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Editor: Alina Mungiu-Pippidi

Authors: Bruce M. Wilson, Evelyn Villarreal Fernández

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## Costa Rica's long, incomplete struggle against corruption

Bruce M. Wilson, University of Central Florida, Orlando, Florida, USA  
& Chr. Michelsen Institute, Bergen, Norway ([bruce.wilson@ucf.edu](mailto:bruce.wilson@ucf.edu))  
GIGA German Institute of Global and Area Studies

Evelyn Villarreal Fernández, Vice President Costa Rica Integra, Costa Rica  
& Programa Estado de la Nación, Costa Rica ([evelynvillarreal@estadonacion.or.cr](mailto:evelynvillarreal@estadonacion.or.cr))

### ABSTRACT

This paper tracks Costa Rica's long transition from a particularistic to a universal ethical society using a process tracing mythology. It argues that the origins of Costa Rica's success began in the early 20<sup>th</sup> century followed by three subsequent tipping points that resulted in limiting opportunities for corruption. Each of these tipping points enhanced corruption-free governance through the devolution of political power across the branches of government, the decoupling of the executive branch's control over state accountability agencies, the creation of new agencies whose actions expanded the anticorruption capacity of state agencies, and the remove of legal impediments on the media to investigate and publish stories about corrupt officials. It details the central role of the media in the most recent period as a public watchdog investigating and reporting on many cases of apparent corruption by public officials. It also identifies many recent cases where the media (traditional and internet-based) initiated investigations into corruption before the state's official anti-corruption agencies investigated and prosecuted them. The analysis draws on primary research and interviews with former and current public officials, magistrates, historians, and investigators.

### Keywords

Costa Rica, corruption, anti-corruption, accountability agencies, media

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## Introduction

Costa Rica's experience with corruption has changed notably over the last century or so. The country's long journey began when it was a particularistic society where control of the strong presidency was effectively a license to distribute state resources to friends and family with little accountability. Unlike many countries that made this transition in the recent past, Costa Rica's journey has followed a very long gradual, undulating arch toward ethical universalism in the contemporary period where corruption scandals are infrequent, if well publicized and scandalous, acts of corruption by public officials. To illustrate, between 2004 and 2012, Costa Ricans' perception of corruption has consistently been among the highest in Latin America. This stands in stark contrast to the fact that only a relatively small minority (between 10 and 20 percent) of Costa Ricans identify as victims of corruption, while a clear majority report a perception of corruption, between 70 and 80 percent (Alfaro and Seligson 2012:97-98; Cohen and Smith 2012: 97-98). This points to the fact that although many Costa Ricans are aware of issues concerning corruption, the large majority does not directly experience it, but are made aware of corruption scandals by the media.

While much of the contemporary period is detailed in "D3.2.5. Background paper on Costa Rica" (Wilson 2014), here we flesh out this transition towards limiting corruption by dividing the historical developments into four 'tipping points' framed by subsequent periods of governance where breakthroughs in the fight against various forms of corruption took place with differing degrees of success. We employ a process tracing methodology to revisit the tipping points as a way of illustrating the causality and links among different events and the resulting reforms that ultimately led to the current situation of ethical universalism.

The first tipping point was the result of a struggle by judicial branch employees for more professionalism and autonomy from the caprices of the executive. The reforms created a judicial branch with a distinct institutional cohesion and laid the foundation for the formal separation of powers. The reforms also gave courts the formal ability to exercise their constitutionally mandated horizontal accountability function and to uphold the rule of law without political interference. The second tipping point was a short, bloody civil war in 1948 that was a consequence of corruption, electoral fraud, cronyism, and a perceived threat of communism. The Civil War ushered in a new regime and a new constitution that reconfigured political power creating one of the weakest presidencies in the Americas and eradicating electoral fraud through the creation of a quasi-fourth branch of government, the Supreme Election Tribunal, to guarantee free and fair elections and remove politicians' influence (Wilson 2010).<sup>1</sup> The particularistic tendencies (capacities) of the executive and other government officials were further dampened by the creation of new audit agencies to investigate government contracts. A third tipping point, building on the institutional framework of the earlier ones, came in the 1980s and 1990s in response to some major political and financial corruption scandals. The state's

