



(DRAFT VERSION)

BATTLING A CANCER: TACKLING CORRUPTION IN PERU, 2011-2014

SYNOPSIS

From 2000 to 2009, Peru's justice system successfully prosecuted a former president and other high-level public officials for corruption. But in the five years that followed, judicial institutions struggled to curb new corruption networks that operated with impunity throughout the country. Because the networks had penetrated the justice system itself, it was increasingly difficult to prosecute or convict people who had participated in bribery, kickbacks, or other schemes. In the 2011 presidential election, Ollanta Humala, who ran on the slogan "Honesty Makes a Difference," captured 51% of the vote and gave a boost to reformers within the country's legal institutions. Humala joined the Open Government Partnership, strengthened Peru's anticorruption commission, and brought together top leaders of the country's judicial and legal institutions to improve the government's response to corruption. In 2012, the comptroller general, the public prosecutor (attorney general), and the president of the judiciary created a new "subsystem" to bring officials accused of corruption to trial. They created a new prosecutorial team and designated a specialized chamber to hear the most complex corruption cases. At the same time, the Ministry of Justice and Human Rights strengthened its capacity to investigate and bring to trial cases involving the misuse of public resources. By 2015, several cases were in preparation, nearing trial. The fight against corruption in Peru continued to face many obstacles, however, including the perception that anticorruption efforts had lost top-level support.

Blair Cameron drafted this case study based on interviews conducted in Peru in August 2015. Case to be published November 2015.

INTRODUCTION

"Corruption in Peru is like a cancer," asserted Walter Albán, who served as Peru's ombudsman in the early 2000s, led the interior ministry during 2013-14, and became the head of Proética, the Peruvian chapter of Transparency International, in 2015. "In the era of President Alberto Fujimori, it was a great tumor. We removed it, but some cancer remained, so the

corruption continued to spread. It flourished without effective control mechanisms."

In 2009, César San Martín, the presiding judge of the Special Criminal Chamber of the Supreme Court, had sentenced Fujimori to 25 years in prison after the ex-president's conviction on charges of human rights violations committed during his decade in office, from 1990 to 2000. Prosecutors also accused Fujimori and his co-conspirator, Vladimiro Montesinos, the de facto

head of the National Intelligence Service, of orchestrating a corruption network that had embezzled public funds, provided favors to friends, and bribed media companies to help build electoral advantage. More than 1,000 people were allegedly involved.

The trials were the culmination of a process that began in September 2000, when a series of videos incriminating Montesinos appeared on national television. The lead investigator at the time was José Ugaz, whom Fujimori had appointed as a *procurador ad hoc* within the Ministry of Justice and Human Rights. Ugaz, a prominent criminal lawyer, was originally tasked with investigating Montesinos, but the investigation soon uncovered evidence incriminating Fujimori as well. Special prosecutorial teams within the public prosecutor's office (*Ministerio Público*, an autonomous institution) were in charge of the Fujimori-Montesinos prosecutions, and special chambers set up within the Superior Court of Lima and the Supreme Court of Peru heard the cases.

Ugaz recalled that the corruption scandal rocked the country. "The Peruvian state collapsed," he said. "We had all these videos released that revealed the high level of corruption around the country, with Supreme Court judges being involved, with the public prosecutor being involved... the entire judicial system was captured by criminal networks."

During the next ten years, more than 200 trials took place to prosecute those involved in the corruption. In addition to Fujimori, Montesinos, and Blanca Néida, the public prosecutor (attorney general), were convicted and given lengthy prison sentences.

Despite the convictions of high-level officials, new corruption networks soon emerged. As the central government devolved powers to the regions and a mining boom opened new streams of money and resources, regional leaders and organized crime groups sought to capture the incoming revenue.

The new networks of corruption employed many of the same tactics the Fujimori-Montesinos network had used to cover up their wrongdoing. Carlos Rivera, a lawyer at the Legal Defense Institute, a non-governmental organization based in Lima, the capital city, said provincial and municipal leaders "bribed the local media and persecuted the little independent press that existed in the regions. They "filled as many positions as possible in the public prosecutor's office," and "they made a plan to control judges should any case against them reach the judiciary."

The institutions that had put Fujimori behind bars had weakened by 2010. Fuad Khoury, the comptroller general, announced that his office had reported more than 10,000 public officials for "presumed" acts of corruption committed at the national, regional, and municipal levels, from the beginning of 2009 until mid-2011.¹ But few of these allegations resulted in prosecution.

In May 2011, Khoury teamed up with José Pelaez, the newly appointed attorney general or head public prosecutor (*fiscal de la nación*), and César San Martín, the newly elected head of the judiciary and the judge who had sentenced Fujimori to jail. The three signed a joint "Declaration against Corruption," pledging to improve coordination among their institutions so that more cases could be prosecuted.

Just a month later, Peruvians signaled their backing for anticorruption efforts by electing a new president, Ollanta Humala, who had campaigned on the slogan "Honesty Makes a Difference." He garnered a slight edge over his opponent, Keiko Fujimori, the former president's daughter, who had raised the possibility of giving her father a presidential pardon if she won. In a June run-off election, Humala won 51.45% of the vote to Fujimori's 48.55%.

At the outset, the new president and reformers in the country's main independent (autonomous) legal institutions shared common goals. Shortly after he was sworn in, Humala

indicated his interest in joining the Open Government Partnership (OGP), a multilateral organization that aimed to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.

In its OGP Action Plan, the Peruvian government pledged to improve the performance of the specialized corruption units that existed in the public prosecutor's office and the judiciary, put a justice ministry lawyer specializing in corruption cases (*procurador público anticorrupción descentralizado*) in each judicial district in the country, and report the outcomes of corruption trials publicly. Although the judiciary and the comptroller's office participated in discussions to create the action plan, the OGP working group did not formally adopt Khoury, San Martín, and Peláez's plans to revamp the process of prosecuting corruption cases in Peru.

THE CHALLENGE

In 2000 and 2001, the interim government that took power after a decade of authoritarian rule under Fujimori had set up a special system to investigate corruption allegations. The president of Lima's Superior Court had designated six judges to hear the cases, and the public prosecutor's office had created a six-person unit of special anticorruption prosecutors (*fiscales*).

