



FIRST ASSESSMENT OF THE CITIZEN CORRUPTION OBSERVATORY (CCO): MONITORING THE IMPLEMENTATION OF THE LIMA AGREEMENT REGULATORY INDICATORS

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Summary.

The CCO consists of a coalition of civil society organizations and social stakeholders from 19 countries in the American continent, who have jointly advanced a follow-up of the fulfillment of the agreements adopted by the governments of the region in the Eight Summit of the Americas held in 2018 in Lima, Peru.

This document presents a first assessment of the existing legal framework in the countries participating in the CCO according to the agreements prioritized within the Eight Summit of the Americas, to strength the fight against corruption. The information laid out is based on the compilation and review of the status of the legislation and judicial precedents currently in force in the countries that form part of this initiative. Being a preliminary report, it includes and examines the data incorporated from the review of the legal framework and offers information on the main conditions necessary to fight against this issue.

In general terms, the regulatory framework that exists is relatively enough to fight against corruption. However, this initial analysis of the legal framework indicates the necessity of adopting different national and regional strategies to support the countries with weaker regulations. Also, this assessment evidences the importance of keeping up the progress in the development of broader legal frameworks incorporating and strengthening the measures shown on these commitments. At the same time, it is necessary to advance in a concrete way in the inclusion of new approaches to the fight against corruption, to obtain better results in this matter.

Introduction

The project “Citizen Corruption Observatory (CCO) – Monitoring the Lima Agreement” seeks mainly to strengthen the Citizen Forum of the Americas (CFA) through the co-creation, with the Latin American and the Caribbean Network for Democracy (REDLAD) and the Citizen Forum of the Americas (CFA) an observatory to offer technical support to promote the Participation of Civil Society in the Summit of the Americas (PASCA).

The CCO consists of a coalition of civil society organizations and social stakeholders from 19 countries in the American continent¹, who have jointly advanced a follow-up of the fulfillment of the agreements adopted by the governments of the region in the Eight Summit of the Americas held in 2018 in Lima, Peru. As a result of this Summit, the countries signed the Lima Agreement “Democratic Governance Against Corruption”, which includes 57 commitments regarding the adoption and progress of measures to fight against corruption in the region. Between November 2020 and June 2021, more than 150 social organizations participating in this project have been applying a participatory methodology to monitor and assess the



progress made in these agreements¹. This methodology² builds upon the identification of regulatory and practice indicators and the selection of criteria to determine the degree of implementation in each of the agreements analyzed. Based on this, 19 commitments were selected and classified in the following 5 topics:

- I. **Reinforcement of Democratic Governance**, which considers agreements in connection with judicial autonomy, the promotion of gender equality and the inclusion of vulnerable groups in the anticorruption policies, the public servants selection processes, the prevention of conflicts of interest and the promotion of behavior codes.
- II. **Transparency, Access to Information, Protection of Whistleblowers, and Human Rights, including Freedom of Expression**, which considers agreements associated to citizen participation, open government programs, the autonomy and independence of supervisory bodies, the strengthening of transparency bodies and the preparation of statistics and policy follow-up indicators, among others.
- III. **Financing of Political Organizations and Election Campaigns**, which focuses on transparency, accountability, adequate accounting and use of banking services in connection with income and expenses of the political organizations and parties.
- IV. **Prevention of Corruption in Public Works and Public Procurement and Contracting**, focused on commitments concerning the promotion of government electronic purchasing systems and anticorruption clauses and bureaucracy reduction.
- V. **International Legal Cooperation; the Fight Against Bribery, International Corruption, Organized Crime, and Money Laundering; and Asset Recovery**, focused on promoting the cooperation of inter-administrative entities and the merging of measures to consolidate provisional attachments in corruption cases.

Below we present a first assessment of the existing legal framework in the countries participating in the CCO according to the agreements prioritized within the Eight Summit of the Americas, to strength the fight against corruption. The information laid out is based on the compilation and review of the status of the legislation and judicial precedents currently in force in the countries that form part of this initiative³. Being a preliminary report, it includes and examines the data incorporated from the review of the legal framework and offers information on the main conditions necessary to fight against this issue; however, it does not explore in depth the context analysis or the effective application of these regulations. This task will be carried out throughout the other stages of this methodology, as it will be explained in the next section.

¹ The regional Transparency International chapters as well as civil society organizations that form part of the Citizen Forum of the Americas, are part of this initiative.

² The Methodological Guide for monitoring the commitments can be consulted in the following link: <https://occ-america.com/metodologia/>

