



**REGIONAL THEMATIC REPORT:
International Legal Cooperation in the Fight against Corruption**





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Contents

Summary	3
Introduction	3
1. International Legal Cooperation.	6
2. The Regional Context and Legal Cooperation.	10
3. The Results of the Citizen Corruption Observatory on Developments in Legal Cooperation.	11
4. Scenarios for Strengthening International Legal Cooperation.	15
5. Strengths and Developments in International Legal Cooperation in the Region.	16
6. Main Barriers and Challenges for the Region in International Legal Cooperation.	
7. Results of the CCO in Comparison with Other International and/or Regional Agreements or Commitments.	19
Conclusions and Recommendations	22
Expanding the International Commitments Follow-Up Indicators.	22
Analyzing International Legal Cooperation from the perspective of Institutional Strengthening.	23
Inclusion of Civil Society in the Formulation, Implementation and Monitoring of International Commitments.	24
References	26





Summary

This document presents an analysis of the results of the work carried out by the Citizen Corruption Observatory (CCO), which assessed the progress of the implementation of the recommendations of the Lima Agreement in terms of international legal cooperation in 19 countries in the region from 2020 to 2021, including a follow-up of measures such as preventive seizure, asset forfeiture and confiscation of the proceeds of corruption.

This thematic report seeks to expand on the work developed by the CCO, based on the analysis of several additional measures that have also been promoted within the framework of international legal cooperation in Latin America to fight corruption. These include the exchange of information, the adoption of investigation and punishment standards, the implementation of legal cooperation mechanisms, the enhancement of the capacities of investigative entities, the creation of national and international groups and entities that fight money laundering, among others. One of the points highlighted in this report is that, despite the progress in the signing of conventions, treaties and regional agreements for international instruments to promote international legal cooperation, in practice, shortcomings exist in the generation of indicators to report on the implementation and impact of these mechanisms.

This analysis is supplemented by a number of recommendations to strengthen international legal cooperation in the fight against corruption as well as to promote progress monitoring and evaluation in this area.

Introduction

Through the Citizen Forum of the Americas (CFA), we have sought to strengthen Civil Society (CS) meeting and dialogue spaces to address the social, political and economic realities that impact the region, in order to create shared agendas for strengthening democracies, guarantee human dignity, and improve the quality of life in the continent (Citizen Forum of the Americas, 2021).

In the framework of this initiative, the Project "Citizen Corruption Observatory (CCO) - Follow-up on the Lima Agreement" was created with the purpose of strengthening the CFA, through the co-creation, together with the Latin American and Caribbean Network for Democracy (REDLAD) and the Chapters of Transparency International in the region, of an





observatory that offers technical support to the implementation of the project Civil Society Participation in the Summit of the Americas (PASCA, by its Spanish initials).

The CCO consists of a coalition of civil society organizations and social actors from 19 countries in the Americas, who have jointly followed up on compliance with the agreements adopted by the governments of the region at the VIII 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 corruption in the region. These commitments, which the CFA actively participated in defining, acknowledge that preventing and combating corruption is fundamental to strengthening democracy in the region and that corruption has a negative impact on institutions, public trust and the full enjoyment of human rights. In this sense, several of the actions included in the Lima Agreement reaffirm the agreements made by the governments of the region in the framework of other international treaties against corruption, such as the United Nations Convention against Corruption (UNCAC) and the Inter-American Convention against Corruption (IACAC).

In order to follow up on the progress made by civil society in the fulfillment of these commitments between November 2020 and June 2021, over 150 social organizations participating in the CCO (several of which are also part of the CFA)¹, implemented a participatory methodology that made it possible, on the one hand, to select specific commitments for follow-up and, on the other, to deploy a process of analysis and validation of the progress made in both policy and practical terms.

Thus, in a participatory and concerted manner, 19 commitments were selected on the basis of four analysis criteria: sustainability, inclusion of new approaches, vulnerable groups and representativeness.

The methodology for monitoring and analyzing the progress of the prioritized commitments consisted of examining existing regulatory frameworks in each of the 19 CCO countries and contrasting them with their practical implementation. This analysis was supplemented by an assessment of the progress of each commitment in terms of sustainability, effectiveness and relevance.

¹ For more information on the CFA's participating organizations, please visit the following website: <https://forociudadanoamericas.org/foro-ciudadano-de-las-americas/>



Table 1. Overview of Indicators and Sources of Reference

	POLICY INDICATORS	PRACTICE INDICATORS
Overview	Policy indicators reflect the legislation in force that regulates the issues covered by the commitments of the Lima Agreement Summit.	Practice indicators are specific actions or measures taken by each government in response to the anti-corruption commitments undertaken or reiterated during the VIII Lima Summit.
Sources of reference	For these indicators, the standards, relevant case law and the Constitution of each country were reviewed through 74 questions that inquired about progress on each prioritized commitment.	The analysis from a practical application perspective is based on verification sources, such as interviews, reports on compliance with anti-corruption commitments, requests for information, media reports, among others. A total of 64 questions were asked about the practical progress of the prioritized commitments.

Based on this analysis, a report was prepared in each country that includes the results of the follow-up to the Lima Agreement. Two regional reports were also prepared, one on the balance of the policy framework in Latin America to address corruption and the other on the general findings of the follow-up to the Lima Agreement.²

To supplement this process, through a process of consultation with the CFA organizations, five specific topics were defined to be analyzed in greater detail, based on the results of the CCO’s follow-up to the Lima Agreement:

1. Access to public information in the context of a pandemic.
2. Public procurement in the context of pandemics.
3. International legal cooperation in investigations and proceedings related to crimes of corruption, money laundering, bribery and transnational bribery.
4. Gender approach in the fight against corruption.

² Both country and regional reports are available on the CCO website. See: <https://occ-america.com/#>





5. Fight against corruption with a focus on human rights and the inclusion of vulnerable groups.

These issues seek to contribute to the challenges and needs for transformation and progress in the region highlighted by the CFA, in terms of “gender, non-discrimination, respect for the territories and culture of indigenous peoples, and the true and effective commitment States must show to address challenges such as the Covid-19 pandemic and the climate crisis” (Citizen Forum of the Americas, 2021).