These judges and prosecutors "were young, untainted, and they had all the political support to go forward with the investigation," said José Ugaz, the criminal lawyer who helped create the system. A pivotal element of the strategy was Ugaz's own team of state attorneys, known as the *procuraduría ad hoc*, which were part of the Ministry of Justice and Human Rights, to probe the initial allegations against Montesinos and his network.

By 2011, however, the limits of this approach were apparent. The executive's main weapon in the fight against the Fujimori-Montesinos corruption network, the ad hoc office

of state attorneys in the justice ministry, had a dwindling budget and gradually lost the charisma and efficacy that had attracted public support. Alan García, president from 2006 to 2011, had created an additional unit of state attorneys specialized in corruption crimes, the *Procuraduría Pública Especializada en Delitos de Corrupción*, to represent the state in corruption cases involving the administration of his predecessor, President Alejandro Toledo.

Problems were rife. The two *procuradurías*, which were responsible for securing repayment or damages under the law, lacked adequate resources. Coordination and communication among institutions—prosecutors, attorneys, courts, and auditors—was weak. High staff turnover, inadequate capacity, capture by the corruption networks themselves, and some distinctive constitutional provisions all reduced effectiveness.

Retaining talented employees was a problem everywhere in government. Jaris Mujica, an anthropologist who later worked to reform the anticorruption state attorney's office, said: "Administrative service contracts do not provide a career ladder, and they have to be renewed every three to six months. As a result, well qualified people search for other jobs that give them more job security." Threats of possible physical harm and other retribution made it especially difficult to retain talented staff to focus on corruption.

Political changes compounded the disruption. "When a ministerial change occurred, the incoming minister would often change other people within the ministry, and it was common for the people who worked under the outgoing managers to also resign," Mujica said.

Limited expertise further hampered the prosecution of corrupt officials. Hector Maldonado, who worked at the comptroller's office, the autonomous institution that audited public spending, said prosecutors often had difficulty deciphering the reports that the auditors

Box 1. The New Criminal Procedure Code

In 2004, Peru introduced a new criminal procedure code and began switching from an inquisitorial legal system to an adversarial system. Under the old system, judges and prosecutors had shared an investigative role. With the new system, prosecutors were responsible for investigations, and judges had totally distinct roles as impartial adjudicators.

The code was introduced region by region over a period of several years, but in 2010 President Garcia decided the code should be implemented for all corruption cases nationwide. At the time, more than 60% of the country was still operating under the old criminal procedure code, including the Lima region, where most of the corruption cases took place. The change went into effect in January 2011.

“There is an oral hearing where everyone participates,” Arbizu said of the new system. “The public prosecutor opens by presenting the accusation. Then the state attorney has time to present the civil damages that they are seeking to reclaim. Then the defense attorney has the floor to speak on behalf of the accused. After that is the submission of the evidence, and then we have the experts’ opinions, then finally there is debate. After the debate the judge makes his ruling.”

sent them. “The public prosecutors were not trained to handle public management of resources and finances, like the auditors were,” he said. “Our reports were not user-friendly. We gave them too much sophisticated information that was difficult for them to digest, and sometimes they had to hire external consultants to understand the reports.” Better communication also would have helped, because the prosecutors had no way to contact the auditors for assistance in understanding the reports they received.

Additional capacity challenges arose from a 2004 reform of the criminal procedure code that required new ways of working [see Textbox 1]. The code was slowly implemented across Peru, region by region, but in 2010 President Garcia decided to implement it nationwide for corruption cases, beginning in January 2011. “The implementation of the new code meant that small-scale corruption crimes, such as petty bribes paid to policemen for traffic offenses, had to be processed by the same prosecutors investigating complex cases,” said Fany Quispe, who led one of three teams of anticorruption prosecutors in Lima. Before 2011, general prosecutors, not members of the specialized prosecution teams, had investigated these less complex cases. Quispe said that the change created an “overflow” of cases, making it harder to do what she considered

the most important part of her job—investigating serious corruption. The prosecutors had to devote most of their time to the operational work necessary to clear simple cases.

A third challenge was that the corruption networks had influence within the judiciary itself. According to Transparency International’s 2010 Global Corruption Barometer, the public saw the courts as the most corrupt public institution in Peru. The Barometer used national surveys to measure citizen perceptions and assigned each institution a score between 1 (not corrupt) and 5 (very corrupt) based on these data. In Peru, the judiciary scored 4.4, which compared unfavorably with the Latin America average of 3.8 and world average of 3.3.

One problem was that judges and prosecutors lacked security of tenure. Susana Silva, who became the coordinator of Peru’s anticorruption commission, said the high proportion of temporary positions to permanent positions was a major issue across the country. “It is a big problem that judges and public prosecutors are rarely given permanent positions,” she said. “I do not want to say that a temporary public prosecutor is synonymous with corruption... but to guarantee the independence of a prosecutor or judge they need to have a permanent position.”

Finally, Peru's 1993 constitution complicated efforts to develop corruption cases against senior officials because it provided special protections for congressmen, ministers, the heads of the autonomous state institutions, and high-ranking prosecutors and judges. Prosecutors had to get congressional approval to investigate these officials while they held office or during the five years after they left their posts. Only high-ranking prosecutors could investigate such cases. Further, the investigations required endorsement by the public prosecutor, and the only venue for such cases was the Supreme Court. Meeting all the prerequisites for investigations and prosecutions took considerable time and made it more difficult to obtain the evidence needed for convictions.

Major reforms to the system required the support of weak political parties operating in a divided legislature. Winning such backing was especially challenging because personalities rather than political platforms and policies often dictated the success or failure of legislative initiatives.

FRAMING A RESPONSE

After taking office in late July 2011, Humala put transparency and fighting corruption at the top of his administration's agenda by strengthening the national anticorruption commission, the *Comisión de Alto Nivel Anticorrupción*, and by announcing Peru's intention to join the OGP (see Textbox 2).

The president viewed the anticorruption commission as a possible vehicle for generating action and improving communication and coordination across government. He and the prime minister, a presidential appointee, turned to Silva to coordinate the commission. At the time, Silva was the secretary general of the Lima municipal council, and she was unsure about whether to take the position. "It was a very weak organization and had no presence on the political agenda," she said. "But the fight against corruption was one of the flagship themes of the

incoming administration, and they had a reputation for being honest people... so I took the job."

