



## POLICY DIALOGUE REPORT

### CORRUPTION AND COVID-19

#### Within the Framework of the Follow-Up and Implementation of the VIII Summit of the Americas

Thursday, June 18, 2020

This report presents the main issues discussed during the (virtual) policy dialogue meeting "Corruption and COVID-19," including a series of recommendations to governments in the region for countering the impacts of the pandemic on democratic governance.

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#### **Introduction**

This Dialogue is one of a series of cooperation initiatives undertaken by the Summits of the Americas Secretariat in connection with execution of the Follow-up and Implementation Mechanism of the "Lima Commitment: Democratic Governance against Corruption" with participating States, the institutions of the Joint Summit Working Group (JSWG), civil society, and social actors. This Virtual Dialogue provided an opportunity for an exchange of views on the agenda for fighting corruption during states of emergency, covering such matters as State monitoring and oversight bodies; integrity in public service; transparency and accountability; as well as the strengthening of procedures and legal frameworks for curtailing the influence of private interests in public policy decisions and the role of justice operators and oversight bodies in safeguarding the integrity of measures to address the crisis.

Experts were invited from Argentina, Colombia, Peru, and the United States to analyze the risks of corruption in connection with the pandemic from a variety of standpoints: that of Executive Branch oversight bodies, a judicial perspective, and from the point of view of multilateral development banks. Participants in the conversations included: **Susana Silva**, Secretary of Public Integrity in the Office of the Presidency of Peru's Council of Ministers and former Coordinator General of the High-level Anti-corruption Commission; **Claudia Escobar**, a former magistrate in Guatemala's Court of Appeals and a member of Ecuador's International Commission of Experts to Combat Corruption; and **Fernando Carrillo**, Colombia's Inspector General (*Procurador General*). The moderator for the meeting was **Pablo Sanguinetti**, Vice President of Knowledge at the CAF – Development Bank of Latin America – an entity forming part of the Joint Summit Working Group. The Dialogue was opened by the Office of the President of the Summits of the Americas process, represented by Ambassador Luis E. Chávez Basagoitia, National Coordinator for the Summits process and Director of Multilateral and Global Affairs of the Ministry of Foreign Affairs of Peru.

The VIII Summit of the Americas (Lima, Peru, 2018) culminated in the adoption by Heads of State and Government of 57 mandates or concrete measures to prevent and combat corruption summarized in the "*Lima Commitment: Democratic Governance against Corruption*." The mandates cover a wide range of fields, including the importance of public integrity, transparency initiatives and public accountability for government acts, citizen monitoring and oversight, and the role of oversight bodies in preventing and combating corruption.

## Core issues

Taking as their starting-point the measures contained in the "*Lima Commitment: Democratic Governance against Corruption*," the discussion revolved around the effects of the pandemic on actions to prevent, control, and punish corruption, particularly in three areas for action identified in the CAF Report "*Integrity in public policy; Keys to prevent corruption*": a) ex ante rule and ex post checks to oversee decisions taken in public office (the functions performed by oversight bodies, the office of the Inspector General [*Procuraduría*], the Office of the Comptroller General, and their ties to justice); b) civil servant accountability and penalties to deter unlawful conduct (e.g. disqualification from holding public office); and c) oversight by the branches of government, especially the role of the legislature and the judiciary in curbing and investigating acts of corruption.

One of the first areas addressed in the exchange of views had to do with the effects of emergency management with regard to **ex ante rules and internal controls in public administration**. One of the starkest effects of the emergency is that it has required States to be more expeditious in the actions they undertake, which entails taking and implementing decisions at a quicker pace (Governing as a Matter of Urgency). As a consequence of that emergency situation, administrative procedures, such as those governing public tenders, have been relaxed, just as huge volumes of funds have been mobilized to purchase the medical supplies needed to address the pandemic. Under those circumstances, governments have had broader discretionary powers in several public management areas, such as transfers of funds, hiring of personnel, and in public expenditure in general.