This report focuses particularly on the analysis of actions to promote international legal cooperation under the terms set forth in Commitment No. 37 “Promoting the broadest possible cooperation among judicial, police, and prosecutorial authorities, financial intelligence units, and administrative authorities in investigations and procedures related to offenses of corruption, money laundering, and transnational bribery and corruption”; and No. 41 “Furthering the adoption or strengthening of measures through relevant institutions to enable the preventive seizure, asset forfeiture and confiscation of the proceeds of corruption”. This is based on individual country reports and on both regional follow-up reports on compliance with the Lima Agreement, as well as on the broader analysis of other actions promoted in international scenarios to advance international cooperation.

1. International Legal Cooperation.

In a world characterized by connectivity and interdependence, international legal cooperation plays a key role in the fight against corruption and crime prevention. Over the last decade, and following the signing of international conventions, different formulas have been promoted in Latin America to prevent, investigate and prosecute corruption offenses that, by force of markets, profit or prosecution, are transferred from the national to the international sphere.

Both the Inter-American Convention against Corruption (IACAC) and the United Nations Convention against Corruption (UNCAC) contain a wide range of agreements to ensure international legal cooperation in the fight against corruption. Both agreements are ratified by the Lima Agreement and urge governments to make greater efforts to deepen such cooperation and demonstrate greater results in the implementation of measures against bribery, money laundering and transnational bribery, among other crimes defined as corruption.

It should be borne in mind that international legal cooperation does not only refer to the exchange of information between countries to fight crime, but also to a series of actions to



be carried out by different national and international entities to ensure that the prevention, investigation and punishment of corruption-related conducts can be addressed regardless of the country where such conducts have taken place.

Likewise, legal cooperation should be distinguished from judicial cooperation, in the sense that the latter only refers to cooperation between judicial entities, excluding administrative and even political instances, which fall under the concept of legal cooperation. In this regard, it should be noted that bribery and kickbacks are criminal conducts that each jurisdiction deals with and punishes differently. Extradition is a judicial cooperation tool, while seizure and forfeiture are judicial measures primarily aimed at remedying the damage caused or recovering assets that were obtained illicitly or with the proceeds of criminal activities.

A key concept within international legal cooperation is that of Mutual Legal Assistance since, through it, collaboration between countries is materialized. Mutual Legal Assistance, defined in article 46 of the UNCAC, may be requested by a State from another to take evidence or statements from persons; to serve judicial documents; to execute searches, confiscations and preventive seizures; to carry out expert evaluations; to identify or trace proceeds of crime, property, instrumentalities or other elements for evidentiary purposes; and to recover assets involved in corruption cases, among other judicial actions.

The above should be supplemented by provisions aimed at banning the use of banking secrecy or to circumvent the exchange of information, the introduction of rules to avoid dual criminality, the inclusion of conditions for the transfer of convicted persons to testify in another country, the designation of central authorities to convey and execute mutual legal assistance requests, as well as the requirements for countries to refuse to provide mutual legal assistance, the transfer of criminal proceedings, and the steps to be taken to carry out mutual legal assistance requests, and the steps for joint anti-corruption investigations, among many other provisions that crystallize judicial cooperation in practice.

However, it should be borne in mind that international agreements are always very cautious in acknowledging, rather than intervening, in the domestic law of countries. Hence, the IACAC states the following in Article XIV on Assistance and Cooperation:

In accordance with their domestic laws and applicable treaties, the States Parties shall afford one another the widest measure of mutual assistance by processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute the acts of corruption described in this





Convention, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption. (1996, page 7)

As can be seen, international legal cooperation in the fight against corruption encompasses many actions to be carried out by different national and international entities. It does not only refer to the exchange of information or the role of central authorities in judicial assistance, but also to the participation of institutions engaged in judicial investigation (judicial police), or intelligence agencies, to mention a few. The agencies in charge of financial intelligence investigations, as well as Interpol, play key roles in mutual legal assistance, as does the private sector, including the financial sector, law firms, and large consulting firms, among others, which have also been recognized as key actors in judicial cooperation in the fight against corruption.

On the basis of standard and practice indicators that would allow an objective follow-up on these commitments, different civil society organizations that are part of the CCO carried out a process of evaluation of the progress made by governments in this area, using as a reference commitments No. 37 "Promoting the broadest possible cooperation among judicial, police, and prosecutorial authorities, financial intelligence units, and administrative authorities in investigations and procedures related to offenses of corruption, money laundering, and transnational bribery and corruption" and No. 41 "Furthering the adoption or strengthening of measures through relevant institutions to enable the preventive seizure, asset forfeiture and confiscation of the proceeds of corruption" – see Table No. 2-



Table 2. Policy and Practice Indicators Commitments Related to International Legal Cooperation.

Commitment	Indicator	Question
No. 37 Promoting the broadest possible cooperation among judicial, police, and prosecutorial authorities, financial intelligence units, and administrative authorities in investigations and procedures related to offenses of corruption, money laundering, and transnational bribery and corruption.	Policy	Is there a legal framework or a state policy for the exchange of information between the authorities in charge of preventing, investigating and sanctioning the crimes of corruption, money laundering, kickback and transnational bribery?
		In the last two years, have there been any policy developments for the promotion of cooperation among the authorities tasked with preventing, investigating and prosecuting the crimes of corruption, money laundering, kickbacks and transnational bribery?
	Practice	Are there mechanisms in place to coordinate measures such as the exchange of information to prevent, investigate and prosecute crimes of corruption, money laundering, kickback and transnational bribery?
		Is there a joint working group for the investigation and prosecution of corruption, money laundering, kickback and transnational bribery crimes?
		In the past two years, have there been any cases where cooperation between authorities has led to the prosecution of corruption, money laundering, kickback and transnational bribery crimes?
		Do you believe that in the past two years significant progress has been made in the fulfillment of this commitment?
	No. 41 Furthering the adoption or strengthening of measures through relevant institutions to allow preventive seizure, asset forfeiture and confiscation of the proceeds of corruption.	Policy
Are there guidelines to carry out the procedure for seizure, freezing, confiscation or asset forfeiture of proceeds of corruption?		
Is there any institution or agency engaged in preventive seizure, asset forfeiture and confiscation of the proceeds of corruption and the management of such assets?		
In the past two years, have there been any policy developments for the adoption or strengthening of measures to enable preventive seizure, asset forfeiture and confiscation of the proceeds of corruption?		
Practice		Are there any mechanisms among the institutions that allow for verification, follow-up and updating of information related to proceeds of corruption?
		In the past two years, have there been cases of corruption in which preventive seizure, forfeiture and/or confiscation of assets have been applied?
		Do you believe that in the past two years significant progress has been made in the fulfillment of this commitment?

