

CPI 2023 FOR THE AMERICAS: Lack of independent judiciary hinders the fight against corruption

Luciana Torchiato, Regional Advisor for the Americas, Transparency International

With two-thirds of the countries in the region having a score under 50 out of 100 on the Corruption Perceptions Index (CPI), the Americas shows considerable challenges in the fight against corruption. The lack of independence of the judiciary in the region is one of the main problems. It undermines the rule of law and promotes impunity for the powerful and criminals to the detriment of the people and the common good.

Only two countries in the region, **Guyana** (CPI score: 40) and **Dominican Republic** (35) have improved their CPI scores over the past decade. All others have either stagnated or significantly worsened their scores. **Canada** (76) and **Uruguay** (73) are at the top of the regional ranking with more robust checks and balances. **Venezuela** (13), **Haiti** (17) and **Nicaragua** (17) find themselves with the lowest scores, with widespread impunity and a complete lack of independence of the judiciary.

Lack of independence of the judiciary, corruption and impunity

In Latin America and the Caribbean, the [lack of independence and transparency of the judiciary](#) promotes corruption and the undue influence of political and economic elites. This renders many justice systems across the region incapable of applying the law effectively in an impartial manner or exercising their function as a check on other branches of government, which is fundamental for all well-functioning democracies.

In countries like **Brazil** (36), **Mexico** (31) and **Honduras** (23), the removal of judges and prosecutors [without merit](#) by other branches of the state, often [through opaque](#) and, in some instances, [illegal processes](#), undermines the independence of the judiciary. This fosters injustice and a system where the law is applied according to the interests of the ruling government and elite. It also ensures impunity for the corrupt and hampers the recovery of stolen assets.

In cases of extreme co-optation of judges and prosecutors by political elites, as seen in **Nicaragua** (17), **Guatemala** (23) and **El Salvador** (31), the judiciary becomes a tool to [attack honest judges and prosecutors](#). More recently, in the last two countries, it has also been used to manipulate electoral processes, putting democracy at risk, and in Nicaragua, to consolidate dictatorship.

The sense of impunity and the inability of prosecutors and judges to proceed impartially and guarantee fair trials and equality before the law significantly impacts [public trust](#) in the judiciary. This, in turn, discourages reporting, as the institution is perceived as corrupt, unreliable and unsafe. The most severely affected are the poorest and most vulnerable groups, such as women, Indigenous Peoples, Afro-descendants, sexual minorities and migrants. These groups often [experience discrimination](#) when seeking justice.

An independent judiciary brings accountability

The **Dominican Republic** (35) is the only country in the region that has made [significant progress](#) in the fight against corruption since 2021. In just a few years, the country has managed to strengthen the independence of the judiciary and the Public Prosecutor's Office, allowing for progress in the investigation of cases of grand corruption without interference. Similarly, the country has professionalised the judiciary in recent years by strengthening transparency and advancing its [digital transformation](#). The work of the media and civil society organisations in monitoring the justice system's actions has been key in raising public awareness of the costs of corruption and demanding accountability.

In the **United States** (69), [weak ethics rules](#) for the US Supreme Court raised serious questions of judicial integrity, but the US federal and state judiciaries largely continue to function with appropriate independence, free from executive and legislative interference. Attacks on the independence of the US federal and have largely failed, and cases against politically connected individuals have proceeded without effective interference. For example, credible legal cases against a [former US President](#) and against the [current President's son](#) are moving forward through appropriate and independent judicial channels.

Weak checks and balances, lack of justice and impunity

In **Brazil** (36), the independence of the justice system has faced significant setbacks for nearly a decade. The involvement of key figures, including the main judge and prosecutor, with the government of former president Jair Bolsonaro in Operation Car Wash, have seriously cast doubt on the judiciary's independence and the investigation itself. Despite celebrating its 10th anniversary this year and having the undeniable merit of exposing grand corruption schemes, Lava Jato has also faced criticism for compromising its impartiality. Both Bolsonaro and current president Luiz Inácio Lula da Silva have sidestepped processes aimed at increasing the legitimacy and independence of the judiciary by appointing trusted individuals as [Prosecutor General](#). Lula's [controversial decision](#) to appoint his former lawyer as a Supreme Court judge further raises concerns. Additionally, the recent decision to [invalidate all evidence](#) from the Odebrecht leniency agreement, the world's largest foreign bribery case, and to [suspend JBS's](#) record-breaking fine, the world's largest meatpacker, ensures impunity for numerous cases of grand corruption in Brazil and beyond.

