

UN CONVENTION
AGAINST CORRUPTION
CIVIL SOCIETY REVIEW:
PERU 2011

Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally binding anti-corruption agreement applicable on a global basis. To date, 154 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Co-operation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group (IRG), which met for the first time in June–July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "*to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption*" and to strengthen that participation by measures such as "*enhancing the transparency of and promote the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*" Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10). Article 63 (4) (c) requires the conference of the States Parties to agree on procedures and methods of work, including co-operation with relevant non-governmental organisations.

In accordance with resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the conference secretariat on their compliance with the convention, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, based upon the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption funded by the UN Democracy Fund (UNDEF), Transparency International has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process, aimed at supporting the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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Introduction

Peru signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003, during the United Nations Convention against Corruption (UNCAC) High-Level Conference held in Merida, Mexico, and ratified it by *Decreto Supremo* no, 075-2004-RE on 19 October 2004, becoming the first South American country to ratify and approve the convention, and the 11th of the 30 countries that were required for its entry into force.

Scope. This report reviews Peru's implementation and enforcement of selected articles in chapters III (Criminalisation and Law Enforcement) and IV (International Co-operation) of the UNCAC. The report is intended as a contribution to the UNCAC peer review process currently under way covering those two chapters. Peru was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the first year of the process. An earlier draft of this report was provided to the government of Peru.

The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), protection of reporting persons (Article 33), and mutual legal assistance (Article 46).

Structure. Section I of the report is an executive summary, with the condensed findings, conclusions and recommendations about the review process and the availability of information; as well as about implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Peru as well as access to information issues. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments and section V elaborates on recommended priority actions.

Methodology. The report produced was prepared by the National Council for Public Ethics with funding from the UN Democracy Fund (UNDEF). The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was supplied to government officials.

The report was prepared using a questionnaire and report template designed by Transparency International for the use of civil society organisations. These tools reflected but simplified the UN Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared with the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46(9)(b)&(c).

The report preparation process went through a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report. The report was peer reviewed by a national expert selected by Transparency International.

The draft report was shared with the government for comments prior to its being finalised. A final draft of the report was then sent to the government prior to publication with the aim of continuing the dialogue beyond the first-round country review process.

In preparing this report, the author also took into account the review of the Peruvian implementation of the Inter-American Convention against Corruption presented in a report of September 2009 by the Committee of Experts of the Follow-up Mechanism (MESICIC).¹

¹ Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption. Fifteenth meeting of the Committee of Experts, Republic of Peru. Final report, adopted at the 18 September 2009 plenary session, www.oas.org/juridico/english/mesicic_III_rep_per.pdf.

I. Executive summary

This report finds that some important steps in the fight against corruption have been taken in Peru, such as enacting a new Criminal Procedure Code and a new law on money laundering. Additionally, the Peruvian legal framework largely complies with the UNCAC articles reviewed for this report.

On the enforcement side, however, the report finds that the Peruvian state has been unable to successfully develop adequate capacity of enforcement authorities. There is a lack of independent, sufficiently resourced investigation and prosecution authorities and judiciary. The establishment and subsequent closure of the National Anti-corruption Office – in less than a year – is one of many examples of a clear lack of firm guidance and leadership on the part of the government regarding this issue. Further delays in processing corruption cases and imposing sanctions have created a sense of impunity in Peru.

It is important to note that on 28 July 2011 a new Peruvian government was inaugurated. The new government has shown a strong political will to fight against corruption and in the weeks following its inauguration some relevant announcements have been made. For example, there is a proposal that corruption crimes committed by public officials should not be subject to a statute of limitations. There is also an initiative to re-establish the anti-corruption prosecutor's office and to create a prosecutor's office for senior public officials. In this new context, much of the information detailed in this report refers to the previous political administration of Peru (Alan Garcia's government).

Assessment of the review process

Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Peru.

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	Yes
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	No
Was civil society invited to provide input to the official reviewers?	Not yet
Has the government committed to publishing the full country report?	Unknown

Availability of information

Peru's legal framework is well developed, but there is not enough public information on the implementation and enforcement of UNCAC obligations. There are virtually no statistics available from the judiciary, office of the Attorney General, Ministry of Justice or any other public institution.

Implementation and enforcement of the UNCAC

Overall, Peru has largely implemented the requirements provided in the convention articles under analysis in this report, except with regard to the liability of legal persons.