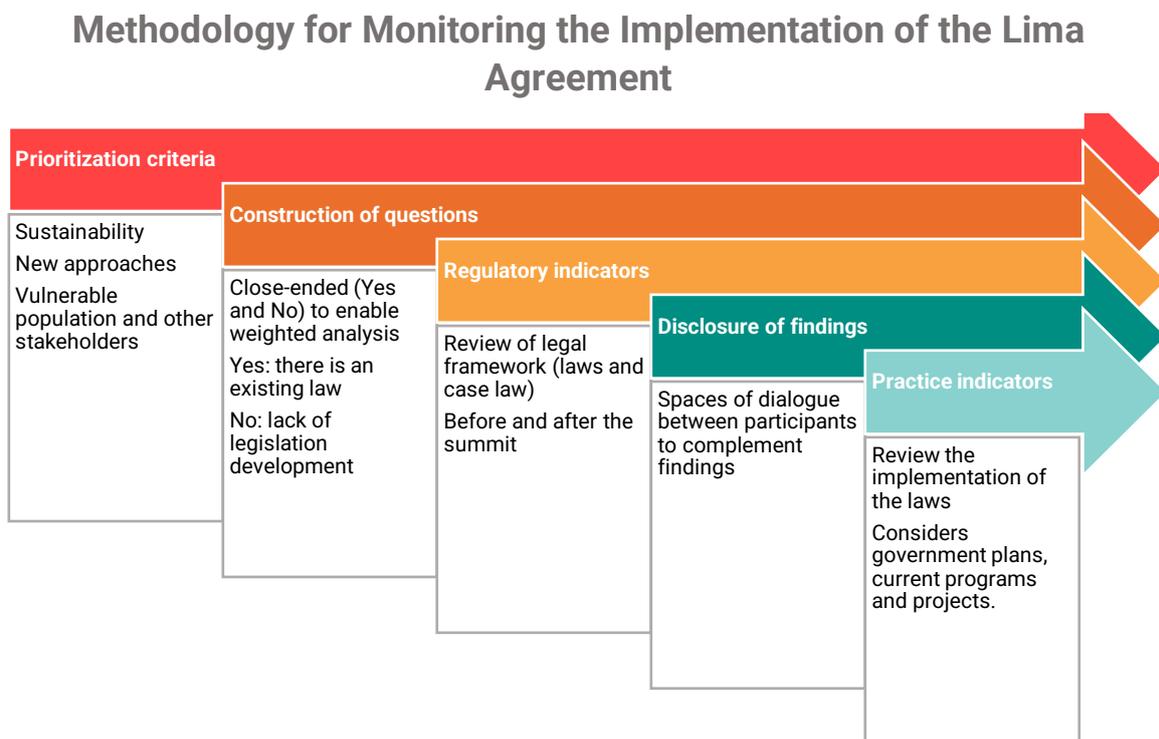
³ In each country participating in the CCO, the gathering of the regulatory indicators was entrusted to one civil society organization that acts as national coordinator; however, the results of the monitoring of regulatory indicators were socialized and complemented by the other social organizations participating in the CCO.

Methodology for Monitoring the Implementation of the Lima Agreement

As already mentioned, the methodology to monitor the Lima Agreement seeks to determine the degree of progress or compliance of the commitments in each country of the region that forms part of the CCO. This follow-up is based upon the analysis of each commitment in regards of the regulatory and practice indicators and the assessment of their degree of progress and compliance considering three criteria: Pertinence⁴, Efficacy⁵ and Sustainability⁶.

Both, the prioritization of the 19 commitments, and the construction of the indicators and the monitoring considered in the follow-up methodology, were developed by reviewing documents and evaluations about anticorruption initiatives; their purpose is to generate a set of methodological tools to enable civil society organizations to monitor the Lima Agreement. The following graph describes the methodology construction process:

Figure 1: Methodology for monitoring the implementation of the Lima Agreement.



Source: Elaborated based on CCO methodology

⁴ The efficacy parameter seeks to establish the extent to which government actions – as a result from the Lima Agreement – contribute to the fight against corruption in the country.

⁵ Pertinence seeks to determine the extent to which the actions engaged by the government are timely, convenient and adequate in accordance with the economic, institutional and/social context of the country.

⁶ Sustainability seeks to determine the extent to which the actions engaged to comply with the agreement will be ongoing.



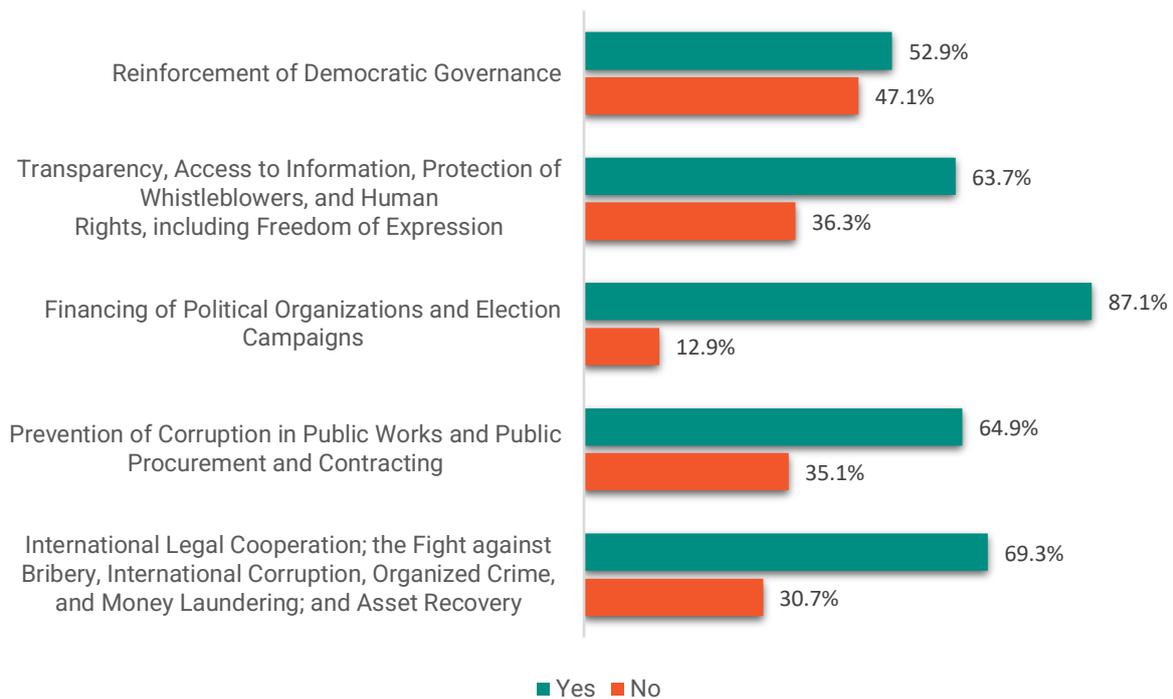
Regulatory indicators **are made up of 74 close-ended questions (Yes or No)**⁷; they include 12 questions aimed at determining if the regulations are subsequent to the signing of the Lima Agreement. Affirmative answers evidence the existence of laws or case law developments that regulate the subjects addressed in the commitments, and negative answers indicate the absence or scarce regulatory development in the prioritized commitments. In order to perform the regulations analysis, each country reviewed the legislation in force, the case law and legal provisions of different ranks, as applicable.