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<sup>1</sup> The TSE widely regarded as one of the most effective electoral agencies in the Americas that 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).

response was to create more audit and accountability agencies and situate them outside executive branch control and to grant them higher levels of political and financial autonomy. Among the most significant of these new institutions was the Constitutional Chamber of the Supreme Court (Sala Constitucional, or Sala IV), generally viewed as one of the most powerful superior courts in Latin America (Rios Figueroa). The final period starts at the beginning of the twenty-first century with a series of political corruption scandals that revealed the limitations of existing agencies and saw two former presidents arrested and sent to jail while a third former president declined to return to Costa Rica and face the charges. The ultimate expression of this period was the 2014 presidential election victory of Luis Solís, the candidate from a non-traditional political party, PAC, created in large part as an anticorruption party.<sup>2</sup> Our story suggests an institutional explanation that identifies a relationship between the devolution of political power across government branches and agencies, the creation and empowerment of accountability agencies, the freeing of the press (including the internet), and the more recent rise of nascent civil society organizations, all of which have contributed to Costa Rica's progress in the fight against corruption over time. Many of these changes were not designed by individuals with the specific or primary intent of curtailing corruption, but nonetheless changed the institutional context in a way that limited the opportunities for corruption.

The research for this report spans more than two decades of academic fieldwork for Wilson and many years of academic research focused on corruption and anti-corruption by Villareal. Villareal also brings her years of experience as vice-president of Costa Rica Integra, the local Transparency International affiliate, to bear on the scholarship. Our research relies on reviews of secondary and primary sources in Spanish and English and interviews with leading actors including politicians, judges, journalists, civil servants, and academics. A significant number of interviews were conducted by Villareal for her University of Oxford MA thesis on Costa Rican corruption; the others were conducted by Wilson in 2013 and 2014 (see list below).

**Table 1. Horizontal Accountability Systems in Costa Rica**

Regimes	Period	Characteristics	Institutions and legislation
Patrimonialism	Until first half of 20th Century	Legal controls, entities within the Executive, beginning of the Rule of Law consolidation process	Judicial Branch independence 1871 Constitution 1879 and 1937 Ley Orgánica del Poder Judicial (organic law of the Judicial Branch)
Competitive Particularism	1949 (end of Civil War) to 1980s 1949 Constitution	Financial and legal controls Dependent on the Executive for appointments & Budget	Two specialized anti-corruption agencies: Office of Comptroller General Office of Attorney General Banks Audit (within Central Bank)

<sup>2</sup> Partido Acción Cuidadana (PAC) was created in the early 2000s in response to a series of major corruption scandals (Rodríguez A. 2013:76). Although other parties now routinely campaign on anti-corruption platforms, for PAC it is still part of its identity and a central campaign issue (La Nación 2013d).

		Limited powers.	National Electricity Service (SNE).
Border Line	Transition period 1980s to the end of the 1990s	New legal framework More powerful mechanisms Significant expansion in subjects under control, from human rights to environment protection and corruption. More independence, more technical appointments, etc.	Human Rights Office (1984) Constitutional Court (1989) General Audit of Financial Institutions (1988) National Committee in Defense of the Consumer Rights (1994) Regulator Authority of Public Services (1996) Ombudsman (1994) Superintendents (1995 & 1998) Internal comptrollers (1996) etc.
Ethical universalism	Consolidation 2000 Constitutional Reform to current period Principle of accountability as a duty of all public servants	Consolidation of the new institutional framework and the efforts to enforce the legislation created in the previous period. Increase in budget and personnel. Citizen participation.	Law of Financial Management and Public Budget (2002) Law of Internal Controls (2002) Law against Corruption & Illicit Enrichment in the Public Sector (2004). <i>Fiscalía Penal de Hacienda y Función Pública</i> Public Ethic Office. Enhanced press freedoms <sup>3</sup> Civil society organization

Source: based on Villarreal, 2003.

