

Global Ethics and Corruption Measurement Issues in Latin America: The Cases of Colombia and Honduras

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Introduction

Current international organizations focus more on measuring corruption rather than ethics, integrity or transparency in government. Even Transparency International (TI) does not actually measure “transparency” but corruption itself. More critical, those measurements may not be considering government efforts to prevent public corruption at the national and local level. For instance, according to TI’s Corruption Perceptions Index (CPI), during the last decade the phenomenon of corruption in Latin America and the Caribbean countries has remained low-moderate, reaching ratings between 4 and 5 within the CPI rating scale, which includes values between 1 (more corruption) and 10 (less corruption). However, CPI scores may be ignoring specific data from the situation at the local government level. Moreover, CPI scores may have been seriously ignoring socio-political factors that affect corruption perceptions in society, as in the case of Colombia, or extreme poverty, such as in the case of Honduras. In order to escape a trap in which transparency efforts enhance the image of more affluent democracies while only appearing to confirm negative perceptions of societies in a developing stage, the author proposes the creation or improvement of “active transparency” practices at the local government level. This will transform citizens into key actors instead of just receptors of laws and anticorruption programs designed by government. Hence, this paper first discusses the problem with corruption and transparency measurement in the Latin

American and the Caribbean region, second it briefly addresses two case studies in Colombia and Honduras, and third, based on these case studies, it suggests some possible solutions to prevent public corruption.

I. The Problem with Corruption and Transparency Measurement in the Latin American and the Caribbean Region

In recent years several states in the Latin American and Caribbean region have launched major, often innovative, transparency efforts. All too often, however, important initiatives and accomplishments are not reciprocated by improved images and perceptions around the world.¹ In general, transparency refers to the ways in which citizens are able to observe and appreciate their public institutions at work. This is likely to be measured through perceptions. The main indicator to measure transparency is basically the state of public corruption in a country. In this sense, annual releases of Transparency International Corruption Perception Index (hereafter, CPI), the

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¹ Apaza and Johnston (2009). “Rethinking Transparency: Engaging Civil Society, Changing Perceptions.” Paper prepared for the Organization of American States (OAS), *Governance Project*. May, 2009, Washington, DC.

World Bank Institute's Worldwide Governance Indicators (WGI), and others provide certain data which are largely criticized for a number of methodological reasons already detailed in other scholarly works.² One problem is validity: it is unclear what, if anything, such indices actually measure. Thus, links between survey responses and actual governance problems are unproven (Apaza, 2009, Thomas, 2007; Arndt and Oman, 2006). A second major problem is the "one-number" issue: a single score for all parts of a society can tell us very little.³

In the case of the CPI, judgments are drawn from panels of experts (Transparency International: Corruption Perceptions Index 1999-2008.) For the WGI indicators, ratings are designed from a range of opinion-based data combined with selected "hard" indicators using an aggregation methodology through sophisticated statistical techniques.⁴ None of those indicators purports to measure transparency as such—an important concern since, as we shall see, nations are urged to practice transparency but have difficulty demonstrating the effects of their efforts. This is even more critical, as noted in the next section, when referring to local government transparency and anticorruption efforts because the international corruption indices only assess a country as a whole, ignoring the situation of corruption at the local government level.

CPI data suggest that during 1999 - 2008 corruption in the Americas and the Caribbean region has remained low to moderate, generally falling between 4 and 5 on the CPI scale, which ranges from 1 (bad) to 10 (good) (See figure 1). During the same decade, however, corruption has become a critical problem for a number of countries in the region. For instance, Bolivia, Ecuador, and Venezuela rank just above 2 on the ten-point scale. Haiti's situation is even more critical, scoring below 2. Colombia, El Salvador, and Perú barely reach 4. By contrast, Costa Rica, Dominica, and Uruguay score around 5. The best ratings belong to Canada (nearly 9), Chile (above 7), Saint Lucia (approximately 7), and USA (above 7).

However, even if such rankings are correct in suggesting that a country has fewer or more corruption problems, they give us no guidance as to where those problems reside, what ought to be done about them, or how we would recognize improvement if it took place. Indeed, in some respects country-level rankings are the *opposite* of real transparency: they are based upon blanket judgments made at a distance by individuals whose knowledge of a society's realities is uncertain or confused.⁵ Some good examples of somewhat unreliable CPI ratings are the cases of Colombia and Honduras as detailed below.