1. General Trends of the Regulatory Developments in the Region.

The graph below shows the general trends of the regulatory developments in the region in making progress in the fight against corruption:

Figure 2: Results of the normative indicators by topic.

Results of the Normative Indicators by Topic



Source: Elaborated based on the information register by the CSOs in the CCO platform.

- In the region there is an ample regulatory body with the provisions required to fight against corruption. When inquiring about the existence of legal provisions or case law in connection with the 19 commitments examined, 64.9% of the questions were answered positively.

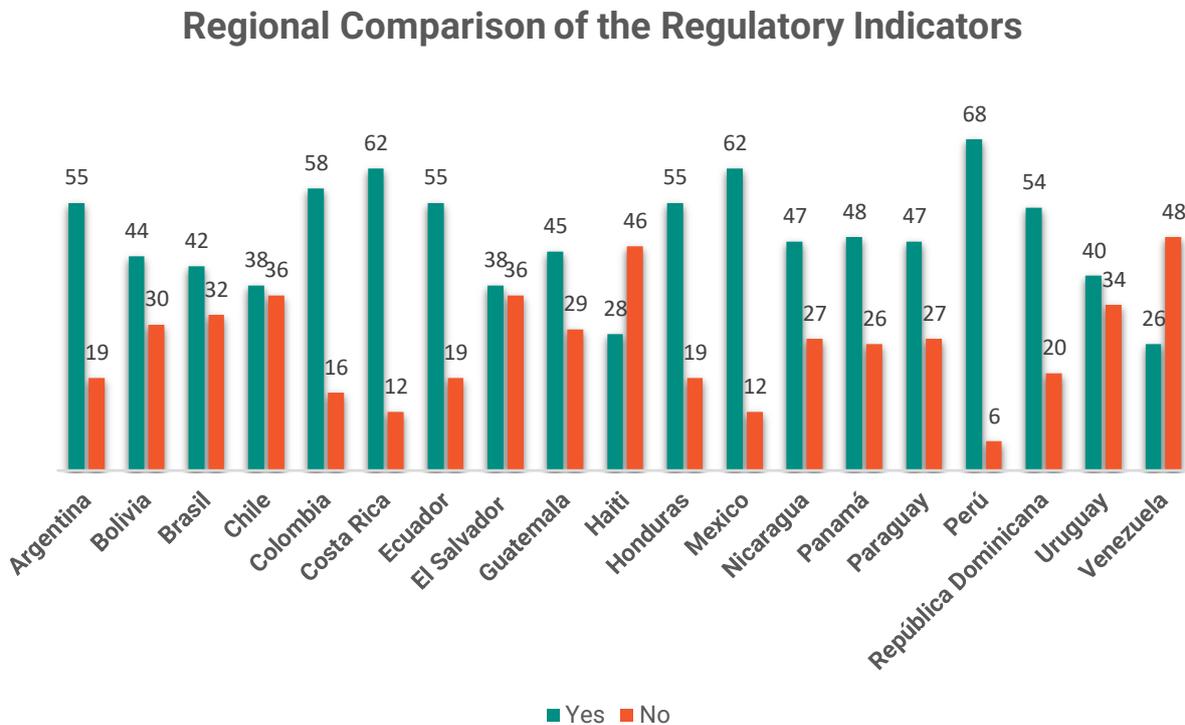
⁷ Questions regarding regulatory information may be consulted in the following link: <https://occ-america.com/metodologia/>

- In general terms, the largest regulatory development in the region is present in the regulations regarding *financing of campaigns*, specifically in the existence of measures fostering transparency, accountability and handling of resources through the banking system.
- However, the information gathered shows that the core topic *strengthening governance* is the one with the least regulatory development. In this respect, 47.1% of the regulation questions had a negative answer.

1.1. Regulatory Progress per Country Participating in the CCO

The review of the existing regulations to fight corruption in the region evidences different degree of development in the 19 countries participating in the CCO, as it is noted in the graph below:

Figure 3: Regional comparison of the regulatory indicators



Source: Elaborated based on the information register by the CSOs in the CCO platform.

- Among the countries with the highest number of regulatory indicators negatively answered (that is, evidencing lack of legal provisions) are Venezuela, Haiti, Chile, El Salvador and Uruguay. While Peru, Mexico and Colombia are the countries with the highest number of positive answers, indicating the existence of legal provisions in force⁸.

⁸ It is worth clarifying that the existence of legislation does not imply that it is actually being implemented; this analysis will be made in the second results report, where regulatory and practice indicators will be compared.

