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# The Impact of the Inter-American Convention Against Corruption

Giorleny D. Altamirano

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## ARTICLES

### The Impact of the Inter-American Convention Against Corruption

Giorleny D. Altamirano\*

I.	INTRODUCTION .....	488
II.	THE PROBLEM: NEGATIVE IMPACTS OF CORRUPTION ...	492
	A. <i>Negative Impact on the Economy</i> .....	493
	B. <i>Negative Impact on the Government's         Machinery</i> .....	497
	C. <i>Negative Impacts on the Political Process</i> .....	498
III.	OAS SOLUTION: THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION AND ITS FOLLOW-UP MECHANISM .....	499
	A. <i>The Inter-American Convention Against         Corruption</i> .....	499
	B. <i>The Follow-Up Mechanism</i> .....	504
IV.	EFFECTIVENESS VIA IMPLEMENTATION .....	508
V.	IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION .....	509
	A. <i>Guatemala</i> .....	512
	B. <i>Honduras</i> .....	516
	C. <i>Jamaica</i> .....	520
	D. <i>Trinidad &amp; Tobago</i> .....	523
VI.	EFFECTIVENESS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION .....	525
	A. <i>The Data</i> .....	525

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1.	Transparency International Corruption Perception Index (CPI).....	526
2.	Governance Research Indicator Country Snapshot (GRICS) .....	528
3.	International Country Risk Guide (ICRG) ...	534
	<i>B. Country Specific Causes of Corruption</i> .....	537
VII.	RECOMMENDATIONS .....	540
	<i>A. Strengthening the Follow-Up Mechanism</i> .....	541
	<i>B. Building Enforcement Networks</i> .....	544
	<i>C. Other Recommendations</i> .....	545
VIII.	CONCLUSION .....	547

## I. INTRODUCTION

The world is currently engaged in an anti-corruption campaign, particularly against political corruption and transnational bribery. This trend is fueled by the fact that international, political, and economical organizations understand that corruption reduces growth, restricts trade, and increases poverty. The World Bank (WB) and the International Monetary Fund (IMF) regard corruption as a major obstacle to achieving sustainable economic growth and equitable development.<sup>1</sup> However, there is no precise definition of corruption. The World Bank defines corruption as “the exercise of public power for private gain[.]”<sup>2</sup> while the IMF understands corruption as “the abuse of public authority or trust for private benefit.”<sup>3</sup> On the other hand, to Transparency International, a corruption fighting non-governmental organization, corruption is defined as “the misuse of entrusted power for private gain.”<sup>4</sup>

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1. The World Bank (WB) and the International Monetary Fund (IMF) have stressed the need for good governance and transparency as parts of their programs to foster sound economic frameworks and encourage stable economies. These institutions assert that poor governance can affect private market confidence and reduce private capital inflows and investment, retarding economic growth in developing countries. *See generally* The World Bank, [www.worldbank.org](http://www.worldbank.org) (last visited Apr. 5, 2007); International Monetary Fund, <http://www.imf.org> (last visited Apr. 5, 2007).

2. Daniel Kaufmann et al., *Governance Matters III: Governance Indicators for 1996-2002* (World Bank Pol. Res., Working Paper No. 3106, 2003), available at <http://www.worldbank.org/wbi/governance/pubs/govmatters3.html>; see also Vito Tanzi, *Corruption Around the World, Causes, Consequences, Scope, and Cures*, 45 IMF STAFF PAPERS 559 (1998), available at <http://www.imf.org/external/Pubs/FT/staffp/1998/12-98/pdf/tanzi.pdf>.

3. IMF, A FACTSHEET: THE IMF AND GOOD GOVERNANCE (Apr. 2003), available at <http://www.imf.org/external/np/exr/facts/gov.htm>.

4. Transparency International Frequently Asked Questions About Corruption,

Members of international political organizations have demonstrated interest in preventing and combating corruption by adopting international anti-corruption treaties. In 1997, the United Nations (UN) adopted the Convention Against Corruption (UNCAC),<sup>5</sup> which condemns public and private sector corruption. The Organization for Economic Cooperation and Development (OECD) has adopted the Inter-American Convention Against Corruption Against Bribery of Foreign Public Officials in International Business Transactions,<sup>6</sup> which criminalizes any bribery of foreign public officials to obtain or retain international business deals. Furthermore, the African Union (AU) adopted its own Convention on Preventing and Combating Corruption, which also combats public and private sector corruption.<sup>7</sup>

The Inter-American Convention Against Corruption (IACAC)<sup>8</sup> was the first international anti-corruption convention in the world. The IACAC represents regional consensus regarding the prevention, criminalization, and investigation of corruption acts in the public sector,<sup>9</sup> and establishes a legal framework to facilitate cooperation among its members (State Parties) for purposes of investigation and recovery of assets. Four years after the IACAC became effective, the Follow-up Mechanism on Implemen-

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[http://www.transparency.org/news\\_room/faq/corruption\\_faq](http://www.transparency.org/news_room/faq/corruption_faq) (last visited Apr. 13, 2007).

5. United Nations Convention Against Corruption [UNCAC], U.N. GAOR, 58th Sess., U.N. Doc. A/RES/58/4 (Dec. 11, 2003), available at [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf). For a list of signatories to the UNCAC, see [http://www.unodc.org/pdf/crime/convention\\_corruption/cosp/session1/COSP1.pdf](http://www.unodc.org/pdf/crime/convention_corruption/cosp/session1/COSP1.pdf) (last visited Apr. 3, 2007).

6. The Org. for Econ. & Coop. for Dev. [OECD], *Information Sheet on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Feb. 15, 1999, available at <http://www.oecd.org/dataoecd/52/24/2406452.pdf>. For a list of the countries that have ratified the IACAC, see [http://www.oecd.org/infobycountry/0,2646,en\\_2649\\_34859\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/infobycountry/0,2646,en_2649_34859_1_1_1_1_1,00.html) (last visited Apr. 3, 2007).

7. African Union Convention on Preventing and Combating Corruption, adopted at Maputo, July 11, 2003, 43 I.L.M. 1, <http://www.africa-union.org/root/au/Documents/Treaties/Text/Convention%20on%20Combating%20Corruption.pdf>. For a list of the countries that have signed and ratified the convention, see [http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/List/African%20Convention%20on%20Combating%20Corruption.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/List/African%20Convention%20on%20Combating%20Corruption.pdf) (last visited Apr. 3, 2007).

8. Inter-American Convention Against Corruption, Mar. 27, 1996, 35 I.L.M. 724, available at <http://www.oas.org/juridico/english/Treaties/b-58.html> [hereinafter IACAC].

9. The Organization of American States (OAS) is composed of thirty-four State Parties without Cuba, which has been excluded since 1962 from participating in the OAS. From all the active OAS Members, only Barbados has not ratified the IACAC.

tation of the Inter-American Convention Against Corruption<sup>10</sup> (Follow-up Mechanism) was created to monitor the implementation of measures adopted by IACAC signatories. To date, the Follow-up Mechanism has reviewed twenty-eight State Parties.<sup>11</sup>

The objective of this article is to determine whether the IACAC has impacted corruption perception and risk levels. In order to reach that purpose, a comparative analysis among four countries will be made - two from Central America and two from the Caribbean. The selected countries are Guatemala, Honduras, Jamaica, and Trinidad & Tobago. These countries were chosen because of shared characteristics including population, area, and the fact that all have implemented the terms of the IACAC to some extent. Three independent indexes that measure corruption will be used to examine change, using the ratification date and the date of major implementing measures as the explanatory variable. The indexes applied are the Transparency International's Corruption Perception Index (CPI),<sup>12</sup> the World Bank's Governance Research Indicator Country Snapshot (GRICS),<sup>13</sup> and the PRS Group's International Country Risk Guide (ICRG).<sup>14</sup>

The first two indexes serve to compare corruption perception from 1996 to 2004, and the third determines changes in corruption risk levels over the last decade. These corruption measures are based on a subjective analysis of the problem. The indexes do not reflect the actual degree of corruption in a country given that governments do not systematically report corruption in the public sector. CPI and GRICS measure the perception of corruption using the assessments from various data sources.<sup>15</sup> ICRG assesses risk of corruption to the extent that it is viewed as a factor that

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10. OAS, *Follow-up Mechanism on Implementation of the Inter-American Convention Against Corruption*, AG/RES. 1784 (XXXII-O/02) (June 5, 2001), available at <http://www.oas.org/Assembly2001/documentsE/Decl-Resol.aprv/ag-RES1784XXXI-O-01.htm> [hereinafter OAS Follow-up Mechanism].

11. The Committee of Experts issues a country report for each examined country. With consent of the examined country, the country report is made public though the OAS Follow-up Mechanism's official website at [http://www.oas.org/juridico/english/mec\\_ron1\\_rep.htm](http://www.oas.org/juridico/english/mec_ron1_rep.htm) (last visited Apr. 3, 2007).

12. Transparency International (TI) releases the Corruption Perception Index (CPI) annually and requires at least three available sources to rank a country in the index. The 2006 CPI is available at [http://www.transparency.org/policy\\_research/surveys\\_indices/global/cpi](http://www.transparency.org/policy_research/surveys_indices/global/cpi) (last visited Apr. 3, 2007) [hereinafter 2006 CPI].

13. See Kaufmann, *supra* note 2 (presenting six governance indicators for 199 countries and territories over four time periods between 1996-2002).

14. The PRS Group assesses corruption as a component of political risk. See generally PRS Group, <http://www.prsgroup.com> (last visited Apr. 3, 2007).

15. 2006 CPI, *supra* note 12.

causes business underperformance.<sup>16</sup>

Because Honduras and Trinidad & Tobago ratified the IACAC three years before Guatemala and Jamaica, this article anticipated to find an improvement in corruption perception and risk levels in those countries before any progress occurred in the latter two. However, the data reflects that ratification date as an explanatory variable does not affect corruption perception or corruption risk levels (dependent variables). Thus, ratification date does not necessarily generate a change in perception within the ratifying state. This finding is consistent with the view that international treaties must be implemented to create change.<sup>17</sup> For that reason, implementation of national legislation was used as the explanatory variable, as opposed to ratification date, expecting a positive change in perception and risk levels in the four countries.

Nevertheless, the same result is observed for corruption perception. Implementing national legislation did not reflect improvement in corruption perception as a dependent variable in any of the four countries. This last result was not expected, as positive changes are intuitively expected when ratification is followed by implementing national legislation to comply with the terms of the IACAC. This explanatory variable has influenced a positive change in corruption risk level as a dependent variable for one country (Honduras). This positive finding is explained by the fact that Honduras has made the most far-reaching changes in its institutional and legal system among the countries examined.

The remainder of this article is structured as follows: Part II reviews the serious negative consequences of corruption. Part III discusses the provisions and nature of the obligations of the IACAC and its Follow-up Mechanism. Part IV explains the difference between the concepts of compliance, implementation, and effectiveness of international treaties. Part V describes the measures adopted by the four countries to implement the terms of the IACAC. This section is divided into four subparts corresponding to Guatemala, Honduras, Jamaica, and Trinidad & Tobago. Part VI contains a comparative analysis of the chosen countries using

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16. STUART POOLE-ROBB & ALAN BAILEY, *RISKY BUSINESS: CORRUPTION, FRAUD, TERRORISM AND OTHER THREATS TO GLOBAL BUSINESS* 14 (2002) (stating that risk is an important factor in business and investor decision making, and high levels of corruption risk can undermine the success or further the failure of a business).

17. DAVID G. VICTOR ET AL., *THE IMPLEMENTATION AND EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL COMMITMENTS: THEORY AND PRACTICE* 1-2 (David G. Victor et al. eds., 1998).

subjective perception indexes and describes the specific causes of corruption in the four countries.

Part VII presents findings and proposes recommendations to strengthen the IACAC's Follow-up Mechanism and to build enforcement networks to achieve the IACAC's objectives. Part VIII concludes the paper by observing that the ratification date of the IACAC and implementation measures do not seem to be stimulating any modification in corruption perception. An integrated strategy by both national and international actors is needed to spur a positive change in corruption perception. A strengthened Follow-up Mechanism and better national enforcement institutions are important components of an integrated anti-corruption strategy to prevent and fight corrupt practices.

## II. THE PROBLEM: NEGATIVE IMPACTS OF CORRUPTION

Every country criminalizes corruption and every culture and religion heavily discourages corruption.<sup>18</sup> Nonetheless, increase in international trade, foreign investment, and technological growth has created opportunities to spread corruption.<sup>19</sup> Corruption is not a result of globalization,<sup>20</sup> but rather caused by weak political, judicial, and administrative institutions.<sup>21</sup> Opportunities to engage in corrupt practices increase when government officials

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18. See Philip M. Nichols, *Regulating Transnational Bribery in Times of Globalization and Fragmentation*, 24 YALE J. INT'L L. 257, 277-278 (1999) ("The myth that bribery is acceptable in some cultures finds no empirical support . . . . Every major religion or school of thought, including Buddhism, Christianity, Confucianism, Hinduism, Islam, Judaism, Sikhism, and Taoism, specifically condemns bribery."); see also Alhaji B.M. Marong, *Toward a Normative Consensus Against Corruption: Legal Effects of the Principles to Combat Corruption in Africa*, 30 DENV. J. INT'L L. & POL'Y 99, 105 (2002).

19. Nii Lante Wallace-Bruce, *Corruption and Competitiveness in Global Business, The Dawn of a New Era*, 24 MELB. U. L. REV. 349, 355 (2000) (expressing that research by TI supports the view that corruption is increasing in recent times); see also Nichols, *supra* note 18, at 262; Marong, *supra* note 18, at 105.

20. Saladin Al-Jurf, *Good Governance and Transparency: Their Impact on Development*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 193, 198 (1999) (arguing that corruption has roots in colonial administration of developing countries); see also Luz Estella Nagle, *Latin America: Views on Contemporary Issues in the Region the Challenges of Fighting Global Organized Crime in Latin America*, 26 FORDHAM INT'L L.J. 1649, 1692 (2003) (asserting that corruption in Latin American has "pervaded political ambition for many generations"); JOHANN GRAF LAMBSDORFF ET AL., *THE NEW INSTITUTIONAL ECONOMICS OF CORRUPTION* 2 (2005); Nichols, *supra* note 18, at 272 (describing globalization as economic and commercial integration in stating that "bribery as a phenomenon is as old as bureaucratic systems argues that bribery is a phenomenon").

21. Kimberly Ann Elliott, *The Problem of Corruption: A Tale of Two Countries*, 18 NW. J. INT'L L. & BUS. 524, 525 (1998).

have high discretionary power distributing goods, services, or other assets valued by the private sector.<sup>22</sup> The opposite is true when decision-making is transparent and when there is an impartial judicial system.<sup>23</sup>

When rules are unclear, enforcement institutions are weak, and government officials are not held accountable, corruption becomes pervasive, embedding itself in all aspects of governmental decision-making processes.<sup>24</sup> Economic and political literature has presented empirical evidence that corruption is a large international problem that negatively impacts economies, government machinery, and political processes.<sup>25</sup> Experts have also argued that corruption is a threat to international peace because it hampers economic development and destroys confidence in governments.<sup>26</sup>

### A. *Negative Impact on the Economy*

Empirical studies have confirmed that there is an inverse relationship between levels of corruption, foreign investment,<sup>27</sup>

22. Robert Klitgaard, *International Cooperation Against Corruption*, 35 FIN. & DEV. 3, 4 (Mar. 1998) (suggesting the equation: C = M + D - A (Corruption Equals Monopoly Plus Discretion Minus Accountability)); see also Al-Jurf, *supra* note 20, at 198 (explaining that the state in Latin America has wide discretion in the economic sphere, allowing the government the ability to seize and halt private resources and to redistribute a country's based on arbitrary political policies); Marong, *supra* note 18, at 103 (arguing that administrative discretion of officials increase the likelihood of corruption).

23. Paolo Mauro, *Corruption: Causes, Consequences, and Agenda for Further Research*, 35 FIN. & DEV. 11 (Mar. 1998) [hereinafter Mauro, *Agenda for Further Research*] (asserting that corruption is most prevalent where there are political instability, bureaucratic red tape, and weak legislative and judicial systems); see also Al-Jurf, *supra* note 20, at 199 (arguing that a legal system and the judiciary that functions under government control create opportunities and incentives for engaging in corrupt activities).

24. Marong, *supra* note 18, at 104 (arguing that developing countries need responsible and accountable government to fight corruption and contribute to economic development).

25. Sanjeev Gupta et al., *Does Corruption Affect Income Inequality and Poverty?* (IMF, Working Paper No. 98/76, May 1998), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=882360](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=882360); see also Nichols, *supra* note 18, at 275; Al-Jurf, *supra* note 20, at 195 ("[T]he World Bank and the IMF have identified corruption as the major barrier to sustainable economic growth and development.").

26. Elliott, *supra* note 21, at 524.

27. Mauro, *Agenda for Further Research*, *supra* note 23, at 12 (expressing that regression analysis shows that a country that improves its standing on the corruption index two points will experience a four percentage point increase in its investment rate and a 0.5 percentage point increase in its annual per capita GDP growth rate).



and economic growth.<sup>28</sup> Corruption has a significant negative effect on investment flow as the level of uncertainty in the business environment affects investment.<sup>29</sup> Corruption also affects private market confidence and reduces economic growth by affecting investment flows.<sup>30</sup> Thus, investment tends to decrease when high levels of corruption are present and tend to increase when the level of corruption is low.<sup>31</sup> Moreover, political instability due to a high level of corruption hampers economic growth.<sup>32</sup> Economic studies find that a one-unit increase in the corruption index reduces growth rate by approximately 0.545 percentage points.<sup>33</sup>

Furthermore, even if government officials manage to attract public investment, public corruption will distort economic decision-making, which increases uncertainty and distrust for future investment.<sup>34</sup> In a corrupt transaction, misallocation of government resources will hamper economic growth. Evidence suggests that corruption reduces growth by increasing public investment while reducing its productivity.<sup>35</sup> New investment will be withdrawn when productivity expectations are not met because past investments have been misdirected or misused. As a direct consequence, infrastructure is directly damaged because investment money will not be used for maintenance or any other intended purpose. Therefore, corruption also reduces economic growth by lowering the quality of the existing infrastructure,<sup>36</sup> which

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28. Pak Hung Mo, *Corruption and Economic Growth*, 29 J. COMP. ECON. 66, 76 (2001).

29. Paolo Mauro, *Corruption and Growth*, 110 Q. J. ECON. 681, 704 (1995).

30. See generally The Role of the IMF in Governance Issues: Guidance Note, <http://www.imf.org/external/pubs/ft/exrp/govern/govern.pdf>, at 7 (approved by the IMF Executive Board on July 25, 1997).

31. Mauro, *Corruption and Growth*, *supra* note 29, at 12.

32. Mo, *supra* note 28, at 70, 76 (stating political instability is measured by the average of the number of assassinations per million population per year and the number of revolutions per year over the period).

33. *Id.* at 76 (utilizing the 1980-1985 CPI and the University Goettingen Indexes as measures of corruption levels).

34. Vito Tanzi & Hamid Davoodi, *Corruption, Public Investment, and Growth* 4-9 (IMF, Working Paper No. 97/139, Oct. 1997), available at <http://www.imf.org/external/pubs/ft/wp/wp97139.pdf>; see also Elliott, *supra* note 21, at 524.