Source: Prepared based on the CCO methodology (2021).



2. The Regional Context and Legal Cooperation.

Over the past decade, a number of studies have shown Latin America to be one of the regions hit hardest by corruption worldwide.³ State capture by private interests, weak institutions, poor law enforcement, cumbersome bureaucratic processes, the presence of criminal groups and companies, and the existence of certain historical and cultural factors, among other elements, allow corruption to find fertile ground in Latin America.

In general terms, corruption has been defined as the abuse of power in search of private benefits, and in particular, it has been associated with the bribery of public officials. However, since the beginning of the 21st century, broader concepts associated with manifestations of corruption such as State Capture and State Cooptation have been introduced, which provide a supplementary perspective for analyzing the phenomenon of corruption in the region.

According to (Garay and Salcedo-Albarán, 2012), State Capture is the intervention of individuals, groups or legal companies in the drafting of laws, decrees, regulations and public policies to achieve short- and long-term benefits, mainly of an economic nature and to the detriment of the public interest. In this sense, throughout Latin America it is common to find analyses, primarily in the media, on how individuals or groups of power intervene, legally or illegally, in the passing of laws or in the decisions of state authorities for their own benefit.

To explain the phenomenon of corruption in Latin America, the World Bank (WB), the Inter-American Development Bank (IDB) and the Organization for Economic Cooperation and Development (OECD) have used the concept of “State Capture”, highlighting cases in which the evidence shows that political and economic elites have exercised “undue influence” over the drafting of laws, the definition of public policies and the allocation of resources, seeking their own benefit to the detriment of the public good.

Along the same line of analysis, another concept developed by Garay and Salcedo-Albarán (2012) is that of State Cooptation, defined as:

The action of social agents, legal or illegal, who through illegal or legal but illegitimate practices, systematically seek to modify the regime from within and influence the design, amendment, interpretation and application of the rules of the social game and public policies. These practices are developed with the objective of obtaining long-term benefits and ensuring that their interests are politically and legally validated, in order to obtain social legitimacy in the long term, even if these

³ Sources consulted included the World Bank, the Inter-American Development Bank, the International Monetary Fund, the United Nations Office on Drugs and Crime, and the Americas Barometer, among others.





interests are not governed by the fundamental principle of the common good. (p. 45)

It is common to find media reports from all countries related to officials who legislate or regulate for their own benefit. It is also common to find cases in which public servants come and go from the private sector, within the same area of expertise, generating an obvious conflict of interest and creating the well-known 'revolving door'. It is also common to find networks of officials who rotate public positions within the same group, or networks of lawyers, contractors and officials who 'rig' contracting processes for the benefit of a few companies. As if that were not enough, it is also common to find cases in which criminal networks engaging in drug trafficking, illegal exploitation of natural resources, arms trafficking or human trafficking end up as beneficiaries of contracting processes in cases that combine crimes such as bribery and money laundering.

Each of the countries in the region has advanced in a different way in strengthening the legal regime that seeks to prevent and punish the capture and co-optation of the State, but as observed in the First Assessment of the Citizen Corruption Observatory (CCO) "Follow-up on the Implementation of the Lima Agreement - Policy Indicators", the results of the fight against this phenomenon do not seem to be the most desirable. This situation is partly due to the fact that those who must draft and apply the norms, in many cases, are the same people who will be harmed by doing so.

In this context, international legal cooperation is essential, especially when globalization brings with it the internationalization of many economic processes and millions of financial operations that allow corrupt individuals and criminal networks to move assets and resources immediately and, in many cases, without leaving a trace thanks to the opacity sometimes allowed by the international financial system.

For this reason, it is essential to include mechanisms against money laundering, the implementation of asset forfeiture processes, and the international prosecution of corruption-related crimes, through tools such as seizure, confiscation or extradition. These mechanisms not only help to prevent State capture, but are also a key tool to secure the recovery of assets acquired through corrupt practices.

3. The Results of the Citizen Corruption Observatory on Developments in Legal Cooperation.

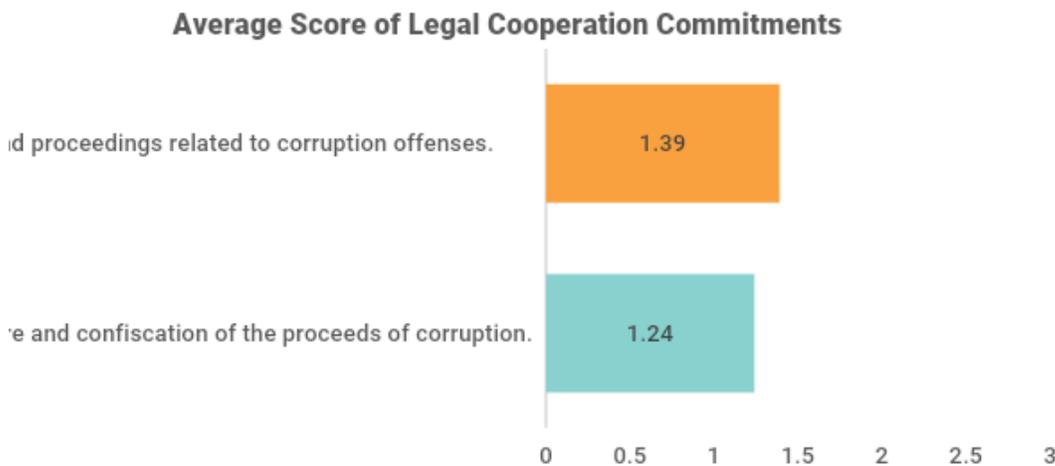
In general terms, the evaluation of the commitments related to progress in international legal cooperation to combat corruption is low. Commitment No. 37 obtained an overall score of 1.39/3.00 and Commitment No. 41 obtained a score of 1.24/3.00. This means