- While the comparison exercise between countries and number of existing regulations to fight against corruption is not enough to determine the conditions of each country to face this phenomenon, it does offer information that makes it possible to identify strengths, weaknesses and/or gaps between the existence of regulations and their effective implementation (activity that will be developed through the analysis of the practice indicators).

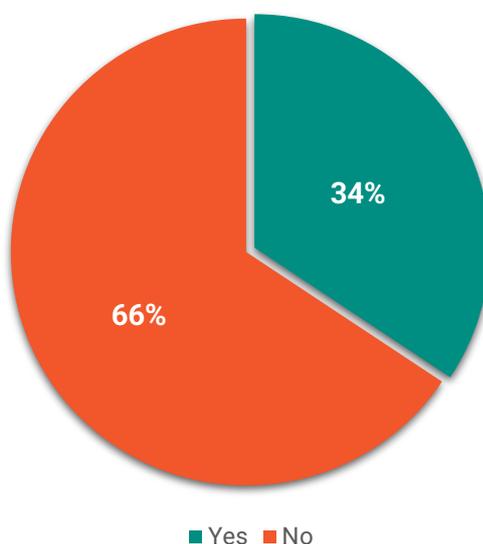
1.2. Regulatory Progress after the Signature of the Lima Agreement.

Bearing in mind that the Eight Summit of the Americas took place in the year 2018 and the Lima Agreement was signed as a result of it, it is important to review whether there have been recent developments in the regulations or case law.

The graph below compares the percentage of legal provisions developed subsequent to the 2018 Lima Agreement with the previously existent regulatory framework on the matter. In order to inquire about this development, the regulatory indicators included 12 questions specifically focused on determining if any new legal provisions had been enacted in the past two years in connection with the subjects addressing the commitments:

Figure 4: Regulatory developments after 2018

Regulatory Developments after 2018



Source: Elaborated based on the information register by the CSOs in the CCO platform.

- The results show that more than 50% of the provisions to progress in the fight against corruption existed prior to the signing of the Lima Agreement. This situation indicates that, at least, at regulatory and legal levels, the countries that form part of the CCO already had a broad legal framework prior to the implementation of these commitments for the promotion of measures against corruption.



- In the region, most of the recent regulatory developments are connected to the implementation of national Open Government policies and plans. However, Brazil, Chile, Nicaragua and Venezuela currently lack national policies or plans on electronic government and digital participation that relate directly to measures against corruption.
- An innovative aspect in the Lima Agreement is the inclusion of a gender and vulnerable populations approach in the policies against corruption. Unfortunately, these subjects show the least regulatory development in the region. In fact, during the past 2 years, only Argentina, Costa Rica, Panama and Peru evidence some kind of regulatory progress for the inclusion of these groups in policies and measures aimed at strengthening governance and fighting corruption. The foregoing underscores the importance that countries in the region must give to these new approaches in the fight against corruption, in the short and medium term, to complement the existing regulatory framework in the matter.
- Regarding the regulations prior to 2018, we find that 16 of the countries participating in the CCO have legislation aimed at ensuring transparency and equality of opportunities in the public servant selection processes. In this connection, after 2018, only 6 countries – Colombia, Costa Rica, Ecuador, El Salvador, Mexico and Peru – have promoted new regulatory developments to regulate aspects such as merit, equality and competence in public employment, as indicated under the commitment Nr. 9.
- Furthermore, all countries participating in the CCO have regulations prior to 2018 that address issues regarding the use of electronic systems for public procurement. In this regard, 7 countries – Chile, Colombia, Costa Rica, Ecuador, Panama, Paraguay and Peru – have developed complementary legislation after 2018, to strengthen these electronic systems.

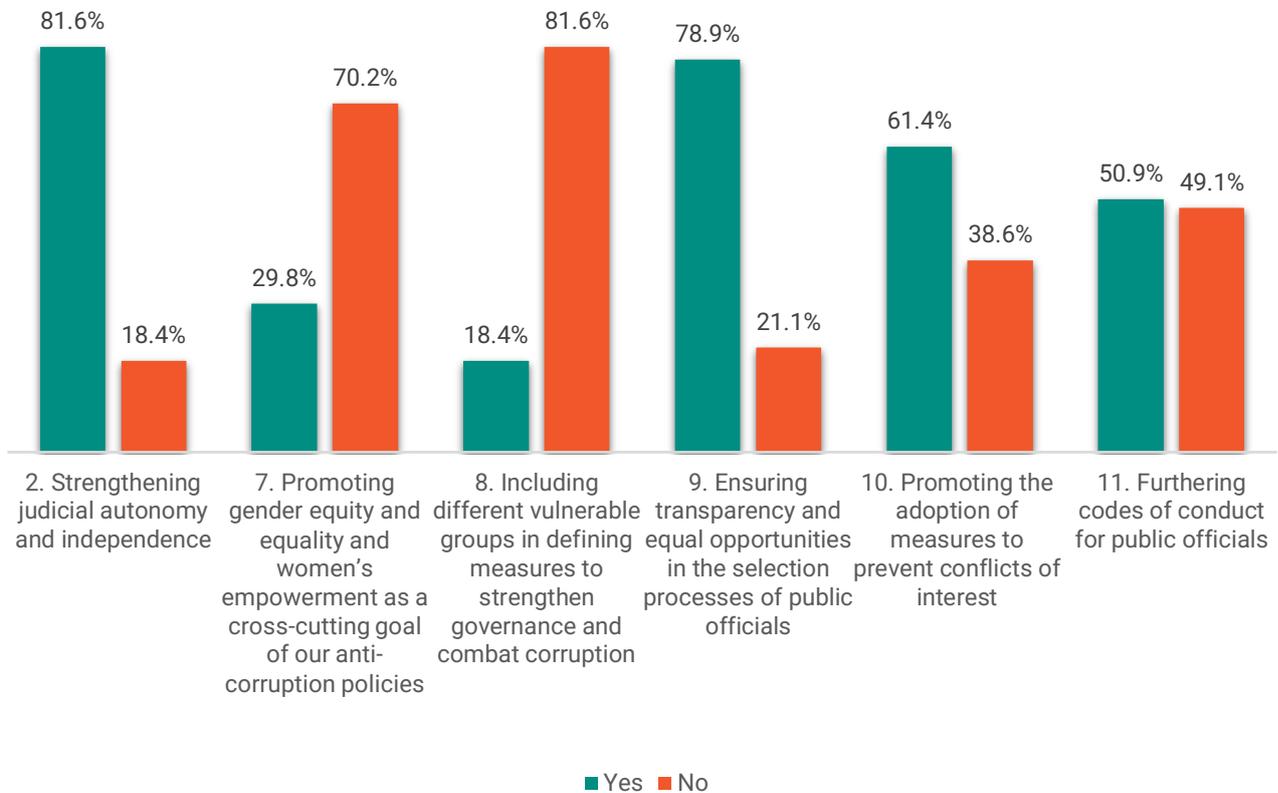
2. Regulatory Progress of the Commitments by Topic

