



**Americas'
Accountability
Anti-Corruption
Project**

Corruption in Latin America: A Desk Assessment

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Abbreviations

AAA	Americas' Accountability/Anti-Corruption Project
ACWB	Anti-Corruption Without Borders
APEDE	Asociación Panameña de Ejecutivos de Empresas
BNP	Bolivian National Police
CAF	Corporación Andina de Fomento/Andean Development Corporation
CAFTA	Central America Free Trade Agreement
CAPEL	Centro de Asesoría y Promoción Electoral
CARICOM	Caribbean Community
CCCC	Comisión de Control Cívico de la Corrupción, Ecuador
CEJA	Justice Studies Center of the Americas/Centro de Estudios de las Américas
CELAP	Latin American Journalism Center/Centro Latinoamericano de Periodismo
CEMIS	The Multimodal, Industrial and Services Center in Panama
CIDE	Research and Teaching Center for Economics/Centro de Investigación y Docencia Económicas in México
CLAD	Centro Latinoamericano de Administración para el Desarrollo
CLD	Corporación Latinoamericana para el Desarrollo, Ecuador
CPI	Corruption Perception Index
CSO	Civil Society Organization
DAC	Development Assistance Committee of the OECD
DCD	Development Co-Operation Directorate
DCHA	Democracy, Conflict and Humanitarian Assistance
FEMICA	Federation of Central American Municipalities/Federación de Municipios del Istmo Centroamericano
FLACMA	Latin American Federation of Cities, Municipalities and Associations/Federación Latinoamericana de Ciudades, Municipios y Asociaciones
FLACSO	Latin American Faculty of Social Sciences/Facultad Latinoamericana de Ciencias Sociales
GDP	Gross Domestic Product
G-8	Group of 8
GOVNET	DAC Network on Good Governance and Capacity Development
IACC	Inter-American Convention against Corruption
ICMA	International City/County Management Association
ICGFM	International Consortium on Governmental Financial Management
ICITAP	International Criminal Investigative Training Assistance Program
IDB	Inter-American Development Bank
IDEA	International Institute for Democracy and Electoral Assistance
IDIF	Instituto de Investigación Forense, Bolivia
IFMS	Integrated Financial Management System
IMF	International Monetary Fund
INCAE	Central American Institute of Business Administration/Instituto Centroamericano de Administración de Empresas
INL	International Narcotics and Legal Matters Bureau (Department of State)

LAC/RSD	USAID Latin America & Caribbean Bureau's Office of Regional Sustainable Development
MCA	Millennium Challenge Account
MERCOSUR	South Common Market/Mercado Común del Sur
NGO	Non-Governmental Organization
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OPR	Office of Professional Responsibility
PARLACEN	Central American Parliament/Parlamento Centroamericano
PFC	Periodistas Frente a la Corrupción
PRD	Partido de la Revolución Democrática, México
PTJ	Policía Técnica Judicial, Bolivia
SAI	Supreme Audit Institutions
SECODAM	Secretaría de Contraloría y Desarrollo Administrativo, México
TAM	Technical Assistance Module
TI	Transparency International
TILAC	Transparency International Latin America and the Caribbean
UN	United Nations
UNDP	United Nations Development Program
UPD	Unit for the Promotion of Democracy, OAS
USAID	United States Agency for International Development
USG	United States Government
WB	World Bank
WBI	World Bank Institute
WHA/PPC	State Department/Bureau of Western Hemisphere Affairs, Office of Policy, Planning and Coordination

Executive Summary

Purpose of Desk Assessment

This desk assessment provides a baseline overview of corruption in Latin America. It provides the United States Agency for International Development's (USAID) LAC Bureau inputs for an effective, realistic, and comprehensive regional approach over the five- year strategy period, 2004-2009. Although not exhaustive, it serves as a starting point to document recent trends, programming approaches and potential entry points for anti-corruption activities in Latin America.

It draws on the literature reviewed, Casals and Associates experiences and on a series of interviews in Washington D.C.. The purpose of the assessment is to provide a basic description of the existing trends, levels and patterns of corruption, the areas where anti-corruption activities seem to be working, methodologies and advances in measuring corruption and the impact of anti-corruption activities. The assessment will highlight areas of opportunities and recommend feasible approaches.

Given time and resources limitations, the assessment is limited in its scope (see Annex 1, Scope of Work). As such, it not intended to be an impact or capacity assessment; much less an evaluation of specific programs and/or projects. Rather, it describes (based on secondary information available in compliance with the Scope of Work (SOW) and time constraints) the state of corruption in Latin America after a decade of activities and transition and highlights major illustrative areas that merit regional anti-corruption attention. It maps out priorities and strategic options.

Findings in Brief

Corruption in Latin America is widespread, but measuring its extent is inherently challenging. The incidence of corruption in Latin America varies from country to country, ranging from "normal" to "widespread" to "systemic." If it is normal, it may be relatively easy to identify the problem, sanction and close the opportunities that allowed corruption to occur. Once it is widespread and becomes systemic, however, the likelihood of detection and sanction decreases, and incentives are created for corruption to increase further. Moreover, where there is systemic corruption, the institutions, rules, and norms of behavior have already been adapted to a corrupt *modus operandi*, with public sector officials and employees and other actors (i.e., business sector) often following the examples. In these cases, corruption can be highly damaging to the stability of democratic institutions, erosive to the rule of law and corrosive to economic growth and competitiveness.

Several factors in Latin America give rise to corruption. First, a civil service that is still in transition after a series of reforms, where low levels of accountability, transparency and efficiency often lead to incentives to abuse power. In addition, cumbersome legislation, overlapping responsibilities of different government agencies, legal confusion, all contribute to increase the discretionary power of public officials. Also, oversight and

control institutions remain weak, despite the creation of anti-corruption commissions/agencies, ombudsmen (*defensorías*) and justice system oversight entities (*Consejos de la Judicatura*), the implementation of anti-corruption legislation, and the efforts of the international donor community to strengthen government institutions in charge of control. Further, most of the countries lack an effective judicial system to prosecute and sanction corrupt officials. Finally, absence of political will, weak social controls, and mixed attitudes about corruption.

International donors, including USAID, and international non-governmental organizations (like Transparency International) are addressing corruption directly or indirectly by working to create an environment that is not conducive to corruption.

Over the past decade, the donor community has financed a wide variety of programs in Latin America geared at improving public sector management (integrated financial management systems, civil service reforms, introduction of information and communication technology in government, modernization of tax administration and customs agencies) and promoting greater accountability and transparency in government (access to information legislation, judicial reforms, procurement reforms, training prosecutors, strengthening civil society organizations, training journalists).

The results of all these efforts appear to be mixed. Although more research and empirical analysis is necessary to evaluate the impact of these projects, the record seems to be filled with examples of programs that succeed at first but that are undermined by subsequent governments or by economic or political crisis and/or constraints.

Many donors now recognize, that a well designed anti-corruption reform strategy requires a long-term vision and a clear understanding that fundamental change can begin to take place now, but only come to fruition within one or two generations. In as much as it is difficult to ascertain, with current data and instruments, whether corruption has declined or increased in Latin America, progress has been documented on a number of fronts. For example:

- Countries in the region today have greater access to a wide variety of technological, legal, institutional and administrative tools to combat corruption;
- Awareness about the problem of corruption has significantly increased in Latin America, both among policymakers and society;
- The analytical tools to understand and measure corruption have substantially improved and become more sophisticated;
- New actors have emerged on the anti-corruption front, both at the national and regional levels;
- As a result of an increased understanding of the nature, causes, and effects of corruption, multilateral organizations and international financial and development agencies have refined their anti-corruption strategies and made them more systemic, holistic, and long-term, emphasizing prevention, strengthening of oversight and supreme audit institutions, public participation and coalition building and enforcement;

- Today anti-corruption assistance covers a much wider range of program approaches than a decade ago;
- New Legal instruments and conventions, such as the OAS Inter-American Convention against Corruption and the UN convention against corruption;
- Political corruption is beginning to be addressed; and
- Unlike the past, when high-ranking officials resigned and avoided prosecution, today a number of corrupt public officials in different Latin American countries have been effectively prosecuted.

Even though there has been a lack of any systematic effort by the donor and civil society communities to synthesize and analyze the impact of anti-corruption experience in Latin America, there are some lessons learned about the conditions and components necessary for initiatives to succeed.

The literature review on what is working and what is not working in anti-corruption in the region yields four general lessons:

1. There are no quick fixes. Addressing corruption is a complex political endeavor requiring governance and economic wide reform. Long-term commitment is required to gain public confidence in efforts to prevent and control corruption;
2. The need to balance between prioritizing short-term, immediate visible targets that create momentum but merely scratch the surface of the problem with deeper, more difficult, as well as time and resource intensive systemic reform that attack the root causes of corruption;
3. Anti-corruption activities can be encouraged and fostered by outside partners and donors, but the drive and the leadership must come from within; and
4. Anti-corruption strategies, whether national or regional, require a long-term vision and clear understanding that fundamental change can begin to take place now, but only come to fruition within one or two generations. Nonetheless, visible early victories, such as successful prosecution of high-level officials, may be critical for building credibility and generating sustained pressure for reform.

In addition, documentation from experiences in the field and the literature review suggest that the effectiveness of anti-corruption activities does not depend on one single factor but on a convergence of factors. For example:

- Political will and commitment from national leaders are critical to implement and sustain anti-corruption efforts.
- Wide popular support and ownership are necessary to advance anti-corruption efforts.
- For anti-corruption programs to be effective they must be tailored to each country's unique history, economic and institutional conditions. A base line assessment of the nature, extent and root causes of corruption in a given country is a critical first step to plan, guide and implement programs.
- Transparency and access to information are also indispensable tools for enabling the public to identify and report corruption.

- Donor coordination and information sharing, to exchange and learn lessons, experiences, successes and practices and avoid duplication of efforts.

In contrast to a decade ago, today in Latin America it is feasible to measure progress in other development areas like health, poverty and productivity, with universally accepted objective and subjective measures. There is as yet any universally accepted standard for measuring corruption. Because current measures are still imprecise, it is difficult to know with certitude whether corruption is declining or increasing. In the absence of more reliable and hard data on corruption, donors will find it difficult to target anti-corruption activities and more importantly without this information donors would not be able to determine what impact, if any, their anti-corruption efforts are generating.

As the Assessment Team researched for literature on corruption trends, best practices and lessons in the region, it found an enormous amount and variety. Some information, like general assessments and studies, as well as theoretical and conceptual material was relatively easy to find, although information on corruption is often woven into the governance, business development and/or institutional development literature. Impact assessment and other evaluation assessments were much harder to access; what was found was selective and non-comparative. For example, the Team was unable to find a recent comprehensive regional or even sub-regional assessment of corruption in Latin America. From the literature review and interviews it is apparent that:

- Donors are just beginning to adapt their information systems to the need to have access to more hard data and information on corruption in Latin America;
- Few countries in Latin America have any form of evaluation of anti-corruption policies and programs, from which positive and negative lessons about implementation can be learned.
- Information and documents, if they exist, on the effects of the anti-corruption efforts in Latin America have not been made public;
- There are few comparative evaluations that examine experiences of similar types of anti-corruption programs and/or activities in Latin America; and
- There are few efforts, nationally and regionally, to create and maintain a common updated data base of indicators and information to assist analysis, research and evaluation of corruption and anti-corruption programs.

Few anti-corruption programs in Latin America have been evaluated systematically. Such analysis could be used in developing future program and strategic plans. These evaluations could also help donors, governments and civil society organizations to refine anti-corruption objectives and performance measures. Similarly, while much progress has been made in estimating the global economic costs of corruption, much remains to be done in terms of measuring the impact of corruption on economic development, particularly in the Latin American region.

Strategic and Policy Options for Programming

Based on the regional trends identified in this desk assessment, the following strategic options are recommended for consideration by the LAC Bureau. In Part A, the Assessment Team proposes a set of Non-Project Activities at the regional level, or sub regional level that would help to further progress in reducing corruption in Latin America. These interventions are meant to compliment bilateral or mission funded initiatives.

In addition, the Assessment Team proposes seven strategic options in Part B, along with illustrative activities, for consideration by the LAC Bureau.

- Strategic Option 1: Increase awareness of the problem and mainstream anti-corruption programs within development strategies and programs.
- Strategic Option 2: Reduce the tolerance for corruption and help to strengthen the political will to undertake reforms to fight corruption.
- Strategic Option 3: Assist countries in the implementation of the Inter-American Convention against Corruption.
- Strategic Option 4: Promote private sector engagement
- Strategic Option 5: Establish a fund to support innovative pilot activities in Missions.
- Strategic Option 6: Support regional institutions in their fight against corruption.
- Strategic Option 7: Strengthening investigative capacity of agencies in dealing with complex crimes, such as corrupt activities (money laundering and illicit enrichment).

Each strategic option suggests possible partners for implementation of the illustrative activities. They are meant to be a menu of strictly regional activities, with the understanding that the Bureau will not be able to fund all the options presented.

I. Overview

A. Introduction

Widespread corruption is seen as one of the most significant threats to deepening democratization in Latin America.¹ The issue of corruption is a matter of increasing importance to the United States, other governments, inter-governmental organizations and civil society organizations (CSOs) around the globe. The United States Government (USG) actively advances bilateral and multilateral efforts to reduce corruption, promote transparency, and improve governance. President George W. Bush, Secretary of State Collin Powell, Secretary of Commerce Don Evans and Administrator Andrew S. Natsios have stated that the fight against corruption is an important foreign policy objective.² The destabilizing effect that corruption has on political systems and democracy threatens vital American interests.

The USG has recently stressed corruption as an impediment to sustainable development and investment in people, as demonstrated by the high hurdle insisted upon by President Bush in late 2002 that effective control of corruption must be a vital factor to qualify for funding from the Millennium Challenge Account (MCA). Similarly, the USG has been engaged in Free Trade Agreements with various countries in the region, to promote political and economic reform and establish conditions to enforce anti-corruption laws and ensure a basic level of accountability and transparency. Furthermore, since 1994, the Summit of the Americas under the leadership of the USG, has been promoting democratic values and practices. The maintenance and strengthening of the rule of law, accountability and transparency are a shared hemispheric goal and commitment, and constitute a central political priority of the Summits of the Americas Process. Corruption was also taken into account at the G-8 Evian Summit in 2003, where under the USG leadership a Declaration in Fighting Corruption and Improving Transparency was issued.³

The Organization of American States (OAS) Inter-American Convention against Corruption (IACC) has been signed and ratified by almost every country in the Americas.⁴ In fact, the IACC mandate is hemispheric and provides a common framework for identifying areas of assistance.⁵ Since its ratification governments in the region are legally committed to implement significant policies aimed at reducing

¹United Nations Development Programme (UNDP). *Report on Democracy in Latin America*. New York: UNDP, 2004; Latinobarometro. *Informe Latinobarometro 2003*. Santiago: Latinobarometro, 2003; Mitchell A. Seligson. "Corruption and Democratization in Latin America," (mimeo), 2002; and Kurt Wayland, "The Politics of Corruption in Latin America," *Journal of Democracy*, Volume 9, Number 2 (April):108-121.

²*Report to Congress Pursuant to the International Anti-corruption and Good Governance Act* (Public Law 106-309), May 2004.

³Ibid.

⁴Cuba, Haiti and Barbados have not ratified the Convention. St. Lucia, St. Vincent & Grenadines, Suriname and Trinidad and Tobago have only signed in accession.

⁵Roberto de Michele. "Follow-up Mechanism of the Inter-American Convention against Corruption, a Preliminary Assessment: is the Glass Half Empty?" *Southwestern Journal of Law and Trade in the Americas*, Volume 10, (Summer 2004):101-125.

corruption and enhancing transparency. This commitment was also reflected in the most recent OAS General Assembly meeting held in Ecuador in June 2004, where 34 countries issued the “*Declaración de Quito sobre el Desarrollo social y democracia frente a la incidencia de la corrupción.*”

B. Purpose of Desk Assessment

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It draws on the literature reviewed, Casals and Associates (C&A) experiences and on a series of interviews in Washington D.C.. The purpose of the assessment is to provide a basic description of the existing trends, levels and patterns of corruption, the areas where anti-corruption activities seem to be working, methodologies and advances in measuring corruption and the impact of anti-corruption activities. The assessment will highlight areas of opportunities and recommend feasible approaches.

Given time and resources limitations, the assessment is limited in its scope (see Annex 1, Scope of Work). As such, it not intended to be an impact or capacity assessment; much less an evaluation of specific programs and/or projects. Rather, it describes (based on secondary information available in compliance with the Scope of Work (SOW) and time constraints) the state of corruption in Latin America after a decade of activities and transition and highlights major illustrative areas that merit regional anti-corruption attention. It maps out priorities and strategic options.

The report is divided into parts:

- Section II provides an overview of the main corruption trends in Latin America, including its consequences.
- Section III describes the changes during the last decade in fighting corruption in Latin America, including achievements and set-backs.
- Section IV is an overview of lessons learned and of challenges ahead.
- Section V looks at measuring corruption.
- Section VI provides an extensive analysis of the Inter-American Convention against Corruption.
- Section VII offers a brief summary of major donors’ anti-corruption activities.
- Section VIII provides strategic options.

C. Methodology

The assessment developed by the Americas' Accountability Anti-corruption Project (AAA), which is funded by USAID under contract with Casals and Associates, Inc. (C&A), was carried out in three phases. First, a team of Democracy and Governance anti-corruption specialists conducted an initial desk study to synthesize information available in written documents. Second, the team conducted a series of interviews in Washington D.C. with USAID partners and experts. And last but not least, based on the information collected, the Team produced the assessment. Throughout the process, the team met several times to outline themes, review and discuss information and finalize the report.

A key methodological feature of this assessment was its consultative process. From April 20 to May 6 2004, the C&A Team reviewed more than 100 policy and strategy documents (Annex 3, Bibliography) and conducted more than a dozen interviews with key informants and experts in Washington, D.C. (Annex 2, List of Interviews). This information was supplemented by email interviews with missions where C&A has in-country staff and with those partners who responded to emails sent out by USAID/LAC Bureau in April and May 2004.⁶

The C&A Team members included Norma Parker, Team Leader; Yemile Mizrahi, Democracy and Governance Specialist; Roberto de Michele, Anti-Corruption Specialist; Gerardo Berthin, AAA Democracy and Governance Adviser and Deputy Project Director; and Patricio Maldonado, AAA Project Director.

D. Acknowledgements

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⁶The assessment includes information on Spanish-speaking Latin America, including the Dominican Republic but not the rest of the Caribbean.

II. Corruption in Latin America and its Consequences

A. The Extent of the Problem

International donors believe that corruption is a challenge to political stability, hampers economic growth and prevents public services from reaching those most in need. In recent years, Latin America has provided multiple examples of alleged high-level corruption, aside from the more visible daily petty corruption. For example:

- In early 2002 on primetime television, waving cash in his hand, Panamanian Congressman Carlos Afú charged that a leader of his party distributed envelopes containing \$6,000 to legislators in exchange for their votes in favor of ratifying a contract for the development of a multipurpose free-trade export zone near the Caribbean entrance of the Panama Canal;
- In December 2003, former Nicaraguan President Arnoldo Alemán was sentenced to 20 years in prison for corruption. Alemán was found guilty on charges including money-laundering, fraud, embezzlement and electoral crimes, judicial officials said. He was accused of helping to divert nearly \$100 million of state funds into his party's election campaign.
- In February 2004, Brazilian president, Luis Inacio Lula da Silva, was forced to fire a close government adviser following corruption allegations. A magazine accused Waldomiro Diniz of demanding illegal campaign contributions from a businessman in Rio de Janeiro;
- In January 2004, prosecutors in Guatemala opened a formal investigation of former President Alfonso Portillo, former Vice President Juan Francisco Reyes, and four other associates to determine if millions of Dollars of government funds found their way into Panamanian bank accounts;
- In Mexico, in March 2004, a video was made public showing a businessman and property developer, Carlos Ahumada, handing over wads of cash to the mayor's personal secretary and to the leader of his Democratic Revolution Party (PRD) in the city council.
- In April 2004, the mayor of Ilave, Peru, Fernando Robles Cayomamani, was lynched by a group of protesters who accused him of corruption; and
- In April 2004, an Argentine judge ordered the arrest of the governor of Santiago del Estero Province, Mercedes "Nina" Aragonés and her husband, former Governor Carlos Juárez. Both were accused of corruption, abuse of power and murder. The call for their arrest came hours after Congress approved direct rule of the province by the federal government.

