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Author: Bruce M. Wilson

Editors: Thomas Richter, Christian von Soest and Sabrina Maaß

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ACRONYMS

CCSS	Costa Rican Social Security Agency [Caja Costarricense de Seguro Social]
CGR	Office of the Comptroller General of the Republic [Contraloría General de la República]
DHR	Office of the Ombudsman [Defensoría de los Habitantes de la República]
ICE	Costa Rican Institute of Electricity [Instituto Costarricense de Electricidad]
FAPTA	Probity, Transparency, and Anti-corruption Prosecution Unit [Fiscalía Adjunta de Probidad, Transparencia y Anticorrupción]
GDP/c	Gross Domestic Product per capita
HDI	Human Development Index
MESICIC	Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption [Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción]
MPS	Ministry of Public Security [Ministerio de Seguridad Pública]
OIJ	Judicial Investigation Branch [Organismo de Investigación Judicial]
PAC	Citizen's Action Party [Partido Acción Ciudadana]
PASE	Party Access without Exclusion [Partido Accesibilidad Sin Exclusión]
PEP	Office of the Inspector of Public Ethics [Procuraduría de la Ética Pública]
PLN	National Liberation Party [Partido Liberación Nacional]
PUSC	Social Christian Unity Party [Partido Unidad Social Cristiana]
Sala IV	Constitutional Chamber of the Supreme Court, [Sala Constitucional, Corte Suprema de Justicia]
TSE	Tribunal Supremo de Elecciones [Supreme Elections Tribunal]
TCA	Administrative Dispute Tribunal [Tribunal Contencioso Administrativo]

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I. Introduction

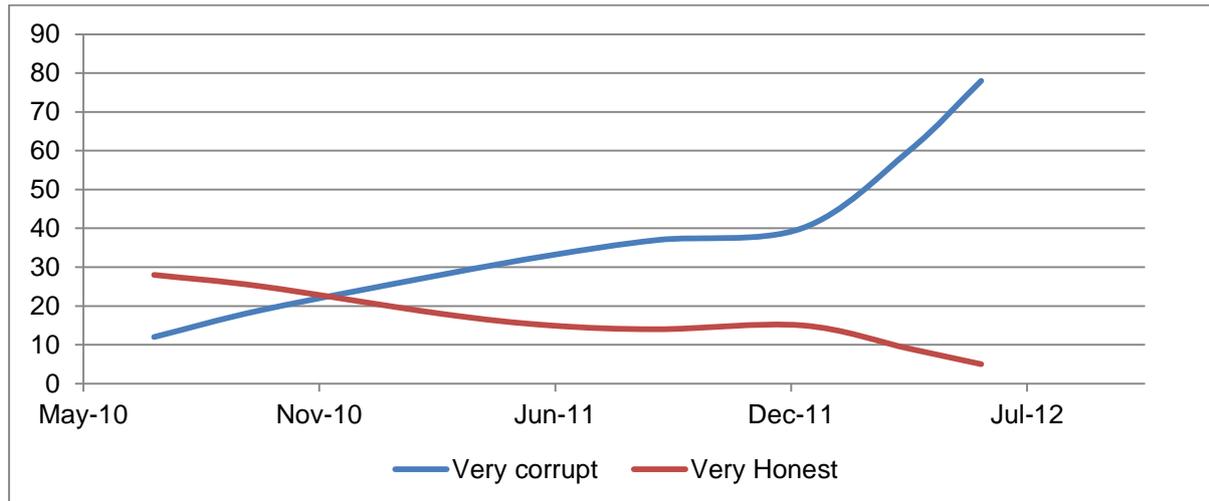
In May 2013, Costa Rican President Laura Chinchilla (PLN) took a personal trip to Peru on a Canadian oil company's private jet. Access to the jet was brokered by a Colombian businessman with known drug cartel connections.¹ When the media broke the story it quickly became a major scandal for the president resulting in the resignation of a number of her senior staff, a public investigation by the Procuraduría de la Ética Pública (PEP, Public Ethics Inspector), and confirmation for many Costa Ricans who have come to believe that their political leaders are corrupt. The PEP's final report noted that while the president's actions were clearly ethically questionable, the country's extensive anti-corruption laws did not apply to the president (La Nación 2013c). For a president who had campaigned on an anti-corruption platform under the slogan "firme y honesta" (firm and honest),² the scandal added to earlier, smaller questionable acts by members of her government. Figure 1 illustrates the increasingly rapid decline in citizens' perceptions of the level of the government's "honesty" and a swift increase in their perceptions of "corruption" in the government of President Chinchilla between mid-2010 and mid-2012. As the president entered her final nine months in office, polls revealed 95 percent of Costa Ricans believed members of the government to be corrupt (CRHoy 2013).³

¹ The oil company connection is relevant because the flight took place one week after President Chinchilla publically discussed the possibility of ending Costa Rica's long standing prohibition of oil exploration in its national waters with President Obama.

² The significance of the campaign slogan is explained in Rodríguez F. (2013:110). The Chinchilla campaign positioned itself to capitalize on a national sentiment, reflected in national polls, that the number one priority for the new government should be to deal with corruption in the government and the citizens' perception of increased violent crime. Chinchilla promised 4,000 new police officers to the existing 12,000 during her campaign, but only 880 were added by the end of 2012 (U.S. State 2013) .

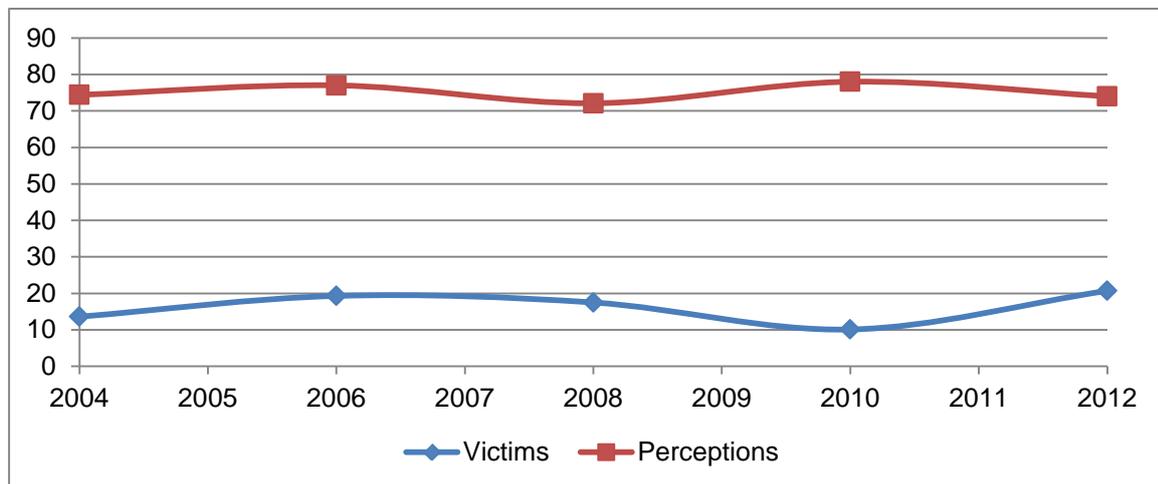
³ This was compounded by other *La Nación* reports that reveal that this was not an isolated incident of a sitting president borrowing a "free" private jet for personal reasons or accepting other gifts (La Nación 2013a).

