

Article 13. Participation of society

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:

- (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 programmes, 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 limited only in such cases as are provided for in law.

CIVIL SOCIETY REPORT

on the Implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN COSTA RICA

by Asociación Costa Rica Íntegra

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The findings in this report are those of the authors, but do not necessarily reflect the views of the UNCAC Coalition and the donors who made this report possible.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of 12 March 2021.

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Asociación Costa Rica Íntegra is an organization of volunteers who advocate for transparency, integrity and anti-corruption issues in the country's public agenda. It is Costa Rica's chapter of Transparency International. The organization is a representative of civil society in various multi-stakeholder fora such as the National Open State Commission, the Working Group of the National Integrity and Corruption Prevention Strategy, the Multisectoral Group for Transparency in the Infrastructure Sector (CoST), the Justice Forum, among others. In addition, it is part of various citizen platforms at the national and international level.

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Abbreviations

While the abbreviations are provided in both Spanish and English in the following table, they are used in their original Spanish version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbr.	Spanish	English
APNFD	Actividades y Profesiones No Financieras Designadas	Designated Non-Financial Activities and Professions
CGR	Contraloría General de la República	Office of the Comptroller General of the Republic
CONASSIF	Consejo Nacional de Supervisión del Sistema Financiero	National Council of Supervision of the Financial System
CRI	Costa Rica Íntegra	
CSO	Civil Society Organization	
ENPT	Encuesta Nacional de Percepción de la Transparencia	National Survey on Perception of Transparency
FALC	Fiscalía Adjunta de Legitimación de Capitales y Capitales Emergente	Office of the Deputy Prosecutor for Money Laundering and Emerging Crimes
FAPTA	Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción	Deputy Prosecutor's Office for Probity, Transparency and Anticorruption
FIU	UIF – Unidad de Inteligencia Financiera	Financial Intelligence Unit
GAFILAT	Grupo de Acción Financiera de Latinoamérica	Latin American Financial Action Task Force
INTOSAI	International Organization of Supreme Audit Institutions	
ITPC	Índice de Transparencia del Sector Público	Public Sector Transparency Index
LCA	Ley de Contratación Administrativa	Administrative Contracting Law
MIDEPLAN	Ministerio de Planificación Nacional y Política Económica	Ministry of National Planning and Economic Policy
MP	Ministerio Público	Public Prosecutor's Office
MRI	Mecanismo de Revisión Independiente	Independent Review Mechanism
NGO	Non-Governmental Organization	
OATRI	Oficina de Asesoramiento Técnico y Relaciones Internacionales	Technical Advisory and International Relations Office
OECD	Organization for Economic Cooperation and Development	
OIJ	Organismo de Investigación Judicial	Judicial Investigation Organism
PEP	Procuraduría de Ética Pública	Public Ethics Ombudsman's Office

PJ	Poder Judicial	Judiciary
PND	Planes Nacionales de Desarrollo	National Development Plans
ROS	Reporte de Operaciones Sospechosas	Suspicious Transaction Reporting
SICOP	Sistema Integrado de Compras Públicas	Integrated Public Procurement System
SUGEF	Superintendencia General de Entidades Financieras	General Superintendence of Financial Entities
SUGESE	Superintendencia General de Seguros	General Superintendence of Insurance
SUGEVAL	Superintendencia General de Valores	General Superintendence of Securities
SUPEN	Superintendencia de Pensiones	Superintendency of Pensions
UNCAC	United Nations Convention against Corruption	
UNODC	United Nations Office on Drugs and Crime	

List of persons consulted for the report

To complement the information found on the websites of public entities, request for information and interviews were conducted with several public officials, including senior officials, and the following is a list of the persons consulted:

Table 1. Persons consulted in the preparation of the shadow report, according to institution and position

Institution	Position	Officer
Office of the Comptroller General of the Republic	Legal Division Manager	Luis Diego Ramirez
	Associate Manager Legal Division	Roberto Rodriguez
General Directorate of Taxation	Director of Audit	Karla Salas
	Deputy Director of Control	Lorena Chacon
	Deputy Director of Negotiation	Andrey Garments
Deputy Prosecutor's Office for Probity, Transparency and Anticorruption	Deputy Prosecutor	Carlos Melendez
	Sociologist	Andrea Bermudez
Office of the Deputy Prosecutor for Money Laundering and Emerging Market Capital	Deputy Prosecutor	Warner Molina
Deputy Prosecutor's Office for Drug Trafficking	Deputy Prosecutor	Ileana Mora
Costa Rican Drug Institute	Director	Sergio Rodriguez
	Director	Marcela Ortiz
Office for the Attention and Protection of Victims	Head	Sara Arce
Technical Advisory and International Relations Office	Director	Laura Cordero
	Assistant Prosecutor	Henry Zuniga
Judicial Investigation Organism	Director	Walter Espinoza
Judicial Branch Planning Directorate	Statistics Sub-process Director	Ana Rodriguez
Office of the Public Ethics Ombudsman	Procurator	Tatiana Gutierrez
General Superintendence of Insurance	Superintendent	Tomás Soley
	Director, Oversight Division	Vilma Gamboa
General Superintendence of Securities	Superintendent	Lucia Fernandez
	Director of Supervision	Rodrigo Segura

Superintendency of Pensions	Superintendent	Rocio Aguilar
	Director of Supervision	Patricia Abarca
	Legal Director	Nelly Vargas
	Director of Planning and Policy	Porfirio Rojas
	Assistant Superintendent	Nogui Acosta
Court of Judicial Inspection	Inspector	Jason Alfaro
Financial Intelligence Unit	Chief	Román Chavarría
General Superintendence of Financial Entities	Superintendent	Rocio Aguilar

Source: Elaborated by the authors of this report

The requests for information that were made can be seen in the Annex.

1 Introduction

Costa Rica signed the United Nations Convention against Corruption (UNCAC) on 10 December 2003 and ratified it on 21 March 2007.

This report reviews Costa Rica's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the ongoing UNCAC implementation review process covering these chapters. Costa Rica was selected by the UNCAC Implementation Review Group through a drawing of lots for review in the fourth year of the second cycle of the Implementation Review Mechanism. A draft of this shadow report was provided to the government of Costa Rica.

Scope. The articles and topics in Chapter II of the UNCAC that receive special attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Articles 6 and 13.2), reporting mechanisms and whistleblower protection (Article 8.4), public procurement (Article 9.1), access to information and participation of society (Article 10) and the judiciary and prosecution services (Article 11). With respect to Chapter V, the issues discussed are measures for direct recovery of assets (Articles 53 and 56) and return and disposal of confiscated assets (Article 57.3 a, b and c).

Structure. The report begins with an executive summary, which includes key messages and condensed recommendations on the review process, the availability of information, as well as implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Costa Rica, as well as access to information issues in more detail. For each policy area, the section begins with a so-called “Strategic Reading”, which aims to summarize the findings in a concise manner. This is followed by a review of the implementation of the Convention, providing examples of good practices and deficiencies. Then, the report discusses recent developments and, lastly, recommendations for priority actions to improve UNCAC implementation are provided.

Methodology. The report was prepared by Asociación Costa Rica Íntegra with technical and financial support from the UNCAC Coalition. The information for the reports was compiled from government offices, especially through what was available on the Internet, and was then complemented with specific requests for missing information. In addition, the authors of this report sought to establish a dialogue with government officials through interviews with technical and managerial staff. As part of this dialogue, a draft of the report was made available to them for their input.

The report was prepared using guidelines and a reporting template designed by the UNCAC Coalition and Transparency International for use by civil society organizations (CSOs). These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practices and areas in need of improvement in articles of UNCAC Chapters II and V of UNCAC.

2 Executive Summary

This shadow report aims to identify Costa Rica's progress in implementing Chapters II on Preventive Measures and V on Asset Recovery of the United Nations Convention against Corruption from a practical perspective. This executive summary presents key messages for each chapter, which are not intended to be exhaustive but rather to identify the points that are considered as crucial - from the perspective of civil society - to achieve significant progress in achieving compliance with the Convention. Every policy area begins with a “strategic reading” section that summarizes the section’s main findings.

Regarding Chapter II, the first key message is that there is no governing or coordinating entity to lead the prevention of corruption and guide the actions of all the competent entities in this area. In the absence of a leading institution, there is also no national policy that identifies clear objectives for the fight against corruption, which means that the measures adopted by control entities have been scattered and have achieved limited impact.

The Office of the Comptroller General of the Republic, for example, is one of the strongest oversight bodies in the country in terms of institutional capacities and it carries out its work through audits in the entities that administer public funds. However, its emphasis is not on preventing corruption but on oversight and detection of administrative irregularities. On the other hand, the Office of the Public Ethics Prosecutor, an agency of the Office of the Attorney General of the Republic, which does have preventive powers in its law of creation, has given priority to its work of detection and recommendations for the initiation of sanctioning procedures, although these are not binding for the entities, which limits their usefulness. It has also been very active as an assistant in criminal proceedings. Prevention is mainly carried out through training courses, but given the limited resources they have, has been implemented scarcely.

Several control bodies, for example, internal audits or the Ministry of Justice’s System of Ethics and Values Commissions, which could be carrying out greater prevention, do not have sufficient economic and human resources to do so.

The second key message is that there is a lack of reporting and whistleblower protection mechanisms. Costa Rica does not have a law that makes it easier for public servants to file complaints, let alone one that guarantees minimum protection for whistleblowers against reprisals taken against them in the workplace. This discourages public servants from sharing valuable information about corruption cases with the competent authorities. Within the Judicial Branch there is a Victim and Witness Protection Office for general criminal proceedings, but there is no specialization for corruption-related crimes. Moreover, the existing complaint channels are not uniform in terms of the level of protection, publicity, accessibility, and not all of them have a clear regulatory framework. The data on the effectiveness of these channels is very scarce, and most complaints end up being dismissed.

The third key message is dedicated to identifying two very important pieces of legislation before the Legislative Assembly that have a potential impact on the prevention of corruption. On the one hand, there is the Public Procurement Law, which seeks to modernize this area that is very susceptible to corruption. Currently, the extraordinary procurement procedure is used very frequently and, in addition, the Integrated Public Procurement System, mandatory

since 2016, has not been universalized and has limitations in terms of transparency and accountability. On the other hand, the approval of a law on access to information is pending. So far, regulations have been issued through decrees and jurisprudence for the exercise of this right, which are not applicable to the entire Public Administration, so its scope is limited.

Finally, the last key message relates specifically to prevention measures implemented in the judiciary and the Public Prosecutor's Office, which were the subject of a recent study. Several of the bodies and initiatives that have been created in the judicial sphere require review in order to avoid overlapping powers and to manage the limited resources available to them more efficiently. In addition, the implementation of the sanctioning regime has not been a useful tool for detecting the areas most vulnerable to corruption in the judiciary or for sanctioning misconduct. With respect to threats to judicial independence, two types of threats have been identified, an external one related to the appointment process for Supreme Court and Constitutional Chamber justices, which has not been transparent or objective and is constantly being called into question, and an internal one related to the appointment and disciplinary powers of the Plenary Court.

Regarding Chapter V on asset recovery, this report has found two key messages. The first key message notes a continuous development of general anti-money laundering regulations, but with a low sanctioning capacity. The application of the sanctioning regime by the competent superintendencies has been almost non-existent in the last five years. As regards criminal sanctions, prosecution of money laundering has been limited by the way in which it is defined in the legislation. Thus, in Costa Rica there is the offence of laundering of proceeds of drug trafficking, which is investigated by the Office of the Deputy Prosecutor for Money Laundering and Emerging Market Capital, and laundering of proceeds derived from acts of corruption, which is the Deputy Prosecutor's Office for Probity, Transparency and Anticorruption's responsibility. This has led to a lack of coordination in the prosecution of this crime, and a series of investigative limitations for the Deputy Prosecutor of Anti-Corruption, such as not having access to the Financial Intelligence Unit. However, a bill is being developed that seeks to unify the two types of offences and centralize prosecution in the Deputy Prosecutor's Office for Money Laundering and Emerging Capital, although this institution also has investigative limitations. With regard to the Financial Intelligence Unit, there is not much information available on the official websites, but the authors of this report found that the Suspicious Transaction Reports it receives have been gradually increasing over the last decade, and with it the number of financial reports it sends to the Public Prosecutor's Office. The latter has been finding it increasingly difficult to deal with these reports, since it does not have sufficient resources to cope with the increasing workload.

The second key message point is that there are gaps regarding the country's measures for the recovery and direct return of assets. There is no domestic legislation in this area and no specific international cooperation agreements have been signed for this purpose. Thus, it is not even clear to the Costa Rican authorities what the best way for another State to bring legal action or claim compensation is in the national courts, nor has a request to that effect been submitted. The same is true in the case of the return of assets central to the crime committed. In addition, confiscation cannot be applied to assets of economic interest of equivalent value, which could be a constraint on international cooperation.

In conclusion, the implementation of the analyzed provisions is generally moderate for those of Chapter II, and poor for those of Chapter V, mainly due to a lack of adequate development of regulations and the low number of signed agreements for international cooperation on the recovery and return of assets of foreign origin. To improve the level of implementation of both chapters it is necessary to define and consolidate a central authority to ensure better management of resources and coordinated work, to provide more tools and inputs to the entities that fight corruption, and to carry out profound legal reforms to eliminate the investigative and sanctioning obstacles that exist in practice.

Availability of Information

In general, the degree of access to the information required for Chapter II of the UNCAC is good. Basic statistics are available on the internet, as well as qualitative information such as follow-up reports prepared by national and international public and private institutions that have been crucial for the analysis of the implementation of these articles in Costa Rica. Improvements should be made to follow up on the records of criminal cases and complaints, so that the data is traceable inter-institutionally.

However, with regard to Chapter V on asset recovery and the return and disposal of assets, there is no information available on the websites of the Public Prosecutor or the Judiciary, so most of the information was obtained through requests for information and interviews with the institutions' heads and officials.

Implementation in Law and in Practice

Recent normative developments in the area of anti-corruption are largely due to Costa Rica's commitments to international organizations such as the Organization for Economic Cooperation and Development (OECD), of which it is expected to become a member very soon. However, the same progress has not been achieved in the implementation of some provisions of the United Nations Convention against Corruption.

This is the case for articles 5, 8.4, 53, 56 and 57.3 of the Convention, for which no legislation or policy has been issued. Thus, the implementation of a national anti-corruption strategy, the adoption of draft legislation to ensure the protection of public officials from reprisals taken against them in the workplace, and the preparation of legal initiatives regulating measures for the direct recovery of assets and the return of assets that have been subject to confiscation are still pending. Nevertheless, it is important to note that a Working Group, comprised of various public entities and civil society, is currently preparing the National Public Integrity Strategy which is expected to be approved in 2021.

With regard to articles 6 and 13.1, no new regulations have been adopted, since the structure and powers of the three preventive bodies discussed in the report are provided for in their own legislation, which was not issued because of the United Nations Convention against Corruption. However, they have strengthened accountability and people's interest in exercising citizen oversight through their community outreach initiatives, the opening of spaces for citizen participation, and the creation of channels for the submission of complaints.

Examples of such initiatives are the Office of the Comptroller General of the Republic¹'s program "Together we are more", which has existed since 2015; the projects "Opening the minds of citizens", "Youth comptrollers", "With this project we move from awareness to practice", which were all started in 2016, and the virtual course on citizen oversight "Each one counts". The Office of the Deputy Prosecutor for Probity, Transparency and Anti-Corruption held its first "Citizen Meeting"² to inform citizens about its work. Finally, the Judicial Branch created the Citizen Participation Program³ and the Legislative Assembly also has its own mechanisms to guarantee participation.⁴

Regarding public procurement, the OECD report's recommendations were followed, in particular the recommendation on developing draft Law 21.546⁵, which was already approved by the Special Commission of the National Assembly in the first session. However, this draft law is still under discussion and it is unknown when it will finally be approved so that it can enter into force. As for access to information, no law has been issued that expressly regulates the exercise of this right, although there are regulations that refer to it. Thus, for example, Executive Decree No. 38994-MP-PLAN-MICITT was issued in 2015⁶ and the Decree on Transparency and Access to Information No. 40200-MP-MEIC-MC⁷ and Guideline No. 073-MP-MEIC-MC⁸ was issued in 2017 in the framework of compliance with the Open Government Partnership, which Costa Rica has been part of since 2012. Other important initiatives in this area are the Public Sector Transparency Index⁹; the Inter-Institutional Transparency Network¹⁰ and the National Transparency Perception Survey developed by the Comptroller General of the Republic.

With regard to article 11 on preventive measures in the judiciary and the Public Prosecutor's Office, a reform is being prepared to improve the disciplinary regime and strengthen the capacities of the Judicial Investigation Court. However, it is unknown when the bill will be submitted to the Legislative Assembly. Additionally, the Judicial Branch has two important initiatives related to corruption prevention: the "Strengthening of institutional human capacity in the area of fraud or corruption detection and anti-corruption methods" and the "Early

¹ "2019 Annual Report," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/documentos/publicaciones-cgr/memoria-anual/2019/memoria-anual-2019.pdf>.

² "Are You Affected by Corruption?" (2018-2019), Public Prosecutor's Office, accessed on August 20, 2020, <https://ministeriopublico.poder-judicial.go.cr/images/Documentos/revista/revistanov18.pdf>.

³ "Citizen Participation," Judiciary, accessed on September 30, 2020, <https://participacionciudadana.poder-judicial.go.cr/index.php/conozcanos/participacion-ciudadana>.

⁴ Legislative Assembly, *Participation and Communication Mechanisms*, accessed on September 30, 2020, http://www.asamblea.go.cr/pa/Documentos_Participacion_Ciudadana/MECANISMOS%20DE%20PARTICIPACION%20Y%20COMUNICACION%20CIUDADANA.docx.

⁵ <http://proyectos.conare.ac.cr/asamblea/21546%20DICTAMEN%20AFIRMATIVO%20UNANIME.pdf>.

⁶ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRT C&nValor1=1&nValor2=79442&nValor3=100459&strTipM=TC.

⁷ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRT C&nValor1=1&nValor2=84166&nValor3=108486&strTipM=TC.

⁸ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRT C&nValor1=1&nValor2=84167&nValor3=108487&strTipM=TC.

⁹ The Office of the Ombudsman, accessed on September 30, 2020, http://www.dhr.go.cr/red_de_transparencia/indice_de_transparencia_del_sector_publico.aspx.

¹⁰ The Office of the Ombudsman, accessed on September 30, 2020, http://www.dhr.go.cr/red_de_transparencia/.

Warning System". An Axiological Policy has also been developed to educate judicial officials in ethical values; however, its implementation is scheduled for 2026.

Finally, with regard to articles 52.1, 52.5, 52.6 and 58 of the Convention on anti-money laundering, existing laws such as Act 7786 were amended¹¹ in 2017, and the National Council for Supervision of the Financial System is constantly issuing regulations in compliance with the recommendations issued by the Latin American Financial Action Task Force, for example, the Corporate Governance Regulation¹² and the Registration Regulation.¹³ Similarly, the "Know Your Customer Information Center" platform is currently being developed.¹⁴

Table 2. Summary of implementation and enforcement of Chapter II

UNCAC Articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5- Preventive anti-corruption policies and practices	Not implemented	Moderate (National Integrity and Corruption Prevention Strategy announced for May 2021)
Art. 6 - Corruption prevention bodies	Largely implemented	Moderate
Art. 8.4- Mechanisms for information and protection of whistleblowers	Not implemented	Poor
Art. 9.1- Public procurement	Partially implemented	Good
Art. 10 and 13.1- Access to information and participation of society	Largely implemented	Good
Art. 11- Judiciary and prosecution	Partially implemented	Moderate

Source: Report Template, UNCAC Coalition

Table 3. Summary of implementation and enforcement of Chapter V

UNCAC Articles	Status of implementation in law	Status of implementation and enforcement in practice
Arts. 52.1; 52.5; 52.6; 58- Anti-money laundering	Largely implemented	Moderate

¹¹ Act 7786/1998, Act on Narcotics, Psychotropic Substances, Drugs for Unauthorised Use, Related Activities, Money Laundering and Financing of Terrorism, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=29254.

¹² "Acuerdo SUGEF 16-16 Reglamento sobre gobierno corporativo," Consejo Nacional de Supervisión del Sistema Financiero (CONASSIF), accessed on November 30, 2020, [https://www.sugef.fi.cr/normativa/normativa_vigente/SUGEF_16-16_\(v_02_diciembre_2016\).pdf](https://www.sugef.fi.cr/normativa/normativa_vigente/SUGEF_16-16_(v_02_diciembre_2016).pdf).

¹³ Regulation 1450/2018, Regulation for registration and deregistration with the SUGEF of regulated entities that perform any or some of the activities in Articles 15 and 15 bis of Law on narcotic drugs, psychotropic substances, drugs for unauthorized use (SUGEF 11-18) access September 30, 2020, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=87558&nValor3=116472&strTipM=TC.

¹⁴ Central Bank of Costa Rica, *Central Guide: Central Directo: Know Your Customer - Compliance*, accessed on September 30, 2020, https://www.centraldirecto.fi.cr/Sitio/CentralDirecto/Guias/Guia_conozca_cliente.pdf.

Arts. 53 and 56 - Measures for direct recovery of assets	Not implemented	Poor
Art. 53 a, b and c- Return and disposal of confiscated assets	Not implemented	Poor

Source: Report Template, UNCAC Coalition

Table 4. Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the Report	Key words that explain the performance
Office of the Comptroller General of the Republic	Moderate	Oversight, focused training, few criminal complaints, dismissal of citizen complaints, underutilization of sworn statements, appointment of head depends on the Legislative Assembly.
Office of the Public Ethics Ombudsman	Moderate	Training, low coverage, preliminary investigation reports not mandatory, limited resources, transparency, depends on the Executive.
Deputy Prosecutor's Office for Probity, Transparency and Anticorruption	Moderate	Investigation, lack of resources, investigative limitations, low sanction rate, lack of resources, low sanction rate.
Office of the Deputy Prosecutor for Money Laundering and Emerging Market Capital	Moderate	Prosecution of offences, emerging capital, operational constraints.
Superintendencies of Financial Institutions, Securities, Insurance and Pension Funds.	Moderate	Risk-based supervision, Know Your Client Information Center, technical independence, little specialization of staff, little application of sanctioning regime.
General Directorate of Taxation	Moderate	Monitoring, application of sanctions, registry of beneficial owners not public, investigative limitations, no full-time staff.
Financial Intelligence Unit	Good	Scarce resources, suspicious transaction reports, alerts and bulletins, administrative freezes, training, etc.
Office of Attention and Protection to the Victim	Moderate	Protective measures for all criminal proceedings, no specialization, limited resources.
Judicial Investigation Organism	Moderate	Audits, investigations, reports, evidence gathering, limited resources, no specialized money laundering staff, small anti-corruption unit.
Court of Judicial Inspection	Moderate	Disciplinary regime, on-site inspections, prevention of corruption.

Recommendations for priority actions

Article 5: Preventive anti-corruption policies and practices

- Finalize and implement the National Integrity and Corruption Prevention Strategy;
- Consolidate the steering role for the prevention of corruption in a single body.

Article 6: Preventive anti-corruption bodies

- Provide control bodies with more resources for preventive purposes;
- Carry out regulatory reforms to make the reports of the Office of the Public Ethics Prosecutor mandatory;
- Re-evaluate the powers of the Office of the Comptroller General of the Republic so that they can provide greater input to the Public Prosecutor's Office;
- Strengthen coordination of training and awareness-raising activities to avoid duplication and improve their coverage and quality.

Article 8.4: Access to information and whistleblower protection mechanisms

- Approve draft legislation amending the "Law against Corruption and Illicit Enrichment in the Public Service" to regulate the mechanisms for the protection of public officials;
- Strengthen the Office of Victim and Witness Protection to become a body responsible for providing protection to whistleblowers as required by the United Nations Convention against Corruption;
- Review the effectiveness of public reporting channels and their protection protocols.

Article 9.1: Public procurement

- Approve draft law number 21.546 with the inclusion of transparency, participation and citizen control mechanisms;
- Incorporate all public entities into the Integrated Public Procurement System (SICOP), including the decentralized sector.

Arts. 10 and 13.1: Access to information and participation of society

- Develop and adopt an access to information law that is binding on the entire public administration;
- Publish the contents of public officials' sworn asset declaration;
- Make the register of beneficial owners public;
- Conduct more community outreach initiatives to increase citizen participation.

Article 11: Judiciary and Prosecution Services

- Conduct a review of the competencies and results of prevention bodies to avoid overlapping competencies and a waste of resources;
- Strengthen the capacity and independence of the Court of Judicial Inquiry;
- Reform the appointment process for Supreme Court and Constitutional Chamber justices;
- Improve the disciplinary regime.

Articles 52.1, 52.5, 52.6, 58: Anti-Money Laundering

- Provide more resources to the relevant entities and monitor their performance;
- Eliminate legal restrictions that affect institutions' investigative powers;
- Approve the bill that unifies the two criminal offences of money laundering;

Articles 53 and 56: Measures for Direct Recovery of Assets and Article 57.3: Return and Disposal of Confiscated Assets

- Develop and adopt domestic legislation regulating the direct recovery of assets by other States and the return of assets that have been confiscated;
- Enter into international cooperation agreements.

3 Assessment of the Review Process for Costa Rica

The official reports for the UNCAC review process are being compiled without the participation of civil society and with no publicity. The Public Ethics Ombudsman's Office (PEP) coordinates the responses with public entities and systematizes the report to be sent, but this is not previously known by the public.

Transparency of these processes is provided only through the official UNODC web pages, since the PEP's own web page does not have a section for the UNCAC review, nor are these official reports publicly available. No dissemination activities are carried out by PEP before or after the presentation of the official review report to the Committee of Experts.

This is the first time a shadow report has been prepared by civil society in this review cycle; previously there was no civil society counterpart. For the preparation of this shadow report, the official report that had already been presented by the Costa Rican government was requested, but to date it has not been made available.

Table 5. Transparency of the government and CSO participation in the UNCAC review process

Question	Reply	Comments
Did the government disclose information about the country's focal point?	Yes	The Office of the Public Ethics Prosecutor is the focal point for the two anti-corruption conventions (OAS and UN).
Was the review schedule publicly known?	No	It is not published, nor was it reported directly.
Was civil society consulted in the preparation of the self-assessment?	No	The report is being compiled without the participation of civil society.
Was the self-assessment published online or made available to civil society?	No	
Did the government agree to a country visit?	Pending	As of March 2021, it had not been carried out due to the pandemic.
Was a country visit undertaken?	Pending	
Was civil society invited to provide input to the official reviewers?	No	The report is being compiled without the participation of civil society.
Was the private sector invited to provide input to official examiners?	No	The report is being compiled without the participation of the private sector.
Has the government committed to publishing the full country report?	Yes	

Source: Report Template, UNCAC Coalition

Access to information

In general, the information available on the public institutions' websites for the implementation of the articles contained in Chapter II is good, since there the authors of this report were able to access reports on accountability and the work of the various entities that have competencies or are related in some way to the fight against corruption in Costa Rica. The same cannot be said of Chapter V, for which there was almost no information available, for example, on the Public Prosecutor's Office's website, and the information that was found was out of date. Almost all information was retrieved from reports from international organizations and from interviews with certain public officials.

In order to compile the necessary information, the authors of this report first carried out exhaustive research on several public institutions' websites, which was complemented with reports from international organizations, such as the Organization for Economic Cooperation and Development. To confirm that the information available on the website was up to date, and to obtain even more data on specific topics, requests for information were submitted and interviews were requested with the heads of the following public institutions: Comptroller General of the Republic, Directorate General of Taxation, Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption, Deputy Prosecutor's Office for Money Laundering and Emerging Capital, Costa Rican Drug Institute, Office of the Public Ethics Prosecutor, Superintendency General of Insurance, Superintendency General of Securities, Superintendency of Pensions, Court of Judicial Inspection, Technical Advisory and International Relations Office, Financial Intelligence Unit, Superintendency General of Finance. Information was also requested from the Deputy Prosecutor's Office for Drug Trafficking, the Judicial Investigation Agency, the Planning Directorate of the Judiciary and the Office of Victim Assistance and Protection. In addition, other civil society reports were used as a source, specifically the reports submitted to the Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption by Asociación Costa Rica Íntegra.

The most important documents available online from state agencies were their work reports, since they contained everything from statistical data and budgets to the limitations they face and the progress made by each entity in the fight against corruption.

The biggest obstacle we encountered was finding statistical data on measures for the direct recovery of assets and the return and disposal of confiscated assets on the websites of public institutions. The reason for this is that there is information is not compiled on these issues, and the little information available is not updated on the websites.

4 Assessment of the implementation of Chapter II provisions

This section assesses the implementation of Articles 5, 8.4, 9.1, 10, 11 and 13.1 of Chapter II of the UNCAC, first providing a strategic reading on the provision that contains the most relevant findings, and then analyzing the qualitative and quantitative information collected on each of the issues in detail to provide the reader with an overview of the context and level of implementation in Costa Rica.

