



Netherlands Institute for  
**Multiparty Democracy**



**Clingendael**

Netherlands Institute of International Relations



# Illicit Networks and Politics in Latin America



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# About the Organizations

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# Foreword

As democracy has been consolidated and taken root in Latin America, emerging problems have become both more complex and less obvious. Though democracy has taken root, challenges to this state of affairs arise in countless scenarios that are more subtle than the fear of a return to the coups d'état that haunted the region in the past. One of the biggest challenges is the increasingly serious nexus between organized crime and the illicit organizations and political actors that support it. This book, produced by International IDEA, NIMD and the Clingendael Institute, provides an insight into this critical nexus and its impact on the region's democracies.

The book focuses on the influence of illicit networks on the political landscape, and in particular the most obvious manifestation of this relationship—the corruption of public officials. It also analyses the emergence of regions in which citizens' rights and constitutional authority no longer prevail, and how criminal activity has led to the emergence of parallel regimes in which violence and an absence of respect for human rights are the rule rather than the exception. So-called state capture is an intermediate stage between these two extremes. It goes far beyond mere corruption and while it has not led to the total demise of the state, it has reoriented it in favour of criminal interests.

Colombia—a country in which drug cartels directly and violently challenge public authorities and political leaders, government officials, the armed forces, the justice system and journalists—is an

extreme example of the multifaceted nature of this relationship. Colombia remains an outlier, but the drug trafficking that has spread to other countries in the region is now the most serious criminal activity to affect them. The sheer scale of and the revenues gained from drug trafficking undermine the democratic process and subordinate the state to the interests of illicit organizations.

Drug trafficking is not the only criminal business that requires a relationship with the authorities in order to thrive. Illicit activities such as smuggling, human trafficking and arms trafficking also require the active or passive cooperation of the authorities. The scale of the business determines the need for cooperation by public officials, and criminals therefore deploy various strategies that increasingly affect and distort democracy by placing the state at the service of illicit interests that worsen conditions for coexistence. Moreover, any improvement in the living conditions and incomes of the communities in which drug traffickers operate is more often than not short-lived, and hugely outweighed by the regime of terror to which citizens must submit.

This book offers readers an understanding not only of how the intricate and shocking relationships between crime and politics work, but also of the logic governing those relationships. The need for information on and protection against the actions of the authorities, the deviation of governance, the threat and use of violence, as well as the diversion of public resources for the benefit of those who profit illegally, and even the persecution

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of whistle-blowers, form a network of relationships that distort the exercise of the rule of law in such a way that the consequences of growing lawlessness are now a much bigger problem than public order, and constitute a genuine challenge to the consolidation of democracy.

For all these reasons, this book is extremely timely and welcome. It demonstrates the complex and growing presence of lawlessness in the Latin American political landscape. In so doing, it is hoped that it will prompt those involved in promoting democracy to understand the magnitude of the challenge and to promote not only better analysis, but also greater debate as part of the search for options and answers that go far beyond traditional punitive solutions.

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Faced with this challenge, it is time for a more comprehensive approach that takes account not only of the international ramifications and the need for joint action by states—an area that has seen notable progress—but also the need to make adjustments and reforms focused on aspects such as campaign financing, the institutionalization of political parties and effective control of electoral activity.

Fortifying the political process will be vital if democracies are to withstand the onslaught of crime.

César Gaviria Trujillo  
Former President of Colombia  
Former Secretary-General of the Organization of American States

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# Preface

The citizen protests in Brazil, Turkey, Spain, Chile and the Middle East are a constant reminder that democracy is—or should be—a system whose value depends on its ability to respond to the needs and aspirations of citizens, be they political, social or economic. In other words, citizens expect democracy to go beyond a periodic opportunity to choose representatives through elections and, more importantly, to improve the lives of the general citizenry—not just represent the interests of a select few.

Corruption is one of the main threats to democracy as it places private gain above the public interest. It undermines the principles of popular control over public decisions and political equality—the foundations of representative democracy. One pervasive and elusive source of corruption is money of illicit origin. It is one of the most dangerous sources of corruption as it involves organized criminal networks that act in secret and beyond the reach of any laws or regulations.

The main aim of these networks is to obstruct the functioning of the state in order to protect their illicit activities. They exploit the instability and weakness of national and local governments and political parties for their illicit activities, such as money laundering, trafficking drugs and weapons, and smuggling women, children and exotic animals. In the process, they undermine efforts to create transparent political systems that are accountable to citizens and can respond to their needs and aspirations.

The capacity of organized crime to infiltrate politics has unfortunately increased in recent years. This not only affects fragile states or democracies in transition, but also erodes the quality of democracy in stable countries. Vote buying, money laundering involving political figures and infiltration of political parties by organized criminal networks are just some examples of how connections between criminal networks and political institutions are created and consolidated. However, global comparative knowledge of these trends and dynamics is quite limited, except for the work of investigative journalists in different parts of the world, which are all the more admirable considering the personal risks these activities entail. This book aims to fill this gap.

As part of their efforts to support democracy worldwide and in Latin America in particular, the International Institute for Democracy and Electoral Assistance (International IDEA), the Netherlands Institute for Multiparty Democracy (NIMD) and the Netherlands Institute of International Relations (Clingendael Institute) joined forces in 2012 to conduct the research on which this book is based. The research began by documenting a series of case studies that illustrates how the nexus between organized crime and politics is created and maintained. This was followed by studies of the various policy tools used to prevent, mitigate and penalize these corrupt relationships.

Latin America is a particularly important region for this work. On the one hand, organized crime

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has extensive interests in the region, not only drug trafficking but also increasingly businesses such as illegal mining and logging, trafficking in people and arms, smuggling exotic species and money laundering. The weaknesses that these networks create in local political spaces are extremely worrying. On the other hand, since Latin America has been at the forefront of the struggle against this devastating phenomenon, some of the most important lessons about the most effective strategies in the fight against corruption linked to organized crime can be drawn from the efforts of countries and institutions in the region. Learning from this experience is of great value for other

regions when launching new initiatives to confront this global enemy.