Figure 1: Perceptions of Corruption in the Chinchilla Administration, 2010-2012



Source: La Nación, July 30, 2012

Figure 2: Perceptions and Victims of Corruption, 2004-2012



Source: Alfaro and Seligson (2012:97-98)⁴

As Figure 2 shows, these perceptions of widespread corruption did not start with the Chinchilla administration; over the last 8 years Costa Ricans have persistently had one of Latin America’s highest perceptions of corruption.⁵ These levels have been consistently high, but have fluctuated between 72 and 78 percent peaking during general election years and declining between elections (Cohen and Smith 2012: 97-98), which both reflects the ongoing salience of corruption as an issue and politicians’ frequent use of that issue as a campaign

⁴ Perceptions of corruption question: Taking into account your experience or what you have heard, corruption of public officials in corruption is (1) very common (2) somewhat common (3) a little common (4) not common.

⁵ According to the Estado de la Nación (2004), since the 1990s about 50 public officials per year were found guilty of illicit enrichment. These prosecutions confirm of citizens’ perceptions of public corruption as does the US State Department’s (2013) recent report that notes over 1,000 uniformed police officers were suspended during a recent 15 month period “mostly for suspected misuse of resources, abuse of authority and domestic violence.”

strategy.⁶ At first glance it also appears to be supported by Costa Ricans' overwhelming perception that corruption is a fact of life and that bribes must be paid in order to obtain good state-provided services. But as the lower line in Figure 2 reveals, Costa Ricans' personal experience with corruption is very low (less than 21 percent at its peak) and is among the lowest levels in Latin America.⁷ This gap between these perceptions and experience presents a puzzle that is amplified by other polls that show Costa Ricans' satisfaction with state-provided services as being among the highest in Latin America.⁸ Perhaps the logical conclusion is that Costa Ricans' understanding of and experience with corruption is less focused on paying bribes to public officials (with which they have little personal experience) and more on the corrupt acts of politicians and public officials who are exposed in the media for using their public office for personal gain.

II. Main Part

The contemporary period for corruption began at the start of the twenty-first century when *La Nación*, the country's leading daily newspaper, published a series of stories on senior public officials, including sitting and former politicians, using their public office for self-enrichment. That is not to suggest that the previous period was corruption-free, just that accusations against sitting presidents and high-ranking politicians and public official were less common, seldom prosecuted, and rarely resulted in convictions. For example, when José Figueres Olsen (PLN 1994-98) was accused of financial irregularities in his dealings with state banks by the media, there were merely accusations with no full-scale investigations and/or prosecutions. Indeed, in that case, it was the journalists who published the accusations against Figueres who ended up losing their jobs (Gudmundson 1996: 80). Although it cannot be said with certainty, perhaps what changed at the turn of the century is not the behavior of public officials, but the mechanisms and agencies willing and able to investigate and uncover acts of corruption coupled together with a newly assertive media that is no longer timid about publishing stories linking public officials to corrupt acts.⁹

⁶ It should also be noted that the creation of and rise of the Partido Acción Ciudadana (PAC) in the early 2000s was in large part a response to corruption in Costa Rican politics (Rodríguez A. 2013:76). Corruption remains a central issue and concern for the PAC and was the first issue discussed at their recent convention (La Nación 2013d).

⁷ It should be noted that the vast majority of the approximately 21% of respondents with personal experience of corruption in the last year had just one experience (Cohen and Smith 2012:99-100).

⁸ Costa Ricans have higher levels of satisfaction with state provision of health and education services than any other country in Latin America (Alfaro and Seligson 2012:88-90).

⁹ The most onerous parts of Costa Rica's 1902 Printing Press Law was ruled unconstitutional in 2010 ending prison sentences for journalists and publishers found guilty of "criminal defamation and insults." But even before that date, the Inter-American Court of Human Rights ruled it incompatible with Article 13, paragraph 1 of the American Convention of Human Rights [*Convención Americana de Derechos Humanos*], (*Sentencia de la Corte Interamericana de Derechos Humanos de 2 de julio de 2004. HU Vs. C. R.*).

The current period of aggressive investigation and prosecution of corruption in Costa Rica began with a story in *La Nación* about embezzlement by senior public officials at the social security and health agency, the Costa Rican Social Security Agency (Caja Costarricense de Seguro Social, CCSS). These investigations eventually exposed the involvement of a former president, Rafael Angel Calderón (PUSC 1990–94).¹⁰ Later the same year, President Abel Pacheco (PUSC 2002-2006) fired two directors of the state-owned power and phone company (ICE) for taking kickbacks from a French company in exchange for facilitating a major contract channeled to the company. Eventually another former president, Miguel Angel Rodríguez (PUSC 1998–2002), was also implicated, which led to the unusual sight of a former president being arrested, handcuffed, bundled into a police van, and driven to jail, all on live national TV. In response to this unexpected outcome, a senior lawyer at the Supreme Court stated that he never believed it “would be possible for a politician to be adjudged in this manner.”¹¹ Although the prosecution was very slow, eventually both former presidents were convicted of corruption and received prison terms and financial penalties.¹²

As noted above, while corruption might not be a new phenomenon in Costa Rica, the reporting on and prosecution of political corruption scandals in the last decade clearly constitutes a ‘tipping point’ in Costa Rica’s experience with corruption. The exposure given to these corruption scandals have been more profound and with serious consequences for the country’s political system: the collapse of a major political party (PUSC),¹³ the end of the country’s two-party system, the rise of minority governments, legislative gridlock (Wilson 2010), the issue of corruption rising to the top of citizens’ list of things that governments have not been able to resolve (Latinobarómetro 2011: 41), and a negative impact on Costa Rican’s views of democracy. The collapse of the political party system appears to have undermined voters’ confidence in government and political parties in general. A 2012 poll shows less than 26% of Costa Ricans believe their government is interested in what citizens think about issues and just 22% believe the same about political parties (Alfaro and Seligson 2012: 75-76).

Other reasons to see the early 2000s as a turning point are the new anti-corruption agencies and laws and strengthening of existing ones, the public’s increased sensitivity to the extent of corruption by public officials, and the change in the behavior of the historically timid media

¹⁰ The scheme is detailed below, but in short, it involved a new law and a Finnish loan for \$40 million to buy medical equipment.

¹¹ Lic. Olman Rodríguez, interview by author, San José, Costa Rica, May 2013.

¹² Both appealed their convictions with Miguel Angel Rodríguez winning his appeal on a technicality. A third former president, José Maria Figures Olsen (PLN 1994–98), was also identified in a similar \$1million kickback scheme, but declined to return to Costa Rica and was never formally charged with any wrongdoing.