that for the CCO, international legal cooperation, and the incorporation and application of tools to allow preventive seizure, asset forfeiture and confiscation of the proceeds of corruption, are formal actions that do not translate into practical effects. As indicated in the Regional Balance Report of the Citizen Corruption Observatory, progress can be seen in the development of laws, decrees, rules and policies, both to deepen cooperation between countries and to combat bribery, transnational bribery, organized crime and money laundering; however, the analysis of the progress of these commitments, developed by the CCO, shows that in practice they are insufficient.

A common denominator in the region that can be observed in the reports of each country on the assessment of these commitments is the lack of political will of governments and the lack of action by law enforcement institutions, as the main barriers to progress in the implementation of agreements and anti-corruption standards to promote legal cooperation.

Graph 1. Average Score of Legal Cooperation Commitments⁴



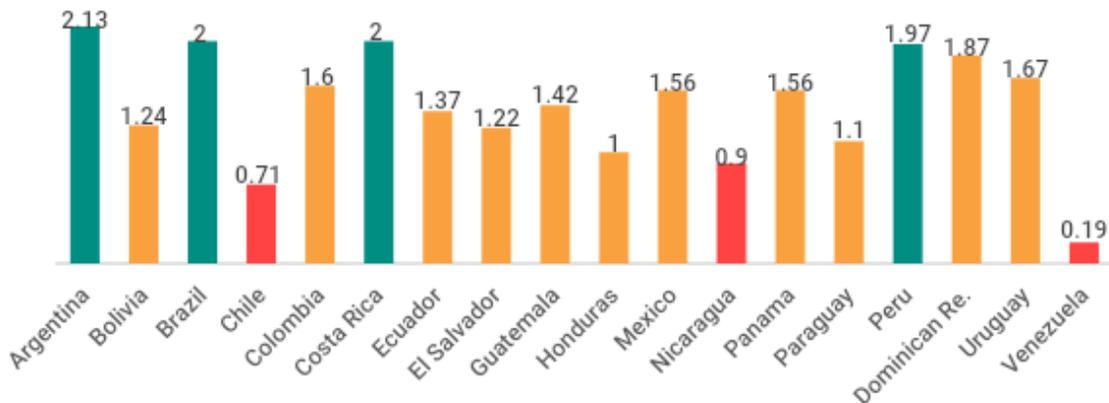
Source: Prepared by the author based on information filled out by the CSOs participating in the CCO.

With regard to commitment No. 37, it should be noted that, with the exception of Bolivia and Haiti, the other countries in the region report having a minimum legal framework to ensure, at least formally, international legal cooperation. In particular, Argentina with a score of 2.13/3.00; Brazil with 2.00/3.00; Costa Rica with 2.00/3.00 and Peru with 1.97/3.00, are the countries with the best score for this commitment.

⁴ Rated on a scale of 0 to 3: 0=no records, 1=low, 2=average and 3=high.



Graph 2. Average Score Commitment No. 37 Cooperation in the Investigation of Crime
Average Score Commitment No. 37
Cooperation in the Investigation of Crimes

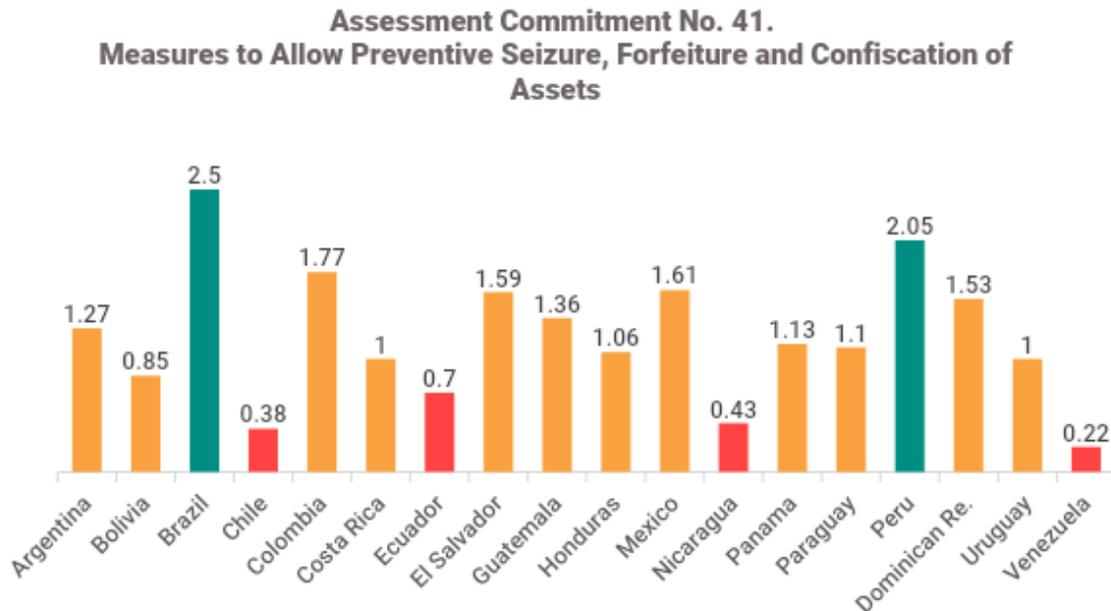


In addition, only the reports from Argentina, Paraguay and Peru state that, besides the enactment of laws, there has been progress in the last two years in deepening international legal cooperation. For the remaining countries, no effective coordination is evident among the entities responsible for cooperation, nor is it evident that joint working groups have been created for the investigation and prosecution of crimes.