This first observation points to a second issue of vital importance in connection with public integrity, because bolstering integrity requires focusing on **administrative processes followed to select government officials** based on merit, whereby entry into the civil service is subject to evaluation and professional training systems.

One proposal is thus to amend training, skills-building, and selection processes. Temporary appointees to civil service positions who follow instructions from the party in power, a practice found in numerous countries in the region, means that when a government's term ends many institutions have to start again from scratch; it is precisely in such scenarios that the private sector and special interest groups are able to wield more influence.

In order to counteract possible setbacks in the fight against corruption, **citizen monitoring of actions of government officials and oversight of the influence exerted by companies and private individuals** on government decisions become the most effective way to counterbalance such developments and constitute a major challenge, as in states of emergency more powers are concentrated in the hands of central government.

With regard to the three spheres of challenges referred to above, the moderator asked experts for their reactions and comments concerning the ways in which those challenges are being addressed in their countries' management of the pandemic.

First, Dr. Claudia Escobar, a former magistrate in Guatemala's Court of Appeals and a member of Ecuador's International Commission of Experts to Combat Corruption, pointed to the pandemic's early impact on the justice system and especially as it disclosed its vulnerabilities in connection with the election of judicial operators to investigate possible acts of corruption. She said that it was therefore

urgent to strengthen the autonomy and independence of the judiciary so as to achieve a balance among the branches of government and limit the commission of the abuses being discovered.

For his part, Dr. Fernando Carrillo, Colombia's Inspector General, suggested that what was most at stake in this crisis is the legitimacy of the State and of government institutions. The credibility of democratic institutions and citizens' trust in them would depend on the handling of the worst crisis in the recent history of the world, which has been most acutely felt in Latin America.

In that scenario, the power of presidents appears to be unchecked by the other branches of government, especially given the absence of resolute action by the Legislative Branch or of political control over emergency powers, and the shutdown of the Judiciary.

That being so, the Inspector General posited that it was all the more necessary to redouble efforts to strengthen democracy in Latin America and strike a balance between emergency powers and the discretionary powers of government authorities, both of which are heightened during the pandemic. Above all, the inter-American system needed to be boosted, with an emphasis on the separation of powers and defense of the fundamental rights of citizens.

The rule of law was built upon those checks and balances and institutions to establish limits to the power of presidents. As an example of the above, Colombia established a coalition in the form of a triple partnership among the Office of the Attorney General (FGN) competent for criminal law matters, the Inspector General's Office, which is the Public Prosecutors Office (*Ministerio Público*), and the Office of the Comptroller General and the Ombudsperson's Office (*Defensoría del Pueblo*), which are all independent entities within the Executive, in order to try and curb these kinds of abuses and limit discretionary powers.

As for the impact of the crisis on enjoyment of rights, Inspector General Carrillo stressed that one of the main areas of impact of the pandemic had to do with the lack of access of the population to such fundamental rights as health and the minimum wage, survival, life, and the integrity of the inhabitants of the region. For analysts of the economy and society, this state of affairs will delay the achievement of social goals, with respect to equality, equity, guaranteed rights, and the consolidation of democracy.

As regards oversight in public administration, Inspector General Carrillo, one phenomenon to surface during the emergency related to the rise of cartels is the existence of a series of suppliers, who, grouped together as contractors, deliver a series of services, and even medical supplies, from markets to impoverished sectors, when in fact they are cartels based on, and spreading, corrupt practices. Ties have also been detected between campaign financing and hiring during the state of emergency, in the form of procurement or hiring to pay for political favors or campaign debts. To deal with that, more robust ex post audits are urgently needed, along with technically proficient and independent government oversight bodies.

Dr. Susana Silva, Secretary of Public Integrity in the Office of the Presidency of Peru's Council of Ministers, shows how new digital solutions are becoming not just a key tool in the fight against corruption but also a mechanism for ensuring renewed ties with citizens and even a channel for securing the social and economic inclusion of huge segments of the population that are currently marginalized.