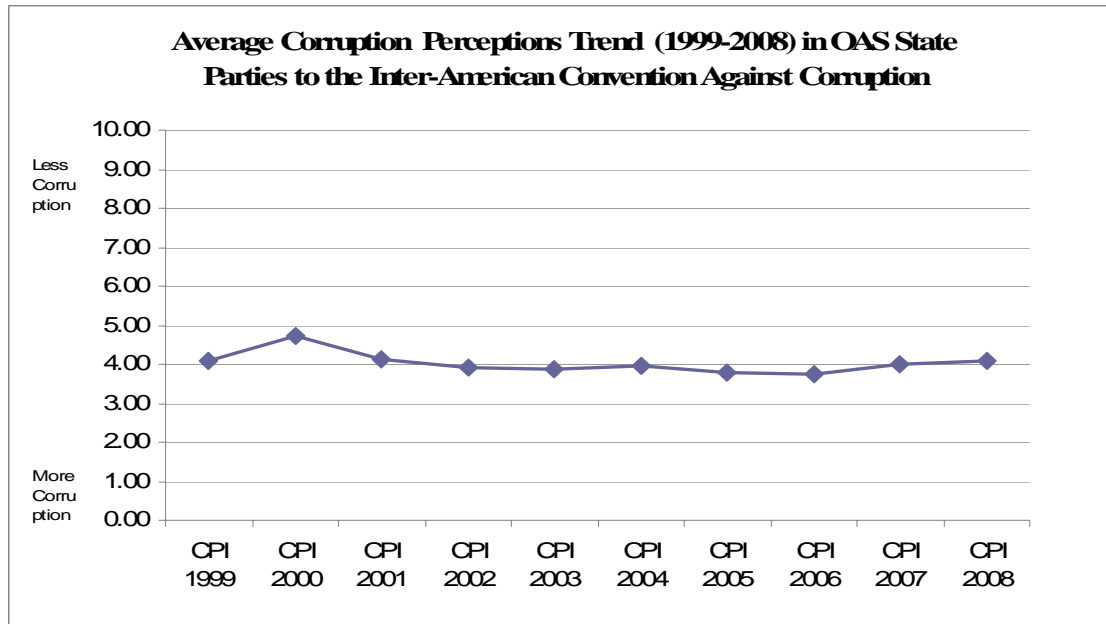
² Apaza, Carmen R. (2009). "Measuring Corruption and Governance through the Worldwide Governance Indicators: Critiques, Responses, and Ongoing Scholarly Discussion." *Political Science PS*, January 2009.

³ Apaza and Johnston (2009.) *Ibidem*

⁴ Kaufman, Daniel, Aart Kraay, and Massimo Mastruzzi (2007). "Governance Matters VI: Governance Indicators for 1996–2006." World Bank Institute, Washington, DC. World Bank Policy Research Working Paper No. 4280. http://www.wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2007/07/10/000016406_20070710125923/Rendered/PDF/wps4280.pdf

⁵ Apaza and Johnston (2009) *Ibidem*.

Figure 1:



Source: Transparency International: Corruption Perceptions Index 1999-2008
http://www.transparency.org/policy_research/surveys_indices/cpi

II. Government Efforts to Promote Ethics and Transparency in Colombia and Honduras

Colombia

Colombia has remained holding a moderate-low score on the CPI during 1999 - 2008, stabilizing at around 4 since 2005 (see figure 2). Crucial reforms in the public sector administration have been undertaken to remedy this situation.

A number of factors shape corruption problems in Colombia, including low salaries, high unemployment rates, and the lack of strong state institutions. Of particular concern are links between politicians and the drug “*kingpins*.”⁶ For example, in 1995, within the “Proceso 8000”⁷ case, it was proven that President Ernesto Samper received illegal funds to run his presidential campaign.