Silva expanded the commission by bringing in a broader range of officials and others who played roles in anticorruption efforts. Under her watch, the number of representatives on the commission nearly doubled to 23 from 12. The members included representatives of regional and municipal governments, Congress, and the heads of autonomous state institutions, such as the president of the judiciary, the public prosecutor, and the comptroller general, as well as five civil society representatives and three private-sector representatives. The prime minister and the minister of justice represented the executive side. The commission, which met every two months, became a focal point for identifying problems and discussing solutions.

The energy required to implement reform came from two groups: key Humala appointees in the executive and the three men behind the May 2011 Declaration Against Corruption—Houry, San Martín, and Pelaez.

Within the justice ministry, the new minister, Francisco Eguiguren, recruited Juan Jiménez to be his vice-minister. Both knew the ministry well. Jiménez had been vice-minister during a transitional post-Fujimori government, and Eguiguren had served as an external adviser to the ministry. The pair had plans to reform the ministry. "We wanted to reconstruct anticorruption policy," said Jiménez.

Eguiguren and Jiménez quickly decided it was unnecessary to have two separate groups of state attorneys assisting in anticorruption investigations. They merged the two offices into one that had responsibility for representing the state in all corruption cases. On Eguiguren's recommendation, Humala appointed Julio Arbizu, who had worked under Ugaz in the earlier corruption prosecutions, as the head anticorruption state attorney. His job was to assist

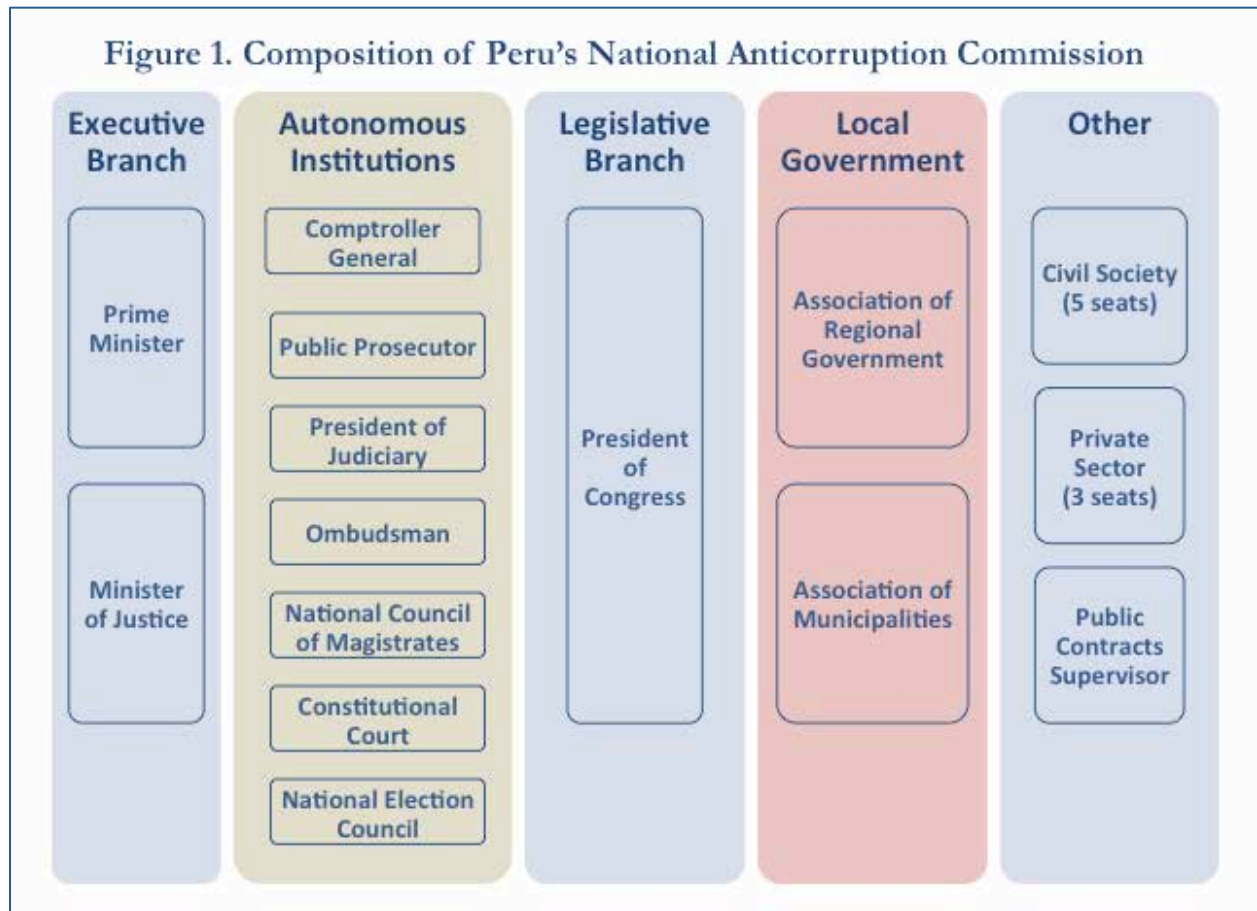
the prosecutor with his investigation and argue for reparations to be paid.

Jiménez turned to a former colleague for help in designing the new unit and building investigative capacity. Jan-Michael Simon, a criminal justice researcher at the Max Planck Institute in Germany, had worked with Jiménez in Central America and as a project adviser for the German Corporation for International Cooperation, or GIZ, which had supported the introduction of Peru’s new criminal-procedure code. Simon had persuaded the GIZ to shift its focus to anticorruption reform. The anticorruption focus “coincided with what, at that time, was the interest of Humala’s government,” Simon said.

While the justice ministry introduced its reforms, the judiciary, the public prosecutor’s office, and the comptroller’s office devised their own action plan. In mid-July 2012, about a year

after Khoury, San Martín, and Pelaez had released their joint declaration, the trio announced a joint policy called the Specific Tripartite Agreement for Institutional Cooperation. In the agreement they pledged to “implement concrete actions for joint efforts to improve efficiency and efficacy in corruption cases of public officials, with special emphasis on serious crimes, complex crimes, and crimes with national repercussions.”²

The agreement outlined specific tasks for each institution. The comptroller’s office would establish a forensic auditing unit to improve detection of corruption. The public prosecutor’s office would designate anticorruption prosecutors who specialized in serious, complex crimes with national repercussions. The public prosecutor’s office and comptroller’s office would also coordinate to establish new protocols for joint action by the two organizations. Meanwhile, the judiciary would institute a “specific criminal



system” for hearing the cases.