¹³ The PUSC went from controlling the executive and the largest share of seats in Congress during the 2002-2006 administration and 58 percent of the presidential vote to winning just 2.5% of the vote in the 2006 presidential election (Wilson 2007).

that started to employ more aggressive, investigative techniques and tools and new social media used crowd-sourcing to shine a bright light on the actions of politicians and public officials.¹⁴

Related to this rise in cases of corruption is the increasing presence of Mexican drug cartels (U.S. State Department 2013) in Costa Rica. Costa Rica's location on the Central American isthmus coupled with lightly populated, rural areas on its borders and extensive Atlantic and Pacific coastlines make the country a geographically attractive location for drug cartels. A recent Transparency International report notes that 50 per cent of Costa Ricans "live in almost constant fear of falling victim to a violent crime" and that "drug trafficking encourages corruption by offering "resources" to public officials, weakening already vulnerable institutions."¹⁵ Even with the formal anti-corruption institutions, professionally trained personnel, national laws, and international treaties, the Costa Rican state is not keeping pace with the increasing sophistication of the corruption tied to the cartels (U.S. State Department 2013). While some efforts to modernize the investigative police of the judicial branch, Organismo Investigación Judicial (OIJ, Judicial Investigation Branch), have been successful, other major reforms have been stuck at the committee stage in the Legislative Assembly since 2008. According to the recently retired director of the OIJ, the reforms are urgently required to combat the actions of organized criminals operating in the more remote areas of Costa Rica (La Nación 2013e). There have been some successes in anti-money laundering cases including enhanced training of police officers and the use of new electronic accountability and management tools to help track and interdict drugs passing through Costa Rica and the laundering of money (US State Department 2013).

Simultaneously, there is a proposal from the Supreme Court to implement a reorganization of the court system to allow better trained and qualified judges in the capital, San José, deal with organized crime cases that are currently dealt with by transient judges in the rural areas where the crimes are committed. There is a separate movement to institute a system to track the assets of judicial branch personnel to help identify illicit income that might impact judicial decisions and introduce ethics and conflict of interest rules for judges (interview with Licda. Nancy Hernández May 2013). More broadly, a bill in the Congress will remove the legal impunity from the President, vice presidents, government ministers, Supreme Court magistrates, and deputies if they are accused of corruption (La Nación 2013g).¹⁶

¹⁴ There are numerous website that detail the actions of public officials including delinquency on tax bills and payments into the social security fund as well as wasteful public projects. See, for example, *El Cobrador de la CCSS* <<http://robertomorasalazar.ticoblogger.com/>> or *El Infierno en Costa Rica* <<http://infierno.ticoblogger.com/>>

¹⁵ Transparency International Secretariat 2013.

¹⁶ This will reform Constitutional Articles 110 (parliamentary immunity) and Article 121, which protects members of the supreme powers from accusation of misconduct.

1. State of Governance and Mechanisms

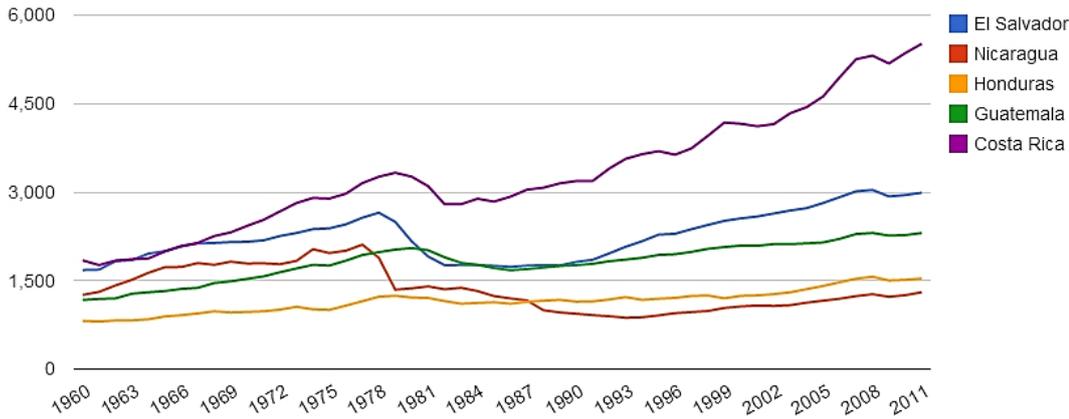
Costa Rica is a small, middle-income, developing country situated on the Central American isthmus, bordering Nicaragua in the north, Panama in the south, and with Caribbean and Pacific coastlines to the east and west respectively. The country boasts one of the oldest and best functioning democracies in the Americas (Freedom House 2014) with universal adult suffrage and regular competitive executive and legislative elections every four years since 1953.¹⁷ For many years Costa Rica was Central America's only democracy, a peaceful oasis in a region torn apart by internecine wars and state terrorism. It was generally viewed by social scientists as a political, economic, and social outlier: fully democratic, no standing army, high ranking on the Human Development Index (HDI), with World Bank governance indicators ranked far higher than those of its neighbors, and a Bertelsmann Status index level that consistently places Costa Rica between 10th and 12th among the world's developing countries (Bertelsmann 2014).¹⁸

The origins of Costa Rica's economic and social policy success have been traced to the promulgation of a new constitution in 1949, after the short, bloody civil war of 1948. Before the war Costa Rica was economically similar to the rest of the region, but in the period immediately after the war, its economic growth and population's social wellbeing began to rise at a much faster rate than in the rest of the region (Wilson 1998: 82). Figure 3 shows how Costa Rica's Gross Domestic Product per capita (GDP/C) grew much more rapidly than in the rest of Central America. Similarly, Figure 4, the Human Development Index (HDI) for the Central America, shows Costa Rica enjoying a significantly higher HDI than the rest of the region.

¹⁷ Some argue the start of Costa Rica's democracy dates back to 1889 when an incumbent government voluntarily gave up power to the challenger for the first time. While this sequence of events is true, there were numerous non-democratic transitions of power between that date and the 1948 civil war, which was the last non-electoral transition of power in Costa Rica (Wilson 1998).

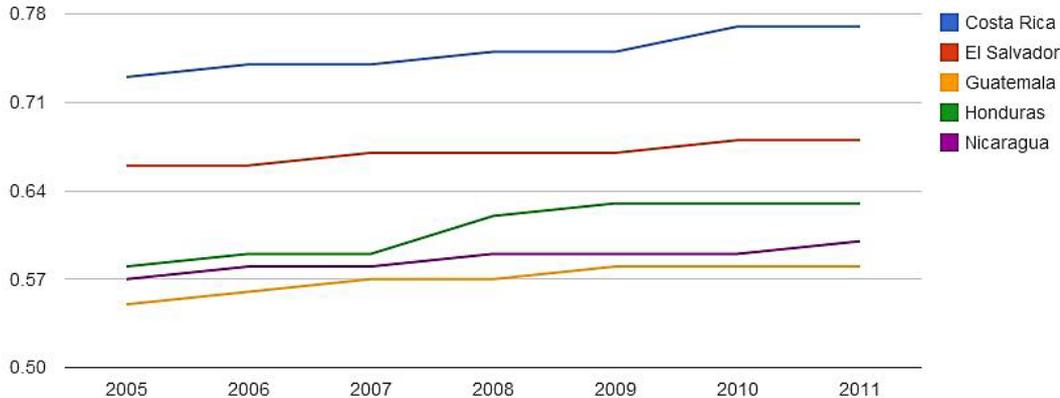
¹⁸ Just ten years ago according to the World Bank governance indicators, Costa Rica outperformed countries with similar economic development by a considerably margin (World Bank 2013).