A key development is the entry into force of the new Criminal Procedure Code (the Code) for crimes related to bribery, extortion and embezzlement committed by public officials (law no. 29574

published 16 September 2010). This is important because the Code establishes fundamental principles such as: (1) prompt prosecution: cases can be decided within a few days or even a few hours if the offender admits guilt²; (2) record-keeping: all of the proceedings are transcribed and recorded on camera; and (3) transparency: the process is public. The new Code provides a fixed term for delivery of judgments, and in case of delay, the judge must inform the Office of Judicial Control (OCMA) of the reasons.

However, in recent years the government has reduced the number of staff dedicated to investigating and prosecuting corruption crimes, so there is a significant problem of procedural delays in the resolution of corruption cases. One of the main obstacles for implementing the Code is a lack of necessary funds for the judiciary, Public Ministry, Ministry of Justice and Ministry of Interior in order to implement the Code. In addition, there is a lack of training for judicial officers and insufficient infrastructure to implement the Code.

There is also some evidence of problems in the enforcement system including (1) apparent lack of priority given to corruption cases in law enforcement; and (2) concerns about independence of investigators, prosecutors or judiciary.

Recommendations for priority actions

1. Provide training on the implementation of the Code to all institutions in the anti-corruption system, especially the judiciary and the Public Prosecutor's Office.
2. Hire more staff, taking the caseload into consideration.
3. Increase the budget for responsible independent institutions (judiciary, Public Prosecutor's Office and Comptroller General's Office, among others) to enable them to effectively combat, prevent and punish corruption crimes at all levels.
4. Collect and publish statistics and other information on corruption cases.

II. Assessment of review process

A. Report on the review process

The body responsible for the government self-assessment is the Office of Public Administration of the Presidency of the Council of Ministers (PCM), in co-ordination with the Ministry of Foreign Affairs.

The government self-assessment was completed and sent to the UNODC in June 2011 for review by experts from Ecuador and Bolivia. Regarding the status of the self-assessment report, public officials from the PCM and the Ministry of Foreign Affairs were very open and willing to answer questions regarding the review.³ However, the person responsible for the Peruvian self-assessment is no longer working for the PCM and it is currently unclear who will assume this responsibility.

The self-assessment is not online and has not been otherwise provided.

Experts from Bolivia and Ecuador have shown their willingness to visit Peru for an onsite review and according to the Peru's Foreign Affairs Minister, their visit will be accepted, but as of the time of writing this report none had taken place. The inauguration of the new government on 28 July 2011 is a factor to take into consideration. A visit by the review team will hopefully be agreed upon in the coming months.

² According to the new Code, the deadline is 140 days for investigating simple cases, and eight months for complex cases.

³ Public officials contacted: Dr. Patricia Guillén of the Presidency of the Council of Ministers (PCM), and Enrique Noria of the Ministry of Foreign Affairs.

It is likely that the Peruvian government will agree to publication of the full report, in light of the fact that documents from the earlier pilot process have already been published.

B. Availability of information

Relevant statistical information is not fully accessible partly because it has not been compiled by the government. Some information is available, only to authorities and public officials of the judiciary and the Public Prosecutor's Office. It is not available to ordinary citizens. Statistics from the Public Prosecutor's Office and judiciary include only the number of cases closed or still pending in a certain year, without any additional information.

Through Ministerial Resolution no. 233-2008-JUS, the Justice Ministry established an online system to register officials and public servants who have been prosecuted for alleged crimes against the public administration. (It is available at <http://sistemas2.minjus.gob.pe/sigminjus/Procesados.do>.) However, the system does not provide any details. It allows access only to a list of people by name, or, if users have the file number, to check the status of a file. The system does not include statistics on cases according to their status (processed, convicted, acquitted or waived). From a quick reading, it is evident that the vast majority of cases are still in progress and have not been resolved, providing an indication of the current caseload relating to corruption offences..

According to statements by the public prosecutor specialised in corruption, the Prosecutor's Office has a corruption caseload of 7,042 cases, of which 1,863 are being processed in Lima.⁴ This indicates a need for more staff dedicated to this task, with the concomitant need for an adequate budget.