4.1 Art. 5: Preventive anti-corruption policies and practices

Strategic reading

Costa Rica has carried out several normative reforms related to the fight against corruption that have allowed for adjusting the legal system to international practices and standards. However, further changes are required to fully comply with the United Nations Convention against Corruption, especially in the area of prevention. To date, the country has not assigned an institutional steering role for the issue, nor has it approved national policies or strategies as required by article 5 of the UNCAC.

The main public policy instruments, such as the National Development Plan¹⁵, do not establish clear policies in this area, which limits the allocation of resources because it is difficult to justify the allocation of budget in each entity if it is not part of the institutional objectives. Existing initiatives are isolated and have little impact.

There is an extensive agenda of legislative proposals related to the prevention of corruption, including a comprehensive reform of the Law against Corruption and Illicit Enrichment, a law on Access to Information, Public Procurement, among others, but there is no legislative support for their approval.

Currently, the National Strategy for Integrity and Prevention of Corruption (ENIPC) is being developed by a multi-sectoral group called "Working Group" whose objective it is to establish the strategic framework for action by the State and other actors in society, with emphasis on prevention, promotion of ethics and the creation of a culture of legality that reduces acts of corruption through five areas of work, namely: governance scheme of the area of corruption, human talent management, promotion of citizen participation and control, management of corruption risks in public-private interaction, and, access to information and accountability.

4.1.1 Legal framework

Costa Rica has a comprehensive legal system on anti-corruption; however, there is still much work to be done in this field, particularly with a preventive approach. As evidenced in the Report on the Implementation of the UNCAC by Costa Rica corresponding to the first review cycle 2010-2015¹⁶, it is recommended to make several reforms to the criminalization of corruption-related offences in order to keep them in line with the text of the Convention, and to strengthen international cooperation.

It is also important to note that in recent years Costa Rica has made structural changes to bring its regulatory framework in line with international standards and practices in order to

¹⁵ Ministry of National Planning and Economic Policy, *National Development Plan 2015-2018*, accessed on September 30, 2020, <https://documentos.mideplan.go.cr/share/s/L4VKA53TyOWyPR9BAB-qA>.

¹⁶ https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_08_10_Costa_Rica_Final_Country_Report.pdf.

complete the process of accession to the Organization for Economic Co-operation and Development (OECD). In terms of anti-corruption, the country ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) before the OECD in 2017, and Law No. 9699 on Liability of Legal Persons on Domestic Bribery, Transnational Bribery and Other Offences was issued in 2019, in addition to several administrative acts. Similarly, Law No. 9416/2016¹⁷ was issued to Improve the Fight against Tax Fraud in compliance with the recommendations issued by the OECD and the Financial Action Task Force (FATF) on tax and financial transparency, in order to make the identity of the beneficial owner of financial transactions transparent. It is worth noting that pressure from these international entities played an important role in the approval of this regulation while other anti-corruption legislation proposed to Congress has not advanced with the same speed because it was not a constituent part of the OECD accession agendas.

4.1.2 Anti-corruption strategies and policies

The National Development Plans (PND) outline national objectives and goals that guide the policies, plans, programs and budgets of Costa Rican public institutions.¹⁸ These plans are prepared every four years by the Ministry of National Planning and Economic Policy (hereinafter MIDEPLAN) in coordination with the National Planning System's bodies, which are responsible for monitoring them.

Since Costa Rica joined the Open Government Partnership in 2012, the PND 2015-2018¹⁹ was the first to include the principles of this initiative by setting the fight against corruption and the strengthening of a transparent State as an objective. However, it was not specified how to achieve this purpose, the actions to be taken, nor which would be the bodies in charge or the mechanisms for its implementation. In fact, the legislation does not designate an entity to lead and centralize the coordination of the different social actors for the development, execution and evaluation of a public anti-corruption policy.

This has led each entity to design and implement its own anti-corruption actions. For example, according to the Public Ethics Ombudsman, Tatiana Gutiérrez, there are bodies such as the Judiciary that have good training programs for personnel in public ethics, but this is not the case in other institutions and municipalities, which is why uniformity is needed.

Within the framework of action of the National Development Plan 2015-2018, the National Commission for Open Government²⁰, made up of representatives of the government, civil society and the private sector was created to promote the principles of Open Government, as well as to formulate and evaluate Open Government Action Plans. To date, Costa Rica has four such documents.

¹⁷ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=83186.&nValor3=106701.

¹⁸ "National Development Plan," Ministry of National Planning and Economic Policy, accessed on September 30, 2020, <https://www.mideplan.go.cr/plan-nacional-desarrollo>.

¹⁹ "National Development Plan 2015-2018," Ministry of National Planning and Economic Policy, accessed on August 7, 2020, <https://www.mideplan.go.cr/Plan-Nacional-Desarrollo-2015-2018>.

²⁰ Executive Decree : 38994 of 29/04/2015 www.gobiernoabierto.go.cr.

In accordance with the aforementioned National Development Plans, the Government Action Plan II for 2015-2017, covers three thematic areas: transparency and access to information, the fight against corruption, and citizen participation, which are embodied in twenty-three commitments.²¹ With respect to the fight against corruption, the Plan of Action has four commitments. The first is related to the publication of internal audit reports and details of compliance with the recommendations made to facilitate the work of citizen oversight, for which an initiative called the Compliance Matrix (MACU) was established.

Regarding the implementation of this matrix, the Open Government website²² has a list of the thirty-two ministries and institutions that have developed and published this instrument as of July 2020. In other words, only a limited number of public entities are participating in this initiative, considering that there are more than three hundred public entities in the country. Additionally, the information contained in the MACU is not uniform for all entities and is difficult for citizens to understand.²³

According to the Open Government Partnership's Independent Review Mechanism (MRI) report (2017)²⁴, the reforms carried out regarding the commitment to implement regulatory reforms to prevent, detect and punish corruption, were not a result of the National Development Plans, but were due to the commitments that the government maintains with international organizations. Nevertheless, this commitment was included in the Open Government Action Plan III for 2017-2019 for follow-up, which so far has made 25%²⁵ progress, although it was scheduled to be completed in August 2019 and there are currently no evaluations of its results.

Regarding the Second Plan of Action's commitment to develop a transparent selection system of public servants, the government pledged to create an online system to publish information related to the selection processes in those institutions subject to the civil service regime. The result, according to the MRI report, was a greater dissemination of information and therefore a greater number of applicants. However, there is a need to include information subsequent to the hiring of candidates, for example, the objective criteria used to prefer one applicant over another. Therefore, as a follow-up to this initiative, it was decided to include "the commitment to design and implement an online system for the competition for positions under the Civil Service Regime" in the Third Plan of Action.²⁶ To date, there is no evaluation report on follow-up or compliance by the authorities.

With respect to the fourth and final commitment, which is to make the processes from the initial approach, execution and completion of infrastructure projects transparent, Costa Rica

²¹ "Annual Goals Monitoring Report 2018 and 2015-2018 Period-End Closing Report." (2018), Ministry of National Planning and Economic Policy, accessed on August 5, 2020, <https://documentos.mideplan.go.cr/>.

²² "Audit Report Compliance Matrices," Presidency of the Republic and Ministry of the Presidency, accessed on August 8, 2020, <https://gobiernoabierto.go.cr/macus/>.

²³ "Independent Review Mechanism (IRM): Costa Rica End-of-Term Report 2015-2017," Israel Aragón Matamoros, accessed on August 5, 2020, https://www.opengovpartner-ship.org/wp-content/uploads/2018/06/Costa-Rica_End-of-Term_Report_2015-2017.pdf.

²⁴ Ibid.

²⁵ "Seguimiento a los compromisos de la estrategia nacional por un gobierno abierto," Presidency of the Republic and Ministry of the Presidency, accessed on August 8, 2020, <https://gobiernoabierto.go.cr/panorama/seguimiento-a-los-compromisos-de-la-estrategia-nacional-por-un-gobierno-abierto/>.

²⁶ See "Seguimiento del III Plan de Acción de Gobierno Abierto", Presidency of the Republic and Ministry of the Presidency, accessed on 8 August 2020, <https://www.gobiernoabierto.go.cr/seguimiento-iii-plan-de-accion/>.

adhered to the Construction Sector Transparency Initiative (CoST) in 2016, which sets the standards and mechanisms for the disclosure of information. The initiative was formalized through Executive Decree 40380-MP-H-MOPT-MIDEPLAN of 2017²⁷ which defines its scope, which covers all public entities without prejudice to the independence or autonomy they have, and, the Multisectoral Group was created, made up of representatives of the government, civil society and the private sector, which in its capacity as the highest coordinating body is responsible for implementing this initiative.

The "First Report on Public Infrastructure Project Assurance in Costa Rica" (2019)²⁸, prepared by the Multisectoral Group CoST Costa Rica, found that information management platforms for infrastructure projects such as Mapainversiones²⁹ contain limited information, are not user-friendly if the person consulting the page is not familiar with procurement processes, and institutional sites do not usually publish official project documents. In addition, it states that there are information gaps on the phases of public procurement and identifies low disclosure of information as the stages of work progress.

Finally, the National Development Plan IV for 2019-2022 did not include integrity and corruption as a national objective. However, by citizen initiative, it was included in the IV Open Government Action Plan 2019-2021.³⁰ The document notes the current absence of national strategies to coordinate and prioritize actions to prevent corruption, caused by the lack of education, institutional ethics and values; the lack of budgetary, human and technological resources, the absence of a governing body in the field of anti-corruption, as well as the scarce training that exists on the subject.

Despite this assessment, no integrity and corruption prevention strategy was developed with the reason being that this process requires time that does not fit the period of this Action Plan. Therefore, a commitment to "Strengthening citizen capacities and mechanisms for the prevention of corruption in the Public Administration based on open data" was made. The initiative aims to disseminate existing anti-corruption regulations among the private sector, journalists and civil society and to create new oversight and reporting mechanisms. There is a work plan for Costa Rica³¹ on the Open Government Partnerships website, which began on January 1, 2020 and ends on August 31, 2021; however, the Open Government Partnership approved an extension of one year until 2022 due to the pandemic, so no evaluation of the work plans results has been conducted to date.

Due to the importance of having a national anti-corruption policy, the National Integrity and Corruption Prevention Strategy (ENIPC) is currently being developed by a multisectoral group

²⁷ http://pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&n_Value1=1&nVa_lor2=79442&n_Valor3=112832&strTipM=TC%3E

²⁸ "First Assurance Report on Public Infrastructure Projects in Costa Rica" (2019), Infrastructure Transparency Initiative, accessed on August 8, 2020, 27, <http://costcostarica.gn.apc.org/wp-content/uploads/2019/11/Primer-Informe-Aseguramiento-Costa-Rica.pdf>.

²⁹ "Mapainversiones + Module COVID-19. Plataforma de Gestión de la Información de los proyectos de infraestructura", Ministry of National Planning and Economic Policy, accessed on August 8, 2020, <http://mapainversionescr.mideplan.go.cr/#/proyectos>.

³⁰ "Open State Action Plan 2019-2022," Presidency of the Republic and Ministry of the Presidency, accessed on August 8, 2020, <https://www.gobiernoabierto.go.cr/plan-de-accion-de-estado-abierto-iv/>.

³¹ Open Government Costa Rica, accessed on 25 February 2021, <https://www.gobiernoabierto.go.cr/seguimiento-plan-de-accion-de-estado-abierto-integridad-y-anticorrupcion/>.

called the "Working Group". This working group is made up of some entities representing the government, such as the Office of the Comptroller General of the Republic, the Office of the Attorney General of the Republic, the Public Prosecutor, and the Ombudsman's Office; civil society, including Asociación Costa Rica Íntegra, and some private sector entities. The objective is to establish the strategic framework for action by the State and other actors in society in the prevention, promotion of ethics and the creation of a culture of legality that reduces acts of corruption in public service. The ENIPC covers five thematic areas: the creation of a governance scheme in the area of corruption; the management of human talent; the promotion of citizen participation and control; risk management in public-private interaction; and access to information and accountability.³² Its implementation is scheduled for the first quarter of 2021.

Finally, it should be noted that in addition to Costa Rica's adherence to the Open Government Partnership and CoST, the country also participates in other international programmes and initiatives, although their implementation and results are not disseminated:

- "EFS in the Fight against Corruption"³³ to support Supreme Audit Institutions in increasing the effectiveness of their fight against corruption;
- Lima Commitment "Democratic Governance in the face of Corruption";
- CLAD - Ibero-American Charter of Ethics and Integrity, 2018; and
- Sustainable Development Goals Agenda, SDG 16.

Regarding the publicity of anti-corruption initiatives, the National Survey on Corruption Prevention conducted in 2020 by the Office of the Comptroller General of the Republic revealed that only 21% of respondents are aware of actions in the public sector to prevent corruption and 59% of respondents said that the government is acting badly in the fight against corruption, which indicates great opportunities for improvement in this area (see Annex 1).³⁴

Good practices:

- *Ongoing regulatory reforms to bring the legal system into line with international anti-corruption standards and practices;*
- *The National Integrity and Corruption Prevention Strategy is being developed with the objective of establishing the actions to be taken by the State and other social actors focused on the promotion of ethics and the creation of a culture of legality;*
- *Creation of the Open State and Digital Transformation Strategies to promote transparency and citizen participation;*
- *Participation in several international initiatives such as Open Government Partnership, CoST and Supreme Audit Institutions in the Fight Against Corruption.*

Deficiencies:

- *There is no national anti-corruption policy, so each entity implements its own actions without any coordination or uniformity;*

³² "Annual Report of Work 2019-2020," The Office of the Ombudsman, accessed on August 8, 2020, http://www.dhr.go.cr/transparencia/informes_institucionales/informes/labores/documentos/if_2019_2020.pdf.

³³ "IDI's "EFS in the Fight Against Corruption" programme begins implementation at OLACEFS, the Latin American and Caribbean Organization of Supreme Audit Institutions, accessed on 8 August 2020, <https://www.olacefs.com/se-dio-inicio-a-la-implementacion-de-la-iniciativa-idi-de-lucha-contra-la-corrupcion-en-las-efs-de-la-olacefs/>.

³⁴ "Citizen Perception: 2020 National Corruption Prevention Survey," Office of the Comptroller General of the Republic, accessed on August 20, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/enpc-2020/perc-cuid.html>.

- *No designated leadership body has been appointed to develop and coordinate the implementation of anti-corruption policies;*
- *The Government Action Plans have not been fully implemented and have not achieved the expected results;*
- *Open State and Digital Transformation Strategies have had limited implementation.*

4.2 Art. 6: Preventive Anti-Corruption Body or Bodies

Strategic reading

While Costa Rica does not have an anti-corruption agency, several entities have competencies related to prevention as required by Article 6 of the UNCAC, which also have powers for detection and sanctioning. Among the most relevant are the Office of the Comptroller General of the Republic (CGR), the Office of the Public Ethics Prosecutor (PEP) and the Office of the Deputy Prosecutor for Probity, Transparency and Anti-Corruption (FAPTA).

According to its 2013-2020 Strategic Plan³⁵, the main contribution of the Comptroller's Office with regard to preventive work, is through the audits it carries out. However, this is increasingly complex due to the large size of the Costa Rican public administration, which continues to grow. It also conducts trainings especially for internal auditors and those in charge of legal institutions, and it has major programs for dissemination and awareness-raising. In addition, of the three entities, the Comptroller's Office is the only one with sanctioning powers. Nonetheless, the application of sanctions derived from the audits it carries out has been gradually decreasing since 2015.

The Office of the Public Ethics Prosecutor's and Office of the Deputy Prosecutor for Probity, Transparency and Anti-Corruption's greatest contributions to prevention are the trainings they provide to public institutions, professional associations and civil society organizations, thanks to which they have managed to position certain concepts on public ethics among the citizenry.

Regarding the limitations these institutions face for the proper exercise of their functions, it is important to note that the three entities lack sufficient economic and human resources to cope with the workload, and none of them has the specialized staff to deal with the increasing complexity of the complaints that are filed. Moreover, they face legal and operational restrictions that have prevented them from developing preventive and investigative capacities in anti-corruption matters. Thus, for example, none of them can freely access databases containing confidential information (such as that of the tax administration, customs, sworn declarations, final beneficiaries of the Central Bank of Costa Rica, among others³⁶) and the FAPTA cannot use the Financial Intelligence Unit's tools for the detection of corruption cases, nor can it intercept the communications of the persons under investigation because in practice it is complicated to obtain judicial authorization.

Unlike in other countries, there is no anti-corruption agency in Costa Rica, since the existing public institutions have their own internal control bodies and there are several entities whose competencies are related to the fight against corruption. Thus, the Office of the Comptroller General of the Republic (CGR), the Office of the Public Ethics Prosecutor (PEP), the Deputy Prosecutor for Probity, Transparency and Anti-Corruption (FAPTA), the Ombudsman of the Republic, the Civil Service Tribunal, the Legislative Assembly, the Comptroller of Services,

³⁵ CGR. Institutional Strategic Plan PEI 2013-2020, accessed on August 20, 2020, <https://cgrfiles.cgr.go.cr/>.

³⁶ Meléndez Sequeira (FAPTA Deputy Prosecutor), in conversation with the author, December 2020.

and the Criminal Jurisdiction of the Treasury and the Civil Service are among the most important ones.³⁷

For the purposes of this report, reference will be made only to the Office of the Comptroller General of the Republic, the Office of the Public Ethics Prosecutor and the Office of the Deputy Prosecutor for Probity, Transparency and Anti-Corruption, for two reasons: first, because their powers cover the areas of prevention, detection and punishment, and second, because they are the entities that deal with corruption cases the most.

As was mentioned under Article 5, Costa Rica has not developed any national anti-corruption policies, and the legislation has not designated one institution to take the lead in the development of such policies and in the task of preventing corruption. At the moment it is not possible to evaluate the implementation of anti-corruption policies by public entities as required by article 6 of the UNCAC.

4.2.1 Institutional capacities versus competencies

Office of the Comptroller General of the Republic (CGR)

The participation of the Comptroller's Office in the fight against corruption is focused on prevention, which according to Luis Diego Ramirez³⁸ is carried out through the exercise of the following powers: i) the subsequent control of the management of public funds, ii) the prior control in budgetary matters and administrative contracting, iii) the determination of civil and administrative responsibilities, iv) the provision of consultations and advice in relation to public funds; v) the resolution of appeals in administrative contracting; and vi) the receipt and verification of asset declarations.³⁹ The Comptroller's Office also has several projects that enable it to fulfill this purpose, such as the national surveys on corruption prevention and perception of transparency in the public sector⁴⁰, as well as the Institutional Management Index,⁴¹ which have been useful tools for evaluating the general situation of the public administration in the area of transparency and anti-corruption.

The execution of this oversight body's powers is increasingly complex due to the highly fragmented nature of the Costa Rican state structure, which is currently made up of 357⁴²

³⁷ "Final Report: Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption" (2013), Organization of American States, accessed on September 30, 2020, http://www.oas.org/juridico/PDFs/mesicic4_cri_sp.pdf.

³⁸ Ramírez González (Legal Division Manager at CGR), in conversation with the author, December 2020.

³⁹ See Political Constitution of the Republic of Costa Rica/1949, 7 November 1949, article 183; Ley 7428/1994, Ley Orgánica de la Contraloría General de la República, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param2=NRTC&nValor1=1&nValor2=21629&strTipM=TC; Ley 7494/1995, Ley de Contratación Administrativa, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=24284&nValor3=95769¶m1=NRTC&strTipM=TC.

⁴⁰ "National Surveys," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://www.cgr.go.cr/03-documentos/publicaciones/encuestas-nac.html>.

⁴¹ "Institutional Management Index," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://www.cgr.go.cr/03-documentos/publicaciones/igi.html>.

⁴² "Public Budgets 2020: Status and Outlook," Office of the Comptroller General of the Republic, accessed on September 2, 2020, <https://sites.google.com/cgr.go.cr/ipp2020-situaciony perspectivas/>.

institutions, programs and trusts. For this reason, the Comptroller General's Office does not have sufficient human resources to deal with the volume and complexity of issues related to the Public Treasury⁴³, despite the fact that it has more staff members each year, especially in the area of oversight.⁴⁴

Considering that the Comptroller's Office's strategic plan for 2013-2020⁴⁵ had the objective of preventing corruption through the strengthening of audit work, it is necessary to analyze the results obtained by the Comptroller's Office in the last five years:

Table 6. Audit outputs of the Office of the Comptroller General, 2015-2019

Outputs	2015	2016	2017	2018	2 019
Audit Reports	119	118	129	118	126
Factual Relationships	7	6	7	1	5
Preliminary investigation reports	39	20	20	41	49
Criminal complaints to the Public Prosecutor's Office	3	0	0	0	3
Number of sanctions resulting from Administrative Proceedings	221	215	75	77	54

Source: Own elaboration with data from the Office of the Comptroller General of the Republic (2015-2019)

The table shows that the number of audit reports remained stable in the years 2015-2019, despite the fact that the number of public entities increased during this period, from 301 in 2015 to 333 in 2019.⁴⁶ It is also noteworthy that the CGR has only submitted six complaints to the Public Prosecutor's Office as a result of its audit work since 2015, which is four times less than those submitted in the previous five years (2010-2014), which shows a decrease in the number of irregular activities detected by this body. This could be due to two reasons. First, the Comptroller's Office does not make it a priority to investigate acts of corruption, although this does not mean that they are not obliged to report them when they are detected and carry out the relevant investigations. The second reason could be that the CGR does not have the capacity and tools to do so, as it has limited investigative powers since it does not have free access to confidential information such as banking and tax information or other databases that could provide important inputs for the detection of acts of corruption.⁴⁷ Furthermore, the issue of digital transformation is a challenge according to Roberto

⁴³ "2018 Annual Report," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/documentos/publicaciones-cgr/memoria-anual/2018/>.

⁴⁴ See "Annual Report 2019", Office of the Comptroller General of the Republic.

⁴⁵ CGR, Institutional Strategic Plan PEI 2013-2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/documentos/cgr-transp/planes-politicas/plan-estrategico/pei-2013-2020.pdf>.

⁴⁶ See CGR Annual Reports 2015-2019: "Memorias Anuales", Contraloría General de la República, accessed on September 30, 2020, <https://www.cgr.go.cr/03-documentos/publicaciones/memoria-anual/memoria-anual.html>.

⁴⁷ Ramírez González (Legal Division Manager at CGR), in conversation with the author, December 2020.

Rodríguez, Associate Manager of the CGR's Legal Division⁴⁸, because corruption cases are increasingly complex and criminal organizations are more robust so that investigations require technological tools that the Comptroller's Office currently does not have.

It should be noted that the Office of the Comptroller General provides formal and informal technical support to the Public Prosecutor's Office through the information requests it receives. According to Mr. Rodríguez, the low number of filed complaints does not mean that the entity is no longer involved in criminal matters, since all the efforts of the CGR are concentrated in this instance through coordinated work with the Public Prosecutor's Office. Moreover, all the complaints they file are followed up on in the investigation stage and even in the procedural stage when they are constituted as plaintiffs.⁴⁹

Additionally, the authors of this report found that the number of sanctions resulting from administrative proceedings has gradually decreased despite the fact that the number of preliminary investigation reports and complaints filed with the CGR has increased. However, this may be in part due to the fact that, complainants file the same complaint with several entities in most cases, so it is common for the complaint to be investigated simultaneously by the Office of the Comptroller General and the Public Prosecutor's Office, in which case the CGR merely coordinates and cooperates with the latter, which then takes the lead in the investigation.⁵⁰

Another striking fact is the low number of sanctions for civil liability imposed by the CGR during the period 1999-2017⁵¹, which does not exceed 134.⁵² According to Luis Ramirez⁵³, this is mainly due to two issues. First, the filing of judicial and constitutional appeals paralyzes the sanctioning procedures, preventing the Comptroller's Office from issuing final decisions. Second, it is complex to quantify and individualize the damage caused by the actions or omissions of public officials in the exercise of their powers in practice, which is one of the legal requirements to determine civil sanctions. Nevertheless, the latter cannot be a justification since the imposition of sanctions is one of the most important powers of the Comptroller's Office, and one that differentiates it from other bodies focused on the fight against corruption. The lack of a timely determination of civil liabilities could imply a significant economic loss for the State since its purpose is to obtain compensation for the damage caused, as well as sending the wrong message to the population about the rigorousness with which the Comptroller's Office applies the sanctioning regime.

Public Ethics Ombudsman's Office (PEP)

The main powers of the PEP are exercised in three areas: administrative, judicial, and international as the State's representative before the follow-up mechanisms of some anti-

⁴⁸ Roberto Rodríguez (Associate Manager of the Legal Division at the Office of the Comptroller General of the Republic), in conversation with the author, December 2020.

⁴⁹ Complainant (*querellante* in Spanish) is a different legal concept from the complainant (*denunciante* in Spanish) who only brings to the attention of the court the commission of a crime, but is not part of the judicial process.

⁵⁰ Rodríguez (Associate Manager of the Legal Division at CGR), in conversation with the author, December 2020.

⁵¹ For 2018 and 2019, there is no data on civil liability penalties in the CGR Annual Reports.

⁵² See Annual Reports 2005, 2009, 2010, 2012-2017 of the CGR.

⁵³ Ramírez González (Legal Division Manager at CGR), in conversation with the author, December 2020.

corruption conventions. In the first area, it has the duty to prevent, detect and eradicate corruption and increase ethics and transparency in the public service by receiving and processing complaints of acts of corruption, lack of ethics and transparency in the public service. In the second area, it has the power to denounce and criminally charge public servants and private persons for unlawful actions in the exercise of their positions or on the occasion of these and can claim damages caused to the State for acts of corruption through the civil action for compensation. From 2017 to 2019 this data is available: the PEP filed 121 civil actions⁵⁴; however, the outcome of the processes is unknown.

The institution's most important contribution to the prevention of corruption has been the training it provides to public institutions, professional associations and civil society organizations on issues of prevention, detection and punishment of corruption, thanks to which the Public Ethics Ombudsman, Tatiana Gutiérrez⁵⁵, says that the PEP has been able to root important concepts in public ethics such as probity, conflict of interest and influence peddling in the general public. Similarly, it has a training program for public officials of various hierarchies, which makes it possible to address ethics management in the public sector in a more appropriate manner.

Table 7. Trainings of civil servants, 2015-2019

Trainings	2015	2016	2017	2018	2019
Number of seminars held	110	108	92	81	35
Number of staff trained	3237	2713	3837	2861	2918

Source: Office of the Attorney General of the Republic (2017, 2019)⁵⁶

Although fewer seminars are held each year, the number of public servants trained seems to be maintained, except for the year 2017 when more public servants benefited from the trainings (Table 7). It should be noted that it has not been possible to train all public servants every year, so it is necessary to conduct more trainings or cover more public servants in each workshop.

Considering the PEP's broad scope, Ms. Gutiérrez indicates that there is a need for more human resources, especially in the area of prevention and processing complaints.⁵⁷ At present, they have no specialized multidisciplinary team or investigators in place, since all

⁵⁴ "Informe de Labores y Rendición de Cuentas 2017," Procuraduría General de la República, accessed on September 30, 2020, https://www.pgr.go.cr/wp-content/uploads/2018/06/Informe_de_labores_y_rendicion_de_cuentas_2017_vf.pdf; "Informe de Labores y Rendición de Cuentas 2018," Procuraduría General de la República, accessed on September 30, 2020, https://www.pgr.go.cr/wp-content/uploads/2019/08/Informe_de_labores_y_rendicion_de_cuentas_2018-vf.pdf; "Informe de Labores y Rendición de Cuentas 2019," Procuraduría General de la República, accessed on September 30, 2020, https://www.pgr.go.cr/wp-content/uploads/2020/03/informe_de_labores_2019.pdf.

⁵⁵ Tatiana Gutiérrez Delgado (Office of the Public Ethics Ombudsman), in conversation with the author, December 2020.

⁵⁶ See "Informe de Labores y Rendición de Cuentas 2019", Procuraduría General de la República; see "Informe de Labores y Rendición de Cuentas 2017", Procuraduría General de la República.

⁵⁷ Gutiérrez Delgado (Office of the Public Ethics Prosecutor), in conversation with the author, December 2020.

their officials are lawyers, except for one auditor who does not perform investigative functions, which in practice complicates the efficient exercise of these functions.

The lack of staff is even more evident considering the number of officials this institution has dedicated to processing administrative complaints and trials. From 2012 to 2017, the PEP had fifteen officials, of which only four prosecutors (two for complaints and two for trials) were assigned to these tasks with the collaboration of an assistant, a technician from the secretarial area and occasionally a professional from the audit area, although none of them exclusively.⁵⁸ This means that, on average, each of the two prosecutors was responsible for 78 complaints, and each of the other two for 1764 trials.⁵⁹

However, as the number of officials increased to 31 from 2018 to 2020, the number of prosecutors was increased to 10 (five for complaints and five for trials) with the collaboration of the same assistants mentioned above, but they are not working on these issues full time either.⁶⁰ Even so, the increase in the number of officials had a positive impact mainly in the handling of judicial processes, since for 2018-2019 each procurator was in charge of 865 trials on average. In addition, during this period the percentage of completed trials increased by 142.55%, although the outcome of these is unknown.⁶¹

Considering that the proper detection of irregular acts can be a major contribution to preventing corruption, in addition to being one of the main competencies of the Office of the Public Ethics Prosecutor, it is necessary to highlight its work in handling the complaints it receives.