35. See Tanzi & Davoodi, *supra* note 34, at 7.

36. César Calderón & Luis Servén, *The Effects of Infrastructure Development on Growth and Income Distribution* 27 (World Bank Pol. Res., Working Paper No. WPS 3400, Mar. 2004), available at [http://www.ifw-kiel.de/VRCent/DEGIT/paper/degit\\_10/C010\\_056.pdf](http://www.ifw-kiel.de/VRCent/DEGIT/paper/degit_10/C010_056.pdf) (providing an empirical evaluation of one-hundred countries over forty years (1960-2000) on the quality and quantity of infrastructure, transportation, power, and telecommunications, and to a less degree water infrastructure). This working paper concluded that infrastructure quantity and quality raises economic growth and lowers income inequality. See *id.*

increases the cost of doing business, a factor that is almost guaranteed to scare away investors.<sup>37</sup>

In addition, transaction costs are greater in corrupt markets than in ordinary ones.<sup>38</sup> Investment is reduced because of the high cost of bribes.<sup>39</sup> Investors view bribery as a private tax on their investment.<sup>40</sup> They “tend to shy away from jurisdictions with high rates of ‘private taxation.’”<sup>41</sup> Corrupt government officials will always reward the highest bidder, causing the competition to offer more money and creating a non-fixed private tax for investors.<sup>42</sup> Once a price (bribe) has been set, it may become inflexible even if the market conditions change.<sup>43</sup> Therefore, if an investor wants efficient service from a corrupt official, he or she must pay whatever “tax” is demanded.

Finally, a non-independent judiciary that is not willing to uphold the rule of law increases the risk for investors. If the judiciary is corrupt, contracts will not be equally enforced and property rights will not be respected.<sup>44</sup> Corrupt judges and government officials, in general, are usually protected by lax legal systems, thus creating a corruption-prone cycle that causes distrust and instability. This situation is also not attractive for investors. The rule of law and an independent judiciary are essential to foster an investor-friendly environment. Moreover, corruption that lowers institutional quality, such as the quality of contract enforcement and property rights, is a significant detriment to trade flows.<sup>45</sup> Ineffective institutions increase transaction

37. Mauro, *Agenda for Further Research*, *supra* note 23, at 12.

38. LAMBSDORFF, *supra* note 20, at 153.

39. In other words, bribery increases the transaction costs of doing business in particular jurisdictions. The effect has been lower inflows of foreign investment to countries with high rates of corruption. See Marong, *supra* note 18, at 107.

40. With respect to its effects on the economy, there is evidence that investors view bribery as a private tax on their investment, and tend to shy away from jurisdictions with high rates of “private taxation.” *Id.*

41. *Id.*

42. Al-Jurf, *supra* note 20, at 201-02.

43. *Id.* at 202 (expressing that when prices for bribes or fees become known to the members of the business community, the prices may not adjust properly to changing market conditions).

44. Omar Azfar et al., *The Annals of The American Academy of Political and Social Science*, 573 ANNALS 42, 47 n.6 (2001).

45. Andrei A. Levchenko, *Institutional Quality and International Trade* (IMF, Working Paper No. 04/231, Dec. 2004), available at [http://alevchenko.com/Levchenko\\_imfwp04231.pdf](http://alevchenko.com/Levchenko_imfwp04231.pdf); see also Henri L.F. de Groot et al., *The Institutional Determinants of Bilateral Trade Pattern* (Tinbergen Inst., Discussion Paper No. 03-044/3, 2003), available at <http://www.ersa.org/ersaconfs/ersa03/cdrom/papers/421.pdf>; James E. Anderson & Douglas Marcouiller, *Insecurity and the Pattern of Trade: An Empirical*

costs and reduce trade.<sup>46</sup> Countries with better institutional quality tend to have larger trade volumes, gaining more from international trade.<sup>47</sup>

Conversely, corruption decreases growth in gross domestic products and development, in part, by causing reduction of assistance for development projects.<sup>48</sup> Mistrust among the donor community is created when development funds are misdirected and not used for the purposes intended.<sup>49</sup> Experience demonstrates that corruption takes place as a diversion of public funds from development assistance.<sup>50</sup> Therefore, the donor community denies or conditions development assistance until anti-corruption measures are adopted.<sup>51</sup>

The negative effects of corruption on investment, development aid, and trade intensify poverty.<sup>52</sup> Corruption is directly associated with an increase in income inequality, which has expanded in countries with high levels of corruption. Low eco-

*Investigation*, 84 REV. ECON. & STAT. 342, 351 (2002) (arguing that corrupt transactions generate a hidden tax or tariff to trade, increasing transactions costs and reducing international trade).

46. Henri L.F.M. de Groot et al., *Why do OECD-Countries Trade More?* 9 (Tinbergen Inst., Discussion Paper No. 03-092/3, 2003), available at <http://www.tinbergen.nl/discussionpapers/03092.pdf> (arguing that differences in institution effectiveness offer an explanation for the tendency of OECD countries to trade more between each other, than with non-OECD countries).

47. Levchenko, *supra* note 45, at 4.

48. Mauro, *Corruption and Growth*, *supra* note 29, at 705-706 (finding a close correlation between corruption and economic growth in all regions of the world); see also Paolo Mauro, *The Persistence of Corruption and Slow Economic Growth*, 51 IMF STAFF PAPERS 1, 15-17 (2004), <http://www.imf.org/External/Pubs/FT/staffp/2004/01/pdf/mauro.pdf>.

49. Duane Windsor & Kathleen A. Getz, *Fighting International Corruption & Bribery in the 21st Century, Multilateral Cooperation to Combat Corruption, Normative Regimes Despite Mixed Motives and Diverse Values*, 33 CORNELL INT'L L.J. 731, 757 (2000) ("[C]orruption leads to improper construction of infrastructure, in which is easily destroyed in the event of a natural disaster. For example, Hurricane Mitch, which hit Honduras . . . and other Central American countries . . . resulted in widespread death and destruction out of proportion . . . [partly because] infrastructure . . . had not been adequately constructed, due largely to corruption. Disaster relief funds 'poured into' the region, while no significant progress was made with reconstruction."); see also Al-Jurf, *supra* note 20, at 196 (stating that corruption leads to the diversion of funds making developing nations suffer in the areas of education, health care and infrastructure advancement).

50. Marong, *supra* note 18, at 109.

51. Elliott, *supra* note 21, at 530 (expressing how the IMF suspended lending money to Kenya until anti-corruption reforms were adopted).

52. Se-Jik Kim & Yong Jim Kim, *Growth Gains from Trade and Education* 25 (IMF, Working Paper No. 99/23, Mar. 1999), available at <http://www.imf.org/external/pubs/ft/wp/1999/wp9923.pdf> (arguing that in the long term, international trade and education can contribute to growth).

conomic growth leads to unequal distribution of assets and increases ineffectiveness of social spending.<sup>53</sup> Low growth rates and income disparity are directly linked with deterioration in living conditions,<sup>54</sup> affecting health, mortality rates, quality of education, and environmental quality.<sup>55</sup> Moreover, higher corruption is associated with lower government revenues, which translates into fewer funds for development projects. Corruption reduces official government revenue, while increasing private revenues to public officials.<sup>56</sup> It lowers the tax base by allowing potential taxpayers to offer bribes to avoid the responsibility of paying taxes. Furthermore, a quantity of taxes paid by taxpayers is diverted to benefit the administrator.<sup>57</sup> Equally, it is associated with the unofficial economy, which avoids tax responsibilities entirely.<sup>58</sup>

### B. *Negative Impact on the Government's Machinery*

Corruption undermines the effectiveness of government's administration by creating an environment where bribes are expected and demanded. In a corrupt environment, if bribes are not offered or provided, government officials will not perform their jobs effectively. Moreover, pervasive corruption tends to attract dishonest and ineffective bureaucrats by inviting civil servants to abuse their positions to seek economic benefit through corrupt practices.<sup>59</sup> This causes a vicious cycle that focuses on concealing corrupt practices and facilitating their occurrence. Furthermore, corruption may affect the very administrative systems that are required to regulate and eliminate it.<sup>60</sup>

53. Gupta, *supra* note 25, at 29-30.

54. SANJAY PRADHAM ET AL., THE WORLD BANK, ANTICORRUPTION IN TRANSITION: A CONTRIBUTION TO THE POLICY DEBATE 20 (2002), available at <http://www.worldbank.org/wbi/governance/pdf/contribution.pdf> [hereinafter ANTICORRUPTION IN TRANSITION] ("Corruption undermines the social safety net and may deter the poor from seeking basic entitlements and other public services.").

55. Nichols, *supra* note 18, at 276.

56. Roberta Gatti, *Corruption and Trade Tariffs or a Case for Uniform Tariffs* (The World Bank Dev. Res. Group, Working Paper No. 2216, Nov. 1999), available at <http://www.worldbank.org/wbi/governance/pubs/wps2216.html> (arguing for uniform tariffs on import goods to deliver higher revenues and welfare to the country, because these factors are lost in the interaction between importers and corrupt custom officials).

57. Tanzi & Davoodi, *supra* note 34, at 9.

58. Wallace-Bruce, *supra* note 19, at 357 (arguing that bribery for the purpose of accelerating government procedures avoid taxes, as well as other charges that would otherwise have applied to overall government revenue).

59. *Id.* at 277.

60. Nichols, *supra* note 18, at 283 ("A study of judicial reform in Latin America . . .

### C. *Negative Impacts on the Political Process*

In the same way that corruption reduces the quality of institutions and hampers economic growth, it also destroys confidence in the democratic processes. Corruption undermines the democratic processes by creating mistrust in government officials.<sup>61</sup> Skepticism about the democratic system festers once the citizenship has a fixed perception that their leaders are driven by personal interest in their public functions. A recent study on Latin America by the United Nations Development Program (UNDP) indicates that the majority of the population is frustrated with democratically elected governments and is losing faith in the democratic process. Indeed, 54.7% of the people surveyed expressed that they would support an authoritarian government if such a system would resolve social and economic problems.<sup>62</sup> More than 56% preferred economic development to democracy.<sup>63</sup>

Corruption is injuring democratic progress in Latin America by destroying confidence in governments and hampering economic progress.<sup>64</sup> Corruption also fosters a crime-tolerant environment. "Pervasive corruption that undermines economic development and political stability can also be a threat to international peace and prosperity, as well as facilitating drug-trafficking, money laundering" and weapon smuggling.<sup>65</sup> Moreover, in Latin America "corruption has opened the door to international criminal syndicalism."<sup>66</sup>

Drug traffickers provide a source of personal enrichment to corrupt officials, who facilitate the operations of organized criminal organizations.<sup>67</sup> For example, Jamaica is known to be a major transit point for cocaine traveling to the United States and

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found that factors related to corruption in the court system contributed to political inertia in dealing with corruption and bribery.").

61. Windsor & Getz, *supra* note 49, at 757 ("The immediate effects of corruption include the destruction of democratic institutions."); see also Nichols, *supra* note 18, at 279; Patricio Maldonado & Gerardo D. Berthin, *Transparency and Developing Legal Frameworks to Combat Corruption in Latin America*, 10 SW. J. L. & TRADE AM. 243, 244 (2004).

62. UNITED NATIONS DEVELOPMENT PROGRAM [UNDP], DEMOCRACY IN LATIN AMERICA: TOWARDS A CITIZENS' DEMOCRACY 131 (2004), available at <http://democracia.undp.org/Informe/Default.asp>.

63. *Id.* at 133.

64. *Id.* at 137.

65. Elliott, *supra* note 21, at 524.

66. Nagle, *supra* note 20, at 1659.

67. *Id.* at 1678 ("Organized crime would not be nearly as lucrative an enterprise were it not for the culpability and willingness of government officials and corporate executives in organized criminal activities for personal gain.").

Europe, and is the largest Caribbean producer and exporter of cannabis.<sup>68</sup> Cocaine, heroin, and other illicit narcotics are also transported to the United States and Europe through Guatemala.<sup>69</sup> According to the U.S. Department of State, narcotics-related corruption in Jamaica undermines law enforcement and judicial efforts against drug-related crimes,<sup>70</sup> and in Guatemala, this corruption is considered as the largest single obstacle to the overall efficiency of anti-narcotics programs.<sup>71</sup>

### III. THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION (IACAC) AND ITS FOLLOW-UP MECHANISM

#### A. *The Inter-American Convention Against Corruption*

The IACAC was the first multilateral instrument to establish a comprehensive legal framework aimed at combating corruption of government officials by criminalizing domestic and transnational bribery.<sup>72</sup> The Organization of American States (OAS) adopted the IACAC on March 29, 1996,<sup>73</sup> and it became effective in March 1997 with the deposit of the second instrument of ratification in accordance with Article XXV of the Treaty.<sup>74</sup> As of 2005, the IACAC was ratified by 33 of the 34 active members of the OAS (State Party).<sup>75</sup>

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68. U.S. DEPT. OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT 2003: THE CARIBBEAN (Mar. 2004), <http://www.state.gov/p/inl/rls/nrcrpt/2003/vol1/html/29834.htm> [hereinafter THE CARIBBEAN REPORT].

69. U.S. DEPT. OF STATE, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT 2003: CANADA, MEXICO, AND CENTRAL AMERICA (Mar. 2004), <http://www.state.gov/p/inl/rls/nrcrpt/2003/vol1/html/29833.htm> [hereinafter CANADA, MEXICO & CENTRAL AMERICA REPORT].

70. THE CARIBBEAN REPORT, *supra* note 68.

71. CANADA, MEXICO & CENTRAL AMERICA REPORT, *supra* note 69.

72. Nancy Boswell, *The Impact of International Law on Domestic Governance*, 97 AM. SOC'Y INT'L L. PROC. 133, 133-34 (2003); see also Wallace-Bruce, *supra* note 19, at 366.

73. IACAC, *supra* note 8.

74. The IACAC became effective with ratification from Paraguay and Bolivia. IACAC Article XXV states: "This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification. For each State ratifying or acceding to the IACAC after the deposit of the second instrument of ratification, the IACAC shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession." *Id.* at 734.

75. Status of ratification can be found on the OAS official website at <http://www.oas.org/juridico/english/Sigs/b-58.html> (last visited Apr. 03, 2007). Cuba was excluded from participating in the OAS in 1962 and is no longer an active member. See OAS, *Final Act of the Eight Meeting of Consultation of Ministers of Foreign Affairs*

The OAS members, by participating and promoting the adoption of this first regional instrument in 1996, took a leadership role in the international fight against corruption.<sup>76</sup> The IACAC attacks corruption in the performance of public functions and acts of corruption related to such performance.<sup>77</sup> Its objective is two-fold: first, it attempts to provide guidance to State Parties for the establishment of mechanisms that can eradicate corruption; second, it promotes cooperation among State Parties to enforce mechanisms that would eradicate corruption in the hemisphere.<sup>78</sup>

The IACAC reaches officials at all levels of hierarchy in government bureaucracy.<sup>79</sup> It does not, however, include any provision regarding party officials or candidates to public offices and funding to political parties.<sup>80</sup> The IACAC extends criminal jurisdiction based on territoriality and nationality principles.<sup>81</sup> Extraterritorial jurisdiction based on the nationality principle is reflected because State Parties are required to extend jurisdiction to offenses committed by their nationals or residents, even if they were not committed inside their territory.<sup>82</sup> However, as discussed *infra*, the establishment of extraterritorial jurisdiction is not mandatory as it only applies to *transnational* bribery. It is important to note that the IACAC leaves the imposition of penalties for corrupt offenses and the criminalization of other corrupt activities

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*in Punta del Este, Paraguay*, OEA/Ser.C/II.8 (Jan. 22-31, 1962), available at <http://www.oas.org/columbus/docs/OEAsercii.8eng.pdf>.

76. Claudio Grossman, *The Experts Roundtable: A Hemispheric Approach to Combating Corruption*, 15 AM. U. INT'L. L. REV. 759, 770 (2000).

77. The IACAC is composed of a preamble and twenty-eight articles. The basic structure of the IACAC includes domestic obligations (Articles III-IX and XI) and actions that require cooperation and assistance among the member (Articles X, XIII-XVI, XVIII, and XX). Articles I, II, IV-VI, XII, and XVII deal with definitions, purposes, scope of the IACAC, jurisdiction, acts of corruption, effect on state property, and nature of the act. Articles XIX, XXI, and XXII-XXVIII deal with temporal application, signature, ratification, accession, reservations, entry into force, denunciation, additional protocols, and deposit of original instrument. See generally IACAC, *supra* note 8.

78. Peter D. Maynard, *The Law Against Corruption and Money Laundering in the Caribbean with Special Reference to the Bahamas*, 29 U. MIAMI INTER-AM. L. REV. 627, 629 (1998); see also IACAC, *supra* note 8, art. II.

79. Article I defines the terms "public function," "public official," "government official," "public servant," and "property." See IACAC, *supra* note 8, art. I.

80. The IACAC does not include regulate political parties funding. However, the UN Convention requires State Parties to "enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties." See UNCAC, *supra* note 5, art. 7, para. 3; see also Homer Moyer, *The Role of Law in Combating Official Corruption*, 98 AM. SOC'Y INT'L. L. PROC. 169, 177 (2004).

81. IACAC, *supra* note 8, art. V.

82. *Id.* art. V, para. 2.

to the discretion of the State Parties.<sup>83</sup> The latter approach could be a weakness because penalties can range from monetary awards to serving time in prison.

Moreover, the IACAC contains different levels of obligation.<sup>84</sup> Some provisions are compulsory, while others are aspirational.<sup>85</sup> For example, Article VI, the most important provision of the IACAC, is mandatory.<sup>86</sup> Article VI specifies all acts of corruption that fall within the IACAC's scope. While Article VI does not provide a specific definition of corruption, it does list a number of "acts of corruption" that must be criminalized.<sup>87</sup> Article VI condemns both active and passive bribery,<sup>88</sup> but limits its reach to corrupt practices by public officials within the State Party's territorial boundary.<sup>89</sup> Article VI has a broad scope because it places legal responsibility on principal actors, co-participants, instigators (aiding or abetting),<sup>90</sup> accomplices or accessories after the fact.<sup>91</sup>

83. *Id.* art. V, para. 4.

84. Grossman, *supra* note 76, at 771; *see also* Edmundo Vargas Carreño, *The Inter-American Convention Against Corruption*, IADB (2000), at 9, available at <http://www.iadb.org/leg/seminar/Documents/corruptin%20Carreo%20Eng.pdf> (prepared for the Conference on Transparency and Development in Latin America and the Caribbean).

85. Grossman, *supra* note 76, at 771-74.

86. Carreño, *supra* note 84, at 12.

87. IACAC, *supra* note 8, art. VI.

88. Passive bribery refers to the demand side of corruption, when public officials abuse their office to achieve private gain. Active bribery is understood as the supply side of the equation, applying to private parties who offer bribes to government officials in return for benefits. Article VI, a mandatory provision of the IACAC condemns passive and active bribery. *See* IACAC, *supra* note 8, art. VI (stating that passive bribery is "[t]he solicitation or acceptance . . . by a government official or a person who performs public functions, of any article of monetary value or other benefit. . . . [Whereas active bribery is] [t]he offering or granting . . . to a government official or a person who performs public functions, of any article of monetary value, or other benefit. . . ."); *see also* Frank Vogl, *The Supply Side of Global Bribery*, 35 FIN. & DEV. 2 (June 1998), available at [www.imf.org/external/pubs/ft/fandd/1998/06/vogl.htm](http://www.imf.org/external/pubs/ft/fandd/1998/06/vogl.htm).

