

# Characteristics of the Judiciary vs. Corruption Perception

## A preliminary assessment of this relationship in Latin America

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¿Hasta qué punto se asocian la eficiencia y calidad de una judicatura con el nivel percibido de corrupción? A pesar de su importancia, esta pregunta ha sido mayormente ignorada por la literatura interdisciplinaria que se enfoca en la corrupción y la reforma judicial. El presente artículo busca evaluar esta relación en América Latina, región en que la corrupción generalizada y la ineficiencia judicial perjudican la gobernabilidad. Considerando distintas variables relacionadas a la calidad de la judicatura: inversión en el sistema judicial; número de jueces por habitante; tasa de resolución en cortes civiles de primera instancia; y los salarios de jueces en las cortes ordinarias y superiores. Analizando cómo se relacionan estas variables y los niveles percibidos de corrupción en selectos países latinoamericanos. Identificando tendencias, analizando los resultados extremos y ofreciendo algunas conclusiones preliminares para esta pregunta.

*'Cree, cree en algo  
Que no sea corrupción'*

Yolanda Pantin<sup>1</sup>

To what extent are the efficiency and quality of a judiciary associated with the perceived level of corruption? Both the achievement of optimum judicial institutions and combating corruption are goals related to improving governance –the capacity of the state to respond to their citizens' demands, and to deliver the services and goods it is purposefully meant to provide.

Corruption has long been considered a threat to state-building.<sup>2</sup> Its negative effects in the market

economy, the development of a stable and representative political system, and perverse influence on social dynamics make it imperative to know more about the reasons which explain it, as a prerequisite to devise strategies to undermine it. More importantly, it is a key concern of the citizens: 'corruption is now recognized as perhaps the most challenging governance problem afflicting many countries (...) public awareness about the corrosive effects of corruption is at an all-time high and corruption is invariably among the top problems cited in citizen surveys'<sup>3</sup>. Latin America, as we reckon, is no exception. This approach has motivated a vast effort to developing reliable indicators about the relative incidence of corruption across countries, along with

<sup>1</sup> 'Believe; believe in something other than corruption'. Pantin, Yolanda: *Poesía Reunida, 1981–2002*. Editorial CEC, S.A., Caracas, Venezuela, 2004, p. 237.

<sup>2</sup> For a long time, some scholars did not criticize this phenomenon, preferring a 'functionalist' approach which did not deem corruption a malaise for democracy *per se*. However, 'now that democracies have emerged widely in the Third World, corruption has begun to be viewed quite differently, and it is seen as a threat to the consolidation of those regimes'. Seligson, Mitchell A.: The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries, in *The Journal of Politics*, Vol. 64, No. 2, May 2002, p. 408.

<sup>3</sup> Bhargava, Vinay and Emil Bolongaita: Challenging Corruption in Asia; Case Studies and a Framework for Action. The International Bank for Reconstruction and Development/The World Bank, 2004. This has been recognized at the utmost level of international political debate. In H.E. Kofi Annan's words, 'it is now widely understood that corruption undermines economic performance, weakens democratic institutions and the rule of law, disrupts social order and destroys public trust, thus allowing organized crime, terrorism and other threats to human security to flourish'. Message of Secretary General of the United Nations Kofi Annan, in 'Global Action Against Corruption, the Merida Papers', United Nations, Vienna, 2004, p. 1.

sophisticated studies at the macro and micro levels about why corruption is considered ‘graver’ in some polities than others.

On the other hand, common sense indicates that a poorly organized and/or underachiever judicial system should be associated with higher levels of corruption. One of the key mechanisms to deter corruption is arguably the existence of a system to denounce, prosecute and punish malfeasants. An ineffective judiciary should, in theory, be hampered to provide a net to catch those involved in corruption activities. On the other hand, beyond crime prevention, courts that solve conflicts promptly, especially those against abuses of power by the state or day-to-day civil or commercial conflicts, reduce the need for ‘alternative’ methods that would involve bribing or fraud. Hence, a judicial system working efficiently should increase constraints upon corruption wrongdoers, and make it more difficult to perform the actions through which they extract benefits, *i.e.* increase the costs associated with engaging in rent-seeking.

The eventual existence of judicial crusades against corruption has involved the open prosecution and impeachment of high-position office-holders, including heads of State. Alas, although events such as these can give occasional widespread fame and legitimacy to a country’s judiciary, this unfounded celebrity can give a misleading impression. What really matters is to achieve a systematic, consistent capacity to deal with cases of administrative and political corruption and, more generally, an aptitude to deliver the ‘goods’ of justice: To solve conflicts in fair, efficient and predictable ways, with due regard to the Law and in a timely manner. Judicial fighting against corruption should mean more than isolated messages of good will.

However, an assessment of the relationship between the characteristics and performance of a judiciary, and corruption perception, is not as simple as it might first seem. The multiple phenomena that we refer to as ‘corruption’ are quite often not easy to observe or assess. Furthermore, institutional, structural and cultural factors altogether may play different substantial roles in the explanatory equation of corruption, and the great number of interrelations between these different variables hinders our ability to make accurate generalizations.<sup>4</sup>

<sup>4</sup> In this regard, see Treisman, Daniel: The Causes of Corruption: A Cross National Study. *Journal of Public Economics* 76, 399–458.

On the other hand, cross-country assessments of features or dynamics of judicial systems are cumbersome as well, especially because it is only in recent times that reliable and comparable data in Latin America and other parts of the world has been available more easily. Traditionally, governments lacked genuine interest in collecting such information.<sup>5</sup> As with the case of the comparative analysis of judicial independence, a sister topic, it is difficult to devise sound measurement strategies to assess the quality and performance of judicial systems.<sup>6</sup>

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To contribute to fill this gap, I take a first step to assess the relationship between some basic indicators related to the quality/efficiency of the judiciary, and the incidence of corruption. I focus on Latin America, a region where both the quality of judicial institutions has been consistent and severely criticized, and corruption, in all its different manifestations, is considered a heavy burden.<sup>7</sup> This region has been the beneficiary of significant efforts to combat failing judicial systems and widespread corruption, through special programs commanded by governments, multilateral institutions, non-governmental organizations, and so forth; via special programs of assistance in areas such as the protection of human rights, the implementation of alternative dispute resolution mechanisms, and judicial administration. Hence, a

<sup>5</sup> There are two main reasons for the lack of data available: ‘First, national judiciaries were not historically concerned with performance data; they are only now beginning to gather relevant information in a systematic basis. Second, comparative law scholars have not tended to show an interest in quantitative data on judicial efficiency, preferring qualitative comparisons instead. An exception to this trend was a 1979 study, headed by John Merryman, David Clark and Lawrence Friedman, compiling extensive legal data for six countries in Latin America and Europe over the period between 1945–1970’. See Dakolias, Maria: Court Performance around the World: A Comparative Perspective. World Bank Technical Paper; No. 430. *The World Bank*, Washington, D.C., 1999, pp. 2–3. In recent years, a number of interesting datasets have been released with the purposes of increasing public awareness about the judicial system, and ease and increase scholar and professional efforts to understand the reasons and consequences of its dynamics. A parallel, and much welcome, increase in the volume and quality of comparative assessments of courts has accompanied this trend, making their analysis more feasible.

