

*CORRUPTION, INTEGRITY AND TRANSPARENCY:
LOOKING TO THE 2030 AGENDA*

SHADOW REPORT ON THE IMPLEMENTATION OF

SUSTAINABLE DEVELOPMENT GOAL 16

IN THE AMERICAS





CHILEAN CHAPTER OF TRANSPARNECY INTERNATIONAL

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PROLOGUE

PROLOGUE

One of the most common problems that we find in civil society and in government is the lack of good tools that allow us to know what is being done well, what works and what does not, and what the challenges are that each one of our countries faces in the area of the fight against corruption.

The framework of the Sustainable Development Goals (SDGs) presents an unequalled opportunity to create methodologies that allow those of us in civil society to monitor and compare the progress of the member-countries of the United Nations, thus overcoming that constant lack of information with which all of us struggle.

In response, Transparency International, the leading organization in the fight against corruption at the global level, developed in 2016 an oversight methodology for those goals that relate to the fight against corruption, which are contained in the targets 16.4, 16.5 and 16.10.

In Chile Transparente, we proposed using this methodology to coordinate with the various chapters of Transparency International in the region in order to compile national progress reports. These would then result in a regional shadow report that civil society could use to pressure governments to firmly advance towards not only formal compliance but also the true achievement of the SDGs.

Today it is my pleasure to present this report. This is a more developed version of that which we present in June at the United Nations. It will also be placed online at www.ods16.com so that this information is easily available and learned from.

However, the struggle does not end here. Rather, this is only one of the first steps towards the most important objective: making a better planet. For this reason we hope that this initiative will be replicated all over the world. Already our colleagues in Africa have begun the process and we hope that our colleagues in the Caribbean and Asia do the same so that we all have a tool for effective oversight and advocacy at the global level.

The only way to defeat our enemy is with global cooperation. Alone we will fail. Together we will not only succeed but also build a more free and caring world.

Alberto Precht Rorris

Executive Director Chile Transparente
Chilean Chapter of Transparency International



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ABBREVIATIONS

ARG: Argentina

BRA: Brasil

CHL: Chile

CRI: Costa Rica

SLV: El Salvador

HND: Honduras

PER: Perú

NA: Not Applicable

NS: No score

NR: No response



INTRODUCTION

I. INTRODUCTION

Building a better tomorrow in which everyone can live free of the scourge of poverty with economic systems that respect the environment and are able to guarantee the fruits of peace and prosperity is the objective that world leaders established when they met at the United Nations in September 2015 to adopt the 2030 Agenda of the Sustainable Development Goals.

This agenda and its 17 goals demonstrate the necessity of finding a new development paradigm (ECLAC, 2016) that is able to bring the advantages of prosperity to all corners of the planet. Nevertheless, none of these efforts will be successful if we are not able to put a stop to corruption. Because of this, SDG 16, titled “Peace, Justice and Solid Institutions”, contains at least three targets (16.4, 16.5, 16.10) related to the fight against corruption.

Corruption is a phenomenon present in the very foundations of societies. Fighting against it requires the strengthening of democracy as a means of co-existence. This requires a focus on putting the center of action on the general interest as the greater good above the particular interests of the individuals who make up society. It means recognizing that not facing up to corruption can lead to hunger, deaths and the inability to form societies that can healthily co-exist.

As a result, Transparency International (TI), the global coalition against corruption, designed a methodology to evaluate the implementation of the targets for SDG 16 (16.4, 16.5 and 16.10). Together with seven national chapters (Argentina, Brazil, Chile, Costa Rica, El Salvador, Honduras and Peru) TI prepared independent reports (shadow reports) that allow for a different vision from that of the national governments regarding what the challenges are that we must take on in order to achieve the targets that SDG 16 proposes.

The results can be seen in this report and are owed to the effort of the civil society organizations that have assumed responsibility for the success of the 2030 Agenda. They recognize that this shared responsibility applies to all social actors and that their actions, coordination and synergies can contribute to the success of the targets that we have set, as a society, for the world of tomorrow that we seek to build.



METHODOLOGY

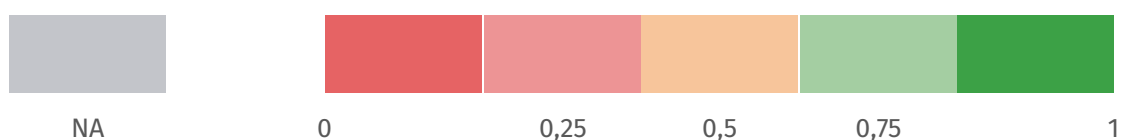
II. METHODOLOGY

The report seeks to evaluate the existence of policies and the form in which these are implemented as well as the gaps that exist in the institutional framework in order to effectively combat corruption. This is done by means of the application of a standardized instrument for each of the countries evaluated.

The methodology was designed by the Secretary of TI to help its national chapters to evaluate the implementation of SDG 16 (16.4, 16.5, 16.10). With this in mind, the methodology separated the official targets and indicators and for each one included specific questions. The answers provide information about the degree of implementation of SDG 16 (16.4, 16.5, 16.10) and allow for the evaluation of progress in the area of anti-corruption in each country from a general perspective, thus widening the scope of the official indicators.

Each thematic area was evaluated according to three elements. First, the legal and institutional framework of each country was evaluated. Second, the relevant data for the evaluated countries and indexes produced by civil society and international organizations were considered. Lastly, researchers carried out a qualitative evaluation of the de facto efforts of each country to fight corruption.

Each one of the evaluated dimensions was scored on a scale from 0 to 1, with intermediate points that represent a traffic signal color code for the purpose of facilitating the understanding of the degree of progress in each area, for each country evaluated.



The data was compiled between the months of May and December 2017 by researchers from each national chapter. These data were later processed and analyzed by the team of Chile Transparente in its capacity as coordinating chapter.



CONTEXT

III. CONTEXT

The way in which states put into practice the implementation of the SDGs is key. States have created specific organizations or empowered already existing ones with coordinating and leading the national development agenda. In some cases there are even national plans for their implementation. Even still, the participation of non-state actors (civil society and the private sector) in the definition of particular goals and local plans can be increased.

The implementation and evaluation of the SDGs faces three key challenges: the multi-dimensional nature of the SDGs, the availability of data and the objectivity of the information generated by government bodies. These challenges make clear the need for independent evaluation of the efforts of governments to fight corruption and other initiatives related to the SDGs.

With the resulting methodology and reports, TI hopes to offer a more complete panorama of each country's progress in the fight against corruption in a series of different areas and make up for the insufficient coverage and availability of data for the official indicators of SDG 16.

The information obtained through independent reports is key to completing the national evaluations at the High-Level Political Forum. At the same time, it can also be useful for the government to review processes that each country is currently undergoing.

The implementation and monitoring of the SDGs requires the formation of alliances and broad mutual-help agreements that allow for coordinated work and the leveraging of the different viewpoints of each country. Therefore, national, regional and global efforts must go beyond those of national governments and must attain the inclusion of civil society and other interested parties.





RESULTS

IV. RESULTS

LATIN AMERICA

The evaluated countries of the region (Argentina, Brazil, Chile, Costa Rica, El Salvador, Honduras and Peru) showed differing levels of progress in the anti-corruption targets of SDG 16. These differences are the result of the design of the state for each nation in addition to the cultural institutions and the problems of greater urgency in their institutional agendas. Policies of access to information and transparency have seen significant progress owing to the presence of regulations and laws that guarantee the right of the access to information in all the countries of the region.

Applying the principles of the paradigm of open government to the different areas of public administration is something that all seven evaluated countries share. This is seen in the materialization of certain actions in different areas of national action that seek to development concrete commitments that improve policies of transparency, strengthen the access to information and raise the standards of accountability.

Nevertheless, the active struggle against corruption and the development of dissuasive mechanisms has remained relegated to a secondary priority, despite this being the greatest challenge for the countries of the region.

Concrete measures that assure institutional frameworks should be adopted that regulate the movement of employees from the public to the private sector and vice-versa, prevent conflicts of interest, assure information registries about effective controllers of business, create effective mechanisms for the recovery of assets and, above all, ensure the release of this information.

The main focus of action should not only be the design of institutional framework and effective policies to fight corruption but also the way in which these are implemented and evaluated. The principal problem in these countries is that they are inefficient in this area since they are not able to carry out the policies that they have created. In order to this, public institutions in-charge must have the power, means and resources to give life to these policies. The political leadership needs to commit itself to strengthening democracies and also increasing the participation of all actors in different stages of the policies that they are looking to develop.

What follows is a summary of the principal findings of the countries evaluated in the priority areas of the fight against corruption as found in SDG 16.



i ACCESS TO INFORMATION

The evaluated countries have solid regulatory frameworks in terms of access to information. This includes constitutional recognition and access to information laws that assure that people can exercise this right.

	ARG	BRA	CHI	CRI	SLV	HND	PER
A fundamental right of access to information	1	1	0	1	1	0	1
This right is applied in all areas	0,5	1	1	1	0,5	0,5	0,5
It applies to all the branches of the state, autonomous bodies and public businesses	1	0,75	0,75	1	1	0,75	1
Clear deadlines to respond to requests	1	0,5	0,25	1	1	1	1
Exceptions are compatible with international norms	0,75	0,25	0,75	1	0,75	0,5	1
Application of damages test	0	0,75	1	1	1	0	NA
Restrictions to the exceptions in special cases	0,75	0,25	0,25	1	1	0	0,25
Existence of an independent organization in charge	0,75	0,5	1	0,25	1	0,5	0,25
Norms of proactive transparency	1	1	1	1	1	1	1

Table 1: Results Access to Information by Country

Chile and Honduras stand out for lacking constitutional recognition of the right to information, though at the time of the writing of this report a bill is moving through the Chilean National Congress that could change its status.

On the other hand, the application of exceptions, the time-frames for response time that access laws stipulate and the lack of a judicial regime that applies to all the powers of the state are some of the deficiencies that are found in the evaluated countries. Another deficiency is the inability to request information anonymously, which amounts to an obstacle to the full exercise of the right.

\$ PUBLIC PROCUREMENT

The tendency in the acquisition of goods, services and public works by the state is to regulate such acquisitions by means of laws. However, Argentina is the only country analyzed in the region that does not have a law in this area and that regulates this topic in terms of lower level norms. It is worth noting that the countries evaluated tend to have an ordered regulatory framework that privileges the use of digital means for procurement, with defined exceptions for the application of regulations. The way in which these regulations are designed is the principal deficiency: ambiguity of the exceptions and their breadth, a lack of transparency in the distinct stages of the purchasing process, the non-existence of oversight for the execution of contracts and the lack of common regime among the different powers of the state all create openings for the continuation of corruption.

↓ OPEN GOVERNMENT AND OPEN DATA

Technologies and social dynamics offer new ways of relating the state to the citizen and an endless number of tools that facilitate the work of public administration and the resolution of problems by the state. The countries of the region demonstrate a growing interest in offering information in the format of open data. However some have had some difficulties in the implementation and the launch of the plans to support this initiative.

The Alliance for Open Government has found fertile ground in Latin America and the Caribbean for putting in practice its guiding values. In general, the countries have implemented, at least, two national action plans. Chile and El Salvador stand out for fulfilling more than 50% of the promises contained in these plans. However, the processes of citizen participation that have been put in place must be reviewed in order to develop channels and mechanisms for active collaboration among actors.

✓ INTEGRITY IN PUBLIC ADMINISTRATION

Policies exist that incentivize the behavior of people who work for the state is common in all the countries that were evaluated. The areas that these cover, though, are quite varied.

	ARG	BRA	CHI	CRI	SLV	HND	PER
There are regulations on integrity and conflict of interests	0,75	1	1	1	0,25	0,25	1
There is "revolving door" regulation	1	1	0	0	0	0	0
The "revolving door" applies to all public employees	0,25	0,25	0	0	0	0	0,25
There is a required waiting period	0,5	0,5	0,5	NA	0	0	0,5
There is a public body that supervises the regulation of the "revolving door"	1	1	NA	NA	NA	0	1
There are proportional and dissuasive sanctions	0,5	0,5	NA	NA	NA	NA	NA
There are regulations regarding conflict of interest and personal wealth	0,5	1	1	1	0	1	0,5
Information is made public regarding the interests of employees of the state and its autonomous bodies	0,75	0,25	1	1	0	1	0
Information is made public regarding the personal wealth of employees of the state and its autonomous bodies	1	0,75	1	1	1	1	1
Access to information about assets	0,75	0	0,25	0	0,25	0	0,25
There is a supervisory body for the declaration and publication of conflict of interests and personal wealth	0,25	0,25	0,75	1	0,75	1	1
There are proportional and dissuasive sanctions	0,5	0,5	1	1	0,5	0,5	0,75

Table 2: Results Integrity in Public Administration by country

In general, the problem with these initiatives is with the implementation, oversight and punishment regarding these policies. It is necessary to highlight the delay that exists in the regulation of the movement of public employees from the public to the private sector, given that only Argentina and Brazil have norms to protect and avoid possible conflicts of interest.

Honduras and El Salvador stand out for the non-existence of mechanized designed to strengthen integrity and prevent conflicts of interest in the management of public affairs.

Improving the publication and access to information regarding the declaration of interests and wealth of officials and public employees is necessary since the obligation to declare is not tied to publication. The obligation to publish varies depending on if the official that declares is part of the executive, legislative or judicial power.

★ **TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES**

Leveling the conditions of competition between the political parties and candidates is essential for a healthy democracy. In the Latin American region, only El Salvador shows a delay in the regulation of the financing of parties and electoral campaigns.

	ARG	BRA	CHI	CRI	SLV	HND	PER
Regulation about the financing of political parties	NA	1	1	1	0	1	1
Regulation about the financing of candidates	NA	1	1	1	0	NS	0
Electoral fundraising and spending and individual donors are published	NS	1	0,75	1	1	1	1
Parties publish income, expenses and individual donations	NS	1	0,75	1	1	1	1
Electoral spending is subject to independent scrutiny	NS	0,5	0,5	1	0,5	0,5	0,5
The accounts of parties are subject to independent scrutiny	NS	0,5	0,5	1	0,5	0,5	0,5

Table 3: Results Transparency in Electoral Campaigns and Political Parties by country

Strengthening the requirements of publication of electoral spending is very necessary in order to help the citizenry in its role of overseer and to empower the electoral bodies to exercise processes of exhaustive revision of electoral spending.

FISCAL TRANSPARENCY

The progress that the evaluated countries of the region demonstrate in policies of budget transparency is owed fundamentally to the application of law of access to information and specific regulations in this area.

	ARG	BRA	CHI	CRI	SLV	HND	PER
There are regulations on fiscal transparency	0,5	1	0,75	0,75	0,75	0	0,5

Table 4: Results Fiscal Transparency by country

There is an acceptable level of disclosure of budget information in six countries and the Brazilian initiative that introduces digital means for real oversight of the budget stands out. The case of Honduras is worrying since it is no obligatory to disclose budget data despite the existence of a general law for the access to public information. Though the situation for the region as a whole is good, there are still the challenges of making budget information comprehensible for all citizens and of progressing in the disclosure of information regarding fiscal policy.

FINAL BENEFICIARY TRANSPARENCY

Policies for the registration and disclosure of information regarding beneficial ownership show disparate results.

	ARG	BRA	CHI	CRI	SLV	HND	PER
Existing legal definition	1	0	0,5	1	0	1	1
Financial institutions have procedures to discover the identity of the beneficiary	1	0,5	0,5	1	0	1	1
There is an organization with access to this information	0,25	0,5	0,75	1	0,25	0,5	0,25
Authorities have access to this information	0,75	NR	0,5	NR	NR	0,5	0,25
Information about ownership that is required to be reported	1	NR	0,75	NR	NR	0,75	1
Information available to the public	0	0	0,5	NA	0	0	0
Obligation to update information	0,5	NR	0,75	NR	NR	0,75	0
There is a registry with information about trusts	0,5	NR	0,5	NR	NR	0,5	NR

Table 5: Results Final Beneficiary Transparency by country

Argentina, Costa Rica, Honduras and Peru have made concrete efforts to legislate in this area but they still must strengthen the implementation processes of these policies and ensure the access to information included in the registries so that civil society can take on an active oversight role. Brazil and El Salvador, on the other hand, are still in the stage of deregulation although certain information is accessible regarding the effective beneficiaries thanks to other legal instruments. In the case of Chile, efforts have been made to adopt regulations in this area, without the binding force of the law, that would allow for the registration of the effective controllers of businesses but this availability of this information for the public is still not assured.

ASSET RECOVERY

The creation of specific policies and mechanisms for the recovery of assets has only been observed in Brazil and Chile, for now. In Argentina and Costa Rica some methods exist but not particularly for cases of corruption. On the other hand, Peru and El Salvador stand out for not having specific mechanisms in this area.

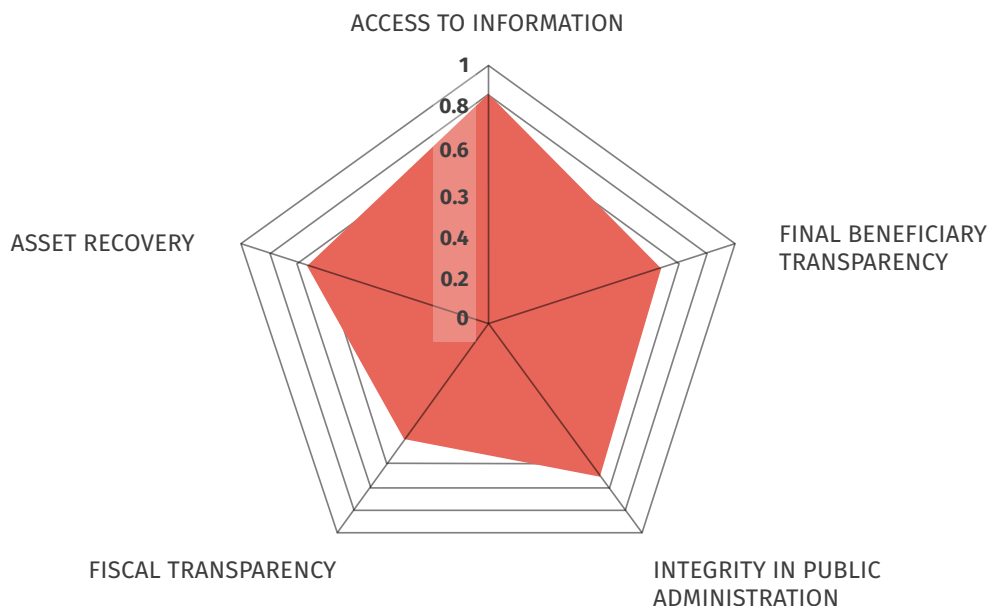
	ARG	BRA	CHI	CRI	SLV	HND	PER
There is a specific policy	0,5	1	1	0,5	0	1	0
Existing mechanisms	0,75	0,25	0,25	0,25	0,25	1	0,5
There are specialized units or teams	0,75	0,5	0,5	0,75	0	0,5	0,5

Table 6: Results Asset Recovery by country

In all cases, the available mechanisms must be strengthened in order to ensure effective recovery, since all the policies are deficient. But it is especially necessary to incentivize alliances and intergovernmental cooperation to increase the effectiveness of the pursuit of asset recovery.