III. Implementation and enforcement of the UNCAC

Considering the high level of reported corruption in Peru during the Fujimori government (1991–2000), it was evident that the Peruvian state did not have adequate legal mechanisms to confront corruption problems of such a magnitude. Since late 2000, the Peruvian state has therefore adopted a series of measures to allow a more efficient, centralised management and investigation of corruption cases.⁵

A. Key issues related to the legal framework⁶

The Peruvian anti-corruption legal framework is composed of laws such as:

- Criminal Code: legislative decree no. 635 (April 1991)
- Law on the rights of citizens' participation and control: law no. 26300 (May 1994)
- Effective Collaboration Law: law no. 27378 (December 2000)
- Regulation measures to protect collaborators, victims, witnesses and experts under law no. 27378: Supreme Decree 020-2001-JUS (July 2001)
- Access to Information and Transparency Law: law no. 27806 (August 2002)
- Law against money laundering: law no. 27765 (June 2002)
- General Law of the National Control System and the Comptroller General's Office: law no. 27785 (July 2002)
- New Criminal Procedure Code: legislative decree no. 957 (July 2004)

⁴ Jorge Luis Caldas, statements published 2 October 2010. See: www.cronicaviva.com.pe/index.php/politica/2-politica/4595-procuraduria-anticorrupcion-tiene-mas-de-8000-procesos

⁵ Ronald Gamarra Herrera, Lilia Ramírez Varela, Cruz Silva Del Carpio. Balance del Subsistema Anticorrupción a seis años de su creación (2000–2006). Instituto de Defensa Legal. Pontificia Universidad Católica del Perú. Facultad y Departamento Académico de Derecho, 2007, p. 7.

⁶ For the development of this section we acknowledge the assistance of Nora Bonilla and the support of the Miranda & Amado Abogados Law Firm, which conducted an analysis of the applicable legislation as part of its *pro bono* work.

- Mandatory compliance policies for government entities: supreme decree no, 027-2007-PCM (March 2007)⁷
- Law for the early implementation of the Code of Criminal Procedure for crimes committed by public officials: law no. 29574 (September 2010)
- Protection law for claimants in administrative proceedings and effective co-operation in criminal proceedings: law no. 29542 (June 2010)

Overall, Peru's legislative framework has largely implemented the convention articles analysed below, except with regard to the liability of legal persons (companies).

1. Areas showing good practice

UNCAC Article 15: Bribery of national public officials. The Peruvian Criminal Code classifies bribery as either active or passive. Article 15 of the UNCAC has been incorporated into domestic criminal law by including the following crimes in the Peruvian Criminal Code:

- Article 393: Passive bribery (I): Passive bribery occurs when a public official or servant requests, accepts or receives, directly or indirectly, donations, promises or any other advantages or benefits, in order to perform or omit any act, in violation of his obligations. It is also applicable to those public officials who condition their behaviour, depending on their status or position, to the delivery or promise of a benefit or donation.
- Article 394: Passive bribery (II): Passive bribery occurs when a public official or servant requests, accepts or receives, directly or indirectly, donations, promises or any other advantages or benefits, to act within his duties and obligations.
- Article 397: Generic active bribery. Any person who under any modality offers, promises or gives a benefit, donation or advantage to a public official or servant, in order for him to perform or omit any act in violation of or within his duties and obligations.

UNCAC Article 16: Bribery of foreign public officials. UNCAC Article 16 has been incorporated into domestic criminal law by including the following crime in the Peruvian Criminal Code:

- Article 397-A: Active transnational bribery: Active transnational bribery occurs when someone offers, gives, or promises, directly or indirectly, to a public official or servant of another state or of a public international organisation, a donation, promise, advantage or benefit, which benefits him or a third party, in order to make the public official perform or omit any act, in violation or not of his duties, which, in any form, helps obtaining or retaining a business transaction or gives an advantage in the realisation of international commercial and economic businesses.

However, passive transnational bribery is not covered in the Peruvian Criminal Code.

UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official. UNCAC Article 17 has been incorporated into domestic criminal law by including the following crimes in the Peruvian Criminal Code:

- Article 389: Embezzlement: Embezzlement occurs when a public official or servant gives the money or other goods he manages, a final destination different from the one to which they were intended to be applied, affecting the service or function entrusted to it.
- Article 387: Intentional and negligent embezzlement: Embezzlement occurs when a public official or servant appropriates or uses in any way, for himself or for another person, funds or other property entrusted to him for administration and custody by virtue of his public position.

⁷ National policies regarding corruption are: strengthen the fight against corruption in public tenders, public acquisitions and the fixing of referential prices to eliminate illegal and excessive charges; ensure transparency and accountability; promote public ethics; and encourage citizen participation in monitoring and controlling the public administration.