Khoury, San Martín, and Pelaez decided that the new anticorruption system should have the capacity to investigate and prosecute serious and complex corruption cases of national importance, leaving smaller matters to the regional prosecutors and judges already in place. Serious corruption cases already underway would continue in the existing anticorruption system under the Superior Court in Lima.

GETTING DOWN TO WORK

The justice ministry and the autonomous institutions—the judiciary, the comptroller (public auditor), and the public prosecutor’s office—implemented their reforms independently but in parallel. The anticorruption commission served as a forum for informal coordination.

Under the tripartite agreement, the movement of a corruption case through the system was supposed to follow a clear path. “The original idea was that the [new unit of prosecutors] would investigate complex corruption cases that originated from reports provided by the auditors at the comptroller general’s office,” Quispe said. [See Figure 2.]

The comptroller’s office, or *Contraloría General de la República*, was responsible for auditing public spending. “When the *Contraloría* detects irregularities that constitute crimes, it has the obligation to denounce them” to the public prosecutor, said Alfonso Gonzalez, who worked for the office. Like the judiciary, the *Contraloría* was an autonomous institution, structurally independent of partisan political control.

An on-call anticorruption prosecutor received the initial report from the comptroller’s office and then conducted a preliminary investigation. If the on-call prosecutor found reasonable grounds, a formal investigation began. In cases of large-scale corruption, the national coordinator of anticorruption prosecutors evaluated the case to determine whether it was serious, complex, and important enough to merit

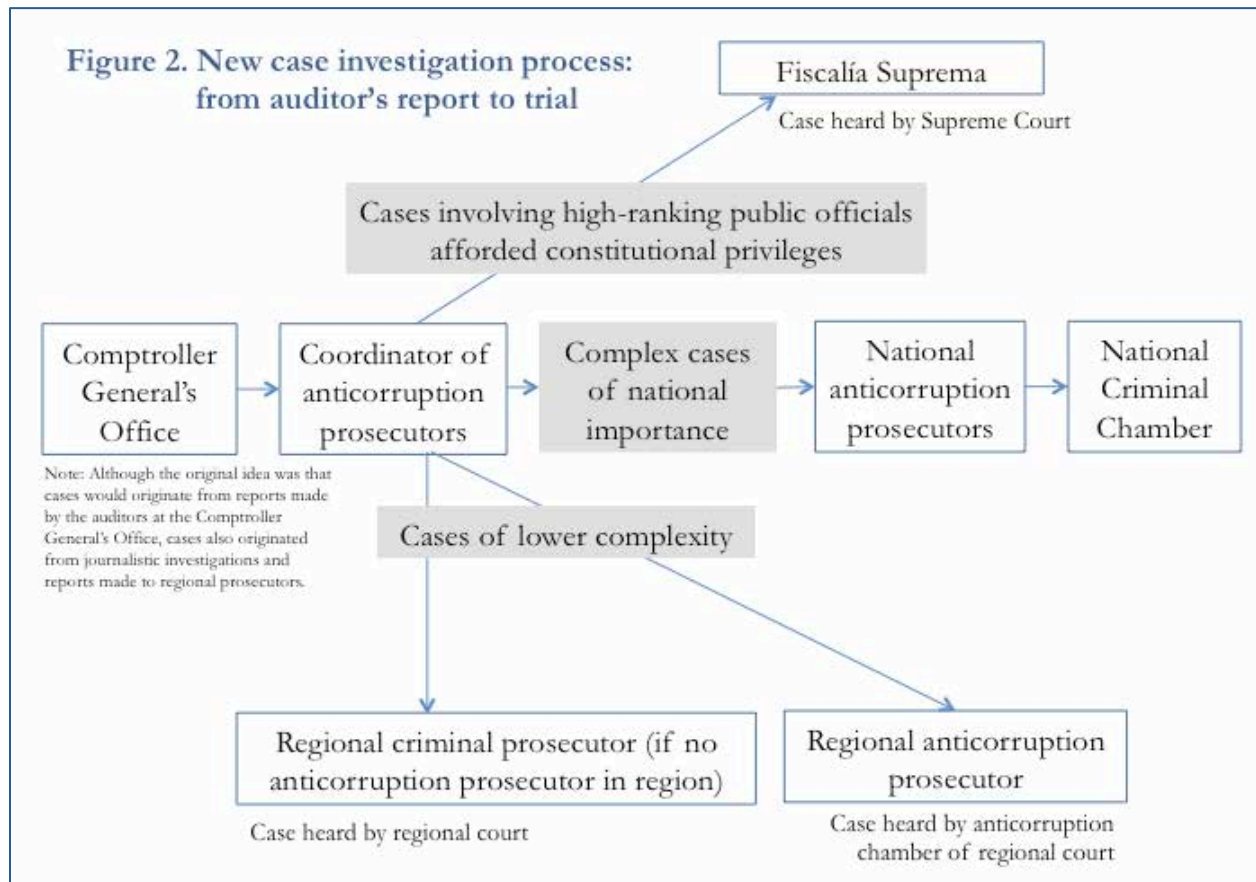
investigation by the new unit (called the *Fiscalía Supraprovincial Corporativa Especializada En Delitos De Corrupción*, or national anticorruption prosecutors). If not, the anticorruption public prosecutor in the region where the crime was committed would conduct the investigation. In regions where there was no anticorruption prosecutor, the region’s general criminal prosecutor would investigate.

Expanding the jurisdiction of the anticorruption chamber

The tripartite agreement Khoury, San Martín, and Pelaez had put in place required the public prosecutor’s office to coordinate with the judiciary to create parallel units of prosecutors and judges specifically for serious and complex corruption cases.

At the same time Pelaez, the public prosecutor (attorney general), formed the national anticorruption public prosecutors, San Martín, the president of the judiciary, proposed the National Criminal Chamber (*Sala Penal Nacional*) as the judicial wing of the new system. The chamber already existed and had jurisdiction to hear national-level crimes related to terrorism and organized crime.