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# Abbreviations

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<b>AIC</b>	Alianza Integral para el Cambio [Integral Alliance for Change, Guatemala]
<b>APRA</b>	Alianza Popular Revolucionaria Americana [American Popular Revolutionary Alliance, Peru]
<b>AUC</b>	Autodefensas Unidas de Colombia [United Self-Defense Forces of Colombia]
<b>CAE</b>	Corporación Aduanera Ecuatoriana [Ecuadorian Customs Corporation, Ecuador]
<b>CANG</b>	Colegio de Abogados y Notarios de Guatemala [Guatemalan Bar Association]
<b>CCPAG</b>	Colegio de Contadores Públicos y Auditores de Guatemala [Guatemalan Association of Public Accountants and Auditors]
<b>CECPAA</b>	Colegio de Economistas, Contadores Públicos y Auditores y Administradores de Empresas [Association of Economists, Public Accountants and Auditors]
<b>CFATF</b>	Caribbean Financial Action Task Force
<b>CIA</b>	Central Intelligence Agency
<b>CICIG</b>	Comisión Internacional contra la Impunidad en Guatemala [International Commission against Impunity in Guatemala]
<b>CNE</b>	Consejo Nacional Electoral [National Electoral Council]
<b>CNM</b>	Comisión Nacional para la Moralización [National Ethics Commission]
<b>CODEGAM</b>	Corporación de Desarrollo de García Moreno [García Moreno Development Corporation]
<b>DEA</b>	United States Drug Enforcement Administration
<b>DIRANDRO</b>	Dirección Antidrogas de la Policía Nacional del Perú [Drugs Directorate of the Peruvian Police Force]
<b>ELN</b>	Ejército de Liberación Nacional [National Liberation Army, Colombia]
<b>EP</b>	Excelencia Profesional [Professional Excellence, Guatemala]
<b>EPL</b>	Ejército Popular de Liberación [Popular Liberation Army, Colombia]
<b>FARC</b>	Fuerzas Armadas Revolucionarias de Colombia [Revolutionary Armed Forces of Colombia]
<b>FATF</b>	Financial Action Task Force
<b>FECOR</b>	Fiscalía Especializada contra el Crimen Organizado [Specialist Organized Crime Unit of the Public Prosecutor's Office]
<b>FRG</b>	Frente Republicano Guatemalteco [Guatemalan Republican Front]
<b>GAFISUD</b>	Financial Action Task Force of South America
<b>GANA</b>	Gran Alianza Nacional [Grand National Alliance]
<b>GDP</b>	Gross Domestic Product
<b>IAPA</b>	Inter-American Press Association

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<b>INA</b>	Iniciativa Nacional Anticorrupción [National Anti-Corruption Initiative, Peru]
<b>INDA</b>	Instituto Nacional de Desarrollo Agrario [National Institute of Agrarian Development]
<b>INPEC</b>	Instituto Nacional Penitenciario [National Penitentiary Institute]
<b>IVE</b>	Intendencia de Verificación Especial [Special Verification Unit, Guatemala]
<b>JNE</b>	Jurado Nacional de Elecciones [National Electoral Board]
<b>LIDER</b>	Libertad Democrática Renovada [Renewed Democratic Freedom]
<b>MEF</b>	Ministerio de Economía y Finanzas [Ministry of Economics and Finance]
<b>MESICIC</b>	Mecanismo de Seguimiento de la Implementación de la Convención Interamericana contra la Corrupción [Follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption]
<b>MPJ</b>	Movimiento Pro-Justicia [Pro-Justice Movement]
<b>MPU</b>	Movimiento Popular Unido [United Popular Movement]
<b>NGO</b>	Non-governmental organization
<b>NIMD</b>	Netherlands Institute for Multiparty Democracy
<b>OAS</b>	Organization of American States
<b>ONPE</b>	Oficina Nacional de Procesos Electorales [National Office of Electoral Processes]
<b>PEP</b>	Politically exposed persons
<b>PIN</b>	Partido de Integración Nacional [Party for National Integration]
<b>PRI</b>	Partido Revolucionario Institucional [Institutional Revolutionary Party]
<b>SIE</b>	Servicio de Inteligencia del Ejército [Army Intelligence Service]
<b>SIN</b>	Servicio de Inteligencia Nacional [National Intelligence Service]
<b>UAF</b>	Unidad de Análisis Financiero [Financial Analysis Unit]
<b>UNE</b>	Unidad Nacional de la Esperanza [National Unity for Hope, Guatemala]
<b>URNG</b>	Unión Revolucionaria Nacional Guatemalteca [Guatemalan National Revolutionary Union]
<b>USAC</b>	Universidad de San Carlos [San Carlos University]

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# Glossary

- 1. Aspirational crime:** Individuals or groups willing to challenge the rule of law, who choose criminality as a way of life because of the high levels of economic inequality and the scarcity of legitimate opportunities for social mobility in vulnerable settings.
  - 2. Banditry:** A social phenomenon in which individuals make a living by organized and systematic stealing and looting on the outskirts of rural communities, commonly identified as revolutionary acts or signs of popular resistance.
  - 3. Confiscation of property:** A mechanism through which the state, by means of a legal process, may remove property obtained through illicit means from those who claim to own it, such property subsequently being owned by the state.
  - 4. Criminal gangs:** Armed criminal groups that were restructured after the demobilization of the Autodefensas Unidas de Colombia (United Self-Defence Forces of Colombia, AUC).
  - 5. Democratic security:** Government policy to defend security using democratic values.
  - 6. Kingpin:** The extraditable leader of a criminal organization in Colombia or Mexico.
  - 7. Local fiefdom:** The rule of a political leader over a rural society, characterized by high levels of political clientelism.
  - 8. Mafia state:** A country where the state uses its power systematically to protect the interests of criminal groups.
  - 9. Maras:** Criminal groups, active mainly in urban and suburban areas, that originated in the USA but have spread to several countries, principally in Central America.
  - 10. Marimberos:** Generally refers to musicians who play the marimba, but in Colombia also used to denote marijuana producers on the Atlantic coast.
  - 11. Movementism:** A political strategy based on majorities, generally focused on popular struggles and social demands which lack clear aims. Usually associated with populist tactics.
  - 12. Narco-guerrilla:** An association between guerrilla groups and drug trafficking groups, or direct participation by guerrilla groups in drug trafficking or by drug trafficking groups in guerrilla activity.
  - 13. Narco-paramilitarism:** An association between paramilitary groups and drug trafficking groups, or the direct participation by paramilitary groups in drug trafficking or by drug trafficking groups in paramilitary activity.
  - 14. Narco-pardon:** A pardon issued by a government that quashes a conviction or commutes a sentence for crimes related to drug trafficking.
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15. **Organized crime:** Groups or networks that systematically engage in illicit activities, with the main aim of benefiting financially or materially from them.
  16. **Oversight committee:** A mechanism for democratic representation that allows citizens and community organizations to monitor public administration.
  17. **Parapolitics:** The name given to the judicial investigation into the links between politicians and AUC groups after 2006.
  18. **Politically exposed person:** A person who has assumed an important public office in a country, or a member of his or her family or one of their associates.
  19. **Rule of law:** Principally, the notion that everybody is equal under the law, including Heads of State, politicians and members of the military.
  20. **State capture:** Alliances between organized crime and the political sector, involving mutual benefits.
  21. **Stationary bandit:** A criminal who monopolizes theft in his or her territory and operates in a stable fiscal environment, increasing the bandit's interest in the prosperity of the society over which he or she has permanent control.
  22. **Ungoverned space:** A territory where state sovereignty is either not exercised or very weak.

