

Country Report on the National Integrity System in Peru

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Corruption Report of Peru Narrative Report

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Corruption Report of Peru Narrative Report

1. Introduction

The aim of this document is to examine the components of the National Integrity System of the country in relation to corruption and the condition of the institutions and existing anti-corruption measures. This study was made using the methodology suggested by Transparency International in the documents “Proposal for Funding of TI’s Contribution to Global Forum II” and “Preparation of a Country Report for the Global Forum II on Fighting Corruption”.

This methodology, based on the solution of specific questions dealing the relevant aspects to analyze corruption, permits to obtain a systematic comprehension of the legal framework and the practices related to corruption. It is not an easy task to make an integral analysis taking into consideration the institutional factors that generate or facilitate corruption, as it has so many different manifestations, origins, actors, effects, etc. This difficulty is the reason why most of the existing studies about corruption have end up being discussions about theoretical economic models, or anecdotal evidence.

The methodology suggested by TI points out the basic aspects to be examined in order to obtain a complete view of the institutional framework of a country. After completing the process of answering each one of the questions proposed in the questionnaire, the areas that have a higher tendency to corruption are identified, as well as the prevailing types of corruption and the most important measures needed to counter it. The answers to the first part of the question (the opinion of the legal framework) permit to detect the legal gaps and contradictions that tend to favor corruption, and that can be corrected by a law. The answers to the second part of the question (the way the law is actually applied) evidence the discrepancies between law and reality; the next step is to find out the reasons for the breaking of the rule.

In order to answer the section “what actually happens”, sources that could assure the reliability of the information were consulted: previous investigations into the public sector, information the Comptrollership had divulged, being this the entity in charge of investigating the corruption net, and interviews with some important persons that offer credibility.

The study was made using the corruption structure established during the government of President Alberto Fujimori (1990-2000), due to its magnitude and its recent character. In spite of the change of government at the end of year 2000, and the significant progresses made in investigating and disclosing the corruption net, there are still remainders to find of this system, and this study will not only permit to understand the factors that allowed its creation and permanency, but will also extract lessons for the future. The actions of the government concerning anti-corruption politics that the study makes reference to, include the measures implemented by the transition government of Dr. Valentín Paniagua (November 2000 - July 2001) and the current administration of President Alejandro Toledo.

The narrative section of this report has been basically made on the information delivered by the responses to the questionnaire, and on official information about the advances of the investigations. The second section of the Country Report includes the detailed responses to the questionnaire.

2. Characterization of Corruption in Peru

Until the first months of the year 2000, Peru did not seem to be an exceptionally corrupt country. In the Corruption Perceptions Index 2000 (CPI) of Transparency International, made on surveys undertaken during the period of 1998-2000, Peru was ranked 41 between 90 countries. At regional level, Peru was ranked third, only after Chile and Costa Rica.

LATIN AMERICA

Regional Country Rank	Country	2000 CPI Score
1	Chile	7.4
2	Costa Rica	5.4
3	Peru	4.4
4	El Salvador	4.1
- Regional Average -		
5	Brazil	3.9
6	Argentina	3.5
7	Mexico	3.3
8	Colombia	3.2
9	Bolivia	2.7
9	Venezuela	2.7
11	Ecuador	2.6

Likewise, surveys undertaken by “Apoyo Opinión y Mercado” in Lima, between 1997 and 2001, revealed that the problem of corruption/bribery was identified in average by only one of three Peruvians, when asked what were the main problems the country was facing.

Of the following problems listed, which are, in your opinion, the first three main problems of the country at present time?*

Problems	1997 %	1998 %	1999 %	2000 %	2001 %
Unemployment / lack of jobs	57	66	74	79	68
Poverty / hunger	51	36	38	65	65
Corruption / bribery	37	29	33	28	30
Inadequate education	7	12	13	4	26
Drug consume	18	10	24	26	17
Human Rights violation	17	37	15	16	12
Inflation	11	10	17	3	9
Terrorism / subversion	17	4	4	4	5

Apoyo Opinión y Mercado S.A.

Lima, April 2001

* The complete listing of problems posed in the survey has not been included.

These results were obtained in spite of the fact that already in 1998, evidence of political corruption started to come out, related with the use of the State machinery to support the re-election of the president and to press the media. Nevertheless, it was not only until September 2000, with the diffusion of the first of a group of videotapes¹ recorded by the Intelligence Administration of Peru (Servicio de Inteligencia Nacional), that people realized the magnitude of corruption.

The investigations made until now have permitted to determine that the regime had performed illegal activities to eliminate independency and/or to control the legislature, the judiciary, the army, the media, and other institutions with the double purpose of obtaining personal enrichment and to hold on to power indefinitely:

- The president's advisor in themes related with security and intelligence secretly controlled a centralized corruption net of great impact, very probably with authorization of the president.
- Different methods were used to remove money: On the one hand, the procurement of armament for the Ministry of Defense, that had a secret character², served to transfer public funds and to obtain commissions from the providers (**bribery**³). On the other hand, public resources were drawn from the budget assigned to the Ministry of Defense (**embezzlement**⁴). The "secret" character of the making and completion of the budget for the Defense sector supported this appropriation. In some cases, the giving of resources had the authorization of the President by means of an Urgency Decree (an exceptional decree emitted by the Executive, with the character of a law). Probable blackmailing to drug dealers in order to gain funds, and tributary blackmailing to opponents of the regime are also being investigated (**extortion**⁵).

¹ Hundreds of videotapes were found, recorded by Vladimiro Montesinos, who was the director of the Intelligence Administration of Peru (Servicio de Inteligencia Nacional) and advisor of the president in themes related with security and intelligence. These videotapes registered in detail countless acts of corruption that involved him and numerous personalities of the public and private sectors as they negotiated favours, political agreements, bribes, etc. These videotapes are popularly known as the "vladivideos".

² The secret was authorized by the law. The budgets for the Ministry of Defence and the Ministry of Domestic Affairs are of reserved character. Only the Commission in charge of the budget in the Congress, the Ministry of Finances, and the Comptrollership (Contraloría General de La República) have access to this information. Secret military procurement demands authorization of the Comptrollership. The authorization decree is not made public.

³ "Bribery is the payment (in money or kind) that is given or taken in a corrupt relationship. A bribe is a fixed sum, a certain percentage of a contract, or any other favour, usually paid to a state official who can make contracts on behalf of the state or otherwise distribute benefits to companies or individuals, businessmen and clients". Research on Corruption. A Policy Oriented Survey. Norwegian agency for Development Co-operation, NORAD. Oslo 2001, page 14.

⁴ "Embezzlement is theft of resources by people who are put to administer it. (...) Embezzlement is a form of corruption and power abuse that can develop in closed institutional and moral spheres, independently of the public moral and with few possibilities of public sanction. In many thoroughly corrupt countries, embezzlement is a fundamental part of the resource extractive capacity of a ruling elite, even more important than extraction through bribes". Idem, page 15.

⁵ "Extortion is money and other resources extracted by the use of coercion, violence or the threats to use force. (...). Corruption in the form of extortion is usually understood as a form of extraction "from below" by mafias and criminals. (...) Corrupt practices of this kind can, however, also be "from above", when the state itself is the biggest mafia of them all. This is for instance when the state, and in particular its security services and paramilitary groups, extorts money from individuals, groups and businesses." Idem, page 16.

A part of these resources was exclusively used for the private benefit of those involved. Another part was used to finance corruption of public officials, politicians, and the media (**fraud**⁶).