## Historical background

Costa Rica is a small, middle income, developing country situated on the Central American isthmus between Nicaragua in the north and Panama to the south and with a Caribbean and Pacific coastline to the east and west. Politically and economically Costa Rica is frequently considered an outlier in Central America: regular, competitive, fair executive and legislative elections have taken place every four years since 1953 without incidence or legal challenge (Freedom House 2014). For much of the 20<sup>th</sup> century Costa Rica was not just the only democracy in Central America, but was “a peaceful oasis in a region torn apart by internecine wars and state terrorism” (Wilson 2014). The country has no standing army, enjoys the highest Human Development Index (HDI) and World Bank governance indicators (World Bank 2013) rankings in the region and is consistently ranked as one of the top developing countries by the Bertelsmann index (Bertelsmann 2014) and the least corrupt country in Central America.

<sup>3</sup> In 2004 an Inter-American Court of Human Rights decision ruled Costa Rica’s 1902 Printing Press Law 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.*). Subsequently in 2010 a Sala IV decision declared significant parts of the press law unconstitutional, effectively ending any significant sanction against journalists and/or publishers found guilty of “criminal defamation and insults.”

However, an investigation of the earliest periods of Costa Rican political history reveals that the country used to be quite similar to its Central American neighbors. Costa Rica was, like the rest of Central America, part of the Spanish empire and used a similar highly centralized administrative structure in which the separation of public office and private gain tended to blur; it was common practice for government officials to purchase their position and recoup their “investment” through skimming taxes and duties. According to Creedman (1991:234), patronage and graft were so widespread in Costa Rica that the job of *regidores* (aldermen) “usually went to the highest bidder.”

Post-independence governance did not deviate too far from this pattern; the powers of the newly created presidential office were strong and most presidents took office not through the ballot box, but through non-democratic means and regularly used their office to reward friends and family with government jobs and or contracts and to punish the losers (Wilson 1998). For example, Tomas Guardia Gutiérrez, Costa Rica’s modernizing, if dictatorial, president (1870 to 1876; 1877 to 1882). As a military leader and not part of the extant political elite, he used his time in office to diminish the political power the dominant coffee elite by expanding the franchise beyond the landed elite and by dislodging powerful members of the coffee elite from high government office replacing them with members of his own family (Wilson 1998:22). Congress rewarded the president personally for successfully negotiating a contract to build a railroad connecting the *meseta central* with the coastal areas, a form of personal enrichment from a government office that would now be considered corrupt.<sup>4</sup>

Although formally the struggle for political control of the newly independent country was ostensibly between Conservative and Liberal parties, the battles are perhaps better understood as struggles between competing elite families rather than ideologically-based political parties. The vast majority of presidents from independence through the late 1880 represented the Liberal party; yet many of them were removed from office or took office by other members of the Liberal Party. By way of an example, in 1882 when President Tomas Guardia Gutiérrez, who initially came to power via a coup d’état against another Liberal president, died in office he was replaced by his brother-in-law Próspero Fernández Oreamuno, another Liberal party member. Three years later when President Fernández also died in office, his son-in-law, Bernardo Soto Alfaro (Liberal Party), became president. Although this dynastic transfer of power was far from democratic, President Guardia Gutiérrez and his family’s long control of the state facilitated an increasing separation of public and private in part by braking the coffee elite’s historical grip on political power, and opening up the franchise to a growing number of competing interests and voters. Guardia Gutiérrez and his family’s policies ushered in a new liberal constitution in 1871<sup>5</sup> and oversaw the watershed election in 1889 that was open, competitive, with a free press, and an “honest tabulation of results” (Rinehart 1984:29). The 1889 election marked the first time in Costa Rican history that a peaceful transfer of power from an incumbent president to a

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<sup>4</sup> It should also be noted that the contract with British builders for the railroad collapsed due in part to corruption and a lack of funds.

<sup>5</sup> The 1871 Constitution survived, with amendments, until the civil war of 1948; it was replaced by the current Constitution of 1949.

challenger, José Joaquín Rodríguez Zeledón, had ever taken place. Although this was a major step toward democratic government, democracy continued to develop only slowly and with many setbacks including numerous undemocratic transfers of power and a short 1948 civil war.

Many of the post-independence governments were led by enlightened, if less than democratic, leaders inspired by the liberal ideas from Spain. They introduced policies and laws that laid the foundations for the modern Costa Rican state, including free compulsory education and state involvement in the economy and as a provider of social goods.