SUMMARY OF RESULTS



Graphic 1: General Results Argentina.

Although regulations that deal with diverse areas of transparency, access to public information and the fight against corruption can be found in Argentina, there is not an integrity system to speak of in concrete terms. Furthermore, even when regulations meet international standards, the main problem is the gap between the norm and practice.

The limits for the construction of an integrity system are associated with, among other things, existing state capacity to enforce existing regulations as well as the real processes for the implementation of public policies of integrity. Specifically, the majority of deficiencies in Argentina in this area are not because of the design of these policies but rather in the real way these initiatives are brought into action. The fluctuations in political will to create an integrity system impact heavily in the availability of the means to make it a reality.

Lastly, it is impossible to talk about an integrity system when the government bodies in charge of the duties of prevention, oversight and punishment either do not have the necessary institutional independence to guarantee the objectivity of their actions or when they do have this, they are denied the resources and the means to do their job. Or simply their recommendations their recommendations are simply not listened to, whether they are binding or not.

i ACCESS TO INFORMATION

While in 2003 Argentina started down the path of guaranteeing the access to public information with the promulgation of Decree N° 1.172, this rule only regulates the actions of the national executive power and some parts of the private sector with links to the state, thereby leaving the legislative and judicial power outside the scope of the regulation. In addition to this weakness, the decree in question was arbitrarily applied throughout its existence.

EThis situation changed in 2016 with the approval of the law 27.275 regarding the access to public information, which extended this right to the three powers of the state. With it recently coming into force in September of 2017, institutions designed to apply this law began to be formed with the creation of Agency of Access to Public Information whose role is to supervise the effectiveness of the exercise of this right and to promote measure to achieve greater transparency in the sphere of the national executive power. The wide definition of public information included in the regulation is worth pointing out. It is understood as “any information included in documents, whatever their format, that a member of the three powers of the state possesses, generates, transforms or obtains.”

The access to information reaches its legal limit in the application of a variety of exceptions, among which are the protection of personal information, national security and exterior relations and information that would affect the working of financial or banking system. Despite these exceptions, the regulation stipulates that in case of “serious violations of human rights, genocide, war crimes or crimes against humanity”, these exceptions become invalid and the information must be published.

Beyond the progress that the adoption of national access to information law represents for the implementation of transparency policies, there is a range of challenges particular to putting into practice a law that changes the traditional parameters that have defined the work of the Argentinian state. Among these are the effective implementation of the law in the legislative and judicial powers and all others covered by the law as well as the strengthening of the rules for active transparency in all the bodies covered by the regulation and the elimination of the existing barriers between people and the access to information created by the requirement to supply identifying information at the moment of presenting a request for the access to information in digital format.

§ PUBLIC PROCUREMENT

In the Argentinian state, the acquisition of goods, services and the development of public works is characterized by the absence of an organized policy for a unified regulatory framework. The absence of a national law and the resulting regulation of these processes through an executive order, have led to the profusion of legal instruments of less ability to regulate this area. By definition, they are far from having meaningfully reduced the margins of discretion that the current regulatory architecture makes possible.

As a result, public contracting at the national level is regulated by a series of rules that depend on the area of the contracting. In the case of the public purchase of goods and services, there is no law that provides for regulation. Instead it is done under the guidelines of Executive Order N° 1.023 and Decree N° 1030. Public Works are governed by the law N° 13.064, which has its origin in the 1940s. The bodies of the legislative and judicial power are excluded from these rules since they have their own regulations.

In this framework the advances that have been made is owed to the progressive establishment of the system of electronic purchasing and the creation of digital portals through which the acquisition processes of the state are published. The portals COMPR.AR (comprar.gob.ar) for goods and services and CONTRAT.AR (contrat.ar) for public works bring together the information referred to in these procedures though not all in one place. However, this information is available for whoever is interested. To this can be added the System of Suppliers (SIPRO) that registers all the buyers and sellers of the contracting that the bodies of the National Public Administration carry out, in addition to those who have been previously excluded or that currently have problems with doing business with the state. In the case of public works, the creation of the Registry of Constructors has not gone beyond the requirement to sign up. It lacks a complete list of all the businesses that work with the state. It should be mentioned that this registry is not public and it does not contain a list of those prohibited from working with the state. Both portals, given their short existence so far, cannot be completely evaluated according to their full potential.

While there has been progress in the publication of purchases and contracting done by the executive, in with internationally agreed to obligations, there are distinct challenges to making these processes completely transparent. As a result, various civil society organizations have presented a range of recommendations to the Ministry of Modernization in order to fulfill the commitments made in this area.

↓ OPEN GOVERNMENT AND OPEN DATA

Since its creation in the year 2011 and its formal integration into the Open Government Partnership (OGP) in November 2012, the national executive power has assumed the responsibility of adapting its government practices to fall in line with the four fundamental pillars that constitute the OGP.

While in the last few years there has been clear progress in the area of the methodology and institutionality of the process – for example with the creation of the National Open Government Commission and the thematic meetings from which emerged the commitments contained in the Action Plans – there are still major challenges.

Among the most important of these is the necessity of Argentina to fulfill its ambitious and innovative commitments and to increase the number of binding commitments in the fight against corruption. At the same time it is necessary to increase the publicity and diffusion of the OGP process and achieve an increase the number of civil society organizations in federation that are involved in the process of the co-creation of the action plans.

Similarly, an open government agenda that goes beyond the action plans of the OGP is still a necessity. This would deepen the state commitment with a policy of pro-active transparency that includes the totality of the organizations of public administration. Without a doubt, the correct implementation of the law of access to public information, Law N° 27.275/16, can help with this.

Of the commitments taken on by the country in its dos first national action plans, the degree of compliance in the areas of the promotion of transparency, accountability and integrity was in no case more than 40% of the total amount of commitments.

Although the available spaces of participation so that organized civil society could be part of the process were few and not very effective during the elaboration and implementation of the first and second action plan, the change of the political orientation of the national authorities in December of 2015, modified the perception of the open government agenda which increased the base of organizations that participate in the process, which became clear in the production of the third plan.

✓ INTEGRITY IN PUBLIC ADMINISTRATION

The group of obligations, prohibitions and mismatches to which Argentinian public employees are subject is regulation by the law N° 25.188 from the year 1999 regarding Ethics in the Exercise of the Public Role. According to the framework of the law, the work of personnel of the state, without distinction among the various bodies that are part of the different powers of the state, must conform to the principles of integrity, honesty, uprightness, austerity and good faith.

Nevertheless, the combination of an old regulation to cover the different ways that the state functions and the emergence of new forms of corruption has demonstrated the necessity to develop new permanent guidelines with complementary regulations that function as “band-aids” for an essentially obsolete law.

While since it took effect the regulation of public ethics has prevented civil servants from receiving any type of gift, present or donation, with an exception for the case of diplomatic courtesy or custom, only in the year 2017 were there created a registry of gifts and another for the trips financed by third parties, in order to ensure transparency in this area.

With regards to the sworn declarations that civil servants must prepare, these contain information about wealth, professional status and conflicts of interest. In practice, the section regarding the declaration of interests has not been subject to the same level of oversight as the declaration regarding wealth, even though this too has problems, on the part of the responsible organizations.

It must be pointed out that the system of sworn declarations suffered a setback owing to a structural reform that took place in 2013, which led to less information being available to the public regarding the wealth of civil servants and their family members. This modification

is considered a setback and even unconstitutional since it violates the Interamerican Convention Against Corruption, which Argentina signed. Despite discussions and calls for the reform, up till now there has been no modification to this system.

In terms of conflicts of interest, this is just a starting point. In practice, a multiplicity of cases, above all in the last two years, have made the limitations of this law clear. As a result, national authorities have rolled out a series of measures through decrees. However these only apply to the president and, in some cases, to chiefs of staff.

Argentinian regulation establishes a rule for the “revolving door” that places restrictions on the movement of personnel from state bodies to the private sector when it is related to the role that they carried out as a member of the state. This restriction lasts for a period of three years. There is not, however, a similar regulation that establishments restrictions on the movement of people from the private to the public sector, a situation which has been responsible for a rising number of cases of conflicts of interest that the system was not able to prevent and which the state later had to take actions to remedy.

Beyond the efforts to regulate the integrity system in Argentina, undoubtedly a structural reform is necessary that must allow for efficient prevention and penalization mechanisms for cases of conflicts of interest or the failure to fulfill the ethical duties of civil servants. On the other hand, the lack of institutional independence for the enforcing authority and the low level of compliance with the regulations by the judicial and legislative power weaken a law that already lacks basic elements to carry out effective control of public administration.

★ **TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES**

The regular life of parties and the economic support of the electoral processes are ruled in Argentina by a specific legal framework, centrally concentrated in law Nº 26.215/06, and its modification under law Nº 26.571/09, as well as what is stipulated in the National Electoral Code.

Despite current regulations establishing the forms of financing of political parties and electoral campaigns, which set limits on donations and spending, set the parameters for their accounting and define the relevant penalties for their violation, political financing in Argentina should be analyzed beyond just what is strictly established in the currently regulatory framework if deceptive conclusions want to be avoided regarding the reality of political financing. In this area, the fact that the legal framework is broad and deals with internationally recognized elements is not enough to guarantee the integrity and transparency of the entire system.

As a result, it can be affirmed that the real problems in terms of the integrity of financing of politics in Argentina go along different tracks. For example, the apparent breadth of the donations that judicial persons can make to political parties despite it being explicitly illegal for political campaigns makes the tracking of such donations difficult. While the relevant regulation stipulates that campaigns have a short duration of 35 days, in practice these last the whole year during which there is electoral competition. Thus the limits between the regular life of the party and the electoral campaign are hard to define for those who review the spending of political parties.

Another relevant topic is associated with the type of donations that physical or judicial persons makes. In Argentina almost 100% of donations are done with cash and that money is deposited directly in the only bank account of the party or alliance of parties. This makes traceability of the donation impossible since it is not possible to know with certainty who gave the money. An addition pending point in this analysis has to do with the judicial control over what is not declared. In Argentina, the big problem is “dark” donations, meaning those that are not included in reports nor in bank balances.

Thus, even though all information must be turned over the electoral division of the federal justice system, an independent body of the political parties, with the organization of auditors of the National Electoral Commission reviewing the account and even with this information being publicly released, it becomes vital to analyze what real capacity the electoral authorities have to audit campaigns. This goes right to the heart of the issue of

the independence of the electoral bodies. While analyzing it from outside the reality of the justice system in Argentina would be an error, within that context perhaps the electoral bodies are the honest and independent that can be found in the entire justice system.

Nevertheless, it is impossible to get data that can be verified to be 100% independent or not dependent on someone. The electoral bodies face a problem of political constraints. What should be noted is that, since political financing depends on self-regulation by parties, this creates problems for the authorities: if regulations are not strict (and in Argentina they are not) it is because the legislators do not wish to pass clear guidelines. In other words, the authorities are not going to take responsibility for a problem that the politicians do not want to resolve. Under this framework, despite electoral authorities having the ability to impose penalties for the breach of electoral law, the current system does not act as a deterrent, which leads to recurrence and the failure to comply becoming habitual, especially with the biggest parties. Lastly, it should be noted that leeway exists in the use of public resources by public officials, which allows for major distortions of electoral campaigns. In this area, the electoral authorities have totally failed to act.

In this context, reform to the system of the financing of the politics in Argentina that that places the focus on making the real financing of the system transparent is necessary, above all during electoral campaigns. This should be done with the creation of a formal method of donating through the banking system to political parties (whether through cards, electronic payment systems, wire transfers, etc.) so that it is possible to reconstruct the origin and final destination of those funds at the time of evaluating the integrity of the accounting done by political parties. In addition to this, there should be a system of clear limits and restrictions on the use of public resources by the government during electoral campaigns. This will avoid distortions that can favor determined candidates or political sectors over others. Lastly, without a doubt, electoral authorities must have real autonomy, sufficient resources to carry out their duties and established mechanisms for true oversight, in addition to auditing systems for the accounts of campaigns and political parties.

In conclusion, in Argentina there is a big difference between the law and practice. If an analysis is done of what seems to be covered by law, there is complete legislation. Nevertheless, some points that seemed strong are not and legislators have astutely left many spaces open to discretion and many possibilities to continue illegally financing politics. As a result, Argentina urgently needs a reform of its system of political financing.

FISCAL TRANSPARENCY

In terms of the budget, current regulation requires the Ministry of Finance, through its National Budget Office, to make information regarding the public budget available to all on its website. These data cover everything from the presidential message that accompanies the budget bill sent to congress to the accounts of invested resources approved by the budget law.

While this information is available in different formats (PDF and DOC), which is a step forward that puts Argentina in line with the international commitments it made upon signing the Open Government Partnership, these obligations have not always been totally fulfilled. For example, since the year 2015 there has not been an improvement in the number of documents published.

Because of this, it is necessary to elaborate and publish a citizen budget accompanied by periodic revisions and to make available the documentation that supports the execution of the budget and the verification of gains and losses. Along these lines, the effective and efficient fulfilling of their roles by the bodies empowered to oversee and audit the execution of the budget is necessary.

It is also necessary to strengthen the active role of civil society in the budget oversight process and in fiscal policy in general by facilitating mechanisms that allow for participation, monitoring and auditing.

FINAL BENEFICIARY TRANSPARENCY

Legislation establishes the obligation to register information regarding any natural person who controls at least 20% of the capital or decision rights of a business (judicial person) or that exercises some type of final control over the business.

In Argentina, owing to its federalism, there are a large amount of government bodies that collect information related to the final beneficiary of judicial persons. The laws, however, do not specify the way in which these bodies should exchange information, which has made it common practice to sign inter-institutional collaboration agreements that make such exchange possible. As a result, the fact that this depends on the authorities of each body weakens the integrity of the established mechanisms to share information since this can be subject to the political will, capriciousness and/or particular logic of each institution.

Another issue with the final beneficiary system in Argentina is the absence of unified registry of judicial persons since each province has its own databases with its own systems and requirements. In 2005 the law N°26.047 was approved that created the National Centralized Registry of judicial persons for the purpose of unifying all the provincial registries. But this never occurred in practice because, for the law to become operative, each province had to agree to join it and there was subnational resistance to this ceding of information. Despite this situation, there are institutions, like the Financial Information Unit (UIF), that have registries that allow for the identification of final beneficiaries, independent of the previously mentioned registry.

Though this information should be public, it is very difficult for citizens to gain access to these registries, since they cannot be found online and there are barriers to the access to information. For example, whoever is interested in knowing final beneficiary information must present a formal request to the Inspector General of Justice, and must pay an amount of money established by this authority.

On the other hand, the policies that seek to prevent the laundering of assets and the financing of terrorism require judicial persons to annually provide information in a sworn declaration on their final beneficiaries, including their name, ID number, address, nationality, occupation, percentage of participation and the number of their unique tax ID number.

At the same, the contracts that establish trusts must declare the final beneficiary of the trustor, fiduciary and, when defined, the trustee and the beneficiary. As a part of associative contracts, the personal information of the effective beneficiaries that form part of the contract must be provided.

The main challenge in this area is achieving the total application of the regulations that have been created, especially the establishment of the National Centralized Registry of judicial persons and to assure free and public access to anyone. Similarly, a clear definition of the powers of public bodies that oversee, monitor and penalize these obligations and the articulation of their actions in terms of an integral system is a pending task.

ASSET RECOVERY

The current regulation on asset recovery has undergone numerous recent changes. Today the seizure of property is possible without the necessity of a conviction in the cases of drug trafficking and financial and economic crimes. In other cases, and as a general principle, according to the law 20.785 a conviction is required in order to proceed with the confiscation of assets.

The work of recovering goods stolen from public property is made more difficult owing to the non-existence of a complete and historic registry of confiscated and recovered property during penal processes and by the lack of differentiation between crimes against public administration and common crimes. Contrary to what the regulation establishes, this means that recovered assets are prevented from becoming part of the property of the judicial power. Facing this situation of administrative disorder, each judge must manage the decommissioned goods in each case.

The body responsible for the recovery of assets taken from the administration of the state is the Supreme Court of Justice of the Nation, which is who decides the destiny of these goods. Once the final sentence is decided, the assets come under the administration of the justice system. This process can take more than 10 years.

In the field of the public prosecutor ministry, there are specialized offices that contribute to the work of the prosecutors, whether that is collaborating with investigations or carrying out preliminary research that will later initiate a formal complaint. For example, there is the Office of Economic Crimes and Money Laundering (PROCELAC) as well as the Office of Administrative Investigations (PIA), the latter fulfilling the same role as the PROCELAC but as it relates to crimes against public administration. There are other supporting institutions to the public prosecutor ministry such as the General Administration of Economic and Financial Advising and the General Administration of Asset Recovery and the Decommissioning of Goods.