Figure 3: GDP per capita, constant 2000 US dollars, 1960-2011



Source: TheGlobalEconomy.com, The World Bank

Figure 4: Central American Human Development Index, 2005-2011



Source: TheGlobalEconomy.com, The United Nations

The promulgation of the current constitution in 1949 was, in part, a response to years of corruption and electoral fraud that eventually sparked a short, bloody Civil War in 1948. After the war the new constitution prohibited the existence of a standing army, weakened the office of the executive, and created strong institutions to act as accountability agents to limit corruption and keep the executive, legislature, and bureaucracy acting within the law. To combat electoral fraud and corruption a quasi-fourth branch of state was created, the Tribunal Supremo de Elecciones (TSE, Supreme Elections Tribunal). The TSE is generally regarded as an effective referee that created and maintains an even playing field for political parties and supervises elections that are ranked among the cleanest and freest in the Americas (Freedom House 2013; Wilson 2010).

While the TSE has become a model for other Central American countries' election tribunals, it still has a major weakness in its control of private donations to political parties (Global Integrity 2007: 36). This lack of transparency in donations to parties might hide connections between private companies (and/or drug cartels) and political parties and even with the

strengthened Electoral Code, these connections are very difficult to trace. And, even when it is very clear, as in the case with former president Abel Pacheco, who accepted \$100,000 from Alcatel (the same company tied to the jailed former president) and \$500,000 from a Taiwanese businessman in return for government contracts (Global Integrity 2007: 3-4), it remains difficult to prove the illicit enrichment accusation.¹⁹ Rumours and allegations of illegal contributions to election campaigns are not new. In the 1980s, for example, Oscar Arias (PLN 1986-90) received drug cartel money via a Miami company, Ocean Hunter, and his campaign attempted to take delivery of a suitcase stuffed with \$750,000 in cash that had been smuggled into the country.²⁰

A reform of the Electoral Code (Código Electoral Ley 8765) in 2009 granted more power to the TSE to audit political parties' campaign expenses more closely. The reform also formally prohibits contributions from companies and non-Costa Rican citizens (Article 123 and 128 of the Código Electoral Ley 8765). But, as with many other specific anti-corruption reforms, a major loophole remains open: parties are still able to raise campaign funds by selling bonds to companies whose real owners can remain anonymous (2012 Transformation Index). The constitutionality of the selling of these bonds is being challenged at the Sala IV with the hearing scheduled for October 17, 2013. In the first election since the reform, the TSE's audit has resulted in campaign finance charges against nearly all the parties that contested the 2010 election.

¹⁹ These and other large donations were accepted at a time when the legal limit was just \$28,000. This has now been reduced to zero under the reforms of the electoral code. For the many accusations of corruption against Pacheco, see La Nación 2003.

²⁰ The suitcase was confiscated by police at San José's international airport and arrested the courier, a close associate of Ricardo Alem, who was himself a senior member of Oscar Arias' election campaign team (El Tiempo 1992).

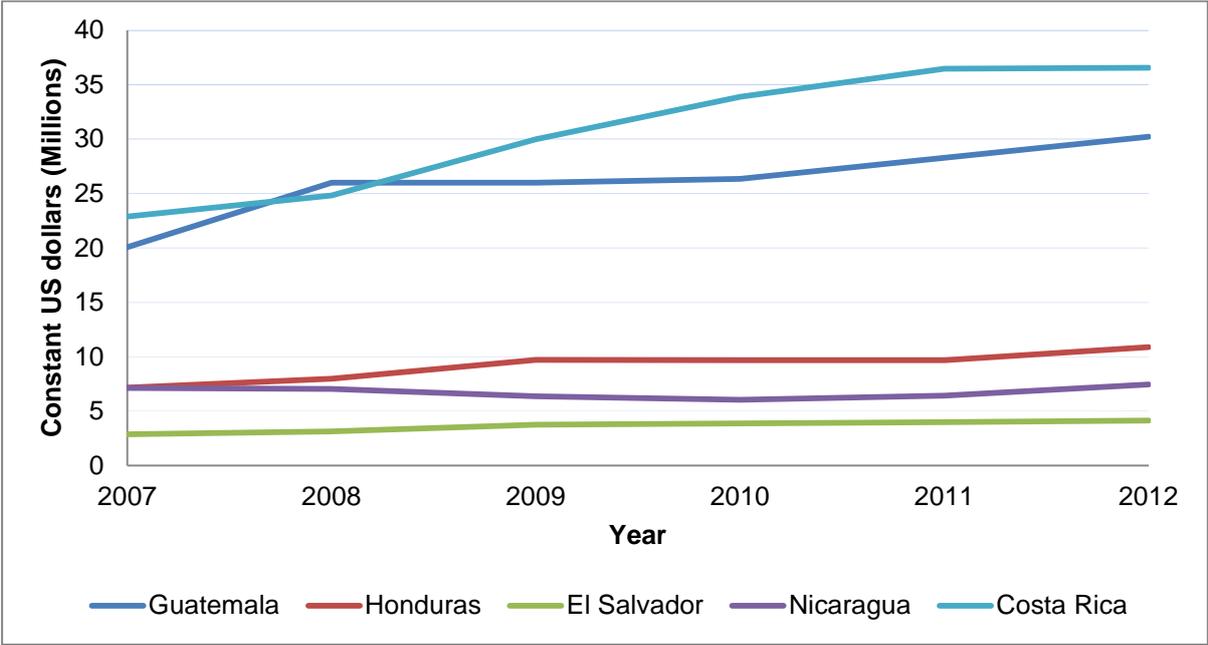
Table 1: Major Anti-Corruption Laws and International Instruments

2004	Law against corruption and illicit enrichment in public office (<i>Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública</i>). Law #8422, October 6 Replaced:
1983	<i>Ley sobre el Enriquecimiento Ilícito de los Servidores Públicos</i> , replaced:
1950	Declaration of assets of public officials (<i>Declaración de bienes de los funcionarios públicos</i>). Law #1166, June.
1997	Inter-American Convention against Corruption (<i>Convención Interamericana contra la Corrupción</i>). Law # 7670, May 9.
2001	Signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4.
2002	Creation of the <i>Fiscalía Penal de Hacienda y de la Función Pública</i> . Law #8221, Feb 8.
2006	Ratification of the United Nations Convention against Corruption (<i>Convención de las Naciones Unidas contra la Corrupción</i>). Law #8557, Nov 29.
2009	Law against Organized Crime (<i>Ley contra la Delincuencia Organizada</i>). Law #8754, Jul 22.
1970	Penal Code (<i>Código Penal</i>). Law #4573, May 4.

Control of State Resources: The 1949 Constitution laid the legal foundations for an expansive, state-led economic development model with an emphasis on education and universal health care, and state-owned monopolies in many basic service areas including water, electricity, and phones. A series of state agencies were established to oversee the revenues and expenditures of the large state sector. Principal among these was the Office of the Comptroller General of the Republic [*Contraloría General de la República*] that was created to audit the expenditures of these institutions and to ensure funds are expended effectively and legally.

