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## BATTTLING A CANCER: TACKLING CORRUPTION IN PERU, 2011–2014

### SYNOPSIS

From 2000 to 2009, Peru's justice system successfully prosecuted former president Alberto Fujimori and other high-level public officials for acts of corruption committed during the previous decade. But the country's judicial institutions struggled to curb newer corruption networks that were operating with impunity throughout the country. Because the networks had penetrated the justice system itself, it was increasingly difficult to prosecute—let alone convict—people who had participated in bribes, kickbacks, or other schemes. In the 2011 presidential election, Ollanta Humala, whose campaign slogan was "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 from 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 to trial those officials accused of corruption. 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 published December 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 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, 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, who was de facto head of the National Intelligence Service, of orchestrating a corruption network that had embezzled public funds, provided favors for friends, and bribed media companies so they could build electoral advantage. More than a thousand people were allegedly involved.

The trials culminated a process that had begun 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 state attorney (*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 office of 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 had 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 involved, with the public prosecutor involved . . . the entire judicial system was captured by criminal networks."

During the next 10 years, more than 200 trials were held to prosecute those charged with violating Peru's anticorruption laws. Fujimori, Montesinos, and Blanca Nélida, the public prosecutor for the nation (*fiscal de la nación*), were convicted and given lengthy prison sentences. But despite the court convictions of those high-level officials, corruption soon re-emerged in the form of new regional networks. As the central government devolved powers to the regions and as a mining boom opened new streams of money and resources, regional leaders and organized

crime groups sought to capture the incoming revenue.

To cover up their wrongdoing, the new corruption networks applied many of the same tactics the Fujimori-Montesinos network had used. Carlos Rivera, a lawyer at the Legal Defense Institute, a nongovernmental 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."

By 2010, the institutions that had put Fujimori behind bars had weakened. Comptroller General Fuad Khoury 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.<sup>1</sup> But few of the allegations resulted in prosecutions.

In May 2011, Khoury teamed up with José Peláez, newly appointed attorney general or public prosecutor for the nation, and César San Martín, 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 between their institutions so that more cases could be brought to trial.

Just a month later, Peruvians signaled their backing for anticorruption efforts by electing a new president, Ollanta Humala, who had campaigned with the slogan "Honesty Makes a Difference." In the election, Humala 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 runoff, 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

### 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, both judges and public prosecutors had shared an investigative role. With the new system, public prosecutors were responsible for investigations, and judges had totally distinct roles as impartial adjudicators.

The 2004 code was introduced region by region, but in 2010, President Alan García decided that 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 wherein 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 the state is 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. Then we have the experts’ opinions, and, finally, debate. After debate, the judge makes a ruling.”

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

### THE CHALLENGE

As they contemplated how best to clean up government, the people who were leading reform diagnosed the reasons why Peru’s anticorruption subsystem had weakened.

The interim government that took power after Fujimori’s departure in 2000 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 (*Ministerio Público*) had created a six-person unit of special anticorruption prosecutors. Those judges and prosecutors “were young and untainted, and they had all the political support to go forward with the investigation,” said 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*. Part of the Ministry of Justice and Human Rights, this unit was created to probe the initial allegations against Montesinos and his network.

By 2011, however, the limits of the approach had become 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 had gradually lost the charisma and efficacy that had once attracted public support. Alan García, president of Peru from 2006 to 2011, set up another unit of state attorneys specialized in corruption crimes to represent the state in cases involving the administration of his predecessor, President Alejandro Toledo. But that change was no match for the problems that had developed.

High staff turnover limited capacity across state institutions. 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 forms of retribution also made it difficult to retain talented staff to fight 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 of the comptroller’s office, the autonomous institution that audited public spending, said prosecutors often had difficulty deciphering the reports that the auditors sent them. “The public prosecutors were not trained to handle public management of resources and finances the way the auditors were,” he said. “Our reports were not user-friendly. We gave the prosecutors 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 (text box 1). The code was implemented slowly across Peru, region by region, but in 2010, President García decided to apply it in all corruption cases nationwide, beginning in January 2011. “The implementation of the new code meant that small-scale-corruption crimes, such as bribes paid to police 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 at the time. Before 2011, general prosecutors, not members of the specialized prosecution teams, had investigated such petty corruption cases. Quispe said 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 specialized prosecutors instead had to devote most of their time to the operational work necessary to clear simple cases.