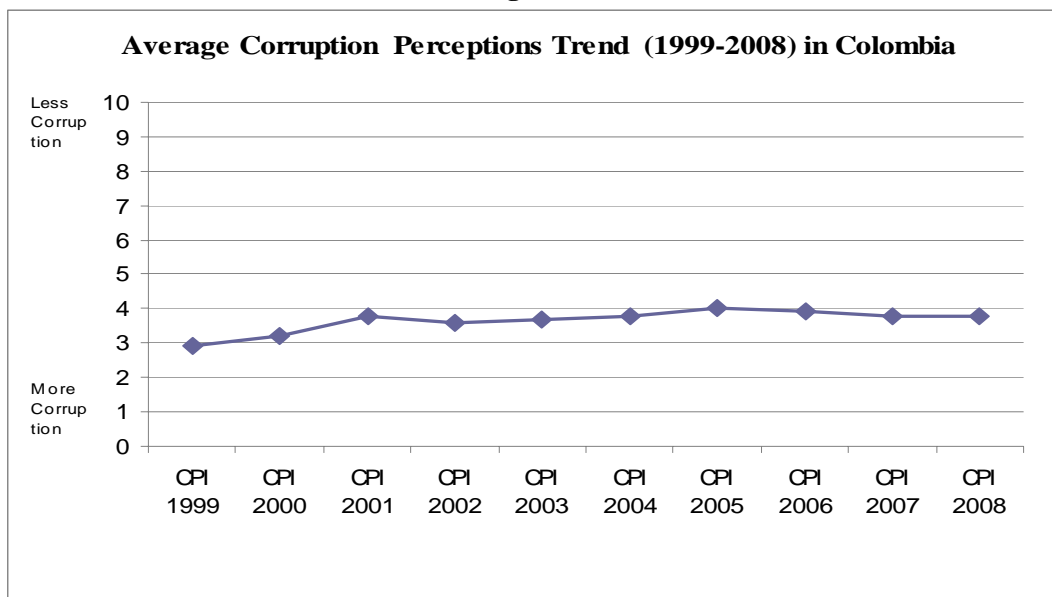
Recently, however, Colombia has taken steps toward higher levels of integrity and transparency in government. For instance, during the Andres Pastrana administration (1998-2002) major initiatives included Presidential Directive No. 9, issuing guidelines in policies

⁶ This term refers to drug trafficking heads, or *Capos de la mafia*.

⁷ http://semana.com/wf_InfoArticulo.aspx?IdArt=44895: This page shows an article of the magazine “Revista Semana”, in which the case investigations against President Ernesto Samper and other politicians involved with narcotraffic heads (“*capos*” del narcotráfico), are clearly detailed.

against corruption. Law No. 489 of 1998 regulates administration according to principles of good faith, equality, transparency, morality, efficiency, efficacy, economy, speed, impartiality, publicity, participation and responsibility, all of which must be administered by the Oversight Bodies and the National Department of Planning, according to Article 343 of the Political Constitution of Colombia. Decree 2405 of 1998 led the government's agenda to lessen corruption and improve the principles of public administration.⁸ Law No. 526 of 1999 created the Financial Analysis and Information Unit.⁹ Law No. 598 of 2000 created the Information System to Oversee Contracting Out and a Catalog called the Reference Prices List, intended to regulate fiscal duties and guarantee the transparency in contracting and the use of the goods and services by the public administration. Finally, Law No. 734 of 2002 created the Discipline Code for public servants.¹⁰

Figure 2:



Source: Transparency International: Corruption Perceptions Index 1999-2008
http://www.transparency.org/policy_research/surveys_indices/cpi

The Uribe Administration (2002-2010) has continued such efforts. For instance, through the “Democratic Manifesto” President Uribe proposed: “1. [...] to defeat corruption. 2. Corrupt public officials are not allowed to return to public office by appointment, election or by contract. 3. Each contract must be monitored by the community. [...]. 4. Public hearings for contract adjudications. Publication and price sharing of the official purchases [...]”¹¹

⁸ Decree No. 2405 was modified by Decree No. 127 of 2001.

⁹ Part of the mission of this unit was the “detection, prevention, and in general the fight against money laundry in all the economic activities in general (Law No. 526 of 1999.)

¹⁰ This was created according to article 124 of the Colombian Constitution of 1991.

¹¹ <http://www.minminas.gov.co/minminas/pagesweb.nsf/0/1229c9ffdb0b2d905256def00707eff?OpenDocument>.