In the area of the executive, there is the expert committee on the control of organized crime and corruption from the Ministry of Justice and Human Rights, which was created for the purpose of contributing to the fulfillment of the relevant commitments signed on to by the country.

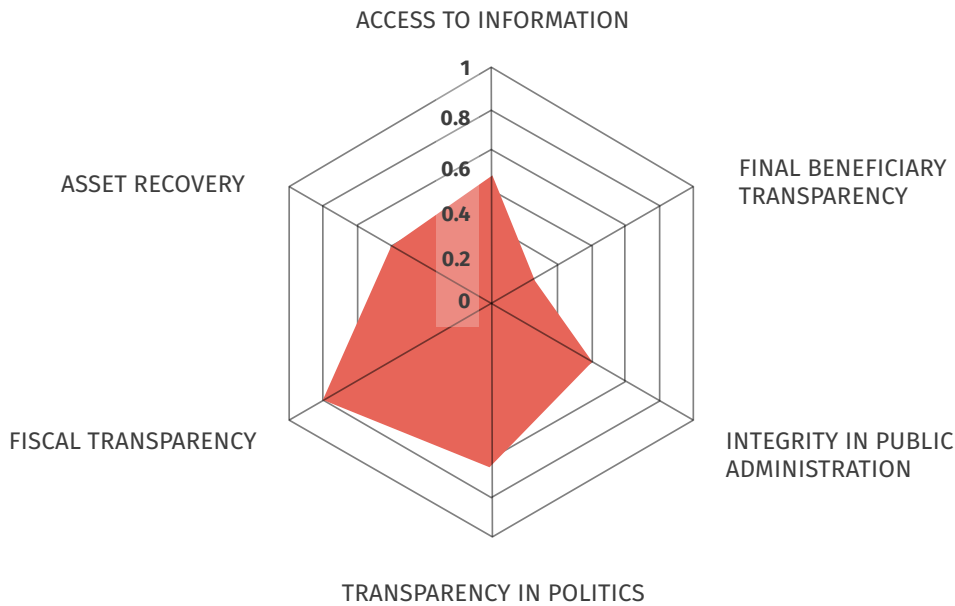
Argentina forms part of a series of international organizations that fight money laundering and terrorism financing through the exchange of information and technology necessary to recover assets. Among these are the United Nations Convention and the Interamerican Convention Against Corruption.

As in other areas, the challenge to achieving an adequate system of asset recovery is having the mechanisms and the right people for the implementation of the current obligations and legal framework. Similarly, it requires clear and effective political and judicial decisiveness to grant the respective bodies the abilities and means necessary to carry out their work.

RECOMMENDATIONS

1. Strengthen the implementation of the National Law for the Access to Public Information by giving institutional, financial and technical resources to the Access to Information Agencies of each of the three powers of the state so that they can carry out their duties.
2. Approve a national law of public procurement and contracting that establishes a unified system that assures the transparency of the entire process and reduces the margin of discretion by authorities.
3. Channel efforts in the area of Open Government in actions that promote the active fight against corruption through the adoption of substantive and ambitious commitments in this area.
4. Strengthen the spaces for co-creation with civil society in instances of deliberation that can enrich Open Government Policies.
5. Reform the Law of Ethics in the Exercise of the Public Role to ensure optimal standards for the prevention and penalization of acts of corruption or the breach of the duties of civil servants and grant sufficient autonomy and independence to oversight bodies so they can do their job.
6. Introduce modifications to the system of financing of politics in such a way to make the real practices of the actors involved more transparent and to allow for greater regulation by the relevant authorities by promoting their integrity, with a special emphasis during electoral processes.
7. Grant autonomy and sufficient resources to the electoral bodies to supervise the fulfillment of the legal obligations in terms of the financing of politics in general, and electoral campaigns specifically. Emphasize the proper accounting of donors and receivers of financing.
8. Legitimate an institutional framework in fiscal transparency that allows for the access to information during the totality of the budget cycle on a permanent basis for the purpose of promoting citizen control of the budget process.
9. Complete the implementation of existing policies to make possible the permanent access to information about the financial beneficiaries of judicial persons.
10. Generate an asset recovery and confiscation regime that allows for the rapid reintegration into state coffers of public funds diverted as a result of corruption. Such a regime should have tools that guarantee transparency in the administration and fate of this property.

SUMMARY OF RESULTS



Graphic 2: Results Brazil.

Policies designed to provide for an integrity framework and access to information in all the relevant areas of the fight against corruption have been successfully adopted in Brazil. Nevertheless, its efforts in the area of budget transparency stand out for the remarkable practice, in comparison with the other countries evaluated, of making available information about the budget cycle and fiscal policy.

In addition, the policies that are being developed to strengthen the transparency of electoral campaigns and to regulate the financing of political parties are going down the right track despite difficulties at the moment of implementation.

Nevertheless, the regulatory framework regarding the registration of final beneficiaries must be strengthened, policies to prevent conflicts of interests of civil servants must be improved, and the international mechanisms for asset recovery should be strengthened as well.

i ACCESS TO INFORMATION

The policy of transparency and access to information in Brazil is governed by the constitutional recognition of this right and by the law on access to public information from 2011, which establishes the way to exercise this right, mechanisms for protection and the system for penalization.

The dispositions of these regulations apply to the powers of the executive, legislative and judiciary, in addition to the agencies, public and public-private businesses, public foundations, regulatory institutions and businesses that receive public financing. However, it does not cover private entities with public functions.

There is information that owing to its nature are not subject to any request. Such is the case of information that damages or puts at risk the international relations of country; puts at risk someone’s life, the security of the public or of institutions, high-ranking national officials, public health, the financial stability of the country. Similarly protected information includes that which harms or risks the plans or operations of the armed forces. It also covers developments in science or technology or in areas of strategic interest to the nation or that information which could compromise intelligence activities, research or the prosecution of crimes. Lastly, there is also the prohibition of disclosing information that is already prohibited by law. Nevertheless, it is not possible to deny the access to information that is of use for the judicial or administrative protection of fundamental rights.

Faced with an information request, the legislation notes that, if the records in question are not immediately available, an answer must be given by email or mail in a maximum period of twenty working days. The Comptroller General of the Union and the Mixed Commission on Information Reevaluation are the institutions in charge of reviewing of the rejections of the turnover of information. Nevertheless, none of these bodies is political and financially autonomous and they lack real powers of oversight which makes the exercise of the right of access to information difficult.

In terms of active transparency, the law for the access to information contains the obligation of public bodies to promote the disclosure of information of interest that each respective institution generates or holds. Despite this requirement, in practice this is not fully the case.

Though legal norms exist, it has not been possible to implement these policies in an effective manner. There are barriers between citizens and the public institutions covered by the law that limit the exercise of the right: for example, the obligation of identification when making an information request, the reluctance of some institutions to share information and the lack of awareness of these obligations that the law creates by civil servants.

§ PUBLIC PROCUREMENT

Brazil has had a law on the bidding process since 1993 that controls the procurement of goods, services and public works without distinction. Nevertheless, regulation is much more complex and is composed of the legal framework for public purchases in the law for the acquisition of goods, services and others through proclamation, the law for the concession of services, the law for public-private associations, the law for public consortia and the regulatory framework based on the voluntary agreements between the state and private entities. For exceptional cases there is a Differential Regime of Public Contracting (RDC).

A series of cases are excluded from the requirements of the bidding regime with the possibility of direct adjudication. Among the most notable are the works or services of engineering, for purchases and services that amount to 10% of the expected maximal value, when there were no bidders in the previous round of offers, in cases of emergency or public disaster, and some others. There are cases when an open bidding process is not required, for example when the good or service to be purchased can only be supplied by one business in particular. In the cases just described, the determination not to follow normal procedure must be justified.

The legal framework for the system of public procurement does not require the publication of the complete contracts. Instead, only summaries are necessary that contain the parties, date, purpose and value of the contract. This information, in addition to that regarding the request for bids, is available to citizens on a monthly basis and without cost in the portal Open Data of the Integrated System of General Administration and Services (SIASG). Information on canceled contracts or the imposition of penalties does not appear to be available.

Brazilian public bidding law does not require the disclosure of final beneficiaries so the public does not know this information. The publication of contracts only requires the registration of the business or physical person with which the public institution signed the contract.

The principal challenge that the procurement system of the country faces is the publication of the information contained in the contracts for goods, services and public works. It is essential that the final beneficiaries behind each contracting entity be known. It is also important to strengthen the access to information in the federations and the sub-national governments

↓ OPEN GOVERNMENT AND OPEN DATA

As a member of the Open Government Partnership since its creation, Brazil has implemented a series of actions through its National Action Plans. These strategies have been focused fundamentally on the opening of information and the creation of mechanisms of citizen participation.

Particularly in the Third Plan of National Action, the initiatives focused on improving integrity policies. As a result, the following laws were passed: the Anti-Corruption Law, the Conflict of Interest Law, a decree regarding the opening up of government archives, and the use of a methodology to classify the transparency portals of local governments by the Ministry of Transparency, Supervision and Control.

Nevertheless, the participation of civil society in the elaboration of different plans has been uneven. In the case of the first two plans, citizen presence was not very substantial. In fact, the Second National Plan did not consider suggestions brought forth by civil society. In the last plan, however, a large number of representatives of civil society, more actually than government officials, participated in the design of commitments.

Despite their scarce participation in the action plans, there have been initiatives from civil society that seek to increase the openness of management of public affairs. The Forum on the Right of Access to Public Information (2013) stands out since it included the participation of various organizations. Its purpose was to influence the government and society so that the right of access to information is respected. In fulfillment of this goal, it participated in the creation of the Law of Access to Information. This forum is currently responsible for the publication on its website of the “Opacity Monitor” where they show news about state bodies that do not comply with the law.

The open government agenda in Brazil requires the focus of actions in the strengthening of transparency and access to information measures since information is not published regarding contracting, bids, government spending and final beneficiaries that would allow for oversight and supervision of the work of public institutions.

✓ INTEGRITY IN PUBLIC ADMINISTRATION

The integrity policy is covered by the Code of Conduct from 1992 and the Conflict of Interest Law from 2013, which are applicable only to the high levels of the executive with the legislative and judicial power excluded from the regulations. This is despite the necessity to establish a general system applicable to all the bodies of the powers of the state.

In the area of the federal executive power, civil servants will be in violation of the law if upon leaving their government position they sell their services, directly or indirectly, to people with whom they have interacted during the exercise of their position; or accept job or establish links with people who carry out activities related with their previous work; or sign contracts for services, advice or consultancy with entities of the federal executive with links to the public authority where they worked; or intervene in any way for private benefit before an institution in which they have worked or with which they have established a relevant relationship. Along these lines, before they have been out of the job for six months, civil servants also cannot disclose privileged information such as that related to classified matters or which is not publicly known and that is relevant in the making of decisions by the federal executive. This time frame is insufficient for the prevention of conflicts of interest.

The fulfillment of these rules is supervised by the Ministry of Transparency, Supervision and Control and by the Commission of Public Ethics. The civil penalties for the infraction of these regulations includes the complete compensation of the damage, the suspension of political rights for three to five years, and the payment of fine of up to 100 times the salary of the civil servant. The administrative punishment includes the demotion of the civil servant.

Nevertheless, the penalty system is deficient given the scarce supervisory power of these entities and because of the lack of financial resources and personnel to carry out their role. In addition, these institutions only act when the conflict of interest has become a scandal. As this shows, penalties are not dissuasive since in practice they are not applied.

On the other hand, public employees from the high levels of the executive power are obligated to prepare declarations of wealth and interests and hand them over to the government. This includes properties, income, investments, gifts, donations, sponsored trips, received benefits and jobs. The analysis of an eventual conflict of interest that involves other federal services that are not obligated to prepare these declarations of interests is the responsibility of the Ministry of Transparency, Supervision and Control.

For their part, senators must sign a document confirming that they do not occupy high level positions in media organizations (such as director or manager of a licensed or authorized radio or television emitter). They must also declare if they occupy or occupied high level positions in public or private organizations in Brazil or outside, and also must provide details about such a position in the last two years.

Regarding the sworn declaration of wealth, this covers the three powers of the state, in addition to the members of other public institutions like the Office of the Federal Prosecutor. Depending on their responsibilities, public employees also must declare the assets of their dependent family members. It is worth nothing that the declaration of assets and income in Brazil are focused on the employee of the executive power but not in the other branches of the state.

The information contained in the previously mentioned declarations is not available for citizens to review. They can, however, obtain access to it from the Ethical Commission of the President in the case of the most influential positions within the government. For the rest of the federal services the Ministry of Transparency, Supervision and Control is in charge of oversight and has developed an electronic system so that authorities can consult the government about eventual conflicts.

In order to strengthen the integrity system in public administration it is necessary to extend integrity and transparency policies to the small range of public administration as well as the legislative and judicial powers. To this can be added the necessity of granting real powers and demarcate the current ones to the oversight bodies.

★ **TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES**

Currently, the financing of electoral campaigns and political parties is governed by the law Nº 13.165 from 2015. This regulation has as its goal to reduce the costs of campaigns, simplify the administration of parties, increase female participation, establish a system for the financing of political campaigns in which only natural persons and party funds can turn over resources, prohibit contributions from businesses, and fix maximum thresholds for spending in campaigns determined by declared expenditures in previous campaigns for the same position prior to the law taking effect.

In addition to this regulation, law Nº 9.096 establishes that these organizations, and not individual candidates, will receive money from the Party Fund for the development of campaigns and to sustain the day-to-day expenses of the collectivity based on the vote totals obtained in the last general elections for the House of Deputies. This fund is financed with the donations of natural persons, the payment of fines for the breach of electoral law and associated laws, and financial resources set aside by law and by appropriation in the national budget. Electoral ads in mass media are also financed by the state. Public financing is restricted to political parties.

Natural persons can also directly support parties and candidates, who then must open bank accounts for the sole purpose of receiving these contributions. These accounts can be closed after elections and the remained funds are returned to contributors. Unidentified donations cannot be used by candidates or parties and are transferred to the national treasury. So that a donation in kind or in cash is considered valid, the person must give their name and present identification.

Candidates and parties at all levels must justify their spending to the electoral justice system through the system of electoral accounts (SPCE) by presenting two partial reports during the campaign and one at the end. All resources received in cash for the financing of campaigns must be reported within 72 hours from the moment of the donation. Support between candidates and parties and the transfer of personal property are excluded from this rule.

The Superior Electoral Court prepares the reports on spending and loans and makes them available to the citizenry where they can view on its website the amounts by contributor. Transparência Brasil maintains a platform that publishes this information in a simple format.

In non-electoral periods, parties inform the Electoral Court about their accounts, whether annually or monthly during electoral years. The annual financial reports are not publicly available. This regime, of by the way, has not prevented illegal contributions.

If a party does not follow these regulations, it can have its transfers from the Party Fund suspended, or be prohibited from participating in the fund for a period of 1 to 2 years according to the case or be forced to pay fines. The legal registration and the statutes of the party can even be canceled in determined situations.

In order to contribute to the strengthening of the transparency regime in campaigns and for parties, maximum amounts should be established for personal donations since the lack of limits generates leads to large inequalities. Penalties should also be strengthened in the case of violations of the legislation. In addition, individual donations should be promoted.

FISCAL TRANSPARENCY

The policy of open budget and tax information in Brazil is principally regulated by the Law of Fiscal Responsibility that guides the financial management of the state. There are also regulations regarding the access to information, transparency and citizen participation.

According to the analysis done by the Open Budget Survey, the country publishes all the documents required by the national open budget standards. As a result, Brazil obtains a total of 77 points (out of a maximum of 100) in their index. These documents include the stage of elaboration of the budget bill, the proposal of the executive, the approved public budget, the citizen budget, the annual report and its mid-year revision, and the audit report.

Updated information on taxes, revenue and spending are available for citizen review for free and easy access in the web site of SIOP, SIGA Brazil and the Transparency Portal. These portals utilize the databases of the Integrated System of Financial Administration of the Federal Government (SIAFI), a web platform of fiscal information of the government that does not comply with the criteria of open data.

Thanks to the fulfillment of these mentioned regulations, Brazil currently has a high degree of fiscal transparency. Nevertheless, there is still work to be done such as increasing the records available regarding the budget proposal of the executive and the reports on the review of the execution of the budget. In addition, there is a need to officially update the Multi-Year Plan (PPA) as a key material in the orientation of the annual budget and to guarantee the consultation of the legislature in the case of extraordinary spending. With these, it is hoped that citizen participation will increase in the control of the budget of the nation.

FINAL BENEFICIARY TRANSPARENCY

Brazil does not have a specific law regarding final beneficiaries. Instead there is a lower level regulation: Regulatory Instruction 1.634 from the Secretary of Federal Revenue, which only applies to the administrative sphere. This instruction defines the final beneficiary as the natural person that directly or indirectly possess, controls or influences a business in a significant way – which is to say, a natural person that possesses at least 25% of the capital of a business or that has the power to take part in the social or power deliberations of the entity, or the person in whose name transactions are carried out.

There are also other legal bodies that indirectly affect the registries of effective beneficiaries, such as the law against money laundering which demands their identification by financial institutions. This information, however, is not available to the public; the only ones with access are the Council for the Control of Financial Activities (COAF), the Secretary of Federal Revenue of Brazil (RFB) and the Central Bank. Prior to these institutions seeing this information, the beneficiary must be reviewed to see if he or she is a politically exposed person, which changes the conditions for the publication of records. The country does not

have a centralized database of final beneficiaries that can be consulted by national or foreign authorities.

All entities that do business in Brazil, including foreign businesses, must register with the Secretary of Federal Revenue. Following this, they are given a unique tax ID number. For their part, in order to be registered, a legal entity must provide detailed information regarding the owners, including the name and number of shares in their power. In the case of foreign businesses, the law only requires them to reveal the name of the administrator of the business in Brazil, but not the real owners. This information is available online through a centralized database called the Registry of Owners and Administrators (QSA) to which only the relevant authorities have access and not the general public.