In the same vein, Inspector General Carrillo pointed to a major challenge posed by the fact that the dearth of the investments needed for a State to update its technological infrastructure could generate a

society developing at two different paces: one with fully guaranteed access to enjoyment of political, economic, and social rights, and another deprived of such access.

Another issue discussed had to do with digital government. Participants stressed the importance of government procurement systems, inasmuch as the current emergency has once again demonstrated the importance of technology and of digital tools for creating more resilient and capable bureaucracies. Digital government and transparency need to be pursued not only in government procurement; they also need to be applied to economic transfers, monetary subsidies, and bonds for a variety of sectors, in ways that could make it easier to keep track of processes and even grants to governments to help them manage the pandemic.

The crisis has demonstrated the need to find efficient mechanisms for providing services and, for that, technology is becoming particularly important for fostering and guaranteeing integrity and for combating corruption. Along those same lines, the digitization of judicial proceedings also needs boosting in order to expand and simplify citizens' access to their rights.

Access to information and the use of data facilitate oversight; and, for that, it is essential to activate mechanisms fostering citizen participation and whistleblowing. For former judge Claudia Escobar, the general public is already tapping all the information generated by the digitization of services for State oversight purposes, but not to a homogeneous extent from one country in the region to another. She pointed out that whistleblowing is not part of the culture in Latin America, for lack of trust in institutions. Recovering citizens' trust in institutions is a prerequisite for expanding whistleblowing.

Former judge Escobar underscored the importance of establishing international cooperation instruments for achieving a more robust institutional presence of the region in mechanisms such as the international commissions against impunity (the International Community against Impunity in Guatemala [CICIG] or the Mission to Support the Fight against Corruption and Impunity in Honduras of the Organization of American States [MACCIH-OAS], and even the Mission starting in El Salvador, for instance).

For his part, Inspector General Carrillo mentioned that, in order for efforts to combat corruption to be successful, there had to be ethical oversight in each country's domestic system; social oversight and societal condemnation of an individual's misconduct; and, finally, legal control, or application of the full weight of the law. The main thrust of the strategy should focus on prevention, i.e. attempts to exercise all forms of control prior to the application of penalties.

Private sector integrity plays a key part in curbing corruption. That entails fostering compliance systems covering all corporate practices and even international cooperation agencies, whose compliance offices have mushroomed in recent years.

### ***Conclusions and recommendations***

As a result of the exchanges of views among experts, some key points were worked out in the form of recommendations to Latin American governments for fostering integrity in public administration in the areas established in the Lima Commitment.

1. Professionalize the civil service, making entry into it subject to a merit-based selection process using rigorous evaluation systems, with severe penalties for non-compliance that also apply to the judiciary.

2. Strengthen the autonomy and independence of the judiciary so as to achieve a balance among the branches of government and limit the commission of the abuses being discovered.
3. Redouble efforts to strengthen democracy in the countries of the region based on the mechanisms contemplated in the inter-American system, such as the separation of powers and judicial and legislative oversight mechanisms.
4. Strive for greater transparency in the handling of government data for citizen monitoring and oversight, as well as access to information in an open data format, bearing in mind exceptions designed to protect personal data.
5. Strengthen oversight not only of bodies performing external audits of the Executive Branch but internal audits as well, and increase the power of administrative, judicial, or electoral sanctions to deter corruption.
6. Strengthen institutions so as to prevent the payment and offering of bribes by both individuals and legal entities and provide incentives for companies to adopt in-house compliance programs.
7. Reinforce private sector measures to foster integrity (prosecuting attempts to bribe, effective regulation of lobbies, keeping records of end beneficiaries, and so on).
8. Promote new digital solutions, accompanied by an open data policy, that are key to adopting integrity policies and facilitating outside supervision.
9. Ensure greater social inclusion in the region by narrowing digital divides, which will help combat not just COVID-19 but corruption as well.
10. Foster a whistleblowing culture among citizens and strive to enhance the credibility of the institutions responsible for punishing crime, which people no longer trust.
11. Promote a culture of integrity in citizens, as well as institutions.
12. Strengthen international cooperation instruments, such as the Anticorruption Commissions established in the region to lend support to the regional institutions responsible for investigation acts of corruption.