89. Grossman, *supra* note 76, at 771.

90. Nagle, *supra* note 20, at 1672.

91. Article VI of the IACAC provides: "1. This Convention is applicable to the following acts of corruption: a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions; b. The offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions; c. Any act or omission in the discharge of his



The "acts of corruption" list is not exhaustive because it contains a broad clause that allows members to criminalize other corrupt related practices through mutual assistance agreements. Furthermore, Articles VIII (Transnational Bribery), IX (Illicit Enrichment), and XI (Progressive Development), discussed *infra*, provide other "acts of corruption" that could be considered offenses in State Parties. These articles are not mandatory, however, as State Parties are not required to criminalize such acts as offenses.<sup>92</sup>

The IACAC emphasizes cooperation among State Parties to fulfill its anti-corruption goals in evidence gathering, extradition, seizure of assets, and bank secrecy.<sup>93</sup> In this regard, the most important provisions are Articles XIV, XV and XVI, which are mandatory. Article XIV requires members to provide mutual assistance and technical cooperation in preventive, investigative, and enforcement efforts, according to their domestic laws.<sup>94</sup> Article XV is dedicated to furnishing assistance among members for asset recovery.<sup>95</sup> Article XV is general and brief,<sup>96</sup> but asset recovery has the potential to become a powerful incentive for members to fully implement the terms of the IACAC and carry out its objective of eradicating corruption in the hemisphere.<sup>97</sup> Lastly, Article XVI sets prohibiting bank secrecy as its rationale for denying information or assistance to a requesting State Party.<sup>98</sup> The

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duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party; d. The fraudulent use or concealment of property derived from any of the acts referred to in this article; and e. Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this article. 2. This Convention shall also be applicable by mutual agreement between or among two or more States Parties with respect to any other act of corruption not described herein." IACAC, *supra* note 8, art. VI.

92. Carreño, *supra* note 84, at 10.

93. Article XVIII of the IACAC requires State Parties to designate a Central Authority that will be responsible for processing requests for assistance and cooperation, and facilitating communication between themselves. Article XIII (Extradition) creates a framework to enhance cooperation by being the legal basis for extradition and allowing acts of corruption to be included in any existing or future extradition treaties. IACAC, *supra* note 8, arts. XVIII, XIII.

94. *Id.* art. XIV.

95. *Id.* art. XV.

96. *Id.* art. XV ("The States Parties shall provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of offenses established in accordance with this Convention.").

97. Moyer, *supra* note 80, at 176-77.

98. IACAC, *supra* note 8, art. XVI; *see also* Carreño, *supra* note 84, at 17.

requested information shall be provided in accordance with domestic laws and procedures and cannot be used for any purpose other than those for which the information was sought.<sup>99</sup>

These provisions create a horizontal network of prosecutors, investigators, and police agencies that can facilitate the gathering of evidence for investigations and prosecution of corruption-related offenses. The provisions also create the legal framework of an anti-corruption network that can serve to deter corrupt practices by the effective enforcement of anti-corruption legislation. However, as stated in the recommendations section of this article *infra*, national enforcement institutions must be strengthened and fully equipped to take advantage of the opportunity provided by these articles to fully achieve the purpose of the IACAC.

Aspiration provisions of the IACAC include Articles III, VIII, IX, and XI. Article III establishes in detail a number of preventive measures to be created, maintained, or strengthened.<sup>100</sup> State Parties are only required to “consider the applicability” of preventive measures in their own institutions, making their implementation discretionary.<sup>101</sup> Although the language of Article III is arguably weak,<sup>102</sup> it is nevertheless essential to deter corrupt practices and ensure good governance. Consequently, countries that adopt measures referred in this article will demonstrate a high level of commitment to fight corruption.<sup>103</sup>

Article VIII requires prohibition and punishment of transnational bribery. Transnational bribery occurs when a public official from one country bribes a public official of another in relation to an economic transaction.<sup>104</sup> Article VIII focuses solely on active bribery, allowing prosecution of the offense by exercising extraterritorial jurisdiction based on the nationality principle. State Party courts can prosecute a bribe giver for an act that occurs outside

99. Maynard, *supra* note 78, at 631.

100. IACAC, *supra* note 8, art. III.

101. Carreño, *supra* note 84, at 11.

102. See Nagle, *supra* note 20, at 1674.

103. The IACAC's preventive measures are stated in Article III, which include: having standard of conduct for the public sector, as well as training and enforcement mechanisms of those standards; declaration of assets; standards for systems of hiring and procurement; government revenue collection and control systems deterring corruption; denial of tax deductibility of corruption-related expenditures; protection systems to public servants and private citizens who report acts of corruption; oversight bodies; requiring companies to keep books, records, and internal accounting control; and mechanisms to encourage participation of civil society. IACAC, *supra* note 8, art. III.

104. *Id.* art. VIII.

their territory.<sup>105</sup> Similarly, a bribed official would face prosecution by courts where the offense took place, based on the territoriality principle.<sup>106</sup> However, the exercise of extraterritorial jurisdiction is not mandatory as it is only applicable to transnational bribery, which is a hortatory provision of the IACAC.

Article IX focuses on illicit enrichment of public officials.<sup>107</sup> Illicit enrichment is defined as “a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions.”<sup>108</sup> Articles VIII and IX are not obligatory because they only request State Parties to “consider” transnational bribery and illicit enrichment as “acts of corruption” within their legal systems.<sup>109</sup> However, the offense of illicit enrichment assumes the burden of proof relies in the public official to provide justifications for an increase in assets.<sup>110</sup> Thus, the provisions of Article XI could be difficult to criminalize in the Caribbean states because the provisions could contradict the principle of presumption of innocence.<sup>111</sup> Nonetheless, State Parties of the IACAC must provide cooperation and assistance insofar as their internal laws allow it.

Article XI is aspirational. Its heading, Progressive Development, means that State Parties are to consider various behaviors as corrupt offenses to foster the development and harmonization of national legislation.<sup>112</sup> Additional acts of corruption mentioned in Article XI include the improper use of information or property by a government official, “any act or omission by any person” to obtain illicit benefits for himself or any other person, and the diversion of property for personal benefit.<sup>113</sup>

### B. *The Follow-Up Mechanism*

In 2001, the OAS General Assembly adopted the “Report of Buenos Aires on the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption,”<sup>114</sup> which

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105. *Id.*

106. Nichols, *supra* note 18, at 259.

107. IACAC, *supra* note 8, art. IX.

108. *Id.*

109. *Id.* arts. VIII, IX.

110. Carreño, *supra* note 84, at 14.

111. *Id.*

112. *Id.*

113. IACAC, *supra* note 8, art. XI.

114. OAS, *Report of Buenos Aires: Mechanism for Follow-up of Implementation of*

defines the structure and elements of the Follow-up Mechanism on Implementation of the Inter-American Convention against Corruption.<sup>115</sup> The Report of Buenos Aires states the purpose, characteristics, and procedures of the Follow-up Mechanism, with the objective of promoting the implementation of the IACAC and facilitating harmonization of national anti-corruption legislation throughout the hemisphere.<sup>116</sup>

The Follow-up Mechanism operates under a voluntary peer review system where each country will provide a self-assessment of improvement through a questionnaire, which is then analyzed by other State Parties.<sup>117</sup> Three main documents define the scope of this procedure: The Report of Buenos Aires, the Rules of Procedure and Other Provisions,<sup>118</sup> and a round-specific Methodology.<sup>119</sup> The Mechanism is principally an inter-governmental device, composed of two bodies: the Conference of the States Parties to the IACAC and the Committee of Experts.<sup>120</sup> The Conference of the States Parties represents the political body whose responsibility is to review the performance of the Committee of Experts and assure

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*the Inter-American Convention Against Corruption*, AG/RES. 1784 (XXXI-O/01) (May 2-4, 2001), available at <http://www.anticorruccion.gov.ar/acta%20de%20buenos%20aires%20ingles.pdf> [hereinafter *Report of Buenos Aires*].

115. OAS Follow-up Mechanism, *supra* note 10. On June 5, 2000, the OAS General Assembly requested that the OAS Permanent Council study the existing mechanisms and recommend an appropriate model to monitor the IACAC's implementation. See OAS, *Enhancement of Probity in the Hemisphere and Follow-up on the Inter-American Program for Cooperation in the Fight Against Corruption*, AG/RES. 1723 (XXX-O/00) (June 5, 2000), available at [http://www.oas.org/JURIDICO/english/agres\\_1723\\_00.htm](http://www.oas.org/JURIDICO/english/agres_1723_00.htm).

116. *Report of Buenos Aires*, *supra* note 114 (stating that the purposes of the OAS Follow-up Mechanism is to: "promote the implementation of the IACAC . . . [;] [t]o follow up on the commitments made by the States Parties . . . [; and to] facilitate . . . the harmonization of the legislation of the States Parties.").

117. Roberto De Michele, *The Follow-Up Mechanism of the Inter-American Convention Against Corruption, A Preliminary Assessment: Is the Glass Half Empty?*, 10 SW. J.L. & TRADE AM. 295, 304 (2004).

118. OAS, *Rules of Procedure and Other Provisions of the Committee of Experts of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption*, SG/MESICIC/doc.9/04 rev.3 (Dec. 15, 2006), available at [http://www.oas.org/juridico/english/mesicic\\_rules.pdf](http://www.oas.org/juridico/english/mesicic_rules.pdf) [hereinafter *Rules of Procedure*].

119. OAS, *Methodology for the Review of the Implementation of the Provisions of the Inter-American Convention against Corruption selected within the Framework of the First Round* (May 24, 2002), available at [http://www.oas.org/juridico/english/followup\\_method.htm](http://www.oas.org/juridico/english/followup_method.htm) [hereinafter *Methodology*].

120. The composition of the Committee of Experts of the OAS Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption [hereinafter *Committee of Experts*] can be found at [http://www.oas.org/juridico/spanish/mec\\_com\\_exp.htm](http://www.oas.org/juridico/spanish/mec_com_exp.htm) (last visited Apr. 3, 2007).

its funding.<sup>121</sup>

The Follow-up Mechanism was adopted in 2001, and the Committee of Experts began functioning in June 2002.<sup>122</sup> The Rules of Procedure prescribe the structure and operation of the Committee, which consists of representatives appointed by each State Party, who are to be impartial and objective in their assessments.<sup>123</sup> The Committee of Experts is responsible for the technical analysis of implementation of the IACAC. However, each State Party can appoint and change as many experts as it deems fit.<sup>124</sup>

The Committee of Experts reviews the State Party's measures in a series of "rounds."<sup>125</sup> At the beginning of each round, the Committee must choose what provision is to be analyzed, adopt a questionnaire to be answered by the State Party members and the civil society, and adopt a methodology that will serve as a guide to review the selected provisions for that round.<sup>126</sup> The Rules of Procedure regulate the role of non-governmental organizations (NGOs) in the review process. NGOs are important elements of the process because they are able to provide independent assessment about implementing measures by responding and critiquing a country's reply to the questionnaire. Moreover, NGOs can participate and make presentations in formal and informal meetings of the Committee.<sup>127</sup>

After analyzing the responses to the questionnaire by the

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121. OAS, *Rules of Procedure of the Conference of the States Parties to the Mechanism for Follow-Up on Implementation of the Inter-American Convention Against Corruption*, SG/MESICIC/doc.58/04 rev.7 (Apr. 2, 2004), available at [http://www.oas.org/juridico/english/followup\\_conf\\_rules.pdf](http://www.oas.org/juridico/english/followup_conf_rules.pdf) [hereinafter Conference of State Parties' Rules of Procedure].

122. De Michele, *supra* note 117, at 313.

123. *Report of Buenos Aires*, *supra* note 114, pt. 3 ("[The OAS Follow-up Mechanism] shall be impartial and objective in its operations and in the conclusions it reaches.").

124. *Rules of Procedure*, *supra* note 118, art. 2, at 3 ("[A] State Party shall notify the Secretariat when there is a change in its representation to the Committee.").

125. Nagle, *supra* note 20, at 1675.

126. *Id.*

127. The Committee in its Fifth Meeting (Feb. 2-6, 2004) amended Article 35 of the Rules of Procedure to include a second paragraph, providing the civil society with more active participation. The amendment reads: "The Committee will invite civil society organizations to give verbal presentations, in formal meetings, of the documents they presented in accordance with the provisions in Article 33 (a) and (b) of these Rules." See OAS, *Report on Activities to Date by the Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption*, SG/MESICIC/doc.95/04 rev.3 (Feb. 17, 2004), available at [http://www.oas.org/juridico/english/mec\\_activity.pdf](http://www.oas.org/juridico/english/mec_activity.pdf).

State Parties and NGOs, the Committee issues a country report that contains observations and recommendations regarding the degree of compliance with the IACAC. The country reports can be made public though the Internet before the round finishes at the request of the reviewed country.<sup>128</sup> If a reviewed country does not authorize its publication, however, the country report can only be made public after the entire round finishes; that is, after all the State Parties have been reviewed.<sup>129</sup> Reports presented by State Parties that reflect progress in implementing the IACAC are public via the Internet.<sup>130</sup> Moreover, responses to the questionnaire by State Parties and the civil society are also public through the Internet.<sup>131</sup>

In April 2004, the Conference of State Parties adopted "Schedule for Accelerating the Process of Analysis within the Framework of the First Round."<sup>132</sup> This Committee is involved in analyzing the provisions on preventive measures,<sup>133</sup> assistance and cooperation, and central authority designation.<sup>134</sup> As of 2007, it has met on ten occasions and has reviewed implementing measures by Argentina, Paraguay, Colombia, Nicaragua, Uruguay, Panama, Ecuador, Chile, Bolivia, Peru, Costa Rica, Venezuela, Mexico, Trinidad & Tobago, Honduras, El Salvador, Dominican Republic, and the Bahamas.<sup>135</sup> At its seventh meeting, held on March 2005, the Committee adopted six country reports including

128. *Rules of Procedure*, *supra* note 118, art. 25(g).

129. *Methodology*, *supra* note 119, § VIII.

130. *Rules of Procedure*, *supra* note 118, art. 30 (explaining that at the beginning of each committee meeting, State Parties can present national progress reports about their progress in implementing the IACAC). The Committee of Experts decided to make public the national progress reports during its fourth meeting, which are available at [http://www.oas.org/juridico/english/mec\\_rep\\_progress.htm](http://www.oas.org/juridico/english/mec_rep_progress.htm) (last visited Apr. 3, 2007).

131. OAS, *Questionnaire on Provisions selected by the Committee of Experts for Analysis within the Framework of the First Round* (May 24, 2002), available at <http://www.oas.org/juridico/english/questionnaire.doc>.

132. OAS, *Schedule for Accelerating the Process of Analysis Within the Framework of the First Round*, available at [http://www.oas.org/juridico/english/mec\\_sched.htm](http://www.oas.org/juridico/english/mec_sched.htm) (last visited Apr. 03, 2007).

133. IACAC, *supra* note 8, art. III (analyzing paragraph 1 on conduct standards, paragraph 2 on enforcement mechanisms for the conduct standards, paragraph 4 on assets disclosure, paragraph 9 on anti-corruption oversight bodies, and paragraph 11 on civil society participation).

134. OAS, *Report on Activities to Date by the Committee of Experts of the Follow-up Mechanism for the Implementation of the Inter-American Convention Against Corruption* (Feb. 17, 2004), at 4, available at [http://www.oas.org/juridico/english/mec\\_activity.pdf](http://www.oas.org/juridico/english/mec_activity.pdf).

135. OAS Follow-up Mechanism, *supra* note 10, [http://www.oas.org/juridico/english/mec\\_rep\\_progress.htm](http://www.oas.org/juridico/english/mec_rep_progress.htm) (last visited Apr. 12, 2007).

those from Honduras and Trinidad & Tobago. Most recently in the tenth meeting, which took place in December 2006, the Committee considered the preliminary draft reports from the Second Round of Review for Argentina, Paraguay, Nicaragua, Uruguay, Ecuador, and Honduras. Among other items on the agenda and calendar, the Committee reviewed the results from the Second Meeting of the Conference of States Parties to the MESICIC.<sup>136</sup>

#### IV. EFFECTIVENESS VIA IMPLEMENTATION

The purpose of this article is to evaluate the impact of the IACAC in corruption perception and corruption risk levels. To reach that objective, the following analysis will shed light on implementing measures adopted by the chosen countries. Therefore, to understand the relationship between compliance, implementing national legislation, and effectiveness of the IACAC, it is necessary to comprehend the difference between these three concepts.

Compliance is defined as “an actor’s behavior that conforms to a treaty’s explicit rules.”<sup>137</sup> Compliance determines if a State Party’s behavior to an agreement conforms to the letter of that treaty.<sup>138</sup> Thus, compliance depends on both behavior and “the stringency and scope of the legal standard.”<sup>139</sup> Experts argue that with respect to most international treaties, governments negotiate and adopt the agreements to which they know in advance they can comply.<sup>140</sup> In this respect, a simple compliance with the letter of the international treaty does not reflect its utility or impact, as compliance can occur without any implementing efforts by the parties.<sup>141</sup>

A situation of high compliance that lacks implementing efforts occurs when the IACAC merely codifies the current behavior of a State Party.<sup>142</sup> In such a case, compliance can be automatic. Article VI of the IACAC reflects a case of automatic

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136. See Office of Legal Coop., OAS Dept. of Int’l Legal Affairs, *10th Plenary Meeting of the Committee of Experts of the MESICIC*, ANTI-CORRUPTION NEWSLETTER, [http://www.oas.org/juridico/newsletter/nl\\_en\\_2.htm](http://www.oas.org/juridico/newsletter/nl_en_2.htm).

137. Kal Raustiala, *Compliance & Effectiveness in International Regulatory Cooperation*, 32 CASE W. RES. J. INT’L L. 387, 391 (2000) (citing RONALD B. MITCHELL, *INTERNATIONAL OIL POLLUTION AT SEA: ENVIRONMENTAL POLICY AND TREATY COMPLIANCE* 30 (1994)).

138. VICTOR, *supra* note 17, at 7.

139. *Id.* at 661.

140. *Id.* at 662.

141. Raustiala, *supra* note 137, at 392.

142. *Id.*

compliance with respect to the examined Central American country and Trinidad & Tobago. This provision requires State Parties to criminalize certain acts of corruption, including passive and active corruption.<sup>143</sup> As demonstrated *infra* in Part V, at the time of ratification of the IACAC, these examined countries already considered as offenses the acts of corruption enumerated in Article VI.<sup>144</sup> Guatemala and Honduras had already criminalized passive and active bribery in their respective Criminal Codes.<sup>145</sup> The same is true for Trinidad & Tobago, which had the Prevention of Corruption Act in place since 1987.<sup>146</sup> Thus, these three countries reflect a case of automatic compliance regarding Article VI of the IACAC.

#### V. IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Because simple compliance does not reflect the impact of the IACAC, it is important to explore the concepts of implementation and effectiveness.<sup>147</sup> Implementation is the process of “putting international commitments into practice,”<sup>148</sup> including the promulgation of new regulations and legislation by the national governments.<sup>149</sup> It is one of the most important factors that affect the degree of effectiveness of an international treaty.<sup>150</sup> On the other hand, effectiveness is a different concept that entails a favorable change in behavior in a State Party.<sup>151</sup> The effectiveness of the IACAC is measured by the extent it leads “to change in behavior” that furthers its goal.<sup>152</sup> Effectiveness is not the ability of the IACAC to solve the problem of corruption.<sup>153</sup> Thus, the IACAC will

143. See discussion *supra* at Part III.A; see also IACAC, *supra* note 8, art. VI.

144. See Carreño, *supra* note 84, at 13 (“The overriding criterion throughout the negotiations [of Article VI] was to include [ ] only those crimes already defined as offenses in the respective national criminal legislation.”); see also discussion *infra* at part V.

145. See discussion *infra* at Parts V.A & V.B (Guatemala & Honduras).

146. See discussion *infra* at Part V.C (Trinidad & Tobago).

147. Raustiala, *supra* note 137, at 395 (“The existence of noncompliance with a legal rule on its own does not indicate much about the effectiveness of that rule.”).

148. *Id.* at 392.

149. VICTOR, *supra* note 17, at 4-6.

150. *Id.* at 4 (stating that there are a “range of factors, beyond implementation, that affect behavior and determine the effectiveness of international accords”).