A further challenge arose from the influence of corruption networks within the judiciary itself. According to Transparency International’s 2010

Global Corruption Barometer, the Peruvian public saw the courts as the most corrupt public institution in the country. The barometer used national surveys to measure citizen perceptions and assigned each institution a score of 1 (not corrupt) to 5 (very corrupt). In Peru, the judiciary scored 4.4, which compared unfavorably with the Latin American average of 3.8 and the world average of 3.3 for judicial institutions.

Susana Silva, whom Humala appointed as coordinator of Peru’s anticorruption commission, said a lack of permanent positions within the judiciary and the public prosecutor’s office was a critical issue. “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, [a prosecutor or judge] has to have a permanent position.”

Finally, Peru’s 1993 constitution complicated efforts to build corruption cases against senior officials because it provided certain protections for congress members, ministers, heads of autonomous state institutions, and high-ranking prosecutors and judges. Prosecutors had to get congressional approval to investigate those officials while still in office or during the five years after they left their posts. Only the highest-ranked prosecutors could investigate such cases; the investigations required endorsement by the public prosecutor for the nation; and the only venue for such cases was the Supreme Court. Meeting all of the prerequisites for investigations took great amounts of 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 the fight against corruption at the top of his administration's agenda by strengthening the national high-level anticorruption commission (*Comisión de Alto Nivel Anticorrupción*), and by announcing Peru's intention to join the OGP (text box 2).

The president viewed the anticorruption commission as a vehicle to generate action and improve 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 secretary-general of the Lima municipal council and 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 (figure 1). 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.

Meanwhile, the office developing the country's Open Government Partnership action plan consulted civic groups and officials about priorities. The public commitments made included improving the performance of the specialized corruption units in the public prosecutor's office and the judiciary, assigning a

state attorney specialized in corruption cases to each judicial district in the country, and reporting 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 the reforms that Khoury, San Martín, and Peláez were planning.

The energy required to implement reform came from two groups: key Humala appointees in the justice ministry and the three men behind the May 2011 Declaration—Khoury, San Martín, and Peláez.

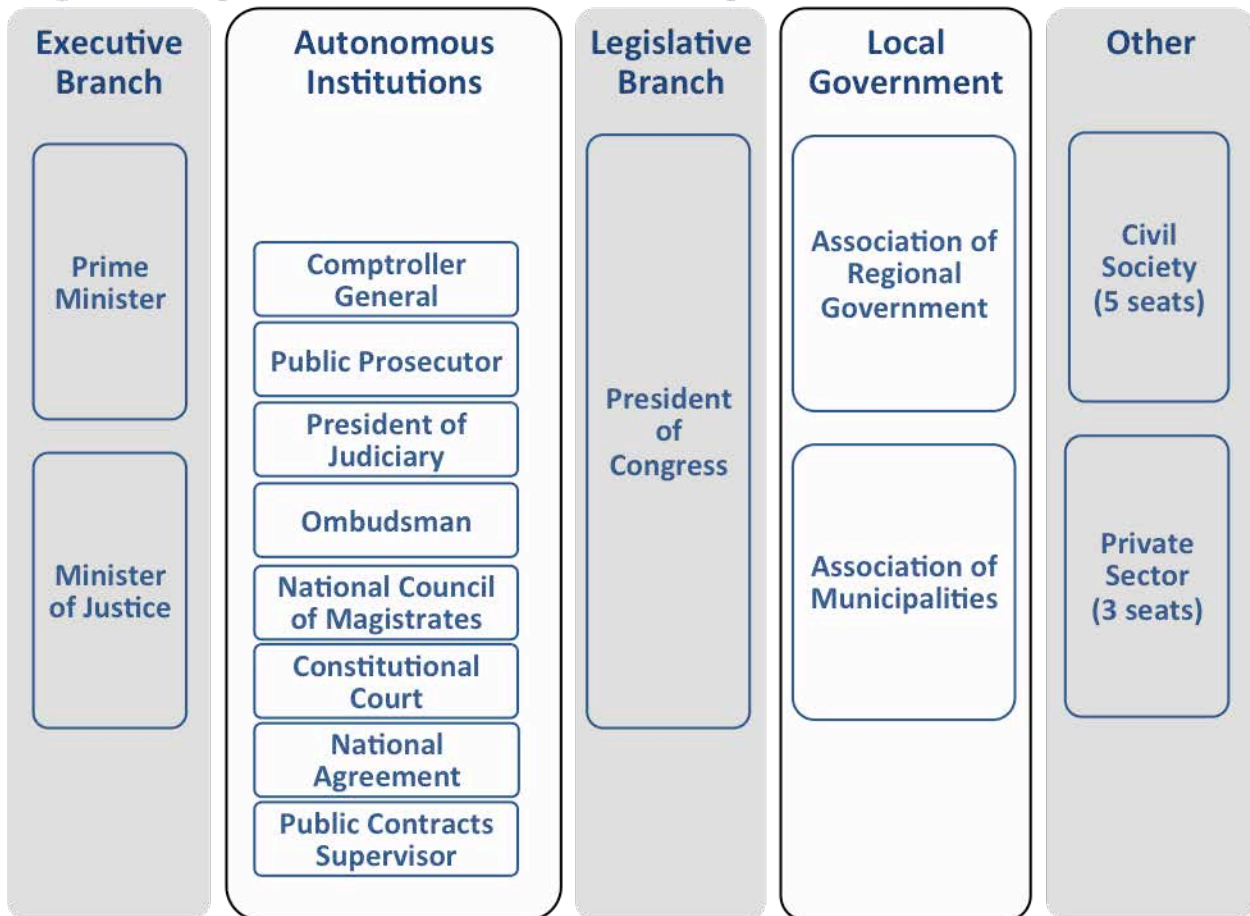
At the justice ministry, the plan was to move all anticorruption state attorneys into a single, specialized unit, and then to build the capacity of that office to support the public prosecutors' investigations and argue for state reparations.