### **Advent of checks-and-balances: Signs of an independent judiciary**

If the post-independence period was a political free-for-all for control of the state machinery, the first half of the twentieth century Costa Rica became gradually more democratic, and saw the creation of the first mechanisms of control, including some accountability agencies that allowed the state to deal with issues considered corruption and/or misuse of power, even if only ineffectually. An important first step towards reducing routine political corruption was the gradual limitations placed on presidential powers brought about by a nascent struggle within the judicial branch for increased autonomy and professionalism. Since the 1880s Costa Rica's political discourse included the idea of promoting a modern state with a professional, impartial institutions, an independent judiciary, and a legal culture similar to those found in Western industrialized democracies. These motivations were not an explicit attack on the power of the executive nor were they part of a larger plan to restrict the particularistic behavior of the president. The judicial sector reforms, designed to insulate magistrates from the partisan politics of the day, produced an unintended consequence of enhancing the institutional autonomy and power of the judicial branch to limit the self-serving actions of the executive. Congress, not the executive, appointed magistrates to their four-year terms and could only remove them in exceptional circumstances. To insulate them further from politics, all judicial personnel were barred from joining political parties or taking part in electoral campaigns<sup>6</sup> and a 1898 reform uncoupled the appointment of magistrates from presidential elections by moving the appointment period to the middle of the presidential term.

Although these reforms started a process of strengthening the separation of powers and increasing the extent to which the president could be held to account for his actions, other institutional designs undercut their effectiveness. For example, the newly found judicial independence was undercut by maintaining the Supreme Court as an administrative unit of the Ministry of Justice (part of the executive branch), which controlled its budget. Also before 1935 most magistrates tended to have political backgrounds; it was not until 1935 that a career judge became President of the Supreme Court for the first time. Yet, institutional shifts indicated steps towards imposing constraints on the overreach of power routinely exercised by presidents and created a judicial branch with a professional mindset that understood its function as a body

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<sup>6</sup> 1871 Political Constitution and 1887 Ley Orgánica del Poder Judicial.

separate from the political branches.

## Electoral Fraud, Corruption, and Civil War

The 1948 civil war constitutes a turning point in the political history and control of corruption in the country. A lack of space precludes a complete explanation of the complex causes of the civil war in this chapter, but it is important to note that government corruption, electoral fraud, expropriation of German descendants' property, and the fear of communism were the principal arguments used by the insurrectionists for challenging the incumbent regime militarily (Ameringer 1982; Molina and Lehoucq 2002). In the aftermath of the civil war a number of measures were codified and institutions created to prevent a repeat of the political chaos, corruption, and electoral fraud that was a regular feature of Costa Rica in the 1940s.

The Civil War is the key event in modern Costa Rican history that transformed it from political instability to a stable democracy; from a poor backwater to the most prosperous country in the region; from *caudillo* politics to competitive electoral politics with idea-based political parties. The victorious forces in the civil war was an alliance between José Figueres, a small farmer affiliated with a small social democratic party, and his National Liberation Army on the one hand, and the conservative PUN party, led by the reputed winner of the 1948 election, Otilio Ulate Blanco, on the other. During an 18 month interregnum, Figueres governed the country with a *junta* and helped create a new constitutional order with the goal of preventing a return to the corrupt, undemocratic *caudillo* politics of the 1940s. Most significant among the changes was the abolition of the army, the diminution of executive branch powers that gave Costa Rica perhaps the weakest presidential office in the hemisphere (Shugart and Carey 1992). At the end of the agreed period, Figueres surprised many observers by voluntarily dissolving the governing *junta* in 1949 and allowing Ulate Blanco to finally assume the presidential office he had won in the election of 1948.<sup>7</sup>

Electoral corruption was dealt a severe blow with the creation of a quasi-fourth branch of government, a politically and financially autonomous Tribunal Supremo de Elecciones (Supreme Elections Tribunal, TSE). The magistrates of the TSE are doubly removed from the contemporary political life of the country, since they are elected to six-year, renewable terms by a two-thirds majority vote of the Supreme Court magistrates, who in turn are elected by super majorities in the Congress (Wilson 2003).<sup>8</sup> The TSE's budget cannot be altered or reduced by the Congress, which gives the body effective financial autonomy, too. The TSE supervises and controls all aspects related to voting and the election process, including registration of all births

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<sup>7</sup> This was surprising on many levels: Figueres had abolished the national army, but he still controlled his National Liberation Army; he was in political disagreement with Ulate and the policies he was proposing; Figueres' Social Democratic party did poorly in a national election for a constituent assembly, which suggested his party might remain small and never win an election.