- In addition, the heads of corruption administrated other mechanisms of bribery. They made favors to the person, his or her family or company, such as solving judicial problems, or getting the tributary administration or finance institutions to release them from debts. On the other hand, the recording of the conversations with the persons that were being bribed or benefited by corruption, served as evidence in order to keep the agreement in force and also for possible extortion.
- With the combination of these mechanisms, the regime gained progressively the control over the other branches of the State, over the public institutions and the media.
- The regime was able to guarantee a majority and to gain the support of some congressmen, who were members of the opposition, through payments and favors. Various congressmen received money, either to change parties, or to support the Executive in specific matters, apparently remaining part of the opposition. In this way, the regime was able to assure the majority in Congress, and could also control the behavior of the congressmen. These conducts are entirely demonstrated in the videotapes and the audio recordings taken by the president's advisor himself, and that were made public starting September 2000.

Similarly, the supposedly independent institutions responsible of organizing the elections did not act neutrally. There are proofs that the president's advisor made arrangements together with these organisms in order to affect the process and the results of the elections.

- Key judges and public prosecutors subjected themselves to the instructions of the regime. The judicial processes that were most significant for the government, political as well as economic, were resolved following the instructions of the advisor of the Intelligence Administration.
- The media, together with the regime, agreed upon the contents of the journalistic programs in exchange of financial benefits and/or judicial favors for their owners.
- The Comptrollership, the independent audit institution in charge of investigation and control, did not fulfill its functions. It did not intervene to investigate the actions of the Ministry of Defense, and it did not request information about the procurement of armament, regardless of the fact that the Constitution authorized it for doing this.

⁶ "Fraud is an economic crime that involves some kind of trickery, swindle or deceit. Fraud involves a manipulation or distortion of information, facts and expertise, by public officials positioned between politicians and citizens, who seek to draw a private profit. (...) Fraud is also a broader legal and popular term that covers more than bribery and embezzlement. It is fraud for instance when state agencies and state representatives are engaged in illegal trade networks, counterfeit and racketing, and when forgery, smuggling and other organised economic crime is propped up by "official" sanction and or involvement. It is fraud when politicians and state agents take a share for closing their eyes on economic crimes, and it is serious fraud when they have an active role in it". Idem page 15

The discrepancy between the perceptions of the public and the concealed reality is related with the context of the beginning of Fujimori's government: the severe economic crisis and the subversion. The government of the engineer Alberto Fujimori, who was elected after a second turn of elections, started in July 1990 and had to resolve these two giant problems without the majority in Congress.

Starting in 1991, the government applied an adjustment policy that gave rapid and visible results in the control of a hyperinflation that was precipitated during the previous government. After doing this, the government directed an economic policy founded in subsidies from the State and financial freedom, through the privatization of public companies, the de-regulation of markets, and the opening of the economy to external competition. All these measures substantially reduced the conflicts between the private sector and the State, and therefore the chances for corruption. The government justified this policy of reducing the activity of the State and of de-regulation of the economic activity with arguments related with the economic efficiency, and also with the necessity of eradicating the wave of corruption that had developed during the last decade, when it was common to find traffic of import licenses, foreign currency with preferential change, negotiations for the fixing of controlled prices, diverse authorizations and permits, etc.

In addition, several entities of the public sector acted in a transparent and efficient way in the area of service to the users. Like this, the treatment to the citizens improved considerably at customs, at the collector's office and in the organs responsible of the reception and the filing of complaints for the functioning of the public utilities and consumer related problems.

In this way, as the performance of the State seemed to be so clean and transparent in economic and administrative matters, it was not easy to believe in the few political corruption reports that went out to the public. Like this, the cleaning of certain areas of the public sector, namely the visible ones, benefited the corruption in other areas, the secret ones.

On the other hand, the subversion the country had to face since the last decade had driven the people to feel scared and discouraged. These aspects helped to justify the secrecy of the actions of the armed and the security forces. Later on, the progress of the government in this matter (with the capture in 1992 of the main leader of a terrorist group and the liberation of the hostages taken by another dissident group in 1997) increased the popularity level of the government and then again, it created a resistance among the people to discuss about corruption cases in the armed forces and the police, and an implicit tolerance towards irregularities.

Correspondingly, the traditional and visible way of corruption remained among the judges, the police and the public utilities, without drawing the attention of the public and the media. Specifically in the judicial field, for many decades, the lawyers were habituated to deal with judges, attorneys and justice auxiliaries to obtain favorable verdicts, even if reason was on their side. Generally, in every established lawyer's office there was someone who was dedicated solely to cultivate contacts and friendship in the Judiciary. But, even in these areas affected by chronic corruption did the government seem to make efforts to eliminate it. Like this, in the judicial field, the government launched a reform that was supported by international organisms, like USAID and the

Inter-American Development Bank, which produced significant and visible results for the citizens. Similarly, other mechanisms to control corruption were installed among the police, (the Ombudsman), and the public utilities (the “INDECOPI”, a supervising agency responsible for the reception of complaints from the citizens against the public utilities for excessive charges).

The lack of interest of the people to find out about corruption or even accepting the existence of it at the highest level can also be explained by the lack of factual information. Very little financial information from the State was produced, and no kind of official information on corruption indexes, like, for instance, the number of investigated cases and sanctions.

3. Components of the National Integrity System. The Institutional Base of Integrity

The National Integrity System (NIS), according to the definition of Transparency International, is the group of elements that make possible that the different components of the State and the civil society get organized and act with transparency, efficiency and efficacy. The National Integrity Systems are characterized by an interdisciplinary approach that combines different political, economic, legal, sociological and administrative elements.

The institutions of a State, defined by Douglass North as the rules of the game, both formal and informal, as well as the mechanisms to make them effective, that conduct the human interactions in society, are necessarily understood using a systemic approach, where power is not concentrated in just one of them, but it is horizontally distributed among them all. The center of this image is a fundamental constituent of responsibility, or accountability, in which the institutions that constitute the “pillars” of the System confront and pry the others (they supervise and are supervised by the others) and, in the last resort, confront the citizens.

The period of great corruption that had to face Peru in the last years, implicated the take over by particular interests of the greater part of the institutional “pillars” of integrity. This section summarizes the main conclusions that came out after responding to the questionnaire proposed by TI.

3.1 The Executive

Inoperative political supervision mechanisms (administrative checks and balances on decisions) due to the formation of the Congress and the control of the regime over the majority

Formally, when asked, the Executive has to justify and explain its acts to Congress. In addition, the Constitution contemplates the questioning of Ministers, with possibility of censoring. In practice, during the decade of the nineties, the explanations and justifications of the Executive to Congress consisted of formal presentations that always ended up with the vote of confidence. The Congress never requested the Ministers of Defense and of Internal Affairs to give explanations about the operations suspected of

being irregular. In the same way, the efficacy of the mechanism of questioning was suspended because of the lack of autonomy of Congress.

Extremely restricted judicial control mechanisms

Formally, the Peruvian legislation contains a series of mechanisms that protect the citizen in the case of arbitrariness or misuse of power by the Executive. These mechanisms are the so called Actions of Guarantee (Acciones de Garantía) and are employed before the Judiciary against the acts or omissions of authorities or public officials who harm or threaten the individual freedom and the rights protected by the Constitution. In addition, the Constitution created the Constitutional Tribunal as the autonomous control organ to guarantee the constitutionality of laws and actions of the organs of the State.

However, the take over of the Judiciary by political interests in the recent years, extremely reduced the effectiveness of these mechanisms. Like this, during the judicial reform, courtrooms specialized in Public Law were established apparently to generate coherence in the handling of the Actions of Guarantee and to promote the specialization of judges. Even though at the beginning there was an apparent improvement in the quality of the sentences, later on there was evidence that such measures of administrative reform were employed to manipulate cases. The specialized courtrooms were composed of regular and of substitute and provisional judges. Because of the little significance of their offices, these judges were easily influenced in favor of the hidden political power of the president's advisor Vladimiro Montesinos. These magistrates were the protagonists of the most debated verdicts and judicial accusations of the last years, in concert with or put under pressure by Montesinos, who managed that his "clients" were helped and his enemies damaged.