2.1. Commitments for the Reinforcement of Democratic Governance.

For the Strengthening of Democratic Governance, 6 specific commitments were analyzed using 20 regulatory indicators (questions). The following graph shows the results regarding each commitment:

Figure 5: Results of commitments for strengthening of governance.

Results of Commitments for Strengthening of Governance



Source: Elaborated based on the information register by the CSOs in the CCO platform.

- As to the strengthening of democratic governance, most regulatory developments focus on *regulating measures to guarantee judicial autonomy and independence and transparency and equal opportunities in public servant selection processes*, topics that traditionally have been addressed from the definition of policies concerning integrity and anticorruption initiatives.
- Most regulatory developments on this topic are prior to the signing of the Lima Agreement. Precisely due to this, it is surprising to see that there are no further developments in connection with measures for prevention and processing of conflicts of interest, as well as codes of conduct for public servants, topics that have been prioritized in previous international or regional commitments such as the United Nations Convention Against Corruption (UNCAC) and which are reaffirmed in the Lima Agreement.⁹
- Regarding the inclusion of new stakeholders, the commitments Nr. 7 and 8, aimed at promoting *the inclusion of gender and of vulnerable populations in the anticorruption policies* are particularly significant. However, as it was already mentioned, the

⁹ These compromises are registered in sections 7 and 8 of the United Nations Convention against Corruption. Available at: https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corrupcion/Convencion_de_las_NU_contra_la_Corrupcion.pdf

information gathered indicates that these topics are the ones evidencing less regulatory development for most countries in the region.

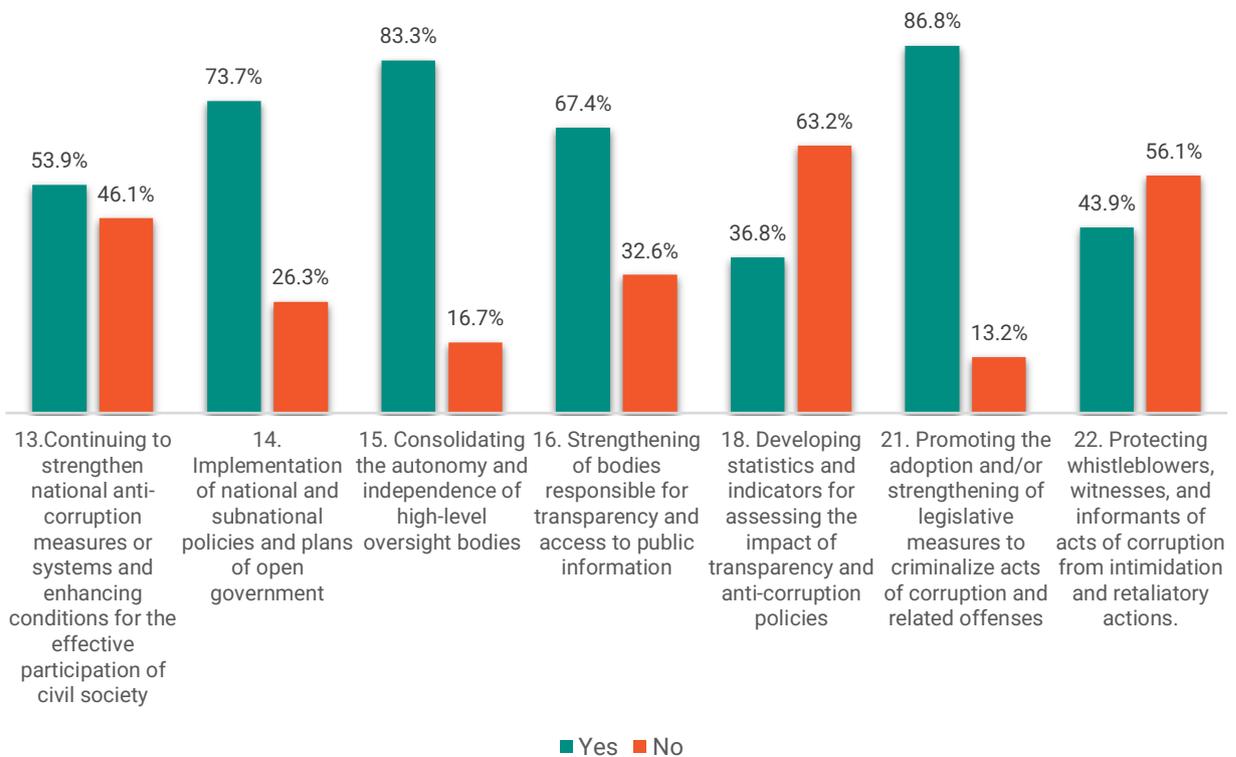
- Nevertheless, we must point out cases like Argentina, Costa Rica and Panama, countries that have currently regulations focused on promoting women equity and equality in anticorruption policies. In turn, Costa Rica, Panama and Peru have included in their legal framework tools to embrace vulnerable populations in their anticorruption policies.