- Article 388: Embezzlement by use: “Embezzlement by use” occurs when a public official or servant uses, or allows others to use, vehicles, machinery or any other working instrument owned by the public administration, or that is under his custody, for purposes other than those originally given to them.

An important step towards prosecuting corruption crimes is the enactment of the new Criminal Procedure Code for crimes related to bribery, extortion and embezzlement. This is a significant development because the new Code establishes fundamental principles such as:

- **Transparency/Orality**: Trial proceedings are transcribed and recorded by video camera.
- **Speed**: An offender who confesses to a crime shall be tried within a few hours and punished within a few days. After the prosecutor has presented the case and witnesses have provided testimony, the judge may make an immediate decision, which can be appealed. Under the new Code, prosecution of corruption offences has fixed for review /appeal, unlike under the previous legal framework, which set no deadlines. Currently, the investigation of crimes related to the corruption of public officials has a time limit of 120 days, which can be extended by 60 days. For complex cases, the deadline for the investigation is eight months, which can only be extended with the judge’s approval for an additional eight months. The Code also provides for judges to diligently observe the legal deadlines for issuing decisions and judgments, as well as providing for monitoring of compliance with the limits set. If there is a delay, judges must provide the reasons to the Office of Judicial Control (OCMA), which has disciplinary responsibility.

Regarding the duration of the preliminary investigation, this may be too short for complex cases to be handled in the given time. In general, simple crimes (measured by the circumstances and the persons who commit them) are easy to resolve because the research is straightforward. However, complex cases are more difficult to clarify because investigations can be delayed and deadlines extended. Complex cases may require more time for the preliminary investigation, and deadlines cannot always be met. In these cases, the defendant is entitled to request that the case be filed.

UNCAC Article 22: Laundering of the proceeds of crime. The Criminal Law against Asset Laundering was enacted in 2002. Previously, Peruvian law only criminalised money laundering when connected to drug trafficking. Under Article 1 of the 2002 law, when a person converts or transfers money, goods or any kind of asset, which he knows or could presume has an illegal origin, making it difficult to identify or confiscate it, this conduct shall be punishable by 8 to 15 years in prison and a fine. Under Article 2, when a person acquires, uses, keeps or maintains under his custody money, goods or any kind of asset, the illegal origin of which he knows or could presume, making it difficult to identify or confiscate it, this conduct shall be punishable with 8 to 15 years in prison and a fine.

There is no specific list of predicate offences for money laundering. The 2002 law provides a general application of such law to money laundering derived from the commission of any crime (“all offences”). However, there is an aggravating circumstance when the perpetrator commits asset/money laundering while taking advantage of his/her position as a public official. In such cases, imprisonment shall be 10 to 20 years, and the fine is higher.

UNCAC Article 3: Protection of witnesses, experts and victims. UNCAC Article 33: Protection of reporting persons. The following laws and regulations provide protection for witnesses, experts, victims and reporting persons under Peruvian criminal and administrative law:

- Law no. 27378 and its regulation: Enacted in 2000, law no. 27378 provides the benefits derived from effective collaboration in the field of organised crime, and includes certain protective measures to be adopted towards witnesses, experts, victims and collaborators related to criminal offences within the scope of such law. Among the list of offences that fall under the scope of the law, article 1 includes those crimes “committed by one or more persons or criminal organisations, in case public resources have been used or public officials have intervened in the crimes, or any person has intervened in the crimes with the consent of a public official”.

Article 9 of the regulation of law no. 27378, approved by supreme decree no. 020-2001-JUS, includes a list of protective measures that can be adopted to protect witnesses, experts, victims and collaborators, including:

- Police protection, which may include appointing permanent police personnel at their home and during their daily journeys, changing residence to an unknown place, transferring the protected person to special housing and, in general, concealing their location for all purposes.
- Protection of their identity during the proceedings in which they participate.
- Use of technological resources, such as video conferencing or other appropriate means, provided that applicable courts have the necessary resources for their implementation.
- Provision of documents with a new identity and, if necessary, the required financial means to change their residence or workplace, in very exceptional and serious circumstances.
- Protection of labour rights according to applicable labour laws.

A special unit has been created within the National Police Office against Corruption called *Unidad Especializada de Investigación, Comprobación y Protección*, which, among other duties, protects witnesses, experts, victims and collaborators, according to law no. 27378 and its Regulation.

- Law no. 29542 and its regulation: The purpose of law no. 29542, enacted in 2010, is to protect and benefit public officials or any other citizen who reports (based on reasonable grounds) the commission of any arbitrary or illegal acts within any public entity, in order for them to be investigated and sanctioned administratively.