In relation to the Actions of Unconstitutionality of Standards, between 1997 and 2001 it was not possible to declare the unconstitutionality of any law, because the Constitutional Tribunal never had the quorum required for doing this— six of seven votes are required— since Congress dismissed 3 of its 7 members, as they resolved the action against the law that permitted President Fujimori to have a second re-election.

The functioning of the Executive

In a context of ample freedom and a lack of institutional controls, complemented by the sustained index of popularity of the president, the Executive acted following its will in a barely transparent and informal way.

- Authoritarian and informal government
The regime of Fujimori attempted to resolve the great national problems in a centralized and authoritarian way, and was very effective in the subjects of greater concern to the public, namely inflation and terrorism. The authorities and the public officials who acted following their own will, considered the procedures and formalities were just a normative tangle that served as an obstacle to their work. The government did not take measures to modernize and simplify them, but instead generated exceptions with the use of explicit norms, and evasion, using dubious methods. This was completed with the limited public discussion and justification of the measures.

- **Lack of transparency**
During the nineties, the Executive was not willing to offer detailed explanations or to share information supporting its decisions. Generally, an ambiguous and abstruse language was used, so that the norms that could have a negative impact on the public opinion would pass unnoticed through the newspapers and no public debate was generated around them.
However, until now, there is not a single proposal to regulate the procedure of expedition of norms of general character of the Executive.
- **Diversity**
It has to be mentioned, that not all the institutions of the Executive were corrupt. Some modern public institutions that were managed by technocrats, such as Indecopi (National Institute for the Protection of the Consumer and Copyright), Osiptel (Supervising Organism of Private Investment in Telecommunications), and Ositran (Supervising Organism of Investment in Public Transportation Infrastructure), made efforts inside the government to promote more transparency, to motivate their decisions in a proper way and to make their proposed laws public in order to gather opinions from those interested and from the public in general. Other efficient institutions of the public sector were taken over by the political corruption by the last years of the regime.

In the same way (excepting the cases that presented irregularities), the bidding processes (public roads, ports, airport) and the privatization of public companies were kept in the technical sphere, with very little political interference. Even though the „mafia“ of the regime later on used the money gained through the privatization, the privatization processes by themselves were transparent and effective in relation to the number of bidders, the price paid, impugnation, and other aspects.

3.2 The Congress

Failure to fulfill the supervising function

During the nineties, the Legislature did not make use of its attributions as a supervising and controlling agency over the Executive. For instance, in questions of budget, even though the Constitution says that the Congress has to approve the Budget of the Republic, in practice, the Ministry of Economy and Finances was the protagonist in the budgetary process. In the same way, important amounts of public expense were of confidential character, favoring corruption. Like this, the budgets for the Ministry of Defense and the Ministry of Internal Affairs are not made public, and only the Budgetary Commission of the Congress, the Ministry of Economy and Finances and The Comptrollership receive information about each one of the budgetary phases of these sectors. In practice, the Ministry of Defense and the Ministry of Internal Affairs concealed the levels of specific separated values. The Congress was only informed about the levels of generic items, like “personnel and social obligations”, “goods and services”, “investments”, and “other running expenses”. Neither the Congress nor the Comptrollership, who held the faculty to observe those amounts, demanded a greater specific support of the expenses. The “confidentiality” towards the budgets of the Ministry of Defense and the Ministry of Internal Affairs favored the economic and

political corruption that took place during the last years in Peru. The corrupt “mafia”, lead by the advisor of the Intelligence Administration of Peru, counted on unlimited resources to bribe politicians, judges, and public officials.

Captured congressmen

As mentioned, many congressmen who were members of the opposition, openly or secretly moved to the party in power in the government, in exchange of monthly payments. This took place, even though the congressmen are highly remunerated since 1995; currently, the monthly remuneration of a congressman is of approximately US\$ 4,500, plus US\$ 4,500 for operative expenses. This salary is a very attractive income that should discourage the search of higher incomes. However, this was not always the case.

The explanation for this was the capacity of the regime not only to bribe with important sums of money, but also to manage trials, to offer public offices, to impulse and promote political careers, and in some cases, to blackmail. Another aspect that could have probably favored this behavior among the congressmen is that they have a very weak bond with their voters. In the last general elections, the congressmen were elected by “single national district”, so that they don’t feel obliged towards their voters, and the citizens don’t ask for explanations. This system distances the electors and their representatives once the election is ended, and the citizen loses all incentive and capacity of acting as a supervisor.

Absence of rules concerning gifts and hospitality

The regulation of the Congress does not include any rule on these subjects, in contrast to the previous regulation, that was in force until 1995. Without any specific regulation on these matters, the congressmen do not need to make the acceptance of gifts and hospitalities transparent. There are no criteria to discern if the benefits a congressman obtains from people or private companies are legal or constitute questionable profits.

3.3 The Electoral System and the Financing of the Political Parties

3.3.1 The Electoral System

Captured institutions

The Constitution conceives an electoral system that is composed of three formally autonomous institutions: the National Jury of Elections, the National Office of Electoral Processes, and the National Registry of Identification and Legal Status. The National Jury of Elections inspects the legality of the election process; the National Office of Electoral Processes is responsible for organizing all the electoral processes; and the National Registry of Identification and Legal Status is in charge of registering the voters. The origin of the directors of these institutions should guarantee their impartiality. As to the National Jury of Elections, it is a collegiate body composed of representatives designated by the Judiciary, The Lawyer’s School of Lima, and the public and private Universities. The directors of the two other institutions are chosen by

the National Council of the Magistracy (Consejo Nacional de la Magistratura), an autonomous organism responsible for the evaluation and the selection of judges.

During the elections that took place between 1995 and 2000, the electoral authorities were not independent, as illustrated by the recordings taken by the National Intelligence Administration of Peru as they were negotiating agreements with the regime. This was radically changed with the Transition Government, which convoked elections in 2001, supported by electoral institutions acknowledged by the public opinion and the domestic and international observers for their impartiality.

The manipulation of the electoral system began with the control of its authorities. On the one hand, a Judiciary controlled by the regime designated the president of the National Jury of Elections. The same occurred with the representative of the Public Ministry, and with that of the public universities, the latter elected by the intervening commissions designated by the Executive. This, added to the arrangements made by the president's advisor Vladimiro Montesinos to bribe or press the public officials, resulted in the manipulation of the referendum requested by a sector of the citizens, to prevent the second candidacy of the president and then in the election process of the year 2000.

3.3.2 The Financing of Political Parties

Absence of rules

The Constitution includes some very general rules on the financing of political parties. It emphasizes the necessity of issuing rules that assure the "transparency of the origin of their economic resources and the free access of the media property of the State". The Elections Law includes some dispositions related with the declaration of takings and expenditures of the political groups that take part in the elections, which are obliged to present a projection of their expenses before the elections, and a declaration of the amount and the concept of expense after the elections. A regulation of the National Jury of Elections establishes that this organism can ask for additional information. It is worth to mention that these regulations make reference to the projections of expenses and their destination, focusing only in the information about the contracting of publicity announcements in the media. The norms do not regulate the presentation and publication of information about the donors and the amount of each donation and the do not require the publication of the accounts of the political parties, nor do they establish transparent procedures for their examination.

In Peru there have never existed regulations directed to make the financing of political parties a more transparent issue. It resulted socially acceptable that the candidates with greater possibilities of triumph would receive important sums of money, especially from the private sector. Among politicians, there has always existed consensus not to establish restrictions or requirement of publication.

It can be concluded that the lack of regulations on the incomes and expenditures of the parties, the political movements and the candidates highly contributed to create a favorable environment for the political corruption of the last years in Peru. For instance, in one of the videotapes recorded by the NIS, a congressman member of the opposition can be seen as he was receiving a sum of money from an agent of Vladimiro Montesinos for the electoral campaign of his wife, who was a candidate for the

municipal elections. In exchange of the money, the congressman accepted to hinder parliamentary investigations on the procurement of weapons. In the investigation procedure, the accused supported his defense on the fact that it is not illegal to receive donations of private persons. Some more serious cases were made possible due to the normative vacancy on this subject: during the municipal elections of 1998 and the presidential elections of 2000, the candidates of the regime were financed with public donations.