<sup>6</sup> Positive analysis of judicial independence has proven truly problematic for similar reasons. Scholars still struggle to agree on the best way to define what it is, and how it should be measured. For a recent discussion in this regard, see Hayo, Bernd and S. Voigt: Explaining *De Facto* Judicial Independence. *International Center for Economic Research*. Working Paper Series, N° 1, 2004.

<sup>7</sup> See Prillaman, William C.: *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*. Praeger, Greenwood Publishing Group Inc., Westport, Connecticut, USA. 2000.

snapshot of the region's status in different judicial indicators with regards to corruption, the quintessential malaise in developing democracies, also gives us a sketch of where we are standing in the process of crafting the rule of law in these polities.

The first task in any study about corruption is to agree on its definition, and on an adequate measurement strategy to assess it.<sup>8</sup> Both issues are difficult and have hampered cross-country study in the past.<sup>9</sup> Corruption in fact can be examined from many different perspectives, and the choice of any of them influences the method selected to perform the study.<sup>10</sup> The phenomenon has been described as 'the provision of material benefits to politicians and public officials in exchange for illicit influence over their decisions'<sup>11</sup> or, more commonly, as the 'use of public office for private gain'.<sup>12</sup> This definition includes disparate modalities of embezzlement, fraud, petty crime, judicial misfeasance, and other forms of misappropriations of state's resources and wrongful allocation of public goods.

At this stage of the analysis, it is better to follow a general approach, to reject distinctions made among different types of corruption activities, and to get around the idiosyncrasies of each country with regards to what constitutes a corrupt act. We know that, 'what is corruption to some may not be

corruption to others'.<sup>13</sup> Furthermore, corruption is not always considered illegal. In fact, corruption disguised under legal robes is often more difficult to assess. However, for the purposes of assessing the relationship between judicial systems and the 'general' phenomenon of corruption, let us center our attention in the violation of that said 'public order' that the judiciary is meant to uphold and protect in a State. Sometimes, this will refer to the abstract possibility of submitting minor acts of corruption to trial, in others it will refer to the ability of courts to reject undue influences from powerful economic or political actors. By presuming, at least, that the control of these different expressions of corruption is performed by courts, that legal mechanisms have an influence in the transparency of the public sector; that is, by *assuming the logical importance of this connection*, we can figure out that there is an *abstract* dimension in which this analysis is feasible and necessary.

Now, the measurement of a real, true, objective level of corruption, as such, is basically unfeasible. Even counting the cases of embezzlement, fraud, and others of a similar sort that are tried before local courts at any point in time would not allow us to determine with accuracy the level of corruption of a given country. In many countries where corruption is low and almost unnoticeable, one could find a deceiving high rate of corruption-related crimes per inhabitant, because it embodies conducts rejected by society and punished accordingly. In other countries where corruption is high, there might be a very small number of cases of prosecution of corrupt acts, because the phenomena in question are too widespread, up to the point that they become a social norm, and/or are not illegal, and/or because of the lack of institutional capacity to monitor them. Moreover, differences in terms of criminal prosecution systems and political idiosyncrasies could enervate the possibility of obtaining comparable data. A look at the prevailing literature on the topic in general leads to a similar conclusion.<sup>14</sup> Thus, this is an incorrect strategy.

Therefore, we need to rely on data focused on the people's *perception* of corruption. There are several available datasets, based upon different surveys of people working or residing in different countries, about how pervasive they believe corruption is in their respective environments. Sophisticated combined instruments have been prepared based on

8 'Corruption is an elusive phenomenon that is difficult to capture in a single crisp definition', Kunicová, Jana and Susan Rose-Ackerman: Electoral Rules and Constitutional Structures as Constraints on Corruption. *British Journal of Political Science*, Vol. 35, 2005, p. 576.

9 'At a minimum, two crucial issues hinder generalizable explanations of political corruption. First, the term "corruption" defies clear conceptualization and precise definition. Second, methodological pitfalls plague the operationalization and measurement of political corruption'. Lancaster, Thomas and Gabriella R. Montinola: Toward a Methodology for the Comparative Study of Political Corruption. *Crime, Law and Social Change*. 27 (3-4), 185-206, p. 185.

10 Definitions are summed up in two groups: 'One set conceptualizes corruption as deviation from some standard, such as the public interest, legal norms and moral standards sanctioned by the people. The second set of definitions associates corruption with system-level attributes, such as patrimonialism (as opposed to rational legal bureaucracy), primordial notions of the public interest (as opposed to the civic notion), or systems in which bureaucrats regard public office as private business'. Kunicová and Rose-Ackerman, *Op. Cit.*, pp. 576-577.

11 Weyland, Kurt: The Politics of Corruption in Latin America. *Journal of Democracy*, Vol. 9, April 1998, pp. 108-121; consulted on-line at: [http://muse.jhu.edu.pallas2.tcl.sc.edu/journals/journal\\_of\\_democracy/v009/9.2weyland.html](http://muse.jhu.edu.pallas2.tcl.sc.edu/journals/journal_of_democracy/v009/9.2weyland.html)

12 Rose-Ackerman, Susan: *Corruption and Government. Causes, Consequences and Reform*. Cambridge University Press, Cambridge, England, 1999.