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 Peláez 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."<sup>2</sup>

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 Peláez decided that the new anticorruption system should have the

Figure 1. Composition of Peru’s National Anticorruption Commission



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

Transforming these plans into real practices required several steps, some of them much more difficult than others.

Clarifying roles

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 (figure 2).

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

An on-call anticorruption prosecutor would receive an initial report from the comptroller’s office and then conduct 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 enough, complex enough, and important enough to merit investigation by the new unit (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 a region with no anticorruption prosecutor, the general criminal prosecutor for the region would investigate.

#### *Expanding the jurisdiction of the anticorruption chamber*

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

At the same time that Public Prosecutor Peláez was establishing the national anticorruption public prosecutors, San Martín, president of the judiciary, proposed that the National Criminal Chamber become 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 Peru's Congress to turn the National Criminal Chamber into a 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; but a chamber could have its jurisdiction changed at any time by the executive council of the judiciary. San Martín's proposal failed to win support. As the presiding judge who had sentenced Fujimori to 25 years in prison, San Martín was unpopular with some politicians. Congress also blocked San Martín's attempts to introduce other reforms for tackling corruption within the regional courts, including establishment of supervisory committees to oversee the courts most at risk of corruption.

The executive council of the judiciary—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. He said people told him that "the system was covering too much and that new cases would hinder the cases the chamber already had." Others said that diverting important cases to a separate national chamber was detrimental because it would ignore 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 that 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 as well as 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 Peláez, the head of the public prosecutor's office, 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 Peláez could