3.4 The judicial system

Former problems justified a reform

In Peru, the judicial system does not function in an adequate manner: the judicial processes are not efficient (high costs and slow trials), there is political influence, the judicial decisions are uncertain, there is corruption, and there is an unequal access to justice. As a result, the judicial system promotes juridical insecurity. For many decades, there has existed a consensus on the urgent need for improvement, not only through reforms of procedures and the recovery of the infrastructure, but also through the reinforcement of the independence and the capacity of judges, so that the Judiciary can act as a counterbalance to the other branches of the State (the Executive and the Legislature) and stops being so vulnerable to groups of economic and social power.

The reform made during Fujimori's regime, started in an promising and favorable way with the support of wide sectors, but ended being only a part of the plan of the regime to control all the institutions related with justice in Peru: The Public Ministry, the National Council of the Magistracy, the Academy of the Magistracy, and the Constitutional Tribunal.

During the first stages of the reform, there were innovative measures directed to make the administrative body of the Judiciary a more modern and dynamic organization, with a positive impact in the administration of massive justice. The Office of Control of the Magistracy was also fortified, so that it could perform important supervising measures that ended up with the destitution of magistrates and jurisdictional auxiliaries. In the same manner, efforts were made to improve the academic level of the magistrates, by means of instruction programs for candidates and further education and advanced education.

However, as a whole, the reform left a negative balance:

1. The magistrates that demonstrated independence were systematically changed in order to distance them from the cases of political interest. They were either transferred or submitted to investigation procedure. This was made possible through measures that were supposedly directed to accelerate the solution of conflicts. Temporary courtrooms and tribunals were created, pertaining to the corporative judicial office or as specialized tribunals that were also used with purposes of practicing political control over the judges.
2. An excessive number of provisional and substitute magistrates that were made responsible of resolving the cases of greater political implication. The reason for

this was, that provisional or substitute magistrates respond better to external indications, since their position does not offer any securities.

3. Renouncing of the Judiciary of the competence of judging offences like high treason and other serious crimes committed by civilians. These are now judged by the military jurisdiction, and so, the essence of the martial court has been eliminated, which is to resolve the crimes of function committed by the police and the military and nothing else.

Moreover, the reform did not manage to resolve the most basic and ancient problems: the lack of competence and corruption. Until now, a great number of magistrates do not have the sufficient professional and ethical level necessary to accomplish in an adequate manner their functions. For this reason, they prefer to concentrate themselves in formalities, since this allows them to employ “objective” reasons as a shield in order to accede to or to deny the petitions of the parts, instead of using their “subjectivity”, that could be their own justice criteria. Like this, there is the perception that there has been a retrocession due to the lack of political independence.

Limited autonomy of the Magistrates

Formally, the judges and the magistrates are independent. The law is clear and extensive in regard to their independence, their election is based on merit and career, and there are guarantees to prevent an arbitrary removal. Consequently, according to the Constitution and the Law, all magistrates who practice a jurisdictional function, are part of the judicial career. Previous to the appointment of the magistrates, a public selection process of merits is made, together with a personal evaluation, a process fulfilled by the National Council of the Magistracy, which is an independent organism, composed of representatives of different organizations.⁷ The career of a magistrate develops through promotions, which take place with the formulating of a chart of merits. This includes the years of service and the trajectory in regard to the procedure and resolution of legal actions, probity, sanctions and disciplinary measures, academic degrees, distinctions, publications. The magistrates can only be removed from their office as a consequence of serious grounds⁸. The removal is made after an investigative procedure, carried out by the Judiciary’s Office of Control of the Magistracy.

However, a high percentage of judges (82%) do not have a steady employment because of having a provisional or substitute status⁹. The provisional magistrates have been designated to practice an office in a particular hierarchic level, but temporarily assume a superior magistracy. The substitute magistrates are lawyers that provisionally fill the function of a magistrate by designation of the Executive Commission. This concept was

⁷ One member is elected by the Supreme Court in plenary; one member is elected by the Board of Supreme Public Prosecutors; one member is elected by the College of Lawyers of the country; two members are elected by the other Professional Colleges of the Country; one member is elected by the Rectors of the Public Universities of the country; and one member is elected the Rectors of the Private Universities of the country. Two additional members can be elected by the Council itself, selecting among several listings proposed by the representative institutions of the Working and the Business Sectors. .

⁸ Like, for instance, to make an attempt against the respectability of the Judiciary, and for having received a sentence depriving them from liberty as a consequence of a fraudulent offence.

⁹ According to the records provided by the Administration of the Supreme Court, in February 2001, the judicial system counted 1626 magistrates; from which 283 were regulars. The rest, 276 provisional and 1067 substitutes, were filling a post temporarily. Taken from PNUD, Informe de la Misión “Fortalecimiento Institucional de la Justicia en el Perú” (Report of the Mission “Institutional Reinforcement of Justice in Peru”), July 2001

created in order to cover for the short term the posts of magistrates that were on vacation or on leave. The number of provisional and substitute magistrates increased during the nineties for two main reasons. On the one hand, in 1992, the government, having assumed extraordinary faculties in a unilateral way, dismissed a large number of judges. On the other hand, the judicial reform demanded additional judges in order to accelerate the justice administration and to eliminate the great quantity of cases to be resolved. This process meant the arrangement of one third additional tribunals and temporary courtrooms (approximately 400), which in part are still in use. The larger part of these cases was given to provisional or substitute judges.

Since they are not protected against the arbitrary removal from their office, the provisional and substitute judges are more vulnerable to political and economic influence. These magistrates can be removed from the instance they are working at, and be transferred to another courtroom. The return to their original office means for the provisional magistrates to have a significant reduction of their income, and to descend from hierarchical level, what is a very negative effect in a vertical institution such as the Judiciary. The substitute magistrates are even more vulnerable, since the revocation of their assignment means the loss of their jobs.

A solution for this problem could be to designate in the shortest term possible all the judges that are needed. This may be difficult until the process of concluding all the cases still to be resolved is finished and the exact number of magistrates the Judiciary currently needs is identified. Seen from this perspective, the solution to the problem should start by estimating the number of permanent magistrates the country requires.

3.5 The Public Administration

3.5.1 Public office career

Diversity of regulations

The Basic Precepts of the Public Office Career established in 1984 determine the regulations applied to most of the public officials. This law refers to the conditions of admission, permanence and promotions of public officials, using the general principles of public office common in other countries: admission after a selection process entering to the lowest level; permanence; succession of merits; and equal opportunities. As a body of laws, the Decree DL 276 is still in force, although many of its resolutions have lost their effectiveness through other laws, or are ignored in practice. The public office career established by the DL 276 does not include the officials filling political positions or a post of confidence. In the same way, the members of the Judiciary, the Legislature, the Diplomatic Corps, the Armed Forces, and the teachers, are not part of the public office career, for being regulated by special laws that are similar to the law of Public Office Career, and, in some cases, have more benefits.

In order to avoid the lack of flexibility of the public labor regime and the effects of an expensive public pension system, in the last years, specific groups of public officials have been assigned to the private labor regime, especially those who work at new or reformed entities. In these cases, the regulations concerning public selection process for the admission are not necessarily applied, nor the promotions, sanctions and

administrative procedures established by the DL 276; each institution has defined its own policy in regard to these matters. The private regime allows offering more attractive remunerations, which can be assigned directly by the entity, respecting the parameters authorized by the Ministry of Economy and Finances for each case. However, this regime does not resolve central issues. For instance, public officials subject to the private regime are exposed to arbitrary removal from their office.

