

## EXECUTIVE SUMMARY

# EL SALVADOR'S BID TO FIGHT CORRUPTION

DOES THE COUNTRY HAVE THE NECESSARY  
TOOLS TO WIN THIS BATTLE?

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## EL SALVADOR'S BID TO FIGHT CORRUPTION

### DOES THE COUNTRY HAVE THE NECESSARY TOOLS TO WIN THIS BATTLE?

- While there have been a number of criminal proceedings in El Salvador that have unearthed serious cases of corruption and resulted in the punishment of a few high-level officials, **doubts remain about the willingness and capacity of Salvadoran institutions** to dismantle the criminal organizations that, to varying degrees and in various forms, have permeated State institutions.
- Although Latin America offers comparative experiences with international support in the fight against impunity, El Salvador has opted to tackle corruption with **strictly national tools and institutions**. However, according to the report published annually by Transparency International, this has not reversed the **perception that impunity is widespread** in the country. Furthermore, according to comparative estimates, "hidden" crime rates in El Salvador are extremely high: 90 out of every 100 crimes committed go unreported.
- This climate of impunity is detrimental to the fight against corruption in El Salvador for two reasons: first, because it reveals a system incapable of investigating crimes that involve complex structures and networks; and second, because it also shows that **the independence of justice institutions lacks sufficient safeguards** to shield them from the pressure exerted by groups with an interest in thwarting the fight against corruption.
- Apart from some sporadic investigative journalism efforts, El Salvador has **no publicly available information on basic impunity statistics**—such as the number of investigations resulting in convictions in a given period—for any crime. Nor is there transparency regarding the work of the Office of the Prosecutor General, since, for example, its case prioritization criteria and strategic guidelines are not available to the public. It is telling that the Prosecutor General presents his **criminal prosecution policy plans** at the end of his term, when he will no longer be able to execute them, rather than at the beginning of his term.
- At the international level, El Salvador has signed and ratified the most important anti-corruption instruments and has been evaluated by their monitoring mechanisms, but it **has done little to put the law into practice**. Thus, for instance, it has failed to show implementation of the recommendations and observations made by the MESISIC to create a mechanism that produces statistics on corruption cases investigated and adjudicated, and on the revenues brought into the public coffers as a result of the imposition of penalties.

Without this information, it is virtually impossible to conduct a true assessment of the obstacles to justice in the fight against corruption, or to design evidence-based public anti-corruption policies.

- At the domestic level, **the impunity problem is not due to a shortage of institutions tasked with combating corruption (more than 15 in total), but to the way in which they exercise the powers conferred on them by the national legal framework.**
- One of the causes lies in the **way in which the heads of the oversight institutions are appointed**. The selection of the chief anti-corruption authorities is absolutely political, since this power falls to the Congress, which appoints them by means of procedures with few safeguards against undue influences, and in which there are wide margins of discretion that leave room for the interplay and negotiation of different types of interests. Moreover, unlike other countries in the region—which prohibit it—El Salvador allows for the **reelection** of these authorities. This is a factor that generally creates disincentives for investigating and punishing those who have the power to confirm those appointments.

Unlike other countries that also have political appointment mechanisms, in El Salvador the **regulation is minimal and inadequate**, especially with regard to the appointment of the Prosecutor General. This creates a substantial risk that the appointment of oversight authorities will not necessarily be determined by the candidates' merit and their ability to prosecute corruption.

- Despite its powers to monitor the proper use of public resources and investigate the officials who manage them, the **Court of Auditors of the Republic** seems not to prioritize the identification of patterns or gather information to understand how corruption networks work. Nor does it have the power to initiate or assist in the criminal investigation of corrupt acts, which is under the purview of the Office of the Prosecutor General.
- The **Integrity Division, which is part of the Supreme Court of Justice**, is one of the institutions with the greatest potential to combat

corruption, since it has the authority to receive financial disclosure statements from public officials at the beginning and end of their terms, verify their accuracy, and report any signs of unjust enrichment to the Plenary of the Court.

Nevertheless, it is a weakened body, which has only acted under pressure and demands from civil society organizations. Its case selection criteria are not public, and since June 2017, based on the argument of protecting the reputation rights of officials under investigation, it has kept all its audit reports confidential, thus keeping citizens from knowing about and demanding the investigation of cases with major social impact.

- The **Office of the Prosecutor General of El Salvador** has shown undeniable progress in the criminal prosecution of senior officials in specific cases, but generally on the basis of evidence produced by other institutions, especially the Integrity Division of the Supreme Court; it has not demonstrated that it has—by itself—the capacity to detect, investigate, and prosecute corruption cases, although it can act independently of other oversight institutions. Generally speaking, it is an opaque institution, reluctant to provide complete, timely, and accessible information, and one lacking a culture of transparency and accountability. In spite of this, it should be acknowledged that it has pushed for important amendments to its organic law, which, after being passed by the Legislative Assembly, were vetoed by the President.
- El Salvador has a **Law on the Unjust Enrichment of Public Servants** that dates back to 1959, but it has rarely been enforced. Attempts to replace it with a new modern Integrity Act have been unsuccessful so far.

El Salvador was one of the last Central American countries to pass a **Public Information Access Act**, which was accomplished thanks to the initiative of civil society. The **Access to Information Institute** has been an important player in the fight for transparency and accountability, but its work

has encountered resistance from other bodies, especially the Plenary of the Supreme Court of Justice, which has ruled that audit reports on the assets of public servants produced by its Integrity Division are "confidential."