13 Lancaster and Montinola, *Op. Cit.*, p. 188.

14 See, for all, Graf Lambsdorff, Johann: *Consequences and Causes of Corruption -What do we know from a Cross-Section of Countries?* At University of Passau's web-site, accessed on March 30, 2006: [http://www.wiwi.uni-passau.de/fileadmin/dokumente/lehrstuehle/lambsdorff/downloads/Corr\\_Review.pdf](http://www.wiwi.uni-passau.de/fileadmin/dokumente/lehrstuehle/lambsdorff/downloads/Corr_Review.pdf)

these studies. The most popular is the Transparency International's *Corruption Perceptions Index* (CPI). This instrument 'ranks more than 150 countries in terms of perceived levels of corruption, as determined by expert assessments and opinion surveys';<sup>15</sup> in this respect, countries are given a score between 10 (more clean/less corrupt) and 0 (less clean/more corrupt).<sup>16</sup> The data is available yearly between 1995 (first edition) and 2005 (last edition).

The index is prepared out of '16 different surveys of business people'. This raises an immediate concern: Is this 'perception' an unbiased assessment of a country's real level of corruption? Transparency International experts express that this is an assessment of 'experienced respondents'<sup>17</sup> that includes perceptions by foreign non-residents, neighboring non-residents and residents. They also highlight that the 'data correlate well with each other, irrespective of (the) different methodology'.<sup>18</sup> According to Treisman, who used an earlier version of the database as his measurement of corruption in a comprehensive study about the causes of this phenomenon, 'the consistency of (TI's and the other instruments)' across time period, source, and method of construction reduces the risk that one is analyzing the quirks or guesses of individual organizations'.<sup>19</sup> For instance, in the case of the 2005 publication, all surveys considered use a ranking of nations, and measure the 'extent' of corruption,<sup>20</sup> without reference to any other variable. Although there seems to be some variation due to the nature of the sources consulted by the organization, the purpose is to provide a 'snapshot of the views of businesspeople and country analysts'.<sup>21</sup>

The CPI database has been consistently used by scholars from different disciplines to do

cross-section and/or time-series assessments of the causes of corruption. This is an additional advantage of using this database: it allows easier comparisons with results obtained from previous research.

What are the causes of corruption? What explains that some countries have greater corruption levels than others? Recent years have witnessed an impressive array of works exploring the political, economic, cultural, legal and ethical dimensions of corruption. A comprehensive survey of the most recent quantitative-based literature is provided by Graf Lambsdorff;<sup>22</sup> who classifies the works by the type of explanation analyzed and gives an efficient summary of the main evidence provided so far. Others good reference frameworks are provided by Adsera et. al.,<sup>23</sup> Andvig and Fjeldstad,<sup>24</sup> and Treisman.<sup>25</sup> With the wider objective of studying what impacts good governance, La Porta et.al.<sup>26</sup>, among others, make also a significant contribution. These are only a handful of the myriad works that have surged in the last years in this respect.

With respect to the relevance of judicial/legal systems, the influence of country's type of legal system on 'good governance' has been assessed,<sup>27</sup> with the main distinction being made between Socialist and Civil Law systems –arguably less effective in curbing corruption– versus Common Law systems, which are meant to enforce private rights more efficiently and, therefore, reduce corruption in-

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<sup>15</sup> Taken from [http://www.transparency.org/policy\\_and\\_research/survey\\_indices](http://www.transparency.org/policy_and_research/survey_indices).

<sup>16</sup> 2005 Transparency International's Corruption Perceptions Index web-site at [http://www.transparency.org/policy\\_and\\_research/surveys\\_indices/cpi/2005](http://www.transparency.org/policy_and_research/surveys_indices/cpi/2005).

<sup>17</sup> (TI, 'CPI Methodology', p. 1), The list of surveys used for the 2005 CPI can be consulted at Ibid, p. 2.

<sup>18</sup> Ibid, p. 6.

<sup>19</sup> Treisman, Op. Cit., p. 410.

<sup>20</sup> The phrase extent of corruption 'seems to equally reflect the two aspects, frequency of corruption and the total value of bribes paid' (CPI methodology, p. 5).

<sup>21</sup> Ibid, p. 3.

<sup>22</sup> Op. Cit. See also, Corruption in Empirical Research – A Review. Transparency International Working Paper: [http://www.user.gwdg.de/~uwvm/downloads/contribution05\\_lambsdorff.pdf](http://www.user.gwdg.de/~uwvm/downloads/contribution05_lambsdorff.pdf)

<sup>23</sup> Adsera, Alicia; Carles Boix and Mark Payne. 2003. Are You Being Served? Political Accountability and Quality of Government. *Journal of Law Economics & Organization* 19 (2): 445–490.

<sup>24</sup> Andvig, Jens Christian and Odd-Helge Fjeldstad. 2001. "Corruption: A Review of Contemporary Research." Norwegian Institute of International Affairs Report 268. Oslo.

<sup>25</sup> Treisman, Op. Cit.

<sup>26</sup> LaPorta, Rafael; Lopez-de-Silanes, Florencio; Shleifer, Andrei and Vishny, Robert: The Quality of Government. *Journal of Law, Economics and Organization*. Vol. No. 15 (1), 1999, pp. 222–279.

<sup>27</sup> For instance, see LaPorta et. al., Ibid.

cidence.<sup>28</sup> However, there have been reservations about the validity of this classification.<sup>29</sup> A more careful evaluation should also include an assessment of the specific characteristics of each legal system, especially of the new legal trends that have blurred the traditional differences between them; such as constitutional review; arbitration; type of criminal prosecution model; new substantive criminal law rules; tax law, competition law and administrative law; the hierarchy of legal sources (statute-based or jurisprudential), and so forth, all of which might have a significant impact on the relationship between legal systems and corruption perception.

Now, a related, but different question is the relevance that characteristics of the judicial systems have in explaining corruption perception. Although the literature about the assessment of comparative judicial performance has increased vastly, few studies have attempted to explore this relationship in a systematic manner.<sup>30</sup> The ideal way to do this would be to come up with a single measure of judicial quality. Such a measure, however, is not readily available. Hence, at the most basic level, given the intellectual and methodological complexity of such task, it is better to rely on indicators of court's efficiency and quality, familiar to judicial reform experts.