There is no reliable data about the number of public servers in the country, or a central registry with information about all of them. A commission established by the Transition Government¹⁰ estimated there are 945,000 public officials (excluding those who work at regional offices.) A large fraction of them is ruled by special labor regimes (military, police, judges, diplomats, medical officers and teachers) The rest of the public officials are subject to the DL 276, or to the private labor regime, the contracting regime, or render their services through companies (*services*). In this manner, the concept of public office career has been diluted and has lost importance.

The Public Office career has lost its prestige

The public office career has lost its prestige in front of the public opinion. The system does not offer appropriate incentives, so that the best professionals do not ambition entering and remaining at the service of the State. The group of entities that were allowed to contract personnel using the private regime and paying better loans has been able to form an efficient and motivated bureaucracy. In the presence of this, the rest of the public sector personnel feel discouraged, badly remunerated and relegated. There are no surveys or empiric studies to demonstrate this, but after taking a look at the senior public officials working at the ministries, it can be concluded that those who are in fact in charge of the main technical positions are not part of the public office career.

The administration of the personnel under the public office career regime is a complex matter. The regulations for the public office career constitute a complicate system. The legislation is ambiguous and contradictory. As a result, when it comes to sanction a public official for misconduct, the public entity has to carefully fulfill all necessary requisites, formalities and procedures. Otherwise, the Judiciary could order the reinstatement of the public official.

The legal framework does not include any important regulations in order to ensure the independence and transparency of the public office. For example, there are no regulations concerning the acceptance of gifts and hospitalities, or protection for whistle blowers. Only a rule proscribing the designation or contracting of a person who is related to the public official who makes the decision has been recently approved. Even so, these restrictions are evaded using methods such as settling the person in a different institution.

3.5.2 Public Procurement

The regulations on public procurement encompassed in the Law for Public Procurement and State Contracting, require the holding of competitive bidding processes with a free

¹⁰ A Multi-sector Commission responsible for Examining the Situation of the Central Public Administration Personnel, created by the decree DS 004,2001,TR. The report was published on July 15 2001.

contest of bidders for every public procurement exceeding the amounts established each year by the Annual Budgetary Law. The rule establishes various procedures, which are applied depending on the type of operation: the contest in the case of services; a bidding process for the procurement of goods and for public works; and direct awarding, for goods, services, and public works that are within the limits established by law. This rule must be obeyed by all public entities, including autonomous organisms, dependencies of the Judiciary, regional governments, and public utilities, with some exceptions granted by the law. The Law for Public Procurement and State Contracting contemplates some cases where bidding processes or contests are not obligatory, either by using a modality of exemption or the non-application of the entire law. For the exemption from a bidding process, a resolution must be previously enacted and published, along with a suitable foundation. In the case of procurement with a secret military character or of internal kind, the resolution authorizing this is not published in the official gazette. Besides the possibility of exemption contemplated in the regulation, special contract regimes have been created by the law, especially for specific institutions in order to accelerate the process. Also, detailed authorizations have been issued by a Decree of Urgency (a rule of the Executive that has the character of a law for extraordinary reasons).

In the main, the Law for Public Procurement and State Contracting includes a series of measures directed to guarantee the publication and transparency of the processes, even though sometimes these measures end up being exaggerated formalities that result in an extremely slow process. The regulation for public procurement has been adequately divulged; public entities are obliged by severe requirements to divulge their procurement plans and specific operations (if this is not done inside the established terms, the process can be annulated); the direct contracting of a single source is not permitted, unless a suitable argument is given; the main parts of the process must take place within a public hearing; an independent tribunal revises in the last resort the refutations against the process. The vulnerable areas in this matter were the procurement of the Ministry of Defense and the Ministry of Internal Affairs, and the exempt of bidding processes.

The secret character

The procurement processes of the Ministry of Defense and the Ministry of Internal Affairs have always lacked transparency. The law conferred them a “secret” character, without determining what kind of goods or services should be considered as such. Like this, when they were exempted of a bidding process, the law authorizing this was not made public. Millionaire operations were made, and are now being investigated by the Judiciary and the Congress. The preliminary results of these investigations reveal that these operations were used by Vladimiro Montesinos and former President Fujimori for taking possession of public funds.

The exempt of bidding processes

The greatest part of exempts of bidding processes authorized by the Law for Public Procurement and State Contracting were supported by giving them an “urgent” or “emergency” character. In many cases, this was related to the difficulties many public entities had to face as a consequence of a lack of preparation to carry out the new law (the making of bidding processes for the selection of security services or the contracting

of an insurance company, for example) or to quickly solve those problems that were not foreseen by the law (like the acquisition of medicines in bulk, for example).

The irregularities emerged when specific exemptions were approved by means of an Urgency Decree. Various accusations of corruption are currently under investigation, like the direct acquisition of machinery and medicines coming from China.

A significant lack in the legal framework is the absence of a register of the companies that have bribe records, in order to disable them to make contracts with the State.

3.5.3 Police

The Police of Peru is a centralized institution and a branch of the Ministry of Internal Affairs. The Commissioner of Police is not autonomous. It is a post of confidence and the permanence in office is determined by the President of the Republic, as the Superior Officer of the National Police of Peru.

According to the regulation, the admission to Police is based on merit, and only those who have attended the Schools and Institutes of the National Police of Peru, or other similar colleges can apply. The promotions are made according to professional performance, potential value for serving the police, and duration in the rank. The members of police are subject to be changed of position by order of the Commissioner in case of promotions, specialization, or limits of permanence. In practice, the Commissioner's decisions are influenced by persons of a higher political and institutional rank. For promotions, for instance, the Commissioner is supposed to take notice from the evaluations made by the personnel direction of the institution, but in the end, the opinions and recommendations of colonels and generals carry more weight.

The Police of Peru suffers from traditional corruption. The convergence of factors like a low pay, the absence of adequate internal control systems and fair sanctions, deficiency of infrastructure and many other, produce a corps of discouraged officers with a high propensity for corruption. The bribery of traffic officers has become an extended practice in Peru; and there is knowledge that police officers are involved in delinquency, kidnapping and drug traffic. For some decades, police has been the institution drawing up the list of the less reliable institutions, according to public opinion surveys.

Even though there is a General Office for Complaints, the number of complaints is very low because of the lack of confidence of the people in the competence and disposition of the superiors to investigate and to sanction the crimes committed inside the institution. Like this, there is no efficient mechanism to control and investigate the activities of the police. Only the media and the Ombudsman perform an outside control function.

3.6 The Supreme Audit Institution (Comptrollership) and other Watch Dog Mechanisms

3.6.1 The Comptrollership (La Contraloría General de la República)

The Comptroller (General Auditor) is the highest official in the National System of Control, responsible of supervising the lawfulness of the execution of the State Budget, the procedures of the public debt, and the actions of the institutions subject to control. The Constitution guarantees independence for the General Auditor, who is designated by the Permanent Commission of the Congress, on suggestion of the Executive, for a seven-year period. During his period of functions, the General Auditor can only be removed as a result of a serious fault, like for example, the breaking of the Constitution, the abandonment of his office, or the perpetration of an offence during the fulfillment of his functions, causing a significant financial damage to the State. The process of removal is made through a “Constitutional Accusation” in front of the Congress.

The General Auditors designated during the government of Fujimori were persons close to the Executive, nominated due to the parliamentary majority of the party in power in the government, and proved to be very submissive in their office.

During that period, the main investigations carried out by the Supreme Audit Institution were related with the activities of the regional governments, where serious irregularities could be detected. However, in financial terms, these investigations represent a virtually trivial amount compared to some of the few cases, in which the regime was involved, dealing armament procurement. It is also worth to mention, that important accusations made by the media supported with significant credibility elements, were not investigated. For instance, some of the omissions made by the General Auditor Víctor Enrique Caso Lay, were:

- Deviation of public funds with electoral purposes.
- Expenses of the defense and transportation (road construction) sectors, constituting the greatest expenses of the former government.
- Excessive purchases of medicines by Essalud, which is the entity in charge of the social security for health.
- Handling of funds destined to the Intelligence Administration.
- Handling of funds destined to the Government’s Palace.