<sup>8</sup> Only a two-thirds vote of the full Supreme Court can remove a TSE magistrate. Articles 99–104; TSE Organic Law (Ley No. 3504); Electoral Act (Ley No. 1536) regulate the work of the TSE. See Rubén Hernández Valle. N.d. [http://www.idea.int/publications/emd/upload/EMD\\_CS\\_Costa\\_Rica.pdf](http://www.idea.int/publications/emd/upload/EMD_CS_Costa_Rica.pdf)

and deaths and maintaining voter rolls and mandatory national identity cards, training poll workers, and certifying all election results. Polling data show Costa Ricans tend to have a great deal of confidence in the work of the TSE and in the electoral outcomes.

The new emerging regime also maintained many of the social policies initiated by the defeated government and expanded the state's role in the economic and social life of the country through the nationalization of many industries and public utilities and the amplification of the existing nascent welfare state. The 1949 Constitution also established the first generation of modern accountability mechanisms and created institutions to control their administration and professionalized the civil service. A series of new accountability agencies were created to prevent a return to pre-civil war corrupt actions and curtail particularism of state agencies and/or politicians. The most important of these agencies was the Comptroller General's Office (Contraloría General de la República CGR) and the Attorney General's Office (Procuraduría General de la República, PCR) as well as an audit agency for the newly nationalized state agencies including the state banks, the Bank Auditing Office and the National Electricity Service (SNE) for public services (Villarreal, 2003). While on paper these agencies were formally autonomous accountability agencies, in reality they operated with limited powers and little independence from the executive branch, which was in control of both the appointment process and the agencies' budgets. Another effort to limit public corruption was articulated in one of the first laws enacted in the post-civil war period, Law N° 1166 in June 1950, the "Declaration of assets of public officials" (Declaración de bienes de los funcionarios públicos). The law required senior public officials to list all their assets each year, but the utility of the exercise depended entirely on the honesty of the individual public official since there was no effective agency that could realistically check the veracity of the claims or corroborate what was or what was not reported.<sup>9</sup>

Improvements in the checks-and-balance system included a more professional civil service and the abandonment of the previous practices such as periodic and sweeping changes of civil service personnel, which tended to make it less professional and more tied to the popular branches. At the time, most of these mandated institutions were highly dependent on the executive for appointments and a budget, had limited powers, experienced personnel shortages, and citizen participation was almost non-existent. In 1977 the CGR's auditing department employed just 25 civil servants to investigate over 80 municipalities and hundreds of other public institutions. The resulting backlog meant that most audit reports took between two and four years and were, by definition, completely out of date as soon as they were published and likely ineffective as anticorruption audit agencies (Hernández, 1977; Vicenti Salazar, 1977).

## **1980s and 1990s: The transition period - borderline**

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<sup>9</sup> The number of public officials covered by "declaration of assets" laws has been expanded over the years, most recently to include judges. Licda. Nancy Hernández of the Supreme Court (now a Magistrate on the Constitutional Chamber of the Supreme Court), notes that this lack of required reporting from judges created significant opportunities for corrupt politicians and/or criminals to bribe judges (Interview with Wilson 2014).

The decline of public trust in government, international trends of democratization and human rights, together with a major drug trafficking scandal in the middle of the 1980s, marked the beginning of a second phase of accountability mechanisms characterized by more mandated institutions, expansion of their legal powers, criminalization of acts of corruption, and increased media attention. During this period, for the first time international cooperation was crucial in promoting anti-corruption legislation and sponsoring the creation of new accountability institutions.

