

Anti-Corruption Demands and Government's Defense:
The Case of Peru, 2000-2014

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LIST OF ABBREVIATIONS

AAT	Autonomous Authority on Transparency
ACT	Anti-Corruption and Transparency Task Force
APEC	Asia-Pacific Economic Cooperation
APRA	American Popular Revolutionary Alliance
ATP	Anti-Corruption Threshold Program
CAN	Anti-Corruption High Level Commission
CERIAJUS	Special Commission for the Integral Reform of the Justice Administration
CJDS	Council of Judicial Defense of the State
CNA	National Commission to Fight Against Corruption
CNI	National Council of Intelligence
CNM	National Council of the Judiciary
CONFIEP	National Confederation of Private Business Institutions
CPC	Criminal Procedural Code
CPI	Corruption Perception Index
EOM	Electoral Observation Mission
FBI	Federal Bureau of Investigation
FCPA	Foreign Corrupt Practices Act
FEDADOI	Special Fund of Administration of the Money Illegally Obtained
FIM	<i>Frente Independiente Moralizador</i>
FONCODES	National Fund of Compensation and Social Development
GAC	Governance and Anticorruption
GDP	Gross domestic product
GIZ	German Corporation for International Cooperation
GTCC	Task Force Against Corruption
IACAC	Inter-American Convention Against Corruption
ICT	Information and communication technologies
IDL	<i>Instituto de Defensa Legal</i>
INA	National Anti-Corruption Initiative
IRM	Independent Reporting Mechanism
JDSS	Judicial Defense System of the State
JNE	National Electoral Jury

MESICIC	Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption
MCC	Millennium Challenge Corporation
NACS	National Anti-Corruption Standards
NGO	Non-governmental organization
OCG	Office of the Comptroller General
OECD	Organisation for Economic Co-operation and Development
ONA	National Anti-Corruption Office
ONPE	National Office of Electoral Processes
OAS	Organization of American States
OGP	Open Government Partnership
PCM	Presidency of the Council of Ministers
PNP	Peruvian Nationalist Party
PROMUDEH	Ministry of Promotion of Women and Human Development
PRONAA	National Programme of Food Aid
RENIEC	National Registry of Identification and Marital Status
SPM-PCM	Secretariat of Public Management of the Presidency of the Council of Ministers
SUNAT	National Superintendent Agency for Tax Administration
TI	Transparency International
UIF	Financial Intelligence Unit
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

Chapter I

Introduction

The history of Latin America, and more specifically that of its political system as seen from the perspective of political science, denotes a series of constants easily accessible from the intellectual repertoire of even the common citizen. Some of those constants are a product of its colonial background, a sort of intuitive path dependence, such as the political and economic dominance of European descendants, or the role of the Catholic Church in national debates. Other constants are a consequence of the international politics of primarily the 20th century, specifically the relationship between the United States of America and nations of this hemisphere, with all the implications it had (and continues having): markets structured around the export of agricultural commodities and other natural resources; or the reliance on United States as a source of both financial aid in the form of remittance from expatriates, and of political and military intervention during periods of national or international conflict.

But the largest group of constants in Latin American history, although not exclusive to this region, represents those factors that have been domestically bred and nurtured: populist leaders, clientelistic politics, weak political parties, an ineffective judicial system, and above (and in many cases also behind) them all, corruption.

It is indeed corruption which would probably take the post as the most recurrent and consistent element in Latin American politics, a position that is only slightly grasped by surveys that frequently find it to be among the top national problems as identified by the citizenry. The cases of corruption in the region are so pervasive and frequent that the University of Chile had no problem in creating a database of those of them that had been ‘socially significant’ (i.e. had attracted extensive media attention) for the period 1998-2008 in Argentina, Brazil, Chile, Colombia, Mexico and Peru, identifying as much as 252 cases (Universidad de Chile, 2010). The scandals, however, continue and in recent years there have been emblematic cases such as Hotesur¹ (2014~) in Argentina, Lava Jato² (2014~) in

¹ *Hotesur* is the name given to a case of alleged tax irregularities perpetrated by a hotel operator owned by Argentinian president Cristina Fernández and her family. The case eventually evolved into an investigation of money laundering after evidence surfaced that businessman Lázaro Báez, also under investigation for presumably winning public contracts through political connections, had used Hotesur to funneled money towards the presidential family for years.

² *Lava Jato* is the name given to a criminal investigation originally focused on money laundering, but later expanding to cover a corruption network involving senior officials of the Brazilian government

Brazil, La Línea³ (2015~) in Guatemala, White House⁴ (2014~) in Mexico, among many others.

According to Transparency International's (TI) Corruption Perception Index (CPI), in 2012 Latin America as a region was "doing worse than the global average" (Salas, 2012), and based on the 2013 CPI it was stated that "[d]espite many new transparency and anti-corruption regulations that states have agreed to comply with, the effect appears to have been minimal" (Turi Gargano, 2013). Indeed, between 2002 and 2011 the regional average (including the Caribbean) had consistently remained around the 3.5 level in the ten-point scale of the CPI, with a very modest improvement from 2008 onwards. In the governance indicators of the World Bank data a similar stagnation is apparent, with the *control of corruption* remaining low and stable from 2000 to 2009 (UNDP, 2012). During the same period, on the other hand, the region endorsed international anti-corruption mechanisms such as the Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption (MESICIC), the United Nations Convention Against Corruption (UNCAC) and its Review Mechanism, the Andean Plan to Fight Against Corruption (Bolivia, Colombia, Ecuador and Peru), the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Argentina, Brazil, Chile, Colombia, and Mexico), and others. The mismatch between international commitments and domestic anti-corruption reforms in Latin America, hence, is both evident and deep.

Turning to the specific case of Peru, a country that can be said to represent a typical case in the region,⁵ it is clear that corruption permeates almost every aspect of political life regardless of international discourse. According to Alfonso W. Quiroz in his book *Corrupt Circles: A history of Unbound Graft in Peru* (2008), which addresses the issue of public malfeasance in the country from 1750 to 2000, "[t]here

and construction firms for allegedly using the state-controlled petroleum company Petrobras to award contracts at inflated rates in exchange for bribes. With corruption activities spanning over a decade, the criminal case is considered to be the biggest corruption scandal in Brazilian history.

³ *La Línea* case involves the alleged set up of a customs corruption ring in Guatemala by which officials charged lower import duties in exchange for kickbacks. As a consequence of the scandal several high-level officials were arrested, including vice president Roxana Baldetti and even president Otto Pérez Molina, after Congress had stripped the latter of his immunity.

⁴ *White House* is the name of a scandal involving Mexican president Enrique Peña Nieto and his wife, and derives from a luxurious mansion of US\$ 7 million considered to be propriety of the presidential family, but which has been revealed to be actually owned by a construction company tied to the award of a multibillion-dollar public contract.

⁵ In 2006 the regional CPI average, excluding the Caribbean, was exactly the same as Peru's score, 3.3; while by 2013 the difference was only of 0.2 (Pozsgai Alvarez, 2015).

has been no historical period or cycle of little or no corruption; all the cycles surveyed were characterized by moderately high, high, and very high indicators of corruption” (p. 432). A quick review of the daily headlines in Lima would probably make any passerby agree immediately with Quiroz’ bleak assessment of Peruvian history. Such is the reality of its political system when asking about the spread and frequency of corrupt activities involving public officials, and no elected president in the past twenty years has been exempted of at least one major corruption scandal putting his moral capacity to govern in question.

Then came the presidency of Alberto Fujimori (1990-2000), which developed into a full-fledged criminal organization pursuing the capture of the State and effectively changed the way the system had traditionally experienced corruption and coped with it (Pariona Arana, 2012).

With Fujimori’s regime the game stepped up to a whole new level, and therefore new rules had to be implemented to deal with it. And although political actors have kept showing similar patterns of behavior as in the past, the complexity and dynamics of this new era has somehow accelerated the *cycles* referred to by Quiroz, and added a complexity that forces social scientists to reinterpret the role of corruption in the Peruvian system. But, perhaps more importantly, this era finally saw the rise of the natural counterpart of corruption, that which had already been raging around the world for at least a decade: Anti-corruption policies.

Just as natural as thinking of medicine when considering diseases, anti-corruption efforts are the logical answer of the political system to the presence of public malfeasance. Yet, notwithstanding the place that the topic of corruption has in current scholarship, politics, business analyses and public opinion, it was not until relatively recent that the issue was considered taboo among leaders and bureaucracies around the world, and that the citizenry would only have a clear image of its destructive effects when exposed to high-profile cases of national impact (and still then, most of the debate tended to transpire around ethical issues), those which are now called *grand corruption* cases. Among the few scholars who discussed the topic an initial agenda had taken form that focused on the definition, nature and characteristics, on the one hand, and the effects or consequences it had for the political system and the economy, on the other; but such scientific enquiry was largely theoretical due to the natural unavailability of data regarding such kind of illicit activities. This way, a predominant debate took place between those authors

who would treat corruption as an evil of public life, and those who would give attention to the potentially beneficial effects of such phenomenon given certain specific conditions (a debate that was later dubbed as *grease the wheels versus sand in the wheels*, first popularized by the works of Leff, 1964; Leys, 1965; and Huntington, 1968, from the *grease* camp).

In time, thanks to the political pressure exerted by the United States on international fora to make the problem of corruption part of the mainstream political debate, and the development by international non-governmental organization (NGO) Transparency International of its CPI, the set was finally ready in the 1990s to undertake the long-overdue task of understanding and fighting malfeasance in the public sphere. That decade saw the explosion of academic work on the subject, the pouring of financial aid to underdeveloped countries and regions exclusively for this problem, the production of international legal instruments aimed at fighting corruption, the formation of international and domestic NGOs and fora dealing with different tasks related to the issue, and even the involvement of the private sector in reducing transnational bribery. It was the beginning of an informal movement with formal actors, institutional arrangements, and a plethora of newly developed tools which has seen a steady increase in financial resources ever since. Florencia Guerzovich (2012), looking at the activities of this international anticorruption movement, has appropriately described the last three decades as focused, first, on *standard setting* (1990s), then on developing *diagnostics* (2000s), and finally on *policy-making* (2010s), summing up the way the movement's agenda has been evolving.

The brief description of the evolution of the topic has the purpose of showing not only the rise of the international concern with corruption *per se*, but more importantly the late but welcomed introduction of informed and scientific discussion of policies and activities designed to fight that scourge. With it, both sides of the subject can now be focused on, the problem as much as the proposed solutions; and yet, when it comes to actual accomplishments, it becomes painfully clear (as will be pointed out as one of the major pillars of the present work) that we presently know much more about corruption than we do about how to defeat it.

Current scholarship on corruption usually starts by defining it in line with United Nations' unofficial wording: the *misuse of public office for private gain* (Rose-Ackerman, 1997, p. 31; Treisman, 2000, p. 399; Seligson, 2002, p. 408; Anderson and

Tverdova, 2003, p. 92; UNODC, 2004a, p. 11; Kunicová and Rose-Ackerman, 2005, p. 577; McCann and Redlawsk, 2006, p. 798; Balán, 2011, p. 4). Following a definition agreed upon, scholars have (except for the rare outlier) unanimously and completely put an end to the old grease versus sand debate, and found corruption to be harmful on a multidimensional level, a point not questioned anymore even in cases of red-tape. Thus, briefly going through the major consequences that corruption has for the overall health of all social subsystems, Pozsgai Alvarez (2013, p. 3) summarizes:

Corruption erodes democracy by breaking the rule of law (Seligson, 2002, p. 410; Bratton, 2007, p. 106), hindering the effective exercise of civic and political rights (Bailey, 2006), and damaging any process of inclusion of the most vulnerable sectors of the population (McCann and Redlawsk, 2006, p. 797); it damages the economy by reducing the total amount of foreign direct investment (Habib and Zurawicki, 2002), diverting resources from productive to rent-seeking activities (Kunicová and Rose-Ackerman, 2005, p. 577; Morris, 2004, p. 4; Goudie and Stasavage, 1998, p. 113), increasing transaction costs (Seligson, 2002, p. 409), and limiting the availability of information required to conduct regular business operations; and probably in the most pernicious dimension, corruption reallocates public resources away from areas such as education and health (Mauro, 1995, 1997), and, overall, it reduces the level of generalized trust that society requires to develop social capital (Uslaner, 2008; Rothstein, 2005, p. 131), which in time has a direct effect on both democracy and economic growth. These consequences are felt even more deeply in developing countries, where the resource diversion has a direct impact on the poor by limiting the amount and quality of social programs, and where political clientelism affects political choices and participation (for a comprehensive review of issues related to corruption see Heidenheimer and Johnston, 2002).

As we have already mentioned above, besides having for the first time easily accessible, cross-country, multi-year data to use in corruption-related research, the 1990s was a period dedicated to the setting of standards regarding effective institutional means to control corruption in society, a task that heavily relied on

exporting “good practices” from successful anti-corruption stories such as those of Hong Kong and Singapore, to countries that were deemed to be permeated by corruption, sometimes to the point of evidencing *systemic* corruption. Eastern Europe, Africa, and to a lesser degree East Asia and Latin America, became the target of international cooperation agencies, donors and NGOs. A secondary source of anti-corruption activities that were offered by these international actors was based on academic work by experts from the World Bank and other reputed scholars already famous for their expertise on the topic. In turn, the results of these proposed and implemented activities would be eventually assessed (both officially by the donor agent, and unofficially by the academia) and the conclusions would give path to a new cycle of spread, implementation and assessment of anti-corruption efforts, until the tools were mostly agreed upon by theory and experience. At the beginning of the 2000s, the United Nations, through its Office on Drugs and Crime (UNODC, who was in charge of the organization’s effort to combat corruption) published a so-called *package* comprising several publications, all summarizing the body of knowledge attained so far on anti-corruption under a banner reading “EQUIP YOURSELF.” To be sure, even if it was not clear the way to *defeat* corruption, most international actors seemed to agree on the best ways to *fight* it.

Going back to Peru, it is possible to see that, while the international anti-corruption movement was taking form, the country was experiencing never before seen levels of state capture and high-level corruption, even if it was not yet perceived by the public at the moment. According to José Ugaz (2014), *ex ad hoc* procurator hired to represent the Peruvian government in the prosecution of Alberto Fujimori and Vladimiro Montesinos’ criminal network, although the exact amount of money illicitly obtained during the 1990-2000 period was never known, different opinions point to a number ranging from US\$600 millions up to several billion dollars. On the other side, Quiroz (2008, p. 420) finds that the estimated *costs* of Fujimori-Montesinos’ corruption are “between \$1.4 and \$2 billion.” Whatever the actual amount, however, the additional costs of corruption generated by the 1990-2000 regime of President Alberto Fujimori in terms of the damage done to the political, social and economic systems of the country is perhaps impossible to estimate. Regarding the current topic of anti-corruption efforts, at least, there is no doubt that Peru had no possibility of riding the international wave while Fujimori stayed in power.

It was not until the collapse of the Fujimori regime, and the subsequent creation of a transitional government led by Valentín Paniagua, that Peru really started adopting and implementing effective anti-corruption measures, and it did so with an explosive beginning. In the short nine months that President Paniagua stayed in power, before giving way to a newly constitutionally elected president (Alejandro Toledo, 2001-2006), the apparatus dubbed *anti-corruption subsystem* was put in place, made up of an specialized Procurator's Office, District Attorneys, Courts of law, and an Anti-Corruption Police Unit,⁶ with the sole task of investigating and prosecuting Vladimiro Montesinos and his network. In time, the District Attorneys and Courts of law would evolve in full-fledged anti-corruption bodies, with the mandate to fight not only the criminal acts conducted by the Fujimori government, but all instances of corruption of national importance (Pariona Arana, 2012). Together with the *subsystem*, a package of legal instruments to facilitate investigation, prosecution and the recovery of assets was adopted (Ugaz, 2014), where the Law of Efficacious Collaboration had probably the biggest impact. These systemic efforts to confront the realization that the country had been controlled by a mafia-like organization were not only unprecedented for its magnitude, but primarily for the speed and strength with which they were carried on. Ugaz (2014, p. 247) states that, only between November of 2000 and January of 2002, Peruvian authorities “managed to freeze US\$250 millions [of stolen assets] in various bank accounts of different countries and recovered US\$75 millions.”

It would seem from this brief overview that Peru has been able to effectively combat corruption; however, the reality differs from a shallow account of major official activities.

As much as Peru has indeed successfully entered the period described by Guerzovich (2012) as centered on technical diagnostics, particularly through the rounds of review conducted by MESICIC, actual policy changes have been scarce, and the execution of anti-corruption legislation has proven far from ideal in reality.

From the part of policy reform and implementation, the United Nations Development Programme reports (albeit for the whole Latin American region, and not Peru exclusively) on the implementation levels of the Inter-American Convention Against Corruption (IACAC) using data from MESICIC, saying that “there is

⁶ The Anti-Corruption Police Unit was actually officially adopted under Toledo's government, three weeks after assuming office.

alarmingly low level of satisfactory compliance with the recommendations (less than 10%) in core preventive areas, such as access to information, strengthening the oversight bodies and prevention of conflicts of interest” (UNDP, 2012, p. 46). Regarding other areas, “[t]here is a more favorable trend, but always within the lower ranges (below 30%)” (p. 46). Finally, “the follow-up reports show that the majority of the recommendations given to governments are not implemented satisfactorily, nor are they properly reported to the MESICIC, casting doubt about the government’s real willingness and ability to commit to them” (p. 45).

The Peruvian case may be even bleaker. According to the Task Force Against Corruption (GTCC, 2010), of 51 recommendations made by MESICIC in the first Round of review (2004), 43 are still pending information or requiring additional; and of 26 recommendations made in the second round of review (2007), 21 are still pending information or requiring additional attention.

From the part of execution of anti-corruption legislation, specifically that aimed at enforcement, a document elaborated by *Justicia Viva* (a department of human rights organization *Instituto de Defensa Legal—IDL*) in 2005 informed that “after four and a half years of creation of the anti-corruption judicial subsystem, the number of processes that has been completed is very limited: 20 out of 205, representing a mere 10% of the total”⁷ (Siles, 2005, p. 60). As a consequence of the slow pace of prosecution, “145 people accused of corruption perpetrated in the 90s were benefitted with the application of the statute of limitations only during 2010 and 2011”⁸ (AP, 2011/09/06).

While the actual execution of anti-corruption measures is by itself a common problem for policy makers, be it related to the prevention or control of corruption, the core of the issue is the adoption and effective implementation of solid policies to fight malfeasance in the public and private spheres, and of them, prevention becomes the most important and discussed element in the current era. It also is, at least in Peru, the area where less progress has been made. The reason is simple: prevention usually represents a more massive, complex, dynamic and costly endeavor compared to policies related to control/enforcement, which are rooted on traditional legislative and administrative processes that in most cases has existed (even if only partially) in normative structures dating back to the beginning of the constitutional republic.

⁷ Translated from Spanish.

⁸ Ibid.

To give an example, the UNCAC chapter on preventive measures stipulates that the State shall promote the participation of society, collaborate in international programmes and projects, create effective anti-corruption bodies, establish and manage a professional civil service, provide adequate remuneration to civil servants, promote their education and awareness of corruption-related issues, develop systems of transparency and prevention of conflict of interests, strengthen the procurement systems, and engage in administrative simplification, among several others. On the other hand, the UNCAC chapter on criminalization and law enforcement employs almost half of its articles in prescribing or recommending the passing of legislation to make various corrupt activities a criminal offence under national law. Naturally, if we could presuppose the existence of political resources ready to be spent in the enactment of such legislation, the implementation of half that chapter would take only the time needed to draft the bills, debate their specific content, and have them enter into force.

Problem Formulation

In sum, while Peru has made some progress over the past fifteen years in fighting corruption and developing an anti-corruption body of norms and policies, actions have been generally scarce, far apart, seemingly unresponsive to popular dissatisfaction, and for the most part inconsistent with international commitments such as the IACAC and the UNCAC. This situation raises a crucial question: What explains Peru's limited adoption and implementation of anti-corruption policies between 2000 and 2014?

The question that inspires the present study is composed of two points. First, there is a need to identify under what circumstances anti-corruption policies are adopted and implemented in Peru. For example, we need to ask why the anti-corruption subsystem was created, and why did it focus on control. While the intuitive answer may point at the need to prosecute the Fujimori-Montesinos network, it does not explain why it was eventually dismantled, first operatively and then officially. It does not explain why it did not spawn a similar effort in terms of preventive policies, or why subsequent scandals of grand corruption involving the president failed to produce an equally strong reaction, either. In other words, while we may be urged to attribute the Peruvian anti-corruption subsystem to the particularities of the historic moment, such a practice does not provide us tools to assess other events that may be

similar in nature. The same could be said of other moments in the past history when anti-corruption policies seemed to have been successfully adopted and implemented. Are all of them supposed to be attributed to the specificities of the historic situation, or do they share a common pattern that may shed light on the drivers and triggers for anti-corruption reform?

The second point of our question regards to the majority of policies that were *not* adopted and implemented; or, to put it another way, to the reasons why popular dissatisfaction and international monitoring failed to trigger the production of anti-corruption policies by the Peruvian government. For example, while the videos of presidential advisor Vladimiro Montesinos bribing other political and social actors kick-started the anti-corruption era in Peru in 2000, the so-called *Petrogate* scandal of 2008 involving audio recordings of corrupt deals in lucrative petroleum contracts did not accomplish to produce the much needed reform of the legislation on lobbies, or even see the effective prosecution of the actors involved. To what can we attribute the different consequences for the anti-corruption agenda of these two corruption scandals? If not all corruption cases produce relatively equal pressure to fight it, there must be a factor for which the field has not accounted yet, and which may hold the key to explain the limited level of adoption and implementation of anti-corruption policies.

Literature Gap

What does almost three decades of intensive scholarly production have to say about these questions? When it comes to addressing not corruption, not even anti-corruption policies, but specifically anti-corruption *reform* as a separate dimension of the phenomenon that also needs to be ascertained, there is unsurprisingly a complex array of answers that, in general terms, fall under at least one of five approaches: authors taking a *principal-agent, top-down* approach (the most prominent include Klitgaard, 1988; Langseth et al., 1997; and, Kaufmann, 1998, among others); authors turning to a *principal-agent, bottom-up* discussion (Kisubi, 1999; Brunetti and Weder, 2003; and, Kpundeh, 2005, among others); authors looking into the *principal-agent, international pressure* angle and its capacity to affect local actors (Carr, 2006; Hanlon, 2004; and, Marong, 2002, among others); authors writing on anti-corruption *cleanups* (Mbaku, 1996; Adebawo and Obadare, 2011; and, Taylor, 2006, among others); and, authors interested in the *political will* for engaging in reform

(Brinkerhoff and Kulibaba, 1999; Ruzindana, 1997; and, Kpundeh, 1998, among others). These five approaches, presented in the above order, show an increasing awareness of the role of agency and the importance of developing an encompassing model with the inclusion of key stakeholders. However, although taken as a group they provide favorable grounds from which to venture an answer for the question of anti-corruption reform, no individual approach has so far succeeded in putting together all the relevant analytical elements in a single model.

Although the dissemination of anti-corruption discourse, instruments and financial and technical support is currently at an all-time high, political will as a precondition for effective reform has not attracted as much attention as one would expect, which is a particularly troublesome situation when considering the disappointing level of progress in much of the developing world. The principal-agent, top-down approach that is arguably the most prominent body of literature informing the work of think tanks and NGOs, takes for granted the presence of political will in domestic settings or at the very least ignores its crucial importance. Its two other versions, namely bottom-up and international pressure, do a better job in including political will as part of their discussion, but finally exhaust their efforts in placing the burden of reform in yet another stakeholder without deeply considering the conditions and power relations inherent in anti-corruption processes. While the development of strategies based on the roles of civil society and international actors recognize the usual difficulty in stimulating political will from domestic leaders, they again take the premise that there are in fact social forces available to push for reform, and that the problem keeps being one of technical and financial resources. Furthermore, instead of blending both approaches into coherent strategies based on the natural strengths and weaknesses of each stakeholder (including governmental actors), there is in fact scarce literature laying bridges between domestic and international actors, and the few that does skimp over necessary theoretical foundations. What motivates actors to behave the way they do? What lies behind efforts to reform the anti-corruption apparatus of the State?

The literature on cleanups, in this sense, makes a better work reflecting the peculiarities of different stakeholders, but to dismiss of analytical constructs and exportable models. Being more embedded in historical analysis, the conclusions arrive to by this body of literature shed light on specific processes of corruption and anti-corruption reform, highlighting the supremacy of agency and putting political

will in the context of national dynamics. For cleanups, there are no premises regarding available resources or interests, only political and economic circumstances attached to specific settings. Thus, whilst authors from this approach avoid falling into the usual pits afflicting the principal-agent tradition, they do not provide much ground to continue the evolution towards an answer to the issue of anti-corruption reform. This weakness is finally corrected by the literature on *political will*, which takes its cue from the importance of national governments in the adoption and implementation of anti-corruption policies without taking for granted their interest in fighting malfeasance. Thus, political will largely takes up where previous approaches failed, and suggests an analytical route to address the interests and role of domestic leadership.

Does the above description mean that the political will approach holds the answer to the question of anti-corruption reform in Peru? Unfortunately, it does not. Although its worry for theoretical discipline and correct appreciation of political interests makes it more suitable for the task at hand than other approaches, it only provides a partial framework for the analysis of corruption and anti-corruption reform, and does not consider the basic elements underlying the state and stimulation of political will. For this reason, its conclusion invariably tend to fall back on recommendations that are not susceptible to policy interventions, or even worse, that implicitly consider the preexistence of some level of political will among the authorities. At the end, the core of the issue at hand is not only the role of political will and agency, or the possibilities for social stakeholders to engage national leaders in a successful way, but rather the reason why political systems are able and willing to resist changes even when falling under pressure.

In conclusion, none of the above approaches effectively operationalizes the concept of political will for anti-corruption reform and implementation up to the point where it can produce applicable conclusions. In the best cases, they fall repeatedly in various forms of logical and empirical problems: by either assuming *a priori* the existence of political will from domestic leaders to adopt anti-corruption measures, or explicitly pointing to the existence of political agendas and hidden interests that usually work against policy reform, their conclusions normally suggest the application of strategies that inevitably end up assuming once more the preexistence of some kind of political will, the very same thing that should be critically considered before it is taken into account. When they do manage to get over assumptions regarding domestic

political will, on the other hand, they still fail to effectively draw together the various elements and actors that are relevant in a thorough analytical model; as a consequence, the field still lacks an integrative approach to the issue of anti-corruption reform.

Argument

Corruption challenges traditional scholarship on policy implementation by putting forth an element usually not existent in other policy areas: while all governmental decisions imply the initial expenditure of different amounts of financial, technical, and political resources by one or more actors or organizations, and hence they can be analyzed and eventually acted upon by referring to benefits and costs of different actions in terms of their value in political capital, anti-corruption policies do not translate only in that currency. A leader faced with the option of engaging in the adoption and implementation of anti-corruption measures, will not think only of the traditional costs implied in that effort, but also in the potential loss of private assets for himself, his party and any other network as a consequence of putting in place structures that will make it harder for him and his subordinates to obtain benefits from corrupt activities. This situation, as grim as it may appear, is not only implicit at the core of most corruption-related topics, but is also the single main reason why the solution to the implementation of anti-corruption policies cannot be directly extracted from the general public policy literature. While in most cases policy makers can be approached and convinced to adopt certain measures in exchange for technical and financial aid, political support, reelection funds, and/or public backing of their greater agenda, anti-corruption policies may only be of interest to inherently non-corrupt leaders; otherwise, the incentives mentioned above may just not be enough to compensate them for the potential loss of a profitable activity.

As central as this argument is for the study of corruption, it has nonetheless been widely ignored as a key element, staying in most cases only as part of the discussion background, much like the secrecy of a corrupt act. This condition has resulted in a plethora of work regarding the correct instruments to be adopted, but avoiding the discussion on how to actually come about their implementation in political terms.

If we adopt the premise that domestic political actors could have an inherent interest in keeping the national anti-corruption standards *as is*, the traditional

argument moves to look at the principal-agent model, and suggests to focus on the strategies available to domestic non-governmental actors and the international community.

In terms of financial and technical resources, the international community (once the inexistence of a government “principal” has been agreed upon) becomes the next best thing, albeit the natural constraints imposed by its existing outside the political system (and thus not having most of the prerogatives of a classic domestic leadership) effectively require proponents of such arrangement to think outside the box and develop new analytical frameworks.

On the other hand, in terms of political resources, actors grounded in the domestic social, economic and/or political systems usually have the capacity to engage in activities as effective as those of their foreign counterparts. Opinion leaders, opposition parties, media outlets, and advocacy groups such as local NGOs, civic organizations, professional associations, and regional movements can all be crucial to changes in legislation and public policy, sometimes to even greater extent. Although usually engaged in a much less formal and institutionalized network of stakeholders, domestic actors are better positioned in the local setting than international actors. However, as it was mentioned, it is usually the latter that have the financial, technical and logistic resources needed for an enterprise such as anti-corruption reform, especially in developing countries, where reform is needed the most but resources are scarce.

An effective model to address the possibilities and the best strategies for anti-corruption reform in scenarios where national governments cannot be expected to have much political will for such endeavor, then, requires giving proper consideration to the presence of both international and domestic non-governmental actors affecting the process and result. Additionally, it may also be expected that the presence and activities of one will affect the presence and activities of the other. The potential existence of different agendas and resources have been a cornerstone of debates surrounding the problem of implementation for decades (Pressman and Wildavsky, 1973), and a similar issue emerges when questioning the reason for certain outcomes considering the existence of multiple actors spread over different levels of policy making. Synergy, assistance, subrogation, and substitution are some of the forms that may appear in different scenarios of their interaction as constitutive elements of an encompassing anti-corruption implementation model.

But the key aspect of the above argument is that it necessarily results in an antagonist relationship between the political system represented by domestic governments, and environmental actors such as NGOs and international organizations; and just as the latter have the potential for developing different functional arrangements and strategies, governments should also be found to have at their disposal a variety of mechanisms with which to reduce reform pressure while maintaining political control. This, in consequence, becomes the proposed answer to the earlier question regarding Peru's limited adoption and implementation of anti-corruption policies, and the core of the present study: *the actions taken by domestic and international actors to press Peruvian authorities into fighting malfeasance have been unable to improve overall national anti-corruption standards in any significant way after the short period of the transitional government (2000-2001), due to the availability and timely employment by the Peruvian authorities of highly effective political strategies to mitigate demands and secure support without having to engage in real anti-corruption reforms.*

Theoretical Framework

The model used in this work, taking into account the argument just exposed, is a reinterpretation of David Easton's famous *Political Systems Model* (Easton, 1965a, b). Although criticized as much as praised (Leslie, 1972; Sorzano, 1975, 1977; Stewart and Ayres, 2001), its core concepts have had a deep impact in the entire field of political science (Gunnell, 2013), and they open particularly promising possibilities for the study of corrupt systems.

At its core, Easton's model aims at providing an essential structure to understand the different forces that might create *stress* for a political system, and subsequently identify the *coping mechanisms* available to it to keep a minimum level of support flowing. Over this basis, the model incorporates multiple elements that are part of the dynamic processes embedded in the system; but at the end, all of them follow the author's interest to address the survival of the political system, which Easton defines as "those interactions through which values are authoritatively allocated for a society" (1965b, p. 21).

Of particular interest to the study of corruption is Easton's own identification of *clientelism* as a type of *output* of the system which creates stress for itself: "Extended reliance on this kind of outputs as a source of specific support for political

objects may well prove more effective in stressing than in maintaining a system” (1965b, p. 361). This way of understanding public malfeasance represents an interesting (and surprisingly untapped) opportunity to see the effects of corrupt activities in the life of a country.

By treating corruption as a type of output, Easton’s model forces us to go beyond the scope of his particular work and to analyze it as we would any other output generated by the system. The outcome proves to be deep and manifold. In light of the current progress of corruption studies, we can argue that corruption produces stress for the system following three different patterns or scenarios, which are here denominated: Corruption perception, characterized by public dissatisfaction as a consequence of what is usually referred to as *scandals of corruption*; economic inefficiencies, characterized by public dissatisfaction with the state of various economic variables partially affected by corruption and the way they impact their daily lives; and, corruption intolerance, characterized by public dissatisfaction with anti-corruption standards, regardless of the perceived level of actual corruption.

What Easton’s work does is to allow us to address the phenomenon of corruption in his model’s terminology, producing as a result what will be dubbed here a *Systems Model of Corruption and Anti-Corruption Reform*. This model, however, is only half of the equation needed to answer the questions about the circumstances under which anti-corruption policies are adopted or ignored; the other half depicts the analytical consequences of having three potential ways in which corruption stresses the system, and what that represents for its survival.

As we said already, at the core of Easton’s work there are stress and coping mechanisms. Indeed, the survival of the system is what gives his work the shape it has, and when we talk about episodes in recent Peruvian history pertaining to one or more corruption scenarios, all the while keeping low levels of anti-corruption policy implementation, we are implicitly stating that the political system is able to *survive without abandoning its anti-corruption standards*. How can it do this?

Just as Easton’s model describes several coping mechanisms that allows the system to deal with stress, a reinterpretation of it for the study of corruption, this time looking particularly at the possibilities for anti-corruption policy adoption and implementation, shows that there are a number of measures available to the authorities that reduce the pressure coming from both domestic and foreign actors, and provides the system with enough support to keep its anti-corruption standards.

These coping mechanisms will be in some cases common for the three stress-inducing corrupt scenarios, such as repression/coercion; and in some others specific to control the situation at hand, such as congressional investigative committees. At the same time, the selection of mechanisms to be activated will depend in the kind and source of pressure, with not all being possible at any given time (physical repression may be an effective way of controlling a public manifestation marching downtown, but will not prove feasible when addressing official admonitions from reputed international NGOs, or even worse, foreign leaders), or if possible, not potentially effective (a smokescreen may distract enough public attention as to get over accusations of malfeasance involving mid-level political actors, but will not prove as effective in keeping senior officials away from front pages).

Finally, in order to make this model susceptible to empirical test, Easton's concept of political system needs to be somehow qualified and adapted to the conditions of Peruvian democracy. What do we talk about when we talk about a political system? Throughout the present work, the concept of *political system* will be slightly differentiated from the term *government*, allowing the former to group all public agencies and structures, while the latter will be used as a reference to the incumbent party in all those agencies and structures, particularly the executive branch and the national parliament. The employment of the term *executive branch*, on the other hand, will make reference to that particular branch of government against other public bodies such as Congress. By carrying the discussion using these three different terms, the theoretical model will be able to adapt to the particularities of the political scenario under analysis: some cases, such as systemic corruption or State capture, will be better discussed by making reference to the 'political system,' as horizontal accountability will have been severely diminished and most public agencies will follow the same rationale. In other cases, however, coping mechanisms will reflect the efforts of only the members of the incumbent party in Congress and of senior public officials of different ministries, therefore inviting the employment of the term 'government' to reflect their coordinated stance based on party loyalty without including the participation of constitutionally autonomous bodies. And still some other cases will show the 'executive branch' standing alone, particularly during periods of political crisis and/or cases of low party discipline, requiring the discussion to reflect the change in actors involved.

Methodology

To test the tenets of the theoretical model and support the hypothesis, the present work focuses on the period 2000 – 2015 (from the second and illegal re-election of President Fujimori to the present) and analyzes corruption-related news in Peru (through important newspapers like *La República*, *Perú21*, *El Comercio*, and others); international anti-corruption activities involving Peruvian participation or affairs (e.g. MESICIC, UNCAC); and country statistics (particularly those provided by the World Bank and consulting agency APOYO) regarding multiple economic, social and political variables, to look at particular cases of stress resulting from corruption. Additionally, a process of content analysis is performed over the front pages of newspaper *La República* spanning from July 29, 2000, to December 31, 2014, in order to quantify the level of media coverage produced by each corruption event (and therefore the amount of indirect pressure exerted over the political system) over most of the period analyzed.

The research then identifies the participation of foreign and domestic actors as sources of stress by reviewing official documentation such as proceeds and minutes of national anti-corruption offices from 2000 to 2014, international agreements of technical and financial cooperation (e.g. UNDP, USAID), public statements released in the media, and official reports from domestic and international organizations such as the UNODC, Transparency International, the Organization of American States, the Ministry of Justice of Peru, NGO Proética, and others.

It further assesses information from thirty-two personal interviews (and additional communication) conducted between 2013 and 2014 with current and former public officials in charge of fighting corruption in Peru, and reviews the most relevant legal measures (legislation, regulations, administrative decisions) adopted by the State apparatus in the last fifteen years, in order to improve the detection of coping mechanisms and other political responses. Finally, it analyzes the outcomes in each case.

The main methods that are satisfied with the collection of the above data are that of *congruence* and *process-tracing*, the satisfaction of which will depend on the specific case analyzed. For example, most (if not all) cases pertaining to that of corruption perception, or scandals, by their own nature are not susceptible to in-depth analysis short of conducting investigative journalism, and so they can only be

addressed here by relying on variations between social pressure and government activities. The congruence method supports this approach:

“The essential characteristic of the congruence method is that the investigator begins with a theory and then attempts to assess its ability to explain or predict the outcome in a particular case. The theory posits a relation between variance in the independent variable and variance in the dependent variable; it can be deductive or take the form of an empirical generalization... If the outcome of the case is consistent with the theory’s prediction, the analyst can entertain the possibility that a causal relationship may exist” (George and Bennett, 2005, p. 181).

On the other hand, some cases in the present study will open the possibility for a more in-depth analysis thanks to a wider and more thorough availability of data; thus, for these instances a process-tracing method will be pushed in order to increase the validity of our conclusions. This approach relies on the possibility to assess not only the two main variables, social pressure and government response, but also the intervening mechanisms that connect them both: “The process-tracing method attempts to identify the intervening causal process—the causal chain and causal mechanism—between an independent variable (or variables) and the outcome of the dependent variable” (George and Bennett, 2005, p. 206). In other words, “[p]rocess tracing, to reiterate, is an analytic tool for drawing descriptive and causal inferences from diagnostic pieces of evidence—often understood as part of a temporal sequence of events or phenomena” (Collier, 2011, p. 824).

The success of these methods will show that corruption cases effectively fit at least one of the three stress-inducing scenarios; that one or more coping mechanisms are activated in most situations; and that these mechanisms were effective in reducing stress before the system had to change (to a certain degree) its anti-corruption standards.

The work is divided in the following way:

Chapter II reviews the literature on anti-corruption reform, arranging it in five distinctive approaches: *principal-agent, top-down*; *principal-agent, bottom-up*; *principal-agent, international pressure*; *cleanups*; and, *political will*. Although each

new approach discussed here represents a slight progress towards addressing the problems involved in improving national anti-corruption structures, the general conclusion of each individual approach, and of all them considered together, points to the absence of a comprehensive model for the analysis of corruption and anti-corruption processes rooted in sound analytical grounds.

Chapter III revisits the argument behind political will for anti-corruption reform, positing that the singularity of policies to fight malfeasance makes arguments based on political capital unsuitable to address the interest of national leaders. Then, it reviews David Easton's Dynamic Response Model of a Political System, positing its untapped potential for the analysis of corruption and anti-corruption processes. As a result of considering the exchanges between the political system and environmental actors in terms of corruption outputs and anti-corruption pressure, a *Systems Model of Corruption and Anti-Corruption Reform* is drawn, introducing four theoretical scenarios of stress affecting the system as a consequence of the stability of the national anti-corruption standards: (1) Corruption in processes; (2) corruption perception; (3) corruption intolerance; and, (4) prolonged stress.

Chapter IV discusses the coping mechanisms potentially available to the government, and the strategies and activities usually undertaken by domestic non-governmental and international actors. From the side of the government, four typical moments for the activation of strategies are: (1) Output concealment; (2) output perception attenuation; (3) negative input defuse; and, (4) stress amelioration. Each of these moments, called *coping points*, is addressed under each of the four stress scenarios identified in the previous chapter, and appropriate coping mechanisms are suggested for each point. From the side of environmental actors, strategies are divided between international and domestic pressure activities, and three general types are identified for each of those sources: (1) Direct pressure; (2) indirect pressure; and, (3) influence. As a result of laying down all potential strategies, this chapter makes an argument for the strength of the government's position in comparison to the costly and scarce options available to reform actors.

Chapters V to VIII comprise the analysis of the instances of stress-inducing corruption, together with the responses taken by the government, recounting the periods of the end of the Fujimori regime and the transitional government (2000-2001), and the governments of Alejandro Toledo (2001-2006), Alan García (2006-2011) and Ollanta Humala (2011~). Each of these governments will reflect

peculiarities specific to the political conditions of the moment, beginning with the presence of a scenario of *prolonged stress* during the Fujimori-Paniagua transition (Chapter V), passing through the stabilization of the National Anti-Corruption Standards during the Toledo administration (Chapter VI) and its relative deterioration in the face of countermeasures during the García administration (Chapter VII), and finishing with the promising but ultimately feeble progress made during the government of President Humala (Chapter VIII), which also presents a case for the potential of political agency to upset the value of the National Anti-Corruption Standards.

Chapter IX presents the summary of the empirical chapters and contrasts them with the theoretical model developed in Chapters Three and Four, finding that the Peruvian case provides enough ground to validate the tenets of the Systems Model of Corruption and Anti-Corruption Reform. However, the comparison between the model and the data leaves certain theoretical cases without empirical confirmation. The stress scenarios, coping mechanisms and pressure activities that were not found in Peruvian national politics during the time period examined here are addressed by presenting brief examples of their existence in other administrative levels, time periods or countries.

Finally, Chapter X presents the conclusions, offering possible ways to break the hegemony of the political leadership in regards to the defense of the National Anti-Corruption Standards. Although limited by available resources, the evidence presented in this work suggests that reform actors could exploit certain theoretical openings, particularly the impact of corruption tolerance for the overall levels of pressure and for the value of corruption profits vis-à-vis political capital.

By the end, the role that Peruvian society and the international community have played in the adoption and implementation of anti-corruption policies in Peru over the past fifteen years will become clear, highlighting the variety of measures national authorities have taken to resist the pressure. But, more importantly, a comprehensive analytic framework with potential application to developing democracies throughout the globe will have been tested, offering a framework to inform stakeholders of the inner workings of resisting political systems.

Chapter II

Literature Review

As it was explained in the previous chapter, currently the field of corruption studies has a much better grasp of the causes and consequences of corruption than it ever did in the pre-1990s period, thanks to the development of measurement instruments by Transparency International and the World Bank. Globally, academia and international organizations have worked in tandem to arrive to a clear understanding of the pernicious effects of corruption, and to consolidate a single position on the issue: it is to be fought, deterred, and control.

Resulting from an agreed position, literature on anti-corruption strategies quickly picked up the pace, and a body of instruments was developed and promoted, such as the IACAC, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or United Nations' Anti-Corruption Package, among several other examples. The International Anti-Corruption Academy, established in 2011, is a clear proof of the level of development of the international anti-corruption movement and its expertise in fighting malfeasance. However, how does this expertise translate into actual, real-life, domestic reform?

This chapter reviews traditional and current scholarship on anti-corruption in order to understand how they address the issue of reform: the avenues and strategies to stimulate domestic adoption and implementation of anti-corruption policy proposals. Indeed, knowledge on reform can usually be found embedded in the more general literature of anti-corruption measures. But first, a brief overview of the international network of actors involved in fighting corruption will be presented in order to appreciate both the circumstances that have produced the literature on anti-corruption, and the necessity to effectively address the issue of reform once and for all.

1. The International Anti-Corruption Movement

The significance of anti-corruption studies, which usually aim at supporting policy implementation (even if not exclusively those pertaining to applied research), is better appreciated in the light of the international network developed more or less in a consistent way to push the anti-corruption agenda across the globe.

As Guerzovich (2012) explains, although talking in regards to the Latin America experience, anti-corruption advocacy follows three consecutive stages starting from the 1990s. That decade, she elaborates, had the setting of anti-corruption standards as a main activity, represented by the normative work of Transparency International and others; the effort was directed at producing knowledge about *good-practices* implemented in specific successful cases, and disseminate it across corruption-stricken regions, particularly Eastern Europe, Africa and Latin America (not least of all in the form of international anti-corruption conventions or programs). The 2000s saw the shift of efforts towards the development of detailed and comprehensive diagnostics on the incidence, determinants, forms, actors involved, etc., of corruption as suffered in particular societies; this also included the introduction or improvement of indicators, assessment tools, international peer-review mechanisms, and other instruments to make an effective diagnostic possible. Finally, in the current phase of evolution of the anti-corruption regime/movement, we have seen an increasing emphasis (though still overall lukewarm) on the policy-making conditions for a successful implementation of anti-corruption reforms.

The new stage of development is by no means accidental.

When the literature talks about an international anti-corruption *regime*, it tries to describe a structure that can be more or less institutionalized and its norms more or less extended and legalized (depending on the author cited); but it invariably makes reference to the network of international organizations and donor agencies, the legal instruments produced in their forums such as international anti-corruption conventions, and the body of instruments and procedures built around the fight against corruption (Wolf and Schmidt-Pfister, 2010; Sandholtz and Gray, 2003; Windsor and Getz, 2000). This regime can be said to make for most of the official anti-corruption activities being undertaken from an international perspective. However, just as important as multilateral cooperation and legally binding conventions, there is in reality also a variety of actors and activities that involve case-by-case interactions, issue-specific oversight, national representation arrangements, research and training, and other forms of anti-corruption advocacy and support that by its nature is less institutionalized. For this reason, it is a better description of the international community to talk about of a *movement* rather than a regime in order to include the less formal elements of the global anti-corruption effort.

The international anti-corruption movement, then, can be defined as the variety of international, domestic, public and private actors engaged in the development, adoption and implementation of the body of conventions, review mechanisms, policy recommendations, country rankings, scholarly production, measurement tools, indicators, statistics, training courses, and advocacy practices, all with the aim of fighting corruption in domestic contexts from a transnational perspective.

This movement has seen a tremendous expansion of its activities and budget over the years. According to the OECD (OECD, 2015b), the official development assistance for supporting anti-corruption organizations and institutions in developing countries has risen from \$36.3 millions in 2002, to \$292.7 millions in 2012.⁹ An increase of over seven times the budget in only one decade! Turning to Transparency International, and international non-governmental organization whose projects funds are “raised largely from European governments and development agencies” (Sampson, 2005), we see their budget increasing from €6 million in 2005 to €24.5 millions in 2014 (a growth of four times the amount) (TI, 2014/01/08).

On the other hand, the amount of international conventions and fora has increased rapidly. Starting with the IACAC in 1996, it was quickly followed by the OECD Anti-Bribery Convention in 1997, the Council of Europe Criminal Law Convention on Corruption in 1999 and its counterpart convention on Civil Law the same year, the Southern African Development Community Protocol Against Corruption in 2001, the Economic Community of West African States Protocol on the Fight Against Corruption in 2001, the African Union Convention on Preventing and Combating Corruption in 2003, the United Nations Convention Against Corruption in 2003 (OECD, 2015a), and many others from there on.

Fora such as the International Association of Anti-Corruption Authorities (IAACA, 2011), the Global Organization of Parliamentarians Against Corruption (GOPAC, 2015), the European Partners Against Corruption (EPAC, 2015), the Group of States Against Corruption (Council of Europe, 2014), the East African Association of Anti-Corruption Authorities (EAAACA, 2015), the Anti-Corruption and Transparency Task Force (ACT) of the Asia-Pacific Economic Cooperation (APEC) forum (APEC, 2015), the Open Government Partnership (OGP, 2015a), the Extractive

⁹ Amounts are provided for official development assistance from all donors for the sector of “Anti-corruption organisations and institutions,” through all channels.

Industries Transparency Initiative (EITI, 2015), and others, have also appeared in the anti-corruption landscape to support efforts and push for international and domestic actions to fight malfeasance in the public and private sectors.

On the domestic side, most countries in the world have created at least one government office specialized in fighting corruption, either regarding its control, its prevention, or both. Some modern archetypal cases are Lithuania's Special Investigation Service, Latvia's Corruption Prevention and Combating Bureau, Spain's Special Prosecutors Office for the Repression of Corruption-Related Economic Offences, Romania's National Anti-Corruption Directorate, Croatia's Office for the Suppression of Corruption and Organized Crime, Belgium's Central Office for the Repression of Corruption, France's Central Service for Prevention of Corruption, Slovenia's Commission for the Prevention of Corruption, Albania's Anti-Corruption Commission and Monitoring Group (OECD, 2008), and many others around the world. These cases feed the international anti-corruption movement by making it harder for other countries to continue without implementing similar offices of their own.

With such level of financial support and pressure coming from the international movement (which keeps growing even if unsteadily) it is only natural to expect a concomitant improvement in the legal regimes of recipient countries in the form of implemented anti-corruption recommendations, and a subsequent decrease in the domestic levels of corruption; this, however, seems to be far from reality.

Already by the end of the 1990s and beginning of the 2000s, some authors were pointing out and calling into attention the deep mismatch between expectations and reality: notwithstanding the amount of media attention, international donor involvement, technical expertise and governmental discourse that had been experienced in the previous years, anti-corruption projects and interventions in regions like Africa, Eastern Europe and Latin America were mostly disappointing, showing a very low success rate (Klitgaard et al., 2000; Brinkerhoff, 2000; Heeks, 2007). Most of them had failed to reach the targets set, and were soon to be discontinued or rolled back from lack of follow-up efforts by recipient countries.

As part of an independent evaluation of World Bank support programs for public sector reform, focusing on data from nineteen country cases for the period 1999-2006, Fjeldstad and Isaksen (2008, pp. 61-62) found that

“Even given the many uncertainties, a main overall conclusion is that there were not a great many successes in terms of reducing the problem of corruption.”¹⁰ The Bank’s clear successes in corruption reduction have been much fewer than the failures. The overall result may, at best, be characterized as ‘moderately unsatisfactory.’”

After adopting a new approach in 2007 called the Governance and Anticorruption (GAC) Strategy, the World Bank switched its focus from supporting actors and mechanisms on the demand-side of accountability, to formal institutions involved in public finance management (including supreme audit institutions). Migliorisi and Wescott (2011, pp. 48-49) report that

“Although there is not necessarily a causal effect between the GAC strategy and these outcomes [regarding the changes in the achievement of accountability objectives], it is clear that the decline in support for the demand for good governance has been mirrored by a slight decline in the impact of Bank projects on civil society organizations. The increase in support for Supreme Audit institutions has been translated into an improved achievement of objectives relating to the external audit function, although starting from a low base.

... [However,] apart from the case of Ombudsmen, there have been more cases of deteriorating or stable effectiveness of domestic accountability institutions than improvements. Countries with World Bank projects for non-executive accountability institutions had an equal number of positive and negative changes.

In sum, the analysis of country strategies and projects at the output level shows limited achievements. It seems logical to assume that, if accountability institutions are not strengthened, progress in accountability systems is unlikely to take place.

The apparent failure of the international anti-corruption movement, particularly in its official and institutional form, to bring about effective

¹⁰ Bold in original.

implementation and the reduction of corruption in recipient countries has given way to a small but incisive literature that highlights the issues surrounding that failure. Authors writing from this critical approach are usually skeptic, pessimist, and sometimes even distrustful and outright cynic of the global fight against malfeasance, raising arguments that questions the concepts, methodology, activities, discourse, politics and consequences developed by the international community (Kennedy, 1999; Brown and Cloke, 2004; Hanlon, 2004; Hindess, 2005; Sampson, 2005; Larmour, 2005; Carr, 2006; Everett et al., 2006). Carr (2006), for example, not only discusses the problems behind the activities of international organizations, but explicitly questions the benefits of the rise of anti-corruption as described in the previous pages. The same description of the broad range of activities and instruments developed by domestic and international actors, is taken by Carr to be if not a sign of weakness, at least a significant obstacle to the pursued objective: “[T]he lack of a unified approach is unlikely to further the fight against corruption in any meaningful way...” (2006, p. 3)

Hence, the relative failure of the international anti-corruption movement has had not only the effect of keeping corruption as a continuous scourge in the twenty-first century, but it has raised questions about the relevance of the movement itself. Amidst the plethora of supporters and critics, of efforts and failures, one crucial question still remains: How can corruption be tackled?

The weight of these questions naturally fall on the academic production dealing with anti-corruption, which has at its root the fundamental premise that *the reduction of corruption levels requires some form of anti-corruption policies*. Although this statement might come as a given, it nonetheless involves a crucial element that affects the way we disaggregate the problem.

To say that anti-corruption policies are a pre-requisite to decrease the levels of corruption in a country involves isolating the issue of implementation from that of policy content. Indeed, although there is no intention to suggest that all policies are the same or that their specific content is irrelevant, implementation is clearly a topic all by itself, which merits attention aside and beyond the virtues or flaws of a specific piece of legislation. Needless to say, the content of a policy affects the possibilities and strategies behind implementation; but if we take as a given that a policy (regardless of what specific form it takes or if it is generic or country-specific) is

necessary to prevent or control corruption, then we can divide our efforts between drafting the policy and coming up with a strategy to have it adopted and implemented.

Taking this position as a first step, scholars researching anti-corruption need to take proper consideration to both policy products, and adoption and implementation strategies; both, however, are not susceptible to the same analyses, and history has shown that the issue of best practices or policies is a much easier subject to address than that of implementation, perhaps due to the technical nature of the former compared to the more political of the latter. To back this claim, we just need to look at the Guerzovich's (2012) description of the phases of anti-corruption advocacy, or the United Nations' Anti-Corruption Package, both of which were discussed in the previous chapter. Elaborating on what was said before, we currently do not just know much more about corruption than about how to defeat it, but we also know much more about how to defeat it than about how to convince domestic actors to actually try and do so.

Additionally, the success of scholars dealing with anti-corruption policies in informing and orienting the activities and efforts of public national and international agencies can only be possible if the activities and efforts they recommend actually take place, namely in the form of actual adoption and implementation. Without having sound academic work implemented and tested in real settings, there is no point in disregarding policy recommendations for any number of flaws critics might want to point in them.

Therefore, the adopted premise of the role of anti-corruption policies forces us to focus on the issue of anti-corruption adoption and implementation, without needing here to engage in the debate surrounding the wisdom behind specific policy recommendations produced by the international anti-corruption movement. Although such considerations are also crucial to ultimately defeating corruption, the current state of affairs requires us to address the separate issue of implementation as a matter of urgency.

2. Anti-Corruption Reform: A Literature Review

Although it has just been highlighted the importance of looking at anti-corruption policies and their implementation separately, in reality the truth is that most of the literature concerned with fighting corruption does not make that

distinction so clear, and more often than not the focus on policies leaves little space for considerations over their implementation. This limitation is all the more profound when implementation is only glossed over implicitly rather than explicitly, leaving us with the job of identifying the proposed strategies to bridge the distance between policy advice and policy practice.

Some cases surrender completely the matter of implementation, and address exclusively the technical content of anti-corruption tools available to political actors.

Other publications, however, are produced aiming at balancing the weight between policy content and policy implementation, and focus on advocacy strategies and activities suggested to international donors, NGOs and social stakeholders. These could be said to work as the counterpart to the ones referred to in the previous paragraph: *International Drivers of Corruption: A Tool for Analysis* (OECD, 2012) and the *Corruption Fighters' Tool Kit: Civil society experiences and emerging strategies* (Transparency International, 2002), among others, are some examples from this position.

Although these two groups are prominent in their efforts to further specific agendas, be it of producing policy recommendations and/or supporting and engaging in policy advocacy, for the majority of academic publications the focus is not so clearly defined. At once they will analyze specific anti-corruption activities, and will move on to a conclusion or recommendation regarding its viability in technical and operative terms. All that can be stated without a doubt is that they are in one way or another concerned with the issue of fighting corruption. It is from this vast and heterogeneous body of anti-corruption publications that the state-of-the-art of anti-corruption reform (i.e. adoption and implementation) actually arises, informing think tanks and practitioners.

Looking at what the anti-corruption literature has to say about the issue of adoption and implementation, five different types of discussions can be identified: *Principal-agent: top-down*; *principal-agent: bottom-up*; *principal-agent: international pressure*; *cleanups*; and, *political will*. Each one of this will be briefly described in turn.

Principal-Agent: Top-down. This approach is by far the most prominent and ubiquitous in both political science and economics (Persson et al., 2010). Its tenets are simple enough: it looks at corruption in society as an activity engaged in by a certain

group of actors, product of the asymmetry of information that allows them to abuse their delegated position for private benefits, and contrast them to another group of actors that entrusted the former with the performance of activities for the collective wellbeing. Thus, the interactions between both groups are dubbed a principal-agent model because it imagines a *principal* who has to control the performance of an *agent* that is inherently corruptible.

The question of who these principal and agent are is somehow less straightforward. In most cases, the principal is found in the senior officials part of the ruling government, while the agents are naturally the bureaucracy in general; this is the top-down approach that will be discussed in this section. In other cases, however, the agents will be the ruling government itself while the principal is embodied by society at large; therefore, an inversion of the role of the government takes place and society is called on to perform control activities in a bottom-up fashion (which is the second approach discussed later). Finally, the principal may even be imagined in the form of international organizations (as the third approach will discuss).

The literature on anti-corruption describing reform as a government activity aimed at controlling bureaucratic corruption was the first approach to lend itself to identification due to the considerable proportion of the international movement involved in its production. Such is the case of the United Nations' so-called 'anti-corruption package': The *United Nations Handbook on Practical Anti-corruption Measures for Prosecutors and Investigators* (UNODC, 2004b), the *United Nations Guide on Anti-Corruption Policies* (UNODC, 2003), the *United Nations Anti-Corruption Toolkit* (UNODC, 2004a), and the *Compendium of International Legal Instruments on Corruption* (UNODC, 2005). Together with other publications such as the *Resource Guide on Strengthening Judicial Integrity and Capacity* (UNODC, 2011) and *Anticorruption Programmes in Latin America and the Caribbean* (UNDP, 2012), these are but a few examples of the work developed under the principal-agent model with domestic governments as the envisaged principal. This type of documents, all elaborated by think tanks, are openly directed to practitioners; in other words, they engage and inform public officials and policy makers directly, in the same way the International Anti-Corruption Academy does. They work as compilations of fact sheets summarizing key anti-corruption tools available for implementation.

But they are not the only, or even the most prominent, body of literature following this approach. The initial interest in developing policy recommendations to

deal with corruption comes in the form of normative research from the 1990s building on historical and anecdotic evidence. Some famous examples of this trend are the works by Robert Klitgaard (1988; Klitgaard et al., 2000), Transparency International's Jeremy Pope (1999a; 1999b; Langseth et al., 1997, 1999), Daniel Kaufmann (1997; 1998; 1999), and Rose-Ackerman (1997; 1998). Furthermore, to some degree most corruption-related studies end up adopting this approach (at least when it comes to drawing conclusions and making recommendations) (Doig, 1995; Khan, 2006; Aron, 2007; Man, 2009; De Sousa, 2010; Vannucci, 2011).

What all this production mentioned above has in common is a heavy reliance in the pre-existence of some level of political will already in place at the domestic leadership level. Although the settings are not always overlooked by the work of this approach, and the recommendations sporadically address contextual and environmental factors that need to be kept into consideration for a successful implementation, when it comes to the point of reforming national anti-corruption standards it consistently becomes *intuitive* as to how exactly those mechanisms are to be adopted, and by whom.

Furthermore, it usually includes very limited reference to scientifically collected empirical data on implementation issues, basing its conclusions and recommendations on a logical process that builds on current knowledge on networks, organizations, and economic development. The point for this approach seems to be the exposition of policies in a logical and simple manner to provide a frame of reference for future adoption. As the discussion on the international anti-corruption movement has shown, at least in this sense it has proven to be quite effective.

The convenience of its simplicity, however, is equally matched by the utter exclusion of the actual means to bring along policy adoption; or, to put it another way, *its discourse makes the assumption that the problem of corruption control is one of knowledge, and not will*. Examples of this implicit assumption abound, and, even though some authors are able to recognize the difficulties and paradoxes behind expecting corruption-stricken societies to just go ahead and implement anti-corruption policies (even if the specific policy recommendations were actually infallible), their arguments keep revolving around normative statements (*good-practices*) all the while taking for granted the necessary political will, or at least disregarding the issue.

Principal-Agent: Bottom-up. The second approach to the adoption and implementation of anti-corruption policies derives logically from the previous one and its inability to secure effective reform. To clearly see the transition between the reliance of the top-down approach on government authorities, and the bottom-up discussion of policy advocacy by civil society, a paper by Susan Rose-Ackerman (1999) is discussed below.

In her discussion of the link between electoral systems and corruption, Rose-Ackerman (1999) attempts to go beyond the implicit assumption of automatic implementation and gives fair consideration to the issue of political will. Suggesting four ways in which a political system may break the connection between campaign financing and undue influence (restrictions on time and methods of campaigning; stronger disclosure rules; limits to individual donations; and, alternative sources of funds in the public sector), she then turns to the crucial subject of how to come about reform. She explicitly considers that “[r]eform will not occur unless powerful groups and individuals inside and outside government support it” (1999, p. 373), working with the premise that political leaders do not have an inherent interest in reform unless the benefits can somehow outweigh the costs. The solution to this problem, however, is hindered by the sheer weight of the issue at hand: “Democratic structures can promote reform under some, but not all, conditions” (p. 373). She states that “[r]eform ought to be more likely in governments with voting rules that limit the ability of politicians to benefit from patronage and in systems where power is balanced across political groupings” (p. 377), both aspects that are amenable to reform in the electoral system. But then we are confronted with a paradox: we need to reform in order to make reform possible. This paradox, although obvious enough, is largely ignored when she suggests that “[r]eform is possible and can become institutionalized and hard to reverse when it creates new supporters who resist efforts to undo past changes” (p. 378). If it is indeed the specificities of the electoral and party systems that can create support for anti-corruption reform, how exactly are they developed, and by whom?

Although Rose-Ackerman does not give a clear answer beyond that of the historical particularities of United States and Britain, the argument finally switches to the importance of another group of actors in the political system: society. She states that “[i]n a democracy not everyone need support reform; it can be carried out if enough voters begin to see that it will be, on balance, beneficial” (1999, p. 377), and

that “[it] is much easier if the domestic and international business communities believe that they will benefit from a reduction in corruption and patronage and if ordinary citizens see gains as well” (p. 378).

Having given up on the political will of the government to do anything more than just formally endorse the anti-corruption discourse, civil society becomes the preferred *principal* for anti-corruption control. This is the territory of vertical accountability (O’Donnell, 1998) and policy advocacy, of international and domestic NGOs like Transparency International and its national chapters, and the World Bank’s preferred approach before the adoption of the Governance and Anticorruption (GAC) Strategy in 2007.

Certainly, the inclusion of civil society in projects supported by international donors and organizations has been a fundamental part of the mainstream literature from the top-down perspective. We need only look at the influential work by Langseth, Pope and Stapenhurst (1997; 1999) on their model *National Integrity System*, which includes as some of its pillars the media, the private sector, and the civil society, among government actors and agencies. However, other accounts of the importance of civil society to control the activities of the government focus solely (or at least primarily) on it, such as the work on Transparency International’s Advocacy and Legal Advice Centres (Elers et al., 2010; Giannakopoulos, 2011; Keller-Herzog, 2009), publications aimed at providing guidance (such as the *Anti-Corruption Ethics and Compliance Handbook for Business* by OECD et al., 2013; the *Anti-Corruption Kit, 15 Ideas for Young Activists* by Transparency International, 2014; or the *NGO Corruption Fighters’ Resource Book* by Richard Holloway, 2011), and a growing number of academic publications (Kisubi, 1999; Brunetti and Weder, 2003; Kpundeh, 2005; Shelley, 2005; Németh et al., 2011; Trivunovic et al., 2013).

Though it may seem that this position holds a better ground than the top-down approach (and this might be in fact true), as it is indeed more plausible that society, being the disadvantaged party in a corruption transaction (Spengler, 2010; Karklins, 2005), will have an inherent will to fight malfeasance in the public sphere, it nonetheless continues working under the paradigm that there is an actor in the domestic system willing to take the role of the *principal*. Such a premise gives way to the problem of *collective action*.

Bo Rothstein in particular has given much attention to this issue (2005, 2011). He describes this position as questioning “the underlying assumption [in the principal-

agent theory] that every society holds at least one group of actors willing to act like ‘principals’ and, as such, *enforce* such [monitoring and punishment] regimes” (Persson et al., 2010, p. 5). The collective action problem posits that, in societies ravaged by systemic corruption or simply in those where the issue of corruption does not stay restricted to the higher levels of government but can be found in everyday life (ubiquitous petty corruption), there may not be any actor willing to take the role of the principal, as it is always more profitable to partake in corruption rather than spend private resources to fight it (Del Castillo and Guerrero, 2003; Karklins, 2005; Uslander, 2008). It becomes the common formula ‘if everyone is corrupt, then nobody is.’ The perception of corruption becomes a force of society, and makes addressing anti-corruption strategies from a principal-agent approach rather futile.

Finally, even in societies where a maturing and growing organized civil society can be assumed, the lack of a comprehensive theoretical framework reduces most of the literature in this bottom-up approach to being largely descriptive and anecdotic. There is no conceptualization of the nature of the various advocacy strategies, besides the point that they are pointed at the government; the possible responses of the government remains in total obscurity, beyond the fact that they may ignore, listen or embrace civil society; and the way certain advocacy activities and government responses interact to produce scenarios of success or failure of anti-corruption reform is, so far, unknown.

To sum up, although it introduces the issue of political will and the power of civil society to produce changes in the national anti-corruption standards, the principal-agent model as adapted by the bottom-up approach overestimates the willingness of civil society to fight corruption. It also ignores theoretical considerations to integrate its tenets into a comprehensive model of anti-corruption reform, and thus it remains as an adequate contraposition to the top-down approach without actually surpassing its inherent limitations.

Principal-Agent: International pressure. When we cannot assume the existence of honest and willing senior officials, nor the presence of a strong civil society, there is only one more source of anti-corruption drive available: the international anti-corruption movement. As described earlier, this movement rises from the global interest in curbing corruption, and as such, it inherently has the positivist prerogative of addressing, facilitating, and ultimately producing changes in

domestic and international anti-corruption systems. The moral intentions and methods of this movement to engage in anti-corruption advocacy and support is beyond the point: they may very well have hidden political or economic agendas behind their anti-corruption efforts (Kennedy, 1999; Hindess, 2005), but the fact remains that certain anti-corruption activities become feasible thanks to the intervention of international actors.

The emphasis on international actors is an extension of the classic *principal-agent* model normally related to the work of the top-down approach, but it also tends to bottom-up positions. While the latter see an arrangement in which rulers or citizens (in other words, domestic actors) are respectively called to the role of principals in charge of controlling the behavior of agents, authors focusing on international pressure imagine international actors as potential *principals* too, especially in the absence of domestic actors willing or able to perform that role (as in cases of endemic corruption). In other words, in cases characterized by a collective action problem, where the adoption and implementation of anti-corruption policies is not being undertaken due to domestic political and economic barriers, the international community (particularly in the form of donor agencies) could fulfill the role of anti-corruption champion.

The body of literature that could be loosely described as focusing on international pressure for the implementation of anti-corruption reform, on the other hand, is quite a heterogeneous one, for the main point of intersection between the arguments of individual studies is that they all, somehow, address the role of the international community in supporting anti-corruption activities and producing changes in the *anti-corruption standards*. This role can be assumed indirectly, as when it takes the form of technical and/or financial support to domestic governments and/or bureaucracies (Maldonado and Berthin, 2004; Michael, 2004b; Charron, 2011), where this approach overlaps with the top-down position. It can also take the form of technical and/or financial support to local anti-corruption advocacy (Wang and Rosenau, 2001), where it overlaps with the bottom-up approach. Finally, the international community can also have a direct impact in anti-corruption reform, as when it generates international pressure through the release of corruption rankings or policy assessments, or when it calls for the subscription of anti-corruption agreements or declarations (Martin, 1999; Marong, 2002; Carr, 2006; Wouters et al., 2012).

The international pressure approach is best recognized in the emergence of the

international anti-corruption *regime*, and in the past decade it has seen a spur of academic work, from the assessment of international instruments such as the OAS Convention or the work of Transparency International and their relevance and impact (Husted, 2002; Vincke, 1997; Hendrix, 2003; Guerzovich, 2012), to the historical review and subsequent proposal of strategies to increase the effectiveness of donor interventions (Hanlon, 2004; Petkoski et al., 2009; Michael and Kasemets, 2007; Mathisen, 2007; Rose-Ackerman, 2011).

The growing and beneficial inclusion of the role of the international community in domestic anti-corruption reform, however, has in most cases produced an overestimation of its relevance, to the direct detriment of the role of domestic actors: the argument tends to revolve exclusively on the activities and strategies available to international actors, excluding the potential for a more synergic approach that would include all stakeholders. In this state, few are the studies that give both domestic and international actors their rightful weight; some exceptions are Abbott and Snidal (2002), Hanson (2003), Bukovansky (2006), and Hanlon (2004). This regular issue is a direct result of the normative approach that is usually employed, which ignores the adoption or development of clear models to describe the interaction between the different elements at play – i.e. international community, domestic civil society, and national governments.

Having avoided the issue posed by the collective action problem, and in very few cases suggested theoretical models that include a more dynamic approach to the interactions between all stakeholders (Michael, 2004a; Guerzovich, 2012), the international pressure approach can be considered to be a step forward in the line of the principal-agent theory. However, where this approach does not shine, it keeps in utter obscurity. The initial and classic idea of government political will is not completely addressed, and it remains unresolved. The consequence of not deepening the discussion on the government side is that it limits the possibilities to further our understanding over successful and failed cases of international pressure for anti-corruption reform. Can we say that, whenever anti-corruption policies are adopted and implemented at the domestic levels, it is due to the performance of international actors and civil society? Perhaps in some cases. Can we say that, whenever anti-corruption policies *fail* to be adopted and implemented, it is due to inappropriate strategies from the international and social sides? It would definitely be considered a failure of the anti-corruption movement, and still there would very little to improve

without addressing the actions adopted by the national government to avoid reform. Again, this issue has been completely ignored in any effective way by the literature under the *international pressure* approach.

Cleanups. In needing to address the unresolved issue of political will for anti-corruption reform, the fourth approach reviewed here concerns the literature on anti-corruption *cleanups*, which reflects a higher focus on domestic politics and the actual people that adopt and implement policies to control public malfeasance.

Kate Gillespie and Gwenn Okruhlik, arguably the most relevant authors in this approach, define cleanups as “government-initiated and government-directed campaigns against corruption” (1988:60), and explain that the defining characteristic of these campaigns is that “[the] decisions to initiate them are political, as are their scope and initial targets” (1991:82). Following their argument, *what* cleanups are can be considered to be the implementation of one or more policy recommendations as proposed by the principal-agent, top-down approach, while the issue of *how* they are actually implemented is clearly far from what this classic view had in mind.

The literature on cleanups does not assume the preexistence of political will, but undertake a critical review of historical processes (Cheung, 2007; Taylor, 2006; Kupatadze, 2012) in order to highlight the deeply political nature of anti-corruption reforms in the cases under study. The result is the case-by-case identification of an instrumental version of political will, one that mainly has private interests behind the adoption and implementation of anti-corruption policies. But the difference between the will for cleanups and the will for reform as described by the first approach does not only reside in the private interests that cleanups pursue (against the inherently social role of anti-corruption policies under normal circumstances): it is also usually highly temporal, limited by the term in office of the political leadership and the expected benefits it produces in terms of political capital and the concentration of power.

Anti-corruption cleanups represent the effective political instrumentalization of the tenets of the international anti-corruption movement not only at the level of discourse, but particularly at the level of political competition and stability. Discussing the drive behind anti-corruption cleanup in Hong Kong during the 1970s (arguably the most famous example of successful anti-corruption efforts), Cheung (2007, p. 48) explains the purely political nature of that experience:

"By grasping an anti-corruption agenda, the reformist colonial administration under MacLehose was able to demonstrate its epistemic authority... Doing something about what everybody wanted to be eradicated, and doing it right the first time, was a sure way of winning support and legitimacy. As the ICAC scheme subsequently showed, the innovative way of combating corruption through a high-powered agency was able to underscore both the *moral*¹¹ determination as well as the *organizational*¹² effectiveness of the new administration to finally do something about corruption. The worth of government was thus proven."

Cheung (2007, p. 64) emphasizes the role of political self-preservation behind the anti-corruption efforts in Hong-Kong:

"During the post-1967 crisis of legitimacy in Hong Kong, by building up strong public expectations for combating corruption, and seizing the opportunity of an administration that was weakened by the crisis and thus internally less resistant to drastic reforms, MacLehose was able to accomplish what previously was thought almost impossible..."