It can be said, that the Comptrollership, instead of being a control instrument, functioned as a supporting mechanism for organized crime, backing extortion. A significant part of the investigations were rather targeted to those ministers and public officials that did not wish to make part of the turbid objectives of the regime.

3.6.2 The Ombudsman

The Ombudsman’s Office is an autonomous organism created by the Constitution in 1993, in charge of defending the constitutional and fundamental rights of the individual and the community, and of supervising the fulfillment of the obligations of the State Administration. The Ombudsman is elected by the Congress. After his election, he has complete independence when practicing his functions. He is not subject to imperative mandate, and he does not take instructions from any authority. He can only be removed for negligence, for committing a criminal offence, or for incompatibility.

The Ombudsman makes recommendation reports after investigating concrete cases and also on his work in general. He reports to Congress at least once a year, and on request. An extract of his reports appears in the official gazette “El Peruano”. The reports have

to include the number and type of complaints presented, those that were rejected and the cause, and those that were investigated and the results of these investigations.

Even during Fujimori's regime, did the Ombudsman's Office play an important role as an institution to which the citizens can appeal for the defense of their rights, especially in the area of human rights. The launching and the good performance of this institution were based on the prestige and leadership of the first Ombudsman in office, and on the commitment of international cooperation. For instance, even though the government is not required to adopt the Ombudsman's recommendations, it is estimated that about half of the recommendations were implemented. Starting in 1998, the work of the Ombudsman's Office became more difficult with the Executive sections that were more connected with the corruption net.

The Ombudsman acted with independence and was never removed from office. He resigned when he decided to participate in the elections as a presidential candidate. This was considered as being negative for the institution, for there is the risk now, that the Congress, when evaluating the candidates for the Ombudsman's Office for the next election, could take into account the political factor of the candidate, rather than his personal merits. For example, the congressmen could make a calculated election in order to hinder the formation of a potential political rival.

3.7 Civil Society

3.7.1 Access to information

The Constitution guarantees the people's right to ask for information without expressing the cause, and to receive it from any public agency, excepting information that affects personal intimacy and other that could be excluded by law. This constitutional right has been regulated through a specific law, but there existed other legal instruments that assisted the citizens in getting informed:

- The Law for Administrative Simplification acknowledges the people the right to access without any limit information regarding administrative procedures where they are interested parties.
- The Law for Fiscal Prudence and Transparency, enacted by the Congress toward the end of Fujimori's regime, requires the Executive to divulge its macroeconomic projections, as well as their foundations, and semester reports related with these objectives.
- The Legal Framework for the Growth of Private Investment requires all public entities to divulge the books of administrative proceedings, in Peru called "TUPAS" (textos únicos de procedimientos administrativos), which contain the only obligatory requirements and the costs for the administrative proceedings that take place in the entity.

In addition, the Transition Government issued a law establishing the basic framework for the public access to information on public finance, including the publication mechanisms and methodology, and what kind of information should be divulged by

public entities in general, as well as the information that the Ministry of Economy and Finances should make public, and other organs from this sector. In the same manner, the public entities were encouraged to create internal procedures in order to be prepared for the request of information.

In spite of this regulation, the access to information is still difficult and expensive. The public entities give preference to particular members of the media, and difficult the access for others. At regional level the problem is even more serious. In many cases, the lack of resources in the public sector is the reason for the information not being available, as the institutions do not have the personnel nor the necessary material to generate, file, and process information. Like this, the public entities are slow in giving the information (or deny having it), make unnecessary requirements, and demand exaggerated fees.

These problems confirm the need for a legal framework on the access to information, not only public finance information, but also the rest of information with a public character, in order to assure an increase and a continuity of the efforts made in this field. The information Web site of the Congress, for instance, was not approved by any law, so that the information the Congress makes public today could be eventually restricted.

3.7.2 Participation of Civil Society Organizations in Public Matters

The following facts evidence that the private sector has not played an active role on watching over the public sector's performance:

- There are no stable cooperation means between the public sector and civil society organizations. At times conventions are signed, especially in regard of the execution of international cooperation projects (what is normally a requisite from the international side).
- There are too few groups of citizens or firms making campaigns against corruption.
- There are almost no private organizations monitoring the performance of the government. Some NGOs do this in very specific areas. For example, the private association "Manuela Ramos" supervises issues related to women, like mother-child mortality). Other institutions monitor specific subjects, like the environment, anti-drug policies, and electoral themes.

This situation has changed in the last months, with an increased participation and interest from civil society organizations to discuss about corruption in different forums, to provide diagnostic and suggestions to the authorities and the public opinion, and even to form alliances between the different organizations in order to include the fight against corruption in their agendas. In this matter, the following efforts can be brought to light:

- National Anti-Corruption Initiative (Iniciativa Nacional Anticorrupción, INA). This is commission was convoked by the Transition Government and is composed of civil society members coming from different sectors who are renowned for their probity. The objective was to make a diagnostic document including proposals of anti-corruption policies, and to present this to the administration of President

Toledo. The final document encompassed four main areas: institutionalization, public ethics, transparency and rendering of accounts, and citizen control. The effort included the carrying out of regional meetings to give feedback to the process.

- Anti-corruption Coalition “Proética”. Composed by renowned civil society organizations: Civil Association Transparency (Asociación Civil Transparencia), Andean Commission of Lawyers (Comisión Andina de Juristas), Press and Society Institute (Instituto Prensa y Sociedad), and Exporter’s Association (Asociación de Exportadores). The first public activity convoked by the Coalition was the First National Anti-Corruption Conference in June 2001. This conference was coordinated along with the Ministry of Justice and approached the corruption subject from different perspectives thanks to the participation of senior public authorities, important figures from the private sector, and international specialists. The event was also an occasion to discuss the progresses of the National Anti-Corruption Plan of the National Anti-Corruption Initiative, INA. Proética also works on education proposals, the monitoring of public contracting, the carrying out of surveys and public opinion polls, and the expansion of the Coalition.
- First Anti-Corruption Conference of the Business Sector. This was an effort of the business sector, convoked by the Chamber of Commerce of Lima, gathering national executives and international and national experts for three days to discuss on this subject. By the means of videoconferences and the Internet, hundreds of executives, university teachers and the public in general could play a part in this event.

In addition, there are many different national and regional organizations that include the subject of corruption in their activities. However, it is worth mentioning that most of the anti-corruption initiatives are new, and, in most of the cases, there is no knowledge of concrete and continuous activities that could have had an impact.

3.8 Information and Public Awareness

The Constitution and the Law guarantee the freedom of expression and the freedom of the press. During the second administration of Fujimori, the regime manipulated information and the different political parties and movements did not have equal access to the media during the electoral campaigns. After the collapse of Fujimori’s regime, various videotapes recorded by the Intelligence Administration were made public, showing how the regime achieved to gain control over the television. Everyone who owned a television channel could be seen having conversations with the intelligence advisor, Vladimiro Montesinos, about their information policies. The most submissive of them consulted every day the content of their news broadcastings, talked about the journalists they would hire or keep on program, and asked for money-making headlines, like exclusive interviews with top terrorists in jail.

The manipulation of the press was supported by serious financial problems and the extraordinary tax debts the television channels are still paying today. The owners of these programs asked for or accepted reductions of their liabilities in exchange of the influence of the regime on their information policies.

In addition, the manipulation also involved the inclusion of government publicity. It is worth to mention, that during the second administration of Fujimori, a law was enacted regulating the exchange of government publicity for tax exemption, favoring the television channels, the radio stations and the newspapers in default, and damaging those who had paid consistently their taxes.

In regard to the press, the regime managed the information that appeared in every low cost newspaper and tabloids by the means of informal agreements. Other newspapers were managed by their owners merely with a commercial intention, without any regard to ethics. They submitted themselves to damage the image of some public figures, tarnishing their reputation, and went unpunished, because the Judiciary never discouraged such actions.