Article 10 of the regulation of law no. 29542, approved by supreme decree no. 038-2011-PCM, includes a list of protective measures that can be adopted to defend the reporting individuals, including the following:

- An identification code that will appear in the files of the proceedings where they participate, instead of their actual identification data
- Labour rights' protection

No distinctions are made in the above-mentioned laws and regulations based on the gender of the witnesses, experts, victims, reporters or collaborators.

2. Areas with deficiencies

UNCAC Article 26: Liability of legal persons. Peru lacks effective legislation to deter and sanction the commission of corruption crimes by legal persons.

Under Peruvian criminal law, there is no direct criminal liability for legal persons (companies), including for corruption offences. Criminal liability is applicable only to individuals. However, the Criminal Code provides certain ancillary consequences applicable to legal persons in cases where crimes are committed in the exercise of the economic activity of a legal person, or by using its organisation to favour or conceal the crime. Under Article 105 of the Peruvian Criminal Code, in such cases judges may apply one or more (or all) of the following subsidiary measures to legal persons involved in the crime:

- Permanent or temporary closing of offices. Temporary closing shall not exceed a term of five years
- Dissolution and liquidation of the legal person
- Suspension of activities for a term no longer than two years
- Banning the legal person from carrying out in the future the activities which favoured or helped commission and/or concealment of the crime

On the other hand, under Peruvian law, legal persons can be subject to direct civil liability and direct administrative liability.

With respect to corruption-related offences, Peruvian criminal law does not stipulate criminal liability for legal persons. However, they may be subject to the application of ancillary measures as described above.

B. Key issues related to enforcement

While most UNCAC articles have been implemented in Peru's domestic legislation, more action is required by the internal control offices in every public institution to ensure effective law enforcement.

Overview of enforcement authorities

The main law enforcement authorities in Peru that deal with corruption crimes are:

- Judiciary: Anti-corruption courts, superior courts and Supreme Court
- Office of the Attorney General Provincial Anti-Corruption Attorney, Anti-Corruption Attorney Coordinator and Supreme Attorney.
- Executive: Prosecutor's Office: The Ministry of Justice (MINJUS) established the public anti-corruption prosecutors' office, with the purpose of defending the state's interests in proceedings related to cases of corruption committed by public officials or activity.

Other notable institutions include:

- Comptroller General's Office, which heads the national government control, monitoring and verification of the events and results of public management of state resources management.
- Supervising Agency for State Contracting (OSCE), an agency under the Ministry of Economy and Finance that oversees the process of procuring goods, services and works undertaken by state entities.

In the executive branch of government, there have been a series of attempts to generate ad hoc agencies, but they have not had the expected success. The establishment and subsequent closure of the National Anti-Corruption Office (ONA) in less than a year is one of many examples that show a clear lack of firm guidance and leadership on the part of the government (the previous administration.).

The National Anti-Corruption Office was created in October 2007 to replace the National Anti-corruption Council (CNA), which had been created during the administration of former president Alejandro Toledo. The ONA was created by the Presidency of the Council of Ministers with the objective to "prevent, investigate, co-ordinate, monitor and promote the public ethics and the fight against corruption through preventive measures, an official investigation and by formulating surveillance and monitoring of public policies on corruption". Unfortunately, it was closed nine months after it was created. There were two main reasons why this institution failed and was subsequently deactivated.⁸ First, political support was lacking. Both the president and cabinet minister did not provide the necessary resources for it to perform its functions. Second, some of its functions overlapped with those of other institutions, such as the comptroller and attorney general, with whom the ONA at one point wanted to co-operate, but he did not support its operations.⁹

⁸ Supreme decree no. 057-2008-PCM, August 2008.

⁹ Anticorrupción: cuatro años perdidos. See: www.noticiasser.pe/25/08/2010/nacional/anticorrupcion-cuatro-anos-perdidos

Later, in 2010, the High-Level Anti-Corruption Commission (<http://can.pcm.gob.pe/>) was created; like its immediate predecessor, it was attached to the Presidency of the Council of Ministers.¹⁰ However, this institution was organised under the format of “multi-agency models”. Members of the commission are senior government officials: the coordinator of the National Assembly of Regional Governments, president of the National Judicial Council, national prosecutor, chief justice, president of the Constitutional Court, Minister of Justice, mayor of the Metropolitan Municipality of Lima, president of the Council of Ministers, technical secretary of the National Agreement Forum, president of the Association of Municipalities of Peru (AMPE) and a general coordinator. It also includes representatives of civil society organisations: the executive director of the National Council for Public Ethics (Proética) and the president of the National Confederation of Private Entrepreneurs (CONFIEP).