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President Uribe proposed a Referendum on a series of policies intended to carry out his theme called “Mano Firme, Corazón Grande” (A Firm Hand, A Big Heart). The proposals would reduce government spending while generating more funds for health and education; withdraw the civil rights of public officials who commit fraud; strengthen public institutions; defeat poverty and unemployment; and consolidate democracy. The Newspaper *El País*¹² commented: “*The Referendum is not miraculous but it is a step that Colombia needs to take in order to defeat corruption, and strengthen the fight against terrorism.*” Unfortunately, the Referendum was rejected.

In 2002 Decree No. 2170 was issued regulating the Law No. 80, governing the participation of the community in monitoring pre-contractual, contractual and post-contractual stages of the solicitation process. That measure was later modified by Decree 2434 of 2006 requiring the publication of terms of reference on an internet portal for contracting.

In 2003 Law No. 850 established the Citizens Oversight Mechanism (*Veedurías Ciudadanas*).¹³ Colombia’s civil society has been actively involved in efforts to control corruption. Some of the civil society organizations collaborating with government initiatives include “Corporación Transparencia por Colombia/Chapter of International Transparency”, promoting and constructing tools for the fight against corruption, and the “Corporación de Acción Ciudadana Colombia AC Colombia” that promotes and consolidates democracy by supporting the integral formation of public institutions.

Interestingly enough, recent successful criminal trials against corrupt officials demonstrate that a hard fight against corruption is taking place.¹⁴ For instance, the corrupt Superintendent of Notary and Registrar¹⁵ was indicted for soliciting funds from notaries to finance his political campaign. In the case of the “Electrificadora Termorío” the superintendent of public services was convicted for appropriation of public funds and for investment interest in public solicitations for his own benefit. And in the “Parapolítica” cases¹⁶ over 80 politicians have been inculpated in hidden links to ‘*paramilitares*’. However, investigations continue against many figures on allegations of crimes against public administration, moral ethics and rectitude. Government efforts also continue to seize properties acquired with illegal funds.¹⁷ Furthermore,

¹²http://www.elpais.com/articulo/internacional/referendum/Uribe/corrupcion/desata/violencia/Colombia/elpporint/20031025elpepuint_2/Tes.

¹³ Law No. 850 de 2003, Artículo 1°.

¹⁴ <http://nuevagaceta.org/comunidad/ng-5-2.htm>. Last view Nov.14 2008

¹⁵ El Espectador.com “punís Cuello Baute to eight years in prison”. Judicial Section, April 9, 2008. Available at <http://www.elespectador.com/noticias/judicial/articulo-condenan-ocho-anos-de-prision-cuello-baute>.

¹⁶ El Nuevo Siglo-LA PARA-POLITICA 2008, Monday, Jan. 14, 2008. “The List of Terrorist of Democratic Security.” Available online at: <http://colombia.indymedia.org/news/2008/01/77696.php>

¹⁷ Law 793 of 2002 officially published on *Diario Oficial* Nro. 45.046, December 27, 2002. Available at: <http://www.secretariassenado.gov.co/leyes/L0793002.HTM> . Regarding this issue also see Jurisprudence available at:http://www.usergioarboleda.edu.co/derecho_penal/jurisprudencia_ult_tri_07.htm

<http://www.elespectador.com/noticias/judicial/articulo87486-desarticulada-red-dedicada-al-lavado-de-activos>:

<http://www.vanguardia.com/pais/103-pais/11528-extincion-de-dominio-a-154-bienes-de-don-mario>