The Nicaragua report provides a worrisome picture of the anti-corruption legal framework applied in a biased manner by the government to prosecute and imprison political opponents. The reports from Brazil, Chile, Colombia, Ecuador, Panama and Uruguay report formal progress but few effective results on the part of the authorities. However, the most worrisome case for the region is that of Venezuela, where no progress has been reported nor are there any favorable trends to correct these problems, as evidenced by the lack of interest on the part of Venezuelan authorities to cooperate with authorities in other countries to facilitate the prosecution of corruption cases (Venezuela Report, 2021).

Regarding commitment No. 41, “furthering the adoption or strengthening of measures through relevant institutions to enable the freezing, seizure, and confiscation of proceeds of corruption”; only Brazil (2.50/3.00) and Peru (2.05/3.00) rated ‘positively’ the progress in this area. The remaining countries rated compliance with this commitment with very low values.

Graph 3. Assessment of Commitment No. 41. Measures to Allow Preventive Seizure, Forfeiture and Confiscation of Assets



that ranks 25th together with the United States in Transparency International’s CPI, and that appears in the World Bank’s development indexes among the highest ranked countries in Latin America, it is striking that no more significant progress is reported in terms of international legal cooperation. However, in this case it could be interpreted that Chile’s standard for assessing these developments is much higher than that of the rest of Latin America.

For this commitment, the cases of Nicaragua (0.43/3.00) and Venezuela (0.22/3.00) are also of concern. In this regard, the Nicaragua report indicates that both the rules and the tools for seizure and confiscation are applied with political criteria, seeking to harm political opponents and critics of the Central American country’s regime. In the case of Venezuela, the national report indicates that there is not even updated and relevant information that would allow monitoring progress in international legal cooperation (Venezuela Report, 2021).

In assessing progress in international legal cooperation, it should be taken into account that each CSO participating in the CCO made an assessment according to the context of its country, history and institutional strengths, which is why the indicators may show some

⁵ Chile is the country with the highest Human Development Index in Latin America for 2020 with a score of 0.7/1 on a scale of 0 to 1. For Colombia, Costa Rica and Mexico, which are part of the OECD, the score is 0.6/1.





imbalances. For example, among the negative responses to the progress in practice regarding these two commitments, Guatemala clarifies that since the International Commission Against Impunity in Guatemala (CICIG) ceased to operate, and despite the fact that it had managed to promote some independent courts, the fight against corruption experienced a serious setback in the country (Guatemala Report, 2021). In contrast, for Peru and Mexico the negative responses to progress in practice arise from the fact that official entities stopped reporting information since 2019 and 2018 respectively. That is to say, while for Guatemala there is an eminently institutional and political assessment, for Peru and Mexico there is a problem more related to access to information.

In this regard, the efforts made by the CCO to try to measure the progress of the commitments should be acknowledged, since, as recognized by institutions such as the International Monetary Fund:

It is not easy either to track concrete improvements in Latin America, as certain indicators are not fully comparable over time. Moreover, perceptions of corruption may in fact be increasing at the same time that corruption is decreasing, as more is being investigated than is being uncovered. (Lipton, Werner y Goncalves, 2017)

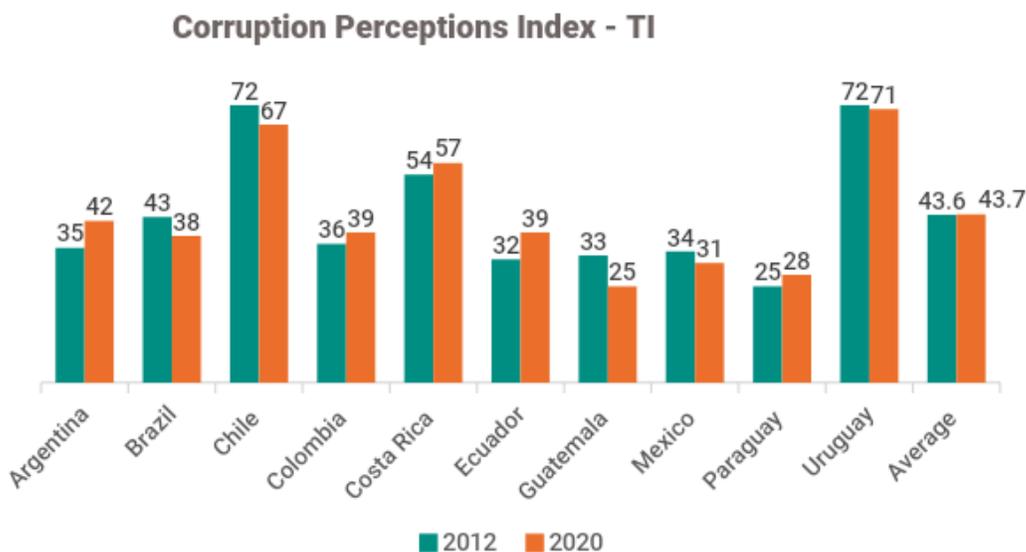
4. Scenarios for Strengthening International Legal Cooperation.

Legal cooperation, but especially mutual legal assistance, will advance and deepen as more cases leave the local and national sphere and move to international scenarios. In this sense, it would be desirable for international legal cooperation to focus mainly on the exchange of good practices and technical assistance to prevent corruption. However, the deterioration of corruption indicators in the region, as well as the relatively recent revelations about tax havens and the fraudulent use of the international financial system, suggest the need to promote investigations, seizures and confiscations to punish these acts.