San Martín asked Congress to make the National Criminal Chamber its own court. “The court is a permanent system that is not subject to the decisions of the president or the executive council of the judiciary,” he said. A chamber, on the other hand, could have its jurisdiction changed at any time by the executive council of the judiciary. San Martín’s proposal failed to win support, however. As the presiding judge who had sentenced Fujimori to 25 years in prison, San Martín was unpopular with some members of the country’s political establishment. Congress also blocked San Martín’s attempts to introduce other reforms to tackle corruption within the regional courts, including supervisory committees for the courts most at risk of corruption.



The executive council of the judiciary, which included San Martín, four other judges, and a representative from the bar association, expanded the jurisdiction of the National Criminal Chamber to include corruption cases. San Martín said the idea triggered some initial resistance, because of concerns about the workload. “There was a fear that there was going to be an overflow in the system,” he said. People told him that “the system was covering too much, and that new cases would hinder the cases that the chamber already had.” Others felt that diverting important cases to a separate national chamber was detrimental because it ignored the territorial jurisdiction of the regional Superior Courts.

However, strict adherence to restrictions on the seriousness, complexity, and importance of cases brought to the court helped minimize such opposition. Further, San Martín stressed, each judge could review the case to decide whether it really fell under his or her jurisdiction.

A separate anticorruption chamber within the Superior Court of Lima, which heard cases related to the Fujimori-Montesinos network and subsequent corruption cases that fell under its regional jurisdiction, continued to operate. “They already had the infrastructure and the system was already implemented,” San Martín said. “So we just let it continue.” Going forward, however, all of the more serious cases were investigated by the national anticorruption prosecutors and heard by the National Criminal Chamber.

Appointing honest judges and prosecutors

Aware that corruption was entrenched within both the judiciary and the public prosecutor’s office, San Martín and Pelaez had to choose judges and prosecutors who had reputations for honesty.

The National Council of Magistrates, a separate autonomous state institution, was responsible for certifying the judges and

prosecutors that San Martín and Pelaez could choose from. The council had seven members: one elected by Supreme Court judges, one elected by the highest-ranking prosecutors, one by the rectors of all the public universities, one by the rectors of all the private universities, one by members of the bar association, and two elected by members of Peru's 31 other professional associations. The council evaluated and ratified each judge and attorney every seven years.

The members of the executive council of the judiciary collected information on candidates' careers in the judiciary and consulted other judges before making appointments to the National Criminal Chamber. "First, we saw if the person being appointed had any disciplinary measures filed against them," San Martín said. "Then we looked at their knowledge and expertise, and any recommendations from other judges." San Martín asked many of his most trusted colleagues within the judicial system for their recommendations.

Meanwhile, Pelaez, the public prosecutor, created two specialized teams for the new national unit. Each team had one prosecutor, three deputies, three assistants, and one administrative staffer. This national unit was far smaller than the Lima anticorruption unit, originally set up to investigate the Fujimori-Montesinos network, which in 2012 had three teams, each composed of five prosecutors plus 15 deputies, assistants, and administrative staff. Quispe, one of the two prosecutors chosen for the new national unit, said the decision to keep the national unit small was a setback but noted "the concession we got was that we would start with a caseload of zero—we would only deal with new cases."

Most of the cases proposed to the national unit came from the regional anticorruption prosecutors or from other prosecutors in the provinces. A smaller number of cases came directly from the public prosecutor's office. César Zanabria, who became the coordinator of the

anticorruption prosecutors for the entire country, said the national unit investigated about a quarter of the cases proposed to it; the remainder were returned to the regional prosecutors for investigation.

As more serious corruption cases rolled in, the prosecutors on the national unit struggled to keep up. By 2014, the public prosecutor had to reassign more prosecutors working at the provincial level to new teams on the national unit, as well as more deputy prosecutors and assistants.

Strengthening the anticorruption state attorney's office

In parallel with these changes, the justice ministry began to reform the anticorruption state attorney's office, which represented the state in corruption cases that carried the prospect of civil damages. The capacity of this office had eroded since 2000, when it began as an ad hoc office under Ugaz. In 2011, the reform team found that the office was in a state of disarray and unaware of exactly how many cases it handled.

Arbizu, the head anticorruption state attorney, and Jiménez, the vice-minister of justice, created a new analysis unit, known informally as the anticorruption observatory. The new team believed that knowing where corruption occurred most often and identifying especially vulnerable functions or offices would help them improve the state's response to corruption. They chose three social scientists and one lawyer to staff the operation.

Arbizu drew on the help of the new analysis unit to create a better case allocation system. The unit developed a classification system that allowed its staff to rank cases in terms of complexity and importance, based on 56 variables. Arbizu set up protocols to assign the most capable state attorneys to the type A cases (the most important) and to give them smaller caseloads.

The classification system also helped the unit pinpoint the sectors and regions most prone to corrupt administration. These statistics allowed Arbizu to allocate his personnel across regions.

"We created 11 macro-regional state attorneys, plus a team of lawyers that moved from one place to another in order to cover the entire macro-region," Arbizu said.

The anticorruption state attorney's office publicized its work. If someone did not pay damages assessed by a judge after a verdict, the attorneys seized property to collect the money and invited the press to observe. After one early seizure, people who had not paid began to live up to their obligations. Arbizu said, "The next day 25 people were at my office saying that there was no need for us to go and seize their property; they were willing to pay the damages before any other measures were taken."

Improving Capacity

New protocols helped codify relationships between the comptroller's office, the public prosecutors, and the judiciary. "The protocols established how the three entities were going to work after reports [of corruption] were filed by the comptroller's office," Quispe said.

The new protocols immediately improved communication between the comptroller's office and the prosecutors. "Before the tripartite agreement, the auditors had no idea what happened to their reports," Quispe said. "There was no communication. Now, they know that once they send their reports, we are going to investigate. And if there is information missing, we are able to request it."

The comptroller's office also changed its operating procedures to ease the prosecutors' task of processing the reports. "We changed the language we used so that the public prosecutors could understand our reports," said Maldonado, who worked in the office. "And instead of sending them a 70-page report, we sent them an abridged three-page report that only included the most relevant information for them."

As part of the tripartite agreement, the two national anticorruption prosecutors, Quispe and Walther Delgado, along with their deputies and

other anticorruption prosecutors, attended joint training courses with the comptroller's office and the judiciary. The courses took place at the comptroller's training center, and the attendees met twice or three times weekly.