In addition, Costa Rica has established an impressive array of laws and agencies to oversee government spending and to limit public officials engaging in illicit enrichment by tracking their assets. Other agencies have been added over the years to enhance this accountability and oversight function including the Criminal Taxation and Civil Service Jurisdiction (CTCSJ), the office of the Ombudsman [DHR, *Defensoría de los Habitantes de la República*], Probit, Transparency, and Anticorruption Prosecution Unit [FAPTA, *Fiscalía Adjunta de Probit, Transparencia y Anticorrupción*], and most recently, the office of Public Ethics [PEP, *Procuraduría de la Ética Pública*]. As Figure Five shows, compared to its Central American neighbours, Costa Rica has expanded the budgets of these auditory agencies at a considerably rate since 2007 in an effort to make these institutions more effective.

Figure 5: Annual Budgets of Supreme Audit Agencies in Central America, 2007-2012



Source: MESICIC (2012:15).

One of the first laws enacted in the post-civil war period, Law N° 1166 in June 1950 “Declaration of assets of public officials” (Declaración de bienes de los funcionarios públicos), was designed specifically to limit corrupt acts by senior public officials by requiring them to list their assets each year.²¹ Other laws, international treaties, and cooperative agreements have been added to the anti-corruption arsenal over the years in recognition of ongoing corruption problems.

The manner in which municipalities receive funds from the national government provides a good illustration of the institutional rules, safeguards, and formal controls used to erect major hurdles to any politician’s attempt to engage in particularistic actions. Municipalities can and do generate revenue streams from property and business taxes, taxes on fuels, licenses, permits, etc., but a major segment of their funding comes from the national government as part of its budget process. Municipal expenditures are closely watched by the national-level Contraloría General de la República (Comptroller General of the Republic) so that all funding allocations must comply with Law #7755, which has had the effect of severely limiting politicians’ particularistic tendencies.²² This law specifies three weighted criteria that have to be used to guarantee a rational allocation of state funds: population size as determined by

²¹ The number of public officials covered by “declaration of assets” laws has been expanded over the years, most recently to include judges. In an interview with Licda. Nancy Hernández of the Supreme Court, she notes the failure to include the judicial branch in these inspections created a major weakness for the accountability of judges and a significant potential for judges to be “bought” by corrupt politicians and/or organized crime syndicates.

²² Before this law, “Control de las Partidas Específicas con Cargo al Presupuesto Nacional” 1998, allocation of monies from the national budget to fund projects within municipalities was by negotiation within the congress with the governing party allocating the lion’s share.

Dirección Nacional de Estadística y Censos (25% weight), the type and size of the territory (25%) certified by the Instituto Geográfico de Costa Rica, and the region's level of poverty (50%) as determined by the Ministerio de Planificación y Política Económica. The Constitutional Chamber of the Supreme Court (Sala IV) has repeatedly upheld the use of these criteria and ruled unconstitutional any allocations that fail to meet the law's requirements. That is, control over the allocation is strong; funding allocations are explicitly detailed in the law, relevant state agencies can easily track those allocations, and the Sala IV provides an effective accountability function to uphold appeals against particularistic allocations of money.

While this appears to be effective in ensuring a rational allocation of funds to municipal projects, many of the major corruption scandals have been perpetrated while following the formal procedures meant to guarantee impartial, rational decisions for state contracts. The case involving former president Calderón, for example, clearly illustrates how a major act of corruption can take place by publicly following proper formal bidding procedures. Calderón manipulated the process from the inside through strategic appointments of partisan loyalists to key committees and boards of state agencies, who in turn followed the correct procedures for securing international loans and state contracts so as not to attract the attention of the relevant audit agencies. While a complete re-telling of the Calderón case and why it almost went unnoticed is available from the PEP's report (Caubillo n.d.), here a brief explanation of the case reveals how the formal checks designed to prevent corruption were avoided by the former president.

After his term in office ended, former president Rafael Angel Calderón became party leader of the PUSC. Because the 2002 presidential election was won by Abel Pacheco of the PUSC, Calderón was in a position to help appoint PUSC party loyalists to the boards of major state agencies including the CCSS, which controls the national health system (Wilson and Rodríguez 2011). Calderón appointed Antonio Lobo, a close friend, to head the CCSS, the mammoth agency charged with the administration of health care and pensions. He then had his allies within Congress push a law to permit a \$40 million loan from the Finnish government²³ to purchase medical equipment from Finland. A local medical company with ties to Calderón acted as broker for the deal and Calderón's appointees on the CCSS convinced the board to purchase the equipment from that particular company. Much of the equipment bought in this process was later deemed unnecessary and unwanted by the CCSS hospitals,²⁴ Calderón and his allies skimmed off approximately \$8 million from the \$40

²³ All international loans to public entities in Costa Rica must be approved by Congress.

²⁴ A damning article by Giannina Segnini, Costa Rica's leading investigative journalist, (Global Integrity 2007:1-20) ties Calderón's push to buy unwanted medical equipment from the Finnish company using CCSS funds that were earmarked for infrastructural repairs. The following year an arsonist set fire to a major San José hospital (ironically named after his father) resulting in the deaths

million loan. This example shows that the formal controls were not able to prevent or even identify these corrupt acts. Rather, it was an assertive press that was investigating the spending habits of CCSS board members that eventually revealed the larger corruption scandal and former president Calderón's part in it. These newspaper reports led to formal investigations by the state and eventually in his and his partners' conviction, jail sentences, and hefty fines.

But as the recent MESICIC 2013 report notes, even though Costa Rica has established the relevant oversight agencies²⁵ to strengthen anti-corruption measures, staffing, training, funding and coordination problems have made the agencies less effective than they might be in "implementing modern mechanisms for preventing, detecting, punishing, and eradicating corrupt acts" (Rodríguez, A 2013: i).²⁶

A recent report published by Costa Rica Integra (the local Transparency International affiliate) and Costa Rica's leading think tank, Programa Estado de la Nación, points to the consequences of these problems and finds not just that the accountability agencies take a long time to resolve white collar crime in general, but that with the exception of the Comptroller General's office, the percentage of cases resolved by other accountability agencies has declined each year. For example, in 2007 the Comptroller General's office resolved 42 percent of the 600 cases it received; in 2011 it resolved 61 percent of approximately 700 cases. Over the same time period, the office of public ethics (PEP) received 71 and 140 cases and made public recommendations for only 25 percent and 21 percent respectively. Similarly, the record of the Deputy Attorney General of Probity is uninspiring: it received 302 cases in 2007 and 393 in 2011, but only made public accusations in 12 percent the cases in 2007 and just one percent in 2011 (MESICIC 2012).

Favouritism in public employment is not generally the norm; a well-established professional civil service exists with its personnel changing little when the party in government changes. There are, though, other areas where "political" jobs are allocated by the winning party. Most worrying is perhaps the practice of appointing members to the Fuerza Pública after elections, which tends to make the police force less professional, and less well trained than it needs to be. But even these appointments need to be approved by the Ministry of Public Security (Ministerio de Seguridad Pública). The lack of training and professionalism of the police forces is particularly worrisome with the rise of corruption tied to violent drug cartels. Costa Rica has no standing army, but instead relies on a Fuerza Pública for internal security that

of 19 people and injuries to many others. In the final report it was noted that the death toll was so high because of the "appalling state of the building and a lack of emergency devices and signs."

²⁵ These bodies include the Office of Public Ethics; the Comptroller General of the Republic; the Ombudsman; the Probity, Transparency, and Anti-corruption Prosecution Unit; and the Criminal Taxation and Civil Service Jurisdiction.

