

U4 Expert Answer



Panama: overview of corruption risks in the judiciary and prosecution service

Query

What are the corruption risks in the Panamanian judiciary and prosecution service? Which legislative and institutional safeguards are in place, which gaps exist? Have there been efforts to strengthen integrity recently? What is the public perception regarding the integrity of the judiciary? Are there well known cases/examples?

Purpose

We are currently assessing the possibility of providing support to Panamanian institutions to strengthen integrity in the judiciary and prosecution service.

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Summary

The legal system in Panama faces serious challenges to its integrity. There is political interference in appointing judges, particularly to the Supreme Court. There is no independent body to investigate corrupt acts of public officials. It is problematic that by law only Supreme Court judges can investigate corrupt acts of National Assembly members and vice versa. Anti-Corruption Prosecution Offices are underfunded and understaffed. Some state institutions do not cooperate with prosecutors in corruption cases involving illicit enrichment of public officials.

1 Overview of the judiciary in Panama

Panama has a “civil law” or codified legal system. The legal system in Panama has been in need of thorough reform for many years. In 2005 the then president, Torrijos, after a scandal involving an exchange of corruption charges between Supreme Court judges, oversaw the development of a “State Pact for Justice”

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in which 27 proposals for reform were agreed. In 2011 Panama initiated a sweeping reform of its criminal law system, changing it from an inquisitorial system, where the court is involved in investigating all or part of the case, to an accusatory system featuring oral trials, where the judge is an impartial referee between the prosecution and defence. The reforms are intended to simplify and expedite criminal judicial cases and are due to be completed by 2015. However, they place a considerable burden on actors within the system to retrain and learn new legal procedures and skills.

Organisation of the judicial system

The highest court in Panama is the Supreme Court of Justice or “Corte Suprema de Justicia” that consists of nine judges and nine alternates and is divided into civil, criminal, administrative and general business chambers. The Appellate Courts or “Tribunal Superior” are one level below the Supreme Court. Other subordinate courts include Labour Supreme Courts, the Court of Audit, two circuit courts or “Tribunal Circuital” in each of Panama’s nine provinces, municipal courts, and electoral, family, maritime and adolescent courts.

Since 2012 the judiciary has a new mechanism for the electronic distribution of case files through a “Single Record of Entry” mechanism (Registro Único de Entrada – RUE). This mechanism is intended to improve transparency in the system and prevent corruption, as it distributes case files entering the judiciary in an equitable and random fashion, ensuring that they are not earmarked for particular courts. The system has been implemented in the civil law, maritime and criminal jurisdictions.

Appointment of judges

Judges of the Supreme Court are appointed for staggered ten-year terms by the president of the republic in agreement with the Cabinet Council, subject to the approval of the National Assembly. The appointment of judges to lower courts is carried out by a process of “co-optation” that confers the responsibility of selecting judges to judges of higher courts: Supreme Court judges select Appellate Court judges; Appellate Court judges select judges in subordinate courts and so on. At the local level, mayors appoint administrative judges, or *corregidores*, who exercise jurisdiction over minor civil cases and hold wide powers to arrest and impose fines or jail sentences of up to one year.

Judicial budget

The budget allocated to the judiciary is governed by the 1972 Political Constitution (“constitution”). Article 214 of the constitution establishes that “The Supreme Court of Justice and the Attorney General shall draw up the budgets of the Judiciary and the Office of the Attorney General, respectively....” They then submit the joint budget to the Executive and, combined, the two budgets should not amount to less than two per cent of the current revenue of the central government. The judiciary has an Internal Audit Directorate for accounting, financial, budgetary, operational and property-related auditing, which are common responsibilities of state internal audit bodies in Panama.

Judges’ pay

At the senior level, judicial salaries are considered adequate when compared with those of other public officials at similar levels. Indeed, Supreme Court judges are entitled to the same remuneration as ministers of state. At the lower court levels, there is an extreme pay differential between district court judges and superior court judges. District court judges earn less than administrative court personnel at the higher court levels. The pay issue has caused some district court judges to resign from the judiciary (Panama: Courts and Judgments 2014).

Disciplinary mechanisms

The National Assembly has responsibility for hearing accusations or complaints against judges or the Supreme Court and for disciplining them, including removing them from office. Disciplinary jurisdiction over judges and magistrates is exercised by the next highest level in the judicial hierarchy. The sanctions for magistrates, senior judicial district prosecutors, circuit judges and prosecutors are: a warning, a fine or suspension from office and non-payment of salary for a period not to exceed 30 days.