These are just some examples that contribute to the perception that corruption in much of Latin America is pervasive.⁷ While no country is immune to corruption, there is a

⁷Robert Klitgaard. "Successes and Failures in Combating Corruption," address to APEDE, Panama, March 19, 2004; Gerardo Berthin and Patricio Maldonado. "Transparency and Developing Legal Frameworks to Combat Corruption in Latin America," *Southwestern Journal of Law and Trade in the Americas*, Volume 10 (Summer 2004):101-120; Development Cooperation Directorate (DCD/Development Assistance

difference between what Robert Klitgaard calls “normal corruption,” a condition that is not widespread and that can be controlled by an anti-corruption apparatus, which includes a legal system, accounting and auditing, budgets, competitive procurement and citizen oversight and “systematic corruption,” where corruption is widespread and the apparatus for restraining and combating corruption is ineffective if not itself penetrated by corruption.⁸ The latter appears to be the case in many Latin American countries.

Although there is considerable variation in the degree of corruption from country to country, there is growing consensus among scholars, practitioners and donors that corruption constitutes a central challenge to democracy and social and economic development. Today corruption is seen not only as a consequence of weak governance, but also as a cause of poverty and underdevelopment.

During the last decade, the international donor community (bilateral and multilateral) has placed greater emphasis on the need to fight corruption as an important part of their development agenda and lending strategies. Growing awareness of corruption has influenced the rhetoric of Latin American leaders, even when their commitment to confront the problem remains questionable. In contrast to a decade ago, it is common today for Latin American election candidates to include anti-corruption slogans and strategies in their campaigns. Some current officials have won elections by promising to battle corruption. Similarly, civil society organizations (CSOs), non-governmental organizations (NGOs) and the media have been increasingly active in promoting transparency, lobbying for reforms and informing citizens.

In sharp contrast to the past, when corruption was perceived mostly as a cultural trait that could only be combated through long term educational and ethics campaigns, today, a growing consensus is emerging that corruption is as much a product of a rational behavior that responds to incentives.⁹ As such, it thrives where the opportunities for corrupt behavior are high, the probabilities of being caught are small, and the consequences for illicit behavior are low or nonexistent.

Although it is difficult to generalize about corruption in Latin America, the countries of the region share some characteristics that are perceived to give rise to corruption. These include:

- **Civil Service in transition.** In most Latin American countries, the transition to a more professional career civil service that rewards merit more than patronage is still a work in progress. In spite of legislation and reform, the public sector remains highly susceptible to influence peddling. While some progress has been made (i.e., public servant laws, administrative procedure laws, improving

Committee (DAC). “Synthesis of Lessons Learned of Donor Practices in Fighting Corruption,” June 23, 2003; Daniel Kaufmann. “Rethinking Governance: Empirical Lessons Challenge Orthodoxy,” (Mimeo), Washington, D.C., the World Bank, March 2003; and (Seligson, 2002).

⁸(Klitgaard, 2004).

⁹(Klitgaard, 2004); (Kaufmann 2003); and Transparency International, *Sourcebook, 2000*. London: TI, 2000.

- horizontal and vertical coordination in the public sectors, regulatory institutions, e-procurement and e-government initiatives),¹⁰ there is still a need to further strengthen the civil service to make it more accountable, transparent and efficient and to reduce incentives for the abuse of power.
- **Cumbersome legislation, overlapping responsibilities of different government agencies, legal confusion**, all contribute to increase the discretionary power of public officials. This also blurs the lines of policy direction and accountability and also creates unnecessarily large bureaucratic barriers, which can serve to multiply opportunities for bribes. Cumbersome legislation, overlapping responsibilities of different government agencies and legal confusion weakens the capacity of governments to detect, deter and punish corruption.
 - **Complex and excessive bureaucratic procedures and regulations** to obtain permits, licenses, registration. In many countries in Latin America, the business community, foreign and domestic investors and citizens face an impenetrable wall of rules that bars them from legally establishing social and economic activities. In a number of countries, it is tremendously difficult to obtain legal documents (i.e., import and export permits, construction licenses, identification cards, birth certificates, driving licenses), pay taxes, acquire legal housing, enter into formal business agreements, obtain credit and find legal jobs.¹¹ Complex and excessive bureaucratic procedures and regulations encourage petty corruption, and adversely affect on potential business development, particularly small and medium enterprises.
 - **Weakness of the control and oversight institutions.** Oversight and control institutions remain weak, despite the creation of anti-corruption commissions/agencies, ombudsmen (*defensorías*) and justice system oversight entities (*Consejos de la Judicatura*), the implementation of anti-corruption legislation, and the efforts of the international donor community to strengthen government institutions in charge of control. Most of these mechanisms are dependent on the Executive Branch of government and are under funded and under staffed to effectively fulfill their functions.¹²

¹⁰For a discussion on progress in civil service reform in Latin America see United Nations Development Programme (UNDP). *Lessons on Public Administration Reform*. New York: UNDP, 2004; Luciano Tomassini and Marianela Armijo, “Reforma del Estado en América Latina: Experiencias y Desafíos,” Santiago de Chile: Editorial LOM, 2002; Gerardo Berthin. *Gobierno y Gobernabilidad Electrónica: Estrategias y Lecciones para el Desarrollo Humano*. La Paz: Programa de las Naciones Unidas para el Desarrollo (PNUD), 2003; Sunil Mani. *Government Innovation and Technology Policy: An International Comparative Analysis*. Cheltenham, UK: Edward Elgar, 2002; World Bank/Center for Democracy and Technology/Infodev. *The e-government Handbook for Developing Countries*. Washington, D.C., 2002; C. Polidano. “Administrative Reform in Core Civil Services: Application and Applicability of the New Public Management.” In Willy McCourt and Martin Minogue, eds., *The Internalization of New Public Management: Reinventing the Third World State*. Cheltenham: Edward Elgar, 2001; and Koldo Echebarria and Francisco Longo. “La Nueva Gestión Pública en la Reforma del Núcleo Estratégico del Gobierno: Experiencias Latinoamericanas,” CLAD, 2000.

¹¹This has been well documented in Hernando de Soto. *The Mystery of Capital*. New York: Basic Books, 2000.

¹²Susan Rose Ackerman. *Corruption and Government: Causes, Consequences, Reform*. New York: Cambridge University Press, 1999; Kaufman, op.cit, 2003; DCD/DAC/GOVNET, 2003.

- **Ineffective Legislatures**, particularly in overseeing the executive branch of government. Most Latin American legislatures are technically weaker than the executive branch and thus unable to exert their oversight functions effectively. For example, legislatures are generally unable to debate budget issues effectively and budget formulation is often flawed by ambiguity between the executive and legislative roles. Thus, the preparation and approval of the budget, and the monitoring and oversight of public expenditures is adversely affected, resulting executive branch discretion in the use of public funds. Moreover, in many countries, legislatures are too subordinated to the executive, fragmented, and/or dominated by special interests, which further reduces their capacity to produce significant and effective legislation.¹³
- **Dysfunctional judicial systems that are inefficient and are not independent.** In spite of judicial reforms (i.e., penal codes, re-training of judges and the creation of oversight institutions),¹⁴ judicial systems in many Latin American countries do not prosecute and sanction corrupt officials. Judges still retain enormous discretion; money can buy favorable court decisions; there is limited training and resources, and cases are “lost” or delayed. Systems seem to be overwhelmed and people, particularly the poor, are deterred from using them. The judiciary is unable to apply criminal law effectively, thus contributing to impunity. At the same, systems do not protect civil and property rights, contributing to a weakening of the rule of law and adversely affecting potential economic activity (investment and competitiveness).
- **Weak social controls, poor articulation and lack of voice.** Even though in the past decade the number of CSOs that work in the area of transparency has grown, most of their efforts have concentrated on awareness raising activities, less so in forming coalitions, generating greater pressure to prosecute corrupt officials and in successfully implementing social auditing activities.¹⁵ At the national and regional levels, CSO networks remain fragmented; lack adequate technical capacity to process and analyze information released by the government; and have limited capacity to translate advocacy activities into broad (governmental and non-governmental) coalition building strategies for change. Moreover, in some cases governmental and political interests have captured many of these organizations, in effect neutralizing their capacity to voice dissenting and critical opinions.

¹³World Bank PREM Notes on the Public Sector. “Strengthening Oversight by Legislatures,” Number 74 (October 2002); and United States Agency for International Development (USAID). “Assessment Report on Assisting Legislatures in Developing Countries,” Washington, D.C., 1998.

¹⁴For a discussion on progress and set-backs in justice reform in Latin America see, Justice Studies Center of the Americas (CEJA). *Report of Judicial Systems of the Americas 2002-2003*. Santiago: CEJA, 2003; Roberto Gargarella. “Too Far Removed from the People: Access to Justice for the Poor, the Case of Latin America,” (Mimeo), UNDP, 2002; and Cristina Bibesheimer and J. Mark Tayne. *IDB Experience in Justice Reform: Lessons Learned and Elements for Policy Formulation*. Washington, D.C.: IDB, 2001.

¹⁵(DCD/DAC, 2003); Transparency International “Corruption Fighters’ Tool Kit 2002-2003. Civil Society Experience and Emerging Strategies,” Berlin: TI, 2003; and Enrique Peruzzotti and Catalina Smulovitz. *Civil Society, the Media and Internet as Tools for Creating Accountability to Poor and Disadvantaged Groups in Latin America*. New York: UNDP Occasional Paper Series, No. 13, 2002; and Transparency International. *TI Sourcebook 2000*. London: TI, 2000.

- **More awareness but mixed attitudes about corruption.** According to interviews, corruption assessments and donor documents, public attitudes of corruption remain somewhat illusive. On the one hand, perceptions about corruption as a problem persist, although only less than one-third of Latin Americans think that there has been progress in reducing corruption.¹⁶ On the other hand, even though people in Latin America perceive that corruption is widespread, corruption is not identified as the most important problem. According to the UNDP survey, more than 60% of citizens in Latin America regard economic problems as more important than corruption and according to the *Latinobarometro* survey half of Latin Americans are more fearful of losing their jobs than of engaging in corruptive acts.¹⁷ Both of these perceptions suggest that most people in Latin America still do not link corruption to the broader capacity of governments to promote economic growth and job opportunities and deliver social services; economic uncertainties are just too overwhelming. Perhaps this explains why tolerance for corruption still remains relatively high in the region.
- **Absence of political will to control corruption.** Donors, international groups and practitioners generally agree that political will is required to implement and sustain anti-corruption reform efforts.¹⁸ Even though most candidates seeking office today promise to combat corruption and include anti-corruption programs in their campaigns, once in office few have been able to follow-up on their campaign promises. Maintaining political will has proven difficult for many leaders for among other reasons: 1) opposition from those with vested interests in the status quo; 2) raising expectations too high on reducing corruption; 3) no practical or immediate consequence for not keeping with electoral promises; and 4) inability of leaders to work with the opposition, build consensus and mobilize support.

B. Major Consequences of Corruption

The incidence of corruption in Latin America varies from country to country, ranging from “normal” to “widespread” to “systemic.” If it is normal, it may be relatively easy to identify the problem, sanction and close the opportunities that allowed corruption to occur. Once it is widespread and becomes systemic, however, the likelihood of detection and sanction decreases, and incentives are created for corruption to increase further. Moreover, where there is systemic corruption, the institutions, rules, and norms of behavior have already been adapted to a corrupt *modus operandi*, with public sector officials and employees and other actors (i.e., business sector) often following the examples.¹⁹ In these cases, corruption can be highly damaging to the stability of democratic institutions, erosive to the rule of law and corrosive to economic growth and competitiveness.

¹⁶(*Latinobarometro*, 2003)

¹⁷(UNDP, 2004) and Ibid.

¹⁸(DCD/DAC, 2003); and United States Agency for International Development (USAID). *Field Perspectives: A report on the Field Mission Anti-Corruption Survey*. February 2003.

¹⁹(Klitgaard, 2004); and (Kaufmann, 2003).

In the governance dimension some of the costs of systemic corruption are beginning to emerge. After more than two decades of the return of democracy in Latin America, a majority of Latin Americans are losing support for their democratic governments and institutions. According to two recent reports, most people in the region are dissatisfied with their governments' performance.²⁰ Even though much progress has been achieved in the electoral front --elections are generally clean in the region and recognized as the legitimate means of access to power-- fifty five percent of the people surveyed in 18 countries said they would support the replacement of democratic government with an authoritarian one, if they could resolve social and economic problems; fifty eight percent agreed the president should go beyond the law if he has to; fifty six percent said economic development is more important than maintaining democracy.²¹ Latin America democracy has not been able to take root because it has largely failed to address long-term problems related to poverty and inequality.

Moreover, most governments have stalled in their attempts to move to truly representative democracy. Political parties, one of the most important institutions of democratic governments, are losing credibility, as they have not been effective in aggregating, articulating, representing, and becoming accountable to their constituencies. Most people feel that parties are aloof, unresponsive to their daily concerns and needs and a central part of the corruption problem.²² Furthermore, leaders with a mandate to respond to citizens' concerns are overwhelmed with growing and unsatisfied demands and confront an explosive mix of weak institutions and distrustful populations.²³ More importantly, there is an emerging consensus in the region that their governments are falling prey to widespread corruption.

In the economic area the costs of systemic corruption are also beginning to be dimensioned. In recent years, many studies have presented powerful empirical evidence on the economic and social costs of corruption.²⁴ They have shown how systemic corruption can hinder domestic and foreign investment, restrict trade, distort the size of the composition of government expenditures, weaken the financial system and strengthen

²⁰(UNDP, 2004); and (Latinobarometro, 2003).

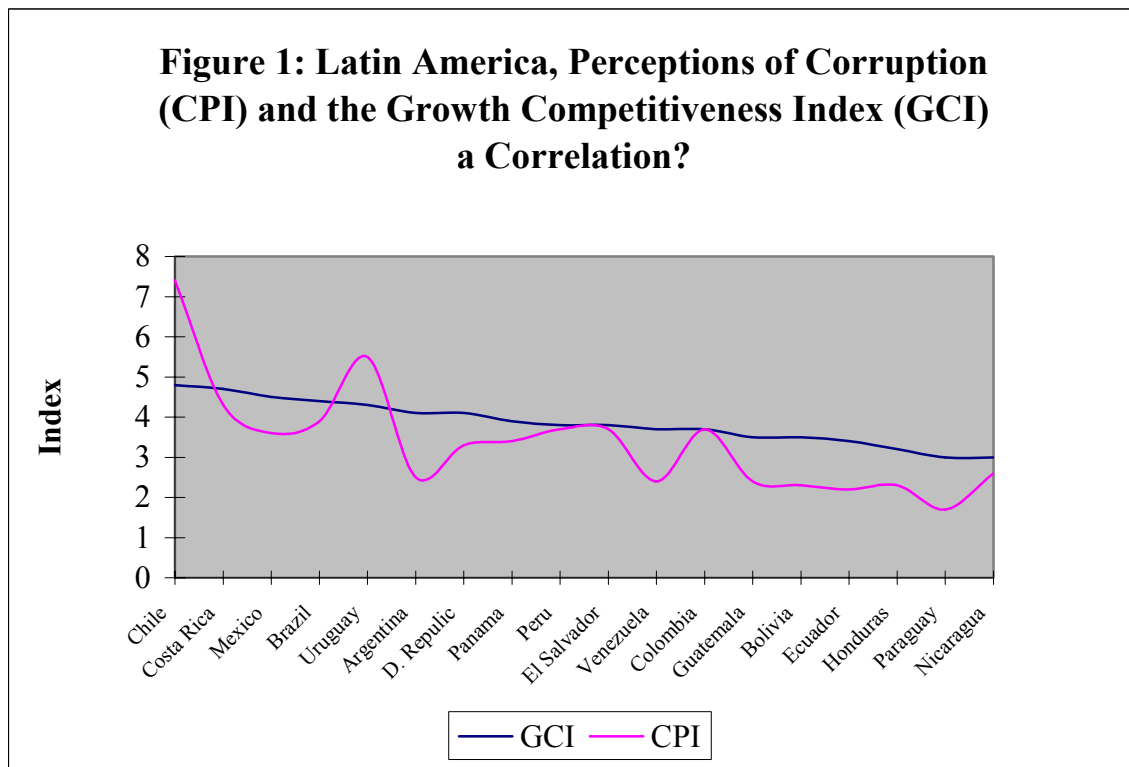
²¹(UNDP, 2004).

²²Ibid; Americas' Accountability Anti-Corruption (AAA) Project. *Political Party Finance in Argentina, Chile, Costa Rica and Mexico: Lessons for Latin America*. Alexandria, VA: Kwik Copy Printing/AAA Project, 2004; National Democratic Institute for International Affairs. *The Public Funding of Political Parties: An International Comparative Study*. Johannesburg: NDI, 1998; and Kurt Wayland. "The Politics of Corruption in Latin America," *Journal of Democracy*, Volume 9, Number 2 (April 1998):108-121.

²³Inter-American Dialogue. *Against the Odds: Democracy in Latin America*. Washington, D.C: Inter-American Dialogue, March 2004.

²⁴For example, Jeffrey D. Sachs and Joaquin Vial. "Can Latin America Compete?" In World Economic Forum, *The Latin American Competitiveness Report, 2001-2002*. New York: Oxford University Press, 2003 (pp. 10-28); Inter-American Development Bank. *The Business of Growth: Striving for Competitiveness in Latin America*. Washington D.C.: IDB Economic and Social Progress in Latin America, 2001; Shang-Jin Wei. "Bribery in the Economies: Grease or Sand?" Harvard University, NBER, and the World Bank, February 3, 2000 (mimeo); Edgardo J. Campos, Donald Lien and Sanjay Pradhan. "The Impact of Corruption on Investment: Predictability Matters." *World Development*, Volume 27, Number 6 (1999):1059-1067; and Sanjeev Gupta, Hamid Davoodi and Rosa Alonso-Terme. "Does Corruption Affect Income Inequality and Poverty?" *IFM Working Paper*, 1998.

the informal economy. Most importantly, systemic corruption can reduce economic growth and competitiveness. This in turn, adversely affects the levels of poverty and income inequality. Nonetheless, unbundling corruption can help reveal variation across countries in the region in terms of the extent of systemic corruption and its costs. As is suggested in Figure 1, there seems to be a level of correlation between perceptions of corruption and economic growth and competitiveness. The country with the lowest perception of corruption in Latin America, Chile, has a high growth competitiveness index, while Paraguay, which has the highest perception of corruption in the region has a low growth competitiveness index.



Source: Transparency International 2003 Corruption Perception Index (Scale is 0-10, where 0 is high levels of corruption and 10 is low); and World Economic Forum, 2003 Global Competitiveness Report (Scale is 0-7, where 0 is low competitiveness and 7 is high).

Global and regional studies that measure the business environment are often used to gain insights into corruption. One of the more comprehensive reports is the *Global Competitiveness Report*. The results of the latest report on competitiveness indicate that Latin America occupies fifth place among the seven major regions of the world in terms of competitiveness, only slightly ahead of the poor countries of Asia and the small group of African countries that are included in the report. Chile and Costa Rica are the countries that offer the best conditions.²⁵ The rest of the countries of the region are below the world average, many of them in the lowest positions among nearly 80 countries considered.

²⁵World Economic Forum and Harvard University. *The Global Competitiveness Report*. New York: Oxford University Press, 2003.

A key factor that appears to reinforce the correlation between systemic corruption and competitiveness is the quality of public institutions. For example, bureaucratic controls and regulations with regards to starting new business is a key factor for an adequate business environment. According to a recent competitiveness report of Latin America, business people perceive this as a major weakness of the region. The average number of procedures to start a new business is higher in Latin America (14 steps) than in non-Latin American countries (10 steps); the time to complete procedures is longer (nearly 93 days in Latin America compared with 58 days elsewhere); and the proportion of time senior managers spends with bureaucracy is also greater (26% in Latin America vs. 21% in the non-Latin American countries).²⁶

If one adds to the bureaucratic burden the severe deficiencies found in the judiciary system (as already mentioned above), it is quite clear that some of the major obstacles to competitiveness in most Latin American countries are directly related to inefficient and ineffective public institutions that, in many cases, fail to deliver the public goods required from them and tend to overburden the private sector with controls and regulations. The countries that tend to grow more rapidly are precisely those that have better conditions of competitiveness, including less prevalence of corruption. As such, one of the clear consequences of corruption is that it raises transaction costs and uncertainty in the economy and leads to inefficient economic outcomes. Corruption also impedes long-term foreign and domestic investment,²⁷ misallocates talent to rent-seeking activities and pushes firms underground (informal sector). As informal activities grow, it undercuts the government's ability to raise revenues, and leads to ever-higher tax rates being levied on fewer and fewer taxpayers. This, in turn, reduces the government's ability to provide essential public goods, including the rule of law. A vicious circle of increasing corruption and informal economic activity can be the ultimate adverse result.²⁸

In fact, survey data supports the notion that corruption, poor governance and lack of economic and public sector reform go hand in hand, with causality running in both directions.²⁹ People think their countries should have made more economic progress and indicated that corruption and vested financial interests were key reasons for their slow progress.³⁰ In analyzing corruption, there is a clear link between private and public actors. For example, corruption can influence the choice of private businesses to supply public goods and services in procurement and contract processes. It can influence the allocation of monetary benefits (tax evasion, subsidies, pensions, or unemployment insurance) or in-kind benefits (access to privileged schools, medical care, housing and real estate, or

²⁶(Sachs and Vial, 2003).