²⁶ This is echoed in the U.S. State Department 2013 report.

Bertelsmann (2014) describes as being inadequate “against cash-laden drug traffickers ... a woefully equipped and undermanned police and security force, which refused to patrol crime-ridden neighbourhoods, and failed to detect the use of a secondary international airport by traffickers, discovered only after two fatal crashes.”

Since its creation in 1989, the Constitutional Chamber of the Supreme Court has acted as one of the most powerful and effective accountability agents in the country. Its seven justices are elected by the 57 members of the unicameral legislative assembly using a super-majority rule; the executive branch has no input into the selection process. Magistrates, once elected, serve eight year terms during which they can only be removed by a vote of their Supreme Court peers. At the end of their eight year term, justices are automatically re-elected unless a two-thirds majority of the current members of the Legislative Assembly vote to remove them; this has not yet happened. Apart from the effective life-terms, the power of the magistrates is enhanced by a constitutional provision that guarantees the judicial branch a fixed percentage of the national budget.

2. Trends

It could be argued that there are four distinct periods in Costa Rica’s recent corruption history: 1) before the 1948 Civil War, when corruption, including electoral corruption, was a major concern and helped spark the 1948 Civil War; 2) the immediate post-Civil War period, when new laws and institutions were created to limit corruption by public officials and political parties. During this period electoral fraud was eradicated, even though the TSE could not monitor the source of all party funds and corruption by public officials seemed to have existed, but the new anti-corruption laws and institutions could not effectively investigate and prosecute corruption by public officials; some corruption continued, but in a more invisible manner. 3) The turn of the twenty-first century marks the start of the third period when the new laws and anti-corruption agencies were put in place and acted in parallel with a more assertive, investigative press. Corrupt acts were more frequently discovered and publicized by the press (and increasingly social media) and subsequently prosecuted by state agencies, although not always successfully. 4) Shortly after the start of the third period, and running concurrently, international drug cartels began to arrive and operate in the more remote parts of Costa Rica bringing a whole new set of corruption problems that the state is ill-equipped to combat.

The current fourth period is perhaps the most troubling as it presents the state with its most difficult challenges and has little concrete information on the scale of the problem. Many elite interviewees voiced concern over the growing specter of drug cartels operating in Costa

Rica, which they note was much more challenging than the ongoing battle to control white collar crime. To combat the drug cartels the Costa Rican agencies require more sophisticated surveillance laws and equipment, changes in the judicial system including procedures to allow crimes to be investigated and tried by the best qualified agents and judges from San José and the support of a confident, well trained police force to regain control over the more distant rural areas that appear to be influenced by the cartels. Attorney General Jorge Chavarria notes that in the south of Costa Rica, 80 percent of his investigations are concerned with drug cartels, which is swamping the area’s courts, but notes that authorities must provide the tools so residents can report crime with confidence (*Inside Costa Rica* 2012). The necessary enhancements, including the reforms to the organic law of the OIJ (bill 17.256 Reforma Total a la Ley Orgánica del OIJ) has languished in the Legislative Assembly since 2008 and is unlikely to become law before the end of the current government’s term in May 2014.²⁷ This inaction of the congress is a reflection of the gridlock that has gripped the law making body since the collapse of the two-party system.

Compounding the struggle against the drug cartels and organized crime is that the cartels operate in the more remote parts of the country, where nearly all government institutions (health care, education, etc.,) are the weakest. Judicial branch interviewees note that the judicial system is similarly weaker in the remote areas of the country than in San José, in large part due to the ongoing formal rules used to assign judges to their posts. The judges with the highest scores in their judicial exams receive the more prestigious posts, which are all in the country’s capital of San José. Similarly, judges who qualify at the bottom of their cohort are sent to less desirable areas, which is exactly where the cartels operate. A separate rule requires crimes be investigated and tried where they took place, thus less qualified judges find themselves in charge of the most difficult and at times dangerous cases.²⁸

3. Detailed Diagnosis

The following table presents, in point form, the various aspects of Costa Rica’s political power.

Table 2: Level of Ethical Universalism in Costa Rica

Power distribution	<p>Generally pluralistic</p> <ul style="list-style-type: none"> • Free and fair elections every 4 years since 1953; overseen by autonomous, quasi-fourth branch of government TSE (Wilson 2010). • The PLN, a dominant party since its creation in the years after
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²⁷ The goal of the law is to reform the administrative organization of the judicial police to make it more agile in its investigations (La Nación 2013e).
²⁸ Interview with Licda. Nancy Hernández. See also Bowen (2013:7)

the 1948 civil war, suffered a split in 2000 with the disaffected leadership leaving to form the PAC, a center left party. The PLN has become less social democratic and more neoliberal in its orientation since the late 1980s.

- Stable two-party system until the 2002 election when a new third party (PAC) forced a second round for the presidential election.
- The other major party PUSC was initially an anti-PLN coalition of social Christian parties. These parties united after the 1982 election under the PUSC banner.
- Until the early 2000s the PUSC and PLN received approximately 90 percent of all votes cast in general elections.
- The PUSC imploded in the wake of corruption scandals and received less than 4% of the national vote for its presidential candidates in both the 2006 and 2010 elections (Wilson and Rodríguez 2011)
- Smaller parties currently (2010-2014) have more elected members of the Congress than at any previous time since the end of the Civil War, which has afforded them considerable policy-making influence.
- Outsized policy-making power in hands of small minority parties who have used their “king” maker position in the congress to capture control of key commissions and committees.
- No party has enjoyed majority support in the congress since 1990 and with the rise of smaller parties the Congress has increasingly been characterized by policy-making gridlock.
- No immediate re-election permitted for deputies or presidents; historically, nearly 80 percent of all sitting deputies are “freshmen.” This allows new politicians entry into congress, but also guarantees large numbers of inexperienced parliamentarians.
- 1949-1969: Presidents were limited to two non-consecutive four year terms; 1969-2003: Presidents were limited to single terms when the Constitutional Court ruled that limitation unconstitutional.
- Executive is among the weakest in Americas; Presidents lack control over his/her party members in Congress due to weak party discipline.
- Constitutional prohibition on the existence of a standing Army, (1949).
- Numerous state autonomous institutions control health, education, power supply, and key economic goods and services.
- Politically and financially autonomous Superior Court, especially since 1989 reforms exercises an assertive accountability function; effective life tenure for magistrates.
- Key families have had extensive political influence: Arias, Figueres, and Calderón.
 - Perhaps declining due to repeated scandals and the collapse of the old two party political system.
- Access to power is facilitated through the use of multi-member districts, a PR election law, and prohibitions on immediate re-election.
- Weakness of TSE’s (election commission) monitoring of election funds helps hide connections between private companies (and/or drug cartels) to political parties.
 - Recent reforms to the Electoral Code grants more auditing powers to the TSE.