During the election period of the year 2000, as former president Fujimori was a candidate, the press completely supported his party, "Peru 2000". The space for electoral publicity was entirely monopolized, limiting the access to the other candidates. In the second turn of elections, as a result of the pressure made by public opinion leaders and by international electoral supervision organizations, the regime reduced the pressure over the media, and opened the access to the other candidates, but never in prime time and paying excessive sums. Various television programs, and mainly the public channel, continued to privilege the activities of the president-candidate.

The subject of television is particularly sensitive for two reasons. On the one hand, it is the information vehicle with the greatest impact and influence on public opinion. On the other, as it uses a limited public good, namely the electromagnetic spectrum, television broadcasting requires a license conferred by the Government. These licenses were granted many years ago without having to go through a bidding process, and since then, are being renewed almost automatically. In fact, the renewal of the license is not based on the fulfillment of certain requirements or on performance. At present, some political groups are promoting the idea of establishing some kind of organ to keep an eye on the behavior of television channels, in order to restrict and condition the renewal of licenses. These initiatives, however, are being rejected by the majority of public opinion leaders and journalists, emphasizing the serious danger of censorship and manipulation involved in any attempt of evaluating or monitoring the press.

4. Progress made in the Fight against Corruption¹¹

The Transition Government (November 2000 - July 2001) set off some anti-corruption measures as the main component of its administration plan. The current government of President Toledo has kept some of these initiatives, and has started other complementary actions. The areas of investigation, pursuit, and judicial actions against the members of the corruption net have been the main issues for both governments, showing some disregard for the areas of prevention, creation of policies and education.

Various official organisms are dedicated to the investigation of the events occurred during the ten years of government of Fujimori. The Executive with the creation of the

¹¹ The totality of specific measures that are being developed since the establishment of the Transition Government are not included in this section, but only those of a greater impact and innovation.

Public Prosecutor’s Office Ad-Hoc, the Congress with the establishment of various investigation commissions and sub-commissions, and, the Administration of Justice, with the help of the Public Ministry and the Judiciary, with the engagement of prosecutors and specialized judges.

The success of the investigations since the publication of the first videotape showing a concrete case of corruption is very significant, given the magnitude of the net that operated in the country. However, the progress of the investigations has been affected by a lack of budget, by the continuation of a few remnants of the corruption net who are still operating in some sectors, and, in the main, for the ambiguity in the areas of activity and for a lack of coordination between the organisms dedicated to the fight against corruption.

On the other hand, specific measures have been adopted in other fields, like the implementation of information and transparency units by the Executive and the Congress, the summoning to the National Anti-Corruption Initiative (INA), and most recently, the designation of an “Anti-corruption-Appointee” (“Anti-corruption-Tsar”).

4.1 The Public Prosecutor Ad-Hoc¹²

Paradoxically, it was former president Fujimori himself who installed on November 3, 2000, the Public Prosecutor’s Office Ad-Hoc to take over the Montesinos Affaire (that was later on extended to the Fujimori Affaire), with the purpose of defending the State’s interests in the corruption cases. At the time this office was installed, the government’s structure was completely occupied by the visible leaders of the criminal organization. Inside the Public Ministry was the District Attorney, who had an authoritarian power over the subordinate attorneys. The Supreme Court and an important part of the Judiciary were being controlled by an agent of Montesinos. The Congress of the Republic was dominated by the party in power in the government and was filled with turncoats. The high ranked officials of the armed forces had submitted themselves to the regime, as well as many other governmental institutions, like the Constitutional Tribunal, the National Organization of Electoral Processes and the National Jury of Elections, among others.

Once installed, the Transition Government provided the Public Prosecutor’s Office Ad-Hoc with all the necessary conveniences. This Office, led by the Attorney José Ugaz and supported by a group of lawyers renowned for their professional competence and their probity, designed a strategy from the start to confront this problem and started with the investigations. At the beginning, it was necessary to conceive and to implement a smart and efficient system, since the Peruvian penal system was not prepared to confront a criminal problem of such magnitude. For this purpose, the Prosecutor’s Office proposed a series of laws to fulfill these objectives.

Law Nr. 27380	The creation of a System of Anti-Corruption Prosecutors, with a tribunal and judges specialized in anti-corruption matters.
Law Nr. 27379	Empowers the Anti-Corruption Prosecutors to demand the judges to adopt Precaution Measures outside the process, in order to avoid the

¹² Information taken form the report of the Public Prosecutor’s Office Ad-Hoc corresponding the month of October (2001).

	runaway of the accused.
Law Nr. 27378	Establishes a regime of Benefits for Effective Collaboration.
Law Nr. 27399	Faculty to impose Personal Precaution Measures to those public officials with the right to pre-trial.
R.S. Nr. 281-2001-JUS	Regulates the intervention of the Public Prosecutor Ad-Hoc in the Benefits agreements.
D.S. Nr. 029-2001-JUS and Res. Nr. 964-2001-MP-FN	Regulates the Administration of seized assets.
D.S. 035-2001-JUS	Regulates the Law for efficient collaboration.
D.U. Nr. 122-2001	Creation of the Special Fund for the Administration of Illegal Money Acquired to the detriment of the State.

The task of the Public Prosecutor's Office in this first stage has mainly consisted in investigating the possible corruption cases and in reporting these to the Public Ministry and/or the Judiciary. Various detention orders have been issued and implemented, so that there are a large number of people under arrest, like one District Attorney, one Supreme Member of the Council, one Regional Prosecutor, one Mayor, four Congressmen, one Electoral Magistrate, one Director of the National Office of Electoral Processes, three former Ministers, fifteen Generals and one Admiral.

As these processes advance to the next resorts, the Public Prosecutor's Office represents the interests of the State in these trials, either by supporting the processes, by impugning resolutions, by providing evidence, or by intervening in the judicial proceedings where it can take part.

At the end of October 2001, there are about 200 investigations taking place, involving more than 1200 investigated persons. The whole process, until all the sentences are pronounced and put into effect, should take at least five more years. However, the upcoming task of the Public Prosecutor's Office is already relatively determined and in the future, it will consist mainly of a follow-up work and the support of the District Attorney and the Judiciary.

**INVESTIGATIONS ON CORRUPTION
CURRENTLY TAKING PLACE 1/**

INVESTIGATIONS	195
Fiscal Investigations	107
Judicial Processes	81
Investigation Commissions in the Congress	7
INVESTIGATED PERSONS 2/	1226
Public Ministry	694
Judiciary	532
PROCESSES	420
Jail	72
House Arrest	41
Abroad	6
Appearance	296
Provisional Freedom	5
FUGITIVES	112

1/ At the end of October 2001.

2/ Investigated and processed now in charge of the District Attorney or of the Judiciary. Hundreds of suspects or those currently investigated by the Prosecutor's Office are not included

On the other hand, about US\$200 million have been fixed in different locations all over the world and approximately US\$50 million could be recovered.

FIXED CORRUPTION FUNDS

1/
(US\$ millions)

United States	19.0
Venero	19.0
Mexico	1.5
Malca	1.5
Grand Cayman	33.2
Juan Valencia	16.6
Malca	13.4
Trinidad	1.6
Venegas	1.6
Switzerland	107.8
VMT	70.0
Venero	10.3
Joy Way	10.9
Duthurburu	2.1
Hermoza	14.5
Luxembourg	5.0
Hermoza	5.0
Other	38.0
Total	204.5

1/ At the end of October 2001.

The government of President Alejandro Toledo, as recognition to the work of the Public Prosecutors Office, confirmed his support for the continuity of this institution.

4.2 Investigation Commissions in Congress

Starting November 2000, the Congress assumed a main role in the fight against corruption. That month, the Investigation Commission for the Montesinos Affaire was installed, with 110 votes in favor, no votes against and no abstentions. The aim of the Commission was to determine the origin, the movements and the amount of money in Montesino's bank accounts in Peru and abroad as a product of presumed crimes of illegal enrichment, drug traffic, money laundering, traffic of arms and corruption of public officials.