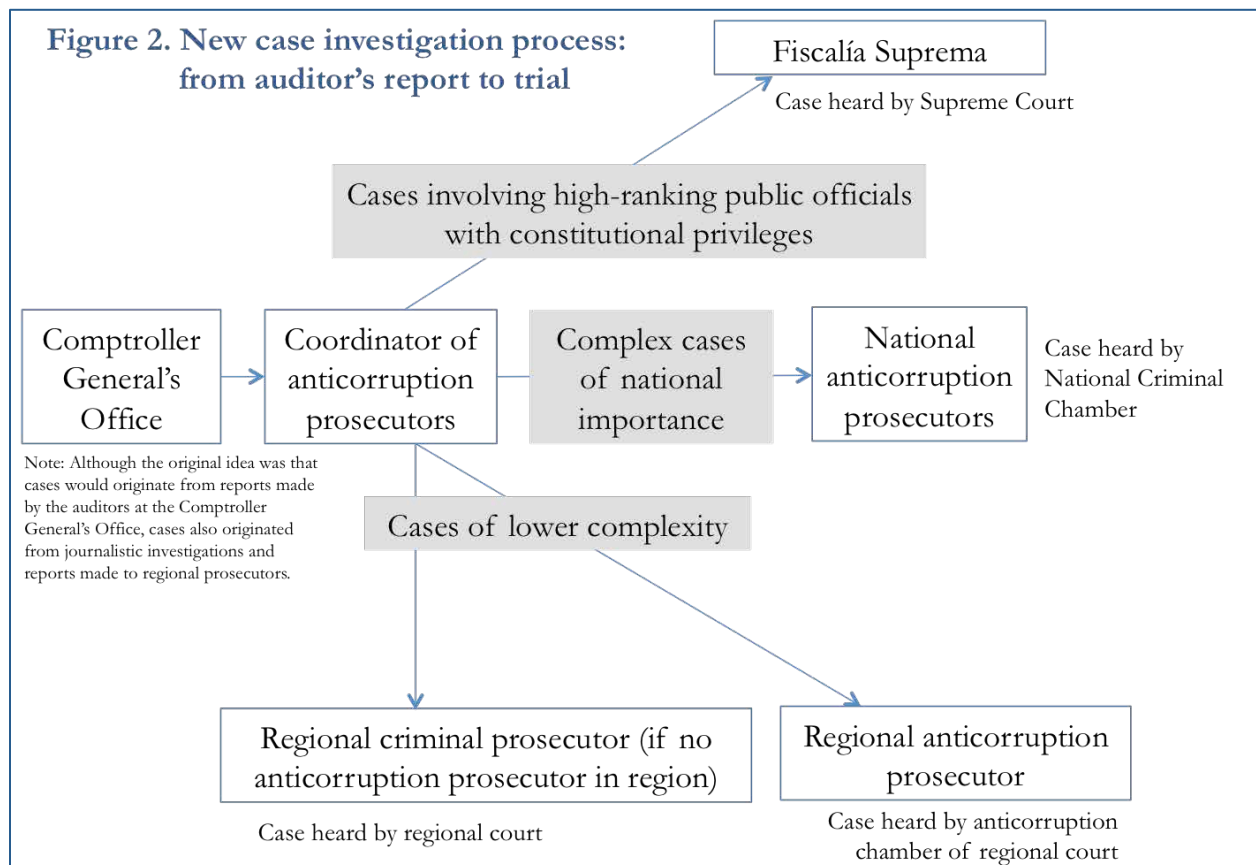
choose from. The council had seven members: one elected by Supreme Court judges, one by high-ranking prosecutors, one by the rectors of all of the public universities, one by the rectors of all of the private universities, one by members of the bar association, and two by members of 31 of Peru's other 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 checked whether 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, Public Prosecutor Peláez picked

two specialized teams to staff the new national unit. Each team had one prosecutor, three deputies, three assistants, and one administrative staffer. This new national unit was far smaller than the Lima anticorruption unit, which had originally been set up to investigate the Fujimori-Montesinos network and which in 2012 had three teams, each composed of 5 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 unit small was a setback but noted, "the concession we got was that we would start with a caseload of zero—we would deal with new cases only."

Most of the cases that reached the national unit came from regional anticorruption prosecutors or other prosecutors in the provinces. A smaller number of cases came directly from the public prosecutor. César Zanabria, who became 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 additional serious corruption cases rolled in, the prosecutors in the national unit struggled to keep up. “There were a great number of cases, and then we had the case of La Centralita, which required a whole new team to be created,” said Quispe. The Centralita case centered on César Álvarez—governor of the region of Áncash, who was charged with bribery, collusion, and money laundering—and 60 other people who were allegedly involved, including regional public prosecutors and President Humala’s campaign manager.

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 the changes in the judiciary and the public prosecutor’s office, the justice ministry began to reform the state office of anticorruption attorneys, 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, unaware of exactly of how many cases it handled.

The new justice minister, Francisco Eguiguren, recruited Juan Jiménez to be his vice minister. Both knew the ministry well. Jiménez had been vice minister during the transitional post-Fujimori government, and Eguiguren had served as an external adviser to the ministry.

They quickly decided it was unnecessary to have two separate groups of state attorneys assisting in anticorruption investigations. They merged the unit of state attorneys specialized in corruption crimes and the team of ad hoc state attorneys into one unit that would represent the state in all corruption cases, assist prosecutors

with investigations, and argue for reparations to be paid. On Eguiguren’s recommendation, Humala appointed Julio Arbizu, who had worked under Ugaz in the earlier corruption prosecutions, as the unit’s head.