The main objective of the High-Level Anti-Corruption Commission is to “help in the articulation, coordination and planning of the medium- and long-term actions of public and private entities to prevent and combat corruption in the country”. It is also responsible for monitoring and enforcing the National Plan to Fight Corruption. The commission was created in line with Article 6 of the UNCAC, and its performance is not related to decisions by the executive branch of government, since its members define their duties and responsibilities.¹¹ However, given the background of the commission, there is much scepticism about what it can actually achieve. Its success depends on the authorities of the state and their will to participate in the process of combating corruption.¹²

1. Areas showing good practice

Evidence of independence of investigators

A case involving the purchase of overvalued police patrol vehicles by the Ministry of Interior is an example of good practice. After the case became public, the Comptroller General’s Office began an investigation into all state purchases from the same automobile company during Alejandro Toledo’s government, seeking to determine whether there were other irregularities in procurement processes.¹³ Following this investigation, another case was reported involving the Gildemeister Company. Fiscal authorities reportedly found irregularities in the bidding process for the purchase of 190 ambulances from this company.¹⁴

2. Areas with deficiencies

Given the lack of judicial statistics available on the processing and prosecution of corruption cases, it is difficult to assess the efficiency of the anti-corruption system. Our information indicates a significant delay in processing and investigating corruption cases, and insufficient human resources. Therefore, the public has a perception of impunity regarding corruption cases. According to a 2010 public survey, 42 per cent of respondents believe the anti-corruption system is not at all effective, 36 per cent think it is somewhat ineffective, only 15 per cent think it is somewhat effective, and 2 per cent said it is quite effective.¹⁵

This and other information suggests that Peruvian authorities are not prosecuting corruption crimes efficiently. The problems appear to include (1) lack of priority given to corruption cases in law enforcement; (2) lack of independence of investigators, prosecutors or judiciary; and (3) lack of skills and training to investigate corruption cases and inadequate resources.

¹⁰ Supreme decree no. 016-2010-PCM, February, 2010.

¹¹ According to Article 2 of supreme decree no. 016-2010-PCM, January, 2010.

¹² See: www.noticiasser.pe/25/08/2010/nacional/anticorruccion-cuatro-anos-perdidos. See also: Grupo de Trabajo contra la Corrupción. Informe anual sobre la lucha contra la corrupción en el Perú. 2010. Lima, 2011, pp. 109ff.

¹³ Mónica Vecco and Juan Carlos Ballón, Segundo Informe sobre corrupción en el Poder Judicial al 30 de enero 2010. <http://es.scribd.com/doc/29075020/Informe-Vecco>, pp. 7–8.

¹⁴ http://transparenciacdh.uchile.cl/corruccion/pdf/Casos_Peru.pdf

¹⁵ Proética, Sexta Encuesta Nacional sobre percepciones de la corrupción en el Perú, 2010. www.proetica.org.pe/convenios.php?llave=5&Mmenu=2.3

In addition, evaluations conducted since the new Criminal Procedure Code was adopted have documented a number of problems in various institutions involved in the implementation process, including the Public Prosecutor's Office, the judiciary and the police.¹⁶ These problems include:

- the poor attitude of public officials towards corruption
- lack of unity and consistent criteria in the interpretation and application of the Code
- lack of logistics to carry out the required measures and actions
- inadequate enforcement infrastructure
- lack of staff

The public perception of ineffectiveness in the prosecution of corruption has been reinforced by actions such as the state's pardon of José Enrique Crousillat, one of the television broadcasters whose editorial line was taken over by Vladimiro Montesinos, the former chief of the Intelligence Department during Alberto Fujimori's government. He was sentenced in 2006 for taking payoffs to run favourable news about President Fujimori.¹⁷ After several months he was detained on other charges.¹⁸

Another case that has contributed to this view is that of former Israeli judge Dan Cohen, who benefited from a decision by Peru's executive to refuse his extradition to Israel in January 2011, even though the Supreme Court had approved it in 2009. Cohen was accused of corruption in Israel for allegedly receiving a US \$1 million bribe from Siemens in connection with the purchase of turbines while he was director and chairman of the Israel Electricity Corporation's asset committee. The extradition was originally upheld by the Supreme Court in July 2010, but surprisingly a lower court later reversed this decision based on an appeal by Cohen on the grounds that the legal process was flawed and that there were no diplomatic relations between Peru and Israel. However, Peru is a State Party to the UNCAC and, as such, is legally obliged to co-operate in such cases with signatory countries, such as Israel. The Supreme Court then reportedly launched a counter-appeal that was upheld by the Lima District Court, which opened the way for the Peruvian government to sign the extradition warrant. However, in January 2011 the international department of Israel's prosecution services was informed that they had failed to obtain the extradition.¹⁹

Other cases illustrate problems in the enforcement system.

