



PUBLIC-PRIVATE PARTNERSHIPS TO PROMOTE TRANSPARENCY

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KEY STATISTICS

- Although the real costs of corruption are difficult to measure, some estimates exist:
 - **Recent studies put the annual cost of bribery alone at about \$1.5 to \$2 trillion** (roughly 2 percent of global GDP), affecting both developed and developing countries.¹
 - **Corruption decreases investment by 5% and increases the cost of doing business by 10% on average.**²
 - Some authors suggest that “an improvement in corruption from the lowest quartile to the median could raise per capita income by about \$3,000 in Latin America over the medium term [...]”³
 - Borrowing costs generally tend to increase for those countries in which corruption is perceived to be high.⁴
- One in three Latin Americans recognized **having paid a bribe at least once** to gain access to key public services such as justice, education or health.⁵
- According to the 2017–2018 World Economic Forum Global Competitiveness Report many countries in the Americas do not have a competitive position in the “Ethics and Corruption” and “Corporate Ethics” indicators.

¹ *Corruption: Costs and Mitigating Strategies*, IMF Discussion Note, International Monetary Fund SDN/16/05 (May, 2016), p. 5, available at <http://www.imf.org/external/pubs/ft/sdn/2016/sdn1605.pdf>, accessed 02/28/2018.

² *The Rationale for Fighting Corruption*, CleanGovBiz-OECD Background brief (2013), available at <https://www.oecd.org/cleangovbiz/49693613.pdf>, accessed 02/28/2018.

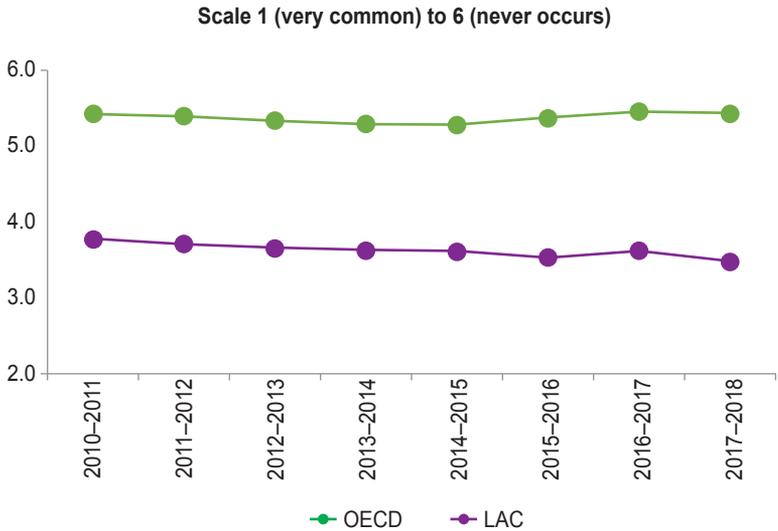
³ D. Lipton, A. Werner and C. Gonçalves, *Corruption in Latin America: Taking Stock*, IMF BLOG (Sept. 21, 2017), available at <https://blogs.imf.org/2017/09/21/corruption-in-latin-america-taking-stock/>, accessed 02/28/2018.

⁴ For a detailed analysis, see U. Panizza, *The Use of Corruption Indicators in Sovereign Ratings*, IDB Technical Note IDB-TN-1318 (Oct. 2017), available at <https://publications.iadb.org/handle/11319/8562>, accessed 02/28/2018. See also IMF, supra note 1, p.11.

⁵ *People and Corruption; Latin America and the Caribbean*, Global Corruption Barometer (Oct. 9, 2017), p. 5, available at https://www.transparency.org/whatwedo/publication/global_corruption_barometer_people_and_corruption_latina_america_and_the_car, accessed 02/28/2018.

Only 5 out of these countries are in the upper third in any of the referred indicators, and over 50% of the Lat-in American countries are below the top 100 positions in both.

Comparison of irregular payments and bribes between Latin America and the Caribbean region versus OECD countries



Source: World Economic Forum Global Competitiveness Report 2017–2018.

Country	"Ethics and Corruption" Ranking	"Corporate Ethics" Ranking
Canada	18	13
United States	23	19
Uruguay	32	35
Chile	40	39
Costa Rica	57	46
Jamaica	72	53
Panama	96	87
Trinidad and Tobago	103	118
Honduras	109	92
Guatemala	113	93
Argentina	115	130
Perú	116	121
Nicaragua	120	111
Colombia	125	113
Ecuador	127	125
México	128	117
El Salvador	130	128
Brazil	133	126
Dominican Republic	135	132
Paraguay	136	134
Venezuela	137	137

Source: World Economic Forum Global Competitiveness Report 2017–2018.