Table 8. Procedural status of complaints filed with the Office of the Public Ethics Prosecutor, 2014-2019

Procedural Status	2014	2015	2016	2017	2018	2019
Admissibility	3	0	1	1	0	0
Preliminary Investigation	16	53	68	88	122	165
Finalized complaints	99	113	110	87	98	122
Clarification & addition	0	0	0	0	0	0
Recursive Phase	0	4	1	1	0	4
Other	2	2	0	3	11	17
Total	120	172	180	180	231	308

⁵⁸ José Armando López Baltodano (Procurador de la Ética Pública), in official letter No. AEP-2052-2020 sent to the author on 24 November 2020.

⁵⁹ See PGR Annual Reports 2019, 2018, 2017, 2015, 2013, and 2012.

⁶⁰ José Armando López Baltodano (Procurador de la Ética Pública), in official letter No. AEP-2052-2020 sent to the author on 24 November 2020.

⁶¹ See PGR Annual Reports 2019, 2018, 2017, 2015, 2013, and 2012.

Source: Own elaboration with data from PGR (2019)⁶²

The table shows that the number of complaints filed with the PEP in 2014 versus those filed in 2019 increased by 64%, and the percentage of complaints that pass on to the preliminary investigation stage, which is where it is determined whether there is merit to initiate administrative proceedings, also increased annually. Like the Comptroller General of the Republic, the Attorney General's Office has investigative limitations because, according to Ms. Gutiérrez, as an administrative body they do not have free access to information that has been declared confidential.⁶³

During this period⁶⁴, 748 resolutions were issued as a result of preliminary investigations that failed to determine irregular actions. In addition, 129 reports⁶⁵ were drawn up for cases in which possible acts of corruption were found to have occurred, which were forwarded to the bodies that have disciplinary powers in public institutions so that they could initiate disciplinary proceedings. Lastly, 17 criminal complaints were filed. There is no information available as to how many of them were dismissed during those years.⁶⁶

It should be pointed out that the reports sent to the public entities by the PEP recommending the opening of sanction proceedings are not binding. Therefore, the respective heads of institutions could ignore the recommendation and not initiate administrative proceedings against the officials under investigation, which has already happened. For example, in 2012 the President of the Republic, Laura Chinchilla, dismissed the PEP report that recommended opening sanctioning procedures against several high-ranking public officials for issuing letters of recommendation within a public procurement process. In response, the former PEP attorney general, Gilbert Calderón, publicly requested a legal reform so that the PEP's criteria would go beyond a mere moral reprimand, but this did not happen.⁶⁷

In 2014, some deputies presented a bill proposing that the recommendations issued by the PEP be mandatory for all public administration officials and that it be granted sanctioning powers, but it has not yet been approved.⁶⁸ According to the PEP, it has not submitted any initiative of its own to date and according to Tatiana Gutiérrez, this has not been considered to be a deficiency or to require reform, and therefore there are no plans to submit a bill in the immediate future.⁶⁹

Although PEP follows up on the recommendations it issues through written and email consultations with the entities, it does not have data on the number of preliminary reports that

⁶² See "Informe de Labores y Rendición de Cuentas 2019", Procuraduría General de la República.

⁶³ Gutiérrez Delgado (Office of the Public Ethics Prosecutor), in conversation with the author, December 2020.

⁶⁴ Data from 2017 is not included because it is not available in the PGR's Work and Accountability Report 2017.

⁶⁵ As of November 2020, 31 preliminary investigation reports have been issued. See PEP response. José Armando López Baltodano (Procurador de la Ética Pública), in official letter No. AEP-2052-2020 sent to the author on 24 November 2020.

⁶⁶ Due to the complexity of the complaints, each one may merit the issuance of several outputs, including resolutions, reports, recommendation actions and criminal complaints.

⁶⁷ See Eugenia Soto Morales, "Procuraduría de la Ética eleva la voz para que no se desacrediten sus resoluciones" (2013), *El Financiero*, accessed on August 21, 2020, <https://www.elfinancierocr.com/economia-y-politica/procuraduria>.

⁶⁸ http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20of%20Law.aspx?Numero_Proyecto=19439.

⁶⁹ Gutiérrez Delgado (Office of the Public Ethics Prosecutor), in conversation with the author, December 2020.

are taken up by public institutions, or on how many of those ended in sanctions.⁷⁰ It is therefore difficult to establish the level of usefulness of the preliminary investigations carried out by the PEP.

Deputy Prosecutor's Office for Probity of the Public Prosecutor's Office (FAPTA)

FAPTA has national jurisdiction⁷¹ to prevent, investigate and bring before the judge corruption offences in which an official of the Public Prosecutor's Office or any other auxiliary of the criminal prosecution, officials of the Judicial Investigation Agency, judges and other public officials are accused. Since 2019, it also focuses on political, private, transnational and organized crime corruption.⁷²

It also has powers to promote the implementation of good practices and establish policies of transparency and probity, as well as to promote citizen participation in reporting acts of corruption by officials of the Public Prosecutor's Office and its assistants. In this regard, in 2018 this Deputy Prosecutor's Office held the first "Citizen Meeting"⁷³ through which they informed the community about their work and created a space for citizen consultation and demand. This initiative is in line with the Judicial Branch's commitment to formulate policies of openness and citizen participation that allow the general public to monitor and question the actions of this institution.

It should be noted that FAPTA is in the process of developing a plan⁷⁴ to contribute to the prevention, detection and reporting of functional and corruption offences, mainly concerning political corruption in the municipal regime and the development of public infrastructure. It is a community outreach strategy that involves legal education workshops and meetings with institutions to strengthen learning and communication channels with citizens. The objective of this project is for citizens to exercise their right to participate and to create the basis for a citizen observatory for the administration of justice. It is not known when this project will be ready.

In addition to its preventive functions, the FAPTA has investigative powers regarding the corruption complaints it receives. In this regard, this institution faces multiple legal restrictions and operational limitations to carry out effective investigations. For example, it cannot make use of the tools of the Financial Intelligence Unit for detection of fraudulent activities, since it is not regulated by the Anti-Corruption Act but by Act 8204, over which it has no jurisdiction.⁷⁵

⁷⁰ José Armando López Baltodano (Procurador de la Ética Pública), in official letter No. AEP-2052-2020 sent to the author on 24 November 2020.

⁷¹ See "Circular Administrativa", Office of the Attorney General of the Republic.

⁷² Carlos Meléndez Sequeira (Deputy Prosecutor of the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption), in conversation with the author, December 2020.

⁷³ See "Are you affected by corruption?" (2018-2019), Public Prosecutor's Office.

⁷⁴ See "Fiscalía fortalece persecución contra el cibercrimen" (2019), Ministerio Público.

⁷⁵ For more information on Act 8204 and the Financial Intelligence Unit, see "*Obligation of banks and financial institutions to establish the identity of beneficial owners*" in Section V of the original Spanish report.

According to Deputy Prosecutor Carlos Meléndez⁷⁶, they cannot request a wiretap because by legal requirement⁷⁷ they must first prove the existence of a criminal organization, which implies the participation of two or more subjects who have agreed to commit a crime. However, not all corruption cases involve more than one person. In only approximately 3% of the FAPTA's investigations it has been possible to carry out a wiretap. The Deputy Public Prosecutor's Office has already alerted to the need to reform the current regulations.

In terms of operational limitations, the FAPTA does not have its own auditors for the investigation of acts of corruption and those that are available from the Judicial Investigation Agency (OIJ) are shared with other prosecutors' offices. Despite the fact that in September 2019 an anti-corruption section was created in the OIJ, according to the Deputy Prosecutor of the FAPTA, it still lacks specialized auditors in the matter. Nevertheless, it must be recognized that thanks to the existing auditors there has been greater coverage in the investigation and the processing time for less complex cases has been reduced.⁷⁸

Considering that the sanctioning of corruption crimes depends not only on the work of the FAPTA and the OIJ but also on the work of judges, it is also necessary to strengthen training, since there are currently no specialized judges. For this reason, FAPTA has designed a curriculum to determine the courses required by prosecutors, which is pending approval. A project is also being developed with the Judiciary and the Attorney General's Office to define the operational methodology for certain crimes in order to identify the areas of knowledge, skills and level of complexity of each case and thus reduce processing times.⁷⁹

Furthermore, it is necessary to strengthen the capacities of the Internal Audits and the Office of the Comptroller General of the Republic, since the audits they carry out are the first filter for detecting possible acts of corruption and serve as a basis for the actions of the Public Prosecutor's Office. According to Deputy Prosecutor Meléndez⁸⁰, the audits conducted by these bodies are weak to the extent that they do not provide sufficient input as complaints and when they do, they are generally not correct. For this reason, the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption has promoted a new working method with at least five internal audits to provide them with the necessary tools and capacities to detect irregular actions.

As a result of all these limitations, the FAPTA has only been able to focus on public corruption from the intermediate level downwards, although since 2019 efforts have been made to address corruption investigations in its various manifestations such as political, private and transnational corruption. This demonstrates the urgent need to introduce regulatory reforms to enable this Deputy Prosecutor's Office to carry out more agile investigations and to provide more financial resources to acquire the specialized staff it requires.

⁷⁶ Meléndez Sequeira (FAPTA Deputy Prosecutor), in conversation with the author, December 2020.

⁷⁷ Act 8754/2009, Law Against Organized Crime, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=65903&nValor3=87003&strTipM=TC.

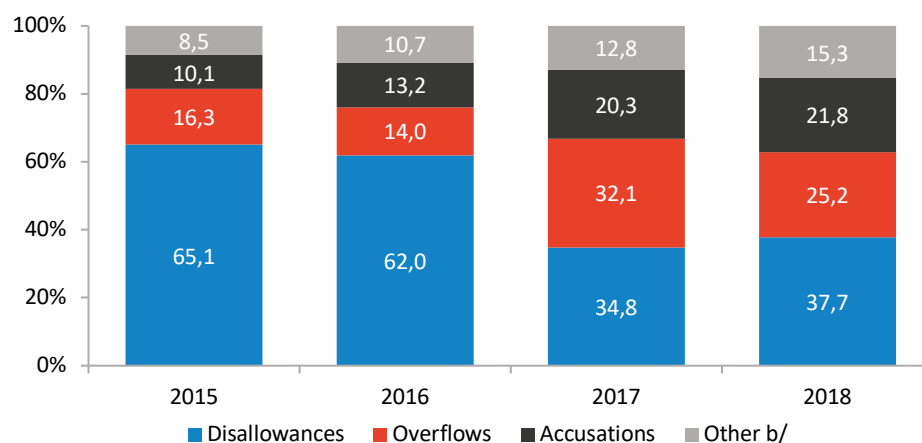
⁷⁸ Meléndez Sequeira (FAPTA Deputy Prosecutor), in conversation with the author, December 2020.

⁷⁹ Ibid.

⁸⁰ Ibid.

As for the results of the exercise of its functions, according to the State of Justice Report III⁸¹, the cases this specialized unit handles are generally closed with dismissals and acquittals in the preparatory stage, so very few cases are sentenced by a criminal court. From 2015 to 2018, they accounted for 68.9% of the total number of cases completed in the preparatory stage.

Figure 1. Cases closed in the FAPTA, by type of completion at the preliminary stage, 2015-2018



Source: PEN (2020)⁸²

During this period, the number of convictions represented 0.25% of the total number of convictions in criminal matters. It should also be noted that there is a reduction in acquittals from 61.6% in 2015 to 51.5% in 2018.⁸³

4.2.2 Independence of corruption prevention bodies

Office of the Comptroller General of the Republic

In the exercise of its powers and duties, the Office of the Comptroller General of the Republic (CGR) enjoys absolute functional and administrative independence with respect to any power, entity or public body. However, with respect to the management of its finances, it does not have complete independence in relation to the Executive Branch, as recommended by the standards of the International Organization of Supreme Audit Institutions (INTOSAI), since its budget may be modified by the Ministry of Finance before being submitted for final approval by the Legislative Assembly. Nevertheless, in practice this has not limited the proper functioning of the CGR.

⁸¹ See "Third State of Justice Report" (2020), State of the Nation Program.

⁸² Ibid. Referrals to other jurisdictions are not taken into consideration; in others, cumulation, opportunity and alternative measures are considered.

⁸³ Ibid.

The CGR's budget has not grown for five years, it went from US\$39,691,736 in 2015 to US\$37,713,343 in 2020, which could be explained by the adjustment of all public entities in the past years to reverse the growth of public debt (Table 9).

Table 9. Nominal budgets of the Supreme Audit Institutions of Central America, 2015-2020 (United States dollars)

Country	2015	2016	2017	2018	2019	2020
Costa Rica	39.691.736	40.621.777	38.314.057	38.425.549	35.283.508	37.713.343
Nicaragua	8.269.108	8.284.855	8.179.831	8.663.776	7.742.481	6.797.561
El Salvador	4.318.305	4.432.590	4.559.908	4.674.193	4.963.876	5.060.065
Guatemala	64.027.416	62.610.566	72.226.489	73.390.486	79.608.344	93.336.723
Honduras	11.708.218	13.136.119	12.973.801	16.829.217	16.310.003	17.747.465
Panama	84.965.000	90.512.000	88.332.664	93.224.110	108.281.568	146.281.568

Source⁸⁴: Own elaboration based on the budgets of the audit institutions of Costa Rica, Nicaragua, El Salvador, Guatemala, Honduras and Panama (2015- 2020)⁸⁵

Regarding the selection process of the Comptroller and Deputy Comptroller, this is done through public competition, and their appointments are made by the Legislative Assembly by a vote of two thirds of the total number of its members. However, this process has not been exempted from secret political negotiations or impositions of any political party influencing the decision.⁸⁶

The Legislative Assembly is also the body in charge of the removal of these positions, which can only happen under two grounds set forth in the Political Constitution, which are for proven ineptitude or incorrect procedures. Both the Comptroller and the Deputy Comptroller General enjoy the same immunities and prerogatives for the exercise of their functions as the members of the Supreme Powers. It should be noted that some deputies intend to modify this regime of immunities with the approval of a bill submitted in September 2019 to reform the Magna Carta and thereby eliminate the immunity of the members of the Supreme Powers, including other public positions such as the Comptroller General, when these servants are subject to

⁸⁴ Costa Rica: "Presupuestos Públicos", Contraloría General de la República, <https://www.cgr.go.cr/03-documentos/>; Nicaragua: "Libros presupuestarios", Ministerio de Hacienda y Crédito Público, <http://www.hacienda.gob.ni/Direcciones/presupuesto/libros-presupuestarios/informacion-de-los-libros>; El Salvador: "Marco presupuestario", Corte de Cuentas de la República, <https://www.cortedecuentas.gob.sv/index.php/>; Guatemala: "Presupuesto de Ingresos y Egresos", Contraloría General de Cuentas, <https://www.contraloria.gob.gt/index.php/07-presupuesto-de-ingresos-y-egresos/>; Honduras: "Biblioteca Virtual", Tribunal Superior de Cuentas, <https://www.tsc.gob.hn/biblioteca/index.php/component/>; Panama: "Informes de Ejecución Presupuestaria de la Contraloría General", Contraloría General de la República, <https://www.contraloria.gob.pa/ejecucion-presupuestaria-cgr.html>, accessed on by all on August 20, 2020.

⁸⁵ Belize's budget data for 2015 could not be obtained and is therefore not included in Table 7. The values contained in Table 1 are nominal.

⁸⁶ See Independent questionnaire for Costa Rica in relation to the provision of the Inter-American Convention against Corruption selected for review in the fourth round and for follow-up on the recommendations made in the first round, http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic4_cri_sc_inf.pdf.

investigations for corruption offenses.⁸⁷ This could be positive to the extent that the investigations and accusations would be carried out in a more agile manner, however, it must be cautiously implemented so that it does not constitute a threat to the impartiality and objectivity of the incumbents of these positions. It is not known when this bill will start being discussed.

Unlike the Comptroller and Deputy Comptroller, the officials of the Comptroller's Office do not enjoy legal safeguards, however, according to the Comptroller's Office's Legal Division's Manager, Mr. Luis Diego Ramirez⁸⁸, the entity has a policy of legal collaboration for officials when they are sued in court and since October 2020 the Comptroller General reformed the internal regulations to expressly reflect this initiative. It should also be noted that, in order to protect employees from any undue influence, an induction to the culture of legality and ethics is carried out in the personnel selection processes, and since April 2020 the institutional ethics management system has been subscribed, which has involved all hierarchical levels in activities and events related to this matter.

With regard to accountability, the CGR has an Internal Audit Office that reports directly to the Office of the Comptroller General. The selection of the head of this office is made through a public competition, and the appointment is made by the highest institutional incumbent. The auditor may only be suspended for just cause and after a file has been prepared. Although internal auditors are independent from the senior officials of audit institutions⁸⁹, the decision on the implementation of the reports prepared depends on the Comptroller General, and there is no higher instance to appeal to in the event that they are not implemented.⁹⁰

On the other hand, in addition to being accountable to the Legislative Assembly to whom it must submit a report on its work every year, since 2011, in compliance with the standards of the International Organization of Supreme Audit Institutions, the CGR conducts annual reviews and external audits to improve its capabilities and to set an example with its accountability. This sends a positive message to all public entities and above all generates public confidence in the actions of the Comptroller General's Office.⁹¹

Finally, it should be noted that the Comptroller's Office communicates with citizens and civil society mainly through its institutional website, although it also uses other media such as

⁸⁷ http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=21571.

⁸⁸ Luis Diego Ramirez González (Gerente de División Jurídica en Contraloría General de la República), en conversación con la autoría, diciembre de 2020.

⁸⁹ Véase «Informe sobre la aplicación del Marco de Medición del Desempeño de las Entidades Fiscalizadoras Superiores en la Contraloría General de la República 2019», Contraloría General de la República.

⁹⁰ Véase Evelyn Villareal Fernández, «Cuestionario Independiente para Costa Rica: en relación con la Disposición de la Convención Interamericana Contra la Corrupción seleccionada para ser analizada en la cuarta ronda y para el seguimiento de las recomendaciones formuladas en la primera ronda» (2012).

⁹¹ Véase «Informe sobre la aplicación del Marco de Medición del Desempeño de las Entidades Fiscalizadoras Superiores en la Contraloría General de la República 2019», Contraloría General de la República.

television, press, and digital media.⁹² It also has several institutional programs for citizen engagement that promote citizen commitment to innovate the forms of social control of public finances and the active participation of high school students as youth comptrollers. It also has school programs to instill in children the principles of probity.⁹³ In addition, the Comptroller's Office provides training to the public sector, for example, in 2020, it conducted a course entitled "Ten Powers to Prevent Corruption/Public Sector"⁹⁴, and in 2019, it held workshops with civil society and public entities on topics related to public finance and public procurement.⁹⁵

It also has several cooperation agreements at the national and international level, in addition to being part of international organizations such as the Latin American and Caribbean Organization of Supreme Audit Institutions (OLACEFS), the Central American and Caribbean Organization of Supreme Audit Institutions (OCCEFS) and the Organization of Supreme Audit Institutions (INTOSAI).⁹⁶

Public Ethics Prosecutor's Office (PEP)

The PEP was established by Act 8242 of 2 August 2002⁹⁷, but began to operate in 2004 as an agency of the Office of the Attorney-General of the Republic (PGR), which is part of the Executive, attached to the Ministry of Justice and Peace. Although the administrative independence of the PGR is guaranteed for the performance of its functions with respect to the rest of the public entities and bodies, nothing has been provided on the autonomy of the PEP with respect to the highest incumbent of the PGR, which implies that the work carried out by the Public Ethics Prosecutor may be reviewed by and appealed before the Attorney General. In view of this, the former Public Ethics Ombudsman, Ronald Víquez, stated that the PEP should be given functional independence and criteria, considering that the sensitive functions it performs require a regulatory shield.⁹⁸ However, it is not known whether this is still being asked for at present.

The Attorney General is in charge of appointing the highest authority of the PEP; however, there is an attempt to change this, since in 2015 a bill was introduced to amend the aforementioned Law by proposing that the Public Ethics Prosecutor be appointed by the Legislative Assembly by vote, after a shortlist of three candidates is submitted by the Attorney

⁹² See Evelyn Villareal Fernández, «Cuestionario Independiente para Costa Rica: en relación con la Disposición de la Convención Interamericana Contra la Corrupción seleccionada para ser analizada en la cuarta ronda y para el seguimiento de las recomendaciones formuladas en la primera ronda» (2012).

⁹³ See «Memoria Anual 2019», Contraloría General de la República.

⁹⁴ «Calendario anual de las actividades de capacitación», Contraloría General de la República, acceso el 30 de septiembre de 2020, <https://www.cgr.go.cr/04-servicios/capacitacion/centro-capacitacion.html>.

⁹⁵ See «Memoria Anual 2019», Contraloría General de la República.

⁹⁶ «Organizaciones Internacionales», Contraloría General de la República, acceso el 30 de septiembre de 2020, <https://www.cgr.go.cr/01-cgr-transp/relaciones-externas/organizaciones-internacionales.html>.

⁹⁷ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=83186.&nValor3=106701

⁹⁸ See Evelyn López Guerrero, Yariela Delgado Rodríguez, "Acciones de la Procuraduría de la Ética Pública que disminuyen la corrupción: hacia un estado con transparencia" (2016) https://ijj.ucr.ac.cr/wp-content/uploads/bsk-pdf-manager/evelyn_lopez_guerrero_y_yariela_delgado_rodriguez_tesis_completa_128.pdf.

General of the Republic. At the time of writing this report, this bill has not been approved.⁹⁹ It is important to note that none of the officials of the Office of the Attorney General, except for the Attorney General and the Deputy Attorney General, have immunities and safeguards that protect them from civil, criminal and administrative proceedings brought against them in reprisal for the exercise of their functions.

Since the PEP is an agency of the Office of the Attorney General of the Republic, it does not have its own budget, and until 2020 it did not have a specific item in the budget of the PGR,¹⁰⁰ since it was not provided with economic resources by omission of the legislature. The lack of sufficient resources has had an impact on the exercise of this body's functions in terms of prevention and attention to complaints.¹⁰¹

Regarding the PEP's accountability, it is difficult to find specific information on its management, since it is included in the Attorney General's Office's work report, where the results of the exercise of its powers are not very detailed, and they were not presented annually until 2011. Therefore, the information on the work carried out during the years 2004-2010 is not sufficiently disaggregated to make a comparative analysis of its results.

As mentioned above, the PEP, being one of the agencies of the PGR, is accountable to the Attorney General, but it is also subject to the Internal Audit of the Ministry of Justice and Peace, as well as to external evaluations by the CGR and the General Directorate of Civil Service in the area of Human Resources.¹⁰² According to the Law of the Attorney General's Office, prosecutors are liable in the exercise of their functions if they act with malice or gross negligence; however, no disciplinary proceedings have been conducted against PEP prosecutors for this reason according to the head of the Institutional Management Area of Human Resources.¹⁰³

Deputy Prosecutor's Office for Probity, Transparency and Anticorruption

The Office of the Deputy Prosecutor for Probity, Transparency and Anti-Corruption (FAPTA) was created in November 2010¹⁰⁴ as an entity attached to the Office of the Attorney General of the Republic, which, although it is an organ of the Public Prosecutor's Office, enjoys organizational autonomy.¹⁰⁵ Although it is the Attorney General who establishes the criminal

⁹⁹ http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20of%20Law.aspx?Numero_Proyecto=19460.

¹⁰⁰ "Activities common to the defence of the state - legal assistance and preventing, detecting and combating corruption" (2020), Office of the Attorney General of the Republic, accessed on August 20, 2020, https://www.pgr.go.cr/wp-content/uploads/2020/01/Presupuesto_aprobado_2020_PGR.pdf.

¹⁰¹ For more information, see the section "*Institutional Capacity versus Competencies*" of the Office of the Public Ethics Ombudsman in Section IV.

¹⁰² "Informe de labores 2014-2018," Procuraduría General de la República, accessed on August 20, 2020, https://www.pgr.go.cr/wp-content/uploads/2018/05/informe_de_labores_2014_2018.pdf.

¹⁰³ José Armando López Baltodano (Procurador Director de la Ética Pública), in official letter No. AEP-2052-2020 sent to the author on 24 November 2020.

¹⁰⁴ "Administrative Circular," Attorney General's Office, accessed on August 24, 2020, https://ministeriopublico.poder-judicial.go.cr/images/phocadownload/CircularesAdministrativas/2018/annexes/anexo_03-adm-2018.pdf.

¹⁰⁵ See Evelyn Villareal Fernández, "*Independent Questionnaire for Costa Rica: In relation to the Provision of the Inter-American Convention against Corruption selected for review in the Fourth Round and for follow-up on the recommendations formulated in the First Round*" (2012).

prosecution policies on the basis of which the FAPTA carries out its work, the functional independence of this unit is recognized in relation to investigations, the design of its work methodology and its approach to cases.¹⁰⁶

It is important to note that unlike the Attorney General and the Comptroller General, the person occupying the Attorney General's Office does not enjoy any type of immunity that protects them from reprisals taken against them for the exercise of their functions, despite the fact that this person is the authority that investigates the members of the Supreme Powers who do have constitutional immunity. According to the Deputy Prosecutor for Probity, Transparency and Anti-Corruption, Carlos Meléndez, none of the officials of this unit has legal safeguards, and there are more and more cases of complaints filed against them for investigations they carry out, or they are subject to disciplinary complaints and discrediting in the press.¹⁰⁷ However, so far there is no evidence that this has in practice interfered with the proper exercise of their functions.

In order to shield FAPTA from political, economic, social, media or other pressures that could jeopardize the objectivity and legality of its work, in 2019 a competency profile was designed for professional, technical and prosecutorial staff in order to strengthen their capacity in areas of technical knowledge, ethics and values. This allows for greater rigor in the selection and appointment of officials in the FAPTA without allowing any interference from the Attorney General, the Judiciary or any other body. In addition, there are two administrative committees, one for internal control and the other for risk management to control, mitigate, manage and transfer risks. However, it is unknown how successful they have been in this task since there is no information available on the Public Prosecutor's Office website.¹⁰⁸

The appointments of Deputy Prosecutors, are made by the Attorney General, without the need for a competition, since the Organic Law of the Public Prosecutor's Office allows for the promotion of a public servant to a higher-grade position if there is a line of promotion. In the opinion of the Association of Prosecutors and the Union of the Public Prosecutor's Office (MP), the lack of mandatory public competitions has allowed some appointments to be made without objective criteria. For this reason, in 2019 they filed several complaints against the current Attorney General¹⁰⁹, which continue in the investigation stage, as indicated by FAPTA.¹¹⁰

¹⁰⁶ Carlos Meléndez Sequeira (Deputy Prosecutor of the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption), in official letter No. FAPTA-3169-2020 sent to the author on 16 November 2020.

¹⁰⁷ Ibid, in conversation with the author, December 2020. In the Court of Judicial Inspection, the data on cases against prosecutors is not disaggregated in order to know which ones correspond to FAPTA prosecutors. In a very recent high-profile media case, the trial judgment ordered the opening of investigations against prosecutors for allegedly being untruthful: <https://semanariouniversidad.com/pais/johnny-araya-y-celso-gamboa-salen-absueltos-en-un-nuevo-fracaso-de-fiscalia-en-casos-politicos/>.

¹⁰⁸ According to Carlos Meléndez, internal control and risk management is recorded on the Judicial Branch's digital platform (SEVRI).

¹⁰⁹ See Paula Villalobos, "Emilia Navas defiende nombramientos y descarta renunciar ante acusaciones de gremios" (2019), *El observador*, accessed on August 25, 2020, <https://observador.cr/noticia/emilia-navas-defiende-nombramientos-y-descarta-renunciar-ante-acusaciones-de-gremios/>.

¹¹⁰ Carlos Meléndez Sequeira (Deputy Prosecutor of the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption), in official letter No. FAPTA-3169-2020 sent to the author on 16 November 2020.

In 2018, the prosecutorial career bill number 20,978 was presented¹¹¹, which proposed the implementation of a prosecutorial career in the Public Prosecutor's Office based on the principle of recognition of the merit of officials. Accordingly, both the entry and promotion of deputy prosecutors must be based on a competitive process. At the time of writing this report, this initiative has not been approved and remains in the legislative pipeline. However, it is important to promote these reforms since a merit-based competition guarantees transparency in the selection and promotion process.

Regarding the FAPTA's budget, Carlos Meléndez said that more economic resources are needed to develop the staff's technical capacities, as well as for the proper exercise of the functions assigned to this prosecutor's office.¹¹² He mentions, for example, that although the FAPTA is in charge of transnational corruption investigations, it does not have funds allocated for travel expenses abroad in case an official has to travel to another country, nor does it have funds and sub-items for scholarships and specialization courses in anti-corruption to train prosecutors with refresher or specialization courses. It also indicates that there is a lack of resources for the rental of a space that accommodates all its officials and minimizes any risk related to investigations.