²⁷Whether related to corruption or not, the Economic Commission for Latin America and the Caribbean (ECLAC) reported in a special study that foreign direct investment (FDI) in Latin America and the Caribbean reached almost US\$36.5 billion in 2003, a sharp 19% decline over the previous year, due mainly to drops in Brazil and Mexico. It is the only region in the world where FDI fell, plunging to well under the US\$88 billion in inflows posted in 1999. See ECLAC. *Foreign Investment in Latin America and the Caribbean*. Santiago: ECLAC, 2003.

²⁸(Kaufmann, 2003).

²⁹(Kaufmann, 2003); and World Economic Forum, *The Latin American Competitiveness Report, 2001-2002*. New York: Oxford University Press, 2003. .

³⁰(Latinobarometro, 2003).

ownership stakes in enterprises being privatized). Corruption can be used to reduce the amount of taxes or other fees collected by government from private businesses and/or to speed up the government's granting of permission to carry out legal activities. Ultimately, corruption can alter outcomes of the legal and regulatory process, by inducing the government either to fail to stop illegal activities or to unduly favor one party over another in court cases or other legal proceedings.

III. Changes in the Fight against Corruption and the Promotion of Transparency in Latin America

A. What has Changed in the Last Decade?

A decade ago, multilateral and bilateral donor organizations and international financial and development institutions did not recognize corruption as a major problem of governance and development that required strategic programmatic interventions. As the Inter American Development Bank acknowledges, “the word corruption was virtually unprintable in official publications of Latin America.”³¹ Much has changed since 1994, when the OAS began to study the issue of probity and public ethics. Since then, the Summit of the Americas has become institutionalized and has opened spaces to tackle corruption and promote accountability and transparency. In 1996 members of the OAS signed the Inter-American Convention against Corruption. Many countries in the region have also signed other international conventions against corruption (Organization for Economic Cooperation and Development³² and United Nations), as well as other related treaties³³ and became formally committed to introducing reforms to control and fight corruption.

Corruption, today, is broadly recognized as a critical governance and development problem for developing and transition countries. Today, most international donors are financing a wide variety of programs to reduce corruption. They have also sponsored an array of studies that have yielded vital data and information, which has greatly enhanced the understanding of the nature, causes and consequences of corruption and the formulation of anti-corruption strategies.

In addition to countries’ commitments --even if only formally-- to combating corruption, civil society organizations like Transparency International and others have also organized in Latin America at the national and local levels to mobilize key sectors of the society, encourage citizens to get involved in government oversight and to advocate in favor of reforms to fight corruption. Today, 14 national chapters of Transparency International in Latin America are part of a formal network commonly known as TILAC. This has contributed to raise awareness and reduce tolerance for corruption. Today, corruption in

³¹Raphael Di Tella and William D. Savedoff. *Diagnosis Corruption. Fraud in Latin America’s Public Hospitals*, Washington, D.C: Inter American Development Bank, 2001.

³²In Latin America only Chile, Mexico, Brazil and Argentina have signed the OECD Convention.

³³United Nations Convention against Organized Crime and Financial Action Task Force 40 Recommendations.

Latin America is increasingly perceived as a problem that can be discussed, confronted, and reduced, rather than as a cultural trait to be accepted with resignation.

As Table 1 shows, the international donor community and international NGOs such as Transparency International have come to share a basic understanding on how to define corruption. There is wide consensus that corruption is not only a matter of culture, but also of opportunities and incentives that are directly related to the institutional setting in society. As such, corruption is now considered a problem of governance, and not necessarily a product of culture, as it has been suggested.³⁴

The consensus in the main definition of the term has led to a general agreement on how to combat corruption. Although there are still different approaches and more specialized (i.e., legalistic, economic) definitions of corruption, there is a generalized agreement that corruption needs to be combated through a systematic long-term and multi-pronged approach that while emphasizing enforcement also focuses on prevention through improving public sector management and strengthening control institutions. There is also agreement that any strategy to fight corruption must include citizen participation, and nurturing political will through the identification of “champions of reform” and the strengthening of broad anti-corruption coalitions.

Over the past decade, multilateral organizations and the international donor community have financed a wide variety of programs in Latin America geared at improving public sector management (integrated financial management systems, civil service reforms, introduction of information and communication technology in government, modernization of tax administration and customs agencies) and promoting greater accountability and transparency in government (access to information legislation, judicial reforms, procurement reforms, training prosecutors, strengthening civil society organizations, training journalists).

The results of all these efforts appear to be mixed.³⁵ Although more research and empirical analysis is necessary to evaluate the impact of these projects (see Section V), the record seems to be filled with examples of programs that succeed at first but that are undermined by subsequent governments or by economic or political crisis and/or constraints.³⁶ An example of this is the National Integrity Plan that was launched in Bolivia in 1998 with donor support, which was designed to tackle state modernization, judicial reform and the fight against corruption. During its initial phase, the program accomplished the passage of important laws (civil service, administrative procedures). However, after the change of government in 2002 and the ensuing economic and political crisis, the program did not gain relevance again.

³⁴For a discussion of the linkage between corruption and culture see, Seymour Martin Lipset and Gabriel Salman Lenz, “Corruption, Culture, and Markets.” In L. Harrison and S. Huntington, eds. *Culture Matters*. New York: Basic Book, 2000 (pp. 112-124); and Daniel Treisman. “The Causes of Corruption: A Cross-National Study.” *Journal of Public Economics*, 76, 3 (1998).

³⁵(Kaufmann, 2003); (DCD/DAC, 2003); (USAID, 2003a); and (UNDP, 2003).

³⁶United Nations Development Programme (UNDP), *Lessons on Anti-Corruption*. New York, December, 2003.

Table 1: Definitions of Corruption

<p>Transparency International:³⁷ Corruption is the misuse of entrusted power for private benefit. Corruption involves behavior on the part of officials in the public sector in which they improperly and unlawfully enrich themselves, or those close to them by the misuse of the power entrusted in them. TI distinguishes between petty corruption and grand corruption. Petty corruption or survival corruption is practiced by public officials who may be grossly underpaid and depend on small rents. This small-scale corruption may be simply a downward projection of much more damaging corruption at higher levels. Grand corruption of high-level public officials often involves large international bribes and “hidden” overseas bank accounts.</p>
<p>United Nations Development Program (UNDP):³⁸ Corruption is the misuse of public power, office or authority for private benefit-through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement. Although corruption is often considered a sin of government and public servants, it also prevails in the private sector.</p>
<p>Inter American Development Bank (IDB):³⁹ Corruption encompasses acts performed by officials who use their positions wrongfully, or are requested to do so by others, to obtain some benefit for themselves or others. Corrupt activities include the solicitation, payment or receipt of bribes, gratuities or kickbacks, extortion, improper use of information or property, and peddling of influence.</p>
<p>World Bank:⁴⁰ Corruption is commonly defined as the abuse of public office for private gain. The World Bank unbundles the concept of corruption, placing primary emphasis on the distinction between state capture and administrative corruption. State capture refers to the actions of individuals, groups, or firms both in the public and private sectors to influence the formation of laws, regulations, decrees and other governmental policies to their own advantage. Administrative corruption refers to the intentional imposition of distortions in the prescribed implementation of existing laws, rules and regulations to provide advantages to either state or non-state actors.</p>
<p>United States Agency for International Development (USAID):⁴¹ Corruption is the abuse of public office for private gain. It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private sectors such as bribery, extortion, influence peddling, and fraud. Corruption arises both in political and bureaucratic offices. It can be petty or grand, organized or unorganized.</p>

The results of all these efforts appear to be mixed.⁴² Although more research and empirical analysis is necessary to evaluate the impact of these projects (see Section V), the record seems to be filled with examples of programs that succeed at first but that are

³⁷Transparency International. *Sourcebook 2000*.

³⁸(UNDP, 2003).

³⁹Inter American Development Bank, “Strengthening a Systemic Framework against Corruption for the Inter American Development Bank,” February 28, 2001.

⁴⁰World Bank. *Anti-corruption in Transition: A Contribution to the Policy Debate*. Washington, D.C.: The World Bank, 2000.

⁴¹USAID, *A Handbook on Fighting Corruption*. Technical Publication Series. Center for Democracy and Governance. February, 1999.

⁴²(Kaufmann, 2003); (DCD/DAC, 2003); (USAID, 2003a); and (UNDP, 2003).

undermined by subsequent governments or by economic or political crisis and/or constraints.⁴³ An example of this is the National Integrity Plan that was launched in Bolivia in 1998 with donor support, which was designed to tackle state modernization, judicial reform and the fight against corruption. During its initial phase, the program accomplished the passage of important laws (civil service, administrative procedures). However, after the change of government in 2002 and the ensuing economic and political crisis, the program did not gain relevance again.

Moreover, recent analyses of anti-corruption programs conclude that there are very few success stories or examples of actually reducing corruption in a “sustained way.”⁴⁴ In a recent World Bank document, for example, Daniel Kaufmann argues that there has been little progress (in some cases even deterioration) in key dimensions of governance in Latin America, particularly in the areas related to controlling corruption and improving the rule of law.⁴⁵ Kaufman contrasts lack of progress in these areas with success in other areas not directly related to governance, such as the quality of infrastructure, the absorption of new technologies, the quality of science and math education and the management of key macro-economic variables, like inflation and budget deficits.⁴⁶

Kaufmann’s broad evaluation seems consistent with some public perceptions about the state of corruption in Latin America. The majority of Latin Americans still believe that corruption is widespread in their countries.⁴⁷ Five of ten Latin Americans have been significantly affected by corruption.⁴⁸ And less than 30% of Latin Americans believe that there has been progress in reducing corruption in the past two years.⁴⁹

These disappointing findings have to be balanced with a central premise that like most governance reforms, anti-corruption efforts are long-term projects and that results are not always evident in the short run. Many donors now recognize, that a well designed anti-corruption reform strategy requires a long-term vision and a clear understanding that fundamental change can begin to take place now, but only come to fruition within one or two generations.⁵⁰ In as much as it is difficult to ascertain, with current data and instruments, whether corruption has declined or increased in the region, progress has been documented on a number of fronts.

⁴³United Nations Development Programme (UNDP), *Lessons on Anti-Corruption*. New York, December, 2003.

⁴⁴(DCD/DAC/OECD, 2003); (UNDP, December 2003); Daniel Kaufman, “Rethinking Governance: Empirical Lessons Challenge Orthodoxy” (mimeo). Washington, D.C: The World Bank, 2003.

⁴⁵(Kaufmann, 2003).

⁴⁶Ibid.

⁴⁷ United Nations Development Program (UNDP), *Report on Democracy in Latin America*. New York: UNDP, 2004; Latinobarómetro. *Informe Latinobarómetro 2003*. Santiago, Chile: Latinobarómetro, 2003; Transparency International, *Global Corruption Report 2004 Special Focus: Political Corruption*. Sterling: Pluto Press, 2004.

⁴⁸Transparency International. *2003 Barometer*. Berlin: TI, 2003.

⁴⁹(Latinobarómetro, 2003)

⁵⁰(UNDP, 2003); and (DCD/DAC, 2003).

B. Major Achievements in the Anti-Corruption Front

Countries in the region today have greater access to a wide variety of technological, legal, institutional and administrative tools to combat corruption. Most countries in the region have made significant improvements in the modernization of their financial and management systems,⁵¹ their procurement practices,⁵² and the strengthening of their Supreme Audit Institutions (SAIs),⁵³ and public prosecutors.⁵⁴ In various degrees, many countries have also introduced information and communication technology initiatives (e-government) to improve government efficiency, effectiveness, transparency and accountability.⁵⁵

Moreover, most countries in the region have made progress in improving their constitutional, legal, and institutional frameworks. Some have passed constitutional amendments to increase the independence and professionalization of the judiciary. Others have introduced new legislation (freedom of information; transparency laws; career civil service laws), and they have created new institutions such as ombudsmen and anti-corruption agencies.

There are encouraging examples of local and institutional reforms that show promise of sustainability even if high levels of systemic corruption surround them. For example,

⁵¹ Americas' Accountability Anti-Corruption (AAA) Project. *Integrated Financial Management Systems, Best Practices: Chile and Bolivia*. Alexandria, VA: Kwik Copy Printing/AAA Project; Americas' Accountability Anti-Corruption (AAA) Project, 2004. *Integrated Financial Management Systems in 17 Central American Municipalities*. Alexandria, VA: Kwik Copy Printing/AAA Project, 2004; Juan Carlos Camacho Encinas. "Viabilidad de los Sistemas Integrados de Administración Financiera en América Latina," Universidad de Chile (mimeo, 2002); Marcos, Makón. "Sistemas Integrados de Administración Financiera Pública en América Latina." *Serie 3 Gestión Pública*. Santiago, Chile: Comisión Económica para América Latina (CEPAL), 2000; Lynette Asselin. "Integrated Financial Management in Latin America, as of 1995" *LAPTS Occasional Paper Series*, Number 18. Public Sector Modernization Division/LAC Region, World Bank, Washington, D.C., 1995.

⁵² Simon J. Evenett and Bernard M. Hoekman. *Government Procurement: Market Access, Transparency, and Multilateral Trade Rules*. World Bank Policy Research Working Paper 3195, January 2004; SICE." Information System for Monitoring Public Procurement - *Sistema de información para la vigilancia de la contratación estatal* [online]. Available at (<http://www.sice-cgr.gov.co/>); Proyecto de Reforma y Modernización del Estado, Chile. *Gobierno Electrónico en Chile: Estado del Arte*. Santiago, Chile: Universidad de Chile, 2003; Inter-American Development Bank. "e-Government Procurement (e-GP): Lessons Learned and New Opportunities for Development – Conference Proceedings." Washington, D.C.: IDB, 2002; and Transparency International, Handbook, 2000.

⁵³ Contraloría General de Chile. Contraloría General de la República fija Normas de Procedimiento sobre Rendición de Cuentas, 2003. Available at (<http://www.contraloria.cl/documentos/RENDICION.pdf>); Contraloría General de Colombia. Transparencia contra la corrupción Propuesta de gestión del Contralor General de la República, Antonio Hernández Gamarra (2002-2006). Available at <http://www.contraloriagen.gov.co/despcontralor/contenido/corruptcion.PDF>; and Secretaría de Contraloría y Desarrollo Administrativo. Programa Nacional de Combate a la Corrupción y Fomento a la Transparencia y el Desarrollo Administrativo 2001-2006 (México). Available at (<http://www.ci.inegi.gob.mx/normateca/Programas/PROGRCCFT.htm>).

⁵⁴ UNDP, 2003; and CEJA, 2003.

⁵⁵ (Berthin, 2003); and Silvana Rubino-Hallman. "E-Government in Latin America and the Caribbean: Reinventing Governance in the Information Age," CLAD, 2002.

participatory budgeting in Porto Alegre, Brazil;⁵⁶ the overhauled and strengthening of the internal revenue service in Ecuador;⁵⁷ the modernization of the Comptroller General Office in Bolivia;⁵⁸ the internal control program in Colombia;⁵⁹ and social auditing and strategic planning at the municipality of Santiago de los Caballeros in the Dominican Republic.⁶⁰

Although the impact of all these efforts in reducing corruption has been modest if not imperceptible, these institutional innovations can play a fundamental role in multiplying the control and combat of corruption in the future.

Awareness about the problem of corruption has significantly increased in Latin America. Even though much remains to be done in raising awareness about the linkage between corruption and economic development, today, in contrast to the past, corruption is a problem that is widely and openly discussed as part of the policy agenda. Corruption has become a priority theme in the regional agenda. Governments are being forced to address corruption by domestic pressures, as well as by external pressures and potential consequences. There is recognition that if they do not address corruption effectively, chances are that countries would lose strategic assistance and investment opportunities. For example, the MCA initiative places enormous importance on corruption indicators in order to determine country eligibility for USG assistance. The media has played a significant role in reporting corruption cases and raising awareness about the nature and the scope of the problem. In virtually all Latin American countries, the media now reports corruption cases more effectively and on a regular basis. New investigative reporting techniques have emboldened the media to provide information to the public, which they can use to demand greater accountability.

The analytical tools to understand and measure corruption have substantially improved and become more sophisticated. In contrast to the past, when corruption was an overarching concept believed to be “immeasurable,” today new tools have been developed to disaggregate corruption in its various dimensions, to measure its intensity and estimate its costs. However, much more needs to continue to be done in this area (see Section V).

New actors have emerged on the anti-corruption front. The different anti-corruption programs supported by the governments and the international donor community during the past fifteen years have brought new actors to the fore. The private sector is beginning to emerge as a critical partner for anti-corruption activities. Once, the private sector was perceived mostly as a promoter or beneficiary of corruption. But recently it is becoming

⁵⁶Boaventura De Sousa Santos. “Participatory Budgeting in Porto Alegre: Toward a Redistributive Democracy,” *Politics and Society*, Stoneham (December 1998).

⁵⁷USAID/Casals and Associates, *Corruption Assessment, Ecuador*, 2003

⁵⁸The World Bank. *Bolivia; From Patronage to a Professional State/Bolivia Institutional and Governance Review*. Washington, D.C., World Bank, 2002.

⁵⁹Casals and Associates, Inc/USAID, “Presentation at the ICGFM Conference,” Miami, May, 2004.

⁶⁰Americas’ Accountability Anti-Corruption (AAA) Project. *Citizen Participation to Strengthen Transparency in Latin America and the Caribbean*. Alexandria, VA: Kwik Copy Printing/AAA Project; Americas’ Accountability Anti-Corruption (AAA) Project, 2004.

evident that many businesspeople not only feel victims of corruption and are ready to fight against it; they have become important “champions of reform” in their own societies.⁶¹

Civil society organizations are increasingly improving their technical skills to effectively oversee their government’s performance and make it accountable. New groups of social auditors are emerging in the region with the mandate to keep their governments in check, particularly at the local level.⁶²

Universities in the region are also playing an increasingly important role in analyzing corruption and disseminating their results, training public officials, and making technological applications of information and communication technology designed by the private sector. For example, worthy of mentioning are *Centro de Investigación y Docencia Económicas* (CIDE), *Facultad Latinoamericana de Ciencias Sociales* (FLACSO), *Facultad de Ciencias Económicas de la Universidad de Buenos Aires* and *Instituto Centroamericano de Administración de Empresas* (INCAE) in Costa Rica.

At the regional level, organizations such as the Federation of Central American Municipalities (FEMICA), the Latin American Federation of Cities (FLACMA), the Latin American Journalism Center (CELAP), the Justice Studies Center of the Americas (CEJA), the Center for Electoral Technical Assistance (CAPEL), the International City/County Management Association (ICMA), the Latin American Center for the Management of Development (CLAD) and the regional offices in Latin America of the Institute for Democracy and Electoral Assistance (IDEA) are including corruption-related activities in their agendas. At the international level, the pressure of international organizations to combat corruption is also increasing and expressed in the ratification and implementation of new anti-corruption conventions.

As a result of an increased understanding of the nature, causes, and effects of corruption, multilateral organizations and international financial and development agencies have refined their anti-corruption strategies. After years of implementing programs and activities, analysts and practitioners acknowledge that anti-corruption efforts require a more systemic, holistic, and long-term approach.⁶³ In recent years, international organizations such as the United Nations Development Program, the U.S. Agency for International Development, the World Bank, and Transparency International, have outlined their anti-corruption strategies. Although there are some differences in the breath and scope of their programs, these strategies share four key elements:

- **Prevention:** reducing the opportunities for corruption by promoting greater efficiency, accountability, and transparency in the delivery and administration of public services. The package of reforms includes civil service reform, freedom of

⁶¹USAID, *Anti-corruption Assessment, Panama*. 2004; USAID, *Governance Assessment. Mexico*. 2001.

⁶²Americas’ Accountability Anti-Corruption (AAA) Project. *Citizen Participation to Strengthen Transparency in Latin America and the Caribbean*. Alexandria, VA: Kwik Copy Printing/AAA Project, 2004.

⁶³(UNDP, 2003); (USAID, 1999); (DCD/DAC, 2003); and The World Bank, www.worldbank.org/publicsector/anticorruption; (DCD/DAC/OECD, 2003).

- information legislation, simplification of procedures and regulations through the use of information and communication technologies; and introduction of sound financial and management practices with efficient accounting systems.
- **Strengthen Oversight and Control Institutions:** restraining the power of public officials by strengthening institutions such as anti-corruption agencies, Office of the Comptroller General, Office of the Auditor General, Office of the Ombudsperson, and Legislative Oversight Commissions.
 - **Public participation and coalition building:** ensure broad public support for the anti-corruption programs and help build the political will to combat corruption by strengthening anti-corruption coalitions. Support programs geared at improving the quality of investigative journalists, improving technical capacities of civil society organizations to conduct social audits and awareness campaigns.
 - **Enforcement:** reducing impunity by promoting greater independence and accountability of the judicial system; strengthening prosecutors; strengthening capacity and integrity of the police; protect whistleblowers; and pass anti-corruption legislation that unambiguously defines corruption and establishes concrete and feasible sanctions.