INTRODUCTION

Institutional quality and transparency are key to the effective delivery of public services and to building a business climate that incentivizes investment and supports private sector development.⁶ Empirical evidence has shown that lack of transparency and integrity can affect a country's productivity and economic growth.⁷ Opaque and cumbersome regulations that restrict access to information and open opportunities for discretionary behaviors, paired with weak government agencies responsible for accountability, are often cited as the main causes for corruption. Recent behavioral research complements these proposals by emphasizing the internal dynamics of how individuals make moral decisions and how these decisions are shaped and influenced by other people's reactions.⁸

There is a broad consensus among academia and international organizations that corruption negatively affects the economy. Besides hindering public decision-making, corruption erodes the efficient allocation of public spending, encourages tax evasion, generates additional costs in financing and transactions, discourages investment and negatively impacts productivity and, therefore, economic growth.⁹

⁶P. Mauro, *Corruption and Growth*, 110(3) *The Quarterly Journal of Economics* 681–712 (1995). Mauro warns about the relationship between honesty and bureaucratic efficiency indicators with economic growth and the potential negative macroeconomic consequences of corruption. Along this line, see also CleanGovBiz-OECD, *supra* note 2.

⁷See, for instance, J.G. Lambsdorff, *How Corruption Affects Productivity*, 56(4) *Kyklos* 457–474 (2003); D. De Rosa, N. Gooroochurn and H. Gorg, *Corruption and Productivity: Firm-level Evidence from the BEEPS Survey*, World Bank Working Paper WPS 5348 (Jun. 2010), available at <https://openknowledge.worldbank.org/handle/10986/4000>, accessed 02/28/2018.

⁸See Richard H. Thaler and Cass R. Sunstein *Nudge: Improving Decisions about Health, Wealth, and Happiness*, Yale University Press, 2008; Dan Ariely, *The Honest Truth About Dishonesty: How We Lie to Everyone---Especially Ourselves*, Harper Collins, 2012 and the recently published report *Behavioral Insights for Public Integrity: Harnessing the Human Factor to Counter Corruption*, OECD, 2018.

⁹For a detailed analysis regarding the negative consequences of corruption in the economy, see IMF, *supra* note 1.

Corruption also casts a negative effect on the confidence in public institutions and the state,¹⁰ lowering the trust in governments.¹¹ Likewise, corruption affects the ability of economic actors to act legitimately and creatively as a driver for growth and development.¹²

According to the Global Competitiveness Report 2017–2018, corruption, along with administrative bureaucracy and democratic instability, hinders economic and private sector development.¹³ This holds also true in Latin America and the Caribbean as corruption increases business costs by incorporating an “invisible tax,” raises barriers for market entry (especially for small and medium enterprises) and undermines the quality of both products and services.¹⁴

Corruption, however, is not an exclusive concern of the public sector. Globally and regionally business stakeholders have also become increasingly engaged with the challenges posed by corruption and with the potential measures and solutions to overcome it. Although the commitment of the private sector to bolster deep reforms in the public sector is essential, its engagement and collaboration with transparency,

¹⁰ Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform*, pp. 97–99 (Cambridge University Press 1999); *Why corruption matters: understanding causes, effects and how to address them – Evidence Paper on Corruption*, Department for International Development UK Aid (Jan., 2015), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406346/corruption-evidence-paper-why-corruption-matters.pdf, accessed 02/28/2018.

¹¹ International Monetary Fund, *supra* note 1, pp. 9, 11, 18; C.J. Anderson and Y.V. Tverdova, *Corruption, Political Allegiances, and Attitudes toward Government in Contemporary Democracies*, 47(1) *American Journal of Political Science* 91 (2003); D. della Porta, *Social Capital, Beliefs in Government, and Political Corruption* in *Disaffected democracies: What's troubling the trilateral countries?* (S.J. Pharr and R.D. Putnam eds. Princeton University Press 2000).