It is difficult to assess the FAPTA's performance regarding its accountability, since its work report is included in the Attorney General's Office's report, where the information presented is not very detailed. However, it should be noted that work is currently underway on the National Plan for Transparency and Accountability in the Public Prosecutor's Office¹¹³, which aims to design and implement a strategy to control corruption through transparency and accountability practices. To date, this initiative is 80% complete and is expected to be completed by 2023.¹¹⁴ In addition, FAPTA produces an anti-corruption newsletter on relevant events to report every four months (on average) on the actions and results obtained, which are communicated to the entire Public Prosecutor's Office, and is in the process of designing an accountability matrix and report for this Office.¹¹⁵

Similarly, the Attorney General's Office does not have its own internal audit, but is subject to that of the Judicial Branch. However, in order to guarantee its independence vis-à-vis the Attorney General and the Judicial Branch, according to Mr. Meléndez¹¹⁶, the Deputy Prosecutor reports to internal committees that are made up of officials of this unit, which also ensures the existence of checks and balances in the regulation of the activities carried out. It should also be noted that all prosecutor's offices use the Institutional Risk Assessment System to identify the level of risk, analyze it and manage it, but the results are unknown because

¹¹¹ Draft Law for the Prosecutorial Career <http://www.aselex.cr/boletines/Proyecto-20978.pdf>.

¹¹² For more information on the limitations of the Office of the Deputy Prosecutor for Probity, Transparency and Anti-Corruption, see the section "Institutional capacities versus competencies".

¹¹³ "Plan Nacional de Transparencia y Rendición de Cuentas en el Ministerio Público" Justicia Abierta Costa Rica, accessed on September 30, 2020, <https://justiciaabierta.poder-judicial.go.cr/index.php/>.

¹¹⁴ See "Plan Nacional de Transparencia y Rendición de Cuentas en el Ministerio Público," Justicia Abierta Costa Rica.

¹¹⁵ More details at <https://ministeriopublico.poder-judicial.go.cr/index.php/transparencia/rendicion-de-cuentas>.

¹¹⁶ Carlos Meléndez Sequeira (Deputy Prosecutor of the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption), in conversation with the author, December 2020.

they are not published on the Public Prosecutor's Office website.¹¹⁷ On the other hand, FAPTA has developed results and performance management indicators for all professional positions.¹¹⁸

As mentioned above, the FAPTA, being one of the dependencies of the Prosecutor General's Office, reports to the Attorney General's Office, while the latter reports to the Plenary Court to which it submits an annual report, which is transmitted in streaming and for the first time in 2019 to the public and the media.¹¹⁹ However, it is not possible to indicate whether this is a significant improvement compared to previous years since this data is only available in the 2018 report, which states that 44 accountability reports were made for that year.¹²⁰

Finally, officials of the Public Prosecutor's Office are subject to the same general regime of disqualifications, incompatibilities, prohibitions and liability as other public officials and are subject to the disciplinary regime established in the Judicial Branch Statutes.¹²¹

Good practices:

- *The Comptroller's Office has a legal assistance program for its staff when they are the subject of legal proceedings brought against them in reprisal for the performance of their duties;*
- *All three entities are accountable annually, however, in addition, the Comptroller's Office voluntarily submits itself to external reviews and audits every year;*
- *FAPTA has a horizontal accountability system which guarantees its independence from the Attorney General and the Judiciary;*
- *FAPTA designed and implemented a competency profile to strengthen the staff selection process and the staff's technical, ethical and values knowledge;*
- *FAPTA has two administrative committees to shield it from external interference, one is for internal control and the other for risk management;*
- *The Public Prosecutor's Office is developing the National Transparency and Accountability Plan, which is 80% complete;*
- *The Attorney General's Office has launched campaigns on social networks that seek to position ethical concepts among citizens;*
- *FAPTA held the first Citizens' Meeting to inform citizens about its work and open spaces for consultation and demand;*
- *In the Comptroller's Office, the institutional ethics management system was implemented at all hierarchical levels;*
- *The Comptroller's Office conducts its own periodic surveys on the issues of transparency and corruption;*
- *FAPTA and the Comptroller's Office are part of international cooperation initiatives and organizations;*

¹¹⁷ "Third State of Justice Report" (2020), State of the Nation Program, accessed on September 30, 2020, https://estadonacion.or.cr/wp-content/uploads/2020/06/PEN_Estado_Justicia-2020-Completo.pdf.

¹¹⁸ Carlos Meléndez Sequeira (Deputy Prosecutor of the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption), in conversation with the author, December 2020.

¹¹⁹ "Prosecutor's Office Strengthens Prosecution Against Cybercrime" (2019), Public Prosecutor's Office, accessed on September 30, 2020, https://ministeriopublico.poder-judicial.go.cr/images/Documentos/revista/Revista_dic_2019.pdf.

¹²⁰ "Interagency Transparency Network: Accountability," Public Prosecutor's Office, accessed on September 30, 2020, <https://ministeriopublico.poder-judicial.go.cr/index.php/transparencia/informes-institucionales>.

¹²¹ Organic Law of the Judiciary. 1993. <https://pj.poder-judicial.go.cr/index.php/informacion-institucional/normativa-de-interes>

- *Since 2019, the FAPTA's scope of competence and approach to criminal phenomena has been expanded to include investigations of other corruption-related crimes.*

Deficiencies:

- *The Comptroller's Office does not have complete independence, since it lacks financial autonomy from the Executive and Legislative Branches;*
- *The PEP and the FAPTA do not have their own work reports, so the information available on their websites on the results of the exercise of their functions is limited;*
- *The Attorney General's Office and the staff of the PEP and FAPTA have no immunities or legal safeguards to protect them from possible reprisals taken against them;*
- *PEP has no budget of its own while FAPTA has no budget line so its budget is unknown;*
- *The Comptroller's Office does not prioritize the detection of acts of corruption when carrying out audits, since their main objective is to contribute to the best use of the Public Treasury. For this reason, the biggest corruption scandals have been detected by means external to the control bodies.*
- *The number of criminal complaints filed by the Comptroller's Office with the Public Prosecutor's Office is low, although since 2015 it has been decreasing, as has the imposition of sanctions arising from administrative proceedings;*
- *All three entities lack sufficient and specialized economic and human resources for an efficient exercise of functions in the preventive, investigative, detection and sanctioning areas;*
- *The preliminary reports prepared by the PEP in response to the complaints it receives are not mandatory for public entities, so it is optional to initiate disciplinary proceedings;*
- *The PEP has no information on how many sanctioning procedures result from its preliminary reports or the number of sanctions imposed;*
- *From 2015 to 2018, the majority of cases handled by FAPTA ended in dismissal at the preparatory stage.*

4.3 Art. 8.4: Reporting mechanisms and whistleblower protection

Strategic reading

Costa Rica does not have a regulatory framework that establishes mechanisms to facilitate the reporting of acts of corruption by public officials or to protect them from possible reprisals in the workplace as required by Art. 8.4 of the UNCAC, except for the fact that in general, the confidentiality of the whistleblower in criminal proceedings is guaranteed in the law. There are no uniform practices in this regard in the public sector, nor is it clear which entity should be responsible for providing protection. Of the three bodies analyzed in the previous section, it is only known that within the Judiciary, the Prosecutor General's Office, has applied protection measures that have had an impact in the workplace through the Office for Attention and Protection of Victims of Crime; for example, since 2016, some job relocations have been carried out.

In 2012, the "Bill Nr. 18348 of partial reform to the Law against Corruption and Illicit Enrichment"¹²² was presented, which establishes protection measures for public officials in the workplace, such as eliminating the disturbance, suspension of execution of administrative acts, provisional relocations, transfers or exchanges, among others. However, to date it has not been approved and it is unknown if this is going to happen.

Finally, the Office of the Comptroller General of the Republic and the Office of the Public Ethics Prosecutor allow complaints to be filed through their websites. The Judicial Branch has a confidential telephone line. The opening of these channels is a useful tool, as it has been used more by individuals;

¹²² Bill Partial Reform and Addition to the Law Against Corruption and Illicit Enrichment in the Public Service, Law No. 8422, October 6, 2004, <http://proyectos.conare.ac.cr/asamblea/18348.pdf>.

however, they also receive complaints via e-mail and fax, which raises doubts about the level of protection of the confidentiality of complainants' identity. Moreover, the data on the resolution of these citizen complaints shows that a very high percentage of complaints is rejected.

The fact that the vast majority of high-profile political corruption scandals have been reported through media outlets that maintain the sources' confidentiality rather than through formal institutional reporting channels is highly indicative of the reforms needed in this regard.

4.3.1 Legal framework

Although Costa Rica has legislation that guarantees whistleblowing as the exercise of citizens' right of oversight and as a duty for public officials, such as the General Law on Internal Control, the Law against Corruption and Illicit Enrichment in the Public Service and its Regulations, a law has not yet been enacted that establishes measures or systems to make it easy for public officials to file complaints.¹²³

According to the Office of the Comptroller General of the Republic¹²⁴, by 2016, 23% of decentralized institutions had not even determined the criteria for admissibility of complaints and 31% did not have guidelines regulating the procedure for handling complaints or for filing appeals, nor the means to communicate to the complainant on the progress and final results of the investigation or to verify compliance with the resolution. Therefore, in its 2018 and 2019 Annual Reports¹²⁵, the CGR insisted on the need to have a regulatory framework on the processing of complaints in public institutions.

It should be noted that there is also no legislation or uniform procedures in the public sector that establish mechanisms to protect public officials who report acts of corruption from threats or reprisals in the workplace, let alone the entities that should provide such protection. The only norm that refers to this issue is the Law against Corruption and Illicit Enrichment in the Public Function¹²⁶, whose Article 8 established that those who report acts of corruption that are related to crimes typified in the Criminal Code will be protected by the administrative police authorities according to the foreseen legal mechanisms. This leaves out of this protection mechanism those officials who file complaints based on the Law against Corruption and Illicit Enrichment in the Public Service, which also typifies crimes in this matter.

In practice¹²⁷, the Law on Victims, Witnesses and Other Persons Involved in Criminal Proceedings Protection of 2009¹²⁸ is used to protect those who report acts of corruption. However, the protection measures are granted according to the level of risk or danger the

¹²³ "OECD Economic Surveys" (2020), Organisation for Economic Co-operation and Development (OECD), accessed on September 30, 2020, <https://www.oecd.org/economy/surveys/costa-rica-2020-OECD-economic-survey-overview-spanish.pdf>.

¹²⁴ "Annual Report 2016," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/documentos/publicaciones-cgr/memoria-anual/2016/memoria-anual-2016.pdf>.

¹²⁵ See "Annual Report 2018", Office of the Comptroller General of the Republic; see "Annual Report 2019", Office of the Comptroller General of the Republic.

¹²⁶ Law Against Corruption and Illicit Enrichment in the Public Service, <https://www.pgr.go.cr/wp-content/>.

¹²⁷ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NR_TC&nValor1=1.&nValor2=65274&nValor3=76217&strTipM=TC.

¹²⁸ "Response of the Republic of Costa Rica to the Questionnaire for the Fifth Round of Analysis of the MESICIC" (2015), Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption, accessed on September 30, 2020, http://www.oas.org/juridico/PDFs/mesicic5_cri_resp.pdf.

person is in, i.e., they are intended to protect life, physical integrity and safety, not to protect them from retaliation in the workplace.

In 2012, the "Bill for the partial reform of the Law against Corruption and Illicit Enrichment"¹²⁹ was presented, which sought to create a framework of protection in the workplace by establishing measures such as: suspension of the execution of administrative acts that harm the official, provisional relocation, transfer or change in their position and even temporary separation with pay to the entity or person who threatens or the entity or person who receives the threat, among others. Although more than eight years have passed since the initiative was presented, it has not yet been approved and it is unknown if it will be approved.

According to the CGR, the absence of a regulatory framework that guarantees the protection of public officials has not encouraged public officials to file complaints. As a result, the control bodies and the public administrations themselves may be losing out on valuable information, since these officials, by virtue of their occupation, are generally closer to and more aware of the commission of acts of corruption.¹³⁰ The National Survey on Corruption Prevention (ENPC)¹³¹ conducted by the CGR among public officials in 2020 found that 27.9% of those who stated that they had witnessed some act of corruption did not report it. As the main reasons 45.5% indicated fear of reprisals, 11.4% indicated distrust in the system and 18.2% indicated that they do not see potential for changes.

According to the CGR, when public officials consider that there is transparency in their institution, the probability of trust in the complaint mechanisms is 3.39 times higher than when they consider that there is no transparency. Therefore, when public entities design and implement their own whistleblowing channels, they should ensure that they are accessible and well-known, sufficiently regulated, guarantee confidentiality and protection against retaliation, and should be supported by senior management to generate greater impact.

4.3.2 Operation of complaints mechanisms

Pursuant to the Regulations to the Law against Corruption and Illicit Enrichment in the Public Service, complaints may be filed with the Public Administration, the Internal Audits, the PEP and the CGR. They may also be addressed to the FAPTA, as indicated above. This section will therefore outline the structure for presenting complaints to the most relevant anti-corruption control bodies, which are the Office of the Comptroller General of the Republic, the Office of the Public Ethics Prosecutor and the Office of the Deputy Prosecutor for Probity, Transparency and Anti-Corruption.

With respect to the Office of the Public Ethics Prosecutor, it has not adopted measures to protect whistleblowers from reprisals taken against them in the workplace, except to ensure the confidentiality of the whistleblower, which is guaranteed by law.¹³² It has also not set up specific channels to facilitate the presentation of complaints by public servants. The authors

¹²⁹ Bill Partial Reform and Addition to the Law Against Corruption and Illicit Enrichment in the Public Service, Law No. 8422, October 6, 2004 <http://proyectos.conare.ac.cr/asamblea/18348.pdf>.

¹³⁰ See "Annual Report 2019", Office of the Comptroller General of the Republic.

¹³¹ "Perception of Public Officials: National Corruption Prevention Survey 2020," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/enpc-2020/perc-fp.html>.

¹³² Gutiérrez Delgado (Office of the Public Ethics Prosecutor), in conversation with the author, December 2020.

of this report are unable to indicate whether the Comptroller's Office has implemented measures in this area, beyond the fact that it guarantees confidentiality, since no response was obtained to the request for information from the Complaints and Investigations Area.

According to the head of the Public Prosecutor's Office's Office of Attention and Protection of Victims of Crime, Sara Arce¹³³, the office has processed thirty-six complainants of acts of corruption since 2016 to date, of which four correspond to public officials who denounced other public officials of the same institution. During this period, the extra-procedural protection measures that had been implemented included job relocations, transfers and custodial workplaces. According to Ms. Arce, these measures were adopted to protect these whistleblowers from reprisals that could affect their jobs and threats to their physical integrity. It should also be noted that this office has an internal working instrument that takes the needs of complainants into account within the framework of risk assessment in the protection program.

Regarding complaint channels, the body responsible for receiving, registering, investigating, and processing complaints in the Office of the Comptroller General is the Division of Operational and Evaluative Oversight's Complaints and Investigations Area, to which complaints may be submitted verbally or in writing (electronically). The "Guidelines for handling complaints" can be downloaded from the CGR's institutional web page on "Electronic Complaints"¹³⁴, which explains the types of complaints over which the CGR has jurisdiction, the grounds for dismissal and filing of complaints, and the requirements that must be met in order for complaints to be admitted, including the submission or suggestion of evidence.

However, it is unknown whether the confidentiality of the complainant is guaranteed in practice when sending the complaint to the institutional email address, since it is not the most secure medium for storing or receiving sensitive information and therefore more sophisticated programs have been developed for processing this data. In addition, in order to submit an anonymous complaint, the "Electronic Complaints" page asks for contact information such as an address, telephone number, e-mail, fax or post office box, which does not seem to guarantee the anonymity desired by the complainant.

It is important to note at least until 2018, the CGR did not have the specialized human resources to deal with the technical complexity involved in some cases of complaints.¹³⁵ Indication of this can be found in the CGR's Annual Reports for the years 2015-2018¹³⁶, in which investigations of complaints filed since 2012 are observed, i.e., complaints from previous years are processed, some of which are still in the admissibility stage or under investigation. Moreover, an average of 63.3%¹³⁷ of complaints were dismissed in this period and filed for various reasons such as: the facts reported are not within the competence of the

¹³³ Sara Arce (head of the Office for the Attention and Protection of Victims of Crime), in official letter No. 2354-OAPVD-2020 sent to the author on 3 December 2020.

¹³⁴ <https://cgrweb.cgr.go.cr/apex/f?p=233:3:0::NO>; <https://cgrweb.cgr.go.cr/apex/f?p=DENUNCIAS>.

¹³⁵ See CGR Annual Reports 2016, 2017, 2018.

¹³⁶ See "Annual Reports", Office of the Comptroller General of the Republic.

¹³⁷ See Annual Reports 2015-2019 of the CGR "Memorias Anuales", Office of the Comptroller General of the Republic.

Comptroller's Office, the complaint does not comply with the essential requirements for its processing according to internal regulations, the matter is known by other competent bodies, among others. However, it should be clarified that this cannot be attributed to a lack of competence of the institution, since not all complaints are eligible to continue to the investigation phase.

Similarly, only a small percentage of the complaints filed pass on to the investigation stage: 8.7% in 2016, 15.2% in 2017, 16.1% in 2018 and 11.4% in 2019, as the rest were transferred to other entities or continue in the admissibility stage. At the moment it is unknown how many administrative sanctioning procedures were derived from any of these processes and how many of them ended in a sanction.

Furthermore, the PEP has automated the process of receiving and managing complaints submitted verbally or in writing, which allows it to monitor the status of each procedure. It also has a web application called "Denuncia en línea" which allows complaints to be submitted electronically.¹³⁸ The PEP's processing procedure is based on the Regulations to the Law against Corruption and Illicit Enrichment in the Public Service. On its institutional webpage, there is a brief explanation of what types of complaints are dealt with, the requirements it must contain, such as the description of the facts, the provision of evidence (although it is not mandatory) and the identification of the complainant. Regarding the latter, it is expressly stated that anonymous complaints will only be processed in exceptional cases if sufficient evidence is received. On the "Online Complaint" page, there is no option for a complaint to be anonymous, since identification is mandatory.

With regard to FAPTA's handling of complaints, the Public Prosecutor's Office's institutional website¹³⁹ indicates that complaints may be submitted to any prosecutor's office, the Judicial Investigation Agency, Judicial Inspection or the Office of the Comptroller of Services, in person, by telephone, e-mail or fax, and indicates what the requirements are. However, there is no information on the admissibility criteria or the time limits for correcting possible errors or for resolving the complaints. Like with the Comptroller's Office, questions as to how the Public Prosecutor's Office guarantees confidentiality when complaints are submitted via e-mail and fax, as well as regarding anonymity arise, since the complainant is required to identify themselves in order to submit a complaint. Moreover, filing a complaint with the Judicial Investigation Agency can only be done in person. In 2018, the latter developed a guide for reporting acts of corruption and, like the Public Prosecutor's Office, has produced audiovisual materials for citizens.

Once the complaint is filed, a prosecutor assesses whether it stays in the Anti-Corruption Prosecutor's Office of San José or whether it is referred to another regional prosecutor's office or another office of the Public Prosecutor's Office.¹⁴⁰ It should be noted that during the period 2015-2019, the number of complaints related to corruption increased fivefold, especially in

¹³⁸ See "Informe de labores 2014-2018", Procuraduría General de la República.

¹³⁹ "Report Corruption: Means to Report," Public Prosecutor's Office, accessed on August 20, 2020, <https://ministeriopublico.poder-judicial.go.cr/index.php/servicios-a-la-ciudadania/inspeccion-fiscal>.

¹⁴⁰ Carlos Meléndez Sequeira (Deputy Prosecutor of the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption), in official letter FAPTA-3169-2020 sent to the author on 13 December 2020.

2017, which is due to the creation of FAPTA's territorial offices, and in parallel has also had a steady growth in the number of indictments, particularly since 2017 since it doubles from 38 to 71 indictments by 2018 and it reached 100 in 2019. Nevertheless, it is unknown how many of these resulted in a conviction.¹⁴¹

Good practices:

- *The law guarantees the complainant's confidentiality and allows for the submission of anonymous complaints, provided they meet certain requirements;*
- *The Office of the Comptroller General of the Republic, the Deputy Prosecutor for Probity, Transparency and Anti-Corruption, and the Office of the Public Ethics Prosecutor admit the filing of complaints through electronic means;*
- *The Law on the Protection of Victims, Witnesses and Other Persons Involved in Criminal Proceedings is used to protect whistle-blowers in corruption cases;*
- *The Public Prosecutor's Office's Office for the Care and Protection of Victims of Crime applies extra-procedural measures to protect reporting persons, including public officials, from measures taken against them at their workplace.*

Deficiencies:

- *Costa Rica does not have a regulatory framework that regulates mechanisms in the public sector to facilitate whistleblowing by public officials and to protect them from possible reprisals at the workplace;*
- *PEP has not taken measures to make it easier for public officials to report acts of corruption;*
- *(At least until 2018), the Office of the Comptroller General of the Republic, the Public Ethics Prosecutor's Office and the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption did not have sufficient specialized human resources to deal with a growing number of complaints.*

4.4 Art. 9.1: Public Procurement

Strategic reading

The biggest corruption scandals have been linked to public procurement processes. Although in Costa Rica public and abbreviated bidding are the ordinary contracting procedures, in practice 80% of the procurement volume is carried out through direct contracting which is, according to the law, an extraordinary procedure that is faster and has fewer controls. In other words, the current regulations in Costa Rica do not facilitate the existence of a procurement system based on competition as required by Article 9.1 of the UNCAC, and as control points are reduced, the system's vulnerabilities are increased.

Using the Integrated Public Procurement System (SICOP)¹⁴² has been mandatory for the entire public administration since 2016, which represents a major achievement considering that up to that date 20 virtual public procurement platforms coexisted. However, it has not yet been incorporated in all public entities. Until 2019, 30% of institutions were missing¹⁴³, and even those that have implemented SICOP do not use it for all stages of the contracting procedure, nor for all purchases. Despite this, its use has brought the country savings in resources (0.9% of GDP in 2017), as well as greater dissemination of information, which in turn generates more competition of bidders in procurement procedures. Publicity is

¹⁴¹ "2019 Accountability Report," Public Prosecutor's Office, accessed on September 30, 2020, <https://ministeriopublico.poder-judicial.go.cr/index.php/transparencia/informes-institucionales/rendicion-de-cuentas>.

¹⁴² "Integrated Public Procurement System," Integrated Public Procurement System, accessed on September 30, 2020, <https://www.sicop.go.cr/index.jsp>.

¹⁴³ "Transformation Toward Greater E-Procurement Efficiency: Benefits and Savings from Unification" (2019), Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/>.

expected to improve much more with a recent initiative called the Public Procurement Observatory inaugurated by the Ministry of Finance.

The draft "General Law on Public Procurement"¹⁴⁴ intends to prevent the coexistence of multiple procurement regimes, to reduce the cases of exceptions to circumvent ordinary procedures and to introduce requirements for the application of direct contracting. This law was developed by the Office of the Comptroller General of the Republic with the participation of civil society. Unfortunately, this proposal was not used to include modern mechanisms of incentives and citizen control.

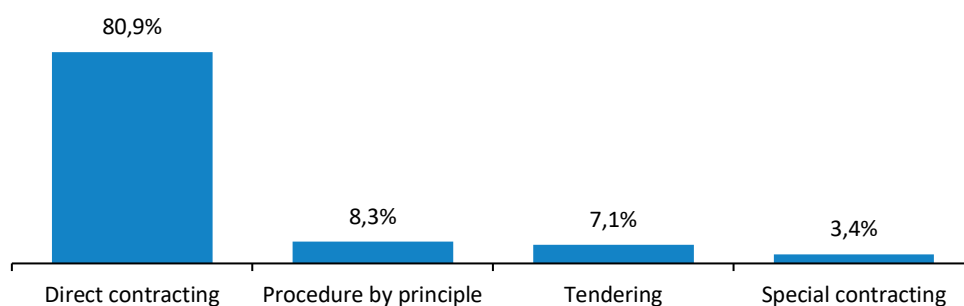
4.4.1 Legal Framework

In Costa Rica, the three main contracting procedures are public contracting, abbreviated bidding and direct contracting and are regulated with the Administrative Contracting Law. The first two are the ordinary procurement procedures for public works, concession of facilities, supply of goods, provision of services, among others, held by the organs of the Supreme Powers, the Supreme Electoral Tribunal, the CGR, the PGR, the Ombudsman's Office, institutions of the decentralized territorial and institutional sector, and sometimes non-state public entities and state-owned enterprises. Direct contracting is an extraordinary procedure that is limited to those cases that are expressly provided for in the law as exceptions to the application of ordinary procedures.

4.4.2 Direct Contracting

Despite the exceptionality of direct contracting, this is the procedure most used by public institutions. Thus, according to the CGR it represented 80% of the processes in 2019 and 58.43% of the total amount awarded, which has remained without substantive changes in the last six years.¹⁴⁵ Reports generated by SICOP show similar data and detail the different types of procurement procedures that have been carried out by public entities that use this system to make their purchases.¹⁴⁶

Chart 2. Distribution of procurement procedures registered in SICOP, 2010-2020



Source: Prepared by the authors with data from SICOP (2020)

¹⁴⁴ Draft General Law on Public Procurement File No. 21.546 <http://proyectos.conare.ac.cr/>.

¹⁴⁵ See "Annual Report 2019", Office of the Comptroller General of the Republic.

¹⁴⁶ See "Sistema Integrado de Compras Públicas," Integrated Public Procurement System; "Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System" (2019), OECD, accessed on September 2, <https://www.oecd.org/countries/costarica/costa-rica-public-procurement-system.pdf>.

There are three main reasons for the overuse of direct contracting. The first is related to the system of economic thresholds. According to Article 27 of the Administrative Contracting Law (LCA), the application of the bidding procedure and direct contracting for contracts that do not have a specific procedure is determined based on the economic thresholds, which are updated by the CGR annually. These thresholds are based on three criteria: the first refers to the category of procurement, whether public works or procurement of goods and services; the second is the budget allocated to the entity; and the third is the scope of the law. In addition, these thresholds are distributed according to the category in which the procuring entity is located; currently there are ten.¹⁴⁷

According to the OECD's report "Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System"¹⁴⁸, the economic thresholds foreseen for all procurement procedures are very high compared to international best practices. Thus, for example, taking the thresholds established by the CGR in 2017, the OECD found that, for public tendering procedures, 60% of the entities were required to apply a higher threshold than that provided by the Agreement on Government Procurement¹⁴⁹, which widened the margin for the use of direct procurements. Similarly, it was found that 3.7% of public entities had a budget that allowed them to carry out direct contracting for an amount of US\$161,928, which is higher than the threshold established by the aforementioned Agreement on Government Procurement, which was US\$130,000; and higher than that of other countries, such as France, which is US\$25,000 and Mexico, which despite having a system similar to Costa Rica's, is US\$25,171.

According to the OECD¹⁵⁰, the above may constitute a barrier to competition and reduce the efficiency of the contracting system, which in fact has already happened, since the most used exception (75.3%) by public institutions to resort to direct contracting during the period 2015-2017 was related to the amount to be contracted, which was below the threshold required to apply the bidding procedure.

Moreover, according to the OECD¹⁵¹, the threshold system in Costa Rica does not correspond to a principle of proportionality between the budget allocated to the entities and the amount of procurement it carries out in practice. For example, for 2018, entities that were placed in category A received 70.5% of the total budget for procurement, while the amount of procurement it carried out only represented 41.4% of the total volume, which meant a difference of -41.3%.¹⁵² On the other hand, the entities that belong to category E received 6.6% of the total budget while their number of procurements was four times greater (22.9%). This shows that resources are neither allocated nor executed in an efficient manner.

¹⁴⁷ See «Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System» (2019), OECD.

¹⁴⁸ Ibid.

¹⁴⁹ The Agreement on Government Procurement is a plurilateral agreement promoted by the World Trade Organization that regulates the procurement of goods and services by members of the organization, based on the principles of openness, equality and transparency.

¹⁵⁰ See «Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System» (2019), OECD.

¹⁵¹ Ibid.

¹⁵² This percentage, in part could be explained by the fact that not all of the budget was executed in 2018.

Therefore, the OECD¹⁵³ has recommended that Costa Rica reduce the value of the economic thresholds foreseen for each of the procurement procedures, as well as modify the threshold system to create one that is uniform for all entities, regardless of their size or budget, as is done in most OECD Member States.