The courses were the first opportunity the prosecutors, auditors, and judges had to interact personally. "The tripartite agreement changed the traditional form of work between the public prosecutor's office and the comptroller's office," Quispe said. "Before having the tripartite agreement we never met with the auditors. Afterwards, we developed personal relationships with them."

Additional workshops, supported by the GIZ, focused on the internal functions of government agencies and the law for public contracts. Learning about these topics allowed the prosecutors to work more closely with the auditors, who scrutinized public contracts and public administration practices every day, and to better understand the auditors' reports.

Investigating high-ranking public officials

In 2011, the public prosecutor designated an office to handle investigations of high-ranking officials who enjoyed pre-investigation privileges under Peru's constitution. The office was called the Supreme Public Prosecutor's Office for Administrative Cases (*Fiscalía Suprema en lo Contencioso Administrativo*). In 2014, when this unit began investigating corruption cases, the public prosecutor appointed Quispe to be one of the prosecutors on the new team.

Having a separate unit to handle the highest-ranking public officials complicated the task of investigating corruption networks. When a prosecutor began investigating a case, it was not always immediately clear how many people were involved in the corruption, or if any of those involved had constitutional privileges. "In these cases," said Quispe, "the law states that they should all be tried together at the highest forum."

Box 2. OGP in Peru

Shortly after he was sworn in, President Humala had indicated his interest in joining the Open Government Partnership (OGP). The Ministry of Foreign affairs led a group of public servants who were in charge of designing an action plan to join the OGP, in conjunction with the Secretariat of Public Management, part of the cabinet office. Mariana Llona, who was the head of the secretariat, said the partnership “was an alliance between the executive and civil society, but also with the participation of autonomous institutions and certain ministries.” The autonomous institutions that participated included the ombudsman’s office, the anticorruption commission, the comptroller general’s office, and the judiciary, but not the public prosecutor’s office.

“We invited all the different state powers to be part of the partnership, but only those with political will participated,” said Eduardo Pezo, who also worked for the secretariat. The public prosecutor’s office (attorney general) “was not interested,” he said. Despite being included in the OGP commitments, the public prosecutor’s office was never represented at the OGP meetings and therefore “no concrete commitment was made,” Pezo said.

After a five-month consultation process, the secretariat presented Peru’s Action Plan at the OGP annual conference in Brazil in April 2012. Three of the commitments in the action plan were related to the anticorruption system:

- Disseminate information to the public about the outcome of investigations for administrative offenses related to corruption.
- Improve processes, performance, and timely publicity in the specialized corruption units that existed in the public prosecutor’s office and the judiciary.
- Put a justice ministry lawyer specializing in corruption cases (*procurador público anticorrupción descentralizado*) in each judicial district in the country.

According to Pezo, “the commitments were not implemented in their totality.” Although the judiciary made some progress in publishing decisions, the general public still had little access to information about the initiation of formal charges, indictments, or the basis for court decisions. In most corruption cases. Further, the justice ministry lacked the resources to finance the creation of anticorruption state attorneys in every judicial district, and opted instead to implement macro-regional anticorruption attorneys to cover several districts at once.

After 2013, weak executive support hampered implementation progress. Pezo recalled that the commission set up to ensure follow-through on the commitments had “about 10 meetings with all 15 representatives, as well as some bilateral meetings.” But, according to Llona, “the last meeting was in May 2014 because of personnel changes and because the civil society representatives left the commission.”

The civil society commission members quit because of a conflict with the executive about a proposal to set up an independent transparency authority to facilitate public access to information. Advocates said the transparency authority would ensure timely access to information from government ministries, local governments, and autonomous institutions. Although similar structures had been created in several other OGP member countries, the proposal ran into opposition from high-level officials of the Peruvian government.

“The commission members decided, by consensus, that the transparency authority would be a commitment,” said Llona. “But when the preliminary plan was presented to the prime minister, concerns were raised about the idea.” Successive prime ministers refused to sign off on the agreement, and Llona said the concerns centered on the handling of sensitive information.

In July 2015, the secretariat published a new plan that included different commitments than those originally agreed upon by the commission. It was immediately rejected by the civil society groups that had earlier welcomed the OGP initiative. “We started the partnership well, but it decayed,” said Llona. “We need to work on rebuilding trust now. ... It’s going to be a great challenge to rebuild the partnership.”

If a case focused on a high-level official, Quispe said, the long process required to launch an investigation could delay action and allow defendants to leave the country. "There is a large group of people that enjoy pre-trial privileges," she explained. "For these people we have to wait for the public prosecutor's preliminary investigation before we can act. As the saying goes, time passes and they flee."

Investigating officials who held privileged positions was an "enormous challenge" for the public prosecutor's office, according to Quispe. "It all takes time, so it may take years before a public official with privileges is duly processed," she said. "Sometimes during that period of time we lose evidence, or we lose witnesses. For example, after a certain period of time we are not able to request communication records because the telephone communication company does not keep information for a long period of time."

OVERCOMING OBSTACLES

Those who wanted to build lasting reform faced hurdles created by the constant rotation and reassignment of personnel as well as the changing composition of the influential National Magistrates Council.

During the first three years of his presidency, Humala replaced his prime minister six times and his justice minister five times. Eguiguren, Humala's first minister of justice, lasted just four months before Humala decided to replace him and promote Jiménez to the role. After seven months as the minister of justice, Jiménez became prime minister. Jiménez said he was able to continue supporting the anticorruption state attorneys as prime minister, but not with the same intensity as when he was part of the Ministry of Justice and Human Rights. Instead, he focused on instituting preventative anticorruption policies with the anticorruption commission. Jiménez worked on these reforms for 14 months before Humala sent him to Washington to be

Peru's ambassador to the Organization of American States.

Judges and prosecutors faced similar problems. Although they had security of tenure as long as they obeyed the rules, they often found themselves shifted from one court or chamber to another. Every 12 months, the judicial council could choose to move a judge to a different chamber or role within the court. And every two years, the highest-ranking judges elected a new president to preside over the judicial council. Prosecutors, on the other hand, could be reassigned to different roles or units at any time by the public prosecutor.