The registry maintained by the federal tax authority (RFB) is the official registry of taxable assets. All legal entities that do business in the country, including foreign businesses, must register. They must also register with the commercial assembly in the state in which they are established. The information registered by all the states can be found in a central registry of businesses. There is also a central registry of businesses that brings together all the information registered at the sub-national level.

The Ministry of Planning, Development and Management and the Ministry of Transparency, Supervision and Control allow for the public consultation of the information on the registry of business suppliers of the government but in an incomplete way since it only contains information on business that have supplied goods or services to the government or those that have been registered.

The Open Company Data Index has evaluated Brazil with a grade of 0 out of 100 in its annual rating. This is owed to the absence of registries freely available for public review.

ASSET RECOVERY

The legislation regarding money laundering is in charge of regulating the way in which illicitly obtained assets are recovered in Brazil and abroad. Brazilian procedures do not allow for civil confiscation without a conviction. Goods, rights and values can be returned either totally or partially as long as there is an order and previous judicial decision. It is worth mentioning that there is not specific procedure for the recovery of assets obtained through acts of corruption.

The organism responsible for the return of assets in Brazil is the Department for the Recovery of Assets and International Judicial Cooperation (DRCI), which falls under the National Justice and Citizen Secretary (SNJ) of the Ministry of Justice and Public Security. This institution, created in 2004 with sufficient resources for its job, has as its principal mission to articulate the government bodies in areas related to the fight against money laundering, transnational organized crime, the recovery of assets and international judicial cooperation. Additionally, it also defines policies and develops a culture of preventing and fighting the laundering of assets.

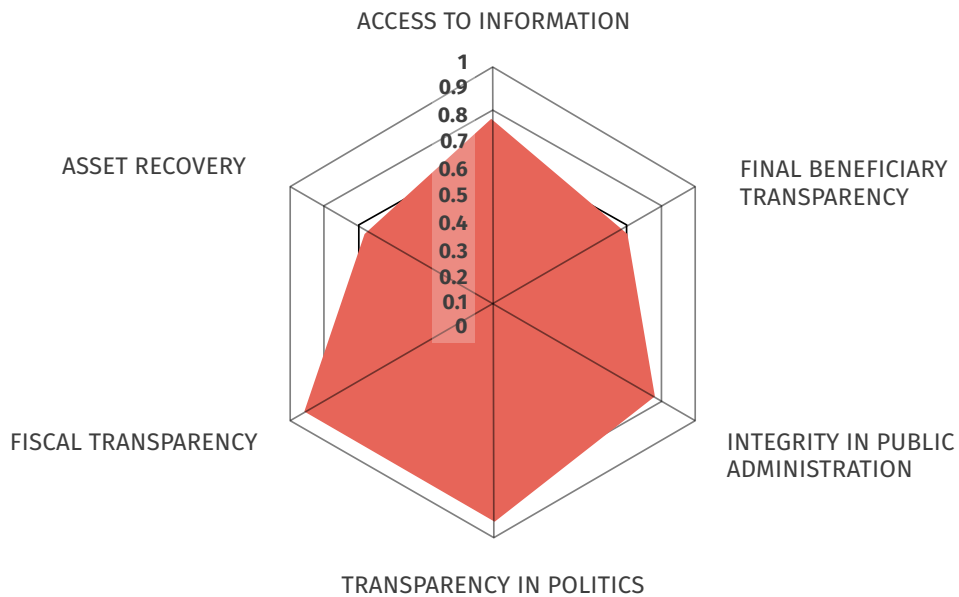
With regards to international cooperation for the return of assets, there is a specific department to address this topic: the Department for the Recovery of Assets and International Judicial Cooperation. In addition, Brazil is part of the G20, the group of developing countries that has among its objective the fight against corruption, which is a political priority of the country. Similarly, the law against money laundering established when there is a treaty or international convention and a request from a foreign authority, the judge will issue provisional rulings regarding assets, rights and values resulting from crimes committed abroad. In the absence of a treaty or convention, the regulation applies if the government of the foreign country in question has a reciprocity treaty with Brazil.

Considering the recent cases of corruption and money laundering that have affected the region and Brazil in particular, it is important that international cooperation and internal processes for asset recovery are further strengthened whenever the country has the infrastructure and the personnel for the job.

RECOMMENDATIONS

1. Decrease the waiting periods for the turning over of public information requested by citizens and standardize the implementation of the law at the federal and sub-national levels.
2. Ensure the publication of the contracts for goods, services and public works in order to allow for active citizen oversight and strengthen the transparency measures in all stages of the procurement process.
3. Promote the participation of civil society in the elaboration, monitoring, oversight and evaluation of the National Action Plans.
4. Extend the obligations of ethics and integrity laws to all the powers of the state and to the different levels of administrative organization of the Brazilian state.
5. Grant the necessary powers, means and resources to the regulatory institutions in order to comply with the legal obligations created to evade acts of corruption.
6. Limit the maximum amount of donations that people can give to campaigns and establish measure to level the playing field of competition conditions for candidates.
7. Toughen the system for penalties for the breach of obligations in the area of electoral or political transparency.
8. Expand the information available from the different stages of the budget cycle and make it available in a commonly understood language for the purpose of increasing citizen participation and oversight.
9. Assure the access to information of the registries on final beneficiaries that exist in the country and establish a general centralized and systematized registry of this information.
10. Strengthen the mechanisms for international collaboration in the recovery of assets and facilitate particular alliances between specialized organisms.

SUMMARY OF RESULTS



Graphic 3: Results Chile.

Chile has been able to successfully adopt and implement a policy of transparency and access to information that stands out in the region. It shows a degree of maturity that has allowed it focus efforts in sectors such as fiscal policy, public procurement and measures to publish the sworn declarations of interests and wealth. The integrity system is at the vanguard in the prevention of conflicts of interest and the openness of information but must advance in the regulation of sensitive areas such as the movement of civil servants from the public sector to the private sector (the revolving door).

The prevention measures against corruption linked to the private sector have not become a priority in the public agenda. However, there has been progress in the registries regarding final beneficiaries.

The most recent changes that have been introduced to the Chilean political system have allowed for the reduction of the risks of corruption in this area but there is still more to be done in the individualized disclosure of the donors of political parties and in granting greater resources to the oversight bodies.

i ACCESS TO INFORMATION

Since the year 2005, access to public information and transparency have been incorporated as a guiding principal in Chilean constitutional norms, but this does not mean full recognition of the access to public information as a fundamental right.

The law N° 20.285 on the access to public information covers the type of information that can be and must be disclosed, the public bodies that are subject to these obligations, the system of exceptions and the mechanisms to guard the right of access to information.

Information subject to public access includes all acts and resolutions, supporting documents, and the procedures followed for their materialization, in addition to all that information elaborated with public funds and the information that is found in the hands of any body of the state. The only causes to limit the access to public information are if the publication of information affects the due compliance with the functions of the required public body, or if the publication of the information affects the rights of third parties, or if it affects national security, or if it affects national interest, or if a law previously classifies the information as secret.

Even though the right of access to public information is applicable to the executive, legislative and judicial power, the retention regime is distinct in each one of the powers of the state, with the executive having the most robust system of classification which is the responsibility of one independent body: the Transparency Council.

Given all the above, there are still challenges that need to be address in this area: fulfilling the time periods for the delivery of information (it is currently 20 work days), decreasing the maximum time periods for delivery, eliminating the ambiguities that are produced in the application of exceptions to access to information and lowering the times for the resolution of claims on the part of those in charge of guarding the access to information.

PUBLIC PROCUREMENT

The acquisition of goods, services and public works in the framework of the work of the state is a fundamental process for the correct functioning of institutions. As a result, since 2003 Chile has had a law that sets the general basis for the acquisition of goods and services for the bodies of the administration of the state (law N° 19.886). In terms of the contracting of public works, a particular regime applies which can vary depending on who assume the costs and risks of the construction of public infrastructure, which can either be the state itself or a private entity.

Despite the differences between the procurement regimes, depending on the object of the contract (which could be a good or service on the construction of public works), the most important rule is that of open public contests and the transparency of the process. Today this is guaranteed through the use of a web portal (www.mercadopublico.cl) which, despite being itself an instrument for the regulation of the acquisition of goods and services, today is also being used to publicize the contracting of public works.

The principal exceptions to the regime of public contracting are applicable in special circumstances, such as when no offers are made in public bidding process, in cases of the premature ending of the contract, or in exceptional situations like an emergency or in order to protect the security or interests of the country. However, the discretion of the public bodies in the definition of terms and conditions of the process of procurement can generate the conditions to privilege, exclude or direct the process towards determined bidders.

Even though the bidding process, as a procedure that is an open contest to any person (natural or legal), is the general rule for all the processes of procurement, this mechanism is obligatory only when the amount of the contract is more than \$72.000 approximately.

Today the biggest challenge that the procurement of goods, services and public works faces is to make transparent the information of the controllers or final beneficiaries of the businesses that participate in the bidding contest and to decrease the margin for discretion that exists in the writing of the requirements and the definition of the conditions and characteristics of the contract.

OPEN GOVERNMENT AND OPEN DATA

Since Chile joined the Open Government Partnership in 2011, efforts in this area have focused on the execution of three national action plans. The focus of the commitments of these plans has been placed on actions that seek to raise the standards of transparency and to develop or strengthen integrity policies. However, there have been no concrete commitments to place the focus of action on efforts to fight corruption in the context of the open government.

Organized civil society has been present in the elaboration of different action plans and in the oversight and monitoring of the commitments that have been made but it was not until the third action plan that there have been practices for the co-creation of commitments. Yet these efforts have had little success in shaping what is finally included in the different action plans.

Despite the challenges that the country faces in strengthening mechanisms of participation in the design, elaboration, monitoring and oversight of the national action plans, the high

percentage of fulfillment of the commitments that have been made in the framework of the OPG stands out.

On the other hand, the country has not been able to put in place a policy of open information with clear direction and intentions. It also lacks technical regulations that standardize the form of publishing information, the update deadlines, nor the responsibility of different public bodies for the availability of information.

The deficiencies in the adoption of a coherent policy in this area are reflected in the barely sufficient results that the country receives in the measures such as the Open Data Index and the Open Data Barometer.

✔ INTEGRITY IN PUBLIC ADMINISTRATION

The combination of regulations and policies that orient and regulate the conduct of public employees in Chile is based on a complex succession of complimentary rules that should be interpreted on the whole, including those policies that seeks transparency in the behavior of the people that carry out public roles in the bodies of the administration of the state.

In Chile it is not common to talk about integrity as such but rather the term “administrative honesty” that is understood as “maintaining impeccable conduct and honest work that is true to the corresponding role, with the preeminence of the general over the private interest.” This has had legal backing since 1999 and constitutional recognition since the year 2005.

With the variety of legislation, public employees and, in general, anyone who does the work of the state are subject to a combination of obligations, restrictions and prohibitions aimed at protecting the general interest. They are expressly prohibited from receiving gifts, donations or any advantage that comes from the role that they carry out.

One of the areas that lacks regulation is the movement of officials and employees from the public sector to the private sector and vice-versa. Today, except in the case of civil servants that work as regulators where there is no evidence for the real application of this regulation, there is no law that deals this phenomenon and establishes responsibilities, grants powers or establishes punishments.

The greatest progress that has been made in this area is the requirement for sworn declarations of wealth and interests. Though the obligation to declare interests has been around since the year 2000 and the obligation to declare wealth since 2006, these declarations were not public or complete until the reforms introduced by the law N° 20.880 in the year 2016.

The modifications made to the regime of sworn declarations of wealth and interests in the year 2016, not only improve transparency but also increase the number of employees and officials required to make the declaration, increase the details of the information that must be declared, extends the declaration to include the wealth of partners and children that are under the guardianship of the declarer. It even extends the obligation to declare to those people that are candidates for a position of popular election.

In addition the declarations of wealth and interests must be done by way of an electronic form that allows for the immediate digitalization of the information in a standard form and makes its available for public consumption immediately after the declaration is made.

Only in the administration of the state, as of June 30th 2017, 88,049 civil servants have made sworn declarations of wealth and interests. These declarations remain permanently available for anyone and for all the powers of the state, by means of a web site that functions as a repository of information (www.infoprobidad.cl) and on the website of each public institution whose officials and employees must declare.

For each branch of the state, there is a body responsible for supervising the fulfillment of the obligations to declare and publicize their content. In the case of the administration of the state, it is the Comptroller General of the Republic, and in the case of the judicial power, it is the disciplinary and penalization system established by the tribunal code. In the case of the national congress, the Ethics Commission and the Parliamentary Transparency Commission of each house are in charge of establishing the necessary measures to punish the breach of the obligations stemming from the declaration of wealth and interests.

Nevertheless, it is not possible to have an evaluation of the effectiveness and the impact of the regulations given the short amount of time that they have had to be implemented.

★ **TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES**

Starting in the year 1988, the Chilean political system, as much in the functioning of the parties as well as the electoral campaigns, was characterized by the freedom of association, the binomial electoral system, predominately private financing without control, a passive regulatory approach by the state and the essentially zero mechanisms for the accounting of expenditures.

Beginning in the year 2003, the focus began to be placed on transparency through the establishment of the first transparency and accounting obligations of electoral campaigns, whether these are independent candidates or candidates that represent political parties. In this way, all those who compete for a public position must register all the support they receive and the spending that they do in the framework of a political campaign. When the electoral process is finished, they must submit information to the electoral authority, in this case the Electoral Service, for review and later approval. They are further required to make this information public once it has been approved.

But it was not until a further group of reforms to the institutional system in 2014 that the foundation of the Chilean political system was changed, in particular with the laws N° 20.900 and 20.915. These reaffirm the public role of the political parties, prohibit donations by businesses, decrease the duration of campaigns, limit the amount of spending that can be done during a campaign and establish transparency obligations for all political parties.

Specifically in the financial area, the parties (once a year) and the candidates (at the end of campaign) must justify their expenses according to the minimum standard of the Electoral Service (SERVEL). However, there are no exact deadlines for parties to comply with the annual spending report.

Despite this progress there are still donations during electoral campaigns that are not traceable, as is the case when the donation is less than \$4,800 USD approximately.

The main challenge that Chile faces in the effective implementation of political institutionality, in what concerns this report, is the strengthening of the institutions that must oversee and penalize compliance with these regulations. These institutions, despite being legally empowered, lack technical capacity and the sufficient personnel to carry out this work. On the other hand, the necessity to join the forces of the electoral authority and other public institutions in such a way to strengthen the oversight role must be taken seriously. In addition, the periods before electoral campaigns need to be regulated through the establishment of limits to activity and of clear forms of financing.

🔍 **FISCAL TRANSPARENCY**

In Chile, the law 20.285 regarding access to public information provides for a general framework of the right that people have to access the information that is in the hands of the state. This law regulates the publication of administrative acts, their reasoning behind them and the relevant records as a basic rule in the conduct of the state.

Thus the information related to the management of fiscal policy, the public budget and its strategic objectives are subject to the application of this general rule. In practice, information on the public budget is available for citizen access from the moment the bill is presented by the executive to the national congress – though its process of modification, design and elaboration is not covered since it is considered an internal deliberative process of the administration and not a decision, act or record.

Despite the lack of access to information about its projection during the deliberative stage of the conformation of the public budget, information on its execution and evaluation is permanently available for anyone on the website of the budget department, in at least four formats (pdf, xlsx, csv and xml) so that anyone can utilize it in the format that is most useful for them and their inquiries.

Nevertheless, there is no policy of transparency specifically dedicated to the area of fiscal policy. Even in international evaluations like the Open Budget Survey, Chile barely reaches 50% compliance.

It is worth mentioning, however, that there are initiatives from civil society, like the Observatory of Fiscal Spending, that seek to set standards and make budget information more friendly for the average person. Similarly, public bodies such as the Transparency Council, the Library of Congress and some sub-national governments have promoted initiatives in the area of budget transparency.

FINAL BENEFICIARY TRANSPARENCY

The obligations for the registration and transparency of information on final beneficiaries in Chile are found in an administrative regulation from the Unit of Financial Analysis (Memo N° 57 from 2017), which is the body whose objective is to prevent and impede the use of the financial system for the commission of economic crimes, such as money laundering and the financing of terrorism.

This regulation introduces a broad definition of final beneficiary, considering as such any natural person that has, either directly or indirectly, participation in the capital or decision-making rights of a judicial person. Moreover, the regulation establishes the obligation of judicial persons to inform in a sworn declaration the real natural people that are behind their legal structure. They must update this information at least once a year.

This information is not permanently available to citizens. Access to these registries is restricted to clients of each respective judicial person, before and during the establishment of a legal or contractual relationship.

Besides the obligation to inform the Unit of Financial Analysis, businesses must comply with the requirements of the tax authority and the superintendents (the regulatory institutions) that correspond to their area.

In general, Chile has registries and information that allows the identity of the final beneficiaries of businesses to be known and there is an organizational mandate for oversight and supervision for the fulfillment of binding obligations. But it is necessary to strengthen the mechanisms of transparency and access to information in order to allow anyone to have access to these registries.

ASSET RECOVERY

The system for the fight against corruption in Chile is characterized by being an atomized system that is specialized across a variety of areas. As a result, there are government bodies focused on the prevention, monitoring, detection, prosecution and punishment of illicit acts.

In terms of asset recovery, there are different public bodies with the responsibility and power to do although not always directly: the Council for the Defense of the State, the General Comptroller of the Republic, the Director General of Secured Transactions, the Judiciary, the Public Prosecutor and the Unit of Financial Analysis. These all work together for the recovery of assets.

However, the Public Prosecutor is exclusively in charge of investigating acts that constitute a crime, through its Specialized Unit in Money Laundering, Economic Crimes, Environmental Crimes and Organized Crimes (ULDELCO).

It must be noted that the seizure of assets, as the main form for the recovery of assets, constitutes an accessory penalty to the main punishment of the loss of liberty. In the case that the respective court applies the punishment of asset seizure in the final sentence, the respective goods that are not money or commodities are sold at public auction by the Director General of Secured Transactions. In effect, then, recovered goods cannot be sold at auction without a final sentence.