It is important to note that in August 2019, bill number 21,546 called "General Law on Public Procurement"¹⁵⁴, which, among other issues, aims to reform the current procurement system, was submitted and unanimously approved by the Special Commission of the National Assembly in the first session period. According to this initiative, there would only be two types of ordinary procedures, the major bidding and the minor bidding, and two thresholds, depending on whether they are for goods and services or public works. In other words, the application of one or the other procurement procedure will no longer be determined according to the budget approved for the public entity, but according to the estimated volume of procurement, which, to a certain level, allows to achieve the uniformity recommended by the OECD throughout the public sector.

The second reason for the frequent use of direct contracting is that the legislation that regulates this matter provides for 26 categories of exceptions to the ordinary procedure¹⁵⁵, which public entities use excessively.¹⁵⁶ The most used were: single bidder (6.4%), undetermined repairs (4.6%), trainings (4%), social media (2.4%), fuel (1.2%) and artistic or intellectual goods or services (1%). Between 2015 and 2017, the amount of spending allocated for contracting that fell under one of these exceptions increased from 43.2% to 47.6%; however, if one takes into account that the volume of contracting increased during that period, the percentage of spending actually increased by 69.9%.¹⁵⁷

The third reason is due to the fact that a significant number of non-state public entities and public enterprises are exempted from applying the procedures provided for in the LCA because of the needs of the market in which they operate, which are generally characterized by high levels of competition, so there is greater demand for flexibility and efficiency in contracting processes.¹⁵⁸

This has caused some institutions to establish their own regulatory framework, which provides for other types of exceptions to the ordinary procedures and even other economic thresholds for the application of one or another procurement procedure. For example, in 2018, 15 public entities, which accounted for 17.68% of the total procurement for that year, had their own thresholds, which were higher than those provided for in the LCA. For instance, for the Costa Rican Railway Institute (INCOFER) and the Costa Rican Electricity Institute (ICE), the thresholds were eleven times higher than for public contracting.¹⁵⁹

¹⁵³ See «Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System» (2019), OECD.

¹⁵⁴ <http://proyectos.conare.ac.cr/asamblea/21546%20DICTAMEN%20AFIRMATIVO%20UNANIME.pdf>.

¹⁵⁵ See «Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System» (2019), OECD.

¹⁵⁶ See "Ley General De Contratación Pública", Asamblea Legislativa República de Costa Rica, accessed on 30 September 2020, <http://proyectos.conare.ac.cr/asamblea/21546%20DICTAMEN%20AFIRMATIVO%20UNANIME.pdf>.

¹⁵⁷ Véase «Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System» (2019), OECD.

¹⁵⁸ «Costa Rica: Good Governance, from Process to Results» (2015), OECD, acceso el 2 de septiembre de 2020, https://read.oecd-ilibrary.org/governance/costa-rica-good-governance-from-process-to-results_9789264246997-en#page1.

¹⁵⁹ See «Enhancing the Use of Competitive Tendering in Costa Rica's Public Procurement System» (2019), OECD.

In order to have a clearer regulatory framework, the OECD has recommended specifying which entities are subject to the Law on Administrative Contracting, since the way it is drafted omits certain entities that should without a doubt be covered by the law.¹⁶⁰ Similarly, the institutions that are currently excluded from the LCA should be evaluated, since the country could benefit from their inclusion considering the volume of contracts they represent per year. For example, among the excluded institutions are the Costa Rican Social Security Fund (CCSS), the Costa Rican Electricity Institute (ICE), and the National Insurance Institute (INS), which represent a third of all government purchases. According to the OECD, the exclusion of these types of entities increases the risk that a significant amount of public spending is not benefiting from competitive procurement processes.

With respect to the current system for approving exceptions to bypass the ordinary procedure, the OECD has indicated that it is not in line with international best practices, since there is no clear separation of the functions exercised by the CGR, which is responsible for authorizing exceptions for the use of direct contracting, deciding on appeals filed by bidders, and subsequently monitoring those procurements. In view of this, it has been recommended that the CGR's authority to authorize the use of exceptions be gradually withdrawn and instead that the responsibility of each public entity be strengthened, as well as the internal control exercised over contractual operations.

For this reason, the CGR has been reducing the number of contracts that require its authorization since 2012.¹⁶¹ In addition, the draft "General Law on Public Procurement" aims to eliminate the authorization of direct contracting, which is the CGR's responsibility, so that the contracting entity itself will be responsible for this procedure.

This legal initiative also seeks to broaden the scope to cover all public sector entities to avoid the coexistence of multiple procurement regimes, which has generated a legal framework that is difficult to understand, as well as to reduce the cases of exceptions to circumvent ordinary procedures and introduce requirements for their use.

4.4.3 Public procurement system and access to information

In 2001, the Ministry of Finance developed the public procurement system Compr@Red, whose use was mandatory only for central government institutions.¹⁶² Subsequently, in 2009, the Technical Secretariat of Digital Government created a second platform called Mer-Link, which was also mandatory only for the central administration, although it was used by municipalities and some autonomous institutions; while the rest of the decentralized entities developed their own public procurement platform, such as the Costa Rican Social Security Fund (CCSS), with up to 20 different systems coexisting¹⁶³, and others did not even have a

¹⁶⁰ Ernesto, Jinesta, *Administrative Contracting*. (Costa Rica: Editorial Jurídica Continental, 2010), Volume IV.

¹⁶¹ See «Costa Rica: Good Governance, from Process to Results» (2015), OECD.

¹⁶² Randall Arias et al., *Opening Government? The Case of Costa Rica in the Open Government Partnership* (2016), accessed on 7 September 2020, <https://www.globalintegrity.org/wp-content/uploads/2018/12/Costa-Rica-final.pdf>.

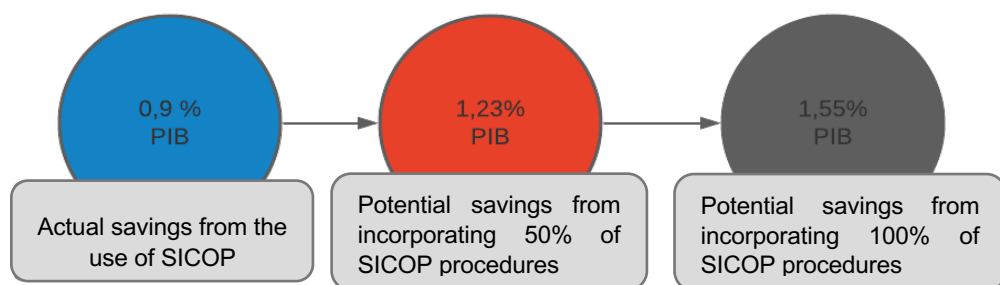
¹⁶³ See "Final Report: Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption" (2016), Organization of American States, accessed on September 7, 2020, http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic5_inf_cri_sp.pdf.

computer system but handled all procedures manually. Finally, in 2015, the Integrated Public Procurement System (SICOP) was introduced¹⁶⁴, which replaced Compr@Red and Mer-Link, but its use, like the other two, was only mandatory for the central government institutions.¹⁶⁵

Considering that decentralized entities account for more than 90% of the demand for goods, works and services for the public sector¹⁶⁶, the absence of a single system for the entire public administration has prevented the standardization of contracting processes, centralization of information, economies of scale or greater efficiency in management.¹⁶⁷

In view of this, Law No. 9395 of September 2016 was issued,¹⁶⁸ which established that all procurement activity regulated under the Administrative Procurement Law, as well as that regulated under any special regime, must be carried out through SICOP, for which a non-extendable period of one year was given. After its entry into force and with the incorporation of more entities into the system, Costa Rica has benefited from significant capital savings, as can be seen as follows:

Figure 1. Actual and potential GDP savings by use of SICOP, 2017



Source: CGR (2019)¹⁶⁹

According to the Office of the Comptroller General of the Republic¹⁷⁰, the number of institutions using this unified system rose from 49 in 2014 to 235 in 2019¹⁷¹, although not all of them use it 100% at all stages of the process, and there are still 30% of institutions that do not use it at all. 98% of the entities that have implemented SICOP use it for the first stages of the pre-contractual procedure, such as the announcement of the procedure, the notice, the electronic bid, the opening of bids, the award and the contract. However, less than 40% use it for the execution, such as payment management, settlement and evaluation of the supplier. This is mainly due to the fact that some entities still use their own systems for the execution

¹⁶³ See Executive Decree 38830-H-MICITT, https://www.hacienda.go.cr/docs/5909f84120c67_Decreto%20Ejecutivo.

¹⁶⁴ Ibid.

¹⁶⁵ See Randall Arias et al., *Opening Government? The Case of Costa Rica in the Open Government Partnership* (2016).

¹⁶⁶ See "OECD Economic Surveys" (2020), OECD, accessed on 2 September 2020.

¹⁶⁷ See "Transformation towards greater efficiency in electronic public procurement: Benefits and savings of unification" (2019), Office of the Comptroller General of the Republic.

¹⁶⁸ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1.=1&nValor2=82447&nValor3=105407&strTipM=TC.

¹⁶⁹ See "Transformation towards greater efficiency in electronic public procurement: Benefits and savings of unification" (2019), Office of the Comptroller General of the Republic.

¹⁷⁰ Ibid.

¹⁷¹ Note that in the July 2020 SICOP Report, the number of entities registered in SICOP was 315.

of certain tasks, others cannot use SICOP due to interoperability problems, and in others there is a lack of training for officials in the use of the platform.

Although the process of implementing this system has been slow¹⁷², in March 2019, as part of the Digital Transformation Strategy¹⁷³ and the sixth commitment of the Open Government Action Plan III¹⁷⁴, a breakthrough was achieved in this area as the three institutions that constitute a third of all government purchases, which are the Costa Rican Insurance Fund, the National Insurance Institute and the Costa Rican Electricity Institute, signed a letter of commitment to join the SICOP.¹⁷⁵ To date, only the Costa Rican Electricity Institute's institutional page shows that it is already using this system.¹⁷⁶

Regarding access to information through SICOP, according to the report of results and conclusions for Costa Rica for 2019¹⁷⁷, prepared by the Citizen Center for Open Society Studies (ACCESA) based on the Transparency in Public Procurement Index (ITCP), this system allows access to information on tender notices, candidate applications, bids, contracts, contract compliance including acts of delivery, acceptance and payments; subcontractors, complaints and dispute resolutions. However, this is only accessible on an individual basis, as mass access (open data) is not yet available. In other words, Costa Rica does not yet comply with the ITCP Standard or with other international standards on the subject, such as the Open Contracting Data Standard, in practice.

The above is confirmed by the commitments adopted in the Action Plan of the Open Government Partnership III for 2017-2019¹⁷⁸ in relation to the public procurement system, in which it was proposed to make SICOP information available in an open, neutral and operable way following the open contracting standard. According to the Open Government Costa Rica website¹⁷⁹, this commitment has already been 100% achieved, but there is still no results evaluation report. In addition, when going on the SICOP's website, although the "Open Data" option is evident, it is still necessary to have specific information to search for suppliers or goods and services, such as the name, identity card, the classification code of the good or service, among other data, which makes it difficult for citizens to access.

¹⁷² See "Transformation towards greater efficiency in electronic public procurement: Benefits and savings of unification" (2019), Office of the Comptroller General of the Republic.

¹⁷³ See "Estrategia de Transformación Digital hacia la Costa Rica del Bicentenario 4.0", Ministry of Science, Technology and Telecommunications.

¹⁷⁴ "Third National Open Government Action Plan of Costa Rica (2017-2019)," Regional Observatory for Development Planning, accessed on September 30, 2020, <https://observatorioplanificacion.cepal.org/es/planes/tercer-plan-de-accion-nacional-de-gobierno-abierto-de-costa-rica-2017-2019>.

¹⁷⁵ "ICE, INS and CCSS commit to use SICOP in their purchases" (2019), Ministry of Finance, accessed on September 30, 2020, <https://www.hacienda.go.cr/noticias/15022-ice-ins-y-ccss-se-comprometen-a-usar-sicop-en-sus-compras>.

¹⁷⁶ "Instituto Costarricense de Electricidad," Instituto Costarricense de Electricidad (ICE), accessed on September 30, 2020, <https://www.grupoice.com/wps/portal/ICE/transparencia/compras>.

¹⁷⁷ "Índice de Transparencia en Contratación Pública (ITCP) Resultados y Conclusiones para Costa Rica," Asociación Centro Ciudadano de Estudios para una Sociedad Abierta (ACCESA), accessed on September 7, <http://accesa.org/wp-content/uploads/2019/04/ITCP-CR-Reporte-final.pdf?>

¹⁷⁸ "Open Government Partnership Action Plan November 2017 - November 2019," Presidency of the Republic, accessed on September 30, 2020, <https://www.opengovpartnership.org/wp-content/uploads/2001/01/>.

¹⁷⁹ See <http://www.gobiernoabierto.go.cr/panorama/implementacion-de-los-estandares-de-contrataciones-abiertas-al-sistema-integrado-de-compras-publicas-sicop/>.

Regarding the disclosure of infrastructure projects, the "First Report on Assurance of Public Infrastructure Projects in Costa Rica (2019)"¹⁸⁰ indicates that some institutions do not respect the 10 working days deadline granted by law to receive a response to requests for information; that there is a lack of implementation of search engines in institutional pages to facilitate access to information related to projects; that the publicity of the initial stages of contracting is adequately disseminated, but not the final stages; and finally, that SICOP and other platforms that contain data on infrastructure projects such as MapalInversiones are not user-friendly.

It is also important to note that public access to quality control reports and other essential reports on the products delivered by contractors is still not guaranteed¹⁸¹, nor is there a mechanism that allows citizen participation in the supervision of procedures. What can be accessed through SICOP is the sanctions that suppliers have received, so it is possible to know which ones have been disqualified by the State.

Finally, it is important to highlight the need for greater publicity about the functioning of SICOP, since a survey conducted in 2020¹⁸² by the Office of the Comptroller General of the Republic among citizens found that 70% of respondents were unaware of the existence of a single public procurement system.

4.4.4 Governing bodies of the public procurement system

The bodies with the greatest relevance in the public procurement system are the General Directorate of Asset Management and Administrative Procurement, the Office of the Comptroller General of the Republic and the Technical Secretariat of Digital Government, as well as the procurement offices in each public entity.

The Ministry of Finance's General Directorate of Asset Management and Administrative Contracting is the governing body of the Central Government's Asset Management and Administrative Contracting System. Among its functions is to establish policies, evaluate the procurement processes periodically, guide the development of the Central Administration's public procurement programs through its guidelines, supervise the institutional suppliers to ensure proper execution of procurement processes, among others.

Since this Directorate is only responsible for central government procurement, which represents less than 10% of the total procurement volume in the country¹⁸³, more than 90% of the procurement processes that correspond to decentralized entities do not have a governing body in charge of supervising, coordinating, and issuing guidelines for their procurement. As a result, some institutions follow the guidelines issued by the Ministry of Finance through the General Directorate of Asset Administration and Administrative

¹⁸⁰ See "Primer Informe de Aseguramiento de Proyectos de Infraestructura Pública en Costa Rica" (2019), Infrastructure Transparency Initiative.

¹⁸¹ See "Transparency in Public Contracting Index (ITCP) Results and Conclusions for Costa Rica", ACCESA.

¹⁸² See "Annual Report 2019", Office of the Comptroller General of the Republic.

¹⁸³ See "OECD Economic Surveys" (2020), OECD.

Contracting, others follow the provisions issued by the CGR, and the rest follow their own regulations.¹⁸⁴

In the draft procurement law proposed by the CGR¹⁸⁵, the aim is to create a steering committee that resides in the Executive Branch with competence to regulate procurement conditions for the entire public sector in order to avoid the multiplicity of norms and contradictions that currently exist.

4.4.5 Recursive regime

The appeals system in Costa Rica is not simple because the filing of appeals depends on several factors. One must take into account the category to which the Public Administration that promotes the contracting procedure belongs; whether the entity has a particular procurement regime; the type of procedure, whether it is a public contracting or abbreviated bidding procedure, because the deadlines vary depending on this; and the competent body to hear the appeals, which depends on the amount of the contract in the case of appeal or revocation.

However, this is intended to change with the draft Public Procurement Law¹⁸⁶ mentioned above, which modifies the bodies' competence to hear appeals. Thus, considering that there will only be two ordinary contracting procedures, which are the major public tender and the minor public tender, it will be distributed according to the procedure that is contested, which will provide greater clarity to suppliers who wish to appeal.

In order to promote efficiency in public procurement, this project also proposes the establishment of fines when recourse is used improperly and arbitrarily in violation of the public interest, i.e., when there is recklessness or bad faith. However, it does not specify what is meant by both of these terms. This could give way to the discretion of the public official who interprets it, and eventually be a dissuasive technique for the presentation of appeals if these terms are used in an excessive and arbitrary manner.

With regard to the response time for resolving appeals filed with the Office of the Comptroller General of the Republic in the area of administrative contracting, objections to the notice are resolved in an average of six working days, when the law allows for a period of ten days, which is positive. In 2019, of these, 43% were partially upheld, while most appeals were rejected (54%) at the admissibility stage for not complying with the requirements, but 17% of the procedures that were resolved merited the annulment of the awarding act.¹⁸⁷

4.4.6 Corruption risks in the procurement system

According to the CGR, the main problems in the area of public procurement are the lack of clarity of the bidding documents, which do not respond to the administration's needs and contain evaluation systems that are not simple. This, together with the high degree of

¹⁸⁴ See "Transparency in Public Contracting Index (ITCP) Results and Conclusions for Costa Rica", ACCESA.

¹⁸⁵ <http://proyectos.conare.ac.cr/asamblea/21546%20DICTAMEN%20AFIRMATIVO%20UNANIME.pdf>.

¹⁸⁶ Ibid.

¹⁸⁷ See "Annual Report 2019", Office of the Comptroller General of the Republic.

discretion on the part of public officials in their interpretation, generates risks of irregular conduct.¹⁸⁸

According to the National Survey on Corruption Prevention¹⁸⁹, conducted by the Office of the Comptroller General of the Republic in 2017, the main corruption practice was influence in the design of the bidding notices' terms of reference, followed by the practice of making adjustments to the specifications of the contractual object once the contract has already been awarded, and the pressure that exists to be awarded to a particular supplier. 28% of the companies surveyed are aware of some corrupt acts by their competitors, especially in the infrastructure and IT industry.

Furthermore, according to news published in the various digital media on the risks of corruption in the contracting system, businessmen believe that the way in which the notices are drafted, by containing very specific conditions, discourages especially small and medium-sized enterprises to participate in the contracting procedures, which reduces the level of competitiveness. Also, the guarantees that are sometimes required do not promote the participation of more suppliers.¹⁹⁰

The most recent corruption scandals in public procurement involved a contract for eighty million dollars signed by the Costa Rican Electricity Institute with the company SAP Costa Rica in 2015 for the acquisition of a Financial Administrative Modernization Program, which was awarded without a public tender.¹⁹¹ This contract was questioned by the Comptroller General of the Republic since weak controls were applied and high expenses were incurred which were financed with public resources.¹⁹² Even the Institute's internal audit initiated an irregular contracting investigation; however, the results are unknown.

It is important to note that this company is a subsidiary of the German multinational SAP, which has been the subject of several corruption scandals in other countries such as Panama and Mexico. Thus, in 2015 the Regional Director for Latin America pleaded guilty to paying bribes to Panamanian officials and in 2017 the vice president of SAP Costa Rica also confessed to having paid bribes.¹⁹³ Despite this, the Bank of Costa Rica requested authorization to carry out direct contracting with this company; however, this request was finally denied by the Comptroller General of the Republic.¹⁹⁴

Good practices:

¹⁸⁸ Ibid.

¹⁸⁹ See "Annual Report 2016", Office of the Comptroller General of the Republic.

¹⁹⁰ Marcela Castro Barrantes, "Forum: My experience as a young entrepreneur" (2019), *La Nación*, accessed on September 30, 2020, <https://www.nacion.com/opinion/foros/foro-mi-experiencia-como-joven-empresaria/XD6FFCZVFRFTTLZ6BMGAVC4IZI/story/>.

¹⁹¹ Johel Solano, "ICE Audit Finds Irregular Contracting in System of ¢46 Billion" (2019), *crhoy.com*, accessed on September 30, 2020, <https://www.crhoy.com/nacionales/auditoria-del-ice-determina-como-irregular-contratacion-en-sistema-de-46-mil-millones/>.

¹⁹² Alexander Ramírez, "Congress to investigate ICE for irregular contracting of up to ¢80 million" (2019), *crhoy.com*, accessed on September 30, 2020, <https://www.crhoy.com/nacionales/congreso-investigara-al-ice-por-contratacion-irregular-de-hasta-80-millones/>.

¹⁹³ María Siu Lanzas, "Cinco entidades tendrían contratos con empresa cuestionada" (2017), *Diario Extra*, accessed on September 30, 2020, <https://www.diarioextra.com/Noticia/detalle/325941/cinco-entidades-tendrian-contratos-con-empresa-cuestionada>.

¹⁹⁴ Staff, "SAP in Latin America, beset by corruption scandals" (2017), *tynmagazine*, accessed on September 30, 2020, <https://www.tynmagazine.com/sap-en-latinoamerica-acorralada-por-los-escandalos-de-corrupcion/>.

- *The mandatory use of for the Public Procurement System for the entire public administration;*
- *The incorporation of more public entities into the Public Procurement System has brought savings equivalent to 0.9% of GDP in 2017;*
- *Three of the entities that account for a third of all government procurement, namely the Costa Rican Insurance Fund, the National Insurance Institute and the Costa Rican Electricity Institute, have signed letters of commitment to join the Public Procurement System;*
- *It is possible to see the sanctions imposed on suppliers in the Public Procurement System;*
- *The response time for the resolution of objections to contracting notices by the Comptroller General of the Republic is less than the legally established 10 working days.*

Deficiencies:

- *The financial thresholds foreseen for all procurement procedures are very high compared to international best practices;*
- *There is no clear separation of the functions exercised by the Office of the Comptroller General of the Republic, since it is responsible for authorizing exceptions for the use of direct contracting, for deciding on the administrative appeals presented by bidders, and for subsequently overseeing the same contracting;*
- *Less than 40% of the public entities that are incorporated into the Public Procurement System use it for the contractual execution stages;*
- *There are still 30% of public entities that have yet to join the Public Procurement System;*
- *Costa Rica does not meet the Transparency in Public Contracting Index Standard or the Open Contracting Standard;*
- *The information available in the Public Procurement System is not 100% accessible to mass information (open data);*
- *Quality and other reports on the products delivered by contractors are not publicly available through the Public Procurement System;*
- *The 2020 National Corruption Prevention Survey reveals that 70% of respondents do not know about the existence of a single public procurement system in Costa Rica;*
- *Decentralized entities that carry out more than 90% of procurement processes are not subject to a governing body for public procurement that regulates and supervises them.*

4.5 Arts. 10 and 13.1: Access to Information and Participation of Society

Strategic reading

Costa Rica does not have a law on access to public information, but there is a broad national and international regulatory framework, as well as important initiatives related to this issue such as the Open State Alliance, or the National Commission on Open Data, which have promoted the exercise of the right of access to information. In the last decade, the amount of data available on the official websites of public entities has increased significantly.

For example, among the most important initiatives is the Decree on Transparency and Access to Public Information¹⁹⁵ of 2017, which defined what information is publicly accessible, created the legal concept of the Access to Information Officer and obliged entities to include a transparency section in their work reports. However, the scope of this Decree is limited to the Executive Branch, although a guideline was issued on the matter that is mandatory for the Decentralized Administration. In addition, not all the entities to which these regulations are applicable fully comply with them.

¹⁹⁵ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor 1=1.&nValor2=84166&nValor3=108486&strTipM=TC

According to the National Survey on Perception of Transparency conducted by the Office of the Comptroller General of the Republic in 2016¹⁹⁶ and 2019¹⁹⁷, 71% of citizens believe that the State is not transparent regarding the information it makes public. In addition, there is a drop in the evaluation of the speed, ease and equality of access to information.

The right of access to information has several exceptions, which require further legislative development for its application, since in practice it has prevented the exercise of effective citizen control in some areas.

Finally, regarding citizen participation, the results of the 2016 National Transparency Consultation reveal that there is little transparency in this regard and there have been no significant changes by 2019. Thus, only 24% of respondents know about their right to participate in the decision-making processes of public entities and 44% negatively assess the current mechanisms of participation because they consider that they are not sufficient, are not properly publicized and are not easy to use. However, the initiatives of entities such as the Office of the Comptroller General of the Republic, the Public Ethics Ombudsman's Office, the Ombudsman's Office, the Judicial Branch and the Legislative Assembly, should be highlighted as they have provided information to the general public about their rights and have created spaces to promote participation, even though they have yet to become permanently active spaces with the capacity to have a real impact on decision-making.

4.5.1 Normative Framework and Constitutional Jurisprudence

Costa Rica does not have a law on access to information, however, it has an extensive regulatory framework related to this matter. For example, Article 30 of the Constitution guarantees the exercise of the right to free access to information on matters of public interest, except in exceptional cases in which it is considered legitimate to restrict this right. This has been extensively addressed by the Constitutional Chamber's jurisprudence, which has been responsible for developing its content, typology, purpose, and its intrinsic and extrinsic limits.¹⁹⁸ Among the most important national and international norms and initiatives on access to information are the following:

Legislation related to the right of access to information in Costa Rica

Name of the law	Details
Law No. 7202 on the National Archives System	Pioneer rule in the field that guaranteed access to all documents generated or held by public institutions.
Law No. 8220 on the protection of citizens from excessive administrative requirements and formalities; and its Regulations.	Establishes as a limit to the right of access to information issues related to the defense of the State and national security; establishes the administrative responsibility of the Administration and the civil servant; the governing body; etc. It creates the legal concept of the Administrative Procedures Simplification Officer to ensure the institutional application of this law, and promotes the optimization of institutional processes focused on users.
Law No. 9097 regulating the right of petition in the Public Administration.	Regulates the formalities in the exercise of the right to petition; the jurisdictional protection of this right through the writ of protection; sanctions regime.

¹⁹⁶ "National Transparency Consultation," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/enpt/index.html>.

¹⁹⁷ "Encuesta Nacional de Percepción de Transparencia en el Sector Público," Comptroller General's Office, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/enpt-2019/index.html>.

¹⁹⁸ See "Annual Report 2015", Office of the Comptroller General of the Republic.

Law No. 6227 General Law of the Civil Service	Provides for access to administrative files and their exceptions.
Law No. 7135 on Constitutional Jurisdiction	Refers to the right to petition and the possibility of filing an appeal on the grounds of unconstitutionality.
Financial Administration Law No. 8131	Establishes the provision or use of confidential information from which an undue advantage derives for the official or third parties as administrative liability, or allows causing damage to the State and other public entities.
Law No. 7472 on the Promotion of Competition and Effective Consumer Protection.	Regulates the right of access to information on goods and services.
International Regulations and Initiatives	
Open Government Partnership	
International Open Data Charter	
E-Government Network for Latin America and the Caribbean (Red-Gealc)	
Ibero-American Code of Good Governance	
Ibero-American Charter of Electronic Government	
Ibero-American Charter for Citizen Participation in Public Administration	

Source: Own elaboration based on Ortega (2003)¹⁹⁹

In the framework of compliance with the Open Government Partnership, the II Annual Open Government Plan was prepared, which has among its axes Transparency and Access to Information. As a result of this Plan, four decrees and other administrative acts were issued. Thus, for example, through Executive Decree No. 38994-MP-PLAN-MICITT/2015²⁰⁰, the National Commission for Open Government was created with the objective of coordinating and facilitating the implementation of Open Government in public entities; and, through Executive Decree No. 40199-MP/2017²⁰¹ the National Policy of Openness of Public Data was created. This defined the minimum information that public institutions must publish on their official website, which must be available in an open and neutral way, in addition to being interoperable and updated; as well as the obligation to publish all data catalogs of public entities in the national portal of open data.

After the entry into force of these decrees, the amount of information published by public institutions on their websites increased significantly.²⁰² According to the Transparency Index of the Public Sector (ITPC)²⁰³, which is an evaluation tool developed by the Ombudsman's Office (DHR) to measure the level of transparency of public entities through their official

¹⁹⁹ Jorge Córdoba Ortega, *Costa Rican Legislation and the Right of Access to Public Information*, accessed on 30 September 2020, http://www.oas.org/es/sla/ddi/docs/acceso_informacion_base_dc_leyes_pais_cr_2.pdf; Resolution No. 12625/2012, <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-633669>.

²⁰⁰ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1.&nValor2=79442&nValor3=100459&strTipM=TC.