As a result of the work of this Commission, presided by the Congressman David Waisman, the current Congress, installed in July of this year, intensified its investigation activities on corruption cases, and opened different areas of activities with the creation of five commissions:

- Investigation Commission responsible of making a report with conclusions and recommendations, based on the work of the Commission presided by Waisman, on the performance, the origin, the movement and destiny of the financial resources of Vladimiro Montesinos, and his manifest relationship with Alberto Fujimori.
- Investigation Commission of the Administration of Alberto Fujimori, responsible of formulating the relevant recommendations in order to incriminate those who broke the Constitution and the Law during Fujimori's mandate.
- Investigation Commission in charge of examining the arrangement and the renegotiation of the national debt, incurred by the Peruvian Government during the period of 1990-2000, with international organisms, international banking, foreign governments, and others.
- Investigation Commission responsible of analyzing the financial crimes committed during the period of 1990-2001 in the privatization process, in the employment of public resources in salvage operations of financial and non financial companies, in public bidding processes, in the employment of public resources to form a corruption net, in the employment of the SUNAT and ADUANAS (the Customs) as mechanisms to blackmail or of tributary evasion, and in the misuse of donations and other helps, among others.
- Investigation Commission of the influence of Alberto Fujimori during his government (1990-2000) on the Judiciary, the Public Ministry, and other public institutions related with the administration of Justice.

These commissions have provided significant information and have alerted the public opinion on the magnitude of corruption during Fujimori's regime, and in contrast to the Public Ministry and the Public Prosecutor's Office, they can make penal and constitutional accusations. However, the Congress has currently a total of 108 commissions, sub-commissions and teams dedicated to the subject of corruption, which is a disturbing number with regard to the fact that there are only 120 congressmen, and 99 of them are engaged in these activities. In addition, the sub-commissions as well as the teams are studying themes that are already being researched by one of the five large investigation commissions, duplicating the work.

This problem also arrives when the Congress is investigating subjects that are already under investigation in some other organism, like the District Attorney's Office or the Judiciary. This does not only generate a duplication of efforts, but also delays the investigation activities of the Judiciary and the Public Ministry, affecting their work

when the testimonies they obtained in a confidential way, are made public during the televised sessions of the investigation commissions.

4.3 Other measures

National Anti-Corruption Initiative (INA)

This is commission was convoked by the Ministry of Justice during the Transition Government. It was composed of civil society members renowned for their probity and engagement with the country. During its four months of work, it created a diagnostic document including proposals of anti-corruption policies, which was presented to President Toledo. In addition to the regional analysis forums they made, the document included a report of the World Bank on the corruption perceptions of the Peruvians (executives, public officials and users), based on surveys made between February and March 2001.

Internet Sites for Information and Public Transparency

This is an effort that was launched by the transition government and the Congress, aimed to give new information options to the public. It is still in an evolution stage and its scope is still limited. However, it is considered to be a significant step in the strategy to make a more transparent government and to bring it closer to the citizens. Some of the elements included in the Web sites are:

- Internet Site of the Peruvian State. Its objective is to become the only Internet gateway to all the information related to the different public institutions, and to the main procedures and formalities they carry out. It includes the following items: a Directory of Public Institutions, a Guide of formalities and procedures, Public Procurement, Business Opportunities, Official News, Newsletters, and Useful Services. The Public Procurement section functions only as an “electronic information poster”, meaning it is only used to divulge bidding processes, the bases and to inform about the results, as well as the relevant legislation.
- Internet Site of the Ministry of Economy and Finances. This site includes information on the main economical indexes and projections, summaries of the Strategic Plans of different sectors, information on the expenses of the central government (SIAF-SP), a directory of the public entities, the financial situation of the utilities (FONAFE), a list of the real estate of the State, data on the interior and exterior debt, information on State suppliers, and others.
- Internet Site of the Parliament: Transparency and Society. Includes an account of the posts that occupy the parliamentarians in Congress, the bills the Congressmen propose, and the voting during the plenary sessions. In addition, the Web page includes information of economical and administrative character, like their expenses in supplies, in telephone bills, in courier services, in gasoline, in travels and other items.

Anti-corruption Police

The government of President Toledo created a new police division to support the work of the district attorney and the judges in the investigations of the corruption net. This division depends on the administrative level on the Commissioner of police, and on the functions level, on the Judiciary and the District Attorney's Office in order to support the team of judges and prosecutors investigating the corruption net. The anti-corruption police will investigate and follow the suspects of corruption and will capture and arrest them.

Designation of an "Anti-corruption-Appointee" ("Anti-corruption-Tsar")

President Toledo designated the Dean of the Lawyers School of Lima, as the senior advisor of the Presidency on themes related with the fight against corruption and the promotion of ethics and transparency in the public administration, or "*Anti-corruption-Appointee*". In order to avoid the duplication of efforts with other institutions, the "*Anti-corruption-Appointee*" will not be in charge of investigations on previous events, which is the task of the Public Ministry, the Judiciary the Parliament, the district attorneys and the Public Prosecutor. The main objectives are the inculcation of ethics at all levels in the government, and prevention, in order to assure that public funds are correctly employed. One of the first tasks of the "*Anti-corruption-Appointee*" will be to write a Codex of Ethics for the Public Administration.

National Commission for the Fight Against Corruption and for the Promotion of Ethics and Transparency in the Public Administration

In the middle of November, a Supreme Decree was enacted, for the creation of this Commission that will depend on the Presidency of the Council of Ministers, and will be presided by the "*Anti-corruption-Appointee*". In addition, the Commission will comprise State Ministers, the Comptroller of the Republic, the Ombudsman, one representative of the Episcopal Conference, and three members of civil society. The objective of the Commission is to propose the national policy for prevention and fight against corruption.

The designation of the "*Anti-corruption-Appointee*" and the creation of the Commission are both very recent events, and consequently, there is still no clarity on their functions, or the development of their work.

5. Final Comments

A well-organized analysis of the components of the National Integrity System allows having a "picture" of the current state of the institutions and the efforts related with the fight against corruption. On the one hand, this allows to have a basis to guide the anti-corruption strategies and a reference to identify the progresses made or the possible retrocession, and on the other, it helps to give the subject an integral treatment with the inclusion of many institutions.

Like in other countries of the region, the problem in Peru seems to be of a practical genre, rather than formal or legal. In other words, the institutions are there, as well as

the standards and regulations, but the administrative practices and the “accepted” customs difficult the application and respect of the law, leading to their abandonment.

This happened in Peru, to a certain degree, as a result of the great tolerance of the public opinion towards certain corrupt practices during the government of Fujimori. While the regime was making significant progresses in the fields of finances and the fight against terrorism, it made light of the subject of corruption. As a consequence, the problem invaded a large part of the institutions of the Peruvian political system during the last decade.

Today, in contrast to the events occurred during the last years, civil society is better informed and has gained more conscience of the problem’s dimension and of the negative impact it represents for the country. Even though the efforts coming from the civil society and the media are still limited, and in general, centered in the pursuit of the corrupt ones, rather than prevention, they have increased and corruption is now a main subject on the public agenda.

The Transition Government and the current Administration have shown they are ready to work against corruption by means of different specific measures. However, there are still many important aspects in the regulation field to work on, especially in questions of the financing of political parties, transparency in the public sector, and the independence of the different branches of the State and the public officials, among others. In addition, certain confuse legal schemes with superposition of standards and regulations should be simplified in order to avoid wide margins of alternative among the officials.

Finally, civil society will have to pay more attention to the practices favoring corruption, in order to eliminate them. The rejection to these practices should be the base for an effective vigilance from the side of civil society and the independent media. As a final point, the efforts of the civil society should not be exclusively focused on the punishment of the corrupt ones, but should first and foremost consider new strategies in the area of prevention.