Judicial ethics and training

A Judicial Audit Directorate and a Judicial Ethics Office exist. There is a Judicial Code of Ethics, agreed in 2008, in addition to the Uniform Code of Ethics for civil servants. There is a Judicial Academy (Escuela Judicial) which advertises courses for judges on its website. A Regional Anti-Corruption Academy (ARAC) was established in Panama in December 2012 for Central America and the Caribbean. Its purpose is to establish a comprehensive and interdisciplinary

approach to training in the fight against corruption and to foster education and research. The Academy offers courses to prosecutors, judges, police officers and other government officials on how to handle corruption in government offices.

Whistleblower protection

There is no adequate law to protect whistleblowers within the judiciary and prosecution service, or indeed in any institution of state (OAS Report 2013).

Transparency of judiciary

The judiciary maintains a website to keep citizens informed of its activities. This contains a “transparency section” containing statistics and other information regarding the work of the judiciary. The judiciary’s “Automated Judicial Management System” is open to the public, allowing people to enquire about the distribution of cases, consult case files, see rulings and obtain judicial office statements. The website also allows the public to search for Supreme Court and higher court judgments. The judiciary also has a “Centre for Information and Attending to Citizens”, which is responsible for offering guidance to citizens, and receiving complaints, claims and suggestions. In addition, the judiciary has a programme, called JUDICIN, for training citizens in areas such as justice and peace, and human rights.

2 Overview of the prosecution service in Panama

The Public Prosecution Service in Panama (Procuraduría General de la Nación or PGN) prosecutes crimes and violations of constitutional or legal provisions, and monitors the professional conduct of government officials.

Organisation of the prosecution service

The PGN and the Office of the Solicitor-General (Procuraduría de la Administración) form part of Panama’s Office of the Attorney General (Ministerio Público). Approximately 2,725 officials work for the Office of the Attorney General. There are four prosecutor’s offices specialising in combating corruption, as well as the Ninth Anti-Corruption Prosecutor’s Office in Panama’s First Circuit, which

deals with crimes against public administration in which the amount missing is less than US\$100,000.

Senior prosecutors have competence at the national level, circuit prosecutors have competence within their respective provinces and municipal attorneys have competence within their districts.

Appointment of officials

The attorney general, like judges on the Supreme Court, is appointed by the president of the republic in agreement with the Cabinet Council, subject to the approval of the National Assembly, for a ten-year term. Other officials in the Office of the Attorney General are appointed by their superiors in the hierarchy.

Budget

The total annual budget allocated to the PGN in the past five years was as follows: US\$190,848 (2009); US\$191,862 (2010); US\$222,837 (2011); US\$469,983 (2012); and US\$462,345 (2013).

Powers of investigation and prosecution

The Office of the Attorney General is responsible for all criminal action, with the exception of bringing proceedings against the president of the republic and magistrates of the Supreme Court of Justice. These officials may be denounced directly by citizens before the National Assembly for acts that violate the constitution or the law, or are detrimental to the free exercise of public authority. The Office of the Attorney General is also, since the passing of Law 55 of 21 September 2012, excluded from investigating and bringing proceedings against illegal acts committed by members of the Assembly and their substitutes. That power is with the Supreme Court of Justice sitting *in banc* (i.e., in full court, with all nine judges) (Articles 2478 to 2492 of the Judicial Code).

Disciplinary mechanisms and accountability

The Office of the Attorney General has an internal Control and Oversight Secretariat that monitors and makes recommendations on working procedures, oversees accounting, financial, budgetary, operational and property-related matters and supports the Office’s efforts to detect and corroborate possible breaches of

the disciplinary code and any failures to comply with the duties of staff of the Office of the Attorney General.

A Disciplinary Council is responsible for investigating any violations committed by staff of the Office of the Attorney General. The Disciplinary Council prepares a report for review by the appointing authority, which will decide whether to impose the penalties of suspension or dismissal.

Ethics and training

There is a Uniform Code of Ethics for public servants applicable to officials in the PGN. In addition, the Chief Prosecutor for Administrative Matters was given the responsibility in 2002 to establish an "Inter-Agency Public Ethics network" comprising 104 state institutions to promote and strengthen a culture of ethics in the public sector.

Training for officials in the Office of the Attorney General is provided by the Judicial Academy (Escuela Judicial) that serves both the judiciary and the Office of the Attorney General.

Transparency

Like the website of the judiciary, the website of the Office of the Attorney General includes a transparency section that publishes statistics and other information regarding the work of the Office.