For the Latin American region, it is relevant to observe the results of Transparency International's corruption perception index over the last eight years, since only five countries of the 19 analyzed by the CCO have increased their score and have risen in the ranking (Transparency International, 2020).



Graph 4. Corruption Perceptions Index - TI



Source: Prepared by the author based on TI's Corruption Perceptions reports.

The behavior of this index shows that the region tends to worsen rather than improve and, therefore, an increase in cases of national, bilateral and/or multilateral impact is to be expected, depending in part on the scope and capacity of criminal organizations and individuals, not only to act in the international arena, but also to circumvent the cooperation measures and mechanisms that may gradually be implemented in the region.

However, one cannot overlook the fact that there has been significant progress in a period of time similar to that analyzed for Transparency International's CPI, mainly in the issuance of laws and regulations to fight corruption in general and, in particular, to improve international legal cooperation.

5. Strengths and Developments in International Legal Cooperation in the Region.

The CCO's assessment of international legal cooperation shows that the signing of the IACAC in 1996 and the UNCAC in 2004 led to significant and numerous developments in the fight against corruption in Latin America. This is evidenced, for example, in the reports of Argentina, Paraguay, Ecuador, Costa Rica and Peru, which make direct reference to these conventions.





Moreover, in the case of Paraguay, the implementation of commitments in the area of international legal cooperation and measures on seizure, forfeiture and confiscation of assets are emphasized as a byproduct of the signing of international conventions. Likewise, Brazil and Peru, which are the countries that report the greatest progress in terms of international legal cooperation in the region, show significant achievements in the implementation of commitments based on international scenarios.

Another aspect that should be highlighted is the participation of more civil society organizations in the drafting, implementation and follow-up of international anti-corruption commitments, with the formation of the CCO and the preparation of the Regional Assessment being an example of this.

Unfortunately, beyond the above, there is no evidence of further progress in the implementation of international legal cooperation, as governments have failed to generate any significant and relevant information on the results of mutual legal assistance. For example, Ecuador, which is one of the countries with the highest score, highlights in its country report that, although several of the recommendations arising from international agreements have been adopted, particularly those arising from the Lima Agreement, not enough time has elapsed to determine the impact of their implementation (Ecuador Report, 2021).

In addition, it should be noted that the countries of the region that participated in the CCO show shortcomings in terms of developing statistics and indicators to evaluate the impact of transparency and anti-corruption policies. In fact, Commitment No. 18 analyzed this progress and the average result for the region was 0.73/3.00 (Regional Balance. 2021).

In connection with the above, in order to make progress in measuring the results of international legal cooperation, efforts must be made at the regional level to implement initiatives that will make it possible to qualify and quantify efforts in terms of legal cooperation. This includes “unifying the regulations, procedures, instruments and regulations of international treaties of international judicial cooperation to facilitate enforcement of the rules according to the requirements established by each country” (Transparencia por Colombia. 2021).



6. Main Barriers and Challenges for the Region in International Legal Cooperation.

An issue repeatedly mentioned in several of the CCO reports is the low or non-existent implementation of the tools or mechanisms that have been recommended by international conventions and that the countries have incorporated into their domestic legislation. This may be due to the fact that corruption is mainly understood as a fundamentally local and national phenomenon. Therefore, the need for the joint participation of various jurisdictions, authorities and countries has occurred sporadically and in connection with a few specific cases that have come to public light because they have become major scandals. *Lava Jato*⁶, the Panama Papers⁷, and, more recently, the Pandora Papers⁸ are merely three recognized cases in which, by force of events, the authorities of the region and of the world have had to begin to cooperate in a more frequent, deeper and coordinated manner.

In this regard, it is worth noting that each country will resort to international legal cooperation depending on the scope of the criminal organizations, or companies involved in cases of transnational bribery or individuals involved in corruption cases. Colombia and Mexico, for example, are known to frequently seek international legal cooperation in light of the international nature of criminal organizations involved in drug trafficking and their ensuing involvement in large-scale money laundering⁹.

The same happened in Brazil, Colombia, Ecuador, Panama and Peru in the *Lava Jato* case, where several construction companies, including the Brazilian company Odebrecht, were involved in the payment of bribes to politicians and in the contribution to political campaigns in those countries with public money, in order to obtain the award of millionaire contracts.

Bearing in mind that the scope of corruption determines the activation of international legal cooperation mechanisms, there are several obstacles associated with these instruments, making it necessary to review them continuously. According to the IDB's

⁶ See more at

<https://cnnespanol.cnn.com/2016/09/26/7-preguntas-y-respuestas-para-entender-la-operacion-lava-jato/>

⁷ See more at

<https://cnnespanol.cnn.com/2016/04/04/las-7-cosas-que-debes-saber-sobre-los-panama-papers/>

⁸ See more at <https://www.nytimes.com/es/2021/10/18/espanol/opinion/papeles-pandora-papers.html>

⁹ See more at <https://www.eluniversal.com.mx/mundo/mexico-colombia-y-eu-unen-fuerzas-contra-el-narco>

See more at

<https://www.dw.com/es/m%C3%A9xico-y-colombia-acuerdan-estrategia-contra-el-narcotr%C3%A1fico/a-52732560>





Report of the Expert Advisory Group on Anti-Corruption, Transparency, and Integrity in Latin America and the Caribbean:

Generally speaking, a Latin American country tracking corrupt officials must resort to cumbersome mutual legal assistance procedures. Financial centers in the global north (e.g., Luxembourg, Liechtenstein, Switzerland and the United Kingdom) allow several appeals, resulting in slow and complex procedures. Mutual legal assistance is inefficient due to technical and political challenges. In addition, ancillary authorities, such as financial intelligence units, often do not cooperate optimally. There are cases where, even after all legal requirements have been met, asset recovery has been postponed by northern financial centers due to political reasons (...) The challenges of international cooperation are compounded by jurisdictions known for their opacity and almost no cooperation. Recent regional and global corruption scandals have highlighted how offshore centers and tax haven jurisdictions can facilitate the illicit flow of money and how shell companies can be used for money laundering purposes. (p. 12)

In short, the implementation of international legal cooperation seems to face three main obstacles: the political will of some governments, agencies or other bodies to implement the laws; the cumbersome procedures of mutual legal assistance; and the lack of cooperation of some jurisdictions characterized by their opacity.