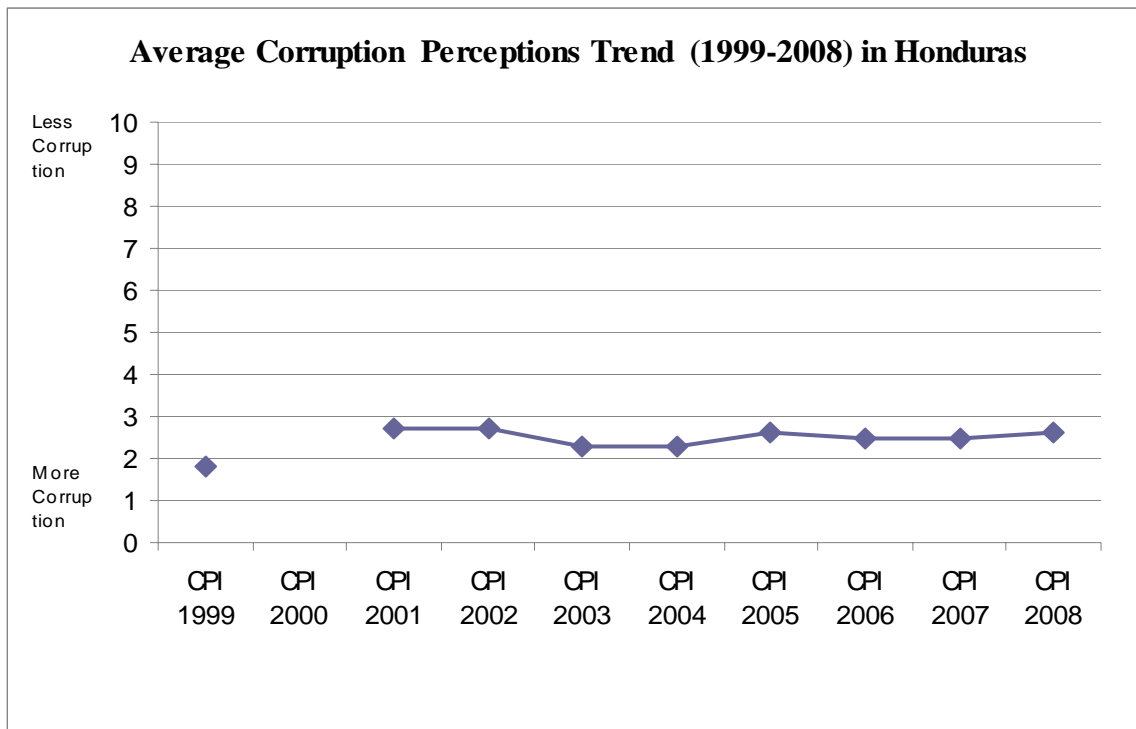
<http://www.caracol.com.co/nota.aspx?id=596165>

there are ongoing investigations related to the links between *paramilitarismo* violence and corruption.¹⁸

Honduras

For many years Honduras has ranked as one of the countries in the Americas region with more corruption, along with Bolivia, Ecuador and Nicaragua. During 2005 - 2008 Honduras ratings have kept stable at below three out of ten (see figure 3). However, Honduras has been experiencing improvements at the local level that are not reflected on the CPI scores.

Figure 3:



Source: Transparency International: Corruption Perceptions Index 1999-2008
http://www.transparency.org/policy_research/surveys_indices/cpi

In Honduras, public corruption in the form of bribery is penalized by Article 361 of the Criminal Code, which states that “Any public official or employee who solicits, receives or accepts, either on his own or through third parties, handouts, gifts, offers, promises or any other undue advantage in exchange for performing any act that violates his or her duties and constitutes a crime shall be punished with imprisonment for a period of five (5) to seven (7)

¹⁸ General Attorney Report (2006-2007): investigations related to the corruption, terrorism and “paramilitarismo” crimes. Available at: <http://www.fiscalia.gov.co/pag/divulga/gestioncalidad/Informe%20Fiscalía%202006-2007.pdf>

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years, plus absolute disqualification from public office for double the period of his or her incarceration, separate and apart from the penalty incurred by reason of the crime committed in exchange for the handout or promise.”¹⁹

In 1998, Honduras ratified the Inter-American Convention Against Corruption and adopted measures to fight such behavior as money laundering, influence-peddling, embezzlement and obstruction of justice. It also became one of the first countries in the region to deny immunity for former public officials, including presidents, in corruption cases.²⁰ Nevertheless, a small percentage of all corruption cases is actually punished. For instance, according to the National Anti-Corruption Council's report, only 2.2 percent of the 1,925 corruption cases that reached the court between 2002 and 2006 ended in a conviction.²¹

In 2001 the Congress passed the Law of State Contracting (Decree Number 74-2001), and its Regulation (Executive Agreement Number 055-2002), which apply to contracts for public works, the provision of goods and services, and consulting services entered into by the Centralized and Decentralized Public Administration organs in the Executive, as well as in the Legislative and Judicial branches (Article 1.) Article 38 of the Law, provides that public procurement shall be carried out through: (1) Public Tenders, (Articles 41 to 58); (2) Private Tenders, (Articles 59 and 60); (3) Public Competition, (Articles 61 and 62); (4) Private Competition (Articles 61 and 62); and Direct Contracting (Article 63). In addition, the Law also provides that procurements that are in excess of the amount established in the General Provisions of the General Budget of State Income and Expenditures, shall be carried out via public bidding (Articles 38, 59 and 61 Law of State Contracting.)²²