2.2. Commitments for Transparency, Access to Information, Protection of Whistleblowers, and Human Rights, including Freedom of Expression.

Seven commitments were analyzed through 28 regulatory indicators (questions) in connection with ensuring access to information, generating statistics and data to estimate the impact of anticorruption measures and protection of corruption reporting parties, among others. The graph below shows the results compared by commitment:

Figure 6: Results of commitments for strengthening of governance.

Results of Commitments on Transparency and Access to Information



Source: Elaborated based on the information register by the CSOs in the CCO platform



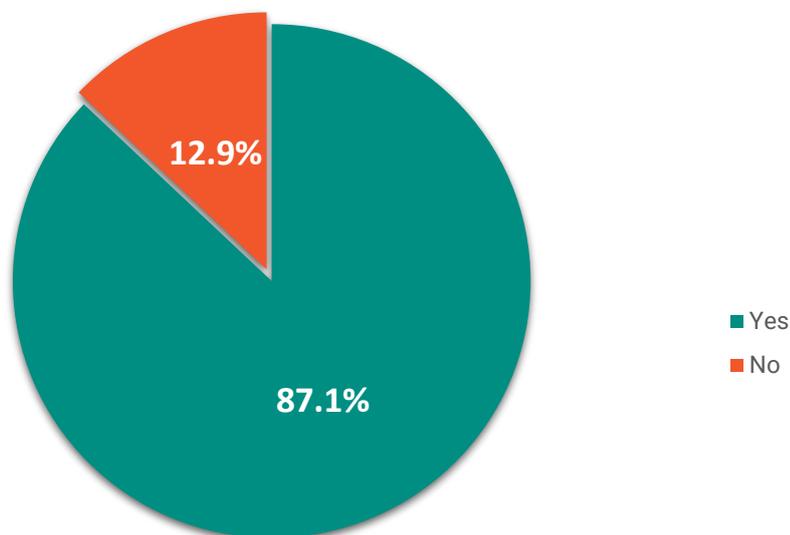
- Since the 1996 Inter American Convention Against Corruption, the countries in the region have been assuming commitments for the promotion of policies and plans to strengthen reporting systems, open government, and transparency bodies and access to information. The commitments analyzed coincide with topics on which there is greater regulatory development in the countries participating in the CCO. Argentina, Colombia, Costa Rica, Ecuador, Panama, Paraguay, Peru and the Dominican Republic are the countries where the regulatory developments on these topics are most notorious.
- Nevertheless, these regulations do not include yet the development or generation of statistics to monitor the impact of transparency policies and plans on the citizens, according to the terms indicated in the commitment Nr. 18. From the information reviewed, only 4 countries – Argentina, Colombia, Paraguay and Peru – have a responsible body and manuals or forms to monitor the impact of policies concerning transparency and the fight against corruption.
- The legal definition of the corruption offense as mentioned in the commitment Nr. 21, also stands out as one of the issues in respect of which there is greater regulatory development in the region. It is worth mentioning that since the Inter-American Convention against Corruption (1996) these topics are being prioritized in regulatory developments; therefore, it is surprising to see that Brazil and Venezuela do not have, to this date, any legal provisions defining acts of corruption and related offenses as criminal behavior.
- The commitment Nr. 22 Protecting whistleblowers, witnesses, and informants of acts of corruption from intimidation and retaliatory actions, is still a pending task in several countries of the region. Despite the protection of whistleblowers, witness, and informants has been highlighted since the Inter-American Convention against Corruption, the weak regulatory development on this issue is evident. For instance, Colombia, El Salvador, Guatemala, Panama and Dominican Republic still do not have any legal provisions concerning the definition of what it means to be a whistleblower, witness, and informant of acts of corruption, and is lacks of protocols or measures to guide on how to lodge a report, threats and other incidents involving harassment to reporting parties.
- This deficiency in legislative terms is more evident in Argentina, Chile, Nicaragua, Paraguay and Venezuela, countries which to date lack any legislation to address this issue.

2.3. Commitments regarding Financing of Political Organizations and Election Campaigns.

The commitment Nr. 25 was prioritized for this analysis through 11 regulatory indicators (questions) involving transparency measures, accountability, accounting and banking of resources for political campaigns. The graph below shows the results obtained:

Figure 7: Results of commitments for strengthening of governance.

Results of the Commitment of Financing of Political Organizations.