7. Results of the CCO in Comparison with Other International and/or Regional Agreements or Commitments.

The general results of the CCO do not differ much from the follow-up efforts that have been carried out at the regional level over the last 10 years by different institutions and organizations. Transparency International, the World Bank, the Inter-American Development Bank, the Organization for Economic Cooperation and Development (OECD), the Organization of American States (OAS), the Andean Development Corporation and various non-governmental organizations have recorded how Latin America has not been able to overcome the deep roots of corruption in its political, economic and social systems, despite the fact that almost all countries have made progress in issuing policy frameworks to address this phenomenon on the basis of international conventions.

As mentioned above, not much progress has been made in international legal cooperation by the various multilateral organizations, beyond reiterating the commitments derived from the IACAC and the UNCAC. A clear example is the reports on the status of implementation



of the UNCAC, prepared by UNODC. A review of the 2015¹⁰ and 2017¹¹ reports in the international cooperation chapters explains how more countries are incorporating anti-corruption legislation into their legal systems and describes how extradition, transfer of convicted persons, and mutual legal assistance proceeds.

However, these reports do not take stock of the implementation of these measures. How much has extradition served to prevent corruption cases? Has mutual legal assistance reduced impunity rates in corruption cases? How much money has been recovered by the rules applied on asset recovery? How many individuals have been convicted as a result of effective legal cooperation? For all these questions in the region there is still no information available.

Another way to know the progress of legal cooperation is through broader analysis exercises on the fight against corruption, and in particular, on the recommendations arising from the IACAC on Institutional Strengthening, since some of its sections refer to the strengthening of justice and the administration of justice.

According to the latest report of the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption - MESICIC (2020)¹², from 2008 to 2020 the region has shown progress in six categories¹³. One of them, Institutional Strengthening, shows an advance of 36% as evidenced in the following graph:

¹⁰ UNODC State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation 2015. Retrieved from:
: https://www.unodc.org/documents/treaties/UNCAC/COSP/session6/15-03460_S_ebook.pdf Date: 11-15-2021

¹¹ UNODC State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation 2017. Retrieved from:
https://www.unodc.org/documents/mexicoandcentralamerica/publications/Corrupcion/Estado_de_la_aplicacion.pdf Date: 11-15-2021

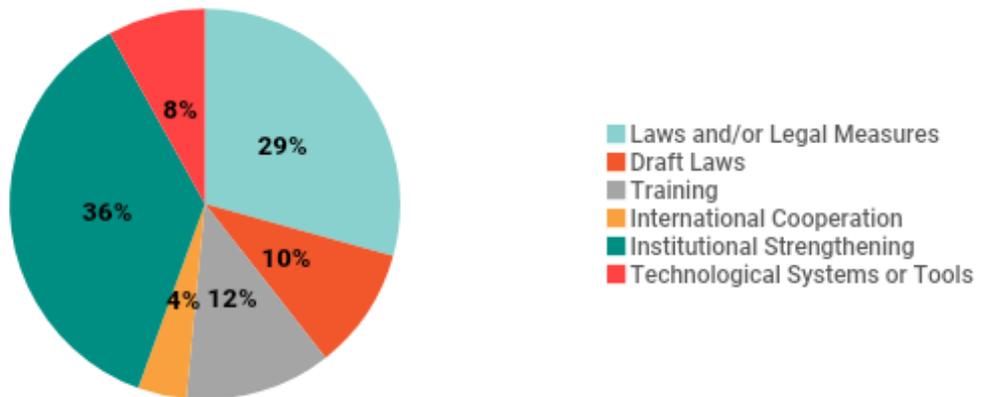
¹² Hemispheric Report of the Fifth Round of Review by the Committee of Experts of the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption. Retrieved from:
http://www.oas.org/es/sla/dlc/mesicic/docs/mesicic_inf_hem_final_5_ronda.pdf Date: 17-11-2021 18:30h

¹³ According to the Committee, the region has made 67% progress in the formulation and incorporation of standards aimed at strengthening the legal frameworks corresponding to the aforementioned categories over the last 12 years. This reflects, to a large extent, the emphasis that has been placed in Latin America on the need to translate the recommendations of the IACAC into laws or regulations.



Graph 5. Percentage of Actions Developed by the States for the Implementation of the Recommendations of the MESICIC Committee of Experts from 2008 to 2020

Percentage of Actions Developed by the States for the Implementation of the Recommendations of the MESICIC Committee of Experts from 2008 to 2020



the requirements and conditions for access to public administrative career positions in the judicial bodies of each country. This is in line with the recommendations made by the Committee of Experts on State Contracting; but it is only one of the aspects that should be observed within what would constitute institutional strengthening for the benefit of international legal cooperation and justice at the national level.

There are other international bodies such as the Latin American Financial Action Task Force - GAFILAT, regional chapter of the Financial Action Task Force (FATF). This group seeks to establish international standards for the fight against money laundering, human trafficking, corruption, terrorism and arms trafficking, among other crimes, as well as to improve the willingness of governments to incorporate these standards and improve controls at the national, regional and global levels. Of the 19 countries participating in the CCO, 16 are GAFILAT partners, since El Salvador, Haiti and Venezuela are not members.

In addition to this effort, there is GELAVEX, the Group of Experts for the Control of Money Laundering of the Organization of American States - OAS, a forum made up of experts from 34 countries, which together with the United Nations Office on Drugs and Crime - UNODC, put forward the fight against political corruption from the perspective of financial intelligence¹⁴. No public cases have yet been documented in which institutions involved in financial intelligence in the region have cooperated to prevent a case or to bring to justice those responsible for a case of corruption, but, undoubtedly, these organizations and

¹⁴ This was within the framework of the 51st GELAVEX meeting held on November 16-17, 2021.

scenarios are an effort of international legal cooperation to strengthen the fight against this phenomenon.