Lack of priority given to corruption cases in law enforcement

One day after making public a complaint against the then Vice President Luis Giampietri²⁰ in 2009 for negotiated arms purchases by the Navy, Justice Minister Aurelio Pastor announced the

¹⁶ El Sistema Acusatorio en el Nuevo Código Procesal Penal. Jorge Rosas Yataco.

www.mpf.n.gob.pe/ncpp/files/dfbaaa_articulo%20dr.%20rosas%20yataco.pdf; El Nuevo Código Procesal Penal En Lima, ¿Para Sancionar A Corruptos O Para Beneficiarlos?

www.justiciaviva.org.pe/noticias/2009/febrero/12/nuevo_codigo.htm. Cuestionan la aplicación del nuevo Código Procesal Penal. La República, 5 May 2010. www.larepublica.pe/archive/all/larepublica/20100505/8/node/264725/todos/15

¹⁷ BBC News Online, 17 March 2010, Peru Justice Minister Aurelio Pastor Fired, <http://news.bbc.co.uk/2/hi/8573654.stm>

¹⁸ Lilia Ramírez Varela. Crousillat atrapado: indulto vs lucha anticorrupción y justicia, 13 January 2011. www.justiciaviva.org.pe/notihome/notihome01.php?noti=448

¹⁹ IDL Reporteros, 8 February 2011. <http://idl-reporteros.pe/2011/02/08/dan-cohen-aguarda-otro-proceso-en-marzo/>; Transparency International, *Progress Report 2011: Enforcement of the OECD Anti-Bribery Convention*, p. 43.

²⁰ A 2006 report was issued by the ad hoc prosecutor on the reasons for the then Vice President of Peru, Luis Giampietri, and 27 navy officers being accused of irregularities in the purchase of weapons during the government of Alberto Fujimori. This report referred to a report by the comptroller general regarding procurement by the Navy of Peru. In its review of 14 purchasing processes, the report noted apparent violations of regulations regarding the allocation of scores of proposals without establishing the criteria for them. In 2006 the prosecutor requested that a preliminary investigation be opened to determine whether there was cause to formalise a complaint. On 29 October 2009, prosecutor Marlene Berrú brought a charge before the judiciary. The complaint includes 27 senior naval officers, and Luis Giampietri, a retired vice admiral. Berrú made accusations of crimes of unfair collusion and conspiracy to commit a crime by taking advantage of the ability to make decisions in the Navy that favoured a particular group of companies in exchange for commissions. The indictment charges that companies that were openly favoured were shell companies that sold millions of dollars in assets to the Peruvian state linked to Vladimiro Montesinos, former adviser to former President Alberto Fujimori (1990–2000). The prosecutor's investigations focused on about 50 contracts signed by the Navy between 1995 and 1997 at a cost of US\$45 million. According to the prosecutor, irregularities were found in at least 14 direct awards made by Giampietri while he held the post of Chief of Staff of the Navy. The crimes were allegedly committed in the purchase of batteries for torpedoes, spare parts for

downsizing of the *ad hoc* processing of the Fujimori and Montesinos cases to reduce personnel of this office.²¹

Concerns about judicial investigations

The “Petrogate”²² is an example of a case that has led to concerns about judicial investigations. Petrogate is the media’s name for the corruption case related to the concession of offshore oil blocs. Alleged corruption was reportedly brought to light through the recording of telephone conversations. Work by the anti-corruption judge in charge of the investigation, Jorge Barreto, has been questioned for having taken eight months to allow a confiscated computer to be examined.²³ This delay hampered the prosecutor’s analysis of e-mails stored in the computer, a critical piece of evidence in the case.²⁴

Lack of skills and training to investigate corruption cases, inadequate resources

One of the main obstacles to effectively fighting corruption is the lack of well-trained judicial officers and the appropriate infrastructure to implement and enforce applicable laws and regulations.

