

## ANTICORRUPTION IN THE AMERICAS RESEARCH: COMPARATIVE ANALYSIS

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### **1. Preamble**

To carry out a comparative analysis on the state of corruption and its research in the region of the Americas, it is necessary to have in mind that the corruption in our countries—except for honorable exceptions such as Canada, the United States, Uruguay and Chile—is historical, systematic and extensive.

According to the 2018 Corruption Perceptions Index of Transparency International, the average obtained by the region is 44 points out of 100 (the same as the Asia Pacific region), versus 32 in Sub-Saharan Africa, 35 in Eastern Europe and Central Asia, 39 in Middle East and Northern Africa and 66 in Western Europe.

Although 44 is quite a deficient score, the serious thing is that if we take Canada out of the picture (81 points), the United States (71 points, its lowest position in 7 years), and Uruguay (70 points), Latin America falls to the limit of 30/100, that is, it is located in the lower third of the table as one of the most corrupt regions in the world.

As the corruption is systemic, it is clear that it cannot be solved with temporary solutions. Sometimes, we are tempted to think that corruption depends on the coming to power of a certain political party or some bad authorities. However, in reality, we are facing a phenomenon that is permeated in the power structures of our States and that is expressed through networks in which public officials of all levels converge--politicians, business elites and organized crime operators.

Another characteristic of corruption in our region is that it occurs simultaneously on two levels. On the one hand, we suffer from widespread administrative corruption, particularly through routine and low-level illegal transactions (which we can describe as *petty corruption*, which has permeated the citizenry and been "normalized").

On the other hand, in recent times, the region has been shaken by scandals that we can describe in the terms of Transparency International, as cases of Grand Corruption, consisting of the abuse of high-level power that benefits a few at the cost of the majority, causing widespread damage to individuals and society as a whole. An essential characteristic of this type of corruption is that it has an undoubted impact on human rights, and by its very nature, its perpetrators usually enjoy impunity.

### **2. Some Grand Corruption Scandals in the Americas**

Undoubtedly, the case that has most impacted the region in recent decades is the so-called "Lava Jato Case", a corruption scheme linked to large construction companies, which began in Brazil and ended up involving 11 countries of the region (Argentina, Brazil, Colombia, Ecuador, El Salvador, Guatemala, Mexico, Panama, Peru, Dominican Republic and Venezuela), and two from Africa (Angola and Mozambique).

The Lava Jato Case had the following characteristics: i) Bribes were paid to high-level officials (presidents, ministers and others) and political parties; ii) The goal was to secure large infrastructure works, iii) Projects were later overvalued through addendums to contracts; iv) It used a sophisticated structure, which in the case of Odebrecht consisted of organizing a bribe administration department, applying 4 layers of offshore companies to channel payments, and purchasing a bank of its own to avoid anti-laundering controls.

Other cases worth mentioning in the last two decades are the "Fujimori case" in Peru (The capture of the state by a corruption network that controlled power), the "Mensalao case" in Brazil (illegal purchase of congressional votes to support the first Lula government), the "La Línea case" in Guatemala (corrupt network in the country's customs system that reached as far as the presidency of the republic), the "Finmeccánica case" in Panama (payment of bribes by an Italian company for the purchase of radars and helicopters), the "White House case" in Mexico (purchase of a mansion by the president's wife from a Chinese government contractor), and the "Cuadernos de la Corrupción case" in Argentina (bribes to ex-President Kirchner and other officials of her government).

All these cases have had different responses. In some, the investigations have been shipwrecked in a sea of impunity and procedural tricks to avoid the punishment of those responsible, while others have managed to break the tradition of impunity and have driven investigations to bring the truth to light and generate consequences for the perpetrators.

### **3. Comparative analysis**

Once again, the Lava Jato case shows us that in terms of investigation and punishment of the perpetrators of great corruption, the reality is very different depending on the country in question and the political circumstances that surround it. In the other examples of various countries that we have cited, the same thing happens more or less. In this sense, depending on progress, investigations of great corruption in the region can be classified into three groups:

#### **a) Successful investigations**

There is no doubt that the investigations carried out in Peru against the criminal network of Fujimori and Montesinos at the end of the year 2000 qualify as successful: Investigating more than 1,500 people in 300 criminal proceedings and recovering approximately US \$ 300 million. The entire leadership and most of the relevant perpetrators were convicted, many of whom have finished prison sentences or remain there (Fujimori and Montesinos for 25 years).

The Mensalao case can also be described as successful, insofar as it made it possible to know the truth of the facts despite the power of its perpetrators and to convict 27 of those responsible. This investigation was the germ that helped lay the groundwork for judges like Moro to promote the Lava Jato case.

The Lava Jato case is being successfully tried in Brazil, where the main and powerful perpetrators have been sent to prison and/or have decided to collaborate with the authorities

by providing valuable information and evidence. However, it is not exempt from problems, such as the shielding of President Temer by Congress, which prevents him from being prosecuted. In Peru, despite criticism, attacks by politicians and challenges in the justice system, investigators have made important advances.

It is important to highlight the case of Guatemala, in which, thanks to the intervention of the CICIG (International Commission against Impunity in Guatemala), a tradition of decades of impunity was broken. The CICIG's involvement generated important revelations such as the La Línea case that brought President Perez Molina and Vice President Barletti to prison, and several other investigations that involve high-level officials such as current President Morales.

What are the keys to success? In some cases, the existence of political will, in others, the emergence of public figures with a strong anti-corruption calling and technical capacity. Sometimes, success requires both traits, as well as international cooperation and the existence of appropriate legal instruments. In the case of Guatemala, the implementation of an international mechanism proved effective.

b) Current investigations with advances and setbacks

Panama is an example of how, despite some progress such as the appointment of an ambassador to Italy to promote the Finmeccanica case, and the efforts of the Public Ministry to carry out the investigations, the resistance of the Supreme Court and other actors have successfully closed the case. The same is happening with the Lava Jato case, in which the Supreme Court has ruled several times in favor of former President Martinelli, citing lack of evidence, expiration of deadlines and other technicalities.

Argentina has begun to promote investigations of Lava Jato after the change of Attorney General (the previous one refused to investigate for political reasons), but in the case of corruption notebooks, despite the judge's efforts to reach former - President Kirchner, the congress does not concede to remove official immunity.

As for Lava Jato, this pattern of progress and setbacks includes investigations in Colombia (including suspicious deaths of witnesses), Ecuador, El Salvador and the Dominican Republic.

What causes this contradictory situation? The coexistence of lack of political or institutional will, inadequate or insufficient legal tools, institutional weakness of justice agencies, and, on the other hand, the presence of justice officials with a commitment to anti-corruption.

c) Total impunity

At this extreme are the notorious cases of Mexico and Venezuela. We hope that with battle against and expulsion of CICIG by President Morales, Guatemala does not return to this category.

Ex-President Peña Nieto and his wife were exonerated from an evident case of conflict of interest, if not of hidden corruption, and in the matter of Lava Jato, no progress has been made, despite the existence of sufficient evidence.

In Venezuela, the country where Odebrecht had the most infrastructure contracts in the region, Maduro's government has not only prevented the investigation of high-level government officials engaged in obvious acts of corruption, but has also chosen to indict investigating prosecutors, forcing them to flee the country.

How is this explained? In the case of Mexico, because of the government's refusal to allow an Attorney General's office independent of the political influence, and as for Venezuela, because of the existence of a dictatorship that annuls any possibility of a credible and autonomous justice system.