Today anti-corruption assistance covers a much wider range of program approaches than a decade ago. This often responds to national demands, to windows of opportunity and/or to the presence of national champions. In every country in Latin America one would find different program approaches, with a variety of sectoral and cross-sectoral activities. For example, in Guatemala much of the anti-corruption activities are focused in the justice sector reform, on human rights and working with civil society; in the Andean countries anti-corruption efforts are imbedded in alternative development strategies; in Panama the emphasis is on administration of justice and on supporting a broad coalition of CSOs and provide them small-grants to develop and implement initiatives; and in Colombia focus is being placed on the development and implementation of internal control procedures.⁶⁴

New Legal instruments and conventions. The OAS Inter-American Convention against Corruption is another positive change in the fight against corruption (see Section VI for a detailed analysis). It already offers a number of practical opportunities to intensify the fight against corruption in the future. As the process to verify compliance moved forward, there have been meetings convened, reports drafted and implementation has been monitored.

Political corruption is beginning to be addressed. A decade ago, it was unthinkable to tackle corruption and transparency issues related to political parties. Today, political corruption is emerging as a key issue. Most Latin American countries have introduced legislation on political parties, in particular to regulate the sources, flow and destination of money in politics. Bans and limits in the area of political party campaign finance are being addressed divergently in the region. Public funding is being debated, discussed and in some cases reformed. Control mechanisms, are being created and strengthened to

⁶⁴(USAID, 2003a).

encourage and enforce disclosure of information by political parties. Civil society organizations are becoming increasingly involved in promoting better disclosure and transparency and in lobbying for reform in political party finance. *Poder Ciudadano* in Argentina and *Participa* in Chile are two such examples. In spite of this progress, much more needs to be done to ensure transparency, integrity and disclosure in political party finance in Latin America.⁶⁵

Unlike the past, when high-ranking officials resigned and avoided prosecution, today a number of corrupt public officials in different Latin American countries have been effectively prosecuted. Even though it is clear that removing a “few bad apples” will not solve the problem of systemic corruption, the prosecution of these officials represents a major achievement on the anti-corruption front. Visible wins may be critical for building credibility and generating sustained pressure for reform. These officials would not have been prosecuted without international and national pressures. The investigation against former President Alemán in Nicaragua, which led to the removal of his legislative immunity and later to his incarceration, serves as a needed example in the region of the consequences of corruption. Corrupt leaders have fewer safe heavens today than they had in the past. More importantly, this and other cases, like the mobilization against the former president of Guatemala and the former Peruvian Head of Intelligence Vladmiro Montesinos, have empowered civil society organizations in the region.

IV. Lessons in the Fight against Corruption and Challenges for the Future

After nearly a decade of anti-corruption programs and activities, what are the lessons learned? What areas seem to be promising, what areas seem to be ineffective?

The literature review on what is working and what is not working in anti-corruption in the region yields four general lessons:

1. There are **no quick fixes**. Addressing corruption is a complex political endeavor requiring governance and economic wide reform. Long-term commitment is required to gain public confidence in efforts to prevent and control corruption;
2. The need to **balance** between prioritizing short-term, immediate visible targets that create momentum but merely scratch the surface of the problem with deeper, more difficult, as well as time and resource intensive systemic reform that attack the root causes of corruption;
3. Anti-corruption activities can be **encouraged and fostered** by outside partners and donors, but the drive and the leadership must come from within; and
4. Anti-corruption strategies, whether national or regional, require a **long-term vision** and clear understanding that fundamental change can begin to take place now, but only come to fruition within one or two generations. Nonetheless,

⁶⁵Americas’ Accountability Anti-Corruption (AAA) Project. *Political Party Finance in Argentina, Chile, Costa Rica and Mexico: Lessons for Latin America*. Alexandria, VA: Kwik Copy Printing/AAA Project, 2004.

visible early victories, such as successful prosecution of high-level officials, may be critical for building credibility and generating sustained pressure for reform.

In addition, documentation from experiences in the field and the literature review suggest that the effectiveness of anti-corruption activities does not depend on one single factor but on a convergence of factors. For example:

- **Political will**⁶⁶ and commitment from national leaders are critical to implement and sustain anti-corruption efforts.
- **Wide popular support and ownership** are necessary to advance anti-corruption efforts. The experiences of *Poder Ciudadano* in Argentina, *Transparencia por Colombia*, the *Alianza Pro-Justicia* in Panama, are broad coalitions that include government, the private/business sector, civil society and the media, which have proven to be successful in identifying problems, agreeing on solutions and implementing reform. In addition, well-designed awareness campaigns that are accompanied by concrete reform proposals can help generate ownership by civil society groups and mobilize the public.
- For anti-corruption programs to be effective they must be **tailored to each country's unique history**, economic and institutional conditions. A base line assessment of the nature, extent and root causes of corruption in a given country is a critical first step to plan, guide and implement programs. USAID-sponsored assessments in Paraguay, Honduras, Ecuador and Panama, and the WBI support given to anti-corruption agencies (Ecuador, Honduras, Nicaragua) have been instrumental in nourishing national anti-corruption strategies. In addition, the results of the assessments should be widely disseminated to clarify the nature and extent of the problems, mobilize support and develop action plans.
- **Transparency and access to information** are also indispensable tools for enabling the public to identify and report corruption. Information about government policy and programs, budgets, fees for services and performance should be available, permitting citizens to oversee government, hold it accountable, and ensure that their rights are respected.
- **Donor coordination**, and information sharing to exchange and learn lessons, experiences, successes and practices and avoid duplication of efforts.

Even though there has been a lack of any systematic effort by the donor and civil society communities to synthesize and analyze the impact of anti-corruption experience, there are nonetheless some emerging lessons that have been articulated in the literature written over the past five years.

⁶⁶Political will, refers to the demonstrated credible intent of political actors (elected or appointed leaders, civil society watchdogs, stakeholder groups) to attack perceived causes or effects of corruption at a systemic level.

A. Some Emerging Lessons

On Prevention

Reducing incentives and the opportunities for corruption is essential in any effort to combat systemic corruption. Prevention strategies include a very wide array of policies, reforms, programs, and activities aimed at increasing the effectiveness, efficiency, transparency and accountability of governments. Many of these programs were introduced in Latin America before a coherent anti-corruption strategy was even formulated. The literature of the experience of reform in these areas is enormous and beyond the scope of this assessment, but evaluations on the impact of these efforts in reducing corruption is limited. However, there are three main lessons that can be distilled:

First, improving the performance of governments requires a long-term commitment and the investment of large amounts of financial, technical, and human resources to change the way in which governments operate. While the donor community can introduce innovative organizational models and provide new information systems and technology, governments still need to appropriate these innovative ideas and technologies and commit sufficient resources to ensure their sustainability. Many of these reforms entail the support of a large number of people working in administrative capacities. There are no technical quick fixes. The experience in Latin America suggests that many technical capacity enhancement projects languish after the assistance of international donors concludes.⁶⁷

For example, over the last decade most countries in the region have implemented expensive Integrated Financial Management Systems (IFMSs), yet little is known about their impact. A recent effort to document IFMS experiences in Latin America, found that IFMS reform is not often an integral part of a well-defined, interrelated and interactive state modernization strategy. Little effort has been made to publicize the benefits of IFMS, to ensure that all stakeholders understand them and to build support constituencies. Building a cadre of knowledgeable personnel, with the needed technical skills to implement, manage and operate an IFMS is critical for obtaining sustainable results. Ultimately, the effectiveness of IFMS as a financial management and anti-corruption tool is dependent on the ability to finance and the capacity to maintain and utilize relevant technology. If either is lacking, the system will not provide useful and timely information to decision makers.⁶⁸

⁶⁷Manuel E. Contreras, "Capacity Building in the Bolivian Social Policy Analysis Unit. Reflections of a practitioner." In Merilee S. Grindle, *Getting Good Government. Capacity Building in the Public Sectors of Developing Countries*. Cambridge, Mass: Harvard University Press, 1997.

⁶⁸Americas' Accountability Anti-Corruption (AAA) Project. *Integrated Financial Management Systems, Best Practices: Chile and Bolivia*. Alexandria, VA: Kwik Copy Printing/AAA Project; and Americas' Accountability Anti-Corruption (AAA) Project, 2004. *Integrated Financial Management Systems in 17 Central American Municipalities*. Alexandria, VA: Kwik Copy Printing/AAA Project, 2004.

Second, there is now a growing recognition that reorganizing bureaucracies and increasing the salaries of public officials will not reduce corruption in the absence of a broader civil service reform. The World Bank has documented that raising public sector wages has no impact in reducing corruption.⁶⁹ However, setting the pay levels right may be part of the answer. In several countries, key government agencies, like the tax administration in Ecuador, the Economic Policy Analysis Unit in Bolivia, or the Canal Authority in Panama, improved their performance by raising wages within a comprehensive package of organizational reforms.⁷⁰

Third, public awareness campaigns, anti-corruption conferences/seminars and training events can be useful. For example, in Mexico the Project Atlatl, in collaboration with the *Secretaría de Controlaría y Desarrollo Administrativo* (SECODAM), selected the script and funded the production of short public awareness anti-corruption films with recognizable themes, such as “Please do us a Favor/ *no sea malito*,” and “When I Grow Up/*Cuando sea Grande*,” focusing on petty corruption in basic public services (i.e., police, permits, health services). This series was conceived as a non-lucrative project to create public awareness on the negative effects of corruption. The short films were shown in more than 300 theaters throughout the country, and according to project information, over 5 million people saw the films. In addition, national long-distance bus companies are showing the films as part of the entertainment showings for their passengers. The films are being used in seminars and as public service announcements.⁷¹ According to the latest *Transparencia Mexicana’s report on corruption in Mexico*, this type of public awareness campaigns might have had an impact in reducing petty corruption in Mexico. According to their report, from 2000 to 2004, petty corruption in Mexico has substantially declined.⁷²

For prevention to be effective there needs to be continued monitoring (audit, internal controls and evaluations). Evidence from the literature review and from interviews suggest that it is not enough to introduce new organizational schemes, new technology (like IFMSs), to train police forces and prosecutors and to implement public awareness campaigns. Unless these are continuously monitored and evaluated, anti-corruption efforts could subside and another more extraordinary effort would be necessary.

On Strengthening Control and Oversight Institutions

Most Latin American countries have agencies in charge of controlling and curbing corruption. Many of these agencies have been unable to fulfill their mandates, because they have encountered legal challenges in the process of moving a prosecution of corrupt officials. In many cases, their impact in prosecuting and punishing the corrupt has been virtually insignificant mainly because enforcement approaches have not simultaneously

⁶⁹(Kaufman, 2003).

⁷⁰(Contreras, 1997); USAID/Casals and Associates, Inc. *Corruption Assessment, Ecuador*, 2003; USAID/Casals And Associates, Inc. *Corruption Assessment, Panama*, 2004.

⁷¹Casals and Associates, Inc./ Project Atlatl, “Quarterly Report,” 2002.

⁷²Transparencia Mexicana. *Encuesta Nacional de Corrupción y Buen Gobierno*. México, DF: Transparencia Mexicana, 2003.

changed.⁷³ Typically, anti-corruption agencies identify, document, file cases and turn them over to the appropriate prosecuting agencies. Often, anti-corruption agencies perform these responsibilities without appropriate capacity and resources. If and when prosecuting agencies receive the cases, they either refuse to give priority to the cases and/or have little or no capacity to handle corruption cases. Even when the prosecuting agency handles the case and turns over to the judicial system, the courts might be weak or too dependent on the executive to effectively pass judgment and punish responsible individuals and/or groups. Moreover, when courts finally are able to sanction cases, it is generally against petty offenders sparing the “big fish.”

In addition, some anti-corruption agencies in Latin America have operated under the executive branch of government, calling into question their political independence and authority. Further, some of these agencies lack resources and were understaffed and under funded to be effective. In spite of these shortcomings, these agencies for the most part have played an important role in providing a central locus for the denunciation of corruption.⁷⁴ As was described above, what happens after the denunciation in many cases is beyond the control of the anti-corruption agencies, and in itself is a lesson learned for future activities.

In fighting corruption, Supreme Audit Institutions, anti-corruption agencies and entities such as the *fiscalía/procuraduría* and the offices of ombudspersons (*defensorías*) are important. Experience has demonstrated that to fulfill their functions, these institutions need independence and functional autonomy from the executive, close relations with enforcement officials, internal controls, adequate and well-qualified staff, and adherence to international auditing standards.⁷⁵ In most Latin American countries, these conditions do not exist mostly due to the absence of political will. Typically, oversight institutions are subordinated to the executive, and lack the technical capacities and adequate staff to perform their oversight responsibilities.⁷⁶

Another emerging lesson from Latin America in the area of control and oversight institutions is that deficient and/overlapping regulation creates confusion, increases arbitrary discretion and encourages corruption. The cases of Panama, Ecuador and Argentina, exemplify this lesson. Simplifying administrative procedures and clearly delineating functional responsibilities among control agencies are important first steps.

On Promoting Public Participation and Coalition Building

Civil society plays an important role in fighting corruption. A watchful public is necessary for holding government officials accountable, reducing the tolerance for corruption, and creating public awareness about corruption. However, after years of

⁷³Patrick Meagher. “Anti-Corruption Agencies: A Review of Experiences.” Maryland: the IRIS Center, 2002.

⁷⁴For example during 2002 the Anti-corruption Commission of Ecuador handled more than 600 cases, and the Bolivian Anti-corruption Office more than 500 cases.

⁷⁵ DCD/DAC/GOVNET (2003).

⁷⁶ USAID, *Field Perspectives: A report of the Field Mission Anti-Corruption Survey*. 2003.

supporting different groups, there are some key questions to ask about CSOs working in anti-corruption areas. For example, who do CSOs really represent? How inclusive are CSOs? And, to whom they are accountable? Moreover, some civil society groups have questionable motives in seeking international donor support; therefore, “they need to be held to the same accountability standards as people in public office and private companies.”⁷⁷ In addition, CSOs still need much more capacity-building assistance y key areas, such as project/proposal design, sustainability strategies and coalition building. Thus, civil society organizations need to acquire not only greater organizational and advocacy skills, but also greater technical capabilities to monitor the government and propose alternative reform strategies.

Furthermore, supporting a stronger and vibrant civil society while important is not an alternative to promoting cleaner, more accountable and transparent public sectors. They are clearly complementary.⁷⁸

Unlike the past, when most efforts of the donor community were geared at strengthening and enhancing civil society organizations’ capacity to confront their governments and demand greater accountability and transparency, today many analysts and practitioners agree that a more collaborative and less confrontational approach is necessary to bring about substantial change.⁷⁹ Furthermore, civil society organizations need to find “champions of reform,” which are always present even in the most corrupt public sectors, and build broader coalitions in support for change. Anti-corruption campaigns cannot succeed unless the public is behind them and are strongly supported by political leaders.⁸⁰

Surveys and assessments that involved civil society participation are useful not only in identifying problems and for monitoring and evaluation programs. As the experience of *Poder Ciudadano* in Argentina, *Participa* in Chile, *Corporación Latinoamericana para el Desarrollo* (CLD) in Ecuador, *Transparencia por Colombia* and *Transparencia Panama* suggest, they help raise awareness and create opportunities for change. If these efforts include the media, independent consultants and sound methodologies credibility is enhanced even further. Moreover, it can help raise awareness about the complexities of obtaining and accessibility of information and encourage more demands for transparent and accountable government.

To date, there is very little evaluative work on the experience of civil society organizations in Latin America in their fight against corruption. Research in this area can be supported by the donor community to further improve the role of civil society.

Other key lesson emerging from Latin America in the area of citizen participation and coalition building are:

- CSO work seems to be evolving from a confrontational to a more collaborative approach, which includes engaging governmental actors;

⁷⁷ World Bank, public sector governance page. <http://www1.worldbank.org/publicsector/anticorruption>

⁷⁸ DCD/DAC/GOVNET, 2003.

⁷⁹ DCD/DAC/GOVNET, 2003.

⁸⁰ USAID, 2003a

- Dependence on donors for financial sustainability is still a key issue for majority of CSOs in Latin America;
- CSOs are demonstrating that they can play a big role in anti-corruption activities, not only at the national scene but also at the local scene;
- Helping CSOs and citizens organizations, capacity building in key strategic areas is critical. For example, project/proposal design, survey techniques, use and maintenance of information and data, monitor and evaluation techniques and cost benefit analysis.

On Enforcement

Efforts to reduce impunity have often translated in the prosecution of a large number of corrupt officials, or as Klitgaard articulated it, “frying a few big fish.”⁸¹ Most analysts and practitioners agree that systemic corruption requires greater emphasis on prevention than on enforcement. Experience has proven that too much emphasis on enforcement can become problematic. First, prosecuting officials takes a long time and the process is usually filled with “legal technicalities” that are bound to disappoint those who expected quick results. But more importantly, punishing corrupt officials without introducing substantial reforms to prevent and detect corruption, does not contribute to reducing corruption in the end. As Rose-Ackerman argues, the primary goal of reform should be “reducing the underlying incentives to pay and receive bribes, not to tighten systems of ex-post control....If incentives remain, the elimination of one set of ‘bad apples’ will soon lead to the creation of a new group of corrupt officials and private bribe payers.”⁸² Moreover, the government can use the process of prosecuting corrupt officials in a discretionary manner to punish political opponents. Needless to say, the latter can significantly undermine other efforts to strengthen the rule of law.

Even while acknowledging that enforcement cannot become the cornerstone of an anti-corruption strategy, the effective prosecution of several corrupt officials has demonstrated that given sufficient public and international pressure, it is in fact possible to build political will to punish corruption and reduce impunity.

Moreover, enhancing the enforcement capacities of prosecutors and the police, and promoting the independence and accountability of the judicial systems can also become part of a campaign of deterring and preventing systemic corruption. The case of Colombia provides some lessons on enforcement. Not only is there a special unit within the *Fiscalia* that deals with corruption cases (*Unidad Especializada de Delitos en contra de la Administracion Publica*), but the government has trained citizens to combat corruption using constitutional mechanisms; it has issued a Decree creating a National System of Internal Control across ministries and other national bodies; and the General Comptroller’s Office issued a requirement for government entities to follow the standardized internal control processes. Another case that provides some lessons is

⁸¹(Klitgaard, et.al. 2000).

⁸²Susan Rose-Ackerman. *Corruption and Government: Causes, Consequences and Reform*. New York: Cambridge University Press, 1999.

Bolivia. Under the International Criminal Investigative Training Assistance Program (ICITAP) in Bolivia, hundreds of members of the *Policía Técnica Judicial* (PTJ) have been trained, along with prosecutors from the *Instituto de Investigación Forense* (IDIF) and judicial personnel, on investigative techniques and the Criminal Procedures Code. In addition, progress has recently been made towards improving the disciplinary regime within the Bolivian National Police (BNP), including the establishment of an Office of Professional Responsibility (OPR) and the strengthening of the disciplinary court.

Yet, although the majority of Latin American countries have passed important anti-corruption legislation, most of this legislation remains un-enforced because governments have lacked the political will to significantly control and combat corruption. Many governments have used these legal instruments as “window dressing” to comply with international conventions against corruption without a serious commitment to do much about this problem. The case of Panama provides a clear example of how, a law on transparency was curtailed. This law was the collaborative product of civil society, the business community, the Legislature and elements of the Government. It is widely understood that the President never favored the law but it came for signature in middle of a widely publicized corruption scandal involving elements of her government and the Legislature. However, a few weeks after it was signed, the Government issued implementing regulations that all but negated most aspects of the law, rendering it practically useless.⁸³ As a result, critical information, such as the asset declarations of senior officials, continues to be unavailable to the public.

Effective enforcement activities that have been attempted in Latin America range widely from supporting legislation, regulatory structures and justice sector institutions to establishing and supporting institutional procedures and internal control mechanisms. Although no evaluation exists about the impact of these efforts, progress has been reported in fostering legislative/policy reform, constitutional reform, criminal laws on anti-corruption, financial crimes, tax, procurement, and decentralization.⁸⁴

B. Challenges for the Future

Donor agencies are now realizing that since corruption is a complex and multi-dimensional phenomenon, and that it is the result of broader structural relationships between and among political, government, business sector and civil society actors, that there are in fact multiple entry points for intervention. One of the emerging lessons is that anti-corruption programs need to be mainstreamed into other areas not previously considered such as poverty strategies, education, health, and environment. The IDB, for example has supported a study of corruption in the health sector in Latin America that provides detailed evidence of the effect of corruption in a sector that many people considered to be “immune from such abuses.”⁸⁵ New areas that were previously not

⁸³ All of the presidential candidates have stated that they will eliminate the problematic implementing regulations and ensure that the intent of the Transparency Law is fully implemented.