This was also a period of major change in the political arena when the various small conservative parties that fought elections in as an anti-PLN alliance formally merged as the *Partido Unidad Social Cristiana* (PUSC). The revolutionary left, banned after the civil war, returned as a marginal electoral force garnering fewer than 7% of the votes in national elections. In the 1990 election, for only the second time in the post-civil war period, a non-PLN party captured control of the presidency and the legislative. Previously, the PLN had been the dominant force in Costa Rican politics having won 5 of 8 presidential elections between 1953 and 1986.

Perhaps the most important institutional change in Costa Rica's recent history was the creation of the Constitutional Chamber of the Supreme Court (Sala IV) in October 1989. The Sala IV is perhaps the most powerful court in the Americas; its decisions are binding on everyone in the country, it has extensive judicial review powers and has open access to even the most marginalized person to file a case directly with the court. The Sala IV has played the most important accountability role in Costa Rica since its inception. Its open access and broad definition of standing has allowed any person in Costa Rica to file a case with the court to challenge the constitutionality of any public or private official's actions. In spite of the powers given the new chamber of the Supreme Court and the centrality of its role in the political and administrative life of the country, it was not explicitly designed to take on that role. Indeed, the transcripts of the parliamentary debates that created the court and interviews with many of the architects and advocates show that the goal was not to create an institution that would limit the powers of the popular branches and animate anti-corruption mechanisms (see, for example, Wilson 2011; Gloppen et al 2010).

The 1980s and 1990s witnessed the creation of new mandated institutions and increased the size of the state. The rest of the region also experienced the creation of these new mandated institutions with the support of international donors. For example, all Central American ombudsman offices were created in the 1990s with European Union and Scandinavian assistance. The "old" accountability institutions, such as the CGR and PGR, also underwent profound reforms including increasing their political independence by requiring a two-thirds majority in congress to appointment their directors; enhancing budget autonomy; and setting up citizen participation mechanisms. This institutionalization required an expansion of staff and budget availability to encompass these new mechanisms of control.

Issues of corruption were infrequent topics in the news media during the 1980s in large part due to the massive political turmoil created in isthmus, particularly Nicaragua's revolution

and civil war on Costa Rica's northern border and the US invasion of Panama immediately south of the country. In spite of public opinion polls not mentioning corruption as a major issue facing the country during this period, congress still passed a law against illicit enrichment in the public function in 1983. This law compelled public servants to declare all their sources of income. But, as with the earlier laws of this nature, the CGR did not have capacity to audit these declarations and thus they were not used to initiate any investigations of public servants' financial impropriety.<sup>10</sup> In 1996 Costa Rica also signed another international anti-corruption instrument, the Inter-American Convention against Corruption.

Media denunciation of political corruption scandals rose in the context of this new institutional and legal framework, which was no different from similar occurrences in the rest of Latin America, where watchdog media also started playing a central role in politics. During the 1990s at least 10 major corruption scandals involving presidents, vice-presidents, and/or ministers were exposed by the media, including the Emergence Funds, Anglo Bank (BAC), FODESAF, *Aviación civil*, etc.

For example, despite the TSE's success in safeguarding democratic elections, its control of private donations to political parties is limited (Global Integrity 2007: 36). There is little transparency concerning the donations that private companies or even drug cartels make to political parties, and it is difficult to prove a case of illicit enrichment. This was the case with former president Abel Pacheco, who accepted \$100,000 from Alcatel and \$500,000 from a Taiwanese businessman in return for government contracts (Global Integrity 2007: 3-4). Similarly, 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 (*El Tiempo* 1992). As a result, 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.

Some prevailing characteristics of corruption during the second period are worth noting: Firstly, in the rare cases where the press reported acts of corruption, they mainly targeted high level political corruption, involving congressmen, presidents, and other senior authorities. While these cases appeared in the press sporadically, journalists frequently failed to follow up on cases and publish their conclusions. This was, in part, related to the expansive libel laws that required journalists to provide extraordinary levels of proof before publishing an investigative story that accused a public figure of corruption or any other kind of misbehavior. Publishing stories without this kind of evidence could result in the journalist going to jail. For example, when a journalist wrote a story that accused sitting president José Figueres Olsen (PLN 1994-98) of financial irregularities in his dealings with state banks, no state agency investigated the veracity of the newspaper reports and no charges or prosecution resulted; rather it was the journalist who was reprimanded and lost his job (Gudmundson 1996:80). The restrictions on press freedoms due to the 1902 press law kept a tight gag on journalists; as a result many stories that should have been published were not.