- There is a **Government Ethics Act and a Tribunal** responsible for its enforcement that has both preventive and punitive functions. However, this tribunal can only suspend officials and impose fines, since dismissal only occurs upon a criminal conviction, which depends on the initiative of the Office of the Prosecutor General. In addition, there is a strong political component to the way in which the members of the tribunal are appointed, which means that this body ultimately depends on the same people it might need to investigate.
- In El Salvador, **nepotism** is not among the offenses contained in the Criminal Code, and is only an infraction punishable by a fine under the Government Ethics Act, so the consequences of violating the rules are minimal. Several senior and former State officials have been sanctioned by the Government Ethics Tribunal for hiring family members.
- In recent years, a number of **cases have come to light that illustrate the seriousness of corruption in El Salvador**. Perhaps the most emblematic is that of the confidential expenditures of the Presidency of the Republic: during at least five different presidential terms, funds were discretionally distributed to public servants and private actors in amounts accounting for up to 60% of the total expenditures of the Executive Branch, from a budget line that received funds diverted from other branches of government, secretly and without any oversight mechanism. Another illustrative example is the fact that the country's former Prosecutor General is currently under arrest and awaiting criminal prosecution for having received bribes in exchange for not prosecuting or hindering the prosecution of serious cases of corruption.

## CONCLUSIONS

- The fight against corruption has taken root in public debate and political discourse in El Salvador. The drive of an insistent community of investigative journalists has been a decisive factor in activating legal and institutional mechanisms against senior officials who have benefited from the diversion of public resources. **The main source of information on major corruption cases is journalistic investigation, rather than any investigations carried out by the State institutions** with that mandate.
- Generally speaking, El Salvador has the institutions and legal resources needed to fight corruption. **There are no insurmountable legal gaps, but there are aspects that can be improved** (unconnected dots, some overlaps in functions, procedural obstacles that preclude the use of one legal route when another is underway, etc.). Comprehensive reform that unifies all these resources in one system is possible if the political will exists.
- El Salvador has **major challenges** in the fight against corruption. The first is to provide the oversight institutions, **especially the Prosecutor's Office**, with the **actual conditions they need to act autonomously and independently**. To this end, an inevitable aspect that must be examined—and without which there can be no substantive progress against corruption—is the highly political system that currently exists to appoint the heads of those institutions.
- The second is to invest in **strengthening the capacity of the Prosecutor's Office to investigate crimes, especially complex crimes**. If this is not achieved, the results—whether few or many—will continue to depend on its ability to produce objective evidence, and on what other institutions or investigative journalists are able to produce.

- Third, **the knowledge and use of available tools for public oversight of the civil service should be promoted.** The culture of accountability should be fostered in different sectors of civil society.
- Finally, there is a need to ensure the **availability of public, accessible, systematized, useful, and timely information**, especially with regard to oversight institutions whose mandate is directly related to the fight against corruption.

## RECOMMENDATIONS

1. **Review the design of the mechanisms for the appointment of the top corruption control authorities** in El Salvador: the Prosecutor General, judges of the Court of Auditors, the Government Ethics Tribunal, the Institute for Access to Information, and the Supreme Court Justices.

This entails **revising the existing political model** to bring it into line with international standards on transparency, openness, the identification of merit, civil society participation, and equality and nondiscrimination. One important measure would be **to promote the enactment of a general law on second-tier appointments** that incorporates safeguards to reduce the amount of discretion in the evaluation and appointment process.

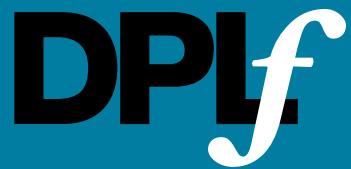
2. **Review the design of the internal and external accountability mechanisms of oversight institutions.** It is important that these mechanisms are democratic, in the sense of involving civil society.
3. Undertake a comprehensive evaluation of oversight institutions and the regulatory framework for combating corruption in order to identify unconnected dots, regulatory gaps,

interference or duplication of functions, or procedural impediments that can be eliminated or removed, as well as opportunities to enhance inter-institutional cooperation or tools that can be strengthened, with a view to **coordinating these institutions and standards in a system-based approach.**

4. **Strengthen the Office of the Prosecutor General's capacity to investigate corruption offenses.** To this end, the first step is to carry out a comprehensive assessment of the prosecutor's office and police institutions in order to identify strengths and weaknesses, and thus establish a basic working model.
5. Resume the debate on the operational and budgetary autonomy of a **special prosecutor's office to combat corruption** within the structure of the Office of the Prosecutor General, whose head is elected and supervised through special mechanisms, and which incorporates safeguards similar to those applicable to the election of the Prosecutor General. It is also important to encourage a new legislative debate that will lead to the overriding of the presidential veto on the initiative to amend the organic law of the Prosecutor's Office regarding the autonomy of the **Financial Intelligence Unit (FIU)**.
6. Assess the need to **request international support to establish a special mechanism to tackle corruption and impunity in El Salvador.**
7. Promote the **passage of a new Integrity Act** that is consistent with other existing anti-corruption regulatory instruments and that governs the disclosure of audit reports in accordance with international standards for access to public information. It is recommended that the draft of this important legal instrument be subject to a broad public debate, with the participation of civil society in an open parliament format.
8. **Until the Integrity Act is passed, it is recommended that the Plenary of the**

**Supreme Court of Justice lift the existing confidentiality of the audit reports prepared by its Integrity Division** and their background documents, consistent with the right of access to public information recognized in international commitments assumed by the State of El Salvador.

9. **Introduce mechanisms that allow for the effective participation of civil society in spaces strategically linked to the fight against corruption**, such as regulating mechanisms for effective participation in the selection and appointment of oversight authorities, in the accountability mechanisms of such institutions, in the reporting of corrupt acts, and in the formulation of policies to criminalize or prosecute the phenomenon of corruption, among others. The possibility of civil society involvement in criminal proceedings on corruption, through procedural devices such as the private prosecutor or civil party, is another tool that can be strengthened.



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