Most instances of cleanups, however, do not have a happy ending. Mbaku (1996, p. 108) describes the interests and motivations behind anti-corruption campaigns in Africa, which directly affect the quality of government:

"The impetus to clean up corruption can be provided primarily by political exigency rather than by genuine interest in the efficient functioning of the nation's political and economic institutions. In several countries, including those in Africa, postcoup commissions of inquiry are usually designed to discredit the ousted government and help incoming elites gain recognition and legitimacy. Incumbents also use cleanup programs to help them stay in power and continue to monopolize the supply of legislation and the allocation of resources."

¹¹ Cursive in original.

¹² Cursive in original.

The literature on cleanups clearly and directly addresses the issue behind the concept of political will, something that was always missing in the principal-agent approaches. However, although rich in historical insight, it often lacks a clear theoretical model or framework for the analysis of cases (Kupatadze, 2012; Manion, 1998; Mbaku, 1996; Adebani and Obadare, 2011), and thus its contribution to the study of corruption in general is limited as a result. Without a properly developed model that allows for the integration of insights from this approach into the progress already made by the previously reviewed positions (particularly that of the international pressure), there is not much the literature on cleanups can tell us about the rate of success and failure of anti-corruption policies in other countries.

The main contribution of this approach to our understanding of anti-corruption reform comes between the lines, in the identification of those circumstances that allowed the adoption of anti-corruption actions (even as politicized and self-serving as by nature cleanups are): *pressure* (Gillespie and Okruhlik, 1988), *momentum of stress* on the regime (Cheung, 2007), *regime legitimacy* (Kupatadze, 2012), *political necessity* (Mbaku, 1996), *intra-party political competition* (Balán, 2011), *instrumentalization* and *self capacity-building* initiatives (Adebani and Obadare, 2011), etc. The focus on the identification and description of these scenarios is a key element missing from the principal-agent approaches, with their inherent interest in policy recommendation and advocacy strategies; however, for this same reason, the study of cleanups cannot cross the bridge towards a full model of anti-corruption reform, and it remains limited to a political analysis that leaves almost no room to real policy reform free from manipulation, self-service and sabotage.

Political will. The literature on anti-corruption reform reviewed so far has left unanswered some crucial questions: What drives national leaders to support/tolerate the adoption and implementation of anti-corruption policies? How can this support/tolerance be measured? How can it be stimulated?

While the literature on cleanups adopts a realistic and even cynic attitude regarding the political will behind highly manipulated and instrumental reforms, the core concept of political will was left underdeveloped and unexploited. What exactly was understood by *political will*? The cleanups literature would suggest definitions in line with the specific circumstances in which it was expressed, differing from one case to another. For example, even though cleanup campaigns had initial similarities

in Zambia (2002~) and Kenya (2003~), because the former ultimately saw more progress and was pursued more effectively than the latter (Taylor, 2006) the cleanups approach would have to describe political will in those cases in terms of the singularities of one experience contrasted with the other. Taylor does exactly that, and although he does not explicitly employ the term ‘political will,’ he suggests that effective prosecution (anti-corruption cleanup) can be accomplished when there is “competitiveness of elections,” a strong governing coalition, “rapid initiations... of proceedings,” small “coterie of beneficiaries of corruption *outside the state*”¹³, and “international pressure” (2006, pp. 297-298). Obviously, there must be a common element linking these five circumstances, but this is never actually addressed.

The issue of political will, just as this chapter has been suggesting from the beginning, is the single most important element when addressing anti-corruption activities. Kupatadze (2012, p. 28) states that

“One of the key variables here is the political will of the committed leadership that is viewed as the key to the success of any anti-corruption campaign in the academic literature. As mentioned earlier [Georgia’s president from 2004 to 2007] Saakashvili showed clear willingness to pursue [an] anti-corruption agenda. The most important question here is ‘what motivates elites and leaders to undertake or shy away from the tough anti-corruption reforms.’”

To define and understand political will, and to trace its causes and processes, is to unveil the inner workings of anti-corruption activities in the making. Unfortunately, such concern has certainly driven less scholarly attention; but what has been produced, even if limited in number, is more embedded in theoretical worry.¹⁴

Perhaps the most serious study of the concept of political will for anti-corruption reform was the one produced by Brinkerhoff and Kulibaba (1999; and Brinkerhoff, 2000), who define it as “the commitment of [elected or appointed leaders and public agency senior officials] to undertake actions to achieve a set of objectives—in this case, anti-corruption policies and programs—and to sustain the costs of those actions over time” (1999, p. 3). Once it can be contemplated as an

¹³ Italics in original.

¹⁴ Particularly noteworthy is the work of Anna Persson (Persson et. al. 2010; Persson and Sjöstedt 2012).

individual element, conceptually different from other with whom it interacts (such as stakeholders, advocacy strategies, specific policies, etc.) and even passive to further disaggregation, the gate is open for authors to describe it, develop indicators for identification and assessment, analyze different manifestations and levels, describe contexts and settings, and propose possible ways and means to stimulate (and even push) it (Kpundeh, 1998, 2000; Persson et. al., 2010; Brinkerhoff and Kulibaba, 1999; Persson and Sjöstedt, 2012; Ruzindana, 1997).

In the words of Sahr J. Kpundeh, the study of political will for anti-corruption reform brings forth into the scholarly discussion the role of “the actors, their motives and the choices they make to promote and implement anti-corruption reforms” (1998, p.92). However, notwithstanding the obvious benefits of looking into the drivers of anti-corruption reform from a scientific perspective, literature production on this approach still falls short regarding the possible strategies to either stimulate support for reforms or come about them through other means. In other words, so far, the identification and assessment of political will have not suggested effective means for its manipulation. In their place, the study of political will has proposed scenarios that are not easily susceptible to intervention, or that rely again on political will, in a clear case of circular logic.

To give two examples, Persson and Sjöstedt (2012, p. 626) find that the quality of the social contract determines the level of political will to fight corruption:

“[T]he suggested analytical framework highlights the ways in which leadership behavior is to a significant extent conditioned by the character of underlying social contracts. Where a shared social contract is lacking, we should expect the incentive and opportunity structure of leaders to be geared towards moral hazard and adverse selection, making the existence of leaders demonstrating political will less likely.”

Quite obviously, the social contract is not something easily malleable by any standard; it could even be said that corruption is a more simple issue than the quality of the social contract. So, to suggest the modification of the latter in order to solve the former is not just impractical, it is useless.

On the other hand, Kpundeh (1998) proposes participatory governance as a way to foster political will. But to do so, he first requires the existence of public

pressure for reform (in the same way the principal-agent, bottom-up approach does); and more importantly, he suggests that such public pressure must be sustained and stimulated by specific policies: “Independent entities institutionalise (sic) political will, which is paramount to the success of any reform strategy.” (p. 105) Naturally, his argument puts as back at the beginning, as we are required to have at least some actors manifestly willing to support anti-corruption policies in order to begin fostering political will in the system at large. Although this brings attention to the historic importance of specific people in leadership positions, it does not suggest ways to stimulate political will other than to capitalize on any already existing.

The result of the shortcomings described above is that, although the *political will* literature explicitly deepens our understanding, and secures the theoretical position, of a most important element to address the problems behind anti-corruption reform, it does not provides us with a clear model to solve the implementation issue. This is all the more eloquent when we consider that it does very little to address the issue of counter-reform, which effectively depicts not just a lack of political will for anti-corruption, but an active resistance to it.

A better approach, then, needs to be comprehensive in nature and retain the strengths and scientific innovations of the five groups of work that have been briefly reviewed above. Although *political will* managed to focus on a persistent problem behind anti-corruption reforms, it lacks the empirical and down-to-earth approach of the work on *cleanups*, and so it is unable to provide any definite answer. On the other hand, although the arguments highlighting the relevance of *international pressure* to secure effective implementation allow for a richer and more comprehensive model of anti-corruption reform (building greatly on the work of normative authors regarding the *principal-agent* model), their general underestimation of domestic forces renders them insufficient to tackle the problem.

The answer to *how the adoption and implementation of anti-corruption policies is possible* requires a more inclusive and productive model, acknowledging the importance of the three main groups of actors involved (international actors, civil society, and national governments) and describing them in terms of their objectives and strategies. The issue of political will in a multiple-actor arrangement, conversely, highlights the dangers of confusing the official adoption of international anti-corruption standards with their necessary implementation in domestic settings: while

both adoption and implementation are obviously needed for reform, the former represents a formal (and often symbolic) political gesture that does not need to be reflected in succeeding measures, such as the provision of resources or even the enactment of regulations. Brinkerhoff (2000), for example, in identifying the five key characteristics of political will, explicitly differentiates between *mobilization of support* from *continuity of effort*, asking regarding the latter: “Does the reformer treat the effort as a one-shot endeavor and/or symbolic gesture, or are efforts clearly undertaken for the long term?” (p. 243) In other words, the level of technical expertise exhibited in the adoption of the most promising anti-corruption policy can, and must be, clearly differentiated from the actions taken to implement such policy in a way consistent with its technical, political and economic demands. Such position seems specially sensible when considering cases such as that of Peru and the Latin American region in general, where the adoption of international anti-corruption conventions has so far not been followed by adequate levels of national implementation, just as it was described in the previous chapter. In consequence, the evidence of formally adopted anti-corruption policies should not presume any later degree of implementation.

Pushing the idea of lack of political will even further, it is possible to consider not just the resistance to implement international commitments and the resort to anti-corruption practices that subvert their spirit, but even the adoption of counter-reform measures (from the enactment of regulations to constitutional reforms) that facilitate the practice of public malfeasance: censorship of the media (Peters, 2003; Dyczok, 2006; Stanig, 2015), intervention of the judiciary and/or regulatory agencies (McMillan and Zoido, 2004; Sherman, 1980), increased legislative powers to the executive branch (Corrales and Penfold, 2007), spread of special procurement types (Schultz and Søreide, 2008), and deactivation of formal channels for the monitoring of public spending (Roberts, 2000; Coronel, 2006), among others.

However, the distinction between accounts of political measures that weaken control structures and enable the capture of public resources for the benefit of private interests, on the one hand, and the five approaches to anti-corruption reform reviewed earlier, on the other, resides not in their policy-making nature (which they share), but in their relationship to the phenomenon of corruption: while the latter discuss the possibilities for engaging in the fight against public malfeasance, and at most their arguments might focus on the government’s neglect of this responsibility, the former focus on processes of active State-sponsored corruption. In other words, these

accounts deviate from an anti-corruption policy discussion, and enter the more general area of corruption literature, adding to its wealth of knowledge. Therefore, although they provide important insights regarding anti-corruption devolution that implicitly point at the existence of *political opposition* to reform in the terms proposed by international standards, they are also categorically different from the approaches considered at the core of this chapter.

Chapter III

Theoretical Framework I:

A Systems Model of Corruption and Anti-Corruption Reform

1. The Anti-Corruption Dilemma and the Nature of Government

The critical review of the anti-corruption reform literature (engaged in the previous chapter) concluded that a central problem in the efforts to adopt and implement reforms was the issue of political will. Naturally, just as any other policy, anti-corruption requires the initiative of a senior official (or politician with prerogative) to address malfeasance by introducing a coherent group of actions aimed at reducing corruption in a certain part of the public and/or private spheres. As government activities are never free, the simple idea of performing an action against corruption requires us to consider the inherent costs of that action as a starting point.

Already in the 1980s, Robert Klitgaard (1988) was considering the magnitude of implementation embedded in the anti-corruption idea, in an effort to provide a grounded advice to policy makers. Considering the variety of activities and instruments that could be adopted to fight corruption, each one of them with its specific cost to the organization, Klitgaard suggested that it would be inefficient to invest in all of them without considering the relative impact they potentially offered. As government, just like any other organization, does not have unlimited resources, it would be wise to invest in those activities that produced the highest margin of benefits in terms of anti-corruption success; however, this success in turn needs to be considered in terms of benefits for the whole system. Corruption is not an evil by itself, but only when considering its pernicious effects. Therefore, the cure for corruption should not be allowed to be more expensive to society (and not just in monetary terms) than corruption itself, and that is a real possibility when the marginal returns of anti-corruption activities are considered. Thus, Klitgaard (1988, p. 195) arrives to a crucial point:

“It follows that policies to crack down on corruption have costs in terms of the organization’s effective performance of its primary mission. The wise policymaker will consider these costs as well as the benefits of reduced

corruption. The ideal level of anticorruption efforts will be short of the maximum; and the optimal level of corruption will not, in practice, be zero.”

But the marginal returns of anti-corruption efforts are not the only (or even the most important) element in the calculations of real-life politics. To stop at that would be to adopt the premise that social benefits and collective wellbeing are the only concerns of the leadership, when realistically speaking they usually are not. The whole concept of corruption entails the idea that social considerations are put aside in favor of private benefits. If the leadership is already engaged in illegal acts, the anti-corruption drive will not just stop short of the maximum, but it will most likely stop much earlier than that. Klitgaard evaluation of the appropriate length of an anti-corruption campaign is perfectly reasonable when considering public administration from a normative perspective, but it becomes futile when the politics of corruption is considered.

Before tackling the issue of efficiency in a scenario of corrupt leadership, let us consider an additional element to the equation. Taking a more realistic approach, it is usually considered that besides considerations of technical, financial, and political costs related to the adoption and implementation of anti-corruption policies, there is also the element of political capital. Anti-corruption, just as any other government activity, does not only translates into costs, but as it impacts in society (hopefully in a beneficial way) it also creates benefits for the government in the form of *political capital*. This capital, when we drop the assumption of a virtuous and devout leadership, explains in theory the reason why certain policies are adopted while others are ignored. Not surprisingly, political capital is especially important in democracies, where it has the ability to directly translate into votes and power. Therefore, Klitgaard’s idea of anti-corruption efforts being efficient just as long as social welfare is attained could be converted into a more realistic statement: anti-corruption efforts are pursued just as long as they are politically profitable for the leadership.

Michael and Kasemets (2007, p. 6), following this logic, postulate that

“Parliamentarians are, to some extent, vote maximisers working in these ‘political markets.’ In political markets, parliamentarians would want to expose corruption because social welfare translates into votes. As the issue of anti-corruption becomes more popular, the probability of action turning into

votes increases. ... If anti-corruption increases returns, it can also decrease risks of being sacked and perhaps [Georgia's second president] Eduard Shevardnadze's support for anticorruption in Georgia serves as a testament to such a fear."

Although the above assertion is correct, anti-corruption policies are not just like other policies: they target the government itself (or at least the bureaucracy that supports it), contrary to most other policies that target in one way or another civil society. The contradiction or dilemma is obvious. Going back to the subject of efficiency in a scenario of corrupt leadership, there is a clear incompatibility between the objective pursued and the actors called on to address it. To give an analogy, it is equivalent to expecting a thief to arrest himself. Michael and Kasemets (2007, p. 6) understand this dilemma, and add

"Yet, if serving minority interests and engaging in patronage earns more political capital, parliamentarians would be expected not to follow any type of donor training [regarding anti-corruption policies].

Simply put, parliamentarians, when considering anti-corruption action, will balance the probable increase in votes with the costs to special interests which support them politically."

It could be added that, to convince corrupt politicians to ignore anti-corruption recommendations, not only minority interests and patronage must provide higher political capital, but also political capital can be completely surrendered for higher rewards in the form of proceeds from corruption. We can take political capital completely out of the equation, and expect a political leadership to reject any anti-corruption activity that might create obstacles to his network of corruption or even prosecute it. Certainly, the relative weight of political capital against illegal incomes will depend on the subjective preferences of the political actors, but when the latter are prioritized we could expect anti-corruption reforms to completely stagnate; and this is a major peculiarity of anti-corruption policies, for other types of policies do not introduce additional costs to their implementation beyond regular resources. Anti-corruption policies effectively cost the organizational resources demanded to their adoption and implementation, and any surreptitious benefits the leadership may have

been perceiving from corruption and the national anti-corruption standards; all else being equal, they have a higher ratio of costs to political capital than most other types of policies.

Thus, the peculiarity of anti-corruption introduces an additional level of complexity to the adoption of reforms (Maldonado and Berthin, 2004).

On top of that, there may even be incentives for an *honest* politician to avoid supporting the adoption and implementation of anti-corruption policies. Rose-Ackerman (1999), reporting on work by Barbara Geddes, suggests the existence of a “politicians’ dilemma” (p. 373) where a single actor or group brings about anti-corruption reform but voters are unable to perceive who is responsible for those improvements in the *anti-corruption standards*, and so political capital is distributed equally to all political actors. The politicians’ dilemma arises, then, when the spending of resources cannot produce an increase in political capital, thus devoiding the actor of enough reasons to invest. But the politicians’ dilemma also manifests in the opposite scenario. If voters are in fact able to identify the actor responsible for tackling corruption, the possibility of gaining office as a consequence of an electoral campaign driven on anti-corruption promises may make it more costly for the actor to hold on to a reformist agenda, as it will invariably bring a decrease in political patronage and its benefits for the party in office.

One way or another, it seems costly for the political actor to invest resources in anti-corruption efforts. Evrenk (2011), employing a different logic to the one commented by Rose-Ackerman, supports this position and posits that “[a] clean politician... has incentives to not adopt the reform, because by (effectively) turning his corrupt rivals in future elections into clean candidates, the reform eliminates the clean politician’s competitive advantage in future elections” (p. 499). Here, the honest politician is not faced with the loss of political support from special interest groups, but fears that effective reform will make the anti-corruption campaign a one-time thing, benefitting him in the short run but taking away his competitive advantage in the long run. Therefore, for both Rose-Ackerman and Evrenk political systems are structured in such a way that there are no straightforward sources of stimulus for anti-corruption activities, even in cases where leaders do not have a private interest in defending the *status quo*.

Once we stop assuming that anti-corruption reform is of any interest or benefit to the political leadership, and that even the contrary might be true (corrupt politicians

stand to lose from reform), the implementation of campaign promises and international conventions become less likely, while counter-reform efforts become a real possibility. Just as Guerzovich (2012, p. 42) describes, “[i]n all societies, there are stakeholders with vested interests who stand to lose from [anti-corruption] reforms.” She then goes even further: “According to different Mexican anticorruption stakeholders, as no institutional anchor (or proactive advocacy tactics) made it mandatory or politically costly to roll back disclosure, executive officials have been willing and able to undo positive transformations” (p. 45). This situation highlights some qualities of the government as a reactive and creative system, one that not only adapts passively to the demands of its environment but that is able to develop new mechanisms in order to defend itself and even change its surroundings. The international anti-corruption movement has tended to see national governments as actors facing only two options, either adopt its recommendations regarding anti-corruption reforms, or ignore them. In reality, however, national governments have two additional options: they can adopt policies that decrease the prevention and control of public malfeasance, effectively making it easy for political leaders to benefit from corruption without fearing detection and prosecution; and they can also undertake actions against the international anti-corruption movement, diminishing its strength, changing its focus towards other nations, or convincing it of the merits of their national *anti-corruption standards*. Each one of these options will naturally entail a different consequence, and will have a different degree of difficulty. Nonetheless, all four are perfectly possible alternatives, and to describe a government as been only able to execute the first two is an oversight that may very well explain why there has been so little progress in the academic field of anti-corruption reform.

Therefore, it is possible to say that *to acknowledge the existence of a leadership tolerant to corruption is to accept the possible existence of government actions that aim at defending (and even reinforcing) the existing anti-corruption standards, against any or all actions taken by international and local supporters of anti-corruption reform*. Without making assumptions about the honest or corrupt nature of the political leadership, its description in the terms discussed above is both realistic and consequential. It is realistic based on what it is widely known regarding the level of high-level corruption in most developing countries around the globe, and of the level of adoption and implementation of anti-corruption policies described in the introductory chapter. We may call the governments of these countries apathetic,

tolerant, or even corrupt; what matters is that we recognize the reality of the lack of incentives they have to adopt actions against malfeasance, just as this chapter has been discussing. It is consequential, because it opens the door to analyze government activities not just in terms of what they do to implement policy recommendations, but also in terms of what they do to *resist* implementation.

The key to begin exploring the consequences of this reasoning will be, then, to explicitly adopt a description of the nature of national governments in relation to their interest in controlling corruption.

Krastev and Ganey (2004, pp. 75-76) ask and respond exactly in line with the present discussion:

“Why anticorruption programs are not getting support from ‘the top’ is the central question of this paper. It is not a study of anticorruption policies, it is a study of incentives. The ‘highest levels of the state’ do not support anticorruption efforts (1) because they have incentives to be involved in corruption, or (2) because they do not have incentives to initiate anti-corruption campaigns even when they do not have incentives to be involved in corruption.”

These hypotheses will be at the core of the theoretical framework to be developed in the rest of this chapter. *For an honest government, anti-corruption policies should only be attractive in direct relation to the political capital they can generate for them; for a corrupt government, anti-corruption policies should be avoided in direct relation to the interests they threaten.* Such is the initial hypothesis of this study to answer the question of what explains Peru’s limited adoption and implementation of anti-corruption policies between 2000 and 2014.

2. Dynamic Response Model of a Political System

Taking into account all that it has been discussed so far regarding the particularities of anti-corruption reform, both generally and in Peru, a theoretical model for the assessment of the Peruvian experience since the turn of the century should consider the following:

- There are three main groups of actors that are of importance: the government; local civil society; and international actors.¹⁵
- The government is pressured by local civil society and international actors to adopt and implement anti-corruption policies; however, the government may chose to reform or not.
- The government has an inherent interest in obtaining political capital; anti-corruption actions may or may not provide it with political capital; and anti-corruption will only be chosen when it provides more political capital than the sum of the resources spent and any loss in corrupt profits.
- The adoption and implementation of anti-corruption policies in Peru has fallen quite short of the target, and the *national anti-corruption standards* has been largely preserved for most of the period considered here.

These four points put together describe a scenario where the Peruvian government defends (or at least allows) national anti-corruption standards to remain relatively underdeveloped, even against any pressure arising from public and international discontent, in a way that represents the most economical and convenient result for the leadership. Translating this description to a theoretical model, David Easton's *Dynamic Response Model of a Political System* (Easton 1965a, b) is found to fit perfectly the tenets of the present study.

At its core, Easton's model aims at providing an essential structure to understand the different forces that might create *stress* for a political system, and subsequently identify the *coping mechanisms* available to it to keep a minimum level of support flowing. Over this basis, the model incorporates multiple elements that are part of the dynamic processes embedded in the system; but at the end, all of them follow the author's interest to address the survival of the political system,¹⁶ which Easton defines as "those interactions through which values are authoritatively allocated for a society" (1965b, p. 21).

¹⁵ Although the local civil society and international actors may have hidden agendas and different interests, for the purpose of this model they must be considered to exert some type of pressure over the government towards anti-corruption actions. Therefore, their inclusion in the model will consequentially define them as inherently standing against domestic corruption.

¹⁶ Easton's work on his *systems analysis* is, even in its simplest form, a more complex model that this study can hope to portrait. For further details, hence, the reader can consult directly the literature referenced here.

Easton's political system (conceived as the most generic, basic and fundamental shape forming the structure of *any* political system, from the simplest of nomad tribes to most complex of modern nations) is defined by the presence of two variables, which he dubs "essential" (1965a, p. 96): (1) "the making and execution of decisions for a society," and (2) "their relative frequency of acceptance as authoritative or binding by the bulk of society" (pp. 96-97). They will describe any and every form of political system; without them, the system does not exist. Putting it another way, once a political system ceases to make and execute decisions for a society, and/or those decisions fail to attract compliance, the system itself ceases to exist. Therefore, the maintenance of those variables will become for Easton the most important task of the system, and the model itself is drawn in terms of its survival.

Before translating the study of anti-corruption reforms to Eastonian terms, let us delve a little more over the ways the system has to secure its survival, which demands discussing the ways in which it can be threatened to begin with.

The political system (which from here on will mean the national government, interchangeably, for the present purpose) works as a machine that converts *inputs* into *outputs*. The inputs will take the form of demands or support, both coming from civil society or international actors.¹⁷ In turn, the system produces outputs in the form of government actions aimed at affecting in one way or another civil society and the international scene (i.e. the system's environment). These "exchanges" or "transactions" (Easton, 1965a, p. 109) between the government and the actors in the environment represent the life of the political system, the way a country is run. However, in order to work properly, demands and support need to be held constant lest the government begins to see its ability to perform its two essential variables threaten.

¹⁷ To be precise, inputs can also originate inside the political system, and not just in its environment. Easton (1965b) describes this possibility under the label of *withinputs* (p. 55). He posits that "[d]emands such as these differ from the inputs we have been discussing in that the latter are shaped by such parameters as culture, economy, social structure, and the like, whereas withinputs are politically determined... Whereas the externally influenced demands must cross the boundary from parameters to political system—thereby creating an exchange between the social environment and the system—the internally shaped demands may just flow from one subsystem within a political system to another. Demands may move from a party subsystem to the legislative subsystem, as in the case of a party proposal to the legislature for an amendment to an electoral law. Boundaries need not be relevant for all purposes and consequently they may be ignored when the occasion requires it without impeding the analysis or creating any logical inconsistencies. For tracing out the effect of variations in demands on a political system, the fact that demands are determined by variables within the political system is quite irrelevant. Both inputs and withinputs press themselves in the same way upon members of the system as a possible agenda for discussion. Their implications for stress on the system are identical" (pp. 55-56).

While Easton see both types of inputs as being crucial for the life of the system, the issue of survival is directly linked to the level of support. Although demands are the raw materials for government actions, as the leadership needs to create in response to specific necessities, without support the government is completely unable to perform any action. Therefore, the constant flow of support from society (or international actors) to the government is essential for the leadership to keep exerting its authority; without it, it would be hard to say it is still in power, especially when its subjects and its peers are unwilling to recognize it a commanding role. Support, in these terms, is indistinguishable from political capital.

Demands tend to affect the government only in relation to the way they affect the level of support when left unattended. When demands increase, it usually reflects a situation that is unsatisfactory for society. If it is a reaction to previous government actions, such as the wrong monetary policy or corruption in defense procurement,¹⁸ this will usually be joined by a decrease in the overall support for the political leadership. If, on the other hand, demands are raised as a reaction to the emergence of new circumstances, such as drought or the aggressive stance of a foreign nation, the level of support will depend on the government response to the challenge. This is the nature of demands, and by themselves do not seem to create what Easton calls *stress* to the political system. Demands are only stressful when the system fails to respond appropriately.

This brings us to the issue of *output failure*, which describes “the failure of the authorities to produce adequate outputs” in response or anticipation of societal and/or international demands, and the consequent “decline in the input of support” (Easton, 1965b, p. 230); in other words, output failure represents the scenario created by those government actions that are widely considered unsatisfactory, delegitimizing the leadership. Easton (1965b, pp. 230-231) says that such situation arises under three possible circumstances:

“First, [output failure] it arises when the authorities fail to take any action to meet the demands of the relevant members of a system....

Second, even if members have put in no specific demands about a matter, output failure may still occur. This is the case when the authorities fail to take

¹⁸ Regarding corruption, Easton (1965b, p. 39) explicitly states as a way of example that “exposure of corruption in government may give rise to a demand for improved control over lobbying.”

action that anticipates conditions which may later arise and to which relevant members of the system might then object. It becomes output failure if the members blame the authorities for not having the foresight or wisdom to have prepared for such an eventuality.

Third, the authorities may take action of an important nature that they interpret as a response to demands. But the outputs may in fact be considered by the affected members as quite inappropriate for the conditions or incompatible with their demands. In that event the failure has not been in the quantity but in the quality of the outputs. The probability is that the outputs would encounter more hostility than support and in that way add to any shortage of support.”

As it has been explained, outputs can be understood in general terms as all activities of the government. However, in order to fully grasp their meaning and be able to translate it to the field of anti-corruption reform accordingly, it is necessary to go deeper and analyze the concept of outputs.

By definition, outputs are generally directed at the system’s environment,¹⁹ aiming at affecting in one way or another social and international actors and their level of support to the government. In order to be of any relevance, outputs are required to generate some kind of response, and this will come as a result of the way the system’s environment interpret the specific outputs under discussion. As we have seen, some outputs may generate support, while others might hinder them. It all comes down to the way society reacts to certain government actions. Based on this characteristic, Easton (1965b) classifies outputs as *circumstantial* or *perceived*. Their meaning is very intuitive. In the one hand, circumstantial outputs are those government activities that affect the material or objective conditions in which an individual live, indirectly stimulating his/her support in a positive or negative way. Perceived outputs, on the other hand, affect individuals in a subjective way; they are the way government actions are interpreted by the individual, notwithstanding the actual effects on real conditions. Logically, circumstances and perceptions may represent two dimensions of the same policy, as when economic reforms have a

¹⁹ To be more specific, output need not only be directed at environmental actors, but may also take the form of *intrasystem outputs* (Easton, 1965b, p. 347): “[M]any outputs significant in the production of specific support are also directed to objects within the political system itself... The concept *outputs* does not suggest that the authoritative allocation must be related to something outside the system; it refers only to the notion that the allocation emanates from or comes out of the behavior of the authorities.”

positive overall impact on society but are unpopular for ideological reasons, or when a sound and potentially beneficial labor policy is inaccurately understood by workers. However, they can also describe different government activities: there is clearly an important difference between changes in the interest rate, which directly address the real conditions of domestic markets; and the presidential address delivered annually, which aims at improving citizen perceptions about the way government is handling relevant issues.

Going back to the issue of output failures, they will take place when either social circumstances, perceptions, or both, are incongruent with public demands. When demands increase, and support decreases, the political system has difficulty in making decisions and having them accepted (the two essential variables) and so it is said to be undergoing stress. If left unattended for too long, stress may cause the authorities to be replaced, the regime to be modified, and even the political community to fall apart (1965b). Luckily, however, the political system has ways of securing the constant provision of at least a minimum level of support flowing, enough to keep the political system intact in order of priority: they are called the *coping mechanisms*, available to the system to deal with stress and keep the essential variables inside a normal range. They will explain how a political system manages to endure even after the government fails to tend to the demands of citizens and international actors.

In Easton's elaboration of his model, coping mechanisms are ubiquitous; they are mentioned sporadically, directly referring to specific mechanisms, and are not collected under a special title. Nonetheless, in explaining the fundamental categories of analysis employed in his work, Easton (1965b) states that "we shall find that political systems accumulate large repertoires of mechanisms through which they may seek to cope with their environments. Through these they may regulate their own behavior, transform their internal structure, and even go so far as to remodel their fundamental goals" (p.19).

Coping mechanisms do not only (or even largely) aim internally at transforming the political system so as to adapt to public discontent, but they can also be directed externally at the sources of demands and support, i.e. the system's environment. In this way, coping mechanisms are indistinguishable from outputs as they have been discussed earlier, with the only difference that the former describe the

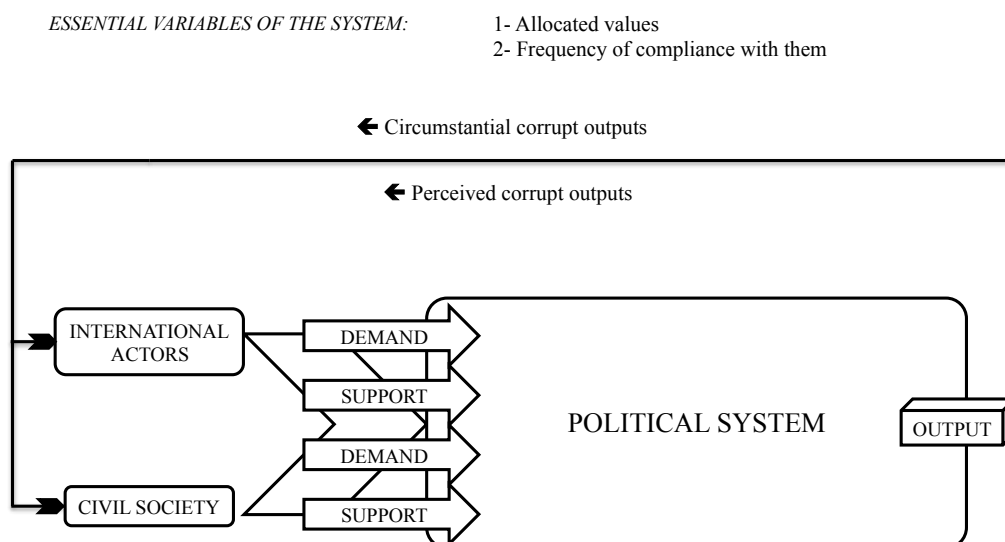


Figure 1. Dynamic Response Model of a Political System

Source: Easton (1965a, 1965b) (adapted).

system's response to actual or potential stress. Easton (1965b, p. 441) supports this logic:

“[I]f [authorities] are unresponsive as defined here, they will not seek to stimulate support by reacting so as to satisfy the feedback demands. Rather, they may devise ways to ignore them without unnecessarily endangering the input of support... Our primary task in this section of the analysis is to understand the way in which outputs are a coping mechanism for reducing the dangers from insufficient support for the political objects.”

Therefore, we shall talk of coping mechanisms as those *government actions that seek to secure support for the authorities without having to necessarily tend to the specific demands of civil society and/or international actors*. In this manner, Easton's model relates to the argument of this study regarding the ways in which the Peruvian government managed to avoid drastic changes in the national anti-corruption standards.

To get a clear picture of the interactions between the political system and its environment, with the flow of demands and support and their conversion into circumstantial and perceived outputs, Figure 1 presents a simplified depiction of Easton's model.

Although Easton's model might prove extensively theoretical, we just need to look at instances of social convulsion in any given country to see that behind a highly technical jargon, the Model of a Political System only describes reality in a series of concepts that become then available to proper analyses and comparison.

To give an example, looking at the case of Peruvian President Alberto Fujimori and his illegal re-election in 2000, we see that the details of this historic episode reflect all the elements and relations described by Easton's model.

Without going into excessive detail, it suffices to know that the Peruvian presidential elections of 2000 was marred by manipulation of the electoral apparatus in order to legitimize Fujimori's candidacy, and allegations of further electoral fraud. As a result of public knowledge of the government's efforts to remain in power through these means (i.e. output failure), and a growing perception of corruption affecting senior officials of Fujimori's government (i.e. perceived output), opposition candidate Alejandro Toledo called for a multitudinous march across the capital city, Lima, to protest against the government on the days surrounding Fujimori's taking of oath and the beginning of his third government.

Called the *Marcha de los Cuatro Suyos* (March of the Four *Suyos*²⁰) by Toledo, it gathered people from different points of the country, with thousands gathering around Congress and the Presidential Palace (i.e. increased demands and decreased support from civil society). In addition to the domestic front, the international community had been closely following the details of the 2000 presidential campaign, with an OAS Mission in the country supervising the transparency of the process but finding it severely flawed and irregular (BBC, 2000/05/31), to the point where direct criticism was directed towards Fujimori's governments for not addressing the allegations of electoral fraud (BBC, 2000/04/06). As a consequence, the social and political convulsion expressed in Toledo's march of protest was being closely followed by international media (Relea, 2000) and other actors (LR, 2000/07/30a) concerned about the state of democracy and human rights in Peru (i.e. increased demands and decreased support from international actors).

While Fujimori's government was constricted in its options regarding the international front, and would not be able to effectively regularize the inflow of

²⁰ A *suyo* was the traditional political division of the Inca Empire. The Inca territory was divided in four *suyos* or regions, spawning from east of modern-day Colombia to north-west of modern-day Argentina.

support from institutional actors such as the Organization of American States without addressing at least some of the key issues they had raised, the domestic front, on the other hand, offered more possibilities. On July 28, the day Fujimori took oath, Toledo's *Marcha* was confronted by more than 30,000 police officers (Noriega, 2000) (i.e. repression as a coping mechanism), leaving six persons dead, ninety-eight injured, more than a hundred arrested (LR, 2000/07/29), and the building of the National Bank burnt to the ground (which was later known to have been part of a secret operative by the National Intelligence Agency to delegitimize the protest). With that, the main threat to Fujimori's political legitimacy was controlled, and even though the coping mechanism employed gave birth to new waves of demand and withdrawal of support, these were relatively less threatening to the government than Alejandro Toledo's call for civil disobedience and resistance, and the media agenda promptly moved to new issues.²¹

Although much more could be said regarding the particularities of the event just narrated, and a proper analysis would unveil hidden processes and mechanisms that produced this specific moment of Peruvian history, in its general composition it reflects the accommodation and survival of the political system (i.e. the government) against stress from its environment, just as suggested by Easton's model. How would the model look not just for one event, but when we consider the stability of national anti-corruption standards across decades? What can Easton's model reveal about the possibilities of reform when the government is better off leaving the problem of corruption alone?

3. A Systems Model of Corruption and Anti-Corruption Reform

The Stability of the National Anti-Corruption Standards as an Essential Variable

David Easton was not oblivious to the peculiarities of corruption as a form of (degraded) government activity. In fact, his model of a political system considered corruption (or clientelism, to be precise) one of the four types of outputs possible. These types were "authoritative statements" (1965b, 354), or government *decisions*; "authoritative performances" (p. 355), or the *implementation* of those decisions;

²¹ Fujimori's government would fall within four months after the events of the *Marcha de los Cuatro Suyos*, but the reasons behind its collapse will be discussed in detail in Chapter V.

“associated statements” (p. 357), or the *rationale* behind them; and “associated performances” (p. 361), or *clientelism*.

Easton says that “[b]ribery and corruption are classic illustrations of this kind of associated performance outputs” (p. 361), opening the door to understanding corruption as just another type of output from the system. Indeed, if we remember that outputs are nothing but government activities that impact society in objective and/or subjective ways, it becomes possible to see corrupt transactions as an attached element of whichever action was being officially carried out, such as cases of procurement corruption, favoritism in public contracting, embezzlement, nepotism, etc. All these activities represent the corrupt distortion of an official duty, and this is why multiple actors have consistently defined corruption as *the misuse of public office for private gain*.²² In the same line, Easton describes his fourth type of output, associated performances, as “performances which assume the form of tangible goods and intangible services associated with authoritative action and yet which do not themselves acquire any binding quality” (1965b, p. 360). The key element here is the ‘binding quality,’ meaning that even though these outputs are related to official activities, they are not actually official themselves:

“Typically, persons in positions of authority in all legal systems quickly become accustomed to fortifying support for themselves, with incidental consequences for the political objects, through performing numerous small and large services for individual or groups of members, services that are **over and beyond the production of authoritative outputs**.”²³ (Easton, 1965b, p. 360)

There can be no doubt, then, that corruption represents an unofficial output; but this is not all. Currently, most countries have included their legal systems provisions to criminalize at least some (if not all) forms of corruption, making malfeasance in public life an illegal and criminal act. The identification of corruption as a problem of government sets it apart from other types of outputs. While the latter may increase or decrease support, depending on the quality of the output produced by

²² Naturally, it is also appropriate to talk about corruption in the private sector, but for the purposes of the present study the term *corruption* will deal specifically with corruption in the public sector.

²³ Bold by the author.

the system and the way it impacts the circumstances and perceptions of the citizens, corruption is widely and almost unanimously considered to be detrimental to society, and thus it always creates stress to the government by decreasing the level of support and raising demands. In the words of David Easton (1965b, p. 361), “[e]xtended reliance on this kind of outputs... may well prove more effective in stressing than in maintaining a system.”

The description of corruption as a specific type of output that is by nature stressful to the political system brings us back to the discussion about output failure, which was said to ‘represent the scenario created by those government actions that are widely considered unsatisfactory, delegitimizing the leaders.’ Connecting the dots, and employing the terminology developed in Easton’s work, we would then understand corruption as *a kind of output that generates a scenario of output failure, which in turn creates stress for the system by giving rise to an increase in demands and a decrease in support; furthermore, if such situation remained unchecked, it could develop in the unsustainability of one or more of the political objects (authorities, regime, political community) and the consequent failure of the system to perform its essential variables (allocation of values and frequency of compliance with them).*

Therefore, corruption represents a threat to the normal life of a political system; this will be true in any system where public malfeasance is considered morally or legally wrong. Nonetheless, the stress produced by corruption may be specially damaging to a *specific type of system*, not because of the vulnerability of its nature but due to the way we define it. As Easton (1965a) defends, we should understand a system not necessarily as a natural object, but we may more fruitfully envisage systems as empirical constructs and define them in terms of our analytical interests and needs instead of all they materially include.²⁴ Thus, the way we describe a specific system, the elements we decide to include in it, and the interactions we choose to focus on for academic reasons, will be scientifically appropriate as long as

²⁴ Easton (1965a, pp. 27-30) posits: “We might maintain that it is pointless to try to distinguish so-called natural from non-natural or nonexistent systems. In this interpretation any aggregate of interactions that we choose to identify may be said to form a system. It is solely a matter of conceptual or theoretical convenience... What commands our attention is the need to decide whether the set of activities is an interesting one, in the sense that it is relevant and helps us to understand some theoretical problems, or whether it is worthless or trivial from this point of view. Where the selected parts of political life are relevant, show some degree of interdependence, and seem to have a common fate, we can say that we have an interesting and useful system from the point of view of understanding the way in which political systems are likely to operate.”

it allows us the possibility to conduct relevant analyses. Considering corruption as a source of stress, the challenge it represents to the survival of the political system will depend directly on what we actually consider that survival to be. In Easton's model, as its focus is any and every political system, survival depend on the maintenance of the two essential variables (decisions and compliance) and it can be ultimately measured by the persistence of the authorities, the regime, and the political community. For Easton there are degrees of survival, things that the system is willing to give up in order to secure the stability of its basic components. The ultimate object that will define the existence or disappearance of a political system is the political community, beyond which it could be said that the system has disappeared.

Before the disappearance of the political system, or its metamorphosis into a new one, Easton considers that the authorities can be changed (as when a new government takes office after winning the elections) and the regime modified (as when a military government gives way to a democratically elected leadership), and the political system would be said to continue existing. How should we understand then the differences between a democratic regime and a dictatorship? To clarify this issue, and highlight the macro-level of analysis embodied by his model, Easton (1965a, p. 93) discusses the possibility of having *essential variables for specific types of systems*:

“For democracies these might be conceived to be some vaguely defined degree of freedom of speech and association and popular participation in the political process. For a totalitarian system the essential variables might consist of some minimal degree of exclusion of popular participation, dominant power in the hands of a political elite, coercion of the individual, and controlled and highly restricted freedom of speech and association.”

The existence of specific essential variables allows us to get closer to the ground and focus on how the stress over a totalitarian system may bring its replacement for a democratic one, and why the leadership of the new regime makes efforts to secure the survival of freedom of speech, association, and popular participation during periods of declining support for these figures. It is the specific system (in this case, a democracy) replacing an older and outdated one, and later trying to alleviate stress and guarantee support for the legal structure. All the

considerations made for the general political system described by the bulk of Easton's work are directly applicable to particular systems, such as democracies, dictatorships, and any specific system that we choose to focus on, as long as we address the essential variables that will define the existence of *that* system.

So, what type of system does Peru represent when considering its limited adoption and implementation of anti-corruption policies between 2000 and 2014? Following Easton's suggestion, we proceed to select the relevant elements in order to address a constructive system, one that is relevant and productive, and describe our analytical system as characterized in its basic form by the relative stability of the National Anti-Corruption Standards (NACS): the general but distinguishable level of adoption and implementation of anti-corruption principles, norms and policies in a national setting during a period of time. Any element of the general Peruvian political system included in the chosen analytical system, then, will only be analyzed in relation to the way it serves to positively or negatively affect the stability of the NACS, which is the core issue of the present study. That way of defining the analytical system, furthermore, will also offer it the essential variable.

What type of political system is especially vulnerable to stress generated by corruption? To answer this is to remember that stress represents a threat to the persistence of the specific political system we focus on. Although corruption is problematic for the stability of any government, the demands for anti-corruption actions directly attack one particular element: the NACS. As long as the authorities are willing to make appropriate corrections, corruption should not be a problem and the level of support should rapidly recover. In that process, however, the authorities prioritize their survival (and the survival of the form of government) over that of the NACS, and therefore the system cannot be conceived as including the persistence of the anti-corruption model as we have seen in Peru over the past fourteen years. Anti-corruption demands are more threatening to a system identified by the stability of its NACS, simply because those demands are directed at destroying what gives that specific systems its principal characteristic (in the analytical terms presented here). Therefore, just as any political system strives to keep its essential variables in normal range, so does Peru have coped with domestic and foreign pressure to adopt and implement anti-corruption policies, and succeeded in limiting any transformation of the NACS. For this reason, it is completely rational to consider the *stability of the NACS* the best way of defining "the characteristic way in which the system operates"

(Easton, 1965a, p. 92) (i.e. the essential variable) for the objective of the present study.

Corruption Outputs and Anti-Corruption Pressure: Four Scenarios of Stress

Once the essential variable of the analytical system has been defined as the stability of the NACS, we need to consider any pressure aiming at modifying it as a source of stress for the government. Increased demands for anti-corruption actions, and a decrease in support as a consequence of ignoring those demands, will force the government to either revise its position towards the NACS, or to activate coping mechanisms to secure the flow of support. The former, as has been explained, jeopardizes the existence of the system as defined by the NACS, and so the government is forced to address the problem in a way that does not include any effective change in the way it handles malfeasance in public life.

Coping mechanisms, as mechanisms to deal with stress, are directly related to the specific form, degree and source of pressure. To understand the choices of the government regarding the actions it takes to control public dissatisfaction and make sure its decisions are respected, first we need to look at the specific type of stress involved. When talking about corruption, it is obvious that the source of stress has its antecedents in government activities; corruption, after all, is the misuse of public office for private gain, and thus it has its origin inside the government itself. Any type of pressure that may later arise as a consequence of corruption has its antecedents in a particular action taken (or not taken) by the government.

Corruption is an output, and as it has been explained earlier, outputs impact social (and international) actors in two different ways: they can affect the objective conditions of the citizen, or they can affect the way he/she perceives them. The same two dimensions exist when we consider corruption. Let us consider briefly what is widely known about corruption: As the introductory chapter described, it damages the economy by reducing the total amount of foreign direct investment, diverts resources from productive to rent-seeking activities, increases transaction costs for private businesses, reallocates public budget from social services to less transparent and more profitable sectors, and in general is considered to be one of the major sources of economic stagnation and underdevelopment. These are all actual, material conditions affected by corruption that impact the lives of society at large, including the

international community.²⁵ On the other hand, corruption is usually perceived through the media coverage of corruption *scandals*, which are for the most part the only way citizens can gain knowledge of the existence of malfeasance involving senior officials (Morris, 2008, p. 392; Németh et al., 2011, p. 61; Uslaner, 2008, p. 14; and Tverdova, 2007, p. 3); media coverage, however, may or may not accurately report the case, and the so called ‘scandal’ may end up being a fabrication of political rivals. Allegations of corruption usually include as much noise as they involve proof, and it is very easy to manipulate news presentation so as to benefit or harm the allegedly corrupt actor.²⁶

Whereas both circumstantial and perceptual dimensions many times coincide in the same event, as when a case of political corruption becomes a damaging scandal to the government, they also create different possibilities that drive them apart. For example, although a social program may fail to raise the living standards of its target citizens, its failure might only partially be a consequence of corruption in one or more of its activities. Mismanagement, red tape, scarce human resources, lack of expertise, insufficient budget, conflicting objectives, lack of political will, mischaracterization of the problem, poor communicational strategies, inconsistency of efforts, competing services and offices, and many other circumstances may prevent a program to reach its objective.²⁷ Corruption, in this case, stands as one of multiple factors that can be found responsible for the downfall of government efforts in addressing a public demand, and it might not even be perceived by the actors involved (except for those directly engaged in corruption transactions, of course). In this case, stakeholders might characterize the failure of the program as a generic problem of design and/or implementation, and move on; corruption, even being one of the elements that hindered the execution of the program, need not be identified at all. This scenario is more common than it might seem; we need only to keep in mind that, until news of corruption are presented by the media, corruption transactions are carried out without the knowledge of civil society, international actors, and many times even of senior officials of the government. Corruption is only indirectly felt by its impact on the living conditions of citizens, and as a result the demands that arise are not for the

²⁵ One clear example is United States’ Foreign Corrupt Practices Act (FCPA) of 1977, and the American efforts to have it seconded by the OECD (Weiss, 2009).

²⁶ The government of Peruvian President Alberto Fujimori was particularly keen to buying off media outlets to control the news, using them to attack political rivals and to prevent the dissemination of information regarding the government’s illicit activities (Conaghan, 2005).

²⁷ A classic study of the difficulties of policy implementation can be found in Pressman and Wildavsky (1973).

adoption of anti-corruption actions, but for the addressing of the decline in living conditions.

On the other hand, allegations of corruption involving the president and other senior officials are very common in Latin America, and although they rarely end in the prosecution of those actors directly and indirectly involved, they have a high impact on the general *perception* of corruption in the country and on the popular support for the leadership. It rarely matters if the allegations relate to actual instances of grand corruption, or if they are used as a political tactic to delegitimize a government unfriendly to certain interests such as the media or the private sector. The core of the corruption scandal is that it creates a wave of discontent among the public and a blow to the government's international image. In this respect, corruption scandals are of a completely different nature to that of corruption activities as described previously: news of corruption affect the perception that people have about the government, while actual corruption affect their living circumstances.

The perception of corruption stands as both the less objective and most relevant source of anti-corruption activities. Due to the secretive nature of corruption, it has been impossible for researchers to address its measurement in any direct way, and the closest they have come is to obtain self-reported accounts of petty bribery as offered by private individuals;²⁸ regarding grand corruption transactions, these are obviously not amenable to academic or public scrutiny, and all we know comes from investigative journalism in a case-by-case fashion, which usually excludes hard proof of wrongdoing, and leaves a great degree of interpretation and probability. However, if not for media coverage, corruption would not even be an issue. Scandals open the opportunity for citizens and foreign actors to address the NACS and demand the effective adoption and implementation of sound policies, and the enforcement of the legal anti-corruption system. Even if corruption news only represent a limited and biased depiction of government activities and the incidence of malfeasance, this window of opportunity creates a source of stress and pressure over the government much higher than real but not perceived instances of corruption ever could. It is in the dimension of corruption perception that most demands for anti-corruption actions (and the consequential decline of support) have their origin.

To give some clarity and order to the discussion of anti-corruption pressure

²⁸ We refer to Transparency International's Global Corruption Barometer.

from here on, we will dub corruption as a circumstantial output *corruption in processes*; while corruption as a perceived output will be dubbed *corruption perception*. These types of corruption, and the differentiated types of demand and stress they give origin to, represent the first two of four scenarios through which anti-corruption pressure creates stress for the political system.

The third scenario of stress produced by the NACS and its inadequacy to prevent and control public malfeasance depicts what Easton (1965b, p. 22) call “disturbances”: they are the “influences from the total environment of a system that act upon it so that it is different after the stimulus from what it was before.” Disturbances modify the settings under which the political system carries on its activities, producing new patterns of behavior of the actors outside government. Whenever a new way of understanding political life, public good, government responsibilities, social and economic rights, welfare and well-being, or any other relevant concept that stimulates a variation in the content of demands we can say that a disturbance has taken place. They can also take the form of natural events, such as floods, earthquakes, droughts, or any other disaster. International events such as the introduction of new technologies or processes, and armed conflicts, also represent disturbances in the environment. What all these situations have in common is that they redefine demands, and therefore the way outcomes are perceived and reacted to. Although this needs not necessarily produce stress for the political system, in the case of the NACS disturbances will represent the historical global transition from corruption as a matter of exclusively domestic politics and subject to cultural interpretations, to corruption as a target of the international anti-corruption movement. In short, the disturbance that is of importance to the NACS is the global decrease in corruption tolerance that begun in the 1990s (which was commented in the introductory chapter), and that threatens its stability and persistence.

Corruption tolerance is defined as the citizens’ behavioral adherence to condone the corrupt behavior of the political leadership (Pozsgai Alvarez, 2013), and its study has inspired the production of a growing literature (Peters and Welch, 1980; Welch and Hibbing, 1997; Chang and Kerr, 2009; Winters and Weitz-Shapiro, 2013). A decrease in the domestic levels of this construct points to the transformation of the social awareness regarding the evils of malfeasance, which has been a mayor focus of the activities of the international anti-corruption movement. The whole principal-agent, bottom-up approach that was reviewed in the previous chapter is implicitly

based on the utilization and malleability of the concept of corruption tolerance in domestic settings, while the approach dealing with international pressure embodies the decrease in tolerance at a global scale. Therefore, although not explicitly referred to as such, it can be said that the importance of corruption tolerance has been at the core of a big part of the literature dealing with anti-corruption reform ever since the field took off some twenty years ago. Both principal-agent approaches posited the possibility of civil society and international actors taking the post of principal, respectively, monitoring government performance and pushing for the adoption and implementation of effective anti-corruption policies. However, the literature on civil society accurately stresses the role of international actors in supporting financially and technically domestic efforts; after all, it is no mere coincidence that the anti-corruption movement became global and started influencing domestic policies in almost every region on the planet only after the cold-war ended, Transparency International developed its Corruption Perception Index, and the United States drew the attention of the rest of the OECD countries to the necessity of criminalizing international bribery. The international anti-corruption movement, in many senses, has been crucial to the growth of anti-corruption activities by organized civil society, especially in developing countries like Peru.

The decrease in the international tolerance towards corruption was a significant global disturbance that stressed the NACS of almost every country, including Peru. As a consequence of this disturbance, civil society (through increased awareness, media coverage, public discussion, and electoral response) and international actors (through international conventions, country rankings, aid conditionalities, and review mechanisms) increased their demands for anti-corruption reforms; and when these demands were not properly addressed, the level of support for impervious authorities decreased (at least in theory).

Thus, the third scenario of stress will be dubbed here *corruption intolerance*. This scenario differs from the previous two in that the latter reflected the stress produced by the inability of the NACS to prevent corrupt activities, and the subsequent decline in support. Corruption intolerance, on the other hand, does not only reacts to the presence of corruption, but directly addresses the persistence of the NACS even when there are no corrupt outputs. This third scenario aims at reforming the political system both as to control and prevent corruption, and this quality will be of chief importance when looking at the specific way the government copes with

pressure. While corruption perception focuses on *control*, corruption intolerance will be stronger on *prevention*. What all three scenarios have in common, finally, is that they are the environmental response to output failures caused by the persistence of an inadequate NACS.

Last, the fourth scenario of stress for the political system describes the prolonged exposure of the system to the stress produced by one or more of the previous three scenarios. This scenario does not have any peculiarity of its own, other than demanding an extended period of time and being a critical point where corruption in processes, corruption perception, and/or corruption intolerance threatens the persistence of not only the people in authority positions, but also the form of government and the political community. Easton (1965b, 231) explicitly supports this possibility:

“Initially, the discontent might be directed toward the authorities. But if, where possible, these are changed and especially if this happens again and again, and still little improvement in outputs occur, it will be impossible to prevent the dissatisfaction from shifting toward the regime [i.e. the form of government] and even the political community.”

What this possibility represents is the potential of any output failure to delegitimize more than just the people placed in authority positions. Prolonged dissatisfaction with government activities, particularly after a change in leadership, may disenfranchise society to the point where little regards are held to the form of government and even the unity of the nation. Latin American is well known for its history of swinging between military/authoritarian and civilian/democratic governments, with the tolerance and very often the support of civil society. Peruvian President Alberto Fujimori, for example, had no difficulties carrying on an ‘auto-coup’ to dissolve Congress (which had an opposition majority) thanks to the general delegitimation of traditional political parties after years of economic crisis and subversive insurgence. Fujimori’s auto-coup confronted almost no opposition from civil society, who felt the system had failed to improve the situation of the country, and so he proceeded to write a new constitution, permanently eliminating the senate, and calling to new congressional elections that gave his party an ample majority and control over legislation.

Generalized social and political convulsion has brought down many governments throughout history, revolutions have entirely changed the type of government, and international conflicts have destroyed and produced national communities. When the authorities are unable to produce a minimum level of support, they leave the door open for social and international actors to make the changes they deem appropriate. The survival of a leadership, as we have discussed, depends on the satisfaction of demands and the production of support, and the quality and timing of outputs is essential to secure the continuation of the political system. If outputs consistently fail to address demands, and support decreases to a critical point, the survival of the highest political object will dictate the path for the community. Naturally, it is much easier and productive to change the leadership than to change the form of government, and to change the latter is preferred than to change the composition of the community, dividing the nation. This is partly the strength of democracy as a form of government, in that it has inherent mechanisms for the relief of pressure and the addressing of social demands.

The point has been made before regarding the expectation we can have about the political leadership. It was said that ‘anti-corruption will only be chosen when it provides more political capital than the sum of the resources spent and any loss in corrupt profits.’ If we consider the stakes at play in a scenario of prolonged output failure, it is possible to conclude that anti-corruption policies have the best chance of being adopted and implemented in this fourth scenario. As it describes a situation where leadership is unsustainable unless demands are satisfied, and even the fabric of the political system is at risk, it becomes obvious that no government resources and illegal profits can amount to more than the political capital desperately needed; or, to put it another way, activities directly aimed at producing support become the absolute priority, above and beyond considerations regarding government resources and the loss of illegal profits. When the NACS becomes the primary agent of destruction for the political system there can only be loss in ignoring demands for anti-corruption reform, and so the authorities have no option but to comply or step aside. This is the nature of the fourth scenario of anti-corruption pressure, which will be dubbed *prolonged stress*.

To summarize the above discussion, the four scenarios of stress created by the stability of the NACS are: (1) corruption in processes; (2) corruption perception; (3) corruption intolerance; and, (4) prolonged stress.

The next step is to address the coping mechanisms available to the government to deal with each one of these scenarios. In doing so, it will be possible to see more clearly just how pressure is manifested from civil society and international actors, which will directly affect the options open to the authorities in specific conditions.

Chapter IV

Theoretical Framework II: Coping Mechanisms and Types of Pressure

1. Coping Mechanisms

It was said earlier that it was possible to understand coping mechanisms as government actions that seek to secure support for the authorities without having to necessarily tend to the specific demands of civil society and/or international actors. For the case of anti-corruption pressure, coping mechanisms represent all available strategies that the government may decide to activate in order to prevent, control or diminish stress without affecting the NACS. Coping mechanisms may be designed to have an immediate impact, or may aim at being fully implemented in the mid to long term. Different strategies demand different resources, have different time frames, and stimulate support to different degrees. Their objective is common, however, in that they try to preserve the NACS in a certain form that is deemed useful to the political leadership. Because of the utility of the NACS, there are a couple of points that require clarification before fully engaging the review of coping mechanisms.

First, although the NACS are the state of the anti-corruption normative and effective structure in a specific point in time, as long as its characteristics remain relatively consistent for an extended period of time we can talk of the NACS remaining stable. This shall not mean that it remains absolutely static, and that it has not suffered any changes. It will only suggest that the actions and policies adopted and implemented have not been prominent in terms of the current knowledge on good practices and successful reforms, and that the situation is *in relative terms* the same before and after those actions and policies, particularly as perceived by the political leadership. Some elements of the NACS can be sacrificed so that its core structure can remain, particularly in regards to the protection of senior officials: while some mechanisms can be implemented to control petty corruption, presidential accountability and monitoring of party funding can be expected to remain underdeveloped.

This brings us to the second point. Because the NACS are relative and dependent on the interests of the political leadership, it is necessary to accept the presence of ‘agency’ in the specific behavior of different governments. Indeed, not all

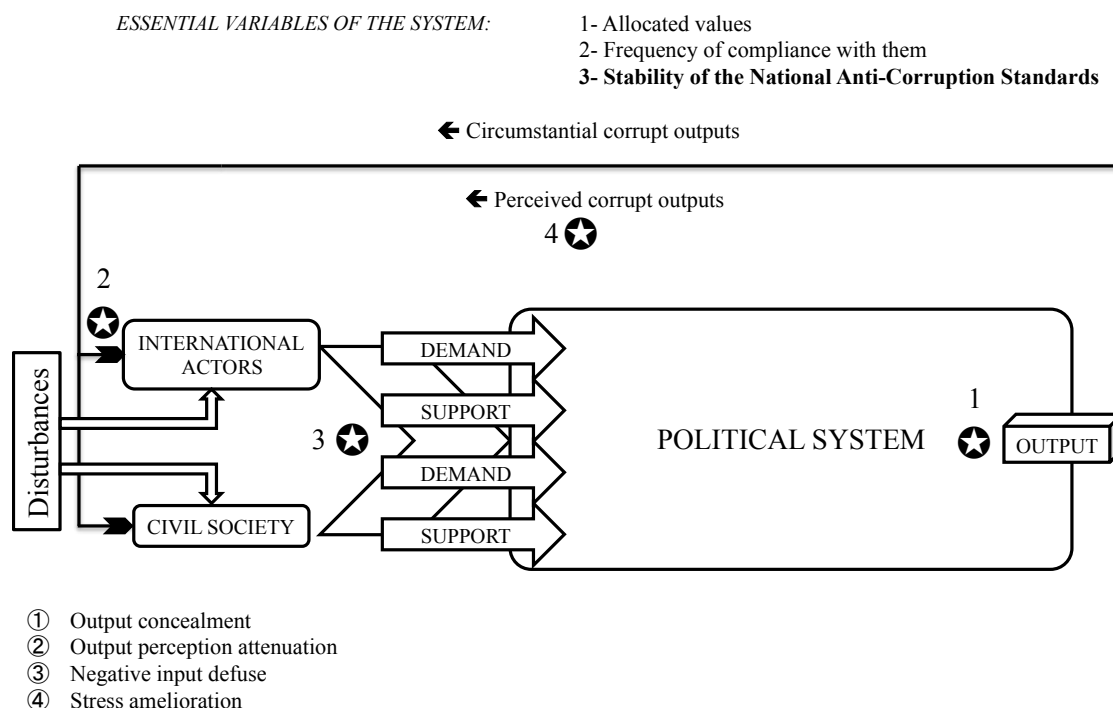


Figure 2. Coping Points in the Systems Model of Corruption and Anti-Corruption Reform

politicians are perfect and rational utility maximizers. There are individuals more honest than others, and their personality will account for the type of coping mechanism activated and the degree of its execution. Furthermore, it will also account for their preferences and perceptions regarding what exactly the NACS are, and what changes can be made while still considering it stable.

Having set the above out of the way, let us look at what possibilities each stress scenario gives to the reaction of the government. Some mechanisms will be common to all scenarios, while others will be exclusive to the characteristic pressure of the specific output failure considered. Disregarding the specific scenario we wish to focus on, however, coping mechanisms are distributed throughout the model and its processes of output production/reaction, output effects (outcomes), and input production/reaction (demands and support), reflecting the entire cycle through which the systems interacts with the environment. Based on the moment of the cycle when coping mechanisms can be expected to be effective, these stages will be called *coping points*, and they are four: (1) Output concealment; (2) output perception attenuation; (3) negative input defuse; and, (4) stress amelioration. Figure 2 shows their position in the model.

The coping point of *output concealment* covers the exit channels of the

political system, and allows for the activation of mechanisms that target precisely those channels through which corruption may be discovered, and preemptively disable or obstruct them. In other words, in this point actions are taken against certain anti-corruption enforcement efforts that deal with investigation and detection. As a consequence, coping mechanisms embedded in this stage are corruption-enablers to different degrees.

The coping point of *output perception attenuation* covers the entry channels of social perception, and allows for the activation of mechanisms that address the way corrupt (or corruption tolerant) outputs generates increased demands and decreased support, by suppressing or altering the way citizens and international actors perceive information of public malfeasance. Their objective is to cut the link between corruption news and attitudinal change, preventing the generation of demands.

The coping point of *negative input defuse* covers the entry channels of the political system, and allows for the activation of mechanisms that address the way demands are directed towards the system. They aim at cutting the link between popular dissatisfaction and the actual manifestation of demands, preventing their transfer into the system. This is the last coping point before the government can be said to come under stress.

Lastly, the coping point of *stress amelioration* covers output failures after the system has come under stress, and allows for the activation of mechanisms that serve as compensatory measures. There are two different kinds of mechanisms in this point: Symbolic measures, which describe the production of outputs that aim at changing the perception social actors have of the way the government is handling the issue, without actually implementing them in any effective way; and genuine measures, which aims at generating support through the effective satisfaction of demands not related to the original source of stress.

Coping mechanisms are discussed below in reference to their activation at one of the four coping points, for each of the four stress scenarios.

Corruption in Processes. This is perhaps the easiest scenario for the government in terms of its possibilities for coping with anti-corruption pressure. The reason is simply that, as we mentioned before, due to the non-perceptual nature of the corrupt outputs being produced there is no reason to expect civil society or international actors to voice any anti-corruption demands at all. Certainly, all

government measures are expected to at least include a minimum level of anti-corruption mechanisms (particularly of the kind addressing administrative corruption) in order to be able to control the execution of public budgets and monitor the performance of the bureaucracy; however, the rationale behind them relates to efficiency, and not necessarily clean government. These control mechanisms are so ubiquitous, that it is difficult to assert that they aim at preventing malfeasance at all: they are usually adopted and implemented to facilitate the execution of public policies and the attainment of specific results, and any impact on the likelihood of corruption is only indirect, and many times even involuntary. Instruments such as the *annual plan of contracting and acquisitions* and the *institutional operative plan*, and the spread of *information and communication technologies* (ICT) in government systems testify to the focus on results and efficiency, above and beyond concerns of corruption.

Although some actors among civil society and the international community are usually able to identify the presence of corruption as at least one of the factors involved in unsatisfactory government activities, to do so usually imply the crossing over from this scenario to that of ‘corruption perception’ and its specific characteristics and coping mechanisms. To address the strategies available to the government to cope with the specific scenario of corruption in processes, we need to focus on those cases of corruption that are *not perceived* as such by the environment. They involve the generation of demands specific to the issue affecting the citizens, and even though they do not represent a direct threat to NACS, in order for it to remain stable the government needs to cope with social and international pressure in one way or another, lest the stress forces it to actually address the actual factors behind its failure in public management (one of which is the NACS).

Indeed, coping mechanisms in this scenario still represent a way for the government to secure the stability of the NACS. But, as the threat is indirect, it gives the authorities the chance to isolate the material conditions that are producing stress on the system and to address them directly without considering anti-corruption actions *per se*.

If the government do engages in anti-corruption under this scenario, however, it is logical to expect actions circumscribed to administrative processes, where they might have the most impact on effective and efficient public administration, and away from the spheres of high government. As the leadership is interested in obtaining as

much support as possible without taking actions that might prove costly, the decision between competing strategies should rest on the prioritized source of political capital. When the leadership depends on patronage jobs for specific support, government decisions will address material conditions without affecting the anti-corruption structure of bureaucracy. On the other hand, when the leadership receives direct support from civil society and has no party interests invested in lower echelons of the government, anti-corruption policies restricted to those ranks will be easier to come about if they have the potential to generate increased support. At the end it all comes down to the level of penetration of the incumbent party in the political system.

- I. Output concealment: This scenario does not possess coping mechanisms in this specific point, as it represents the objective impact of corruption on the real conditions of the environment, which are not amenable to concealment.
- II. Output perception attenuation: At this point, the government has the possibility to create *smokescreens*, which are fabricated events that gain wide public attention and news coverage, above and beyond that of the piece of information the government wants to keep unattended (Requejo Alemán, 2007). These events involve either superfluous or sensitive conditions stimulated by the political system, aimed at having the highest impact possible on public attention and perceptions. Superfluous events include pieces of information pertaining to show business, sports events, sensationalist media, and others. Sensitive events include politically, socially, culturally or economically relevant pieces of information other than the one the leadership wants ignored.
- III. Negative input defuse: Confronted with public dissatisfaction, the government can activate different mechanisms to repress the public expression of demands and guarantee the steady flow of support. The simplest of coping mechanisms is to turn to *coercion* or *repression*, effectively employing the police and military resources of the political system to force civil society and/or international actors to comply with government outputs.

A milder version of this mechanism is the creation of *obstacles to advocacy*, which rely on legal structures to make it difficult for

public dissatisfaction to transform into actual demands entering the system. Complex procedures for the input of legislative proposals by non-governmental actors is one such mechanism; it effectively slows down the rate in which the environment may stress the system, and it can even work as a filter to keep at bay the most threatening demands, only letting in those that are perceived harmless to the leadership.

Another way of obstructing the input of demands relies on exploiting or manipulating *public priorities*: by resorting to the personal or ideological legitimacy of the leadership, or the sense of common interests of the nation, the government may succeed in increasing the relative tolerance to corruption of the environment. The aim here is to stimulate public self-restraint and relative corruption tolerance with the excuse that there are other issues that supersede that of momentary social dissatisfaction. To resort to personal or ideological considerations is to remind the environmental actors of the qualities of the persons in charge in terms of their individual attributes and their political agenda; the idealization of a technocratic government invested in liberal reforms may be a powerful deterrent against complaints of specific government failures. Calling on national and common interests, on the other hand, consists in harnessing the support for the form of government and the political unity of the country, and to use it for the benefit of the leadership. Episodes of international conflict or tension, for example, or the emergence of subversive or extremist groups can be employed by the government as an excuse to pull support towards addressing those issues, turning away attention from government failures in the process.

Descending into even more subtle ways of social control, the government may decide to invest in long-term mechanisms and turn to the stimulation of *new cultural norms* through education strategies and other elements of the socialization process. This is done with the objective of reinventing the meaning of political life, changing the array of topics and spheres that may be subject to government attention and intervention. If done correctly, social dissatisfaction over specific issues may not be something the environment feels that requires

authoritative outputs, and hence no demands would be produced. The recent history, for example, has seen the emergence of issues in the public agenda related to sexual orientation, conservation of natural resources, diet, and animal protection, all of which were previously considered to be exclusive matters of the private sphere. This implies the change of cultural norms regarding what society considers should be part of government activities.

Finally, the government can take a minimalist approach regarding public demands, and cope with them by fostering the *misallocation of responsibility*. As it implies, this coping mechanism involves publicly holding actors away from the political leadership and even the system responsible for the output failure generating demands. Thus, the government (this is, the specific party in office) does not entirely aims at preventing the introduction of demands, but just manipulates the situation as to keep those demands away from affecting the people in office through the use of scapegoats.

- IV. Stress amelioration: The last coping point where the government has the possibility to activate one or more coping mechanisms is at the beginning of a second round of interactions between the political system and its environment. By way of symbolic measures, this scenario does not provide different type of options but only one, capable of adopting a wide array of characteristics. As corruption in processes imply the impact of corruption in any government activity, including economic or monetary decisions, budget allocation and execution, monitoring and control, tax collection, etc., it makes more sense to discuss symbolic measures in the most general terms capable of being adopted for any specific activity. Thus, the quintessential symbolic mechanism available to the authorities is the provision of *public promises regarding the satisfaction of specific demands*. These promises usually take the form of public speeches, media interviews, written or oral comments, and other ways of addressing civil society and international actors to convince them that actions are being carried out to solve the problem. Obviously, these promises need not be implemented in any way: as long as they succeed in reducing the

inflow of demand into the system and stabilize the provision of support, stress will have been avoided, which is after all the main interest of the leadership (theoretically speaking).

Genuine measures, on the other hand, provide more options to handle stress. The government has the possibility to turn to *clientelism and other forms of economic stimuli*, which is a straightforward mean to 'buy-off' popular support by exchanging financial resources for political capital. Considering all the possibilities opened by this mechanism, the usage of money can be transformed into any form of scarce commodities commonly sought after by social actors, thus giving the option to the government of not just offering money, but any material condition considered to be more relevant than that which gave birth to the original demands.

On the other side of the spectrum, social wants can also be translated to subjective conditions and valued concepts such as national pride and social justice. This is the realm of *alternative populist gratifications*, which seek to provide subjective satisfaction that may or may not linked to material resources. Policies aiming at providing additional job stability, for example, does not only affect the actual living conditions of the citizens, but it also addresses their perception regarding the role of the government in protecting the interests of workers, and therefore creates a sympathetic link between the two groups.

Somehow similar to the concept of populist gratifications is the provision of *political concessions*, which usually target opposition actors and advocacy groups. Just as clientelism represents the buying-off of demands, the government has the capacity to transfer the political agenda from one subject to another, and provide satisfaction of demands other than the ones stressing the system. In doing so, it balances out the stressful effects of the original demands with the surge of additional support related to another area, thus stabilizing the system. A common way to secure support for controversial policies, for example, is to offer ministry positions to opposition parties as a way of guaranteeing the inclusion of different opinions in the process

of government; this way, specific policy demands are balanced out of with activities involving inclusive governance. Political concessions, in short, involve the trade-off of political interests in a way the benefits the particular agenda of the leadership.