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# 1 Introduction

*Catalina Uribe Burcher*

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In 2005, Vicente Castaño Gil, one of Colombia's most prominent paramilitary leaders, claimed in an interview in a best-selling magazine that over 35 per cent of the members of the Colombian Congress had links to criminal structures (*Revista Semana* 2005). These revelations had such a massive impact on society, the media and the political sphere that they effectively paralysed Colombia's legislature. The scandal—which subsequently became known as 'parapolitics'—forced the judiciary to launch a far-reaching investigation into the top echelons of Colombian politics, one which went further than any other investigation in the country or indeed the region, and was rivalled in scope only by the corruption probe that followed the revelations about the activities of Peru's former head of intelligence, Vladimiro Montesinos. At its peak, over one-third of the members of the Colombian Congress were under investigation—ringing alarm bells among those who had, until then, stressed the waning impact of organized crime in Colombia. As evidence, they had pointed to the fall in illicit drug cultivation and lower levels of violence, two indicators that, while positive and encouraging in themselves, could not explain events that appeared to be part of a paradigm shift in how these networks operate. This change in the modus operandi of illicit networks focuses on safeguarding their interests—including the control of territory, access to transport and guaranteeing impunity for their crimes—through the use of threats and violence as well as strategic alliances with the political sphere. At the same time, many of the region's politicians have been keen to exploit the resources and power at the disposal of illicit networks, which has created an opportunity for symbiotic relationships to develop between two sets of partners.

## 1.1 The problem

This book focuses on how alliances between illicit networks and political and economic actors are created, and the policies and laws used to combat this phenomenon. Why study these problems in this region, at this time? These links are not new to the region. Nor are they exclusive to Latin America. Chapter 2 presents a historical analysis by Ivan Briscoe of what he terms the 'dynamic process of criminalization'. While the roots of this problem can be traced back a long way, the growing sophistication of national and transnational illicit

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networks, partly as a result of globalization and the increased flexibility of cross-border commercial exchanges, means that the tools used to promote their interests have also become more sophisticated. It should be noted that while the links between politics and organized crime in the region have generally been mediated by activities related to drug trafficking, this publication takes a broader view to consider activities such as illegal mining, arms trafficking and money laundering. In practice, all these activities are closely linked, to both each other and the legal economy.

It is important to stress that the nexus between organized crime and politics is not exclusive to a few 'problem' countries, regions (such as Latin America) or sub-regions (such as the Andes), or to where the issue of drug trafficking is most acute. Rather, it is a global problem associated with the presence of illicit networks, whatever their nature, which reflects the fact that political corruption is one of the main strategies used by these networks to conduct their economic activities. Connections between politicians and criminal networks are found in countries with robust, stable democratic systems, as is the case in some European states (see, for example, Villaveces-Izquierdo and Uribe Burcher 2013), as well as in fragile democracies. The difference is that in the latter, organized crime is able to find more vulnerable points at which to penetrate the political system, and its impact on the country's stability is deeper and more long-lasting (Locke 2012; Cockayne 2011).

Latin America is particularly vulnerable to such dynamics. It suffers from the presence of illicit networks dedicated to various unlawful activities, including illegal mining, trafficking in exotic species and arms, the counterfeiting and smuggling of medicines and, of course, the production and sale of illegal drugs such as cocaine. This last activity is of particular importance, as Latin America is the world's largest producer of cocaine—the most lucrative of the illegal drugs that, between them, generate half of all the profits attributed to transnational organized crime worldwide (UNODC 2011a).

Furthermore, this massive flow of money into the region from illicit sources has occurred in parallel with two significant developments in the political field: the rising costs of political activity and the difficulty of monitoring political spending. Although there are no global or regional estimates of the exact costs of political activity, several researchers and journalists have argued that elections in the region are more expensive now than ever before, and that this is an indicator of the high costs associated with politics in general (Thompson 2012; Casas-Zamora 2013). This causes other adverse effects, such as the increasing difficulties faced by under-represented groups—such as women or ethnic and religious minorities—in seeking to participate in politics (Ballington and Kahane 2014). The Political Finance Database of the International Institute for Democracy and Electoral Assistance (International IDEA) shows that of the 33 countries in the Latin America and the Caribbean region, only 17 require their political parties to disclose the sources of their funding on a regular basis (International IDEA 2014). This is just one example of the problems that exist in the region with regard to political funding, and this is before one considers that the greatest challenge of all relates to the application of any regulations. All these factors have combined to produce a lethal cocktail in the region, in which vast sums of money from organized crime have to be laundered before they can be of use to those who control the drug business, while the harsh realities of political funding together with weak control mechanisms create the ideal political machinery for laundering this illicit money.

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The process of enriching the few gradually erodes the legitimacy and capacities of politics and the state. The legitimacy of politics and of the state, understood as 'popular acceptance of political authority' (Ramsbotham and Wennmann 2014: 6), is affected because citizens come to view politicians, political parties and politics in general with increasing distrust. Indeed, according to Transparency International's *Global Corruption Barometer 2013*, political parties all over the world are perceived as the most corrupt of all institutions (Transparency International 2013), and the problem is not just one of perception.

This corruption erodes the rule of law, because it affects state capacity to provide basic services in the areas of security and crime prevention. This is evidenced, among other phenomena, by the growing number of addicts in the region (Gandássegui 2012). The links between organized crime and politics are designed to undermine the ability of states to halt the activities of organized crime (UNODC 2011a). The main problem is that, although this is the most immediate consequence, it is not necessarily apparent, because there are few direct signs of it, merely a systematic failure to tackle organized crime effectively.

Another consequence of reduced state capacity—less direct but no less serious—is a decline in the provision of basic services such as health and education. When politics is at the service of illicit interests and major economic resources leave the country in the form of illicit financial flows, public institutions are impoverished, which means 'fewer hospitals and schools, fewer police officers and fewer roads and bridges' (OECD 2014: 23). This inevitably affects ordinary citizens in general, and minorities and marginalized groups in particular as they lack state support to access the basic services that are essential if these groups are to overcome the inequality from which many of them suffer. This is particularly serious in developing countries, where the gap is widest, as is indicated in several studies by the World Bank, the Organisation for Economic Co-operation and Development, and Global Financial Integrity (Reuter 2012; OECD 2013; Kar and LeBlanc 2013).