Jiménez also turned to a former colleague, Jan-Michael Simon, for help in designing the new unit and building investigative capacity. Simon, a criminal justice researcher who had long worked on justice issues in the region, was a project adviser for the German Corporation for International Cooperation, or GIZ, which had supported the introduction of Peru’s new criminal procedure code. He persuaded the GIZ to shift its focus to anticorruption reform.

Simon, Jiménez, and Arbizu together established a new analysis unit, known informally as the anticorruption observatory. 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 turned to the analysis unit to create a better case allocation system. The unit developed a classification system so that staff could rank cases’ levels 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. The statistics enabled 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 an early seizure at the home of a high-profile former

politician, people who had not paid began to honor their obligations. Arbizu said, “The next day, 25 people were at my office saying 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*

The comptroller’s office, the public prosecutors, and the judiciary issued new guidelines that specified their respective roles in the handling of corruption cases. 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 information is missing, we can request it.”

The comptroller’s office also changed its operating procedures to make prosecutors’ jobs slightly easier. “We changed the language we used so that the public prosecutors could understand our reports,” said Maldonado. “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 the tripartite agreement, we never met with the auditors. Afterward, we developed personal relationships with them.”

Additional workshops, supported by the GIZ, focused on government agencies’ internal functions and on public-contract law. Learning about those topics equipped 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 the 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 whether any of those involved had constitutional privileges. “In those cases,” said Quispe, “the law states they should all be tried together at the highest forum.”

If a case focused on a high-level official, Quispe said, the long process required to launch an investigation could delay action and enable defendants to leave the country. “There is a large group of people who enjoy pre-trial privileges,” she said. “For those 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

### Box 2. The Open Government Partnership in Peru

Shortly after he was sworn in, President Humala indicated his interest in joining the Open Government Partnership (OGP). In conjunction with the Secretariat of Public Management—a part of the cabinet office—the Ministry of Foreign Affairs led a group of public entities that were in charge of designing an action plan to join the OGP. Mariana Llona, former 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.” Those autonomous institutions that participated were the ombudsman’s office, the anticorruption commission, the comptroller general’s office, and the judiciary—but not the attorney general’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 was also with the secretariat. “The attorney general’s office was not interested.”

- 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 involved the anticorruption system as follows.
- Disseminate information to the public about the outcome of investigations of 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.
- Create an anticorruption state attorney for each judicial district in the country.

According to Pezo, “The commitments were not implemented in their totality.” The judiciary made some progress in publicizing sentences, but most corruption sentences were still not accessible to the general public. Despite being included in the OGP commitments, the public prosecutor’s office was never represented at OGP meetings, and therefore “no concrete commitment was made,” said Pezo. The Ministry of Justice and Human Rights did not have sufficient resources to finance the placement of anticorruption state attorneys in every judicial district and opted instead to implement macro-regional anticorruption attorneys who would cover several districts at once.

Pezo recalled that the commission set up to ensure follow-through of 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 representatives had left because of a conflict with the executive about the creation of an independent transparency authority to facilitate public access to information. The transparency authority would ensure timely access to information from government ministries, local governments, and autonomous institutions. Several other OGP member countries had created similar agencies. “The commission members decided, by consensus, that the transparency authority would be a commitment,” said Llona. But the prime minister declined to support the proposal.

Because of opposition to the transparency authority from the highest levels within the Peruvian government, two subsequent prime ministers also refused to sign off on the agreement. Llona explained the concern at the top of government: “If we say to public officials that they could receive a sanction for not releasing information, then they might release sensitive information. For that reason, the commitment was not negotiable.”

In July 2015, the secretariat published a new plan—approved by the prime minister—that included commitments different from those originally agreed upon by the commission. The plan was immediately rejected by the civil society groups that had earlier welcomed the OGP initiative. “We need to work on rebuilding trust now,” said Llona. “It is going to be a great challenge to rebuild the partnership.”

example, after a certain period of time, we can't 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 preventive anticorruption policies with the anticorruption commission. Jiménez worked on those 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 executive council of the judiciary 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 executive council. Prosecutors, on the other hand, could be reassigned to different roles or units at any time.

Following 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 authorized to give prosecutors permanent positions. But as of mid-2015, only 2 of the 33 prosecutors in 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 of 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] who 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, former ombudsman and interior minister who in 2015 became head of Proética, said the two new council members had been elected by an indirect vote and that just 10 of the 41 professional associations recognized by the electoral authority voted.

Rivera said the composition of the council was changing, adding 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 there are political factions in Peru that are trying to control the council. It is the ideal way to control the judiciary.”