25. Adoption and/or strengthening of measures to promote transparency, accountability, appropriate accounting, and use of the banking system for income and expenditures of political organizations and electoral campaigns

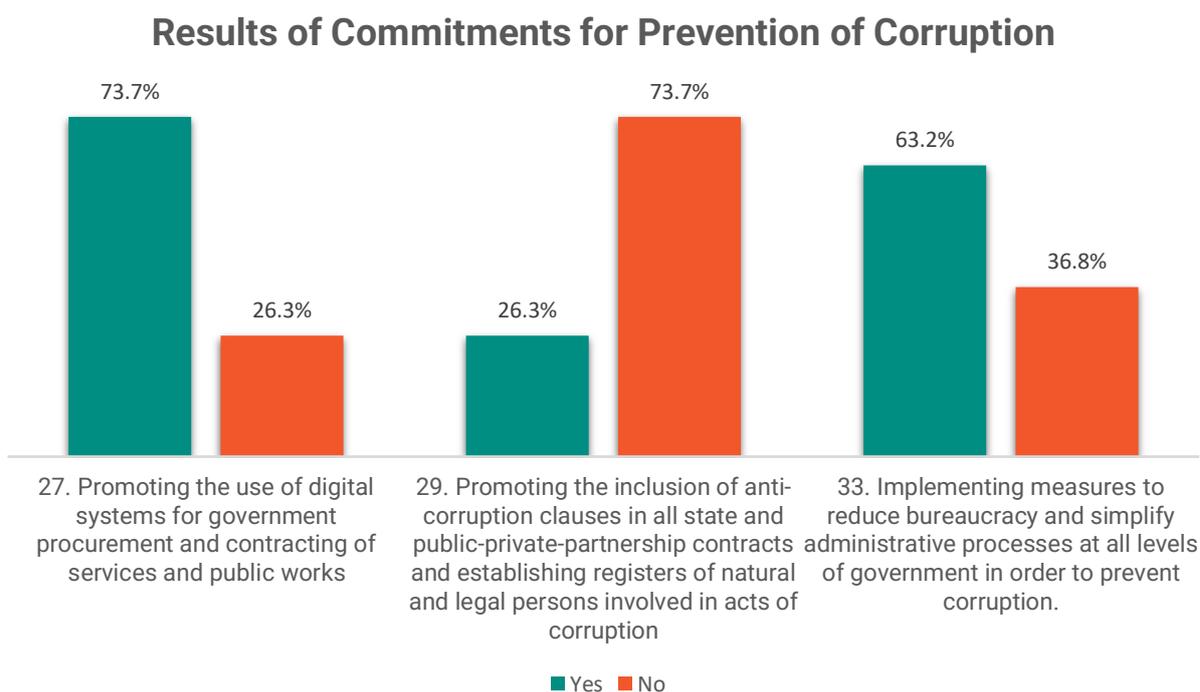
Source: Elaborated based on the information register by the CSOs in the CCO platform.

- This commitment evidences the highest regulatory development in the region. Nevertheless, in El Salvador and Venezuela the information on political party and candidate accountability is still not public.
- In this respect, El Salvador is the only country participating in the CCO that, to date, lacks the mandatory formats for candidates to submit their campaigns incomes and expenses reports.

2.4. Commitments for Prevention of Corruption in Public Works and Public Procurement and Contracting

This subject was analyzed through 3 commitments and 9 regulatory indicators (questions) as shown in the following graph:

Figure 8: Results of commitments for Prevention of Corruption



Source: Elaborated based on the information register by the CSOs in the CCO platform.

- As it has been pointed out, measures such as the promotion of electronic systems for government purchases and procurement of services or reduction of bureaucracy, which have traditionally been applied against corruption, evidence the higher amounts of regulatory development in the region. It is worth mentioning that these issues have been included since the 1996 Inter-American Convention against Corruption.
- However, Haiti and Venezuela both lack to date an electronic platform for public access to consult on government procurement processes.
- Other measures to fight corruption, like inclusion of anticorruption clauses in government contracts, still require further regulatory development. From the analysis made, only 5 countries – Argentina, Brazil, Honduras, Nicaragua and Peru – have established the obligation to include these anticorruption clauses in the contracts.



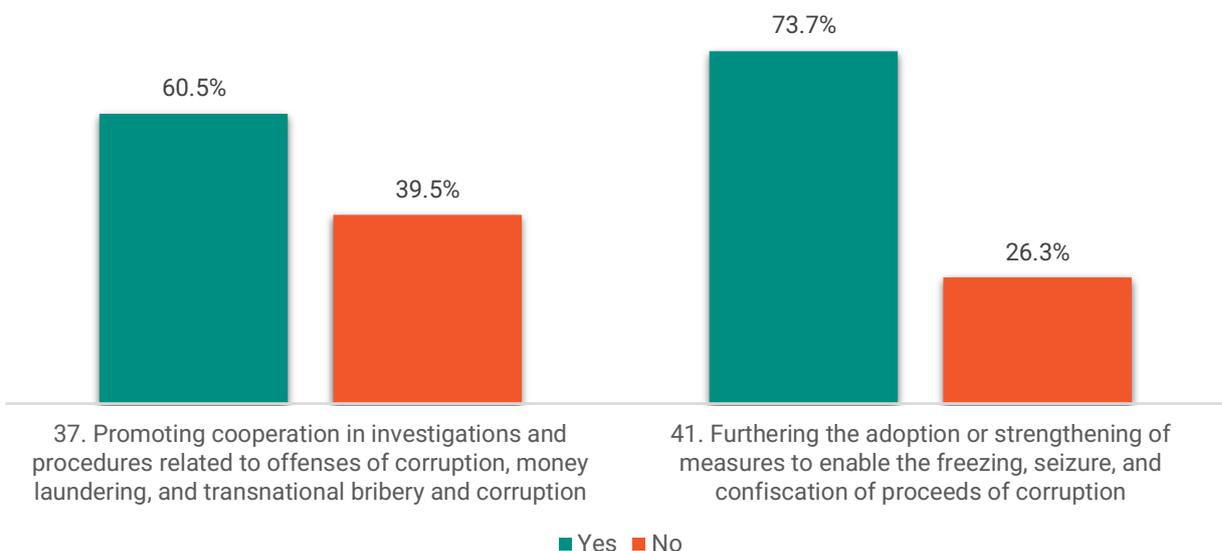
- The implementation of measures to reduce bureaucracy and simplify the administrative procedures is one action that is gaining force to fight against corruption (BID. 2018). However, in several countries of the region this task has not yet been developed. For example, in Argentina, Bolivia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay and Venezuela, no regulatory developments were identified to eliminate administrative procedures that are difficult for citizens find more difficulties.