⁸⁴USAID, *Field Perspectives: A Report on the Field Mission Anti-corruption Survey*, February 2003; and DCD/DAC, 2003.

⁸⁵(Di Tella and Savedoff, 2002).

included in the anti-corruption effort are now emerging as important entry points for the international community in the future. For example, in a global USAID survey conducted in 2003, USAID missions identified more than 20 types of anti-corruption programs, in areas such as energy, health, education and environment.⁸⁶

A decade ago combating corruption focused on measures to address the problem in public administration and public finance management. Today corruption is a cross-cutting theme. Because there is an increased recognition that the roots of corruption extend far beyond weaknesses in the capacity of government, the repertoire has been expanded to target broader structural relationships, including the internal organization of the political system, relationships among governmental institutions, the interaction between the public and private sectors and the relationship between government and civil society.

Designing effective programs to combat corruption in these new areas needs to start with a good diagnosis, something that is now only beginning to be done. Education, health, and the environment are critical areas that affect people's daily lives; anti-corruption efforts in these areas may have more direct, shorter term impact and gain greater political support than programs in areas of civil service reform or the modernization of the state which are further removed from people's daily affairs and successful results are not easily perceived by the general public.

Another emerging area that has not yet been adequately targeted is political corruption. The financing of political parties is typically an area where powerful interest groups can "buy" special favors and "capture" the state once parties are elected into office.⁸⁷ Many countries in the region are beginning to perceive the need for regulating the flow of money in politics by introducing limits to campaign contributions, campaign expenditures and by passing disclosure provisions. In most countries, this regulation remains largely un-enforced. Illegal contributions, patronage, and kickbacks are becoming today one of the most important corruption scandals in these countries. Donors, who have typically worked mostly on areas related to voter registration, voting and vote counting, can become engaged in providing advice and technical capacity to administrative agencies responsible for regulating and controlling political party finance.⁸⁸

Corporate governance is another key anti-corruption area for future programming, particularly because it emphasizes issues of competitiveness, transparency, internal and external accountability and disclosure. The private sector is caught in a particular dilemma. On the one hand, in some cases it benefits and is willing to tolerate and often pay for corrupt practices. Yet, on the other hand, it suffers from the economic uncertainty and potential expropriation of assets that are typical of corrupt environments where the public sector and political forces exercise illegal "demands." Moreover,

⁸⁶(USAID, 2003a)

⁸⁷AAA Project, *TAM on Political Party Finance*, 2004.

⁸⁸DCD/DAC/GOVNET, 2003; World Bank, *Public Sector anti-corruption page*, www.worldbank.org/publicsector/anticorruption

privatization of many state-owned enterprises and trade policies have meant that Latin American countries increasingly depend on private businesses to create jobs, generate tax revenues, furnish consumers with goods and services, manage pension funds and financial markets.

Weak institutions for corporate governance not only result in inefficiency, they encourage corruption. Poorly governed managers often use their positions to extract favors from the government. Corrupt behavior in the private sector is often difficult to detect, especially in countries where business transactions are obscured and/or informal. A wide array of corporate governance reforms has proven effective in curbing both incentives and opportunities for corruption. For example: public disclosure of share ownership and cross-holdings; strong penalties for insider trading and pyramid schemes; the appointment of outsiders to boards of directors; the introduction of regular, published independent audits of financial accounts based on standardize rules; the establishment of an effective legal framework for the exercise of creditors' rights and conflict of interest; strong enforcement of ethical standards; and improvement in the quality and integrity of financial reporting.⁸⁹

During the last five years, a number of corporate governance initiatives have been implemented in the region. For example: in 2001 the Argentine capital markets reform, covering a broad range of corporate governance issues was decreed into law and became effective; in Chile, in 2002 a new Tender Offers and Corporate Governance Law was enacted; in Colombia, in 2001 the *Superintendencia de Valores* enacted a resolution, by which all issuers who intend to be recipients of pension fund investments are obliged to disclose their corporate governance practices; in 2002, Peru published the "Principles for Good Governance of Peruvian Corporations," a key reference endorsed by the private and public sectors; and in 2001, the Mexican Congress approved key reforms to the Securities Markets Law, such as the power to regulate tender offers in order to prevent the exclusion of minority shareholders from the benefits, stricter enforcement and changing the regulatory approach from a merit-based approach to a disclosure regime.⁹⁰

As part of their corporate responsibility, many firms in Latin America are recognizing a call to act in benefit not only of immediate shareholders but also of other less direct interests, including the immediate community and the public interest. Increasingly, firm are collaborating in the provision of information technology and training to the government and joining civil society organizations in their efforts to promote greater transparency and accountability of governments. However, it is important to recognize that the private sector is not a homogeneous entity. Small and medium size entrepreneurs (those who have more autonomy from the government and who therefore depend less on contracts, permits, and other government "favors") have more to gain from a system that plays by open and transparent rules and that limits public officials' discretionary power.

⁸⁹For an account on new approaches of the private sector in self-regulating activities, see OECD. "White Paper on Corporate Governance in Latin America." Paris: Center for Cooperation with Non-Members/OECD, 2003; and Virginia Haufler. "A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy," Carnegie Endowment for International Peace, 2001.

⁹⁰(OECD, 2003).

These entrepreneurs, more than the larger and most powerful conglomerates, are the natural allies in any anti-corruption campaign.⁹¹

Finally, many countries in the region have introduced decentralization policies in an effort to increase the government efficacy and efficiency in the provision of public services. More attention is being paid to the creation of accountability mechanisms to ensure that sub-national governments have the capacity to respond and account for their actions. The possible impact of decentralization on corruption has not been adequately analyzed and addressed. Some emerging evidence suggests that decentralization may increase the opportunities for corruption.⁹² For example, recent studies of Colombia's experience with decentralization reveal that corruption significantly increased after a radical decentralization program was undertaken in the early 1990s.⁹³ However, there is also growing evidence that the local/decentralized level presents a target of opportunity to affectively address corruption, particularly through social audit mechanisms which seem to be able to gather greater political will from elected municipal officials because of their closeness to their constituents.⁹⁴

V. Measuring Corruption and Evaluating Anti-corruption Initiatives

Corruption in Latin America is perceived to be widespread, but measures are imprecise. During the last decade, there have been efforts to try to measure corruption more systematically and scientifically, using a wide range of methodologies, ranging from opinion polls to public sector expenditure tracking and in-depth diagnostic surveys.⁹⁵ The Corruption Perception Index (CPI), sponsored by Transparency International each year since 1995, is currently the most popular such method in the world.

In the international comparison of perceptions Latin America ranks just above Africa (Figure 2). This provides a useful aggregated measure, which shows that Latin America is lagging behind the other regions and that it has a huge challenge ahead. Like all averages, however, the CPI does not reveal the enormous variation in the region with respect to the perceived level of corruption. For example, the most recent CPI shows that while Chile's score is high and similar to the United States and Ireland, Paraguay, Ecuador, Bolivia and Honduras have low scores, comparable to countries in the bottom of the scale like Uganda, Nigeria and Sierra Leone. Most other Latin American countries have medium scores. Costa Rica and Uruguay have scores above the global average, while Brazil, Peru, El Salvador, Colombia and Mexico have scores closer to the Latin American average. Panama, Dominican Republic, Nicaragua and Argentina have scores below the Latin American average.

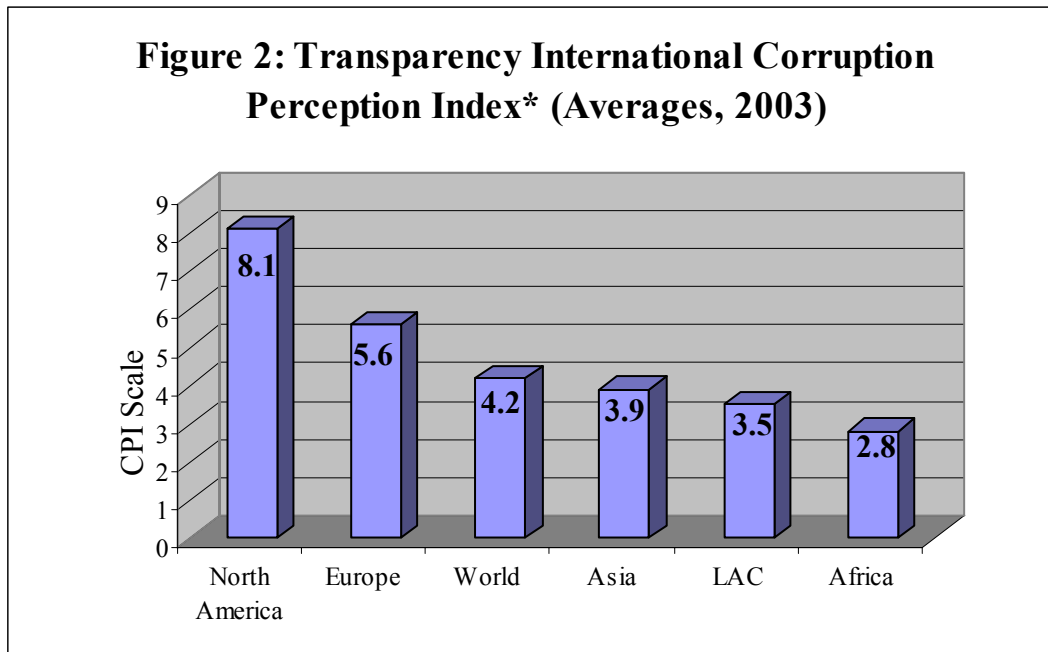
⁹¹This evident in the cases of Mexico (COPARMEX), Panama (APEDE and Chamber of Commerce), Ecuador (Chamber of Commerce of Guayaquil) and Brazil (several regional business associations).

⁹²UNDP, December 2003.

⁹³Fernando Cepeda Ulloa, "Colombia: The Governability Crisis," in Jorge Dominguez, et.al. *Constructing Democratic Governance in Latin America*. Baltimore: John Hopkins University Press, 2003.

⁹⁴AAA Project, *TAM on Citizen Participation to Strengthen Transparency in Latin America and the Caribbean*, 2004

⁹⁵(Berthin and Maldonado, 2004).



*In the CPI Scale, 0 implies high perceptions of corruption while 10 implies low perceptions of corruption.

Furthermore, when looking at the Latin American CPI data, and other similar indicators, over time it is hard to ascertain whether corruption has increased or decline.⁹⁶ For example, the CPI from 1999 to 2003 presented in Table 2 shows that Latin America scored almost the same in terms of perceptions of corruption. The World Economic Forum indicators presented also in Table 2 show a slight increase in perceptions of corruption. As such, while the CPI and other similar indicators can be useful as a broad gauge of corruption, they cannot be use to guide program and or policy decisions.

Since 1996, the World Bank has also explored the use of surveys as a means to “measure” corruption. The World Bank has conducted private sector surveys and more recently, perception surveys directed to households and public officials. Moreover, in recent years an alternative to the CPI measure has emerged from the World Bank Institute (WBI). This alternative uses a series of governance indicators, including one for control of corruption, to measure the quality of governance.⁹⁷ While WBI data also shows the region of Latin America with a low rating, in comparison to East Asia (Figure 3), a more in-depth review of country specific data also reveals regional variation. For example, overall Chile scores high in the WBI governance indicators; Costa Rica and Uruguay are not ranked as high as Chile, but are above the rest of the countries; Argentina, Bolivia, Brazil, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Mexico and Peru reflect the average of the region; and Ecuador, Venezuela and Paraguay are ranked low.

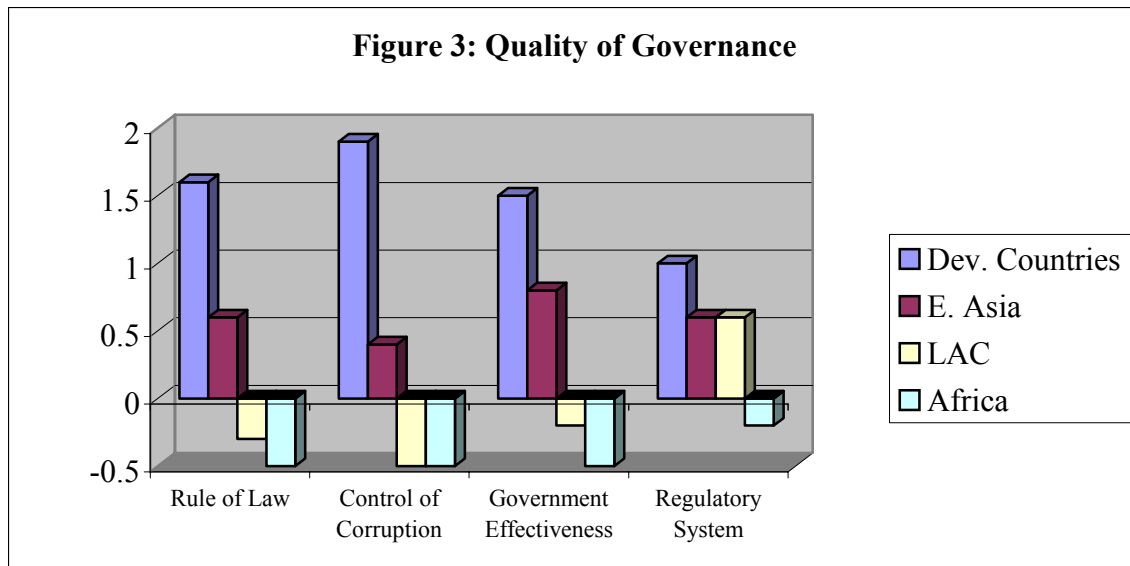
⁹⁶Part of the problem is that corruption is by definition cannot be fully measured.

⁹⁷Daniel Kaufmann and Aart Kraay. “Governance Matters III: New Indicators for 1996-2002 and Methodological Challenges,” in Transparency International. *Global Corruption Report 2004*. London: Pluto Press, 2004; and op. cit., (Kaufmann 2003).

Table 2: Perception Corruption Indicators in Latin America

Country	Transparency International*		World Economic Forum**	
	1999	2003	2001	2003
Argentina	3.5	2.5	4.28	4.42
Bolivia	2.0	2.3	4.26	3.56
Brazil	4.0	3.9	4.45	4.82
Chile	7.5	7.4	6.35	6.34
Colombia	3.8	3.7	4.73	5.14
Costa Rica	4.5	4.3	4.60	4.41
Ecuador	2.3	2.2	3.91	3.67
El Salvador	3.6	3.7	4.47	5.16
Guatemala	2.9	2.4	4.12	3.81
Honduras	2.7	2.3	3.64	3.84
Mexico	3.7	3.6	4.40	4.82
Nicaragua	2.4	2.6	3.76	4.31
Panama	3.7	3.4	4.26	4.52
Paraguay	1.7	1.6	2.77	3.55
Peru	4.1	3.7	2.31	5.21
D. Republic	3.1	3.3	4.46	4.43
Uruguay	5.1	5.5	4.78	5.88
Venezuela	2.8	2.4	4.05	3.85
Region	3.6	3.5	4.37	4.52

*1-11, low number= high corruption, low number= low corruption; **1-7, low number=high corruption and high numbers=low corruption. Source: UNDP (2004), Table 19, p. 99.



Source: D. Kaufmann, 2003.

Another methodology that has been developed to measure corruption is the Victimization Methodology. Departing from the premise that it overcomes the limitations of the CPI and World Bank methodologies (based on aggregated national data), and inspired by the crime-victimization surveys (focused on individuals), this methodology measures corruption by accounting for personal, direct experience with it.

One key contribution of this methodology is the finding that perception of corruption has only a weak relationship to victimization levels.⁹⁸ In other words, if one uses the perception ratings as a corruption measure in a Latin American country, one would be inclined to conclude that where there are low perceptions of corruption victimization levels are also low. In fact, results of the victimization survey shows that in Latin America the link between perceptions and victimization is not always consistent.⁹⁹ Another key finding generated by the victimization methodology is that one very common way in which corruption affects Latin Americans is through the very officials who should be involved in controlling it, namely the Police.¹⁰⁰ While victimization corruption rates vary substantially from country to country, in all the countries studied it is substantially higher than in advanced industrial countries. One shortcoming of this methodology is that it is unable to gauge the extent of grand corruption, in the aggregate more damaging than the petty corruption victims tend to report.

In addition to the CPI, the WBI indicators and the victimization scale, other organizations like Transparency International, the International Budget Project and the Center for Public Integrity, have also introduced innovative methodologies to analyze several aspects of corruption in Latin America. For example, Transparency International has developed the Global Barometer Survey and the Bribe Payers Survey, with relevant data for Latin America.¹⁰¹ The International Budget Project has developed the Latin American Index of Budget Transparency, which is a product that involved leading civil society organizations in ten countries in the region.¹⁰² More recently, the Center for Public Integrity released the Public Integrity Index, which provides a quantitative scorecard of governance practices in seven Latin American countries.¹⁰³ The Public Integrity Index assesses the institutions and practices that citizens can use to hold their governments accountable to the public interest.

At the national-level, several organizations have also introduced new methodologies to measure corruption and integrity in their countries. National-level public perception surveys and corruption studies play an important role in providing information about the nature, magnitude, and location of corruption within a country. For example, the Impunity Index in Panama, shows that of 110 prominent corruption incidents reported in the media, only four ultimately resulted in legal sanction; the Public Sector Integrity

⁹⁸Mitchell A. Seligson, the University of Pittsburgh Latin American Public Opinion Project's Corruption "Victimization Scale," in op. cit., (Transparency International, 2004).

⁹⁹Ibid.

¹⁰⁰Ibid.

¹⁰¹www.transparency.org/surveys/index.html.

¹⁰²www.internationalbudget.org/themes/BudTrans/LA03.htm.

¹⁰³www.publicintegrity.org/ga/ii.aspx

Index in Colombia, measures the effectiveness of more than 140 public institutions in areas such as transparency, capacity to investigate and sanction and efficiency; and the Index of Corruption of Good Governance in Mexico, focuses on the 38 most important public services and how corrupt they are based on client responses. These national-level efforts suggest that corruption is still rooted in those institutions that have the greatest contact with the public, such as the police, the justice system and health services.

Worth mentioning is a collection of country studies recently published by the Inter-American Development Bank's (IDB) Latin American Research Network, which provides detailed evidence of the effects of corruption in the health sector in seven Latin American countries (Argentina, Bolivia, Colombia, Costa Rica, Nicaragua, Peru and Venezuela).¹⁰⁴ Theft of medical supplies, illegal or excessive fees for goods and services, absenteeism by doctors and nurses and unauthorized use of public facilities, were some of the problems highlighted in the study. In 2002, USAID sponsored several studies to identify manifestations of corruption in specific sectors.¹⁰⁵

Information and analysis about corruption has also proliferated and is widely available on the Internet. Regional web sites such as Respondanet (www.respondanet.com) and Probidad (www.probidad.org), and non-region specific web sites such as Nobribes (www.nobribes.org) and the Utstein Anti-corruption Resource Center (www.u4.no) are important virtual fora for the exchange of information and discussion within the Latin America region and across other regions of the world. Even though their access is limited to those who have access to computers and Internet, they have nonetheless contributed significantly to increasing the debate and information about corruption in the region.

Another example is Anti-corruption without Borders (ACWB), a Respondanet service that networks 100 CSOs in the region, and allows interaction, interactive online training and exchange of ideas. Similarly, *Periodistas Frente a la Corrupción* (PFC) is a regional initiative of Probidad, which provides a network, resources, assistance, support and defense to journalists and media outlets involved in investigating corruption. Last but not least, since 1996 the Transparency International national chapters in Latin America created the TILAC network (<http://www.transparency.org/tilac/english/index.html>), which includes 14 countries. It serves as an important means to share information and experiences.

All of these efforts have yielded an important body of data, which has helped not only to refine the understanding of the causes and nature of corruption, but also, and more importantly, to provide civil society organizations with powerful advocacy and monitoring tools for combating corruption. Nonetheless, in spite of all that progress there is still plenty of room to continue to understand the nature and dynamics of corruption in Latin America, improve and refine analytical tools and instruments, further disaggregate data, and most importantly to measure impact of anti-corruption efforts. In order to know

¹⁰⁴(di Tella and Savedoff, 2002).

¹⁰⁵MSI/USAID. "Anti-Corruption Sector Papers," 2002.

precisely where to invest resources, target assistance and how to measure the degree of success and/or impact of anti-corruption efforts assistance, donors like USAID need to be able to rely on more evidence and indicators.