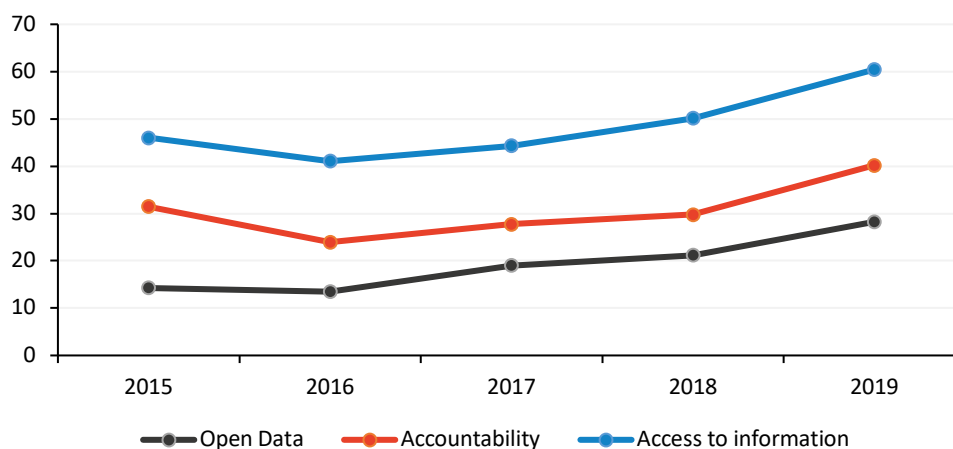
²⁰¹ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1.&nValor2=84004&nValor3=108193&strTipM=TC.

²⁰² See "Independent Review Mechanism (IRM): Costa Rica End of Term Report 2015-2017", Israel Aragón Matamoros, accessed on 30 September 2020.

²⁰³ "Public Sector Transparency Index," The Ombudsman's Office, accessed on September 30, 2020, http://www.dhr.go.cr/red_de_transparencia/indice_de_transparencia_del_sector_publico.aspx.

websites, the components related to access to information, accountability and Open Data have improved their score during the last five years (Figure 3).

Figure 3. Evolution of the components of the Public Sector Transparency Index, 2015-2019



Source: Own elaboration with data from the Ombudsman Office (2019)

In addition, according to the most recent Public Sector Transparency Index results report (2019)²⁰⁴, the number of public institutions without a website decreased from 22 in 2018 to 15 in 2019. 60% of the 254 institutions have a transparency section on their websites, which improved from 46% in 2015. However, the Municipal Sector and Public Enterprises and Bodies remain the worst evaluated in terms of access to information.

Although the information available on the web pages has increased, according to the report of the Independent Review Mechanism (IRM), the information published varies from one entity to another, in terms of uniformity, updating, relevance, usefulness for users and ease of use and understanding, especially when it comes to autonomous institutions.²⁰⁵ Moreover, the construction of a National Open Data Portal where all public sector information is grouped is still pending, and it is unknown when it will be completed.²⁰⁶

The Decree on Transparency and Access to Public Information issued in 2017 is only binding for the Executive Branch. Among other things, it created the position of Access to Information Officer (OAI), whose responsibility falls upon the Comptroller of Services of the institution or in if non-existent, on another official of the same entity. Although the Guideline "On Transparency and Access to Public Information"²⁰⁷ was issued in 2017 to ensure compliance

²⁰⁴ "Transparency Index of the Costa Rican Public Sector" (2019), La Defensoría de los Habitantes, accessed on September 30, 2020, http://www.dhr.go.cr/Red_de_transparencia/indice_transparencia/resultados_itsp/_2019/resultados_its_2019.pdf; "77 Municipalities and 08 District Councils failed website transparency measurement" (2019), La Defensoría de los Habitantes, accessed on September 30, 2020, <https://cdn.crhoy.net/imagenes/>; see "Mecanismo De Revisión Independiente (MRI): Informe De Fin De Término De Costa Rica 2015-2017", Israel Aragón Matamoros.

²⁰⁵ Véase «Mecanismo De Revisión Independiente (MRI): Informe De Fin De Término De Costa Rica 2015-2017», Israel Aragón Matamoros.

²⁰⁶ «Datos Abiertos», Presidencia de la República, acceso el 30 de septiembre de 2020, <https://www.gobiernoabierto.go.cr/datosabiertos/>.

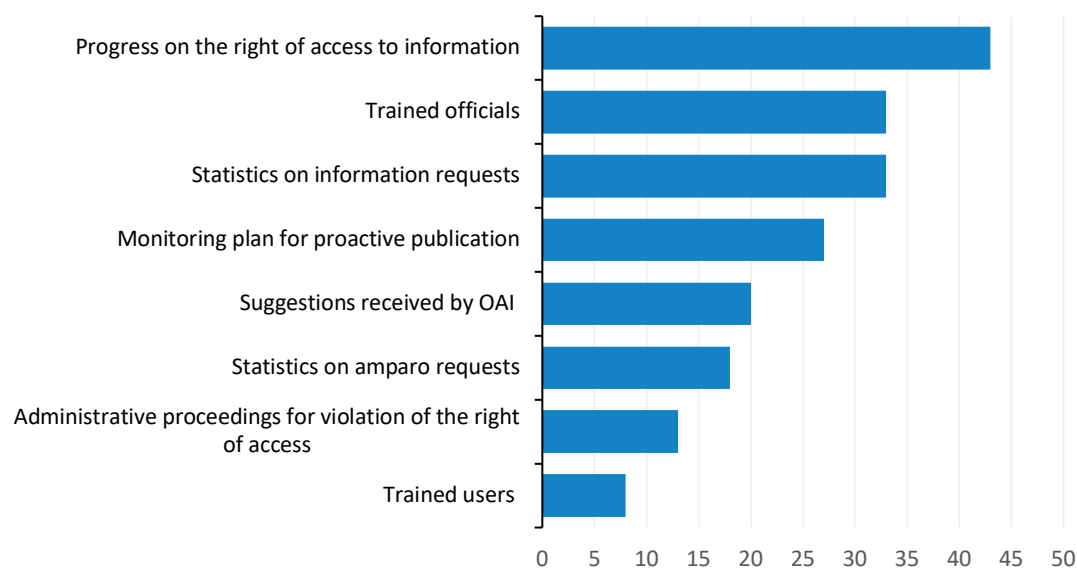
²⁰⁷ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor_1=1&nValor2=84167&nValor3=108487&strTipM=TC.

with this regulation in the Decentralized Administration, the authors of this report were unable to determine exactly how many public entities have established the position of Access to Information Officer, as of 2020. According to the Open Government of Costa Rica website²⁰⁸, most ministries have a designated officer for this purpose, while 22% of public institutions and one municipality has such an officer. However, the "Study on Access to Public Information"²⁰⁹ conducted by the University of Costa Rica and CRI in 2018 states that of the 112 institutions studied (not counting the Supreme Powers, the Supreme Electoral Tribunal, municipalities, public universities, and the Costa Rican Social Security Fund), 63 already had an officer by that date, i.e., a higher number than what the Open Government website indicates.

In addition, the decree stipulates that these officials must prepare an annual work report of statistical data on access to information. However, these appear not to be available on the websites of the entities, or at least not easily accessible, so it is not possible to determine the level of compliance with this provision.

The Access to Information Decree also established the obligation for the annual work reports of all public institutions to include a section on access to information indicating statistics on requests for information, the time taken to respond to them, appeals filed, among other information. Nevertheless, not all entities comply with this requirement. In fact, according to the aforementioned study, the Universidad de Costa Rica and Costa Rica Íntegra were only able to access the accountability reports of 76 of the 101 entities analyzed (Figure 4):

Figure 4. Institutions that comply with access to information requirements, by type, 2018



Source: Costa Rica Integra and University of Costa Rica (2018)

²⁰⁸ «Oficialías de Acceso a la Información», Presidencia de la República, accessed on 15 September, 2020, <https://www.gobiernoabierto.go.cr/oficialias-de-acceso-a-la-informacion/>.

²⁰⁹ Véase «Estudio sobre el acceso a la información pública: Monitoreo en entidades públicas del cumplimiento del Decreto Ejecutivo 40200 y la directriz 073», Escuela de Administración Pública de la Universidad de Costa Rica.

In addition to this study, there are no other research or reports related to access to information that contain systematized data from all public entities, on the number of disciplinary procedures, the average response time to respond to requests, statistics on the number of requests denied and the reasons, as well as the number of administrative appeals filed. However, in terms of data on access to information of public interest, there is the National Survey of Perception of Transparency (ENPT)²¹⁰ conducted by the CGR among citizens in 2016 and 2019, which reveals improvements in the usefulness, clarity and reliability of the information published on the websites of public entities, but there is also a setback in terms of speed, ease and equality. According to this survey in 2019, 71% of citizens perceive that the public sector is not transparent in the information it makes available, a figure that has not changed since 2016. It also indicates that the main barriers to access to information is the time it takes (15%), the procedures involved (14%), and the lack of knowledge or lack of information (9%) about its processing. In addition, it reveals that the preferred means of accessing data is through television, secondly through websites, and thirdly through social networks.

Furthermore, according to the Office of the Comptroller General of the Republic, the least published information on institutional web pages is related to staffing, for example, available positions, descriptions of all types of positions and their requirements, the current salary index, incapacities, vacations, end-of-service reports for certain positions, and staff evaluations. The most published information relates to budget execution in the CGR's SIPP system, as well as on the web pages.²¹¹

4.5.2 Exceptions to access to information

Exceptions to the right of access to information are regulated in different laws, for example, there are limitations with respect to: the defense of the State and national security, commercial and industrial secrets of public sector companies, sworn statements of public officials²¹², the right to privacy of public servants, or when it affects the principle of equality among bidders in public procurement, among others. Some require further normative development for their application, such as those related to national security.

Some of these exceptions conflict with the exercise of citizen control, since there is a "distorted" use, as described by the CGR²¹³, of declarations of confidentiality on certain information of institutions that hinders the disclosure of results to the public. Thus, for example, with respect to the exception related to commercial and industrial secrets, some companies in competition with the public sector have used Law No. 7975/2000 on Undisclosed

²¹⁰ See "Results of the module: "Access to Information: National Consultation on Transparency," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/enpt/>; "Access to Information: National Transparency Perception Survey 2019," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/enpt-2019/acceso-info.html>.

²¹¹ See "Annual Report 2019", Office of the Comptroller General of the Republic.

²¹² See "Annual Report 2016", Office of the Comptroller General of the Republic.

²¹³ See "Report on the Implementation of the Performance Measurement Framework for Supreme Audit Institutions in the Office of the Comptroller General of the Republic 2019", Office of the Comptroller General of the Republic.

Information²¹⁴ to declare information related to their activities confidential. Thus, since 2011 all budgetary information of the Costa Rican Institute of Electricity and its companies in the telecommunications sector is confidential; while in the insurance sector a kind of safeguard of information related to the activities of the National Insurance Institute has been imposed. In both cases the restriction of information is activated when the institutions declare industrial, commercial or economic secrecy or when it is not convenient to disclose something for competition reasons.²¹⁵

4.5.3 Citizen participation

In terms of citizen participation, a recent example is the appeal on the grounds of unconstitutionality filed by a citizen of the canton of Aserrí against the municipality that resulted in a conviction in 2018.²¹⁶ In the ruling, the Constitutional Chamber held that the rights of access to information, citizen participation and accountability are exercised through the new information and communication technologies available, and ordered the local government to install a hyperlink on the website to allow the entry of requests, formalities and procedures online. As a result of this ruling, the Ombudsman's Office opened an ex officio investigation and sent requests for information to 81 municipalities and 8 councils to determine their level of compliance with the Chamber's ruling.²¹⁷ There is still no report with the results of this investigation.

Another example is the plebiscite organized in 2018 by the Municipality of Paraíso to remove the mayor, as a result of the work of the canton's neighbors who collected evidence for months to demonstrate the irregularities committed by this authority.²¹⁸ Despite the fact that 46,754 voters were summoned, 80% did not show up, so not enough votes were obtained for the removal of the mayor.²¹⁹

In this regard, it should be noted that citizen participation in Costa Rica is poor or very poor according to the results of the National Transparency Consultation²²⁰ conducted by the Comptroller General of the Republic in 2016. Thus, for the citizen participation module, it was found that only 0.95% of respondents are very participatory, while 87.3% are not very participatory.

Results of the citizen participation module of the National Transparency Survey, 2016

²¹⁴ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor 1=1.&nValor2=41810&nValor3=74709&strTipM=TC

²¹⁵ See "Annual Report 2019", Office of the Comptroller General of the Republic.

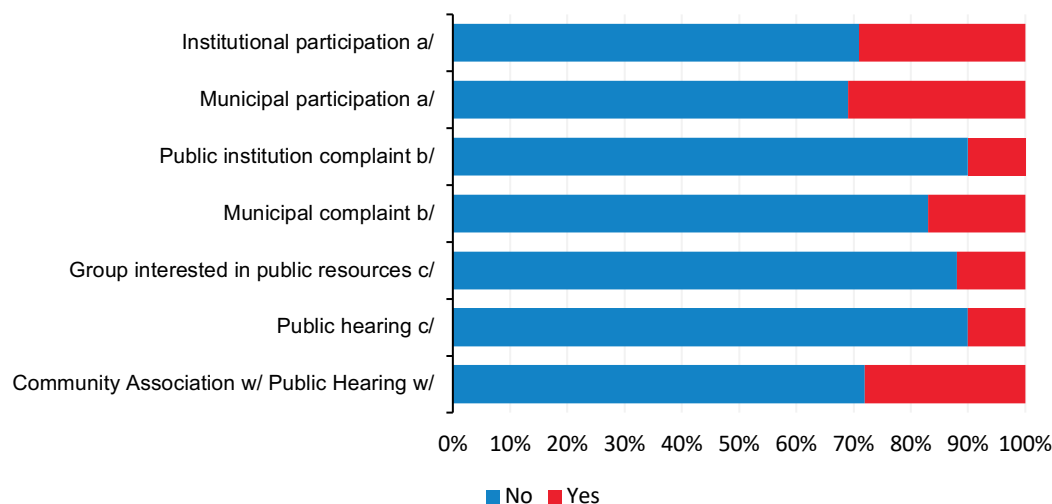
²¹⁶ Ruling No. 12129/2018, <https://vlex.co.cr/vid/736307469>.

²¹⁷ See "Informe Anual de Labores 2019-2020", La Defensoría de los Habitantes, accessed on 30 September 2020.

²¹⁸ "Municipality of Paraíso approves plebiscite to recall mayor" (2018), PAC Fracción Legislativa, accessed on September 30, 2020, <https://pac.cr/municipalidad-de-paraiso-aprueba-plebiscito-para-destituir-alcalde/>.

²¹⁹ "Paraíso plebiscite results favor questioned mayor" (2018), *delfino.cr*, accessed on September 30, 2020, <https://delfino.cr/2018/05/resultados-del-plebiscito-en-paraiso-favorecen-a-cuestionado-alcalde>.

²²⁰ "Results of the module: "Citizen Participation": National Consultation on Transparency," Office of the Comptroller General of the Republic, accessed on September 30, 2020, https://cgrfiles.cgr.go.cr/publico/docsweb/enpt/part_ciud.html.



Source: Own elaboration with data from the Office of the Comptroller General of the Republic (2016)²²¹

It was also found that the mechanisms most used for participation in issues related to the Public Treasury are community or local associations, cantonal or district committees, local boards, and national associations or groups. However, participation through these means is still very limited. Similarly, it was observed that people 50 years of age and older are the most participative group, versus those between 18-29 years of age who are the least involved, which shows the need for new public awareness campaigns and training to attract the attention of young people.

In 2019, the results of citizen participation did not change significantly. According to the National Transparency Survey²²², only 17%, 27% and 48% have participated or attended public hearings, service comptrollers or organized groups in their communities, respectively, although people know or have heard about them. Similarly, only 24% know about their right to participate in the decision-making process, which shows that there is still a lack of publicity in this area. However, there are also improvements in some aspects, for example, 20% of respondents indicate having contacted a public institution to request that some special item be included in the plans and programs, which is more than triple the number reported in 2016. Also, there was an increase from 12% in 2016 to 23% in 2019 regarding presentation of recommendations to improve public institutions.

However, respondents consider that the participation mechanisms are not sufficient or are not adequately disseminated and are not easy to use. Thus, one of the barriers is lack of information (24%) and lack of interest (9%). In addition, for 66% of respondents, municipalities do not create sufficient spaces for participation, which has not changed significantly since 2016; and in general, 44% of respondents negatively evaluate the available spaces for participation.

²²¹ a/ Refers to the perception of whether the entities offer sufficient spaces for participation; b/ Refers to whether people have filed a complaint in the last two years; c/ Refers to participation in any of the aforementioned instances.

²²² "Citizen Participation: 2019 National Transparency Perception Survey," Office of the Comptroller General of the Republic, accessed on September 30, 2020, <https://cgrfiles.cgr.go.cr/publico/docsweb/enpt-2019/part-ciud.html>.

Despite the above, some entities seem to have made efforts to inform communities about their rights and open spaces for citizen participation. For example, the Office of the Comptroller General of the Republic has several citizen engagement programs that promote citizen commitment to innovate forms of social control of public finances, as well as the active participation of high school students in the role of youth comptrollers.²²³ However, the results of these initiatives are unknown because the authors of this report were unable to find information about them on the institutional website. Another entity is the PEP, which has systematized constitutional jurisprudence on the right of access to information and administrative jurisprudence on public ethics to facilitate knowledge and understanding.

Moreover, through the Institute for Human Rights Education, which was created in December 2020, the Ombudsman's Office aims to design and implement institutional strategies aimed at civil society and other entities, on the knowledge, promotion and protection of human rights, including good administration, access to information and citizen participation.²²⁴ From 2021 onwards, officials of this entity will conduct trainings for certain communities on transparency in public infrastructure as part of the social audit project of the CoST Costa Rica initiative, to motivate citizens to demand accountability.²²⁵

The Judicial Branch also has a Citizen Participation Program that allows people to become involved in the decision-making process and in the execution of policies for the administration of the justice system.²²⁶ The Legislative Assembly also has its own participation mechanisms. The authors of this report were unable to find information on the results of these programs.

Finally, it should be noted that the Constitution²²⁷ regulates the power of the people to legislate by referendum, however, it is not possible to exercise it when it comes to budgetary, tax, fiscal, security, contracts, and acts of an administrative nature, among others. In Costa Rica, only one referendum has been held in 2006 on the Free Trade Agreement between the United States, Central America and the Dominican Republic.²²⁸ In addition, the General Law of Public Administration of 1978²²⁹ provides for the possibility that the Executive Branch or the Ministry of branch, submits a preliminary draft of regulations to the public.

Good practices:

- *Executive Decree No. 40199 defined the minimum information that public entities must publish in an open, neutral, interoperable and updated manner;*
- *Decree No. 40200-MP-MEIC-MC on Transparency and Access to Public Information was issued as an urgent measure in the absence of a law on access to information;*
- *The Judicial Branch and the Legislative Assembly have citizen participation programs;*
- *The Ombudsman's Office through its Human Rights Institute aims to train civil society organizations and other entities on various rights including access to information and from 2021*

²²³ See "Annual Report 2019", Office of the Comptroller General of the Republic.

²²⁴ See "Informe Anual de Labores 2019-2020", La Defensoría de los Habitantes.

²²⁵ Asociación Costa Rica Integra has been part of the multi-sectoral group of CoST since its foundation. In 2021 it assumed the presidency of CoST and the representation as "country manager".

²²⁶ See "Citizen Participation", Judicial Branch.

²²⁷ See Political Constitution of the Republic of Costa Rica/1949, of 7 November.

²²⁸ "Referendum on NAFTA boosted citizen participation" (2012), University of Costa Rica, accessed on September 30, 2020, <https://www.ucr.ac.cr/noticias/2012/10/10/referendum-sobre-el-tlc-potencio-la-participacion-ciudadana.html>.

²²⁹ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor 1=1.&nValor2=13231&nValor3=109081&strTipM=TC

onwards will provide workshops to communities on the issue of transparency in public infrastructure as part of the social audit project of the international initiative CoST Costa Rica;

- The Office of the Comptroller General of the Republic has citizen engagement initiatives to promote the commitment and participation of high school students;
- The Office of the Public Ethics Ombudsman has systematized jurisprudence on the right of access to information to make it available to the public and facilitate its understanding.

Deficiencies:

- The municipal sector and public companies and entities are the worst evaluated in access to information according to the Public Sector Transparency Index;
- The information published on the websites of public bodies is not uniform, and varies in terms of its accuracy, relevance, usefulness, ease of use and comprehensibility;
- The Decree on Transparency and Access to Public Information is not mandatory for entities of the Supreme Powers, except for the Executive, municipalities, municipal district councils and public universities;
- The reports to be prepared by the Access to Information Officers of each public entity are not easily accessible on institutional websites or are not published;
- Not all public bodies comply with the obligation to include a section on access to information in their annual reports;
- Since 2016, there has been a decline in relation to the ease, speed and timeliness of information provided by the public sector;
- According to the 2019 National Transparency Perception Survey, the barriers to access to information are the delay time, the administrative procedures involved, and the lack of knowledge about the steps to follow to obtain data;
- There is a distorted use of confidentiality declarations on information that should be of public access;
- According to the 2016 National Transparency Consultation, citizen participation is poor;
- In 2019, Costa Ricans feel that the mechanisms for participation are not sufficient or adequately publicized, nor are they easy to use;
- Only 24% of those surveyed by the Office of the Comptroller General in 2019 know about their right to participate in the decision-making process.

4.6 Art. 11: Judiciary and measures of the Public Prosecutor's Office

Strategic reading

Citizen's trust in the judiciary has been declining over the past decade, especially since 2017. Regarding judicial independence, it was found that there are two major threats of an external and internal nature. The first refers to the process of appointing magistrates to the Supreme Court of Justice and the Constitutional Chamber by the Legislative Assembly, which is characterized by secrecy and high discretion of the deputies in the selection of candidates, which favors the politicization of the appointments. The second is related to the vertical structures of the judicial and administrative power in the Supreme Court of Justice, which have raised questions about the independence of judges in terms of the disciplinary regimes' control and appointments by the Plenary Court.

Regarding the prevention mechanisms of the Judicial Branch, it should be noted that it has several bodies in charge of detecting, investigating and sanctioning internal corruption; however, there is no coordination among them and even a duplication of functions has been detected. In addition, they do not have sufficient economic and human resources for the proper exercise of their powers, nor do they make the information they generate on cases of public misconduct by judicial servants available to the public.

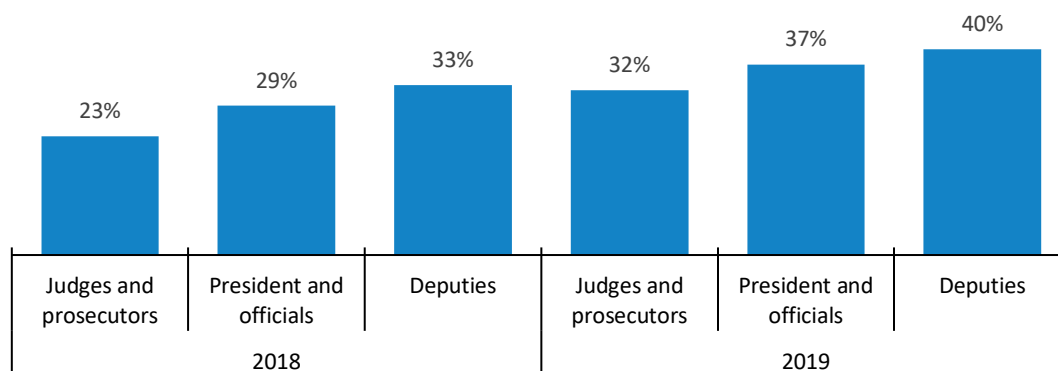
The disciplinary system has not proven to be an effective early warning mechanism for detecting areas of greatest risk in the Judicial Branch or for sanctioning misconduct. However, improvements are currently underway to strengthening the capacities of the Judicial Inspection Tribunal and eliminate the disciplinary functions of the Plenary Court and the High Council.

4.6.1 Evaluation of the integrity and independence of the Judiciary (Poder Judicial, PJ) and the Public Prosecutor's Office (Ministerio Público, MP)

Integrity of the Judiciary and the Public Prosecutor's Office

Despite the fact that the Judicial Branch in Costa Rica has historically enjoyed high levels of institutional trust, these have been decreasing during the last decade, especially since 2017, due to two important events: the corruption scandal related to the case known as "El cementazo" that involved high-level officials of the three Supreme Powers, including magistrates of the Supreme Court of Justice and the Attorney General of the Republic; and, the judicial workers' strikes over the reform of the pension system. The above was reflected in the 2018 statistics in which 23% of Costa Ricans considered that all or almost all judges and magistrates are corrupt, which increased in 2019 to 32%.²³⁰

Figure 6. Percentage of the population who think that all or almost all members are involved in corruption, by group, 2018-2019



Source: Sáenz and Villarreal (2020)

The "Cementazo" Case

"El Cementazo" is one of the most recent and largest corruption scandals in Costa Rica, which revealed a network of influence that involved officials of the three Supreme Powers: the Executive, the Legislative and the Judicial branch, and which is still under investigation. To date, there have been no criminal convictions in this case.

Thanks to his contacts in the government, Costa Rican businessman Juan Carlos Bolaños allegedly managed to reform a regulation in 2015 so that his company could import Chinese cement with more

²³⁰ "Evolution of the Legal and Institutional Framework and Preventive Mechanisms for Public Misconduct in the Judiciary" (2020), CONARE Institutional Repository, accessed on September 30, 2020, <http://repositorio.conare.ac.cr/handle/20.500.12337/7910?show=full>.

than 45 days of storage and thus end the duopoly that currently exists in the country formed by the companies Holcim and Cemex.²³¹ Following this approval, the Federated College of Engineers and Architects raised questions about the regulation because they considered that it lacked technical support. However, this did not prevent it from entering into force.²³² Due to the participation of the Presidential House in this case, the Public Ethics Ombudsman's Office was asked to reopen an investigation against the former President of the Republic Luis Guillermo Solís in 2020 to determine whether he incurred in breaches of the duty of probity.²³³

In order to import the cement, Bolaños requested a loan of US\$30 million from the Bank of Costa Rica, which was approved in violation of the bank's internal policies because the cement that was to be imported was accepted as collateral for the loan. A media outlet revealed a recording between the businessman and the Bank's assistant manager in which Bolaños' intention not to pay the loan was evidenced.²³⁴ The Bank's former manager was suspended for this, and subsequently the Bank changed all members of its Board of Directors. Bolaños also asked Banco Popular for a loan in the amount of 5 million dollars, which was granted. Both banks are public banks.

Judicial branch officials are also linked to the case. Thus, it was found that the magistrate of the Third Chamber of the Supreme Court, Celso Gamboa and Juan Carlos Bolaños flew together to Panama and back to Costa Rica with tickets that were purchased with the same credit card, which is a fact the judge was untruthful about in his first appearance before the Court. As a result, the full court suspended Gamboa and his counsel and he was later dismissed by the Legislative Assembly. The scandal also involved two other magistrates, among them the Supreme Court of Justice's former president who was investigated for having dismissed a case of influence peddling against some deputies and the businessman Bolaños on this issue. Notwithstanding, he was not dismissed because he went into retirement and the other magistrate resigned.²³⁵

Attorney General Jorge Chavarría was also suspended for saying he was unaware of a report by the Judicial Investigation Agency that recorded more than a thousand phone calls between Bolaños and some legislators, which proved to be untrue because the report was sent directly to the Attorney General's office. Another official of the Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption was also suspended.

Moreover, it was found, for example, that a legislator of the National Liberation Party was allegedly pressuring the president of the National Commission for Risk Prevention and Emergency Attention for the awarding Bolaños a contract.

Among the crimes that the Public Prosecutor's Office accused the people involved are bribery, criminality of the corruptor, breach of duty, aggravated influence peddling and fraud of law. In addition, the Public

²³¹ Luis Jiménez, "Cementazo: a mil días del arresto de Bolaños aún no hay juicio" (2020), *Teletica.com*, accessed on September 30, 2020, https://www.teletica.com/nacional/cementazo-a-mil-dias-del-arresto-de-bolanos-aun-no-hay-juicio_263048.

²³² Fabiola Dominguez Aguilar, "The Origins of 'Cementazo'" (2017), *Teletica.com*, accessed on September 30, 2020, https://www.teletica.com/reportajes/los-origenes-del-cementazo_176938.

²³³ Alexander Ramírez, "Ordenan abrir nueva investigación contra Luis Guillermo Solís por el cementazo" (2020), *crhoy.com*, accessed on September 30, 2020, <https://www.crhoy.com/nacionales/ordenan-abrir-nueva-investigacion-contra-luis-guillermo-solis-por-el-cementazo>.

²³⁴ Fabiola Dominguez Aguilar, "The Origins of the 'Cementazo'" (2017), *Teletica.com*, accessed on September 30, 2020, https://www.teletica.com/reportajes/los-origenes-del-cementazo_176938.

²³⁵ Esteban Arrieta, "Tres magistrados salpicados en el 'Cementazo' ya fueron sustituidos" (2020), *La República*, accessed on September 30, 2020, <https://www.larepublica.net/noticia/tres-magistrados-salpicados-en-el-cementazo-ya-fueron-sustituidos>.