	<ul style="list-style-type: none"> ○ As a result a number of political parties are now facing criminal charges for their actions in the 2010 election. • 2004: two former presidents were sent to prison for corruption • Approximately two-thirds of Costa Ricans believe the government can resolve major problems such as Corruption (60%); Crime (64%); Drug trafficking (62) (Latinobarómetro 2011: 91). • There is a formal capacity that allows popularly backed initiative to be debated in Congress. • Since mid-2000s possible to have national referenda (popularly or executive initiated). Only one has taken place (CAFTA-DR) another (on limiting rights of LGBTI people) was ruled unconstitutional by the Sala IV.
<p>State autonomy from private interest</p>	<p>Generally high; there is little capture by specific groups; some areas, Elections, Courts have very high levels of autonomy with constitutional guaranteed funding.</p> <ul style="list-style-type: none"> • Members of the TSE, for example, are elected by the members of the Supreme Court, who in turn are elected by super majorities in the Congress. • Professional civil service, with relatively few senior positions in state agencies allocated based on political identification of new government. • President has few prerogatives to appoint friends to public office even where the president has the power of appointment, for example in the case of ambassadors, heads of some autonomous state agencies such as CCSS, etc, he/she needs the consent of the Consejo de Gobierno. • Since 1998 there have been few possibilities for deputies to engage in pork barrel projects due to a change in law for allocating funds to municipalities. This is compounded by the multi-member districts and the prohibition on immediate re-election, which dampens the need/desire of politicians to deliver “pork” to their districts. That is, they cannot claim sole responsibility for, nor benefit politically from “pork” in their district.
<p>Distribution of Public Goods and Services</p>	<p>Reasonably fair and predictable</p> <ul style="list-style-type: none"> • Comptroller’s office makes it difficult to exercise much discretionary power on the distribution of public goods and it audits all government contracts and expenditures with the exception of the smallest contracts. • Municipalities and other agencies that rely on financial transfers from the national government are generally subject to legal controls about those allocations, which leaves little room to exercise particularistic allocations of state funds. • A suggestion by a vice president that municipalities should be financially punished if they failed to support the PLN government’s position in the CAFTA-DR referendum, was forced to resign once the emails became public (in 2007). • Provision of public benefits is generally universal and fair. For example, in the case of state-provided health care, any perceived discrimination of its provisions can (and will) be reported to the Constitutional Chamber of the Supreme Court (Sala IV). That Court generally rules in favor of the plaintiff and orders the health agency to provide the treatment/medication immediately. Compliance is high (Wilson 2010; Wilson and Rodríguez 2014).

	<ul style="list-style-type: none"> • Satisfaction with public provision of health and education is highest in Latin America (Alfaro-Redondo and Seligson 2012: 156). • Nevertheless 33% claim to have paid a bribe to get a service (Latinobarómetro 2011:64). <ul style="list-style-type: none"> ◦ This likely includes “biombos”; small payments to doctors, nurses, and/or administrators to get faster and/or better treatment. Most Costa Ricans do not seem to consider the payments as “corrupt.”
Personal autonomy and collective action capacity	<ul style="list-style-type: none"> • Voter turnout (historically about 80%) has declined in recent elections in part as a response to citizen’s perceptions of increased levels of corruption among the political class. • Satisfaction with democracy is high by Latin American standards, but is declining (Latinobarómetro 2011). • Civil society is among the weakest in Latin America (Moseley and Smith 2012) • Accessible, assertive Superior Court allows individuals to challenge actions of state agencies and officials (without need for lawyers, funds, or collective actions), which has created a new legal opportunity structure. • Lowest participation in municipal meetings in Latin America (Moseley and Smith 2012) • Costa Rica Integra is a new anti-corruption activist organization working with Transparency International to promote public transparency and ethics. • Increasing use of social media for political/social ends including Facebook, YouTube, blogs, etc.
Distinction public-private	<p>Generally there is a good distinction between private and public. Historically Costa Rican politicians seemed to have pursued policies that enhanced the national interest while they were in government (although there have been unproven accusations against many presidents and candidates over the years). This appears to have changed (or at least become less obvious) in recent years:</p> <ul style="list-style-type: none"> • In 2004, two former presidents charged with serious acts of corruption and eventually tried, fined, and jailed. A third former president was publically accused of corruption, but refused to return to Costa Rica and was not charged. Currently an ex-president is the subject of a criminal enquiry concerning a presidential decree he signed for an open-pit gold mine. • 2013 president’s use of private aircraft for a personal trip to Peru investigated by state agencies. • A 2013 Ministerio Público investigation ends with a former deputy being sentenced to three year suspended sentence, fines, and a three year ban from politics for using a state-owned aircraft for electoral purposes.
Relation Formal/informal institutions	<ul style="list-style-type: none"> • Size of the informal economy is significant. • Compliance with Superior Court rulings varies by defendant and case-type (Wilson and Rodríguez 2014). <ul style="list-style-type: none"> ◦ Compliance has improved across the board since the Court began publicizing non-compliance in 2012 • Tax evasion and failure to pay contributions in to health and retirement funds by employers were a major issue, but has been aggressively fought by government agencies using mobile units to visit work sites (Doryan-Garron 2009 interview).

	<ul style="list-style-type: none"> • Blogs publish the names and amounts of unpaid CCSS contributions and taxes by public officials. • Finance Minister was forced to resign (2013) because he altered his reported property values to avoid paying taxes. • Frequent insider dealings are likely high, but the cases of the former presidents illustrate that the state agencies are willing to investigate and prosecute anyone. • Transport Minister Francisco Jiménez forced to resign (in 2012) due to kick-backs on public works contracts to build a controversial 160KM road (Trocha Fronteriza) along the Nicaraguan border in response to the aggressive land grab of territory by Nicaraguan forces.
Accountability and rule of law	<ul style="list-style-type: none"> • 2012/13 Trocha Fronteriza (major incomplete state-funded road project near Nicaraguan border) resulted in criminal cases being opened against the responsible parties. The project began as a popular Costa Rican response to Nicaraguan incursion into Costa Rican territory, but due to corruption it became an international embarrassment. • 2012/13 San José - San Ramón road construction project funded by the state. Serious irregularities in contract process. Case filed with the Tribunal Contencioso Administrativo (TCA) by Foro Nacional (a national organization of community groups) to stop the government paying the Brazilian construction company OAS almost \$46 million for their work. • RECOPE oil refinery project (partnered with Chinese Company) was signed without following proper procedures. Public backlash caused the government to rescind the contract (2013). • Heads of state agencies have been investigated and some sent to prison. • The Procuraduría de la Ética Pública and other agencies follow up and investigate wrongdoing by anyone, including sitting presidents. <ul style="list-style-type: none"> ○ recent private jet case ○ former presidents ○ a criminal investigation into former president Arias about an open pit gold mine concession he authorized. • People can and do complain officially about unfair treatment either through the Sala IV, which gets approximately 17,000 such cases per year, or through the Ombudsman's office, or those of the various Procuradurías and/or the different contralorías de servicios. • Whistleblowers exist and are formally protected although there are some reports of punishments being meted out by superiors. • All government agencies file annual reports, generally for the congress, but also for external international agencies such as the World Bank or OAS. They generally include information on objectives, which were not reached and measures taken to solve them.