In contrast to a decade ago, today in Latin America it is feasible to measure progress in other development areas like health, poverty and productivity, with universally accepted objective and subjective measures. There is as yet any universally accepted standard for measuring corruption.¹⁰⁶ Because current measures are still imprecise, it is difficult to know with certitude whether corruption is declining or increasing. In the absence of more reliable and hard data on corruption, donors will find it difficult to target anti-corruption activities and more importantly without this information donors would not be able to determine what impact, if any, their anti-corruption efforts are generating.

As the C&A Team researched for literature on corruption trends, best practices and lessons in the region, it found an enormous amount and variety. Some information, like general assessments and studies, as well as theoretical and conceptual material was relatively easy to find, although information on corruption is often woven into the governance, business development and/or institutional development literature. Impact assessment and other evaluation assessments were much harder to access; what was found was selective and non-comparative. For example, the Team was unable to find a recent comprehensive regional or even sub-regional assessment of corruption in Latin America. Moreover, descriptive and conceptual information about corruption in Latin America seems to be more easily accessible to practitioners than empirical information (evaluations and assessments). From the literature review and interviews it is apparent that:

- Donors are just beginning to adapt their information systems to the need to have access to more hard data and information on corruption in Latin America;
- Few countries in Latin America have any form of evaluation of anti-corruption policies and programs, from which positive and negative lessons about implementation can be learned. Some countries have had corruption and/or democracy governance assessments, which are not easily accessible or have not been made public;
- In general, there is little document sharing among donors, in key anti-corruption areas such as expenditures tracking, procurement, civil service reform and public sector financial management;
- Information and documents, if they exist, on the effects of the anti-corruption efforts in Latin America have not been made public;
- There are few comparative evaluations that examine experiences of similar types of anti-corruption programs and/or activities in Latin America; and
- With very few exceptions, such as Respondanet (www.respondanet.com), the TILAC Network (<http://www.transparency.org/tilac/english/index.html>), the Probidad (www.probidad.org), and the Utstein Anti-corruption Resource Center (www.u4.no), there are very few efforts to create and maintain a common

¹⁰⁶(Seligson, 2002).

updated data base of indicators and information to assist analysis, research and evaluation of corruption and anti-corruption efforts in Latin America.

Few anti-corruption programs in Latin America have been evaluated systematically. Such analysis could be used in developing future program and strategic plans. These evaluations could also help donors, governments and civil society organizations to refine anti-corruption objectives and performance measures.

While much progress has been made in estimating the global economic costs of corruption, much remains to be done in terms of measuring the impact of corruption on economic development, particularly in the Latin American region. Estimating the financial costs of corruption is necessary to dimension its impact on the quality of public services, on the investment climate, and on the opportunity cost for the private sector in general.

Several studies have attempted to show that corruption has a negative impact on public investment, foreign direct investment, as well as on the size and quality of these investments. These studies, however, have been mainly conducted at a global scale. At the regional level there has not been a systematic and comparative effort. The results of these studies could become a critical tool in raising awareness about the problem of corruption in the region and how it is linked to those economic problems that people in Latin America recognize as the most critical ones.

For example, in his study of several developing countries, Paulo Mauro, from the International Monetary Fund (IMF) concluded that a reduction of corruption could significantly contribute to increase the ratio of total investment to Gross Domestic Product (GDP).¹⁰⁷ Furthermore, a drop in the investment/GDP ratio as a result of corruption was shown to have an important negative effect on economic growth. According to Mauro's estimates, a reduction of corruption by an equivalent of two points on the corruption index would contribute to increase the annual grow rate by 0.5 percent through its positive effect on the investment/GDP ratio. Considering the severity of economic problems in Latin America, particularly the inability to attract investment and the sustaining economic growth, this type of findings could be relevant for the region.

In another study focusing on foreign direct investment, Shang Jin Wei of the National Bureau of Economic Research shows that an increase in the marginal tax rate has a lower impact on foreign direct investment than an increase of corruption.¹⁰⁸ According to this study, an increment of 1 percent of the tax rate affects foreign direct investment by 3.3 percent, while an increment of 1 percent in the corruption index reduces foreign direct investment by 11 percent. The uncertainty and unpredictability of corruption has a negative impact on foreign direct investment. If studies like this could be conducted in the region and widely disseminated. Their findings could be used to convince investors that paying taxes is more profitable than paying bribes.

¹⁰⁷Paulo Mauro. *Why Worry about Corruption*. Washington, D.C.: IMF, 1997.

¹⁰⁸Shang-Jen Wei. *Why is Corruption so Much more Taxing than Tax? Arbitrariness Kills*. Cambridge, Mass: National Bureau of Economic Research 1987.

In terms of the impact of corruption in the operation and maintenance of public services, a study by Tanzi and Davoodi from the IMF concludes that high levels of corruption have a negative impact on the size and quality of infrastructure investment.¹⁰⁹ According to this study, the impact of corruption is strongest in the quality of roads and in power outages. It would be interesting to find out how this manifests in Latin America.

Lastly, several studies conducted mostly by the World Bank and Transparency International have estimated the costs of corruption on income distribution. Even though it is shown that the rich generally “spend” more on corruption related activities, the poor are strongly affected because these expenditures represent a larger share of their total income.

VI. Legal Mechanisms

A. No Safe Haven

At the May 2003 Third Global Forum on Combating Corruption and Safeguarding Integrity in Seoul, Korea, the USG committed to deny safe haven to corrupt officials, those who corrupt them, and their assets. The US has been successful in getting countries of the Region to undertake similar commitments, culminating in the inclusion of the no Safe Haven commitment in both the G-8 Evian Declaration and the Special Summit of the Americas' Declaration of Nuevo Leon in 2003. The “no safe haven” commitment was also reiterated in the most recent OAS General Assembly meeting held in Ecuador in June 2004. These mechanisms have contributed to reduce the tolerance for accepting corrupt official and their assets in the United States and throughout the hemisphere.

B. Conventions

The United Nations (UN) Convention against Corruption, The Organization for Economic Cooperation (OECD)'s Convention on Combating Bribery of Foreign Officials in International Business Transactions and the Organization of American States (OAS)'s Inter-American Convention against Corruption: These three conventions have varying provisions that will impact on corruption in Latin America. Below (see Annex 4) is a discussion of the three treaties and a series of charts that describe the differences and similarities of the UN and OAS conventions.¹¹⁰

The recently adopted UN Convention against Corruption is the most complex and comprehensive international legal instrument dealing with transparency and corruption. The Organization for Economic Co-operation (OECD) and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Organization of American States (OAS) Inter-American Convention against Corruption have a more limited scope.

¹⁰⁹Vito Tanzi and Hamid Davoodi. “Corruption, Growth and Public Finances.” Washington, D.C.: an IFM Working Paper, 1998.

¹¹⁰This analysis was conducted by Casals consultant, Roberto de Michele, expert in the Inter American Convention against Corruption.

Logically, many of the issues contained in the UN Convention are also found in the other instruments, particularly in the Inter-American Convention against Corruption (See Annex 4). However, there are at least two significant differences among the three treaties (UN, OAS, OECD).

First, in terms of the requirements of USAID to identify areas to develop assistance, the OAS Inter-American Convention against Corruption should be considered as the main source. In Latin America, only Argentina, Brazil, Chile and Mexico have ratified the OECD Convention.¹¹¹ The UN Convention is in the process of ratification, with an uncertain time frame to cover every country in the region. In contrast, the OAS Inter-American Convention against Corruption has been signed and ratified by every country in the Americas, except for Barbados, Cuba and Haiti. Therefore, the mandate of the Convention is a common field for almost every Latin American government. This has a practical effect. Since the massive ratification of the Inter-American Convention against Corruption, governments are now legally committed to implement a significant number of policies aimed at reducing corruption and enhancing transparency.

Second, both the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Inter-American Convention against Corruption have an operating follow-up Mechanism, based on a peer-review process.

The UN Convention in Chapter VII, Article 63, paragraph 4 (e) reflects the necessity of a Conference of State Parties to develop a follow-up procedure, once the conditions for entry into force are met.¹¹² In other words, the possibility of monitoring the compliance of the UN Convention is a pending issue.

Therefore, even if the UN Convention is a more comprehensive instrument, it has not achieved so far two important requirements in order to be considered the central element of an anti-corruption strategy for Latin America. The first requirement is that the ratification process is at its very early stage. Only a small number of countries have ratified this instrument. Only when thirty countries ratify and deposit the Convention, it will enter into force. Once that happens, the process to convene a committee to address the issue of monitoring the applications of the treaty will begin. In other words, the application of the UN Convention is currently limited by its particular process of ratification and adoption.

The second requirement is the lack – at this time – of a process to monitor compliance. It should not be concluded that no effort should be bestowed in promoting the UN Convention. The ratification of the UN Convention should be considered as a positive outcome. This is basically a political process aimed at creating the conditions for the ratification of the Convention. Only then, the mandate of the UN Convention would have a practical effect at the national level.

¹¹¹ Access of new Latin American countries to the OECD framework is not automatic and probably there will be no additional admissions in the near future.

¹¹² See Article 68 of the UN Convention

As mentioned before, the UN Convention is more comprehensive than both the OECD and the OAS treaties. However, the Inter-American Convention against Corruption is reasonably broad in terms of its contents. It includes several criminal provisions that help leveling the field of penal legislation for many Latin American countries. It also contains a number of articles designed to facilitate legal and technical mutual assistance. Such provisions are essential to promote transnational cooperation in the fight against corruption. Last, but not least, Article III of the Convention is an inventory of measures, actions and policies to prevent corruption.

Article III includes paragraphs related to public sector accountability, public ethics, conflicts of interest regulations, financial disclosure forms, public procurement, revenues systems, accounting systems, civil society participation and others.

In other words, the Inter-American Convention against Corruption provides a solid starting point for a preventive and prosecutorial strategy against corruption. The current situation should serve to indicate where to invest the existing energies. That is, in promoting the ratification of the UN Convention, but mostly in complying with the existing commitments under the Inter-American Convention against Corruption.¹¹³ Perhaps one way of demonstrating that while complying with the Inter-American Convention against Corruption, countries are also in the process of complying with the general mandate of the UN Convention is to identify the provisions in both treaties dealing with similar topics. In Annex 4 there is a comprehensive comparative analysis of both instruments.¹¹⁴

C. Compliance with the Requirements of the OAS Convention

Compliance with the requirements of the Convention is verified mainly by the Follow-up Mechanism. However, before this exercise began, the OAS conducted a study to determine the level of compliance of the criminal law provisions of the Convention. This study is reflected in a collection of reports. These reports describe the existence of criminal law provisions at the national level and their consistency with the requirements of the Convention.

The main difference is found in the area of illicit enrichment. These reports should be reviewed in light of the new legislation, and an updated account provided. In general, these reports find that most of the countries in Latin America have the basic criminal law provisions required to deal with corruption. There are some exceptions, such as illicit enrichment and bribery of foreign officials, where either a review of existing legislation or the passing of new statutes is required. In any case, given the fact that legislatures

¹¹³There could be a legitimate concern that the UN Convention could be use as an excuse to divert the required commitments to sustain the existing efforts to comply with the Inter-American Convention against Corruption.

¹¹⁴Some of the most salient provisions are compared. The criterion used for selection and comparison should be of functional equivalence. See the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *Methodology on the Follow-Up of the Inter-American Convention against Corruption* for alternative definitions of this concept.

regularly produce reforms to criminal law, the information on those reports should be revised periodically.

Regarding the follow-up mechanism, every country has submitted a reply to the questionnaire. The quality of the responses to the questionnaires is uneven. The reply to the questionnaire requires certain analytical capacity. In the case of some countries it is evident that such capacity is limited. For example, the Methodology - which defines how to analyze and respond the questionnaire -requires providing objective indicators of the level of implementation. Several countries failed to identify indicators or provided information that cannot be considered as an indicator. So far no country has been asked to redo a submission. Results from recent research on the performance of the Follow-Up Mechanism suggest that some experts expressed the opinion that redoing a submission could be an alternative, though an extreme one.¹¹⁵

The Committee of Experts convenes at least three times a year to review the responses to the questionnaire. In each session, four countries are analyzed. To date, eight countries (Argentina, Chile, Colombia, Ecuador Nicaragua, Panama, and Paraguay) have been reviewed. In July 2004 the Committee of Experts will convene to analyze four additional countries (Bolivia, Costa Rica, Peru, and Venezuela). The result of this analysis is a Country Report, containing the finding of the Committee of Experts and specially the recommendations for improving the application of the Inter American Convention against Corruption.

On the other hand, there has not been time, energy or resources to focus on reviewing the practical effects of the Country Reports produced by the Committee of Experts. That is, to help the reviewed country to implement the recommendations suggested by the Experts. In this way, however, the Follow-Up Mechanism could have a practical impact. The Country Reports are an excellent starting point to suggest assistance to particular countries. For example, in the case of Argentina, the Committee of Experts recommended expanding the application of preventive measures, such as conflicts of interest regulations, to the provincial level. In the case of Panama, the Committee of Experts recommended to revise the access to information regulations, to make them operative and less restrictive.

D. Is the Mechanism Working to Reduce Corruption?

It allows for examining, from a technical point of view, the consistency of the efforts implemented by countries to implement the Convention. This activity, paired with the publicity of the reports, creates the opportunity to sustain political debate based on a policy-oriented strategy to attack corruption. The inclusion of civil society reports is extremely important to balance the process.

Will this reduce corruption? It will promote the identification and implementation of public policies to prevent it and will increase transparency. The Mechanism should not

¹¹⁵(de Michele, 2004a).

be tested as an instrument of reducing cases of corruption, but as a process to promote the implementation of the proper structural policies. Actually, the Mechanism shifts the debate away from cases and scandals into considerations connected with governance issues. The way in which corruption is framed by the Convention and analyzed by the Mechanism requires an approach that takes into account not only formal legislation, but also compliance, not only the public sector, but also civil society and to a lesser degree the private sector, not only investigation but also prevention.

In other words, the Convention and the Mechanism provide a systemic approach to confronting corruption. Given its emphasis on public sector, civil society, criminal provisions, and preventive measures, the Convention is a suitable platform for developing a comprehensive strategy.

This has implications not only for government and civil society, but also for multilateral and bilateral agencies that should benefit by coordinating their efforts more effectively.

A less recognized contribution of the Convention and the Mechanism is that it has changed the tenor of the debate. Compliance with the Convention, in its various forms, is now required given the commitment of the government at the time of signing the treaty. This removes from the discussion unnecessary explanations on why certain policies or measures or legislation need to be implemented.

Evidently, there are some gaps in the Convention. For example, there is no reference to political campaign financing, a determinant factor of corruption. Corporate governance is another topic not addressed by the Convention, though there is a reference to revenues systems and accounting systems.

VII. Donors: Summary of their Anti-Corruption Efforts and their Role

The **USG** including all its agencies (State, USAID, Treasury, Justice, and Commerce) jointly had put together a holistic approach to USG foreign anti-corruption assistance in a wide range of areas including policy, diplomacy, and programs to advance four main goals:

1. Uniting governments under common anti-corruption commitments;
2. Helping governments meet or exceed those commitments;
3. Mobilizing popular will and private sector action; and
4. Leading by example.

USAID, one of the major donors in the region, is developing a new anti-corruption assistance strategy to identify programmatic entry points that can make a greater contribution to USG efforts. An inter-agency experiment is being carried out in Nicaragua on a pilot basis that will, inter alia, be cross-sectoral in its approach and involve raising citizen awareness of the costs of corruption and strengthening civil society's capacity to oversee government activities.

The OAS is also sponsoring interesting activities in the area of transparency. For example, a project helps to identify best practices in the use of information and communication technology in the private sector, and works with high-tech firms in the region. The OAS is persuading firms to donate funding and technical training to use applications of this technology in the public sector (e-government, e-procurement) as part of their corporate responsibility. The OAS is also working with clusters of municipalities to train them in the use of information and communication technology. The Unit for the Promotion of Democracy (UPD), one of the principal bodies within the General Secretariat of the OAS has also been directly and indirectly involved in the anti-corruption area. In particular, the UPD is working in the area of political party finance. Advocating for more transparent mechanisms and the modernization of political parties throughout the hemisphere have been two key areas.

The Inter-American Development Bank (**IDB**) has no particular central place to address transparency and accountability issues. It works across sectors and in an array of areas. For example:

- Integrated financial management systems, more recently at the municipal level;
- Provides technical assistance to countries working to comply with the requirements of the Inter-American Convention Against Corruption;
- Technical cooperation for the follow-up by civil society organizations to the implementation of the Quebec Summit of the Americas Action Plan;
- Regional policy dialogue that focuses on transparency and public sector management with a network of senior public authorities;
- A host of bilateral lending activities to the countries of the region in the areas of income and asset disclosure, national procurement systems, modernization of the public sector (especially civil service reform) and support to national legislatures to oversee public spending;
- Programs to improve the administration of justice;
- Documenting and analyzing best practices in the area of citizen participation in municipal budgetary decision-making;
- Drafted a strategy for promoting citizen participation in Bank programs;
- Money laundering prevention training activities and the creation of financial intelligence units in South America; and
- Drafted a set of recommendations to adopt in assisting countries to implement transparency and accountability policies.¹¹⁶

The **World Bank** has long been working in this area, especially through the research conducted by the World Bank Institute. The Bank has had programs in administration of justice, ethics training, procurement systems, and civil service reform. Moreover, the World Bank has supported many public sector modernization programs, including IFMS. Their programmatic goals are to:

¹¹⁶Roberto de Michele. "Iniciativas para Incrementar la Transparencia y Prevenir la Corrupción Fichas de Trabajo," Washington, D.C.: Departamento Legal/ IDB, 2003.

- Increase political accountability.
- Strengthening civil society participation.
- Create a competitive private sector.
- Create institutional restraints on power.
- Improve public sector management.

In some countries, such as Argentina and the Dominican Republic, the International Monetary Fund (IMF) has included as part of Stand-By Agreements recommendations on institutional reform and public sector management that are consistent with increasing transparency and accountability. Such interventions could be beneficial if coordinated with a more comprehensive strategy carried-out by USAID and other donors.

Other bilateral donors are working in a piecemeal fashion on transparency and accountability issues. An inventory of bilateral and multilateral donor assistance is desperately needed to understand the programs in this sector and to coordinate them. Donor coordination mechanisms are extremely weak in this area as well (as reported by USAID field mission), as one important constraint on program effectiveness.¹¹⁷

VIII. Strategic and Policy Options for Programming, 2004-2009

One of the major roles of any anti-corruption strategy is to serve as a catalyst for change in government, civil society and businesses. In prioritizing strategic and policy options, the LAC Bureau should make controlling and reducing corruption in the region the first Intermediate Result under the Strengthening Democracy Strategic Objective. Clearly reducing corruption will promote the consolidation of democratic governments in Latin America. Strategic and policy options cannot be a blueprint, but rather a set of rolling recommendations which recognize that corruption is very complex and multidimensional, manifests itself in a variety of ways in different settings, and changes in intensity and scope over time. As such, any strategy must be responsive to ever changing conditions in the field and to targets of opportunity.

Since corruption is the result of high opportunities for engaging in corrupt behavior combined with a low level of risk, an effective regional anti-corruption approach must affect both prevention (the reduction of opportunities) and enforcement (the increase of risk and reduction of impunity).

The menu of strategic and policy options presented in this section should help the LAC Bureau to establish programmatic and funding priorities; identify coordination mechanisms; and find appropriate entry points for anti-corruption activities. One of the most important activities or options is the need to identify appropriate methodologies to assess and measure quantitatively the nature and extent of corruption in the region, as well as the impact of anti-corruption programs and activities.

¹¹⁷(USAID, 2003a).

Based on the regional trends identified in this desk assessment, the following strategic options are recommended for consideration by the LAC Bureau. In Part A, the Assessment Team proposes a set of **Non-Project Activities** at the regional level, or sub regional level that would help to further progress in reducing corruption in Latin America. These interventions are meant to compliment bilateral or mission funded initiatives. In addition, the Assessment Team proposes **seven strategic options in Part B**, along with illustrative activities, for consideration by the LAC Bureau. Each strategic option suggests possible partners for implementation of the illustrative activities. They are listed in order of priority. They are meant to be a menu of strictly regional activities, with the understanding that the Bureau will not be able to fund all the options presented. Some new activities are recommended, such as the LAC Bureau managed regional technical assistance fund, new, critical research in establishing linkages between poverty and corruption, and cost effectiveness analysis on the best combination of interventions to have the greatest impact.

A. Non-Project Activities

1. Regional policy dialogue on anti-corruption and its impact on poverty reduction, trade-led economic growth, and good governance in the Hemisphere. The USG has substantial influence in Latin America. From the Assistant Secretary of State for Western Hemisphere Affairs through all the US Ambassadors to USAID Mission Directors, the ability to discuss, convene, and demarche this topic is unquestioned. Indeed, many ambassadors (e.g. Ambassador Linda Watts in Panama, Larry Palmer in Honduras) and Assistant Secretary Roger Noriega have already increased the level of public discourse on the problems of corruption. Continuing negotiations on bilateral free trade agreements (Panama, the Dominican Republic, Ecuador, Peru) and sub regional agreements (CAFTA, CAF, MERCOSUR) and, of course, the Free Trade Agreement for the Americas in 2005 are all excellent platforms to introduce the importance of reducing corrupt practices and strengthening democratic institutions.