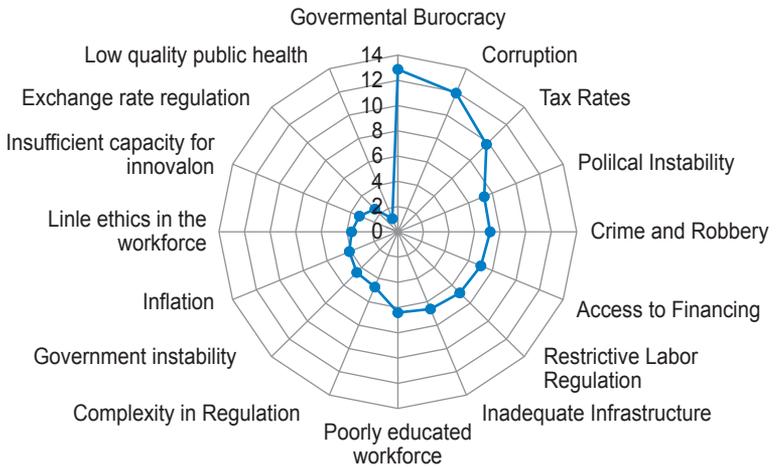
¹² See Anna Kochanova, *World Economic Forum* (May 6, 2015), available at <https://www.weforum.org/agenda/2015/05/how-does-corruption-affect-economic-growth/>, accessed 02/28/2018.

¹³ *The Global Competitiveness Report 2017–2018*, World Economic Forum (Sept. 2017), pp. 28–29 and 31, available at <https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018>, accessed 02/28/2018.

¹⁴ B20 Anti-Corruption Taskforce, available at <http://b20turkey.org/anti-corruption/>, accessed 02/28/2018.

integrity and anti-corruption measures is also imperative, by strengthening corporate governance and the way in which firms interact with governments, clients, suppliers and employees.

Most Problematic Factors for Doing Business in LAC 2017–2018



Source: World Economic Forum, Global Competitiveness report 2017–2018.

DIAGNOSTIC AND TRENDS

Recent corruption scandals in the region have shown that Latin American countries are in a critical juncture when it comes to their transparency, integrity and anti-corruption agendas. Indeed, a cursory review of various and recent corruption indicators¹⁵ show, on average, a high and not declining level of perceived corruption in the region, which emerges as one of the most serious problems to the public and private sectors. Although an important number of Latin American countries have adopted a series of measures to combat corruption, on average, the indicators have not improved over the past fifteen years;¹⁶ in contrast, other regions such as East Asia and former Eastern/Central Europe, have made progress in this area.

Over the past four years, a series of high profile events and scandals have exposed the existence of significant gaps in the anti-corruption and integrity systems of some Latin American countries. The most notable example is the information arising from the *Lava Jato* investigations. On the one hand, this case showed the level of influence that international corporate elites can exercise over high-level politicians. On the other, it evidenced the extent of cross-border corruption, illicit campaign financing and irregular procurement of large

¹⁵ Transparency International's Corruption Perceptions Index states that the average score for the Americas is 44 out of 100, where ratings below 50 indicate high levels of perceived corruption. See Jessica Ebrard, *Americas: Sometimes Bad News is Good News*, Transparency International (Jan. 2017), available at https://www.transparency.org/news/feature/americas_sometimes_bad_news_is_good_news, accessed 02/28/2018. See also Worldwide Governance Indicators Project, Control of Corruption, available at <http://info.worldbank.org/governance/wgi/#home>, accessed 02/28/2018.

¹⁶ According to the Worldwide Governance Indicators Project, some countries of Latin America and the Caribbean are showing their worst results across the years (2000–2016), which are also significantly higher *vis-à-vis* other regions of the world. See World Governance Indicators Project, *ibid.*

infrastructure projects.¹⁷ Similarly, the *La Línea* scandal in Guatemala has exposed a network of corruption intertwined with tax evasion and customs fraud, going up to the highest governmental officials.¹⁸

In addition, the so-called *Panama Papers* and the more recent *Paradise Papers* scandals have revealed the existence of opaque legal structures that allows the hiding and laundering of proceeds from tax evasion, corruption, embezzlement, misuse of revenues from extractive industries and other related crimes.

The impact of these scandals has been felt strongly in the region at different levels.

First, grand scale and transnational corruption connected to infrastructure projects has also affected the implementation of important construction plans. Some infrastructure projects have been suspended, terminated or declared void before its conclusion due to evidence of corruption.¹⁹ This has generated a negative political and economic impact

¹⁷ See, for instance, A. Schipani, J. Leahy, J. Webber and B. Mander, *Odebrecht scandal puts Latin America's leaders on watch*, Financial Times (Feb. 20, 2017), available at <https://www.ft.com/content/f76cc10c-f56d-11e6-8758-6876151821a6>, accessed 02/28/2018; *Odebrecht case: Politicians worldwide suspected in bribery scandal*, BBC News (Dec. 15, 2017), available at <http://www.bbc.com/news/world-latin-america-41109132>, accessed 02/28/2018.