Peru (33) and **Ecuador** (34) dropped three and two points, respectively, since the previous year. In Peru, [growing interference](#) in the justice system by a majority coalition in the legislative branch is of grave concern. This is coupled with the potential takeover in 2024 of the National Justice Board, which is responsible for appointing judges and prosecutors. Delays in investigating are also a cause for concern. Ecuador is grappling with a severe crisis of violence and declining trust in public institutions. The situation is further complicated by questionable rulings from specific judges in favour of criminals, which suggest [potential infiltration](#) of organised crime within the judiciary, pointing to serious deficits of transparency, accountability and integrity.

In **Jamaica** (44), collusion among the powerful, as well as the [overwhelming dominance](#) of the executive over the legislature weakens the parliament's oversight capacities, creating conditions ripe for abuse and corruption. Additionally, the executive's failure to close gaps in the governance framework weakens the pursuit of [corruption cases involving organised crime](#) and fosters impunity of high-level corrupt elites.

Significant setbacks: Co-optation of power and violation of human rights

With a drop of five points in the last three years, **El Salvador** (31) shows significant setbacks in the fight against corruption. This increase in the perception of corruption is accompanied by [the co-optation](#) of the judiciary, the Public Prosecutor's Office and the legislature by the executive. This has deepened impunity in the country, as the justice system is not moving forward with investigations against current administration officials. In addition, the lack of effective controls has enabled president Bukele's registration for immediate re-election, [despite its unconstitutionality](#).

Honduras (23) has also faced a significant weakening of checks and balances. The growing capture of Congress by the executive branch has allowed the appointment of the general prosecutor by the legislative branch [without transparency and illegally](#). The country is also witnessing [growing attacks](#) on the press and grassroots organisations that hold power to account, consolidating the authoritarian trend in Northern Central America.

In **Venezuela** (13), the payment of bribes and the [co-optation](#) of judges and prosecutors at all levels of the justice system has become one of the main mechanisms used by criminal networks to secure the operation of their [illicit businesses](#) as well as their impunity. Some Venezuelan judges and prosecutors, in addition to being part of these networks, are also being [investigated by the International Criminal Court](#) for their participation, action or omission in abuses, torture and other crimes against humanity.

Country to watch: Guatemala

Guatemala (23) has shown a 10-point drop since 2012 as the result of three consecutive governments allied with corrupt practices. The impact of the investigations conducted by the [International Commission against Impunity in Guatemala \(CICIG\)](#) resulted in the consolidation of the "Pact of the Corrupt", a pro-corruption alliance composed of the political and economic networks whose interests have been affected by the successful investigations conducted by this body. This group expanded corruption in the country, generating impunity for its members through the co-optation of all state institutions and powers.

In the last few years, the use of the Public Prosecutor's Office and the judiciary for the prosecution of [anti-corruption actors](#) has left the state without any institutional capacity to fight corruption, in addition to granting elites and corrupt networks total impunity for their actions. Furthermore, in 2023, the Public Prosecutor's Office was used as an instrument to try to overturn electoral results adverse to the "Pact of Corruption" [in elections observed](#) by the European Union and the Organization of American States.

The main challenge for the new government led by president-elect Bernardo Arévalo will be to dismantle the corruption networks that have co-opted the Guatemalan state and return it to its primary functions, which have been severely damaged by corruption.

Country to watch: Chile

Chile (66) continues to stand out in the index for the strength of its democratic institutions and high levels of transparency. However, the country's score has dropped significantly since 2014, losing its regional leadership. This follows the exposure of several high-impact corruption cases involving

important figures from almost all major political parties and many of the country's most relevant institutions, showing structural deficiencies in preventing corruption as well as little response in terms of sanctions.

This year, Chile has a unique opportunity to make a difference in the fight against corruption and to stop the growth of organised crime if the beneficial ownership law is passed and the recommendations of the [Advisory Probity and Transparency Commission](#) are implemented. Also necessary is the effective implementation of the [First National Integrity Strategy](#), modernisation in key areas to prevent, investigate and sanction corruption, and the strengthening of sub-national governments.

The way forward

The Americas urgently needs a more robust and independent judiciary to enhance justice, tackle impunity and face the growth of transnational corruption networks. Judicial and prosecutorial appointments and dismissals must be transparent and based on experience and performance to prevent the interference of other branches of government. The disclosure of asset declarations of judges and key public officials is also essential to prevent conflict of interest and to build trust. Honest judges and prosecutors should have guarantees to conduct their work without interference, pressure, or threats to advance investigations and sanctioning. Finally, proper resources and greater international cooperation between independent prosecutors from different jurisdictions are vital to prosecuting and sanctioning transnational corruption.

Embracing strong, independent judiciaries in the Americas will foster hope for a fairer society, ending impunity for wrongdoers and serving the common good.