Following this approach, 'judicial administration is defined by the concepts of efficiency, access, fairness, public trust, and judicial independence'.<sup>31</sup> We could add the problem of judicial corruption or,

more specifically, the proclivity of judges and other judicial personnel to use their appointments for their own benefit, as one of the greatest contributors to general perception of corruption. All these concepts are different and deserve theoretical insight on their own merit. However, the most important point to remark is that 'these categories are closely interdependent',<sup>32</sup> which actually means that the fullest assessment of the impact of the judiciary in corruption should include them all. When evaluating the relative impact of judicial reform programs, Dakolias focused on court *efficiency*. This concept embodies '( . . . ) the use of resources to produce the most of what a court system values where the values are timeliness individual attention to cases and effective advocacy'.<sup>33</sup> The problem of efficiency is related to time and ultimately to *quality*. Several problems in the judiciary such as congestion, cost and delay are typical of an inefficient judiciary. Issues such as the lack of personnel to deal with cases and the poor incentives for judges in terms of good salaries and benefits, reputation, adequate equipment and training come immediately to our minds as some of the causes that might explain the lack of efficiency.

In sum, as we know, basic problems in the organization of the judiciary lead to a lack of capacity for administering justice, for producing decisions timely and efficiently. Thus, the aforesaid analysis focused on the following indicators: '1) Number of cases filed per year; 2) Number of cases disposed per year; 3) Number of cases pending at year end; 4) Clearance rate (ratio of cases disposed to cases file); 5) Congestion rate (pending and filed over resolved); 6) Average duration of each case; and 7) Number of judges per 100,000 inhabitants'.<sup>34</sup> Not all of these aspects are related to efficiency; some of them deal with *quality*, especially number of judges per inhabitant, and the time judges take to decide cases, that is, duration. The idea is clear: Given our lack of adequate and uniformly-agreed measurement strategy for these concepts, an initial analysis should explore each one separately.

Hence, I used Dakolias' this framework as a platform to start assessing the relationship between judicial performance and corruption. I restricted my analysis to the information provided by the World Bank's web-site, 'Legal and Judicial Sector at a Glance: Worldwide Legal and Judicial Indicators', which was collected from diverse sources, such as government representatives, legal and judicial sector actors, and official government resources,

<sup>28</sup> In this regard, Treisman comments that it has been argued that legal cultures coming from a British colonial past show a greater concern for procedures more than those which belong to other cultures, but that the overlap between legal system and colonial experience is not perfect. In fact, he finds out that former British colonies show significant lower perceived level of corruption; but he does not find a statistically significant disadvantage for having a Hispanic or Portuguese colonial past. On the other hand, Treisman's statistical model's results suggest that countries with Common Law and a period of British rule have lower perceived corruption, British heritage without Common Law may also have lower perceived corruption; but countries with common law without British cultural influence have higher corruption. See Treisman, Op. Cit.

<sup>29</sup> See Voigt, Stefan: Are international merchants stupid? A Natural experiment refutes the legal origin theory. International Centre for Economic Research. Working Paper No. 21/2005.

<sup>30</sup> According to Graf Lambsdorff, Op. Cit., the World Bank has assessed the quality of the judiciary, finding that an index of the predictability of the judiciary has a significant positive impact in the level of corruption in 59 countries. However, that study did not break down the index into the different variables that, in this respect, should be taken into consideration. The purpose of this paper is to look into the different variables first, before proceeding to elaborate a complex index that could do justice to the influence of the different court indicators.

<sup>31</sup> Dakolias, Op. Cit., p.5. See also Buscaglia, Edgardo and Maria Dakolias: Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account. Legal and Judicial Reform Unit Technical Paper. The World Bank (1999).

<sup>32</sup> Ibid.

<sup>33</sup> Ibid., note 17.

<sup>34</sup> Ibid., p. 7.

including documents and web materials;<sup>35</sup> and to data from the latest Report on Judicial Systems by the Justice Studies Center of the Americas (JSCA–CEJA),<sup>36</sup> a comprehensive database of the Inter–American context. Accordingly, this preliminary assessment was focused on the following variables, which are closely related to the efficiency and quality of the judiciary: Spending in the judicial sector per inhabitant; salaries of the high court and lower court judges; number of judges per inhabitant; and clearance rate in civil courts.

All of the aforementioned indicators are intrinsically related to a judiciary with good performance. However, each one of these indicators has a connection with corruption perception of its own. The theoretical reasons that lead to a separate analysis of each indicator –and, therefore, to separate predictions– are the following:

**Investment in the judiciary:** A first theoretical premise is that greater spending in the judicial sector should be associated with a more capable judicial system and, therefore, with lower levels of corruption perception. Conversely, poor investment in the judicial sector should lead to a lack of a capacity of the judiciary to uphold rule of law and deter wrongdoings, including those activities catalogued as ‘corruption’; along with a generalized clumsiness to deal with commercial and civil cases efficiently. Moreover, a poorly funded judiciary contributes directly to increasing the people’s perception of corruption: Any person –not only businessmen– should tend to find a country more corrupt if one of its most distinctive institutions shows signs of neglect.<sup>37</sup>

<sup>35</sup> Last checked at <http://www4.worldbank.org/legal/database/Justice/>. This web–site has been specially devised with a view to ease the measurement of benchmark progress with regards to judicial reform projects

<sup>36</sup> [www.cejamerica.org](http://www.cejamerica.org). See the 2004–2005 version of the ‘Report on Judicial Systems in the Americas’ ([http://www.cejamerica.org/reporte/muestra\\_portada.php?idioma=ingles](http://www.cejamerica.org/reporte/muestra_portada.php?idioma=ingles)).

<sup>37</sup> – However, there is also another possibility: That is, given the growing awareness in governments, multilateral institutions, the international business community, policy–makers of different sort, and so forth, about the impact of the judiciary –not only in reducing corruption but with regards to other aspects of state–building and the development of a thriving private sector in the economy– there might be countries where contrary to our expectancies investment in the judiciary is high, despite a poor performance with regards to corruption. What would these cases be? We do not analyze in this paper time–series data that would allow us to measure the changes that have taken place in investment in the judiciary in the past; especially after the 1980s, when many countries undergone liberal–democratic revolutions that should have increased investment in the judiciary as a method to increase governance and state–building. Therefore, there might

This variable is conceptualized in terms of the money spent per inhabitant, taking into account purchase power parity. I would like to remark that this should not be taken as an infallible indicator of judicial administration efficiency, because money invested does not guarantee efficient results. There is also the possibility that this greater spending is, at least in part, due to the greater concern about widespread corruption. Moreover, richer countries would have more money to spare and, probably, would have to channel a lower percentage of resources to have a functional judiciary.<sup>38</sup> Thus, from this discussion, the following statement results:

### **Prediction 1 (H1): Greater Investment in the judiciary should be negatively associated with corruption perception**