Whistleblowing mechanisms

In March 2013 an Office for Attending to Citizens was established to process complaints and whistleblowers' denunciations against civil servants working for the Office of the Attorney General, as well as suggestions of an administrative nature. However, no whistleblower protection laws are in place.

3 Corruption risks and examples of corruption in the judiciary

The Global Competitiveness Report 2013-2014 states that the independence of Panama's judiciary is the weakest in Latin America and the Caribbean, and globally it is ranked 118 out of 148 countries. The US Department of State in its 2012 Investment Climate Statement, and the World Bank's "Doing Business" project in its "enforcing contracts" data from June 2013 paint a picture of a judicial system in Panama that is slow, inefficient and corrupt. Personnel are poorly

trained, and those who use the court system lack confidence in its integrity and ability to resolve disputes.

Weak implementation of anti-corruption conventions

Panama ratified the United Nations Convention Against Corruption (UNCAC) in 2005 and the Organization of American States' (OAS) Inter-American Convention Against Corruption (OAS Convention) in 1998. [Reports from the follow-up mechanisms](#) established by these conventions indicate that Panama is slow to respond to official recommendations to fulfil its obligations under these conventions.

Weak powers to investigate corruption

The law in Panama permits only the National Assembly to initiate corruption investigations against Supreme Court judges, and only Supreme Court judges may initiate investigations against members of the National Assembly. As the US State Department puts it, this encourages in effect a "non-aggression pact" between these two branches of government. In 2012 the "New Code of Criminal Procedure" was updated to include new articles shortening further the time period in which a prosecuting magistrate may investigate a member of the National Assembly who is accused of corrupt acts. If investigations are not completed within the time period, the deadline for concluding an investigation may be deemed to have expired and the National Assembly member ceases to be investigated. In the latest OAS report on the implementation of the OAS Convention from September 2013, the OAS highlighted its concerns about the new rules and requested that the government of Panama investigate their effect on the success of investigations by prosecuting magistrates.

The staff of the Supreme Court are generally not skilled or sufficiently resourced to support investigations by the prosecuting magistrates. The OAS recommends they receive the necessary training and infrastructure to support the Court in its investigation of corrupt acts allegedly committed by members of the National Assembly.

There is no functionally autonomous disciplinary body in the judiciary to oversee the investigation and discipline of judges. The OAS recommends such a body be established, "capable of conducting preventive, concurrent, and ex-post oversight of magistrates, judges and other officers of the judiciary".

Political interference in judicial nominations

Nominations of Supreme Court judges by the president are typically made on the basis of personal and political considerations. Civil society has been blocked from participating in appointment processes and has strongly criticised the lack of transparency in appointment procedures, as well as the lack of information about proposed candidates (Due Process of Law Foundation 2007).

The top-down appointment system, whereby senior judges appoint judges in lower courts, not only enables the more senior judges to make appointments on the basis of political and personal considerations, but it also lends itself to undue interference by higher-level judges in lower-level cases in which they have no jurisdiction.

The system of mayors appointing administrative judges or *corregidores* has been criticised since many *corregidores* are not legally trained and many have not completed secondary education. The courts overseen by the *corregidores* lack adequate procedural safeguards for defendants and, in practice, appeal procedures are non-existent. Corruption charges have also been leveled against some *corregidores* (Panama Courts and Judgments 2014).

President Martinelli, the current president, who campaigned in 2009 on a promise to “eradicate corruption”, has been criticised for interfering with and undermining the independence of the judiciary. In 2009 he nominated two political allies to the Supreme Court. In April 2011 a Supreme Court judge appointed by President Martinelli resigned after accusations emerged that he had conspired to have the attorney general, Ana Matilde Gomez, ousted from office. The president replaced the judge with an official who worked in the Ministry of Economy and Finance. The appointment was contrary to a constitutional provision prohibiting the appointment to the Supreme Court of persons who had worked in a position of authority in the current administration. Further nominations to the Supreme Court by President Martinelli in January 2012 were criticised as consolidating the president’s influence over the judiciary (Due Process of Law Foundation 2007, [see also English language newspaper reports by Newsroom Panama](#)).

In 2011 the Supreme Court revived legislation to expand the court from nine judges to 12 and establish a fifth chamber within the Supreme Court that would be “a court of constitutional guarantees.” The president would

have been entitled to appoint three more judges, giving him a total of seven out of twelve appointees. After strong public protests in June 2012, the president backed down and the plans were withdrawn.