151. Raustiala, *supra* note 137, at 394.

152. *Id.*

153. VICTOR, *supra* note 17, at 6; see also Raustiala, *supra* note 137, at 394; ORAN R. YOUNG, THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL REGIMES: CAUSAL CONNECTIONS AND BEHAVIORAL MECHANISMS 3-5 (1999).



be effective even if it does not eliminate actual corruption, but causes desired behavioral change.<sup>154</sup>

Because implementation is an important factor that leads to behavioral changes to further the goal of the IACAC, this section will review the most important anti-corruption implementing legislation adopted by each examined country (Guatemala, Honduras, Jamaica, and Trinidad & Tobago). The first two countries share similar characteristics including geographic location, area, population, and legal system, and are both portrayed with the highest levels of corruption perception among all Central America countries.<sup>155</sup> The last two countries share similarities in territory, population, geographic location, and legal systems. Guatemala and Honduras' legal systems are based on Roman civil law, whereas the Jamaica and Trinidad & Tobago's legal systems are based on English common law.

Another important consideration in choosing these specific countries was the difference in ratification date. Honduras and Trinidad & Tobago ratified the IACAC in 1998,<sup>156</sup> whereas Guatemala and Jamaica ratified the IACAC in 2001.<sup>157</sup> It is important to note the three-year difference between the ratification dates of the groups of countries. Thus, ratification date is used as an explanatory variable to determine improvement in corruption perception and risk levels (dependent variable).

This difference creates a positive expectation for the first-to-ratify countries. An improvement in the dependent variable is anticipated earlier in the countries that ratified the IACAC in 1998. This intuition is based on the presumption that early ratification translates into more time to adopt implementing legislation. New legislation influences desired behavior change,<sup>158</sup> including the reduction of corrupt practices, which is reflected in an improvement of corruption perception and risk levels.<sup>159</sup> The

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154. Raustiala, *supra* note 137, at 394; *see also* VICTOR, *supra* note 17, at 6-8.

155. TI Corruption Index, [http://www.transparency.org/layout/set/print/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/layout/set/print/policy_research/surveys_indices/cpi) (last visited Apr. 03, 2007).

156. For IACAC ratification dates, *see* <http://www.oas.org/juridico/english/Sigs/b-58.html> (last visited Apr. 3, 2007) [hereinafter IACA Ratification Dates].

157. *Id.*

158. VICTOR, *supra* note 17, at 1-2.

159. *See* discussion *infra* at Part VI. As demonstrated *infra*, neither the ratification date nor implementing legislation seems to be affecting change in corruption perception for any of the examined countries. Moreover, only Honduras shows improvement in corruption risk levels for one time period. The other three countries do not reflect any positive change in corruption risk levels influenced by implementing legislation nor ratification date.

IACAC does not require State Parties to adopt a specific legislative model. Each State Party has the discretion to implement laws, policies, and institutions to fulfill their obligations according to their national legal system. Thus, each country has adopted new anti-corruption legislation since ratification.

Honduras has made the most extensive institutional and legal changes, including the adoption of constitutional amendments to prosecute high-ranking government officials and the conversion to an adversarial criminal system.<sup>160</sup> Trinidad & Tobago has enacted two important anticorruption legislations: Integrity in Public Life Act<sup>161</sup> and Freedom of Information Act.<sup>162</sup> Moreover, Trinidad & Tobago created an institution to ensure transparency and accountability in the government (Freedom for Information Unit).<sup>163</sup> Guatemala created an Anticorruption Commission<sup>164</sup> and passed a Law on Probity<sup>165</sup> to assure transparency in the performance of public officials.<sup>166</sup> Finally, Jamaica adopted the Corruption Prevention Act<sup>167</sup> to implement the terms of the IACAC. Furthermore, Jamaica took the approach of Trinidad & Tobago by promulgating freedom of information legislation, the Access to Information Act,<sup>168</sup> and creating an institution to assure its compliance, the Access to Information Unit.<sup>169</sup>

The following subparts will explain the legislation adopted by each country. To illustrate the degree of implementation, the subparts will describe the anti-corruption legislation in place at the

160. See discussion *infra* at Part V.B.

161. See Integrity in Public Life Act (2000) (Trin. & Tobago), available at <http://www.ttparliament.org/bills/acts/2000/a2000-83.pdf> [hereinafter Trin. & Tobago Integrity Act].

162. See The Freedom of Information Act (1999) (Trin. & Tobago), available at <http://www.ttparliament.org/bills/acts/1999/a1999-26.pdf> [hereinafter Trin. & Tobago FOI].

163. See discussion *infra* at Part V.D.

164. See Guatemala, Comisión para la Transparencia y Anticorrupción [Transparency and Corruption Commission], available at <http://www.guatemala.gob.gt/entidades.php?tipo=3&codigo=33> (last visited Apr. 12, 2007).

165. See Decreto No. 89-2002, Ley de Probidad y Responsabilidades de Funcionarios y Empleados Públicos [Decree No. 89-2002 Law on Probity and Responsibility Public Officers and Employees], 71 D.C. AM. 12, 24 de Diciembre de 2002 (Guat.), available at <http://www.congreso.gob.gt/archivos/decretos/2002/gtdcx89-2002.pdf> [hereinafter Guatemalan Law on Probity].

166. See *id.* at 2; see also discussion *infra* at Part V.A.

167. See Corruption Prevention Act (2001) (Jam.), available at [http://www.oas.org/juridico/spanish/jam\\_res10.pdf](http://www.oas.org/juridico/spanish/jam_res10.pdf) [hereinafter Jamaican CPA].

168. See Access to Information Act (2002) (Jam.), available at [http://www.moj.gov.jm/ati\\_act](http://www.moj.gov.jm/ati_act) [hereinafter Jamaican ATI].

169. See discussion *infra* at Part V.C.

time of ratification (automatic compliance) and any implementing legislation promulgated after ratification (implementation).<sup>170</sup>

### A. Guatemala

Guatemala signed the IACAC on June 4, 1996, and ratified it on August 3, 2001.<sup>171</sup> Before ratification, Guatemala employed a special prosecution office for corruption within its Attorney General's Office. According to Guatemalan regulation, the corruption prosecutor investigated and prosecuted public officers and individuals that committed criminal acts.<sup>172</sup> Crimes prosecuted included those relating to the "public administration and crimes against the economy of the country, the tributary regime and the custom regime."<sup>173</sup> Cases were assigned by the Attorney General's Office.<sup>174</sup> Guatemalan regulations do not specifically state the acts of corruption listed in the IACAC, but its terms are broad enough to cover them. This qualifies as automatic compliance with Article VI of the IACAC.<sup>175</sup> Nonetheless, these regulations have a major flaw in that they grant high-ranking public officials broad discretionary power to decide which corruption cases should be investigated and prosecuted.<sup>176</sup>

In October 2002, the Guatemalan Government created an Anti-Corruption Commission<sup>177</sup> to comply with Article III (11) of the IACAC.<sup>178</sup> This commission brought public offices and the civil society together to combat corruption. It also created a network composed of the Attorney General's Office, the Public Prosecution

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170. See discussion *supra* at Part IV.

171. See IACA Ratification Dates, *supra* note 156.

172. See Accord No. 01-2000, Reglamento de Organización y Funciones de la Fiscalía de Sección Contra la Corrupción [Organization and Function Regulation for the Corruption Prosecution Section] (Guat.), available at [www.oas.org/juridico/spanish/gtm\\_res22.doc](http://www.oas.org/juridico/spanish/gtm_res22.doc) (last visited Apr. 16, 2007).

173. *Id.* art. 1.

174. *Id.* art. 2.

175. See discussion *supra* at Part IV.

176. It is important to note that illicit enrichment is not a crime in the Guatemalan Criminal Code.

177. See Guatemala, *Respuesta al Cuestionario del Comité de Expertos del Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción en relación a las Disposiciones Relacionadas en el Marco de la Primera Ronda* [Guatemala's Response to the Committee of Experts' Questionnaire Regarding Articles Analyzed in the First Round] 17 (Guat.), available at [http://www.oas.org/juridico/spanish/gtm\\_res2.pdf](http://www.oas.org/juridico/spanish/gtm_res2.pdf) [hereinafter Guatemala's Response].

178. See IACAC, *supra* note 8, art. III; see also Carreño, *supra* note 84, at 11. Article III of the IACAC is considered as an aspirational provision because it only requires State Parties "to consider" the creation, strengthening and maintenance of mechanisms for civil society participation. See IACAC, *supra* note 8, art. III.

Office, the Institute of Public Criminal Defense, the Ministry of Governance, the Judicial Branch, and the Association of Journalists to facilitate investigation and proceedings regarding corruption within the judicial system.<sup>179</sup> However, by late 2003 the Guatemalan commission was facing allegations of non-transparency.<sup>180</sup>

In December 2002, the Guatemalan Legislature adopted an important piece of anti-corruption legislation through Decree No. 89-2002, "Law on Probity and Responsibility of Officers and Public Employees," which became effective in February 2003.<sup>181</sup> The decree's objective was to create norms and procedures to assure transparency in public officials' performance.<sup>182</sup> This legislation also complies with the aspirational provisions of the IACAC.<sup>183</sup> Decree No. 89-2002 established a mechanism that requires public officials to declare assets and liabilities while in office, and to prevent illicit enrichment or misuse of Guatemalan property.<sup>184</sup> Nonetheless, the decree has a confidentiality obligation, Article XXI, which prohibits disclosing information about such declarations unless required under a criminal proceeding.<sup>185</sup> More importantly, the decree's objective is to prevent illicit enrichment in an attempt to comply with Article IX (aspirational) of the IACAC. However, under the Guatemalan Criminal Code, concealment of property is considered as a criminal offense,<sup>186</sup> not illicit enrichment.<sup>187</sup>

At the time of IACAC's ratification, Guatemala already had

179. See Guatemala's Response, *supra* note 177, at 15.

180. TI, GLOBAL CORRUPTION REPORT 2004: Political Corruption 197 (2004), available at [http://www.transparency.org/publications/gcr/download\\_gcr/download\\_gcr\\_2004](http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2004).

181. See Guatemalan Law on Probity, *supra* note 165.

182. *Id.*

183. See IACAC, *supra* note 8, arts. III (4), XI (a), (b) & (d).

184. Public officials must present declarations of assets and liabilities at the beginning and end of their terms of office and on an annual basis according to specific criteria set out in the Law on Probity. See Guatemalan Law on Probity, *supra* note 165, art. 21.

185. See discussion *infra* at Part V.A (Honduras). According to the Organic Law of the Superior Court of Accounts, an element of confidentiality is not required in the Honduran legislation.

186. See Decreto No. 17-73, Código Penal [Criminal Code], art. 447 (Guat.), available at [http://www.oas.org/juridico/mla/sp/gtm/sp\\_gtm-int-text-cp.pdf](http://www.oas.org/juridico/mla/sp/gtm/sp_gtm-int-text-cp.pdf) [hereinafter Guatemalan Criminal Code].

187. INFORME INDEPENDIENTE DE SEGUIMIENTO A LA IMPLEMENTACIÓN DE LA CONVENCION INTERAMERICANA CONTRA LA CORRUPCIÓN EN GUATEMALA [Independent Follow-up Report about the Implementation of the Inter-American Convention Against Corruption in Guatemala] 5 (Guat.) available at [http://www.oas.org/juridico/spanish/gtm\\_res3.pdf](http://www.oas.org/juridico/spanish/gtm_res3.pdf) [hereinafter GUATEMALAN CIVIL SOCIETY REPORT].

several civil service laws to regulate and prescribe the rights and responsibilities of public officials.<sup>188</sup> Equally, the Executive Branch is governed by the “Executive Branch Law,” which contains general norms to assure ethics and transparency.<sup>189</sup> In this respect, Guatemala chose to implement the IACAC; not by adopting new legislation, but instead by issuing specific norms of ethics as Accords (or Acuerdos). The Accords are legally binding governmental agreements,<sup>190</sup> which are the means to fulfill Article III (1) of the IACAC.<sup>191</sup> For example, in 2001, the “Ethical Standards of the Judicial Branch” was adopted to govern the ethics and morals in the judicial system.<sup>192</sup> Equally, in 2004, the Executive Branch issued Governmental Accord No. 197-2004, which regulates the Executive Branch’s personnel including public officers, employees, and advisors.<sup>193</sup>

In 2004, the Executive Branch created the Transparency and Anticorruption Commission.<sup>194</sup> The Commissioner is an executive appointee that serves a term of one year, which can be extended by Presidential authorization.<sup>195</sup> The Commissioner is responsible for identifying adequate anticorruption measures to promote transparency within the government.<sup>196</sup> For the purposes of IACAC Article XVIII, the Commissioner represents the Central Authority.

At the time of the Guatemala’s IACAC ratification, its criminal laws already considered active and passive bribery criminal

188. See Decreto No. 1748, Ley de Servicio Civil [Civil Service Law] (Guat.), available at <http://www.mspas.gob.gt/dgrvcs/DRACES/REGULACIONES/Dt1748.pdf>; Decreto No. 48-99, Ley de Servicio Civil del Organismo Judicial [Judicial Branch Civil Service Law] (Guat.), available at <http://www.congreso.gob.gt/archivos/decretos/1999/gtdcx48-1999.pdf>; Decreto No. 44-86, Ley de Servicio Civil del Organismo Legislativo [Legislative Branch Civil Service Law] (Guat.), available at <http://www.congreso.gob.gt/Docs/serviciocivil/tit1.htm>.

189. See Decreto No. 114-97, Ley del Organismo Ejecutivo [Executive Branch Law] (Guat.), available at <http://www.guatemala.gob.gt/docs/LeydelOrganismoEjecutivo.pdf>.

190. The main distinction between decrees and agreements is the governmental branch that issues them: In Guatemala, Congress issues decrees, whereas the Executive and Judicial branches commonly issue Accords.

191. See Guatemala’s Response, *supra* note 177, at 3-4.

192. *Id.* at 3.

193. See NORMAS DE ÉTICA DEL ORGANISMO EJECUTIVO [EXECUTIVE BRANCH ETHICS NORMS] (Guat.), available at <http://www.guatemala.gob.gt/docs/Normaseticasdelorganismoexecutivo.pdf>.

194. Acuerdo Gubernativo Número 99-2004 [Governmental Accords No. 99-2004] (Guat.), available at <http://www.congreso.gob.gt/archivos/acuerdos/2004/gtagx0992004.pdf>; see also Guatemala’s Response, *supra* note 177, at 3-4.

195. *Id.*

196. *Id.*

offenses, showing a case of automatic compliance.<sup>197</sup> Active bribery is directed at those who give or offer bribes to a public officer (supply side of corruption).<sup>198</sup> Passive bribery is an offense for which a public officer that requests or accepts a bribe can be punished (demand side of corruption).<sup>199</sup> Both active and passive bribery are punishable by two to eight years in prison.<sup>200</sup> Criminal jurisdiction extends to acts committed within Guatemala and by Guatemalan nationals.<sup>201</sup> Furthermore, bank secrecy is protected under Guatemalan law unless law enforcement agencies request the information in a narcotic investigation proceeding.<sup>202</sup> This “drug-investigation” exception was created under Article 58 of Guatemala’s Criminal Code, which regulates drug trafficking.<sup>203</sup>

Guatemala is part of several bilateral Mutual Legal Assistance Agreements. Bilateral agreements currently in force include those with Argentina, Belgium, Great Britain, Ecuador, Spain, United States, and Mexico.<sup>204</sup> Thus, Guatemala has international assistance treaties in places that can facilitate the investigation of corrupt practices though gathering evidence and cooperating in other legal proceedings. Additionally, certain Guatemalan anti-corruption law initiatives are pending approval. These initiatives seek to fill the gaps in the anti-corruption legislation in existence.<sup>205</sup> The most important initiative includes the “Framework Law on the Protection of Persons that Denounce Acts of Corruption,” which protects “whistleblowers”<sup>206</sup> and fulfills a requirement of Article III (8) of the IACAC.

The “Anti-Corruption Law” initiative creates a strict scrutiny mechanism for assets belonging to public officials with the objective of preventing illicit enrichment.<sup>207</sup> Additionally, the initiative

197. See Guatemalan Criminal Code, *supra* note 186, tit. XIII, ch. III.

198. *Id.* art. 442.

199. See *id.* art. 439.

200. *Id.* arts. 439, 442, 443.

201. *Id.* art. 5; see also Guatemala Code of Criminal Prosecution, art. 38, available at <http://www.congreso.gob.gt>.

202. Ley de Bancos y Grupos Financieros [Law on Banks and Financial Groups], art. 63 (Guat.), available at <http://www.congreso.gob.gt/2004/leyes.asp>.

203. *Id.* art. 58.

204. Guatemala’s Response, *supra* note 177, at 25-27.

205. *Id.* at 9, 17.

206. Iniciativa No. 2632, Ley Modelo sobre Protección de Personas que Denuncian Actos de Corrupción [Framework Law about Protection of Persons that Denounce Acts of Corruption] (Guat.), available at [http://www.congreso.gob.gt/gt/ver\\_iniciativa.asp?id=350](http://www.congreso.gob.gt/gt/ver_iniciativa.asp?id=350).

207. Iniciativa No. 3197, Ley Anticorrupción [Anti-Corruption Law] (Guat.), available at <http://www.congreso.gob.gt/archivos/iniciativas/registro3197.pdf>.

to enact the "Law on Mechanisms for the Participation of Civil Society in the Prevention of Corruption" assures active civil society participation in corruption prevention.<sup>208</sup> Finally, initiatives Nos. 3195 and 3210, presented on February 2005 and March 2005 respectively, typify illicit enrichment as a crime (thus complying with Article IX),<sup>209</sup> and strengthen criminal penalties for other corrupt practices, including embezzlement and misappropriation.<sup>210</sup>

### B. Honduras

Honduras signed the IACAC in March 1996 and ratified it in May 1998.<sup>211</sup> According to Article 18 of the Honduran Constitution, international treaties are non-self-executing, but will prevail over national legislation if they do not contradict the Honduras Constitution.<sup>212</sup> The IACAC determines which acts of corruption are punishable at every level of hierarchy.<sup>213</sup> Therefore, in 2003, the Honduran Congress repealed Articles 200 and 205(15) and amended Article 313(2) of its Constitution to allow impeachment and prosecution of congressmen and of the "highest officers" of the country.<sup>214</sup> This new constitutional right provides a judicial tool for all individuals to access information about themselves contained in public or private databases, and to modify, remove, or

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208. Iniciativa No. 2617, Ley de Mecanismos de Participación de la Sociedad Civil en la Prevención de la Corrupción [Law on Mechanisms for Participation of Civil Society in the Prevention of Corruption] (Guat.), available at <http://www.congreso.gob.gt/archivos/iniciativas/registro2617.pdf>.

209. Iniciativa No. 3195, Reformas al Código Penal, art. 11 [Reforms to the Criminal Code] (Guat.), available at <http://www.congreso.gob.gt/archivos/iniciativas/registro3195.pdf>.

210. Iniciativa No. 3209, Aprobar las Reformas al Código Penal, arts. 12-18 [Initiative to Approve Criminal Code Reforms] (Guat.), available at <http://www.congreso.gob.gt/archivos/iniciativas/registro3209.pdf>.

211. IACAC, *supra* note 8.

212. CONSTITUCION DE LA REPUBLICA DE HONDURAS [CONSTITUTION OF THE REPUBLIC OF HONDURAS] art. 18 (1982), available at [http://www.honduras.net/honduras\\_constitution.html](http://www.honduras.net/honduras_constitution.html).