IV. Recent developments

The implementation of the new Criminal Procedure Code will bring radical changes in the dynamics of all legal practitioners, who were previously accustomed to procedures based largely on written submissions. There will now be greater speed and more oral hearings. This implies a major change in the workings of the judicial system. Much work needs to be done, not only for judges and other officials in becoming accustomed to the new rules, but also to change their mindset and attitudes.

Another important change concerns oversight of government spending. In Peru this oversight is exercised by the National Control System (CNS), but also by public agencies through their own offices. Traditionally, most of these “offices of institutional control” (OIC) monitor the entity that finances their control activities, including paying its staff, which is a situation that could raise doubts about their objectivity and independence. Law no. 29555 calls for the progressive incorporation of these personnel into the Office of the Comptroller General, seeking to strengthen independence and autonomy from government control. Unfortunately, this transfer process will occur in only two phases in 2011 and thereafter.

Nevertheless, the above-mentioned law is important regarding the fight against corruption as it helps reduce corruption risks in an operational way, and should eventually result in control of almost 90 per cent of the republic’s budget. Also, transferring the OIC to the Office of the Comptroller General is expected to strengthen its decentralised operations to ensure timely and more effective presence of government oversight throughout the country. It should also ensure an accompanying preventive and collaborative approach to achieve better performance of entities, including better co-ordination of the work developed with regional offices in their respective geographical areas of control.

Another important step is the establishment of a computerised system for the registration of public servants and officials prosecuted for alleged crimes against the public administration. This system was established by ministerial resolution no. 233-2008-JUS (available at: <http://sistemas2.minjus.gob.pe/sigminjus/Procesados.do>).

engines and the upgrading of missiles. It was concluded that the acquired weapons did not meet the requirements originally planned. See: http://transparenciacdh.uchile.cl/corrupcion/pdf/Casos_Peru.pdf.

²¹ www.larepublica.pe/06-11-2009/reducen-procuraduria-que-denuncio-luis-giampietri-0

²² See: http://transparenciacdh.uchile.cl/corrupcion/pdf/Casos_Peru.pdf.

²³ See: http://transparenciacdh.uchile.cl/corrupcion/pdf/Casos_Peru.pdf. and www.projusticia.org.pe/Collage/juez_barreto.pdf

²⁴ See: http://transparenciacdh.uchile.cl/corrupcion/pdf/Casos_Peru.pdf

The number and frequency of corruption charges made public has increased through the dynamic role played by journalists and civil society organisations. Despite some important steps, however, there are some critical gaps such as the failure to enact the law on transparency and access to information, the effective collaboration law (law no. 27378 of December 2000, aiming at the provision of benefits for collaboration regarding persons with links to organised crime), the money-laundering law and the whistleblower protection law, among others. The Peruvian state so far has been unable to successfully develop a national anti-corruption policy.

The election of Judge César San Martín as president of the judiciary for 2011 also opens up a range of possibilities in the fight against corruption, given his high degree of legitimacy.²⁵ In his initial statement, he confirmed his goal to combat corruption in the judiciary.

V. Recommendations for priority actions

The following priority actions are needed, in order of importance:

1. Provide training regarding the implementation of the new Criminal Procedure Code within all aspects of the anti-corruption system, especially to members of the judiciary and the Public Prosecutor's Office.
2. Hire more judicial staff, taking the caseload into consideration, in order to punish perpetrators of corruption quicker and more effectively.
3. Increase the budget for the anti-corruption system (judiciary, Public Prosecutor's Office and Comptroller General's Office, among others) to enable these agencies to effectively combat, prevent and punish corruption crimes at all levels.
4. Implement a system to maintain records on corruption cases, so that statistics can be compiled on implementing and enforcing anti-corruption laws and regulations. This would allow citizens to monitor sanctions imposed for corruption crimes.
5. Foster awareness of anti-corruption issues within the general public in order to form a critical mass of citizens who are vigilant against acts of corruption.

²⁵ Judge San Martín worked in the judiciary from 1976 to 1992, when he was dismissed as a member of the Superior Court of Lima when the "Government of National Emergency and Reconstruction" was established. In March 2004 he re-entered the judiciary and was appointed a member of the Supreme Court by the National Judicial Council. In 2009, as chairman of the Special Criminal Court, he sentenced former President Alberto Fujimori to 25 years in prison for the Barrios Altos and La Cantuta cases against human rights.

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