Lengthy court proceedings

Given the risk of delays in court proceedings or interference with the judicial process, many foreign businesses are advised to include arbitration clauses in their contracts (US Department of State 2012). Such clauses provide for a non-judicial mechanism for the resolution of disputes by arbitral tribunals.

Foreign nationals are warned in particular about the inability of Panama’s judicial system to resolve property disputes given the general lack of titled land, inadequate government administration of the property system as well as a weak judiciary (US Department of State 2012).

Inadequate budget and salaries

The budget allocated to the judicial system consistently falls considerably short of the budgetary needs of its institutions. Judicial remuneration is considered inadequate at the lower court levels, given that more senior judges may earn double the junior judges’ salaries. At the higher levels, judges are entitled to be paid salaries equivalent to those of ministers of state. Inadequate remuneration of judges and court staff can play a role in judges and court personnel accepting bribes.

Weak Court of Accounts

The Court of Accounts undertakes audits of state institutions. Frequently the Court is unable to access relevant information to perform its duties. The OAS recommends that legislation should be considered to enable the Court to enter into cooperation agreements with institutions whose information it requires to carry out audits. In addition, the Court should be able to impose appropriate administrative sanctions against public or private entities that delay delivering information requested by the Court of Accounts in connection with proceedings.

Other bribery and corruption risks

The types of corruption that may take place in a judicial system go beyond political interference and extend to myriad forms of bribery and nepotism. The Due Process of Law Foundation has recorded reports of:

“monetary payments in exchange for information; altering the contents of a report; sale of draft rulings; protection for individuals connected to drug trafficking; granting of alternative measures in exchange for money; lawyers drafting judgments; failure to transmit detention orders by junior personnel; and jail privileges, among others.”

4 Corruption risks and examples of corruption in the prosecution service

In August 2010 the then attorney general of Panama, Ana Matilde Gomez, was suspended by a five-to-four vote of the Supreme Court. She was sentenced to six months in prison, which was switched to a fine of US\$4,000, and disqualified from office for four years for abuse of office on account of authorising wiretapping while investigating a prosecutor accused of receiving a bribe. The controversial ruling was feasible because in the previous month the president, who was seen as opposing the attorney general, had appointed two new Supreme Court judges who were widely viewed as his allies and likely to rule against the attorney general (Newsroom Panama 2012). The case highlights the lack of independence of the judiciary as well as political interference with the prosecution service.

The latest report (September 2013) by the OAS on Panama's implementation of the OAS Convention details corruption risks in the prosecution service.

Lack of power to investigate and prosecute corrupt members of the National Assembly

As mentioned above, currently, citizens in Panama have the right to file a complaint about National Assembly members with the Supreme Court, but the law places a heavy burden on them to substantiate a complaint levelled against a member about acts of corruption. Consequently, few citizens have the resources to make such a complaint.

The OAS recommends that the power to file a complaint regarding offences allegedly committed by principal or substitute members of the National Assembly is returned to the Prosecution Service.

Lack of support for Anti-Corruption Prosecutor's Offices

The Anti-Corruption Prosecutor's Offices are seriously underfunded and under-resourced. The OAS reports that the Fourth Anti-Corruption Prosecutor's Office must share funds with the other Anti-Corruption Prosecutor's Offices since its budget was never approved by the Ministry of Economy and Finance, despite being included every year in the preliminary draft budget of the prosecution service. There are only two advisors in each office to help prosecutors analyse complex auditors' reports. Advisors' salaries are low and many leave after a short period of service to work in private companies or institutions that offer higher salaries. The OAS recommends that “wages, benefits, and promotion opportunities are sufficient to attract advisors and the other qualified staff needed to form a multidisciplinary team”.

“Acting Staff” (Servidores en Funciones) working in the Anti-Corruption Prosecutor's Offices do not have access to the possibility of becoming “career” civil servants. Indeed “permanent staff” in the prosecution service, who make up the majority of staff members, also have not been able to acquire the status of “career” civil servants. Neither acting staff nor permanent staff enjoy the employment law privileges and guarantees available to career civil servants. This situation can have a detrimental effect on institution-building within the prosecution service and on the quality of the performance of duties by staff.

Lack of training for prosecutors

Prosecutors lack ongoing and broader training, especially in the operation of the new adversarial criminal law system due to be implemented across all Panama's regions by 2015. They also require training on investigating acts of corruption. The recently established Regional Anti-Corruption Academy (ARAC) for Central America and the Caribbean was set up as a forum for providing training and expertise, and sharing experiences between countries.