213. IACAC, *supra* note 8, art. I.

214. See Honduras, *Cuestionario en Relación con las Disposiciones Seleccionadas por el Comité de Expertos para ser Analizadas en el Marco de la Primera Ronda* [Questionnaire Regarding the Articles Selected by the Committee of Experts to be Analyzed in the First Round], available at [www.oas.org/juridico/spanish/hnd\\_res2.pdf](http://www.oas.org/juridico/spanish/hnd_res2.pdf) [hereinafter Honduras' Response]; see also Honduras National Progress Report, *Seventh Meeting of the Committee of Experts*, [http://www.oas.org/juridico/spanish/mec\\_avance\\_hndVII.pdf](http://www.oas.org/juridico/spanish/mec_avance_hndVII.pdf) (stating that Decree No. 175-2003 repeals Articles 200 and 205 (15) of the Honduran Constitution and amends Article 313(2) by granting powers to the Honduran Supreme Court of Justice to prosecute at the highest level of hierarchy).

correct that information when necessary.<sup>215</sup> The Honduran Congress also introduced a second amendment to Article 182 of the Constitution in March 2005, establishing the figure of Habeas Data.<sup>216</sup> This second constitutional amendment is a legal instrument to promote “transparency in government, protect personal privacy against the arbitrary or illegitimate use of personal data, and ensure accountability to and participation by society.”<sup>217</sup>

Furthermore, since ratification, Honduras has undergone multiple reforms of its criminal justice system and of key anti-corruption institutions.<sup>218</sup> For instance, in 2002, a new Code of Criminal Procedure replaced the written, inquisitive criminal system with an adversarial system modeled on the Anglo-American justice system.<sup>219</sup> Afterwards, the Honduras Supreme Court of Justice created the Inter-Institutional Commission of Criminal Justice, comprised of the Supreme Court, the Office of the Public Prosecutor, the Attorney General’s Office, the Supreme Court of Accounts, the Ministry of Security, the Ministry of Interior, and the National Congress, to coordinate the implementation of the new criminal system.<sup>220</sup>

Also, in 2002, the Honduran Congress issued the Organic Law of the Superior Court of Accounts,<sup>221</sup> which created the Superior Court of Accounts (SCA) by merging the Administrative Director-

215. INTER-AM. COMM. HUMAN RTS. [IACHR], ANNUAL REPORT 2001: REPORT OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION, ch. 1 (General Reports) (2001), available at <http://www.cidh.org/Relatoria/showarticle.asp?artID=404&IID=1>.

216. Honduras’ Response, *supra* note 214, at 8-9; see also Red Probidad, *Congreso Ratifica la Figura del Hábeas Data* [Congress Ratifies Habeas Data], PROBIDAD, Mar. 18, 2005, <http://probidad.org/index.php?seccion= comunicados/2005/032.html>.

217. *Probidad*, *supra* note 216, at 113.

218. See discussion *infra* at Part VI.A.3 (showing that the 2002 and 2003 in-depth legal and institutional changes, influences a decrease of corruption risk levels in Honduras). The ICRG data specially shows that Honduras improves the risk points in 2002 and 2003. See *id.*

219. REPUBLIC OF HONDURAS, FINAL REPORT ON THE IMPLEMENTATION IN THE REPUBLIC OF HONDURAS OF THE PROVISIONS OF THE IACAC SELECTED FOR REVIEW WITHIN THE FRAMEWORK OF THE FIRST ROUND 3, SG/MESICIC/doc.141/04 rev.4 (Mar. 12, 2005), available at [http://www.oas.org/juridico/english/mec\\_rep\\_hnd.pdf](http://www.oas.org/juridico/english/mec_rep_hnd.pdf) [hereinafter HONDURAS FINAL COUNTRY REPORT].

220. Republic of Honduras, *Honduras National Progress Report, Fourth Meeting of the Committee of Experts* (July 14, 2003), available at [http://www.oas.org/juridico/spanish/mec\\_avance\\_hon.pdf](http://www.oas.org/juridico/spanish/mec_avance_hon.pdf).

221. Decreto No. 10-2002-E, Ley Orgánica del Tribunal Superior de Cuentas [Organic Law of the Superior Court of Accounts], art. 115 (Hond.), available at <http://www.tsc.gob.hn/normativa2.htm> [hereinafter SCA Organic Law] (establishing that Article 115 of the SCA Organic Law derogates the Comptroller General Organic Law (Decree No. 224-93) and the Law Against Unlawful Enrichment of Civil Servants (Decree No. 301 of 1975)).



ate and the Office of the Comptroller General.<sup>222</sup> The SCA is an independent governmental institution that has been working since January 2003.<sup>223</sup> The SCA is responsible for implementing the IACAC and for assuring the proper administration of national resources.<sup>224</sup> It is also the Central Authority of Honduras for purposes of the IACAC, with an objective of strengthening mechanisms to prevent, detect, and punish “acts of corruption in any form.”<sup>225</sup> The SCA is specifically responsible for implementing non-mandatory provisions of the IACAC, such as Article III on preventive measures.<sup>226</sup> To fulfill the requirement of Article III (11) of the IACAC, the Organic Law established the National Anti-Corruption Council, which is responsible for coordinating the participation of civil society in anti-corruption initiatives.<sup>227</sup>

Furthermore, the SCA is responsible for establishing a mechanism that assures transparency of public functions.<sup>228</sup> The SCA Organic Law created a Division of Ethics and Probity responsible for managing a new system for registering declarations of assets and income of public officials, which must be presented on an annual basis.<sup>229</sup> Noncompliance of disclosure is considered an offense according to Article 350 of the Honduras Criminal Code.<sup>230</sup> The SCA is also responsible for creating and strengthening the

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222. *Id.*

223. *Id.* art. 6.

224. *Id.* art. 68; *see also* Honduras’ Response, *supra* note 214, at 11, 23-24; HONDURAS FINAL COUNTRY REPORT, *supra* note 219, at 4, 6, 10.

225. SCA Organic Law, *supra* note 221, art. 37; *see also* Honduras’ Response, *supra* note 214, at 55; HONDURAS FINAL COUNTRY REPORT, *supra* note 219, at 35.

226. SCA Organic Law, *supra* note 221, arts. 68-70. Article 69 creates a “Social Comptrollership,” which is a process whereby citizens help the SCA fulfill its duties. *Id.* art. 69. Article 70 establishes the scope of the Social Comptrollership, stating that the Court is responsible for “fostering transparent public administration and establishing processes and mechanisms to allow citizens to participate” to encourage transparent management of civil servants and to assure the investigation of complaints. *Id.* art. 70.

227. *Id.* art. 71; *see also* HONDURAS FINAL COUNTRY REPORT, *supra* note 219, at 21 (stating that Executive Decree No. 015-2000 created the National Anti-Corruption Council, which was strengthened by including representatives of civil society though Decision No. 064-2002.).

228. SCA Organic Law, *supra* note 221, art. 3.

229. *Id.* The SCA Organic Law derogated the Law Against Unlawful Enrichment of Civil Servants. *See id.* Therefore, for interpreting purposes when the derogated law is mentioned in other legislation, such as the Criminal Code, it is replaced by the SCA Organic Law.

230. Decreto No. 144-83, Código Penal [Criminal Code] (Hond.), art. 350, *available at* [http://www.congreso.gob.hn/constitucionesy\\_codigos/codigos/codigopenal.pdf](http://www.congreso.gob.hn/constitucionesy_codigos/codigos/codigopenal.pdf) [hereinafter Honduras Criminal Code]. The Honduras Criminal Code has been reformed by Decrees No. 120-94 & No. 127-99 and Norms 63-44, 177-99, 120-94, 59-97, 34-82, & 459-77. *Id.*

mechanism that prevents, investigates and punishes acts of corruption.<sup>231</sup> It has a duty to investigate, corroborate, and determine the existence of unlawful enrichment.<sup>232</sup> In this respect, it is important to highlight that the Organic Law dedicates whole sections to corruption<sup>233</sup> and illicit enrichment.<sup>234</sup> More importantly, in complying with Article XVI of the IACAC, the SCA will have complete access to financial statements and bank accounts of civil servants and their relatives during its investigations of illicit enrichment.<sup>235</sup>

Furthermore, in 2002, the Honduran Legislature passed the “Law Against the Crime of Laundering Assets.”<sup>236</sup> Under this new law, the term “assets” is defined to include “any type of tangible or intangible property, negotiable instruments, securities, documents, or legal instruments that prove property and other rights over these assets.”<sup>237</sup> The 2002 “Law Against the Crime of Laundering Assets” also includes provisions that detail the obligations of banking institutions regarding information disclosure, registration, and notification of financial transactions and sanctions against financial institutions that violate the law.

Even before the IACAC’s ratification, Honduras’ Criminal Code criminalized bribery,<sup>238</sup> embezzlement,<sup>239</sup> misappropriation,<sup>240</sup> and extortion.<sup>241</sup> Moreover, Section V of the Criminal Code applies to active and passive bribery of public officers and government employees.<sup>242</sup> In this respect, Honduras reflects an example of automatic compliance vis-à-vis Article VI of the IACAC.<sup>243</sup> Criminal jurisdiction is based on nationality and territoriality;<sup>244</sup>

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231. SCA Organic Law, *supra* note 221, art. 54(6).

232. *Id.* art. 54(3).

233. *Id.* arts. 68-72.

234. *Id.* arts. 62-67. Article 62 defines Illicit Enrichment in the terms of Article IX of the IACAC. *Id.* art. 62.

235. *Id.* art. 67(2); *see also* Honduras’ Response, *supra* note 214, at 16; HONDURAS FINAL COUNTRY REPORT, *supra* note 219, at 22.

236. Decreto 45-2002 Ley Contra el Delito de Lavado de Activos [Law Against the Crime of Asset Laundering], art. 2 (Hond.), *available at* <http://www.unodc.org/enl/showDocument.do?tab=details&cmd=add&country=HON&node=docs&documentUid=2242&language=SPA> [hereinafter Honduras ATI].

237. *Id.*; *see also* Honduras’ Response, *supra* note 214, at 53.

238. Honduras Criminal Code, *supra* note 230, § V, arts. 361-369.

239. *Id.* arts. 370-71.

240. *Id.* art. 372.

241. *Id.* art. 377.

242. *Id.* art. 396 (stating that Article 396 applies to any member of the judiciary or a tribunal that accepts bribes (passive bribery)).

243. *See* discussion *supra* at Part IV.

244. *See* Honduras Criminal Code, *supra* note 230, arts. 3-6; *see also* Decreto No.

however, Heads of State, Diplomats, and Governments of foreign countries enjoy immunity from criminal prosecution.<sup>245</sup> The Special Anti-Corruption Prosecutor carries out criminal prosecution of corruption cases in Honduras.<sup>246</sup>

Honduras is also part of several bilateral and multilateral Mutual Legal Assistance Agreements to receive and provide legal assistance and mutual cooperation to fight corruption.<sup>247</sup> Moreover, the SCA is the main body receiving requests for assistance and cooperation for the purposes of the IACAC.<sup>248</sup> The SCA Organic Law states that the IACAC will be the legal basis for providing assistance for the investigation and prosecution of corruption acts.<sup>249</sup>

### C. Jamaica

Jamaica signed the IACAC in March 1996 and ratified it in March 2001.<sup>250</sup> The Jamaican Government amended the Parliamentary (Integrity of Members) Act in 2001 to increase penalties for its breaches by parliamentarians (members of the House of Representatives and Senate), and to increase the punishment of asset nondisclosures.<sup>251</sup> The Parliamentary Act created the Integrity Commission,<sup>252</sup> which receives and reviews declarations of assets from members of the Corruption Commission and parliamentarians,<sup>253</sup> thereby complying with the aspirational provision of the IACAC.<sup>254</sup> The Integrity Commission must report any act of corruption on the part of any parliamentarian to the Director of Public Prosecution for investigation.<sup>255</sup>

One year after ratification, Jamaica enacted the Corruption Prevention Act (CPA)<sup>256</sup> to better implement the terms of the

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189-84, *Codigo de Procedimientos Penales* [Code of Criminal Procedure], art. 54 (Hond.), available at [http://www.oas.org/juridico/mla/sp/hnd/sp\\_hnd-int-text-cprp.pdf](http://www.oas.org/juridico/mla/sp/hnd/sp_hnd-int-text-cprp.pdf).

245. Honduras Criminal Code, *supra* note 230, art. 8.

246. HONDURAS FINAL COUNTRY REPORT, *supra* note 219, at 19.

247. *Id.* at 33-34.

248. Honduras' Response, *supra* note 214, at 55.

249. SCA Organic Law, *supra* note 221, art. 68.

250. IACAC, *supra* note 8.

251. Parliament Integrity of Members Act (1973) (Jam.), available at [http://www.oas.org/juridico/spanish/jam\\_res24.pdf](http://www.oas.org/juridico/spanish/jam_res24.pdf).

252. *Id.* § 3 (stating that the Integrity Commission consists of the Auditor-General and four appointees of the Governor-General). The appointed members serve a period of two to five years and may be reappointed.

253. *Id.* § 4(1).

254. See IACAC, *supra* note 8, art. III(1).

255. *Id.*

256. See Jamaican CPA, *supra* note 167.

IACAC.<sup>257</sup> The CPA criminalizes passive and active corruption by public servants,<sup>258</sup> active corruption by any person within Jamaican territory,<sup>259</sup> embezzlement,<sup>260</sup> transnational bribery,<sup>261</sup> and illicit enrichment.<sup>262</sup> Article 14 of the CPA defines “acts of corruption” in similar terms as the IACAC. Criminal responsibility extends to Jamaican citizens who commit acts of corruption in a foreign state<sup>263</sup> and to persons who instigate, aid, abet or are accessories after the fact, or participate in the commission or attempted commission of an act of corruption, or conspire to commit any act of corruption.<sup>264</sup>

Furthermore, the CPA requires public servants, including police officers, customs officers, revenue officials, and procurement officers, to submit a declaration of assets and liabilities.<sup>265</sup> Such declarations are to be presented to the Corruption Prevention Commission.<sup>266</sup> The Commission is responsible for investigating complaints of corruption based on the CPA.<sup>267</sup> Finally, the Commission is required to report any acts of corruption committed by a public servant to the Director of Public Prosecutions for further investigation.<sup>268</sup> However, declarations of assets, liabilities, and income are not considered public documents.<sup>269</sup>

In January 2004, Jamaica’s Access to Information Act (ATI) entered into force.<sup>270</sup> It applies to all government entities and aims to provide transparency in government administration, greater government accountability, and participation by civil soci-

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257. Gladys Young, Crown Counsel, *Questionnaire on Provisions Selected by the Committee of Experts for Analysis within the Framework of the First Round*, May 24, 2002, available at [http://www.oas.org/juridico/spanish/jam\\_res1.pdf](http://www.oas.org/juridico/spanish/jam_res1.pdf) [hereinafter *Jamaica’s Response*]; see also TI, *THE NATIONAL INTEGRITY SYSTEM TI COUNTRY STUDY REPORT: JAMAICA 2003* 36-38, 46 (2003) [hereinafter *TI, JAMAICA 2003*].

258. *Jamaican CPA*, *supra* note 167, § 14(1).

259. *Id.* §§ 14(2), 14(10)-(12).

260. *Id.* § 14(8).

261. *Id.* § 14(4).

262. *Id.* §§ 14(5), 14(6).

263. *Id.* § 14(9).

264. *Id.* § 14(3).

265. *Id.* § 4(1).

266. *Id.* The Corruption Prevention Commission was launched on March 2003. It has the authority to require any public servant to present sworn declaration of assets. The Commission consists of the Auditor-General and four persons appointed by the Governor-General. The appointed members serve for a period of seven years and may be reappointed.

267. *Id.* § 5.

268. *Id.* § 12(2).

269. *Id.* § 4.

270. *Jamaican ATI*, *supra* note 168, § 2.

ety in national decision-making.<sup>271</sup> This law grants every person the right of access to official documents not considered “exempt documents,”<sup>272</sup> creating an administrative proceeding when access to information is denied.<sup>273</sup> The Access to Information Unit meets with the civil society in an ATI Committee of Stakeholders to identify strategies for the fulfillment of the Act’s objectives.<sup>274</sup>

Jamaica is also part of multiple bilateral treaties on police cooperation and general cooperation arrangements with various countries.<sup>275</sup> Additionally, Jamaica is part of the Caribbean Community and the Commonwealth (CARICOM), which allows technical cooperation to prevent, detect, investigate, and punish acts of corruption.<sup>276</sup> The Mutual Assistance (Criminal Matters) Act allows cooperation with overseas law enforcement agencies in investigations and proceedings related to criminal matters, including acts of corruption.<sup>277</sup> The requesting country, however, must be a State Party to the IACAC or a designated Commonwealth country.

Assistance under the Criminal Matters Act includes, but is not limited to gathering evidence and assisting investigations, retaining dealings in property or freezing assets, and tracing, seizure, and forfeiture of property.<sup>278</sup> Three governmental entities are responsible for the Implementation of the Mutual Assistance Act: the Minister of Justice, the Director of Public Prosecution, and the Organized Crime Investigation Unit of the Jamaica Constabulary Force.<sup>279</sup> The Director of Public Prosecution was delegated by the Ministry of Justice as the Central Authority for purposes of processing requests for assistance and cooperation

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271. Jamaica’s Response, *supra* note 227, at 19-22.

272. Honduras ATI, *supra* note 236, § 14-23. Exempt Documents include those that contain information that would prejudice the security, defense or international relations of Jamaica and those that would involve an unreasonable disclosure of information relating the personal affairs of any person. *See id.*

273. *Id.* § 30-31 (providing for an internal review by the Public Authority if a request for access is denied and appeals to an Appeals Tribunal established by the Act).

274. Access to Information Unit, [http://www.jis.gov.jm/special\\_sections/ATI/default.html](http://www.jis.gov.jm/special_sections/ATI/default.html) (last visited Apr. 3, 2007).

275. Jamaica’s Response, *supra* note 257, at 25-28. For example, Jamaica has signed such treaties with Canada, Colombia, the United Kingdom, and United States. *See id.*

276. *Id.* at 28.

277. Mutual Assistance (Criminal Matters) Act (1995) (Jam.), *available at* [www.oas.org/juridico/MLA/en/jam/en\\_jam\\_mla\\_1995.html](http://www.oas.org/juridico/MLA/en/jam/en_jam_mla_1995.html).

278. Jamaica’s Response, *supra* note 257, at 25.

279. *See* Mutual Assistance Act, *supra* note 277; *see also id.* at 15.

based in the IACAC.<sup>280</sup>

#### D. *Trinidad & Tobago*

In April 1998, Trinidad & Tobago signed and ratified the IACAC.<sup>281</sup> A 1987 “Prevention of Corruption Act,” which criminalizes corrupt acts by public servants, high ranking officials of the government, and State enterprises, was already in place.<sup>282</sup> Furthermore, in 2000, the Legislature issued the “Integrity in Public Life Act”<sup>283</sup> with the objective of strengthening the existing anti-corruption legal regime and preventing illicit enrichment. The Integrity Act created an Integrity Commission and a Code of Conduct.<sup>284</sup> The Code of Conduct applies to persons in public life<sup>285</sup> and all “persons exercising public functions.”<sup>286</sup> This Code regulates, among other things, the use of public office for private gain or to influence decisions, the use of confidential information to further private interest, the acceptance of fees, gifts and personal benefits, and conflicts of interest. The Integrity Act does not require any public officials or members of the public to report acts of corruption and denunciations are made on a voluntary basis.<sup>287</sup> Nonetheless, there is no effective legal protection for whistleblowers.<sup>288</sup>

The Integrity Commission is responsible for investigating

280. *Id.*

281. *See* IACAC, *supra* note 8.

282. Prevention of Corruption Act (1987) (Trin. & Tobago); *see also* TI, THE NATIONAL INTEGRITY SYSTEM TI COUNTRY STUDY REPORT: TRINIDAD & TOBAGO 2001 15 (2001), available at [http://www1.transparency.org/activities/nat\\_integ\\_systems/dnld/trinidad&tobago.pdf](http://www1.transparency.org/activities/nat_integ_systems/dnld/trinidad&tobago.pdf) [hereinafter Trin. & Tobago Nat'l Integrity System]; Trin. & Tobago, *Update to the Questionnaire on Provisions Selected by the Committee of Experts for Analysis Within the Framework of the First Round* [hereinafter Trin. & Tobago's Response], available at [http://www.oas.org/juridico/spanish/tto\\_res1.pdf](http://www.oas.org/juridico/spanish/tto_res1.pdf).