Finally, the government can directly address demands and satisfy them without actually having to amend the issues related to corruption. As malfeasance may only be one among several factors involved in the output failure as perceived by the citizens, unfavorable conditions might be improved through general administrative reforms or measures. Thus, this coping mechanism does not aim at substituting the satisfaction of the original demands: it does not need to. The analytic existence of the scenario of corruption in processes depends on our focus on the stability of the NACS, and does not require the system to avoid any and all other forms of reform. As long as economic or administrative reforms do not affect the anti-corruption structure, and they manage to reduce stress, they will work as appropriate coping measures for the purpose of our essential variable (the stability of the NACS). Thus, *demand-satisfactory measures* aim at correcting economic, social, and political distortions; at developing or improving inefficient or underdeveloped systems/markets/institutions/procedures; at preventing contractions; or at other outcomes that directly or indirectly enable general economic growth and popular satisfaction, without having to necessarily engage in the fight against corruption.²⁹

Corruption Perception. While the first scenario of stress as a consequence of the NACS provided only indirect pressure, and actually no explicit anti-corruption demands need take place on a regular basis, the second scenario is the most stressful

²⁹ As it was briefly discussed before, what the leadership considers to be acceptable for the stability of the NACS will heavily depend on the specific characteristics of the incumbent party. It is completely plausible to see the implementation of demand-satisfactory measures containing limited anti-corruption mechanisms if they enable enough support as to allow the general anti-corruption structure to continue functioning undisturbed. The control of petty corruption may even serve the objective of generating a more stable NACS for the higher ranks of government. Although we would see the NACS slightly changing in general terms, demand-satisfactory measures of this kind still represent coping mechanisms from the perspective of the political leadership.

for the NACS because corruption is directly perceived (or at least believed), and so specific actions for controlling and preventing it are directly demanded.

The explicit and raw nature of stress as a consequence of corruption, however, gives this scenario certain qualities that makes it not only more stressful for the system, but it also provides it with more opportunities for coping with that stress, ironically. To understand this seeming incompatibility, we need to discuss the concepts of enforcement, prevention, and control.

Anti-corruption policies can be said to fall into one of two general categories. The first one, *prevention*, includes actions such as the creation of specialized anti-corruption bodies in charge of policy development, civil service reform, codes and standards of conduct, regulation of official discretion, reduction of procedural complexity (administrative simplification), transparency laws, internal reporting procedures, regulation of conflicts of interests, disclosure of assets, any many others (UNODC, 2004a). All of these measures address the event of corruption from a preventive perspective, putting in place structures and processes to deter the involvement of public officials in illegal activities.

The second category of policies involve *control* measures, and although their existence also works as a deterrence, their main objective is to facilitate the monitoring of government activities; the investigation, correction, prosecution, and punishment of corrupt activities; and the recovery of stolen and generated assets. These measures include anti-corruption bodies specialized in prosecution, strengthening of judicial institutions, effective collaboration laws, improvement of financial investigations, integrity testing, electronic surveillance operations, whistleblowing protection, criminalization of different forms of corruption, international legal cooperation, and many others (UNODC, 2004a).

Some specific measures may be said to stand in both prevention and control dimensions, such as laws of access to information; but most anti-corruption policies pertain only to one. Both prevention and control policies, nonetheless, are integral parts of any anti-corruption reform, and represent two sides of a coin when we consider their relative potential for stressing the stability of the NACS.

Enforcement, on the other side, does not represent a policy *per se*, but rather the actual activation of implemented control policies. As it relates to compliance, enforcement addresses the degree to which norms regarding the prohibition of corrupt activities are followed by citizens and public officials; enforcement represents the

effective application of the law against different forms of malfeasance. Whether those norms are generally followed or not is a different matter. Enforcement is related to compliance only as far as both seek the legality of government activities, but the former comes into action after the latter fails. For this reason, enforcement only applies to control policies, and not to preventive ones.

Preventive policies become effective as soon as they are implemented; in other words, when the structures, processes, tools and resources involved in a specific preventive policy are effectively in place and working, we can say that prevention has begun. Control policies, on the other hand, can be already implemented without actually being carried out. With the exception of measures related to the monitoring of government activities, all other policies pertaining to the control of corruption focus on the situation *after corruption has taken place*. Although structures, processes, tools and resources might be in place, they only begin to actually work after corruption has been detected. This differentiated point of activation makes control and enforcement linked to each other as much as enforcement and prevention are connected by their being anti-corruption policies.

So, what does this have to do with the possibilities of the government to cope with anti-corruption pressure?

The presence of enforcement as the effective activation of control policies, and the markedly different nature of its activities to those of preventive measures, forces the model to consider not one round of transactions between the political system and the environment, but two. These rounds, although analytic in nature, will differ in nature due to the type of demands being voiced, with the first round of stress being created by demands of enforcement, and the second round reflecting demands regarding policy reform. On top of this, it is even possible to expect that the policy reforms demanded will be of the control type, as these are closer to enforcement.

Due to the logic behind two differentiated rounds of stress, it is also necessary to reassess the specific point where we can say that the NACS are getting stressed. As the first analytical round focuses on enforcement, it does not need to represent stress for the stability of the NACS, but only as far as it gives way to a second round of demands explicitly targeting the adoption and/or implementation of preventive or control policies. The first round only represents stress for the political authorities, challenging their legitimacy and demanding the prosecution of corrupt actors. Therefore, even if the culprits are prosecuted, this single event does not imply that the

NACS have in any way been changed, or that a precedent has been made against which all (or at least most) future cases will be conducted. The complete satisfaction of demands of a single case of stress under this first round of enforcement pressure has no necessary impact on our analytical system.

The second round of reform pressure, on the other hand, directly addresses the change of the NACS, and for the purpose of this study represents the source of stress under the scenario of corruption perception. If successful, the demands input here would destroy the stability of the analytic system and describe the change of the anti-corruption structure. Coping mechanisms activated by the government, therefore, become the top priority of the leadership agenda. But this second round does not exist completely apart from the first one: it is drastically influenced by the outcomes of the previous round, and the type and strength of demands voiced here are partly a result of the way the political system was able and willing to handle the scandal. When enforcement proves efficient and effective, demands should be found to focus more on preventive policies; on the other hand, when enforcement fails and the actors involved are not effectively prosecuted, civil society and/or international actors will most likely prioritize the reform of control mechanisms. In conclusion, although both rounds must be coped with for their potential to stress the system, the second exerts its pressure directly and therefore must be prioritized, whereas the first round impacts the system only indirectly through its influence on the second.

To put all this into perspective, let us imagine the case of a corrupt scandal regarding the involvement of a senior official of the Ministry of Defense in the irregular procurement of army boots. As the scandal breaks out, public demands for prompt investigation of the event, and the eventual prosecution and punishment of all actors involved, gain momentum, bringing down the general popularity of the president. The coping mechanisms selected by the government will directly reflect the demands for enforcement, as the alleged event involves a criminal act punishable by prison; the chosen mechanisms will likely address the need for clarifying the case and finding a culprit. This is the first round of stress under the scenario of corruption perception.

The second round is the follow-up to the corruption scandal. Whatever mechanism the government chooses to cope with the stress, at least some elements of civil society and/or the international community will want to address the core of the issue, i.e. the NACS. Evidently the corruption event involving the senior official in an

irregular procurement process can be traced to the inadequacy of the NACS to prevent such occurrence, either through insufficient monitoring, little participation of civil society, lack of transparency, or some other weakness. Regardless of how the government deals with this specific case, then, some pressure will be exerted towards improving the anti-corruption structure, so as to make sure that it does not happen again.

In conclusion, the scenario of corruption perception involves two analytically different rounds of pressure, one pertaining to enforcement, the second pertaining to reform. And although both might coexist in the same moment in time, for theoretical concerns and their impact on government responses they must be analyzed separately.

- I. Output concealment (1st round): The first coping point introduces four different mechanisms available to the system to preemptively conceal the existence of corruption from members of the environment.

The first concealment mechanism involves *institutional imperviousness*: It aims at securing the null or inefficient implementation of anti-corruption measures such as access to public information and financial transparency laws; it also includes the adoption and implementation of norms and actions that restrict access to public information and policy processes. While the former approach is more passive in nature, in that it does not directly deteriorate the control apparatus of the state, the latter actively reforms the relation between the government and its environment, cutting down complex ways of interaction in favor of a more hierarchical structure. Both, however, represent efforts by the political system to close its borders to the prying eyes of civil society and international actors, shunning away from popular overseeing, social control and participatory forms of government, all for the sake of keeping its activities (among which is corruption) under a veil of secrecy.

The second mechanism is dubbed *environmental repellence*, and while it shares with the previous mechanism the government's desire to reduce contact between civil society and the inner workings of the political system, it does so by addressing the capabilities of the environment instead of acting upon its own structures. Environmental

repellence consists of the adoption and implementation of norms and actions against freedom of press and other social, political and economic rights that may empower society to the detriment of government secrecy and impermeability. At the extreme, this mechanism includes the null or limited participation of the country on international and domestic anti-corruption fora.

Third, the government has the option of adopting a strategy of *risk management*, through which it would seek to obtain the lawful political control of investigatory bodies and/or agencies of the state. By doing so, the leadership effectively becomes its own guardian, as when congressional commissions of audit and control of public affairs are chaired by a member of the incumbent party, or when supposedly autonomous agencies as the office of the comptroller general, the ombudsman, the attorney general, or even the judiciary are chaired by people close to (or appointed by) the government. By employing measures related to this mechanism, corrupt actors can avoid detection by official means, which usually represent the first and most powerful line of defense against public malfeasance; with this possibility out of commission, a corrupt leadership need only fear detection from civil society and international actors, both of which can in turn be suppressed by other mechanisms as the ones reviewed earlier.

The fourth and last mechanism available at this point represents the effective application of counter-reform measures. Aimed not only at hampering the progress of anti-corruption efforts in regards to detection, but at dismantling any significant instrument that may have been adopted and implemented by a more honest leadership in the past, *institutional devolution* is an ever lurking danger for anti-corruption reforms. It involves the legal or practical disablement of institutional control mechanisms related to the detection of public malfeasance, and although it may include other areas of anti-corruption control such as investigation or prosecution, only at this point in the process of stress-inducing pressure can we say that it acts as a coping mechanism. In any other instance, institutional devolution can be perfectly equated to actual corruption for the purpose of its stressful impact on the system,

as it protects public offenders and impairs effective enforcement even against social and/or international demands. For the purpose of output concealment, however, institutional devolution is only a corruption-enabler, and as long as it is successful, it need not represent additional stress to the NACS other than the cost of its own execution.

- II. Output perception attenuation (1st round): At this point, the government has the possibility to create smokescreens. Another option is turn to the common tactic of *argumentative defense*, which aims at providing an additional source of information in the form of a counter position. This is the most natural and intuitive coping mechanism, and for that same reason the less sophisticated. By trying to compensate for the negative information with an official government position of a more positive nuance, argumentative defense aims at balancing out any potential demand that may be in process. Certainly, the effectiveness of this measure depends on the current level of support for the government, the extent of the corruption scandal, and the quality of the measure itself; as the point is to thrust one version against another, both the version and the person become variables attenuated by public perceptions.

Connected to argumentative defense, authorities (directly or through a proxy) can also turn to *plaintiff discredit*, which represents an appropriate companion to the previous tactic: together with presenting a counter argument, the government can strengthen its position by calling into question the legitimacy of the original source, thus reducing the social impact of the corruption claims. The objective here is not so much to directly confront the veracity of the allegations, as to raise doubts regarding the quality of the person or group exposing the news of corruption. Thus, the political system addresses the issue indirectly in an approach widely known as ‘argumentum ad hominem.’

Considering long-term measures, the government can stimulate *corruption tolerance* in absolute terms through usually complex socialization processes, altering the social meaning of corrupt activities in a way that makes it difficult for social actors to recognize the illegality of the act and/or the responsibility of those involved.

Although it is not easy to theorize the specific measures that may be involved in this mechanism, corruption tolerance as a social and cultural reality is usually considered to be amenable to government outputs to some degree. Karklins (2005) and Uslaner (2008) agree that the level of popular acceptance of bribery behavior among citizens reacts to the way society perceives the performance of the leadership: when people at the top are seeing benefitting from illegal or unethical activities, it becomes less morally troublesome for regular citizens to do the same, and so society at large becomes more tolerant to corruption by condoning or even forgetting the pernicious consequences of malfeasance. Other cues from the government, particularly those aimed at changing popular perceptions regarding the boundaries between the public and private spheres and the role of private interests in political life could also help change the degree to which corruption generates social demands.

- III. Negative input defuse (1st round): At this point of the scenario of corruption perception, the government has the following mechanisms at its disposal: Repression/coercion; obstacles to advocacy; manipulation of public priorities; new cultural norms; and, misallocation of responsibility.
- IV. Stress amelioration (1st round): At the fourth and final coping point of the first cycle of anti-corruption pressure, the government has at its disposal additional symbolic and genuine measures to those available in the previous scenario. Besides public promises regarding the satisfaction of anti-corruption enforcement demands, which in this case might even take the form of public expressions of condemnation and/or enforcement support, two common mechanisms found here involved almost theatrical manifestations of government activity.

First, there are *non-independent, insufficiently funded, and/or mismanaged investigations/prosecutions* aimed at giving the appearance of highly qualified and effective official display, but which is nonetheless conceived with inherent flaws. These flaws, as is the case with any other coping mechanism, are purposely included (or at least negligently allowed) in order to sabotage the performance of the

actors called on to carry the investigation of the corruption case and its eventual prosecution. However, as far as the official design and initial presentation is concerned, the execution of those anti-corruption activities needs to seem appropriate and provide enough ground as to dissuade popular opinion from any withdrawal of support. Therefore, this mechanism is usually denoted by a wide display of publicity through a constant stream of official statements and the stimulation of media coverage. Intense publicity of this coping mechanism exploits its symbolic nature, and provides it with power and legitimacy.

A second symbolic measure, theoretically part of the one just discussed but deserving a specific mention of its own, is the setting of *non-sanctioned parliamentary committees of investigations*. These follow the same logic of defectiveness and publicity, but do so with arguably more expertise. Considering the natural power, political position and historic prestige of national parliaments, together with the popular representativeness it has by electoral process, they provide a particularly important setting for anti-corruption enforcement activities. Taken out of context from the formal arrangements of the legal system, however, those same qualities provide a significant opportunity for coping with anti-corruption pressure, giving unduly legitimacy and impact to a coping mechanism designed to be nothing more than an exercise in theatrics. Notwithstanding the actual intentions and performance of members of a parliamentary committee established to investigate a particular corruption scandal, the impact a committee has on judicial cases and their prosecution is usually limited: as their conclusions are not binding, it falls back onto the formal legal system to take the appropriate steps to see enforcement carried out. In the process, the parliamentary committee succeeds in relieving some pressure from the government, as it demonstrates that something is actually being done to address popular demands. Therefore, the benefits produced by the committee in terms of possibilities for enforcement, on the one hand, against the satisfaction of demands and production of support it represents, on the other, show the potential of parliamentary committees of investigation as a coping

mechanism of the symbolic type.

Regarding genuine measures, the government can choose to activate clientelism and other forms of economic stimuli; alternative populist gratifications; political concessions; or demand-satisfactory measures. The last one, however, varies slightly from its form under the scenario of corruption in processes, and deserves some elaboration.

As was explained earlier, the stability of the NACS does not require the system to avoid any and every form of reform. The same applies to the first round of a corruption scandal: while pressure concentrates on anti-corruption enforcement, it does not stress the system directly and so the authorities may be more willing to comply, particularly when the leadership is not compromised. To resort to *scapegoat convictions* of low to mid-level public officials represent an attractive option for senior officials, as they can satisfy popular demands, stimulate support, and have little to no cost for the incumbent party. Even when the case does not allow for the usage of scapegoats and the actual culprits must be brought to justice, as long as they represent a politically economic way of producing support and securing stability for the both the political leadership³⁰ and the NACS, this coping mechanism will be an appropriate way of dealing with stress.

A second type of demand-satisfactory measure particularly relevant at this point is the employment of *exclusively non-partisan investigations/prosecutions*, especially when the actors involved belong to the political opposition. While this mechanism share some common characteristics with the usage of scapegoats, the main difference between the two is that the latter deals with stress originated as a consequence of government malfeasance, while the former

³⁰ Scapegoats may be useful, as noted here, for dealing with stress affecting both the authorities and the NACS. This is so because, even when a corruption scandal does not translate into reform pressure, the popularity of the leadership is bound to suffer, which represent an obvious problem for their legitimacy. Although this stress does not affect the analytic system dealt with in this study, it calls for the activation of a coping mechanism for the sake of the political interests of government actors. Scapegoats are one type of mechanism that can satisfy that requirement. However, for the purpose of our discussion on the stability of the NACS, we are interested in seeing these coping mechanisms in its role of reducing any type of influence that a corruption scandal may produce on the second round of this scenario, that is, on the demands for anti-corruption reforms.

represent a response to demands for enforcing anti-corruption measures against members of the opposition, or actors that are not part of the government party structure. These may even include key members of previous governments (as long as they are not partisans) such as former ministers, congressmembers, and others. Investigations and prosecutions of this kind represent highly beneficial and economical responses, and may even be used as means for the accumulation and storage of support (as we will discuss later). The literature on cleanups, as we have seen, largely describes the activation of this particular mechanism, suggesting its potential and popularity.

- I. Output concealment (2nd round): This round does not possess coping mechanisms at this specific point, as information regarding corruption has already left the political system in the first round and is no longer under sole control of the leadership.
- II. Output perception attenuation (2nd round): This round does not possess coping mechanisms at this specific point, as perception of corruption has already been effectively attained in the first round.
- III. Negative input defuse (2nd round): At this point, the government has the option to activate one or more of the following mechanisms: Repression/coercion; obstacles to advocacy; manipulation of public priorities; and, misallocation of responsibility.
- IV. Stress amelioration (2nd round): Finally, mechanisms similar to those found in the previous round, but modified to fit anti-corruption reform pressure instead of enforcement, are available as a last resort to cope with stress. As symbolic measures, the government can install *inadequate anti-corruption policies/bodies/agencies* that are by design unenforceable, generic, non-independent, insufficiently funded, mismanaged, redundant, and/or discriminating. Just as it was the case with mismanaged investigations/prosecutions, this particular mechanism benefits from high levels of publicity, which increases the social impact and exploits its symbolic nature. A second mechanism in this category represents the public expression of reform support/proposal; this is equivalent to public promises regarding the satisfaction of anti-corruption demands as we have seen in the scenario

of corruption in processes and in the round of enforcement pressure.

Regarding genuine measures, the following mechanisms are available: Clientelism and other forms of economic stimuli; alternative populist gratifications; and, political concessions.

Corruption Intolerance. Parting from pressure directly or indirectly induced by the output of corruption, the third scenario explicitly deals with the stability of the NACS, exerting pressure over the political system with or without the actual presence of corruption outputs in any single moment.

The difference in nature between this scenario and the previous two has important implications for the type of pressure imposed over the system. The most obvious consequence of directly targeting the NACS without requiring the prior presence of corruption is that the first two coping points become instantly disable, and so the government does not have the option to activate any preventive mechanism of concealment, nor can it turn to affect popular perceptions. Corruption intolerance takes place when popular dissatisfaction with the anti-corruption structure emerges; in that sense, this scenario is somehow similar to the second analytic round of corruption perception. Another point of comparison between the two scenarios is the explicit concern in the adoption and implementation of anti-corruption policies. However, where the second round of corruption perception was somehow influenced by the government's performance regarding enforcement, the scenario of corruption intolerance is not amenable to satisfaction through specific cases of enforcement. This independency from other extraneous satisfactions represent a quality that gives the third scenario a particularly strong position to stress the system, at least from a theoretical perspective.

Of the scenarios reviewed so far, corruption intolerance provides the least amount of possible coping mechanisms to the government. From this perspective, it is logical to expect that efforts undertaken under this scenario should prove more effective in threatening the stability of the NACS, all else being equal. However, an important variable in the capacity of the system to deal with stress has to do directly with the type and source of pressure, which is analytically independent from the array of mechanisms available to the system. Although this point will be taken up later, it is necessary to consider here that system stress is a consequence of the amount of pressure exerted by the environment and the way the government deals with it

through the activation of coping mechanisms. The relevance of the scenario of corruption intolerance for the fight against corruption, therefore, directly depends on the level of demands and support civil society and international actors are able to manipulate and channel. If few demands are voiced, the government may even forgo the activation of coping mechanisms and let the natural process of media agenda deal with the problem. In short, although theoretically this scenario should provide more opportunities for anti-corruption fighters, it may very well prove sterile for the creating of demands and the withdrawal of support. We will discuss these possibilities later.

- I. Output concealment: This scenario does not possess coping mechanisms at this specific point, as environmental pressure does not require the presence of corruption in any particular case.
- II. Output perception attenuation: This scenario does not possess coping mechanisms at this specific point, as environmental pressure does not require the perception of corruption in any particular case.
- III. Negative input defuse: At this point, the government has the option to activate one or more of the following mechanisms: Repression/coercion; obstacles to advocacy; manipulation of public priorities; argumentative defense; plaintiff discredit;³¹ and, misallocation of responsibility for reform.
- IV. Stress amelioration: At the last point, the government has the option to adopt symbolic measures such as inadequate anti-corruption policies/bodies/agencies or public expressions of reform support/proposal. As genuine measures, on the other hand, the government can activate the following mechanisms: Clientelism and other forms of economic stimuli; alternative populist gratifications; and, political concessions.

Prolonged Stress. Finally, the fourth scenario of stress represents the persistence of output failure under any of the three previous ones, i.e. corruption in processes, corruption perception, of corruption intolerance. When the government in

³¹ This mechanism is slightly adapted to this scenario from the description presented earlier, as in this case the plaintiff is not an actor or group producing allegations of corruption against the government, but producing demands for anti-corruption reform.

unable to reduce demands and increase support through the activation of one or more coping mechanisms, and support decreases beyond a minimum level, regular political life becomes impossible. In this case we would say that stress has become too great for the government to cope with, and thus the transformation of the political system becomes the only possible way for authorities to keep exerting power. For the case of our analytical system, this transformation implies the reform of the anti-corruption structure into a version that guarantees a minimum flow of support towards the political leadership, the form of government, and the community in general.

Due to the nature of this fourth scenario, it rejects by definition the possible existence of any coping mechanism available to the authorities. Whatever coping point existed, it took place earlier; and whatever mechanisms were activated, the presence of the scenario of prolonged stress means that they failed as a group to alleviate the stress over the system. By this stage, government cannot maintain the two essential variables (decisions and their compliance) without addressing the stability of the NACS, and therefore no coping mechanisms are available. In order to stabilize the system and secure the survival of higher political objects, we would expect the government to reform the NACS through the effective adoption and implementation of anti-corruption policies at least until enough support is produced and the authorities are again legitimized.

2. Types of Environmental Pressure

Coping mechanisms are essential for understanding the possible ways in which the authorities are able to maintain the stability of the NACS across years and even decades, getting past corruption scandals, periods of economic crisis, and the emergence of new global trends such as the international anti-corruption movement. Those mechanisms available to the political leadership, however, are only as effective as the amount of support they can stimulate and the types of demands they succeed in repressing. Information on the strength with which civil society and international actors pressure the political system is just as important in understanding why certain mechanisms are successful while others are not.

Types of pressure and coping mechanisms are the two variables that decide the fate of the NACS. Certain events, such as corruption scandals, usually produce high amounts of demands on the system, and thus they require the activation of

equally effective coping mechanisms; other situations, like an international organization adopting new lending policies in line with international anti-corruption standards, may be better coped with a different, more subtle mechanism. 'Better' in this regard only implies a calculus of efficiency: the most simple and economical of two equally effective coping mechanisms can be considered the best. Whatever mechanism can produce the most support and the least demands for the least amount of government resources, will be expected to take the lead in a concerted strategy against environmental pressure.

What can we say about the best type of anti-corruption pressure, on the other hand? Certainly, the most effective form of activism would be that which produces the highest amount of pressure over the government, to the point where the authorities do not have any other option but to comply with demands. However, just as it happens with the government, civil society and international actors also have limited resources and other concerns besides that of fighting malfeasance, thus considerations regarding viable strategies must necessarily include their relative costs and the amount of resources at their disposal. The 'best' strategy under any scenario would be considered that which produces the most pressure for the least resources; nonetheless, this may not be necessarily relevant for the case of environmental strategies.

Civil society and international actors include a wide variety of formal organizations and informal groups that usually do not coordinate or harmonize their activities. At the same time as an international organization is negotiating the inclusion of anti-corruption mechanisms in a financial cooperation agreement, domestic NGOs may be pushing for the passing of a transparency and access to information bill, while popular attention is engaged in demanding the prosecution of senior officials over charges of embezzlement. Although all members of the environment are pushing for anti-corruption measures, each one of them is acting under a different scenario, and so their efforts can be frustrated by different coping mechanisms. Just like the figure of speech goes, 'Jack of all trades, master of none,' the environment may cover more topics than the ones it can possible impact.

The lack of coordination between members of the environment takes special relevance when we consider the benefits and difficulties of each stress scenario for the reform of the NACS. The first scenario, corruption in processes, do not explicitly include any demands for dealing with malfeasance; the second, corruption perception, only addresses reforms in its second analytic round, and thus it could be said that

most of the efforts under this scenario are spent in dealing with enforcement, which threatens the NACS only indirectly if at all. The third scenario, corruption intolerance, undoubtedly represents the best theoretical chance for pressuring the system into reform, as the adoption and implementation of anti-corruption policies become here the sole targets of social and international action. The potential of corruption intolerance seems to be widely recognized, as it is indeed under this scenario that most of the activities engaged in by the international anti-corruption movement take place.

However, the logic behind the stimulation of pressure under the third scenario drastically hinders the overall strength of the environment: as corruption intolerance implies a change in attitudes and behavior, it is first adopted by organized groups of civil society such as NGOs and professional bodies, and by international organizations and fora. It is through these groups that new perspectives on corruption influence the perception of members of society regarding what acceptable government activities are, and it is them who have the level of technical sophistication required to identify issues in the NACS and make appropriate suggestions and demands. When it comes to garner social attention and support for anti-corruption campaigns, corruption intolerance encourages public attention of corruption scandals but it does not succeed in harnessing that potential for specific policy reforms. To put it simply, the scenario of ‘corruption intolerance’ relies mostly on organized civil and international society for domestic anti-corruption reform, while the scenario of ‘corruption perception’ keeps most of the public resources distracted on the investigation and prosecution of singular media cases. Thus, the most important source of pressure for anti-corruption activities is lost in a scenario that does not focus on reform.

For this reason, the ‘best’ theoretical strategy for the environment becomes unviable due to the impossibility of coordinating and channeling all sources of demands and support in line with a single reformist agenda.

But even when it is not feasible to make inferences regarding the best possible strategies available to the environment, we can describe the way pressure is channeled against the system, and the different forms it can take. As Figure 3 shows, there are three main routes through which civil society and international actors can implement their strategies/activities. First, civil society and international actors can exert a direct pressure over the political system, without any kind of coordination or cooperation

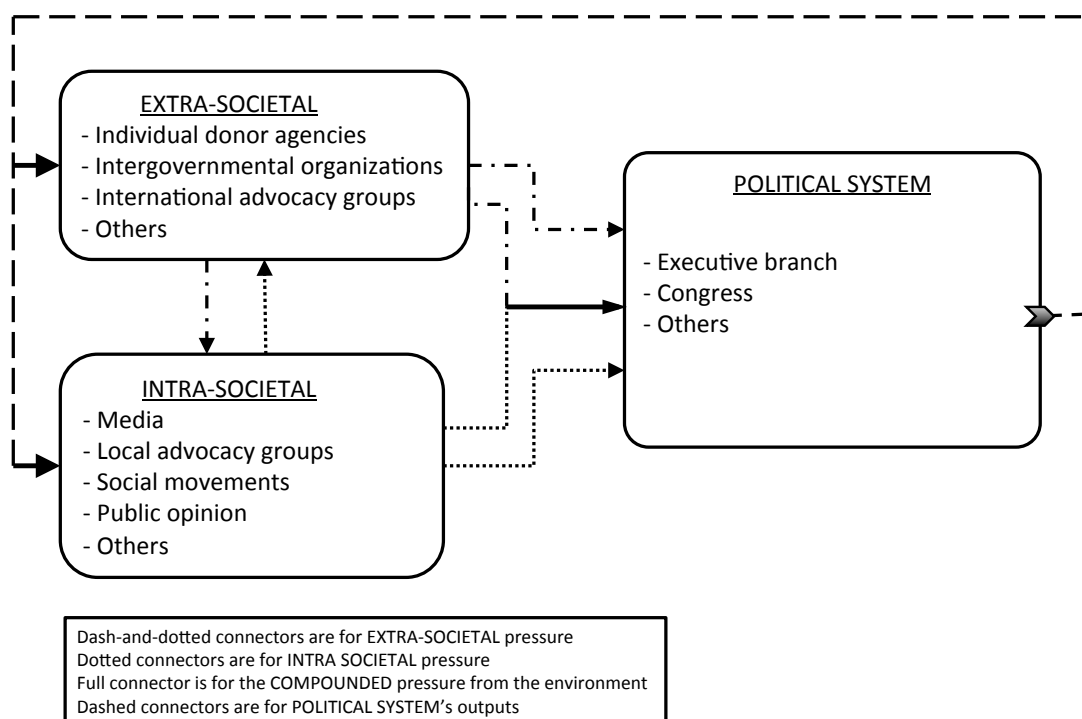


Figure 3. Routes Available for Environmental Pressure

with each other. For example, negotiations of free trade agreements that include the implementation of specific anti-corruption mechanisms are usually conducted exclusively between official representatives of the state parties involved; the same can be said about any special attention given by a media outlet to a corruption scandal, which usually implies the mobilization of investigative journalist without any form of technical or financial support from international organizations.

Second, civil society and international actors can influence each other and thus exert pressure over the political system in an indirect way. This is the case of grants offered by international donor agencies to local NGOs on anti-corruption platforms, or the reproduction on local media outlets of information related to domestic corruption that has international news as a source. The influence can also work in the other direction: national NGOs can be given a role in the review mechanisms of international anti-corruption conventions, as it is the case of the MESICIC, where they present independent reports regarding the state of implementation and changes in the NACS.

Third, civil society and international actors can combine efforts in a more coherent and consistent fashion, resulting in improved possibilities of stressing the system than either one of them had standing alone. For example, foreign governments

can take position with local demands and make public declarations of criticism or condemnation over special cases of political corruption, or their media outlets may adopt local news and provide them with a global reach, thus affecting the international legitimacy of corrupt leaders. In the same way, international reports finding deficient anti-corruption structures in domestic settings are usually reproduced and instrumentalized by local media, forcing the government to deal with diplomatic and popular challenges regarding one common demand.

Disregarding the route through which demands are channeled into the system, there are different ways in which these can manifest. Certainly, civil society and international actors do not exert pressure over the government in only way, but will be found to also have different strategies available to them depending on the intensity of the specific case, the scenario where it is embedded, and the resources available at that moment in time. Each strategy or activity, in turn, has a relative amount of effectiveness attached to it in terms of its potential to stress the system; what this amount is, however, is a matter of empirical analysis, but some intuitive categories can be laid down.

- I. Direct pressure: The first category of the available forms of impact to environmental actors includes those activities that are commonly considered to exert unmediated pressure over the government. For civil society, these are: Public exhortations; popular criticism; protests; advocacy/networking; and, legislative initiatives.

Public exhortations describe speeches, addresses, interviews, press statements, and any other type of public address undertaken by an influential stakeholder against the government regarding specific corruption-related issues.

Popular criticism, on the other hand, is the popular version of public exhortations. Relying on social networks, electronic media platforms, and other elements of the ICT that have democratized political participation and freedom of speech over the past decade, actors of the non-organized civil society are now capable of introducing demands and threatening their input of support to the political leadership. Older forms of popular criticism include citizen surveys of government/presidential support, and other tools reported by

domestic media that measure the level of support and the types of demands arising in society.

Protests describe the physical manifestation of popular criticism, which may take on more pacifist or violent forms depending on the circumstances, but usually represent a more effective way of stressing the system due to its explicit and evident nature.

Advocacy/networking changes the actors involved and reduces the distance between social stakeholders and public officials. Executed by members of the organized civil society such as NGOs and professional associations, advocacy represents a direct effort to influence policy making by approaching the official actors involved in the process of adoption and implementation of anti-corruption actions. This strategy can focus on mid-level public officials in charge of corruption awareness and control inside an agency, or can target senior officials and congressmembers with the intention of bringing specific issues into the political agenda. For these efforts to succeed, policy networks become an important resource: these can be defined as “(more or less) stable patterns of social relations between interdependent actors, which take shape around policy problems and/or policy programmes” (Kickert et al., 1997, p. 6).

The last form of hard pressure usually employed by civil society and opposition political actors is the introduction of *legislative initiatives*, which include popular instruments as the calling to referendum. As this form of pressure is formal and technical in nature, having legal requirement that need to be fulfilled, it is possibly the most costly in relation to the previous ones. A legislative initiative usually requires the conformation of a network of stakeholders with enough resources to harness and mobilize public interest around the issue, making it more time consuming and logistically complex, which in turn leaves it open to attack by a variety of coping mechanisms. However, it also represents a more serious and concerted advance against the stability of the NACS, which might make it a more enticing option if the conditions are favorable.

On the side of the international community, the activities

available under this category are: Public exhortations; international conventions; international agreements; and, aid conditionalities.

International conventions are legally binding instruments that set minimum standards regarding the NACS and practice in national settings. As mentioned before, instruments of this kind are the IACAC, the UNCAC, and others.

International agreements represent a more heterogeneous group of documents that may or may not be legally binding. Current free trade agreements, for example, usually include certain provisions regarding the control of corruption, particularly in the form of national legislation criminalizing transnational bribery. Other agreements, however, are less effective and binding, and sometimes represent mere statements of intentions regarding the position of domestic governments regarding the fight against corruption. Examples of these are the Beijing Declaration on Fighting Corruption (APEC, 2014), or the Andean Plan to Fight Against Corruption (Andean Community, 2007).

Aid conditionalities refer here to any form of linkage between the provision of financial support and the adoption and implementation of anti-corruption measures. These measures may be minimally aimed at controlling the execution of aid projects, or may be more overreaching and include the adoption and implementation of general anti-corruption policies; but they all respond to a trade-off with the providing agency, in which money is exchanged for compliance with the international anti-corruption movement in a similar but opposite way to the activation of clientelistic measures by the government.

- II. Indirect pressure: Diminishing in the their capacity to produce stress on the system, activities addressing the NACS in an indirect manner work more as instruments that stimulate pressure rather than exerting it themselves. Available to civil society, these activities are: Media coverage; technical corruption-related reports; and corruption awareness.

Media coverage is perhaps the most common way of raising concerns about public management among regular citizens. As it was

mentioned before, civil society only becomes aware of corruption involving senior officials through its exposure to corruption news; in this way, media coverage represents a tool to bridge the distance between the political system and the environment, and it allows social and international actors to correct their opinions and attitudes regarding the leadership in line with the presence of corruption. Thus, the press becomes a force able to produce demands and reduce support for the government, giving cues for social mobilization that are normally outside the capacities of other social stakeholders such as NGOs and international organizations. Furthermore, media coverage helps in the communications between stakeholders, carrying relevant information across analytic borders that help the informal coordination of anti-corruption activities.

The production of *technical corruption-related reports* by competent members of civil society represents a sophisticated and academic approach to domestic pressure. These reports stimulate social dissatisfaction and activism by bringing attention to the spread of corruption in national settings and the state of the NACS, which can be used as an objective rationale behind the production of demands and the withdrawal of support.

Corruption awareness, too, aims at stimulating social perception of the state of affairs regarding the fight against corruption, but includes more general approaches than just the production of technical reports. Educational advertisement campaigns in radio and television, open conferences, training courses, and other forms of popular dissemination of anti-corruption standards and norms help decrease the general level of corruption tolerance in a society, and prepare the ground for the channeling of demands after specific objectives are identified.

On the side of the international community, the activities available under this category are: Technical and financial assistance; international cooperation; and, technical corruption-related reports.

Technical and financial assistance differ from aid conditionalities in that they do not come connected to a trade-off

strategy; they merely represent the foreign funding of domestically bred anti-corruption projects and the transfer of knowledge to facilitate the activities related to it. In this sense, technical and financial assistance do not aim at pushing the government towards compliance with international standards, but they provide the conditions to make it harder for the leadership to avoid implementing them. By reducing or completely eradicating the official costs involved in anti-corruption activities, international actors preemptively suppress the coping mechanism ‘argumentative defense’ as the government cannot turn to the excuse that it has no resources to undertake the socially demanded reforms. Therefore, they hinder government negligence and give grounds for the justified emergence of demands.

International cooperation is an extension of the previous strategy, as it also aims at facilitating the adoption and implementation of anti-corruption policies in domestic settings, taking possible forms of ‘argumentative defense’ away from the government.

Finally, *technical corruption-related reports* from international actors include such instruments as international corruption rankings of the like of Transparency International’s (2015a; 2015b) Corruption Perceptions Index and the Global Corruption Barometer; or reports of peer-reviewed mechanisms for the implementation of international conventions, such as the MESICIC (OAS, 2011b) or the UNCAC mechanism (UNODC, 2015).

- III. Influence: The third and final category of impact available to environmental actors is of the subtlest kind. While direct and indirect pressure can usually be traced for their effects (or the lack of them) on the stability of the NACS, to talk about influence is to focus on all those activities that have anti-corruption concerns at their core but that are so ubiquitous that their impact is not explicitly recognized, and thus can barely be said to even exist. Nonetheless, small traces of their existence can be found almost everywhere in the political system. For both civil society and international actors, these activities involve the *general dissemination of corruption awareness and anti-corruption principles and information* targeting not members of the environment,

but public officials. The objective of this influence is to affect the perceptions of the government itself in relation to the social, political, and economic costs of corruption.

Much as the literature on the principal-agent, top-down approach did, influence as a form of impact on the stability of the NACS focuses on facilitating the knowledge required to adopt and implement effective policies to combat malfeasance if the political will of the leadership allows it. Indeed, even if the information is not actually employed, the extensive effort to influence policy agendas increases the costs of the government to secure the stability of the NACS. This is apparent when we consider that, below crucial positions at the top of the leadership, there exists a great degree of discretion available to junior officials in places of policy implementation that may be targeted for anti-corruption education. The potential impact of 'influence' increases drastically when we consider the regular renewal of actors in positions of political power and decision. As not all political actors need be equally invested in the stability of the NACS, the early provision of information regarding the potential social and political benefits of fighting malfeasance may tip the balance in favor of reform. Academic conferences and publications, international and academic discourse, formation of professional networks, and similar activities support the dissemination of corruption awareness among all official actors of the political system.

3. Final Considerations regarding Coping Mechanisms and Environmental Activities

Corruption is a difficult phenomenon to study due to its secretive nature. The actors involved in it are invested in keeping their activities hidden from public perception, and so it is almost impossible to directly measure corruption, particularly of the high-level kind. The only information we have regarding events involving senior officials regards those accounts provided by investigative journalism, or the results from official investigations and prosecutions. In consequence, to talk about grand corruption is in reality to talk about the specific instances where it has actually

been detected or claimed. Transparency International's Corruption Perception Index in part solves this problem, but it does creating a new one: To bypass the bias related our dependence on variables such as the media or the judiciary, it relies on popular perceptions, which is in itself another bias. Cases of petty corruption are easier to study due to the accessibility of regular citizens to such transactions, the ease with which they report them in surveys after anonymity is guaranteed, and the relatively small interests that are affected. Certainly, it is easier to uncover a petty bribe to obtain a driver's license, than a multimillion embezzlement of insurance funds.

Coping mechanisms can be said to be even harder to detect and assess than corruption. While the latter relies on secret transactions and illegal networks of trust, the former is done completely in the open, at least in terms of the activities implemented. Because of the public nature of coping mechanisms, the official rationale behind them needs to be clearly established in every case, and this effort engulfs the actual reasons that inspired the activation of the mechanism in the first place. For obvious reasons, to publicly present a government measure as a way to cope with demands by not actually satisfying them would completely defeat its purpose. Coping mechanisms, after all, are also outputs like any other government decision, with the crucial difference that their motivation is purely instrumental for the interests of the political leadership. Therefore, *it is not the official activity itself which identifies a coping mechanism, but the real and hidden rationale behind it*. The political motivations and objectives behind the introduction of a legislative bill regarding augmented powers for anti-corruption prosecutors, for example, will ultimately reveal if the bill can be catalogued as a coping mechanism or as an actual anti-corruption measure aimed at modifying the NACS.

But, how can the motivations behind coping mechanisms be assessed? Whereas corrupt activities, even if hidden, are ultimately instances of actual behavior involving one or more actors and usually a trail of money or other goods, motivations behind coping mechanisms never need to be stated on any material way and remain in the psyche of the political leaders, unknown to anybody but them. However, just as corruption can be implied from evidence of illicit enrichment, the presence of conflict of interests, the abuse of power and other forms of inappropriate behavior that may or may not be corrupt by themselves, coping mechanisms can also be identified by the presence of other events or activities that provide ample ground to state that a certain government action has effectively managed to reduce anti-corruption pressure from

the environment. Although it will remain impossible to posit with no margin of error that a certain activity indeed represents a coping mechanism, a methodic approach based on recurrent patterns of behavior and the cautious and alert identification of coincidental/accidental events will provide enough grounds for relevant inferences.

The first challenge faced in the following chapters is to identify the instances of anti-corruption pressure following the presence of one or more environmental activities to that end, under any of the anti-corruption scenarios described in the previous chapter. If the theory proves correct, we should be able to find in most cases at least one coping mechanism activated by the political leadership in order to deal with the stress; this is the second challenge. Although not all cases of environmental pressure and coping mechanisms need to occur in response to each other, the clustering of these event will give strength to the predictive power of the theoretical framework, and explain how the Peruvian government has managed to keep the NACS relatively stable in the time period evaluated here.

While the purely theoretical description of a systems model of corruption and anti-corruption reform suggests that coping mechanism are activated by the government upon the presence of corrupt activities or reform pressure, it is entirely feasible that proactive political leaders may find use for coping mechanisms besides their reactive nature, and choose to activate them preemptively in order to accumulate popular and international support. Just as promises of economic satisfaction may balance out and counteract demands for anti-corruption reforms, the latter can also be promised to assuage economic demands that are not in line with the ideological stand of the government party. In this case, therefore, coping mechanisms do not perform the job of protecting the NACS, and cannot be appropriately identified as such.

On the other hand, they may also be proactively activated in direct relation to future corruption events, in the expectation that certain degree of support will be withdrawn. Although in these specific cases coping mechanisms would be found to comply with their role as described in the theoretical model, the identification problems described earlier will become usually unmanageable in any appropriate way. Without the presence and relevance of the context to provide support to claims regarding the identification of a coping mechanism, the latter cannot convincingly be differentiated from an honest anti-corruption output, or a coping mechanism serving unrelated political agendas. Therefore, although theoretically real, preemptive coping mechanisms will in most cases not be amenable to be identified as such.

It also needs to be noted that the coping mechanisms and environmental activities listed here were not intended to provide an exhaustive list of all the possible instruments and measures available to the political system, and to the civil society and international actors. The only purpose of those described in this chapter was to provide an idea of the common and theoretical possibilities open to both groups of actors. It is evident enough that the number of mechanisms and activities theoretically available to social and political actors is only limited by human imagination and resources, which are constantly increasing and evolving. However, when considering their real world applicability, it is clear that their actual availability is connected to the type of country and political system we consider, with some settings being institutionally hostile or repressive towards certain environmental activities, in particular.

While the theoretical model introduced in this chapter is envisioned as a proposed framework for the analysis of corruption and anti-corruption reform in most developing countries, beyond its core tenets the variety of coping mechanisms, stakeholders and pressure strategies will better describe political systems characterized by the stability of contested anti-corruption schemes, and that fit into the classification of liberal or electoral democracies (Diamond, 2002), and to some extent even delegative democracies (O'Donnell, 1994) or competitive authoritarian regimes (Levitsky and Way, 2002). The reason for this qualification stems from the model's focus on the political struggles around the presence of corruption, which has implicitly considered that political leaders, on the one hand, and domestic and international actors, on the other, are predominantly constrained by the availability of resources and predominance of interests in relation to the issue of public malfeasance, but otherwise in a level playing field in terms of formal political rights. This is, the model (as is) does not include forms of social and/or political control beyond those found in the above-mentioned types of regime and besides corruption-related coping mechanisms: non-governmental actors are considered to have at their disposal the widest array of legal channels and instruments, affected only when in direct connection to the control of anti-corruption pressure, such as the cases of *repression/coercion* and *obstacles to advocacy*. Thus, while an adapted version of the array of instruments presented here might be suitable for slightly more authoritarian regimes, extreme examples of systemic political repression such as autocratic or totalitarian regimes would require us to reevaluate the role of non-governmental

stakeholders as a source of support, and even the relevance of corruption as a source of stress entirely.

Additionally, it is possible to see that a similar leeway is inherent to the model in regards to the behavior of the political system: even though the employment of any coping mechanism is dependent on the technical, political and financial capabilities of the administration at the specific moment of activation, the types of political systems cited above are considered to have a constant theoretical availability of all the mechanisms described by the model, which could be *potentially* employed provided that their technical, political and financial requirements are met. It is precisely under this premise regarding the maximum theoretical availability of pressure activities and coping mechanisms that the argument elaborated in the present chapter clearly points to the predominance of the latter over the former, which in turn has been proposed to explain Peru's limited adoption and implementation of anti-corruption policies over the last decade and a half. In other words, the hypothesis introduced in the introductory chapter finds theoretical support in the number and variety of strategies identified here as long as they are constantly available for potential activation (this is, despite the presence of temporary or circumstantial constraints).

4. Real Anti-Corruption Activities and Reform

Regardless of the rather pessimist approach that the Systems Model of Corruption and Anti-Corruption Reform might represent at first glance, its core utility is to offer a realistic approximation to the dynamics of corruption in the presence of a political regime such as the Peruvian one,³² and does not inherently reject the possibilities for real anti-corruption activities, or even reform, being engaged by the government. The analysis described in this chapter emphasized the role of interacting forces behind the tensions caused by corruption, without predisposing the results of that tension to any given result. Rather, each individual process in real life will be brought to an end following the empirical values of the interacting forces, namely those of stress and government endurance; and although the model suggests a more powerful position from which the political system can secure the stability of the

³² In the last three decades, Peru has moved from a delegative to an electoral democracy (or even to a liberal one—Diamond, 2002), only falling briefly to forms of competitive authoritarianism during the last years of the Fujimori administration (1990-2000).

NACS, the carrying out of activities to fight malfeasance have without a doubt become a part of regular public administration, providing an argument for the possibilities of change.

The variety of coping points and mechanisms against the strategies available to environmental actors describes an uneven ground to push for anti-corruption activities, but does not doom reformist to failure; after all, the stability of the NACS are not a condition for the persistence of the political leadership *per se*, but rather a quality of the political system developed by a lack of effective opposition. In other words, the NACS have persevered and keep being defended because it pays off to do so in political and/or economic terms. As long as coping mechanisms are able to generate enough support to allow the political leadership to continue pursuing its own agenda, it will not be reasonable to expect any real change in the NACS. Thus, two natural conditions can be drawn from the tenets of the model that would allow the power relations in a country to be disturbed in specific cases: First, as agency plays a crucial role in the stability of the NACS, for its breaking point is defined by the value that corrupt profits have for a specific set of leaders, a honest government will find coping mechanisms more costly vis-à-vis the amount of support they generate. Taking the case of a political leadership that has (hypothetically) no economic or political interest in benefitting from corruption, its expected response should follow the most effective and efficient way of stimulating support from society and international actors, which in many cases will be to engage in real anti-corruption reform. Thus, by devaluing corrupt profits as a source of political interest, the model suggests an improved position from which to launch anti-corruption pressure. This condition, in fact, is what might account for most of the current progress in bureaucratic control mechanisms: as political parties have lost much of their appeal for stimulating partisanship, and most citizens in modern societies have become disengaged from membership into political groups, it was to be expected from the government to stop concentrating in handing out bureaucratic positions to its party ranks, and instead to allow the introduction of anti-corruption mechanisms specially targeting administrative processes as a form of stimulating public satisfaction and support.

A second condition, when a more honest leadership cannot be attained, relates to the way resources are employed by each side of the confrontation. Although the model proposes the existence of a vast number of coping mechanisms available to the government, they all differ in the amount of support they can stimulate, and this

potential is even more relative depending on the specific corruption scenario affecting the political system. A perfect example of the subordinate value of coping mechanisms is the scenario of *prolonged stress*, where the failure to generate appropriate and timely responses allows the accumulation of sufficient stress as to render any newly activated coping mechanism useless. Thus, prolonged stress evidences a crucial characteristic of both pressure and coping strategies: their efficacy depends on particular conditions, and these must be addressed empirically rather than theoretically. For anti-corruption activities and reform to become possible, the model only suggests that the accumulated pressure must be higher than the support stimulated by coping mechanisms, with even the period of time over which these forces must be exerted being up to historical analysis. If this condition is met, there is no reason suggested by the model for which real anti-corruption activities should not be expected, given that other potential intervening variables are held constant. On the complete opposite side, this way of conceiving possibilities for reform also suggest that not every form of pressure will need to be met with the activation of a coping mechanism, for specifically defensive outputs might be more costly than the minimum deviation in support, and regular government outputs more efficient.

To conclude, and to bring the above two conditions together, the theoretical model introduced in the present chapter allows for a flexible explanation of corruption and anti-corruption processes based on returns, which are valued by reference to particular political leaders and specific political circumstances. Thus, while for some leaders the NACS might not have any value by itself, others might prioritize its defense over the stimulation of support above the bare minimum; and while the former will probably concede to engage in anti-corruption reform after it becomes inefficient to keep deflecting the issue, the latter will only give in after corrupt rents have become unsustainable and political capital is all there is left.

Chapter V

End of the Fujimori Regime and the Transitional Government

From the discussion over a theoretical model with which to address the core question of this study (i.e. what explains Peru's limited adoption and implementation of anti-corruption policies between 2000 and 2014?), we turn now to empirically testing its basic tenets, namely the existence and activation of coping mechanisms to deal with different forms of pressure from civil society and international actors. The time period covered includes (although not in their entirety) the governments of Alberto Fujimori, Valentín Paniagua, Alejandro Toledo, Alan García, and Ollanta Humala. The present chapter will focus on the last months of the Fujimori government and the brief term of interim President Paniagua. By reviewing the fluctuations in the input of demands and support, and the activation of certain coping mechanisms, the events leading to Fujimori's demise and the recovery of democratic government will provide initial support to the strength of the theoretical formulations presented in the previous two chapters.

1. Preface: Fraud in the 2000 Presidential Elections

By now many studies have attended to different aspects of the Fujimori government, which went on from 1990 to 2000 (Degregori, 2001; Conaghan, 2005; Carrión, 2006; and, Murakami, 2007, to name but a few). Beyond the social, economic, and political aspects of his peculiar regime, one aspect that comes out in any account is the spread of systemic corruption that characterized the decade. As we know now, Fujimori's government managed to seize control of most of the institutions of the country, from the military to the media, with the help of his main advisor, Vladimiro Montesinos. But most of the information regarding the illicit dealings of the government leadership came only in the aftermath, after Fujimori's third government had come to an abrupt end and he had fled the country.

By the time of the electoral process of 2000, the biggest source of pressure from civil society and international actors had to do with the government's blatant abuse of power the possibility of electoral fraud, which is also a type of grand corruption but with special and grave consequences to a democratic system. Fujimori's efforts to stay in office for a third period included the control of Congress,

the Constitutional Tribunal, the National Electoral Jury (*JNE*), and the National Office of Electoral Processes (*ONPE*); these institutions were crucial to secure a legally viable way of running for office for a third term, as the Constitution of 1993 explicitly stated that the president could be re-elected only for one additional consecutive term. On top of this, the government was regularly employing public resources in support for Fujimori's candidacy,³³ openly acting against the principle of neutrality.

Notwithstanding the abuse of authority showed by the leadership, presidential approval among citizens had been on the rise since February 1999, and by the same month of 2000 more than 50% of the population approved of Fujimori as president, and voting intentions were giving him an ample margin of success above that of the opposition candidates: more than 40% declared their intentions to vote for Fujimori, while none of the challengers reached even 20% (Carrión, 2000).

To face the challenge, several institutional environmental actors mobilized to either stop Fujimori's campaign or to make sure the process was carried out with a minimum level of fairness and transparency. Peruvian opposition and advocacy groups invested their efforts in stopping Fujimori's candidacy through legal means by presenting motions of impugnation or resorting to public exhortations to the JNE³⁴ (Castro Hansen, 2002). International agencies and organizations such as the Carter Center, the National Democratic Institute for International Affairs (NDI, 2015), the International Federation for Human Rights (FIDH, 2000), the International Center for Human Rights and Democratic Development, and the Organization of American States (OAS, 2000) sent observation missions to monitor the elections (Castro Hansen, 2002; Tanaka, 2006).

However, the combined efforts from both environmental groups of actors were insufficient to keep the government at bay, and by the end of the second round of elections Alberto Fujimori won over opposition candidate Alejandro Toledo, who had informally resigned after the first round in an attempt to boycott the whole process. The reports from the observation missions were critical of the way the government had carried on the process, and their reports corroborated what was widely known by

³³ Political magazine *Caretas* read: "Government registers thousands of people to Family Plots Program, less than 2 months to elections. [Fujimori's party] *Perú 2000* in campaign" (Escobar y Sullón, 2000; translated from Spanish).

³⁴ Peruvian NGO *Transparencia* demanded the update of the electoral register; and later it publicly requested to participate, in association with the OAS, in the *quick count*, but was confronted with government allegations to the OAS stating that the NGO was biased (Gonzales Arica, 2000a).

domestic actors in Peru, and gave support to their positions against Fujimori's campaign. The mission from the OAS (2000) concluded that:

“After nearly three months of continuous work in Peru, the Electoral Observation Mission (EOM) of the Organization of American States issued its final assessment of the general elections, noting that ‘by international standards, the Peruvian election process falls far short of what could be called free and fair’... The overall assessment points to persistent inadequacies, irregularities, inconsistencies, and inequities, leading the Mission to qualify the entire electoral process as irregular, to use one of the categories listed in the Manual for the Organization of Electoral Observation Missions issued by the General Secretariat of the Organization of American States.”

The conclusions from the Carter Center (NDI and Carter Center, 2000) had an even harsher tone:

“The 2000 election process in Peru failed dramatically to meet minimum international standards for a genuine, democratic election. As a result, the people of Peru were denied the opportunity to exercise their right to democratic elections, and the government that emerged from the elections lacks a legitimate mandate based on the will of the electorate. Almost all of the groups observing the electoral process in Peru, including NDI/Carter Center, the OAS, the European Union, the *Defensoría del Pueblo*,³⁵ *Transparencia*,³⁶ and *Consejo por la Paz*,³⁷ decided not to observe the second round of voting on May 28, affirming their belief that the electoral process was neither legitimate nor credible. This broad consensus among various Peruvian and international observer groups that the election process did not meet international standards speaks to the extraordinary extent and severity of the irregularities that were documented throughout the process.”

The end of the electoral process did not equally end the waves of social unrest,

³⁵ Peruvian Ombudsman.

³⁶ Peruvian NGO.

³⁷ Official forum created by Law No. 25237 on June 8, 1990.

but these rather gain strength over the following weeks. Under the leadership of Alejandro Toledo, the domestic front began a cycle of public speeches and manifestations of condemnation against the illegal re-election of President Fujimori, connecting with severe critics from the OAS' Secretary General, César Gaviria. However, the international front was anything but cohesive in its position regarding Fujimori's government, and while electoral missions had taken a critical approach, other influential actors in the hemisphere were more tolerant, and even supportive. Aided by several countries, particularly Brazil and Mexico (Basombrío, 2001; Pevehouse, 2005), Fujimori managed to avoid sanctions and regional isolation at the OAS level, and got away with the decision to create a Dialogue Table³⁸ between members of the government and representatives from civil society and opposition groups to discuss actions for the democratization of the country.³⁹

On top of the diplomatic failure of the United States to get actions approved against the Peruvian government at the regional level (Jones, 2000), the Clinton administration showed a continuous inconsistency, going back and forth in its declarations regarding bilateral relations; finally, it bet for political stability and the eventual normalization of internal affairs, demonstrated by the presence of the U.S. ambassador at Fujimori's inauguration on July 28, and the fact that none of the US\$ 125 million in aid allocated to this country for the year 2000 was suspended (McClintock, 2001).

The issue of Vladimiro Montesinos followed a similar pattern. Although some actors of the American government saw with good eyes a third term of Fujimori, and drug czar Barry McCaffrey was considered to be very close to Montesinos concerning the American support for Peru's war on drugs (McClintock, 2000), journalist sources reported on early July the apparent streamlining of positions between the United States Congress and the OAS (LP, 2000/07/24): some sectors had decided to push Fujimori for the immediate removal of his main advisor, particularly for his record of attacks against human rights, the media, and a fair electoral process (Gonzales Arica, 2000b). What was clear, however, was that the American senate had frozen in June a financial support of \$42 millions aimed at fighting the production of drugs in Peru pending information on effective progress in the country's democratic record, only to

³⁸ Resolution No. 1753.

³⁹ This decision was considered lukewarm by the democratic forces of Peru. Nonetheless, the political opposition still saw it as an opportunity to continue pressing the government (Paniagua Corazao, 2002).

green light it again in early August (Páez, 2000a). This lukewarm employment of *aid conditionalities*⁴⁰ with no real intention of backing their official discourse could not have meant much pressure for the Peruvian leadership, and indeed did not affect Fujimori's position in any apparent way.

Under these circumstances of social convulsion but tepid international monitoring, opposition leader Alejandro Toledo called on all social and political forces of the country to gather together on the days prior to Independence Day (which was also the day Fujimori would take oath for his third term in office) on a massive social mobilization he dubbed the *Marcha de los Cuatro Suyos*. In the meantime, President Fujimori and main advisor Vladimiro Montesinos were busy buying off a majority in Congress that the elections had not provided.

2. Road to Change: July-September, 2000

On July 28, 2000, the political system and its domestic environment collided in their efforts to bring stability or stress, respectively. As the days had closed to the beginning of Fujimori's third term in office, his party *Perú 2000* had managed to secure (through illegal means, as would later be revealed) an absolute majority in Congress, even though the elections had only given the party 52 out of 120 parliament seats. As newspaper *La República* recalls, “[i]n the year 2000, 18 congressmembers elected to other parties were added to Fujimori's government party, in exchange for money”⁴¹ (Sánchez, 2011). Fujimori's strategy of *risk management*,⁴² aimed at lawfully controlling the legislative branch, had been activated as early as June, soon after the second round of the presidential elections had finalized. *Caretas* (2000/06/22) magazine reports in its issue of June 22 that at least eight congressmembers had become turncoat, with others probably following in a more low profile fashion. Thus, the government efforts to keep parliamentary functions such as audit and other forms of financial and political control under its power had paid off. The most immediate threat, however, was on the streets.

Ever since the official ending of the electoral process, Alejandro Toledo had

⁴⁰ As described under international pressure activities, direct pressure.

⁴¹ Translated from Spanish.

⁴² As described under the scenario of corruption perception, coping point of output concealment (1st round).

begun to employ ever increasingly activities of *public exhortation*,⁴³ openly questioned the legality of Fujimori's power, and had announced the formation of a movement of 'peaceful resistance,' which would go indefinitely until the elections were considered void (Emol, 2000/05/30). On July 28, Independence Day and the official beginning of Fujimori's third term, Toledo's *Marcha*, which had congregated in downtown Lima over thirty thousand people (Tenorio, 2000) from all regions of the country, was violently repressed by the police, resulting in 207 people being arrested (Caretas, 2000/08/03) and 9 getting killed. This event can easily be identified, following our theoretical model, as the environment investing in *protests*⁴⁴ against the government, and the latter activating one of the most common of coping mechanisms, *repression*.⁴⁵ However, the government activated almost immediately a second mechanism, *plaintiff discredit*.⁴⁶ Members of the National Intelligence Service infiltrated the *Marcha* (Páez and Aguirre, 2011) in order to vandalize the buildings of the Ministry of Education and the JNE, and to detonate a bomb in the building of the National Building (Loli, 2013), causing its complete destruction. Members of the government were fast to blame these actions on the poor and violent leadership of Alejandro Toledo. As newspaper La República (LR, 2000/07/30b) read in its front page, "Fujimori confirmed yesterday that from the Government side there is a hardline regarding the organizers of the peaceful *Marcha de los Cuatro Suyos*: to accuse them of terrorism."⁴⁷ Thus, the social front of the opposition forces was all but delegitimized, and the immediate stress to the stability of the NACS was dealt with (Tanaka, 2000).

The international front, on the other hand, was moving slowly.

As previously noted, the presence of friendly governments (Brazil, Mexico) and tolerant powers (United States, OAS) had provided Fujimori's new government with the necessary level of international recognition. Domestic media outlets, however, kept reproducing notes from a number of foreign actors that kept calling on Fujimori to revise his authoritarian style. This was the case of the ex-president of Argentina, Raúl Alfonsín, who visited Lima in the days prior to the *Marcha de los*

⁴³ As described under domestic pressure activities, direct pressure.

⁴⁴ As described under domestic pressure activities, direct pressure.

⁴⁵ As described under the scenario of corruption perception, coping point of negative input defuse (1st round).

⁴⁶ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁴⁷ Translated from Spanish.

Cuatro Suyos to show his support to the opposition forces, or the *public exhortations*⁴⁸ made by American presidential candidate George W. Bush (LR, 2000/08/03), the Brazilian media (LR, 2000/08/04), the Wall Street Journal (LR, 2000/08/05), the European Union and the OAS (LR, 2000/08/08). Notwithstanding the limited effects (if any at all) of these criticisms over the NACS, opposition groups in the country consistently kept using them as a way to keep public awareness and pressure.

The most important strategy left for the environment, after popular mobilizations were delegitimized, was the OAS' Dialogue Table which was meant to keep the discussion alive and represent an opportunity for opposition actors to keep exerting pressure over the government. The agenda prepared by the High Level Mission (created by OAS Resolution No. 1753) included the independence of the judiciary, freedom of speech, congressional checks and balances, accountability, and other important issues related to the quality of democracy (Soria Luján, 2010). Naturally, these items represented an attack against the stability of the NACS, not to mention the bigger picture of Fujimori's personalistic and authoritarian rule. But the Dialogue Table itself represented also a superb opportunity for Fujimori's government to cope with international and domestic pressure. From the beginning, the OAS decision to send a High Level Mission to intercede between the political forces of the country had fallen short of the show of international isolation that domestic actors had expected against Fujimori's government, and it had meant the implicit acceptance and validation of the electoral results (Paniagua Corazao, 2002; Tanaka, 2005). After getting its foot in the door, the government only faced the *technical assistance*⁴⁹ imposed by the international community in the form of the Dialogue Table. Ironically, this intervention by the OAS offered an exceptional opportunity for the government to assuage demands and boost support by mimicking an interest in democratic reforms: by either providing some *political concessions*,⁵⁰ or better yet, making a big display of symbolic *reform support*,⁵¹ the government could effectively

⁴⁸ As described under international pressure activities, direct pressure.

⁴⁹ As described under international pressure activities, indirect pressure; in this case, the assistance had a clear political nuance, but remained limited to being an indirect instrument, supplying the opposition with a forum through which to pressure the government for reforms that would impact the NACS.

⁵⁰ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

⁵¹ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

cope with stress without having to actually give up its core instruments of power. Tanaka (2000, p. 13) is also of this opinion:

“In sum, I believe that the Government has managed to surpass all obstacles that it faced in the short term. Fujimori is still head of state, although its legitimacy is being questioned, both in the domestic and the international fronts. Many sectors showed their disposition to exchange the provision of legitimacy to a government that was the result of fixed elections, for the promise of democratization within a reasonable period of time.”⁵²

The symbolism of the government's participation in the Dialogue Table became evident very soon, and by the end of August opposition leaders were expressing their frustration at the dilatory maneuvers adopted by government representatives. The meetings supported by the OAS had so far failed to address the proposed agenda, and no relevant agreements had been made; in fact, the government was still insisting in discussing the conformation of specific commissions for attending to different topics, an attitude that was understood by the opposition as a mere exercise in futility and a strategy to wear them down. It was clear for them that Fujimori had no intentions of applying actual democratizing measures, notwithstanding the official discourse (Kadena, 2000).

But while the Dialogue Table struggled, something unexpected was taking place. Although most authors writing on Fujimori's government see September 14 as the day the collapse of the government officially began, there is a prior event that left the political system vulnerable to environmental pressure. On August 21, the same day that the Dialogue Table was installed, Fujimori and Montesinos (sitting beside the ministers of Defense and Interior, and the head of the National Intelligence Service) gave a press conference to inform of a successful intelligence operation to dismantle a criminal network of arms dealers in the jungle of Peru. The criminals, so they informed, that had been smuggling ammunition from Jordan and dropping it by plane on the territory of the Colombian FARC. Dubbed the ‘Operation Siberia,’ it was presented as an effort of almost two years directly commanded by Vladimiro Montesinos himself, without the knowledge of the Colombian authorities (Hinojosa,

⁵² Translated from Spanish.

2000a).

Imagined in part as a *smokescreen*,⁵³ and in part as a preemptive *argumentative defense*,⁵⁴ the news were quickly suspected for their content and timing. Ombudsman Jorge Santistevan was the first one to bring attention to the extreme coincidence in which the story of Operation Siberia broke, being on the same day that members of the opposition were sitting down with the government to discuss the terms of democratization (LR, 2000/08/22). Colombian authorities, on the other hand, were also quick to respond to Montesinos allegations and state that they had had knowledge of the existence of arms being smuggled into FARC territories for over a year, and that Montesinos statements had not been accurate. Finally, independent Peruvian media suspected that the press conference might have had the intention of showing the expertise of Fujimori's government in military intelligence (Caretas, 2000/08/24), in a *manipulation of public priorities*.⁵⁵ However, the reality was much more obscene, as it would become known in the following days.

Followed by heavy and critical *media coverage*,⁵⁶ new pieces of information regarding Operation Siberia kept emerging daily as the event evolved, until the true nature of the arms trafficking came finally to light on August 25: authorities of Jordan refuted Fujimori's description of the scandal, and declared that the weapons had been officially purchased by representatives of the Peruvian military (LR, 2000/08/25). There was no controlling popular perceptions now, as the event was arduously followed by the media, covering front pages day after day. Fujimori's government tried to take attention away from the scandal by resorting to *smokescreens*,⁵⁷ *political concessions*,⁵⁸ *argumentative defense*,⁵⁹ and *environmental repellence* such as radically changing its official position regarding a life sentence against infamous convicted terrorist Lori Berenson (Romero, 2000), giving explanations in person to Colombian president Andrés Pastrana (LR, 2000/09/01) (together with a written

⁵³ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁵⁴ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁵⁵ As described under the scenario of corruption perception, coping point of negative input defuse (2nd round).

⁵⁶ As described under domestic pressure activities, indirect pressure.

⁵⁷ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

⁵⁸ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁵⁹ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

report of Operation Siberia), agreeing on a fifteen-days deadline to settle various politically controversial cases⁶⁰ with representatives of the opposition, and harassing opposition and independent media (Inés, 2000).

Finally, media attention on the case began to dwindle after the first week of September, as Congress rejected the motions introduced by the opposition to officially investigate the connections between the government and the arms dealers. At the end, the whole event cost Fujimori a decline of 7% in popular approval, and a whooping 62% of Peruvians demanding new elections (LR, 2000/09/09), in a clear show of *popular criticism*.⁶¹

The core of the issue, however, had been on the international front all along, and although public perceptions in Peru continued to slowly turn against Fujimori's government, foreign actors represented the biggest source of threat for the leadership at this point. From the beginning, Colombia, Spain and Jordan, who had been included in the information regarding Operation Siberia and the route for arms smuggling into FARC territories, called into attention several elements of the report given by Fujimori and Montesinos that were not truthful. The American reaction, however, was initially positive. Richard Boucher, spokesperson for the U.S. Department of State, qualified in good terms the actions taken by the Peruvian authorities, highlighting the importance of having the whole region invested in controlling the Colombian conflict (Hinojosa, 2000b). It was not until after the involvement of government representatives in the arms purchase from Jordan was revealed, that the White House took a more critical position and demanded additional information to clarify the embarrassing affair (LR, 2000/08/29). The coping mechanisms activated by the government, which were mentioned earlier, mostly point at dealing with international pressure and not domestic. Even the radical change regarding the imprisonment of American citizen Lori Berenson for charges of terrorism was a *political concession*⁶² to the U.S., and not just a *smokescreen*.⁶³ For opposition leader Alejandro Toledo, it was indeed both: "I have the clear impression that this is first a smokescreen and a political move to ameliorate the decision of the

⁶⁰ Specifically, the cases of Baruch Ivcher, the Constitutional Tribunal, the return to the Inter-American Court of Human Rights, and the reform of the National Intelligence Service.

⁶¹ As described under domestic pressure activities, direct pressure.

⁶² As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

⁶³ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

Department of State and the American government, who have requested from Jordan to explain the arms purchase”⁶⁴ (LR, 2000/08/30a).

The importance for this case of the international community as a source of stress for the stability of the Peruvian NACS became evident much later, after Fujimori’s government had collapsed. It has already been stated that the press conference of Operation Siberia was in part a *smokescreen*,⁶⁵ and in part a preemptive *argumentative defense*.⁶⁶ Although the situation soon escaped the government’s hands, the motif behind it was to get ahead of a scandal that was unavoidable, and to control the news by choosing the way in which it would first be presented. According to Caretas magazine in an article from 2006, “the situation was that several intelligence agencies were following Montesinos tracks, and the press conference was a desperate attempt to escape the problem that was promptly arising”⁶⁷ (Caycho, 2006). Ugaz (2014, pp. 221-222) confirms this reading of the event: “Everything indicates that Montesinos, finding himself caught, convinced Fujimori of the necessity of getting ahead of the Americans [who already had knowledge of the participation of Peruvian officials in the smuggling of arms into FARC territory] and to give a press conference to inform the country of the alleged discovery...”

Thus, the activation of these and subsequent coping mechanisms were inspired by the government’s need to preemptively address a scenario of high stress, which had its origin in the activities of the international actors. The government reaction, however, did not succeed in keeping international demands away, and it injured the political system greatly. Only one week after the media attention of Operation Siberia began to decrease, the biggest scandal to hit Fujimori’s government would explode, finding the leadership unable to cope with stress any longer.

3. The First *Vladivideo* and the Collapse of Fujimori’s Government

Having barely come out of the arms smuggling debacle, the government was hit by yet another scandal that, unlike any other before, stripped the political corruption that had been rampaging for some time already. Pozsgai Alvarez (2013, p.

⁶⁴ Translated from Spanish.

⁶⁵ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁶⁶ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁶⁷ Translated from Spanish.

1) briefly describes the events:

“The day of September 14th, 2000, can be considered a turning point in Peruvian politics, one of those dramatic moments whose impact is still very much present throughout the years, affecting the whole political experience of an entire generation. That day, passed 6pm, congressman Fernando Olivera, Luis Iberico, and Susana Higuchi from the political party *Frente Independiente Moralizador* (FIM), were in the middle of a press conference in the Bolívar Hotel, a few blocks away from the National Parliament. Both Olivera and the FIM had by then earned for themselves a name between the few references in Peruvian politics regarding active efforts to fight corruption in the higher levels of government, a pursue that had been ongoing since the decade of the 1980s, during the first administration of Alan García...

The first cassette of what would be later dubbed the *vladivideos*, in reference to the president’s main advisor Vladimiro Montesinos, was exhibited for the attentive eyes of all the press corps and the Nation at large, in a show that could easily be described as abominable: Montesinos himself was seen in a small office of the National Intelligence System, of which he was considered to be a powerful figure (if not the head), sitting down with *turncoat* Congressman Alberto Kouri, negotiating in monetary terms the latter’s departure from *Perú Posible* and his recruitment in the ranks of the government’s party. In short, the video was showing the effective bribing of a congressman to change his political allegiance, conducted by the person who had been publicly acknowledged throughout the past decade to be Fujimori’s right hand.”

The news of bribery involving Montesinos confirmed the suspicions that Fujimori’s party had not obtained his congress majority through honest means; furthermore, it exposed once and for all the true nature and role of the presidential advisor, whom for a decade had been exerting political power in the shadows. Needless to say, the political opposition and civil society at large used this opportunity to go all out and to stress not only the NACS, but most importantly the

continuation of Fujimori's party in office. Unabating *media coverage*,⁶⁸ universal *public exhortations*⁶⁹ and condemnation, and continuous *protests*⁷⁰ took place almost instantly: News of government corruption filled the front page of newspaper *La República* almost every single day for over two months; while representatives of the Catholic Church in Peru, the Ombudsman, associations of the private sector, opposition leaders, and even the U.S. Government demanded a swift investigation and the prompt capture and prosecution of Vladimiro Montesinos (LR, 2000/09/16a). The opposition and civil society even informed the OAS that their participation in future meetings of the Dialogue Table was conditional on the performance of the government regarding those enforcement activities (LR, 2000/09/16c). Opposition congressmembers took the same stance, and threatened with boycotting Congress sessions unless an investigatory commission was duly formed (Chirito, 2000). On the streets, citizens carried on mobilizations and protests in various parts of the country (LR, 2000/09/16b).