Country Teams in the region are continually expanding the dialogue on a bilateral basis. The recommendation is to develop a policy agenda that can be conducted on a regional level in regional forums, meetings of regional associations etc. that USG senior level personnel attend. It is the Team's belief that a regional dialogue would help reinforce and sustain bilateral dialogues. Policy institutions in the United States and in Latin America could be natural partners.

One of the most important elements in this policy dialogue agenda should be the elimination of immunity for high-level public sector employees, including national legislatures, and regional bodies such as PARLACEN. Other agenda topics could be a discussion of libel laws and media ownership.

2. Strengthening coordinating mechanisms for USG programs in corruption at the Washington level. Although the Team was told that the inter-agency coordinating groups were working together, there was still a lot of bureaucratic jousting that was time and energy consuming. Perhaps professional facilitation of these meetings, a high level

senior official as chair, or a renewed commitment to jointly addressing the problem without introducing agency affiliations and bureaucratic turf would improve the process. It is imperative that this coordination process succeed to avoid duplication of programs, provide synergies across programs, and to reduce costs. Fighting corruption is an important shared objective among the USG agencies working in law enforcement and development in Latin America.¹¹⁸

3. Improved Donor Coordination of Anti-Corruption programs. For the same reasons the USG agencies must coordinate their programs, donors need to sit together and share the donor burden of assisting countries to address their accountability and transparency problems. In as much as the problem in Latin America is systemic, donors working in the region do not often respond to the problem systemically. Donors' engagement is on a piecemeal basis, such as working on political party finance issues or e-procurement or strengthening civil society groups in monitoring and social auditing activities. Regular, periodic donor meetings to focus on corruption (or transparency and accountability) issues and programs would benefit the host countries and the donors alike. Too few of these meetings are actually held on the bilateral level and virtually none at the regional level for Latin America. At the regional level, coordination could be promoted and enhanced by sub-regional groupings of countries (Central America, CARICOM, Andean, and Southern Cone countries) where borders are shared and problems may be similar.

4. Improved Coordination among USAID Mission Anti-Corruption Programs. Regional, sub regional, and cross border meetings with neighboring missions should be held periodically to promote internal coordination among USAID anti-corruption programs and exchanges of experiences. These meetings could be facilitated by a partner or contractor working in the anti-corruption area. Currently, missions are reinventing the programs in each country and there are too few exchanges to promote lessons learned. It is clear from the desk assessment that missions, and indeed all donors, are clamoring for this type of information. A set of regional workshops would be extremely valuable for those charged with carrying out the anti-corruption mandate for their missions.

B. Strategic Activities

Strategic Option 1: Increase awareness of the problem and mainstream anti-corruption programs within development strategies and programs

Although there is citizen concern about rampant corruption, the issues of poverty and employment are still of more immediate concern than controlling corruption. Much work remains to be done to move the issue higher up on the development agenda. Information on costs and impact of corruption on the economy and on society would help to truly understand the dynamics of the problem and help make the case for mainstreaming corruption within development programs, across all sectors. It would be very useful to

¹¹⁸Foreign Aid in the National Interest, USAID's White Paper on U.S. Foreign Aid, and the joint State-USAID Strategic Plan, 2002.

know the cost of corruption in health and education and in the environment. Also it would be useful to know if corruption was occurring at the local level below that of municipalities, in the local neighborhood associations, such as Mothers Committees and similar. One nagging question is why some anti-corruption efforts have more impact in some countries and not in others. Is it political, cultural, ethical, legal, institutional, or financial? Clearly corruption manifests itself differently across and within countries in the region, and we do not yet fully understand the reasons.

Our desk audit revealed that more research is clearly needed on such topics as: **confirming the linkages between uncontrolled corruption and poverty, on foreign investment, on trade-led economic growth, and on quantifying the corruption problem and measuring results with experience-based data.** Some even recommend that the Transparency Perception Index should include broader measures such as political party financing issues. There is limited information on the level of enforcement of criminal laws. There are some studies that identify the shortcomings of criminal justice systems, but they are not necessarily linked to reducing corruption. **New tools are required to reduce corruption. More "lessons learned" and best practices" literature is being demanded by donors, Latin American governments, and civil society.** International financial institutions and other bilateral donors are now trying to take political corruption into account when deciding to support government programs. The criteria for the Millennium Challenge Account (MCA) of the United States is a good example of these attempts.

Illustrative Activities:

- a. A series of regional white papers or abstracts on the linkages issues and the quantitative measurement/indicator issues should be drafted at the earliest and given the widest distribution possible. Despite years of program funding we still do not know enough about these issues to say with any degree of assurances what are the most cost effective interventions to reduce corruption in a given country situation. Nor how do we define success. In this sense the area/sector is lagging behind the more traditional development programs. Fortunately, this type of research lends itself well to a regional approach. The research could be conducted by a prestigious network of social science research institutions such as FLACSO or if the research dealt with enforcement and justice sector issue, CEJA could be a mechanism.
- b. A study of best practices and lessons learned in implementing anti-corruption programs in Latin America is urgently needed for future programming requirements. There should be empirical and comparative studies on what is happening at the country level in terms of impact and results. **The desk assessment revealed that impact assessments of this type have either not been carried out, or if carried out, they have not become public.** This stock-taking exercise is timely as the LAC Bureau moves into possible second generation projects in the anti-corruption area. **At the moment it is really not known what the best combination of interventions make for the greatest impact, since there has not been a comprehensive and systematic effort to learn what is**

- working and not working.** The Global Report on the Field Mission Anti-Corruption Survey conducted by USAID in February of 2003 is a good starting point and should be complemented with regional and sub-regional impact assessments. Impact evaluations should be based on field visits and interviews with donors and host countries and include cost effectiveness data. Once again the research would be specific to Latin America and should be given broad distribution.
- c. Create a database of quantifiable indicators to measure the impact of anti-corruption projects. This needs to be done in conjunction with the impact evaluations as described above.
 - d. Utilize Respondanet.com and Probidad.org as a distribution vehicle. Maintain USAID support for these important web sites.
 - e. Develop an inventory of existing regional institutions and examine their activities with a view toward adding complementarity to other transparency and accountability projects and creating synergies.
 - f. Convene Lessons Learned Workshops for countries and missions in the region and the sub regions. Especially look at activities in the area of corporate responsibility, governance reform, political party finance and internal controls. Concrete experiences should be highlighted, such as the experiences of Mexico with corporate responsibility, Chile with governance reforms and Colombia with internal controls.
 - g. Examine the OAS's approach of working with clusters of municipalities to install accountability and transparency measures.
 - h. Increase attention to the issue of political corruption, including political party finance and political party modernization. Donors, who have typically worked mostly on areas related to voter registration, voting and vote counting, can become engaged in providing advice and technical capacity to administrative agencies responsible for regulating and controlling political party finance.

Strategic Option 2: Reduce the tolerance for corruption and help to strengthen the political will to undertake reforms to fight corruption.

This strategy could operate throughout the life of any new regional project. The assumption is that political will in the hemisphere is spotty; strong in some countries and non-existent in others. Activities that would shore up political will and hold executive branch officials accountable to their commitments made during political campaigns and international conventions (OAS Convention on Anti-Corruption, UN Convention against Corruption) would be supported. One way to do this is to place emphasis on external, as opposed to internal or governmental, accountability mechanisms. Our desk audit revealed that these external accountability mechanisms have proven to be strongly effective in maintaining political will for carrying out anti-corruption reforms across various sectors of government.

Illustrative Activities:

External Accountability Training

- a. Hold regional level training courses in for civil society organizations and business groups that are engaged in, or planning to be engaged in, social auditing/monitoring activities, as well as advocacy strategies and participatory budgeting. Training courses should be linked to other substantive activities, such as project design, public awareness, organizational capacity and monitor and evaluation.
- b. Regional training of legislative commissions in how to hold/convene oversight hearings of executive branch programs.
- c. Regional training of civil society organizations in how to perform oversight functions in general, and, particularly, of the judiciary, especially how to participate in merit selection and promotion of judges.
- d. Regional training at CELAP of journalists in conducting and reporting investigations of corruption scandals.
- e. Support national and regional level efforts to adopt and/or expand social oversight and auditing. At the national-level, in some setting, the variety of experiences is significant, but this divergence is multiplied many-fold regionally. Systematization of these experiences is warranted, as is the need to disseminate/provide technical assistance and highlight best practices.

Other Training

- f. Regional training for technology managers and data entry personnel for e-procurement and e-government systems in Latin America.
- g. Support schools of public administration to promote civil service reform and training in technology applications for the public sector. Use established schools such as INCAE in Costa Rica and ESAN in Peru as regional training centers.
- h. Support internal controls training, using the Colombian model.
- i. Continue to support capacity-building initiatives for Supreme Audit Institutions.

Strategic Option 3: Assist Countries in the implementation of the Inter-American Convention against Corruption

The Inter-American Convention against Corruption (IACC) provides a comprehensive framework of preventive and traditional enforcement policies and strategies. Governments are responsible for responding to the questionnaire, participating in the Committee of Experts, reviewing other countries and for implementing the Convention at the national level, taking into account the Country Reports and other inputs.

The IACC envisions a prominent role for civil society participation, as providers of alternative sources of information to facilitate an independent assessment by the experts of the replies to the questionnaire. This process is carried out by producing independent reports and sending them to the Committee of Experts for their analysis. Along with the

country reports, civil society reports play a critical role in promoting public debate at the national level and are a tool for advocacy and monitoring strategies.

This strategy should include government entities and civil society as critical actors.

Illustrative Activities:

- a. Regional training courses for government and civil society to increase knowledge of the IACC.
- b. Under a regional fund managed by LAC and to supplement mission financing, provide technical assistance to pertinent government officials in order to create the required expertise to reply to the questionnaire, to participate effectively in the Committee of Experts of the Follow Up Mechanism, and to review other country cases; and provide technical assistance to civil society groups to enhance their capacity to present independent reports as part of their participation in the Follow Up Mechanisms, as well as to increase their advocacy and monitoring capacity of the commitment of government to implement the provisions of the IACC.¹¹⁹
- c. Design a methodology to conduct a regional inventory of the Countries' legislation and institutions and the extent of consistency with the requirements of the IACC.
- d. Organize regional meetings/conferences to develop assessment mechanisms in order to measure the extent to which countries followed the recommendations from the Committee of Experts.
- e. Organize regional meetings/conferences to discuss obstacles to the implementation of the IACC and to determine specific technical assistance that may be relevant. Article XIV of the IACC indicates the need of "State Parties to provide legal technical assistance." Such activities could be included under the policy dialogue agendas or as part of other activities to enhance the networking capacity of prosecutors and judges across the region.
- f. Devise a regional mechanism to ensure that relevant government officials in each country are informed about the Committee of Experts' recommendations.
- g. Identify and develop best practices in terms of institutional design, public policies, and legislation consistent with the mandate of the IACC, such as conflicts of interest regulations procurement laws, financial disclosure system and codes of conduct for public employees.

Strategic Option 4: Promote private sector engagement and Corporate Governance

The private sector has an important mandate to carry out in facilitating a more transparent and accountable relationship within the market and in connection with the public sector.

¹¹⁹This is analyzed in greater length in Roberto de Michele. *Citizen Participation in the Follow-up of the Inter-American Convention Against Corruption*. Alexandria, VA: Project AAA, 2004.

Whether under the corporate governance approach, or under the more comprehensive idea of corporate social responsibility, there are areas where the private sector can engage constructively in promoting a more transparent environment for business.

The principle objectives of this option are to promote the engagement of the private sector in transparency activities, create better conditions for fair economic practices and to improve the quality of the relationship and interaction between the public and the private sectors.

Illustrative activities:

- a. Development/adoption of best practices in the framework of the corporate governance approach: transparency in investment, creditors' rights.
- b. Analysis of the situation of corporate governance practices in the sub regions.
- c. Inventory of efforts in corporate social responsibility in the sub regions.
- d. Development of best practices for the region, such as ethical frameworks for corporations (codes of conduct, ethics officials, and training courses).
- e. Development of a regional strategy to reduce the incentives for non-transparent relations with the public sector: procurement regulations and conflicts of interest regulations.

Strategic Option 5: Establish a fund to support innovative pilot activities in Missions

Provide additional financing to mission bilateral funds to test innovative pilot projects for reducing corruption by establishing a technical assistance fund managed at the regional level by USAID/LAC/RSD. Innovative activities could be in the area of, for example, community social auditing, implementation of internal control systems, or technical assistance centers to protect whistle blowers.

Illustrative Activities:

- a. Create a small grants program involving civil society for innovative activities, both practical and analytical.
- b. Have an annual regional award event to recognize innovation and impact of anti-corruption activities in Latin America.
- c. Provide technical assistance to strengthen national mechanisms used to measure corruption (impunity index, public integrity index), and explore the possibility to replicate these experiences in another country, using south-south cooperation.
- d. Promote "communities of practice," as a forum to discuss lessons learned and best practices and to encourage greater cooperation among practitioners from different countries in the region.

Strategic Option 6: Support regional institutions in their fight against corruption

There is no single institution in Latin America devoted to fighting corruption as there is in rule of law (Justice Studies Center of the Americas), human rights (Inter-American Institute for Human Rights) decentralization and municipal development (FEMICA) etc. There are professional associations of ombudsmen, attorneys general (*fiscales*), public defenders, chambers of commerce, financial managers (ICGFM - International Consortium on Government Financial Management), and journalists. In addition, there are networks of non-governmental organizations engaged in advocacy and oversight activities in numerous sectors including transparency and anti-corruption (e.g. The Democracy Network and *Anti-Corrupción Sin Fronteras*).

The LAC Bureau could devote grant resources to convening partners and other civil society and business organizations to review the feasibility and demand for establishing a Hemisphere-wide Transparency and Accountability regional organization that would act as a clearinghouse for the region. One way to do this is to build on the experience of TILAC.

The principle objectives of this strategic option would be to:

- Provide moral and financial support to national anti-corruption efforts;
- Bolster commitment and political will to maintain reform momentum; and
- Act as a technology transfer and dissemination of lessons learned mechanism for the region.

Illustrative Activities:

- a. Inventory all ongoing USG programs to determine if there is duplication of activities and identify gaps. This could also be expanded to cover the anti-corruption programs of other major donors.
- b. Inventory all bilateral and multi-lateral donor activity in the transparency/anti-corruption area for the same purpose and to aid in creating a donor coordination mechanism for the Region as a whole.
- c. Continue support to the Democracy Network and the *Anti-Corrupción Sin Fronteras*.

Strategic Option 7: Strengthening Investigative Capacity of Agencies in dealing with complex crimes, such as corrupt activities (money laundering and illicit enrichment)

Some countries have appointed special anti-corruption prosecutors for high profile cases. The special prosecutor for the Montesinos scandal in Peru is a good example. Generally, however, these cases languish because of poor investigative capacity of the judicial police and the prosecutors, or languish in the courts due to crowded dockets and lack of judges trained in understanding the sometimes complicated evidence used in such cases. Cases also are subject to intervention on the part of the Executive Branch (Panama/CEMIS for example), and the cases are dismissed. Lack of political will to

pursue "big fish" is clearly a problem. Most countries in the LAC region are beginning to modernize their justice systems and introduce new criminal procedure codes. At the regional level organizations such as CEJA are training justice sector operators in the implementation of the new codes. At the regional level it may be possible to spark the momentum for reforms by convening regional conferences, workshops to discuss how countries in the region have addressed these problems. Strengthening investigative agencies is key to success in this area. One aspect of the problem is the immunity afforded to executive branch and legislature branch officials.

Governments in the region also need to support aggressive accountability, integrity, and professional responsibility practices and techniques that are found in modern police organizations, including the development of specialized units: Internal Affairs, Inspections, and Background Investigation units. Internal Affairs Offices need to be developed in close coordination with the prosecutor's office responsible for prosecuting government employees in order to enhance public acceptance. Internal Affairs should also coordinate with other government anti-corruption offices and programs. In countries that believe the police are incapable of monitoring themselves the government should be encouraged to form a well-trained Civilian Oversight Board, either temporary or permanent, as a means to build community trust. Police reform should be part of any broad civil service reform in a country. ICITAP has a long record in providing assistance in these areas.

Illustrative Activities:

- a. Regional training and workshops to discuss and inform countries on setting up investigations of anti-corruption cases.
- b. Regional conference to discuss the elimination of widespread immunity from prosecution.
- c. Regional money laundering courses and conferences to promote the coordination of activities of financial investigation units across countries, especially cross borders, such as Paraguay/Bolivia and Peru/Chile.
- d. Regional training courses for *Fiscales* in new investigative techniques and regional approaches for improving forensic and anti-corruption activities with judicial police and *Fiscales*.
- e. Sharing databases on information dealing with illicit activities such as secret bank accounts, money laundering/assets to prevent corrupt officials finding safe heavens in other countries in the region.
- f. Continued assistance to ICITAP/INL in police reform areas discussed above.
- g. Regional workshops to develop strategies and techniques to enhance effective cooperation in the judicial investigation and prosecution of transnational corruption, according to the Inter-American Convention against Corruption and the UN Convention against Corruption.¹²⁰

¹²⁰Both conventions stress the importance of mutual legal assistance in investigations of corruption. The lack of dialogue and coordination among countries to have a common framework to cooperate in investigating cases seriously limits the possibility of effective prosecution. For example, the investigation of Montesinos and Fujimori required the legal assistance of several Latin American countries. The recent

Annex 1: Statement of Work

Desk Assessment of Corruption in Latin America

Background

One of the most serious problems facing Latin America and the Caribbean today is the growing incidence of corruption. In the 2002 survey carried out annually by *Latinobarómetro* in 17 Latin American countries, corruption was regarded as the most important problem facing the region, second only to unemployment. However, in the 2003 *Latinobarómetro* survey the perception that there had been progress made in reducing corruption was documented with nearly one-third of the sample interviewed believing progress had been achieved. Responses ranged from 57% in Colombia to 10% in Guatemala. In 10 of the 17 countries surveyed, the averaged response was between 21 - 29%. In spite of these perceptions, corruption is still a major development challenge for the Latin American and Caribbean (LAC) region.

During the past decade, in a majority of LAC countries national and international-funded efforts to combat corruption have been implemented by governments and non-governmental organizations. Similarly, most Latin American countries have established some form of centralized Anti-Corruption Agency. However, the evidence seems to point out that: the lack of political will; a weak institutional capacity; and, a consistent lack of resources has slowed implementation and precluded sustainable impact. Most candidates running for national and local offices provide lip service to addressing corruption, but more often than not do not have a true commitment to do so and thus do not offer specific programs once in office or simply they do not operationalize their campaign promises. Similarly, civil society, including the media and the business sector, has been addressing the issue more and more through advocacy programs and monitoring activities. However, civil society groups need more technical capacity to follow up with in-depth investigations and analyses. Furthermore, whistle-blowers have begun to play an increasingly important role in the fight against corruption. Nonetheless, very little exists in the way of legal instruments to protect whistle-blowers against retaliation and intimidation.

Most countries, with the help of donors (including USAID) are working to reform and modernize their justice systems with few exceptions, and most countries are working to strengthen their control and auditing institutions. Indeed, many countries have raised financial management standards by promoting rigorous accounting and establishing integrated financial management systems that have increased transparency in bookkeeping and reduced opportunities for fraud.

scandal involving former President Portillo of Guatemala is another example. Generally speaking, most countries try to have good bilateral relations with the United States and/or even Switzerland. However, new realities are forcing countries to put priority on cooperation with neighboring countries. Probably because the United States and Switzerland have increased their vigilance and monitoring of funds coming from illegal practices in Latin America, corrupt officials from the region are again using countries such as Argentina, Panama, Uruguay and others to hide the profits from corruption.

In part because of the growing information about the costs and effects of corruption in the LAC region, and with corruption still a prominent issue in the agendas of international organizations and national groups, many governments in the region have been pressured to launch or reinvigorate anticorruption policies.

The First Summit of the Americas held in Miami in 1994, acknowledged corruption as an acceptable development issue for international concern. The First Forum on Fighting Corruption in 1999 ratified this effort. Supported by the Summit process, 28 countries in the Hemisphere now ratify the 1998 Inter-American Convention Against Corruption and there is a process in place to monitor anti-corruption laws and corrupt practices on a periodic basis. It offers numerous opportunities to reduce the crippling effects of corruption on fragile democratic institutions and market-led economies in the region. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in 1997 by 34 countries (including Mexico in the LAC region) and is helping to fight corruption in international business. More recently, in December 2003 seventeen Latin American countries signed the United Nations Convention against Corruption.