283. Trin. & Tobago Integrity Act, *supra* note 161.

284. *Id.* at Parts II & VI.

285. *Id.* (defining “person[s] in public life” to include: Members of the House of Representatives, Ministers of Government, Parliamentary Secretaries, Members of the Tobago House of Assembly, Members of Municipalities, Members of Local Government Authorities, Senators, Judges and Magistrates appointed by the Judicial and Legal Service Commission, Members of the Boards of all Statutory Bodies and State Enterprises, and Permanent Secretaries and Chief Technical Officers).

286. *Id.* § 2 (defining persons exercising public function as all persons holding office under the Public Service, Judicial and Legislative Service, Police Service, Teaching Service, Statutory Authorities' Service Commission, Members of the Diplomatic Service, and Advisers to the Government).

287. *Id.* § 32(1).

288. TRIN. & TOBAGO TRANSPARENCY INST., INDEPENDENT ASSESSMENT OF THE TRINIDAD AND TOBAGO GOVERNMENT'S RESPONSE TO THE COMMITTEE OF EXPERTS' FIRST ROUND QUESTIONNAIRE ON THE IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION

complaints related to breaches of the Integrity Act and the Prevention of Corruption Act.<sup>289</sup> It must report any breach of the Code of Conduct to the Director of Public Prosecutions and the Public Service Commission.<sup>290</sup> The Commission also receives and examines declarations of assets and liabilities of public officials on an annual basis.<sup>291</sup> Furthermore, the Commission has authority to conduct an investigation to determine whether assets, income, and liabilities were fully disclosed in the declaration.<sup>292</sup> A principle objective of this provision is to deter and detect illicit enrichment of public officials,<sup>293</sup> an offence punishable by up to ten years in prison.<sup>294</sup> The Commission is also responsible for preparing a Register of Interest, which are statements by persons in public life regarding their sources of income and “any other substantial interest” that may appear to raise a conflict between private interest and public obligations.<sup>295</sup> The Register of Interest is available for public scrutiny in order to detect any conflict of interest.<sup>296</sup>

In February 2001, Trinidad & Tobago adopted the Freedom of Information Act (FOI).<sup>297</sup> The objective of the FOI is to promote transparency and accountability in government affairs.<sup>298</sup> It provides the public a right to access information possessed by public authorities.<sup>299</sup> The FOI creates an administrative procedure in case a public authority refuses to provide official documents.<sup>300</sup> Three months after the FOI became effective, the Freedom of

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AGAINST CORRUPTION 9 (2004), available at [http://www.oas.org/juridico/spanish/tto\\_res2.pdf](http://www.oas.org/juridico/spanish/tto_res2.pdf) [hereinafter TRIN. & TOBAGO INDEPENDENT ASSESSMENT].

289. Trin. & Tobago Integrity Act, *supra* note 161, § 5.

290. *Id.* pt. II, § 31. The Public Service Commission has the responsibility of exercising disciplinary control over public officers. The procedure for allegation of misconduct is stated in the Public Service Commission Regulation.

291. *Id.* pt. III, § 11.

292. *Id.* pt. III, § 21 (“[A]ny person who fails to declare or falsely declares it assets, incomes, and liabilities is guilty of an offense and liable to imprisonment for up to ten years.”).

293. See Parliamentary Debates, *Official Report in the Fourth Session of the Fifth Parliament of the Republic of Trinidad & Tobago*, Sess. 1998-1999, vol. 16, [www.ttparliament.org/hansard/senate/1999/hs990706.pdf](http://www.ttparliament.org/hansard/senate/1999/hs990706.pdf); see also Trin. & Tobago Integrity Act, *supra* note 161. According to § 12(5) of the Integrity Act, the person filing the declaration of assets has the burden to prove the sources of income. Unjust enrichment serves as a deterrent, since it’s a presumed offense.

294. Trin. & Tobago Integrity Act, *supra* note 161, § 21.

295. *Id.* § 14(3).

296. *Id.* § 14(2).

297. Trin. & Tobago FOI, *supra* note 162. The Trin. & Tobago FOI was amended by Act No. 92 in 2000 & Act No. 14 in 2003. See *id.*

298. *Id.* at 3.

299. *Id.* pt. III, § 11.

300. *Id.* at 12.

Information Unit was created to monitor, advise, and issue reports regarding compliance by the FOI public authorities.<sup>301</sup>

The Mutual Assistance in Criminal Matters Act<sup>302</sup> implements mutual assistance treaties in criminal matters and can only be applied in relation to a request made by a foreign country under a bilateral or multilateral agreement. This Act allows the gathering of evidence for a criminal investigation or prosecution in a foreign country, including restraining, seizure, or forfeiture of property situated within the boundaries of the territory.<sup>303</sup> The Attorney General, with the assistance of the Counter Drug and Crime Task Force, the Fraud Squad, or the Criminal Investigation Division, carries out requests. The Attorney General is the central authority for purposes of the IACAC and is responsible for receiving requests and coordinating mutual legal assistance and extradition. Extradition is governed by the Extradition (Commonwealth and Foreign Territories) Act, which was amended in 2004 to include corruption as an extraditable offence.<sup>304</sup> This complied with Articles VI and XIII of the IACAC.

## VI. EFFECTIVENESS OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

### A. *The Data*

The IACAC has been in force for over six years, longer than any other anti-corruption treaty. It has been acclaimed as the most comprehensive international anti-corruption agreement.<sup>305</sup> For that reason, determining the IACAC's effectiveness is essential. This article compares corruption perception since 1996 and corruption as a risk for investment since 1994. In order to determine corruption perception levels, two well respected surveys that employ similar methodology will be used: the Transparency International Corruption Perception Index (CPI) and the World Bank Governance Research Indicator Country Snapshot (GRICS). The

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301. Trin. & Tobago Freedom of Information Unit, <http://www.foia.gov.tt> (last visited Apr. 3, 2007).

302. Mutual Assistance in Criminal Matters Act (1997) (Trin. & Tobago), available at <http://www.ttparliament.org>. This Act was amended by Act No.7 of 2001 & Act No.14 of 2004.

303. *Id.*

304. Act to Amend the Extradition Commonwealth and Foreign Territories Act (Trin. & Tobago), No. 12 (2004), available at <http://www.ttparliament.org/bills/acts/2004/a2004-12.pdf>.

305. Boswell, *supra* note 72, at 134.



International Country Risk Guide (ICRG) will be used to assess risk levels.

### 1. Transparency International Corruption Perception Index (CPI)

Transparency International (TI) is an international non-governmental organization devoted to combating corruption. TI focuses on anti-corruption prevention and reforming systems of government, rather than exposing individual cases of corruption.<sup>306</sup> TI is popular for its Corruption Perception Index (CPI),<sup>307</sup> which has been released annually since 1995.<sup>308</sup> The CPI is considered a “poll-of-polls”<sup>309</sup> because it surveys businesspeople and assessments of local and foreign country analysts.<sup>310</sup> The index focuses on corruption in the public sector, defining it as “the abuse of public office for private gain.”<sup>311</sup> The CPI ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians.<sup>312</sup> A perfect score is 10, which indicates that there is no corruption, whereas a lower score reflects the perception of high levels of corruption.

Corruption perception can change over time. The CPI provides an annual snapshot of the perception of corruption in the eyes of business people and country analysts. Nonetheless, TI recognizes that annual trends for a specific country could be misleading because the index is the result of a compilation of data from different sources.<sup>313</sup> Thus, a perception change in the country’s performance could result from a change in methodology or availa-

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306. About Transparency International, [http://www.transparency.org/about\\_us](http://www.transparency.org/about_us) (last visited Apr. 3, 2007).

307. *See id.*

308. *See* Internet Center for Corruption Research [ICCR], [http://www.icgg.org/corruption.cpi\\_olderindices\\_1995.html](http://www.icgg.org/corruption.cpi_olderindices_1995.html) (last visited Apr. 3, 2007).

309. Internet Ctr. for Corruption Res., 2004 CPI, [http://www.icgg.org/corruption.cpi\\_2004\\_data.html](http://www.icgg.org/corruption.cpi_2004_data.html) (last visited Apr. 3, 2007). The CPI 2004 draws on eighteen different polls and surveys from twelve independent institutions.

310. *Id.*; *see also* Tina Søreide, Chr. Michelsen Inst., *Estimating Corruption: Comments on Available Data*, in UTSTEIN ANTI-CORRUPTION RESOURCE CTR. REPORTS (Dec. 2003), <http://www.u4.no/document/showdoc.cfm?id=88>.

311. *See* About Transparency International, *supra* note 306.

312. Surveys are carried out among businesspeople and country analysts, including residents of the countries analyzed in this article.

313. *But see* LAMBSDORFF, *supra* note 20, at 60 (suggesting that relative trends over time can be determined with the CPI data). The study shows that the relative trend for Guatemala since 1998 to 2002 depicts an increase in corruption perception. *Id.* Contrarily, Honduras and Jamaica experienced a positive relative trend from 1998 to 2002, showing a decrease in corruption perception. *Id.*

ble sources.<sup>314</sup> However, a year-to-year perception analysis in a given country can be determined by the country's score to the "extent that changes can be traced to a change in the assessments provided by individual sources."<sup>315</sup> A change can be perceived and is therefore not a result of technical factors. For example, TI found that, aside from technical factors, CPI scores for Jamaica and Trinidad & Tobago decreased in 2004 relative to 2003.<sup>316</sup>

Nevertheless, a corruption perception comparison can be made among countries for one specific time period. In 2004, for example, Trinidad & Tobago was perceived as the least corrupt among our four countries.<sup>317</sup> The same proved to be true in 2001, 2002, and 2003.<sup>318</sup> Trinidad & Tobago is followed by Jamaica in 2002, 2003, and 2004. Moreover, in 1998 and 1999, Jamaica still reflects a better score than Guatemala and Honduras. Between Trinidad & Tobago and Jamaica, the latter is perceived as less corrupt for three consecutive years (2002 to 2004). Between Guatemala and Honduras, TI perceives the former as less corrupt in 1998, 1999, 2001, and 2003. The opposite is true in 2002 and 2004.<sup>319</sup>

TABLE 1: CPI COUNTRY SCORE<sup>320</sup>

Country	1998	1999	2001	2002	2003	2004
Guatemala	3.1	3.2	2.9*	2.5	2.4	2.2
Honduras	1.7*	1.8	2.7	2.7	2.3	2.3
Jamaica	3.8	3.8	N/A*	4.0	3.8	3.3
Trinidad & Tobago	N/A*	N/A	5.3	4.9	4.6	4.2

Note: \* indicates year of ratification

314. Internet Center for Corruption Research Frequently Asked Questions, [http://www.icgg.org/corruption.cpi\\_2004\\_faq.html](http://www.icgg.org/corruption.cpi_2004_faq.html) (last visited Apr. 3, 2007). The ICCR has stated that "[e]ach year, some sources are not updated and must be dropped from the CPI, while new, reliable sources are added. With differing respondents and slightly differing methodologies, a change in a country's score may also relate to the fact that different viewpoints have been collected and different questions been asked." *Id.*

315. The ICCR suggests using the country score, as opposed to its rank, when making annual comparison. *Id.*

316. Transparency International Corruption Perceptions Index Frequently Asked Questions (CPI 2004), [http://www.transparency.org/content/download/1538/7989/file/q+a\\_en.pdf](http://www.transparency.org/content/download/1538/7989/file/q+a_en.pdf) (last visited Apr. 3, 2007).

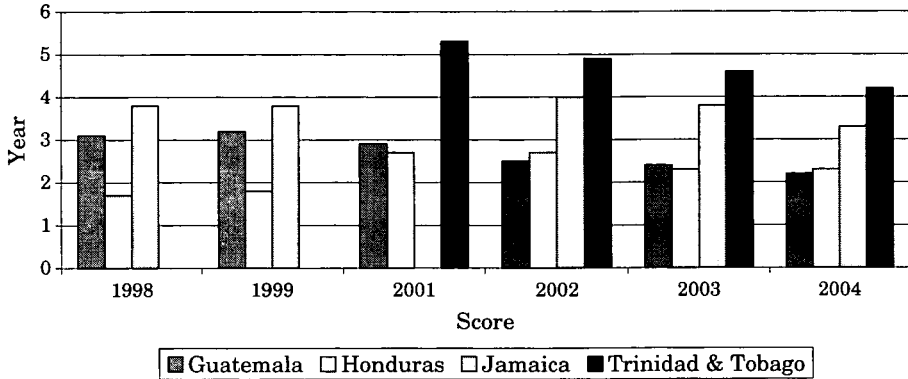
317. *See infra* TABLE 1: CPI COUNTRY SCORE & TABLE 2: COUNTRY RANKING.

318. *See id.*

319. *See id.*

320. Data was only partially available for the Caribbean states in these four years. In 2000 and before 1998, CPI does not have available data for the four countries analyzed in this article.

TABLE 2: COUNTRIES' RANKING



Until recently, the data illustrated that Trinidad & Tobago and Jamaica were perceived as less corrupt than Guatemala and Honduras between these four time periods. The data also indicated that Honduras was perceived most frequently as being the most corrupt, followed by Guatemala. These results are not sufficient to determine whether the countries have improved or worsened in perception of corruption over the years because the CPI does not convey information about trends over time.<sup>321</sup> Thus, Honduras could be perceived as the most corrupt for four different time periods, but it could also be the case that it has improved considerably since the ratification of the IACAC. Therefore, data that reflects trends along the years would be required to determine such changes (increase/decline). Data merely illustrating a shift from one year to another is not sufficient. Even if Jamaica and Trinidad & Tobago reflect an increased perception of corruption in one year, this result does not convey information about systematic change over time. For that reason, the indicator below that shows trends over time will be used.

## 2. Governance Research Indicator Country Snapshot (GRICS)

The World Bank provides a database with estimates of six governance indicators, including "Control of Corruption," for four time periods (1996, 1998, 2000, and 2002).<sup>322</sup> The indicators are

321. TI, TRINIDAD & TOBAGO 2001, *supra* note 282. TI reiterates that "CPI is not designated to provide for comparisons over time, since each year the surveys included in the index vary." *Id.* See also Søreide, *supra* note 310, at 8.

322. The six governance indicators are: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and

drawn from twenty-five separate data sources constructed by eighteen different organizations.<sup>323</sup> “Control of Corruption” measures perceptions of corruption, defined as the exercise of public power for private gain.<sup>324</sup> Point estimates (PE) range between -2.5 and 2.5, with higher value implying better outcomes. This range in the PEs is a result of the methodology used by the experts.<sup>325</sup>

The information is also expressed in percentile ranking (PR) from 0 to 100, which indicates the percentage of countries worldwide that are rated below a given country, with higher values implying better corruption ratings.<sup>326</sup> Like CPI, GRICS is a “poll-of-polls.” An important difference between these two sets of databases is that the latter provides information about the performance of a country over time.<sup>327</sup> The control of the corruption PEs and PRs for the examined countries are represented in the table below.

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control of corruption. See GRICS, Questions and Answers, <http://info.worldbank.org/governance/kkz2002/q&a.htm> (last visited Apr. 3, 2007).

323. See Kaufmann, *supra* note 2, at 2-7. The 2002 indicators used 250 individual measures, taken from twenty-five different sources, which were produced by eighteen different organizations. *Id.* The control of corruption index was based on fourteen distinct sources, using data from 2002. *Id.* TI Corruption Perceptions Index (CPI) is not used as source because it is in itself an aggregate of a number of individual sources that are already included in the corruption indicator. *Id.*

324. This definition covers a broad range of acts of corruption. For purposes of the study, corruption is considered as demonstrator of a failure of governance.

325. GRICS, Questions and Answers, <http://info.worldbank.org/governance/kkz2002/q&a.htm> (last visited Apr. 3, 2007). The experts explain: “We use Unobserved Component Model (UCM) to aggregate the various response in the broad 6 clusters. This model treats the ‘true’ level of governance in each country as unobserved, and assumes that each of the available sources for a country provide noisy “signals” of the level of governance. The UCM then constructs a weighted average of the sources for each country as the best estimate of governance for that country. The weights are proportional to the reliability of each source. The resulting estimates of governance have an expected value (across countries) of zero, and a standard deviation (across countries) of one. This implies that virtually all scores lie between -2.5 and 2.5, with higher scores corresponding to better outcomes.” *Id.*

See also Kaufmann, *supra* note 2, at 8-12.

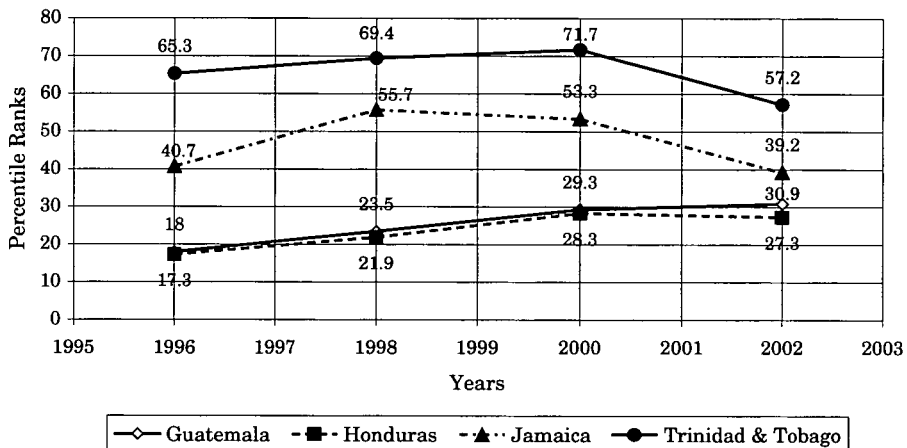
326. The best quartile is over seventy-fifth percentile, the second best is over fiftieth, the third is over twenty-fifth, and the fourth quartile is bellow twenty-fifth.

327. Kaufmann, *supra* note 2, at 11.

TABLE 3: GRICS CONTROL OF CORRUPTION

Country	Mode	1996	1998	2000	2002
Guatemala	PE	-0.90	-0.71	-0.66	-0.71
	PR	18.0	23.5	29.3	30.9
Honduras	PE	-0.90	-0.72	-0.67	-0.78
	PR	17.3	21.9	28.3	27.3
Jamaica	PE	-0.31	-0.26	-0.20	-0.46
	PR	40.7	55.7	53.3	39.2
Trinidad & Tobago	PE	+0.31	+0.13	+0.36	-0.04
	PR	65.3	69.4	71.7	57.2

TABLE 4: COUNTRIES' RANKING



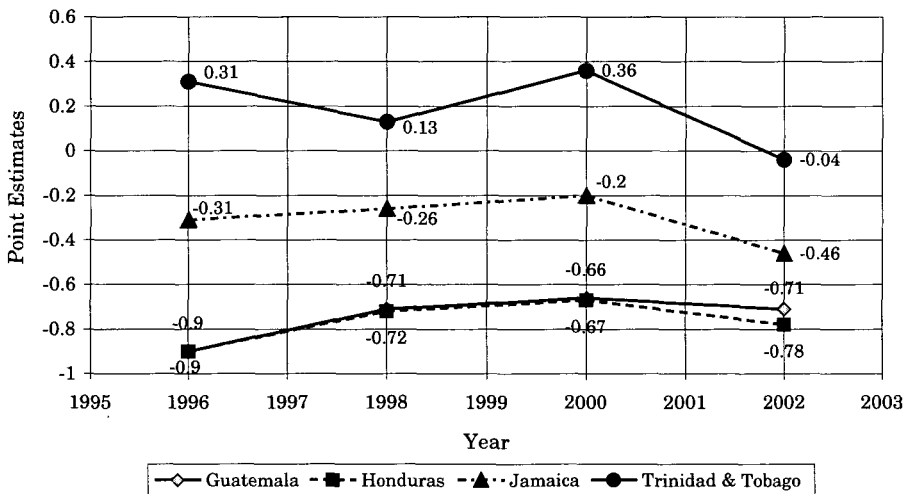
This data sheds new light on the ranking among the four countries over four time periods. Using the PR, the data confirms CPI's results in three of the four time periods.<sup>328</sup> Trinidad & Tobago was considered the least corrupt among the four countries in 2002, and Jamaica had the same result over Honduras and Guatemala in 1998. However, in 2002, Honduras was perceived as more corrupt compared to Guatemala.<sup>329</sup> Finally, the data reflects that from 1996 to 2002, Trinidad & Tobago was perceived as the least corrupt, followed by Jamaica, Guatemala, and Honduras, the latter of which was perceived as the most corrupt.