## 1.2 Key concepts

Concern about the threat to democratic governance and the need to improve mechanisms to confront it motivated International IDEA, the Netherlands Institute for Multiparty Democracy (NIMD) and the Clingendael Institute to produce this book. Although the researchers necessarily took certain key concepts as their starting point, it was not their intention to become bogged down in a debate about how these should be defined. While 'state capture' is a concept that is generally accepted in the scientific literature on this subject (Philp 2001), this study instead talks of the nexus between organized crime and politics, as the term state capture can lead to an oversimplification of a phenomenon that does not necessarily involve the infiltration of politics by organized crime, but frequently involves alliances of mutual benefit built on relationships that are often initiated by the state actors themselves (Garay Salamanca, Salcedo-Albarán and De León-Beltrán 2009). Organized crime is the term most commonly used to refer to the participants in this phenomenon, based on the definition offered by the United Nations Convention Against Transnational Organized Crime (UNODC) of 2000, better known as the Palermo Convention, which defines an 'organized criminal group' as 'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain,

directly or indirectly, a financial or other material benefit' (UNODC 2000: 5). However, this definition has also been disputed (Resa Nestares 2001), particularly with regard to how to identify such groups. Some emphasize the illegal nature of the activities in which the group engages, while others focus on agreement between the members of the group (Flores Pérez 2011; Solís and Foglesong 2008: 20–22). The reality is that organized crime is increasingly involved in activities that are not, in themselves, typically illegal but in which the law is systematically violated. In Italy, for example, the Camorra, one of the country's most powerful illicit networks which has a strong presence in Naples, is involved in the waste collection business, which in itself is a legal activity. However, this organization employs tactics such as extortion and harassment of competitors to gain a monopoly position. The structures of organized crime are also increasingly informal and horizontal, which can make it difficult to identify groups. For this reason, this book refers to illicit networks to cover: criminal behaviour, which is penalized by the criminal code; illegal behaviour, which is contrary to local legislation, including administrative and environmental regulations; illicit behaviour, which is contrary to the law and other regulations; and criminal structures in the form of networks with informal agreements between members.

### 1.3 Overview

The book starts with a historical overview of the development of the nexus between politics, crime and the economy in Latin America. It outlines the major events that have shaped the region and influenced the relationships between key political, economic and criminal actors, and analyses the nexus between illicit networks and politics in the region. The study introduces the national case studies presented in subsequent chapters, and links these studies together by identifying trends that can be observed throughout the region.

More detailed analyses of the countries studied—Colombia, Peru, Ecuador and Guatemala—are presented in Chapters 5 to 8. Each of these contains a brief introduction to the country and an overview of the main legislation designed to combat the links between politicians, criminals and economic actors. This legal description provides a general outline but does not describe any gaps or the challenges to implementation in detail, as these are the subject of Chapter 9. Each national chapter also contains case studies, which explore in greater detail how these links between crime and politics have evolved. The case studies have different perspectives and contain different information. These differences reflect the quantity and type of information available, as well as the specialist knowledge of the different authors. As a result, some of the studies place more emphasis on the details of the case itself, while others focus on the criminal and political context that gave rise to the relationship. While some authors include names and descriptions of the actors, others use pseudonyms in order to protect themselves and others. The national chapters do not necessarily make connections between the case studies, as such links at the national and regional levels are considered in chapters 3 and 4.

The national chapters are supplemented by Chapter 9, which provides a comparative analysis of the status of legislation to combat organized crime and its relationship with the political sphere in the countries studied. This chapter is designed to familiarize the reader with some of the legal and political instruments used in the region, and to highlight their relevance and the ways in which they could be strengthened. The book closes with a synthesis of the

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main conclusions and recommendations put forward at both the national and the regional levels.

Throughout the text, the authors draw on an analysis of the political and economic situation to identify the ideas that form the basis for understanding the nexus between crime and politics. First, they offer a general understanding of the reality of crime in the region. This draws on three elements: (1) the *incentives* that have created opportunities for criminal activity, such as the transformation of some geographic regions and their integration with international chains of illicit trade; (2) the *economic vectors* that have alienated part of the population and contributed to a context of crime and corruption; and (3) the *reconfiguration of criminal activity* in Latin America, from vertical groups to horizontal networks. These elements paint a picture that contrasts with the response of the security forces, which generally have limited capacity and an excessive focus on military strategies and controlling minor criminals, at the cost of neglecting the fight against the criminal structures that sustain the illicit market.

Second, the authors analyse the relationships between illicit networks and politics based on seven common characteristics identified in the case studies:

1. *The complexity of governing in the context of organized crime and the various harmful effects that this has, particularly in fragile states.* The scale of the problem is in stark contrast to the level of understanding of the issues, which is generally limited to isolated reports by investigative journalists. Thus the legal and political measures adopted are meagre and limited primarily to combating political corruption, and do not take the particular characteristics of organized crime into consideration.
2. *The nature of the agreements—both tacit and explicit—that govern relationships between political and criminal actors.* The roles of civil society and the bodies that oversee the state are particularly important here, as social rejection or acceptance—and the capacity of other bodies to monitor politicians' behaviour—have a major role to play in preventing such relationships from flourishing.
3. *Historical factors regarding the crucial milestones of state formation, in both authoritarian and participatory regimes,* that often concentrated power in the hands of elites and enabled members of such elites to move back and forth between the political and the economic arenas.
4. *Geostrategic vulnerabilities where these relationships can be created,* including at the local level where the targets of criminal activities, such as ports, borders or small business centres, are located.
5. *Political-institutional factors connected to the growing fragmentation of political parties in the region,* making them susceptible to illicit influences and undermining their capacity to guard against candidates and politicians with connections to the criminal world. The problems resulting from this fragmentation are exacerbated by gaps and weaknesses in the laws on political funding and, as important, shortcomings in their application.
6. *The politicization and modernization of the bureaucratic apparatus of the state,* connected to a tendency by regional politicians to distribute



bureaucratic positions through their networks of informal influence, which guarantees their power at different levels of public administration and makes this administration vulnerable to their potential interests—both legal and illicit—and the relationships between public officials' and business interests. Thus, the rules that regulate how public tenders and contracts are awarded, and that govern the system for appointing and promoting public servants, should be modified and applied more effectively.

7. Finally, there is *an economic dimension, related to money laundering and how this has led to the participation of political actors in illicit businesses*. Thus, there is an urgent need to strengthen the tools that regulate the activities of politically exposed persons (PEPs).

The authors consider the legal instruments designed to tackle these issues and make recommendations. The analysis in this book is intended to provide a basis for International IDEA, NIMD and the Clingendael Institute—as well as any other interested organizations—to continue to promote discussion on these issues and make recommendations on ways to strengthen state capacity. Detailed information about the project and the methodology that underlies it is provided in Chapter 2.