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<sup>10</sup> Parts of this law were declared unconstitutional by the Sala IV in 1995, further diminishing its effectiveness.

A shackled media coupled with understaffed accountability agencies meant citizens rarely became cognizant of corruption by public officials and even when they did make it to the media, high-ranking politicians and public officials were seldom prosecuted and/or convicted. A former congressman and presidential advisor notes:

What actually happens nowadays is that we have found ways of measuring what was a common practice since colonial times. It is very difficult to separate the state from private businesses in a small country like this. Corruption was present in the United Fruit Company's contract, the construction of the Atlantic railway, then Vesco or Saopim, but in that time there was no Transparency Index or surveys about that.<sup>11</sup>

## Contemporary Costa Rica

The contemporary period can be classified as a final period in the development of accountability mechanisms. It has been a period of consolidation of the institutional and legal framework created in the previous periods. The beginning can be found in the 2000 constitutional reform that included the principle of accountability (*rendición de cuentas*) to be followed by all public servants. The key difference distinguishing the current period from those that went before is the fact that the legal and institutional framework can now be described as constituting a *system* of accountability, coordinated by the CGR. It not only has legal and institutional support, but also enjoys public confidence, but the efficacy of the agencies remains an issue.

This third generation of accountability mechanisms took place in an evolving political milieu in which the traditional two-party system was being eroded and replaced by a political system lacking political majorities and littered with small parties. Despite this flux and Costa Ricans' belief that corruption is endemic, more than 68 percent have "pride in their political system;" a higher percentage than in any other country in the Americas (LAPOP 2014:33).

Alternation in control of the executive and legislature between a social democratic leaning party (PLN) and a Christian social party (PUSC) was a feature of Costa Rican politics for many years, but starting in the late 1990s and early 2000s, though, the two-party system began to collapse and the country entered the ongoing period of political realignment lacking majority parties but numerous small parties winning representation in the congress. During this transition period one of the leading issues in election campaigns has been corruption perpetrated by political elites. It is not surprising that the current president, Luis Solís, represents a party (PAC) that was created specifically in response to corruption scandals. Wilson (2014) develops in more detail the extent, scope, and popular perception of corruption that allowed a party focusing on an anti-corruption agenda to win the election.

Controls on public administration took on a high level of sophistication. Together with ten years of Constitutional Court jurisprudence, four important pieces of accountability legislation

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<sup>11</sup> Constantino Urcuyo, 2005. Political consultant, former congressman and presidential advisor (Interview with Villareal Fernandez).

were approved, the Law of Financial Management and Public Budget (LAFPP, 2002), the Law of Internal Controls (2002), the law of citizen protection against excessive administrative procedures (2002), and the Law against Corruption and Illicit Enrichment in the Public Sector (2004). Even if there is always a possibility of improvements in the legislation, most of the interviewees concur that for now the legal framework is enough to combat corruption. As one former deputy minister asserted:

Legal and institutionally speaking the chances of taking public resources almost disappeared with the new legislation. If I -as a minister- needed one cheque, it has to pass through a long chain of approvals; it is not easy at all at least you had co-opted the whole chain. Basically that means that the nature corruption has changed, now is more likely to have irregularities in appointments of personnel, trading in influences, government procurement, etc.<sup>12</sup>

The anti-corruption landscape since the start of the new millennium amplified the remit of pervious institutions by adding new agencies and increasing the funding of the existing agencies. In 2002, for example, office of the Public Prosecutor (MP) added the *Fiscalía Penal de Hacienda y Función Pública* to deal specifically with corruption and fraud and *Procuraduría de la Ética Pública* (Public Ethics Office) was added to the PGR. In recent years, most of the institutions of control have experienced an increase both in their budget (in real terms) and in personnel. Congressional appointment for the heads of these institutions now follows more transparent and technical procedures that remove even more political influence.