In 2005 Decree Number 010-2005 created the Honduran System of Information on State Contracting and Procurement, “HONDUCOMPRAS.”²³ Then, on November 23, 2006, the Honduran Congress passed the Transparency and Access to Public Information Law, becoming the sixth Latin American country to adopt such a law. The law established the National Institute for Access to Public Information (IAIP) as the clearinghouse for processing citizens’ information requests. However, the law contains a lot of gaps and a lot of provisions for keeping most of public information secret (i.e. “reserved information.”) According to this law, Government ministers are able to restrict any document that is believed to threaten economic stability or governance. “Virtually any document can be classified as reserved.” For instance, under the new law, all information about humanitarian aid is secret. The amounts of aid received and the uses to which they are put cannot be divulged.²⁴

¹⁹ Criminal Code of Honduras. Decreto Número 144-83. Available at: <http://www.upoli.edu.ni/icep/legis-mesoamerica/C%F3digo%20Penal%20Honduras.pdf>

²⁰ Mechanisms for Follow-Up on the Implementation of the Inter-American Convention Against Corruption (MESICIC). Tenth Meeting of the Committee of Experts. December 11-16, 2006. Republic of Honduras Final Report. http://www.oas.org/juridico/english/mesicic_II_rep_hnd.pdf

²¹ Marcela Sánchez “Honduras Losing Steam on Corruption Fight.” Washington post, Friday, July 27, 2007. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/26/AR2007072601615.html>

²² MESICIC 2 Round, *Ibidem*, p 9

²³ www.honducompras.gob.hn.

²⁴ Thelma Mejía. “Corruption – Honduras: A Murky Transparency Law.” Interpress Service. News Agency, 22 de Febrero, 2007. Available at: <http://ipsnews.net/news.asp?idnews=36682>

On February 10, 2007, about 30,000 Hondurans marched in Tegucigalpa to protest corruption and demand “real” transparency in government.²⁵ In responding to this demand, the United Nations Development Program (UNDP) developed a crucial project on municipal transparency in Honduras.²⁶ The project addressed the design and development of performance measurement indicators at the local level. It was executed from February to December of 2004. Its main objective was to support nine Transparency Commissions - civilian entities of social accounting - in nine municipalities in Honduras with the purpose of promoting transparent management of resources at a local level. It thus permitted the fortification of local government and therefore human development.²⁷

III. Possible Solutions and Conclusion

Based on the original experience developed in Honduras (as detailed above) the author suggests an “active transparency” system to prevent corruption. This innovative system will require the following basic issues:

- Full participation of the civil society through a number of “municipal representatives” elected directly by the public and the ones already elected during the municipal political elections.
- Technical assistants hired by a third party –an international organization (e.g., the Organization of American States-OAS) or an integrity watchdog organization.
- Active participation of the Mayor’s office.
- Training offered to citizens and Municipal officials on active transparency issues.
- Design of active transparency and corruption perception indicators before and after the implementation of the project.

In the end, the project will produce active transparency by providing citizens with crucial information on how governance is evolving, allowing them informed participation in decision making processes. It will promote inclusive participation.

Conclusion

Corruption perceptions developed by a number of international organizations such as Transparency International tell an incomplete (and somehow unreliable) story of the situation of corruption and anticorruption mechanisms such as transparency and integrity policies in a country. Furthermore, they ignore important transparency practices, both passive and active, at the national and local government level such as in the cases of Colombia and Honduras described above. A practical solution to the problem involves an active transparency system

²⁵ Freedom House (2007.) Report on Honduras
<http://www.freedomhouse.org/template.cfm?page=140&edition=8&ccrcountry=157§ion=84&ccrpage=37>

²⁶ United Nations Development Program (2005) “An Experience in Local Transparency in Honduras.”
http://www.undp.org/governance/docs/PAR_Guides_localtransparency.pdf

²⁷United Nations Development Program (2005). *Ibidem*. p12

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especially at the local government level. This mechanism would not only help to improve the oversight of government activities preventing corruption but it would also promote dialogue and inclusive citizen participation on government integrity and transparency efforts.