¹⁸ See, for instance, CICIG, *Comunicado de Prensa 011: Desmantelan Red de Defraudación Aduanera*, CICIG (Apr. 16, 2015), available at <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=587&cntnt01returnid=67>, accessed 02/28/2018; CICIG, *Comunicado de Prensa 057: Caso La Línea: MP y CICIG Coordinaron Aprehesión de ex Intendente de la SAT*, CICIG (Sept. 14, 2015), available at <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=634&cntnt01returnid=67>, accessed 02/28/2018.

¹⁹ See *Ultimátum: Odebrecht debe apurar la entrega de la Ruta del Sol II*, Dinero (Aug. 31, 2017), available at <http://www.dinero.com/edicion-impresa/pais/articulo/la-ani-pone-a-odebrecht-ultimatum-en-entrega-ruta-del-sol-ii/249274>, accessed 02/28/2018; *Colombia pedirá nulidad de contrato con Odebrecht por corrupción*, Andina (Jan. 18, 2017), available at <http://www.andina.com.pe/agencia/noticia-colombia-pedira-nulidad-contrato-odebrecht-corrupcion-650038.aspx>, accessed 02/28/2018; J. Ugaz, *Agente 003 (o tres a cero)*, El Comercio (Feb. 5, 2018), available at <https://elcomercio.pe/opinion/columnistas/decreto-urgencia-odebrecht-lava-jato-gobierno-agente-003-tres-cero-jose-ugaz-noticia-494627>, accessed 02/28/2018; M.R. Villalobos, *El decreto de urgencia 003 versus el proyecto de ley 2408*, El Comercio (Feb. 14, 2018), available at <https://elcomercio.pe/economia/decreto-urgencia-003-versus-proyecto-ley-2408-noticia-497109>, accessed 02/28/2018.

affecting several stakeholders, including the financial sector, small and medium enterprises and suppliers, workers and the citizenry.²⁰

Second, corruption scandals have created a wave of popular discontent and disillusion with governments, which in the short term has resulted in massive street protests, showing that citizens are becoming intolerant to corruption and impunity. Citizens in general and a rising middle class in particular, connected and informed through social media, are now demanding a better judiciary and the strengthening of the rule of law.²¹

Corruption scandals have therefore created opportunities for reform that should target both grand corruption and petty corruption, that is the persisting presence of the solicitation and payment of bribes at the service delivery level.²² Indeed, this last problem remains relevant in the Americas, as shown by a recent survey that indicates that on average 20% of Latin American citizens have had some experience with it.²³ Petty corruption particularly targets ordinary citizens, affecting poor people disproportionately and sometimes excluding them altogether from the enjoyment of basic rights and benefits.

Integrity measures from the public sector are required at different levels to overcome the crisis of confidence among

²⁰ See, for instance, PPK: *Odebrecht frena economía de Perú*, Gestión (Sept. 3, 2017), available at <https://gestion.pe/peru/politica/ppk-odebrecht-frena-economia-peru-130410>, accessed 02/28/2018; M. Quispe and R. Bambarén, *La corrupción no solo afecta el PBI sino también la competitividad del país*, La República (Dec. 10, 2017), available at <http://larepublica.pe/economia/1156016-la-corrupcion-no-solo-afecta-el-pbi-sino-tambien-la-competitividad-del-pais>, accessed 02/28/2018.

²¹ See K. Casas-Zamora and M. Carter, *Beyond the Scandals: The Changing Context of corruption in Latin America*, Inter-American Dialogue Rule of Law Report (Feb. 2017), available at <https://www.thedialogue.org/resources/beyond-the-scandals-the-changing-context-of-corruption-in-latin-america/>, accessed 02/28/2018.

²² *United Nations Handbook on Practical-Anticorruption Measures for Prosecutors and Investigators*, UN Office on Drugs and Crime (Sept. 2004), p. 23, available at <http://www.unodc.org/pdf/crime/corruption/Handbook.pdf>, accessed 02/28/2018.

²³ See Global Corruption Barometer, *supra* note 6, p. 6.

citizens and investors and thus enhance development and economic growth. Strengthening institutional and legal frameworks with a focus on effectiveness is a crucial first step to battle the corruption crisis that the region is facing.