### ***Program for the meeting***

*I. Introduction*, María Celina Conte, Acting Director, Summits Secretariat, OAS

*II. Opening remarks*

- Ambassador James Lambert, OAS Secretary for Hemispheric Affairs.
- Ambassador Luis E. Chávez, Office of the Chair of the Summits Process, Government of Peru

III. *Speakers*

- Dr. Fernando Carrillo, Inspector General, Colombia
- Dr. **Susana Silva Hasembank**, Secretary of Public Integrity in the Office of the Presidency of Peru's Council of Ministers
- Dr. Claudia Escobar Mejía, former Guatemalan Judge, member of Ecuador's Commission of International Experts to Combat Corruption, and Executive Director of BeJust

*Moderated by:* Dr. Pablo Sanguinetti, Vice President of Knowledge at CAF-Development Bank of Latin America

IV. Question-and-answer session

V. Conclusions

**Regarding the speakers**



***Fernando Carrillo Flórez, Inspector General of Colombia***

Inspector General of Colombia, former Minister of Justice, former Minister of the Interior, Ambassador to Spain, Director of Colombia's Legal Defense Agency and Inter-American Development Bank (IDB) representative in Paris and Brazil. Promoter of the "Séptima Papeleta" movement, which established the National Constituent Assembly in 1991, in which he chaired the Judicial Committee. Carrillo proposed establishing the Office of the Inspector General, the Constitutional Tribunal, and other institutions with a view to modernizing the justice system in Colombia. He also promoted the precautionary measure, the right of each citizen to appeal for protection of his or her constitutional rights. Carrillo has a B.A. in law from Universidad Pontificia Javeriana and an M.A. in public administration and M.A. in law and public finance from Harvard University.



**Susana Silva Hasembank**

She is currently Secretary of Public Integrity in the Office of the Presidency of Peru's Council of Ministers. She previously held trust positions as Inspector General of the Ministry of the Interior, Coordinator-General of the High-level Anticorruption Commission, Vice-President of the National Penitentiary Institute, Deputy Defender for State Administration in the Ombudsperson's Office, and Secretary-General of the Metropolitan Municipality of Lima.

She has a B.A. in Law from Peru's Catholic University and an LLM in International Development Law from the University of Warwick, England.



*Claudia Escobar*

Centennial Fellow, Edmund A. Walsh School of Foreign Service at Georgetown University, where she focuses on the independence of the judiciary as a tool to fight corruption. A former magistrate in Guatemala's Court of Appeals. A Harvard University 2015 Scholar-at Risk, the first Central American to be admitted to the program. She received the Democracy Award by the National Endowment for Democracy. In Guatemala, she was founder of the Judiciary Institute and the Association for the Development of Democratic Institutional and Comprehensive Development for Central America (Asociación FIDDI), organizations dedicated to promoting the rule of law in Guatemala. She is also one of the commissioners of the International Anticorruption Commission in Ecuador. Escobar obtained her PhD at the Universidad Autónoma de Barcelona, her law degree at the Universidad Francisco Marroquín in Guatemala.

### **Regarding the Summit of the Americas and the Summits Secretariat**

The VIII Summit of the Americas (Lima, Peru, 2018) culminated in the adoption by Heads of State and Government of 57 mandates or concrete measures to prevent and combat corruption summarized in the "Lima Commitment: Democratic Governance against Corruption." The mandates cover a wide range of fields, including the importance of public integrity, transparency initiatives and public accountability for government acts, citizen monitoring and oversight, and the role of oversight bodies in preventing and combating corruption. The Summits Secretariat of the General Secretariat of the Organization of American States, as the Technical Secretariat for the Summits of the Americas Process, is mandated to lend assistance to member states with implementing Summit mandates and initiatives and to follow up on implementation of the mandates derived from the VIII Summit of the Americas and earlier Summits.