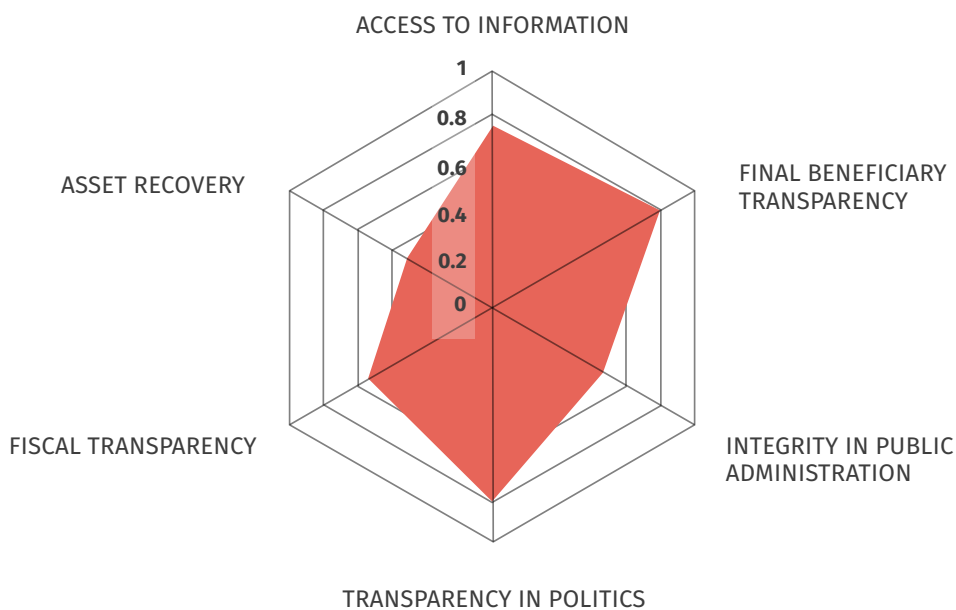
Nevertheless, the most determined efforts for the establishment of concrete mechanisms for the recovery of assets began to be pushed in 2006 with the ratification by Chile of the United Nations Conventions Against Corruption and upon Chile joining the Organization for Economic Cooperation and Development.

Chile must continue strengthening the necessary mechanisms not only for the sentencing of illicit and corrupt acts but also the effective recovery of assets stolen in the act. Chile must also prioritize collaborative work with other countries for the building up of coordinated actions in the face of economic crimes and to improve the bilateral extradition mechanisms that facilitate the judgment of those responsible in the country where the crime took place.

RECOMMENDATIONS

1. Decrease the maximum time-period for the turning over of information and the resolution of complaints as well as to eliminate ambiguities that are produced in the application of exceptions to the access to information.
2. Advance in the publication of information of the real controllers of businesses (judicial persons) that participate in bids to provide goods and/or services to the state.
3. Make the efforts of the country a reality in the area of open government through a transversal policy of the state that allows for the application of these principles to all sectors and levels of state management.
4. Improve the oversight and penalty systems for the measures that seek to prevent conflicts of interest and regulate the movement of personnel from the public sector to the private sector and vice-versa.
5. Strengthen the electoral institutions by giving them sufficient personnel and economic resources so that these can efficiently carry out their work. The periods before electoral campaigns also need to be regulated.
6. Promote the opening of all stages of budget information including deliberations prior to the formalization of the budget bill.
7. Change the way in which information is communicate about fiscal policy using a citizen language.
8. Ensure the access to information of registries regarding the final beneficiaries for all citizens.
9. Promote public access to the information registries of final beneficiaries and facilitate the oversight role of the citizenry.
10. Strengthen the necessary mechanisms for the recovery of assets outside of national borders.

SUMMARY OF RESULTS



Graphic 4: Results Costa Rica.

The policies of transparency and access to public information in Costa Rica have been successfully integrated into public work despite there not being a specific law for the access to information. Costa Rica has also made significant progress in particular areas such as the transparency of registries of effective beneficiaries and in parties and political campaigns.

However the country has been less successful when implementing integrity policies or the fight against corruption as such. There are major challenges such as the regulation of the movement of official and employees from the public to the private sector (the revolving door) and to develop a digital system of sworn declarations of interests and wealth that would be open to citizens. This would allow for more regulators than just the public institutions that must oversee the fulfillment of these requirements. Costa Rica also needs to create the necessary mechanisms so that the state is truly able to recover stolen assets or assets gained through acts of corruption or other illicit activities.

i ACCESS TO INFORMATION

The policy for transparency and access to information in Costa Rica is enshrined in the constitutional right of access to information. The law for the national archives system establishes the general principal of access to all documents of a public nature. This is a right that can be claimed by anyone, whether they are citizens of Costa Rica or no.

The Defender of the People and the Constitutional Court of the Supreme Court of Justice, which receives the writs of *amparo* in the case of the violation of the right to information, are in charge of ensuring the effective fulfillment of these regulations. However they do not have the ability to review classified documents nor to inspect institutions. In addition, the Defender of the Audiences of the National System of Radio and Television (SINART) is in charge of the defense of this right.

The right of access to public information applied to all material, independent of its format or if it is in the hands of any of the three branches of the state, public businesses, oversight institutions, or even among private entities that provide public services or receive significant funds from the state.

There are certain exceptions to the fulfillment of this right. One of these exceptions is the case of state secrets, which requires prior declaration by the competent public body and lasts for up to 30 years after the document in question was produced, except when other fundamental rights would be violated with its publication. Other exceptions include when publication can affect the security of the nation and when it is information about public banks protected by bank secrecy laws.

Costa Rican legislation establishes a required response time of 10 days to an information request for records, except if these records are highly complex. However, under no circumstances may the response time exceed one month. In the case of a document already having previously been made public, it must be turned over immediately.

Costa Rica recently promulgated a Decree for Transparency and Access to Public Information that guarantees the fulfillment of the right of access to information by the executive. Additionally, Costa Rica has committed to creating an innovation laboratory for sustainable and inclusive cities for the purpose of strengthening active transparency in local governments. There is also an incipient initiative for an open parliament in the legislative assembly. All these measures are designed to facilitate and promote access to information.

Despite this progress, there are limits to the effective exercise of this right. Such is the case for the necessity to identify oneself when requesting information, the costs in some cases to access information, the format in which the document is presented, the response times, the inadequate training for those civil servants in charge, and slow construction of its appeals mechanisms. Moreover, there is no law that regulates this right.

§ PUBLIC PROCUREMENT

The system for contracting and procurement is regulated by the Law for Administrative Contracting that, together with other laws and decrees, provides guidance for compliance with regulations. The broad sphere of application of these regulations stand out, given that they cover the tree branches of the state and other state and non-state institutions that either partially or entirely depend on public resources. There is no difference in Costa Rican legislation between the contracting of goods or services and the construction of public works.

In virtue of the principals of publicity and transparency, the information that is made available of everyone includes a registry of the final beneficiaries of the private businesses that contract with the state or that are prevented from doing so. This registry is public and periodically updated.

For its part, although the legal framework in question regulates the publication of the registry of disqualified suppliers, problems arise with its practical application since it can be somewhat difficult to access them.

The way to strengthen the mechanisms of transparency and access to information regarding public procurement has been through the use of web platforms, such as the System for Public Purchases (SICOP), for purchases by the state, in particular the central government. It is also necessary to incorporate transparency standards, such as those put forward by the Open Contracting Initiative, at all stages of the public purchasing and contracting process.

↓ OPEN GOVERNMENT AND OPEN DATA

The participation of Costa Rica in the Open Government Partnership and the work carried out by the National Open Government Commission have created an adequate environment for the development of various initiatives that seek to publish information online with a frequency that can deter corruption. A clear example of such initiatives is the publicity given to data and documents by the Presidency of the Republic through the website <http://gobierno.cr/>.

The three National Action Plans that have been drafted are part of the framework of these attempts at governmental opening. To date, 47.06% of the commitments assumed have been reached, while 52.94% remain in process. Regarding the Third Plan of Action, no evaluation can be made, since it only began in November 2017 with a proposed date of termination for August 2019.

These plans enjoyed the active participation of organized civil society in the creation and implementation of the National Action Plans with a lower presence in the evaluation of their commitments. In fact, in the elaboration of the Third Plan the citizen intervention was such that it began to be called a process of co-creation.

Concrete efforts have been made by civil society in strengthening the system of accountability and in combating corruption through the dissemination and analysis of public data or by promoting citizen support in monitoring the progress of pending tasks. This is in line with the central objective of the last plan to establish an Observatory of the Open Government legal framework in order to monitor the implementation of proposed regulations and actions in addition to the evaluation of their impact for citizen control through the design of proposal for feedback and improvement.

For now, Costa Rica must continue advancing in the opening of government data - as the Costa Rican Transparency Index of the Public Sector in charge of the Defender of the People shows - with the Third Plan of Action and other initiatives in this direction. This is expected to improve Costa Rica's position in indexes such as the Open Data Barometer with results that are now below the Latin American average.

✓ INTEGRITY IN PUBLIC ADMINISTRATION

In Costa Rica, the rules responsible for regulating the behavior of its public officials come from the Law Against Corruption and Illicit Enrichment in Public Function. This law establishes, among its essential principles, the duty of probity of the servants of the state, indicating in this respect that they are obliged to defend the public interest in the exercise of their office. The members of the Executive, Legislative and Judicial branches are obliged to comply with the provisions of the aforementioned law.

Regarding gifts and donations, the Law Against Corruption and Illicit Enrichment in Public Office establishes that these can be received as a gesture of courtesy or diplomatic custom and will be considered property of the nation if their value exceeds a base salary (\$750 USD approximately). These goods or the proceeds from their sale may be delivered to charities, or health or education organizations, or be considered historical-cultural patrimony as specified in the regulations of this act. Honorary, scientific, cultural or academic awards are excluded from the provisions of this regulation. The official who does not comply with these rules may be punished with up to two years in prison.

In terms of possible conflicts of interest, the servants of the state that are covered by the law are forced to make a sworn declaration of wealth, but not of interests, which is reviewed by the Comptroller General of the Republic. The Comptroller General is empowered by the Legislative Assembly but operates as functionally and administratively independent. Faced with the breach of the provisions of the law, the offending official is punished with written reprimand, suspension without pay, removal from office or imprisonment depending on the seriousness of the infraction.

The information contained in these declarations is not for public access, since in these cases the principle of confidentiality of the declarations governs, unless they are required by the special committees of investigation of the Legislative Assembly, the General Comptroller's Office, the Public Ministry or the courts of the Republic to investigate possible infractions or crimes. Therefore, citizens can only know if a sworn declaration was made or not, but not its content. This information is required to be updated weekly.

On the movement of officials from the public to the private sector, and vice-versa (revolving door), there is no regulation.

Despite the challenges that remain pending, it is important to highlight the effectiveness of the system of declarations of wealth, even when there are cases of incomplete reports of assets that to date do not result in penalties. The establishment of the Deputy Prosecutor for Probity, Transparency and Corruption of the Public Ministry for crimes stemming from this law is a positive step.

★ **TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES**

The Supreme Electoral Tribunal (TSE), as an autonomous and independent entity, is in charge of ensuring proper compliance with the financing regime of political parties and electoral campaigns. The policy is governed by the Electoral Code and by the Regulation on the Financing of Political Parties, which is applicable to political parties and their members. It should be noted that unlike other political systems the Costa Rican one does not allow the participation of independent candidates. The only ones that can present candidates are political parties themselves.

The financing of parties is through public and private contributions. In both cases there are no limits to the size of contributions. In the case of financing by the state, the calculation of the resources that each party will receive is based on the number of votes obtained in prior elections. Likewise, the usual expenses of the parties will be reimbursed by the TSE following their review by the Department of Financing of Political Parties. Contributions from abroad, judicial persons and public officials and institutions are prohibited.

Given this reality, both parties and candidates are subject to public accounting detailing their income, expenses and who their donors are in electoral and non-electoral periods. Parties must send this information quarterly to the TSE for review and subsequent publication. During electoral periods the delivery of information is monthly. Regardless of the amount contributed, the names of donors and the amount of the respective donation is published by the TSE for citizen access. Additionally, each party, by legal mandate, must publish at the end of each year, in a newspaper of national circulation, its financial transactions.

For effective compliance with electoral regulations, there are penalties for those who do not comply. Such penalties range from fines to deprivation of liberty depending on the type of infraction.

For the time being, the pending challenges to making the financing system of political parties and electoral campaigns more transparent include effective oversight of the real origin of the resources contributed to politics and facilitating the comprehension by civil society of the information published by the TSE and political parties.

FISCAL TRANSPARENCY

Costa Rica is among the countries at the forefront of the delivery of budget information, according to the evaluation carried out by the Open Budget Survey. This is because, of the 8 key documents of the national budget, 7 are made available to anyone.

Specifically, the budget proposal of the executive, the final approved budget, the citizen's budget, the annual and end-of-year reports and the audit report are published. The declaration prior to the budget and the mid-year review are not made available to the population.

Despite the publication of information related to the budget cycle, the country does not have clear regulation on the publication of the preliminary budget proposal, where the main guidelines of fiscal policy are presented prior to the presentation of the budget proposal of the Presidency.

Given this scenario, it is necessary to deepen the regulatory framework by expanding the obligations of transparency to all stages of the budget cycle, include the constituent elements of fiscal policy and make efforts to present information in a friendly and understandable way for the general public.

FINAL BENEFICIARY TRANSPARENCY

With regards to final beneficiaries, and in line with international schemes, the recent law to improve the fight against tax fraud presents a definition of the final beneficiary as the natural person who exercises control over a legal personality, whether directly or indirectly, that holds the majority of the voting rights of the shareholders, that directs the majority of the administrative bodies, or that controls the company according to its statutes.

According to this law, the Central Bank of Costa Rica is in charge of keeping the registry of effective beneficiaries and shareholders that have substantive participation in the total capital of the company (between 15 and 25%). This registry is not available for public access, since the final beneficiaries rely on a series of guarantees, including the confidentiality of their data. There are only some legitimate causes under which this information may be used, either to comply with the functions of the Ministry of Finance with regards to tax administration, or if the Costa Rican Institute of Drugs (ICD) requests it. In relation to fiduciary properties, no records are submitted according to this regulation.

The entry into force of the law to improve the fight against tax fraud has led to substantial progress, given that it meant that final beneficiaries began to be regulated in the country. However, for effective transparency of these data it is essential that citizens be allowed to freely access them, especially after knowing the participation of Costa Rican businessmen in cases of corruption in the region such as the Panama Papers.

ASSET RECOVERY

There is a set of rules in Costa Rica responsible for regulating the recovery of capital. These are the laws on narcotic drugs, psychotropic substances, non-authorized use drugs, related activities, money laundering and the financing of terrorism, in addition to the law against organized crime. To these is added the general regulations of legislation against drug trafficking, related activities, money laundering, financing of terrorism and organized crime. Despite the presence of these regulations, the institutional framework for asset recovery is not fully consolidated.

The aforementioned legislation has specific mechanisms for capital recovery. For the confiscation of these assets a conviction is not necessary. So if the assets of an innocent are seized, he may request the return of those assets. In the case of goods held abroad, there is no further regulation regarding their recovery.

The Asset Recovery Unit (URA) of the Costa Rican Institute on Drugs (ICD) is in charge of managing, registering, using and disposing of confiscated assets, in addition to general

oversight. It, in turn, depends on the Ministry of the Presidency, which accounts for its lack of autonomy and independence. The ICD website can be consulted for the recovery, return, sale, loaning or donation of goods (www.idcd.go.cr).

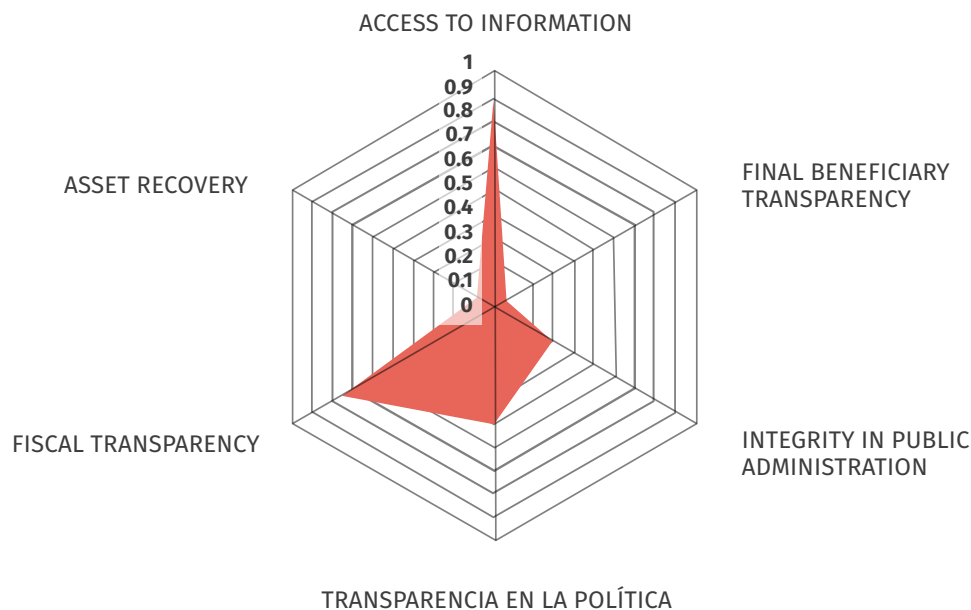
In addition to the national regulations, Costa Rica has signed several treaties and taken up several actions in the international plane. Among most important are its signing on to the United Nations Convention Against Transnational Organized Crime and its protocols in 2004 and its active participation in international cooperation networks such as those of the Latin American Financial Action Task Force (GAFILAT), which proposes the intergovernmental articulation of an asset recovery network.

Although the government is improving in the area of asset recovery by generating a more solid institutional framework, the projects that the executive has sent to congress recently have not been approved. Added to this is the lack of autonomy of the entity in charge of the recovery of assets and the problems in the seizure of assets outside the country. Both are matters where progress is necessary..