Ethics Prosecutor's Office in July 2020 filed a complaint and a civil action for compensation against former Supreme Court Justice Celso Gamboa and businessman Bolaños for 25 million Colones.²³⁶

However, according to the Latinobarometer 2018²³⁷, Costa Rica is one of the Latin American countries in which the general public's trusts the Judicial Branch the most. In fact, a public opinion study did not show alarming levels of corruption in the Judiciary. Thus, when asked if it is possible to bribe a judge, 50% answered in the negative, and when asked if they have been asked to pay a bribe, 10% answered yes. Nevertheless, it should not be ignored that this phenomenon exists in the Judicial Branch and must be eradicated.²³⁸

Furthermore, according to the Americas Barometer surveys for Costa Rica (2004-2018)²³⁹, the rating obtained by the Supreme Court in relation to the work it conducts as an institution, dropped approximately nine percentage points in the last fourteen years. Similarly, according to measurements conducted by the University of Costa Rica²⁴⁰ that have studied the public's opinion of the Judicial Branch since 2013, they show that its management has remained in a range between 6.2 and 6.7 on a scale of 1 to 10, with 10 being the best possible rating. However, when analyzing the data for each institution, it was found that the citizenry's assessment of the Judicial Investigation Agency is positive and with an upward trend, while the perception of the Constitutional Chamber has decreased. Therefore, public perception varies from one entity to another.

Another important factor that affects the perception of corruption and citizen trust in the Judicial Branch is the increased control and scrutiny by the media and citizens. Thus, according to a study on media coverage carried out between 2014-2018 by the State of the Nation Program²⁴¹, the number of journalistic articles on the Judicial Branch increased in that period by 48.3%. It is important to note that most of the publications are neutral, meaning that there is a balance between the sources consulted, and only 5% were negative or positive. Within this second percentage, for every positive coverage, 11.9 negative notes were issued. Among the bodies with the most negative coverage, the Supreme Court stands out, followed by the Judicial Investigation Body and the Public Prosecutor's Office, while magistrates (8.5%) and prosecutors (6.8%) receive the most negative evaluations.

Judicial independence

According to the World Economic Forum's Global Competitiveness Index²⁴², Costa Rica's judicial independence component obtained its worst ranking since 2006 in 2019, ranking 46th out of 141 countries surveyed.

²³⁶ Alejandro Arley, "Procuraduría querrela a Celso Gamboa y Juan Carlos Bolaños por caso de viaje a Panamá" (2020) *Columbia*, accessed on September 30, 2020, <https://columbia.co.cr/noticias/economia/19584-procuraduria-querrela-a-celso-gamboa-y-juan-carlos-bolanos-por-caso-de-viaje-a-panama>.

²³⁷ *Ibid.*

²³⁸ See "Evolución del marco jurídico e institucional y mecanismos preventivos de las faltas a la ética pública en el Poder Judicial" (2020), Repositorio institucional CONARE.

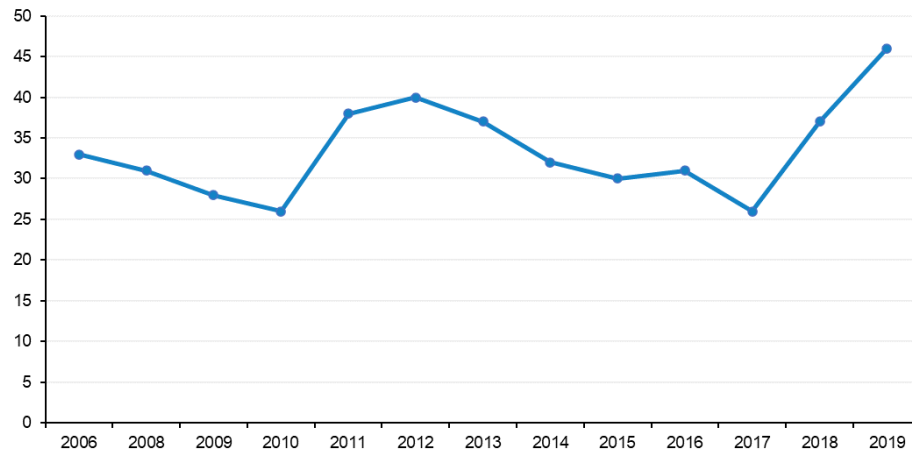
²³⁹ See "Third State of Justice Report" (2020), State of the Nation Program.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² The index measures the country's guarantees of judicial independence. The higher the score, the more unfavourable the situation.

Costa Rica's ranking in the Global Competitiveness Index in the area of judicial independence, 2007-2019



Source: Prepared by the World Economic Forum²⁴³

Moreover, two types of threats to Costa Rican judicial independence should be highlighted, one of an external nature and the other internal. Regarding the former, the most important one refers to the appointment process of Supreme Court justices by the Legislative Assembly. In this regard, the Independent Panel for the election of judges of the Constitutional Chamber and the Third Chamber of the Supreme Court of Justice noted in its final report from May 2018²⁴⁴ that the Legislative Assembly does not have a uniform, objective and measurable procedure for the qualification of candidates; there is no adequate methodology for the interviews; no adequate work or professional profile of the candidates was found, nor criteria that allow to see and verify their ethical profile; and, there is also no adequate motivation in the final selection of the applicants.

In addition, the selection and ratification process is not sufficiently transparent, since the entire process, from the evaluation of the candidates by the National Assembly's Special Permanent Commission on Appointment to the final vote in the plenary, is secret.²⁴⁵ The United Nation's Special Rapporteur on the Independence of Judges and Lawyers²⁴⁶ has also stated that certain practices such as the "lobbying" of candidates with the deputies, especially through private interviews that they hold with the different political parties, still exist despite the increase in publicity in the appointment processes. There have even been cases in which magistrates have been elected who were not included in the shortlists suggested by the Judicial Branch or who were not included in the pre-selection processes. This has led to

²⁴³ The World Economic Forum's Global Competitiveness Report from 2006 to 2019. Accessed on 29 October 2020.

²⁴⁴ "Informe Final del Primer Panel Independiente para la Eleccion De Magistrados/As de la Sala Constitucional y la Sala Tercera de la Corte Suprema De Costa Rica" (2018), accessed on September 30, 2020, https://www.fesamericacentral.org/files/fes-america-central/actividades/costa_rica/Actividades_cr/180516_Eleccion_Magistrados_Magistradas/Informe_Panel_Independiente_Eleccion_Magistrados_as_2018.pdf; and Segundo Panel Independiente para la Elección de Magistrados a la Sala Tercera y la Sala Constitucional de la Corte Suprema de Justicia https://www.cejil.org/sites/default/files/2019_ii_panel_cr_-_informe_final.pdf.

²⁴⁵ See "Third State of Justice Report" (2020), State of the Nation Program.

²⁴⁶ See Diego García-Sayán, "Mandate of the Special Rapporteur on the independence of judges and lawyers" (2019), accessed on 30 September 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24699>.

appointments that have later been questioned and have been the subject of complaints and investigations.²⁴⁷

The secrecy and high discretion in the selection process of magistrates favors the politicization of appointments in the Supreme Court, which is the body that most accumulates the decision-making power of the entire judicial conglomerate in administrative and judicial matters. What prevails in these selection processes are political criteria instead of the constitutional principles of due process, transparency, suitability and accountability, which not only jeopardizes impartiality and independence but also increases public distrust in this important institution.²⁴⁸

Moreover, according to the Inspector of the Court of Judicial Inspection (TIJ), Jason Alfaro²⁴⁹, a fact that can be considered a threat to the independence of judges because of the risk of corruption is the level of indebtedness of judicial officials. The TIJ receives about 30 reports a month of judicial servants who are subject to judicial collection processes and who, in order to pay off their debts, have part, and in some cases all, of their salaries seized, so there is a risk that they will seek funds elsewhere. For example, according to Alfaro, there are currently four judges with a salary of approximately four million colones, who after the seizure receive twenty thousand colones²⁵⁰ a fortnight. There are cases of judges who only live from the location pay, which is an additional economic compensation that is recognized to those who provide their services in a different place than the one that was initially agreed. In response to this phenomenon, the Court issued a protocol to include indebted officials in restorative justice in order to educate them and free them from the disciplinary sanction that, according to the Organic Law of the Judiciary²⁵¹, is mandatory for those who are subject to judicial collection. However, there are still no results to show that the application of this measure has had a positive impact.

The most important internal threat is the vertical structure that concentrates judicial and administrative power in the Supreme Court, and although efforts have been made to decentralize its powers to other bodies such as the Superior Council, the Supreme Court continues to exercise control over them. This administrative model allows the magistrates to decide on issues related to appointments, management policies, salaries, appeals that are raised internally, among other important matters; however, where the greatest risk exists is in the application of the disciplinary control regime.²⁵²

The Plenary Court's disciplinary powers, which has jurisdiction over a specific group of judicial officials, including Supreme Court justices, the heads of the Public Prosecutor's Office and the Directorate of the Judicial Investigation Agency, as well as members of the Judicial Investigation Tribunal and the High Council, have been repeatedly called into question. It also

²⁴⁷ For examples of questioning, see "Appointments of magistrates in Costa Rica: tailor-made suits" (2019), accessed on 25 February 2021, <https://www.elmundo.cr/opinion/nombramientos-de-magistrados-en-costa-rica-trajes-a-la-medida/>.

²⁴⁸ See "Third State of Justice Report" (2020), State of the Nation Program.

²⁴⁹ Jason Alfaro Carballo (Inspector at the Tribunal of the Inspectorate of the Judiciary) in conversation with the author, December 2020.

²⁵⁰ The equivalent of 4 million colones in dollars as of January 9, 2021 is \$6,44.37, and of 20,000 colones is \$32.21.

²⁵¹ http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param2=NRTC&nValor_1=1&nValor2=33635&strTipM=TC.

²⁵² See "Third State of Justice Report" (2020), State of the Nation Program.

has disciplinary powers in cases where article 199 of the Judicial Branch Organization Act²⁵³ must be applied for serious misconduct or delays in the administration of justice.

With respect to this legal provision, in addition to being vague and containing indeterminate concepts, which in itself gives the members of the Full Court who interpret it in each case a high degree of discretion and therefore does not provide the legal certainty required in disciplinary proceedings, it also gives them a tool to intervene in the decisions of judges through disciplinary proceedings. This multilevel structure of the disciplinary exercise has raised serious questions, especially with respect to Full Court's powers, as it could represent a risk to independence.²⁵⁴

4.6.2 Mechanisms for preventing and combating corruption within the Judicial Branch and the Public Prosecutor's Office

It should be noted that the Public Prosecutor's Office is an organ of the Judicial Branch; the internal mechanisms for preventing and combating corruption in the latter are applicable to the former, so when reference is made to the Judicial Branch in this section it should be understood that the Public Prosecutor's Office is also included.

It should be noted that the Supreme Court has declared that it is of institutional interest to strengthen the prevention and fight against corruption in the Judicial Branch.²⁵⁵ In this effort, the FAPTA has been strengthened with new positions and the OIJ-Anti-Corruption Section.

The main bodies responsible for detecting, investigating and sanctioning corruption within the PJ are the Compliance Office, the Internal Control Office, Internal Audit, the Court of Judicial Inspection, the Office of the Comptroller of Services, and the Technical Secretariat for Ethics and Values. However, since there are also at least five related commissions and other judicial government bodies that perform important oversight functions, the competencies of all these bodies and commissions overlap and there is little coordination among them. They have also failed to develop a methodology to evaluate the impact of prevention mechanisms in the fight against judicial corruption, which makes it impossible to know how effective they are at the institutional level.²⁵⁶

One of the problems that most affects the efficiency of these bodies is the scarcity of economic and human resources that they have experienced since their creation, which explains their limited exercise of control and sporadic interventions. In spite of this, even when they manage to present proposals on the application of new prevention mechanisms and instruments, their approval is slow, since the Judicial Branch's internal structure hinders the decision-making process.²⁵⁷ This is why important initiatives in this area have not materialized to date despite having been proposed months, sometimes even years, ago. According to the Report on the

²⁵³ See above, Organic Law of the Judiciary .

²⁵⁴ See "Third State of Justice Report" (2020), State of the Nation Program.

²⁵⁵ "Table of Contents Minutes of Full Court Session," accessed on February 25, 2021, <https://secretariacorte.poder-judicial.go.cr/index.php/component/phocadownload/category/138-2019?download=4687:acta-009-del-04-03-2019>.

²⁵⁶ Ibid.

²⁵⁷ See "Evolución del marco jurídico e institucional y mecanismos preventivos de las faltas a la ética pública en el Poder Judicial" (2020), Repositorio institucional CONARE.

State of Justice III, the information generated by these bodies in relation to cases of corruption of judicial personnel is not transparently available to the public, nor is it systematized. Some of the most important prevention mechanisms and instruments are the following²⁵⁸:

- The creation of the Investigation Commission on the Penetration of Drug Trafficking and Organized Crime in the Judiciary in 2014 whose objective is to provide recommendations to prevent and combat corruption and misconduct against ethics in the institution. However, some of the suggested proposals were not addressed until July 2019 when they were approved by the Plenary Court to be executed only in 2020, and it is unknown which of them have already been implemented or the results obtained.
- The Socio-Labor and Background Investigation Unit, which prepares evaluations of individuals who enter the Judicial Branch, handles approximately 4,000 cases per year, a number that continues to increase. Nevertheless, its human and financial resources have been decreasing at the same time, which affects its investigative capabilities.
- The development of the "Axiological Policy" to educate PJ officials in values based on social, secular and dialogical ethics; but the implementation of this initiative is scheduled for the year 2026, so it is still in progress. Nonetheless, ethical and moral training is provided to civil servants every year, although it has not been possible to train all staff at least once a year due to budgetary and operational constraints.
- The new Code of Judicial Ethics adopted in October 2019, defining the concept of judicial ethics; legal and ethical duties; principles of judicial ethics, responsible bodies, etc.²⁵⁹
- The new "Regulation for the Prevention and Proper Management of Conflicts of Interest in the Judiciary"²⁶⁰, which was approved in April 2019.²⁶¹
- Initiatives called "Strengthening Institutional Human Capacity in Fraud or Corruption Detection and Anti-Corruption Methods" to identify areas of corruption risks and the "Early Warning System" which develops risk indicators of judicial officials who may be vulnerable to corruption. The results are not yet known.

With regard to the Judicial Inspection Court, it should be noted that it performs preventive functions in the offices through surprise *on-site* visits in which it verifies compliance with institutional rules and procedures, as well as detects possible irregularities, which could subsequently lead to the opening of disciplinary proceedings. Despite the fact that this mechanism can be useful for the prevention of corruption, it is used very little as there are only four inspectors for 846 offices throughout the country, which makes it impossible to cover

²⁵⁸ Ibid and see "Third State of Justice Report" (2020), State of the Nation Programme.

²⁵⁹ See "Code of Judicial Ethics" (2019), Judiciary, accessed on September 30, 2020, <https://unmejorpi.poder-judicial.go.cr/images/Documentos/Codigo-de-Etica-Actualizado.pdf>.

²⁶⁰ See Carlos Arguedas, "Corte aprueba nuevas reglas de conducta para funcionarios judiciales" (2019), *La Nación*, accessed on September 30, 2020, <https://www.nacion.com/sucesos/judiciales/corte-aprueba-nuevas-reglas-de-conducta-para/GVYNLOXCCJF7DPYBOUFXXQJDVQ/story/>.

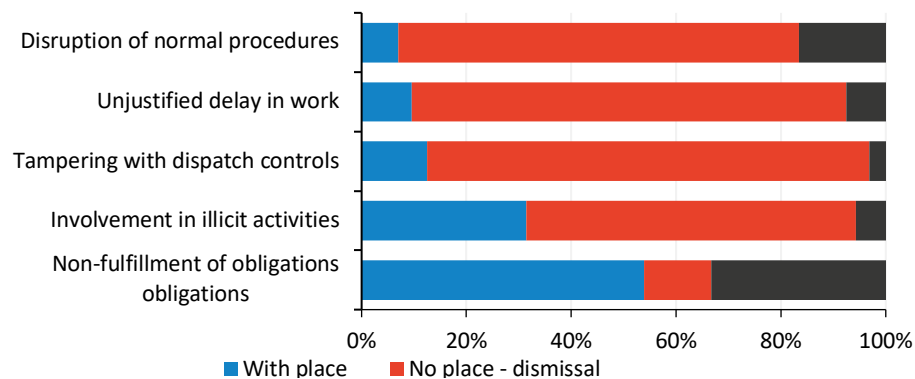
²⁶¹ According to Law No. 8422 against corruption and illicit enrichment in the civil service, magistrates and judges are obliged to declare their assets to the Office of the Comptroller General of the Republic; however, these declarations are not made publicly available.

them all. Hence, in 2018, only 180 offices were visited, i.e., 21.3%.²⁶² In addition, the Inspection office is located only in San José, so receiving complaints of corruption against judicial officials outside the metropolitan area is more complicated.²⁶³ In this regard, it is necessary to establish a presence in more parts of the country, not only to make it more accessible to all citizens but also to generate a deterrent effect on the commission of corruption offences.

According to the State of Justice Report III, the disciplinary system has not proven to be an effective early warning mechanism for detecting the areas of greatest risk or for sanctioning misconduct. Thus, during the period 2017-2019, 57% of the complaints filed for breaches of the duty of probity were related to the unjustified delay of work and the alteration of the normal process to favor one of the parties. However, the sanctions imposed do not correspond to these complaints (which are the most frequent) but to offenses related to the breach of financial obligations and the performance of improper activities during periods of incapacity to work. In addition, half of the cases resolved by the Judicial Inspection Court were dismissed during this period, and only 20% resulted in sanctions, mainly against officials who held positions as judicial technicians, investigators of the Judicial Investigation Agency and judges, with the most common sanction being suspension without pay.

According to Jason Alfaro, there are legal limitations to the exercise of the disciplinary regime, for example, the Judicial Inspection does not have the same tools as the Public Prosecutor's Office for the investigation of corruption cases. In addition, disciplinary proceedings are suspended until it is decided whether or not a crime has been committed in the criminal jurisdiction, which can take several years. Also, the deadlines for the processing of the sanctioning procedure are very short; approximately 300-400 files are processed per month, including those related to corruption, so the times provided by law are insufficient. However, a commission was scheduled to meet in 2020 in order to carry out the proposed amendment and thus allow more time for the investigation.²⁶⁴

Figure 8. Type of closure in disciplinary cases, by breaches of the duty of probity, 2017-April 2019



Source: State of Justice Report III (2020)²⁶⁵

²⁶² See "Third State of Justice Report" (2020), State of the Nation Program.

²⁶³ Alfaro Carballo (Inspector in Tribunal of the PJ Inspectorate), in conversation with the author, December 2020.

²⁶⁴ Ibid.

²⁶⁵ a/ The "Other" category includes cases terminated by declarations of incompetence, archiving and outright rejections.

It is important to remember that the Court of Judicial Inquiry's decisions may be appealed to the High Council of the Supreme Court in cases of serious or very serious misconduct. In practice, it was found that in the majority (78.6%) of cases, the Council upheld the sanction imposed by the Court of Judicial Inquiry; however, in proceedings that are more closely related to internal corruption, the decision has been reversed. Thus, for example, in eight cases linked to the alteration of the proceedings to favor one of the parties, the Council revoked the sanction.²⁶⁶ According to Mr. Jason Alfaro, there are also occasions when the sanction is changed to a less serious one, for example, in cases of corruption where the Inspectorate has imposed the sanction of revocation of appointment, the Superior Council changed it to temporary suspension.²⁶⁷

Currently, reform processes are underway to improve the disciplinary regime, which includes unifying the systems of the offices that handle cases in order to have a single registry, strengthening the Judicial Investigation Tribunal's capacities, and eliminating the disciplinary functions of the Full Court and the High Council as a second instance.

Best Practices:

- *A reform of the disciplinary regime is under way, which aims to strengthen the capacities of the Court of Judicial Inspection and to eliminate the disciplinary powers of the Plenary Court and the High Council;*
- *The creation of the Commission to Investigate the Penetration of Drug Trafficking and Organized Crime in the Judiciary to prevent and combat corruption and misconduct;*
- *The creation of the Socio-Labor and Background Investigation Unit for the preparation of evaluation of applicants for positions in the Judicial Branch;*
- *Annual ethics training for judicial officials;*
- *The elaboration of a new code of ethics;*
- *The approval of the "Regulation for the Prevention and Appropriate Management of Conflicts of Interest in the Judicial Branch;*
- *The creation of the initiatives "Strengthening of institutional human capacity in the field of fraud or corruption detection and anti-corruption methods" and "Early Warning System".*

Deficiencies:

- *The appointment processes for Supreme Court and Constitutional Chamber magistrates are characterized by secrecy and a high degree of discretion on the part of the deputies;*
- *The high level of indebtedness of judicial officials who have a portion or all of their salaries garnished to pay off debts is a threat to judicial independence and increases the likelihood that they will seek funds through other means;*
- *The exercise of the disciplinary regime by the Full Court may constitute a threat to the independence of judges;*
- *There is no coordination between the bodies for detecting, investigating and sanctioning corruption cases in the Judicial Branch and they lack the economic and human resources to carry out their functions;*
- *The internal structure of the Judicial Branch hinders the decision-making process, so that corruption prevention initiatives take months or even years to be implemented;*

²⁶⁶ See "Third State of Justice Report" (2020), State of the Nation Program.

²⁶⁷ Alfaro Carballo (Inspector in Tribunal of the PJ Inspectorate) in conversation with the author, December 2020.

- *There is insufficient publicity of information on corruption cases in the Judicial Branch, which is not systematized;*
- *The disciplinary regime has not been useful for detecting risk areas in the Judicial Branch or for imposing the corresponding sanctions;*
- *The Judicial Inspectorate only has an office in San José so it is not as accessible to the rest of the population and does not have sufficient staff to carry out inspections;*
- *The lack of human and financial resources for the Socio-Labor and Background Investigation Unit of the Judiciary;*
- *Lack of resources for the annual training of judicial officials;*
- *Legal limitations on the exercise of the disciplinary regime, especially for the investigation of corruption cases;*
- *The legal deadlines for the processing of sanctioning procedures are very short;*
- *On-site visits by the Court of Judicial Investigation are rarely used because they do not have enough staff to cover all the offices in the country.*

5 Assessment of the implementation of the provisions of Chapter V

In the English version of this report, this chapter only includes the Strategic Reading and Good Practice and Deficiencies sections of the analysis of the implementation of Articles 52.1, 52.5, 52.6, 53, 56 and 58 of Chapter V of the UNCAC in Costa Rica. For the full analysis of these articles, including all relevant sources, please refer to the original Spanish report.

5.1 Arts. 52.1, 52.5, 52.6, 58: Anti-Money Laundering

Strategic reading

Costa Rica has legislation for the prevention and punishment of money laundering, which lays down a series of obligations for financial and non-financial institutions, legal persons living in the country and other persons engaged in the activities mentioned in the law, including designated non-financial businesses and professions (DNFBPs). In addition, the National Council for Supervision of the Financial System is constantly issuing new regulations in this area.

Failure to comply with any of the obligations under the law leads to the imposition of administrative and criminal penalties. Regarding the former, the Financial Action Task Force of Latin America (GAFILAT) notes that it has been scarce in the period 2010-2014 in which three administrative sanctions were imposed based on Law 8204. The amount did not increase in the five subsequent years, where it was found that three superintendencies have not imposed even one such sanction, while the Superintendency of Financial Entities imposed only three administrative sanctions in 2018 and 2019.

On the other hand, there is a discussion on how proportional both the administrative sanctions of Law 8294 and Law 9416 are to the offenses committed and whether they have a dissuasive effect. As of 2017 these sanctions were modified by Law 9449, strengthening their application, in addition to the fact that after that date the fines imposed became public, which in the opinion of the Superintendencies generate a sufficient dissuasive effect to force the regulatory framework.

It is important to point out that all the superintendencies enjoy technical autonomy for the proper exercise of their functions, but not all of them have full-time staff or specialists in money laundering, although the staff receives annual trainings on the subject, nor do they all assign full-time staff to the work of detection and sanction of money laundering. The Central Bank, which is the administrator of the database of beneficial owners, and like the superintendencies, does not have staff assigned exclusively to monitoring and sanctioning either.

As regards criminal penalties, it is important to clarify that there are two types of money laundering offences in Costa Rica. The first is associated with corruption, which is prosecuted by the FAPTA, and the second is related to drug trafficking and terrorism, which is investigated by the Office of the Deputy Prosecutor for Money Laundering and Emerging Market Capital. This has meant that the prosecution of money laundering is not coordinated between the two Prosecutor's Offices and has led to investigative limitations.

The declarations of assets of public officials are confidential, despite the fact that the follow-up mechanism for the Implementation of the Inter-American Convention against Corruption and the Office of the Comptroller General of the Republic have repeatedly stated the need to make them public in order to exercise adequate political and citizen oversight. Failure to comply with this obligation to submit sworn declarations leads to the imposition of administrative sanctions. In the last five years, 104 sanctions have been imposed, ranging from written reprimands, dismissal, prohibition of entry or re-entry to public service positions, and cancellation of credentials. It is not clear if the CGR uses these declarations as a preventive system for illicit enrichment.

Finally, the Financial Intelligence Unit does not have sufficient resources; however, it has adequate technology that allows it to perform its functions. Since 2014, it has increased the issuance of alerts and

bulletins to warn about suspicious conduct to regulated entities, superintendencies, police, judges and prosecutors, and since 2017 it has increased the number of suspicious transaction reports it receives. However, at least until 2019, the factual relations elaborated on the inconsistencies in transactional behaviors and the expected profile, failed to evidence the existence of possible crimes, and was the main reason why most of the cases processed by the Deputy Prosecutor's Office of Money Laundering ended in dismissal.

Good practices:

- *The National Council of Supervision of the Financial System constantly updates current regulations as appropriate to ensure that regulations are up to date, cost-justified, consistent, and comply with the public policy objectives set out in the legal framework.*
- *The Superintendencies have corporate governance regulations that require the institutions supervised by them to adopt sound international practices that contribute to money laundering risk management;*
- *The Superintendencies provided for in Act 8204 have at their disposal various sanction regimes when any of the supervised entities fails to comply with its obligations regarding identification and disclosure of the beneficial owner, for example the Securities Market Regulatory Act and the Organic Law of the Central Bank of Costa Rica;*
- *The Superintendencies of Pensions, Insurance, Financial Institutions and Securities form various committees, among them the cross-cutting regulatory committee to ensure that all regulations issued on money laundering or other matters take into account all the markets in which they operate;*
- *The four superintendencies have implemented risk-based supervision for the detection of possible cases of money laundering;*
- *In law and in practice, the four superintendencies are guaranteed sufficient technical independence for the proper exercise of their functions;*
- *The four superintendencies schedule trainings on money laundering for their staff;*
- *Law 9416 to Improve the Fight against Tax Fraud imposes an obligation on legal persons, private trusts, non-profit organizations and administrators of third-party resources on behalf of their clients to provide information on beneficial owners who have a substantive interest;*
- *According to GAFILAT, measures have been taken to prevent the misuse of legal persons and there is evidence of the motivation of the authorities to implement good practices;*
- *There is an increased use of emerging capital as a way to control money laundering;*
- *The Financial Intelligence Unit has an annual training program for regulated entities in the financial and non-financial system and for students on money laundering;*
- *The Financial Intelligence Unit issues alerts and bulletins to the financial system, prosecutors' offices, superintendencies and the Judicial Investigation Agency to warn of suspicious behavior which has increased since 2014;*
- *The Financial Intelligence Unit and the Public Prosecutor's Office have designed methodologies that have enabled them to carry out administrative freezes quickly in order to ensure that subsequent investigations can be carried out;*
- *The administrative sanctions of Law 8204 (7786) were assessed and modified on May 11, 2017 by Law 9449, strengthening the proportionality in the seriousness of the offense, the magnitude of the damage and recidivism.*

Deficiencies:

- *No information is published on the websites of the competent superintendencies on their supervision of money laundering in their respective markets;*
- *The Superintendencies of Pensions and Insurance do not have full-time money laundering specialists in this area;*

- *The professional secrecy that protects lawyers prevents them from adequately fulfilling their obligations with regard to money laundering;*
- *A specific database for the registration of final beneficiaries of non-profit organizations has not yet been created;*
- *The amount of the fines provided for in Law 9416 are very low considering the damage that could be caused to the tax administration for failure to record the required information;*
- *There are legal limitations that prevent the Directorate General of Taxation from effectively exchanging information with other institutions;*
- *The Directorate General of Taxation does not have technological independence, since it depends on the Central Bank, which is the administrator of the database where the beneficial ownership information is recorded, and interaction between the two entities can be slow, which makes it difficult for the Directorate to perform its functions;*
- *The Directorate General of Taxation cannot freely extract information from the register of beneficiaries;*
- *The Deputy Prosecutor's Office of Probity, Transparency and Anti-Corruption and the Deputy Prosecutor's Office for Money Laundering and Emerging Market Capital have limitations on access to confidential information which impacts on their investigative work;*
- *Preference is given to the prosecution of the crime of money laundering associated with drug trafficking rather than corruption;*
- *The Judicial Investigation Agency does not have sufficient specialized staff to investigate money laundering;*
- *There are no judges specialized on anti-money laundering;*
- *In 2017, the conviction rate for the crime of money laundering associated with drug trafficking was less than 3%;*
- *There is no evidence on the quality and effectiveness of Suspicious Transaction Reports;*
- *Repeated failure by Costa Rica to comply with its commitment to make public the asset declarations of public officials;*
- *The website of the Costa Rican Narcotics Institute does not contain systematized information on the results of the Financial Intelligence Unit's work in all years;*
- *The Financial Intelligence Unit does not have sufficient human resources;*
- *The accountability reports of the Attorney General's Office do not contain disaggregated data on the number of indictments filed for the crime of laundering of proceeds of corruption and drug trafficking.*

5.2 Arts. 53 and 56: Measures for direct recovery of assets

Strategic reading

Costa Rica has no legislation regulating the possibility for other States to bring actions directly in Costa Rican courts for recovery of their assets as required by UNCAC, nor has it received any request for this, so there is uncertainty among the authorities themselves as to the best way of doing this. One of the procedures appears to be that of exequatur, which allows other States to obtain a conviction in their own jurisdictions and then enforce it in Costa Rican territory, but it has not been used since at least 2013, and even less so for recovery of foreign assets. Another procedure is through international mutual assistance, which in practice has some limitations.