In many ways it is less than clear if the country has regressed and corruption is now a major issue or if it has progressed to the point where new and enhanced state agencies in parallel

with social and traditional media have increased their capacity to reveal, investigate, and prosecute acts of illicit enrichment. What is clearer is the extent of corruption in contemporary Costa Rican society; newspapers, emboldened by changes in the laws that previously criminalized errors in reporting, are using the most sophisticated software to investigate and shine a light on corrupt acts by public officials. Coupled with this are the new laws and institutions that allow the state to respond to newspaper stories and claims made by citizens with thorough investigations and prosecutions. The fact that two former presidents (and many of their associates) were sentenced to jail terms for their part in major corruption scandals reveals the capacity and willingness of the state to prosecute any person, no matter how powerful or important. This likely has had a dampening effect on possible corrupt schemes by politicians or public officials, but the very real weaknesses in the funding and training of personnel within these anti-corruption agencies leave some potential gaps in the state's anti-corruption vigilance.

III. Summary and Conclusions

Costa Rica is a country that has experienced long periods of good governance coupled with corruption by political elites. The corruption scandals of the early to mid-2000s saw two former presidents sentenced to prison, one of the two dominant political parties (PUSC) virtually destroyed as a result of the corruption scandals, and a rush of new smaller parties to fill the political vacuum created by the collapse of the PUSC, which brought to an end a stable two-party system and the creation of a multi-party political system. The lack of single party majorities in the congress has given representatives of the smaller parties more policy-making influence through parliamentary procedures to block bills and their use of veto players, including the Sala IV, to delay or block laws they dislike. The current data show a weakening in the country's governance over the last decade with congress increasingly gridlocked and incapable of generating solutions to major economic and social challenges. Inequality as measured by the GINI index, for example, has increased. As a consequence, Costa Rica, which had been one of the countries in the Americas that boasted a relatively low level of inequality, now suffers from higher inequality than El Salvador, historically an extremely inequitable society.

Costa Rica's practice of continuously updating existing anti-corruption agencies and laws or creating new ones has helped to uncover and highlight corrupt practices, especially at the highest levels of society. But the lack of resources afforded these agencies, although higher than in its neighboring countries, have left these anti-corruption institutions less than fully effective. While the convictions of two former presidents for corruption was a great boost to the perceived effectiveness of the PEP, the fact that one of them recently won an appeal on

a technicality as a result of errors in the prosecution of the case has also highlighted the shortcomings and limits of the PEP and other anti-corruption units. Other important cases are left unresolved due to a lack of staff and resources to conduct timely investigations (Interview with PEP director).

Other laws, while well intentioned, are similarly ineffectual due to the lack of resources. For example, the law on illicit enrichment by public officials that requires all public officials to formally declare their assets each year has not been complied with in a comprehensive manner. The large number of declarations filed (approximately 15,000) and the lack of resources at the Comptroller General's office means that only about one half of one percent is ever actually audited. Furthermore, the fact that the declarations are covered by Sala IV-protected rights to privacy make it very easy for officials to lie or fudge the true value of assets and thus effectively hide any illicit enrichment.²⁹

However, at the same time as the limitations of the official institutions and processes to reign in corruption have become apparent, private actors have begun to exercise a new control function. Perhaps most notably, the newspaper *La Nación* has purchased sophisticated software that allows it to track public officials' expenditures as well as official and recreational travels and staffs a specific unit within the newspaper with the remit of finding, investigating and publishing stories about corruption. It can use the information it generates to ask questions about any unusual expenditure or assets they might find. *La Nación* employees have been known to troll public officials' social media postings to identify expenditures and collaborations that might be evidence of illegal activities. This media outlet, and increasingly other social media, is not shackled by concerns about privacy rights in the same way anti-corruption agencies are. It should be noted that nearly all the major scandals in the last ten years – including the ones that revealed the former presidents' corrupt schemes and exploitative use of the free jet by the current president – were all exposed by the newspaper.

Although not well documented, there is also an evident rise in the use of social media to expose corruption by officials. These websites collect information from their visitors about assets and actions of public officials and then post them online. Officials in state anti-corruption agencies monitor many of these sites and can, as is the case of the PEP, initiate investigations into what they find.

²⁹ The Sala IV ruled that it is unconstitutional to make the asset reports public, which removes a much-needed level of transparency.

IV. Results beyond the empirical assessment

Several general lessons can be learned from this study of corruption in Costa Rica. First, comprehensive anti-corruption laws and relevant international anti-corruption treaties are perhaps a necessary, but not a sufficient condition to effectively combat corruption. Second, adding in an impressive series of anti-corruption agencies that are charged to investigate and prosecute all forms of corruption will similarly be insufficient unless the necessary funding is granted to the agencies. In the case of Costa Rica, numerous reports and interviewees have observed that staffing and funding is insufficient for them to execute their anti-corruption mandates. Third, an assertive, investigative media can overcome some of the limits created by underfunded anti-corruption agencies. Here, it is essential that the freedom of the press and freedom of information is guaranteed and safeguarded by the state. In the Costa Rican case, nearly all the major corruption investigations carried out by state anti-corruption agencies were initially uncovered by the media. Finally, the arrival of international drug cartels is changing the nature of the fight against corruption, especially for a country like Costa Rica without a standing army. The pressing need for judicial reforms to protect vulnerable judges from the cartels, financial forensic experts, and unified anti-organized crime units leaves the state agencies at a significant disadvantage. Recently, due to the huge levels of money laundering in its banks and other financial institutions Costa Rica has been added to the list of top money laundering countries in the world.

Corruption, then, has to be conceived broadly, and the factors that motivate corruption in the form of bribery that affects many citizens routinely may need to be separated by corruption at the elite level, both economic and political. Either way, however, the study of corruption is made difficult by the dearth of reliable data of the nature and extent of corruption. Finally, although this study is of corruption in just a single country, it is evident that corruption cannot be fully understood without considering international factors; international elites have been involved in Costa Rica's most notable corruption cases, and international drug cartels that have more recently become part of Costa Rica's corruption problem operate across borders.

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Appendix 1

INTERVIEWS

All conducted in San José, Costa Rica, May 2013 unless noted otherwise.

- Dr. Eduardo Doryan-Garron, Executive President of the CCSS, June 2008
- Lic. Juan Carlos Rodríguez, Lawyer Millicom, and Law Professor UNED
- Magistrate Licda. Ana Virginia Calzada Miranda, President of the Constitutional Chamber of the Supreme Court of Costa Rica
- Lic. Marco Castillo Rojas, Lawyer/President Movimiento Diversidad
- Lic. Olman Rodríguez Loaiza, letrado (clerk) to the Constitutional Chamber of the Supreme Court of Costa Rica
- Licda. Sigrid Morales Carrasco, letrada (clerk) to the Constitutional Chamber of the Supreme Court of Costa Rica.
- Licda. Nancy Hernández, Director of the Chief Justice's Office of Supreme Court of Costa Rica.
- Gilbert Calderón, Procurador de Ética Pública de Costa Rica
- Juan Carlos Cubillo Miranda, Chief Prosecutor of Probity, Transparency and Anticorruption in Costa Rica.



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Project profile

ANTICORRP is a large-scale research project funded by the European Commission's Seventh Framework Programme. The full name of the project is "Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption". The project started in March 2012 and will last for five years. The research is conducted by 21 research groups in sixteen countries.

The fundamental purpose of ANTICORRP is to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue is how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP seeks to advance the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis is laid on the agency of different state and non-state actors to contribute to building good governance.

Project acronym: ANTICORRP

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