RECOMMENDATIONS

1. Develop a law on transparency and access to information that regulates the way in which the right should be exercised and eliminate barriers to access to information such as the obligation to identify oneself, the associated costs, and to establish maximum terms for extensions of information and a system of protection of the right of administrative jurisdiction.
2. Incorporate transparency standards into all stages of the public procurement or contracting process and promote the use of web portals for the purchasing process.
3. Increase Internet coverage throughout the country, in such a way as to create synergies among the mechanisms that are being promoted in the country to communicate and disseminate information with citizens and their reality in mind.
4. Establish a public policy of open data that allows any person to access it without restrictions and to use freely.
5. Regulate the passage of officials from the public to the private sector, and consider the authorities or officials that should be subject to the rule, the period that the disqualification must last and if there will be a mechanism of financial compensation.
6. Move towards a digital sworn declaration system that allows immediate access to this type of information and ensure the transparency of the declarations of wealth that currently exist.
7. Introduce mechanisms of transparency that permit the real control of the origin of private resources with which the parties finance their activities and campaigns, as well as progress towards a clear language policy so that anyone can understand the information that is published.
8. Deepen the regulatory framework by expanding the obligations of transparency to all stages of the budget cycle by considering the elements of fiscal policy and making efforts to present information in a friendly and understandable manner by the public.
9. Ensure public access to registers of effective beneficiaries and allow citizens to exercise oversight.
10. Strengthen the powers and autonomy of the bodies with powers in the area of asset recovery and facilitate international agreements (treaties) to seize assets that are outside the national territory.

SUMMARY OF RESULTS



Graphic 5: Results El Salvador.

The institutional framework in El Salvador to promote integrity and the fight against corruption is very weak. Strengthening it requires decisive action by all the actors participating in the public debate, from the different organs of the state and political authorities, to the organizations of civil society and private sector actors. A positive aspect that deserves to be highlighted is the path that has been followed in terms of access to information, where there is a public policy that covers all the powers of the state, as well as municipal governments. In addition, the law has been constitutionally recognized and the necessary institutional framework for the correct implementation of the policy has been created.

One of the priority areas to regulate is the final or effective beneficiary registries and the creation of mechanisms for the recovery of assets, as well as to perfect the mechanisms for the prevention of conflicts of interest. For the success of these efforts, a broad debate to facilitate the participation of various actors is required. For this it may be useful to have mechanisms such as promoted by the Open Government Partnership.

However, any regulatory effort or implementation of new policies on the matter requires the creation of a responsible institutional framework with sufficient autonomy and resources to be able to carry out oversight and to impose penalties.

i ACCESS TO INFORMATION

The Constitution of the Republic of El Salvador recognizes access to public information as a fundamental right, under the right to freedom of expression. It allows for the search, retrieval and dissemination of information of all kinds.

In addition, since 2011, there has been a Law on Access to Public Information (LAIP) that regulates the type of information available to citizens, as well as the institutions or bodies subject to its provisions and the mechanisms to demand compliance of this right.

In this context, all documents, archives, databases and communications, which are in the hands of any of the state bodies, as well as municipalities, sub-national governments and other administrative public offices, are considered public information. This includes all documents used in the exercise of their powers, regardless of their format, its source, author or date of preparation. To protect the exercise of the right of access to information, the Institute for Access to Public Information was created.

The only causes for which these covered entities can restrict the exercise of the right of access to information are in cases where the disclosure of the information puts security operations at risk or affects deliberative processes. In this case, a damage test is applied that asks what causes more negative effects: keeping the information secret or its free dissemination.

Although from the regulatory point of view El Salvador considers access to information a fundamental right, has a law that details the way in which the right can be exercised, provides for institutions to guarantee access to public information and respects delivery times that are among the most restrictive in the region (10 days), citizens still face barriers and disincentives when exercising this right. Among these is the obligation to identify oneself to request information, the lack of a single system to make requests, the regulatory ambiguity surrounding the ability of public bodies to claim that the information requested does not exist and the lack of an archives system that ensures the correct preservation and management of information.

§ PUBLIC PROCUREMENT

The Public Administration Acquisitions and Contracting Law (LACAP) establishes the general framework by which public purchases and hiring are governed. The standard is applicable to the acquisition of goods, services and public works. It establishes the technical and contractual minimums according to which a supplier or contractor must be selected.

In terms of contracting public works, in 2012 the Ministry of Public Works (MOP) incorporated a tool that seeks to reduce spaces for corruption and improve compliance with transparency standards through the signing of an Integrity Pact. This initiative has been promoted in collaboration with civil society and private actors through the Citizen Observatory of Public Works. In parallel, the MOP decided to adhere to the Construction Sector Transparency initiative (CoST), which uses indexes to measure compliance with access to information during the public infrastructure contracting processes.

Transparency of the acquisitions and contracts made by the state is ensured by the application of the obligations of the LAIP, which guarantees citizens information regarding contracting and acquisitions made by public institutions. This information details the period, type of organization, source of resources and total cost of the work, awards and publications, results of the monitoring of bidding processes, lists of works in progress, and more. It is permanently available to people through the Electronic Public Procurement System of El Salvador (www.comprasal.gob.sv). Through this same portal, a periodically updated list of state suppliers is publicly available, as well as those who are authorized, or not, to contract with the state.

Nevertheless, it is necessary to deepen and extend these obligations to all stages of the contracting process. Similarly, that the legislative and judicial bodies do not have legal regulation on the matter is worrying.

↓ OPEN GOVERNMENT AND OPEN DATA

The open government approach began to be adopted by El Salvador with the country's entry to the Open Government Partnership in 2011.

These efforts have resulted in three national action plans, which have focused on initiatives that promote transparency and integrity. However, the role of civil society has been restricted to spaces of participation defined by government authorities and it has not been possible to create real co-creation practices for the commitments that the country has made in this matter. Nor has it created effective mechanisms for the monitoring and supervision of the commitments it has signed on to.

With regards to open information, there is no relevant policy. This is reflected in the low results obtained by the country in 2016 international rankings such as the Open Data Barometer. El Salvador only managed to reach 14 out of 100 points. In the Open Data Index it scored only a 35% compliance rate, positioning El Salvador as one of the most backward countries in the area in the region.

Despite this, there have been some initiatives from civil society that have promoted the use of open data such as facilitating accountability mechanisms, using commonly understood language and encouraging the supervisory role of the general public.

With all this in mind, policies are necessary that seek to open state management and its data to the population. As a result, the proactive publication of data in open formats is fundamental considering the levels of internet coverage throughout the country. In addition, it is important to create spaces for active participation and collaboration among various social actors, in the construction of initiatives that seek to materialize the principles of open government.

✔ INTEGRITY IN PUBLIC ADMINISTRATION

Integrity policies in El Salvador are mainly based on the Government Ethics Law, which regulates the proper actions of public officials in all state bodies. It takes the principles of probity, transparency, efficiency, justice and equality as the basis for their conduct.

As a special case, since 2015 the Ministry of Finance has promoted an Integrity Code for its own officials, in order to help strengthen good practices within the entity. A similar practice was adopted by the MOP with the Integrity Pacts in the hiring processes. These pacts seek to avoid practices of collusion in the construction of public works, for which there is support from civil society organizations and the private sector.

In addition, the Salvadoran institutional framework considers it an obligation for public officials to declare their assets. The Declaration of Wealth is supervised by the Probity Section of the Supreme Court of Justice (CSJ), the body responsible for complying and applying the provisions of the Law on the Illicit Enrichment of Officials and Public Employees (LEIFEP). However, this institution does not have complete independence or sufficient resources to oversee compliance with the law.

It is necessary to emphasize that there is no integrity policy to regulate or prohibit the acceptance of gifts and donations, nor the passage of officials or staff between the public and private sector (the revolving door).

The integrity system in question must put at the center of its concerns the need to regulate the conflict of interest in all its areas in a profound and complete manner, as well as to provide autonomous resources and functions to the agencies that must monitor compliance with the obligations in this area.

★ TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES

The way in which political parties are financed, electoral campaigns and the measures to disseminate this information are contained in the Law on Political Parties. This law establishes the way in which the parties are financed in electoral and non-electoral periods and contains guidelines on the type of contributions that can be received, although without establishing limits to amounts, the origin of funds or the publication of information about particular candidates.

The Salvadoran political collectives must publish information regarding the public and private funds that they receive in aggregate and general form, without detailing the particular amounts and the origin of these. With regards to public financing, both the political parties and the coalitions participating in elections will obtain money from the state according to the valid votes obtained. This amount is equivalent to that received in the previous vote, adjusted to inflation. Beyond this general rule, there is no legal structure that establishes the conditions, rules or mechanisms for the financing of candidates competing for public office.

However, the Law on Political Parties establishes the obligation for party institutions to provide information on the individuals or legal entities that finance them and the use of those funds. To this end, the name of the person who contributes and the amount must be specified, but not without first having the express authorization from the donor for publication. The threshold over which these data are generated is not specified. Despite their existence, these obligations are not fulfilled in practice.

Additionally, the Ministry of Finance has the obligation to publish the income and expense records, and include the origin of public and private resources received by the parties. But the fulfillment of this obligation of the ministerial portfolio is dependent on the information that the political parties deliver to the ministry. For this reason, citizens have not been able to count on this information for the exercise of the right of access to public information.

Although Salvadoran regulation considers a sanction system with fines applicable by the Supreme Electoral Tribunal, and the non-delivery of public funds for non-compliance - a sanction that can be applied by the ordinary courts of justice - these penalties have not managed to ensure the proper compliance with these legal rules. Therefore, it is essential to strengthen sanction mechanisms, increase their severity and ensure compliance with existing legal obligations, as well as to deepen the regulation of the political system by incorporating permanent transparency obligations to political parties, limiting the use of resources in periods and establishing thresholds for donations, among other topics.

FISCAL TRANSPARENCY

The publication of the Salvadoran budget process ranges from the work prior to the presentation of the public budget project, the Executive's project and its respective supporting documents, the approved budget, a citizen budget, annual reports on its execution and the success of the budget and the end of the year report and its corresponding audit. This makes it one of the countries evaluated with the most published documents from the budget cycle. Despite this, it only score a little more than a 50% compliance rate in international evaluations such as the Open Budget Survey (2015), where it received 53 out of 100 points.

Information about El Salvador's budget is available for online consultation of any person at the Fiscal Transparency Portal of the Ministry of Finance (www.transparenciafiscal.gob.sv). Still, it is necessary to make the information complete and use clearer language.

The reports mentioned above are available for consultation online, in the Fiscal Transparency Portal of the Ministry of Finance, with the exception of the mid-term review, whose publication is essential for true fiscal transparency.

FINAL BENEFICIARY TRANSPARENCY

The regulatory framework on final beneficiary is far from complete. It does not comply with the principles of publicity and transparency which are supposed to guide the state. This has led the country to be evaluated with 0 points on a scale of 0 to 100 in the index prepared by Open Corporates (2014).

This can be explained by the lack of a definition of final beneficiary in laws related to the matter. It also highlights the absence of a register of actual beneficiaries as such. What currently exists is information that is related, but that is not compiled for public access. This information, which is in the possession of the National Center of Records (CNR), is only available following a contentious process when a court requests it.

As a result, El Salvador must advance in the fulfillment of international standards on the publication of this type of information. In particular, people should have access to the information that until now has been kept secret.

However, El Salvador should be congratulated for the release of data on effective beneficiaries. In 2016 the Institute of Access to Public Information released a resolution that indicates the obligation of institutions such as Pension Fund Administrators, sports federations or NGOs that perform a public function or administer state resources, to abide by the requirements of the LAIP. This, incidentally, includes the release of information.

ASSET RECOVERY

There is no proper asset recovery policy. There are related regulations that contribute to the recovery of stolen or illicitly obtained assets, such as the Law on the Illicit Enrichment of Officials and Public Employees and their civil procedure that allows restitution to the public treasury of illicitly obtained wealth.

Similarly, there is a special law from 2013 for the forfeiture and the administration of goods of illicit origin or destination that regulates the forfeiture mechanisms for state benefit. This law works together with the law against the laundering of money and assets from 1998 that seeks to prevent, prosecute and punish the laundering of money and assets and their concealment.

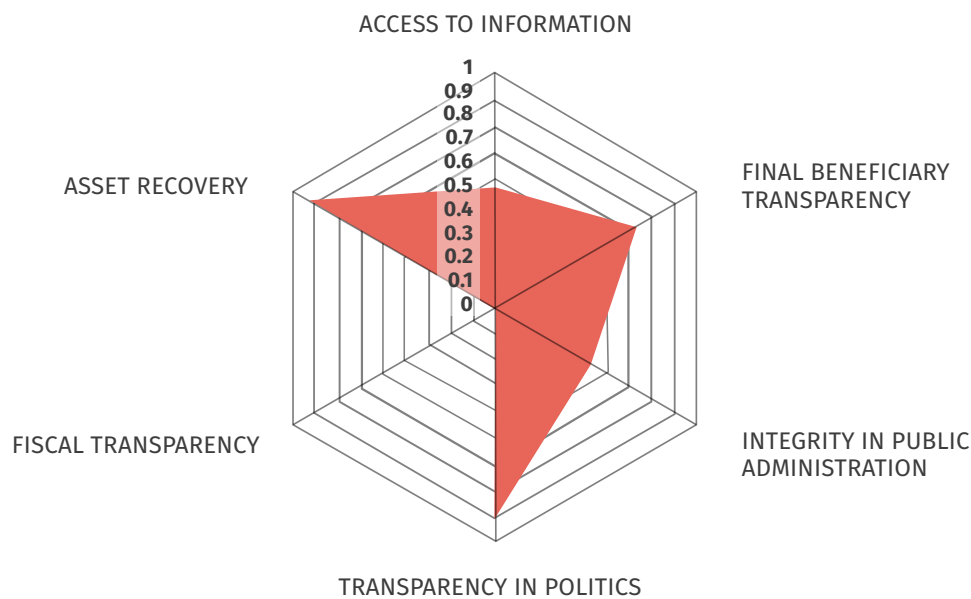
However, no concrete mechanisms exist to return assets stolen from public property through corruption offenses. There are also no special institutions in charge of their recovery. However, the Financial Investigation Unit (UIF) belonging to the General Prosecutor's Office of the Republic (FGR), the National Council of Property Administration (CONAB), and the Public Prosecutor's Office all work together to contribute to asset recovery at the national and international level in collaboration with the National Civil Police through INTERPOL of El Salvador, the Anti-Narcotics Division and the Financial Crimes Division.

Moreover, international treaties and agreements signed on to by the country for the coordinated fight against money laundering and its subsequent recovery are a good sign, particularly its incorporation into the Financial Action Group of the Caribbean (CFATF).

+ RECOMMENDATIONS

1. Unify the system, forms and requirements to make a request for access to public information at all government levels, providing citizens with one system of interaction to exercise the right of access to information.
2. Create a national system of archives and management of public information and thus ensure the preservation and availability of information that is in the hands of the different organs of the State.
3. Extend and deepen transparency obligations to all stages of the public procurement process and create legal rules to regulate contracting in the Legislative and Judicial branches.
4. Establish spaces of participation and active collaboration between social actors for the construction of initiatives that apply the principles of open government to state management, as well as defining an open data policy.
5. Deepen the regulations of the conflict of interest by considering issues such as the revolving door, the acceptance of donations and/or gifts, ensure the transparency of official records and provide power, autonomy and resources to the public bodies responsible for the policy of integrity.
6. Strengthen the sanction mechanisms for corruption crimes, increase their severity and ensure compliance with existing legal obligations.
7. Deepen the regulation of the political system by incorporating permanent transparency obligations to political parties, limiting the use of resources during electoral periods and establishing thresholds for donations to parties and electoral campaigns.
8. Strengthen the measures of active transparency of the budget cycle information and begin to focus the work on the transparency of fiscal policy as well as make the information that is published more accessible.
9. Introduce a policy for the registration and publicity of information of the final beneficiary, ensuring the systematization of the data that allow for oversight of effective beneficiaries and guarantee citizens access to the information of these registries.
10. Develop a policy for asset recovery with mechanisms to recover and liquidate assets by responsible institutions and expand international treaties that facilitate the recovery of illicitly obtained assets when they are outside the national territory.

SUMMARY OF RESULTS



Graphic 6: Results Honduras.

The policies aimed at strengthening access to information, promoting state transparency and combating corruption have not managed to establish themselves as a priority in the Honduran public agenda. With these results, it is one of the countries in the region, among those evaluated, with the greatest delays in the development and implementation of integrity policies.

However, there have been significant advances in the creation of registries to identify the effective beneficiaries of companies and of mechanisms for the recovery of assets. Reforms have been introduced to the political and electoral system which, from a normative point of view, have contributed to closing legal gaps in the Honduran institutional design.

Efforts should be focused on strengthening access to information mechanisms and on improving transparency policies in areas such as the budget cycle and the dissemination of information on final beneficiaries. In addition, the integrity mechanisms of the personnel who perform tasks in the various organs of the State should be improved.

i ACCESS TO INFORMATION

Access to public information is not recognized as a fundamental right by the Honduran Constitution. However, the country has a Law on Transparency and Access to Public Information that regulates the ways in which this right can be exercised.

The bodies that make up the Executive, Legislative and Judicial powers, autonomous institutions, municipalities and other state agencies are subject to the provisions of this legislation. The constitutional and supervisory bodies are also required to comply with it. The law does not cover state-owned companies or private companies that provide public services, although it does cover private entities that receive public funds.

For the purposes of this law, any file, record or communication that is in the possession of the covered institutions and that has not been classified as secret is considered public information. This obligation is independent of its format. The general rule of information publicity considers as an exception those documents whose publication produces damage greater than the benefits from their release. Such is the case of information regarding the security of the State, the life and integrity of people, the development of secret investigations,

other certain interests protected by current legislation, the conduct of international relations and negotiations, and the economic stability of the country. The existence and/or application of a damage test is not mentioned.

Requests for access to information must be resolved within a period of 10 days. However, the institution handling the request may extend the term, once, for 10 more days. If no answers are obtained, the citizen may file an appeal with the Honduran Institute for Access to Public Information (IAIP), an independent regulatory body responsible for compliance with this regulation. In some cases, a fee must be paid to access the required information.