Thus, there are several competent bodies in this area in the country, such as the Office of Technical Advice and International Relations, the Office of the Attorney-General of the Republic, the Ministry of Justice and Peace, the Secretariat of the Supreme Court and the Ministry of Foreign Affairs, which may lead to a lack of coordination among them, as in fact has already occurred in practice. The OECD has

therefore expressed concern that the international assistance provided by Costa Rica is neither rapid nor effective.

As regards to information exchange, Costa Rica has internal regulations, as well as international instruments that promote constant communication between countries. In addition, it is a member of various regional and international bodies that have allowed proactive exchange of information between entities such as the Public Prosecutor's Offices, Superintendencies, the Judicial Investigation Agency and the Financial Intelligence Unit. However, in practice the exchange has been more agile when informal means of communication are used, and even then, it can sometimes take months to obtain a response.

Finally, it is important to note that Costa Rica has no statistics on the number of requests for confiscation orders received from other countries, the amount of assets recovered, the value of confiscated assets, or other information related to this matter under the United Nations Convention against Corruption. This shows an urgent need to compile and systematize the information, which should also be published so that it is easily accessible to the public.

Good practices:

- *Costa Rica is a signatory to several bilateral and multilateral cooperation agreements, and is a member of multiple networks in Latin America and the Caribbean.*

Deficiencies:

- *There is no information on the websites of public institutions on the possibility of other States to pursue legal action in Costa Rica for the direct recovery of assets;*
- *The national legislation does not expressly regulate the direct recovery of assets by other States, which has caused uncertainty among public officials;*
- *There are many different entities involved in international mutual assistance which could lead to uncoordinated, ineffective and time-consuming work;*
- *Several procedures coexist for handling mutual assistance requests that are confusing in practice.*

5.3 Art. 57.3(a), (b) and (c): Return and disposition of confiscated assets

Strategic reading

Costa Rica is a signatory to various international instruments that have enabled it to respond to foreign requests for freezing and confiscation of assets, but according to GAFILAT there is a lack of further development for the restitution and repatriation of assets. Domestically, the country has no legislation expressly regulating the disposal and return of assets of foreign origin, nor has it received requests in this regard, so that the authorities do not know which procedure should be followed in practice. However, the Costa Rican Narcotics Institute is in the process of signing regional and international instruments, as well as alliances with other countries to regulate this matter. In addition, Act 8204 is being reviewed to propose future reforms to ensure asset recovery and return requirements are met, although it is not known when it will be submitted to the Legislative Assembly.

Good practices:

- *The country is a subscriber to several international instruments that have facilitated foreign requests for extradition, freezing and confiscation of assets;*
- *The consolidation of international alliances and the signing of regional and international instruments for the return of foreign assets are in process;*

- *Act 8204 is being reviewed for reforms to facilitate the recovery and return of foreign assets.*

Deficiencies:

- *No information is available on the websites of public bodies on the return and disposal of foreign assets;*
- *Costa Rica has no legislation expressly regulating the return and disposal of foreign assets that have been subject to confiscation or forfeiture;*
- *The confiscation or forfeiture of assets of economic interest of equivalent value is not possible.*

6 Recent developments

This section will focus on two recent developments. The first is related to the issue of public procurement in the context of the pandemic caused by the coronavirus (COVID-19) in 2020, and the second refers to the progress made in the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD in the context of Costa Rica's accession to the Organization for Economic Cooperation and Development.

Since 2020 was marked by the declaration of a global pandemic by the World Health Organization due to the coronavirus (COVID-19), it is important to highlight Costa Rica's experience in public procurement²⁶⁸ in recent months. Thus, the information management platform of the Ministry of Planning and the Inter-American Development Bank "MapaInversiones"²⁶⁹, which aims to improve the transparency and efficiency of public investments, has included a new module called "Covid-19 Module"²⁷⁰, as an attempt to keep up with the accelerated pace of public spending that the country has experienced to cope with the effects of the pandemic.

This module allows for a better traceability of resources, supporting the decision-making process, monitoring, following up and promoting interaction with citizens and other social actors with the objective of improving accountability. From the information published, it will be possible to identify irregularities in the use of public resources, but only if the entities make all the information available, which does not always happen in practice. This is the case of the contract signed in December 2020 between the National Commission for Risk Prevention and Emergency Care and the companies Pfizer and BioNTech for the acquisition of three million doses of vaccines to counter COVID-19 in the country. Some information was disclosed in the media about this contract and even the total price is known, which is seventy million dollars, and some parts of the contract, but not the entire contract.²⁷¹

Although the National Commission for Risk Prevention and Emergency Attention had no choice but to accept the confidentiality clause in order to receive the vaccines, it is important to keep in mind the recommendations contained in the report prepared by the thirteen Latin American chapters of Transparency International, including Asociación Costa Rica Íntegra, on the risks of corruption associated with public procurement and contracts in the context of an emergency²⁷², such as the current one. Thus, some of them refer to the publication of

²⁶⁸ Regarding legislative developments in the area of public procurement, see the section on "Public Procurement" in Section IV of this report for more information on the draft "General Law on Public Procurement".

²⁶⁹ "Mapainversiones," Inter-American Development Bank, accessed on November 30, 2020, <https://www.iadb.org/es/reforma-modernizacion-del-estado/iniciativas-mapainversiones>.

²⁷⁰ Ibid, "COVID-19 Module," Inter-American Development Bank, accessed on November 30, 2020, <https://www.iadb.org/es/reforma-modernizacion-del-estado/modulo-covid19>.

²⁷¹ Sebastián May Grosser. "Gobierno confirma que tres millones de vacunas Pfizer tiene un costo de 36 millones," Delfino.Cr, accessed on March 3, 2021. <https://delfino.cr/2021/01/gobierno-confirma-que-3-millones-de-vacunas-de-pfizer-biontech-tienen-un-costo-total-de-36-millones>; Paulo Villalobos Saborío, "Jerarca de CNE: Si se rompe confidencialidad en contrato con Pfizer se suspende suministro de vacuna" (2020), *Ameliarueda.com*, accessed on January 1, 2021, <https://www.ameliarueda.com/nota/revelar-precio-vacuna-covid19-suspension-pfizer-noticias-costarica>.

²⁷² Transparency International, "Public Procurement in States of Emergency: Minimum Elements for Governments to Consider to Ensure the Integrity of Procurement during Contingencies" (2020), accessed on 1 January 2021,

information in open data format, accountability and the need to ensure competition, so the government should seek to take measures to make processes transparent in order to ensure good management of public resources and generate trust in the population.

Furthermore, as mentioned in previous sections of this report, Costa Rica has constantly issued regulations to bring its legal system into line with international standards and best practices, to which end it has also signed several international conventions on anti-corruption. Thus, for example, the country ratified the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2017, in the framework of accession to the OECD, and has adopted significant legislative actions for its implementation.²⁷³ Similarly, there is Law No. 9699 on Liability of Legal Persons on Domestic Bribery, Transnational Bribery and Other Offences in 2019. However, there are still concerns about the manner in which the offence of foreign bribery is criminalized in the country as it does not cover the most common manifestations of this offence.

In the report on the second phase of implementation of the Convention²⁷⁴, the OECD concluded that Costa Rican authorities do not proactively investigate complaints nor do they prioritize the prosecution of this crime due, in part, to a lack of resources. In addition, it found that some entities such as the Attorney General's Office are involved in this matter, which only consume resources and jeopardize the processes. Moreover, greater transparency is needed in the agreements for cooperation that are reached with criminals, as well as in out-of-court settlements. The OECD also recommended a greater application of bank freezes, not reducing penalties for companies that have reported cases of bribery about which the authorities already have knowledge, extending the scope of extraditions to crimes that have been committed in Costa Rica and that have effects in another country, among others. An oral report by Costa Rica on the implementation of all recommendations is scheduled for March 2021.

<http://d1qqtien6gys07.cloudfront.net/wp-content/uploads/2020/03/Report-Risks-of-Corruption-Public-Procurement-COVID-19.pdf>.

²⁷³ OECD, «Implementing the OECD Anti-Bribery Convention» (2019), acceso el 1 de enero de 2021, <https://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf>.

²⁷⁴ Ibid.

7 Recommendations

Article 5: Preventive anti-corruption policies and practices

- Approve the National Integrity and Corruption Prevention Strategy as quickly as possible and begin implementation.
- Continue to implement the Open State Actions commitments and conduct follow-up assessments.
- Introduce a regulatory reform to assign a public entity, such as the Office of the Public Ethics Prosecutor, to take the lead in preventing corruption, including, among other functions, the development and implementation of national strategies, with the necessary resources to carry out these activities.

Article 6: Preventive bodies

- Provide the three entities with more specialized financial and human resources to develop their preventive, investigative and punitive capacities, as well as mechanisms to evaluate their effectiveness and efficiency.
- Include separate line items for PEP and FAPTA in institutional budgets so that their resource allocation can be monitored.
- Strengthen the independence of the Office of the Comptroller General of the Republic in the budgetary area and improve the processes for appointing senior officials.
- Approve Bill 20,978, which promotes the implementation of a prosecutorial career path in the Public Prosecutor's Office based on the principle of merit in order to guarantee transparency in the process of selecting and promoting prosecutors.
- Carry out regulatory reforms to make the preliminary reports issued by the PEP mandatory.
- The PEP and the FAPTA should be accountable in a separate report without prejudice to the results of their functions being presented in the institutional reports of the Attorney-General's Office and the General Prosecutor's Office, respectively.
- Strengthen the audits conducted by internal audits and the Office of the Comptroller General so that they provide greater input to the Public Prosecutor's Office.

Article 8.4: Reporting mechanisms and the protection of reporting persons

- Approve the bill to partially amend the "Law against Corruption and Illicit Enrichment" to regulate the mechanisms for the protection of public officials.
- Assign a body with the competence to provide protection to public officials from retaliation in the workplace.
- Design a clear regulatory framework in all public entities for the processing of complaints, particularly anonymous ones.
- Strengthen the guarantee of confidentiality and anonymity of whistleblowers in the complaint channels of the Office of the Comptroller General, the Office of the Public Ethics Prosecutor and the Public Prosecutor's Office.
- Record and report on the results of the complaint channels, so that there is timely and complete information on the issues reported, institutions, affected populations, resolution, durations, etc.

Article 9.1: Public procurement

- Promote the process of incorporating the missing public entities into the Public Procurement System.
- Approve bill number 21.546 called "General Law on Public Contracting", including motions that incorporate aspects of transparency and citizen participation.
- Strengthen the internal control system of public entities to improve contracting processes.
- Program the Public Procurement System to allow access to massive, open data, and comparable information without exceptions.
- Incorporate more citizen participation and independence standards in the Public Procurement Observatory project, recently announced by the Ministry of Finance.

Arts. 10 and 13.1: Access to information and Participation of society

- Pass an access to information law to fill the gaps in existing legislation.
- Complete the construction of the National Open Data Portal.
- Continue implementing the position of the Compliance Officer until it reaches all public entities.
- Make Access to Information Officers' reports accessible to the general public on institutional websites.
- Apply sanctions to institutional heads who do not include an access to information section in their annual work reports.
- Make public the sworn assets declarations of public officials.
- Regulate the exceptions to the right of access to information so that there is no abuse by public entities in confidentiality declarations, especially with regard to industrial, commercial or economic secrets.
- Execute more awareness raising campaigns to promote the active participation of the young Costa Rican population.
- Improve publicity and mechanisms for citizen participation in public entities.

Art. 11: Judiciary and Public Prosecutor's Office

- Reform the appointment processes for Supreme Court justices so it is ensured that they are qualified people, selected with objective criteria, more publicity and transparency.
- Evaluate which oversight bodies are essential for detecting, investigating and sanctioning cases of corruption in the Judicial Branch to avoid duplication of functions and create better coordination strategies among them bodies.
- Provide more financial and human resources to the organs of the Judiciary for the prevention and punishment of corruption.
- Systematically publish information related to cases of corruption detected in the Judicial Branch and the results of the actions taken.
- Strengthen the capacity and independence of the judicial disciplinary system.
- Consider decentralizing the office of the Judicial Inspectorate so that it has a national presence.

- Consider the possibility of establishing a Court of Appeals to hear appeals lodged against decisions of the Court of Judicial Inquiry that are not heard by the High Council, which has no jurisdiction in this area.
- Monitor and publicize the results of the implementation of the initiatives "Strengthening institutional human capacity in the area of fraud or corruption detection and anti-corruption methods" and "Early Warning System".

Arts. 52.1, 52.5, 52.6, 58: Anti-Money Laundering

- Unify the two types of money laundering offences so that the Prosecutor's Office responsible for its prosecution can investigate it without the limitations that currently exist in the legislation.
- Publish the results of inspections and monitoring carried out by the superintendencies in the supervised entities in an aggregate manner and in compliance with international standards on data protection.
- The Superintendencies must supervise the implementation of the ML/FT/AML/CFT risk prevention system in the regulated entities required to comply with Act 7786.
- Provide the necessary resources for the entities in charge to allocate more staff and technology to the prevention and detection of money laundering cases in their respective markets.
- Review the rules on professional secrecy protecting the lawyers' profession to introduce amendments to enable them to comply with their due diligence obligations in money laundering matters.
- Consider carrying out regulatory reforms to enable adequate exchange of information between the Directorate General of Taxation and other institutions to enable it to detect cases of money laundering.
- Implement the project being developed by the Directorate General of Taxation, which will enable them to have technological independence and make the preventive approach to money laundering more effective.
- Focus the efforts of the Attorney General's Office and the Costa Rican Narcotics Institute more on the laundering of proceeds of corruption.
- Provide more training for staff of the Public Prosecutor's Office and judges in money laundering.
- Publicize the findings and results of inspections and monitoring carried out by the superintendencies to demonstrate the level of compliance with money laundering obligations in an aggregate manner and within the framework of the data protection regulations in force.
- Publish statistics and information on cases of recovery and return of assets of national and foreign origin.
- Assess the development of legal initiatives to enable the confiscation of assets of equivalent value.
- Direct the resources from seizures of cash, financial products, securities or the proceeds of goods sold by the ICD in such a way that they can also better meet the needs of the other bodies involved in combating crime.
- Establish administrative and civil sanctions of a proportional and dissuasive nature for managers and senior executives of regulated entities.

Arts. 53 and 56: Measures for direct recovery of assets

- Publish information and statistics relating to requests for confiscation and for the general recovery of assets by other States that were the proceeds of an act of corruption on the websites of the competent public entities.
- Develop legislation on methods and procedures for the return of foreign assets to other States.
- Consolidate the central authority for international mutual assistance in a single public entity and eliminate the competencies of the rest.
- Expedite judicial processes for the lifting of bank secrecy when it is in response to requests for international mutual assistance.
- Reform legislation requiring dual criminality for mutual legal assistance cases.
- Assess the possibility of submitting proposals to international organizations which Costa Rica and various public entities are party to in order to improve cooperation and response times to requests for assistance.

Art. 57.3 (a), (b) and (c): Return and disposal of confiscated assets

- Increase the use of tools such as repatriation, repartition and restitution of assets.
- Present the legal initiative to reform Act 8204 to regulate the return and disposal of foreign assets as soon as possible.
- Reform legislation to allow for the confiscation and forfeiture of assets of economic interest of equivalent value.
- Publish information on requests for refunds, the applicable procedure and other relevant information on the subject on the websites of the entities.

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9 Annexes

Annex 1. National Corruption Prevention Survey Results, 2020

		Ciudadanos			Funcionarios Públicos					
La corrupción los perjudica		86%	Consideran que los perjudica en su vida cotidiana		87%	Consideran que los perjudica en su vida cotidiana				
Acciones para prevenir la corrupción en el sector público		21%	Conoce de acciones del sector público		49%	Conoce de acciones de su institución				
Trámites con mayor percepción de corrupción		16% 72% 68%	13% 65% 62%	23% 72% 72%	17% 65% 64%	7% 7% 7%	7% 7% 7%			
Conoce de actos de corrupción		23% 23%	16% 16%	14% 14%	26% 26%	67% 67%	14% 14%	26% 26%	67% 67%	
Cultura para la prevención de la corrupción		1º Lugar Ciudadanía 65% Honestidad 44%	2º Lugar Sector Público 24% Honestidad 9%	3º Lugar Empresas privadas 2% Impuesto 7%	1º Lugar Ciudadanía 59% Honestidad 45%	2º Lugar Sector Público 24% Ética 11%	3º Lugar Empresas privadas 0,8% Honestidad 11%	1º Lugar Ciudadanía 66% Honestidad 45%	2º Lugar Sector Público 24% Ética 11%	3º Lugar Empresas privadas 0,8% Honestidad 11%
Acciones para prevenir la corrupción		38% Cree que las instituciones evitan que se den actos de corrupción	70% Sociedad costarricense es muy tolerante ante la corrupción	38% Cree que las instituciones evitan que se den actos de corrupción	70% Sociedad costarricense es muy tolerante ante la corrupción	66% Consideran que la institución para la que trabaja realiza una buena labor para evitar la corrupción	42% Funcionarios públicos son muy tolerantes ante la corrupción			

Source: Office of the Comptroller General of the Republic, 2020

Annex 2

Sanctions imposed by the Office of the Comptroller-General of the Republic for failure to comply with the obligation to declare assets, 2015-2020

Motif	Type of sanction	Year						Total
		2015	2016	2017	2018	2019	2020	
Omission of information in the affidavit	Written reprimand	0	0	0	0	0	2	2
	Dismissal	0	0	1	0	0	0	1
	Prohibition of entry or re-entry into public service	0	0	1	0	0	0	1
	Suspension	1	0	0	0	0	2	3
Sub-total		1	0	2	0	0	4	7
Failure to file a sworn statement of assets	Written reprimand	2	1	0	2	0	0	5
	Credential Cancellation	1	0	0	0	0	0	1
	Dismissal	4	0	0	1	0	4	9
	Prohibition of entry or re-entry into public service	6	4	0	1	1	5	17
	Suspension	5	3	0	0	0	1	9
Sub-total		18	8	0	4	1	10	41
Late Submission	Public written reprimand	20	1	0	2	0	14	2
	Prohibition of entry or re-entry into public service	0	1	0	0	0	0	1
	suspension	19	0	0	5	5	21	53
Sub-total		39	2	0	7	5	36	56
Total		58	10	2	11	6	17	104

Source: Office of the Comptroller General of the Republic (2020)²⁷⁵

²⁷⁵ Roberto Rodríguez Araica (Associate Manager of the Office of the Comptroller General of the Republic), in official letter No. 17526 sent to the author, November 17, 2020.

Annex 3. Information requested by the UNCAC on money laundering

Information/intelligence phase	2017	2018	2019
Number of suspicious transaction reports (STRs) filed by each category of regulated entities: -banks and financial institutions Business and non-financial professions	Total 322 ²⁷⁶	Total 525 ²⁷⁷	No data
Number of postponement orders adopted on reported transactions	No data	No data	No data
Number of money-laundering investigations conducted independently by law enforcement agencies (without a prior STR) ²⁷⁸	No data	3 ²⁷⁹	5 ²⁸⁰
Number of actual suspicious activities at the border reported to the FIU (including those based on declarations and smuggling)	No data	No data	No data
Number of STRs sent to law enforcement and reanalyzed by law enforcement agencies	No data	No data	No data
Number of staff dedicated full time (or full time equivalent) to money laundering in the FIU	No data	No data	No data

Research phase	2017	2018	2019
Number of cases initiated by law enforcement agencies on the basis of STRs sent by FIU	No data	No data ²⁸¹	No data
Number of full-time (or full-time equivalent) money-laundering officers in law enforcement agencies	No data	Deputy Prosecutor's Office for Money Laundering: 11	Deputy Prosecutor's Office for Money Laundering: 11 ²⁸³

²⁷⁶ http://www.icd.go.cr/portalicd/images/docs/uif/doc_interes/acerca_uif/MEMORIA_%20JULIO_2018.pdf.

²⁷⁷ http://www.icd.go.cr/portalicd/images/docs/uif/ROS_2018/Reportes-de-Operaciones-Sospechosas-2018.pdf.

²⁷⁸ As of November 2020, the number of police investigations was 4 according to official letter No. 921-DG-2020 of November 12, 2020, signed by Walter Espinoza, Director General of the Judicial Investigation Agency.

²⁷⁹ Until November 2020, the number of police investigations was 4 according to official letter No. 921-DG-2020 dated November 12, 2020, signed by Mr. Walter Espinoza, General Director of the Judicial Investigation Organism.

²⁸⁰ Ibid.

²⁸¹ Request for info: The reason there is no data is because the Fiscalía Adjunta de Legitimación de Capitales, has stipulated that all intelligence reports forwarded by the Financial Intelligence Unit are kept confidential. Therefore, the reports of the Judicial Investigation Agency that investigate the facts reported by the FIU, and on the basis of which cases are initiated, cannot refer to the STRs as a source of information.

²⁸³ Request for information: In 2020, the number of staff of the Deputy Money Laundering Prosecutor's Office was increased to 12.

	No data	Judicial Investigation Agency: 25 ²⁸²	Judicial Investigation Agency: 34 ²⁸⁴
	No data	No data	SUGEVAL: 1 ²⁸⁵
	SUPEN: 0	SUPEN: 0	SUPEN: 0 ²⁸⁶
	SUGESE: 0	SUGESE: 0	SUGESE: 0 ²⁸⁷
	No data	No data	SUGEFE: 40 ²⁸⁸
Number of cases brought to trial: originating from STRs, cash transaction reports (CTRs) and independent police investigations	No data	No data ²⁸⁹	No data

Judicial Phase	2017	2018	2019
Number of full-time staff (or full-time equivalent) dedicated to money laundering in the judiciary	No data	No data	No data
Number of persons or legal entities convicted of money-laundering offences ²⁹⁰	Individuals: 9 ²⁹¹ Legal Entities: 0	Individuals: 39 ²⁹² Legal Entities: 0	Individuals: 1 ²⁹³ Legal Entities: 0
Number of convictions for laundering of proceeds of crimes committed abroad	No data	No data	No data

²⁸² Oficio No. 921-DG-2020 of 12 November 2020, signed by Walter Espinoza, Director General of the Judicial Investigation Agency.

²⁸⁴ Ibid.

²⁸⁵ Oficio No. H00/0-1973 dated November 13, 2020 subscribed from the General Superintendence of Securities.

²⁸⁶ Official Communication No. SP-1469-2020 dated November 19, 2020 signed by Rocío Aguilar, Superintendent of Pensions.

²⁸⁷ Oficio No. SGS-0774-2020 dated November 13, 2020 subscribed by the General Superintendence of Insurance.

²⁸⁸ SGF-0015-2021 dated January 6, 2021 signed by José Armando Fallas Martínez, Intendant General.

²⁸⁹ Since the cases brought to trial are based on the reports of the Judicial Investigation Agency, and by order of the Fiscalía Adjunta de Legitimación de Capitales, these reports cannot refer to the intelligence reports submitted by the Financial Intelligence Unit to safeguard their confidentiality, there is no data on how many cases brought to trial originated in suspicious transaction reports.

²⁹⁰ Up to December 2020, according to the Fiscalía Adjunta de Legitimación de Capitales there have been 3 convictions of physical persons. It is important to point out that under Costa Rican criminal law, prosecution for money laundering can only be directed against physical persons.

²⁹¹ <https://www.poder-judicial.go.cr/planificacion/index.php/component/phocadownload/file/3186-personas-sentencia>.

²⁹² <https://www.poder-judicial.go.cr/planificacion/index.php/anuario-judicial-2018/file/5821-penal-personas-sentencia>.

²⁹³ Info request to the FALC.

Number of convictions for offences other than money-laundering arising from STRs	No data	No data	No data
Number of convictions by type of money-laundering offence ²⁹⁴	Money laundering from drug trafficking: 9	Money laundering: 29	No data
		Money laundering from drug trafficking: 8 ²⁹⁵	
Number of non-suspended custodial sentences by duration (as a principal offence, as a predicate offence)	No data	No data	No data

Annex 4. Information requested by UNCAC on asset recovery

No data could be obtained for 2017, 2018 and 2019 for the following topics:

- Number of freezing procedures (based on a court order).
- Number of freezing requests received from another country.
- Value of frozen assets.
- Number of requests for confiscation orders received from another country.
- Value of confiscated assets.
- Amounts recovered from assets.
- Amounts returned.

To obtain the information, information request letters were sent to the following institutions: Deputy Prosecutor's Office for Money Laundering and Emerging Capital, Deputy Prosecutor's Office for Probity, Transparency and Anti-Corruption, Planning Directorate of the Judiciary, Judicial Investigation Agency, General Superintendency of Financial Institutions, General Superintendency of Insurance, General Superintendency of Securities, Superintendency of Pensions and the Financial Intelligence Unit.

It is evident from the data obtained that greater systematization of information is required, especially with regard to the recovery and return of assets of foreign origin.












Annex 5. Response to requests for information to public institutions for the shadow report

Institution	Oficio request	Date reply	Answers
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²⁹⁴ Statistics by subject: table of convictions by type of offence, Criminal Courts 2018 <https://www.poder-judicial.go.cr/planificacion/index.php/component/phocadownload/file/3186-personas-sentenciadas-cuadros>.

²⁹⁵ <https://www.poder-judicial.go.cr/planificacion/index.php/anuario-judicial-2018/file/5821-penal-personas-sentencia>.

<p>Technical Advisory and International Relations Office of the Public Prosecutor's Office</p>	 P-056-2020 OATRI-2.docx  P-31-2020 OATRI.docx  P-059-2020 OATRI-2.docx	<p>12/11/2020</p>	 850-OATRI-FGR-2020.docx
<p>General Superintendence of Securities</p>	 P-37-2020 SUGEVAL.docx	<p>13/11/2020</p>	 1973CRI.docx
<p>Superintendency of Pensions</p>	 P-38-2020 SUPEN.docx	<p>19/11/2020</p>	 2020SP1469[3557].docx
<p>Office of the Comptroller General of the Republic</p>	 P-28-2020 Gerente Área de  P-29-2020 Gerente de	<p>17/11/2020</p>	 17526-2020.docx
<p>Office of the Public Ethics Ombudsman</p>	 P-33-2020 PEP.docx	<p>24/11/2020</p>	 AEP-2052-2020, firmado[3579].doc
<p>General Directorate of Taxation of the Ministry of Finance</p>	 P-25-2020 Dirección General	<p>11/11/2020</p>	 DGT.docx
<p>Money Laundering Deputy Prosecutor's Office</p>	 P-026-2020 FALCA.docx	<p>06/11/2020</p>	 Oficio 410-FACLC-2020
<p>Office for the Attention and Protection of Victims of Crimes</p>	 P-054-2020 OAPVD-2.docx	<p>03/12/2020</p>	 oficio 2354-OAPVD-2020.docx
<p>Deputy Prosecutor's Office for Probity, Transparency and Anticorruption</p>	 P-027-2020 FAPTA.docx  P-057-2020 FAPTA  P-066-2020.docx	<p>13/11/2020 17/11/2020</p>	 Oficio FAPTA 3196-2020.docx  FAPTA 1.docx

Judicial Investigation Organism	 P-32-01J.docx  P-039-2020 UIF.docx	12/11/2020	 Oficio N 921- DG-2020
General Superintendence of Financial Entities	 P-35-2020 SUGEF.docx	06/01/2021	 SUGEF.docx
Judicial Branch Planning Directorate	 P-034-2020 Poder Judicial .docx	20/11/2020	 Poder Judicial.doc
General Superintendence of Insurance	 P-36-2020 SUGESE.docx	13/11/2020	 SGS-0774-2020.d ocx
Deputy Prosecutor's Office for Drug Trafficking and Related Offences	 P-058-2020 Fiscalia Adjunta de	No response was received	
Financial Intelligence Unit	 P-039-2020 UIF.docx	No response was received	