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## 2 Project Development and Methodology

Catalina Uribe Burcher

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### 2.1 Project background

The international community is increasingly recognizing the threat that organized crime poses to the legitimacy of democratic institutions. A number of press reports, researchers and intergovernmental organizations have signalled concern about the growing presence of representatives of organized crime in state structures as part of the more general spread of corrupt practices (see, for example, Naím 2006, 2012; Hellman and Kaufmann 2001; Allum and Siebert 2003; Findlay 2008; Wilson and Lindsey 2009; Mandel 2010; Heine and Thakur 2011; Varese 2011). In particular, the Global Commission on Elections, Democracy and Security (2012), which included world leaders, Nobel Prize winners and leading academics, analysed the main global threats to electoral integrity. In its report, the commission stated that, 'Groups antithetical to democracy, such as organized crime, find campaign finance the most direct route to political influence' (Global Commission on Elections, Democracy and Security 2012: 36). The Latin American Commission on Drugs and Democracy (2009) also referred to this problem in its report. This commission, created by a number of former presidents and leading independent figures from the region, warned of 'the criminalization of politics and the politicization of crime, as well as the proliferation of the linkages between them, as reflected in the infiltration of democratic institutions by organized crime' (Latin American Commission on Drugs and Democracy 2009: 5).

Many organizations have approached this issue from the perspective of organized crime, while others have considered it in the context of corruption. For their part, International IDEA and NIMD have sought to combine the security and governance perspectives. This is more than a merely academic concern. The intention is to ensure that both perspectives inform the analysis of regulations and public policies designed to prevent, mitigate or penalize links between criminals and politicians, and to provide a basis for improving the design of these legislative tools.

International IDEA began its work on these issues in 2009, when it organized a democracy roundtable on illicit political funding with various Mexican institutions, the results of which were published in *Illicit Political Finance and State Capture* (Kupferschmidt 2009). This initiative was supported by the relaunch of the

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International IDEA Political Finance Database, which provides information on the laws and regulations governing this area in 180 countries (<<http://www.idea.int/political-finance/index.cfm>>). NIMD has also been active in this area. It published *Drugs, Democracy and Security: The Impact of Organized Crime on the Political System of Latin America* (Kruijt 2011), which offers a comparative analysis of the impact of organized crime—drug-related crime in particular—on political systems in Latin America. Also in 2011, NIMD (with International IDEA and other institutions) organized an international seminar in Lima on organized crime and state capture. At this event, the participants—among whom were journalists, politicians, researchers and analysts—stressed the need to promote policies based on empirical data at the national and local levels in order to provide a more targeted and effective response.

International IDEA and NIMD have also consulted other organizations in order to coordinate their projects and avoid duplicating their efforts. During 2011 and 2012, they organized events and consultation meetings with various bodies, including the Clingendael Institute whose Conflict Research Unit has been investigating state fragility for more than a decade. As part of this work, the Clingendael Institute has conducted extensive fieldwork in Latin America, the Middle East and North Africa, and sub-Saharan Africa, focused on the links between politics and criminality and understanding the origins of emerging conflicts and crises in these regions. Other organizations—such as Transparency International, the Financial Action Task Force, the Organisation for Economic Co-operation and Development, the Organization for Security and Cooperation in Europe and the World Bank—were also consulted.

The result of these discussions was a project, 'Protecting Legitimacy in Politics', in which International IDEA joined forces with other organizations to document the main methods used by illicit networks to form alliances with the political sector. The analysis is based on a series of case studies that provides examples of how these alliances operate, together with an account of the regulatory frameworks that some countries have put in place to disrupt or penalize these relationships. To date, this project has borne fruit in the Baltic states (Villaveces-Izquierdo and Uribe Burcher 2013) and West Africa (Aning and Edu-Afful 2013a, 2013b). International IDEA, NIMD and the Clingendael Institute joined forces in Latin America, and the results of this collaboration are presented in this book.

## 2.2 Selection of case studies and research areas

Throughout the project, International IDEA, NIMD and the Clingendael Institute worked closely with local researchers in five countries—Colombia, Peru, Ecuador, Honduras and Guatemala—to document cases that would illustrate how illicit networks and political actors have forged alliances, and to identify the regulations that govern the behaviour of political parties and participants, particularly with regard to their possible links to criminal elements.

When documenting these cases, researchers were asked to conduct fieldwork using semi-structured interviews, supplemented by other relevant information from newspaper articles and legal archives, so that each case study would illustrate the different ways in which a politician or political party had established links with a criminal network. Researchers were urged to pay special attention to cases in which there was proof or strong suspicions of: illicit funding of

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campaigns at the local or national level; economic projects in which political actors were involved in businesses with criminal actors; money laundering schemes in which local or national politicians had been or were currently involved; and situations in which criminal actors had entered the political arena through membership of existing political parties or the creation of new ones. An effort was also made to document cases involving both men and women. This led to the identification of a series of case studies that, taken together, spans the region and covers the dynamics of organized crime at both the national and the transnational levels.

The researchers were asked to include a description of the context to help the reader understand who the actors were and their significance at the local, national or international level. They were also asked to consider the recent history of the actor's political party or faction, whether the case had been through the legal system and the outcome of any such process. Finally, they were asked to conduct a detailed analysis of the relationship between the illicit network and the political actors or parties, including: any influence the network might have had on public decisions or political positions; any legislative initiatives in which the political actor or party had engaged; how those involved exploited gaps in the law or regulations; and, where applicable, the different ways in which this process affected men and women. This book presents summarized versions of these case studies.

To document the legal and political frameworks that regulate the behaviour of political actors and parties in each country, and to identify gaps in the regulations and obstacles to their implementation, local investigators were asked to undertake a detailed analysis of all the legal and political instruments of relevance to this topic. They were asked to pay special attention to anti-corruption legislation, including codes of conduct, protection mechanisms for whistleblowers, procedures for appointing and promoting civil servants, individual or collective punishments for misconduct by elected officials, the regulation of public tendering processes, rules on lobbying activities and laws to prevent money laundering by politically exposed persons. They were also asked to consider the mechanisms for establishing and funding political parties, as well as transparency rules such as on the declaration of assets, the regulation of audit processes and procedures for vetoing elected or appointed officials. For each rule, the investigators were asked to analyse how it had been implemented in practice, whether penalties had been imposed and whether these penalties had brought about changes in behaviour. They were also asked to consider whether the implementation, application and enforcement of these rules—or the failure to do so—had a differential impact on men and women. This book includes a summarized version of each of these legal studies, included as contextual information in each of the country chapters.

The five country studies were chosen for a number of reasons. First, there was the practical consideration that International IDEA and NIMD have offices and an extensive network of contacts in these countries, enabling them to be directly involved throughout the project, from the design stage, including the different research stages, all the way through to the final discussions with other key actors in the area, such as national and international non-governmental organizations (NGOs), members of state agencies involved in the anti-corruption and public order fields, and academics and journalists who study and document such issues on a regular basis.