Environmental pressure was reaching a point where the normal execution of government activities was being threatened, stressing the two essential variables of the political system as they have been described in Chapter II. In this scenario, the government had no choice but to activate several coping mechanisms one after another. Within one week of the *vladivideo* press conference, Congress had formed a *committee of investigation*⁷¹ to address the responsibility of turncoat Alberto Kouri, but had designated members of the incumbent party for two of the three available posts,⁷² thus activating a strategy of *risk management*⁷³ in order to secure that the committee was under Fujimori's control. When the opposition forced its recomposition, the officialist forces again managed to designate members of the government party for the majority of the committee.⁷⁴ This way, after two weeks of environmental pressure, the government had managed (for better or worse) to postpone the creation of any committee of investigation (Caretas, 2000/09/28).

A second approach taken by the government was the provision of *political*

⁶⁸ As described under domestic pressure activities, indirect pressure.

⁶⁹ As described under domestic and international pressure activities, direct pressure.

⁷⁰ As described under domestic pressure activities, direct pressure.

⁷¹ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

⁷² Miriam Schenone Ordinola and Guzmán Aguirre Altamirano from *Perú 2000*.

⁷³ As described under the scenario of corruption perception, coping point of output concealment (1st round).

⁷⁴ Mirianella Jesús Monsalve Aita and Pedro David Vilchez Malpica from *Perú 2000*.

concessions.⁷⁵ Almost immediately after the video was released, and seeing that there would not be an easy way to alleviate the pressure this time, Fujimori announced that new elections would be held without his participation, and that his third government would be cut short by surrendering office at the end of its first year (Berntzen and Skinlo, 2010). The formal legislative project to make this possible was sent to Congress on September 19th by Prime Minister Federico Salas,⁷⁶ but it was criticized by the opposition and the media for not considering the dismantling of the networking of government cronies that controlled the electoral apparatus (LR, 2000/09/19). In response to Fujimori's proposal, the opposition in Congress introduced another legislative project proposing the almost immediate dismissal of the heads of the ONPE and the National Registry of Identification and Marital Status (*RENIEC*), and the replacement of the representative of the Board of Supreme Prosecutors to the JNE.⁷⁷ The introductory words of this *legislative initiative*⁷⁸ are very telling:

“... [T]he President of the Republic has sent to Congress a project of constitutional reform with proposals that are not viable and extremely opposite to the proposals he has been taking and defending since the infamous Law of Authentic Interpretation of article 112 of the Political Constitutions was first put under debate. In other words, he has completely changed his position regarding the presidential re-election, which clearly represents a mockery of the Peruvian people and a great offense to the comprehension, intelligence and tolerance of the nation.”⁷⁹

However, by the time these projects were voted on, and the unified text was promulgated as Law No. 27365, only the government's position remained.

A third approach involved the mistaken abuse of *risk management*.⁸⁰ In order to avoid any real enforcement, Montesinos turn to the services of First Public

⁷⁵ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

⁷⁶ Law Project No. 428/2000.CR, received on September 19, 2000.

⁷⁷ Law Project No. 481/2000, received on September 27, 2000.

⁷⁸ As described under domestic pressure activities, direct pressure.

⁷⁹ Translated from Spanish.

⁸⁰ As described under the scenario of corruption perception, coping point of output concealment (1st round).

Prosecutor Blanca Nélica Colán, who had been under his payroll for years.⁸¹ While the government was offering limited information regarding the legal state of Montesinos, with some information stating that he had been taken under arrest by the National Intelligence Service, the presidential advisor went to give his statement to a provisional prosecutor who he knew would be easy to intimidate (Caretas, 2000/09/22). Having officially surrendered to a formal investigation, the matter was promptly resolved by exerting pressure over the prosecution, who within a week decided to close the file and refrain from further investigating the bribery of Congressman Kouri (Emol, 2000/09/26). But this only helped to aggravate the situation, and paired with the tolerant position of President Fujimori and his lukewarm responses when publicly confronted with the issue (he had only stated that the advisor may have made ‘some mistakes’) did nothing to provide a solution to the crisis. Congress had all but ceased to function (LR, 2000/09/22), popular protests continued (LR, 2000/09/21), 64% of the population expressed its demand for new elections without Fujimori (LR, 2000/09/20a), and a diaspora of congressmembers affiliated to the incumbent party *Perú 2000* began. Congressmember Cecilia Martínez was the first to announce her departure (LR, 2000/09/20b), and was soon followed by four others before the end of September (Páez, 2000b). Still, Montesinos was not being officially dismissed from service.

By the time the government agreed to separate the corrupt advisor, in an effort to show some *demand-satisfactory measures*⁸² to the opposition in front of the OAS Dialogue Table, it was too little, too late. Vladimiro Montesinos escaped to Panama, and with him a clear opportunity for the government to regain its legitimacy. Although the reasons behind Fujimori’s tolerance of his advisor go beyond the topic of this study, and involve much more than the protection of the leadership, it is clear that this point in time represents a fracture in the Peruvian government, as Montesinos kept exerting power in an effort to secure his continuation in the political system, and Fujimori trying to stimulate support even to the risk of abandoning the stability of the NACS.

The fourth approach that we find during the following period is the isolation

⁸¹ Blanca Nélica Colán was later, in 2003, found guilty and sentenced to ten years in prison for multiple crimes related to her misusing public office, which she had exploited to serve, protect and conceal presidential advisor Vladimiro Montesinos and his network of corruption (services for which she was paid US\$10,000 every month, according to witnesses) (Pariona Arana, 2012).

⁸² As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

of Montesinos' influence, at least through the activation of *public expressions of reform support*⁸³ and *demand-satisfactory measures*.⁸⁴ On September 28, Congress unanimously approved the deactivation of the National Intelligence Service within fifteen days (Reyna, 2000); on October 2, the Council of Navy Admirals publicly expressed its support for the deactivation of Montesinos' Intelligence Service and for early elections; on October 17, the Army confirmed that officials close to Montesinos would be purged from the institution by the end of the year; and on October 28, Fujimori announced several changes in the military leadership. However, these mechanisms were not implemented in a consistent and appropriate fashion, and the additional activation of *risk management*,⁸⁵ through which the government party kept control of Congress (LR, 2000/10/13), produced even more stress over the political system.

During this period Fujimori's rate of disapproval among the citizens continued to plummet, reaching 77.7% (LR, 2000/10/07); and environmental actors increased their pressure over the government, not least of all due to the constant media coverage of ever emerging information about grand corruption. News of Fujimori requesting asylum for his fallen advisor surfaced in international media, together with warnings from Brazilian president, Fernando Henrique Cardoso, stating that Montesinos would not be allowed to enter Brazilian territory (LP, 2000/09/23); Opposition Congressman Jorge Chávez Sibina officially proposed the vacancy of President Fujimori for 'moral incapacity' (LR, 2000/09/27); U.S. Secretary of State, Madeline Albright, publicly called on Fujimori to respect the agreements made in the OAS Dialogue Table and to implement democratic reforms (Hinojosa, 2000c); the OAS suspended the Dialogue Table after Congress decided to extend the current legislative term for two more weeks (which was against the agreement with the opposition forces) (Rojas, 2000); and popular demonstrations and mobilizations continued across the country. Thus, it is possible to see during this period the final emergence of a clearly stressful international scenario meeting the domestic opposition, reflected clearly in Fujimori's visit to Washington at the end of September in search for political support and a way out of the crisis (Emol, 2000/09/29).

⁸³ As described under the scenario of corruption perception, coping point of stress amelioration (2st round).

⁸⁴ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

⁸⁵ As described under the scenario of corruption perception, coping point of output concealment (1st round).

But the most notorious form of protest took place after Vladimiro Montesinos returned to Peru. On October 29, Colonel Ollanta Humala led a military insurrection in the south of the country, specifically in the province of Tacna, demanding the resignation of President Alberto Fujimori, whom Ollanta and his troops considered to be an illegitimate ruler. Few days earlier, opposition leader Alejandro Toledo had (with a more pacific approach) expressed the same demands, publicly exhorting Fujimori to give up power immediately and give way to a transitional government (LR, 2000/10/25). The presence of Montesinos inside the country had stimulated additional stress over the system, and the situation was turning almost unmanageable for the government.

Under these circumstances the political leadership activated the last round of mechanisms. This fifth and final government approach involved the late activation of five mechanisms in combined forms: *smokescreens*⁸⁶ and *mismanaged investigations/prosecutions*;⁸⁷ *argumentative defense*⁸⁸ and *public expressions of condemnation*;⁸⁹ and, *mismanaged investigations/prosecutions*⁹⁰ and *risk management*.⁹¹ Ironically, it is with the latter that a breakpoint is reached in the NACS, where its stability finally falls under the pressure of the environment and a new structure to fight malfeasance is born.

Forced to deal with the presence of Montesinos in the country, President Fujimori tried to use the opportunity to create a show of personalistic rule, which in the previous decade had brought him a high level of popular approval and support. Mediatizing the police search of his ex advisor's whereabouts, Fujimori took direct charge of the operation and was seen boarding a helicopter, going between military stations and different location where Montesinos might have been hiding (LR, 2000/10/27). Needless to say, this symbolic gesture was aimed at distracting public attention from the wave of corruption scandals involving an ever-growing number of government actors, current and past. Just as Fujimori had been adept at getting his

⁸⁶ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁸⁷ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

⁸⁸ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

⁸⁹ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

⁹⁰ Ibid.

⁹¹ As described under the scenario of corruption perception, coping point of output concealment (1st round).

picture taken while helping poor farmers in the Peruvian Andes furrow their land or harvest their crops, now the style was being redirected to stimulate support in his usual personalistic way to cope with the stress from civil society and international actors.

A few day after the parade of presidential leadership, Fujimori gave a press conference to introduce the new public procurator hired by the government to lead the investigation against the ex advisor, but most importantly, Fujimori used the opportunity to reassure to the public his personal intentions of bringing Montesinos to justice. Furthermore, he claimed that he had had no knowledge whatsoever of the illicit dealings in which his advisor had been involved, and that the latter had abused the faculties he had given him (LR, 2000/11/04a). In sum, Fujimori was trying to show support for any enforcement measure against Montesinos, while taking any blame away from himself. The presence of the newly appointed public procurator for the Montesinos case, José Ugaz, was not coincidental, either.

In his personal account of the event, Ugaz (2014, pp. 44-45) reads:

“I was incredibly uncomfortable, as I felt that Fujimori was using a meeting that I had requested for another purpose: to present himself in front of the public opinion as the prime mover of the investigations against Montesinos. It was obvious that, without my knowledge, he had decided to give a press conference with me by his side to get some political capital from my appointment.”

Just as expected from our theoretical model, Fujimori had seen the possibility of employing highly publicized symbolic measures as a way of boosting support for himself and his government. Channeling public attention to the Montesinos case, and putting in place actions apparently aimed at enforcing anti-corruption laws could insure a minimum level of stability for his leadership. The lack of financial support to Ugaz indeed shows that Fujimori did not expect to have him really succeed in his endeavor, or to even have him at all. Invited by minister of Justice Alberto Bustamante Belaunde to take charge of the Montesinos case on November 1, his appointment became official two days later with Supreme Resolution No. 240-2000-JUS, and was further strengthened on November 4th after Ugaz and his team recognized the necessity to extend their faculties to include the investigation and

prosecution of not only Vladimiro Montesinos, but also any accomplice or accessory involved. While this might suggest the government's intention to deal with Montesinos and his close network, the reality is that Ugaz's capacity to execute his functions was at the same time being left adrift. With no budget officially provided, the procurator was forced to make use of the resources of his private law firm if he was to undertake any action at all. This included the recruitment of some of his colleagues and employees of the law firm, the use of their business offices, and the use of their own money to cover for any expense related to the public appointment as procurator. Ugaz requested the transfer of an institutional budget in four different opportunities, two to the minister of Justice, and other two directly to President Fujimori; but the resources were never transferred (Ugaz, 2014).

Another aspect of Fujimori's final strategy to cope with pressure, besides the activation of *mismanaged investigations/prosecutions*, is the intention to adopt a *risk management* approach. Ugaz (2014, p. 42) points to this fact in another section of his account, remembering the private conversation he had held with the president just before the press conference:

“Fujimori responded that it was very important to capture Montesinos, who had betrayed his trust, because he was ‘blackmailing several of his ministers’ and he had in his possession film material that contained just about everything, from intimate scenes to grave acts of corruption. It was a material that, if it were to be published, it would shake the political class in the country with unsuspected consequences if it were to be used in the wrong way; so it was urgent to stop him in order to avoid a political crisis without precedents, which could plunge the country into chaos.”

Fujimori's description of the urgency of the situation, debriefing Ugaz on the existence of material proof of cases of grand corruption implicating members of the government, was not intended to help the public procurator in dealing with the fight against corruption but to convince him of the necessity to keep that information away from the public. By recruiting Ugaz, Fujimori expected to keep the issue under his control, preemptively addressing the flow of additional demands. Ugaz (2014) himself remembers to have been surprised by the ease with which Fujimori had talked about Prime Minister Federico Salas, who supposedly was very worried for the videos

Montesinos had of him receiving bribes. Clearly, without talking about himself, President Fujimori expected Ugaz to play along and to help stabilize the situation for the government.

Another interesting aspect of this incident is that Fujimori seemed to be aware of the possibility of reaching a point of no return, a scenario with the qualities of *prolonged stress* where the system would be unable to perform its essential activities, and the only option would be to reform the NACS. In this case, the enforcement of anti-corruption laws would most likely affect the leadership at large, forcing a change in government.

The intention of using Ugaz's work as a coping mechanism became more evident only a few days later. On the same day President Fujimori had met with José Ugaz and used the opportunity to show his total support for the enforcement of anti-corruption, the latter held a press conference of his own to counteract Fujimori's intentions. That night, speaking to a room full of journalists, Ugaz assured that his mandate was wide enough to allow him to investigate every and any actor involved in Montesinos' network of corruption, disregarding the power or office they may have, and that his intentions were to pursue the full enforcement of the law even if it reached President Fujimori himself (LR, 2000/11/04b). "Whoever may fall," Ugaz's (2014, p. 46) words, became from then on a catchphrase for the work of the Public Prosecutor's Office and its drive to fight corruption to the last consequences. His insinuations were not well received by the president, who apparently threatened to remove him from his post. On November 11th, minister Bustamante informed Ugaz that Fujimori had expressed his desire to have him removed as procurator. Although Bustamante said he had responded to the president's rage by expressing his intention to leave the Ministry if Ugaz was fired, thus defending the latter, his words of admonition to Ugaz were very eloquent: "I would expect from a lawyer that he did not put into question the honor of his client, even if later on it happened that that his client has been involved [in illegal activities] and that might cause him to quit and take distance from the client..." (Ugaz, 2014, p. 82) It was obvious that the government's intentions were to have Ugaz represent Fujimori's interests, and not those of the State (as was actually his official mandate), in order to benefit the leadership's agenda beyond the actual prosecution or not of Montesinos.

However, not only did these last coping mechanisms completely fail in their execution, but the environmental pressure could not be coped with any longer. The

Public Procurator's Office conducted its work with bravery and independence from Fujimori's pressure and negligence, and did not side with the government's position. News of Montesinos' corrupt activities were rapidly mounting, as bank accounts associated with him in foreign countries began to surface with millions of dollars (Teran Vega, 2000; LR, 2000/11/06) that had presumably resulted from dealings with Peruvian and Colombian drug dealers, embezzlement, and a large number of criminal activities. Blanca Nélida Colán, former Montesinos' champion in the Public Ministry, was replaced in her post of First Public Prosecutor, and so was José Portillo Campbell, head of the ONPE. Vice-president Francisco Tudela gave up his post on October 23, and the president of Congress, Martha Hildebrandt, was dismissed on November 13. All the meanwhile Peruvian authorities are unable to locate and arrest Montesinos, who had by then fled the country again.

The last and severely misguided coping mechanism activated by Fujimori himself was the illegal breaking into Montesinos' apartment and seizure of dozens of boxes and suitcases containing jewelry and, more importantly, videocassettes recorded by Montesinos of all his dealings and negotiations made in his office of the National Intelligence Service (LR, 2000/11/10). Although this example of *risk management* was joined by a clever *smokescreen* through which the president successfully distracted media attention away from the location of Montesinos' apartment and towards the north of the city (to the site of the Army's recreation center) (Castillo, 2007), Fujimori's apprehension led him to publicly inform of the event in a way that would show him in personal command of the manhunt. The corruption-enabling nature of all output concealment mechanisms make them particularly susceptible to failure as coping mechanisms, especially when combined with the publicity characteristic of *mismanaged investigations/prosecutions*. Therefore, by presenting himself in a press conference as the leader of the police operation, he effectively added more pressure to the already critical state of his leadership and the NACS.

Finally, the last straw was Fujimori's implication by a member of the Colombian drug cartels in Montesinos' dealings with them. According to Roberto Escobar, brother of the infamous head of the Medellín cartel, Fujimori's campaign of 1990 had been partially funded with \$1 million that Montesinos had received from Pablo Escobar (LR, 2000/11/12); Fujimori had allegedly even spoken to him on the phone to personally thank him for his contribution (Ugaz, 2014). The news

represented a final blow against Fujimori's constant *argumentative defense* that he had known nothing of Montesinos' corruption, and that everything had been done behind his back.

There were no more mechanisms to activate that could cope with the pressure from civil society, political opposition and international actors. On November 13 public procurator José Ugaz and his team presented a formal request of investigation to the Prosecutor's Office against President Alberto Fujimori, while unbeknown to the country Fujimori was fleeing bound to Brunei and from there Japan.

4. The New National Anti-Corruption Standards

The end of the Fujimori government and the actions taken by the transitional government that followed describe a scenario that has been dubbed *prolonged stress* in Chapter III. Fujimori held on to the stability of the NACS while consistently producing corruption outputs (the extent of his criminal network is depicted in Figure 4) and ignoring critical enforcement actions, accumulating mounting levels of environmental pressure from all external actors until the situation became unmanageable. By the end, the political system was not only confronted by the crisis of the NACS, but the stress had spread to the two essential variables of the system, the capacity to make authoritative decisions and to have them complied with. Under the control of the incumbent forces Congress had ceased to operate, and the monopoly of physical force was being contested. The system could not go any further without addressing the NACS.

It is under these circumstances that Valentín Paniagua's rise to office becomes not only helpful, but unavoidable. We need only to consider that the conservative leadership had left, one after the other, the control of the system in the hands of reformist actors. The vice-president had resigned, the president of Congress had been removed, and Fujimori left the country and abdicated via fax. The government was crumbling under the pressure. The power vacuum opened the opportunity for the political opposition to gain control of the government and begin implementing the reforms necessary to cope with the stress, but in order to do so the adoption and implementation of real anti-corruption reforms (and other crucial democratic measures) needed to be guaranteed. The functioning of the political system depended on the effective handling of the anti-corruption stress, and this could not be done by

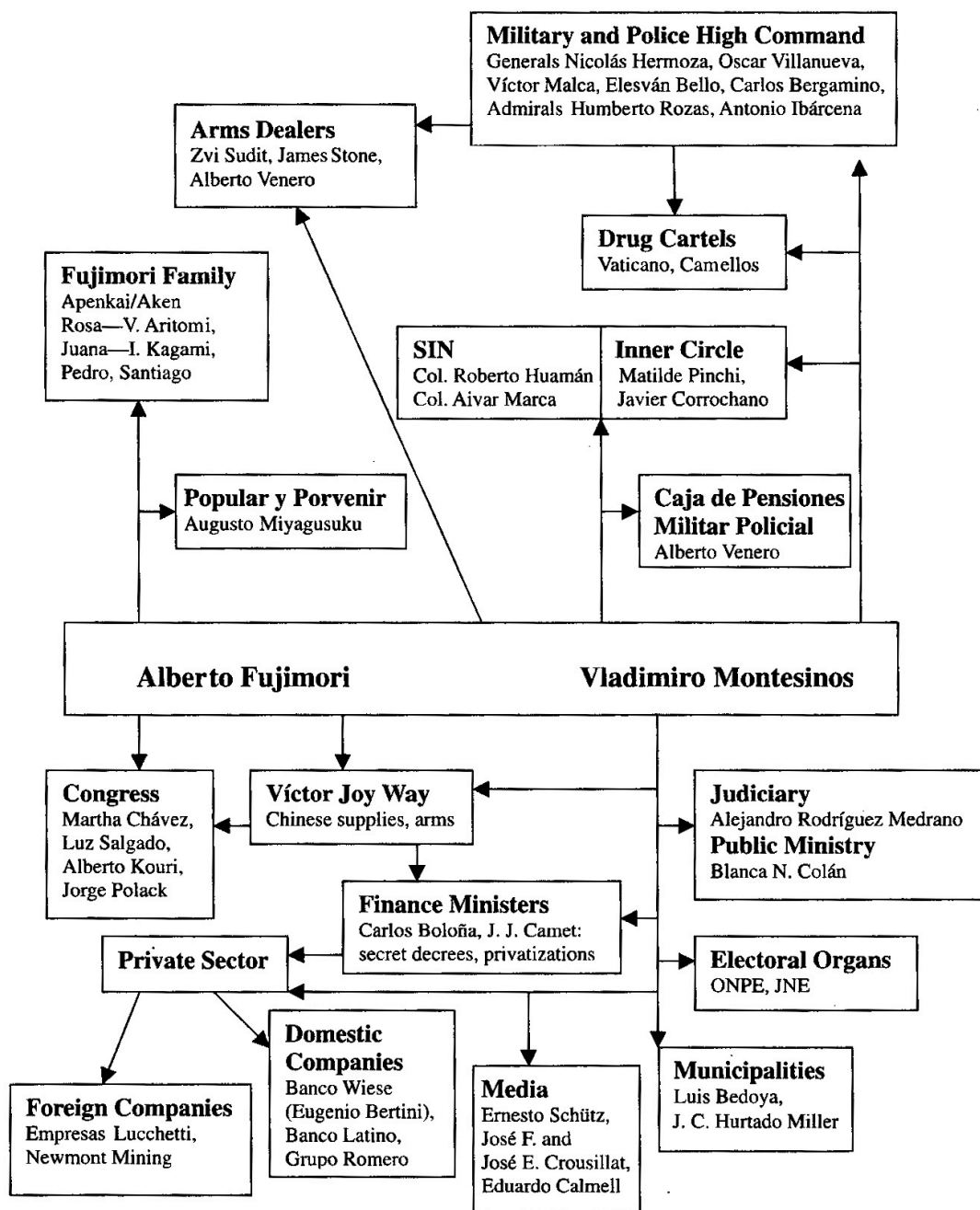


Figure 4. Branches, Networks, and Links of Corruption, 1990-2000

Source: Quiroz (2008, p. 377).

activating additional coping mechanisms. Fujimori had all but tried them all, and they had been insufficient to improve popular and political support, or to keep demands to an appropriate limit. Thus, the selection of Valentín Paniagua to take charge of Congress, and soon afterwards the country, was not a simple gesture of goodwill to the country, but a requirement for the stabilization of the political system (Taylor, 2005).

While Paniagua is universally described as the quintessential democratic figure in Peru, and his qualities were later praised without much refrain, it is crucial for us to note that his becoming the president of the transitional government was not a mere backing of his personal qualities by opposition forces, but more importantly a warranty for the necessary reforms. Of the ten political parties that obtain parliamentary representation in the 2000 elections, Paniagua's party, *Acción Popular* (Popular Action), was second to last, with only three congressmembers out of 120. Alejandro Toledo's party, on the other hand, had the second largest group in Congress, and had been the obvious leader of the opposition forces throughout the year. In these terms, it would be an obvious political choice for Toledo's party to assume control of the Congress, and subsequently of the government after Fujimori's resignation. However, it fell to the leader of one of the smallest parties in the country to lead the transition to democracy.

The conditions for the recovery of a minimum level of support were evident to Ricardo Márquez, second Vice-president and person lawfully in charge of the government after Fujimori, who on November 20 decided to step aside and abdicate to his post, thus leaving the way free for the designation of Valentín Paniagua as new president of Peru. At that moment there were even rumors of a possible coup in the making by members of the military forces (Interview No. 23), which further highlights the strain of the political system and the urgency to stimulate support.

Under Paniagua's transitional government the NACS suffered a dramatic change. This period saw the satisfaction of anti-corruption demands, both in terms of enforcement and reform, with almost no anti-corruption outputs to additionally stress the system. The government took charge of dealing with the scenario of *prolonged stress*, and invested an important amount of logistic and political resources in reforming the NACS without turning to coping mechanisms to generate support. International actors exerted pressure through *technical and financial assistance*⁹² and *international cooperation*, but as it was in line with the official political agenda it added to the government efforts and became supportive rather than stressing.

Although officially the so-called Anti-Corruption Subsystem could be said to have officially started with the promulgation of Resolution of the Prosecutor's Office No. 020-2000-MP-FN on November 10 (which appointed public attorneys to the

⁹² As described under international pressure activities, indirect pressure.

exclusive attention of the Montesinos case), it is after the transitional government begins its rule that this subsystem really starts to take shape. To the resolution of the Prosecutor's Office followed Law No. 27380 on December 20th, which made it officially possible for public prosecutors to be designated to exclusivity; Administrative Resolution No. 024-2001-CT-PJ of the judiciary on January 31, 2001, which created specialized anti-corruption courts for the Montesinos case; and Supreme Resolution No. 133-2001-JUS of the Ministry of Justice on March 23rd, which extended the competence of public procurator José Ugaz and his team to begin legal actions against fugitive President Alberto Fujimori. These three legal corners, supported by the Police Department Against Corruption created already under Toledo's government on August 17th, 2001, were the pyramid over which the investigation, prosecution, and punishment of the Fujimori-Montesinos corruption network stood. Eventually, over the next years, these agencies would have their mandate extended to include all cases of political or notorious corruption, and not only the Fujimori-Montesinos case, becoming a true system for the enforcement of anti-corruption law in the country.

To support the job of the anti-corruption subsystem a body of anti-corruption legislation was approved, mostly written and requested by the Public Procurator's Office (Ugaz, 2012; 2014). Among the most important were:

- Law No. 27378 of December 20, 2000, which creates the figure of *plea bargain*.
- Law No. 27379 of December 20, 2000, which give to judges the possibility of taking exceptional measures to limit the rights of those under investigation.
- Law No. 27399 of January 12, 2001, which creates the possibility of limiting the freedom of those political actors under investigation that are given the right to a political pre-trial.
- Supreme Decree No. 020-2001-JUS of July 6, 2001, which approves the rules for the protection of witnesses and collaborators.

The above measures helped the government reach an impressive rate of success in the investigation, prosecution, and recovery of assets resulting from the Fujimori-Montesinos corrupt network. Ugaz (2014, pp. 256) remembers that, only

during 2001:

“... [M]ore than 1,200 people [were processed] in approximately 200 criminal investigations. Of those, approximately 120 were sent to prison (about 10%), among whom were what at the Public Procurator’s Office we called the ‘gallery of the remarkable convicts,’ a group of high level authorities or powerful political or economic actors that shows the great impact that this criminal network had in the Peruvian State. Among them were the First Public Prosecutor and other prosecutors of different denomination; the president of Congress and several congressmembers; the *de facto* president of the judiciary with several judges of the Supreme Court and of lower ranks; the president and two members of the electoral tribunal; mayors, businessmen and, perhaps the most impressive number due to what the military has traditionally represented in Peru, 14 Army and Police generals, including the Chief Commander of the Army, all without having shot a single bullet...”⁹³

On top of this, US\$250 millions were located and frozen, and US\$75 were promptly repatriated, in what represents an unusual example of haste, efficiency and international cooperation. The decisive support from President Paniagua, the media and civil society, together with the personal drive of the members of the Public Procurator’s Office, helped this office fight corruption in a way never before (or later) seen (Pariona Arana, 2012).

In terms of *preventive* measures to fight corruption, the government also took important steps, although not as prominent as the ones taken to reform the area of anti-corruption *control*. The dismantling of the mechanism of *institutional imperviousness*⁹⁴ was directly addressed by adopting measures of public transparency and access to public information. On December 7, 2000, the government created the Transparency Commission of the Ministry of Women and Human Development,⁹⁵ first of its kind at the national level.⁹⁶ Its sectoral role was to elaborate a code of

⁹³ Translated from Spanish.

⁹⁴ As described under the scenario of corruption perception, coping point of output concealment (1st round).

⁹⁵ Ministerial Resolution No. 297-2000-PROMUDEH.

⁹⁶ The Metropolitan Municipality of Lima had, under the leadership of mayor Alberto Andrade Carmona, formally created the Metropolitan Commission Against Municipal Corruption with Ordinance No. 102-MML of February 5, 1997.

ethics, produce recommendations aimed at increasing transparency, support activities of internal control, and in general to facilitate the detection, investigations and punishment of corruption in the ministry.

This initiative was soon followed by Supreme Decree No. 018-2001-PCM, which disposed that all agencies of the public sector should implement mechanisms for the public access to information under their possession; and Urgent Decree No. 035-2001, which adopted measures for the transparency of public financial information. Both of these norms develop the area of transparency and access to information across agencies and levels of government for the first time in Peruvian history, and represent direct precedents to Law No. 27806 of 2002, which unifies the concepts and principles on the subject. Furthermore, decree 035-2001 describes a specific frame of mind that is completely consistent with has been posited before, regarding the role of the transitional government of President Paniagua as a mean to stabilize the political system through the satisfaction of demands and the reform of the NACS. In the second paragraph of its preamble, its states that “it is of vital importance that the next government administration begins its mandate under a framework of transparency that allows a better monitoring and evaluation of public policies by civil society, [which is an] essential element for democratic ruling...”⁹⁷ Clearly, the most important role of the transitional government was to rehabilitate the flow of support for the system and the leadership, thus solving the scenario of *prolonged stress*.

Additionally, on July 14 the government decreed Law No. 27482,⁹⁸ which regulates the publication of sworn statements of income of public officials. Less than a month later, on July 8, its guidelines (decreed by Supreme Decree No. 080-2001-PCM) were published in the official newspaper *El Peruano*. These two legal instruments represented a big step forward from the outdated law on the matter given in 1988 under the previous Constitution of 1979, and elaborated on the more expansive measures contained in the Constitution of 1993.

On April 11, 2001, the government created the National Anti-Corruption Initiative⁹⁹ (*INA*), an official forum for the discussion and proposal of anti-corruption policies that included actors from the public and private spheres, and civil society.

⁹⁷ Translated from Spanish.

⁹⁸ The text of this law had first been presented in Congress on October 12, 2000, as project No. 582/2000-CR by Paniagua’s party.

⁹⁹ Supreme Resolution No.160-2001-JUS.

Additionally, and perhaps more importantly, the INA was set to formulate a thorough diagnosis on the phenomenon of corruption in the country, and produce a national dialogue upon which the basis for future NACS could be established. For the execution of these tasks, it was given only three months, the time left before the transitional government had to transfer power to the newly constitutionally elected leadership. Nonetheless, thanks to the political circumstances, the support of international actors and that of President Paniagua and his minister of Justice, Diego García-Sayán Larrabure (Interview No. 22), and the homogeneity of its members,¹⁰⁰ the INA not only succeeded in producing the first coherent and comprehensive set of recommendations regarding the effective reform of the Peruvian NACS (INA, 2001), but it also became the common point of reference for all other anti-corruption preventive bodies that were created (without much success) later.

The task given to the INA of developing a framework for future NACS (going beyond the transformation already underway) was described by minister of Justice García-Sayán from the beginning:

“It is indispensable to make progress in the guidelines of a national plan against corruption. It is not a plan of the transitional government, which would greatly exceed its mandate, but [the purpose is] to develop guidelines that may be adopted by the State and the Peruvian society... This global project will be hand over to the authorities that will assume the leadership of the country next 28th of July”¹⁰¹ (Zileri, 2001).

The INA additionally represented the natural companion to the efforts of reforming the NACS in terms of corruption control. The importance of preventive policies for the development of an improved NACS is explicitly stated by a senior official of the transitional government (Interview No. 23):

¹⁰⁰ The members of the INA were: Monsignor Miguel Irizar Campos (president of the commission and representative of the Catholic Church); Antonio Blanco Blasco (engineer); Cecilia Blondet Montero (of NGO *Transparencia*); Carlos Castro Rodríguez (of the exports association *Adex*); Pablo Checa Ledesma (member of the labor union); Margarita Giesecke Sara-Lafosse (historian); Baldo Kresalja Roselló (businessman); Humberto Lay Sun (representative of the national evangelistic groups); Alvaro Rey de Castro Iglesias (psychoanalyst); Mónica Sánchez Cuadros (actress); and, Jorge Santistevan de Noriega (former Ombudsman) (Zileri, 2001).

¹⁰¹ Translated from Spanish.

“The issue of public morality and corruption goes beyond a temporary situation, disregarding how grave this might be, and we saw it and discussed it a lot with Paniagua as a structural matter... We had to see a way of, besides adopting those measures to confront the corruption we faced, defining preventive anti-corruption policies that involve public policies, design of institutional strategies, inclusion of civil society, awareness and education campaigns, etc.”¹⁰²

Turning our attention to the international community, foreign institutional actors showed a particularly high level of *international cooperation*¹⁰³ with Peruvian efforts to freeze and recover stolen assets. The most prominent of these was the role played by Swiss authorities, particularly Zurich’s district attorney, Cornelia Cova. Already at the beginning of November the authorities of that country had informed their Peruvian counterparts of the existence of a bank account under Montesinos’ name holding US\$ 48 millions, money that had been deposited with false excuses (Ugaz, 2014). According to the minister of Justice, Alberto Bustamante, the Swiss government was inviting them “to try and do everything they could to investigate and provide them with information regarding what could be the existence of a case of money laundering...”¹⁰⁴ (Teran Vega, 2000). This show of initiative from the European country quickly continued with the report of additional US\$22 millions in other bank accounts by the end of November, which were also quickly frozen to avoid their transference (LR, 2000/11/29). According to José Ugaz (2014), public procurator in charge of the Montesinos case and responsible for the recovery of stolen assets, it was Cornelia Cova herself who had provided the legal rationale to expedite the repatriation of the financial assets discovered in Switzerland. In her opinion, if there were enough elements to logically deduce the existence of a crime, even when a court of law had not yet ruled on the specific case of corruption, it would represent sufficient ground to warrant the immediate repatriation of the frozen money. Thanks to this interpretation, Ugaz states that over US\$77 millions were recovered from Swiss accounts in only 21 months from the beginning of the investigations.

A second source of *international cooperation* was the role played by

¹⁰² Ibid.

¹⁰³ As described under international pressure activities, indirect pressure.

¹⁰⁴ Translated from Spanish.

American agencies, such as the Federal Bureau of Investigation (FBI) and the district attorneys of various States. On December 4 Peruvian news reported that the FBI was carrying investigations on members of the Montesinos network (LR, 2000/12/04), both former public officials and private actors. Indeed, José Ugaz (2014, p. 133) informs that the American embassy in Peru had put him in contact with the regional office of the FBI ever since he had taken the post of public procurator; the FBI had expressed its intention to assist Peruvian authorities with anything related to the people or money involved in the Fujimori-Montesinos case. Soon afterwards, on January of 2001, Montesinos' front man Víctor Venero Garrido was arrested in Miami.

The district attorneys of New York and South Florida were also of great help. Besides informing the Peruvian government of any suspicious account belonging to people close to Fujimori or Montesinos, as was the finding of US\$ 46 millions under different front men, they also helped the Public Procurator's Office gain access to the information obtained by the American 'Financial Crimes Enforcement Network.'

Ugaz (2014) also posits that the creation of the Special Fund of Administration of the Money Illegally Obtained (*FEDADOI*) was largely due to international pressure. The *FEDADOI* was created by the government of Alejandro Toledo with Urgent Decree No. 122-2001 of October 27, 2001, with the purpose of administering the vast amounts of stolen assets that were being recovered from local and international sources in relation to the Fujimori-Montesinos network. After being transferred to this fund, the money would then be channeled to compensate the victims of corruption perpetrated by the previous government; it would also be employed to pay for the expenses carried by the Public Prosecutor's Office, and for the construction of a maximum-security prison. In short, the *FEDADOI* had the purpose of insuring the efficient and thoughtful usage of the money recovered with the efforts of the Peruvian anti-corruption agencies and that of their foreign counterparts. José Ugaz (2014, pp. 242-243) describes the conditions that gave birth to the *FEDADOI*, which seem to be very similar to the case of *aid conditionalities*:¹⁰⁵

“As a result of the confiscations made by the American authorities, I entered in contact with Dan Clayman... who was in charge of the seizure and eventual

¹⁰⁵ As described under international pressure activities, direct pressure.

destination of the money. From the beginning he expressed his concerns about the use that Peru would give to the money if it were repatriated. Attending to the important amounts of money... and in order to give confidence to the international community about the appropriate administration of those funds, the FEDADOI was created... In January of 2004, over the basis of a bilateral agreement of repatriation with the United States, and having finalized the administrative procedures of the American system, this country proceeded to give us back the confiscated money.”¹⁰⁶

A close look at the bilateral agreement¹⁰⁷ mentioned by Ugaz provides additional support to his account of the FEDADOI. It stipulates the transfer of US\$20 millions in confiscated assets to the Peruvian government under rather stringent conditions: The authorities must give priority consideration to compensating the victims, and to financially support the efforts of the specialized anti-corruption courts, the anti-corruption prosecutors, the *ad hoc* Public Prosecutor’s Office, and the Office of the Comptroller General, among others. Additionally, the Peruvian government agrees to hold a public debate regarding any proposal for the use of the transferred funds, and to inform of the latter to the government of the United States every six months, including the presentation of a final report once the funds had been totally employed. Clearly, as it was mentioned above, such conditions for the transfer of money is perfectly equivalent to the kind of pressure exerted through the implementation of *aid conditionalities*. Although we will discuss the effect this particular situation had on the stability of the NACS in the next chapter, it gives us a better idea of the involvement of foreign pressure in the creation of the Peruvian fund of administration.

Another instance of pressure explicitly recognized by the government is found in Supreme Decree No. 018-2001-PCM, which was mentioned earlier. In it, the preamble considers that the adoption of measures to facilitate citizen access to public information rests on Principle N° 3 of the Declaration of Chapultepec, among other international instruments. This Principle is literary quoted, saying that “[t]he

¹⁰⁶ Translated from Spanish.

¹⁰⁷ “Agreement between the Government of the Republic of Peru and the Government of the United States regarding the transfer of confiscated assets signed on June 12, 2004; approved by Legislative Resolution 28282, published on the official newspaper *El Peruano* on July 17; and ratified by Supreme Decree No. 055-2004-RE, published on September 2.

authorities must be legally forced to put under the disposal of the citizens, in a timely and fair way, the information produced by the public sector.” In this case the influence is direct and concrete, as President Paniagua had signed the Declaration of Chapultepec only two weeks before the aforementioned supreme decree was enacted. For this reason, we can consider the Declaration to have worked exactly as an *international agreement* is supposed to; Paniagua’s government, dealing with a scenario of prolonged stress and engaged in generation support through the effective modification of the NACS, welcomed the event and used it for the stabilization of the political system. On February 13, 2001, the front page of newspaper *La República* exhibited a photograph of President Paniagua signing the Declaration; by his side were the prime minister, the president of the Inter American Press Association, and the director of the most important media group of Peru. Underneath it read: “Peru signs historical declaration of Chapultepec”¹⁰⁸ (LR, 2001/02/13).

From a more benign but just as helpful approach, the international community also influenced the modification of the NACS through the availability of *information on anti-corruption principles, measures and strategies*.¹⁰⁹ A senior public official of the Paniagua administration commented that, in order to write some of the laws (which were mentioned earlier) that were enacted to help prosecute the Fujimori-Montesinos mafia, the government looked for information on the Italian and Spanish experiences (Interview No. 23) through the Internet. In this way, the availability of literature on different international cases and their circumstances helped the Peruvian authorities take appropriate and timely measures, just as our theoretical framework suggested.

The presence of anti-corruption information generated by international actors, and its employment for the implementation of domestic actions, is also evident in the INA. Among the documents stored as part of the commission’s inventory,¹¹⁰ several academic papers written by foreign scholars (and at least in one case explicitly to inform the Peruvian efforts) can be found: *The Fight against Money Laundering*, edited by the American embassy; *The International Fight against Corruption: The Hong Kong Experience*, by Anthony Milford; *Corruption: Causes, Consequences and Cures*, by Susan Rose-Ackerman; and, *Combating Corruption for Development*, by

¹⁰⁸ Translated from Spanish.

¹⁰⁹ As described under international pressure activities, influence.

¹¹⁰ Documents obtained as part of a formal request appealing to the access to information law.

Miguel Schloss. Although it is impossible to know to what degree each of these documents influenced the work of the INA commissioners, it is clear that they had been all informed by the academic production of the international anti-corruption movement.

International actors had additional involvement in the INA's work through the provision of *technical and financial assistance*.¹¹¹ The most important activity undertaken in this aspect was the production of a survey report sponsored and prepared by the World Bank (2001), assessing the state and perception of corruption in Peru. According to some members of the INA, the report worked as a basis for the discussion and identification of specific measures to prevent and control corruption in the country. Their comments describe the World Bank's report as having "the characteristic of precedent or of important previous information"¹¹² (Interview No. 01), and being "a very interesting element for discussion and from which everyone [in the INA] began to manifest their own viewpoints regarding the problem of corruption"¹¹³ (Interview No. 17). However, it is interesting to note that, while this report effectively helped and supported the work of the INA, for the Peruvian government at large the nature of the World Bank involvement was not so straightforward. As we have mentioned earlier, the administration of Valentín Paniagua indeed benefitted from the activities developed by the international community, as the nature of the former allowed it to assimilate the pressure over the NACS as a way to generate support for the bigger political system and the leadership. But other elements of the State were not as inclined towards Paniagua's position. It is stated in the World Bank report that several government agencies refused to participate in the survey, among which were important actors such as the Supreme Court, the Superior Court, the Ministry of Health, the Office of the Comptroller General, the Public Ministry, the Congress, and the agencies that make up the electoral system (JNE, ONPE, RENIEC).

This level of international involvement in the establishment of new NACS, which followed its late but crucial role in bringing Fujimori's government to a much demanded end, would represent from then on the peak of international pressure over

¹¹¹ As described under international pressure activities, indirect pressure.

¹¹² Translated from Spanish.

¹¹³ Ibid.

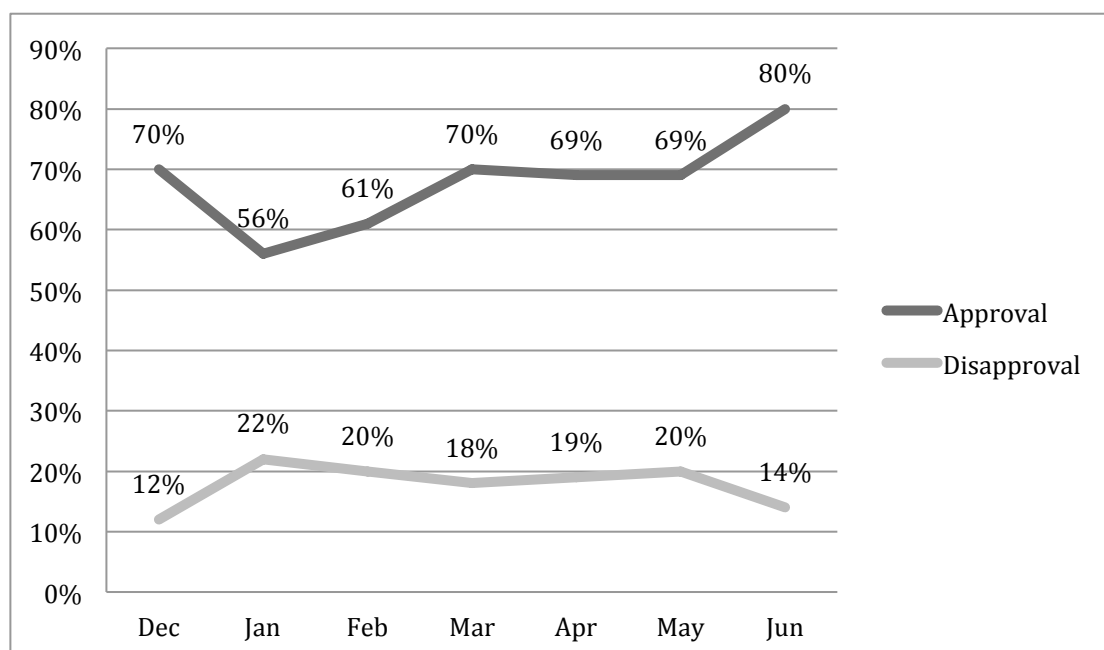


Figure 5. Presidential Approval of Valentín Paniagua

Source: APOYO (2001).

the stability of the NACS in Peru, marked by a strong political quality.¹¹⁴ Nonetheless, in general all these activities helped the political system regain a healthy level of support, rather than stress it. According to Ford Deza (2004), during the year 2000 about three hundred and fifty thousand college students participated in popular mobilizations against the regime, to which we should add a vast and homogeneous list of social groups, including labor unions, religious movements, regional associations, and many others. In only eight months, however, Valentín Paniagua was able to stabilize the political system (at least in term of support for the leadership), and was able to finish his presidency enjoying strong levels of support (Taylor, 2005), as it is possible to appreciate in Figure 5. By May, 69% of surveyed people supported Paniagua, and 42% even expressed their approval of Paniagua staying until 2005 if needed (LA, 2001/05/16). By the end of the transitional government, in July, as much as 83% of Peruvians supported the president (LR, 2001/07/21).

The scenario of prolonged stress had officially come to an end, for the political system in general, and the executive branch in particular, had managed to

¹¹⁴ The strong involvement of foreign actors in the evolution of the Peruvian NACS was short-lived, however, as the attention of the regional champion, the United States, soon shifted away from Latin America and issues of democracy after the attacks of September 11, 2001, and the onset of the “global war on terror. From then on, the involvement of foreign actors in anti-corruption efforts will have exclusively technical characteristics (as opposed to political means of pressure), taking place under the umbrella of the international anti-corruption movement, as it will be reviewed in following chapters.

stabilize its capacity to make decisions and the level of popular compliance with them. In the process, the measures that were adopted and implemented by the Paniagua administration to address the spread of corruption in the country effectively gave rise to a new NACS: the emergence of an anti-corruption subsystem for the control of malfeasance; the adoption of legal norms to facilitate and empower the work of the subsystem; the early results in terms of asset recovery and dismantlement of the Fujimori-Montesinos network; and, the official launching of a national policy discussion on corruption prevention, represented a clear break with the previous treatment of corruption in the country, one that could not be reverted. Thus, notwithstanding small processes of weakening and strengthening brought by later administrations, the NACS introduced by the transitional government became the “new normal” in the fight against corruption in Peru for the next decade and a half.

With a new set of rules in place, then, the change of government in 2001 announced the time to resume the tension between the political system and the environment regarding the level and stability of the NACS.

Chapter VI

Alejandro Toledo (2001-2006):

Stabilization of the New National Anti-Corruption Standards

The 2000 congressional and presidential elections saw the victory of Alejandro Toledo and his party *Perú Posible*, who only one year earlier had been prevented from office by Fujimori's tactics of state capture and electoral fraud. Transitional president Valentín Paniagua, just as he had promised from the beginning, showed a transparent and efficient performance in the organization of the process, while at the same time implementing some important reforms that would serve as a basis for the new government to continue prosecuting the infamous Fujimori-Montesinos mafia.

Some of the key characteristics of Toledo's government, at least in relation to its management of the NACS, can already be detected or explained by looking at the events taking place in the months immediately prior to his ascension to office. In particular, the existence of a vast prosecution project to be undertaken by the new elected government, and the success of Paniagua's leadership, set up the scene for the 2001-2006 government and the management of the NACS that will be described in this chapter.

1. The Political System on July 28, 2001

As we have discussed at length in the chapter regarding the theoretical model, the management of environmental pressure and the stability of both the NACS and the political system at large depend on the production of outputs that successfully address environmental demands and stimulate a healthy flow of support. This characteristic of the model is particularly evident in the scenario of 'corruption perception,' where government performance regarding enforcement measures takes a crucial role not only in preventing demands for reform, but also for securing the legitimacy of the political leadership. The early successes of the Public Procurator's Office led by José Ugaz, for example, provided the government of Paniagua with enough support and legitimacy to adopt the measures it considered necessary to secure the stabilization of the whole political system.

Toledo's party understood from the beginning the importance of having a task

that were at once possible to accomplish, benign for the government, and which could provide them with a good and steady amount of support. Trying to associate his leadership with the prosecution of the Fujimori-Montesinos corrupt network (which offered the qualities just described of an ideal government task), *Perú Posible* began capitalizing on the political crisis before the first round of elections.

Carlos Ferrero, president of Congress and first candidate in Toledo's congressional list, publicly stated that there was a threat of Toledo being assassinated for what he represented for Montesinos' mafia; according to him, Toledo was "the only candidate feared by Montesinos and the corrupt"¹¹⁵ (LR, 2001/03/29). Such declarations were conveniently being voiced less than two weeks before Election Day, clearly attempting to present Toledo as the anti-corruption champion that the country needed amidst the political turmoil. To give an even bigger impact to the candidate's imagined figure, on March 5 (only three days before Election Day), Ferrero decided to order the playback in Congress of several videos recorded by Vladimiro Montesinos, which were still being processed as part of the voluminous evidence against the ex presidential advisor. In the videos, many high-ranking members of the military and the police could be seen presenting their allegiance to the military leadership, signing a Minutes Book to show their support for Fujimori's *self-coup* of 1992 and for the officers benefitted with the infamous Amnesty Law of 1995, in a ceremony that had taken place in secret in 1999 (Caretas, 2001/04/11a).

Such actions by a leader of running party *Perú Posible* were interpreted (albeit timidly) by political magazine *Caretas* (2001/04/11b) in similar terms to ours:

"It is still a mystery why the exhibition of those films were hurried (literally) 72 hour before elections... And why it was done by Carlos Ferrero, none other than candidate number 1 in Alejandro Toledo's list for Congress. Was it to create a wave of fear and therefore a compulsive need for order? In other words, the urgency of [electing] Toledo in first round?

... There are some that speculate that the sudden show of the stored videos could be explained in the conspiracy climate that was ever-present in Toledo's campaign over the last weeks. It should not be forgotten that it was Ferrero

¹¹⁵ Translated from Spanish.

who announced that some people wanted to assassinate Toledo.”¹¹⁶

The possibilities of Toledo playing the same card over the course of his government, however, got seriously impaired by Paniagua’s proactive approach and Ugaz’s rate of success. Furthermore, the most important element for exploiting an image of anti-corruption enforcer, which was the capture of Vladimiro Montesinos, was suddenly taken away by the transitional government barely a month before Toledo was to take office, thanks to the actions of the American FBI (Ugaz, 2014). With Montesinos behind bars, an important source of support for Toledo’s government disappeared, and even though plenty of other opportunities for activating *non-partisan investigations/prosecutions*¹¹⁷ were still available (Fujimori’s capture could be said to take a close second place), the power of this type of coping mechanisms was certainly diminishing quickly by the time Toledo assumed office on July 28. In these terms, it can be appropriately said that Paniagua harvested a significant amount of the resources that could have been used under Toledo’s government if only the former had not been so successful. The stimulation of support for the political system had not only exploited the modification of the NACS, but it had also used a good deal of *demand-satisfactory measures* that could have been activated by the following government in its efforts to stabilize the NACS without stressing the system. Barr (2003, p. 1171) presents a similar reading of the political impact for Toledo of the actions of the previous government:

“Although Toledo had made the first stand against Fujimori, Paniagua was the first post-Fujimori president, thus presenting the most direct contrast to the despised former executive. Paniagua, moreover, could take credit for the capture of Montesinos in what was perhaps the symbolic equivalent of Fujimori’s 1992 capture of Sendero Luminoso leader Abimael Guzman. After eight months of the Paniagua administration, the Fujimori regime no longer presented an acute crisis to resolve, but a residue to remove. Toledo has complained that the political honeymoon he should have enjoyed was exhausted by the interim administration. A March 2003 survey lends support

¹¹⁶ Ibid.

¹¹⁷ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

to his complaint: Paniagua's approval rating was an exceptionally high 65.2%; quadruplet hat for Toledo. While the nefarious role and even persistence of the Fujimori-Montesinos mafia remain salient, as Toledo prefers, the new administration cannot take credit for solving the crisis. Instead, Toledo inherited the unglamorous, albeit tremendously important, work of cleaning up the political system."

Toledo's government would have indeed benefitted from cleaning after the meltdown of Fujimori's regime; instead, it had to follow the highly esteemed leadership of Valentín Paniagua. This situation produced certain conditions for the new period: First, the work of the INA and the new norms on transparency and access to information had created the basis for efforts on corruption prevention; second, there was still a network of actors that would have to be prosecuted, but whose successful prosecution would not necessarily translate in increased support for the leadership; and third, the unity of the political leadership against Fujimori was quickly coming to an end, and opposition parties were ready to resume *politics as usual*.

To those conditions we can add three more that, although not related to the transitional government, are important to understand the special circumstances under which the government of President Toledo had to operate: First, the fall of Fujimori had exposed the political system to unprecedented levels of public scrutiny, creating as a consequence higher levels of corruption awareness; second, the tight control over the State apparatus was suddenly replaced by a political party that was not institutionalized, nor disciplined, thus making it harder for the leadership to control the occurrence of scenarios of corruption perception; and third, the international anti-corruption movement had finally made its first real impression on Peru, and foreign actors would only continue increasing their participation from then on.

In the rest of this chapter, the discussion will show how each of the above conditions affected the way the government performed towards the stabilization of the NACS.

2. The National Commission to Fight Against Corruption (CNA)

Aware of an increasing scenario of *corruption intolerance*, brought about by the domestic and international media coverage of the whole Fujimori-Montesinos

network and the approach taken by the transitional government, Alejandro Toledo was quick in addressing the pressure and to promise the appointment of a so-called ‘anti-corruption czar’ (Valenzuela, 2001). The timing for such measure was also right: in the short span of four months, the 59% of popular approval enjoyed by Toledo when he took office in late July had eroded at an impressive rate, reaching 32% as early as November of that year (Tanaka, 2005). Under the circumstances, the government was in desperate need for new sources of legitimacy.

With a tiny decree¹¹⁸ published on *El Peruano* on October 12, 2001, the government appointed Martín Belaunde Moreyra (who was at the time dean of the Association of Lawyers of Lima) as ‘High Level Advisor of the President of the Republic for the Fight Against Corruption and the Promotion of Ethics and Transparency in Public Management.’ Although the title was rather boastful, the decree itself did not include any information regarding the functions that would be performed by Belaunde Moreyra, nor any other information. A day earlier, however, President Toledo (together with Prime Minister Roberto Dañino Zapata) had given a press conference to publicly present his promised anti-corruption czar, where it was informed that he would have under his duties the prevention of irregular acts and the monitoring of activities that could turn into corruption. The latter task in particular was considered a rather delicate subject, due to the interests that it could clash with; already the Public Procurator’s Office was experiencing some level of “institutional jealousy” (Ugaz, 2014, pp. 66, 166) from the Prosecutor’s Office, which constantly complained that José Ugaz and his team were invading areas of competency that belonged exclusively to them. To supposedly dispel any misgivings that the appointment of a czar would interfere with other offices legally involved in investigations, Toledo assured that the duties of Belaunde Moreyra would not meddle in the activities of the judiciary, the Public Ministry, the Public Procurator’s Office, or the Congress, particularly in relation to the Fujimori-Montesinos case (LR, 2001/10/12).

Despite the public discourse behind the appointment of an anti-corruption czar and its later evolution into the National Commission to Fight Corruption (CNA from here on), these measures were actually consistent with the activation of *inadequate*

¹¹⁸ Supreme Resolution No. 500-2001-PCM.

*anti-corruption policies/bodies/agencies*¹¹⁹ as described in our theoretical framework. To provide evidence of this assertion, we need to first discuss the circumstances under which Belaunde Moreyra was selected; these are narrated first by a staff member of the CNA (Interview No. 26) that worked with him:

“When Martín Belaunde serves as dean of the Association of Lawyers of Lima, Toledo was on campaign. Back then, [Juan Paz, executive secretary of the CNA] was simply a secretary of secretaries, a person that carried documents around. Then what happens? This person goes and finds Toledo, who was a candidate, and tells him: ‘You can explain your party platform at the Association of Lawyers of Lima. I am going to make it happen.’ He was a political operator... He then goes and proposes [the event with Toledo] to the future anti-corruption czar... And they really have the presentation, obviously criticized by many politicians because [Toledo] was being given an important stage. But that was the purchase: ‘I am helping you, doctor Toledo, do not forget it, I am helping you.’ And it worked.”¹²⁰

The above account follows closely the description provided by a former senior official of the Association of Lawyers of Lima (Interview No. 18):

“[Belaunde Moreyra] had a direct contact with Toledo because he had supported him during his campaign... He participated in the mobilizations organized by Toledo... and then in the *Marcha de los Cuatro Suyos*... [Having been a member of the opposition against Fujimori, and then dean of the Association of Lawyers of Lima] gave him a relationship [with Toledo], even though he was formally neutral; but at the end he openly supported him... So he had a favorable position and was present in the inaugural ceremony of Toledo’s government as a friend, but of course a very well regarded friend. Soon afterwards he was appointed for a special commission on the reform of the military forces... and then (in the interim) he was appointed [to the position of anti-corruption czar]. At that moment he had a very good relationship with the prime minister; he knew Pedro Pablo Kuczynski, who was minister of

¹¹⁹ As described under the scenario of corruption intolerance, coping point of stress amelioration.

¹²⁰ Translated from Spanish.

Economy; in sum, he had friends... So, he was appointed thanks to a combination of all these factors.”¹²¹

Therefore, according to this information, it is clear that the appointment of Belaunde Moreyra was a political compensation for his help during the electoral campaign; but more importantly, it suggests the lack of independence of the position of the czar from the beginning. This problem is brought to light only a couple of months afterwards, when in January of 2002 Belaunde Moreyra is cited by local newspapers¹²² as avoiding the investigation of members of the government regarding allegations of corruption (LR, 2002/01/04), and even actively acting as their defendant (Cavero, 2002). A staff member of the CNA, indeed, considered that Belaunde Moreyra was prone to obstruct the work of the commissioners whenever issues affecting the government were brought forth (Interview No. 31).

To completely appreciate the real nature of the government initiative regarding preventive measures, we move on to look at the CNA proper. This commission, first of its class at the national level, was created by Supreme No. 120-2001-PCM on November 17, 2001, roughly a month after Belaunde's appointment. It was presided by a representative of the President of the Republic, conformed by members of the government and the civil society, and included the participation of the comptroller general and the Ombudsman (or their representatives). Among its function were the development of anti-corruption plans and recommendations, the promotion of ethics and transparency in the public sphere, the promotion of international cooperation, the carrying of periodical surveys, and other activities aiming at supporting the fight against corruption in both the government and society. These functions gave the CNA the leading place as the Peruvian anti-corruption body in charge of prevention. But the most remarkable attributions provided by its norm of creation were specifically three, involving not the prevention but rather the *control* of corruption: (1) To evaluate and denounce to the Public Ministry acts of corruption; (2) to inform of any sign of corruption involving public officials or private citizens; and (3) to conduct public hearings with the objective of analyzing cases of administrative corruption.

One of the key aspects that need to be pointed out regarding the creation of the

¹²¹ Translated from Spanish.

¹²² For example, Caretas (2002/05/16).

CNA is its timing. According to a member of the anti-corruption commission, its creation was only decided by the government in the course of the first two weeks after Belaunde Moreyra had been appointed czar (Interview No. 19). Considering that most of the expectations regarding the tasks of the czar were actually embodied in the decree that created the CNA, it would be expected that they both were linked from the beginning, either by institutional design or by government decision; however, Belaunde Moreyra reports to have actually been the author of Supreme Decree No. 120-2001-PCM, which suggests that the idea behind a preventive anti-corruption body had not necessarily been part of the original plan. Such an interpretation is supported by the presence of a competitive project. On October 9 (two days before the appointment of Belaunde Moreyra as czar), Congressmember Ana Elena Townsend Diez Canseco had introduced a legislative project¹²³ proposing the creation of an ‘Office Against Corruption’ with normative, technical, economic, financial, and administrative autonomy, and whose chair would be chosen by the Congress. Four days before the ruling on Townsend’s proposal, however, the government created the CNA. The sudden existence of a commission with similar duties as the one proposed by the Congressmember, albeit with clearly different real power, gave enough grounds for the national parliament to reject her proposal. Thus, the government was able to effectively avoid the creation of a politically independent anti-corruption body. Was the CNA so much different? This question brings us to a second aspect. As it was mentioned earlier, Supreme Decree No. 120-2001-PCM established that the CNA would be presided by the representative of the President of the Republic; to be precise, art. 7 of the decree reads: “The High Level Advisor of the President of the Republic for the Fight Against Corruption and the Promotion of Ethics and Transparency in Public Management is to be the President of the National Commission of Prevention and Fight against Corruption and Ethics and Transparency in Public Management.”¹²⁴ In other words, ingrained in the norm was the presence of Martín Belaunde Moreyra as the CNA’s president. Under these circumstances, the CNA could only be as politically independent as the anti-corruption czar.

The situation was not improved by Belaunde’s selection of close friends to fill some of the commissioners’ seats, particularly the ones that were crucial to the objective of the CNA. According to him, these were: Agustín Figueroa Benza,

¹²³ Legislative Proposal No. 898/2001-CR.

¹²⁴ Translated from Spanish.

Francisco Diez-Canseco Távara, and Enrique Obando Arbulú, three of the four representatives from civil society.¹²⁵ By the middle of 2001 Figueroa quit the CNA due to his critical posture¹²⁶ to some of the activities carried on by Belaunde Moreyra and was replaced by Rafael Villegas Cerro, who was also brought by the czar; Guillermo Benavente Ercilla, representative of the Catholic Church, also quit for similar reasons. In August, Carlos Morelli Zavala, representative from the Ministry of Justice followed suit, and was replaced a month later by Alberto Ygor Martínez Llanos, former congressional candidate for the list of *Perú Posible* (President Toledo's party) in 2000.

Other formal aspects of the CNA also evidence the government's intentions to activate an *inadequate anti-corruption body* as a form of coping mechanism to address the scenario of corruption intolerance. While the capacity to monitor and almost investigate acts of malfeasance theoretically represented an important source of power to the CNA, in reality it was the seed of its own destruction. Disregarding Toledo's initial discourse, other agencies quickly began harassing the work of the commission for what they perceived as being the unconstitutional invasion of their functions. The most hostile of them all was the Office of the Comptroller General (OCG), which, although it had been included by norm as an observer member, it refused to participate in any of its meetings. By early February, the comptroller general had sent an official communication to the Presidency of the Council of Ministers (PCM) requesting the modification of the CNA in two key aspects: the removal of certain attributions from the commission, and the exclusion of the OCG as a member.¹²⁷ Soon afterwards, President Toledo and Prime Minister Dañino expressed to Belaunde Moreyra their opinion that the CNA should focus on prevention rather than control; thus, far from moving towards the institutionalization that the commissioners were seeking (in particular the granting of a higher legal status), the commission was being gently pushed to relinquish one of its main activities. Finally, on April 28, 2003, the norm that created the CNA was officially modified.¹²⁸ With this change, the commission was effectively deactivated for all real

¹²⁵ Actually, if we discard the representative of the Catholic Church, there were only three spots for representatives of the civil society, all of which were designated by the president of the CNA.

¹²⁶ Benavente would even go as far as to contact the Office of the Comptroller General to request its intervention and the auditing of the CNA (as discussed in the proceedings of the fifteenth session of the commission, held on October 2, 2001).

¹²⁷ The issue was discussed during the third meeting of the CNA, held on February 4, 2002.

¹²⁸ Supreme Decree No. 047-2003-PCM.

purposes, being stripped of its attributions regarding corruption control, its representation of the Peruvian country in international fora, and even of its capacity to hold any official meetings of its commissioners (this point will be elaborated on later).

The management audit carried out by the PCM (2006) describes the consequences and responsibilities behind the normativity of the CNA (pp. 10, 11 and 14):

“[T]he Office of the Comptroller General, through communication... dated January 22, 2002, makes some observations to the instrument of creation of the CNA and proposes the then prime minister, Doctor Roberto Dañino Zapata, the modification of Supreme Decree No. 120-2001-PCM... due to the fact that, in its analysis of the norm, it concludes that the various functions given with this instrument to the [CNA] interfere with the competency and duplicate the functions given to the Office of the Comptroller General by the Political Constitution...

Afterwards, as a consequence of these apprehensions... five of the eight articles of Supreme Decree No. 120-2001-PCM are modified...

Through communication dated October 05, 2006,¹²⁹ [the technical secretariat of the CNA] reported that ‘*between the most important consequences [of the modification of the norm in 2003], is the fact that the CNA lost the possibility of driving processes of investigation of presumed acts of corruption or lack of transparency in the different levels of government and especially in the high spheres of political power, as they were already taking place, in the first months of activity of the CNA...*’¹³⁰

The facts presented show that the functions that were given to the [CNA] were not previously established in relation to other agencies that work against corruption.”¹³¹

Regardless of the specific rationale behind the attributions given to the CNA (they could have been seeded on purpose to generate a hostile climate for the newborn agency, or simply included in an act of pure negligence by an inexperienced

¹²⁹ By this time the government had change, and President Alan García Pérez was in office.

¹³⁰ Italics in original.

¹³¹ Translated from Spanish.

government), it is clear that the wrong elements were allowed to fall into place for the mismanagement of the emerging commission.

From the beginning, there had been more interest in creating the image of a great anti-corruption commission than to actually institutionalize the prevention of corruption at a national level. A member of the CNA remembers: “When [Belaunde Moreyra] got appointed they made a big circus out of it. They went all out: he went to Congress, and every day he appeared on the news”¹³² (Interview No. 19). He also approached different opposition leaders, such as Alan García Pérez from the American Popular Revolutionary Alliance party (APRA) and Lourdes Flores Nano from National Unity (Caretas, 2001/10/18), who had the second and third largest parties in parliament, respectively. Thus, the publicity of his appointment followed what we would expect from a properly activated coping mechanism at the point of ‘stress amelioration.’

When the CNA was created, it was obvious for some that Toledo’s approach for the prevention of corruption was markedly different to the one demanded. According to Peña-Mancillas (2011), NGO *Proética* criticized the creation of the CNA for not attending to the suggestions produced by the INA, which were clearly stated in its final report *A Perú Without Corruption* (INA, 2001). Among some of the key aspects recommended by its normative predecessor, the CNA was supposed to be closer to the anti-corruption body proposed by Congressmember Ana Elena Townsend: its chair should be appointed by the majority of parliament, and its political and administrative autonomy guaranteed. It was evident that, notwithstanding the amount of functions that were originally given to the CNA in relation to both prevention and control of corruption, its effectiveness could be greatly impaired if certain level of independence were not accomplished. As it has been described earlier, however, instead of empowering the CNA with the capacity to pursue any incidence of alleged corruption in the government, its existence was tightly linked to the political will of President Toledo. A member of the INA commented (Interview No. 01): “It is possible to assert that none of those governments [of presidents Toledo and García] implemented the suggestions of the INA.”¹³³

For the actors that had participated in Paniagua’s Initiative, it was apparent

¹³² Translated from Spanish.

¹³³ Ibid.

that the new government had no interest in creating an effective preventive body. One of them describes the situation (Interview No. 22):

“The commission created did not follow that guidelines that we had developed. The recommendations contemplated [the inclusion of] people unaffiliated to the government; this is, not politicians or people linked to the government that in one way or another might not carry out their duties with objectivity but try to hide some incidents. [The original idea was to invite] some relevant and prestigious members of civil society that could guarantee the impartial execution of their duties. But what the government did, on the other had, was to appoint an anti-corruption czar (Martín Belaunde) and mainly representatives from different government agencies. Thus, when we saw this, we all said ‘this is not going to work’; and indeed, it did not work.”¹³⁴

This opinion regarding the appropriateness of having the CNA under the control of the executive branch is shared by most. Another member of the INA is even more vocal (Interview No. 16):

“None of us agreed with the creation [of the CNA]... I have the impression that most of us were very skeptic about this idea of an anti-corruption czar. We thought it was a bad idea... I think it was an absolute disaster, in the sense that it was ineffective, first. Also, the work [of the commission] was imperceptible... My personal impression is that in the government of Toledo there was never a real interest in getting involved in the issue of anti-corruption.”¹³⁵

The INA had not only left a clear roadmap for the evolution of the NACS, but had also made sure that the new government was aware of the academic resources available. Following the same approach taken by environmental actors, the members of the Initiative engaged in the direct dissemination of corruption awareness and anti-corruption principles at least in one occasion during the electoral process of 2001.

¹³⁴ Translated from Spanish.

¹³⁵ Ibid.

According to the accounts of the members of the INA, they met with the two candidates that had moved to the second round of the presidential elections, Alan García and Alejandro Toledo, in order to debrief them about the fight against corruption from the perspective of the INA's work (Interview No. 01), which was predominantly normative in nature. Alan García, joined by four of his advisors, was reportedly already acquainted with the issue of anti-corruption activities. Toledo, on the other hand, was completely ignorant of the topic; on top of that, he had arrived an hour and a half late, and instead of bringing some members of his technical staff, he was joined by his nephew (Interview No. 16), Jorge 'Coqui' Toledo (who was in those days involved in allegations of money laundering—León, 2001).

However the INA tried to leave its imprint on the new government, Toledo's leadership failed to follow up on the efforts to prevent corruption from an institutional perspective. An anecdote told by a senior official of his government (Interview No. 30) helps us grasp the lack of political will:

“Almost nobody in the Ministry (of Justice) knew of the small booklet published by the INA. How was that possible, if it had been handed over? The printed edition came out sixty or ninety days after Toledo had taken office... Then, how was that possible? Where were [the booklets]? Didn't public officials know [of their existence]? ... Orders were given to investigate and locate the documents. Much to the surprise [of the minister of Justice], they were found in boxes stored in a shut down bathroom. They had never been distributed.”¹³⁶

A public official appointed to support the activities of an anti-corruption working group created by Ministerial Resolution No. 245-2004-JUS of the Ministry of Justice, confirms the account of the tossed out booklets (Interview No. 02). Under these circumstances, it is very difficult to say that the government of President Toledo was invested in carrying on the type of reforms set on in the decree that created the CNA.

Another important element underpinning our interpretation of the events was the provision (or rather absence) of material resources for the work of the anti-

¹³⁶ Translated from Spanish.

corruption czar and the CNA. In this respect, it is by all accounts explicit that the government insufficiently funded the office directed by Belaunde Moreyra, who was not even provided with an office at the beginning of his appointment and had to perform his duties from the building of the Association of Lawyers of Lima. According to a senior official of the Association (Interview No. 18), Belaunde Moreyra had to stay there at the beginning due to the complete absence of budget; thus, he spent the first three months of his appointment working from his office in the Association of Lawyers, carrying any necessary duty with the help of the employees from the Association. It was only from December on that he could begin hiring a few people, but still had to fit them all in his office as the government had not yet provided a separate location for the anti-corruption activities. This situation continued until January 10, when Belaunde left the position of dean, and moved with his staff to a small office in the building of *Petroperú*.

According to the audit report (PCM, 2006), in 2002 the CNA was allocated S/. 3 millions (roughly US\$ 1 million), “amount that was insufficient for the execution of its activities.”¹³⁷ The first part of this budget was only transferred after the middle of March, when Supreme Decree No. 048-2002-EF ordered the allocation of S/. 1 million to the CNA. On top of that, it is mentioned in the fifth meeting of the commission, held on February 19, that Belaunde Moreyra himself was on a monthly contract basis, which highlights the informality with which the government was managing this agency. The commissioners, furthermore, were never allocated any budget for concept of allowances throughout the thirteen months they were appointed to the post, even though official requests were made to the prime minister to that end.

These conditions reinforce our assertion that the CNA was in fact a coping mechanism set by the government to deal with the emerging scenario of corruption intolerance, one that seemingly proved effective: While the study sponsored by the World Bank (2001) during the Paniagua administration had found that 85% of respondents identified corruption as the second most important obstacle in the country (only outdone by ‘unemployment’), a national survey conducted by Proética (2002) and published in November of 2002 found that corruption had fallen to the third place with 63%, behind ‘economic crisis’ and ‘unemployment,’ and even to a fourth place (behind ‘crime’) when considering spontaneous answers. Furthermore, a study carried

¹³⁷ Ibid.

out in February of 2002 had shown that 10% of respondents thought that the fight against corruption (independently from the prosecution of the Fujimori-Montesinos case) was being prioritized by the government above everything else (APOYO, 2002b); and another one conducted in March showed that 46.1% of surveyed people were aware of the existence of the CNA, and that almost half of them trusted that it would accomplish its mission (University of Lima, 2002). While these results are not particularly impressive, they do point at a diminishing level of corruption-related stress caused, at least partly, by the presence of the national anti-corruption commission.