Albán had similar concerns. “The new composition of the National Magistrates Council is very worrisome,” he said. “The way the new members were elected and the questionable backgrounds of some have created a fear that some council members may be linked to corruption networks.”

## ASSESSING RESULTS

As of mid-2015, about three years after 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 cases in progress. According to Zanabria, the coordinator for all anticorruption prosecutors across the country, the first case the new unit investigated was in oral hearings before a judge. The unit had announced formal charges in 2 other cases, and 20 cases were under preliminary investigation.

Those working within the system remained optimistic for its success. In particular, they pointed to (1) the importance of bypassing prosecutors and judges at the regional level by having a national system to investigate and hear the most-important cases, (2) the improved cooperation between the institutions involved, and (3) the increased capacity of the specialized prosecutors.

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 causes of corruption. The first case the national anticorruption prosecutors investigated involved senior officials of former president García’s administration who were accused of receiving money for organizing presidential pardons for imprisoned drug traffickers. The case “involved working with whistle-blowers,

analyzing more than 200 telephone calls, analyzing banking information, etcetera,” Quispe said. “You could never investigate the case in a system where you also had to investigate a huge number 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 a case.” The new code also called for deadlines that sped up the process of judicial hearings and the time taken to deliver verdicts.

Silva, former coordinator of the anticorruption commission, suggested that public support for the system had increased because of the reputations of 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.

But the news was not all good. Despite strong progress in 2011 and 2012, the reliability of top-level support was uncertain. “Humala had to cover his back,” said Jan-Michael Simon, a criminal justice specialist at the Max Planck Institute for Foreign and International Criminal Law who had long worked on justice issues in the region. “Every political leader in Peru has to fund their campaigns . . . and the people who 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 national-security information a state secret. Plus, from 2013 until mid-2015, the executive refused to approve a second Open Government Partnership Action Plan. Those actions “gave the impression to civil society that the government would not walk the talk,” Silva said. In January

2015, Silva resigned her post at the anticorruption commission because of weakened support by the president and his ministers for anticorruption initiatives, and the commission stopped meeting for several months.

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

Avelino Guillén, 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."

Levels of public access to 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 Coronado, a Lima anticorruption judge. She added that many judges faced time constraints because of the heavy burden of cases on each judge and lack of familiarity with the online system.

Peruvians continued to have low regard for legal institutions. "People feel there are no judicial guarantees," said Gladys Andrade, a lawyer who ran Solidarity Forum, a Lima-based nongovernmental organization focused 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.

A corruption scandal rocked public confidence in December 2014, when the public prosecutor was ousted from his position and investigated for corruption. The incident helped fuel public pessimism, but the ouster was also a positive step toward removing corrupt elements from within the judicial system.

In mid-2015, there was a sign that conditions would improve. The National Magistrates Council appointed Pablo Sánchez, a well-regarded lawyer who specialized in corruption cases, as public prosecutor. Sánchez had a reputation for honesty and was immediately chosen to be president of the anticorruption commission. "The election of Sánchez created a big opportunity," Albán said, adding "but it will take time."

## REFLECTIONS

From 2011 to mid-2015, a few dedicated people had strengthened Peru's capacity to prosecute public officials for acts of corruption. Carlos Rivera, a lawyer at the Legal Defense Institute, stressed 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." Rivera underscored the importance of that achievement: "When no public prosecutors are 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 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, head of Proética, the Peruvian chapter of Transparency International.

“There was a great mobilization of civil society when [President Alberto] Fujimori fell, but since then, the government has failed to fulfill its promises to fight corruption. The biggest damage done to the country is that all this corruption has decreased the morale of the people.”

Avelino Guillén, 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 is 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, Guillén 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 head anticorruption state attorney in 2011, wanted to see steps taken to ensure that anticorruption state attorneys did not become partisan tools. “It is important 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 were common refrains among those 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, a former prime minister. “And even if we did have strong institutions, if you have the wrong person running them, they could be ruined.”

Nonetheless, key reform leaders were optimistic. “This is a dream come true,” said Sergio Salas, president of the court of Lima in 2001 who played a major role in setting up the special chambers to prosecute the network of Fujimori and his coconspirator Vladimiro Montesinos, who was de facto head of the National Intelligence Service. “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 said top-level support was crucial to the success of anticorruption prosecutors and judges. “The biggest risk lies in neglecting the system,” he said

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