The five countries also encompass an interesting range of interactions between organized crime and politics. Although the study does not provide a detailed account of the regional dynamics in this field, it does identify some important evidence of growing trends. The diversity of the countries and the sub-regions studied (the Andean region and Central America) provides a basis for understanding the national contexts and makes it possible to go beyond these to identify shared characteristics and possibly even similar problems in other countries in the region.

Of the countries studied, Colombia and Guatemala have for many years been the arena for relationships between organized crime and politics. These have occurred in combination with conflict and post-conflict processes, which has challenged the resilience of the political systems in these countries. While these problems have become increasingly visible in Peru and Ecuador, the issue has not typically concerned either national politicians or the international community, primarily because the presence of organized crime has not generated the levels of violence seen in Honduras or Mexico. However, it is precisely this fact that makes it so important to consider these countries. The study of organized crime has almost always been subordinated to the international security agenda, which is dominated by statistics on violence and ignores the effects that illicit networks can have on the legitimacy and stability of democratic institutions. Honduras was included for similar reasons: the violence generated by organized crime there has obscured the discussion of how these networks use their relationships with the political class to exercise influence and conduct their business. Although the project included Honduras, the book does not include a separate chapter on that country, due to the potential security threat to local researchers if such documentation was included. The researchers requested that their work remain unpublished, although it has been used as a basis for Chapters 3 and 4.



**Figure 3.1 Latin America**



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### 3 The Historical Development of the Nexus between Politics, Crime and the Economy in Latin America

*Ivan Briscoe*

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Transnational illicit networks have become the subject of growing concern on the part of governments and international bodies as a result of their dynamism, adaptability and capacity to expand, whether through global financial centres or the new peripheral regions that have become the perfect breeding ground for illicit trafficking. Since it was agreed in 2000, 147 countries have signed the Palermo Convention.<sup>1</sup> Despite the general lack of coordination of national, regional and global efforts, the level of attention focused on this topic has intensified in recent years, ranging from the publication of a new US strategy (Office of the US President 2011) and European Union (EU) warnings about the seriousness of this threat (Europol 2013), to ongoing United Nations (UN) efforts to strengthen its response to an illicit industry that generates up to USD 870 billion per year (UNODC 2010a, 2011a; Haken 2011), although it should be noted that this figure varies according to the sources and methodology used to estimate it.

Latin America plays an important role in this dynamic process of criminalization. Various countries and areas suffer from high levels of serious crime that are caused or aggravated by organized criminal networks. This is shown in the high rates of violence in some urban centres or border areas in Central America and northern Mexico, and in the coercion of communities, legal systems, security forces and political leaders, particularly in the Andean region. In some cases, such as Argentina, Costa Rica or Ecuador, the rise of criminal organizations with a presence in communities or public institutions is relatively new (UNODC 2010a; Schmall 2012), while in others, most notably Colombia and Mexico, this influence is based on post-colonial or even older cultures of banditry, local fiefdoms, smuggling or extensive illegal and informal activities (Thoumi 2009; Campbell 2009; Pansters 2012).

The histories of many countries in the region reflect this cycle of the birth and mutation of criminality, creating a succession of illicit phenomena. Perhaps the

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<sup>1</sup> The full list of countries that have signed the convention can be found at <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en)>

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best-known example of this cycle is Colombia, which has experienced several waves of state repression in the past 40 years and suffered from the presence of such diverse and powerful illicit economies as the marijuana producers of the Atlantic coast (the so-called *marimberos*), the Cali and Medellín cartels, organized hired assassins, 'narco-paramilitarism' and 'narco-guerrillas', and new criminal gangs that have survived the arrest or death of almost all their leaders (Rico 2013).

This chapter, based on Colombia and other Latin American examples, focuses on the development of one of the most worrying and opaque aspects of this world—the emergence of a nexus between illicit networks and politics. The analysis stresses the historical roots of the huge variety of forms that these illicit networks take, and the ways in which their capacity to influence political activity differs. These differences range from how they manage to undermine or usurp a state's control of its territory to their more diffuse impacts on the political and business culture of a given area.

The chapter is divided into three parts. Section 3.1 presents a brief discussion of the principal types of criminality that exist in Latin America. Section 3.2 focuses on the historical development of the nexus between politics and crime in the region, taking as its points of reference the expansion of illicit trade, state transformation processes and the political, economic and social conflicts of the past decade. The chapter concludes with a detailed exploration of the existing and emerging illicit networks that connect organized crime, politics and the formal economy. Much of the information used in section 3.3 is derived from around 50 interviews conducted in Colombia, Ecuador, Guatemala and Peru in 2012 and 2013 with experts on illicit networks: ministers and politicians; heads of state bodies, judges and public prosecutors; and criminologists, economists and investigative journalists. All the interviews were conducted under a guarantee of anonymity.

The main purpose of this historical investigation is to describe the different lines along which illicit networks have developed in Latin America. However, this diversity should not obscure a shared feature in all four countries. Despite all the efforts to combat it, criminality in Latin America has successfully evolved, become firmly established, penetrated significant sectors of political power and the economy, and shaped people's thoughts and fears (Adams 2011; Lagos and Dammert 2012). Given that its tentacles have worked their way into almost every corner of the social and political life of these countries, public commitment and imagination are required now more than ever to understand the phenomenon, reduce its influence and resist its 'normalization'.

### **3.1 Organized crime, ordinary crime and illicit networks in Latin America**

The range of forms that criminality takes, both ordinary and organized, has contributed to Latin America's unfortunate reputation as the most unequal, segregated and violent region in the world. People identified a lack of security as their most important concern in 11 of the 18 countries in the region (Lagos and Dammert 2012: 5). The highest murder rates—in Honduras, Venezuela, El Salvador and Guatemala—are on a completely different scale to those of other countries, and have not benefited from the gradual trend that has made people's daily lives more peaceful in other regions of the world (IEP 2013). However, the stigmatization of the region as the supposed source of a potential

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'third generation' of criminal groups operating on a quasi-military basis (Bunker and Sullivan 2011) should not be allowed to obscure the many differences that exist within the scope of illicit activity.

It is difficult to identify a single explanation for all of the manifestations of criminality that affect the region. An important distinction should be made between ordinary crime, whether violent or petty, and organized crime, which is defined in the Palermo Convention as an illicit, profitable activity undertaken by a structured group of three or more persons. Other definitions of organized crime— of which there are more than 100, according to one recent calculation (Longo, 2010: 15)—include features such as the use of violence, links with public institutions and the profitable nature of the activities. There is no clear link, however, between the level of organized crime in a given country and its level of violent crime. A study of over 60 countries found no obvious correlation between the two (van Dijk 2007: 45).