Finally, the own personality developed by the CNA sped its ruin. Although all the characteristics described earlier made it particularly difficult for the commission to undertake any serious actions in execution of its official duties, in time certain confrontation with the political leadership became unavoidable. The commission became interested in gaining institutional legitimacy by following two different strategies: First, it pursued the improvement of its legal status by looking for support in Congress. The intention of the commissioners was to institutionalize the fight against corruption and to secure the persistence of the CNA by replacing the executive decree that created it, for a proper law emanated from Congress. The text of a legislative project was finalized by a subgroup of commissioners on October 4, 2002.

Second, the commissioners (including Belaunde Moreyra) saw the involvement of the CNA in investigations of corruption scandals as a way to attract popular attention, and therefore gaining political capital. This, however, represented the engagement in activities that have been described here as exerting pressure over the political system, and were obviously contrary to the interests of the government. This strategy started as early as February, with the request of information to the National Superintendent Agency for Tax Administration (*SUNAT*) regarding irregular procurements. The real friction, however, began with the critical position adopted during a small scandal involving First Lady Eliane Karp and her contractual relation with private bank Wiese Sudameris. About this event, a member of the CNA (Interview No. 19) recalls:

“Conflicts came with the President of the Republic, in particular due to his wife. [This was the case of] the famous Wiese Sudameris. [We sent her] a

questionnaire with seven questions asking ‘Please answer how much you have earned,’ ‘Please answer if you have paid taxes’... [We sent this questionnaire] to the Presidency of the Council of Ministers, and [as a result Prime Minister] Solari stopped talking to [Belaunde Moreyra]. On top of that, the czar leaked this document to the press... So, Solari got angry with him; Toledo did not say anything. Afterwards the whole thing appeared on the news, and [the czar] said on television ‘Ma’am, you need to leave your post [in Wiese Sudameris]’... This contributed to her losing that salary of US\$ 10,000 per month. Toledo did not say anything, but they got angry and did not provide any [further] support [for the work of the CNA].”¹³⁸

Indeed, the media echoed the CNA’s position and highlighted its criticism of the whole affair. *La República* read (Núñez, 2002a):

“The commission presided by Belaunde Moreyra considers that it is a mistake from the government to have adopted a lukewarm attitude regarding the subject and not having given explanations to clarify it. For them her resignation would not suffice. For all of this, the anti-corruption czar is believed to be evaluating the convenience of staying in his post after his recommendations were ignored. This, in particular, because it was the government itself who appointed him to take a stance in specific subjects.”¹³⁹

Other accounts reinforce the idea that the government began to see the CNA as producing more stress over the system, just as any environmental actor, than to help cope with pressure as it had been designed for. Another member of the commission states that the relationship with the government was anything but friendly and supportive: “The commission became a sort of enemy, or an agency that should be feared”¹⁴⁰ (Interview No. 08). This situation began to precipitate the beheading of the CNA. A staff member that participated in the activities of both the INA and the CNA (Interview No. 06) posits:

¹³⁸ Translated from Spanish.

¹³⁹ Translated from Spanish.

¹⁴⁰ Ibid.

“The National Commission to Fight Corruption, as any anti-corruption body in any country, needs to be joined by political will... in order to fulfill its objectives... And it also depends on the [government’s] purpose and intensity to fight against corruption... At some point the government itself started to withdraw the support that the CNA needed.”¹⁴¹

The last straw was the interest of Czar Belaunde Moreyra in looking into the case of Minister of Internal Affairs Alberto Sanabria Ortiz, who after taking the post on January of 2003 had been immediately challenged by allegations of corruption and favoritism (Chávez, 2003). A member of the CNA describes this final episode (Interview No. 19):

“There was a problem with Mr. Alberto Sanabria, who, as General Director of Internal Government, perceived an income equal to its nominal salary for looking over some raffles. It was not grand corruption, but we considered that it was not legal. Then [Belaunde Moreyra] did get removed [from the appointment of anti-corruption czar].”¹⁴²

The swift and sudden way in which the government handled the deactivation of the anti-corruption czar, and consequently the beheading of the CNA (which would be unable to continue holding meetings of its commissioners without the presence of the president, Belaunde Moreyra), supports both the CNA’s account and our discussion. The last official meeting of the CNA took place on February 6, 2003. Exactly one week later, Martín Belaunde Moreyra was appointed ambassador of Perú in Argentina,¹⁴³ departing the country a day later. The rush was so great that his resignation was only made official two months later, on April 25, which meant that the ministerial resolution had to explicitly state that it had ‘retroactive efficacy.’ Finally, on April 30, the official newspaper *El Peruano* published Supreme Decree No. 047-2003-PCM, which modified the norm creating the CNA, rendering it harmless for the government and putting the blame on the complaints made by the OCG.

¹⁴¹ Ibid.

¹⁴² Translated from Spanish.

¹⁴³ Supreme Resolution No. 044-2003-RE of February 13, 2003.

The effective deactivation of the CNA (which formally kept existing, but its public image was all but dissolved) followed the logic of *institutional devolution*,¹⁴⁴ a preemptive measure activated by the government to control the production of stress over the NACS and the political leadership. As mentioned before, this sort of coping mechanisms can be considered to be corruption-enablers, and so are susceptible to create other forms of pressure over the system. Aware of this fact, the government of President Toledo made sure to include a secondary mechanism to avoid that possibility. The public rationalization of its decision to separate Belaunde Moreyra from his anti-corruption role, and the involvement of an agency that was constitutionally autonomous, was clearly the government's way of preemptively dealing with any stress caused by the beheading of the CNA. The use of the comptroller general was none other but an example of *misallocation of responsibility*,¹⁴⁵ which diverts pressure from the government and towards secondary political objects.

Following these measures, the CNA was further secured from political activism by the appointment of a political operator, Juan Paz Espinoza (Interview No. 26), as the Executive Secretary of the commission on May 1. This position had been officially created by the amending norm (published on April 30) to supersede the administrative duties of the president. By doing so, the government managed to (1) avoid the appointment of a new president, (2) disable any official meeting of commissioners, (3) guarantee its control of the CNA's activities, and (4) still keep the commission running (at least formally). For the next two years no meeting of commissioners would be organized, and most of the activities would revolve around anti-corruption training for public officials and civil society.

When inquired about the fact that no representative of the President of the Republic was appointed after the 'resignation' of Belaunde Moreyra, Jaime Reyes Miranda, Secretary General of the PCM argued that (PCM, 2006, p. 9):

"The appointment of the president of the [CNA] was a competence of other public officials different to the Secretary General of the PCM... When [I] assumed the post of Secretary General of the PCM, [I] could not unduly take

¹⁴⁴ As described under the scenario of corruption perception, coping point of output concealment (1st round).

¹⁴⁵ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

the liberty of appointing or assuming the presidency of the commission, [but I] fulfilled my duty of warning the successive presidents of the Council of Ministers of the need to designate a new president, after the resignation of doctor Martín Belaunde Moreyra.”¹⁴⁶

On the same issue, Juan Paz Espinoza asserts that (PCM, 2006, p. 7):

“Instances of coordination were carried out in important meetings with all the presidents of the Council of Ministers, although this is an issue that exclusively concerns the President of the Republic as in order to be appointed president of the [CNA] one needs first to be Presidential Advisor on Anti-Corruption Affairs; nonetheless, the institutional operative plans were executed and accomplished as far as possible.”¹⁴⁷

Therefore, it is safe to say that the government was quite aware of the situation that the CNA was going through, and purposely kept it without leadership and excluded from the participation of other government agencies and civil society. In this respect, it is not true that the CNA, under the executive command of Juan Paz Espinoza, carried on all its duties as they were programmed. According to the audit report of 2006, of the fourteen activities that were officially programmed by the CNA between 2002 and 2004, the commission focused in only four of them: Promotion of public ethics; training sessions; media campaigns; and interinstitutional agreements. On top of that, the audit process found that on 2004 only 9.4% of the programmed activities could be accounted for, pointing to a serious deficit in management.

Eventually, the CNA was revamped through Supreme Decree No. 035-2005-PCM, signed on May 6, 2005. This second modification was brought by a number of reasons, the most important being three: (1) Toledo’s government was going through the second lowest level of popular approval of his entire term, caused by a series of corruption scandals throughout the second half of 2004; (2) the UNCAC had just been ratified by the Peruvian parliament on October 19, 2004; and (3) the funds described in the *Agreement between the Government of the Republic of Peru and the Government of the United States regarding the transfer of confiscated assets*, signed

¹⁴⁶ Translated from Spanish.

¹⁴⁷ Ibid.

on June 12, 2004, had been recently transferred, which demanded the setting of institutional arrangements to comply with the requirements included in the Agreement. These three circumstances represented instances of domestic and international pressure, specifically regarding *popular criticism*¹⁴⁸ and *media coverage*;¹⁴⁹ *international conventions*;¹⁵⁰ and *aid conditionalities*.¹⁵¹

Although the government response was to modify the CNA so as to allow the executive secretariat to hold official meetings of commissioners in the case of absence of the president, and certain preventive and control functions were improved, the political dependence of the commission was further secured. On January 13, 2005 (less than three months before the modification of the CNA), the government had concluded the appointment of Juan Paz as executive secretary and put Alberto Ygor Martínez Llanos in his place,¹⁵² who until then had officially held the post of commissioner in representation of the Ministry of Justice. Martínez Llanos was another actor that the government knew could be counted on to keep the commission under control, same as Juan Paz; but in contrast to the latter (who had been first brought to the CNA by Belaunde Moreyra from the Association of Lawyers of Lima), the former was an official member of the incumbent party. According to a staff member of the CNA (Interview No. 26), “Juan Martínez Llanos is appointed... because he is another political operator. He actually was directly close to the president, and he actually belonged to [Toledo’s] party. So, it was a matter of ‘O.K., now it’s your turn.’”¹⁵³ Indeed, the new executive secretary had unsuccessfully run for Toledo’s party *Perú Posible* on the congressional elections of 2000.¹⁵⁴

It is difficult to ignore at this point the persistence of the CNA as an *inadequate anti-corruption body*, a coping mechanism to somehow soothe the stress from the scenarios of corruption perception and intolerance. The events that followed the appointment of Martínez Llanos point unmistakably at the total instrumentalization of the commission and its preventive anti-corruption nature. On May 20 (exactly two weeks after the modification of the norm), the government

¹⁴⁸ As described under domestic pressure activities, direct pressure.

¹⁴⁹ As described under domestic pressure activities, indirect pressure.

¹⁵⁰ As described under international pressure activities, direct pressure.

¹⁵¹ As described under international pressure activities, direct pressure.

¹⁵² Ministerial Resolution No. 006-2005-PCM.

¹⁵³ Translated from Spanish.

¹⁵⁴ Alberto Ygor Martínez Llanos occupied the place N° 85 in the list of congressional candidates, as it is shown in Resolution No. 216-2000-JNE of the National Electoral Jury, published on *El Peruano* on February 19, 2000.

decreed¹⁵⁵ that the CNA, together with the Ministry of Justice, would be the agency in charge of identifying the anti-corruption initiatives on which the funds transferred from the American government¹⁵⁶ would be invested. On August 8, the first meeting of commissioners in two years and a half was finally held under the interim presidency of Martínez Llanos. During the next sessions, the task of identification of anti-corruption initiatives was properly discussed and reported, following government orders. The duties were distributed in the following way: the CNA would take care of the normative and technical aspects, while the Ministry of Justice (represented by its new vice minister, Jaime Reyes Miranda), would calculate their monetary costs. The presence of Reyes Miranda at this point is particularly telling of the consistent approach taken by the government: as it was mentioned before, he had been Secretary General of the PCM between 2002 and 2005—this is, throughout the two modifications suffered by the CNA.

This process was officially completed with the approval of the projects by Ministerial Resolution No. 402-2005-JUS, on October 12. Then, two weeks later, on the 26th, the government gave Supreme Decree No. 082-2005-PCM, ordering the transfer of the CNA out of the sphere of the prime minister and assigning it to the Ministry of Justice. In its new sector, the CNA was put under the supervision of Reyes Miranda, who had been given the coordination of anti-corruption policies in the Ministry,¹⁵⁷ and who became the commission's new president in early 2006.¹⁵⁸

With that decision, the CNA was effectively demoted to a sectorial status, and even though its mandate remained having national reach, it is clear that in terms of institutional power the transfer left it even farther away from having any real impact on the NACS. A former senior official of the Ministry of Justice that was close to the work of the commission is of the same opinion (Interview No. 27): "I think it was a mistake to send [the CNA to the Ministry of Justice] and not keep it in the Presidency of the Council of Ministers, strengthening it in a different way."¹⁵⁹

¹⁵⁵ Supreme Decree No. 039-2005-PCM, published on May 24.

¹⁵⁶ These funds are the ones described in the bilateral Agreement that was commented earlier.

¹⁵⁷ This point is referred to at the 28th meeting of commissioners of the CNA, held on December 2, 2005.

¹⁵⁸ The term *commission* is used here to avoid confusion. Actually, on January 16 of 2006 the CNA was reinvented by the Ministry of Justice as the National Anti-Corruption *Council*, which was given a slightly different structure (Supreme Decree No. 002-2006-JUS).

¹⁵⁹ Translated from Spanish.

3. The Anti-Corruption Subsystem

It was explained earlier in this chapter that the success of Paniagua's government in investigating and beginning the prosecution of the Fujimori-Montesinos mafia effectively reduced the amount of spotlight that Toledo and his administration could obtain from activating mechanisms such as *public expressions of enforcement support* and *non-partisan investigations/prosecutions*.¹⁶⁰ As a consequence, the area of enforcement actions represented a less impressive source of support, at least in regards to the corruption of the previous government. The reason was simple: Due to the success of Paniagua's government in the area, environmental pressure had considerably declined. With less demands to satisfy, less support to gain, and so the cases related to the previous decade began to fade in the political agenda.

Let us take a look at the numbers first. Of the 246 days that Paniagua was in power (without counting the days he took and left office), newspaper *La República* included in its front page at least one piece of news related to corruption of members of opposition groups (which included almost exclusively the Fujimori-Montesinos network) on 179 occasions. Looking at the same length of time since the beginning of the Toledo administration, *La República* did a similar coverage of news on 102 occasions. When we compare these two numbers, we get Figure 6: During Paniagua's term in office, corruption cases involving members of the opposition are highlighted 64% of the time, while this figure drastically decreases to 36% during Toledo's government. Clearly, by the time *Perú Posible* arrives to office the saliency of the issue was already in decline; this trend is even more evident when we consider the general pattern in which news of the Fujimori-Montesinos are distributed throughout 2001. From January to May, the coverage of corruption on newspapers is almost uninterrupted, except for a very brief period in April. The biggest two periods of corruption coverage during the second semester of the year take place during July and October; in other words, one still under Paniagua's watch, and only the second under Toledo's.

The reduction of the government's interest in pursuing the enforcement of

¹⁶⁰ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

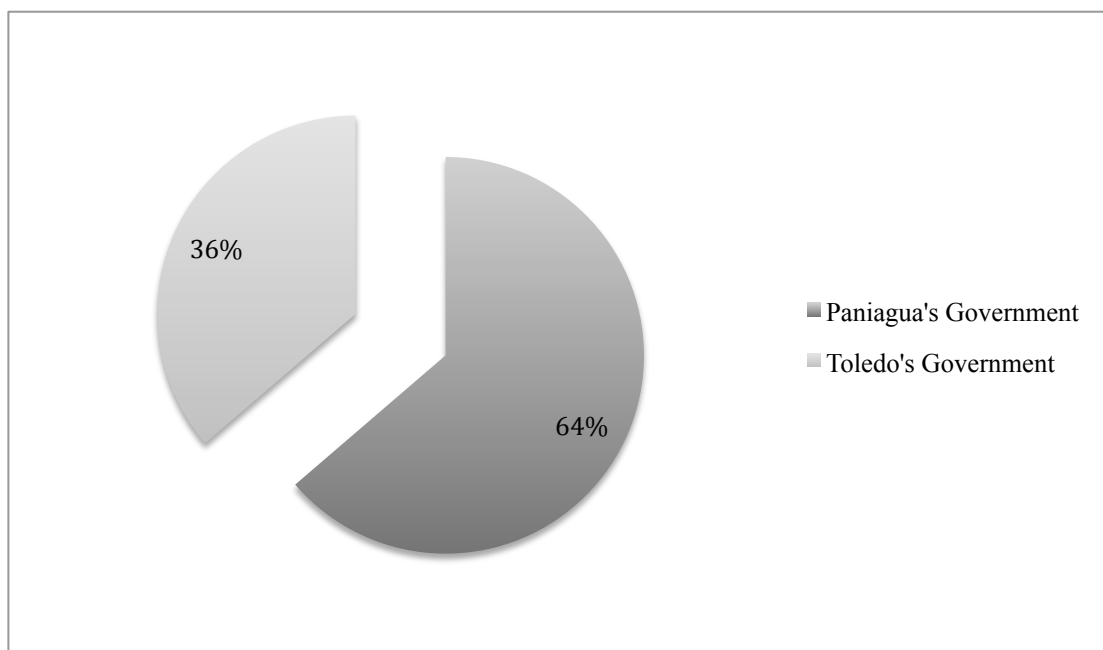


Figure 6. Days *La República* Reported Corruption Involving Opposition Groups–Paniagua/Toledo

anti-corruption norms (this is, the activation of *demand-satisfactory measures*¹⁶¹) became evident almost immediately after Toledo took office. José Ugaz (2014, pp. 169-171), then *ad hoc* procurator for the Fujimori-Montesinos case, describes the lack of presidential will, especially when compared to the transitional government:

“Even though it is true that, in basic terms, the president kept supporting the Procurator’s Office, we were missing the fierce political will of Valentín Paniagua...

It was not possible to understand... how a president that in the public discourse declared to be unambiguous in his fight against corruption without exceptions, was giving shelter in his political party to people... who were bitter enemies of the Procurator’s Office...

[Some time later] I understood that the president could not hold back his Congressman [Jorge Mufarech, who was an open slanderer of the Procurator’s Office], and that we had to fight our battles without relying on the support of the Government...

All these circumstances... contributed to my decision of putting an end to my

¹⁶¹ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

post of Public Procurator.”¹⁶²

The passage of time and its effect on the popular interest, and in consequence on the government efforts, is also expressed by Ugaz (Peña-Mancillas, 2011, p. 6) by comparing Toledo’s administration to that of his successor, Alan García Pérez:

“Toledo let [the Procurator’s Office] do its job. He did not support so decidedly as Paniagua, but he did not make much trouble either... During Toledo’s government what diminished was the political will, it became thinner, but he did not take apart [the anti-corruption subsystem] as this government [of Alan García] did. This government beheaded the Procurator’s Office and, definitely, today we have but a cartoon of what was, in its moment, the [anti-corruption] system.”

The government support that Ugaz calls ‘political will’ here, is what we have identified as merely a type of coping mechanism to deal with social and international demands to fight corruption. As the time went by and the demands moved from prosecuting the Fujimori-Montesinos network to prosecuting members of the incumbent party, it was evident that the interest in a public procurator specialized in the Fujimori government would dwindle in direct relation to the media attention, and that the anti-corruption subsystem would become more threatening to the health of the regime than necessary for its sustainability.

In the following lines we discuss the state and evolution of the relationship between the government and the subsystem by focusing on the hurdles of the Public Procurator’s Office, which is the only element that was under direct responsibility of the government: While the Public Ministry and the judiciary are constitutionally autonomous organizations, and are (at least formally) independent from the political leadership, procurators are officially ‘state lawyers’ hired by the government to represent its interests. The main function of public procurators is to pursue civil damages, and to different extends to support the work of investigation and the burden of proof (especially when the Public Ministry, through its body of public prosecutors, does not have the resources of expertise to do so), in name of the State apparatus.

¹⁶² Translated from Spanish.

However, they can be legally appointed and dismissed at will by senior officials, which makes them particularly telling evidence of the real position of the government in terms of the fight against corruption.

The new NACS, although originally designed to deal with the massive corrupt network of Alberto Fujimori and Vladimiro Montesinos, represented a new set of rules for all political actors, and not just for them. Still in its infancy, it had a great potential for affecting the members of the Toledo administration too. There were two aspects of the subsystem that could become particularly troublesome: First, there was always the possibility that the identified members of the network would eventually extend until it included actors close to the incumbent president, or at least to the higher ranks of his administration. Jorge Mufarech Nemy, of whom Ugaz (2014) complained for his opposition to the work of the Public Prosecutor's Office, and César Almeyda were two such examples. Second, as any administrative system, the anti-corruption structure could autonomously push for its own development, thus becoming a source of stress akin to any other actor in the environment. If left alone, there was no doubt that the NACS would not be stabilized, but rather they would continue evolving to more complex and challenging stages. We shall address each one of these two points in turn.

Before becoming congressmember for Toledo's party *Perú Posible*, Mufarech had been part of the Fujimori regime as minister of Labor for a very brief period of time at the beginning of 1999. Although his position was not in line with that of Fujimori's, he had engaged in obscure affairs with infamous individuals such as Oscar López Meneses, Daniel Borobio (Trujillo, 2003), José Enrique Crousillat, and even Montesinos himself, all four of these imprisoned at one point or another for corruption involving the previous decade. In February of 2005, Mufarech was briefly prosecuted under charges of influence peddling in connection to Crousillat, whom he had allegedly helped in an administrative investigation during his appointment as minister in 1999 (LR, 2005/02/16). Although he successfully appealed the decision of the anti-corruption court to open a legal process against him (Véliz, 2005), the impetus of the subsystem could not be denied nor ignored.

A year earlier, fragments of a conversation held between César Almeyda Tasayco, former chair of the National Council of Intelligence and Toledo's private lawyer; and former Army General Oscar Villanueva, who had been considered to be one of Montesinos' most important henchman, had evolved into a serious political

crisis, and had shown “to the citizens the existence of obscure connections between members of the Fujimori-Montesinos mafia and men very close to President Toledo” (Siles, 2004).

There was no doubt that the combinations of bad elements in important government positions, on the one hand, and an anti-corruption subsystem especially designed to chase and punish acts of corruption linked to the previous decade, on the other, was a dangerous combination for the political (and legal) future of the leadership. The new NACS, thus, represented a threat to the stable inflow of support to the government with its improved capabilities to enforce anti-corruption law. A member of the Public Prosecutor’s Office supports these assertions (Interview No. 02):

“I believe that the subject [of fighting against corruption] is dropped for various reasons. First, because the daily affairs end up overwhelming [the capacity of] politicians, just as it happens in many of those reform efforts. I am sure that if you were to ask Alejandro Toledo ‘what is it going to be [your main concern]?’ [he would answer] ‘The fight against corruption.’ But then the scandals begin, the problems, your own people starts engaging in [illicit affairs], you get pressed to give up on the cases. There was a lot of resistance from [different] sectors, which were not involved in investigations yet, [and they wanted] to stop the anti-corruption efforts because everything was connected to the Fujimori-Montesinos process.... People very powerful got involved in these cases.”¹⁶³

Under these circumstances, the government first relaxed the investment in anti-corruption efforts, and then began to take steps towards *institutional devolution*.¹⁶⁴

Reallocating Resources Away from the Anti-Corruption Subsystem

According to Public Procurator Luis Vargas Valdivia (2002-2004), by mid of 2004 his office was confronting a series of challenges in terms of financial support:

¹⁶³ Translated from Spanish.

¹⁶⁴ As described under the scenario of corruption perception, coping point of output concealment (1st round).

They had been waiting a transfer from the FEDADOI funds to pay for the appraisal of several public buildings erected during the previous decade; the OCG had failed to provide them with human resources to verify the accountability related to cases of illicit enrichment; it had been a year since they had requested without success the hiring of a law firm in the United States to take on a case brought against the foreign accounts of Vladimiro Montesinos, which as a result were in danger of being confiscated in benefit of private actors and entities; furthermore, their annual budget had been cut down from US\$ 1.3 millions to US\$ 0.8 millions. Regarding the last point, Vargas Valdivia had expressed: “The budget has gradually decreased even though we have kept the same level [of performance]”¹⁶⁵ (LR, 2004/09/01).

When we consider the assets that were repatriated during the Toledo administration, the budget cuts to the Public Procurator’s office become all the more striking. According to former procurator José Ugaz (2014), by the beginning of 2002 US\$ 75 million had been effectively recovered thanks to the quick actions of his office and the cooperation of international actors. By the end of 2006, the assets recovered summed more than US\$ 170 million. In Figure 7 we see the evolution of the FEDADOI’s income.

Urgent Decree No. 122-2001, published in the first three months of the Toledo administration, established in its article 10 that the funds administered by the FEDADOI would be employed to *b) pay for services provided and other expenses required by the inherent activities of the Procurator’s Offices that take part in criminal proceedings [regarding illicit activities against the State], and of the anti-corruption Procurator’s Offices of the Ministry of Justice*. Additionally, the funds would also go to compensate the victims of human rights abuses, according to subsection d) of the same article. However, by mid 2005 the Ad Hoc Procurator’s Office in charge of the Fujimori-Montesinos case (the source of the FEDADOI funds) had only received 3% of the total money recovered, while the victims of crimes against human rights perpetrated during the previous decade had been allocated 3.3%. The rest of the money had found purposes other than those explicitly established in the norm creating the FEDADOI.

Newspaper *La República* described the situation in time for President Toledo’s fourth and last State of the Nation address (Páez, 2005):

¹⁶⁵ Translated from Spanish.

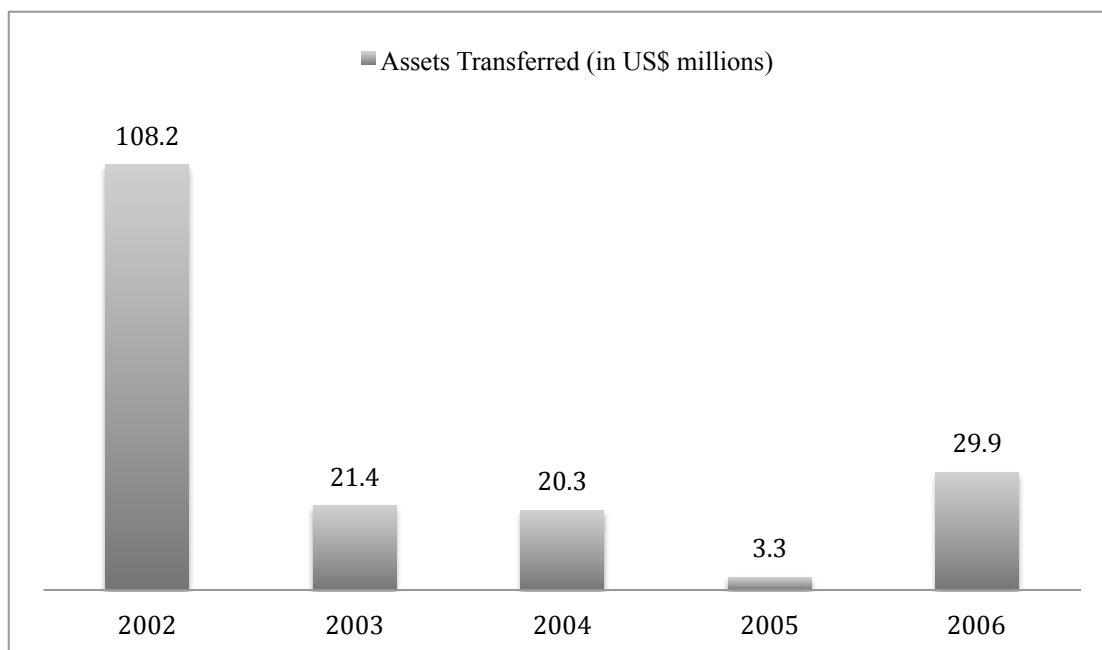


Figure 7. Funds Transferred to the FEDADOI Per Year (in \$US Millions)

Source: Justicia Viva (Gamarra et al., 2007) with information from the Ministry of Justice of Peru.

“More than three quarters (73.3%) of the total amount of money recovered has been spent, by strict orders from the Executive, in aiding to the budget of public universities (22%), in the purchase of uniforms and the payment of overdue vacations for officers of the National Police (22%), and in the compensation of [public] employees fired during the period of Fujimori (20%).

The judiciary received US\$ 11 million, but that amount was distributed in the following way: US\$ 8.2 million went to solve the list of demands made by judicial employees and workers (69.6%), US\$ 3.5 million (30.2%) to raising wages of the members of the Supreme Court, and only US\$ 7,201 to paying the fees of judicial experts. And, how much did the anti-corruption courts receive? Zero.”¹⁶⁶

By Ministerial Resolution No. 377-2005-PCM, published on October 16, 2005, the PCM authorized the transfer of US\$ 1.1 million *for the acquisition of goods and services and the equipment of three Superior Prosecutor’s Offices and two*

¹⁶⁶ Ibid.

Provincial Prosecutor's Offices Specialized in Public Corruption. However, according to an official decree the Public Ministry, to which the Prosecutor's Offices belonged, the resources allocated “do not cover the ordinary expenses of appointment of prosecutorial and administrative personnel; therefore, it is necessary that the Ministry of Economy and Finances allocates the resources to cover those ordinary expenses.”¹⁶⁷ By way of contrast, two years earlier, in November of 2003, the FEDADOI had approved the transfer of US\$ 10 million to the Ministry of Internal Affairs to pay for overdue vacations of its workers corresponding to the years 1995 and 1996 (PCM, 2003). Such differentiated treatment to institutional anti-corruption activities, on the one hand, and the correction of trivial administrative issues, on the other, speaks very eloquently of the political will supporting the anti-corruption subsystem.

Turning to the exact amount of resources allocated to the different components of the subsystem, including the Public Procurator's Office under the management of the Ministry of Justice and the Anti-Corruption Prosecutor's Offices in the Public Ministry, we find that 60% of the funds administered by the FEDADOI were ultimately employed in activities located *outside* the anti-corruption subsystem: while US\$ 73.7 went to support the fight against public malfeasance, US\$ 109.4 were used as discretionary ‘petty cash’ of the government (Gamarra et al., 2007). Figure 8 presents the disaggregated information on the distribution of the money that was allocated to the subsystem, while Figure 9 shows the annual distribution of the amounts transferred. It is particularly telling the fact that the resources of the subsystem steadily declined during the first years of the Toledo administration, before picking up again in 2005 and 2006. As it will be discussed later, 2004 (the year showing the smallest amount of money allocated to the subsystem from the funds of the FEDADOI) was also the most stressful for the government as a consequence of multiple corruption scandals, and the year that the Public Procurator's Office was effectively intervened by the political leadership.

The result of the inconsistent and diminishing investment in anti-corruption enforcement efforts had as a consequence the stalling of criminal proceedings. By March of 2005, only twenty of the more than two hundred proceedings initiated against a population of corrupt actors of 1,492 accused had been finalized, while other

¹⁶⁷ Resolution of the Board of Supreme Prosecutors No. 069-2005-MP-FN-JFS from October 20, 2005.

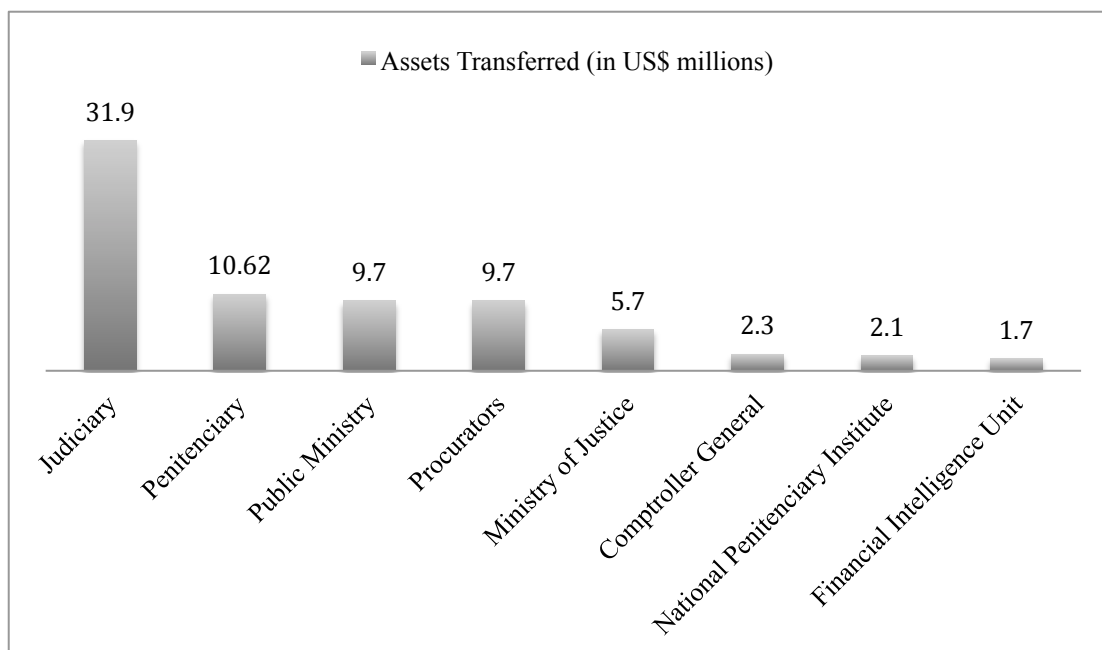


Figure 8. Resources Allocated to the Subsystem 2002-2006 (in US\$ millions)

Source: Justicia Viva (Gamarra et al., 2007) with information from the Ministry of Justice of Peru.

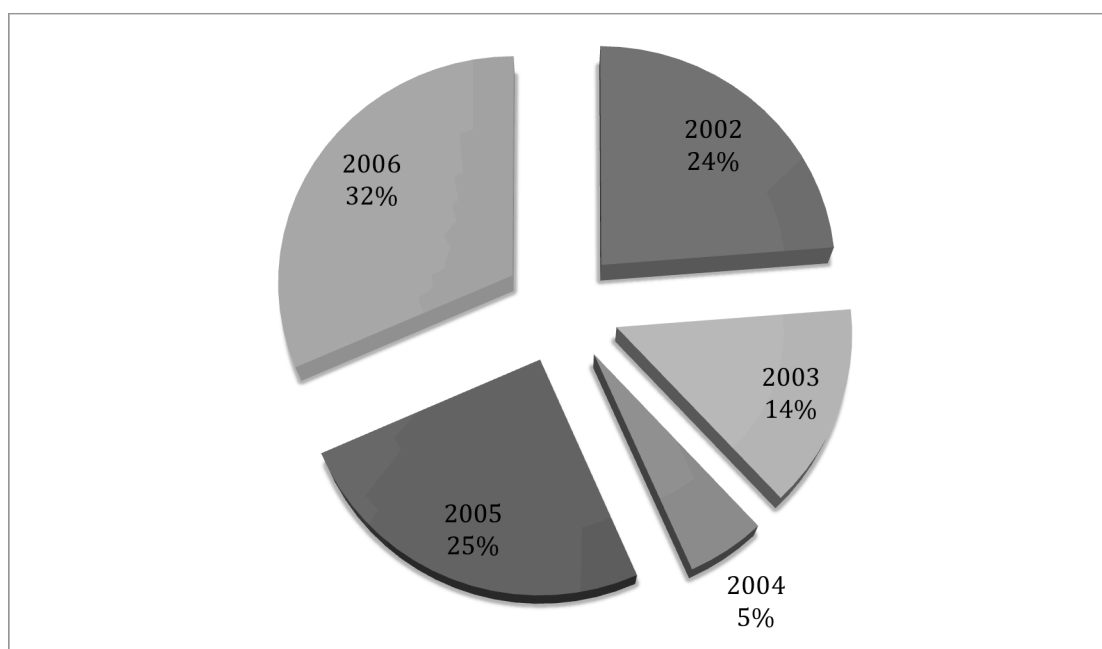


Figure 9. Annual Distribution of Funds to the Anti-Corruption Subsystem 2002-2006 (from Total Allocations from the FEDADOI)

Source: Justicia Viva (Gamarra et al., 2007) with information from the Ministry of Justice of Peru.

twenty-four were being appealed in a higher court. On top of that, more than half of the sentences involved a maximum of four years in prison, the absolute minimum.

This situation highlights the argument that we have been elaborating: With the decline in public interest and media attention to the cases of corruption of the previous decade, and the emergence of an entirely new scenario of corruption perception stressing the government, the coping mechanisms could not stay the same as during the transitional government of Valentín Paniagua. Simply, it just did not pay off to keep investing in *demand-satisfactory measures*¹⁶⁸ anymore, especially when this could turn against the incumbent party just as easily. A member of the Public Prosecutor's Office during the first years of the Toledo administration expressed his view of the political scenario in the following terms (Interview No. 02):

“As I see it, and this is absolutely my personal opinion, the political support dies out when it becomes costly for the government to fight for us. I believe that already by the third or fourth year in office Toledo does not have any more interest in this... Nobody cared anymore. It needs to be said also: the criminal proceedings were not giving the political capital that a politician wants. If they tell you that the trials will finish [somewhere around] the middle of the term of the next [government]...”¹⁶⁹

Harassment and Intervention against the Public Procurator's Office

After José Ugaz resigned to the appointment of *Ad Hoc* Public Procurator for the Fujimori-Montesinos case (February 1, 2002)¹⁷⁰, Luis Vargas Valdivia took the post,¹⁷¹ which he held until December 21, 2004.¹⁷² During this period of almost three years, and notwithstanding the progress it was made in the prosecution of culprits and the recovery of stolen assets, the government's position slowly but steadily switched from negligence to one of open harassment. The conditions for the work of the Procurator's Office was already markedly different by early 2003, after some media sources close to the Fujimori government began a campaign of discredit against Ugaz, accusing him of having received irregular payments by Fujimori during the first days

¹⁶⁸ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

¹⁶⁹ Translated from Spanish.

¹⁷⁰ Supreme Resolution No. 013-2002-JUS.

¹⁷¹ Supreme Resolution No. 016-2002-JUS.

¹⁷² Supreme Resolution No. 266-2004-JUS.

of his appointment in 2000 (Pariona Ariana, 2012). Although by the time of the press attacks Ugaz had surrendered the office of procurator to Vargas Valdivia, this situation affected not only the work that had been done during the former's leadership, but also affected the latter: Vargas Valdivia, after all, had worked with Ugaz in the same law firm before the *Ad Hoc* Procurator Office was created, and he had been part of Ugaz's team from the very beginning. In fact, Toledo had appointed Vargas Valdivia following Ugaz's recommendation. For the former procurator (Ugaz, 2014, p. 93), the situation represented indeed an attack on the whole anti-corruption subsystem:

“We did not imagine that, later, the irregular way in which this money was sent to the Procurator's Office would be exploited by newspaper *La Razón*, spokesperson of Montesinos and his allies in Congress, to orchestrate a series of attacks against me, and in this way, to question the legitimacy of the anti-corruption judges and prosecutors and ask for the resignation of the Public Procurator for the Fujimori-Montesinos case that came after me, Luis Vargas Valdivia.”¹⁷³

Disregarding the true source of the attacks, the situation was soon exploited further by members of Congress, particularly Jorge Mufarech, who went so far as to claim that Ugaz was “a key piece in the Fujimori-Montesinos mafia”¹⁷⁴ (Bonilla and O'Brien, 2003). On April of 2003, congressmembers of the incumbent party voted in favor of recommending that the Public Ministry conducted an official investigation against Ugaz (LR, 2003/04/23). Although eventually the allegations against him would be contested and dropped, the whole affair created a bad precedent for the moral integrity of the Public Procurator's Office.

The attacks on the Public Procurator's Office resumed in 2004, this time directly against procurator Luis Vargas Valdivia and his team, after a new scandal broke regarding the alleged forgery of signatures for the registration of Toledo's party *Perú Posible* in the 2000 elections. Although Vargas Valdivia was quick to assure that no investigation was being carried out that included President Toledo in the scandal, he made clear that it was in the power of his office to investigate the affair, as

¹⁷³ Translated from Spanish.

¹⁷⁴ Ibid.

“it had allegedly taken place in 1998, during the government of the fugitive President Alberto Fujimori”¹⁷⁵ (Perú21, 2004/07/06). The clarification caused that some members of the incumbent party began publicly harassing the Procurator’s Office, expressing the animosity towards their work and even suggesting that Vargas Valdivia and his team were part of a network that was trying to get President Toledo overthrown (clearly, a combined instance of the coping mechanisms dubbed *plaintiff discredit*, *smokescreen*, and even *manipulation of public priorities*¹⁷⁶). Vargas Valdivia (LR, 2004/09/01) expressed on that occasion:

“It is clear [that the Ad Hoc Public Procurator’s Office does not have the political support of the government anymore] when the spokespersons from the government request that we be dismissed, and President Toledo himself does not say anything in relation to the fight against corruption on his State of the Nation address.”¹⁷⁷

Siles (2004, p. 22) summarized with great accuracy the situation that the procurator was confronting: “The Ad Hoc Procurator’s Office was caught in the middle of the storm because of its determination to investigate, with the efficiency and probity with which it has been carrying out its duty, all instances of corruption, including those that involved the present Government.” On December 20, 2004, Vargas Valdivia was replaced by Antonio Maldonado Paredes.¹⁷⁸ Three days later, on the 23rd, Ronald Gamarra and Iván Meini, associate procurators since the time of José Ugaz, publicly resigned to the Public Procurator’s Office alleging differences with Antonio Maldonado, whom they described as being the government’s appointment to subjugate the fight against corruption. According to them, Maldonado had expressed his disconformity with the antagonism that had characterized their relationship with the government, and that they should not openly challenge official versions given by senior officials of the Toledo administration. Under those circumstances, the two procurators had decided to abandon their posts.

The third and last associate procurator from Ugaz’s original team that had

¹⁷⁵ Ibid.

¹⁷⁶ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round) and negative input defuse (1st round).

¹⁷⁷ Translated from Spanish.

¹⁷⁸ Supreme Resolution No. 267-2004-JUS.

continued in office was dismissed a month later, on January 25, 2005. The decision to do away with César Pantoja, who had pushed for the prosecution of Margarita Toledo (LR, 2005/01/26) (President Toledo's sister), was automatically interpreted by the former members of the Procurator's Office as "being evidence that the government is trying to dismember the institution" and that "it confirms that the government is trying to destabilize the Office"¹⁷⁹ (Díaz, 2005).

The situation described clearly points at the activation of *risk management*¹⁸⁰ on top of the extended presence of *institutional devolution*: In order to guarantee the control of the Ad Hoc Public Procurator's Office, the neglect of the resources needed and the open harassment by members of the incumbent party needed to be joined by the appointment of an actor with a more friendly, if not obsequious, disposition towards the government. With the appointment of Antonio Maldonado, who would coincidentally be dismissed only a month after President Alan García had assumed office, the issues between *Perú Posible* and the Procurator's Office came to an end.

Legal Evolution

Taking a look at the normative evolution during the entire period of President Alejandro Toledo, it is possible to find that opposition parties in Congress had most of the political drive for anti-corruption legislative production, while the executive branch lagged far behind. Furthermore, of the seven important legal innovations produced by the government between 2001 and 2006, five of them took place within the first twelve months, supporting the assertion that the issue of corruption control declined at par with public interest in the Fujimori-Montesinos case, just as our theoretical model suggests:

- On August 17, 2001, the Ministry of Internal Affairs gave Ministerial Resolution No. 1000-2001-IN/PNP, which created the Anti-Corruption Police Unit. This Unit became the "specialized office of the National Police of Peru in charge of providing the technical support required by the authorities of the judiciary and Public Ministry, who investigate corruption

¹⁷⁹ Translated from Spanish.

¹⁸⁰ As described under the scenario of corruption perception, coping point of output concealment (1st round).

cases...”¹⁸¹ (Pariona Arana, 2012, p. 173).

- On September 27, 2001, the Ministry of Justice gave Supreme Decree No. 031-2001-JUS, which attended to the rules on extradition. It “specified the deadlines that are to be observed by public offices in the procedure of active extradition from the side of the Peruvian State, keeping in mind the fulfillment of international agreements.”¹⁸²
- On October 27, 2001, the Ministry of Justice gave Supreme Decree No. 038-2001-JUS, through which Decentralized Anti-Corruption Public Procurator’s Offices were established. The rationale behind their creation was that “the management of judicial processes that are started... [in places other than the Capital City, Lima, is currently] dependent on the support provided by the lawyers of those branches, which hampers the proper exercise of the [procuratorial] function.”¹⁸³
- On April 10, 2002, the government signed Law No. 27697, which gave public prosecutors the capacity to execute surveillance operations and to seize private communications. Originally, the Executive branch had sent this legislative project to parliament on October 22, 2001.¹⁸⁴
- On June 21, 2002, the government signed Law No. 27770, which modified the Code of Penal Administration and increased the requirements for penitentiary benefits in cases of crimes against public administration (i.e. corruption). Originally, the Executive branch had sent this legislative project to parliament on May 10.¹⁸⁵
- On October 10, 2003, the government signed Law No. 28088, which modified Law No. 27378 and cuts back penitentiary benefits for senior officials (Siles et al., 2005). Originally, the Executive branch had sent this legislative project to parliament on January 3.¹⁸⁶
- On January 05, 2004, the government signed Law No. 28149, which allows citizen participation in the overseeing offices of the judiciary and the Public Ministry. Originally, the Executive branch had sent this

¹⁸¹ Translated from Spanish.

¹⁸² Taken from the text of the norm; translated from Spanish.

¹⁸³ Ibid.

¹⁸⁴ Legislative project No. 1041/2001-CR.

¹⁸⁵ Legislative project No. 2816/2001-CR.

¹⁸⁶ Legislative project No. 5131/2002-CR.

legislative project to parliament on August 01, 2003.¹⁸⁷

Regarding the above norms, some arguments can be made: First, most of them are aimed at improving the control of corruption in line with the prosecution of the Fujimori-Montesinos network. The creation of the Anti-Corruption Police Unit, for example, was expressly carried in order to reinforce and facilitate the work of the anti-corruption subsystem put in place by the transitional government of Valentín Paniagua. In fact, in article 3 of the norm, it states that the functions of the police officers appointed to this Unit would be determined by the anti-corruption prosecutors and judges. The improved rules on extradition were another instance of normativity being developed with specific political actors in mind; in this case, the interest was to fast-track the repatriation of members of the 1990s government. Similar considerations are behind Law No. 27770, which “restricts the granting of [penitentiary] benefits to the payment of civil damages beforehand” (Arbizu y Piedra León, 2012, p. 235), and Law No. 28088, which exclusively affects those former senior officials already in prison (and the Fujimori government had produced most, if not all, of them).

Second, just as suggested in Chapter IV, *scapegoat convictions*¹⁸⁸ of low to mid-level public officials represent an attractive option for senior officials to satisfy demands and stimulate support. As a consequence of this potential, it is easier to endorse the creation of Decentralized Anti-Corruption Public Procurator’s Offices without endangering the stability of the NACS, at least from the government’s perspective. The possibility of finding this kind of initiatives suggests that Toledo’s leadership might not have been particularly tied to the endorsement or tolerance of corruption at the regional level; however, there is not enough information to make concrete assertions in that respect.

Third, a similar assessment can be made of Law No. 28149, as it only threatened the NACS in relation to the judiciary and the Public Ministry, both of them constitutionally autonomous organization with only coincidental and episodic connections to the incumbent party. Just as it happened with the case of decentralized procurators, it is easier to understand the rationale behind this norm: Following the

¹⁸⁷ Legislative project No. 7711/2003-CR.

¹⁸⁸ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

argument presented in Chapter III, the government can choose anti-corruption actions when it provides more political capital than the sum of the resources spent and any loss in corrupt profits. The development of overseeing mechanisms in the work of autonomous bodies fit perfectly this scenario, representing an opportunity for the government to stimulate support without having to suffer the changes.

Finally, the development of legislation addressing the seizure of private communications in order to more effectively fight corruption, brings attention to something that could have passed unnoticed among the evidence of political manipulation and instrumentalization of anti-corruption activities: There is always room for honest efforts to curb corruption, even if only sporadically and limited to certain issues and actors. The overseeing of the judiciary and Public Ministry was already evidence of the spaces that open up to introduce small modifications into the NACS, even if in general terms it remains quite stable. The same could be said of the Decentralized Anti-Corruption Public Procurator's Offices, which somehow help the efforts of environmental actors to fight malfeasance in public life, even when these do not actually reach the members of the central government, where the biggest scandals usually occur. Law No. 27697, just as the ones just mentioned, may represent an instance of the personality of the leadership and the effect that this variable potentially has for the stability of the NACS.

However, the tenets of the theoretical model seem to keep supporting the government's interest in keeping the NACS under control. This is evident when we contrast the normative production of the Executive branch, with the significance of the norms decreed by constitutionally autonomous agencies or organizations, and opposition parties in Congress. The result shows the lukewarm interest of the Executive to introduce reforms for the control of corruption:

- Law No. 27588 on prohibitions and incompatibilities of public officials (December 12, 2001).
- Law No. 27693, which created the Financial Intelligence Unit (*UIF*).
- Resolution of the Prosecutor's Office No. 988-2002-MP-FN, which elaborated on the faculties of the Provincial Prosecutor's Offices Specialized in the Fujimori case (June 13, 2002).
- Law No. 27765, which expanded for the first time the range of crimes that could constitute predicate offences for money laundering; previously, only

assets stemming from drug trafficking could give grounds to a criminal proceeding on money laundering (Reaño Peschiera, 2012) (June 26, 2002).

- Resolution of the Prosecutor's Office No. 182-2004-MP-FN, which extended the faculties of the prosecutor's offices specialized in anti-corruption so that they may be legally able to prosecute all instances of corruption, and not only those related to the Fujimori-Montesinos case. Later the same year the judiciary would produce a similar norm to join the position of the Public Prosecutor's Office. These steps represent "the creation of a true subsystem specialized in crimes of public corruption" (Quispe Farfán and Delgado Tovar, 2012, p. 185), as from then on there would exist an institutional structure specialized in the prosecution of public malfeasance, a true network of anti-corruption agencies (January 27, 2004).
- Administrative Resolution No. 154-2004-CE-PJ from the judiciary, which decreed that the judges and courts of the anti-corruption subsystem be able to try members of the Toledo administration, in addition to the proceedings involving the Fujimori government that had previously been their exclusive competence (August 13, 2004).
- Law No. 28355, which increases the punishment of illicit association, passive bribery, passive corruption of judicial workers, illicit enrichment, and others (Siles et al., 2005).
- Resolution of the Prosecutor's Office No. 774-2005-MP-FN, which regularized the list of crimes against public administration that anti-corruption prosecutors are able to bring to court, in line with those defined by the judiciary and its anti-corruption courts through Administrative Resolution No. 154-2004-CE-PJ (April 08, 2005).
- Law No. 28716, which strengthens the role of the Office of the Comptroller General in the internal control of public agencies (April 17, 2006).

Additionally, non-Executive organizations also produced a few landmarks in the area of corruption *prevention*:

- Law No. 27806 on transparency and access to public information (August

02, 2002), soon modified and improved by Law No. 27927 (published on February 04, 2003).

- Law No. 27815 on the Code of Ethics of the Public Service (August 12, 2002).
- Law No. 27865 on transparency in the origin of economic resources employed during regional and municipal elections (November 14, 2002).
- Law No. 28024, which elaborates the conditions and procedures for lobbying (July 11, 2003).
- Law No. 28083, which creates the Special Commission for the Integral Reform of the Justice Administration (*CERIAJUS*) (October 03, 2003).

Although the above body of legislation produced by actors outside the executive branch, which we may consider as part of the government's environment, was evidently more significant than the one produced by the government (even if not that much voluminous), it was still a long shot from reforming the NACS. The laws on lobbies, transparency and access to information, and code of ethics, for example, were largely ignored and did not have any important impact in the way the political system behaved in the following years. On the other hand, the evolution of the anti-corruption subsystem carried on by the Public Ministry and the judiciary represented a very important step towards enforcement and control, but, as we have seen earlier, its effectiveness was seriously impaired by the lack of financial support from the government of President Alejandro Toledo, among issues internal to the administration of justice in Peru. Thus, although the legal structure had been somehow reformed, the NACS remained stable.

Ronald Gamarra (2005), former associate procurator, supports the reading provided here regarding the government's willingness to address corruption only when involving members of the previous governments; this is, what we have described as *exclusive non-partisan investigations/prosecutions*¹⁸⁹ and norms that could facilitate the activation of this coping mechanism. He stated in 2005 (pp. 39-40):

“How should we describe the anti-corruption campaign started four years

¹⁸⁹ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

ago...? Insufficient... above all, because the official proposal [of reform] did not involve the creation of an anti-corruption ‘system.’ It only focused on repressing the activities of the past, but neglected the necessity to adopt preventive measures aiming at averting new acts of corruption, and our legal framework was not improved to deal with those public and private actors that, in democracy, expect to have their personal interests rule over those of the State.”

4. Corruption Scandals

The Toledo administration was confronted with multiple instances of *corruption perception*, one of the four stressful scenarios described in Chapter IV, throughout the five years *Perú Posible* stayed in power. Of the 1,825 days spanning between July 29, 2001, and July 27, 2006, newspaper *La República* reported on its front page the presence of corruption involving members of the incumbent party or public officials of the government in 410 opportunities, representing roughly 22% of the time.

Due to the sheer amount and frequency of incidents, only three events are reviewed in this section. They represent a manageable sample amidst a plethora of small, medium and grand cases of corruption that have been identified for the period of 2001-2006, chosen in accordance not to their anecdotal nature or their potential impact on the political system, but for their qualitative value to assess the government reaction to corruption scandals. As a complete analysis of all scenarios found during the Toledo administration would greatly exceed the space provided here, and would require the production of an exclusive work altogether, the sample chosen will serve to demonstrate the regular presence of coping mechanisms under scenarios of *corruption perception*.

Each scenario described here should not be understood as a *case*, which usually imply a comprehensive event with an established group of interrelated actors and the incidence of a specific type of corruption activity; instead, they represent the presence of one or more public cases of corruption, over an extended period of time, and which do not need to be related to each other. The cohesiveness of these events will be provided not by the network of actors, but by their coexistence and accumulating effects for the purpose of stressing the NACS.

The First Scandals

The first such event that can be found during the government of President Toledo began on December 29, 2001, with the news of nepotism involving the minister of Promotion of Women and Human Development (*PROMUDEH*), Doris Sánchez Pinedo. According to a report from the Office of the Comptroller General, ever since Sánchez had taken office, six members of her family had been hired in different areas of the Ministry (Páez, 2001). The news, however, was immediately outdone the next day by coverage of a conflagration in a commercial area of downtown Lima, which reportedly had killed more than a hundred people; this disaster was heavily reported on until some days later, on January 03, 2002, the issue switched to its causes. According to First Public Prosecutor, Nelly Calderón, police officers in charge of security of the area had been receiving bribes in order to ignore a series of safety regulations regarding fireworks, which eventually had caused the fire. The government's first reaction was to activate an *argumentative defense*, with minister of Internal Affairs Fernando Rospigliosi Capurro stating that "it is not possible to go ahead and provide opinion. It is not possible to find responsibilities and then carry out the investigation"¹⁹⁰ (Véliz, 2002). He then explained that the police had been working overtime throughout the season, and that it was a fact of life that certain incidents just could not be avoided. However, prompt factual evidence of police negligence opened the door for opposition Congressmembers to express *public exhortations*¹⁹¹ for the resignation of minister Rospigliosi; confronted with the pressure, Rospigliosi was quick to find in Police General Juan Mijichich a *scapegoat*, and relieved him a week later of his position as director of the General Office of Control of Services of Weapons, Ammunition and Explosives Safety for Civil Use (LR, 2002/01/12). Although the minister had complained about the comments of the First Public Prosecutor, describing them as premature, he had no problem in sacrificing Mijichich when the political pressure began to rise. With this action, the scandal drew to an end, and the time came for the government to address the issue of minister Doris Sánchez. According to sources of *La República*, the replacement of Sánchez had been decided in December, with plans to carrying it out on January 2; however, the conflagration in downtown Lima and the succeeding scandal had forced the government to wait for a more favorable opportunity (Rojas, 2002). Why? The

¹⁹⁰ Translated from Spanish.

¹⁹¹ As described under domestic pressure activities, direct pressure.

dismissal of Doris Sánchez needed to be largely recognized for what it was: a *political concession*. In her place, President Toledo appointed an independent actor that was not part of the incumbent party, but rather a renown member of the anti-corruption movement in Peru: Cecilia Blondet, former member of NGO *Transparencia* and founding member of *Proética* (which became later the national chapter of Transparency International), and who had also been part of the INA in 2001. Thus, the appointment of Blondet in replacement of Doris Sánchez (who was part of *Perú Posible*) represented a clear sign of the government discourse regarding the fight against corruption, and it had required the correct opportunity for maximum impact. The popular response showed this decision to be right: according to a poll conducted in January, 45% of respondents expressed approval of Sánchez's removal (APOYO, 2002a).

During this event, there had been a peculiar situation that had benefitted the government, but which had been brought by a member of an opposition party: Right after the opposition began pressing the government for the dismissal of minister Rospigliosi, Congressman José Barba Caballero of the political party National Unity, who had been appointed chair of the *parliamentary committee of investigation* for the conflagration case, posited that among the organizations involved in the corruption scheme that operated in the commercial area was the Municipality of Lima; in fact, he stated that bribes to this local administration was a regular, year-round activity. On the other hand, concerning the responsibility of the Ministry of Internal Affairs, Barba expressed: "What I have asked to my parliamentary colleagues is that we do not put the responsibility beforehand on the minister of Interior, Fernando Rospigliosi"¹⁹² (LR, 2002/01/07). This was evidently a strange position to defend for a member of the opposition, and which could suggest the activation of *misallocation of responsibility*¹⁹³ in benefit of the government: Indeed, the same poll conducted in January showed that 43% considered municipal authorities to be among those responsible for the tragedy, while 39% named the National Police, and only 22% mentioned the national government (APOYO, 2002a).

This interpretation is supported by two additional facts. First, after all the media attention pulled by Barba Caballero and his allegations of corruption against

¹⁹² Translated from Spanish.

¹⁹³ As described under the scenario of corruption perception, coping point of negative input defuse (1st round).

Lima's mayor, Alberto Andrade Carmona, when the committee's report was released there was no mention of the involvement of municipal officials in the corruption scheme that had ended in tragedy. It was certainly strange that, even though the committee's chair had reported of the existence of a fund of US\$ 100 thousand to bribe the authorities of the Municipality of Lima, the report did not include the names of any culprit belonging to this organization, but rather put the responsibility on the National Police, as it had been previously found by others. This situation supports the presence of not only misallocation of responsibility, but also of the characteristics associated with *smokescreens*.

Second, Andrade Carmona was again publicly accused of corruption less than a month later, with almost identical consequences. On the first days of February, the APRA party brought attention to the lack of transparency with which the minister of Economy, Pedro Pablo Kuczynski, had issued public bonds for US\$ 1.5 billion. What followed was the intervention of the OCG announcing the beginning of formal investigations on the matter, and a congressional inquiry (Hidalgo, 2002). One day after Kuczynski's presentation in Congress, however, Congressmembers Rafael Rey Rey and José Barba Caballero (of the National Unity party) gave a press conference to present alleged proves of a dummy company started by the mayor of Lima with the help of a front man; furthermore, the information indicated that the dummy company had been formed together with the sons of former Army General Víctor Malca, fugitive member of the Fujimori-Montesinos mafia (Caretas, 2002/02/21). The scandal switched public attention away from the government and towards the Municipality of Lima. However, one week later, the front man declared "not having presented any accusations of corruption against [Lima's] mayor"¹⁹⁴ (LR, 2002/02/20), but only informed the First Prosecutor's Office of his participation in the dummy company. Whatever the actual truth behind the allegations were, it effectively buried the event concerning Pedro Pablo Kuczynski, and no legal charges were ever presented against Andrade Carmona regarding bribery or money laundering, or any other corruption activity. As far as Toledo's government was concerned, the actions carried out by Barba Caballero proved as helpful and efficient as any other *smokescreen*.

Overall, the stressful process recounted above shows to have been

¹⁹⁴ Translated from Spanish.

appropriately and timely handled by the government, and while between December 29 and January 19 the presence of governmental corruption news on front pages surpassed the average of 22% to reach 54%, Toledo's approval saw its first recovery since he had taken office, increasing 2% (APOYO, 2002a).

The President's Daughter

The National Programme of Food Aid (*PRONAA*) had been under public and media scrutiny ever since the mother of Jorge Toledo (President Toledo's nephew) was discovered in its payroll, in December of 2001. A month later, amidst the allegations of nepotism against Doris Sánchez, the government decided to dismiss the head of the PRONAA, Mauricio Diez Canseco Beggiato, and to rescind the contract of Jorge Toledo's mother (LR, 2002/01/09). For Diez Canseco, this had meant his utilization as a *scapegoat*, as four months later he publicly declared that the cases of nepotism in the PRONAA had been of sole responsibility of minister Sánchez: "She paid political favors with job positions. She also hired family and friends. She wanted to use the PRONAA as if it was her own farm"¹⁹⁵ (Palomino, 2002).

The problems with this agency began anew in October of 2002, when Congressmen Wilmer Rengifo Ruiz, of the incumbent party *Perú Posible*, denounced the use of public funds in an event organized by the PRONAA in celebration of Father's Day, which had included the presence of exotic dancers (Díaz, 2002a). Although four months had already passed, and the charges were not all that clear (particularly for the small amount of money involved, which added up to little more than US\$ 3,000), President Toledo decided to immediately dismiss the head of the PRONAA, Modesto Julca Jara. Presumably in retaliation, Julca Jara declared in turn that Rengifo's allegations were brought by a desire of revenge because the PRONAA had decided to stop purchasing goods (rice, specifically) from a congressman's business (Velarde, 2005). The media scandal kept taking front pages as the mutual accusations increased, with Rengifo insisting that Congressmembers of *Perú Posible* had been aware of irregularities in the PRONAA since 2001; but the core of the event would only take place a couple of days later, and nothing to do with this public agency.

The news of the existence of President Toledo's illegitimate child, Zarái

¹⁹⁵ Ibid.

Toledo Orozco, had first appeared during the electoral campaign of 2000, when Toledo was still a candidate; then, they had briefly resurfaced during the campaign for the 2001 elections (Mucha, 2001). The existent of the child was not problematic by itself, except for the fact that Alejandro Toledo had consistently refused for over a decade to legally recognize the child's paternity, which was evidently seen as a lack of moral principles and a way of evading his legal responsibilities. The situation suddenly deteriorated into an open scandal of corruption when, on October 8, amidst the PRONAA affair, news of alleged benefits bestowed on the president of the Civil Courtroom of the Supreme Court, José Silva Vallejo, pointed to a case of abuse of power and influence peddling.

Silva Vallejo, under whose presidency the Civil Courtroom had sentenced on April against the Zarái case and decided that President Toledo had no obligation of taking a paternity test, coincidentally had filed a request to the General Administration of the Judiciary only a month later requesting the full payment of overdue income for the period he had been absent from the judiciary, amounting to US\$ 100 thousand. This amount included not only the nominal salary he had been unable to receive during the illegal control of the institution by the Fujimori administration, but also such payments as gas allowances and productivity bonuses, which had been expressively excluded from payment by the Constitutional Tribunal (Caretas, 2002/10/17). With surprising celerity, his request was approved only weeks later, even though many similar cases were still pending since the previous year (Páez, 2002).

The news produced a wave of *popular criticism*¹⁹⁶ against President Toledo for his presume intervention in securing the irregular benefits for judge Silva Vallejo (LR, 2002/10/09). Meanwhile, the PRONAA case continued unfolding, with Congressman Rengifo (Díaz, 2002b) and vice-president of Congress Jesús Alvarado Hidalgo (Zajec, 2002) publicly accepting to have recommended partisans of the incumbent party for different positions in the Food Aid agency; and three managers of the PRONAA confirming to have been pressed by Rengifo to contract with his company (Núñez, 2002b).

In the middle of October, President Toledo's situation concerning the Zarái case took a turn for the worse, as medias sources reported of a private meeting held

¹⁹⁶ As described under domestic pressure activities, direct pressure.

between Toledo and judge Silva Vallejo at the Government Palace in the beginning of September to discuss another file of the case that was still pending decision from Silva's Civil Courtroom. The news generated a new wave of *public exhortations*,¹⁹⁷ as the National Council of the Judiciary (CNM) opened a formal investigation against Silva Vallejo, the parliamentary Justice Commission requested his resignation, and even the Association of Lawyers of Lima demanded he be immediately relieved from his position (LR, 2002/10/15). The news was echoed by international media, which reported the declarations of members of the incumbent party as the government was trying to activate the immediate *misallocation of responsibility* and focus the blame on judge Silva. Thus, the Press Secretariat of the Government Palace issued an official statement declaring that the meeting had taken place by request of judge Silva Vallejo and not of President Toledo, and that the latter had thanked him for his concerns but that he would just wait for the legal proceedings to conclude with normality (LR, 2002/10/16b); and Enith Chuquival, spokesperson of *Perú Posible*, stated that "the judge must resign immediately for having incurred in an irregular act by visiting the house of one of the [litigating] parties"¹⁹⁸ (Del Valle, 2002). The measure, however, did not prove effective, as 77% of people still believed that the meeting had had the purpose of negotiating a successful result for President Toledo, and that it had been over the president's initiative that it had been held, not that of judge Silva. As a consequence, popular criticism improved, and Toledo's approval descended from 17% to 14% (APOYO, 2002c).

Second majority in Congress, the APRA party, was already suggesting to resort to a *legislative initiative*,¹⁹⁹ with its leader, Alan García Pérez, stating (Caretas, 2002/10/17):

"The Zarái case belongs to doctor Toledo and to his relation with the country and the public opinion. But when interference from the political power emerges, when it is revealed that a judge visits the president's house, there is a legal problem that may provide grounds for a [constitutional] accusation."²⁰⁰

Another leader of the APRA, Congressman Jorge Del Castillo Galvez,

¹⁹⁷ As described under domestic pressure activities, direct pressure.

¹⁹⁸ Translated from Spanish.

¹⁹⁹ As described under domestic pressure activities, direct pressure.

²⁰⁰ Translated from Spanish.

went further and stated that “if it is proven that this judge was pressed by Toledo, or that he received certain benefits, then we would have to evaluate the possibility of requesting the [presidential] dismissal”²⁰¹ (Caretas, 2002/10/17).

The same day of Del Castillo’s declarations, October 16, the prime minister provided advanced opinion pointing to Toledo’s change of approach regarding the whole Zarái affair. Clearly, the activation of simple coping mechanisms such as the *misallocation of responsibility* had not proven effective enough to control the level of pressure that was stressing the political system. The same day, the minister of PROMUDEH announced a thorough reorganization of the PRONAA, with newspaper *La República* explicitly pointing that the decision was “trying to bring to an end the scandal in which this institution has been involved”²⁰² (LR, 2002/10/16a) This decision represented the movement from the first round of a ‘corruption perception’ scenario, which involves enforcement, into the second round focusing on reform through the activation of *public expressions of reform support/proposal*.²⁰³

However, the main coping mechanism that finally brought to an end the stressful event surrounding the Zarái case (which was still being pressed by heavy *media coverage*²⁰⁴) was President Toledo’s decision to finally recognize the paternity of his daughter, drop the necessity of a DNA test by own initiative, and financially compensate her with US\$ 100 thousand (LR, 2002/10/19b). Two days after the comments made by members of the APRA regarding constitutional measures against the president, newspapers across the country covered their front pages with the news of Zarái Toledo finally being legally recognized. This move corresponds to what we have described earlier as an *alternative populist gratification*.²⁰⁵ seeking to provide subjective satisfaction that are not linked to material resources, Toledo’s decision was followed for a whole week as mother and child arrived to Lima (LR, 2002/10/18), the details of their reconciliation with Alejandro Toledo were thoroughly reported (LR, 2002/10/19a), bishop Luis Bambarén being quoted regarding his participation in the happy conclusion of the family affair (LR, 2002/10/20), Zarái’s new birth certificate was issued (LR, 2002/10/23), and First Lady Eliane Karp publicly expressed her full

²⁰¹ Translated from Spanish.

²⁰² Ibid.

²⁰³ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

²⁰⁴ As described under domestic pressure activities, indirect pressure.

²⁰⁵ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

support and satisfaction with the decision (LR, 2002/10/24).

President Toledo's recognition of Zarái as his lawful daughter worked exactly as the theoretical model suggested coping mechanisms do: Immediately after the event, one of the most important opinion polling companies in Peru, *APOYO* (2002c), reported that the popular approval of Toledo had increased from 14% to 20%, and that disapproval levels had dropped from 78% to 69%. According to *Apoyo's* director, Alfredo Torres, Toledo's decision "rescued [the government] from a crisis that could have been worse"²⁰⁶ (Emol, 2002/10/21). Indeed, up to 24% of citizens surveyed believed that the president had recognized Zarái to boost his low popularity, and "it [was] probable that if he had not recognized her, the scandal of his meeting with judge Silva Vallejo would have finished to destroy his popularity, and it would have even put the stability of the regime at risk"²⁰⁷ (APOYO, 2002c, p. 1). Thus, although the period of October 4~24 saw an increase in the rate of governmental corruption news to 52% (from an average of 22% for the 2001-2006 term), the executive branch managed to come on top and to change the tendency of support in its favor through the activation of effective coping mechanisms.

The Almeyda Factor

On April 10, 2003, Pedro Arbulú Seminario, former president of an important TV network and partner of fugitive Ernesto Schütz Landázuri (principal shareholder of the network and who during the presidential elections of 2000 had surreptitiously sold the editorial line to the Fujimori campaign) declared to a parliamentary Commission to have had as much as eight meetings with President Toledo in the past five months. In these, according to Arbulú, Toledo had expressed his desire to somehow acquire *Panamericana Televisión*, Schütz network, and to have its editorial line become 'friendlier' to the government. Additionally, Toledo allegedly had offered to help the Schütz administration with its legal problems; to this effect, César Almeyda Tasayco, head of the National Council of Intelligence (*CNI*) and person very close to the president, had told Arbulú that he would make sure that the legal proceedings were under control (Díaz, 2003a).

Notwithstanding the veracity of Arbulú's allegations, the scandal required the prompt response of the government. Immediately, the Press Secretariat of the

²⁰⁶ Translated from Spanish.

²⁰⁷ Ibid.

Government Palace issued an statement to *discredit the plaintiff*.²⁰⁸ The true intention of this psychosocial maneuver was to impede the extradition of the fugitive Schütz Landázuri, the statement had posited, adding that Arbulú's allegations were "tarnishing the honor and prestige of the executive branch and that of senior officials of the government"²⁰⁹ (LR, 2003/04/11). The note, however, was not enough to appease the misgivings generated by Arbulú's story, and the opposition quickly moved to *publicly exhort* the government to address the issue by providing clear explanations, surrendering to an investigation (Velarde, 2003), or even removing Almeyda and others from office (LR, 2003/04/12). These exhortations included important actors such as Alan García (LR, 2003/04/13) and Valentín Paniagua (LR, 2003/04/14), both of them former presidents and leaders of important parties.

Confronted with the circumstances, President Toledo decided to remain silent (Caretas, 2003/04/16); in his place, the government offered Rodolfo Pereira Terrones, head of the Press Secretariat, who publicly declared having resigned to his post, putting all blame on himself: "I feel that I have complicated the president's surroundings. [This is why] I have presented my resignation to the president of the Republic so that he takes the appropriate decision"²¹⁰ (Díaz, 2003b). To his sacrifice followed Toledo's statement on April 16, which employed a natural combination of *plaintiff discredit*, and *manipulation of public priorities*.²¹¹ In it, Toledo denies having had any interest in buying the editorial line of *Panamericana Televisión* or any other network, and suggested that behind Arbulú's declarations hid the Fujimori-Montesinos mafia; the latter artifact, as it has been discussed before, was not new to Toledo and his party, Perú Posible, as it had been utilized during the electoral campaign of 2001. Toledo declared (LR, 2003/04/17):

"This is an outrageous farce that the mafia has created, just as in Montesinos' time... It is clear, then, that behind those maneuvers there is an interest in destabilizing [the government]... If they pretend to distract us with those outrageous farces, they will not succeed. They will not stop us. They will not stop us in our fight against the mafia. Corruption will not remain

²⁰⁸ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

²⁰⁹ Translated from Spanish.

²¹⁰ Ibid.