Although civil society is weak in Costa Rica, citizen participation has become commonplace; without the need for strong support organizations or for individuals to spend resources in order to initiate an investigation of corrupt behaviour since the new institutions encourage the public to file cases. Coupled with this is the unshackling of traditional media and the rise of social media, both of which has increased these institutions' capacity to reveal and investigate acts of public corruption in a manner not previously possible. Accountability agencies explicitly follow stories of interest in traditional and social media and can use that information to initiate an investigation and prosecute acts of illicit enrichment. Newspapers and social media, emboldened by changes in the laws that previously criminalized errors in reporting, now use sophisticated computer 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.

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<sup>12</sup> White, Elaine. 2005. Political Consultant. Former vice-minister of foreign affairs, and former congressional advisor. Interview by Villareal.

Much of the awareness of and discussion about corruption does not stem from individual politicians dedicated to eradicate corruption; instead, it finds its origins in an active press, aided by the advent of the Internet and social media. As stated in the Background Report (Wilson 2014: 21),

“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.”

Thus, the media have new avenues to uncover and publicize political corruption, thus raising public awareness, holding elected and appointed officials of the state to account, and thereby pressuring them to respond to corruption cases through investigation and prosecution as well institutional reforms that set boundaries and limits on corruption.

## **Economic growth and anti-corruption**

Nicaragua, the poorest country in Central America, is also the most corrupt. Panama, the richest country in the region, is considered to be much more corrupt than Costa Rica. The head of Transparency International in Latin America, Alejandro Salas, notes that CR has always ranked the least corrupt in Central America because it has strong institutions. "It's not the poverty of a country which matters but the weakness of its institutions" (*Ticotimes*, Dec 25, 2014).

### **Tentative conclusions**

It is not entirely clear whether corruption in Costa Rica has increased, declined, or remained at about the same level. What is clear, however, is that corruption cases are more likely to be reported and met with public disapproval, even condemnation, making them less acceptable over time. Changes in the institutions governing Costa Rican politics have made it easier, and have perhaps even promoted the identification, labelling, and condemnation of political corruption. These institutional changes have not been able to erode political corruption, but demonstrate a commitment by a democratic state in which the rule of law is respected to signal that corruption is not acceptable.

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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, 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.

Conducted by Villareal in Costa Rica, 2005 unless noted otherwise.

Rodolfo Saborío	Government Procurement Bill Drafter; CGR & PGR, Civil Attorney
Hazel Feigenblatt.	Journalist at La Nación
Julio Jurado	Attorney (Environment)
Paul Rueda	Letrado Sala Constitucional
Guillermo Matamoros	Director de Estrategia Institucional, CGR
Mauricio Herrera	Journalist, La Nación
Elaine White	Consultant Vice-minister of Foreign Affairs/ Parliamentary Advisor
Francisco Dall'anese	General Prosecutor Judge
Hugo Alfonso Muñoz	Professor Congressman, Minister of Justice
Hazel Díaz	Public Administration Department, DHR
Isabel Zuniga and staff	Director of Technical Advisor, Congress
Luis Paulino Mora	President of the Supreme court Magistrate
Mercedes Campos	Director of Internal Audits Department, CGR
Otton Solis	Presidential Candidate & founder of PAC; Deputy, Minister of Agriculture
Pablo Barahona Kruger	Centro Anticorrupcion UCR Lawyer, Professor
Roxana Salazar	Director Transparencia CR
Walter Bolanos	Director of Audits Department, CGR
Eladio Gonzalez	Lawyer Parliamentary advisor, presidential advisor

Rodolfo Cerdas	Political Consultant Former Congressman
Raymi Padilla	Researcher, IDESPO, Universidad Nacional
Miguel Gutiérrez	Coordinator, Estado de la Nación Programe. CONARE
Max Alberto Esquivel	Profesor Political Former Deputy Ombusdman Sciences, UCR
Laura Martínez	Director Semanario Universidad, Journalist TV news, Channel 7
Fernando Sánchez	Congressman Candidate, PLN
Sergio Alfaro	Congressmen candidate, PAC
Harold Villegas	Congressional Advisor, PAC
Fernando Herrero	Consultant Former Minister of Finances
Gilbert Calderón	Procurador de Etica, Procuraduría de la ética pública
Erick Hess Araya	Profesor, Political Science. UCR



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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

Project full title: Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption

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