Latin America offers multiple examples of these complexities. A comparison between the Northern Triangle of Central America and the Andes region reveals marked differences between the sources and channels of criminality. There are areas of drastic inequality, extreme poverty and illicit activity, such as Guatemala's 'dry corridor' close to the border with Honduras, that are very violent; and similar areas where the levels of physical violence are among the lowest in the country, such as the smuggling communities of Puno in southern Peru (see section 6.4). Moreover, and despite the fact that they are the two biggest producers of cocaine, Peru and Colombia have followed different paths with regard to the use of violence against citizens by criminal groups, their structures, and the methods by which they have penetrated politics and the state.

The latter aspect is the focus of the studies contained in this book, which aims to break 'a great silence about these issues' (Garzón 2013: 18). The infiltration of states by illicit structures, operating with their own methods and criteria in order to facilitate their criminal activity, has become one of the principal concerns regarding the rise of organized crime around the world. As a recent report explains, this 'can slowly erode the capacity and will of a state to respond to the needs of citizens' (Kavanagh 2013: 7). Above all, the mutual entanglement of transnational criminal networks and state institutions—in which officials and politicians are prepared to exploit the use of their public powers by means of illicit associations—endangers stability and territorial integrity in countries where the state has traditionally been fragile and lacked resources, and where its legitimacy has been questioned. West Africa, which has for some years served as an important staging post in the drug trafficking route from Latin America, is currently the focus of great international concern in this regard (Kühne 2013).

In Latin America, parts of the state serve as accomplices to criminal groups. Together, they succeed in establishing the systems of collaboration and mutual support referred to in this book as 'illicit networks'. Such networks usually impose a high price on wider society. The squandering of local authority and health service resources by paramilitary groups in Colombia (Romero Vidal 2011) or the Guatemalan extortion networks, most of which operate from within the prison system and provoke real terror among ordinary people (CERIGUA 2013), demonstrate the damage, particularly as a result of widespread impunity, caused by state officials immersed in illicit relationships. It is estimated that

economic damage caused by organized crime in Latin America has reached unprecedented levels: in Honduras it exceeds 15 per cent of gross domestic product (GDP) (IEP 2013: 59–61). Such estimates, however, do not include all the effects of major flows of illicit finance on developing countries. According to a recent World Bank publication, these flows systematically favour 'predatory elites, weak institutions and flawed investment climates' (Moore 2012: 477).

At the same time, there are strong reasons to believe that the effects of the new illicit networks in Latin America may be non-linear, and thus more subtle and difficult to perceive in daily life. As one Mexican academic, Carlos Flores Pérez (2009), explains, the nature of the relationship between state actors and organized crime varies depending on the political system—whether democratic or authoritarian—and the strength of the state in question. Furthermore, the relationships that span both the legal and the illegal sphere are conditioned by a number of factors that shape the scale, direction and incentives operating within this nexus.

The initial list of these factors is extensive: the nature of the illicit activity, from 'mere' corruption and trafficking of influence to extortion networks and transnational crime; the level of the state affected, municipal, regional or central; the preference of networks for officials or elected politicians, particularly ministers or members of parliament; the pathways of influence over political parties or individual candidates; whether criminal groups trick, ignore or co-opt local communities; and the nature of the links with the security forces or the legal system. The form of these relationships and their effects may depend on the existence of a coercive threat, but this is not always the case. Finally, the propagation of illicit networks through public institutions depends on the types of intermediation used and, particularly, on the conditions and guarantees of trust offered by the agents who form the link with groups whose businesses, by definition, lie beyond the protection of the law. It is also these and other intermediaries who forge the links with international groups or find ways to protect, launder and extend their activities through ties to supposedly legitimate companies (Farah 2012).

## 3.2 The historical origins of organized crime

### 3.2.1 Illicit markets: expanding the spaces of opportunity

To understand the links between crime and politics requires an unravelling of the historical trajectory of illegal activity within the states and societies of Latin America. The best place to start is what might be termed the 'space for opportunities' for illicit activity in Latin America, after an important school of criminology that studies organized crime on the basis of the incentives to commit crime that derive from opportunities for profit (Clarke 2012). In particular, three vectors appear to play a key role in expanding this space for opportunity and the consequent involvement of groups and individuals from formal sectors in illegal activity.

The first is the transformation of geographic zones to areas dominated by institutional and social practices in which there is limited respect for the law. Several examples provide evidence of the mutation of territories marked by informality, coercive leadership and exaggerated individualism into centres of organized criminality. Such is the case of Ciudad Juárez in northern Mexico, with its history of smuggling and the sale of alcohol and heroin during the prohibition

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years of the 1920s in the United States (Knight 2012: 119). Several of the regions best known as major centres of illicit activities—whether for the production or trafficking of illegal substances, the presence of violent groups or the rule of politicians with strong criminal connections—were at one time inhospitable and remote places colonized by peasant farmers in search of land and fortune, where the formal state was scarcely present. It is notable, moreover, that these characteristics are concentrated in specific places in the Andean region and Central America, such as the Intag region in Ecuador (see section 7.3), the Petén region in Guatemala, some Amazonian provinces such as Madre de Dios in Peru, and several parts of the so-called agricultural frontier in Colombia, most notably the Putumayo region. According to the economist Francisco Thoumi (2012), the main reason for Colombia's dominance of the cocaine production chain is its national leaning towards informality and activities at the margins of the law. The existence of a post-colonial culture of businesspeople, politicians and judges who took a permissive approach to illegality, and its eventual exploitation for economic ends by criminal organizations is a common theme in many of the case studies described in this book.

However, these historical characteristics of illegal activities do not explain the current proliferation of opportunities for illicit activity throughout the region. This spread is due to a second factor: ever-closer and more diverse integration with international illicit trade networks, often in parallel with or replacing traditional export sectors that went into decline, such as the textile industry in Medellín in the 1960s. Drug trafficking and, in particular, the production and movement of cocaine since the 1970s represent the adaptation of deep-rooted traditional practices to a high-value international activity chain fuelled by burgeoning demand. This adaptation has had a dramatic financial impact on the criminal sector in Latin America. According to an estimate by the Organization of American States (OAS), the commercial link that connects the Andean peasants who cultivate the coca leaf to the markets where the end product is sold, primarily in North America and Europe, represents a quarter of the value of the global cocaine market, estimated at USD 84 billion (OAS 2013f: 57). By the same token, the most conservative estimate of the income of all the Mexican cartels from the sale of drugs is USD 6.6 billion (Keefe 2012).