²¹¹ As described under the scenario of corruption perception, coping point of negative input defuse (1st round).

unpunished.”²¹²

Toledo's declarations represented an effort to reduce social and political demands without having to turn to more expensive coping mechanisms, such as another *demand-satisfactory measure* like the one used with the 'resignation' of Pereira Terrones. César Almeyda, who had also been implicated in the scandal, or Guillermo Gonzales Arica, Secretary General of the Presidency of the Republic, would be an even more expensive *scapegoat* to sacrifice for the stability of the leadership and the NACS. Indeed, Mirko Lauer, political analyst and columnist of *La República*, had written in an article published the same day of Toledo's press conference that, after the departure of Pereira, Almeyda and Gonzáles Arica were probably being weighed to see which one would survive this event of 'corruption perception' (Lauer, 2003).

The timely intervention of President Toledo in the media scene had helped the government to reduce demands, but the news of partisan control of job positions inside the CNI, Almeyda's agency, once again pressured the political system, and the activation of another demand-satisfactory measure became inevitable. The Andean Plan, as it was dubbed, allegedly had been recently initiated under the direction of César Almeyda, and consisted in getting rid of current personnel serving in the Intelligence agency and replacing it with members of the incumbent party. The reports also indicated the presence of activities of espionage, such as the illegal seizure of private communications (LR, 2003/04/21). Thus, on April 25, amidst the scandals involving accusations from members of *Perú Posible* against former procurator José Ugaz (which has already been discussed in a previous section), President Toledo finally accepted Almeyda's 'resignation.' According to the press note (Zajec, 2003):

“[Almeyda] presented his resignation three weeks ago, after the scandal of the alleged pressure over Panamericana Televisión, in which once again he got involved by former director of that media outlet Pedro Arbulú.

Back then his resignation was rejected by the president, who considered that the crisis could be solved. Although the polemic lost importance, the situation

²¹² Translated from Spanish.

of César Almeyda continued deteriorating, this time due to criticism from the opposition caused by revelations of wiretapping and partisan occupation of the CNI's payroll.²¹³

The above description of Almeyda's resignation supports the tenets regarding the usage of scapegoats as demand-satisfactory measures. Although the tension over *Perú Posible*'s treatment of Ugaz would continue for a few more days, morphing into an issue of purely political conflict, the stressful event came effectively to an end with Almeyda's departure. In its wake, the increase of corruption news hitting front covers to 56% of the period between April 11 and 26, paired with Toledo's late and hesitant involvement, did little to stop the free fall in presidential approval, which fell from 21% in March to 15% in April (Caretas, 2003/06/19).

Almost a year later, in January of 2004, the former chair of the CNI would be again involved in a corruption scandal, this time regarding influence peddling for the sake of former Army General Oscar Villanueva, henchman of Vladimiro Montesinos. This event would quickly evolve into a great political crisis for the government, dragging down former minister of Justice and leader of the *FIM* party, Fernando Olivera Vega, who had been a political ally of *Perú Posible* since the beginning of the Toledo administration. Under these circumstances, Almeyda would finally be arrested and incarcerated.

5. International Pressure Activities

When Alejandro Toledo took office, in July of 2001, the international environment he found was completely different to that of the 1990s. Although Peru had been one of the first countries to ratify his commitment to the IACAC, the first anti-corruption convention of its kind, very little had been done in terms of the regional process of monitoring and the domestic implementation of its principles. The issue, however, was quickly changing by the time Toledo assumed office, as the OAS had approved and adopted the MESICIC in the first semester of 2001 (MESICIC, 2006). Together with the regional process, the debacle of the Fujimori government in 2000 had attracted a lot of international attention, and technical cooperation was ready

²¹³ Translated from Spanish.

to be deployed. In this sense, international cooperation can be said to represent most of the important activities engaged in by foreign actors to push for the reform of the NACS during the period of 2001-2006. How these activities were carried out, and how they impacted the stability of the NACS, will be addressed in this section.

From early 2002, the CNA had looked for the international scene as a source of information. On its second meeting of commissioners, on January 22, Belaunde informed that he had received orders from the prime minister and the minister of defense to take advantage of an invitation made by the American Congress, and to obtain current legislation on lobbies and transparency with the intention of using it as inspiration for two legislative projects on the subjects. Such interest evidences the potential influence of the *general dissemination of anti-corruption information*.²¹⁴ Indeed, on the 17th meeting of the CNA, on November 28, 2002, Belaunde Moreyra reported that the commission's work (which had included the hiring of an expert in American legislation) had served as the basis for the project that was being debated in the PCM (CNA, 2002b).

The most important impact on the work of the CNA, however, should have been the *technical assistance*²¹⁵ provided by the United Nations Development Programme (UNDP), which supported Peruvian anti-corruption bodies from early 2002 until the end of the decade.

Falling under the category of 'funds administration agreement,' the Ministry of Justice and the UNDP had signed the Agreement PER/02/003 'Anti-Corruption Procurator's Offices,' putting the international agency in charge of administering the funds transferred from the FEDADOI in support of the procuratorial work, with particular emphasis on its decentralized offices. The explicit purpose of the Agreement was to receive "technical and professional assistance in the execution of any required activities"²¹⁶ from the UNDP.

With this antecedent, the CNA commissioners suggested the possibility of entering in a similar agreement. The idea was first brought forth during their sixth meeting, held on February 28 (the same day as the decree approving PER/02/003 was being signed); in it, the commissioners had discussed the issue of their pending allowances, which still had not been approved by the PCM. Belaunde Moreyra,

²¹⁴ As described under international pressure activities, influence.

²¹⁵ As described under international pressure activities, influence.

²¹⁶ Supreme Resolution No. 054-2002-JUS, published on March 1, 2002.

talking of the bureaucratic problems that were obstructing the allocation of funds to pay the commissioners, informed them that, by law, the allowances they had internally agreed on in a previous meeting could not be possibly paid. The upper limit for that kind of expenditures, he explained, was merely S/. 545 (roughly US\$ 180) per session. Under the circumstances, commissioners Benavente and Morelli came up with the idea of turning to international cooperation funds in order to obtain the desired allowances. The proceedings read (CNA, 2002a):

“Commissioners Mr. Guillermo Benavente Ercilla and Carlos Morelli Zavala spoke on the subject, to request Dr. Martín Belaunde to search for the most suitable way to increase the amount already assigned for Allowances, and suggested that it might be done through the UNDP.

In response, Dr. Belaunde pointed out that, in case the arrangement with the UNDP were successful, the commissioners would have to resigned to the allowances provided by the Commission...”²¹⁷

Thus, the basis for contacting the UNDP and requesting technical assistance were the private interests of the members of the CNA. Two additional statements corroborate this: First, during the seventh meeting, held on March 22, Belaunde Moreyra reported that a document had been sent to Kim Bolduc, representative of UNDP in Peru, regarding the interest of the CNA in signing an agreement of technical and financial cooperation with the international agency. He added that, if successful, the agreement could grant them a fund of US\$ 50 thousand “for projects.”²¹⁸ Second, according to one of the members of the CNA who was present throughout the process, the commissioners “had expectations of being paid. Deep down what [they] wanted was to receive the same amount that [the members of] the Truth and Reconciliation Commission received, which was US\$ 4 thousand”²¹⁹ (Interview No. 19).

Disregarding the initial motivations, the agreement was signed between the prime minister, Roberto Dañino Zapata, and the representative of the UNDP, Kim Bolduc, on May 14. It established that the UNDP would manage the funds transferred from PCM and other sources of cooperation, starting with an allocation of S/. 666

²¹⁷ Translated from Spanish.

²¹⁸ Ibid.

²¹⁹ Ibid.

thousand (roughly US\$ 220 thousand), for the “technical and professional assistance for the programming, execution and monitoring of the components of the ‘Prevention and Fight against Corruption Programme’”²²⁰ (PCM, 2002a, p. 2). The Agreement and its Programme were later designated as PER/02/021²²¹ (eventually renamed PER/02/022), establishing as objectives the (1) reduction of corruption, (2) the promotion of transparency and public accountability, (3) the addressing of social, political and cultural enablers of corruption, and (4) the promotion of citizen participation, through a number of specific activities and targets (PCM, 2002b). Finally, in order to begin implementing the programme activities, the UNDP and the CNA created the Project PER/02/027, which had five immediate objectives: (1) Promotion of international cooperation; (2) incorporation in government policies of a National Plan regarding anti-corruption ethics and awareness; (3) promotion and strengthening of interinstitutional mechanisms of prevention, control and punishment; (4) development of public ethics, transparency and accountability through professionalization of the civil service and results-based management; and (5) support to social anti-corruption actors and networks (PCM, 2002c).

The above description of the promised UNDP support and the activities identified point to a heavy presence of *technical assistance*²²² aimed at stressing the stability of the NACS. However, severe flaws in the implementation and execution of the agreement can immediately be detected, suggesting that the intervention of the UNDP did not represent any real source of stress to the political system.

In the official documents of Project PER/02/027 we find that, for the position of National Director, the UNDP hired Juan Paz Espinoza, who at the time was the CNA’s secretary. As it has been mentioned already, Paz Espinoza was not only a political operator, but he would be placed in charge of the Commission after Belaunde Moreyra is sent to Buenos Aires, thus creating a strange and irregular dynamic between the roles of monitoring (which had been entrusted to the UNDP) and execution (which was the CNA’s responsibility). Paz Espinoza would stay as National Director of the Programme PER/02/22 until his departure from the CNA, for a total length of two years and seven months (PCM, 2006).

The unfortunate appointment of Paz Espinoza was partially responsible for the

²²⁰ Ibid.

²²¹ Supreme Resolution No. 236-2002-PCM, signed on June 10, 2002.

²²² As described under international pressure activities, indirect pressure.

UNDP supported programme failing to reach most of its objectives, leaving the CNA in a paltry state. According to the Management Audit of the CNA, most of the activities carried out focused on Objective 2, *incorporation in government policies of a National Plan regarding anti-corruption ethics and awareness*, with the execution of twenty regional seminars; the other four objectives received null or negligible attention, with no relevant achievements. The report reads (PCM, 2006, pp. 33-34):

“[T]he Auditing Commission has established that the National Anti-Corruption Commission did not reach the expected goals during the period under study; this is, of the five objectives planned, some activities were carried out pursuing them, but these were insufficient... because the percentages of progress fluctuate between only 10% and 18%, which allows us to conclude that the total progress was about 18.5%...”²²³

Regarding the reasons behind the failure of the CNA-PNUD agreement, the reports states that budgetary deficits was an important source of constraint (PCM, 2006, p. 40), reflecting the government’s activation of the coping mechanism dubbed *inadequate anti-corruption bodies*.²²⁴

“[I]n relation to the resources allocated to the CNA during the period 2002-2004, for the execution of the Agreement signed with the UNDP... it is possible to see that these were fewer than expected, to the point where the transfers made to this agency only reached 33% of the amount agreed upon; this is, S/. 2,681,264 out of S/. 7.9 million.”

However, the report turns to the figure of the technical secretary, Paz Espinoza, as partly responsible for the insufficient funding (PCM, 2006, p. 40):

“No documents have been found addressed to the PCM, notifying them that the resources that were being allocated were not in line with the budget planned in the Programme, so that the PCM could take notice and adopt

²²³ Translated from Spanish.

²²⁴ As described under the scenario of corruption intolerance, coping point of stress amelioration.

corrective measures as required...²²⁵

Furthermore, the Audit Report found that the low success of the Programme PER/02/022 in reaching its planned goals was due to the lack of monitoring activities that were supposed to be carried out, which were responsibility of the Project Director and the Secretary General of the PCM; in other words, behind the failure of the UNDP technical assistance is possible to identify the appointment of Juan Paz Espinoza, and the negligence of Jaime Reyes Miranda (future president of the CNA after its transfer to the Ministry of Justice). Perhaps being aware of this, Paz Espinoza left the CNA amidst an irregular transfer of duties, without presenting any report to his successor of the activities carried out and the goals reached.

It is difficult to suggest the reasons behind the appointment of Paz Espinoza, and even harder to explain his permanence in the position even after the CNA was surely perceived to be failing in its objectives. It is possible that the government had suggested and facilitated his employment, thus continuing the strategy of *inadequate anti-corruption bodies*. However, there is not enough information to clearly come with an answer. What is certain, however, is that the tolerance of the UNDP towards the management of the project made it impossible for it to challenge in any serious way the stability of the NACS, leaving this effort as a rather sterile one. If such an important international actor as the UNDP could have nothing but a negligible impact on the NACS, there is very little to suggest that other sources could be more successful unless they took a different approach.

One such international action was the Agreement between the Government of the Republic of Peru and the Government of the United States regarding the transfer of confiscated assets, signed on June 12, 2004, and which was commented earlier. This agreement, working as a form of *aid conditionalities*,²²⁶ actually forced the government to take actions for the financial support of anti-corruption activities, even though the activities funded may have ended corresponding to expenditures not related to fighting corruption. The misallocation of the FEDADOI funds, as we have discussed earlier, clearly hindered the efficient employment of anti-corruption financial resources in benefit of more superfluous and politically oriented objectives. However, at least until the point of allocation, the agreement required by the

²²⁵ Translated from Spanish.

²²⁶ As described under international pressure activities, direct pressure.

American government had the potential to affect the NACS, and indeed was reflected in Supreme Decree No. 039-2005-PCM of May 24, 2005, disposing that the CNA and the Ministry of Justice identify the anti-corruption projects to be funded; and later in Ministerial Resolution No. 402-2005-JUS, which approved the projects, and caused the FEDADOI to transfer over US\$ 12 million to the Ministry of Justice, Public Ministry, judiciary, INPE, UIF, and Ministry of Internal Affairs.

Notwithstanding the merit of the anti-corruption projects, it is important to also consider the timing of the funds being allocated: the transfer was finally made during the last semester of the Toledo administration, meaning that the projects could not possibly be implemented and enforced before the change of government. Such scenario could explain why the Agreement's conditions were formally followed, and that no evident coping mechanism could be detected. Considering that the pressure activity could not actually affect the current government, it is perfectly feasible that it was seen more as an opportunity to stimulate support than as a source of pressure, just as it had been the norm during the transitional government of President Paniagua.

Turning our attention to other international approaches, particularly *international conventions* and *policy agreements*,²²⁷ most (if not all) of them were still taking flight in regards to their potential to stress the NACS.

Although the first round of the MESICIC had come to an end and a series of recommendations had been drawn to the Peruvian government, the next round of review would finish after a new government had taken office; for this reason, it did not need represent much of a challenge to the *Perú Posible* government. In a similar situation were APEC's Course of Action on Fighting Corruption and Ensuring Transparency, and its ACT; and the UNCAC. Both of these international instruments had only made their first appearance in the international anti-corruption movement, and it was too early to have them enforced. The Andean Plan to Fight Corruption was just being suggested by 2005, and would not take shape until well into the APRA government. Thus, these forms of international pressure are best analyzed in the next chapter, when we discuss the government of President Alan García Pérez.

²²⁷ As described under international pressure activities, direct pressure.

Chapter VII

Alan García (2006-2011): Countermeasures and Coping Mechanisms

After a campaign built around an agenda that contrasted deeply with the economic approach taken during his government of 1985-1990, and in opposition to the leftist and nationalist stance of candidate Ollanta Humala Tasso of the Peruvian Nationalist Party (PNP) (which was running in alliance with the Union for Peru—UPP party), Alan García Pérez of the APRA party became president of Peru for a second time in 2006.

By the time he assumed office, on July 28, the NACS had already been stabilized by the government of former president Alejandro Toledo (as reviewed in the previous chapter), with the CNA effectively reduced to a marginal office in the State apparatus, and the anti-corruption subsystem making more progress in its normative aspects than in real terms. The *Ad Hoc* Public Procurator's Office for the Fujimori-Montesinos case had given signs of having fallen under complete political control, and the FEDADOI funds were all but exhausted, with Gamarra et al. (2007) informing that, of US\$ 183.2 million there were only US\$ 0.4 million left as of December 2006. Thus, the anti-corruption reform started by Valentín Paniagua had come to an abrupt end during the Toledo administration, and the scenario of domestic corruption intolerance could be said to have largely disappeared, at least in regards to the unorganized civil society.

García also received a healthy economy, unlike his predecessor. Peru was in the middle of an impressive economic recovery, experiencing a constant growth in its annual gross domestic product (GDP), which reached 6.3% in 2005 and 7.5 in 2006.

On the other hand, the scenario of corruption perception had become widespread during the previous government. According to Transparency International's CPI, even though the overall level of corruption in the country had clearly diminished after the collapse of the Fujimori government and the steps taken to prosecute its corruption network, the popular perception of corruption had actually increased steadily year after year. It is possible to appreciate to severity of the change in Figure 10.

Evidently, the falling ranking of Peru in the CPI corresponds to a series of environmental and systemic factors that changed during the transitional government

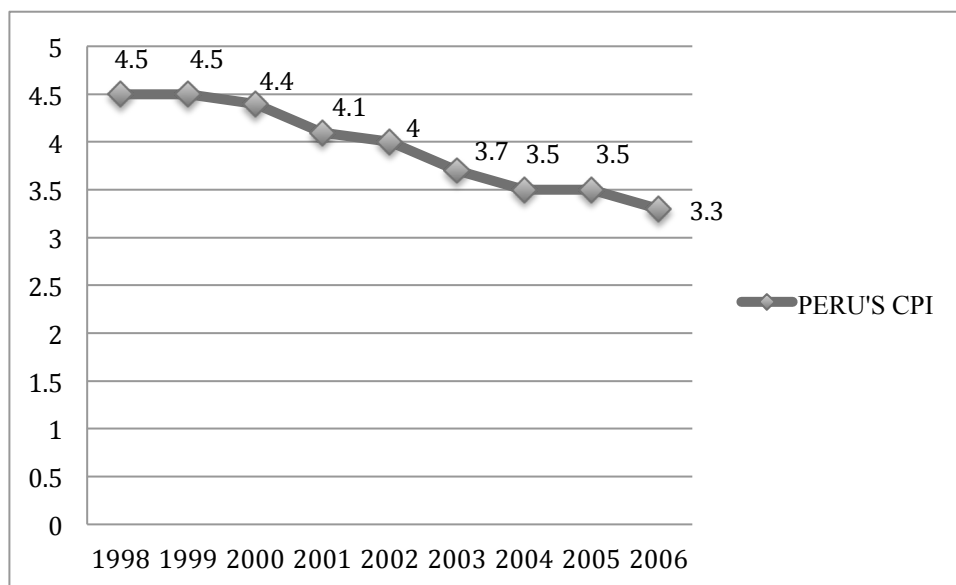


Figure 10. Evolution of the Corruption Perception Index in Peru

(2000-2001), and not the actual level of corruption in the country. However, what interests us is that, by the time García assumed office, there was a widespread perception of corruption affecting the country that went beyond any single case of corruption. A national poll conducted by Proética in 2006 partially showed a similar trend: Although corruption remained in the fourth place of spontaneous answers regarding the most important problem affecting the country, the report stated that “in general, comparing to previous editions [of this poll] (2002, 2003, 2004), there is a slightly lower mention of unemployment and poverty, while concerns about crime and corruption have notoriously increased” (Proética, 2007). Indeed, although the popular importance of corruption had initially decreased from 29% in 2002 to 25% in 2003 (Proética, 2004), it had steadily risen since then. Additionally, the national poll found that corruption was considered to be the biggest obstacle for the public apparatus to achieve the country’s development (50%), almost doubling ‘lack of efficiency’ (26%) and five times higher than ‘lack of economic resources’ (10%) (Proética, 2007).

In addition to popular discontent, the García administration would also inherit a body of instruments and activities involving the international anti-corruption movement, representing a new scenario of corruption intolerance switching from the domestic to the supranational level.

The analysis of all these elements will allow us to understand how the stability of the NACS was protected, and even reinforced, during the period of 2006-2011.

1. The National Anti-Corruption Office

One of the first measures taken by the government of President García was to dismiss the CNA's technical secretary (and partisan of *Perú Posible*) Martínez Llanos, and replace him with Juan Carlos Román Torero,²²⁸ who had only a month earlier been appointed president of the National Council of Notary of the Ministry of Justice. Regardless of Román's personal qualities, during the period of 2006-2007 the CNA continued its steady decline, being little more than a shell, and office that could not work but that could not be entirely deactivated either. A staff member of the CNA that entered during the García administration remembers the state in which the office operated (Interview No. 24):

“[During 2007, the CNA] had somehow little prominence. It had been largely neglected, so much that the council²²⁹ itself did not really function as such; who managed it and did the job was the Technical Secretary. From what I can remember, [the members of the council] met very few times (not to say almost never)... I did not see the council itself to have any real function, and my impression became objectively materialized when, a few months later, it disappears. That shows that it was indeed in real decay, with little support not only at the political level but also at the economic level. We were only six people working; there was no structure...”²³⁰

Regarding the specific activities engaged by the CNA, a senior official of the Ministry of Justice describes them, and technical secretary Román Torero, as focused solely on the promotion of corruption awareness without giving proper and equal consideration to other aspects under its mandate, such as the production of preventive policies and others stipulated by decree (Interview No. 10):

“When I was appointed... the first thing that I noticed was that [some] people were participating in the [council] but were clueless of what they were supposed to do there. There was a technical secretary, Torero, who had as a

²²⁸ Ministerial Resolution No. 448-2006-JUS, published on September 9, 2006.

²²⁹ As mentioned earlier, after being transferred to the Ministry of Justice, the CNA's name changed from that of Commission to *Council*.

²³⁰ Translated from Spanish.

work plan the production of merchandising [and] stationery, and the promotion of anti-corruption mottos through labels [and] publicity. And in that way he believed that public servants would be changed and made better actors in the fight against corruption. In reality, he knew very little of public administration because he had come from the private sphere... So, public administration, and specifically the subjects of ethics, transparency, and the fight against corruption were completely foreign to him. So he thought that the fight against corruption was to produce brochures, do some publicity, produce some almanacs, some caps, etc.

But there were also representatives from other sectors, and each one of them had a different perspective of what they were supposed to do. Thus, the [CNA] had no direction; this is, there was no management tool to provide them with direction. So, to sum it up, the anti-corruption policy under the CNA's responsibility relied on the good mood, the interest, the will of the president of the [council].”²³¹

By decree, the CNA's presidency fell under the vice-minister of Justice, and so nothing could be done unless the government had real political will to do something for the sake of that preventive office.

On October 19, 2007, the official newspaper *El Peruano* published Supreme Decree No. 085-2007-PCM, by which the CNA was officially closed and replaced by the National Anti-Corruption Office (ONA) under the jurisdiction of the PCM, ordering the transference of all its resources and stipulating that, from then on, any normative reference to the CNA would be applicable to the ONA instead. The ONA, as we will see, was an entirely different office from the one created by President Toledo in 2001, born under different circumstances and with a different set of powers.

Circumstances Behind the Creation of the ONA

The creation of the ONA can be explained by the presence of a scenario of corruption perception, and not to corruption intolerance as had been the case of the CNA. The same senior official of the Ministry of Justice commented: “Many events took place in the year 2007... that forced President García to make some decisions to

²³¹ Translated from Spanish.

show that something was really being made in the fight against corruption”²³² (Interview No. 10). Indeed, the ONA represented an *inadequate anti-corruption agency*,²³³ publicly loud, powerful and effective to mitigate public demands and stimulate support amidst a dangerous period of corruption perception.

The event that gave birth to the ONA began in early August of 2007, when an investigation carried out by several media organizations raised serious doubts about the procurement process of patrol cars in the Ministry of Internal Affairs. The issue of patrol cars for the National Police had been followed particularly close since the previous minister, Pilar Mazzetti Soler, was removed from office for a similar case only six months earlier. With the new administration of minister Luis Alva Castro, a new process had been carried for the purchase of the 698 vehicles of Chinese manufacture, which was pointed out for not fulfilling the technical requirements, being overprized, and including only one bidder. Together with the Chinese goods, Alva Castro was also challenged for the procurement of different types of ammunition amounting US\$ 3.2 million from a questionable provider (LR, 2007/08/14). Immediately, Congressmembers of the opposition demanded explanations from the minister, and expressed their intentions to formally interpellate him.

On August 14, the day Alva Castro presented his explanations in Congress in front of severe criticisms from opposition members, General Víctor Gandolfo Monzón, inspector general of the National Police, was dismissed for his participation in the failed purchase of patrol cars. However, the procurement involving General Gandolfo was not the one being questioned by Congress at the moment, but rather the one that had brought down former minister Mazzetti. The ‘sudden’ measure, as the newspapers described it, point to the presence of *scapegoating*, particularly when considering that Gandolfo had not been directly responsible in the procurement process of which he was been accused (Aguirre, 2007). The maneuver was exploiting the similarities between the cases of Alva and Mazzetti: By activating a demand-satisfactory measure regarding the earlier scandal, it could alleviate the pressure originated from the current event; Gandolfo’s dismissal could easily be confused with a quick response to the procurement of Chinese goods, when in fact both were completely unrelated. A second indication of the true coping nature of Gandolfo’s

²³² Ibid.

²³³ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

dismissal is the fact that, right after the whole event was finally brought to an end, Gandolfo Monzón was appointed to the post of permanent secretary of the Human Rights Commission of the Ministry of Internal Affairs, with a supreme resolution signed by President García and minister Alva (Yovera, 2007).

The procurement affair was suddenly dropped from public attention on August 15, when an earthquake of eight degrees of magnitude stroke the south coast of the country, killing more over five hundred people. On August 23, minister Alva Castro decided to void the purchase of the patrol cars (LR, 2007/08/24); *media coverage*²³⁴ insisted on pressing him over the issue, all the while problems with the procurements of ammunitions kept raising questions regarding the process and the responsibility of the minister. However, most of the attention was effectively switching towards the recovery efforts of the areas affected by the earthquake, and the evolution of the proceedings against fugitive President Alberto Fujimori, who had flown to Chile in late 2005 and was facing imminent extradition. These circumstances released some of the pressure from the executive branch, and voided the necessity of any additional coping mechanism. Although a poll conducted in mid-August (APOYO, 2007a) had found that 41% of people perceived corruption behind the irregular procurement of patrols cars (46% even considered that minister Alva Castro should resign), and a second poll conducted a month later revealed that 45% of respondents believed that the purchase had been canceled in order to protect the minister from accusations of corruption (APOYO, 2007b), by the middle of September President García's popular approval had climbed from the 32% he had in July to a comfortable 44%, while that of the executive branch in general had increased from 28% to 38% (APOYO, 2007b), particularly as a consequence of their well-received management of the natural disaster.

As the government enjoyed a moment of high popularity, opposition groups were busy moving towards a new wave of pressure over the Executive branch. On September 13, the *legislative initiative*²³⁵ of interpellation against Alva Castro was approved (LR, 2007/09/14). In addition to the issues affecting the Ministry of Internal Affairs, members of the opposition denounced a series of irregularities in the managements of funds for the victims of the earthquake involving the National Health System (Camacho, 2007). The government had tried to prevent the issue from

²³⁴ As described under domestic pressure activities, indirect pressure.

²³⁵ As described under domestic pressure activities, direct pressure.

producing a new wave of demands by dismissing the head of the Health agency, Julio Espinoza Jiménez, on August 30, but the opposition still charged against the minister of Health, Carlos Vallejos Sologuren. On September 20, Congress approved the formal investigation into the allegations against the National Health System.

Amidst this growing scenario of corruption perception, the president announced an immediate increase in the minimum wage in order to ‘counteract the effect of the increase in prices’ (LR, 2007/09/19). The *economic stimuli*²³⁶ proved to be very well timed, for one days later, on September 20, the news of Fujimori’s extradition grabbed all media attention. The next days all media sources of the country followed closely the details of the process, as the final sentence was read in Chile, and the fugitive president was brought to Peruvian justice.

But the opposition in Congress could not be coped with like popular perception was, and on the last days of September *legislative initiatives* in the form of motion of no confidence and interpellation were presented against ministers Alva Castro and Vallejos Sologuren, respectively. The political leadership was being increasingly pressed. In an effort to defuse the explosive situation, minister Vallejos immediately met with First Public Prosecutor, Adelaida Bolívar, to request the prompt investigation and arrest of the people involved in the National Health System scandal. In declarations to the press, he *publicly expressed condemnation and his support for enforcement*.²³⁷ “[T]hey are a bunch of delinquents that have tried to involve me and tarnish my honor”²³⁸ (LR, 2007/09/29).

On September 30, the Office of the Comptroller General entered the scene to announce that the Ministry of Economy would be audited in order to investigate its responsibility in authorizing the National Health Systems’ irregular expenditures, amounting over US\$ 6 million (Mella, 2007b). With this, there were three ministries involved now in scenarios of corruption perception, and *media coverage* and *legislative initiatives* were proving hard to sway, disregarding the coping mechanisms activated by the government. It was becoming clear that, in order to get over the event, more complex and costly measures would have to be taken, particularly considering that it was unlikely that more episodes like the earthquake or Fujimori’s

²³⁶ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

²³⁷ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

²³⁸ Translated from Spanish.

extradition would naturally occur to distract public attention. The popular approval enjoyed by President García in the aftermath of the natural disaster was quickly being spent: by October 18, the popular approval of President García and the executive branch had fallen 14 points from the level they had in September (APOYO, 2007c), “mostly driven by the increase in food prices and the corruption scandals involving his administration”²³⁹ (IR, 2007/10/21). Indeed, 10% of surveyed people expressed that the scandals affecting the ministers of Internal Affairs and Health had been the biggest problem in the country in previous weeks, while 20% were of the opinion that this issue should be the government’s priority (Alva Castro and Vallejos were being pointed as the top two ministers that should be replaced) (APOYO, 2007c). If *media coverage* kept fueling *popular criticism*, and *legislative initiatives* of opposition groups kept gaining momentum, it would become increasingly hard for the government to ignore the need for anti-corruption reforms without seeing its legitimacy fall to dangerous levels.

The government strategy to finally cope with the pressure and reduce stress to the NACS (not to mention the political leadership itself), involved the activation of three different coping mechanisms, all of which could be said to be more challenging than the ones activated in the previous two months, but for the same reason all the more effective.

The first mechanism was a *smokescreen* targeting former president Alejandro Toledo, and executed by a member of an opposition party. On October 4, the country woke up to a rather strange news: Congressmember Gustavo Espinoza Soto, elected with the UPP party but later disenfranchised, had given a press conference the day before to accuse Toledo of raping a young woman. According to Espinoza, he had found a police statement against the former president: “Mr. Alejandro Toledo has raped, on September 19, a person, Diana Arévalo Sagástegui, after [having] an orgy, after [having consumed] alcohol and drugs”²⁴⁰ (Perú21, 2007/10/04), he expressed publicly. The reaction from members of *Perú Posible* was immediate. Besides accusing Espinoza of gross defamation against their leader, they claimed that the congressmember acted only as a pawn for the incumbent party. Their suspicion was further fueled by the fact that Espinoza had been seen meeting APRA congressmember Javier Velásquez Quesquén that morning. Reports on Espinoza’s

²³⁹ Ibid.

²⁴⁰ Ibid.

connection to the APRA would be repeated two years later, bringing attention to his constant support to incumbent's projects in the national parliament (EC, 2009/11/18). The smokescreen, on the other hand, would only last for two weeks before the facts of the incident chattered Espinoza's allegations, disproving any involvement of former president Toledo in the case; in the meantime, however, an opinion poll showed that 82% of respondents were aware of the scandal, but that only 33% of them saw Espinoza's allegations for what they were while 38% believed that Toledo had really been involved in the illicit affair after all (APOYO, 2007c), thus proving the effectiveness of this coping mechanism in the popular perception.

The second mechanism involved a combination of *scapegoating* and *public expressions of condemnation and enforcement support*: On October 7, Alva Castro announced a thorough pruning in the Ministry of Internal Affairs, including the dismissal of more than twenty officials allegedly involved in the infamous procurement of the Chinese patrol cars. The minister declared (Mella and Faura, 2007):

“We have terminated the contracts of civil officials that were in charge of the purchases in the Ministry, and relieved the heads and members of the National Police that also participated in the acquisitions. In total they are more than 20. We have been selecting the new personnel since last week. We want specialized and competent people that behave with efficiency and transparency.”²⁴¹

The message was clear: although he had initially defended the procurement process of the patrol cars, after the scenario of corruption perception kept growing and becoming more stressful, the only way to get over the incident was to sacrifice mid-level bureaucrats that had no real impact in leadership structure. As newspaper *La República* read (Mella and Faura, 2007), the press seemed to have the same opinion, describing the government's measure as “an effort to safe [minister Alva Castro's] head only a few days before confronting a possible motion of no confidence,”²⁴² and supporting the reading that “the purge inside the Ministry, even though it was designed to secure [Alva Castro's] permanence in office, also

²⁴¹ Ibid.

²⁴² Ibid.

contradicts his own version [of the procurement process] provided until some days ago”²⁴³ (Caretas, 2007/10/11). However, just as expected from *public expressions*, the so-called ‘purge’ was more symbolic than genuine, and no immediate sanctions were taken: most officers relieved from their posts remained working in the Ministry in important positions, only dismissed from being involved in procurement processes (Aguirre and Camacho, 2007).

These two mechanisms were powerful enough to save Alva Castro. On October 10, the opposition failed to get the motion of no confidence approved by Congress. Immediately afterwards, President García confirmed his support of Alva as minister of Internal Affairs, position that he would then occupy for one more year. Yet, public opinion did not welcome the rescue of the minister of Internal Affairs: 78% of surveyed people in October disapproved of the fact that the motion of no confidence had failed, and the number of people that considered that Alva Castro should resign almost doubled to 83% from the 46% that were of that opinion in August. As a consequence, one in every six people considered that the government was coming out debilitated from this event (APOYO, 2007c). The message was clear: “If the president is to try and recover popular support through making changes in the ministries, ...the ministers of Internal Affairs and Health need to be removed. The scandals of corruption and incompetence that have taken place in their sectors have tried the citizens’ patience”²⁴⁴ (p. 1). That measure, however, was what the government was trying to avoid through the activation of coping mechanisms.

Although Alva’s problem had been formally dealt with, minister Vallejos, on the other hand, was still in the middle of the storm. New evidence of massive corruption in the National Health System was spawning a new wave of criticism from all sectors. To control the situation, Vallejos announced the dismissal of as much as fifty public officials working in the corruption-filled agency with the alleged intention of bringing its reorganization (LR, 2007/10/16); such a large scapegoating effort suggests the crossing from the first round of this corruption perception scenario into the second round, and the additional activation of a *public expression of reform support*.²⁴⁵ The next day, October 16, the firsts arrests were being conducted by orders of the Public Ministry. With the public apprehension and prosecution of the

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

direct culprits of the scandal, the event quickly began losing steam.

The third and final mechanism was the creation of the ONA on October 18, and the appointment of judge Carolina Lizárraga Houghton as chief on the 20th. One week later, the scenario of corruption perception finally came to an end, and on October 30 Congress informed that they had found no criminal responsibility in the performance of minister Carlos Vallejos (Perú21, 2007/10/30). Overall, the stressful events that took place between August 14 and October 30 saw news of governmental corruption hitting the front pages of newspaper *La República* during 50% of the period, more than double the average of 24% for the 2006-2011 period. With the scenario dealt with, the decline in the executive branch's popular approval came to a halt, and although the scandals of corruption were mentioned among the reasons for García's disapproval by 25% of respondents to a poll in November, by this time it had managed to change the trend and recover at least modestly (4%) (APOYO, 2007d).

Rise and Fall of the ONA

The ONA represented the government response to the scenarios of corruption perception described above, and the demands to not only prosecute the culprits but to reform the system. Thus, the powers vested in the new agency, and the person that was appointed to lead it, were all an effort to reduce stress on the stability of the NACS by creating an *inadequate anti-corruption body*²⁴⁶ with a high level of publicity. In this sense, the ONA was an upgrade on what the CNA had meant for the government of Alejandro Toledo: the new agency took its place, strengthened its normativity, put it back under the PCM, and hired a new 'czar'; at the same time, it suppressed the involvement of civil society,²⁴⁷ introduced elements that would create even more resistance than before, and cut its budget a short time after its creation, thus completely asphyxiating it.

The inspiration for a new preventive anti-corruption body could not have existed before the system fell under stress. By the end of August of 2007, less than two months before the ONA was created, the CNA was still conducting its functions as usual, signing interinstitutional agreements and planning a 'mega event' for the International Anti-Corruption Day to be celebrated on December 9 (CNA, 2007a). In

²⁴⁶ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

²⁴⁷ Although the ONA would soon create a consultative council, it was a significant departure from the role and responsibilities civil society had in the CNA.

fact, according to the written proceedings of its tenth meeting, held on October 15 (barely three days before its deactivation), none of the councilmembers seemed to be aware of the government plans. On that occasion, the representative of the PCM had only addressed the “declarations from the president, regarding the re-launching of the [CNA]”²⁴⁸ (CNA, 2007b), stating that the proposal was still under evaluation, and that he was of the opinion that a consultative council should be kept. The CNA’s president and vice-president of Justice, Erasmo Reyna, had further prompted the council to continue carrying their activities as usual, since according to him there did not seem to be any overlaying functions between them and the impending ONA. Three days later, however, the government signed Supreme Decree No. 085-2007-PCM deactivating the CNA, erasing completely the figure of the council, and replacing it with an executive agency under the leadership of anti-corruption judge Carolina Lizárraga.

The decision to have Lizárraga in charge of the ONA was by no means coincidental nor technical. The new czar had first attracted media attention in 2004, when she ordered the arrest of former head of the National Council of Intelligence, César Almeyda (Chávez, 2004), and then again in 2006 when she requested that Interpol located former First Lady Eliane Karp (LR, 2006/08/19). These actions, in addition to her previous participation in the proceedings against the Fujimori-Montesinos network, had given her a level of legitimacy that was rather rare in Peruvian judiciary, and make her name be associated with the fight against corruption in the country.

On the days before her appointment to the ONA, Lizárraga had even been responsible for the order of arrest against the public officials involved in the whole National Health System scandal, which helped the government finally get over the stress scenario. These circumstances evidently made her a perfect candidate for endowing the new government agency with the level of media attention, popularity and legitimacy needed to have it succeed in stimulating support and reducing demands. Political magazine *Caretas* noted: “[W]e have to acknowledge a certain spectacular side in the appointment of Lizárraga. As in a circle closing, it was her who, on Tuesday 16, in one of her last decisions as judge, ordered the arrest of those

²⁴⁸ Translated from Spanish.

involved in the overpriced purchases of the [National Health System]”²⁴⁹ (Caretas, 2007/10/25). Indeed, Carolina Lizárraga’s own account of her designation confirms the president’s intention to use her designation as a way out of the stressful scenario (Prensaperu2009, 2009a):

“[The president’s office summoned me] regarding something about an anti-corruption czar. So I went and replied that I was yet not ready for [the appointment], that I was very happy in my position [as anti-corruption judge], but he told me that I had to help him and that we were at a dead end... He needed the support to do this anti-corruption crusade.”²⁵⁰

The government strategy proved to be immediately successful among societal groups such as the media and civil society. Through an official statement, the executive director of anti-corruption NGO *Proética* (and former minister during the Toledo administration), Cecilia Blondet, expressed her complete support for the decision: “Lizárraga is a very good appointment, it is an incredibly appropriate decision. I think she is a well-prepared judge in academic terms, and at the same time she is very brave; and you need both elements to take over this kind of responsibility”²⁵¹ (*Proética*, 2007/10/22). However, other actors of the opposition and the State apparatus, particularly those belonging to the anti-corruption subsystem, were quick to criticize not the person, but the institution.

The contents of Supreme Decree No. 085-2007-PCM described an office “with technical and functional autonomy, with enough attributions for the development of State measures to prevent and fight corruption”; and, although its autonomy was actually impaired by the fact that the chief of the ONA was designated by the president himself, and that it depended on the budget allocated by the PCM, the powers granted to the new agency were unparalleled by even the first version of the CNA. Besides its expected preventive functions, the ONA was formally capable of opening investigations by own initiative, allowing it to take part of any case it saw fit (*article 3, section c*); of carrying out the analysis, processing and transmission of information regarding potential cases of money laundering, and of requesting

²⁴⁹ Ibid.

²⁵⁰ Translated from Spanish.

²⁵¹ Ibid.

information to the UIF to that end (*article 3, section k*); and of notifying public procurators of any corruption case that may come to its attention (*article 3, section l*). In this way, the ONA was entrusted not only with preventive tasks, but also with control capabilities, which made it be perceived as intruding in the exclusive functions of constitutionally autonomous bodies such as the Office of the Comptroller General and the Public Prosecutor's Office. Such seed of destruction was of the same kind as the one originally included in the CNA, and which had allowed for the eventual *misallocation of responsibility* towards its modifications in 2003. Thus, once again, the main preventive anti-corruption body in the country was being designed with inherent structural flows stimulating environmental harassment from particular groups. President García's behavior in the deployment of the ONA was not supportive of a friendly relation between this agency and other control institutions either: While presenting Lizárraga as the new anti-corruption czar, he used the opportunity to criticize the performance of the already existing apparatus (LR, 2007/10/21a):

"This is a new point of attack against corruption. Until now the existing institutions has not been enough. I am not satisfied with their work; if I were, I would not be supporting [the creation of] a new agency to be like a stimulus to work on this subject."²⁵²

The president of the Supreme Court, Francisco Távara, had already expressed his disapproval of the Executive creating the ONA, for what he saw as a duplicity of efforts, a waste of resources that could have been employed to strengthen the anti-corruption subsystem (LR, 2007/10/21b). Evidently, García's expressions were not happy ones, and could not help Lizárraga's position. Shortly afterwards, the president charged directly against the comptroller general, Genaro Matute Mejía, whom he criticized for being vocal in the case of the ONA but having stayed quiet during the previous government and its scandals of corruption (Salazar, 2007). This conflict between Matute Mejía and the ONA would then continue until 2008, as the former held that Lizárraga's agency had no legal right to conduct investigations, and the latter kept trying to establish an institutional space of its own. After a legal report produced by the OCG objecting to the ONA's function was released in early January

²⁵² Ibid.

of 2008, Lizárraga defended her office by stating:

“This office was created to have an area of investigations and an area for the promotion of ethic and anti-corruption policies, and if an anti-corruption office is not allowed to know the reasons behind the corruption phenomenon, then it would not have any reason to exist.... [I]f we carry out an investigation is not only so that someone can be punished, but also to be able to exemplify what is going on, the reasons and the solutions.”

The truth, however, was that the ONA had been given a Trojan horse with those investigatory powers. In describing the interinstitutional relations between the anti-corruption office and non-Executive offices, a staff member of the ONA (Interview No. 05) said:

“What happens is that the ONA created a lot of resistance at the beginning... As ironic as it may be, the National Anti-Corruption Office was devastated in terms of critics by the Office of the Comptroller General, and then the comptroller ended up leading something [very similar to what] he had criticized so much.²⁵³ The problems were solved later on, but the demolition work had been so great, what with Public Ministry, the OCG... Everyone saw that it was an interference, all the State [apparatus]. So, it gave me the impression that we had very little [political] backing.

When the ONA is created, it is done with an investigatory unit. There were journalists, prominent lawyers; in other words, there were people that supposedly entered to push forwards all those denunciations [of corruption]. But I think it was the area that received most of the attacks, and due to which [the ONA] collapsed in political terms, as it represented the provision of competences [to an agency that was not entitled to them]. Everyone complained: ‘But why, if you already have public prosecutors, the Public Ministry, public procurators, the OCG...?’”²⁵⁴

²⁵³ As it will be seen later, Genaro Mature Mejía was invited to coordinate the creation of the Anti-Corruption High Level Commission after he had left the OCG.

²⁵⁴ Translated from Spanish.

Regarding these attacks, the chief of the ONA remembers (Prensaperu2009, 2009b):

“I realized (and I got very disappointed) that nobody cared about corruption. This office was created and [all of a sudden] everyone became an anti-corruption champion; [but then] the office came to an end and nobody ever talked anything about the subject anymore....

It was such an immediate attack! I did not even have an office yet and I was already being summoned by Congress at the end of November to explain about the post, about the money... I did not even have money! There was no support from other institutions; rather, there were attacks.”²⁵⁵

But not only did the ONA’s official functions create severe tensions with the OCG and raised doubts regarding the actual institutional place the former had, but they were also overwhelming for the limited human and financial resources allocated. In other words, the ONA did not really have the material capacity to fulfill its controversial duties. The area of investigations, which Lizárraga defended so fiercely, included five consultants under the direction of Iván Meini Mendez. Meini, as it has been mentioned earlier, had previously worked as part of the procuratorial team on the Fujimori-Montesinos case lead first by José Ugaz and then Vargas Valdivia; his trajectory, therefore, provided this area with the same kind of legitimacy as the presence of Lizárraga in the chief position did to the whole agency. Meini, however, was not in Peru. According to some of the members of the area of investigations who had entered the ONA in January attracted by his reputation, Meini was away doing a postdoc in another country, and he did not get physically involved in the investigations until March or April (Interview No. 12; Interview No. 13); this is, until almost half a year had passed since the creation of the ONA.

The material situations in which the area of investigations had to work, additionally, did not match the alleged importance it had (Interview No. 12; Interview No. 13):

“There were problems every month regarding us getting paid or not. The

²⁵⁵ Translated from Spanish.

administrator, Patricia Guillén, felt distressed because every month she received communication from the PCM stating that they did not know if we were going to get paid or not. And we did not have proper work conditions: We worked inside a basement that more than once got flooded....

The office was not well equipped. I remember Patricia always complaining about money. There was always a problem of money because (I think) there was no defined budget assigned to this project specifically, but rather we kept using the money from the CNA. So there were always problems about that.”²⁵⁶

Another staff member of the ONA indeed corroborated the budgetary challenges faced by the new agency, which continued throughout its period and eventually precipitated its dissolution (Interview No. 03):

“When the CNA is closed and the ONA is created, the [UNDP project PER/02/027] continues carrying on. Even though they were two offices with different denominations, the project that oversaw the whole administrative part remained the same. [So the anti-corruption body] is transferred from the Ministry of Justice to the PCM with all its resources in order to implement it... [According to the UNDP project,] the ministry to which the office was ascribed was supposed to provide the resources for its sustainability and functioning. When the office joins the PCM, it does so with very few resources, and we had to request additional resources for the budget in order to increase it; but they did not do it. They stopped transferring funds.”²⁵⁷

When inquired about the lack of financial support from the government, Carolina Lizárraga confirmed that it had been a matter of political decision (Prensaperu2009, 2009a):

“I worked at the ONA almost eight months, of which only five months and a half were of actual work... When I arrived, I had no office, no personnel, no budget; I had nothing... I put some [conditions] and [the president] said that everything was going to be fine and that we would have everything little by

²⁵⁶ Translated from Spanish.

²⁵⁷ Ibid.

little... I think that in one opportunity he tried to fulfilled [his promise]: he and Dr. Del Castillo signed at a Council of Ministers an urgent decree providing funds, but the minister of Economy said ‘No, this cannot be executed’... [So the ONA] was practically cancelled.”²⁵⁸

Finally, the lack of political will to support any success of the National Anti-Corruption Office became painfully evident only six months after its creation. The ONA, after all, was nothing else than a symbolic coping mechanism, and was never supposed to affect the stability of the leadership or that of the NACS. It simply did not have the political backing to exert a power that had only been received to generate conflict with other public agencies. After Carolina Lizárraga tried to perform its formal functions of chief of an anti-corruption body and got caught unwisely giving advanced opinion on a matter affecting the prime minister, the time came to stop investing in a political measure that had already succeeded in relieving public pressure.

In April of 2008, when the ONA was still finding its rhythm, allegations of a possible conflict of interests and influence peddling appeared on the news involving prime minister Jorge del Castillo Gálvez and his son, Miguel, who was an advisor for a minor television network, RBC. According to a member of the opposition, the Ministry of Internal Affairs had suddenly increased its allocation of publicity to RBC from S/. 0 in 2007 to S/. 283 thousand (roughly US\$ 100 thousand) in only the first months of 2008, raising suspicions about the possible meddling of the prime minister in redirecting the resources for the benefit of his son’s employers. The scenario of corruption perception immediately took form, with Del Castillo and Alva Castro being summoned by the parliamentary Commission of Audit to present their depositions, and members of the incumbent party providing *argumentative defenses*²⁵⁹ for the sake of the prime minister. The dissonant voice in the Executive, however, came from the chief of the ONA, who getting ahead of further details on the case expressed publicly that there could be evidence of an “ethical conflict, because the son of the prime minister works in [RBC], and the Council of Ministers work as an

²⁵⁸ Ibid.

²⁵⁹ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

association”²⁶⁰ (Perú21, 2008/04/09a). By doing so, the ONA was effectively engaging in a *public exhortation*,²⁶¹ generating pressure on the political system just as an environmental actor would. Lizárraga realized almost immediately the effect her words could have, and tried to show a more supportive stance by expressing the ONA’s “great consideration for the prime minister and belief in his version”²⁶² (Perú21, 2008/04/09b); but the pressure did not disappear. In order to avoid losing face, Lizárraga moved the focus of her intervention from the actions of the government to the legal structure, and suggested the introduction of formal guidelines regulating the matter of State publicity. Although such maneuver may have seemed like an appropriate deflection for the anti-corruption czar, in reality she was still pressing the system: her suggestion was just another form of public exhortation, effectively moving the scandal from the first round of corruption perception into the second, which directly involved the NACS.

The effect of Lizárraga’s public statements on the government’s backing is explicitly pointed out by a staff member of the ONA (Interview No. 03):

“The Executive withdraws its support to the ONA because it gets affected by allegations against Del Castillo’s son, and of course, the media go and take Dr. Lizárraga’s statements; and she, being impartial, provides an opinion that apparently was not well received by the prime minister and the president, because from then on all support was really taken away.”²⁶³

Of a similar reading was a senior official of the OCG (Interview No. 09), who pointed out that incident as the beginning of the end for the ONA: “[Carolina Lizárraga] provided opinion beforehand regarding Del Castillo, and in that moment she fell, as she depended on the PCM... [That statement about Del Castillo] killed her.”²⁶⁴

Shortly afterwards, due to all the political and financial challenges the anti-corruption office was facing, the personnel (including Lizárraga herself) began to present their resignations one by one. It was clear to all of them that the true nature of

²⁶⁰ Translated from Spanish.

²⁶¹ As described under domestic pressure activities, direct pressure.

²⁶² Translated from Spanish.

²⁶³ Ibid.

²⁶⁴ Ibid.

the National Anti-Corruption Office created by initiative of President Alan García was nothing more than a symbolic gesture to assuage demands for anti-corruption actions. In the words of a staff member (Interview No. 05):

“Actually, I think that the anti-corruption office was created with a decorative intention. I think there were very capable people, with good intentions of making it work, but I think that it did not work because [the government] never wanted it to work; that is, it was created so that it didn’t work.”²⁶⁵

Two consultants of the ONA agree with the above opinion, and are even more outspoken about the government’s intentions (Interview No. 12; Interview No. 13):

“It was an office created so that it didn’t work. It was an office created with greater faculties than those of the CNA: faculties of investigation, formulation of public policies, creation of a national anti-corruption plan... [but] it was created so that it didn’t work...

I think it was an office created to distract public attention saying ‘We investigate corruption,’ when in reality they did not do it. I think that the people that were there played the role (and I include myself) of useful idiots, and we realized it too late...

There was absolutely no political support from the Presidency of the Council of Ministers, led by Jorge del Castillo.”²⁶⁶

On August 15, 2008, barely ten months after the ONA had been created, the government announced its impending dissolution. With only minimum media coverage and public exhortations, *El Peruano* published Supreme Decree No. 057-2008-PCM, formally deactivating the ONA and transferring its core preventive functions to the Secretariat of Public Management of the PCM; other functions would be transferred to the OCG in turn. Former anti-corruption procurator Ronald Gamarra expressed that “this deactivation confirms that the ONA was a trial and that, in reality, there never was any political will to help Carolina Lizárraga in her post, or to provide her the necessary resources.” In response, and to prevent other forms of criticism, Prime

²⁶⁵ Ibid.

²⁶⁶ Ibid.

Minister Jorge del Castillo stated that the decision had been taken in following the requests of the opposition, which had asked for the ONA's deactivation (Perú21, 2008/08/10). The resort to *misallocation of responsibility*, as can be remembered, had also been employed to behead the CNA in 2003. However effective this mechanism was to keep demands from entering the system, members of the opposition had finally seen the true nature of the ONA through its deactivation: "[This] demonstrates that the ONA was ghostly office, created as a façade to hide the acts of corruption committed by the government, such as the overvalue of food products after the earthquake in Ica..."²⁶⁷ expressed Congressman Isaac Mekler (LPR, 2008/07/31). And he was right.

2. Petrogate

While so far the discussion has focused on scenarios of corruption perception with average levels of pressure, to consider the government management of an event like the Petrogate scandal is to venture into a multifaceted and complex affair. Benefitting from the hindsight provided by the passage of time, certain obscure elements can be studied in light of the course they have taken, thus providing certain degree of comprehension regarding their true meaning and nature; others, however, are still covered by power structures that were never truly unmounted, and which hinder a completely sober and accurate recount of the details. The analysis, therefore, can suggest the general outline of the coping mechanisms activated; the political crisis they tried to control, on the other hand, was from the beginning evident for its significant proportions.

The Petrogate event broke on October 5, 2008, when four audio recordings (taken in a surreptitious way) were presented at an important political TV program. In them, Alberto Químper Herrera, director of the Peruvian company for the promotion of investment in the hydrocarbons sector, *Perupetro*, could be heard discussing with former APRA minister Rómulo León Alegría the payment of bribes in order to award oil contracts in favor of Discover Petroleum, a Norwegian company (LR, 2008/10/06). These contracts were being pursued by arranging the association of Discover with *Petroperú*, the Peruvian state-owned petroleum company, and having

²⁶⁷ Ibid.

Discover's spokesperson, Ernesto Arias Schreiber, handle the delivery of payments for Químper and León. By the time the conversation was being broadcasted on national television, it was already a done deal: the contract had successfully been awarded on September 10.

The government reaction was immediate: That same night, César Gutierrez, president of *Petroperú*, presented his resignation, which was publicly accepted by Prime Minister Jorge del Castillo. The minister of energy and mines, Juan Valdivia Romero, followed suit, while President Alan García forcefully requested the immediate arrest of Alberto Químper, whom he called a 'rat.' Thus, the official strategy from that early hour was to activate both symbolic and genuine measures to cope with the scandal: deal with the culprits, sacrifice the president of Petroperú, and publicly express the government's support in seeing the whole issue dealt with swiftly and harshly.

The next day combinations of symbolic and genuine responses were adopted, with President García accepting Valdivia's resignation and expressing: "I accept his resignation making it clear that he is an honest man; but I accept his resignation until his honor, as he wants, can be duly proven"²⁶⁸ (Andina, 2008/10/06). With equal but opposite strength, the APRA party proceeded to expel Rómulo León from its ranks, stating: "The APRA is deeply sorry about the existence of unscrupulous people that take criminal advantage of the sacrifice of thousands of partisans"²⁶⁹ (LR, 2008/10/07a). Finally, President García moved to suspend the contracts awarded to Discover Petroleum, and ordered the removal of the Norwegian flag from the front side of the Petroperú building (Caretas, 2008/10/09).

But new audio recordings followed, raising questions regarding the amount of information the government had actually had of the dealings before the story had broken out in the news. Additionally, three other members of the alleged network were being involved in the scandal: Fortunato Canaán, Dominican lobbyist and executive of Discover Petroleum; Jostein Kjerstad, president of the Norwegian company; and Daniel Saba, president of Perupetro. In Congress, legislative initiatives were being already prepared against the government: members of the opposition were working on an interpellation against the Council of Ministers and the setting of a committee of investigation, while the National Unity party was even requesting a

²⁶⁸ Ibid.

²⁶⁹ Ibid.

motion of no confidence be prepared.

From the other side of the event, Perupetro released a statement presenting a thorough *argumentative defense*,²⁷⁰ through which the public enterprise was trying to clear its responsibility in any illegal dealings, defending the further legality of the contracts awarded to Discover Petroleum, and assuring the Alberto Químper, as representative from the Ministry of Energy and Mines, had never possessed the faculties to make administrative decisions that could have affected in any way the awarding process (LR, 2008/10/07b). A similar measure was taken by Petroperú the next day (LR, 2008/10/08). While these excuses were being offered, arrest warrants had been issued against Químper and León, as well as a warrant banning Arias Schreiber from leaving the country.

All these activities from both the political system and the environment in a very short period of time set the tone of the event: a severe political crisis was taking shape, and very soon the time would be over for small and economical coping mechanisms. The possible adoption of a *legislative initiative*²⁷¹ such as a motion of no confidence against the entire Council of Ministers; the mentioning in new recordings of the involvement of the prime minister; and, evidence of suspicious meetings with Minister of Health Hernán Garrido Lecca and even President García himself, raised the stakes. Under the circumstances, President García had no option but to make a *political concession*²⁷² and accept the formal resignation of the Council of Ministers in its entirety (Chirinos, 2008), offering the position of prime minister to independent leader Yehude Simon Murano, who was already popular for his honesty and his commitment with transparency in the public sector. Regarding Simon's appointment, political magazine *Caretas* (2008/10/16) expressed:

“What does Simon's appointment by Alan García mean? First, an important reduction in the presence of the APRA apparatus, which only keeps the portfolios of Jorge Villasante in [the Ministry of] Labor and Enrique Cornejo in [the Ministry of] Housing... With the previous prime minister the [APRA]

²⁷⁰ As described under the scenario of corruption perception, coping point of output perception attenuation (1st round).

²⁷¹ As described under domestic pressure activities, direct pressure.

²⁷² As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

party held an organic level of influence that today no longer exists.”²⁷³

Futhermore, the designation of Simon involved the *public expression of support for anti-corruption reforms*.²⁷⁴ “The fight against corruption, just as President García outlined, will cover a big part of [Simon’s] agenda,”²⁷⁵ *Caretas* commented. With this, and the change of six of its ministers (the rest were individually ratified in their positions), the executive branch seemed to have not only saved the imminent political debacle, but even come out with more political support than it had when the event started: According to a poll conducted in October 22-24, its level of popular approval had remained stable in 16%, while that of President García had increased from 19% in September to 22% (even though disapproval *due to high levels of corruption* had also increased from 28% to 37%); more surprisingly, the support for former Prime Minister Del Castillo went up 4% despite the fact that 84% of respondents believed that he had been aware of the corrupt dealings prior to the release of the audio recordings (71% believed President García also had knowledge of this) (APOYO, 2008a). In the opinion of Alfredo Torres, director of APOYO, “[t]he impact of [Simon’s] designation over the image of the president has been moderate... but it is necessary to keep in mind that, if not for the change of ministers, the approval of the administration would have probably suffered a significant blow as a consequence of the ‘Petrogate’ scandal”²⁷⁶ (APOYO, 2008a, p. 1).

The Petrogate scandal, however, kept thriving in regards to the direct actors involved. Media coverage had not left alone the corruption affair, exposing almost every day new details on illegal activities carried out by Romulo León, and the situation did not change with the prosecutor’s orders to initiate proceedings against fourteen members of the Petrogate network on October 21, 2008. The event was specially fueled now by the fact that León was a fugitive of justice, and that former ministers Del Castillo, Garrido Lecca and Juan Valdivia were being formally investigated for their possible involvement and responsibility (Romero, 2008). Soon the media began anew to question the specific participation of former senior officials of the government in the Petrogate affair, as information surfaced regarding meetings

²⁷³ Translated from Spanish.

²⁷⁴ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

²⁷⁵ Ibid.

²⁷⁶ Translated from Spanish.

that the Dominican lobbyist Fortunato Canaán had had with former ministers of Health, Justice, and Internal Affairs (Núñez, 2008). Congress, too, continued its investigation, and former ministers and other officials close to President García were summoned for enquiry. These incidents caused popular approval for President García and the executive branch to fall 3% and 1% by the middle of November, respectively, with 42% of surveyed people expressing disapproval due to the high degree of corruption affecting the government (compared to 37% the previous month). The domestic environment expressed skepticism regarding García's discourse in relation to the fight against corruption: 56% believed that the administration had done nothing to address this issue since it took office in 2006, and 38% considered that the reward of S/. 100 thousand (roughly US\$ 30 thousand) offered for León's capture on November 5 was a mere smokescreen deployed by the government (APOYO, 2008b).

Amidst this enduring pressure (reflected, and partly represented, by news of corruption appearing in the front page of *La República* for 78% of the time—much higher than the average of 24%), however, the whole event was finally brought to an end by a combination of events and measures: First, on November 13, Romulo León gave himself up and was immediately arrested; with it, a large degree of sensationalist coverage grew rapidly silent, moving on to a new story. Albeit not enough information is available, it is possible to suggest that León had effectively been used as a *scapegoat*: Even though President García had publicly called him a criminal, and his capture had effectively helped end the scandal, on July of 2009 Rómulo León was released from prison and put under house arrest. He was soon arrested again for not paying bail, and would remain in prison until December of 2011, when he was put again under house arrest. Arriving home, León gave some statements to the press insisting in his innocence, but adding: “The APRA never dies”²⁷⁷ (EC, 2011/12/02). Half a year later, in July of 2012, his status was further changed and he was granted parole. By 2015, there was still no conviction against León, notwithstanding his central position in the crisis that had meant the fall of Primer Minister Del Castillo's council almost seven years earlier. In September of that year, finally, the judiciary sentenced that the audio recordings were ‘illicit evidence’ due to the way they had been acquired (Barboza Quiroz, 2015), thus effectively bringing to a close the Petrogate case.

²⁷⁷ Translated from Spanish.

Second, in order to control pressure already moving into a reformist second round of the corruption perception scenario, new Prime Minister Yehude Simon presented on November 14 a project of National Anti-Corruption Plan for public discussion, based on the work that had already been advanced by the Toledo administration in 2006. This measure helped stimulate political support towards his person and that of President García, with Simon's popular approval increasing 2% between November and December and disapproval of García's administration due to corruption falling back to 34% (APOYO, 2008c). Beyond its political role, however, it is clear that the Plan was not intended to be anything more than a coping mechanism: although presented in the prominent forum of the National Agreement (Andina, 2008/11/14) and having attracted praises from members of the organized civil society (Proética, 2008/12/24), it would never be officially approved by the government, reinforcing the reading that it was meant to be an '*inadequate anti-corruption policy*'.²⁷⁸

Third, from November 18 the media turned to the coverage of the APEC Summit held in Lima, which filled most front pages until the 24th. The publicly acclaimed handling of the summit helped President García and the executive branch to swiftly recover from the costs of the Petrogate scandal, climbing back to 25% and 21% of popular approval by the middle of December, respectively. When asked about the reasons for their political support for the García administration, 38% of poll respondents mentioned García's performance during the APEC meeting (APOYO, 2008c). Thus, for all practical purposes, the APEC summit worked just as a *smokescreen* in benefit of the government.

3. The International Anti-Corruption Movement

Although beginning in the late part of the government of President Toledo, the international anti-corruption movement can be said to really have shown its full range of activities in Peru during the government of President Alan García. His is the period of expansion of international anti-corruption agreements and internationally funded projects, which spread from institution to institution with varied degrees of implementation and results. In the following subsections, the wide arrange of

²⁷⁸ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

activities are briefly described in order to get a clear picture of the level of international involvement in the efforts to reform the Peruvian NACS and bring down public malfeasance. Although their empirical results are often difficult to assess due to confidentiality measures imposed on their evaluation reports, the employment of personal interviews and the review of specific products will make it possible to provide some conclusions regarding the impact of international activities on the stability of the NACS.

MESICIC

As it has been described in Chapter IV, *international conventions*²⁷⁹ represent direct forms of pressure over a political system to push for the reform of domestic anti-corruption structures. The IACAC adopted by the Organization of American States on March 29, 1996, was the first such instrument to come into existence, back when the international movement was still taking shape. This type of activities, however, represent little more than normative commitments if they are not joined by procedures through which monitor compliance; thus, the need for a review mechanism for the IACAC became apparent soon afterwards, and so the MESICIC was adopted on 2001 to bring attention to the level of domestic implementation in each one of the signatory countries. The First Round of review took place between 2003 and 2006, after selecting the specific provisions that would be subject to assessment.²⁸⁰ The task was carried out by waves, starting with the country report on Argentina (adopted in February of 2003), and concluding with the country reports on Guyana, Grenada, Suriname, Brazil, and Belize (adopted in March of 2006). The MESICIC's committee of experts adopted Peru's country report in July of 2004 (MESICIC, 2006), after having considered information on the national anti-corruption structure up to March 8, 2004.

The country report on Peru identified a series of deficiencies in the implementation of most of the provisions evaluated, and showed a striking absence of information regarding the *results of the legal framework and/or other measures* (MESICIC, 2004), which was consistently missing in the Peruvian answer to the

²⁷⁹ As described under international pressure activities, direct pressure.

²⁸⁰ The provision selected for review in the First Round of the MESICIC were Article III, regarding the preventive measures included in paragraphs 1, 2, 4, 9 and 11; Article XIV, regarding mutual assistance and cooperation; and, Article XVIII, regarding the designation of a central authority for the purpose of international coordination (MESICIC, 2006).

MESICIC questionnaire expressing reasons such as the ‘newness’ of the adopted legislation, the on-going execution of related activities, the lack of implementation or final approval of norms, and others. For the MESICIC (2004, p. 21), such conditions impaired its capacity to “offer a comprehensive and objective appraisal of the results obtained.” Considering the Peruvian measures adopted to implement the IACAC, the country report offered 51 recommendations aiming at improving the NACS, most of which pertained to norms of conduct and compliance mechanisms (24), sworn statements of income (7), and participation of civil society (14). These recommendations were to be adopted and implemented by the government, and again reported during the Second Round of review that would be carried out in 2007 and consider information provided until November 10 of 2006.

As the Second Round actually was set to take place during the 2006-2011 government, the Toledo administration had no real incentive to implement the MESICIC recommendations, as the successor party would be the one to fall under pressure. Although the critical assessment from the MESICIC would point to a lack of commitment of the *Perú Posible* government to take on its recommendations in the two years it had between the First Round’s country report and the transference of power from Alejandro Toledo to Alan García, the news of international criticism would break again under the APRA’s watch, and would generate more stress to the actors in office than to those in the opposition. On the other hand, whatever measures that were to be adopted during Toledo’s government, they would be recognized only after he had left office, and so the political credits would likely be reaped by the APRA, and not by *Perú Posible*. Thus, in terms of political support and demands, there was nothing to lose from ignoring the MESICIC recommendations, and it could actually prove to be a feasible way of stressing the system lead by Alan García.

As expected, the country report on Peru for the Second Round found that, of the 51 recommendations made by the Committee of Experts of the MESICIC, 49 were still pending information or requiring additional attention; this is, 96% of the recommendations had been partially or completely ignored. Additionally, the Second Round involved the review of a new set of provisions included in the IACAC.²⁸¹ This time, 26 recommendations were offered.

²⁸¹ The provision selected for review in the Second Round of the MESICIC were Article III, regarding the preventive measures included in paragraphs 5 and 8; and, Article VI, regarding the typifications of different forms of corruption (MESICIC, 2008).

In light of the bleak level of implementation of the MESICIC recommendations, the technical secretariat of the follow-up mechanism decided to activate an additional pressure strategy to stimulate reform (OAS, 2011a):

“[The technical secretariat] created a technical assistance program to support States Parties in the creation of a national Plan of Action to implement the recommendations formulated by the Committee of Experts. The Plan of Action, which is created with the full participation of the public sector and civil society, identifies the necessary activities to implement the recommendations, the agencies responsible for implementation, estimated time-frame and cost to do so, and indicators to measure the advances in implementation.”

According to the OAS, the project of *technical assistance*²⁸² was to be financed through a contribution made by Canada, the United States and Spain. In October of 2007, project consultant Franz Chevarría Montesinos (who was also member of the ONA in the area of preventive anti-corruption policies) presented a draft project denominated *Action Plan for the Implementation of the Recommendations of the Committee of Experts of the Mechanism for Follow-Up on the Implementation of the Inter-American Convention Against Corruption* (Ministerio de Justicia, 2007), addressing the specific measures and responsibilities to be taken by the State in order to satisfy the recommendations made by MESICIC in the first two rounds of review. On the basis of this document, a national workshop was held in Lima between February 14 and 15, 2008, with the participation of domestic actors such as NGOs, civic and professional associations, constitutionally autonomous organizations, and public officials in general. The idea was to elaborate and improve on the project developed by Chevarría, providing it with popular legitimacy in the process, and to have it officially adopted by the government later on. Thus, the Action Plan financially backed by the OAS was meant to become the foundation, if not the embodiment itself, of a National Anti-Corruption Plan in Peru, as it would be the case in other countries of the region, such as Uruguay (CM, 2010/06/23). However, when the government finally produced an official (but not legally decreed) Plan in

²⁸² As described under international pressure activities, indirect pressure.

December of 2008, members of civil society were quick to point that it had not taken into consideration the measures elaborated in the Action Plan. In fact, there was no mention at all of the document. The report of the civil society (Arias, 2010b) sent to the MESICIC as part of the Fourth Round of review stated:

“It is significant that [the Action Plan] was not included in the National Anti-Corruption Plan (in no part of the latter is the Anti-Corruption Action Plan mentioned), which could be demonstrating that those who were in charge of relaunching the National Anti-Corruption Plan at the end of 2008... were in fact unaware of the existence of this other document. And, what is more troublesome, this omission constitutes the demonstration of the lack of continuity in a subject as important as that of the anti-corruption policy in Peru.”²⁸³

So, the Action Plan produced under the sponsorship of the OAS was pushed into oblivion by the government’s National Anti-Corruption Plan, which would not be legally recognized by decree and would only be introduced as part of a coping mechanism in the whole Petrogate affair, as it will be described later.

Returning to the MESICIC rounds, in 2009 the Third Round of review took place, assessing the provisions included in Article III, paragraphs 7 (laws denying favorable tax treatment for corruption-related activities) and 10 (accounting measures); and, Articles VIII (on transnational bribery), IX (on illicit enrichment), X (on notification of criminalization of the preceding activities) and XIII (on extradition) (MESICIC, 2011). Peru’s country report found that compliance with recommendations made in the First Round had increased from 4% to 16%; and that 19% of recommendations made during the Second Round had been satisfactorily considered (Arias, 2010a). This increase in the compliance with MESICIC suggests that international pressure may have been more effective in forcing the implementation of the IACAC due to fact that both the Second and Third Rounds of review took place during one single presidential period, thus providing enough time and incentives to the government to engage in anti-corruption activities. Although the level of implementation remains very low, it contrasts dramatically with the almost

²⁸³ Translated from Spanish.

inexistent attention to the MESICIC's recommendations in the last two years of the Toledo administration. This may very well point to a degree of effectiveness of international conventions as a source of stress *given the right temporal conditions*.

Additionally, of the provisions reviewed in the Third Round, the MESICIC offered only 16 recommendations, an amount that also reflected the difference between engaging in prevention and engaging in corruption control.

However, in the Fourth Round of review, which considered information until September of 2012, the level of compliance with the recommendations made during the First Round of review was found to have another increased, reaching 30%. By this time, the APRA government was not longer in power but had given way to the administration of President Ollanta Humala Tasso. Why, then, had the government of President García kept investing in implementing the IACAC when the country report would not be produced until well into the next presidential period?

Although this situation may seem to reject the argument made earlier regarding Toledo's lack of incentives to engage in implementation, a closer look at the activities that were found satisfactory can provide an answer: Of all of the measures identified by the MESICIC, only one of them was carried out by the Executive branch: Supreme Decree No. 184-2008-EF, published on the first day of 2009, which provides guidelines for the new law on public contracting; all the other measures were adopted either by constitutionally autonomous agencies, such as the OCG and the First Prosecutor's Office, or already in the government of President Humala. Furthermore, the provision of rules for public contracting finds its reason not in the MESICIC recommendations either, but rather in the presence of an international financial crisis that makes it a preemptive *demand-satisfactory measure* for the scenario of 'corruption in processes,' and not a measure to satisfy international pressure. Thus, although the country report for the Fourth Round of the MESICIC shows different results than the one expected given the change in government, they are not to be attributed to the political will of the government.

Other International Conventions and Agreements

During the government of Alan García the political system was also pressed by other forms of international activism in the area of anti-corruption efforts, although none as institutionally active as the MESICIC.