328. See *supra* TABLE 3: GRICS CONTROL OF CORRUPTION & TABLE 4: COUNTRIES' RANKING.

329. CPI data illustrates that Honduras had a better score in 2002 than Guatemala. See ICCR, *CPI 2002*, [http://www.icgg.org/corruption.cpi\\_2002\\_data.html](http://www.icgg.org/corruption.cpi_2002_data.html) (last visited Apr. 4, 2007).

More importantly, using the PE of corruption control, the data can indicate whether there was any degree of improvement in corruption perception between 1996 and 2004. Four major assessments can be made with the available data. First, because Honduras and Trinidad & Tobago ratified the IACAC in 1998, the data could reflect any change of perception since ratification. Second, Guatemala and Jamaica ratified the IACAC in 2001; therefore the data could show corruption perception before ratification and change in 2002 compared to 2000. Third, as reflected above, Guatemala and Honduras are countries with similar characteristics. The data could illustrate improvement of corruption perception among the countries and determine whether the time of ratification could be a factor of change (improvement/decline). The same assessment can be made regarding Jamaica and Trinidad & Tobago.<sup>330</sup>

TABLE 5: COUNTRIES' PERFORMANCE



Trinidad & Tobago had a corruption perception point estimate of 0.31 in 1996, with a drop in corruption perception in 1998 (0.13), the IACAC's ratification year. Two years after the IACAC ratification, Trinidad & Tobago's low perception of corruption reached its highest peak of 0.36. This is the same year when the Integrity Act became effective to implement the terms of the IACAC. In 2001, the Freedom of Information Act was adopted. However, in 2002, an extreme drop is reflected, leaving the coun-

330. See *supra* TABLE 5: COUNTRIES' PERFORMANCE.

try at its lowest point estimate for the first time in the four time periods (-0.04).

Honduras' performance was not as unstable as Trinidad & Tobago's, although in the last term, it experienced a drop in relation to the previous two-time periods. In 1996, Honduras's point estimate was -0.9, but it improved to -0.72 in 1998, the IACAS ratification year. Between 1998 and 2000, Honduras experienced a peak of low corruption perception (-0.67). However, in 2002, that perception increased to -0.78. This occurred despite the fact that 2002 was the year of major anti-corruption reforms in Honduras, including the adoption of the new Code of Criminal procedure and the Organic Law of the Supreme Court of Accounts.<sup>331</sup>

Jamaica's performance was similar to Trinidad & Tobago's where in 2002, corruption perception increased considerably. Jamaica experienced a steady positive trend of reducing corruption perception from 1996 until 2000. Although Jamaica ratified the IACAC in 2001 and adopted anti-corruption legislation (Corruption Prevention Act and Access to Information Act) in 2002,<sup>332</sup> 2002 was nonetheless the worst corruption perception year (-0.46) of the previous four time periods reported.

Guatemala's performance was similar to Honduras's. The data reflects an improvement in corruption perception for these two countries between 1996 and 2000. Like Jamaica, Guatemala ratified the IACAC in 2001 and adopted anti-corruption measures in 2002 (Law on Probity and Anti-Corruption Commission).<sup>333</sup> Yet, in contrast to Jamaica's performance, Guatemala did not experience a tremendous increase in corruption perception in 2002, although it did increase slightly from -0.66 to -0.71.

Guatemala experienced the least amount of change in 2002, followed by Honduras and Jamaica. Trinidad & Tobago was the country that experienced the most change between 1996 and 2002.<sup>334</sup> This data reflects that the experience of the two Central American countries is similar to that of both Caribbean states that experienced a significant increase in corruption perception in 2002. This negative perception of corruption among the public in Jamaica is best explained by the fact that between 2000 and 2002,

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331. See Honduras Criminal Procedure Code, *supra* note 244; see also discussion *supra* at Part V.A. (Honduras).

332. See CPA *supra* 256, see also ATI *supra* note 270; discussion *supra* at Part V.C. (Jamaica).

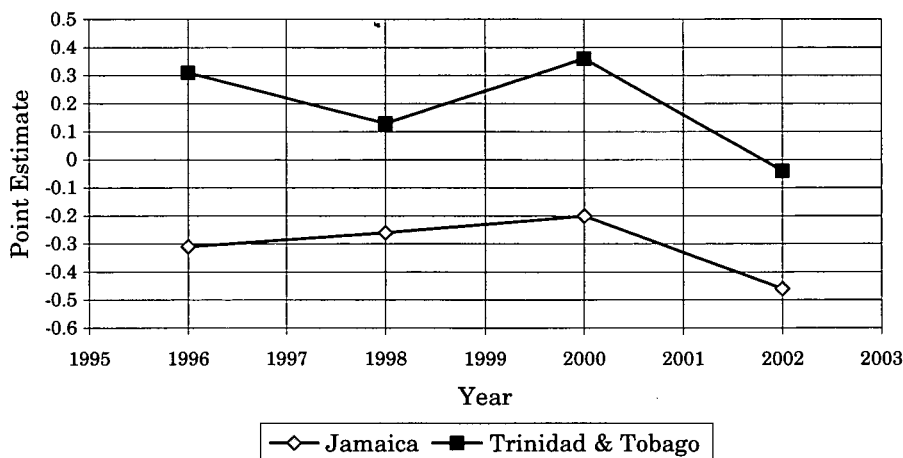
333. See Guatemalan Law on Probity, *supra* note 165.

334. See *infra* TABLE 6: JAMAICA AND TRINIDAD & TOBAGO'S PERFORMANCE.

there was extensive media exposure of corrupt practices connected to the ruling Peoples National Party.<sup>335</sup>

Moreover, at the beginning of 2002, the Jamaica’s Opposition Party announced the launch of an anti-corruption campaign against the Peoples National Party.<sup>336</sup> Similarly, the increase in corruption perception in Trinidad & Tobago may be influenced by corruption scandals related to spending public funds or procurement contracts. For example, a 2001 assessment of corruption in Trinidad & Tobago stated that there was “growing public concern on the uses of pubic funds” including the construction contract for the Piarco Airport terminal.<sup>337</sup> Furthermore, Transparency International reports that the Piarco Airpot corruption controversy lead to the collapse of the government in 2001 and the subsequent election of a new government.<sup>338</sup> Thus, the widely publicized corruption scandals in the Caribbean countries had a negative impact on corruption perception.<sup>339</sup>

TABLE 6: JAMAICA AND TRINIDAD & TOBAGO’S PERFORMANCE



335. TI, JAMAICA 2003, *supra* note 257, at 22, 34 (“Charges have been made that tens of millions of dollars of public contracts have been corruptly awarded to contractors connected to the ruling Peoples National Party and that huge sums of money have been paid for work not done . . . massive media coverage aroused public disquiet.”).

336. TI, GLOBAL CORRUPTION REPORT: 2003, 94 (2003), [http://www.transparency.org/publications/gcr/download\\_gcr/download\\_gcr\\_2003](http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2003).

337. TI, TRINIDAD & TOBAGO 2001, *supra* note 282, at 13-4.

338. *See id.* at 97 (“The controversy over the appropriate responses to the charges essentially led to the collapse of the government.”).

339. *See id.* at 100.



Certainly, the data reflects that the ratification date of the IACAC did not improve corruption perception among citizens, experts, and enterprises in the respective countries. Moreover, the results from CPI and GRICS suggest that corruption perception has worsened since 2000. Nevertheless, important steps to combat corruption have been adopted by the countries in order to implement the terms of the IACAC. Anti-corruption measures were adopted during and after 2002, including a criminal system reform in Honduras, Guatemala's Law on Probity Mechanism, and Jamaica's Corruption Prevention Act Commission. Additionally, Trinidad & Tobago's Freedom of Information Act has only been in place since 2001. In this respect, in order to reach conclusions about the effectiveness of the IACAC, it is necessary to assess changes in perception after 2002. Even though the ratification of the IACAC has not resulted in immediate positive changes in perception, these implementations may result in an improvement over a longer period of time.

### 3. International Country Risk Guide (ICRG)

The Political Risk Group has generated the International Country Risk Guide (ICRG) since 1982. The ICRG provides information about political risks in developed and developing countries. Its assessments are based on the analysis of a worldwide network of experts. Corruption, a component of the Political Risk Index,<sup>340</sup> measures corruption within the political system. The type of corruption considered is that which "is a threat to foreign investment by distorting the economic and financial environment, reducing the efficiency of government and business by enabling people to assume positions of power through patronage rather than ability, and introducing inherent instability in the political system."<sup>341</sup> The Risk Guide assigned a risk point ranging from 0 (higher risk) – 6 (lower risk). Thus, the highest number of points (6) indicates the lowest potential risk of corruption and the lowest number (0) indicates the highest potential risk.<sup>342</sup>

The data does not provide information regarding corruption perception. Instead, the risk-points reflect the comparative risks

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340. The Political Risk rating includes twelve weighted variables covering political and social attributes. See PRS Group, *International Country Risk Guide*, <http://www.prsgroup.com/ICRG.aspx> (last visited Apr. 3, 2007).

341. *Id.*

342. *Id.* A Political Risk rating of 0 to 2.994 indicates a very high risk (3 to 3.594 is high risk; 3.6 to 4.194 is moderate risk; 4.2 to 4.794 is low risk; and 4.8 to 5 is very low risk).

of investing in a country. The ICRG is different from the CPI and the GRICS because it is *not* a “poll-of-polls” about corruption perception. However, the data can illustrate whether there has been any improvement towards a more investor-friendly environment in the last ten years.

The data helps to answer two questions: 1) Has ratification of the IACAC lowered the risk for investors in a certain country? 2) If not, are implemented measures improving the environment for investors? Note that recent anti-corruption measures by Guatemala, Honduras, and Jamaica could affect change in the risk rating. The information regarding the selected countries is shown in the table below.

TABLE 7: ICRG CORRUPTION RISK

Country	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Guatemala	2	2	3	4	4	4	4	3.83*	1.83	1.5	1.5
Honduras	2	2	2	2	2*	2	2	1.91	2.41	2.5	2.41
Jamaica	3	3	3	3	3	3	2.83	2*	1.91	1.5	1.5
Trinidad & Tobago	3	3	3	3	3	3*	3	3	2.58	2	2

Note: \* indicates year of ratification.

As the data illustrates, Guatemala experienced a risk rate of 2 during the first two years, and improved by one point in 1996 and another point in 1997, thus maintaining a constant risk point of four for three years. After 2000, however, the risk of investment increased considerably from 4 risk points in 2000 to 1.5 in 2004. This illustrates that neither ratification nor implementing anti-corruption measures lowered the risk to investors.

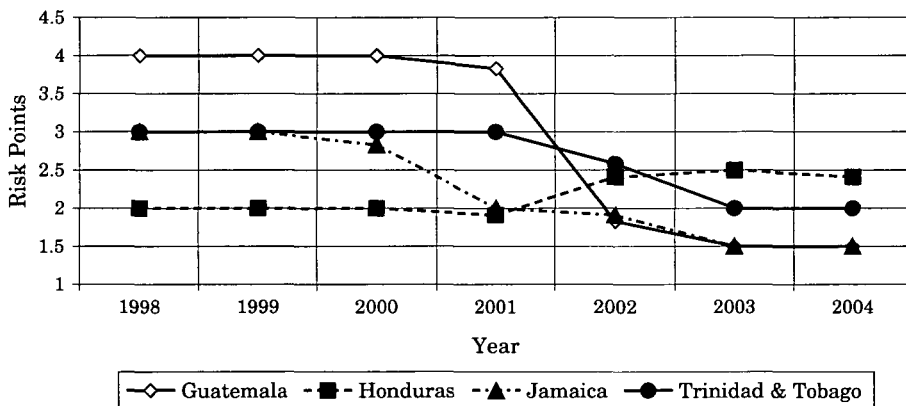
Honduras experienced a stable risk point of 2 for seven years (1994-2000). Like Guatemala, though, it experienced a drop in 2001. In 2002, however, Honduras had a leap of 0.5 points, the greatest of the decade. Since then, and for the first time, Honduras is perceived as more investor-friendly than Guatemala. A small decrease is noticed in 2004, from 2.5 to 2.41. The significant change in 2002 may be the result of the aggressive anti-corruption measures taken by the government, mainly the reformation of the criminal justice system, the anti-immunity constitutional amendments, and the establishment of the Supreme Court of Accounts.<sup>343</sup> The ratification of the IACAC did not seem to have any impact on the investment environment Honduras.

343. See discussion *supra* at Part V (Honduras).

Jamaica ratified the IACAC in 2001. Despite the treaty's ratification, investor risk has been increasing steadily since 2000. The implemented measures did not seem to improve investor risk. The same is true for Trinidad & Tobago, which experienced a constant drop since 2002. Similar to Honduras, Jamaica had a risk point of 3 for eight years. Thus, the IACAC's ratification date did not seem have any impact (improving/worsening) on investor risk points.

The data makes clear that all four countries have suffered an increase in investor risk. Jamaica has experienced increased risk since 2000, followed by Guatemala in 2001, and Trinidad & Tobago in 2002. Only Honduras has proven to be resistant to that trend, although that conclusion is not certain because 2004 shows a slight drop.<sup>344</sup> In 2004, Honduras was perceived as having the lowest risk (2.41), followed by Trinidad & Tobago (2), and finally Guatemala and Jamaica (1.5).

TABLE 8: 2000-2004 COUNTRIES' PERFORMANCE

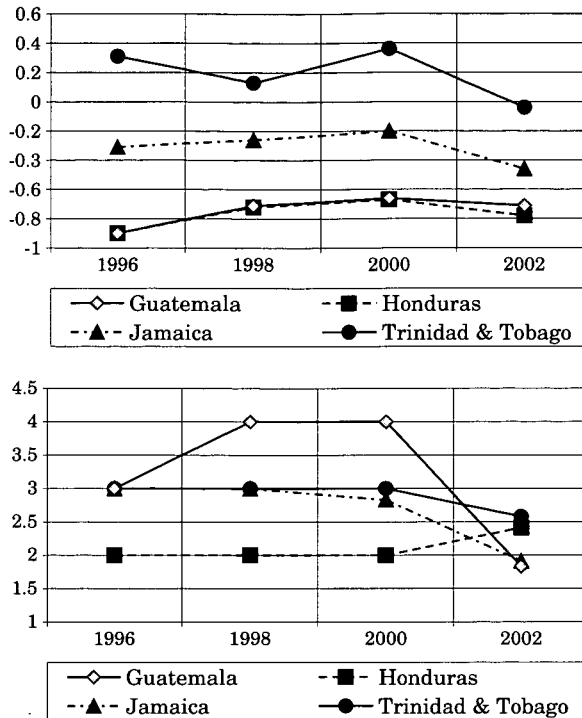


Corruption perception estimates (GRICS) and investor risk points (ICRS) seem to move in the opposite direction in the case of Honduras because this country reflects an improvement in risk points in 2002, but in that same year a decrease in perception is reflected. On the other hand, Trinidad & Tobago has been considered the least corrupt since 1996-2002 by a wide margin. Nonetheless, Guatemala was the highest risk point of all the countries from 1997 until 2001, not Trinidad & Tobago.<sup>345</sup>

344. See *infra* TABLE 8: 2000-2004 COUNTRIES' PERFORMANCE.

345. See *id.*

TABLE 9: CORRUPTION PERCEPTION AND CORRUPTION AS INVESTMENT RISK



*B. Country Specific Causes of Corruption*

Corruption in Latin America is widespread, but the degree of the problem varies from country to country.<sup>346</sup> However, available data provides information about the extent of the problem in the examined countries. The data illustrates three primary conclusions. First, neither the ratification date of the IACAC nor implemented anti-corruption measures seem to have improved corruption perception in the time period reflected (1996-2002). Second, the ratification date does not seem to decrease corruption perceived as a risk to investment.<sup>347</sup> Third, corruption perception and risk levels are not necessarily correlated.

In sum, corruption perception in these countries is not improving, thus making it essential to examine the cause of this

346. Norma Parker et al., *Corruption in Latin America: A Desk Assessment*, in AMERICAS' ACCOUNTABILITY ANTI-CORRUPTION PROJECT (2004), <http://www.u4.no/document/showdoc.cfm?id=96>.

347. Honduras was the only country where anti-corruption measures seemed to influence a change in risk levels.

trend. Generally, an increase in corruption perception is a result of widespread opportunity to engage in corrupt practices and impunity, whereas a low risk of being subject to investigation and prosecution.<sup>348</sup> Corrupt officials do not perceive prosecution as a credible threat; therefore consequences for illicit behavior are low or nonexistent for all actors.<sup>349</sup> Thus, in order to provide accurate recommendations to tackle the problem, an assessment of the foundational causes of corruption is necessary.<sup>350</sup>

In 2002, the World Bank conducted a country diagnostics to determine the causes of corruption in Honduras.<sup>351</sup> The Honduran study concluded that highly politicized executive and judicial branches of government primarily cause corruption; namely the auditor bodies, the courts, the police, the customs officers, the political parties, the municipal government, and even the National Autonomous University.<sup>352</sup> This diagnostic specifically concluded that the judicial branch is perceived as the most dishonest and inefficient government institution most likely to be subject to state capture.<sup>353</sup>

The World Bank also conducted a preliminary diagnostic for Guatemala in 1997.<sup>354</sup> Its assessment stressed that thirty-six years of civil war in Guatemala created mistrust in its political institutions, principally the judicial branch, which is perceived as a tool of corruption.<sup>355</sup> Long-term military control has left a culture of impunity, secrecy, and non-transparency in government practices, principally the auditor bodies, the justice system, the customs office, and the police.<sup>356</sup> Political and military power enabled the accumulation of fortunes by high-ranking officials, thus

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348. United Nations Development Program [UNDP], *Corruption and Good Governance* 51 (Discussion Paper No. 3, 1997), available at [http://www.undp.org/oslocentre/PAR\\_Bergen\\_2002/corruption3.htm](http://www.undp.org/oslocentre/PAR_Bergen_2002/corruption3.htm); see also LAMBSDORFF, *supra* note 20, at 153.

349. Daniel K. Tarullo, *The Limits of Institutional Design: Implementing the OECD Anti-Bribery Convention*, 44 VA. J. INT'L L. 665, 686 (2004); see also Parker, *supra* note 346, at 5.

350. ANTICORRUPTION IN TRANSITION, *supra* note 54, at 58.

351. TUGRUL GURGUR ET AL., THE WORLD BANK, PRELIMINARY DRAFT REPORT: GOVERNANCE AND ANTI-CORRUPTION IN HONDURAS: AN INPUT FOR ACTION PLANNING (2002), available at <http://info.worldbank.org/etools/docs/library/206690/hon%5Fgac.pdf>.

352. *Id.* at 9.