**Number of Judges per capita:** The reasons to analyze this indicator are similar to the ones already provided above: Instead, now the focus is on the availability of *human* resources. Following the discussion extended in the previous paragraph, we should expect that the greater the number of judges per inhabitant, the lower the level of corruption. Similar caveats explained before apply in relation to the possibility that a greater number of judges could also be associated with higher levels of corruption, though, but this should be an exception, not the expected pattern.<sup>39</sup> Hence, we have this statement:

### **Prediction 2 (H2): The number of judges per capita should be negatively associated with corruption perception**

**Congestion and Clearance rates:** Now, with regards to performance, backlogs are an excellent indicator of a dysfunctional judicial sector. An efficient judiciary should, above all, produce and deliver timely decisions. A judge’s duty is to decide, and decide quickly and accurately... *justicia tardia no es justicia*. The existence of large backlogs in the

be countries where investment in the judiciary is high but which, anyway, suffer from high corruption perception; either because there has not been enough time for their judicial–reform agendas to make any significant changes; because the reforms have been inefficient and lack sound results, or because other exogenous reasons continue to drive perception high or outweigh the efforts made in this respect. The latter possibility is especially important –many judicial reform efforts, despite being successful, are not acknowledged by the general public or by the direct users of the judicial system, because other factors, either about the judiciary or of another sort, make them disregard the efforts made.

<sup>38</sup> In a further large cross–country assessment, issues such as the disparity of countries’ size and resources will be captured by some of the other explanations that I have cited above.

<sup>39</sup> Another similar evaluation can be made with respect to court’s personnel, and the proportion of personnel vis–à–vis judges. This indicator would be part of a holistic evaluation of court efficiency.

judiciary should provide a good proxy of rampant inefficiency, with judges who are failing to perform their most basic duties; therefore, this should also be associated with higher perception of corruption. In many countries, the lack of capacity to deliver timely decisions provides an incentive for judges or judicial employees to engage in receiving unduly perks from litigants who are interested in getting their decisions quickly (and often for the benefit of the ‘contributor’). Furthermore, as we know, the ‘congestion’ phenomenon is usually related to another aspect: The capacity of the courts to decide as many cases as are filed. Moreover, a large accumulation of cases should be a good indicator of a long time to decide: Backlogs do not grow overnight.

This group of phenomena: Backlogs, failure to clear the cases’ docket and untimely decisions are interrelated. Despite its diverse relationship with corruption perception, for the purposes of the present work it is enough to focus on any of them. Given the availability of clearance rates in the databases that we used for this work, I decided to rely on this indicator in particular. Thus, the prediction is:

**Prediction 3 (H3): A Higher clearance rate should be negatively associated with corruption perception**

**Salaries:** Countries where judges receive sufficiently large and ‘encouraging’ salaries should have a lower perceived level of corruption. The most evident justification for this criterion is that judges that are paid decent salaries have a lower interest in looking for side-payments as a means to obtain a good standard of living, beyond the more important reason that good remunerations will attract the best candidates for the judicial posts. A similar rationale applies across all the judiciary: Judges should be well-funded, not only in the high spheres (that is, members of the high courts) but more specially in the middle-rank and lower courts, which are the ones that most citizens have greatest access to, and where they will perceive corruption taking place more fiercely. This leads us to a fourth, and definitive, statement:

**Prediction 4 (H4): Higher salaries of judges should be negatively associated with corruption perception**

Moreover, an additional issue should be borne in mind: Most of the characteristics of the judiciary that I mention here can be considered both causes and consequences of corruption. Sometimes it is too difficult to assure in what direction runs the causality link. In a country suffering from widespread corruption, it is reasonable to assume that

the administration of justice is deprived of key resources and, more importantly, would suffer from high *judicial corruption* itself. This is only one example from several potential situations that illustrate the difficulty of this analysis. However, this does not make the identification of trends less interesting or useful.<sup>40</sup>

This analysis is limited to assess the relations between the judicial systems’ characteristics established above, and the relative level of corruption perception.<sup>41</sup> Eighteen (18) Latin American countries are included: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. Please take into account that information of all indicators is not available for all of these countries in the two sources consulted. Table 1 summarizes the data at hand:

*Table 1: Descriptive Summary of the Database*

Variable	obs.	mean	std. dev.	min.	max.
CPI2005	18	3.48	1.33	2.1	7.3
Investment in the Judiciary	15	26.3	18.91	6.01	88.18
Salary High Court Judge	9	192845.3	101954	94437.91	408838.6
Salary Lower Court Judge	9	73790.2	38680.42	33168.54	147824.6
Judge per Inhabitants	16	8.98	3.21	5	16.88
Clearance Rate Civil Courts	15	0.71	0.27	0.16	1.17

Notes: Data from 2004, unless such year not available and replaced for the nearest possible year. Most data comes from the 2004-2005 JSCA-CEJA Report (2nd Edition), available on-line at <http://www.cejamericas.org/reporte>. This was supplemented with information from the aforesaid World Bank’s ‘Legal and Judicial Sector at a Glance’ Web-site, *Op. Cit.*  
 CPI2005: Transparency International’s Corruption Perception Index 2005.  
 Investment in the Judiciary: Measured as amount of resources devoted to the judiciary per capita, in purchase power parity US dollar fashion (PPP).  
 Salary of High and Lower Court Judges: Annual salary expressed in PPPD terms.  
 Judge per inhabitant: Number of Judges per 100,000 inhabitants.  
 Clearance Rate Civil Courts: Proportion of cases decided versus cases filed in lower civil courts, yearly.

40 On the other hand, the great variation across countries in terms of judicial and legal systems makes this study even more difficult. What could represent a sufficient proportion of judges per inhabitants in one country would be absolutely unacceptable in other. The same happens with other variables, such as the salaries of judges, and so forth. As we mentioned before, some of those variations are mitigated by the fact that the legal systems, along with other characteristics, are similar. However, I am aware that a larger cross-country study would have to incorporate controls for the different types of legal systems, an issue that I will address in the future when we expand the present research to a larger universe of politics.

41 Some preliminary descriptive statistics, correlation figures and basic regression results are available; however, for the sake of making this paper appealing to the broadest possible audience, I do not include them in this report. Moreover, the figures in question will make more sense when analyzed in our future larger project.