On November of 2004, the members of the APEC forum (including Peru)

endorsed the *Santiago Commitment to Fight Corruption and Ensure Transparency*, agreeing to promote regional cooperation on extradition, implement punitive and preventive policies, and engage in other forms of cooperation towards improving public transparency and honesty. Additionally, and in more specific terms, the forum leaders endorsed the *APEC Course of Action On Fighting Corruption And Ensuring Transparency*, which consisted of seven points: (1) the ratification and implementation of the UNCAC; (2) the strengthening of measure to prevent and fight corruption; (3) the denial of safe haven to corrupt officials; (4) the fight against both public and private corruption; (5) the promotion of public-private partnerships; (6) the cooperation among member economies; and finally, (7) the creation of an Experts' Task Force to assist government senior officials in the implementation of the Santiago Commitment and the Course of Action. In 2007, these statements and actions were joined by the *Conduct Principles for Public Officials*; *Complementary Anti-Corruption Principles for the Public and Private Sectors*; and the *Statement on Actions for Fighting Corruption through Improved International Legal Cooperation*. Then, in 2009, the APEC ministers endorsed the *Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity*, and the *APEC Guidelines on Enhancing Governance and Anti-Corruption*. However, disregarding the profuse production of official declarations, to this date there has been almost no incidence of the APEC's anti-corruption discourse on the Peruvian NACS. According to a consultant working with the APEC's Anti-Corruption and Transparency Experts' Task Force (Interview No. 11):

“It would be difficult to evaluate [the impact of the APEC on domestic anti-corruption implementation]. There are no national committees, or permanent committee. The [management of the] issue is divided because the Ministry of Production is the one seemingly in charge of representing [the country, but] the Ministry of Foreign Affairs handles the other part. So it is complicated... There is no awareness here yet.”²⁸⁴

Thus, it would seem that, although the APEC's activities can be nominally described as engaging in the kind of pressure activities dubbed here *international*

²⁸⁴ Translated from Spanish.

agreements, in reality they do not have any more impact than that of influencing national public officials through the *general dissemination of corruption awareness and anti-corruption principles and information*,²⁸⁵ an activity that does not normally justifies the employment of coping mechanisms from the government.

Turning to the UNCAC, which represents a more thorough and universal approach, it was ratified by the Peruvian government on October 20, 2004. Steps towards a peer-review mechanism followed shortly afterwards, and in December of 2006 the Conference of State Parties agreed on the establishment of a Pilot Review Programme as a way of testing possible means for a more comprehensive review mechanism. Sixteen countries, including Peru, expressed their willingness to participate in the Pilot in a voluntary way; these countries were later on joined by other thirteen in 2008, amounting to the twenty-nine participant countries (UNODC, 2009).

Peru submitted its self-assessment checklist on August 15, 2007, and the on-site review took place between the 16th and 18th of January 2008, conducted by Argentina and Norway. The scope of review was as follows (UNODC, 2008, p. 2):

“Articles 5 (preventive anti-corruption policies and practices); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 25 (obstruction of justice); 46 (mutual legal assistance), particularly paragraphs 13 and 9; 52 (prevention and detection of transfers of proceeds of crime); and 53 (measures for direct recovery of property).”

While this Pilot Review might be seen as an effort to press the government into engaging more actively on anti-corruption reform, and thus a source of stress for the NACS, the conclusions of the review process were of more help for its stability than a threat. Regarding the Peruvian legislative and regulatory framework, and its correlation with the UNCAC provisions under consideration, the review concluded that “Peru’s legislative framework has largely implemented the requirements in accordance with the eight Articles under the scope of the Pilot Review Programme”

²⁸⁵ As described under international pressure activities, influence.

(UNODC, 2008, p. 3). Furthermore, regarding the level of implementation, the document states (p. 4):

“Peru has implemented the requirements of Article 5 regarding preventive activities through a wide-ranging system of preventive measures and bodies... [Its] implementation of the requirements of Article 15 to criminalize bribery has also been good, with many prosecutions of bribery cases... [It] has fully implemented Article 17 of the Convention, and has prosecuted many embezzlement and misappropriation cases... Overall, Peru’s implementation of the prevention, detection, and reporting requirements of Article 52 has also been good... [It] also has a good history of implementing measures for direct recovery of property as required by Article 53 of the Convention...”

The review process only seemed to find important problems with the implementation of Articles 16 and 25, with all other reviewed provisions being critically commented only in an ancillary way, after describing Peru’s NACS as mostly in line with the tenets of the UNCAC. Thus, it is improbable that the Pilot Review had been seen as a real threat for the provision of support into the political system; most likely, Peruvian authorities saw the country’s voluntary participation in the Programme as an opportunity to *express their support for anti-corruption reform*²⁸⁶ in response to the UNCAC, and the positive evaluation as a way of preemptively addressing future criticisms regarding the NACS. An introductory remark contained in the document supports these assertions (UNODC, 2008, p. 7):

“It must be indicated also that the recently appointed president of the Council of Ministers has been mandated by the President of the Republic to place the fight against corruption as a central axis of the general government policies, with explicit reference to the international obligations undertaken by Peru as State party to the United Nations Convention against Corruption and the Inter-American Convention against Corruption.”

Clearly, this kind of description cannot count as pressure activity in any sense

²⁸⁶ As described under the scenario of corruption intolerance, coping point of stress amelioration.

of the term, as it works more for the benefit of the García administration than for its stress. Under these circumstances, it is completely understandable why the government expressed its interest in voluntarily yielding to a pilot review process.

From the lessons learned in the Pilot Review Programme, in 2009 the Conference established a proper Review Mechanism comprising two five-years cycles. The review process consisted of information provided by the government through the Comprehensive Self-Assessment Checklist created by the UNODC, and an on-site visit by representatives from two other State Parties, which for the case of Peru were Ecuador and Bolivia. The on-site visit to Peru took place in April of 2012, already during the government of Ollanta Humala; from it, a report was finally presented in Vienna on May 27, 2013.

From the review of Peru's implementation of the UNCAC, only the executive summary became available. However, it was enough to observe that, this time, the Peruvian NACS was described in a less positive light, highlighting from the beginning the deficiencies in the domestic legal framework, the level and quality of implementation, and other issues related to the UNCAC provisions (UNODC, 2013). The government of President García, knowing that the UNCAC review would finish during the next presidential period, need not worry about adopting measures to either satisfy the demands for anti-corruption reform, or about coping with the potentially incoming stress: those would be problems for the Humala administration to handle, as the scenario of corruption intolerance (however much its degree of pressure) would only be fully developed in 2013.

Disregarding the problems of bringing pressure over a certain political leadership by carrying out activities that take a long period of time to come to fruition, it is possible to state that the level of pressure represented by technical reports is still significantly lower than other considerations, such as economic interests and political legitimacy. The United Nations, in general, is not a traditionally relevant actor recognized by Peruvian society; and the UNCAC, in particular, is largely unknown even for many civil servants and some senior officials. A member of the CNA, who was later involved in the activities of the Conference of State Parties, comments (Interview No. 08):

“The UNCAC is not even known here [in the country]. I talk about it sometimes. [This one time] there were two prosecutors who asked me ‘What

is that convention of United Nations...?’ So I told them that there was a delegate of theirs that used to travel with me to Vienna, Pablo Sánchez, who worked with me... [And they replied:] ‘Oh, that’s what Pablo was doing in Vienna?’”²⁸⁷

On the other hand, an international instrument like the United States-Peru Trade Promotion Agreement (usually called *free trade agreement—FTA*) has shown to be more effective in bringing along changes in the anti-corruption legal framework, even if only to a degree limited by the nature of the agreement itself. After its subscription on April 12, 2006, the government of President García invested significant efforts in carrying out the implementation of the measures included in the FTA, which was set to enter into force in February of 2009. These measures included, among many others, the provision on active bribery of foreign officials, contained under Section B, *Anti-Corruption*, of Chapter Nineteen, *Transparency*. Thus, in following the text of the FTA, Peru was expected to pass legislation making it a criminal offense for a person to engage in active transnational bribery in any way that may affect international trade or investment. This obligation was fulfilled on January 14, when Law No. 29316 that *Modifies, Incorporates and Regulates Several Measures in Order to Implement the Trade Promotion Agreement Subscribed between Peru and the United States of America* was published, creating the crime of ‘active transnational bribery.’ This law, it should be added, was approved with surprising haste, taking barely five days to go through Congress; this was possible thanks to the decision to exempt it from discussion and ruling in the appropriate parliamentary commission, and instead was prioritized for direct and immediate vote in plenary session.

The text of the legislative project of Law No. 29316,²⁸⁸ presented by the Executive branch, is particularly revealing in terms of the relative weight of agreements such as the IACAC and the UNCAC compared to an FTA:

“The United Nations Convention Against Corruption and the Inter-American Convention Against Corruption... establish the acts of international corruption committed against foreign public officials or officials of international public

²⁸⁷ Translated from Spanish.

²⁸⁸ Law Project No. 2959/2008.PE, presented on January 8, 2009.

agencies.

Likewise, article 19.9.1(c) of Chapter 19 (Transparency) of the Trade Promotion Agreement with the U.S.A. disposes that the Parties will adopt legislative measures to impose criminal sanctions [in cases of active international bribery]...

Notwithstanding having acquired these international obligations, and although there exist recommendations in the sense that Peru should categorize such criminal form in its domestic framework, they have not been adopted until this day. In this sense, and in order to comply with the Conventions mentioned above and article 19.9.1(c) of the TPA, it becomes necessary to introduce an additional [clause] to article 397 of the Criminal Code, categorizing International Bribery.²⁸⁹

The point raised by the government was clear: Even though the Pilot Review of the UNCAC had explicitly found that “Peru has not criminalized either the active or the passive bribery of foreign and international public officials” (UNODC, 2008, p. 17), the project presented by the Executive limited to consider only that aspect which had been included in the FTA, this is, *active* transnational bribery. In fact, Law No. 29316 explicitly framed the crime within *international economic or commercial activities*, a limitation that was not considered in the UNCAC and which was criticized in the report produced by the Review Mechanism in 2013. However, that limitation was perfectly in line with the text of the FTA, which had stated its requirement *in matters affecting international trade or investment*. Additionally, Law No. 29316 had purposely excluded any reference to *passive* transnational bribery, a figure that also needed implementation in line with the requirements of the UNCAC; this deficit would only be amended in June of 2011 with Law No. 29703, by proposal of the judiciary.

Under this body of evidence, it is clear that, even though the legislative project of Law No. 29316 had cited the IACAC and the UNCAC as reasons to criminalize active international bribery, the only legal instrument that had exerted actual pressure on the NACS was the FTA with the United States of America. The government, in turn, satisfied the demands of the FTA to its absolute minimum, while calmly

²⁸⁹ Translated from Spanish.

ignoring the recommendations from the UNODC.

After considering the above cases, it is no surprise that the Andean Anti-Corruption Plan endorsed on June 13, 2007, could have been all but forgotten, considering the irrelevance that the Andean Community had exhibited in most other aspects.²⁹⁰ Already by February of 2011, the Andean Parliament was officially calling for the reactivation of the Executive Committee in charge of managing the implementation of the Plan, which had met only in two occasions, and for the resuming of regional efforts to fight corruption (Andean Community, 2011). Needless to say, the calls came to no fruition, and it is unknown if the Andean Anti-Corruption Plan is still considered an international commitment by members of the government, and much less if it represents any form of pressure.

Failures of the UNDP and the USAID

When the ONA was dissolved in mid-2008, it did not only mean the extinction of an anti-corruption body in charge of driving the development of preventive policies in the country, but it also meant the end of the UNDP project that had been providing technical assistance since 2002. A UNDP program official involved in the activities of the CNA (and later the ONA) indicates that the problem of political support had been a recurrent issue from the very beginning (Interview No. 28):

“I am talking about a whole period... Even though I was responsible for supporting the anti-corruption initiatives, the great problem that I can describe is that, [although] there were very good ideas, very good mid-level professionals, good consultants, and teams that could have been built in an appropriate way, the leadership (and the support of the incumbent government to that leadership) was the great problem that existed... The CNA became the ONA, then this became another commission,²⁹¹ and it was like going from office to office to see what happens; [but] it was not a matter of organizational structure, it was a matter of empowering the leadership. [The government] talked about an anti-corruption czar; but what czar could there be without

²⁹⁰ According to a poll conducted in February of 2006, 61% of respondents in Peru had never heard of the Andean Community (APOYO, 2006) even though it had been on the works since 1969 and Peru had joined its free trade zone in 1997.

²⁹¹ The Anti-Corruption High-Level Commission, created during the APRA government, but which will be reviewed in the next chapter.

power? It was pure title... We could see that [the project] goals were not being reached because of the institutional weakness [of the national agency] and the lack of commitment from the highest spheres of the government.”²⁹²

The UNDP official also comments about the position of the international agency during the final period of the CNA, and the demolition of this to create the ONA:

[The transfer of the CNA to the Ministry of Justice was seen] negatively, because we could perceive a lack of compass, but we had to keep the commitment, otherwise it was going to be even worse, and the little institutionality there was would disappear. So we forced many of our internal procedures regarding agreements and projects. We unloaded the project from one sector to another. And later [the anti-corruption office] went back! It was moved from the PCM to the Ministry of Justice, and from the Ministry of Justice returned to the PCM! So, you can imagine those forced procedures, because inside a project you [should] have a responsible person who remains during the whole life of the project; but we had to close the project, move the remaining resources into the new project. So, we really pushed it, we had to juggle it. I had to present waivers to my agency explaining the situation, the circumstances of the country, etc.”²⁹³

When the ONA was created in October of 2007, it was seen with great expectations by the UNDP. The new office, as it was mentioned before, represented a great refurbishing of an anti-corruption body that had been dragging for years, without ever really taking off, which had obviously impacted in the reputation of those international actors involved in its support. The ONA, however, was short-lived. The problems with it became evident to the UNDP soon after its creation (Interview No. 28):

“The creation of the ONA embraced many of the proposals that we had extended; and I remember there was a lot of expectations for it. But sadly,

²⁹² Translated from Spanish.

²⁹³ Translated from Spanish.

these expectations disappeared quickly with the widespread attacks made against the ONA's responsible, who even ended up with health issues. I had a lot of contact with [Carolina Lizárraga], who was Project Director, and sadly she had to leave because of serious health issues... Even the Ministry of Foreign Affairs complained that the ONA had been given faculties that belonged to the former!²⁹⁴ Truly, that was stingy... UNDP is an institution that [can only provide] support; the government was free to say 'We follow a certain strategy' or 'We coordinate with other institutions to make this strategy work.' But I can tell you, there was not much intention of carrying out any coordination."²⁹⁵

However, even though the persistence of the project and the technical activism of the UNDP had the purpose of keeping with a strategy of *assistance* as a form of indirect pressure, its effectiveness in stressing the political leadership and the NACS was meager compared to the coping mechanisms employed by the government (as they have been described earlier). Confronted with the harsh reality, the international agency could do nothing but to see its strategy fail:

"[We, at the UNDP project, saw it as something] very bad. We were not communicated at the appropriate time (being us strategic partners in the subject); it was a unilateral decision from the government. And what is more, it was a political decision more than a technical one, even though we had highlighted the technical aspect of the office because if you make it a political issue then you discredit it. So, we took it badly... It was not coordinated with us; it was a very political subject. We were simply informed..."²⁹⁶

The treatment received by the government seemed to go hand in hand with the type of pressure activity employed by the UNDP:

"We as UNDP do not engage in political pressure. What UNDP does is to

²⁹⁴ The activity challenged by the Ministry of Foreign Affairs was the representation of the State in international anti-corruption fora such as the Committee of Experts of the MESICIC, the Conference of State Parties to the UNCAC, the APEC's Anti-Corruption and Transparency Experts' Task Force, and others.

²⁹⁵ Translated from Spanish.

²⁹⁶ Ibid.

show the government the necessity of having certain norms, protocols, or conventions implemented, because it is a ‘government commitment,’ [or] ‘a mandate of United Nations and Peru is a member’... But no political pressure; United Nations does not engage in political pressure.

[From the other side,] I do not think the Peruvian government feels pressured [by the UNDP]. United Nations, in general, has the mechanism of Special Rapporteurs, like the ones on *adequate housing, health, indigenous peoples, etc.*, who many times have criticized government affairs, and the government has received them but has not felt pressured.”²⁹⁷

Thus, it is possible to see that, notwithstanding the employment of *technical assistance*, the avoidance of direct forms of pressure hindered the capacity of the UNDP to effectively support the performance and existence of a national anti-corruption body, and through it to secure reforms in the area of prevention or control.

Disregarding its own irrelevance, however, the UNDP had succeeded in leaving behind the seed for another, more aggressive, example of assistance, this time of a financial nature. Adopted by USAID, it would represent the main international activity for the stress of the NACS in terms of its sheer financial resources.

In 2008 the United States Agency for International Development (USAID) launched the Anti-Corruption Threshold Program (ATP) in Peru, under the framework of the Millennium Challenge Corporation²⁹⁸ (MCC), set to work with the judiciary, the National Police, the Office of the Ombudsman, the OCG, and civil society organizations.

The interest of the Peruvian government in applying for the ATP can be found not only in the financial resources that would be poured into the system (some of which had benefits outside the scope of the NACS), but in what it represented: “The

²⁹⁷ Ibid.

²⁹⁸ The MCC, as described by Curt Tarnoff (2015), “provides economic assistance through a competitive selection process to developing nations that demonstrate positive performance in three areas: ruling justly, investing in people, and fostering economic freedom” (summary page). In order for a country to be considered a candidate for economic assistance under the framework of the MCC, it needs to fall “under the threshold for the World Bank’s classification for upper-middle income countries” (Tarnoff, 2015, p. 2); this is, it needs to belong to the lower-income or lower-middle income group. Two types of economic assistance programs are available from the MCC: Compacts, spanning five-year terms and awarding budgets ranging in the hundreds of millions of US dollars; and thresholds, spanning two to three years, and involving fewer resources. Threshold programs are “designed to assist promising candidate countries to become compact-eligible” (Tarnoff, 2015, p. 17), and usually focus on corruption issues.

MCC made control of corruption a ‘hard’ (read: mandatory) indicator for compact status. These Threshold programs were designed specifically to help the recipient countries address identified weaknesses in their control of corruption.” (USAID, 2014) The Compact programs, which could be granted for low-income countries with compact status, involved the *financial assistance* with hundreds of millions of US dollars for a wide variety of activities impacting on poverty and economic growth; but they could only be accessed by improving the country’s NACS, or at least the measurement of this by international indicators. Thus, by assuming the role of an anti-corruption involved government, it was possible to gain access to a much-desired source of international funds. A USAID official who was directly involved in the activities of the ATP is of this opinion (Interview No. 25):

“The MCC has these Threshold Programs as a stimulus to be able to access bigger funds (the Compacts)... So, that was the incentive for the Peruvian government to take on the project. But what happened in the process [of implementation] is that Peru moved on to become a middle-income country, and thus it lost the opportunity to access the Compact. So, the whole launch pad strategy that the ATP represented became discouraged. That was somehow a disincentive for public agencies in Peru (that were involved in the program) to carry out the tasks as we would have wanted them to.”²⁹⁹

The logic behind the government’s interest in the ATP falls perfectly in the tenets of the theoretical model: As it was proposed before, *anti-corruption will only be chosen when it provides more political capital than the sum of the resources spent and any loss in corrupt profits*. Considering that the original run of the ATP was scheduled to go between 2008 and 2010, finishing just in time for the electoral campaign; that the granting of compact status would impact positively on the APRA’s image and political capital; that it provided resources that in reality could be employed in the satisfaction of more than anti-corruption activities; and that the implementation of specific measures could improve the overall rating of the country without actually affecting the NACS from the perspective of the political leadership, it is clear that the incentives for undertaking anti-corruption actions were indeed

²⁹⁹ Translated from Spanish.

present when the government engaged USAID. When economic growth closed the door to the Compact Program, the government lost the principal incentive for successfully implementing the measures contained in the ATP, and so the problems that will be described below arose.

The ATP project had been initially proposed, in all its measures, by the government through the leadership of the PCM and a process of consultations with the public agencies directly involved in the future implementation. Then, the project was analyzed and negotiated in Washington. The result was the granting of US\$ 24 million, including US\$ 1 million to *Proética* (TI's national chapter) for activities involving civil society. In order to monitor the execution of activities carried out by public agencies, an Executive Board was installed chaired by a representative of the prime minister, which had to regularly inform USAID of the progress made. Thus, it is fair to say that the ability of the international agency to affect the stability of the NACS was fairly limited by the presence and control of the government, which had from the beginning the capacity to impose its own interests in the matter.

Due to the impossibility of gaining direct access to the official report of the project, which is confidential in nature, the results of the ATP are described here in detail by copying excerpts from an interview taken with an USAID official (Interview No. 25):

“The final [evaluation] report is very critical, as the expectations that the American government had of that project were not reached because the Peruvian government, in almost every aspect, did not fit the bill. There were important problems in terms of lack of commitment for implementing products that were delivered (and expensive), such as information systems. Everyone requested information systems, and there appeared a problem that began from the formulation of the project, with USAID and the American government accepting all those requests without a previously screening them to see if the [Peruvian] government had the capacity to manage them, or if they were actually needed...”

The problems with the implementation and impact of the ATP are then described by turning to each public agency involved in the specific product. First, the judiciary:

“For example, the technology of Business Process Management, which is used to manage information systems for the follow-up of files in the Office of Control of the Judiciary: the system was implemented, delivered, and after some time the judiciary stopped using it, and threw it away. And the development of that system was the reason for an extension of the project; in other words, in order to fulfill [its commitment], USAID extended the deadline of the project (the Assistance Agreement between Peru and the United States), to provide the contractor with more time to deliver the product... [These issues] represent a waste of money, first of all; and in terms of reaching the goals, [they mean that] we were unable to consolidate a mechanism of transparency and efficiency in the production of disciplinary investigations in the judiciary... [Additionally,] the development of the system was linked to the purchase of equipment: two cutting edge servers with all the conditions so that the system could run, computers, building of a data center, etc. So, a lot of money for infrastructure, besides the software. More than a US\$ 1 million were spent in equipment, and US\$ 0.5 million more in the software. So, more than US\$ 1.5 million were invested... and from that they kept the equipment, and threw away the informatics solution... We also gave them the Business Intelligence [tool]... and they say that it has never been used, that they never implemented it.”³⁰⁰

The activities carried out by USAID in assisting the work of the Office of the Comptroller General were affected by the same problems:

“With the OCG something similar happened. We bought them computers, servers; we hired IBM to do a consultancy regarding a system for the follow-up of citizen denunciations (which was part of the OCG’s mandate)... When we had already made progress with all those requirements that had been included in the [ATP] contract from the beginning, a change in the legislation took place and the SINAD (National System for the Servicing of Denounces) was created. This somehow changed their logic regarding workflows, but what

³⁰⁰ Ibid.

we had been developing for them [under the ATP contract], the flow of those processes for servicing denunciations, was based in the previous system... They ended up coming out and saying: ‘As there are new guidelines, a new organizational structure, a new map of processes, because this is a new unit... all of this that has been made, no longer works.’ So, the system that was developed for them was never used either. For that consultancy USAID paid to a partner of IBM US\$ 300~400 thousand. Wasted money. And they went back to their old system .net.”³⁰¹

Finally, the measures involving informatics components carried out for the National Police followed the same patten as the judiciary and the OCG before:

“Not only the OCG and the judiciary threw away the systems (for different reasons, but the result was the same, they never used them), but also the Ministry of Internal Affairs, specifically the Inspectorate of the National Police. We hired engineers to work in-house, we bought computers, servers, internet repeater antennas... Either way, we also built the system they wanted... [but] at the end they also changed their legislation. [The system] could have been adapted because the changes were not dramatic, but at then end they decided no to use it because the system could not be replicated in all the regions were they had investigatory offices due to technological requirements that were already their responsibility to implement. The project could not do all of it because there were not enough resources, and because that was already responsibility of the government. If you are getting already 70% of the infrastructure, the other 30% has to come out from your pocket. But they did not put that 30% from their pockets, and at the end the users decided to go back to their old system, and [the product] was thrown away. [This failed activity represented] other US\$ 1 million.”³⁰²

Notwithstanding the serious deficits in the implementation of the activities, which had been selected and requested by the government itself, and that the PCM (specifically the Executive Board) had been properly informed of the issues by

³⁰¹ Ibid.

³⁰² Ibid.

USAID, nothing changed. The execution of the ATP kept dragging, the project contract had to be extended until 2012, and a month after the APRA left office the Executive Board was dissolved by the PCM, and USAID lost its primary contact point. All further coordination had to be done directly with the representatives of the public agencies, one by one, with all the difficulties entailed.

As the USAID official expresses, the interest of the international agency had been to somehow pressure the government into adopting anti-corruption measures by offering *financial assistance*,³⁰³ which was expected to work better than the exclusively *technical* approach taken by the UNDP:

“The purpose was somehow to [press the government]. We are not talking about mere cents; we are talking about more than US\$ 20 million that come from the American taxpayers so that improvements in the workflow can be achieved, so that anti-corruption control can be improved. Obviously there was a commitment that the government had to effectively fulfill, but which it didn’t at the end.”³⁰⁴

However, we can consider USAID’s original strategy not only as financial assistance, which ultimately failed to make any real impact in the NACS, but as a form of *aid conditionality*.³⁰⁵ The ATP was supposed to be only a launch pad towards obtaining the ‘compact status,’ and in that way force the government to undertake anti-corruption reforms (at least to a minimum degree) with the promise of aid funds. But as the Compact Program became unreachable, the ATP lost most of its leverage, and so it failed. Although it is impossible to defend that, had the compact status been kept as a possibility, the ATP would have reached a higher level of success, the cases of the FTA and the UNDP suggest that environmental actors have more to win from implementing strategies that rely in direct forms of pressure, particularly those involving financial resources, than from classic assistance activities.

³⁰³ As described under international pressure activities, indirect pressure.

³⁰⁴ Ibid.

³⁰⁵ As described under international pressure activities, direct pressure.

4. The End of the Anti-Corruption Subsystem

Several measures taken during the government of President García affected the formal structure of the anti-corruption subsystem, as well as its effective capacity. In general, the period of 2006-2011 represents the collapse of the Ad Hoc Public Procurator's Office, and the dismantling of the subsystem in regards to the role of the judiciary. To address the details and implications of these changes, the Procurator's Office will be discussed first, after which the study will turn to the constitutionally autonomous agencies of the subsystem.

As it can be remembered, by the end of the government of Alejandro Toledo the main Executive office in charge of corruption control was the Ad Hoc Public Procurator's Office led by Antonio Maldonado, which followed the cases of the Fujimori-Montesinos network. However, with the change of government, leaders of the incumbent party, APRA, began pushing for the creation of an additional *ad hoc* office charged with investigating and denouncing all the cases of corruption involving the Toledo administration (LR, 2006/08/15), in what can only be considered an example of anti-corruption cleanup aimed at stimulating support. For this task of *exclusively non-partisan investigations/prosecutions*,³⁰⁶ the government appointed Gino Ríos Patio on August 29, 2006.³⁰⁷ Procurator Ríos showed promptly to be a fervent critic of the previous administration, and one month after his designation the scandal broke when he publicly stated that Toledo was a 'more corrupt political animal than the fugitive former president Alberto Fujimori himself' (Perú21, 2006/10/08). Naturally, his outburst was immediately criticized by members of the opposition, particularly those of *Perú Posible*, and even the government expressed some distance from Ríos opinion. However, the procurator's words were in line with the government position of harassing the former president, as a few days earlier, on September 28, Congressmembers of the APRA had supported (and succeeded in) the creation of a *parliamentary committee of investigation*³⁰⁸ against Alejandro Toledo and his wife (LR, 2006/09/29). The parliamentary measure was yet another form of non-partisan investigation, only this time of symbolic nature. Together with the

³⁰⁶ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

³⁰⁷ Supreme Resolution No. 143-2006-JUS, published on Augusto 30, 2006.

³⁰⁸ As described under the scenario of corruption perception, coping point of stress amelioration (1st round).

appointment of Ríos Patio, it served a specific agenda aimed at stimulating support for the new government, and so did the statements made by the public procurator.

Meanwhile, a few days before Gino Ríos was appointed, ad hoc procurator Antonio Maldonado had presented his letter of resignation due to family reasons (LR, 2006/08/26). Although the government had previously stated its desire to keep Maldonado in charge of the Fujimori-Montesinos cases, it had no option but to accept his resignation³⁰⁹ and to look for a new procurator. The search concluded with the designation of Carlos Briceño Puente,³¹⁰ but with him a series of disapproving comments followed from different media sources, which pointed out his faulty performance during his time as associate procurator in charge of extraditions, office that he had been forced to leave in November of 2005 after Maldonado had requested his resignation (Salazar, 2006). His appointment as new leader of the ad hoc office was seen not only as a clear negligence of the government by members of the press, but also by the team of associate procurators. Less than a week after Briceño's designation, Iván Montoya Vivanco, new head of the area of extraditions, announced his departure, stating (Salazar García, 2006):

“I hope to be mistaken about Mr. Briceño, but three weeks ago I expressed in advance that the government administration required bigger gestures in order to provide more support to the Ad Hoc Public Procurator's Office in the fight against corruption... It is necessary to show a bigger commitment in the process of extradition of former president Alberto Fujimori. The extradition is a State policy, and not only [a policy] of the judiciary. It is a requirement from the Executive branch that makes it its [responsibility]; therefore, a minimum of non-partisan political commitment is necessary. These are gestures that I have not seen.”³¹¹

The government decision represented in practical terms a form of *institutional devolution*, one that had clear-cut consequences for the functioning and results of the Ad Hoc office over the next year as it will discuss shortly, but whose rationale is not easy to identify. According to former procurator Antonio Maldonado, behind the

³⁰⁹ Supreme Resolution No. 145-2006-JUS, published on September 1, 2006.

³¹⁰ Supreme Resolution No. 156-2006-JUS, published on September 23, 2006.

³¹¹ Translated from Spanish.

intended dislocation of the ad hoc procuratorial office was an interest in protecting the government's relations with the pro-Fujimori forces in Congress and society (Godoy, 2009); such allegations of a secret political instrumentalization of the Fujimori-Montesinos cases by the incumbent party would be repeated several times throughout the period 2006-2011 (Mella, 2007a). In any case, the designation of Briceño continued the pattern started by the Toledo administration of neglecting the treatment and follow-up of the Fujimori-Montesinos case, but now switching in nature from a coping mechanism to a full-fledged *countermeasure*.

In Addition to the above measures, in September of 2006 the government appointed Moises Tambini del Valle as new president of the Council of Judicial Defense of the State (CJDS). Tambini was an old partisan of the APRA, and had been congressmember of that party for the period 1985-1990, during the first government of President Alan García (Zambrano and More, 2007); now, as head of the CJDS, Tambini was effectively in control of all procuratorial offices, including those related to corruption cases. From that unfortunate position of political power over anti-corruption efforts, the boycott of the procuratorial office promptly began (Godoy, 2009):

“The lack of support [for the activities of the ad hoc Procurator's Office] became manifest again during a meeting summoned by Tambini in his office, located in the Ministry of Justice itself, the last week of September. According to a source from the Procurator's Office that prefers to remain anonymous for the moment, during the meeting the newly appointed procurator Carlos Briceño was informed of the decision to reduce, in the next months, the number of lawyers allocated to his office, besides the rescindment of the contracts of associate procurator Janeth Briones (who chose to resign after the announcement) and of the lawyer in charge of the financial investigation against [vice-president] Luis Giampietri...”³¹²

Tambini was also quoted expressing his criticism of legal actions taken by the Public Procurator's Office regarding judicial decision to close cases following the statute of limitations: “In a criminal case in which the statute of limitations has been

³¹² Ibid.

invoked, why would they file appeals? If the statute of limitations has to be followed then there is nothing else to do.”³¹³ For this performance, Moises Tambini was appointed ambassador to Costa Rica in early 2009, after leaving the CJDS (EC, 2009/02/14).

Thus, from the beginning the APRA government managed to secure and exploit the activities of the procuratorial offices in charge of combating corruption, either by using them as a way of stimulating support, by effectively impairing their appropriate management, or by capturing them. Tambini’s appointment was the third coping mechanism activated in the first two months of government, which took the form of *risk management*.³¹⁴ With these measures in place, the real output of the Executive branch in terms of corruption control began a dramatic decline.

According to different sources, of the US\$ 185 million recovered between 2000 and 2011 by the Ad Hoc Public Procurator’s Office for the Fujimori-Montesinos case, only 3% correspond to the years of the García administration; in other words, between 2006 and 2010 only US\$ 2.2 million were recovered, with the amount dropping to zero in 2011 (Ramírez Varela, 2012). This amount contrasts with the actual existence of frozen funds in foreign accounts: US\$ 12.6 million in Switzerland, US\$ 8.4 million in Luxemburg, and US\$ 1.6 in Mexico (Arbizu and Piedra León, 2012). Therefore, it is not possible to say that the poor performance of the procuratorial office in recovering assets was a reflection of the exhaustion of stolen assets to repatriate, but rather the management of the office itself, which had fallen under deliberate negligence by the APRA government.

The reason for such dramatic decline was connected to the management of human resources, as the personnel of the ad hoc procuratorial office were reduced from a team of fifty-four people to only thirteen lawyers and one accountant during the government of President García (Pariona Arana, 2012). Ten of them were dismissed by a single decision on November of 2009, representing a real cutback of almost 50% of the personnel at the time. According to the chief procurator, Pedro Gamarra, the reduction had been carried out by the government following an already decided agenda by which his office would be merged with the newly created Public Procurator Specialized in Crimes of Corruption (Romero, 2009). The merger of both

³¹³ Excerpt from Perú21, quoted in Ramírez Varela (2012, p. 16).

³¹⁴ As described under the scenario of corruption perception, coping point of output concealment (1st round).

procuratorial offices, however, was not implemented until two years later, already during the Humala administration.

The situation of the Decentralized Public Procurator's Offices was no better:

“The decentralized procurators were working mostly in offices occupied thanks to interinstitutional agreements, which were in basements, parking lots or attics of the headquarters of different public agencies. The logistic resources available to them were precarious and did not follow any criteria of requirement, because no previous study had been carried out to establish a standard of minimum requirements for their work.

On the other hand, due to the fact that the national scheme of the Decentralized Public Procurator's Offices follows the model of judicial districts, each procurator had to travel to the provinces under his or her jurisdiction (which were eight on average for each decentralized office), having to take on 800 cases in total. If we consider that, in the majority of cases, a decentralized office had only one procurator, [it becomes clear that] the coverage of all proceedings in any effective way was an impossible enterprise.” (Arbizu and Piedra León, 2012, p. 234)

Alongside the steep deceleration of most procuratorial offices, other important measures were taken by the government during the next years, starting with the granting of additional faculties to the office of procurator Gino Ríos on September 03, 2007. Amidst the news of corruption in the National Health System, and the severe scenario of corruption perception it spawned (which was described in detail earlier in this chapter), the government gave Supreme Resolution No. 149-2007-JUS granting faculties to the office of Gino Ríos to investigate cases of corruption involving members of the incumbent government, and not only those of the Toledo administration. According to the decree,

“[It] is a State policy and primary objective of the government to fight corruption head-on, in order to contribute to the full validity, respect and promotion of the fundamental rights of the people... [and] that objective must be accomplished in a forceful and effective way in regards to the events taking place during the period of the current government...”

The provision of those faculties were, as the decree reads, directly connected to the corruption events already affecting the García administration, and the specific timing suggests that it had the purpose of helping in the prosecution of scapegoat actors connected to the National Health System scandals. A member of the Gino Ríos' procuratorial office comments (Interview No. 29):

“In exercising the broaden faculties, we denounced and requested the taking into custody of the person in charge of the National Health System... who was an important leader of the APRA party, and he ended up in prison.”³¹⁵

However, the most important aspect of the newly delegated powers was to work in practical terms as an *inadequate anti-corruption agency*,³¹⁶ a symbolic coping mechanism activated to create the fiction that the government was really committed to purging corrupt elements from within its ranks. While that was true for specific scapegoat cases, it was not meant to reach the political leadership; in fact, not even scapegoating would be carried out to its full extent, as the head of the National Health System, Julio Espinoza, would be granted a presidential pardon on June 14, 2008, after being in prison for only eight months of the fifteen years that legally corresponded to his crimes (LR, 2011/07/04). Supreme Resolution No. 149-2007-JUS represented the first time that a procuratorial office was being given faculties to look into any new corruption case it saw fit; but the fact that such faculties had to be exercised by an office that did not have the material resources to pursue such task, that had been created as part of a political strategy, and that was already stretched going after the previous government, reveals that behind the government measure hid the true intention of stimulating support and soothing demands without actually reforming the NACS. Members of the opposition, particularly those from *Perú Posible*, adopted the same reading and openly criticized the measure as another political maneuver. Former Prime Minister Carlos Ferrero Costa publicly stated (LPR, 2007/09/05):

“[Gino Ríos] is no guarantee, for being an obsequious official of this

³¹⁵ Translated from Spanish.

³¹⁶ As described under the scenario of corruption perception, coping point of stress amelioration (2nd round).

government; he is a member of the APRA without a membership ID, and for this reason there is no sense in appointing him to control the expenditures of the current administration... Everything indicates that this is a play to the gallery performed by Alan García, but everyone with a minimum of common sense will realize that a person whose main responsibility is to go after former president Toledo cannot be impartial enough to analyze the accounts of the current government.”

To pursue the additional task of controlling corruption in the García administration, the office of Gino Ríos was not awarded any significant increase in its budget, and only saw its human resources go eventually from eight lawyers to twelve. Everything else remained the same, except for the monumental competency it now had. Thus, the ad hoc office remained mostly focused on chasing after cases involving the Toledo administration, which had been its original purpose, and of 362 cases presented to the Public Ministry, less than 30% involved the APRA period: “Because it was our principal objective, so to speak; that is what we were appointed for,”³¹⁷ a member of Gino Ríos’ office commented (Interview No. 29). The set of mind regarding the task assigned and how this was supposed to affect the level of corruption in the incumbent government is clearly depicted in further comments:

“Even though the work done, in my opinion, was thorough and done with a lot of effort, my most important conclusion is that it is not possible to beat corruption from the Procurator’s Office. It is impossible...”³¹⁸

The coping mechanism was later modified, amidst the impending emergence of the Petrogate crisis, by preemptively securing the political control of the procuratorial work, and appointing an actor whose performance would later show a complete negligence of his duties. Stretching the legislative powers granted by Congress for the implementation of the FTA with the United States, the government established by law³¹⁹ the Judicial Defense System of the State (JDSS), creating for the first time the figure of the Public Procurator Specialized in Crimes of Corruption as a

³¹⁷ Translated from Spanish.

³¹⁸ Ibid.

³¹⁹ Legislative Decree No. 1068, published on June 28, 2008.

permanent office of the Ministry of Justice. Although the measure represented an improvement over the *ad hoc* and case-by-case nature of the anti-corruption procuratorial offices up to that point, it also meant the concentration of faculties in an office that was from then on solidly rooted in the Executive branch and thus kept secured under political control.³²⁰ Unsurprisingly, and showing the *inadequacy of this anti-corruption scheme*, Gino Ríos was dismissed in the middle of the Petrogate scandal, on October 31, 2008, and in his place the government appointed José Caldas Malpica, who immediately stated that his office would not pursue any investigation into the Petrogate affair (LR, 2008/11/05); he did, however, get involved in the BTR case that ensued shortly afterwards against those responsible for the audio tapping. Soon afterwards, Caldas Malpica got appointed to lead the newly created anti-corruption Procurator's Office,³²¹ with government orders that all corruption cases being managed by other public procurators were immediately transferred to him. Finally, Caldas left the symbolically important anti-corruption office on November of 2010, after news of a romantic relationship between him and an important witness in the Petrogate (Castillo, 2010) case forced him to present his resignation.³²²

Behind them, Gino Ríos and Caldas Malpica left a depressing record: between 2007 and 2009, the Procurator's Office collected only S/. 700 (roughly US\$ 250) in civil damages (Arbizu and Piedra León, 2012; Mujica et al., 2012), a really shockingly poor amount when we consider that this activity is one of the most important functions of a public procurator, and that according to Legislative Decree No. 1068 (which created the Public Procurator Specialized in Crimes of Corruption) 50% of all funds collected under this activity would be awarded to the Ministry of Justice. The general institutional deterioration of the procuratorial work during this period is also worth mentioning:

“[T]he creation of [a permanent anti-corruption procurator's office] opens a period in which the Ad Hoc Public Procurator's Office for the Fujimori-Montesinos cases, and the Public Procurator Specialized in Crimes of Corruption, coexist, albeit with different courses.

³²⁰ In fact, the guidelines of the JDSS (Supreme Decree 017-2008-JUS, art. 58) established that “public statements in the media without authorization from the Council” would be considered grounds for dismissal of public procurators, thus controlling their exercise of pressure over the political leadership and the NACS.

³²¹ Supreme Resolution No. 026-2009-JUS of January 31, 2009.

³²² Supreme Resolution No. 217-2010-JUS, published on November 11, 2010.

During the initial period of this coexistence, an evident and ever increasing deterioration of the operative capacity of the Ad Hoc Public Procurator's Office for the Fujimori-Montesinos cases took place (expressed in the progressive reduction of specialized personnel and economic and logistic resources), together with the neglect of the fundamental activity of the State's judicial defense (the recovery of assets and collection of damages) by the Public Procurator Specialized in Crimes of Corruption.

On the other hand, it has been evident in the last years the lack of prominence that has characterized procurators, relegating their participation to the level of a mere companion in proceedings, leaving behind the original impetus of the Ad Hoc Procurator's Office..." (Arbizu and Piedra León, 2012, p. 229)

The coup de grace to the procuratorial scheme created by the transitional government of Valentín Paniagua came with the deactivation of the Ad Hoc Public Procurator's Office for the Fujimori-Montesinos case on October 3, 2011,³²³ under the government of Ollanta Humala, ordering the transfer of all its files and resources to the office of the Public Procurator Specialized in Crimes of Corruption.

The final unification of the procuratorial offices had taken place within a general trend in the anti-corruption subsystem, which had extended the government's approach into the judiciary and its associated measures. After years of expansion and evolution, on April 23, 2009, the Executive Council of the Judiciary approved the deactivation of two anti-corruption courtrooms, alleging the low workload they had in comparison to their counterparts in other areas, and reallocating their resources to general cases.³²⁴ The measure was immediately seen for what it was: the effective disassembling of the specialized anti-corruption subsystem that had taken years to consolidate, and that was already seeing corruption cases pertaining not only the Fujimori-Montesinos case but also others that had spawned during the following governments (Perú21, 2009/05/15; Silva del Carpio, 2009). In other words, the movement of the judiciary's position in the fight against corruption represented another *countermeasure*, this time involving not only specific political interests but affecting the stability of the NACS in a counter-reformist way. The counter-reform, however, would not stop there.

³²³ Supreme Resolution No. 186-2011-JUS, published on October 4, 2011.

³²⁴ Administrative Resolution No. 130-2009-CE-PJ, published on May 14, 2009.

On May 20, 2010, the Executive Council of the Judiciary established the Special National Criminal Court³²⁵ for the prosecution of cases involving corruption affecting national, regional, or provincial public agencies, which aimed at becoming the highest courtroom on the subject. The anti-corruption courtrooms of the subsystem had been exercising their functions with relative independence for almost a decade under the jurisdiction of the Higher Court of Lima, and the transfer of these functions to a newly created chamber of the Supreme Court of Justice was a delicate matter, to say the least (Andrade Navarro and Ramírez Varela, 2012). Its creation meant that the deactivation of other anti-corruption courtrooms was a matter of time, and in the meantime there was no saying what would actually become of the Special National Criminal Court just created, which had to be implemented by a working commission chaired by Robinson Gonzáles Campos, judge that had been criticized in several occasions for his suspicious rulings in benefit of prosecuted members of the Fujimori-Montesinos network; in fact, judge Gonzáles had been a trusted appointee of First Prosecutor Blanca Nérida Colán during the Fujimori government (Caretas, 2005/08/04). Additionally, the Special National Criminal Court required the early coming into force of the new Criminal Procedural Code (CPC) in Lima for crimes of corruption. The latter measure was particularly problematic as it represented an important procedural reform for the speeding of criminal proceedings, but which also challenged the logistics and material resources of the judicial agencies and that could severely affect the prosecution of complex cases. If implemented with lukewarm efficiency, it could impair the capacity of public prosecutors to pursue criminal charges in new corruption cases most likely involving members of the APRA administration, considering the impending change of government. Thus, when an urgent legislative projected presented by the government was approved in Congress as Law No. 29574,³²⁶ mandating the immediate application of the CPC for cases of corruption barely six months before the change of administration, it was heavily criticized from different sectors of society (Gálvez Rivas, 2011). The former ad hoc public procurator Luis Vargas Valdivia described the risks perceived at the time (IDEHPUCP, 2010, pp. 9-10):

“Just as the First Prosecutor’s Office and several experts in the subject have

³²⁵ Administrative Resolution No. 177-2010-CE-PJ, published on June 3, 2010.

³²⁶ Published on September 17, 2010. It was set to come into force on January 15, 2011.

pointed out, there is a serious problem of infrastructure and organization, but there is also a problem from a legislative perspective. Law No. 29574 pushes the early coming into force of the CPC for crimes against public administration (extortion, embezzlement, misappropriation, etc.) to January of 2011... However, just as the First Prosecutor's Office expressed, neither the Ministry of Economy and Finances, nor the Executive branch, have made the necessary transfers to logistically implement this norm...

Although it is true that this law was encouraged, allegedly, to guarantee the celerity in the proceedings regarding crimes against public administration, the truth is that, due to its improvised character and the problems mentioned above, it will most likely end up producing results contrary to those expected. Only talking about in respect to deadlines, we would already be facing a serious risk that investigation files could be closed without even having presented charges.”

Notwithstanding Law No. 29574, and for unknown reasons, the Special National Criminal Court was never implemented. However, the normative introduction of this structure managed to open the door for the official disassembling of the anti-corruption subsystem (Ramírez Varela, 2010). After President Ollanta Humala assumed office, it was employed as a precedent for the delimitation of functions of another courtroom with similar hierarchy, the *National Criminal Court*, which on July 9, 2012, was granted competence over most (but not all) corruption crimes that had been previously planned for the Special court.³²⁷ With these, the National Criminal Court was from then on competent to take charge of complex criminal cases involving terrorism, human rights, money laundering, drugs trafficking, criminal organizations, social unrest, press freedom, and of course, corruption. To these, three months later the Executive Council of the Judiciary would include crimes against means of transportation, media outlets and other public services.³²⁸ In other words, corruption proceedings stopped being a specialized branch of the judiciary, and were piled together with almost every other type of crime of social importance. For Andrade Navarro and Ramírez Varela (2012, p. 86):

³²⁷ Administrative Resolution No. 136-2012-CE-PJ.

³²⁸ Administrative Resolution No. 194-2012-CE-PJ, published on October 13, 2012.

“[T]he intentions behind the [Special National Criminal Court] became a reality with the last decision of the Executive Council of the Judiciary to assign the crimes against public administration as a competence of the National Criminal Court. This measure is the one that causes the real process of disappearance of the anti-corruption subsystem, which does not have anti-corruption courtrooms now, but liquidating courtrooms, as if the only cases under their competence were those of the Fujimori-Montesinos mafia and not other cases linked to corruption in later governments, which was the original idea when these courts were made permanent.”

Thus, the countermeasures adopted by the government in regards to the prosecution of the Fujimori-Montesinos affair were finally joined by those of the judiciary, with an even greater impact on the evolution of the NACS in the latter case. By pulling complex cases of corruption with national impact together with cases as mundane as riots and roadblocks, the specialization of the anti-corruption network in the judiciary was lost, and the NACS was slightly devolved.

Chapter VIII

Ollanta Humala (2011~):

Frail Recovery of the National Anti-Corruption Standards

The last government elected during the time period analyzed here is that of Ollanta Humala Tasso of the PNP, who had finished in a very close second place in the 2006 electoral process. Departing from his initial leftists position and moving closer to the center-left, Humala defeated Keiko Fujimori, daughter of convicted former president Alberto Fujimori, and made way for a period that would see some diffident progress in terms of the fight against corruption. In particular, from 2011 on it is possible to perceive a significant recovery in the management of the anti-corruption procurator's office, as well as the institutionalization of the national anti-corruption body in charge of policy reform. Some international links are also introduced that challenged the stability of the NACS; however, their progress was still hindered by the same patterns identified in previous governments.

In a way, the government of President Humala departs from the rigid protection of the NACS that characterized the Toledo and García administration, which points to a significant role of individuals in the political leadership. As it was already suggested in Chapter III, 'anti-corruption will only be chosen when it provides more political capital than the sum of the resources spent and any loss in corrupt profits'; in other words, specific partisan interests in keeping anti-corruption measures at bay are located at the core of the NACS stability, and a relatively more *honest* set of leaders would, therefore, show less inherent resistance to change. This seems to be the case for the government of President Humala, which not only represented an institutional improvement from the overall negligence of the APRA administration, but was also less affected by corruption scandals in comparison to previous governments. However, although Humala's leadership represented a different attitude to the fight against corruption, it was not enough to effectively create a new point of reference through which make anti-corruption reform a political priority. The little political appeal in actively investing in anti-corruption reforms, and a more complex political scenario in later years, discouraged a real change in the NACS beyond the regularization of preventive and control anti-corruption agencies of the Executive branch, which had suffered the adoption of counter-reform measures during the previous administration.

In sum, while the PNP government did improve the general conditions of the NACS, it did not deviate enough to conclude that a new structure has emerged, but rather that it has recovered on average to the level it previously had. This will be particularly evident when we consider the improvement of the procuratorial work, while observing that other public agencies and offices have instead fortified the changes made during the government of President García.

1. The Anti-Corruption High Level Commission

On September 4, 2009, the official newspaper *El Peruano* published Ministerial Resolution No. 394-2009-PCM, by which the government of President Alan García designated former comptroller general Genaro Matute as person in charge of carrying out the necessary arrangements to create an Anti-Corruption High Level Commission (*CAN*); the decree stated that, after the commission was created, Matute would be appointed as its General Coordinator.

According to the government decree, the interest in creating the CAN was to continue with the anti-corruption measures that the Executive had been adopting, and that such efforts required a mechanism to articulate them with other public and civil actors, such as constitutionally autonomous organizations, regional and local governments, organizations of civil society, and others. At its core, however, was the necessity to have a national body to represent the fight against corruption, which was a measure considered in the UNCAC and the IACAC, as well as in most other international commitments on the subject. After the deactivation of the ONA, there was no single agency that could be called out as the responsible office to represent the country in international fora. The Secretariat of Public Management of the PCM (SPM-PCM) had been taking care of the task, but not only was it far from being a specialized office on the subject of corruption, the personnel appointed to it were only two people that had remained from the ONA, Franz Chevarría Montesinos (author of the MESICIC's Action Plan) and Patricia Guillén Nolasco (former manager of the UNDP project). For these reasons, there was a pressing need to create a new national anti-corruption body.

The appointment of Matute for the task is very telling of the government's perspective. As it can be remembered, the former comptroller general had been throughout the decade a vocal critic of the CNA, first, and of the ONA, later, due to

the faculties granted for their participation in corruption cases. Such posture had caused more than once that Matute entered in public disagreements with the government, particularly during the early years of the García administration. In October of 2007, when the ONA was created, newspaper La República reported: “[President García] said that Matute remained quiet during the Toledo administration regarding the ‘exorbitant, crude, terrible expenditures’ of the Government Palace, but that nonetheless, now ‘that mister’ does raise doubts over his government”³²⁹ (Salazar, 2007). Thus, even for Matute himself, it was indeed strange that he had been called upon to coordinate the creation of a new anti-corruption office in the Executive branch (RPP, 2009/08/25). However, it is clear that the government’s intention was twofold: First, by having the former comptroller general behind the project, it would be automatically provided with the social and political legitimacy needed to generate support for the government, just as the appointment of anti-corruption judge Carolina Lizárraga had meant in 2007. A public official of the SPM-PCM was of this opinion (Interview No. 04): “I think that the government wanted a well-known person, one of prestige, who had worked on these topics so that he could be the government’s poster child for the fight against corruption.”³³⁰

Second, Matute’s well-known approach to the role of the Executive in the fight against corruption guaranteed that the future CAN would be limited to interinstitutional coordination and policy proposal, while staying away from scenarios of corruption perception and other forms of political meddling in criminal cases. This way, the CAN was set from the beginning to be an *inadequate anti-corruption body*,³³¹ in the sense that it would represent little more than a forum, while taking the formal position of main anti-corruption office in the country for the purpose of international representation. Such approach was the complete opposite from the one taken in the case of the ONA, but that difference responded to the presence of a different scenario: while the ONA needed to look powerful (and in that power to have its demise) to confront a scenario of *corruption perception*, the CAN needed to be functionally weak and basic (thus securing its persistence) and only fulfill the requirements of the international anti-corruption movement and its *corruption intolerance*. A former public official of the CAN expressed (Interview No. 32):

³²⁹ Translated from Spanish.

³³⁰ Translated from Spanish.

³³¹ As described under the scenario of corruption intolerance, coping point of stress amelioration.

“[Velásquez Quesquén is appointed as prime minister] and says: ‘I need to do something that proves to be important in this subject,’ so Matute tells him that the most important thing that they could do was to have a body in which all institutions of the State could be involved, and develop not investigations, but policies. Thus, [the CAN] would not enter and say ‘we will investigate this and that,’ because [it] does not have the resources; the resources are in the institutions...

[The government] originally told Matute to be the president [of the CAN], but he refused, because if we are talking about institutions, branches of government, he cannot be president of, say, the president of the judiciary. He is the Coordinator, technical coordinator at that level. That is more appropriate.”³³²

In fact, when the CAN was officially created³³³ on January 27, 2010, no specific functions were prescribed. The decree only stated: “The functions of the Anti-Corruption High Level Commission will be established by the members that make it up, observing their attributions y competencias stated in the Political Constitution of the State, the current normativity, and considering the International Agreements and Conventions in the subject of the fight against corruption...”³³⁴ In this way, the CAN started out as a technical forum for the interinstitutional coordination of anti-corruption preventive and control measures, involving the participation of a diverse group of actors through their official leaders: the presidents of the judiciary, the Constitutional Tribunal, the National Council of the Judiciary, the PCM, and the National Confederation of Private Business Institutions; the First Public Prosecutor and the Ombudsman; the Mayor of Lima, the minister of Justice, the Coordinator of the National Assembly of Regional Governments, the Executive Director of *Proética*, and the Secretary of the National Agreement Forum.

The neglect in the provision of specific faculties meant that it was left for the member institutions to decide, which would not take kindly to the idea of providing an Executive office with faculties beyond the bare minimum; but it also meant that an area of dispute was effectively opened between the technical coordination of the CAN

³³² Translated from Spanish.

³³³ Supreme Decree No. 016-2010-PCM, published on January 28.

³³⁴ Supreme Decree No. 016-2010-PCM, art. 2. Translated from Spanish.

and the SPM-PCM, as the latter officially kept its jurisdiction in the areas of public ethics, transparency and access to public information, and citizen watch, which had been transferred after the deactivation of the ONA. A member of the SPM-PCM commented on this issue (Interview No. 04):

“I felt a lot of duplicity in functions... Even though the promotion of transparency and access to information is a crosscutting subject in public management, these are subjects that are also included in any plan to fight corruption... Nonetheless, [the two offices] were completely divorced, because although there was this commission that had little resources and no personnel, there was [the SPM-PCM] as governing entity that carried out activities linked to those that had to be done by the CAN. [The CAN] had initiatives that were later sent to us for technical opinion, but they were stopped because SPM-PCM was already working on similar issues and there was duplicity. So, I think that the political appointment of the Coordinator of the CAN did not match with the technical faculties.”³³⁵

A former public official of the CAN indeed corroborated the lack of both financial and human resources afflicting the work of the Technical Coordination, while pointing out the approval of President García with its work (Interview No. 32):

“Apparently, Alan García was happy with the role of the CAN. He had a positive evaluation of the things we were doing, [mostly] because they were not investigations and people very close to him were present, like Erasmo [Reyna] who is now his lawyer and that kept him directly informed of our activities.”³³⁶

When considering the existence of the CAN as a symbolic coping mechanism, it is reasonable that President García would support a poorly funded anti-corruption body with no clear functions but with a high profile Coordinator.

With the change in government, the Humala administration immediately made the CAN its own, changing everything but its legal structure, which would later be

³³⁵ Translated from Spanish.

³³⁶ Translated from Spanish.

also modified by Congress. The first measure taken was the removal of Genaro Matute as Coordinator, whose resignation was forced only two months into the new government. A former public official of the CAN recounts the event (Interview No. 32):

“When the change [in government] took place, [Genaro Matute] immediately sent a communication congratulating them, and requesting a meeting to define the next steps that had to be taken in the CAN. There was no reply. We went to talk with the president’s secretary once, and still there was no reply. The prime minister did not receive us... We sent three or four requests, but when not even these were answered, Matute presented his letter of resignation... We had so little support that [there was no] money to pay anybody’s salary... It just did not work anymore, so we had to quit.”³³⁷

The reason for the government’s decision to do without Genaro Mature was directly connected to the idea they had of the CAN: as it was mentioned before, Matute’s appointment was perceived by many as a political gesture, and so his work as Coordinator was perceived to belong with the previous administration, not with the new one. A senior official of the CAN expressed this idea by describing the position of Coordinator as a “position of trust,” one which is constructed from a relationship between the political leadership and the person appointed to that office (Interview No. 14). Thus, for the government of President Humala, Matute was a member of the APRA administration, and so he could not be kept in charge of the anti-corruption body. In fact, according to the same senior official,³³⁸ the new administration had a completely different idea of its own:

“The government considered appointing a person that could take the role of anti-corruption czar, and completely change the existence or configuration of the CAN. But that did not happen, they could not find the right profile; the person they had had in mind apparently was not willing to have the kind of position they were suggesting. So, in that moment they decided to continue

³³⁷ Ibid.

³³⁸ Ibid.

investing in the Anti-Corruption High Level Commission...”³³⁹

The suggested deactivation of the CAN in favor of a revamped commission under the leadership of an anti-corruption czar responded to a clear identification by the government of the potential political benefits of such coping mechanism. President Humala’s idea, in that way, was no different from Toledo’s when he created the CNA, and García’s in the case of the ONA: there was an interest in obtaining the political support that came with the creation of a new anti-corruption agency, disregarding its actual utility. *Proética* had already begun to express *public exhortations*³⁴⁰ for augmented powers and functions for the ONA only a month after Humala had taken office (Andina, 2011/08/31), showing the persistence of a scenario of corruption intolerance not only in the international environment, but also in the domestic one. For this purpose, the person they had had in mind was Avelino Guillén Jáuregui (Hernández, 2011), former prosecutor and member of the commission of transfer for the PNP party; however, just as the above account mentioned, soon after the Humala took office, public disagreements begin to appear between the two of them regarding the president’s commitment to the fight against corruption. Avelino Guillén stated (LR, 2012/01/20):

“Initially, in the Commission of Transfer of this government, I pointed out that a great Anti-Corruption General Procurator’s Office needs to be created; but in general terms, from the government of García to the government of Mr. Humala what is taking place is the great continuation in the subject of anti-corruption.”³⁴¹

This statement was made in January of 2012. Genaro Matute’s resignation had been officially accepted on September 29, 2011,³⁴² and it was not until November 18 that the government appointed Susana Silva Hasembank as new coordinator of the CAN.³⁴³ During this period of two months, the commission was completely paralyzed while the government tried to figure out what to do with it; it was in this process that,

³³⁹ Translated from Spanish.

³⁴⁰ As described under domestic pressure activities, direct pressure.

³⁴¹ Translated from Spanish.

³⁴² Supreme Resolution No. 282-2011-PCM.

³⁴³ Supreme Resolution No. 340-2011-PCM.

according to the accounts, Avelino Guillén was approached to take on the task of creating a new anti-corruption agency that could improve the popular support for the new administration. Guillén, clearly, was not willing to play the role of useful fool.

After Susana Silva's appointment, the CAN saw an improvement in its functional relation with the SPM-PCM, its financial resources, and even its legal status. According to a public official of the SPM-PCM who was involved in its anti-corruption activities during this period (Interview No. 07), both offices began coordinating actions regarding different initiatives, like the implementation of an online registry of visits to senior officials, the transfer of responsibilities for the MESICIC report in favor of the CAN, the new guidelines for the law on transparency and access to information, and others. This process of coordination and informal definition of functions resulted in an empowerment of the CAN in topics related to international fora, as well as in its institutional position and role vis-à-vis that of the SPM-PCM. The latter, on the other hand, underwent a change in its paradigm, focusing its resources on the subject of Open Government (which will be reviewed in detail in the next section). The best example of this distribution of activities became evident in 2012 with the development of the Action Plan for Open Government 2012-2013 and the National Anti-Corruption Plan 2012-2016, which were efforts headed by the SPM-PCM and the CAN, respectively, and that shared many of the same activities. Thus, in order to avoid duplicity of functions, both offices had to find their own institutional space to efficiently focus their resources in specific areas of expertise.

In financial terms, the CAN also gained a relatively more comfortable position when its budget was more than doubled by orders of Prime Minister Juan Jiménez Mayor, passing from S/. 491,473 (approximately US\$ 175,000) in 2012 to S/. 1,149,984 in 2013 (approximately US\$ 410,000); however, this budget remained clearly insufficient to cover the increasing amount of tasks entrusted to the CAN's Coordination, with most of its activities still funded with the support of international cooperation agencies through *financial assistance*³⁴⁴ programs.

Finally, on January 3, 2013, the government signed the bill granting the CAN status of Law.³⁴⁵ The importance of this measure for the continuity of the CAN was succinctly pointed out by a public official from the anti-corruption commission

³⁴⁴ As described under international pressure activities, indirect pressure.

³⁴⁵ Law No. 29976, published on January 4, 2013.

(Interview No. 21): “The Law impacted us in a positive way as it provided us with a new status, and it secured our persistence in time. Even though a law can be modified or repealed, this would still require a process; thus, it gives us institutionality.”³⁴⁶

What does the new stage in the evolution of the CAN mean for the stability of the NACS? At first sight, it would seem that the government of President Humala shows a reduced interest in weakening the general condition of the NACS, and that it provides as a consequence some range of action for active reformers to successfully push for reforms. Although such reading is indeed partially true, the management of the CAN as primary anti-corruption body of the country does not support it. Several points indicate that, in fact, the granting of the status of law to the CAN represents the institutionalization of the coping mechanism initially adopted by the government of President García, i.e. the CAN as an *inadequate anti-corruption body*.

First, the effective dismissal of Genaro Matute and the possibility of an anti-corruption czar show that the government perceived (correctly) the office as a political instrument that could be employed for the production of political support.

Second, even though the budget has been somehow raised, there is still an overwhelming amount of activities that could not be possibly carried out without the active involvement of international cooperation agencies; this lack of financial support for anti-corruption activities does not reflect the economic growth experienced by the country over the past decade and a half, or the increasing level of international reserves that by September of 2015 amount to US\$ 58.6 billion, according to the IMF (2015/09/16).

Third, the existence of a Law providing the CAN with a higher legal status, and therefore a higher institutional stability, secures its role as mainly an interinstitutional forum, which prevents attacks against it by keeping it away from a more relevant position in the fight against corruption; thus, it is possible to say that the CAN’s institutional strength is its being operatively dependent on other agencies. This limitation is recognized by a senior official of the CAN itself (Interview No. 14): “Actually, for me, the institutionality of an anti-corruption body needs to be much higher; it cannot have only the functions that the CAN has.”³⁴⁷

Fourth, the role of the CAN as an interinstitutional forum makes it particularly susceptible to issues concerning quorum and the disposition of the person holding the

³⁴⁶ Translated from Spanish.

³⁴⁷ Translated from Spanish.

presidency. For example, while eight meetings were held between February of 2010 and January of 2011, there was no other meeting during the next six months due to the electoral process; and even after the change of government, the meetings were not resumed until January of 2012. Thus, during 2011, only two meetings were held, meaning that the most important role of the CAN could not be performed; this problem was again repeated in 2014, with only two meetings held that year (one on June and one in December). A public official of the CAN summarized the problems created by these circumstances (Interview No. 15):

“Without meetings there are no agreements, and without agreements there are no activities for us to implement. The CAN kept working following agreements that had been previously adopted and that required longer processes of implementation; but still, if the CAN is a space for coordination, it is a weakness to not hold meetings. Indeed, we had difficulties to carry out certain activities.”³⁴⁸

Fifth, as most of the activities discussed in the CAN are actually implemented by its individual members, it largely depends on the specific leadership of each one of those institutions. In some cases, that structure provides a voice for more involved, active, and reformist actors, such as *Proética*, which is usually seen pushing for more concrete actions from all the participating agencies and is able to keep watch over the functioning of the meetings and commitment from its members. However, for most other actors, the CAN became a forum on which publicize their anti-corruption activities regardless of the appropriateness or success of the measures. This is evident throughout the written proceedings of meetings, with different agencies taking turns to describe the actions carried out by their own initiative (CAN, 2015).

And sixth, the persistent role of the SPM-PCM in preventive anti-corruption areas has proven to debilitate the institutional preeminence of the CAN, and the designation of the former as pro tempore Coordinator between February and July of 2015,³⁴⁹ after the resignation of Susana Silva, did not help the issue. The distribution of roles and institutional space in favor of the SPM-PCM after the deactivation of the ONA in 2008 should have been resolved with the creation of the CAN in 2010;

³⁴⁸ Translated from Spanish.

³⁴⁹ Ministerial Resolution No. 031-2015-PCM.

however, even with the latter's new legal status, the SPM-PCM keeps being an important actor in preventive anti-corruption policy making (sometimes to the detriment of reform activities, like the creation of an Autonomous Authority on Transparency), and there has been major points of conflict between the two offices, which naturally diminishes the effectiveness of both. This point will be taken up again in the next section when the Open Government Partnership is discussed.

Thus, although the CAN does represent an important forum for the exchange of experiences and the coordination of activities, it has taken away a position that should have been filled by a more autonomous, well-funded and powerful agency in charge of preventing corruption in public life. Its persistence as a coping mechanism against a scenario of international *corruption intolerance* is all the more eloquent when we consider the treatment given by the government to the proposed Autonomous Authority on Transparency, which was part of the new Action Plan for Open Government and that has been sternly resisted by the government for the past few years. Clearly, while the CAN is favored for its weakness, the possibility of a powerful and autonomous institution represents a challenge to the stability of the NACS, and so the government position reflects their very different nature.

2. The Open Government Partnership

The participation of Peru in the Open Government Partnership (OGP) is certainly one that begins with a mixture of international pressure and government tolerance for anti-corruption actions. The OGP, as its webpage reads, “was launched in 2011 to provide an international platform for domestic reformers committed to making their governments more open, accountable, and responsive to citizens” (OGP, 2015a); furthermore, it “aims to secure concrete commitments from governments... In the spirit of multi-stakeholder collaboration, OGP is overseen by a Steering Committee including representatives of governments and civil society organizations” (OGP, 2015c). In this way, the OGP seems to represent a more proactive approach to anti-corruption networking from a governmental side, standing securely on a strategy of combined and coherent efforts from both international and domestic actors: In order for a country to join, its government must endorse a high-level declaration of commitment, develop a national action plan with the participation of civil society, and agree to an independent reporting mechanism. These conditions directly fall under the

activities denominated here as *international agreement*,³⁵⁰ *advocacy/networking*,³⁵¹ and *technical corruption-related reports*,³⁵² therefore, the OGP could be said to be a potentially powerful source of pressure in a scenario of corruption intolerance that has not usually shown to affect the stability of the NACS. So, how did Peru join such organization, and why? The story is briefly narrated first by a former public official of the SPM-PCM (Interview No. 07):

“That story starts in the year 2011, when Humala goes to a meeting of presidents and the subject is brought up to him. What is decided there is that the Peruvian chancellery (particularly the Peruvian embassy in Washington) presented a Letter of Intent to United Nations in order to join the Open Government Partnership. Once the letter had been submitted, Humala ratifies the commitment of Peru to join the Partnership at the 66th [session of the General] Assembly of the United Nations, and in that way the Letter of Intent is somehow formalized. What happens later is that the chancellery receives communication that, in order for Peru to be accepted into the Partnership, it has to elaborate an Action Plan of Open Government and that, furthermore, this Plan had to be developed by consensus with civil society.”³⁵³

It is indeed feasible that the government of President Humala was not completely aware of the responsibilities implied by the OGP membership when it first expressed its intention to join the international group. The Letter of Intent, after all, was sent on September 15, 2011, less than two months after the beginning of the new administration and only five days before the OGP was officially launched on the margins of the 66th General Assembly of the United Nations. In its final paragraph, the Peruvian communication read: “We are pleased to join the OGP co-chairs and Steering Committee governments in setting a new standard for governance in the 21st century” (OGP, 2015b) In any case, the intention of joining the OGP in this effort responded to the recognized possibility of gaining international reputation, just as the governments of Alberto Fujimori and Alejandro Toledo had done with the prompt adoption of the IACAC and the UNCAC, respectively. The difference with previous

³⁵⁰ As described under international pressure activities, direct pressure.

³⁵¹ As described under domestic pressure activities, direct pressure.

³⁵² As described under international pressure activities, indirect pressure.

³⁵³ Translated from Spanish.

cases, however, was that the Humala administration was not particularly opposed (at least yet) to carrying out anti-corruption activities in the country, as long as they generated political support for the government. That is why soon after the requirements to join the Partnership were communicated, the country initiated a process of coordination between different public agencies and civil organizations for the development of an Action Plan in consensus, which had to be ready by April of 2012.

The process of drafting the Action Plan would eventually prove to be successful, at least in terms of the identification of priorities. However, it also evidenced certain organizational issues afflicting the network of anti-corruption policy management in the State apparatus, particularly those involving the roles of the SPM-PCM and the CAN. The above account proceeds (Interview No. 07):

“At first the chancellery summons civil society and the Office of the Ombudsman to a meeting to introduce the subject, but they do not invite the SPM-PCM. Later, obviously, the chancellery is told that the SPM-PCM, which is the governing agency in transparency and citizen watch, should be present, and that is how we are just invited from the second meeting on and the working group is created.”³⁵⁴

From then on, the SPM-PCM would be put in charge of setting up a multisectoral group composed of government agencies and organizations from civil society. However, the CAN was not included in this group. The account continues:³⁵⁵

“The CAN enters the scene later on. At first, the members of the Executive Committee were only the Office of the Ombudsman, the Office of the Comptroller General, the Ministry of Foreign Affairs, and the SPM-PCM; these were the four representatives from the State apparatus. And, from the part of the civil society were *Proética*, *Ciudadanos al Día*, the Council of Peruvian Press, and the National Association of Centres. The inclusion of the CAN took place later on... Once the draft was produced, we held meetings with other agencies: first, there were meeting with all sectors, and then other

³⁵⁴ Translated from Spanish.

³⁵⁵ Ibid.

meetings where the different offices of the PCM were also included. It was at that moment that the CAN was finally informed of what was being done, and that it begins having a more active participation.”

Once the draft was completed, it was publicly presented for discussion during March of 2012. In order to improve the popular legitimacy of the initiative, the PCM published the document on its website, inviting comments through this channel and through open social networks, and held several meetings with representatives from different public agencies of the State, just as mentioned above; meanwhile, *Proética* held two informational workshops in Lima, and the German Corporation for International Cooperation (GIZ) supported the process by providing professional consulting services (OGP, 2013). Finally, by Ministerial Resolution No. 085-2012-PCM, the revised version with all contributions was formally adopted on April 9.

From a first glance, the process seemed to have been a success, and perhaps it was in terms of the participation of civil society. But, what ever happened to the CAN, which was supposed to be the leading government office in all things anti-corruption? This part of the story is narrated by a former senior official of the CAN (Interview No. 14):

“Susana Silva arrives to the CAN on November 19, 2011, and the first meeting of the Open Government was somewhere between the 22nd and the 25th of November. The SPM-PCM, the Office of the Ombudsman and the CAN are summoned, but Silva could not go because she was in the process of assuming her post... So later, when she tried to join, the SPM-PCM told her ‘No, this is a matter exclusively involving transparency; it is not connected to the fight against corruption.’ So they kicked us out...”³⁵⁶

Thus, while the process of drafting the Plan brought together public and civil actors, it also evidenced a clear problem regarding the definition of functions between the two leading offices in anti-corruption policy proposal (both of which existing under the same institutional structure of the PCM), and the presence of an institutional rivalry that could affect the implementation of the OGP Action Plan. The government,

³⁵⁶ Translated from Spanish.

however, did not take any measures to solve the problem. On January 5, 2013, the Humala administration gave Supreme Decree No. 003-2013-PCM, creating a permanent multisectoral commission for the follow-up of the OGP Plan and putting the SPM-PCM in charge of its technical secretariat. The CAN, which had just been granted status of Law, was not included among the members of the new commission.³⁵⁷

The decision to put the SPM-PCM in charge of Open Government, while ignoring the relevance of the CAN in the subject, points to an effort to disengage the whole OGP process from an explicit anti-corruption discourse, and to sabotage the effective implementation of the activities identified in the Action Plan. The SPM-PCM, after all, lacked not only the human resources needed to achieve additional tasks, but most of its duties regarding the reception of government reports had already been transferred to the CAN. Therefore, the rationale for Supreme Decree No. 003-2013-PCM could not be compatible with a real anti-corruption reformist agenda, nor with the fulfillment of international commitments to the Open Government Partnership. The first report from the Independent Reporting Mechanism (IRM) (Casas, 2014) supports the criticism: Only 3 of 47 activities were completed, while 25 had a limited level of completion or had not even started. Additionally, the report repeatedly cites the lack of coordination and cooperation as a source of weakness for both the CAN and the carrying out of activities contained in the Action Plan. Finally, it quotes something that has been at the core of the present study from the beginning:

“[There is a] recurring concern expressed by the specialists who were consulted: *That the Plan receives political support only to the extent that it does not try to change the status quo.*³⁵⁸ The IRM researcher considers this theory valid as long as the government does not create an entity with sufficient autonomy, authority, and jurisdiction to align the entire state behind a standard of open government.”