353. *Id.*

354. Maria Gonzalez de Asis, *Borrador Guatemala Reforma Judicial y Corrupción* [Draft Guatemala Judicial Reform and Corruption] (Oct. 1998), [http://www.worldbank.org/wbi/governance/guatemala/pdf/guat\\_judrefcorr.pdf](http://www.worldbank.org/wbi/governance/guatemala/pdf/guat_judrefcorr.pdf).

355. *Id.* at 5.

356. Edelberto Torres, Accion Ciudadana, *El Sistema Nacional de Integridad en*

making public office an avenue for personal gain.<sup>357</sup> Deficient and ineffective institutions are an essential factor that furthers corruption in the Guatemala, deepening the culture of impunity.<sup>358</sup>

The Caribbean states also experienced an increase in opportunities to engage in corrupt practices. Jamaica's strategic geographic location as a cocaine supply route, in addition to low wages for public officials, inadequate internal control in government institutions, and ineffective law enforcement in corruption related offences. This creates an environment that facilitates corrupt practices.<sup>359</sup> Moreover, political traditions of patron-client relations in Trinidad & Tobago, as well as a rise in economic activity and growth, increased opportunities to engage in corrupt practices.<sup>360</sup> Trinidad & Tobago's press and private sector have increasingly reported allegations of corruption involving government contracts.<sup>361</sup>

The fact that corruption perception has increased in these countries does not necessarily mean that the IACAC is failing to influence changes in behavior within the countries. Corruption is a pandemic, deeply rooted in a country's historical, social, economic, and institutional situation.<sup>362</sup> The IACAC constitutes an important step in the fight against corruption, but it is only part of a systematic approach against the problem.<sup>363</sup> It is a symbol of consensus among countries in the Western Hemisphere and a legal framework to harmonize laws to establish an anti-corruption network. In the countries analyzed within this article, the IACAC has served as the basis to revise, update and enact new anti-corruption legislation.

In every IACAC State Party, the "Acts of Corruption" listed in

*Guatemala* [The National Integrity System in Guatemala], TI (2001), at 11, available at <http://www.transparency.org/content/download/1650/8371/file/guatemala.pdf>.

357. TI, TRINIDAD & TOBAGO 2001, *supra* note 282, at 198.

358. TI, GLOBAL CORRUPTION REPORT: 2001 155 (Robin Hodess et al. eds., 2001), available at [http://www.transparency.org/publications/gcr/download\\_gcr/download\\_gcr\\_2001](http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2001).

359. TI, JAMAICA 2003, *supra* note 257, at 8.

360. U.S. STATE DEPT., 2005 INVESTMENT CLIMATE STATEMENT: TRINIDAD & TOBAGO (2005), available at <http://www.state.gov/e/eb/ ifd/2005/43041.htm>.

361. For example, allegations of corruption led the Trinidad & Tobago Government to investigate construction projects of the Biche High School and a terminal building of the Piarco Airport. See TI, TRINIDAD & TOBAGO 2001, *supra* note 282, at 32; see also GLOBAL CORRUPTION REPORT: 2003, *supra* note 336, at 97.

362. Steven R. Salbu, *Information Technology in the War Against International Bribery and Corruption: The Next Frontier of Institutional Reform*, 38 HARV. J. ON LEGIS. 67, 70 (2001).

363. Carreño, *supra* note 84, at 21.

Article VI are punishable offenses.<sup>364</sup> Furthermore, State Parties have demonstrated a willingness to comply with non-compulsory provisions of the IACAC, such as article IX on illicit enrichment and article VIII on transnational bribery.<sup>365</sup> Another accomplishment of the IACAC is the inclusion of corruption as an addressable problem on the regional agenda.<sup>366</sup> After the treaty's adoption, there has been a clear increase in public awareness of the problem. Corruption by its very nature is a secret practice. A decade ago, corruption was not even considered an issue that should be addressed by a regional agenda. Rather, corruption was perceived as more of a cultural trait.<sup>367</sup>

Each of the four countries analyzed in this article have widely and openly discussed the problem of corruption. Moreover, the media has played an important role in reporting corruption cases and raising awareness about the nature and the scope of the problem. As a result, the public is now informed of the problem and is increasingly demanding greater government accountability and transparency.

## VII. RECOMMENDATIONS

A culture of impunity and non-transparency in government administration is deeply rooted in these analyzed countries. Therefore, corruption must be addressed through a systematic, multidimensional approach, emphasizing both prevention and law enforcement.<sup>368</sup> A successful anti-corruption strategy must be tackled with substantial national reforms and multilateral support. Because the IACAC and its Follow-up Mechanism are part of the integrated strategy to fight corruption, two modifications are suggested to increase its positive impact. First, the Follow-up Mechanism should be strengthened. Second, international cooperation should be used to assist these countries in building their technical capacities to investigate corruption and to recover assets proceeding from corrupt practices. However, "[t]here are no quick fixes" to eliminating corruption.<sup>369</sup> Current anti-corruption strategies may not show positive results for one or even two genera-

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364. See IACAC, *supra* note 8, art. IX.

365. For example, Honduras and Jamaica have both criminalized illicit enrichment, and Guatemala has a law initiative with that objective.

366. Parker, *supra* note 346, at 4.

367. *Id.* at 12.

368. *Id.* at 13.

369. *Id.* at 20.

tions.<sup>370</sup> Because of public awareness of the problem and the skepticism of government anti-corruption action, regaining the public's confidence becomes a long-term commitment.<sup>371</sup> Nonetheless, the Follow-up Mechanism, if strengthened, can play a significant role in decreasing corruption perception in the future.

### A. *Strengthening the Follow-Up Mechanism*

The first step in the fight against corruption is the development of a legal and institutional framework. Because the IACAC constitutes the international framework to harmonize legislation, the Follow-up Mechanism is an important tool to influence the development of adequate legal and institutional frameworks. The Follow-up Mechanism implements the IACAC by monitoring and assisting national government in putting the IACAC into practice.<sup>372</sup> The literature reviewed draws attention to structural problems that retard the Follow-up Mechanism, including issues such as time-consuming processes, the lack of expertise in the Committee of Experts, and the lack of sufficient resources within the OAS General Secretariat.<sup>373</sup> In this respect, it is fundamental to solve these structural problems to create a more effective mechanism to implement the IACAC. Thus, it is necessary to accelerate the rounds of analysis; regulate the appointment and composition of the Committee of Experts; and create a permanent technical secretariat with an adequate budget and technically qualified personnel. These recommendations are discussed below.

First, the examined countries have implemented the IACAC by enacting new legislation and reforming existing laws. Because corruption increases with the complexity of the regulatory system and decreases with the clarity of the legal system, the Committee of Experts is in a position to enhance the clarity of the anti-corruption legislation in the hemisphere.<sup>374</sup> In this respect, the Follow-up Mechanism should expedite the rounds analysis of national anti-corruption legislation. The first round of analysis is mainly concerned with a small number of provisions.<sup>375</sup> In its first year,

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370. *Id.* at 15.

371. U.N. Office on Drugs & Crime [UNODC], *UNODC Priorities of the Provisions of Technical Assistance: Global Programme Against Corruption*, [http://www.unodc.org/pdf/crime/corruption/corruption\\_gpac\\_strategy\\_jul04.pdf](http://www.unodc.org/pdf/crime/corruption/corruption_gpac_strategy_jul04.pdf).

372. VICTOR, *supra* note 17, at 15-17.

373. *See* Parker, *supra* note 346, at 40; De Michele, *supra* note 117, at 314.

374. LAMBSDORFF, *supra* note 20, at 59; *see also* discussion *supra* at Part II.

375. Conference of State Parties' Rules of Procedure, *supra* note 121, arts. III 1, 2, 4, 9, 11, XIV, XVIII, at 3-4.



the Committee of Experts only reviewed one State Party.<sup>376</sup> The Conference of State Parties noted the problem in 2004 and requested the acceleration of the process by increasing the examined State Parties to twelve per year and increasing the number of annual meetings to three.<sup>377</sup> Following these recommendations, the Committee issued a timetable to allow the review of twelve State Parties per year.<sup>378</sup> As of March 2005, only eighteen members were reviewed, despite the fact that every country had submitted a reply to the questionnaire.<sup>379</sup> Moreover, because the country reports were not published until the end of the first round, the countries that did not accede to its publication have a lengthy 'grace period' during which they will not receive external pressure to comply with the experts' recommendations.<sup>380</sup> Therefore, the Committee should review a greater number of provisions in the next rounds of analysis.

Second, the existing Rules of Procedure should be amended to specify technical qualification requirements to be met by the appointees to the Committee of Experts. The Rules of Procedure should also specifically indicate the duration of the appointment. As noted *supra*, the Committee of Experts is responsible for an analytical assessment of the questionnaires to determine the adequacy of national anti-corruption legislation.<sup>381</sup> Currently, the Follow-up Mechanism does not specify technical prerequisites for the candidates appointed to the Committee of Experts. The Rules of Procedure only require a government appointment.<sup>382</sup> Thus, there is doubt that the persons conducting the reviews have the necessary technical expertise and incentives to effectively monitor the implementation of the IACAC.

In addition to the disparity in legal and analytical skills among the experts, there is a high probability that the appointments are based solely on political considerations and not on merit.<sup>383</sup> The lack of regulation causes the process to lose credibility by slowing down the rounds, and potentially lowers the quality

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376. De Michele, *supra* note 117, at 313. Argentina was the first State Party to be reviewed.

377. OAS, *Conclusions and Recommendations on Concrete Measures to Strengthen MESICIC*, SG/MESICIC/doc.103/04 rev.6, § III (Apr. 2, 2004), [http://www.oas.org/juridico/English/followup\\_conf\\_concl.pdf](http://www.oas.org/juridico/English/followup_conf_concl.pdf).

378. *Methodology*, *supra* note 119.

379. Parker, *supra* note 346, at 40.

380. See *supra* notes 12, 118 and accompanying text.

381. See discussion *supra* at Part III.B.

382. Conference of State Parties' Rules of Procedure, *supra* note 121, art. 2.

383. De Michele, *supra* note 117, at 314.

of the Final Country Reports. Moreover, it creates an excessive burden on those experts that do have legal and analytical expertise.<sup>384</sup> This undue burden is reflected particularly in cases where civil society fails to present “shadow reports” and the experts must research independent sources of information. Hence, the Rules of Procedure should be revised to require the candidates to provide evidence of sufficient analytical and technical expertise. On the other hand, the Rules of Procedure should be amended to determine the duration of the appointment to ensure greater levels of independence from government. For example, the candidates could serve for a term of two years (the proposed duration of a round). The terms should be staggered to ensure that not all the experts begin and complete the term at the same time. In this respect, the experts could enjoy a higher degree of independence vis-à-vis their governments.

Third, the Follow-up Mechanism requires sufficient financial resources to maintain a permanent technical secretariat.<sup>385</sup> Currently, the OAS General Secretariat serves as the Technical Secretariat for the Follow-up Mechanism.<sup>386</sup> The OAS Secretariat, which has limited resources and personnel, is not completely dedicated to the Follow-up Mechanism. The lack of personnel and adequate funding is an obstacle to achieving the Mechanism’s objectives. According to the Rules of Procedure, the secretariat is responsible for carrying out a significant amount of work, including the preparation of draft methodology and questionnaires, preliminary country reports, and research papers or studies on topics related to the Committee’s responsibilities.<sup>387</sup>

Because there is lack of personnel and the degree of responsibility is substantial, the Follow-up Mechanism should have a permanent technical secretariat with adequate personnel and funding. Thus, with a separate secretariat, the rounds could be accelerated to enable the review of sixteen countries annually, given that distributing the amount of work makes it more manageable. Moreover, the high quality of the final country reports can be maintained, even if there are a great number of State Parties examined per session. Article 8 of the Rules of Procedure should be amended to create a separate permanent technical secretariat for the Follow-up Mechanism within the organizational

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384. *Id.*

385. De Michele, *supra* note 117, at 313.

386. *Reporto f Buenos Aires*, *supra* note 114, art. 8.

387. *Id.* art. 9.

structure of the OAS General Secretariat.<sup>388</sup> Ultimately, the Conference of State Parties and the international community should ensure adequate funding to this pillar of the Mechanism.

Finally, it is important to note that the Follow-up Mechanism has revised the Rules of Procedure to provide greater civil society participation in the process.<sup>389</sup> Civil society is allowed to present “shadow reports” and participate in its meetings. This is an important reform since civil society now has regular opportunities to become an alternative source of information, especially when governments fail to develop or disclose sufficient information. Civil society’s effective participation in the process will facilitate and reinforce the analysis of a country’s particular situation. For example, the Honduras Final Report was solely made with the information provided by the government because civil society did not present a “shadow report.” In this report, the Committee noted in more than five occasions that it had insufficient information to make a comprehensible assessment about the actual effects of the laws.<sup>390</sup>

### *B. Building Enforcement Networks*

The Follow-up Mechanism promotes the identification and implementation of public policies to prevent corruption and increase transparency, but by itself it will not reduce corruption.<sup>391</sup> Additionally, the mere enactment of preventative legislation is insufficient. Indeed, “[l]aws cannot completely address corruption embedded in a nation, its institutions, and its social system.”<sup>392</sup> Reforms at the national level are necessary to prevent and reduce corruption. National reforms can include the establishment of an independent anti-corruption agency or a national focal point to facilitate the exchange of good practices within a region. All countries examined in this article produced information about the institutions to be considered as Central Authority to render and solicit cooperation and technical assistance.<sup>393</sup>

However, in most cases, these agencies lack the financial resources, technical expertise, and incentives to conduct complex

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388. *Id.* § 5 (“Secretariat services for the mechanism shall be provided by the General Secretariat of the Organization of American States.”).

389. *Id.* art. 35.

390. Republic of Honduras, *supra* note 220.

391. Parker, *supra* note 346, at 40.

392. Steven R. Salbu, *Delicate Balance: Legislation, Institutional Change, and Transnational Bribery*, 33 CORNELL INT’L L.J. 657, 679 (2000).

393. See discussion *supra* at Part V.

investigations and prosecutions. In this respect, the international community can cooperate by strengthening these institutions. Assistance can be rendered by training the personnel or by giving incentives for the personnel to acquire expertise.

For example, regional workshops, conferences, and meetings of prosecutors and investigators are a good source of training. At the same time, these activities are good incentives for those prosecutors and investigators to acquire more expertise and good practices. The exchange of good practices and information is fluid when there is a close network of prosecutors and investigators. Thus, once a close network of enforcement agencies is created, regional safe havens for corruption are likely to decrease.<sup>394</sup>

On the other hand, these enforcement institutions must be independent from political influence. The country's citizens, its media, and the civil society could serve as "watchdog" organizations to reveal unexplained tardiness, inaction, or inefficiency. Freedom of the press is an indispensable right that must be assured and protected by the courts. Complementary legislation that protects whistleblowers is also essential.

### C. Other Recommendations

It is important to note other measures that experts have recommended for stronger anti-corruption strategies, including increased participation by civil society and increased judicial independence. For example, the World Bank recommends more active participation from civil society as part of the integrated strategy to fight corruption.<sup>395</sup> TI has also emphasized the need for civil society's participation in the Follow-up Mechanism.<sup>396</sup>

Moreover, a specific study on the role of civil society in the Follow-up Mechanism recommends, among other things, training

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394. Parker, *supra* note 346, at 52.

395. *Multi-pronged Strategies for Combating Corruption, Civil Society Participation*, THE WORLD BANK, [http://lnweb18.worldbank.org/eca/eca.nsf/Attachments/Anticorruption4/\\$File/chapter4.pdf](http://lnweb18.worldbank.org/eca/eca.nsf/Attachments/Anticorruption4/$File/chapter4.pdf) (last visited Apr. 3, 2007), at 6; see also ANTICORRUPTION IN TRANSITION, *supra* note 54, at 44; Rick Stapenhurst, *The Media's Role in Curbing Corruption*, WORLD BANK INST. 20 (2000), <http://www.worldbank.org/wbi/governance/pdf/media.pdf>.

396. *Corruption Fighters' Toolkit, Civil Society Experiences and Emerging Strategies (2002-2003)*, TI (Aug. 2002), available at [http://www.transparency.org/tools/e\\_toolkit/corruption\\_fighters\\_tool\\_kit\\_2002](http://www.transparency.org/tools/e_toolkit/corruption_fighters_tool_kit_2002). See generally Jeremy Pope, TI SOURCE BOOK 2000, CONFRONTING CORRUPTION: THE ELEMENTS OF A NATIONAL INTEGRITY SYSTEM 129 (2000), available at [www.transparency.org/sourcebook/index.html](http://www.transparency.org/sourcebook/index.html).

the organizations to provide high quality assessments.<sup>397</sup> The study also recommends greater levels of publicity and media coverage of the Final Country Reports, including the distribution of the reports to other regional organizations and the international donor community.<sup>398</sup>

The U.N.'s Anti-Corruption Toolkit states that an accessible, efficient and independent judiciary system is vital for the success of anti-corruption efforts.<sup>399</sup> Political willpower to adopt new anti-corruption legislation is clearly not enough to deter, detect, and punish corrupt practices. Until corruption cases are brought to courts and the rule of law is enforced, corrupt activities will continue unabated. The four countries examined in this article have all passed new anti-corruption legislation to strengthen the national anti-corruption legal regime.

However, the judiciary must be fully independent to uphold the anti-corruption laws. If a judicial system is infected by corruption, it must be rebuilt to inspire public confidence.<sup>400</sup> In this respect, the adoption and application of a judicial code of conduct is a basic necessity.<sup>401</sup> A law that regulates the selection, continuing training, and appointment of judges is also advisable. Internal legal regulations within the judicial system must prevent the selection of political appointees, incompetent judges, or persons with a history of corrupt practices.<sup>402</sup> Judges should also present on an annual basis declarations of assets and incomes, which would be reviewed by an auditing mechanism.<sup>403</sup> In conclusion, a monitoring system or "judicial watchdog" is essential to determine the compliance of internal laws. On the other hand, judges should also be protected from threats, intimidation, or attacks, especially from organized criminal groups.<sup>404</sup>

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397. Roberto de Michele, *Technical Assistance Module - Citizens Participation in the Follow-up of the Inter-American Convention against Corruption*, AMERICAS' ACCOUNTABILITY ANTI-CORRUPTION PROJECT 23 (2004), [http://www.casals.com/documents/tams/DeMichele\\_TAM.pdf](http://www.casals.com/documents/tams/DeMichele_TAM.pdf).

398. *Id.*

399. UNODC, *The Global Programme Against Corruption, UN Anti-Corruption Toolkit* 110 (Sept. 2004), [http://www.unodc.org/unodc/corruption\\_toolkit.html](http://www.unodc.org/unodc/corruption_toolkit.html) [hereinafter UNODC Toolkit].

400. *Id.* at 110.

401. *Id.* at 112.

402. Pope, *supra* note 396, at 67.

403. UNODC Toolkit, *supra* note 399, at 114.

404. *Id.* at 115.

## VIII. CONCLUSION

The Inter-American Convention Against Corruption has been acclaimed as the world's most comprehensive anti-corruption treaty. The IACAC's Follow-up Mechanism has been in place since 2001, and is currently analyzing the measures implemented by the State Parties.<sup>405</sup> Despite this fact, the available data reflects that the ratified IACAC has not improved corruption perception, nor lowered corruption risk levels.

It is clear that the IACAC has influenced the adoption of new legislation in Guatemala, Honduras, Jamaica, and Trinidad & Tobago. Nonetheless, the available data demonstrates that implemented measures have failed to improve the perception of corruption of these countries. The success of anti-corruption strategies depends on a number of factors including political will and commitment from national leaders, transparency and access to information, and an independent judicial system. The Follow-up Mechanism should be strengthened, however, to become a tool that harmonizes anti-corruption legislation to eventually reduce the negative perception of corruption. Finally, the international community should support the State Parties to strengthen enforcement institutions and make corruption a high-risk activity.

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405. See OAS Follow-up Mechanism, *supra* note 10.