Corruption is also specifically mentioned as a U.S. foreign policy concern in the September 2002 National Security Strategy. The joint State-USAID Strategy for FY 2004-2009 seeks to implement many of its recommendations, especially the section calling for the U.S. to develop, "...transparent and accountable governing institutions." The Millennium Challenge Account, the most important foreign assistance policy initiative in over forty years, places enormous importance on corruption indicators in order to determine country eligibility. There are numerous other policies and programming documents to consult while examining regional approaches to reducing corruption. The World Bank and the Inter-American Bank have also begun new programs in this area.

LAC programs funded with regional monies must be regional in approach and focus, tied to the Summit objectives, the Inter-American Convention against Corruption, the Central America-Mexico Strategy (CAM) and/or reflect other cross border issues best addressed through a regional approach.

Purpose of the Assessment

To conduct a desk study on the most recent corruption trends in the LAC region, including strategic recommendations for USAID's LAC Bureau on options for addressing corruption from a regional perspective. This assessment will provide the basis for an effective, realistic, and comprehensive regional approach over the five- year strategy period, 2004-2009. The assessment will highlight areas of opportunities and recommend feasible approaches.

The contractor will perform a desk study designed to answer or address a series of questions and issues that are relevant to a regional approach to reducing corruption in the

LAC region. Anti-corruption program components and alternatives for analysis will be explored including:

- Procurement and budget oversight in the social sectors;
- Political and parliamentary immunities;
- Civil society needs (partnerships, fundraising and capacity); and
- Anti-corruption law enforcement mechanism

Specific questions, concerns and issues to be answered by the desk assessment include, but are not limited to the following:

1. How effective has the Inter-American Convention against Corruption been? What are its successes, failures, and challenges?
2. What can be done on a regional basis to make the Convention more effective in reducing corruption? What is USAID's role in making it more effective at the regional level?
3. What are the biggest problem areas in corruption? (The strengths, weaknesses, opportunities, and threats (SWOT) of corruption on a region-wide - basis, i.e. LAC as a whole).
4. What has been working well in corruption programs that USAID on a regional level can build on? (Best practices).
5. What are the new opportunities in anti-corruption programming?
6. Who are the key actors and implementing partners at the regional, sub-regional, and country levels (NGOs, universities, governments,)?
7. What are some new, creative approaches to reducing corruption?
8. Are there any recommended changes in legislative frameworks related to corruption or to the Convention that would impact the reduction of corruption?

Other Considerations

The Assessment Team will take into full account the evolving U.S. government policy in corruption as described in such documents as:

- The National Security Strategy
- The Joint USAID - State Strategy
- Summit of the Americas documents
- OAS Inter-American Convention Against Corruption
- Inter-American Democratic Charter
- Inter-American Convention on International Traffic in Minors
- International Anticorruption and Good Governance Act
- Global Forum on Fighting Corruption
- UN Convention Against Transnational Organized Crime and Supplemental Protocols
- Senior Experts on Transnational Crime of the G-8
- OECD DAC paper on Security and Development Nexus: Questions and Challenges for Aid

- White Paper on US Foreign Aid
- Foreign Aid in the National Interest
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- State Department International Strategy Against Corruption
- Millennium Challenge Account

Deliverables

1. The Assessment (including table of contents and executive summary) in 5 hard copies and electronic format. The document will not exceed 50 pages (although additional text can be placed as an annex).
2. Oral Presentation in English of the Assessment Findings
3. Power Point Overview of the Assessment on disc.

Technical Approach

The contractor shall form a team with experience in:

- Anti-corruption assessments and analysis including financial management, decentralization, private sector ethics, and media,
- Justice system operations, especially prosecution in Latin America,
- Civil society organizations and networks,
- Various conventions on anticorruption and other relevant international and US strategy documents and U.S. foreign policy objectives, and
- USAID programming, indicators and measurements.

One of the professionals will serve as Team Leader. The team will review the relevant policy documents cited above and interview appropriate officials in the LAC, DCHA, and WHA bureaus. On April 27, 2004 a meeting, chaired by USAID, will be held in USAID with the partners holding IQCs in the anticorruption area in order to discuss their experiences with anticorruption programs, indicators and other relevant findings. These discussions will serve as inputs into the regional assessment.

Period of Performance

All work shall be completed by May 10, 2004. Draft report (in hard copy and electronic format) will be submitted on May 15, 2004. Final Assessment Report and other deliverables will be submitted on June 14, 2004.

Annex 2: List of Interviews

USAID/Washington <ul style="list-style-type: none"> • Steve Hendrix, ROL adviser, LAC • Maria Barron, Civil Society adviser, LAC • Madelene O'Donnell, Governance adviser, DCHA • Jerry O'Brien, Anti-Corruption specialist, DCHA • Gene Ward, Sr Advisor, Political Finance, DCHA • Eric Kite, Democracy Officer, DCHA 	IFIs <ul style="list-style-type: none"> • Janine Perfit Senior Civil Society Specialist, State, Governance and Civil Society Division, IDB • Mark Payne Social Development Specialist, State, Governance and Civil Society Division, IDB • Linn Hambergren, ROL and governance adviser, PREM, World Bank (phone) • Ronald Scheman, Director General, CIDI/OAS
State Department <ul style="list-style-type: none"> • Alain Norman, Policy Planning Officer, WHA/PPC • John Brandolino, Director Anti-corruption and Governance Initiatives, INL • Richard Werksman, Adviser on the Inter-American Convention Against Corruption • Jim Parrot, INL/Peru, Financial Crimes and Money Laundering Unit (phone) 	Other US organizations <ul style="list-style-type: none"> • Bradley Smith, Chairman, Federal Elections Commission (conference) • Charles Kolb, President, Committee for Economic Development (conference) • Charles Lewis, Executive Director, Center for Public Integrity (conference) • Larry Noble, Executive Director, Center for Responsive Politics (conference) • Vonda Brown, Transparency Specialist/Civil Society Programs, Partners of the Americas
Department of Justice <ul style="list-style-type: none"> • Ray Rivera, ICITAP • Tim Delaney, ICITAP (email) 	Regional Organizations <ul style="list-style-type: none"> • Juan Enrique Vargas, Executive Director, Justice Studies Center of the Americas • Luciana Sánchez, Director of Programs, Justice Studies Center of the Americas
Transparency International <ul style="list-style-type: none"> • Peter Eigen, chairman, TI • Nancy Zucker Boswell, Managing Director, TI-USA 	Others <ul style="list-style-type: none"> • Mitch Seligson, Professor of Political Science, University of Pittsburgh (phone)

Casals & Associates, Inc.

- Sergio Diaz-Briquets, Vice President
- Olga Nazario, Field staff in Guatemala (email)
- Frank Miller, COP, Colombia (email)
- Sally Taylor, COP, Honduras (email)
- Margaret O'Donnell, Bolivia (email)

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Annex 4: Analysis of the OAS and UN Conventions

The first set of articles compared is related to general principles and scope. Along these charts it will be noticed that there is significant variation in the wording of the provisions. A more in-depth analysis should identify if such differences are substantial or formal, and therefore have the same practical effect.

UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 3</i> <i>Scope of application</i></p> <p>1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with this Convention.</p> <p>2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to state property.</p>	<p><i>Article II</i> <i>Purposes</i></p> <p>The purposes of this Convention are:</p> <p>1. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and</p> <p>2. To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.</p> <p><i>Article IV</i> <i>Scope</i></p> <p>This Convention is applicable provided that the alleged act of corruption has been committed or has effects in a State Party.</p> <p><i>Article XII</i> <i>Effect on State Property</i></p> <p>For application of this Convention, it shall not be necessary that the acts of corruption harm State property.</p>

Both treaties contain a significant amount of provisions regulating *Preventive Measures*.

UN Convention against Corruption	Inter-American Convention against Corruption
<p>Preventive measures</p> <p><i>Article 5</i> <i>Preventive anti-corruption policies and practices</i></p> <p>1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.</p>	<p><i>Article III</i> <i>Preventive Measures</i></p> <p>For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:</p> <p>11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption.</p>

<p>Preventive measures <i>Article 5</i> 4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programs and projects aimed at the prevention of corruption.</p>	<p>Article XIV <i>Assistance and Cooperation</i> 2. The States Parties shall also provide each other with the widest measure of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. To that end, they shall foster exchanges of experiences by way of agreements and meetings between competent bodies and institutions, and shall pay special attention to methods and procedures of citizen participation in the fight against corruption.</p> <p>The Inter-American Convention against Corruption concentrates in a single provision – Article XIV – the regulation of assistance and cooperation. The wording of this Convention is sufficient.</p>
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UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 6</i> <i>Preventive anti-corruption body or bodies</i> 1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies.</p>	<p>Article III <i>Preventive Measures</i> For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: 9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.</p>
<p><i>Article 7</i> <i>Public sector</i> 1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavor to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials: (a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude; (b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions; (c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party; (d) That promote education and training programs</p>	<p>There are no similar provisions in the Inter-American Convention against Corruption. Except for Article III, paragraph 5:</p> <p>For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: 5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.</p> <p>Evidently the UN Convention is more specific on this subject.</p> <p>Still, paragraphs 1,2 and 4 of Article III are clear on the need to establish public ethics regulations and policies to monitor public employees.</p>

<p>to enable them to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programs may make reference to codes or standards of conduct in applicable areas.</p>	
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UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 7</i> <i>Public sector</i> 3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.</p>	<p>There are no similar provisions in the Inter-American Convention against Corruption. Note that this is a critical issue and probably could be considered as an subject to be included in the strategy, even though it is not covered by the Inter-American Convention against Corruption.</p>

UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 7</i> <i>Public Sector</i> 4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.</p> <p><i>Article 8</i> <i>Codes of conduct for public officials</i> 1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system. 2. In particular, each State Party shall endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions. 3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental Principles of its legal system, take note of the relevant initiatives of regional,</p>	<p><i>Article III</i> <i>Preventive Measures</i> For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen: 1. Standards of conduct for the correct, honorable, and proper fulfillment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities, acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of public servants and government processes. 2. Mechanisms to enforce these standards of conduct. 3. Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities.</p>

<p>Interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly Resolution 51/59 of 12 December 1996.</p> <p>4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.</p> <p>5. Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.</p> <p>6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.</p>	<p>4. Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.</p> <p>The rules of the Inter-American Convention against Corruption on conflicts of interests are vague. The OECD has done a very good job at suggesting standards for such regulations. The UN code of ethics is very good. In practice, these provisions are generating some uncertainty at the Committee of Experts of the Follow-Up Mechanism, given the lack of specific criteria to evaluate CI regulations. The same is the case with financial disclosure forms.</p>
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UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 9</i> <i>Public procurement and management of public finances</i></p> <p>1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:</p> <p>(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;</p> <p>(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;</p> <p>(c) The use of objective and predetermined criteria for public procurement decisions, in order to</p>	<p><i>Article III</i> <i>Preventive Measures</i></p> <p>For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:</p> <p>5. Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems.</p> <p>Note the significant difference in scope between both Conventions.</p>

<p>facilitate the subsequent verification of the correct application of the rules or procedures;</p> <p>(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;</p> <p>(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.</p>	
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UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 9</i> <i>Public procurement and management of public finances</i></p> <p>2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:</p> <p>(a) Procedures for the adoption of the national budget;</p> <p>(b) Timely reporting on revenue and expenditure;</p> <p>(c) A system of accounting and auditing standards and related oversight;</p> <p>(d) Effective and efficient systems of risk management and internal control; and</p> <p>(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.</p> <p>3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.</p>	<p><i>Article III</i> <i>Preventive Measures</i></p> <p>For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:</p> <p>9. Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.</p> <p>This is another area where the Inter-American Convention against Corruption falls behind the UN Convention on a critical subject. C&A and others have contributed significantly in promoting public finance systems. Recent studies show that in some cases the results achieved are not up to expectations or reforms are not fully implemented. This is an area where coordination and cooperation with other agencies – basically the World Bank and the Inter-American Development Bank – should help the reform process in the right direction.</p>

UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 10</i> <i>Public reporting</i></p> <p>Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take</p>	<p>There are no similar provisions in the Inter-American Convention against Corruption. Note that this is a critical issue and probably could be considered as a subject to be included in the</p>

<p>such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:</p> <p>(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;</p> <p>(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and</p> <p>(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.</p>	<p>strategy, even though it is not covered by the Inter-American Convention against Corruption.</p>
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UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 11</i> <i>Measures relating to the judiciary and prosecution services</i></p> <p>1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.</p> <p>2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.</p>	<p>There are no similar provisions in the Inter-American Convention against Corruption. However, given the definition of <i>public official</i> adopted in the treaty, effects of rules on public ethics include members of the different branches of government.</p>

UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 12</i> <i>Private sector</i></p> <p>1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where</p>	<p><i>Article III</i> <i>Preventive Measures</i></p> <p>For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:</p>

<p>appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.</p> <p>2. Measures to achieve these ends may include, inter alia:</p> <p>(a) Promoting cooperation between law enforcement agencies and relevant private entities;</p> <p>(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;</p> <p>(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;</p> <p>(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;</p> <p>(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;</p> <p>(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.</p> <p>3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:</p> <p>(a) The establishment of off-the-books accounts;</p> <p>(b) The making of off-the-books or inadequately identified transactions;</p> <p>(c) The recording of non-existent expenditure;</p>	<p>6. Government revenue collection and control systems that deter corruption.</p> <p>7. Laws that deny favorable tax treatment for any individual or corporation for expenditures made in violation of the anticorruption laws of the States Parties.</p> <p>10. Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts.</p> <p>Note the difference in scope between both Conventions. The UN Convention is more precise in defining the obligations of the private sector. This is an area that is seldom explored in terms of anti corruption and transparency strategies and there is plenty to be done.</p> <p>The increasing levels of debate on CSR and corporate governance are indicators of a positive trend.</p> <p>See Transparencia por Colombia (TI-Colombia) and their joint efforts with the Ethics Resource Center.</p>
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<p>(d) The entry of liabilities with incorrect identification of their objects; (e) The use of false documents; and (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.</p> <p>4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.</p>	
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UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 13</i> <i>Participation of society</i></p> <p>1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:</p> <p>(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes; (b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programs, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary: (i) For respect of the rights or reputations of others; (ii) For the protection of national security or <i>ordure public</i> or of public health or morals.</p> <p>2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be</p>	<p><i>Article III</i> <i>Preventive Measures</i></p> <p>For the purposes set forth in Article II of this Convention, the States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:</p> <p>11. Mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption. Additionally, the Methodology for analyzing the implementation of the Inter-American Convention against Corruption states: For the purposes of the review of the implementation of this provision, in addition to its consideration in general, the following mechanisms may be taken into account:</p> <p>a. Mechanisms to ensure access to information.- In this regard, mechanisms that regulate and facilitate the access of civil society and non-governmental organizations to information under the control of public institutions shall be reviewed, taking into account that the possibility of obtaining this information is a prerequisite for these organizations to participate in efforts to prevent corruption.</p> <p>b. Consultative mechanisms- In this regard, mechanisms that enable those who perform public functions to request and receive feedback from civil society and non-governmental organizations shall be reviewed, taking into account the valuable contribution made by these consultative mechanisms in efforts to prevent corruption.</p> <p>c. Mechanisms to encourage active participation in public administration.- In this regard, mechanisms that permit the active</p>

<p>considered to constitute an offence established in accordance with this Convention.</p>	<p>participation of civil society and non-governmental organizations in public policy and decision-making processes shall be reviewed, as part of the efforts to prevent corruption.</p> <p>d. Participation mechanisms in the follow-up of public administration.- In this regard, mechanisms that permit the participation of civil society and non-governmental organizations in the follow-up of public administration shall be reviewed, in order to meet the purposes of preventing, detecting, punishing, and eradicating acts of public corruption.</p>
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UN Convention against Corruption	Inter-American Convention against Corruption
<p><i>Article 14</i> <i>Measures to prevent money-laundering</i> 1. Each State Party shall: (a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions; etc.</p>	<p>There are no similar provisions in the Inter-American Convention against Corruption. Note that this is a critical issue and probably could be considered as an issue to be included in the strategy, even though it is not covered by the Inter-American Convention against Corruption. This should not only include regulations but also training to appropriate enforcement agencies.</p>

UN Convention against Corruption	Inter-American Convention against Corruption
<p>Chapter III Criminalization and law enforcement <i>Article 15</i> <i>Bribery of national public officials</i> Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act</p>	<p><i>Article VIII</i> <i>Transnational Bribery</i> Subject to its Constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. Among those States Parties that have established transnational bribery as an offense, such offense shall be considered an act of corruption for the purposes of this Convention. Any State Party that has not established transnational</p>

<p>or refrain from acting in the exercise of his or her official duties.</p>	<p>bribery as an offense shall, insofar as its laws permit, provide assistance and cooperation with respect to this offense as provided in this Convention.</p>
<p><i>Article 16</i> <i>Bribery of foreign public officials and officials of Public international organizations</i> 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.</p> <p>2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.</p>	<p>There are no similar provisions in the Inter-American Convention against Corruption.</p>

Criminal law provisions have been a central subject for anti-corruption strategies. There is a growing tendency to harmonize this type of legislation. Even though these Conventions appear to march on parallel roads, they aim at a similar destiny. Still, the critical issue in Latin America is impunity, which is not related with the lack of an adequate legal framework, but with the lack of will or capacity to implement the existing laws.

UN Convention against Corruption	Inter-American Convention against Corruption
<p>Criminal Law Provisions</p> <p>Most of the Criminal Law Provisions of the UN Convention are under the following articles.</p> <p>Article 17 Embezzlement, misappropriation or other diversion of property by a public official</p>	<p><i>Article VI</i> <i>Acts of Corruption</i> Defines, as an act of corruption: a. Active and passive bribery; b. Breach of public duties; c. The fraudulent use or concealment of property; d. Participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article</p>

<p>Article 18 Trading in influence</p> <p>Article 19 Abuse of functions</p> <p>Article 20 Illicit enrichment</p> <p>Article 21 Bribery in the private sector</p> <p>Article 22 Embezzlement of property in the private sector</p> <p>Article 23 Laundering of proceeds of crime</p> <p>Article 24 Concealment</p> <p>Article 25 Obstruction of justice</p> <p>Article 26 Liability of legal persons</p>	<p>Article IX Defines Illicit Enrichment</p> <p>Article XI recommends criminalizing:</p> <p>a. The improper use of any kind of classified or confidential information which that official or person who performs public functions has obtained because of, or in the performance of, his functions;</p> <p>b. The improper use by a government official or a person who performs public functions, for his own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of, or in the performance of, his functions;</p> <p>c. Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he illicitly obtains for himself or for another person any benefit or gain, whether or not such act or omission harms State property; and</p> <p>d. The diversion by a government official, for purposes unrelated to those for which they were intended, for his own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his position for purposes of administration, custody or for other reasons.</p> <p>Therefore, Articles 21,22,23, 25 and 26 of the UN Convention do not have a comparable provision under the Inter-American Convention against Corruption</p>
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Each Convention has a set of provisions generally defined as procedural rules. These rules are meant to help apply the Convention to the investigation and prosecution of cases.

UN Convention against Corruption	Inter-American Convention against Corruption
<p>Article 29 Statute of limitations</p> <p>Article 30 Prosecution, adjudication and sanctions</p> <p>Article 31 Freezing, seizure and confiscation</p> <p>Article 32 Protection of witnesses, experts and victims</p>	<p>Article XIX <i>Temporal Application / Statute of limitations</i></p> <p>There are no provisions comparable to article 30 of the UN Convention;</p> <p>Article XV Measures Regarding Property includes measures in seizure and confiscation;</p> <p>Article III includes protection of witnesses There are no provisions comparable to article 3e of</p>

<p>Article 33 Protection of reporting persons</p> <p>Article 34 Consequences of acts of corruption</p> <p>Article 37 Cooperation with law enforcement authorities</p> <p>Chapter IV International cooperation</p> <p>Article 43 International cooperation and Article 46 Mutual legal assistance</p> <p>Article 44 Extradition</p> <p>Chapter V Asset recovery</p>	<p>the UN Convention; Article XII is similar to Article 34 of the UN Convention; There are no provisions in the Inter-American Convention against Corruption to define cooperation with law enforcement agencies.</p> <p><i>Article XIV</i>, paragraphs 1 and 2 is equivalent to Article 43 and 46 of the UN Convention;</p> <p><i>Article XIII</i> in the Inter-American Convention against Corruption regulates extradition;</p> <p>Although the Inter-American Convention against Corruption mentions in Article XV the recovery of assets, the level of detail and the extent of this provision in the UN Convention is much greater. Actually, this is another area in which there is room to suggest activities to enhance the capacity of judges, prosecutors and enforcement agencies to implement strategies to recover assets.</p>
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