Another organization that has emphasized international legal cooperation as a fundamental tool in the fight against corruption is the Organization for Economic Cooperation and Development (OECD)¹⁵. Within its anti-corruption initiative, it emphasizes three recommendations that overlap with agreement No. 37 of the Lima Commitment and that deal with the need to exchange information between countries, the provision of evidence and the joint advancement of asset recovery processes, making use of legal cooperation frameworks and carrying out permanent bilateral or multilateral consultations¹⁶.

It seems then that the assessment made by the CCO on the progress of commitments in the fight against corruption in Latin America corroborates with empirical evidence what other organizations have identified and which can be summarized in the following remarks included in the aforementioned IDB expert report (2018):

Though some countries in the region, along with the IDB, have been engaged in selected anti-corruption reforms for the last decade, these have been uneven, partial, and focused more on enacting laws and regulations rather than implementation, more on principles and pronouncements than concrete practice. (p. 9)

Conclusions and Recommendations

In order to advance and deepen international legal cooperation, it is necessary to establish what has happened with the implementation of the measures adopted by the countries over the years. In this sense, the effort made by the CCO in relation to the progress of the Lima Commitment is very important and valuable, since the creation of indicators helps to determine where the advantages are and what should be the course to follow in anti-corruption policies, and in particular, those that have to do with international legal cooperation and mutual legal assistance.

In view of the above, it is suggested that the following actions be carried out:

Expanding the International Commitments Follow-Up Indicators.

¹⁵ Of the 19 countries analyzed by the CCO, only Chile, Colombia, Costa Rica and Mexico are members of the OECD, while Argentina, Brazil and Peru participate as candidate members.

¹⁶ OECD Integrity for Good Governance in Latin America and the Caribbean. An Action Plan 2018. Retrieved from:
<https://www.oecd.org/latin-america/regional-programme/Integridad-para-el-buen-gobierno-en-América-Latina-y-el-Caribe-Plan-de-Acción.pdf> Date: 04-11-2021





Latin America already has sufficient laws, regulations and standards arising from international conventions. However, progress needs to be made in analyzing the progress of these measures in the region, including the creation of indicators to determine the obstacles to their implementation and the impact of these measures.

In terms of impact, questions should be asked about aspects such as:

- Has the exchange of information between investigative bodies enabled timely action to prevent acts of corruption in the region?
- To what extent has mutual legal assistance helped to reduce impunity rates in corruption cases?

With respect to the indicators that will make it possible to report on these actions, the following aspects should be covered:

- How many and which cases that required international legal cooperation and mutual legal assistance resulted in charges, indictments, allegations, acquittals or convictions?
- How many persons have been convicted on account of international legal cooperation processes?
- How many extradition cases have resulted from the prosecution of corruption cases?
- To how many and to which persons was the liability of legal persons applied?
- How many resources (money, movable and immovable property) have been recovered as a result of asset recovery efforts?
- In how many and which cases was it possible to prevent damage to public finances?

The authorities in the region may perform very well in each of these areas, but without a systematic collection of information, the progress and impact of legal cooperation in the fight against corruption cannot be established.

Analyzing International Legal Cooperation from the perspective of Institutional Strengthening.

Crime prevention and prosecution require a strong and independent judicial system within States and, in turn, the judicial system needs international cooperation to prevent and combat crime in increasingly international scenarios. It is precisely for this reason that the Lima Commitment includes aspects such as strengthening judicial independence, which speaks of the need for countries to maintain a clear separation of powers, in addition to





improving the characteristics of the judicial system, which in many countries seems to lag behind the technological and human resources available to the corrupt.

It is therefore essential that the assessments and analyses delve even deeper into state capture, and into how this may be the reason why the measures introduced in the legal systems of the countries are not being applied. In this regard, it is important to know the level of independence of the judiciary and oversight bodies; the mechanisms for selecting and appointing judges, prosecutors and officials of investigative and sanctioning bodies; the composition of the high courts and the influence of political power in them; the degree of vulnerability of the judicial system to national and international criminal organizations; and the links of the judiciary with international actors, among other variables.

International legal cooperation can also be included as an indicator of institutional strengthening processes in the region so that there is a greater commitment by governments to improve their performance in this area. In this regard, the strategy adopted by the OECD in 2017, entitled “Public Integrity”, can serve as a frame of reference for further analysis since “traditional approaches based on the creation of a greater number of standards, stricter observance and stronger enforcement, have shown limited effectiveness” (OECD, 2017, p. 3). For this reason, the OECD proposes a strategy based on three pillars: a comprehensive system that reduces opportunities for corruption; a cultural change to make corruption socially unacceptable; and lastly, holding people answerable through accountability. It also prioritizes three areas: state capture; state contracting; and the construction of public infrastructure.

Inclusion of Civil Society in the Formulation, Implementation and Monitoring of International Commitments.

As has been pointed out throughout the document, the exercise of including civil society in the formulation, implementation and follow-up of international commitments in the fight against corruption is a great step forward.

The formation of the CCO was a step that highlighted the difficulties of monitoring progress in international legal cooperation from civil society. The lack of information, the difficulties in analyzing existing data and the complexity of concepts and legal frameworks for action are some of the difficulties mentioned in the follow-up reports on the Lima Commitment.

This shows the importance of advancing in the effort made by the CCO by generating new evaluation indicators, mainly focused on determining the impact of measures to reduce impunity in corruption cases and establishing the scope of international legal cooperation





in the reduction of these cases, or in the reduction of corruption perception indexes, in each of the countries of the region.

For this reason, it is essential for civil society to demand a greater effort from governments to publicize the results of measures to promote preventive seizure, forfeiture and confiscation or recovery of assets resulting from corruption.

Lastly, it should be important to promote exercises similar to the CCO in which citizens take an interest and actively follow up on these issues.





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