Lack of transparency and accountability

The website of the Office of the Attorney General is not always operational, including links for the sections on transparency and making complaints. Currently, the annual management reports of the Office of the Attorney General and reports on the “developments in administration of justice” are not posted on its website;

by law the latter reports must be made publicly accessible.

The prosecution service does have an internal oversight body, “the Control and Oversight Secretariat”, but it is not permanently in place and lacks the human and financial resources to properly perform its functions (OAS 2013).

Need for cooperation between the prosecution service and the Office of the Comptroller General to combat corruption

The legal requirement of providing “preliminary evidence” of a punishable act before cases are investigated has been used in Panama to block efforts to combat corruption. Previously, preliminary evidence was only required in select cases but now the requirement has been extended to many types of criminal cases.

The Anti-Corruption Prosecutor’s Office may not investigate any government official for “unjustified enrichment” (also referred to as “illicit enrichment”) unless it is provided with preliminary evidence of the punishable act, such as a report from the Office of the Comptroller General. The Office of the Comptroller General and the PGN do not cooperate in sharing information. Indeed the PGN is not empowered to forward to the Office of the Comptroller General any complaint concerning illicit enrichment, nor can it appeal any decision made by the Comptroller General’s Office regarding the archiving of an investigation. There have been cases where the Office of the Comptroller General has been slow to produce auditor’s reports for cases brought before the courts by the PGN. Prosecutors have been forced to ask the judge for stays pending completion of the report and, when the report is not received on time, to ask for dismissal of a case (OAS 2013).

The OAS recommends that Panama eliminates the need for preliminary evidence in cases of unjustified/illicit enrichment and that the PGN and the Office of the Comptroller General coordinate better in investigating these crimes. The PGN should be allowed to forward complaints to the Office of the Comptroller General and appeal decisions regarding the archiving of investigations.

5 Public perception of the integrity of the judiciary and the prosecution service

Citizens in Panama do not have high confidence in the legal system’s ability to dispense fair and timely justice.

The [Latin American Public Opinion Project](#)’s country report for Panama 2013 has some data on perceptions of the justice system. On a scale of 0 (low agreement) to 100 (high agreement), respondents gave Panama 48.7 in response to the question “Courts guarantee a fair trial”. The Supreme Court scores 46.1 out of 100 points and is ranked 7th out of the 11 institutions assessed in terms of their performance.

The [online database of the Latin American Public Opinion Project](#) provides further information on perceptions of the performance of the justice system. On a scale of 1 (representing “no confidence”) to 7 (representing “high confidence”), more than 40 per cent of Panamanian citizens opt for 3 or less when asked how much confidence they have in the justice system. When asked if they had to pay a bribe when using the justice system, 15 per cent of those questioned said “yes”.

Transparency International’s [Corruption Perceptions Index \(CPI\)](#) scores and ranks countries annually based on how corrupt a country’s public sector is perceived to be on a scale of 0 (highly corrupt) to 100 (clean). In 2013 Panama scored 35 out of 100 and ranked 102 out of 177 countries.

6 Recent efforts to strengthen integrity in the judiciary and the prosecution service

The US International Development Agency (USAID) and American Bar Association Rule of Law Initiative (ABA-ROLI) have contributed financial and human resources to the transition of the Panamanian criminal law system from an inquisitorial to an accusatorial system, due to be completed by 2015. This has included ABA-ROLI trainings for Panamanian lawyers, public defenders, prosecutors and judges in how to operate in an accusatorial criminal justice system.

The [Inter-American Development Bank](#) supports rule of law programmes in Panama. In 1998 the Inter-American Development Bank loaned the government of

Panama US\$18.9 million to reform the judicial system; the government of Panama contributed another US\$8.1 million to the programme. The loan was designed, amongst other aims, to speed up the court process and help the courts deal with a backlog of cases, improve strategic administration and planning, as well as improve judicial training. In addition, the loan was directed at strengthening the investigative capabilities of the Office of the Attorney General. In 2007 the Inter-American Development Bank approved a US\$21.6 million loan for justice administration in Panama. The programme is designed to expand access to justice services and strengthen institutions.

The [Fundación para el Desarrollo de la Libertad Ciudadana – Capítulo Panameño De Transparencia Internacional](#), (Foundation for the Development of Citizen Liberty – Panamanian Chapter of Transparency International) implements rule of law projects focusing on transparency, integrity and accountability of the legal system. For example, it ran a “Public Institutions Integrity Index” project, measuring three factors: transparency, citizen participation and institutionality.

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8 Further reading

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For work on the justice system in Panama see Alianza Pro Justicia: <http://www.alianzaprojusticia.org.pa/>