Despite the relatively small size of this group, especially with regards to some categories, there is ample variation. The country in the sample with the lowest perceived corruption is Chile, which enjoys a rating of 7.3 points, whereas the one with the highest perceived corruption is Paraguay, with 2.1 points. Many countries rank between 2 and 4 points, however. We find similar disparities with regard to investment in the judiciary, with a minimum of 6.01 PPPD invested per inhabitant in the country with the highest perceived corruption, that is, Paraguay, whereas the highest investment is in Costa Rica, which ranked second in terms of perceived corruption in our sample, with a whopping 88.18 dollars invested per inhabitant.

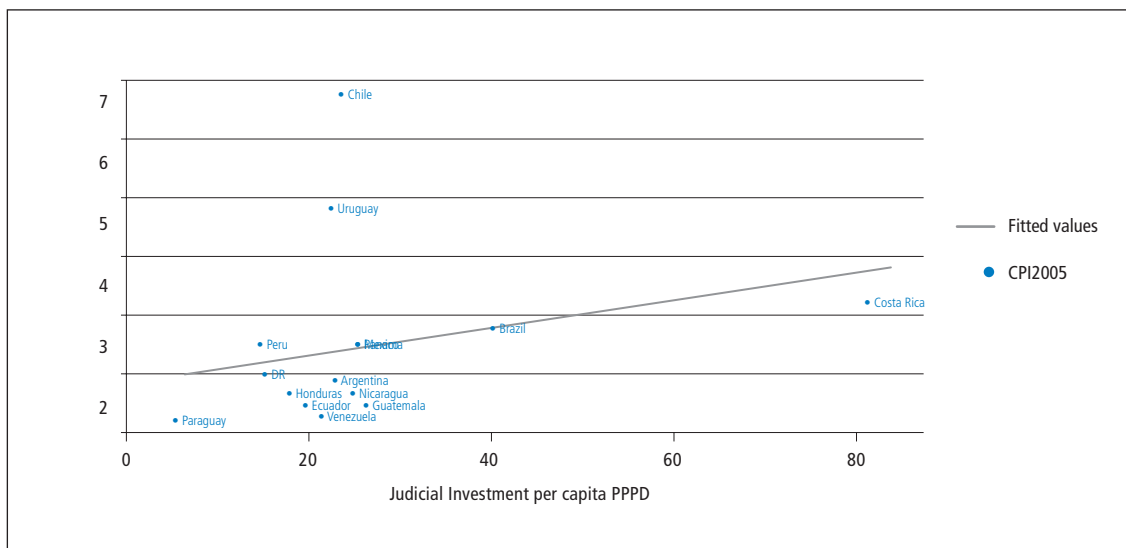
Salaries offer another impressive range of cases, with significant differences between high and lower tribunals, and large ranges in both indicators. We only have comparable data from nine countries, however, so our conclusions in these two items are more limited and open to improvement.<sup>42</sup>

With regards to the number of judges per 100,000 inhabitants, the country with the lowest rate is Chile, with 5 judges per 100,000 inhabitants, whereas Costa Rica has the greatest figure with 16.88. Lastly, the lowest figure with regards to the clearance rate is Ecuador, whereas several countries have high rates of clearance, even over 1, such as Panama or Colombia (where it is likely that recent judicial reform efforts are showing signs of progress).<sup>43</sup>

Therefore, even in a relatively small universe of cases, in a region where there are supposed to be greater similarities, we can find great differences with respect to every variable. This makes a strong call for a more profound evaluation of each one of the statements laid out.

**Investment in the judiciary:** The first statement that we proposed is that investment of the judiciary is negatively associated with corruption perception. At first glance, the relationship in the Latin–American context matches the predicted trend.

Figure 1: Investment in the Judiciary v. Corruption Perception (regression line in scatter-plot)



<sup>42</sup> We could have improved each of these categories by searching for each information item via contacting the judicial administration bodies, or resorting to data provided from other sources. However, we decided to rely on the said two sources for this first assessment. A larger project would probably include data collection by contacting each judiciary separately, or local bodies that could provide us with this information.

<sup>43</sup> The clearance rate data, which measures the number of decisions issued by lower civil courts as compared to the number of cases filed, is also open to improvement. More careful analysis is merited to make sure that we are comparing similar data. This is a very sensitive indicator, which depends on one conceptualization of what is a ‘filed’ or ‘decided’ case; also on when a case is considered ‘filed’ or ‘decided’; on the particular level of the judiciary that is being analyzed (in this case, civil lower courts, although a few countries the indicator also embodies other courts); and so forth.

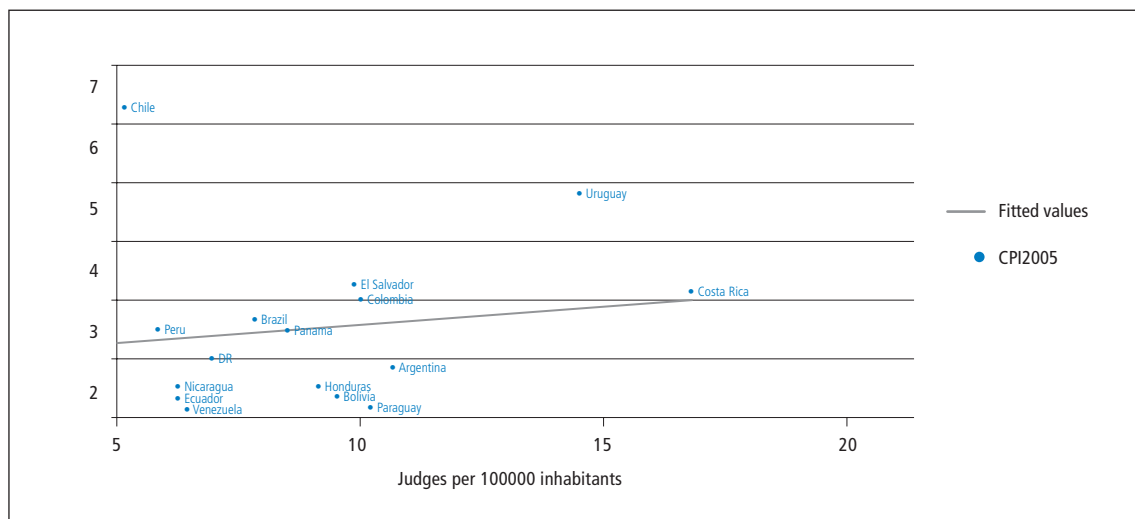


From the graph above we can draw several interesting conclusions. First of all, there is a weak, although clear association between these two variables. A higher investment in the judiciary coincides with a lower level of perceived corruption. A case-by-case analysis also shows provocative suggestions. As we highlighted, the country with the lowest investment per inhabitant in the judiciary ranks at the bottom in corruption perception, that is, Paraguay, with other countries with low levels of corruption not too far in the scene. There are no surprises in this category; there is no country that radically differs from what was expected. Peru and Dominican Republic, the next two countries with lowest investment in the judiciary, are not the next two in the scale of corruption, but they still rank relatively low in the scale, with 3 and 3.5 points respectively. Honduras, Ecuador and Venezuela follow suit, all countries where corruption is high. Furthermore, two of the four countries with lowest corruption perception in the region, Costa Rica and Brazil, happen to be those which more heavily invest in their judiciaries, and Chile and Uruguay are not far from this standard either. These findings strengthen our perception that this relationship needs to be explored more carefully.