THE ROLE OF THE PRIVATE SECTOR

As previously noted, corruption discourages business and economic development since business people and investors are concerned about the risks of doing business due to the lack of confidence in public authorities and institutions and in the business environment.²⁴ The commitment of the private sector to bolster reforms in the public sector is essential since a transparent, honest, open, and competitive environment, where opportunities are weighed by their merits and quality, is crucial for the normal development of the business activity.

Latin American governments should adopt measures to ensure transparency and integrity aimed at reducing public officials' discretion, and limiting the opportunities that may generate encounters with potential bribe payers. Governments should implement mechanisms to ensure citizen and private sector participation. These mechanisms should adopt information and communication technologies (ICT) to ensure more transparency in government processes and decision. The use of ICT is particularly relevant in public procurement and in the preparation and execution of large infrastructure projects. These measures should be coupled with administrative simplification and clearly defined rules, based on reliable data, that promote better decision making.

The private sector can contribute to this effort by adopting transparency and integrity programs. Corruption not only carries legal and commercial risks for companies but also sensitive reputational contingencies. The benefits of a

²⁴ A. López-Claros, *Nine Reasons why Corruption is a Destroyer of Human Prosperity*, WORLD BANK BLOG (March 31, 2014), available at <http://blogs.worldbank.org/futuredevelopment/nine-reasons-why-corruption-destroyer-human-prosperity>, accessed 02/28/2018.

transparent business environment also materialize in a reduction of several costs, including those arising from the payment of bribes, from the investigation and remediation of illegal practices, or from the interest rates for borrowing money,²⁵ something that also results in more favorable payment terms and in more flexible due-diligence requirements. Many of these measures are now mandated by law, thus requiring companies to adopt and implement robust compliance programs, particularly to prevent corrupt practices and to correct irregular practices in case of judicial investigations.

Integrity programs for the private sector can be developed in accordance with existing international standards. The G20/OECD Principles of Corporate Governance may serve as a guideline for both, publicly traded and privately-held companies.²⁶

²⁵ See, for instance, D. De Boskey and P. Gillet, *The Impact of Multi-Dimensional Corporate Transparency on US Firms' Credit Ratings and Cost of Capital*, 40 Rev. of Quantitative Finance & Acc. (2013).

²⁶ G20/OECD Principles of Corporate Governance, OECD (2015), available at http://www.oecd-ilibrary.org/governance/g20-oecd-principles-of-corporate-governance-2015_9789264236882-en accessed 02/28/2018.

OPPORTUNITIES

The private sector is in a unique position to promote transparency and integrity reforms. Such reforms include the adoption of corporate codes of conduct—regulating, among other issues, conflicts of interests and the prohibition to provide any form of illicit payment to public officials, risk management measures, internal and external oversight mechanisms, and training and guidance for employees. A list of measures in accordance to international standards that may be implemented by the private sector could include the following:

- Implementation of an ethical business culture integrated to the companies' policies, strategies and operations, including periodic training of corporate employees on anti-corruption laws and practices through in-house, e-learning and external training courses.
- Implementation of ethics programs for small and medium sized enterprises (SMEs), recognizing issues related to the cost and size of these entities.
- Adoption of anti-bribery clauses in contractual documents and other integrity and transparency pledges in corporate documents relevant for procurement processes with public and private parties.
- Adoption of Integrity Pacts and similar public—private agreements with third party monitoring to ensure transparency and accountability throughout the full contracting process.
- Implementing corporate policies to report fraud, corruption and other illegal activities, as well as protecting whistleblowers from retaliation.
- Timely, periodic, accessible and accurate disclosure of the expenditures and other contributions made by private entities to the public sector or political parties, including political contributions, royalty payments, gifts,

hospitality and entertainment expenses, and donations among others.

- Disclosure of comprehensive and accurate information to appropriate public authorities regarding ultimate beneficial owners. Such information may include the full name of the final beneficiary, the address, the nationality, the identification and tax identification numbers, the percentage of ownership and/or the control chain, and the date from which the person is final beneficiary.
- Conducting periodic evaluations and studies to identify vulnerable corporate activities, ensuring the participation of internal and external controls.
- Appointment of a board member or senior manager to ensure that firms comply with applicable laws, corporate codes of conduct, and other policies regarding corporate governance, integrity, transparency, ethics and disclosure.
- Participation in international transparency initiatives, such as the one proposed by the UN Global Compact²⁷ and/or the business for rule of law framework.²⁸

²⁷ See <https://www.unglobalcompact.org/>.

²⁸ See <https://www.unglobalcompact.org/take-action/action/business-rule-of-law>.