As the report suggested, the political will of the Humala administration was indeed tested during the process of elaboration of a new Action Plan (this time for the

³⁵⁷ It would, however, be eventually included as an associate member after the persistent efforts of the CAN's coordinator, Susana Silva. The complete list of participants can be found in PCM (2015).

³⁵⁸ Italics in original.

period 2014-2015) and the creation of an Autonomous Authority on Transparency (AAT), but this time it failed to show the same level of commitment to anti-corruption reform that had been present in its earlier discourse. Although the SPM-PCM performed its duties to the level expected, and fulfilled its leading role in the elaboration of a new Action Plan by consensus with civil society, the government did not endorse the document. In October of 2014, NGO *Proética* began its *public exhortations*³⁵⁹ for what it considered to be an unfortunate change in the government agenda, being four months and half since the draft had been finished, and yet no measure had been taken by the political leadership (Proética, 2014/10/31). On November 27, the Steering Committee of the OGP adopted a similar position and sent an official communication to the Secretary General of the PCM, *exhorting* the Peruvian government to fulfill its commitments. It read (Proética, 2014/12/04):

“Countries more than four months late in submitting their National Action Plan (NAP) will be considered acting contrary to the OGP process for that action plan cycle. The Government of Peru has not submitted its second NAP as of November 2014, four months after the deadline of July 1, 2014. This letter is therefore to inform you that the Government of Peru has acted contrary to the OGP process for this cycle of action plan development...

In order to avoid a future review by the Criteria and Standards Subcommittee, we recommend that the Government of Peru publishes its second NAP before January 1, 2015, implements the commitments in the NAP, and publishes all future self-assessment reports and NAPs on time.”

However strong the communication from the OGP Steering Committee was, the deadline came and went, and the government of President Humala did not respond. According to *Proética*, the political problem hid in the instability of the prime minister appointment, which saw three different changes only during 2014, and the challenge represented by the creation of the AAT, which was an activity included in the draft for the new Action Plan (Proética, 2014/10/31). Indeed, the relative weight for the Humala administration of political capital vis-à-vis the stability of the NACS had changed over the previous years, and while at the beginning was

³⁵⁹ As described under domestic pressure activities, direct pressure.

considered a good investment to enroll in the OGP in exchange for domestic and international support and the control of corruption intolerant demands, by 2014 the situation had changed, and the government was willing to sacrifice certain level of support in order to forsake anti-corruption reforms.

When finally the government presented the second OGP Action Plan, it was already July of 2015, and so it had modified its 2014-2015 target for 2015-2016; thus, 2014 was a lost year for open government. Furthermore, the document approved by the Executive had made several modifications to the original draft without the participation of civil society and the respect for the procedure established in the country's commitment to the OGP. Of particular importance was the exclusion of the AAT as a target activity, which meant that no significant change in the NACS would be made in the foreseeable future, at least in terms of government structure. Through an official communication to the Executive, *Proética* (2015/07/24) expressed: “[T]he published plan does not follow the deadlines nor the conditions in which it had to be formally approved, which voids it for the [Open Government Partnership].”³⁶⁰

It can be added that the issue generated by the proposal of an AAT had been controversial from the beginning, not so much for its value as an instrument to fight corruption, but for its disruptive potential for the NACS. As it has been discussed before, the time of existence of both the CNA and the ONA had been inversely related to the degree of power and functions they held; thus, it was no surprise that the most powerful agency somehow related to anti-corruption activities should find obstacles from before its inception. It was, after all, an entity that could not easily be created as another coping mechanism, for it was to be autonomous if it was to be at all. The government was quite aware of this, and while several independent voices inside and outside the CAN were supportive of its creation, the political leadership was not willing to see such a project become a reality. The first obstacle to the AAT had come, naturally, from the SPM-PCM. A senior official of the CAN stated (Interview No. 14):

“I do not believe there were constitutional problems [behind the AAT]... I agree a 100% with [the creation of] an AAT. We have been trying to push it forward for a long time, but well, things are not coming along as we wished.

³⁶⁰ Translated from Spanish.

SPM-PCM, indeed, released a technical report saying that the AAT was not viable, that [the proposal] was a badly produced document. So a whole problem arose because the Office of the Ombudsman had sent the legislative project to the PCM in the framework of a meeting of the CAN, and the Secretary General had forwarded it to us and to the SPM-PCM... [After that, the CAN] had begun coordinating, working, holding several meetings with [the SPM-PCM], and [one day] all of a sudden we are informed that the SPM-PCM had already elaborated a negative report... The subject was discussed at the highest level, and they said it was going to be reformulated. There was a lot of pressure from civil society because they knew there was a negative position from the SPM-PCM, so the latter fell back and offered to elaborate a new legislative project... The new proposal is almost the same, except that it establishes that the AAT will not be an autonomous agency, and that it will not take away functions from the SPM-PCM. »³⁶¹

It is symptomatic that, when the Ombudsman first proposed the creation of an AAT, back in April of 2012, vice-president Marisol Espinoza had expressed the commitment of the Humala administration in supporting such effort (Andina, 2012/04/25). However, according to political analyst Carlos Basombrío (Castillo, 2015), by the end of 2014 the progress of counter-reformist forces and the weakness of the Humala administration in political terms pointed to a complete stagnation of structural anti-corruption activities, which was in fact evidenced by the exclusion of the AAT from the second OGP Action Plan.

To summarize, through the treatment given to the Open Government Partnership, and in particular to the national Action Plan and the possibility of creating an Autonomous Authority on Transparency, it is possible to see how the Humala administration went from a position of willingness towards anti-corruption actions in exchange for political support, to one of open defense of the NACS. In the process, an honest anti-corruption activity was transformed into an *inadequate anti-corruption policy*,³⁶² all it took was three years in office.

³⁶¹ Translated from Spanish.

³⁶² As described under the scenario of corruption intolerance, coping point of stress amelioration.

3. Recovery of the Anti-Corruption Procurator's Office

One of the first positions adopted by the government of President Humala in relation to the NACS was to correct some of the countermeasures that had been implemented during the previous administration, specifically in regards to the state of the anti-corruption procuratorial work. Thus, in the last days of September of 2011 the minister of Justice, Francisco Eguiguren Praeli, announced the impending creation of a procurator's office specialized in cases of corruption involving senior officials. In the words of Eguiguren, the new administration had found "an anti-corruption apparatus completely dismantled, without incentives,"³⁶³ and so it was coordinating measures for a more powerful office that could even fall under the jurisdiction of the PCM, with rumors suggesting Avelino Guillén as the probable appointment to the post (Gutiérrez, 2011). The creation of such office had first been promised by Prime Minister Salomón Lerner Ghitis on August 25, during the official presentation of the Council of Ministers in Congress. During the event, Lerner Ghitis talked about the government projects for the *frontal attack against corruption*, among which stood out: "Through Supreme Decree, a General Procurator's Office will be created for cases of corruption and criminality involving senior officials of the State..."³⁶⁴ (Caretas, 2011/08/25). The measures presented by the prime minister were well received by environmental actors, with Transparency International expressing their congratulations to "the government of Ollanta Humala for having this intention and that will, and expressing them publicly"³⁶⁵ (Andina, 2011/09/08). However, the General Procurator's Office soon gave signs of being just a symbolic measure, a *public expression of reform proposal*³⁶⁶ to address the dire state of the anti-corruption procuratorial offices and its stress potential under a scenario of corruption intolerance. As quoted earlier, already by January of 2012 Avelino Guillén would express his disappointment with the government and its yet unfulfilled promise of a procurator's office for senior officials.

In December of 2011, vice-minister of Justice Juan Jiménez Mayor, who had allegedly been put in charge of overseeing the implementation and organization of the proposed General Procurator's Office, was appointed minister; and in July of 2012, he

³⁶³ Translated from Spanish.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ As described under the scenario of corruption intolerance, coping point of stress amelioration.

was further promoted to prime minister. Jiménez's presentation in Congress, one month after his appointment, was criticized by *Justicia Viva* for avoiding the fact that, of the seven anti-corruption measures proposed one year earlier, only one had been advanced, namely the revamping of the office of the Public Procurator Specialized in Crimes of Corruption (JV, 2012/08/23), while the General Procurator's Office had been completely forgotten. Three days later, at the 13th session of the CAN, the office of the prime minister was selected as new president of the commission. After the meeting, and addressing the press, Jiménez used the opportunity to announce the creation of a General Procurator's Office of the Republic (LR, 2012/08/24), this time carefully excluding the mentioning of any specialized anti-corruption function. However, up to 2015, neither this office, nor the previous proposal of a procurator specialized in cases of senior officials, would ever come to fruition.

The relaunch of the anti-corruption procuratorial office created during the APRA administration was indeed the only real and effective anti-corruption measure adopted and implemented by the new government, beginning with the dismissal of César Roca Fernández and the appointment of Julio Arbizu González as new anti-corruption procurator on October 3, 2011.³⁶⁷ Together with this measure, the government also proceeded with the deactivation of the ad-hoc procurator's office for the Fujimori-Montesinos case that had been planned during the previous government, in favor of restructuring the whole representation of the State in corruption cases and empowering the Arbizu office. Disregarding the wisdom of that particular decision for the fight against corruption, the government strategy was soon found to be successful at least in regards to the work of Arbizu and his team. After his resignation in January of 2014, *Justicia Viva* would remember: "With pain, and no surprise, we saw how during the government of Alan García the Procurator's Office lost importance and power, ending up being almost disabled for five years. It was the administration of Julio Arbizu the one that relaunched this office"³⁶⁸ (Mujica Coronado, 2014). Of a similar opinion was José Ugaz, former ad hoc procurator and current president of Transparency International (Núñez, 2014):

"I would say that towards the end of Toledo's government and the beginning of García's government it was evident that the intention was to keep a

³⁶⁷ Supreme Resolution No. 184-2011-JUS, published on October 4, 2011.

³⁶⁸ Translated from Spanish.

Procurator's Office without voice, without resources, and probably without the personnel required. I think there was a dismantling that ends, precisely, when the impetus returns with the new government and procurator Arbizu is appointed.”³⁶⁹

The government's decision to relaunch the anti-corruption procurator's office responded to a very real problem: according to information released by the ad hoc office for the Fujimori-Montesinos case in September of 2011 (one month before its deactivation), 145 people charged for their involvement in acts of corruption had been benefitted with the application of the statute of limitations since 2010 (AP, 2011/09/06), reflecting the deep deterioration of punishment structures in the country. Prime Minister Juan Jiménez Mayor (2012, p. 408) described the situation in the following terms:

“What did we find, then? A procurator's office deeply weakened and, in general, disorientation in the area of action of the Public Ministry and the judiciary. What we found then was that we had a procurator's office inside the Ministry of Justice that was basically a litigations unit, this is, an office that was devoted to trials, an office that was devoted to presenting appeals, to present denunciations every now and then, to follow proceedings and sometimes without even going to the hearings, there were many procurator that did not go to hearings.

We considered, then, how to confront this. We could not have a procurator's office only as a litigations unit. The design that was proposed, the design that is working today, goes beyond a litigations unit: [there is] an intelligence unit, an executive committee, a financial analysis unit, [and] an observatory through which we have been able to systematize information.”³⁷⁰

The results followed short afterwards. In the first half of 2012, the office led by Arbizu (2012) won fifty criminal cases, and during its first two years presented more than five hundred charges against members of the previous two governments, authorities of regional and local governments, and even against two brothers of

³⁶⁹ Ibid.

³⁷⁰ Ibid.

current President Ollanta Humala (Alexis and Antauro) (RPP, 2013/09/29). Arbizu's work was continued by Christian Salas Beteta³⁷¹ in 2014, and by October of that year it was reported that the procuratorial office had recovered S/. 9 million (roughly US\$ 3.3 million) in civil damages since 2011 (Velarde, 2014), with other S/. 16 million (roughly US\$ 5.7 million) more being announced shortly after from a historical legal victory against corruption (RPP, 2014/10/20). On the other hand, the government allocated over S/. 20 million (roughly US\$ 7.1 million) to the anti-corruption procurator's office between 2011 and 2014.

Notwithstanding the evident success of this anti-corruption area from the part of the Executive, by the end of 2014 the government began giving signs of a wavering political support, starting with Christian Salas' departure after only ten months of having been appointed.³⁷² In an interview, Salas would explain the reasons for his resignation (Muñoz, 2014):

“One cannot work uncomfortable, and much less knowing that the appointment is one of political trust... More than disagreements with the executive branch, there was (from my perspective) a discomfort in the Ministry of Justice in relation to some public statements I made about some cases under my competency... It was not a matter of content, of legal issues, but rather due to the political consequences of my statements.”

The statements mentioned by Salas had been reported on the news only days before the government accepted his resignation, and had to do with the corruption scandal involving Martín Belaunde Lossio, businessman and close supporter of Humala's candidacy in the past. Salas had publicly indicated that Belaunde Lossio would not be able to enter in a plea bargain due to the latter's center participation in the criminal event; the statements, however, had caused unrest in the government, and the minister of Justice quickly moved to disavow Salas, stating that the procurator's only function was to “defend the interests of the State in order to obtain compensation for damages caused to it”³⁷³ (Gestión, 2014/11/26), and that Belaunde Lossio had the right to request a plea bargain. Less than a week later, Christian Salas left the anti-

³⁷¹ Supreme Resolution No. 002-2014-JUS, published on January 10, 2014.

³⁷² Supreme Resolution No. 207-2014-JUS, published on November 29, 2014.

³⁷³ Translated from Spanish.

corruption procurator's office.

On December 5, 2014, the government appointed associate procurator Joel Segura Alania in replacement of Salas.³⁷⁴ The same day, associate procurator Yeni Vilcatoma de la Cruz was sending a direct communication to President Humala informing him of the irregularities that had been taking place around the case of Belaunde Lossio, and requesting the immediate dismissal of minister of Justice Daniel Figallo Rivadeneyra (Correo, 2014/12/06). In reply, the government decreed two days later the dismissal of Vilcatoma,³⁷⁵ while procurator Joel Segura publicly distanced himself from her allegations.

Similar measures were later taken against the Public Procurator's Office Against Money Laundering for its insistence in investigating the First Lady, Nadine Heredia. Throughout the year 2015, a series of popular and political demands regarding Heredia's finances struck the general approval of President Humala and his wife, bringing them down from 27% and 34% in October of 2014 (EC, 2014/11/04), respectively, to a mere 15% and 11% in November of 2015 (LR, 2015/11/15). The events had multiple angles, from Heredia's connections with Belaunde Lossio's irregular deals (EC, 2015/04/13), to the sources and employment of the PNP's campaign funds in 2006 and 2011 (Libón and Valle, 2015; EC, 2015/06/22), from her unusually high and frivolous expenses using a friend's credit card (Perú21, 2015/05/31; 2015/06/08), to the leakage of her private agendas with details of suspicious payments (Belaunde, 2015). These issues produced a hectic battle in the Peruvian criminal system, beginning with the Public Prosecutor's decision to open an investigation against Heredia for money laundering (in connection to the campaign funds) in February, only to be annulled by the Superior Court of Justice of Lima in August; this in turn was responded with a formal appeal to the Constitutional Tribunal in September, which sentenced in October that the investigations against the First Lady could be resumed. President Humala, on the other hand, was legally spared, and in September the Prosecutor's Office decided to close the case against him notwithstanding the fact that he, and not his wife, had been the president of the PNP during the 2006 campaign. In reaction to the prosecutor's decision, the public procurator against money laundering, Julia Príncipe, formally complained that "it [was] incongruous with the position that [the Prosecutor's Office] has been taking

³⁷⁴ Supreme Resolution No. 220-2014-JUS, published on December 6, 2014.

³⁷⁵ Supreme Resolution No. 221-2014-JUS, published on December 8, 2014.

regarding the defendant Nadine Heredia” (LR, 2015/09/22).

In early June, Príncipe had requested the Public Ministry to include in their investigations the brother and cousin of the First Lady; in response, the CJDS opened a disciplinary process against Príncipe for making public statements without permission (Uceda, 2015). This, however, did not stop her from further pursuing the procuratorial work against the presidential couple: on August 19, her office presented to the Prosecutor’s Office on Money Laundering the case of Heredia’s alleged agendas, requiring that the First Lady go through a handwriting analysis to confirm the ownership of the documents. On October 20, two days before confronting a vote of no confidence in Congress, the minister of justice presented his resignation, but not before having formally dismissed Príncipe from her post as public procurator³⁷⁶ (Godoy 2015; Caretas, 2015/10/15). With this, the executive branch removed an element that had become threatening to the Humala family; but in activating a preemptive strategy of *risk management*³⁷⁷ already amidst a scenario of corruption perception, it remains uncertain how much stability could it be gained after including in the political calculus the amount of media and political criticism that this measure generated in return: According to a poll conducted in November, 45% of respondents who disapproved of Humala’s administration did so due to the persistent presence of corruption in the Executive (APOYO, 2015).

In conclusion, from the above events regarding both offices against corruption and money laundering, and according to different sources like Lilia Ramírez Varela (2015) of *Justicia Viva* and former anti-corruption procurator Julio Arbizu (Ideele, 2015/07/07), it is possible to conclude that the latest period in the public procuratorial work contrasts the efforts of its members with the rapidly diminishing support from the government, and the apparent weakening of functional autonomy against the increasing intervention of political interests of the leadership through the Ministry of Justice.

³⁷⁶ Ministerial Resolution No. 192-2015-JUS.

³⁷⁷ As described under the scenario of corruption perception, coping point of output concealment (1st round).

Chapter IX

Reflections on the Theoretical Model

In the preceding four chapters, the study has strived to present a thorough but accessible picture of the most important anti-corruption processes in Peru in the last fifteen years, putting particular emphasis on institutionally relevant episodes such as the evolution and decay of anti-corruption bodies, but also reviewing telling examples of anti-corruption pressure that were met by other equally effective coping mechanisms, which in one way or another managed to diffuse the stressful events without pushing the political system into a status upgrade.

Although in each case the events reviewed were found to follow the tenets of the Systems Model of Corruption and Anti-Corruption Reform introduced in Chapters III and IV, no individual event could possibly embody the totality of the theoretical model, for the body of stressful scenarios, coping points and mechanisms, and environmental strategies is too large for a single process to reflect it. Thus, after everything is said and done, a few questions remain: How did the theoretical model fare against the data presented throughout chapters five to eight? Could the data be explained by reference to the model? Can we surmise that the model was indeed supported by the data? And if so, to what extent?

Explaining the Data

Certainly, not every single coping mechanism activated by the government managed to completely reduce stress and stimulate support by itself, nor did they need to. For example, during the scandal reviewed under the title “The President’s Daughter” (Chapter VI), one of the first coping mechanisms found was the *misallocation of responsibility* through which the government blamed judge Silva Vallejo for having approached President Toledo and addressed the issue of his illegitimate daughter; the mechanism, however, soon proved to be ineffective to deescalate the scandal, and the scenario kept running its course. Notwithstanding the evident failure of the mechanism to address the issue at hand, however, its activation supports the tenets of the theoretical model in that the government made an effort to reduce stress through the reliance on an output that did not intend to address the presence of corruption in the system, but only to stimulate support without jeopardizing the stability of the NACS. In that sense, therefore, the presence of the

‘misallocation of responsibility’ gives grounds to support model, however effective that particular mechanism might have been to protect the system. As already described, the government did eventually manage to defuse the pressure and stabilize the system through a *combination* of coping mechanisms, some more effective than others. It is this overall result that supports the initial hypothesis: *the actions taken by domestic and international actors to press Peruvian authorities into fighting malfeasance were unable to improve the NACS in any significant way after the short period of the transitional government (2000-2001), due to the availability and timely employment by the Peruvian authorities of highly effective political strategies to mitigate demands and secure support without having to engage in real anti-corruption reforms.*

In other words, the model did not make a point for the individual power of each coping mechanism against that of each environmental strategy; instead, it suggested their existence and the rationale behind them, positing that the NACS have managed to survive thanks to the *availability* and *effectiveness* of coping mechanisms against that of environmental strategies. The relative success of the Peruvian government to protect the NACS in each case is evidence of that. Is the ‘misallocation of responsibility’ individually more successful than, say, *legislative initiatives* are for domestic environmental reformers? The model did not venture an answer in this respect, for the answer could only be found in a case-by-case basis. The analysis of the Peruvian cases did that, and found that, in general, the misallocation of responsibility is too simple a coping mechanism to deflect pressure in important corruption scandals. It, however, was simple enough as to be activated regularly, in contrast to other more expensive mechanisms such as *repression* or *obstacles to advocacy*, and so it represented a valid strategical element during the specific coping point of ‘negative input defuse.’

The above argument can be replicated for every coping mechanism identified in the data, and it defends the validity not only of these mechanisms but also of their distribution following differentiated coping points. The analytical existence of the latter, as can be remembered, was suggested to explain the order that different coping mechanisms were usually activated as part of a government’s defense strategy. These points follow the theoretical cycle of an anti-corruption pressure event, from the initial output of corruption to the final production of symbolic or genuine measures and the stabilization of the NACS. The fact that *inadequate bodies or agencies* were

created following long and stressful corruption events, for example, supports the theoretical division of the cycle by both points and rounds, particularly during scenarios of ‘corruption perception.’ The cases of the CNA and the ONA were telling in this regard: the CNA was created following the real adoption and implementation by the Paniagua administration of control measures to deal with the Fujimori-Montesinos network; the ONA was created in the very last days of a large corruption event involving the Ministry of Internal Affairs and the National Health System, following the exhaustion of coping mechanisms under the first round of ‘corruption perception.’ Such order in the activation of coping mechanisms responds to their potential for engaging stress in different moments of the cycle, and suggests that failure is indeed very much part of the equation, just as it was evidenced in the example of ‘misallocation of responsibility.’

On the other hand, the domestic and international pressure activities identified throughout the years of 2000 to 2014 in Peru, and the effects they had on the political system and the stability of the NACS, were found to follow the basic tenets of the Systems Model of Corruption and Anti-Corruption Reform: Corruption affects the political system by increasing demands and decreasing support, and this is done in different ways or *scenarios of stress*.

The emergence of the Anti-Corruption Subsystem in the country, spearheaded by the work of José Ugaz in the Ad Hoc Prosecutor’s Office (and even the ascension to office of the man behind the whole anti-corruption effort, Valentín Paniagua), was explained by reference to the collapse of the 1990s government and the unveiling of the massive political corruption institutionalized by the Fujimori-Montesinos network, just as the scenario of ‘prolonged stress’ had suggested. The subsequent creation of the CNA by the government of President Toledo, on the other hand, was explained by “the domestic and international media coverage of the whole Fujimori-Montesinos network and the approach taken by the transitional government” (p. 144), fitting the increasing environmental pressure activities comfortably in the scenario of ‘corruption intolerance’ and shining light on the decision to activate a preventive measure such as an *inadequate anti-corruption body* so early into the new period. From there on, the vast majority of pressure activities stressing the political system would be found under this scenario or that of ‘corruption perception,’ which accounted for some declining levels of popular approval and the activation of a variety of coping mechanisms appropriate to the specific circumstances.

Notwithstanding their ubiquity, however, most forms of domestic and international pressure failed to bring about real anti-corruption measures, an issue that was not surprising given that the model had already suggested the existence of only a handful of strategies of *direct pressure* available to environmental actors, finding all others to be forms of *indirect pressure* or mere *influence*.

The only period analyzed in this study that seemed to challenge the applicability of the theoretical model was the beginning of the Humala administration, where, notwithstanding the relative absence of pressure activities, the government was fast to move straight for the adoption of anti-corruption measures: Support for the CAN increased and a law was passed granting it an upgraded status; Peru joined the Open Government Partnership and a National Anti-corruption Plan was drafted and approved; and the Anti-Corruption Prosecutor's Office was recovered from the morass of political subversion and institutional atrophy. Why did the Humala administration seem to somehow relinquish the stability of the NACS during the first couple of years?

The position adopted by the government of President Ollanta Humala at the beginning of this period can be better understood not by comparing it to the position of previous governments, but by going back to the roots of the theoretical model. Before Easton's Dynamic Response Model of a Political System was even discussed in Chapter III, an argument was introduced to consider political will for anti-corruption activities a special case that needed to be independently addressed. As a result, it was proposed that "for an honest government, anti-corruption policies should only be attractive in direct relation to the political capital they can generate for them; for a corrupt government, anti-corruption policies should be avoided in direct relation to the interests they threaten" (p. 49). What did this mean for the later development of the Systems Model of Corruption and Anti-Corruption Reform? Simply put, it meant that although most Peruvian leaders have shown an interest in preserving the NACS, this interest is the origin of the model and not its consequence: the *essential variable of this particular political system* (Peru). Furthermore, it meant that the value of the NACS is not only defined by reference to structural considerations, but to those regarding individual leaders. The role of agency in the stability of the NACS takes a center point here: just as it was stated above, for some leaders the NACS will be as valuable as its weight in political capital; for others, it will be worth much more. After the value has been set, however, corruption and anti-corruption processes are

expected to follow the usual course established in the theoretical model until the value of the NACS is revised.

In conclusion, the data on Humala's first years does not pose a challenge to the theoretical model proposed here; instead, it sheds light on the importance of considering specific political leaders individually and the value they give to political capital³⁷⁸ and corruption profits, as these will in turn describe the conditions under which real anti-corruption measures will be adopted and implemented instead of activating coping mechanisms.

Supporting the Model

Once it has been established that the Peruvian experience with corruption and anti-corruption processes reflects the tenets of the theoretical model, it is necessary to turn the discussion around and see how much of the Systems Model of Corruption and Anti-Corruption Reform was actually supported by the data. In general, it is possible to conclude that the existence of different scenarios of stress was confirmed by comparing the events that culminated with the collapse of the Fujimori government in the second semester of 2000 and the creation of the Anti-Corruption Subsystem, to smaller but equally telling events like the creation of the short-lived National Anti-Corruption Office—ONA in 2008, or the appointment of an anti-corruption czar with no real political independence in 2001. These schemes, as the previous chapters described, came as a response to very different scenarios of anti-corruption pressure: While Paniagua reacted to a 'prolonged stress' that had been affecting the political system, the ONA was a consequence of the evolution of a corruption scandal moving into the second round of what has been called 'corruption perception'; the appointment of Martín Belaunde Moreyra and the creation of the CNA, on the other hand, was an appropriate response to the wave of 'corruption intolerance' in the wake of the Fujimori-Montesinos network. Beyond these brief examples, the previous chapters showed that the rise and fall of corruption scenarios, matched with the particular value assigned to the stability of the NACS, were responsible for the oscillations in the government's seeming interest in anti-corruption activities. Thus, the suggested interpretation of political will for anti-corruption

³⁷⁸ In here it is considered that the capacity to stimulate support by means of anti-corruption activities remains stable and that political leaders are aware of it. In practical circumstances, however, the value given to political capital will vary alongside citizen perceptual trends.

activities, the adoption of NACS stability as an essential variable, and the modeling of different corruption scenarios and coping mechanisms found support in the data presented.

Some theoretical cases introduced in Chapter IV as examples of coping mechanisms and pressure activities, however, could not be reflected in any of the historical events reviewed. This situation does not suggest their lack of validity, but forces us to look for them in other empirical cases that may not have found place in the present study either because they did not significantly added new evidence to the argument, their political range was limited to local spheres instead of the national scene, or simply because they stood outside the fifteen-year period considered.

The first coping mechanism theorized in the model that failed to be supported anywhere in previous chapters is that of *obstacles to advocacy*, presented under the coping point of negative input defuse. This mechanism, which aims at silencing public dissatisfaction through legal means, can be found in the political maneuver executed by the government of President Fujimori, in 1997, to take control of the editorial line of one of the major TV networks in the country: After television station *Canal 2* began airing investigative reports on the obscure activities of presidential advisor Vladimiro Montesinos, the government moved to revoke the Peruvian citizenship of its principal owner, the Israeli-born Baruch Ivcher, and to place its administration in the hands of minority shareholders Samuel and Mendel Winter, who surreptitiously proceeded to sell the editorial line. This way, the government was able to stop the hurtful media campaign and to silence an important source of pressure against the NACS.

A second coping mechanism is that of *new cultural norms*, a highly difficult strategy to implement and even more to identify. As described in Chapter IV, this mechanism has the objective of changing the array of topics that may be subject to government attention and intervention, thus reducing the number of stressful issues that the environment feels require authoritative outputs. An example of this strategy can be found in the position adopted by the influential journalist Rosa María Palacios in defense of the First Lady, Nadine Heredia Alarcón de Humala: Following almost half a year of constant pressure against the government for corruption scandals involving Heredia Alarcón, Palacios (2015) (who by then was widely known as an important voice in support of the legality of all alleged accusations) released in her personal webpage a note stating:

“The campaign funds of [Humala’s] National Party and all other parties in Peru are subject to scrutiny and audit from the ONPE. There are legal prohibitions, but there is no real punishment. Much less acts that may be qualified as ‘criminal’... To steal campaign funds is not a crime. It may be a disappointment for contributors, but it is not a crime. In any case, they should demand party leaders or treasurer to know how their money was spent.”³⁷⁹

Thus, it is evident that, for Rosa María Palacios, although being morally wrong, the final destination of party funds should not be a matter of criminal investigation, specially not one regarding money laundering. Such discourse reflects an effort from informal government spokespersons to downplay corruption allegations and even push them away from the political system *per se*.

A third mechanism not clearly found in the empirical cases reviewed is that of *clientelism*. Although economic stimuli was at least once identified (p. 202), it is possible to see a more fleshed out example in the employment of the National Fund of Compensation and Social Development (FONCODES) by the Fujimori administration. According to Schady’s (2000) study, FONCODES was used for pork barreling under the Fujimori administration, providing the government with a truly discretionary source of financing to stimulate support before the national elections of 1995. Furthermore, Schady found that FONCODES pre-electoral spending followed an evident clientelistic logic by directing allocations towards those regions of the country where they could have the highest rate of political returns, allowing the administration to recover from a slow down in popularity after the constitutional referendum of 1993 had shown a challenging 48% of disapproval.

A fourth mechanism is that of *institutional imperviousness*, which aims at restricting public monitoring of government activities through internal mechanisms. Institutional imperviousness was only addressed earlier in relation to the changes introduced during the transitional government of President Paniagua. This coping mechanism, however, is better evidenced by looking directly at the content of Law No. 27806, Law of Transparency and Access to Public Information, of 2002. Set to follow on the footsteps of the normativity developed during the previous government, the Toledo administration nonetheless introduced certain restrictions that effectively

³⁷⁹ Translated from Spanish.

challenged the public right to access information considered as *secret* or *strictly secret* by the Council of Ministers (article 15, section a). The norm, furthermore, did not clearly address the conditions and requirements for such classification, or the distinction between both categories. As a consequence of such implicit effort to control the free availability of public records that may be threatening to the government, the Office of the Ombudsman presented an action of unconstitutionality (Defensoría del Pueblo, 2010). Facing multiple challenges against Law No. 27806, Congress finally decided to go back on its decision and modified the norm through Law No. 27927.

A fifth and final coping mechanism that could not be identified in the data presented in previous chapters is that of *corruption tolerance*, which aims at altering the social meaning of corrupt activities in a way that makes it difficult for citizens to recognize the illegality of government actions or the responsibility of those actors involved. Being a long-term measure, just like the stimulation of new cultural norms, outputs trying to increase the general level of corruption tolerance among the constituency are extremely difficult to ascertain. However, the former anti-corruption procurator Julio Arbizu reported the identification of such a strategy as part of a dirty pre-electoral campaign carried out not by the government, but by political forces looking to take office in 2016. He found that many of the corruption-related news broadcasted during the first semester of 2015 responded to a logic of political demolition, through which it was “clear that there exists an interest to equal the allegations of corruption against this government [of President Humala] to those that took place during the second government of the APRA and during the disastrous period of Fujimori”³⁸⁰ (Aguilar, 2015). According to Arbizu, the existence of a hidden discourse that was trying to instill the idea that, “if everyone is corrupt, then nobody is”³⁸¹ was a shame and a responsibility affecting the government. Arbizu’s argument, however, can also be read as the same kind of effort to stimulate corruption tolerance that he seems to repudiate: By comparing corruption allegations affecting the Humala administration to more serious events of the past, Arbizu effectively downplays the relevance and even the veracity of those allegations, sending the message that the Humala administration is actually an honest one when we compare it to the APRA or the Fujimori governments.

³⁸⁰ Translated from Spanish.

³⁸¹ Ibid.

Turning to environmental pressure activities, only two strategies failed to find representation in the cases studied: *technical corruption related reports* and *corruption awareness activities* from domestic non-governmental actors. Both, however, are evidently easy to identify not in the cases exposed in the previous chapters, but in regular and constant forms of pressure exerted by NGOs in Peru, particularly TI's national chapter *Proética*. Indeed, Proética carries out every two years a National Survey about (the Perceptions of) Corruption, counting eight editions so far (Proética, 2015), which has become the primary source of empirical data regarding the corruption perception, incidence and characteristics of bribery, corruption tolerance, and other variables relevant to the issue. More importantly, Proética has become the leading NGO in terms of corruption awareness campaigns, becoming the go-to interlocutor from civil society in government-sponsored roundtables in recent years. This leading role was formally recognized by USAID during its Anti-Corruption Threshold Program, when Proética was provided with US\$ 1 million in grants to build the National Anti-Corruption Network (Proética, 2011), which has the aim to strengthen the capacities of social actors in decentralized spheres. Thus, the above activities show the existence of pressure activities that, for the reasons expressed earlier, could not be mentioned during the main analysis.

Perhaps more significant than the empirical exhaustion of coping mechanisms and pressure activities might be the seeming underrepresentation of certain environmental and systemic actors. This might be the case of the business community and the judiciary, for example. However, the reason behind the lack of concern with these actors stems from the general level of abstraction inherent in this stage of the theoretical model and the economic and political peculiarities of Peru, rather than from a neglect to include them in the empirical analysis.

As it is, the Systems Model of Corruption and Anti-Corruption Reform serves to highlight the opposition between the private interests of the political leadership and the demands from actors in the environment, thus focusing on the characteristics of this tension to explain the stability of the NACS. From this basis, the NACS can be studied by addressing the total level of strength that push on each side of the reform agenda: environmental actors (championed anti-corruption advocates) demanding improved anti-corruption standards, and political actors (particularly the executive branch) trying to defuse those demands. Beyond these two variables and the core actors that consistently react according to the tenets of the theoretical model,

peripheral (or secondary) groups are only important to the stability of the NACS to the degree in which they strengthen the value of one of those variables. In other words, their only worth in terms of the model is that of adding to the position of the actors that are permanently on each side of the reform agenda, i.e. anti-corruption advocates and the executive branch. The reason why these two groups in particular have been at the core of the reform-stability confrontation in Peru, while others like the business community or the judiciary have behaved as *freelancers*, aligning behind one side or the other only provisionally, have more to do with the latter's historic interests and level of political independence, however, than from purely analytical reasons.

During most of the Fujimori administration (1990-2000), the business community played a key role in supporting the government and its agenda of economic reform and liberalization, despite the political and institutional maneuvers of the executive branch to consolidate power and capture other branches of government (Arce, 2003). By the end of the decade, its support became increasingly skewed as the government developed a network of corrupt clientelistic relations with several members of the private sector, particularly those in the media and the banking sector, in order to obtain illegal benefits and to advance Montesinos' political project.

With the fall of Fujimori in November of 2000, the public-private partnership in relation to the NACS was severed, and the business community moved to a position of seeming indifference to these matters, staying away from any institutional participation in the anti-corruption movement for the rest of the decade, with the sole exception of the Extractive Industries Transparency Initiative (EITI). The decision to join this Initiative, furthermore, was a measure adopted by the government of President Toledo in September of 2004 (EITI, 2013) amidst a series of corruption scandals that brought his administration to the second lowest level of popular approval of his entire term,³⁸² and did not originate from a position of anti-corruption support from the mining sector. In fact, according to an article published by the EITI International Secretariat (EITI, 2015/08/06), “[i]n the early years of reporting, there were considerable challenges in convincing all companies that make material payments [to the Peruvian government] to participate [in the process of

³⁸² The Toledo administration approved the Action Plan for the implementation of the EITI in Peru, and created a Commission to oversee its execution, in May of 2006, less than three months before leaving office (Supreme Decree No. 027-2006-EM). This was in turn part of the framework of international commitments found by the new government of President Alan García in July of that year.

transparency].”

More recently, the business community has been engaged by the national government to participate in important anti-corruption fora of the country, such as the CAN and the commission for the follow-up of the OGP Plan. The National Confederation of Private Business Institutions (CONFIEP), for example, has been from the beginning a member of the anti-corruption commission launched in 2010, resulting in clear synergies between the position of that organization and that of Proética in relation to the necessity to show more concrete actions from the CAN; in 2013, the National Society of Industries too joined the commission as associate member. From this interaction, the CAN has been able to successfully promote the adoption of symbolically significant *integrity pacts* in the justice, health, and transportation sector, with the participation of the National Association of Pharmaceutical Laboratories, the Banks Association, and others. Additionally, the private sector has been publicly approached to discuss the future agenda regarding Peru’s interest in joining the OECD’s Anti-Bribery Convention (PCM, 2013/09/18; Andina, 2015/03/24); in this case, however, the CONFIEP has given signs of opposing the introduction of required national legislation that would introduce the figure of criminal liability of private entities in cases of corruption³⁸³ (this is, independently from the liability of people involved) (Acosta, 2014).

In summary, the effect of the business community on the stability of the NACS over the past fifteen years have been minimal, departing from its clear support of the government agenda in the 1990s only to adopt a passive and inconsequential role so far in the new millennium. In the words of a FCPAméricas’ expert (Ellis, 2013):

“Foreigners doing business in Peru sometimes encounter a considerable degree of tolerance for corruption among the business community, or a willingness to look the other way. Some might say this is directly linked to opinions of Fujimori and his legacy. Many in the business community revere the former president for the stability he brought... These attitudes, in certain

³⁸³ To avoid conflicts, the Executive Branch presented Legislative project No. 4054/2014.PE, proposing the criminal liability of legal entities with the exception of those that, prior the commission of the crime, had adopted and implemented preventive anti-corruption programs. However, on May 28, 2015, a multi-party congressional commission approved the project without the exemptions included in the original document (Clavijo, 2015). The issue is still pending discussion in plenary session.

situations, can lead business people to view anti-corruption compliance efforts with skepticism, interpreting them as little more than the usual political criticisms.”

Contrary to the lack of involvement of the business community in matters of anti-corruption reform, the judiciary can be said to have been at least partially active in its systemic role of protecting the NACS. Yet, its performance was not as consistent as that of the executive branch, nor was it as significant.

By nature the judiciary is expected to remain as a politically independent organization of the public apparatus, guaranteeing the legal accountability of members of the executive branch and the national parliament. This role was particularly evident during the early years of the anti-corruption subsystem, with the expansion of the anti-corruption court system between 2004 and 2005 notwithstanding increasing tensions with (and within) the government. However, the performance of the judiciary over the 2000-2014 period analyzed also reflects a high degree of political infiltration that guaranteed a weak implementation of corruption control measures. Examples of this behavior are too copious to review them all: from closing the case on the fraudulent registration of Fujimori’s party for the 2000 elections, to helping President Toledo in the Zarái case; from annulling the use of primary evidence in the Petrogate case, to making every effort so that First Lady Nadine Heredia could not be investigated for money laundering, the judiciary (including here the Public Ministry) has shown to be as much an agent of stability for the NACS as one of change.

Thus, its empirically inconsistent role makes it a secondary actor for the protection of the NACS, complementary in its overall impact to that of the executive branch. In fact, aside from its participation in the dismantlement of the anti-corruption subsystem from 2009 onwards, the judiciary can be better described as *implementing the NACS* rather than protecting them, making the deficiencies in corruption control mentioned above corruption-enablers with no support-inducing or demand-reducing potential in reality. For this reason, the analysis conducted in chapters V~VIII was able to test the validity of the research hypothesis without forcing a deeper review of this systemic actor.

Future work on the theoretical model, however, could benefit from studying individual corruption and anti-corruption events more deeply in order to refine the

functional and structural relationships between the judiciary and other systemic actors with the government in general, and the executive branch in particular. While this venue of work would not necessarily impact on the model's capacity to explain the overall stability of the NACS in regards to its resistance to environmental demands, it could provide a better understanding of the processes inside the political system that explain why certain mechanisms, and certain events, are prioritized in the political agenda.

The identification in additional empirical cases of previously missing theoretical elements, or their recusation based on the historical characteristics of Peruvian politics, lends strength to the argument in support of the Systems Model of Corruption and Anti-Corruption Reform. A final and important element theorized in the model, however, still remains unaddressed: the existence of scenarios of 'corruption in processes' stressing the political system. The discussion turns to this issue now.

Problems in the Identification of Instances of 'Corruption in Processes'

If corruption is hard to empirically analyze due to its secretive nature, and coping mechanisms are even harder to differentiate from common, unrelated government actions, the identification of cases dubbed as scenarios of *corruption in processes* are riddles, wrapped in mysteries, inside enigmas (to use an old and famous quote from Winston Churchill). There are forms of stress suffered by the political system that are almost identical to cases of economic popular dissatisfaction, except for their origin: corruption in processes have an important component of corruption underpinning them, while other economic issues do not. The problem of identification arises from the fact that, in order to address these cases, corruption must not have been widely perceived by environmental actors, otherwise we would move to a scenario of 'corruption perception'; in other words, once the scenario is openly recognized, it ceases to exist as such. How, then, is it possible to address the presence of corruption in processes, and even worse, the activation of related coping mechanisms? Two possible circumstances could provide a way to assert the presence of this type of stress scenarios: First, cases of economic decline that prove important enough as to generate clear demands over the political system and a significant reduction in popular support, paired with an underdeveloped public administration

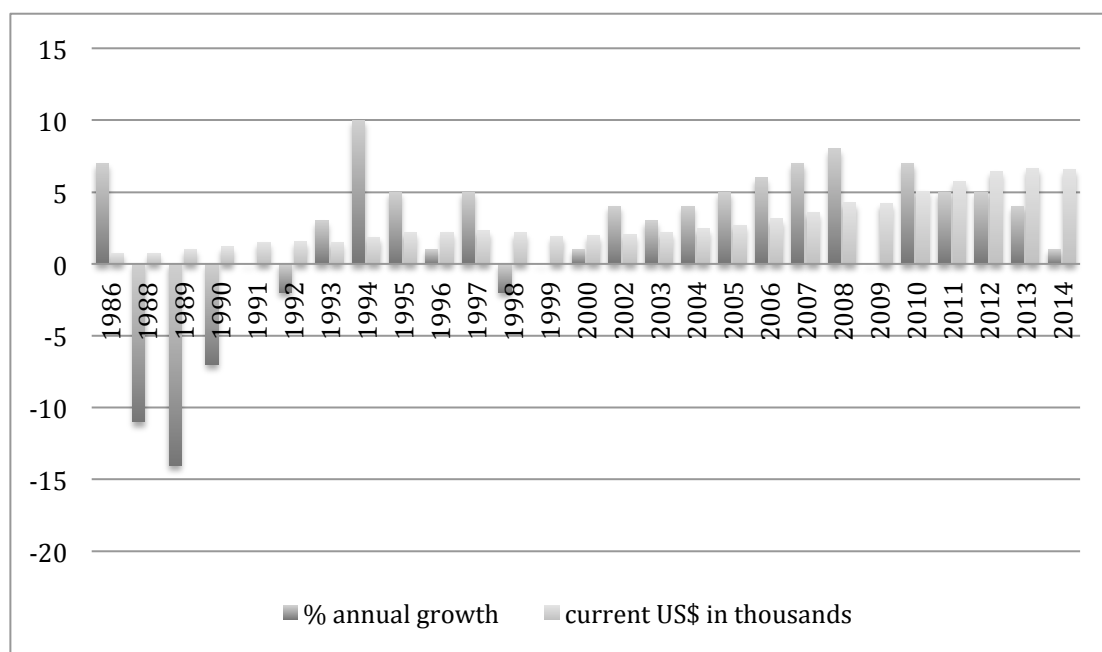


Figure 11. Annual Growth of GDP Per Capita

Source: The World Bank data.

apparatus, will most likely shed light on the presence of corruption affecting the economy without prioritizing popular attention on this component, thus allowing stress to remain in the scenario of corruption in processes without evolving into one of corruption perception. Second, a case-by-case analysis of public agencies related to economic variables in which the country is performing poorly can be able to identify the presence of corruption without gaining enough public recognition as to evolve into a corruption scandal.

Despite their potential for providing a way to empirically assess our theoretical tenets, the above two options present evident constraints: a case-by-case analysis is technically demanding, and require a level of access to information, procedures and personnel usually restricted to government officials and hired consultants; without the free availability of data, it is unlikely that the presence of corruption could be reasonably identified as to proceed from there to the analysis of coping mechanism. Simply put, we are hindered again by the secretive nature of corruption, with the added hindrance of not being able to turn to the mechanisms possessed by the scenario of corruption perception. To require an instance of economic crisis, on the other hand, does not do much more to help with our identification issues, especially in the case of Peru as we can infer from Figure 11. Over the period considered for the present study, the Peruvian economy has been

growing 4.3% on average, with a steady increase of its GDP per capita from less than US\$ 2,000 in the year 2000 to over US\$ 6,500 in 2014. Other indicators, such as unemployment (less than 7%) and inflation (less than 6% annual), has also been kept in check, while overall poverty has been reduced from 55% of the population in 2001, to 24% in 2013 (World Bank, 2015). Thus, it is not possible to find an anecdotal case with the characteristics suggested above for the identification and analysis of coping mechanisms under a scenario of corruption in processes, at least not between 2000 and 2014.

Certainly, over the period the government has promulgated several norms with the objective of improving the efficiency of administrative structures, such as the legislative decrees creating the Centre for Public Procurement³⁸⁴ and the National Authority of Civil Service³⁸⁵ in 2008, but their connection to public malfeasance cannot be asserted without conducting a specialized study. Furthermore, as the international financial crisis did not have any major impact on the stability of the Peruvian economy (except for a 0% GDP per capita growth in 2009) there was no environmental pressure forcing the government to activate coping mechanisms, be in the form of demand-satisfactory measures or others.

There is, however, an instance in the past where it is possible to identify a scenario of corruption in processes effectively forcing the government to activate coping mechanisms: the administrative reforms introduced by President Fujimori in the first years of the 1990s. In Figure 11 it is possible to appreciate that the transfer of power between the governments of President Alan García Pérez (1985-1990) and President Alberto Fujimori (1990-2000) took place amidst a deep economic crisis, with the GDP per capita contracting by -14% in 1989 and -7% in 1990, and inflation soaring in the levels of 3,398% and 7,481% in the same years (World Bank, 2015). A great part of the problem were the catastrophic financial and economic policies implemented by the García administration, but another aspect of the crisis was the partisan depredation of administrative structures that had reached dangerous levels under the control of the APRA. A diagnosis done at the time of initial recovery described the situation (Cáceres and Paredes, 1991, p. 143):

“The grave decline in the State’s management capacity is manifested in

³⁸⁴ Legislative Decree No. 1018, published on June 4, 2008.

³⁸⁵ Legislative Decree No. 1023, published on June 21, 2008.

multiple ways: increasing incapacity to monitor and supervise compliance with the law, incapacity to design and execute coherent programs of economic policy, vulnerability and devaluation of the administrative career, and increase in the immorality and corruption in many institutions of the public sector.”

To confront the situation, part of the strategy of the new administration included the implementation of *demand-satisfactory measures*³⁸⁶ with a big component of real anti-corruption actions aimed at controlling bureaucratic malfeasance. Such approach was possible because, for the government of President Fujimori, the stability of the NACS did not include the presence of rapacious party structures in the lower levels of the State apparatus; rather, Fujimori’s government would turn to the centralization of political power and corrupt networks in the higher spheres of the Executive branch (Peña-Mancillas, 2011). Therefore, more than the actual implementation of anti-corruption reforms, what the new government did was to address the economic crisis through specific control measures in order to reduce demands, generate support, and generate sufficient financial resources to feed a new corrupt network with President Fujimori and Vladimiro Montesinos at the center. Petty corruption in the revenue service (Baca, 2000) was immediately addressed, as this source of income represented by 1990 only 7.9% of the country’s GDP; this agency and the National Bank were structurally reformed, while others simply saw a massive dismissal of bureaucrats that had entered and fattened the State apparatus through the party channels of the APRA (Durand, 2005); and different regulatory agencies were soon created “characterized for having a high degree of autonomy from political processes, qualified human resources, results-based management, and their own financial sources” (Straface and Basco, 2006, p. 10). These measures were effective only as far as needed and they would not be extended to other organizations of the State equally affected by pervasive corruption, such as the judiciary, for these were not directly responsible for economic recovery and could actually threaten the stability of the NACS. According to Carol Wise (Santiso, 2004, p. 294), “the president had little choice but to overhaul those state institutions which were critical for economic recovery,” and in doing so he effectively reduced petty corruption (Hunt, 2005), but this improvement was carefully implemented in order to pursue the

³⁸⁶ As described under the scenario of corruption in processes, coping point of stress amelioration.

private agenda of the political leadership and not create any obstacles. In fact, it is reported that the government went so far as to cancel an already approved loan for US\$ 25 million from the World Bank for the implementation of reforms in the judiciary because it was not willing to accept certain conditions regarding improved autonomy and independence for this State organization (Guerra García, 1999).

As time went by, Fujimori's government would deploy an increasingly complex array of both coping mechanisms and plain corrupt activities to secure the flow of support from the environment, particularly from low economic sectors of society and key international actors. Most of the bulk of government measures during the 1990s, however, fall back on to the problems of identification of scenarios of corruption in processes that were described earlier, and so it is not possible to continue the assertions that were made for the first, initial mechanisms for economic recovery without a specialized study of their own that could unveil their connection to administrative corruption and inefficiencies.

Although further testing becomes necessary to assess the activation of other coping mechanisms beyond that of *demand-satisfactory measures*, at the very least the case identified above shed some light regarding the feasibility of the scenario of *corruption in processes* to stimulate the kind of responses from the government that were theorized by the systems model of corruption and anti-corruption reform early on this work. Future work on the subject will have to include additional considerations to data gathering in order to get over the obscurity of government activities in coping with corruption and economic dissatisfaction.

Chapter X

Conclusions:

Possible Ways Out of the Deadlock and towards a Status Upgrade

The present study began with a common problem and a straightforward question: if Peru has proven to stagnate in general terms in the adoption and implementation of anti-corruption measures over the past decade and a half, just as much of Latin America has... What can be said to explain such a state? Is it that there were not sufficient technical resources to instruct policy makers into the steps needed for reforming the NACS? Or perhaps the Peruvian economy did not allow for such a spending? The study proposed that the reason for Peru's lack of anti-corruption progress was not a consequence of either technical or financial constraints, but rather an inherent absence of political will from the government and the existence of alternative actions at its disposal through which to keep a minimum level of support flowing into the political system. These tenets were embodied in the Systems Model of Corruption and Anti-Corruption Reform, based on the work of political scientist David Easton, which in turn produced a substantially different analytical frame to assess the past history of Peru, its governmental and environmental actors, from what has been previously suggested by academic literature. The result was the identification of coping mechanisms in almost every scenario of anti-corruption pressure assessed, all of them with different levels of investment and effectiveness but having the same purpose: to control the introduction of anti-corruption demands into the system, and to keep the provision of support from the population steady.

Certainly, the amount of instances of stress affecting the political system over the fifteen years period reviewed here was too great to analyze them all. To give an idea of the persistent presence of corruption-related stress in the country, it suffices to look at the scenario of corruption perception and to count the number of days that corruption news were presented in the front page of popular newspaper *La República*: Between July 29, 2000 and December 31, 2014, there were news of public malfeasance getting wide coverage up to 49% percent of the time, with 35% of them involving the participation of one or more actors related to the Executive branch of government; this is, for 1,299 days (or 3.5 years) between the years 2000 and 2014, Peruvian citizens were exposed to news of corruption involving public officials of the government. The number and variety of scandals these news reported on, clearly, is

too high to review them all in the limited space of the present study, and they do not even include the instances of anti-corruption stress originated from corruption intolerance or corruption in processes. Nonetheless, it is the opinion of the present study that the cases selected throughout the empirical chapters were heterogeneous enough to present a clear depiction of the government reaction to anti-corruption demands: the activation of the most suitable coping mechanism available to the leadership.

Although not every single stress-inducing scenario needed to see the activation of a coping mechanism from the government, the response (or in this case lethargy) only represented the willingness of the political leadership to pay with political support rather than to invest in coping outputs. As it was seen in Chapter VIII, for example, the Humala administration decided to ignore the admonition letter from the Steering Committee of the Open Government Partnership and the public exhortations of *Proética* and other societal actors, and to hijack the process of creation of a new Action Plan. While no coping mechanisms were detected, this only proves that the scenario was not important enough to merit their activation (which naturally has costs of its own), and that it was more convenient to let political support decline momentarily. A similar argument can be made for cases of corruption scandal that were not reviewed in the previous chapters, but that may have taken place without the clear presence of coping strategies. For this reason, the study selected major corruption scandals as well as minor ones in order to show the rationale behind government activities in both types of events, and the specific characteristics of the response at different levels of intensity and persistence. Naturally, some mechanisms proved to be more effective than others, such as those pertaining to *stress amelioration* compared to the ones at the point of *output perception attenuation*. And the same could be said of the five administrations commented on, i.e. Fujimori's, Paniagua's, Toledo's, García's, and Humala's: Although the last three could be said to have confronted direly low levels of political support at one point or another, particularly around the third and fourth years in office, only in the case of President Alejandro Toledo did the government temporarily fail to stimulate enough support as to keep the two essential variables of the system (the making of decisions and compliance with them) out of danger.

In May of 2004, before the scandal for the forgery of signatures of Toledo's party *Perú Posible* had grown into a full-blown event, Congressman of National

Unity Rafael Rey Rey proposed for the first time to have Toledo removed from office through constitutional means. Taking into account that President Toledo's popular approval was closing an all time low, descending to under 10%, Rey's proposal was promptly followed by other political leaders, forcing the incumbent party in Congress to push for the passing of legislation in order to increase the legal requirements for approving a presidential overthrow. The threat against the political system was taken up again in October of the same year, turning to the possibility of holding early presidential elections as a way out of the political crisis; and then again in February of 2005, when the APRA party tried to reduced once more the requirements for a presidential overthrow in Congress (Caretas, 2005/04/28). Thus, the low level of popular support flowing into the political system for almost a year (presidential approval stayed under the 10% level) produced the kind of situation that was suggested at the core of the systems model, and highlights the significance of coping mechanisms. A former senior official of NGO *Proética* commented on the reasons that drove the government of President Toledo to keep the National Anti-Corruption Commission, even if only as a symbolic mechanism, instead of having it formally deactivated as it was the case of the National Anti-Corruption Office created and dissolved under the García administration (Interview No. 20): "Toledo never pushed the battles until their last consequences. He had no interest in making great decisions or taking on great enemies. He was very fearful of getting overthrown, so he did not want to open new battlefronts."³⁸⁷

Regardless of the dangers of not choosing and adopting coping mechanisms properly, it is evident that without them the political leadership would not be able to protect the political system while securing the stability of the NACS. Furthermore, the review of cases throughout the empirical chapter has shown that these mechanisms are not only pervasive in their employment, but that they are in most cases more effective than the pressure activities carried out by international and/or societal actors, with the sole exception of different forms of international aid conditionalities. The argument in defense of financial pressure, however, is not one easy to make considering the obvious costs it entails for anti-corruption actors, and the lack of necessary data on the scenario of *corruption in processes* throughout the period analyzed in the present study. Without more information on the stressing capabilities

³⁸⁷ Translated from Spanish.

of the economy-based stress scenario and the rate of success of consequent coping mechanisms, the picture for the reformist forces of society and the international anti-corruption movement remains indeed bleak, with the political system holding the NACS under control.

The NACS, however, were shown to remain stable only when considered in general terms, with every administration providing signs of a specific value assigned to them, and even of this value changing during a single government period due to reasons external as well as internal to the political system. Thus, although it is appropriate to talk about the same NACS persisting since their introduction by the transitional government of President Paniagua, it is clear that they have suffered subtle variations throughout time brought by political preferences of the incumbent leadership.

Starting with a surge of anti-corruption efforts during the Paniagua administration, which responded to a scenario of prolonged stress, the NACS were stabilized by adopting additional efforts from non-Executive political actors between 2001 and 2006, but the Toledo administration itself dropping the issue of corruption prevention and seizing the Ad Hoc Public Procurator's Office from 2004 onwards to prevent the emergence of further scenarios of corruption perception. Afterwards, during the administration of President Alan García, the aggressive activation of coping mechanisms and the introduction of countermeasures managed to weaken the NACS with the intention of shielding the government from corruption scandals, leaving as a consequence the control and preventive functions of the State threatened. Finally, the government of President Humala began in 2011 by investing in the recovery of the NACS, managing to improve the state of the preventive anti-corruption body of the country, the ONA, and the anti-corruption procurator's office; this recovery, however, was curtailed in 2014, and from then on the NACS saw a stagnation brought by scenarios of corruption intolerance and corruption perception, on the one hand, and the government's unwillingness to jeopardize the stability of the NACS any further, on the other.

Through this summary of small but telling variations suffered by the NACS during the post-Paniagua period, therefore, it is possible to perceive the necessary flexibility inherent to the essential variable of the analytical system, i.e. the *stability of the NACS*. Additionally, the above account also highlights the significance of the specific value assigned by different administrations, at different moments, to the

stability of the NACS. That value, as it will be suggested in the following section, might hold the key to break the deadlock and move towards a general status upgrade.

Possible Ways Out of the Deadlock and towards a Status Upgrade

Through the empirical analysis, the challenges of this systems approach to the problem of anti-corruption reform became apparent, but also its future potential.

The former arise from an inherent problem with data collection regarding the motivations of political actors and activities that are otherwise open and public: a high degree of obscurity persists during the stage of policy formulation that cannot be cleared through the analysis of formal procedures; although structures, actors and patterns of behavior can be identified, the rationale behind decisions made in the political system remain hidden in the individuals that partake in these events, leaving only the factual imprint of official measures as a clue. Thus, data becomes not only scarce, but it is in many cases circumstantial and amenable to political interpretations.

It is by tracing the adoption and outcomes of policy measures back to the contextual factors that gave birth to them, that the present study has tried to preserve scientific rigor in the process of identification of different stress scenarios and coping mechanisms. This process required the detailed analysis of multiple instances of behavior in order to reproduce the chain of events as closely as possible. Under these circumstances, the efforts of data collection carried for the present study faced two specific types of challenges: First, it needed to rely heavily on personal accounts provided by actors that directly or indirectly participated in the events; and when these accounts were not available, the tracing of policies back to their particular rationale had to be informed by media reports and statistical information as primary sources of information. Overall, the study showed a high degree of correlation between the expectations of the theoretical model and the public actions taken by the political leadership; nonetheless, the analysis could still be improved provided that more data became available. The possibility of improved analytical power brings us in turn to the second challenge encountered by the study: while information regarding exclusively domestic events and actors was relatively easy to obtain, and multiple sources (such as the media, personal interviews, and official reports) were constantly available, the role and impact of foreign actors could not be exhaustively researched in some cases due to the reservation or unavailability of the actors, the lack of media coverage, and/or the confidentiality of relevant documentation.

Painstaking as data collection is in this subject, however, the empirical analysis finally managed to lend support to a model with considerable potential for the future. Although still amenable to future improvement, this study offers both a new way of understanding the political dynamics inherent to the problem of corruption and the implementation of anti-corruption reforms, and a new direction for domestic and international advocacy actors to invest their limited resources. It is necessary to recognize the real political conditions that are precluding nations from controlling corruption before growing evidence of failed implementation makes the current global anti-corruption era fall to the threat of skepticism and tip over. Thus, the Systems Model of Corruption and Anti-Corruption Reform highlights the dire reality regarding political will for fighting public malfeasance, showing through the Peruvian experience that conventional strategies to fight corruption need to be updated and protected from a political leadership whose partnership cannot be presumed any longer.

Indeed, the result of reviewing the past decade and a half of Peruvian politics through the lenses of this systems model presents a bleak scenario. If national governments are able to activate a wide variety of coping mechanisms, and are even willing to some extent to face the loss of support when those mechanisms are not effective, how can the NACS be pushed towards a status upgrade? There is no easy way to answer this question, but based on the cases reviewed in the present study three possible strategies can be suggested.

First, international pressure activities have proven to be more effective when including financial incentives easily convertible into political capital. It is not enough to provide technical assistance, which invariable relies on the will of public managers and government actors, and the same could be said of financial support for anti-corruption activities. Incentives need to engage the political interests of the leadership in a way that makes it actually profitable for the government to adopt and implement measures against public malfeasance. In this sense, *aid conditionalities* represent a stronger argument than any other direct or indirect pressure activity, and it is even the principal drive behind some of them. For example, while the free trade agreement with the United States was effective in forcing legislative changes in Peru, it did so for what it represented for the economic growth of the country and, consequently, for

the popular approval of the government.³⁸⁸ Currently, the government is also pursuing access to the OECD, and for that reason it has expressed its interest in becoming a party to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Ayres, 2013), which will naturally require the adoption of improved anti-corruption legislation in line with the convention's standards. Thus, a fundamentally economic national objective can produce political will for anti-corruption reforms in the same way explicit aid conditionalities do. The reason behind such willingness to exchange the stability of the NACS for national economic prosperity is at the root of the systems model developed in Chapter III: anti-corruption will only be chosen when it provides more political capital than the sum of the resources spent and any loss in corrupt profits. Thus, for a developing country with an obvious ambition to improve the living standards of society, money can buy more political support than almost any other government activity, including coping mechanisms, and can also leave some funds to feed any persistent corruption network. At this point the argument brings us back to the value of corrupt profits for a specific set of leaders, which is the critical factor that brings down an exchange rationale based solely on political capital; but before we address it, it is necessary to discuss the other two possible strategies.

A second strategy involves the creation of advocacy networks and alliances between organized societal actors and opposition parties with representation in the national parliament. Through these networks and alliances, domestic pressure activities can concentrate in developing and introducing *legislative initiatives*, and directly attempt to reform the NACS. Such strategy proved to be the primary engine of the limited progress made during the government of President Alejandro Toledo, and was found to be equally effective in other cases throughout the past decade and a half. The differentiated behavior of parties in and outside the Executive branch does not contravene the logic exposed earlier regarding the relative weight of political capital and corrupt benefits, but rather exploits the presence of multiple political groups, all struggling for influence but most without actual possibilities of becoming government. Opposition parties and groups, just as their counterpart in the government, are primarily motivated by a logic of benefits in exchange for political

³⁸⁸ A national poll conducted at the end of 2007 found that 57% of respondent were in favor of the free trade agreement with the United States (APOYO, 2007d); by the beginning of 2009, 33% approved of President García for the way private investment was being promoted, and 28% expressed their support due to the good state of the economy (APOYO, 2009).

investment, but ultimately deviate in two crucial aspects: First, parties in Congress are not as capable of extracting corrupt benefits from the political system as the incumbent party, and so the main currency they deal in is that of political capital, not corrupt profits. Notwithstanding the recurrent break of scandals of corruption involving members of the national Congress, the events usually involve the abuse of office for petty gain, and do not affect the position of those congressmembers in issues regarding the stability or reform of the NACS. Second, the nature of the electoral system in Peru has made it possible for multiple parties to obtain representation in parliament, with up to nine different political groups present in Congress at any given period over the past fifteen years. The sheer number of agendas, strategies and ideological positions makes it possible for honest actors to appear and openly push for anti-corruption actions without necessarily displaying reservations for the impact these may have on the affairs of the political leadership. In fact, as long as reformist actors in Congress do not face the possibility of becoming government in the future, there is an increased stimulus for passing legislation that may reduce the chances of the incumbent party to obtain illegal profits and invest them in future elections. Thus, Congress provides a potentially improved channel for the penetration of external reformist forces into the political system. However, for this possibility to be actually effective, the number of actors in Congress with the minimum characteristics to form an anti-corruption network or alliance needs to be as high as possible; otherwise, the reformist members of Congress will have to compensate their weak numbers with increased activity. Both options, unfortunately, are equally contested by the number and characteristics of congressmembers belonging to political parties invested in gaining access to the Executive branch, without even counting the ranks of the incumbent party, which in the case of Peru usually form the first majority in Congress. Under these circumstances, the discussion necessarily has to turn to considerations on the specific set of actors elected for parliament, bringing us once again to the individual characteristics of the leadership, only this time regarding those in parliament.

A third and final strategy to counteract the pervasive effectiveness of coping mechanisms is to decrease the overall levels of corruption tolerance in society. As it was shown, corruption scandals are the most recurrent events stressing the political system of the four scenarios identified by the theoretical model, but due to the variety and effectiveness of coping mechanisms, they seldom manage to push the political

agenda past the first round of anti-corruption enforcement. By decreasing corruption tolerance, cases of corruption perception would spark a larger amount of public demands and cause the withdrawal of dangerous levels of political support (Tverdova, 2007), consequently reducing the range and potential of alternative coping mechanisms and threatening the stability of the NACS more frequently. Corruption tolerance, after all, is usually the difference between countries with pervasive corruption and countries with clean and transparent bureaucracies, and it was identified to be a crucial element of the Fujimori-Montesinos network that captured the Peruvian State during the 1990s: according to former minister of Justice Diego García-Sayán (Zileri, 2001), “the mafia took over Peruvian institutions with the tolerance and interference of a big part of Peruvian society... [We need to], then, identify the objective conditions that existed in our institutionalization and the citizens’ behavior that tolerated this situation to get produced and progress.”³⁸⁹

Environmental actors such as NGOs and international cooperation agencies could provide a source of intervention over those political variables that tend to be more commonly associated with high-level corruption tolerance, in particular media exposure, political awareness, democratic values, self-efficacy, and others. Furthermore, the focus on high-level corruption tolerance allows for interventions to be exerted on three different points along the process of vertical accountability: (1) accurate perception of corruption; (2) corrected attitude about corrupt actors; and, (3) actual punishment behavior against corrupt actors (Pozsgai Alvarez, 2013). To these three we may add a preceding point, which is the availability of information about corrupt activities, which although does not represent a direct intervention on citizen corruption tolerance, it is the condition that puts the vertical accountability process in motion.

USAID’s Anti-Corruption Threshold Program, notwithstanding failing to stimulate successful implementation in public agencies, reported the successful employment of funds by NGO *Proética*, thus showing how the two types of actors can combine and consolidate efforts in political activism on the ground and successfully implement a strategy focused on promoting diminishing levels of corruption tolerance (Interview No. 25):

³⁸⁹ Translated from Spanish.

“[*Proética*’s activities were] excellent. They did carry out activities that effectively produced visible results for the purpose of our cooperation. They made and consolidated the National Anti-Corruption Network and developed anti-corruption activities and initiatives all over the country (and published the successful experiences). Furthermore, it was a sustainable activity as the networks keep operating today. That is something well-regarded here; I mean, that they used your money, the money of the American tax payer to consolidate their project, and that this project has produced results in line with their strategic goals... That is a successful project.”³⁹⁰

Corruption tolerance does not only affect the level of demands and support for the political leadership, but also plays a crucial role in the creation of that leadership: by driving attention onto the role of corruption *résumé* during electoral processes, the tolerance of the national constituency towards high-level malfeasance distributes support among different presidential and congressional candidates, thus influencing electoral results. In other words, the overall level of corruption tolerance could make society either permissive or unwilling to have a dishonest set of actors in government, with the consequent effect on the stability of the NACS that has been described earlier. Therefore, by focusing on the traditional vertical accountability function of national elections and the role played by corruption tolerance in it, the third strategy proposed here could also address the shortcomings of the previous two strategies in regards to the individual characteristics of the leadership.

Previous research has already suggested the possibility of conducting scientific assessments of the distribution of political support during electoral processes across national levels of corruption tolerance (Pozsgai Alvarez, 2014). By taking into account the corruption-related *résumé* and anti-corruption *offer* of electoral candidates, and comparing the composite value of this indicator to first-preference opinion polls, it is possible to identify the precise factors that are driving corruption tolerance in the constituency and develop strategies to modify them. If environmental actors succeed in reducing the level of corruption tolerance during electoral periods, the effort could create the right circumstances for all three potential strategies to have a higher success rate. By making sure that a more honest

³⁹⁰ Translated from Spanish.

government is elected, activists can obtain an improved position and expect more of their efforts to be replied with real anti-corruption measures rather than pure coping mechanisms. Interventions on popular corruption tolerance could be the key to unlock a status upgrade for the NACS, given that environmental actors recognize its importance and redirect financial, technical, and human resources to address it on time before a new set of leaders is elected; after that, whatever progress or regress has been made in changing public willingness to empower corrupt officials will set the conditions under which environmental actors will have to work for the next five years, with the evident cost in time and resources that it implies.

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Abbreviations

AP	Alert Perú
CM	Corrupción en la Mira
DTP	Desde el Tercer Piso
EC	El Comercio
ET	El Tiempo
IR	Info Región
JV	Justicia Viva
LA	Los Andes
LP	La Prensa
LPR	La Primera
LR	La República
TI	Transparency International

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C. List of Interviews*

*For security reasons the identity of all interviewees has been kept confidential, and many quotations throughout the text have been slightly altered to hide explicit references that could jeopardize their anonymity. The study only makes reference to the public agency and general rank they belonged to during the events described.

Interview No. 01	Member of the INA—Lima, October 21, 2013
Interview No. 02	Public official of the Ministry of Justice—Lima, October 21, 2013
Interview No. 03	Staff member of the ONA—Lima, November 4, 2013
Interview No. 04	Official of the SPM-PCM—Lima, November 4, 2013
Interview No. 05	Staff member of the ONA—Lima, November 5, 2013
Interview No. 06	Staff member of the INA and the CNA—Lima, November 6, 2013
Interview No. 07	Public Official of the SPM-PCM—Lima, October 23, 2014
Interview No. 08	Member of the CNA—Lima, October 24, 2014
Interview No. 09	Senior Official of the OCG—Lima, October 23, 2014
Interview No. 10	Senior Official of the Ministry of Justice—Lima, October 24, 2014
Interview No. 11	Consultant for APEC's ACT—Lima, October 24, 2014
Interview No. 12	Member of the ONA—Lima, October 24, 2014
Interview No. 13	Member of the ONA—Lima, October 24, 2014
Interview No. 14	Senior Official of the CAN—Lima, October 29, 2014
Interview No. 15	Public Official of the CAN—Lima, October 30, 2014
Interview No. 16	Member of the INA—Lima, November 3, 2014
Interview No. 17	Member of the INA—Lima, November 4, 2014
Interview No. 18	Senior Official of the Association of Lawyers of Lima—Lima, November 4, 2014
Interview No. 19	Member of the CNA—Lima, November 4, 2014
Interview No. 20	Senior official of Proética—Lima, November 4, 2014
Interview No. 21	Public Official of the CAN—Lima, November 5, 2014
Interview No. 22	Member of the INA—Lima, November 6, 2014

Interview No. 23	Senior Official of the Transitional Government—Lima, November 7, 2014
Interview No. 24	Staff member of the CNA—Lima, November 7, 2014
Interview No. 25	Official of USAID—Lima, November 13, 2014
Interview No. 26	Staff member of the CNA—Lima, November 14, 2014
Interview No. 27	Senior Official of the Ministry of Justice—Lima, November 17, 2014
Interview No. 28	Program official of UNDP—Lima, November 18, 2014
Interview No. 29	Member of the Anti-Corruption Procurator's Office—Lima, November 18, 2014
Interview No. 30	Senior Official of the Toledo administration—Lima, October 21, 2013
Interview No. 31	Staff member of the CNA—Lima, October 23, 2014
Interview No. 32	Public Official of the CAN—Lima, October 23, 2014