From this latest conclusion, one should not venture to assess that a potential solution for improving the corruption score, or any other indicator of good governance, is to invest more in the judiciary. Sure, this contributes to the idea that a readily and effective investment in the judicial system should have some impact in the people's perception of corruption, especially of those who are more commonly surveyed in this type of studies, *i.e.* the business and political leadership community. But having observed that the relationship is *far* from perfect is also evidence of the fact that a careful evaluation of the situation is also necessary before making any quick conclusions.

**Number of Judges per capita:** With regard to the second hypothesis, namely, that a greater number of judges per capita should be associated with lower corruption, the data did not offer a relatively simple panorama, as in the previous case. I actually expected a somewhat clearer degree of association between both variables, since one of the best indicators of a lackluster judiciary is, precisely, the low number of judges, affecting access to justice and, therefore, affecting people's perception of good governance and, potentially, corruption.

Graph 2: Judges per 100,000 inhabitants v. Corruption Perception (regression line in scatter-plot)



In this graph, the relationship is weaker. Chile, the leader in the region in terms of low corruption perception, is a country with a small number of judges per inhabitant as compared to their Latin American neighbors. This interesting observation present more questions than answers; if in a larger evaluation of the relationship between these two variables, including a larger number of countries, we find that such a connection exist, then Chile

would present an interesting case. Next, Uruguay and Costa Rica, the two countries with lowest corruption perception in the continent after Chile, are the top countries in terms of judges per inhabitant. In the case of Costa Rica, the size of the judiciary coincides with being the country with a larger investment in its judiciary. It has also traditionally been well ranked in the CPI index. Then, the picture becomes more complicated. Peru, Dominican

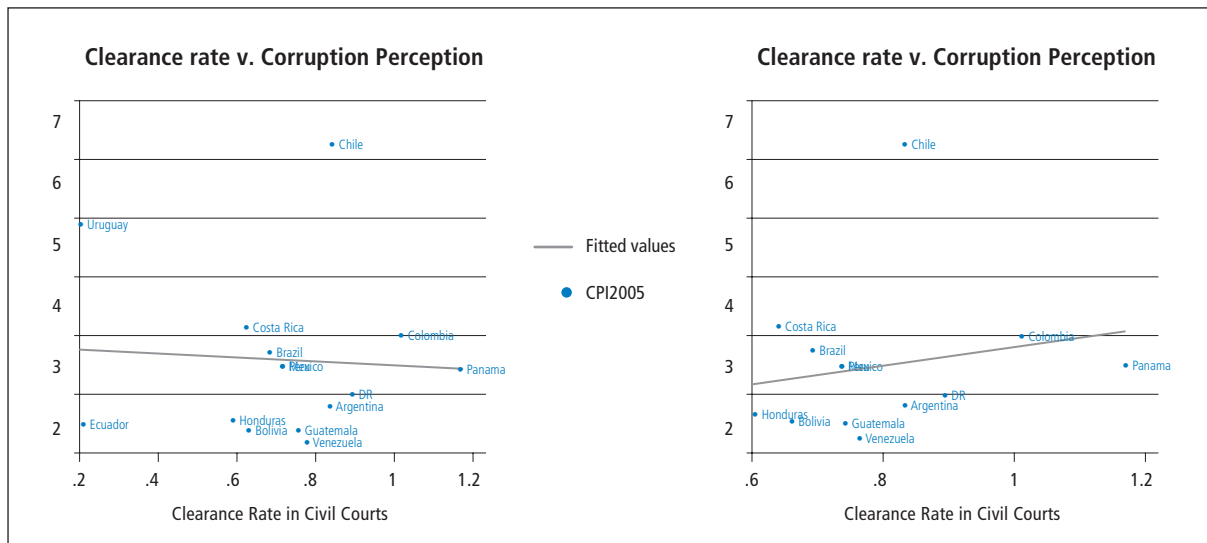
Republic, Nicaragua, Ecuador and Venezuela have no more than 7 judges per inhabitant, well below the average, and the latter three are part of the group with worst corruption perception.

Nevertheless, although the relationship seems to go in the predicted direction, the picture is less than convincing. There are several cases clustered in the middle which only add to confusion. Thus, any implications that we might draw from this graph would probably lack certainty, such as that the increment of the number of judges would not be related to low levels of corruption, or that judicial reform agendas should focus on increasing financial rather than human resources to have a more efficient judiciary. Although in a future analysis we will insist in the premise that a greater number of judges

is related to lower corruption perception; for the time being, our preliminary observations present a less compelling case than with the case of investment in the judiciary.

**The relationship between clearance rate and corruption perception:** With respect to Prediction 3, that is, the relationship between the lower civil courts' capacity to clear their dockets and the perceived level of corruption, graphs 3 & 4 present two sets of results. The first graph includes Ecuador & Uruguay, were clearance rates were suspiciously low (0.16 & 0.18, respectively). Since I feared that this data in particular had been measured in different terms than the other countries', I prepared another graph without them. The results were as follow.

Graphs 3 & 4: Clearance rate v. Corruption Perception (Regression line in scatter-plot)



Recalling our predictions, we suggested that higher clearance rates should be associated with lower corruption. The results in the second graph –where we take out of the picture Uruguay and Ecuador–confirm this suggestion. Even without Colombia and Panama, the two countries where according to the data their lower courts with jurisdiction in civil cases (and where these results might be influenced by the success of recent judicial–reform efforts), the relationship still holds positive. Hence, in the future, when we test this same prediction in a larger setting, we will keep this analytical framework.