After the implementation of the new criminal procedure code, the National Magistrates Council, the body charged with reviewing officers of the court and appointing judges and prosecutors, gained the authority to make a judge's appointment permanent and not subject to change by the president of the court, according to Nayko Coronado. Coronado was one of three judges with permanent positions on the anticorruption chamber of the Lima court. "The other 12 can be changed to any other position by the judicial administration," she said. The National Magistrates Council was also able to give prosecutors permanent positions. But as of mid-2015, only two of the 33 prosecutors on the national anticorruption units had permanent roles.

The focus of those interested in anticorruption reform later shifted to the council's own elections, however, as concerns grew about possible outside manipulation of the group's membership. "In appearance, the election for members of the National Magistrates Council appears very democratic," said Rivera of the Legal Defense Institute. "But unfortunately, there have been too many people elected [to the council] that should never have been there."

In June 2015, after the professional associations of Peru voted for their two representatives on the seven-member council, the

Legal Defense Institute and Proética, the Peruvian chapter of Transparency International, raised concerns about the election process. Albán, the former ombudsman and interior minister who in 2015 became the head of Proética, said the two new council members were elected by an indirect vote, and just 10 of the 41 professional associations recognized by the electoral authority voted.

Rivera said the composition of the council was changing, and that the shift posed a potential threat to the independence of the judiciary. “We are convinced that this has become a problem more recently,” he said. “Earlier, no one was interested in the council. Little by little, people have come to realize that it is a very powerful institution. Its members appoint judges and prosecutors; they can choose whether or not to ratify judges, and they can remove judges and attorneys. . . . We do not have any documents to prove it, but we believe that there are political factions in Peru that are trying to control the council. It is the ideal way to control the judiciary.”

“The new composition of the National Magistrates Council is very worrying,” Albán said. “The way the new members were elected and the questionable background that some of them have has created a fear that some council members may be linked to corruption networks.”

ASSESSING RESULTS

As of mid-2015, about three years after the reform started, it was still difficult to assess the success of new practices and institutions in improving enforcement or deterring corrupt practices. The national anticorruption prosecutors had 23 national-level cases in progress. According to Zanabria, the coordinator for all anticorruption prosecutors across the country, the first case investigated by the new unit was in oral hearings before a judge. The unit had announced formal charges in two other cases, and 20 cases were under preliminary investigation.

Those working within the system remained optimistic for its success. In particular, they pointed to the importance of bypassing prosecutors and judges at the regional level and having a national system to investigate and hear the most important cases, as well as increased cooperation between the institutions involved.

Silva, the former coordinator of the anticorruption commission, suggested that public support for the system had increased because of the reputation of the individual judges, attorneys, and prosecutors working on corruption cases. “The people working today in the anticorruption system are top-level people, and they are very committed to their jobs,” she said.

Even with the appointment of staff members with excellent reputations, concern persisted about conflicts of interest, however. Arbizu worried that personal connections between presidents and past public prosecutors had made it difficult to bring the country’s highest officials, including presidents, to court.

Avelino Guillen, one of the lead prosecutors involved in Fujimori’s prosecution, said prosecutors across the country regularly felt political pressure when dealing with corruption cases, and that they needed stronger political support. “It is a big problem when there is a lack of political will to fight corruption,” he said. “How am I going to investigate and condemn a minister? He has the power to cause a lot of problems for me. In these cases, the prosecutors might look for any small processing error so that the case does not advance.”

Peruvians continued to have low regard for legal institutions. “People feel that there are no judicial guarantees,” said Gladys Andrade, a lawyer who ran Solidarity Forum, a Lima-based NGO focusing on human rights and anticorruption issues. Andrade said she also worried that corruption networks still wielded influence within the independent legal institutions. “The judiciary is captured by political

and private interests, and the public prosecutor's office is captured in a similar way," she said.

The efficiency and effectiveness of investigations improved. Grading cases by seriousness and complexity helped reduce the chance that prosecutors would find all their time diverted to small cases that did not address the real drivers of corruption. The first case the national anticorruption prosecutors investigated "involved working with whistleblowers, analyzing over 200 telephone calls, analyzing banking information, etc.," Quispe said. "You could never investigate the case in a system where you also had to investigate a huge amount of small cases."

Adoption of the new criminal procedure code also helped reduce delay. Quispe said that "after the implementation of the new criminal procedural code, the public prosecutor sees a proceeding from the very beginning until its ruling" instead of handing the case off to an investigating judge or another prosecutor. As a result, she suggested, "the public prosecutor is more invested in his or her case." The new code also implemented deadlines that sped up the process of judicial hearings and the time taken to deliver verdicts.

Public accessibility to the findings and decisions in corruption cases remained low. "The majority of sentences for corruption are not published, despite the existence of a system to publish them on the official page of the judiciary," said Nayko Coronado, one of the Lima anticorruption judges. She said that many judges faced time constraints because of the high burden of cases on each judge, and that many judges lacked knowledge of how to use the online system.

Despite strong progress in 2011 and 2012, the reliability of top-level support was uncertain. "Humala had to cover his back," Simon said. "Every political leader in Peru has to fund their campaigns... and the people that pay for the campaign are going to ask for something in return."

At the end of 2012, President Humala backed away from his enthusiasm for greater transparency when he issued a decree that made all information related to national security a state secret. And from 2013 until mid-2015, the executive refused to approve a second Open Government Partnership Action Plan. These actions "gave the impression to civil society that the government would not walk the talk," Silva said.

Another corruption scandal rocked public confidence in the anticorruption commission in December 2014, when one of its members was ousted while a corruption investigation was under way. Carlos Ramos, Pelaez's successor, was suspended from his position as public prosecutor by the National Magistrates Council, and in mid-2015 the council fired Ramos for hampering corruption investigations when he was in charge of internal control within the public prosecutor's office in 2013. The council also investigated Pelaez but absolved him of all charges.

Meanwhile, in January 2015, Silva resigned her post at the anticorruption commission, which had helped coordinate anticorruption policy, because of weakened support for anticorruption initiatives from the president and his ministers. After her resignation, the commission stopped meeting for several months.

Mid-2015 brought some optimism, when the National Magistrates Council appointed Pablo Sánchez, a well-regarded anticorruption prosecutor, to take Ramos's place. Sánchez had a reputation for honesty and was immediately chosen to be president of the anticorruption commission. "The election of Sánchez has created a big opportunity, but it will take time," Albán said.