In addition to this function, the IAIP has the task of pro-actively publishing the information that should be public. This information can be found through the portal <http://portalunico.iaip.gob.hn/>.

In order to present information requirements, people are not obliged to identify themselves, although they must create an online user account where the name, surname and identification number are requested.

Nevertheless, there are institutional elements that need to be improved, such as the possibility of any law declaring information as secret, the lack of legal appeals, the absence of strict criteria for the selection of commissioners of the Institute of Access to Public Information. This leads to people with great political influence joining it. Finally, it must be taken into account that any measure should consider the low level of access to the internet, which in 2015 amounted to approximately 20% coverage at the national level.

PUBLIC PROCUREMENT

The contracting and purchasing system of the state is regulated by different bodies, depending on the object of the contract, which may be the acquisition of a good or service, as well as the contracting of public works. In the first case, there is a National Office of Contracting and Acquisitions of the State (ONCAE) responsible for publishing all information related to state contracts on the web portal www.honducopras.gob.hn. The public works system, on the other hand, is managed by the Ministry of Infrastructure through the Information and Monitoring System for Publics Works, Contracts and Supervision (SISOCS) (<http://sisocs.org/>).

Despite this obligation to be transparent and to publicize information of this nature, exceptions are allowed in special circumstances: under emergency situations, when there is only one provider that produces a specific good, when circumstances require secrecy in the operations of the government, in case the purchase is linked to the production of notes and coins, when it comes to technical, scientific or specialized arts, or in the case of having completed the first phases of a project satisfactorily, it may be contracted with the same person to continue with the process.

Regarding the identity of the final beneficiaries of the companies that contract with the state, there is no rule in Honduras that requires the disclosure of the names of their beneficial owners.

Ensuring access to information on procurement processes in Honduras depends to a large extent on the ability to evaluate and control the existence and quality of the information published in *Honducopras*. For its part, in terms of public works, SISOCS does not publish information on contracts related to defense and national security due to the exceptions established in the Transparency and Public Information Law. Added to this is the multiplicity of information access portals, which makes it difficult to access these records.

↓ OPEN GOVERNMENT AND OPEN DATA

Since the creation of the Alliance for Open Government in 2011, Honduras has made efforts to implement policies aimed at strengthening state openness. These efforts have materialized in three National Plans of Action. The focus has been on promoting access to information and the adoption of transparency standards. The first plan had 75% of the commitments linked to this matter and the second with 93%. However, these commitments have not been successful and 10% and 20% degree of progress, respectively, has been achieved in these plans.

Regarding the involvement of civil society in the elaboration processes of the various action plans, the official documents describe various instances but these have more to do with informative processes than participative processes.

Regarding open information, since 2015 efforts have resulted in a single portal of transparency (<http://portalunico.iaip.gob.hn/>), which gathers information in a standardized way from public institutions and makes it available to citizens. However, there is no open information policy as such, but rather policies of access to information.

✓ INTEGRITY IN PUBLIC ADMINISTRATION

The policies aimed at promoting integrity in Honduran public administration are composed of a set of legal standards that seek to model the actions of those who work for the state. Among the most relevant are the Code of Ethical Conduct of the Public Servant, the Code of Ethics for judicial officials and employees, the Transparency and Access to Public Information Law, the Civil Service Law, the Organic Law of the Superior Court of Accounts, and the Political Constitution itself.

Despite the multiplicity of laws, none of them refers to donations or gifts that an official may receive, which implies that there is no control or penalties in this regard. Regarding the existence of policies regarding the “revolving door”, Honduras does not have one. Therefore there is nothing to be said about a “cooling off” period, a regulatory body or a system of sanctions.

There are, however, policies to control conflicts of interest. These include presentation of a sworn declaration of wealth for public workers if their salary surpasses US \$ 1,200 or if they occupy some position of popular election or appointment by elected officials. This declaration is mandatory for officials who meet the aforementioned requirements and who perform functions in any body of any of the three branches of the state and other bodies whose decisions affect the public patrimony or that manage state funds. There are no relevant distinctions with regard to the public body to which each public employee belongs.

The Superior Court of Accounts is in charge of the control of these declarations. It is an institution with political independence and empowered by law to investigate declared assets and income. Faced with non-compliance, this body can apply various administrative sanctions such as fines, reprimand, suspension or dismissal from office. Despite this, there is no evidence that sanctions are being applied.

Notwithstanding the obligation to declare equity, there is no mandate for such information to be publicly accessible. For this reason, the country does not have an online portal where these data are available.

In order to advance the integrity of public administration, rules should be established that regulate the revolving door, the donation and delivery of gifts, and conflicts of interest. There is also a need to provide the Superior Court of Accounts with greater infrastructure and resources so that it is able to control the content and veracity of the declarations of wealth.

★ **TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES**

In January 2017, the Law on Financing, Transparency and Oversight of Political Parties and Candidates, commonly known as the “Clean Policy Law”, came into force. Its central axes are the establishment of limits on spending in electoral campaigns, the accounting of contributions received during the campaign and its subsequent publication in the Transparency Portal (<http://portalunico.iaip.gob.hn/>) for citizen consultation, and the prohibition of the granting of loans for financing, among other matters.

According to this legislation, political parties, candidates, the internal movements of parties and alliances between political collectives must report their financial activity to the Unit for the Supervision of Politics of the Supreme Electoral Tribunal. They must detail the contributions in cash and in kind that they receive, their origin and their final destination. In addition, these organizations are obliged to declare their public and private income, as well as their expenditures in an annual financial report that is not, however, subject to independent review.

The accounting of expenses made during an electoral campaign must be delivered 2 months after the date of the election. There is no mention in the law of independent scrutiny of these movements. But that information is publicly accessible, so it can be reviewed by anyone.

Given that the law is quite recent, it is not possible to evaluate the work of the institutions in charge of overseeing compliance, the citizen’s oversight role, or the existing system of penalties for non-compliance.

🔍 **FISCAL TRANSPARENCY**

Honduras does not have specific legislation that requires the publication of documents and records associated with the creation, development, implementation and evaluation of the public budget. In any case, there are regulations that are applicable in this matter that deal with, but only tangentially, the publication of said information, such as the Law of Access to Public Information and the Organic Law of the Budget.

According to the Open Budget Survey measurement, in 2015 Honduras published the 8 documents required for effective fiscal transparency. These documents are the declaration prior to the presentation of the budget proposal, the presidential message with the budget bill, the approved budget, the citizen budget, the annual realization and success reports, the part-time and end-of-year reports of the budget and their audit. However in 2016 there was a decrease in published information with only 6 out of 8 documents made available.

Although there are efforts linked to the Open Government Partnership and the International Budget Partnership to strengthen access to budget information, the lack of a specific policy of fiscal transparency has led the country to be evaluated with 43 out of 100 points, taking 64th place out of 102 countries in the Open Budget Survey evaluation.

👤 **FINAL BENEFICIARY TRANSPARENCY**

The legal concept in this matter is contained in the Money Laundering Law of Honduras, for which the ultimate owner of a company, the person who controls a client or exercises effective final control over the entity, is the ultimate beneficiary and the person for whom transactions are carried out.

Based on this rule, there is an obligation for financial and banking institutions to identify the final beneficiaries of their clients when establishing a business relationship. Likewise, it is forbidden to use false names or the name of another person to conceal the effective identity of a final beneficiary.

On the other hand, the banking and financial entities have the obligation to report to the Financial Intelligence Unit of the National Commission of Banks and Securities the information

related to final beneficiaries. These records can be accessed by public authorities with responsibility for the prevention, detection and prosecution of money laundering.

In order to comply with the regulatory requirements of effective beneficiaries, the name of the owners of the companies, their nationality, place of residence and tax identification number must be registered. It is not clear how oversight of this process is exercised.

Part of the information detailed above is made available to citizens in registries in Tegucigalpa and San Pedro Sula. However the information is only partial, which makes it difficult to identify the final beneficiary.

The body in charge of supervising the registry of final beneficiaries is the Property Institute, an entity that has delegated this management to the Chambers of Commerce in San Pedro Sula and Tegucigalpa. In theory, any variation in the records of each company should be updated in the company record in 15 days. But this does not happen in happen.

In the case of trusts, there is another registry, the access to which depends on the permission of the Secretary of Finance. As in the case of the registry of final beneficiaries, the information available is not sufficient to know the actual beneficiaries.

Allowing access to information regarding final beneficiaries as well as strengthening the institutional framework will help to provide them with the necessary powers and resources to carry out their work.

ASSET RECOVERY

The legal framework that regulates the recovery of assets in Honduras is comprised of what is mandated in the Criminal Code for the confiscation of assets from convictions and by the Law of Permanent Deprivation of Illicit Assets to confiscate assets without the need for prior conviction. In addition to these regulations, the Special Law against Money Laundering deals with forfeiture and the use of precautionary measures.

The Office of Administration of Seized Assets (OABI) under the National Defense and Security Council is a specialized public body in charge of the recovery of assets. As a preventive measure, the Central Bank of the State plays an important role and has adopted regulatory provisions to control the movement of cash across borders.

In order to progress in the establishment of new laws and policies that allow for the recovery of assets stolen from the state, Honduras has signed several international agreements. These are the United Nations Convention against Corruption, the United Nations Convention against Transnational Organized Crime, membership in the Financial Action Task Force of Latin America (GAFILAT) and the signing of agreements with Chile, USA and Panama for the recovery of assets.

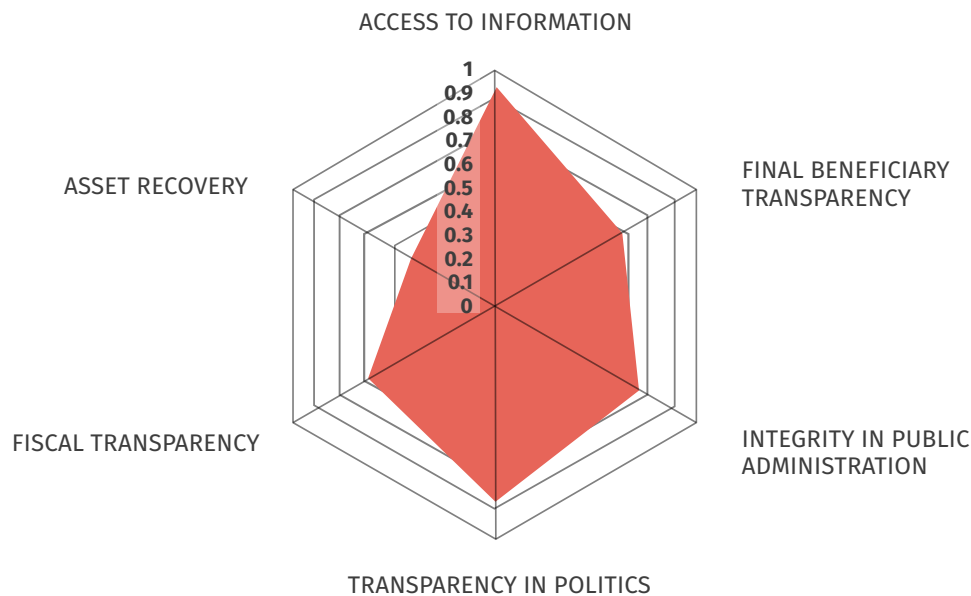
Internally, the existence of a Support Mission against Corruption and Impunity in Honduras (MACCIH) as a result of an agreement with the Organization of American States (OAS) is relevant for attempts to recover assets.

Honduras does not have an official record of seized assets, which makes the work of OABI difficult. Similarly, there is no participation of civil society in the oversight of the asset recovery processes. Therefore, it is necessary to establish policies to reverse this situation. This would help to improve the management of seized assets, the negligence of which has generated various public scandals.

RECOMMENDATIONS

1. Develop mechanisms and permanent instances for citizen participation in the preparation, monitoring, oversight and evaluation of national actions to promote open government.
2. Ensuring access to information on procurement processes in Honduras depends to a large extent on the ability to evaluate and inspect the existence and quality of published information.
3. Concentrate on a portal of easy citizen access the relevant publication on the acquisition of goods, services and public works by the State bodies.
4. Develop an open data policy that allows for the availability of publicly relevant information that remains permanently available, can be reused and redistributed freely.
5. Regulate the passage of public officials to the private sector (revolving door); strengthen the measures for the prevention of conflicts of interest, especially regarding the acceptance of gifts.
6. Incorporate the obligation to declare interests and ensure access to information on affidavits of equity and interest.
7. Strengthen the implementation process of the provisions of the law of clean politics, and review the powers and means available for the Unit for Supervision of Politics of the Supreme Electoral Tribunal to ensure the proper implementation of the law.
8. Create a budget and fiscal transparency policy that ensures the publication of all the stages and documents of the budget cycle, as well as an adequate accounting of the decisions regarding fiscal policy.
9. Ensure public access to registries of effective beneficiaries for all people and strengthen the powers and resources available to institutions responsible for the prevention, detection and sanction of obligations in this area.
10. Institute a national registry of seized assets and establish measures of transparency and accountability regarding its administration.

SUMMARY OF RESULTS



Graphic 7: Results Peru.

The institutional framework in Peru has shown progress in ensuring the right of access to information for all people, with a transparency policy that not only ensures access to information that is in the hands of state bodies in a timely manner, but also requires other non-state sectors such as political parties and electoral campaigns to disclose information on the budget cycle and promote openness in the state administration to prevent potential conflicts of interest.

However, the active fight against corruption has not resulted in policies that are effective barriers to the risks of corruption, which is why it is a priority to strengthen the mechanisms to recover assets, raise the standards of the registries of final beneficiaries and ensure public access to them. In addition, the preventive measures for people who perform functions in the organs of the State administration should be improved by regulating, for example, the acceptance of gifts and donations.

Finally, we must not forget that the fight against corruption is a task that requires the joint work of the various social actors, as well as sufficient spaces and means, so that they join and build together. They also need clear and timely information so that they can be involved in the fight against corruption.

i ACCESS TO INFORMATION

The political constitution currently in force in Peru enshrines the fundamental right of every person to request information that is in the possession of any public entity in the country. This right is regulated through the Law of Transparency and Access to Public Information from the year 2002 (Law No. 27,806).

All the following are covered by the law: the public bodies of the three branches of government, the local and regional governments, bodies that the Constitution or the laws provide with autonomy, institutions that carry out activities according to administrative powers and the private entities that provide services or exercise administrative functions.

The policy of access to information considers all information created, obtained or in the hands of the covered public bodies as public. The information may be documents, writings, recordings or photographs, regardless of their format and medium. The information that

affects the privacy of the people or that alters the security of the nation is exempt from publication. These exceptions have a time limit of 5 years, after said period it is possible to request such information, provided that the authority in charge does not consider its disclosure as risky for personal security, the integrity of the territory or the continuity of the democratic system. This damage test does not establish criteria for its application.

In financial matters, bank secrecy and tax reservation information may be lifted at the request of a judge, the National Prosecutor or an investigating committee of Congress, as established by law and only in relation to the case under investigation. The information related to the violation of human rights or the content of the 1949 Geneva Conventions cannot be considered classified information.

Along with the creation of the Transparency Directorate, other reforms were also approved during 2017. The new system establishes that the deadline to respond to information requests is between 12 and 14 business days, with the possibility of not responding to the request due to a lack of resources.

Despite the successes and progress in transparency and access to information policy in Peru, barriers that prevent the effective exercise of the right of access to information persist in practice, such as the payment of a fee for access and the discretion of public authorities to determine the confidentiality of the information requested. Also the lack of autonomy, power and suitable means to exercise the work of guardianship and guarantee the effective exercise of the right of the “Authority of Transparency, Access to Information and Data Protection”, recently created in 2017.

§ PUBLIC PROCUREMENT

The regime for purchasing and contracting goods, services and public works is regulated by the State Procurement Law (Law No. 30,225) of 2014. The law states that the contracting process carried out by the state should be subject to publicity and dissemination in order to promote free and effective competition. In addition, the state is expected to facilitate the inspection and control of procurement made by all public entities. The Supervisory Body for State Contracting (OSCE) will ensure compliance with its regulations.

Despite the legal mandate to publicize purchases and public contracts, there is a wide range of exceptions. Such is the case of the banking and financial contracts that come from a financial service, the hiring done by the foreign service bodies outside the national territory for its operation and management, the hiring carried out by the Ministry of Foreign Affairs in response to acts with an international presence, the contracting of public notaries in relation to the functions mentioned in this law, the services rendered by arbitrators and conciliators, the contracts made within the framework of requirements and specific procedures of international organizations, the contracts for the lease of services used by the presidents of directories that work full-time in state companies, purchases made by entities in public auctions, and public-private partnerships and projects regulated by Legislative Decrees 1,224 and 674.

Regarding the processes for the promotion of private investment, mainly infrastructure, the information is pro-actively published on the website of the Agency for the Promotion of Private Investment (<http://www.proinversion.gob.pe>). With regards to final beneficiaries, the contractors do not disclose the names of their effective or final beneficiaries.

↓ OPEN GOVERNMENT AND OPEN DATA

On the occasion of Peru's joining the Open Government Partnership in 2012, the idea of developing plans to promote the opening up of the state began. This resulted in the first National Action Plan that same year.

Two National Action Plans have been developed to date, with the main priority being to promote access to information, transparency, accountability and integrity in public service. At the date of the gathering of information for this report, the execution of a third national action plan was about to begin. However, there are no reports on its initial preparation.

More particularly, the First Action Plan (2012-2013) focused its efforts on integrity, transparency and access to information, which represented more than 60% of its initiatives. The Second Plan (2015-2016), on the other hand, was also oriented around transparency and access to information, in addition to the rendering of accounts, surpassing 50% of the initiatives. According to the evaluation of the independent evaluation mechanism of the Open Government Partnership (OGP), the country has fulfilled only 29% of the commitments acquired in this last plan, in which the organized civil society participated including in the Multisectoral Commission of Monitoring and Evaluation of the Action Plan.