2.5. Commitments regarding International Legal Cooperation; the Fight Against Bribery, International Corruption, Organized Crime, and Money Laundering; and Asset Recovery

The graph below shows the results of the regulatory indicators of the 2 commitments prioritized in international legal cooperation issues, through 6 regulatory indicators (questions):

Figure 9: Results of commitments for International Legal Cooperation.

Results of Commitments on International Legal Cooperation



Source: Elaborated based on the information register by the CSOs in the CCO platform.

- In the region, the actions aimed to share information between authorities and supervisory bodies to enable procedures to control money laundering, asset recovery and the confiscation of assets resulting from corruption, are highly developed in legal terms.



- Bolivia and Haiti are the only countries that lack cooperation measures for the exchange of information between judicial authorities to facilitate investigations associated to acts of corruption.
- With respect to measures for strengthening provisional attachments, asset recovery and the confiscation of assets resulting from corruption, Argentina, Guatemala, Paraguay and Peru have legal frames that address the entities, guidelines and procedures for the confiscation and administration of assets.
- Within the two commitments that were analyzed in this topic, Paraguay and Peru register 100% compliance with the regulatory indicators related to legal cooperation, fighting bribery of public officials and payoffs.

Conclusion:

This preliminary report of results presents a first assessment of the regulatory developments in the region in the fight against corruption. In general, the 19 CCO participants have a broad legal framework to make progress in the fight against corruption. While we have identified actions that can be strengthened and new issues that must be included to fight against corruption, the previous existence of this legal framework must be considered as a positive element to counteract the harmful effects of this problem in the region.

This exercise shows that with respect to legal framework, the countries of the region have been complying with the regulation of the traditional approaches on fighting corruption and that the innovative topics included in the Lima Agreement represent a new challenge to make progress on the matter. However, not all 19 countries evidence the same degree of regulatory development. The data analyzed reveal that some countries stand out in issues such as the strengthening of national policies and plans regarding open government and electronic platforms for public procurement and others, in measures for the reduction of bureaucracy and simplification of administrative procedures.

It must be highlighted that the Lima Agreement reaffirms the actions in connection with topics that have been prioritized for more than two decades through conventions such as the 1996 Inter-American Convention Against Corruption, the 1997 OECD Convention Against Transnational Bribery and the 2003 United Nations Convention Against Corruption. Nevertheless, key elements such as protection for whistleblowers, witnesses or informants of actions of corruption and the promotion of codes of conduct for public servants, present a relatively low regulatory development.

Furthermore, the review performed by the Group of Experts¹⁰ to the Lima Agreement, underscored the importance of including measures to protect whistleblowers, witnesses or

¹⁰ In December 2018, within the framework of the celebration of the 15th anniversary of UNCAC, close to 80 experts in corruption from more than 40 countries worldwide analyzed the wording adopted by the Lima Agreement and



informants, the establishment of a registry of individuals and legal entities connected to acts of corruption to prevent them from entering into contracts with the Government and the strengthening of the processes for the supervision and management of assets confiscated in corruption-related processes, in order to achieve greater efficacy in the prevention and fight against corruption from a multi-functional approach.

In general terms, among the analysis of the 19 commitments selected for the monitoring of its implementation in the 19 CCO countries, the regulatory framework that exists is relatively enough to fight against corruption. However, this initial analysis of the legal framework indicates the necessity of adopting different national and regional strategies to support the countries with weaker regulations. Also, this assessment evidences the importance of keeping up the progress in the development of broader legal frameworks incorporating and strengthening the measures shown on these commitments. At the same time, it is necessary to advance in a concrete way in the inclusion of new approaches to the fight against corruption, in order to obtain better results in this matter.

In this respect, we must point out that while the existence of strong legal frames is necessary for the fight against corruption, these are not sufficient to face this problem. They must be accompanied by their effective implementation, by the political will and also, by the development of administrative, human, technical, technological and financial skills, among others. Part of the monitoring of the implementation of the Lima Agreement includes a context analysis for each country and an analysis of the actions, programs, plans and public policies that are taking place (in-practice indicators) to comply with the Lima Agreement.

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based on the agreement, they shared their considerations on lessons learned in relation to the investigation of corruption cases, the impact of corruption cases on matters of security and effective enjoyment of rights and they defined some good practices for the fight against this scourge.



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