REFLECTIONS

Between 2011 and mid-2015, a few dedicated people had strengthened Peru's capacity to prosecute public officials for acts of corruption. Carlos Rivera, the lawyer at the Legal Defense

Institute, emphasized the improvement that had occurred. "At the moment we have a lot of hope," he said. "There is a fantastic group of public prosecutors and another great group of judges who are willing to fight corruption." He underscored the importance of this achievement: "When there are no public prosecutors interested in tackling corruption, even the most spectacular anticorruption plan will fail."

Further progress would not be easy, however. Many other issues competed for President Humala's attention, and in 2015 the president's office was less engaged in the anticorruption strategy than it had been in 2011.

In theory, civil society engagement could help sustain political support and play a role in countering the backlash from the regional corruption networks. But key reformers worried that citizen attention had lagged after a surge of interest in the early 2000s. "A big problem is that we need civil society to react, and to become interested again," said Walter Albán, the head of Proética, the Peruvian chapter of Transparency International. "There was a great mobilization of civil society when Fujimori fell, but since then the government has failed to fulfil their promises to fight corruption. The biggest damage done to the country is that all this corruption has decreased the morale of the people."

Avelino Guillen, a former anticorruption public prosecutor, said citizens' discouragement had serious implications for public administration across the country. "When a public official embezzles funds, the public are indifferent," he said. "They do not feel that corruption affects them. If you ask someone why he or she voted for a public official known to be corrupt, they tell you 'everyone is corrupt, so I voted for the one that built a highway.'" As a result of public

indifference, Guillen concluded, "public officials do not feel obligated to fight corruption."

There was also a risk that corruption networks could capture elements of the anticorruption system. For example, Julio Arbizu, who became the head anticorruption state attorney in 2011, wanted to see steps taken to ensure the anticorruption state attorneys did not become a partisan tool. "It is important also that the anticorruption state attorney's office should not become a weapon that is used by every government administration against the prior government administration," he said.

Finding the right people and keeping them on the job was a common refrain among people who had led the reforms. "The right person in the right position is the only thing that can make a difference, and this will be the case as long as we don't have strong institutions in Peru," said Juan Jiménez, the former Prime Minister. "And even if we did have strong institutions, if you have the wrong person running it, it could be ruined."

Nonetheless, key reform leaders were optimistic. "This is a dream come true," said Sergio Salas, who was president of the court of Lima in 2001 and played a major role in setting up the special chambers to prosecute the Fujimori-Montesinos network. "Before 2000, our situation was very precarious... What we have now is what we always hoped we could have: a great national area specialized in corruption, in terms of state judicial policy. At the moment, the anticorruption system is stronger than it has ever been."

Salas, who was no relation to former anticorruption state attorney Christian Salas, said top-level support was crucial for the success of anticorruption prosecutors and judges. "The biggest risk is neglecting the system," he said.

1"Más de 10 Mil Funcionarios Involucrados en Irregularidades Durante el Gobierno Aprista." *El Comercio*. 31 Aug. 2011. <<http://elcomercio.pe/politica/gobierno/mas-10-mil-funcionarios-involucrados-corrupcion-gobierno-aprista-noticia-1262900>>

2"Convenio Específico Tripartito de Cooperación Institucional Entre el Poder Judicial, el Ministerio Público, y La Contraloría General de la República." César San Martín Castro, José Antonio Pelaez Bardales, Fuad Khoury Zarzar. 17 July 2012.

<<http://scc.pj.gob.pe/wps/wcm/connect/e07861004d8896be8dfcef85f1a0a28f/21.+Convenio+Espec%C3%ADfico+Tripartito+PJ-MP-Contralor%C3%ADa.pdf?MOD=AJPERES&CACHEID=e07861004d8896be8dfcef85f1a0a28f>>



INNOVATIONS FOR SUCCESSFUL SOCIETIES

Innovations for Successful Societies makes its case studies and other publications available to all at no cost, under the guidelines of the Terms of Use listed below. The ISS Web repository is intended to serve as an idea bank, enabling practitioners and scholars to evaluate the pros and cons of different reform strategies and weigh the effects of context. ISS welcomes readers' feedback, including suggestions of additional topics and questions to be considered, corrections, and how case studies are being used: iss@princeton.edu.

Terms of Use

Before using any materials downloaded from the Innovations for Successful Societies website, users must read and accept the terms on which we make these items available. The terms constitute a legal agreement between any person who seeks to use information available at successfulsocieties.princeton.edu and Princeton University.

In downloading or otherwise employing this information, users indicate that:

- a. They understand that the materials downloaded from the website are protected under United States Copyright Law (Title 17, United States Code).
- b. They will use the material only for educational, scholarly, and other noncommercial purposes.
- c. They will not sell, transfer, assign, license, lease, or otherwise convey any portion of this information to any third party. Republication or display on a third party's website requires the express written permission of the Princeton University Innovations for Successful Societies program or the Princeton University Library.
- d. They understand that the quotes used in the case study reflect the interviewees' personal points of view. Although all efforts have been made to ensure the accuracy of the information collected, Princeton University does not warrant the accuracy, completeness, timeliness, or other characteristics of any material available online.
- e. They acknowledge that the content and/or format of the archive and the site may be revised, updated or otherwise modified from time to time.
- f. They accept that access to and use of the archive are at their own risk. They shall not hold Princeton University liable for any loss or damages resulting from the use of information in the archive. Princeton University assumes no liability for any errors or omissions with respect to the functioning of the archive.
- g. In all publications, presentations or other communications that incorporate or otherwise rely on information from this archive, they will acknowledge that such information was obtained through the Innovations for Successful Societies website. Our status (and that of any identified contributors) as the authors of material must always be acknowledged and a full credit given as follows:

Author(s) or Editor(s) if listed, Full title, Year of publication, Innovations for Successful Societies, Princeton University, <http://successfulsocieties.princeton.edu/>



Innovations for Successful Societies (ISS) is a joint program of Princeton University's Woodrow Wilson School of Public & International Affairs and the Bobst Center for Peace & Justice. The Woodrow Wilson School prepares students for careers in public service and supports scholarly research on policy and governance. The mission of the Bobst Center for Peace & Justice is to advance the cause of peace and justice through mutual understanding and respect for all ethnic traditions and religious faiths, both within countries and across national borders.