Despite efforts to install a culture of openness in the Peruvian state, there are no measures that seek to install a structured policy on the release of state data specifically, although initiatives and online portals have been led to facilitate the disclosure of information by the State to the citizens. In this line, the Infobras portal stands out (<https://apps.contraloria.gob.pe/ciudadano/>) as well as the contracting portal of the State (<http://www.perucontrata.com.pe/>) where important information can be found to support the fight against corruption. However, they have limitations for easy access and comprehension by citizens, and none of them provides information in open data format, despite efforts to implement an open data portal (<http://datosabiertos.gob.pe/>) that up to now reuses pre-existing information from an earlier version of the Standard Transparency Portal.

✓ INTEGRITY IN PUBLIC ADMINISTRATION

Since 2005, Peru has a law for the Code of Ethics of Public Service whose objective is to establish the ethical principles, duties and prohibitions of public servants in the exercise of their functions.

In virtue of this, one of the fundamental principles of the regulation is the integrity of the public employee. This implies behaving with rectitude, honor and honesty in the position for the purpose of satisfying the general interest and setting aside all benefits for oneself or on behalf of another person.

Based on compliance with this principle of integrity, the Code of Ethics establishes the prohibition for public servants from maintaining conflicts of interest of an economic, work and personal nature that interfere in the performance of their duties.

Although there is no specific regulation in the matter of gifts and donations, on the other hand, there are rules in Peruvian legislation regarding the movement of officials from the public to the private sector (revolving door). Law 27,588 establishes prohibitions for officials and public servants, as well as for the people who provide services to the state under any contractual modality, from performing tasks in the private sector for a period of one year. This rule does not consider all public employees, but only those of higher rank such as the President of the Republic. The Comptroller General of the Republic is in charge of complying with this regulation, and can require the payment of a fine for violating the law. The amount may vary, without prejudice to other civil or criminal liabilities that may exist.

Regarding the income and assets of officials, there are specific rules in the law that regulate the publication of the Sworn Declaration of Income and Assets of the civil servants of the state (Law No. 27,482). This law establishes the mandatory presentation of a sworn declaration of wealth during the first 15 days of each year, as well as at the beginning and end of the period of employment. These rules apply to the workers of the three branches of government, regulatory entities, state companies and other institutions, as well as mayors and municipal councilors who manage resources greater than 5,000 tax units (UIT)

(US \$ 6,500,000 approximately.). A portion of these declarations are available to the citizens and can be found on the website of the Comptroller General. However, no information is available on the statements of interests of all officials, since they are not required to be published.

Failure to comply with these obligations empowers the Office of the Comptroller General to apply a series of administrative punishments including oral or written reprimand, suspension without pay for up to 30 days, temporary termination with no pay for up to 12 months and dismissal. In other cases, the person can be prohibited from contracting with the state and from performing functions or services in public institutions for up to 1 year.

Faced with this reality, the oversight mechanisms of the Comptroller General's Office should be strengthened in order to comply with the standards discussed since in practice they are often ignored. Such is the case with the revolving door and declaration of wealth obligations. Furthermore, it is necessary to advance in the creation of new legal frameworks in areas the current regulation does not touch, as is the case of the gifts and donations received by public officials or the publication of declarations of interests.

★ **TRANSPARENCY IN ELECTORAL CAMPAIGNS AND POLITICAL PARTIES**

The financing and transparency policy of Peruvian politics was recently modified, especially as it relates to the forms of party financing. The main changes have to do with: i) the prohibition of private contributions by companies, by national and international non-profit organizations, except, in the latter case, when the funds are destined for training; ii) the increase of individual contribution ceilings up to 120 UIT per year (US \$ 156,000 approx.); iii) the obligation to account for all contributions above 1 UIT; iv) the obligation of banking entities to identify appropriately the contributors and those who withdraw funds from the accounts of the parties; v) the prohibition of natural persons sentenced for serious crimes (drug trafficking, terrorism, timber trafficking, illegal mining and others); vi) the obligation for parties to implement internal review systems; and vii) the elimination of periodic financial reports during the campaigns, changing them for a single report due at the end of the campaign.

The policy of transparency and political financing in Peru is defined in the Law on Political Parties and the Regulation of Financing and Supervision of Party Funds from the National Office of Electoral Processes (ONPE). The result is a mixed system where public and private contributions coexist. In the case of public contributions, these can be direct or indirect. In the first case, the parties that have representatives in Congress will receive money for each vote obtained in the last legislative elections, while in the second, an indirect payment results in the allocation of space in public or private media. This applies in both electoral and non-electoral periods.

On the other hand, private contributions can include all kinds of contributions or donations -from cash, goods, services or financial rights- made by natural or legal persons that are not expressly prohibited by law. These contributions cannot exceed 60 Tax Units Tax (US \$ 77,000 approximately) to the same candidate or party. This process is supervised by the Area for the Supervision of Party Funds (GSFP) of the ONPE, an autonomous body.

Donations to campaigns and parties cannot be made anonymously, except in the case of fundraising activities in the street and as long as it does not exceed 60 UIT. This must be duly registered as well. All private contributions must be recorded in accounting books.

Regarding the publication of these contributions, in addition to all income and expenditure made by the party, the regulations state that they are required to present a balance sheet to the ONPE. These reports made by the political organizations are disclosed on its transparency portal eight days after they are received. Once the information has been verified, the ONPE prepares reports that are also made public. Even so, these rules of the game are insufficient. There is evidence that shows that political organizations do not end up reporting all the income and expenses incurred during an electoral campaign.

Faced with the breach of these rules, the law has not translated into effective sanctions that feel precedents. This, because the ONPE has limitations to know in a timely manner if any of the contributors may be suspicious, since it depends on information that only the Financial Information Unit manages in order to lift bank secrecy. This in turn can only be done upon judicial request. In addition, the ONPE lacks the power to impose economic penalties on the infringing parties.

FISCAL TRANSPARENCY

Fiscal transparency is regulated in Peru by the Transparency and Access to Information Law, in addition to the provisions of the Law on Fiscal Responsibility and Transparency (Law No. 27245).

Following the principles of transparency and publicity, the eight key documents of the annual budget of the country analyzed by the International Budget Partnership are available for citizen consultation. These eight include the work done prior to the presentation of the budget proposal, the president's message with his proposal and its supporting documents, the approved budget, a citizen budget, annual reports on performance and budget execution, mid-year and end-of-year reviews. and an audit report.

Despite its availability, the documents indicated are not easily understood because the experience of browsing the website of the Ministry of Economy and Finance (www.mef.gob.pe), where this information is found, is unfriendly. Finally, other ways, outside the internet, to disseminate this information have not been considered.

FINAL BENEFICIARY TRANSPARENCY

The transparency of the registries of final or effective beneficiaries, as well as the management and prevention of the crimes of money laundering and terrorism is contained in a series of resolutions issued by the Superintendent of Banking, Insurance and Private Pensions (SBS).

In Peru an effective beneficiary is considered to be the “natural person in whose name a transaction is made and/or who owns or exercises final effective control over a client, legal person or any other type of legal structure” (Resolution SBS 6089 of 2016).

To identify these beneficiaries there is a registry managed by the National Superintendent of Public Registries (SUNARP) that is completed with the delivery of data to the Financial Information Unit (FIU) required by the SBS. However, the information required by the SBS is not detailed. It only requires basics records from each company's effective beneficiaries, whether natural or legal persons. These are: full name or business name, depending on the case, address, nationality, residence, profession or trade, if it is a politically exposed person (PEP), for whom there will be a differentiated and more demanding treatment, etc.

This information can be requested by a judge, the National Prosecutor or investigative commissions, if necessary. In the face of possible reports of suspicious operations of money laundering and terrorist financing, the FIU receives the information and then analyzes it and sends it to the Public Prosecutor's Office.

The rules issued by the SBS do not include criteria for publishing information about the final beneficiaries, which explains the limited information available. Only direct owners have access to these data and it is not free.

Lastly, initiatives such as the creation of the National Superintendent of Public Registries (SUNARP) and the Council of Legal Defense from the State signed an agreement for access to the information in the register of final beneficiaries, in order to detect cases of corruption and money laundering. This progress is still limited. The publicity process of the effective beneficiaries has yet to be strengthened. This situation is reflected in the scarce 25 points out of a total of 100 obtained by Peru in the Open Company Data Index.

Regarding final beneficiaries, contractors do not, indeed, disclose the names of their effective or final beneficiaries. This vacuum makes it easier for companies to reinvent themselves under new names in order to continue contracting with the state. Similarly, entrepreneurs prevented from doing business with public entities use front companies to avoid the prohibition.

ASSET RECOVERY

The policy for the recovery of assets is comprised of legislation against money laundering and other crimes related to illegal mining and organized crime found in Legislative Decree No. 1106. In addition, the Law of Loss of Ownership of 2012 permits the state to confiscate property without even having to notify those affected. However, there is no general and uniform policy in Peru in the struggle to recover assets stolen from the state.

Powers are delegated for the recovery of assets in the different specialized units of the Public Ministry. In the case of crimes committed within the national territory, there are the Special Prosecutor's Offices for Money Laundering and Asset Forfeiture. Both have existed since 2016. For international cases there is an Asset Recovery Office that belongs to the Unit of International Judicial Cooperation and Extraditions. Despite this, government data on the work carried out by these institutions are not publicly available since they have political autonomy as a part of the Public Prosecutor's Office.

Peru has signed a series of international treaties related to money laundering and other crimes, including the United Nations Convention against Corruption and the Brasilia Declaration on International Juridical Cooperation against Corruption. But, despite these attempts at global cooperation, there are no cases in which Peru had seized and returned assets to other countries.

In the face of publicly known cases of corruption involving Peruvian political leaders and the rest of the region, it is necessary to reinforce existing mechanisms for asset recovery. In this line it is important to highlight the recent return of assets stolen by acts of corruption in the nineties, a process that is still running its course given the magnitude of the events.

+ RECOMMENDATIONS

1. Provide the transparency authority with access to information and data protection, power and sufficient means to exercise its supervisory role. Reduce the range of discretion of authorities in the declaration of the confidentiality of information.
2. Strengthen transparency measures throughout the procurement process and public procurement, from the call for bids to the actual execution of contracts, and publicize information on the beneficial owners of the companies that bid with the state.
3. Develop a national open information policy, which allows for technical standards, regularity and the quality of state data that can be later used by citizens.
4. Introduce efforts to have constant mechanisms of civil society participation in the design, development, implementation, monitoring and evaluation of national plans of action of open government and ensure its continuity over time.
5. Strengthen the control mechanisms and means of the Comptroller General's Office in matters of integrity, prevention of conflict of interest and revolving door.
6. Create a legal norm that regulates the acceptance of gifts and official donations in the exercise of the public function, as well as ensuring access to information that facilitates the detection and control of conflicts of interest.
7. Improve electoral legislation regarding political financing, emphasizing the origin of resources for political campaigns and their sanctions if they were of illicit origin, at the same time. At the same time, confer the necessary faculties, mechanisms and resources so that the electoral authorities can apply severe, timely sanctions and that they achieve the effective fulfillment of the obligations to which the political parties and candidates are subject.
8. Progress in citizen or friendly language measures to present relevant information on government management, especially that referring to the public budget and fiscal policy.
9. Ensure access to information by citizens of the records, although incomplete, that are in possession of various public bodies that allow tracking, monitoring and controlling the final beneficiaries of the companies.
10. Strengthen the mechanisms of asset recovery at national and international levels, establishing diligent and timely measures, which also allow an adequate rendering of accounts of the recovery, liquidation and restitution of ill-gotten assets to the State.



CONCLUSIONS

V. CONCLUSIONS

The history of the countries of our region has been marked by repeated episodes of democratic breakdown (UNDP, 2014) and by the constant challenge of strengthening an institutional framework that allows democracy to be a common space for all those who inhabit the continent. In this scenario, corruption has become a hindrance to achieve just development that respects the environment in which we live and where wealth benefits everyone.

The constant challenge of good governance in Latin America is compounded by the need to strengthen the trust that citizens have lost in the institutions, to improve the mechanisms of social cohesion and to make tomorrow's society a society that is actively involved in the resolution of the problems that affect everyone.

This is why the diagnosis offered by this report sets a roadmap that can guide the way. It shows that the efforts made by most of the countries evaluated in this study to create institutional frameworks that regulate and guarantee access to information have not been enough to put solid barriers to corruption in our countries. It is necessary to focus actions on measures aimed at attacking the essence of the acts of corruption and allowing us to detect them early when preventative mechanisms fail. As a result, the publication of the registries of effective beneficiaries, the creation of asset recovery mechanisms, integrity policies for the people that works for the state, focusing transparency efforts in various sectors where the line between public and private is hard to distinguish and strengthening the mechanisms that allow for more open parties and fairer electoral campaigns, not only will contribute to decreasing the possibility of acts of corruption, but also help in the construction of a democracy by and for the people.

One of the most difficult aspects of the 2030 Sustainable Development Agenda is the capacity of governments, civil society and the private sector to generate policies that allow for the creation of solid regulatory frameworks and in turn develop capabilities so that the measures adopted can be put into action. Any effort that does not consider the way in which policies must be implemented to achieve their objectives will be in vain.

The 2030 Agenda and, especially, SDG 16, demonstrate the need for society to model new governance approaches that listen to everyone's opinion, without discrimination or exclusion, with innovative ways of responding to public problems and in which all social actors are co-responsible for the successes and failures in their respective struggles.





RECOMMENDATIONS

VI. RECOMMENDATIONS

1. Strengthen and incentivize the role of non-state actors (NGOs and the private sector) in the definition of national action and goals.
2. Perfect the implementation process of policies against beneficial ownership secrecy and assure the access to information of their registries in such a way that allows for active oversight on the part of organized civil society and/or citizens in general.
3. Incentivize alliances and inter-governmental cooperation in order to improve the effectiveness of asset recovery prosecutions.
4. Improve the implementation, oversight and punishment of integrity policies in order to ensure their effectiveness.
5. Regulate the movement of public sector employees to the private sector in such a way that having a “revolving door” policy prevents possible conflicts of interest.
6. Assure the publication of and access to information about the declarations of wealth and interests as well as extending its applicability to the officials and employees of all the powers of the state.
7. Make more robust the measures to publicize electoral spending in order to empower citizens to take on the role of oversight and give autonomy to the electoral bodies so that they can carry out audits.
8. Use language that is clear and comprehensible for all citizens, and use technological means that facilitate the disclosure of budget information and spending.
9. Perfect the existing judicial framework by reducing waiting periods and limiting exceptions that apply to the right to access to information.
10. Create, unify and/or perfect systems of public contracting.





GLOSSARY

GLOSSARY

- ACCESS TO INFORMATION** Is the right of citizens, based on the principle of the transparency of state bodies, to access and disseminate information that is in state possession such as key facts and data from the government or any public body. The exercise of this right recognizes “the duty to publicize the acts and documents produced by the administration and the obligation to respond to requests for information from citizens” (Ramos and Villar, 2013: 46).
- FINAL BENEFICIARY** The final beneficiary is the person who, in the last instance, owns, controls or obtains benefits and income from a company or trust. The transparency of this information in a mandatory public registry is justified by the need to be able to easily trace, by government and by civil society, the gains obtained from illicit activities, thereby discouraging potential beneficiaries of crimes or acts of corruption.
- PUBLIC PROCUREMENT** Refers to the processes of decision, planning, bidding or acquisition of goods and/or services required by the organs of the state to fulfill the purposes that are proper to it. It is expected that these processes are developed publicly in all their stages, with an adequate follow-up of the execution of contracts and with a common system among the different powers of the state.
- CORRUPTION** The abuse of power exercised by institutions and state officials with a view to obtaining some kind of private benefit. These acts are responsible for “undermining the institutions and values of democracy, ethics and justice” while at the same time compromising “sustainable development and the rule of law” in the States (UN, 2004: 5).
- OPEN DATA** “Are digital data that are made available with the necessary technical and legal characteristics so that they can be used, reused and redistributed freely by any person, at any time and in any place” (Open Data Charter, 2015).
- OPEN GOVERNMENT** Refers to the “set of mechanisms and strategies that contribute to public governance and good governance, based on the pillars of transparency, citizen participation, accountability, collaboration and innovation, focusing and including the public in the process of taking of decisions, as well as in the formulation and implementation of public policies, to strengthen democracy, the legitimacy of public action and collective well-being “(CLAD, 2016).
- INTEGRITY** In public management refers to the rectitude and honesty with which public officials and state institutions perform their duties, consistent with a set of moral and ethical principles and standards from, fundamentally, mandated by the Constitution and laws in force (Villoria, 2002).

ASSET RECOVERY One of the great evils for the development of a country is the theft of public goods. Acts of corruption, which frequently occur at the highest levels of government, generate the loss of public resources. For this reason, all the governmental acts tending to recover said resources and other assets that were illegally stolen from the fiscal coffers are necessary. This recovery of assets would restore confidence in institutions and improve the private investment climate in the country, while allowing the state to have more funds to allocate to various public policies (Stephenson et al., 2014).

TRANSPARENCY In the public sphere, it is the characteristic of the government, the administration of the State and its officials to be open in the dissemination of information, rules, plans, processes and actions that are carried out in the performance of their functions. To do so, they must act in a visible, predictable and comprehensible manner to promote participation and accountability and allow third parties to easily perceive the actions that are being carried out.

**TRANSPARENCY
IN POLITICS** In this context, transparency should be understood as the opening of information related to electoral processes and activities regarding financing and expenses of political parties and candidates for elected office. The availability of the information indicated, and the subsequent inspection in case of non-compliance, would benefit both the ordinary citizen and those who are affiliated with a political party (Figueroa and Moya, 2016).

**FISCAL
TRANSPARENCY** Is the exhaustive, clear, reliable and timely disclosure of all information (FMI, sf) associated with the objectives, goals and expected results of the fiscal policy of a government, in order to know the existing relationship between income, expenses and government management (Government of El Salvador, Ministry of Finance, 2017). This information is essential for accountability to citizens, legislatures and markets, and for effective management of public resources (IMF, 2016).



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