However, beside this simple analysis, we confront a complicated scene, similar to the analysis of the relationship between corruption and the size of the judiciary in Graph 2 and, thus, less simple than

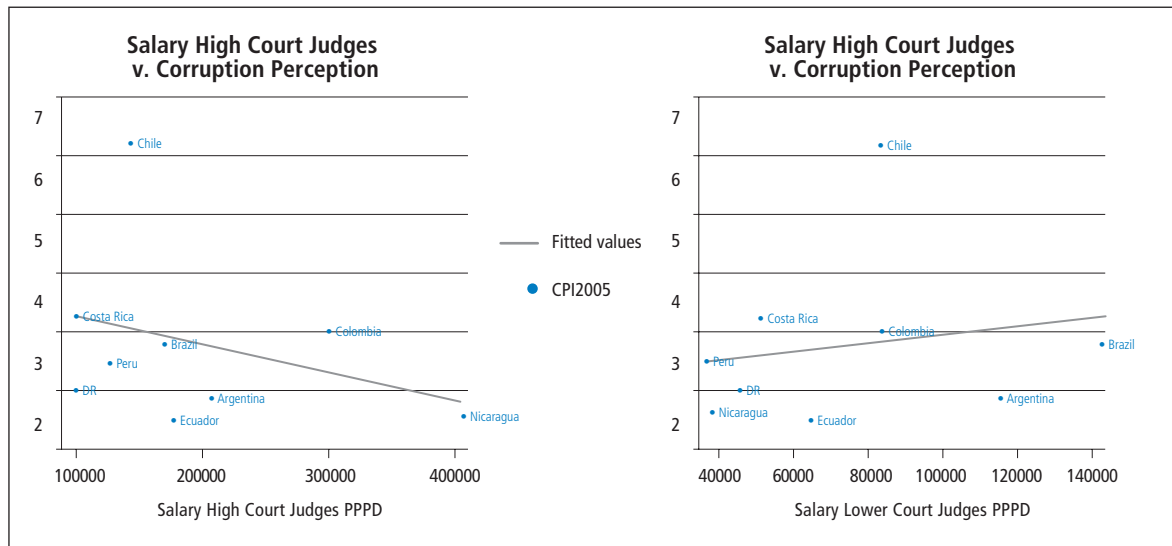
the results shown in Graph 1. The countries with the worst perception of corruption in this dataset are not clustered in the bottom–left corner of the graph. Rather, they are scattered across the clearance rate. Guatemala, Argentina, Venezuela and Dominican Republic, countries with high levels of corruption, with problems to clear their dockets but which seem to outperform other judiciaries, lie in the middle. Although this might be influenced by the fact that the standard deviation from the average does not seem to be so high, they are puzzling findings.

The conclusion, then, is that the current stage of the project does not allow us to see a relationship between congestion and clearance rates, as indicators of dysfunctional judiciaries, and high corruption. By increasing the database in the future we

will be able to assess this trend more appropriately. The collection of data, however, is delicate and, as we saw above, can affect any assessed trend significantly. It would also be interesting to match this results with the clearance rates of higher courts (Supreme Courts and 2nd-tier tribunals), to see if the picture becomes less blurred.

**Salaries:** Finally, with respect to statement 4, namely, the presumed existence of a positive association between the judges' salary and perceived corruption, a look at the next two graphs offers some interesting trends (although our dataset was very limited, only nine observations). Once again, the indicator is made in purchase power parity terms, to control for differences across countries with regard to the value of the currency

Graphs 5 & 6: Salaries of High and Lower Court Judges v. Corruption Perception (regression line in scatter-plots)



The two graphs tell us very different stories. The one for High Court judges shows a variety of cases with a somewhat weak inverted relationship between corruption perception and the Justices' salaries. The great majority of countries are placed in the lower-left corner of the graph, but they are not tightly clustered, so a relationship is too difficult to assume in any case. Maybe this is because of the effect of the outlier, Nicaragua. The annual salary for a High Court judge in this country is at least eight times the salary of a low court judge, and almost twice as much than the great majority of the other cases (in PPPD terms, if expressed in US dollars the difference is not so striking). Conversely, Costa Rica, a country with a lower perceived level of corruption and, according to the graphs cited above, with characteristics proper of an efficient judiciary, is the country where Justices receive the lowest salary (although anyway substantial). On the other hand, the lower court chart does not reflect a strong relationship between the judges' salaries and corruption, although there appears to be a feeble trend. Poor attention to the judges' economic condition is, as we pinpointed before, part of their proclivity to involve in corruption misdeeds, legitimize

corruption action or, at best, not performing their duties appropriately; thus, we should expect this relationship to be strong when more countries are incorporated into our analysis.

Despite I acknowledge that the method of analysis does not reach the level of sophistication necessary to evaluate causal links, the arguments explained *supra* still shed some light on the link between the judiciaries' characteristics and performance, and corruption perception.

There are two important conclusions that, at this stage, can be made. First, notice that all graphs, with the exception of Graph 5, and notwithstanding the limited data, show relationships that were expected at the theoretical level. This shows that this exercise is valuable and requires further consideration, incorporating more variables, increasing the methodological rigor of the study and, of course, incorporating more data. But this introductory analysis has the merit of pointing

out that studying the relationship between characteristics of the judicial systems and corruption is not purposeless.

Second, the most important reading of this paper is that not all indicators appear to be equally associated with corruption perception. Yes, some of them appear to have a somewhat strong relationship, as in the case of the relationship between investment in the judiciary and corruption perception. The case for the relationship between number of judges per inhabitant and clearance rate with corruption perception is certainly weaker; and the one with the judges' salaries is rather inconclusive. But there is great variation among the different indicators; countries have disparate approaches towards investing in their judiciaries, equipping them, and paying their personnel. Each one of these relationships has a connection of its own with the concept of 'quality of the

**... not all indicators appear to be equally associated with corruption perception. Yes, some of them appear to have a somewhat strong relationship, as in the case of the relationship between investment in the judiciary and corruption perception.**

judiciary', just as other indicators not considered such as timing, or fairness, surely do. Therefore, although strongly interrelated, each one of these indicators should be evaluated separately when considering their contribution in the combat against corruption. The general statement that a good judiciary is essential to combat this malaise disguises a rather complex picture that merits greater attention.

In the future, as I have mentioned before, my purpose is to prepare a comprehensive model to explain the association between the efficiency and quality of the judiciary and corruption perception. Meanwhile, I expect this preliminary assessment had helped to open doors for further research, focused on Latin America or other regions where high corruption and/or weak judiciaries are part of the aspects of governance that call for improvement.