Following the dismantling of the leading illicit organizations in Colombia—the Medellín and Cali cartels, which were vertical operations that exercised almost total control over the chain of activities connecting processing, transport and sale—the market went through a period of acute fragmentation and a shift towards more dispersed, flexible forms of cooperation without command centres (Kenney 2007). Despite this shift and four decades of the 'War on Drugs', the industry has maintained a high level of production and retained its strength, making it a point of reference for other sectors of illicit trade in what has been called 'the dark side of globalization' (Thakur and Heine 2011). Trafficking in arms and human beings, the production of other drugs, most notably opium and methamphetamine, the trade in chemical precursors, money laundering and the strengthening of violent urban gangs linked to micro-trafficking, hired assassins and other activities (Santamaría 2013) could not have achieved their current dimensions in Latin America without the resources of power and capital accumulated as a result of the region's integration into a high-value transnational market.

The third aspect of this criminal expansion is essential to understanding the new geometry of relations between politics, crime and the economy: the adverse

impact on the region of efforts to repress criminality and subject it to legal and state control. On a regional scale, for example, the campaign to control the transport of cocaine by sea to Florida in the United States was central to the displacement of trafficking routes to countries that were more vulnerable to corruption in Central America (Bagley 2012). Similarly, Plan Colombia—a bilateral agreement between the United States and Colombia created in 1999 to suppress drug production and trafficking, support counterinsurgency measures and extend the Colombian government’s control over its territory (Shifter 2012)—displaced the production of coca leaf to more remote areas of the country, while the nodes for transporting processed cocaine shifted to neighbouring countries, primarily Ecuador and Venezuela. Meanwhile, the strategy of focusing on extraditable criminal leaders or ‘kingpins’—promoted by the US Department of Justice and incorporated into local strategies by recent governments in Colombia and Mexico—promoted a dynamic of splits, increased criminal competition and intensified violence in some regions (Felbab-Brown 2013).

In general, however, state responses to the increase in criminality have focused on controlling petty criminals, often through a discourse of ‘zero tolerance’ that stigmatizes certain people deemed to pose a particular threat, leading to their marginalization, exposing them to violence and police harassment, and reinforcing their violent rejection of civic norms. The fight against criminal structures or leaders has generally been sporadic and involved a large military presence. In many cases, large criminal groups have enjoyed the protection of state agents who suspend or distort the application of the law. In this respect, as well for all the causes discussed above, state weakness in applying the law, providing security and promoting citizenship is essential to explaining the expansion of criminality in Latin America (Koonings and Kruijt 2004).

### **3.2.2 The fragmentation of organized crime and the reconfiguration of the mafia state**

On the basis of the three conditions mentioned above—the transformation of geographical regions characterized by illegality, integration with international chains of illicit trade and the adverse effects of some anti-crime policies—organized crime in Latin America has been able to expand considerably to countries that were previously peripheral to such illicit activities. Some countries have suffered significant increases in violence, largely as a result of the influence of drug trafficking and other illicit networks in these countries. In Costa Rica and Uruguay, for example, murder rates reached record levels in 2010 and 2012, respectively (UNODC 2011b: 37; Castro 2012; Maciel and Ventura 2013). Although other factors contributed to the rise in criminality in Uruguay, such as the increased participation of minors in murder (21 per cent of solved cases in 2012), there is no denying the evidence of the role of organized crime in the increase in violence in that country, such as the increased flows of cocaine through the country and the formation of new criminal networks as a result of prison overcrowding.

Other countries, meanwhile, have experienced the sudden appearance of transnational illicit networks. Ecuador, for example, had been distinguished from its neighbours Colombia and Peru by its low level of drug production. However, according to the local representative of the US Drug Enforcement Administration, the country has become the ‘United Nations’ of crime (Rosenberg 2011) due to

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its facilitation of the activities of various foreign groups. Its tolerance of money laundering led to its inclusion on the blacklist of the Financial Action Task Force in 2012 for its 'strategic deficiencies' in this area (FATF 2013).

However, this characterization of an expansive, dynamic criminal space only provides a superficial understanding of the phenomenon and, in particular, of its links with the formal sectors of government or the economy. The key to understanding the development of illicit activity in Latin America, as is noted above, is to observe how these groups have reconfigured themselves. They have shifted from monopolistic organizations to horizontal networks, often concentrating their power in the drug trade, for example, in the case of the Sinaloa cartel, but without vertically integrating their entire production and distribution chain. Organized crime has been through a roller coaster process of fragmentation and diversification, generating new networks of illicit activity consisting of specialized suppliers that come together to conduct specific operations. Their smaller size and the range of their connections enables these suppliers to rapidly take advantage of new opportunities, as occurred, for example, with the opening up of routes to the European cocaine market via the coast of West Africa (Garzón 2013). This new picture of small, flexible groupings has been particularly visible in Colombia, where an estimated 350 'mini cartels' are active at various stages of the cocaine production and transport process, while the new criminal bands and representatives of different transnational cartels work together either through alliances or on a per-transaction basis (Chalk and Logan 2010).

According to a Colombian expert interviewed in Bogota in October 2012, the result of this fragmentation is particularly apparent in regions that have a high density of illicit activity, such as the border between Colombia and Venezuela which is a centre for smuggling, drug trafficking, the theft of petrol and a variety of extortion networks. The region has become a marketplace where 'multiple nodes offer their services to each other' (anonymous interview) and where the previous ideological divisions between Marxist guerrilla forces (Fuerzas Armadas Revolucionarias de Colombia, FARC) and the heirs of paramilitarism, or political differences between the two neighbouring states, dissolve into opportunistic cooperation on the ground. According to one Venezuelan military officer quoted in a recent study, national governments exercise only limited control over the border, and the opportunities are immense: 'in just one year it is possible to make a million dollars' (Ávila 2012b: 71). In this free market context, transnational organizations can even buy drug transportation rights from smaller groups as if they were commercial franchises.

Other border regions—such as the frontiers between Colombia and Ecuador; Peru, Brazil and Colombia; Mexico and Guatemala; and Mexico and the United States, the most prized of all because it controls access to the North American market—also suffer from a proliferation of organized crime characterized by improvisation, innovation and the evolution of networks. Similar trends towards the dispersion and recombination of criminal groups can be identified in many large cities in Latin America and the Caribbean (Leslie 2010; Muggah 2012). This trend can be explained in terms of economic sociology: within illegal economies, there are restrictions on the size—and, as a result, exposure to criminal prosecution—of illicit enterprises, combined with a chronic dependence on personal relationships and trusted intermediaries (Gambetta 1993). These factors generate a multitude of small organizations with a 'segmental differentiation characteristic of pre-state societies' (Beckert and

Wehinger 2011), in which an emphasis on personal relationships of trust exists side by side with the constant threat of violent punishment.

However, an approach that focuses exclusively on the diversification of illicit markets, and that perceives them as independent of or removed from the actions of the authorities, ignores a key part of the picture. Criminality in Guatemala and Peru did not flourish in the shadow of a hierarchical criminal cartel, but arose instead in states that surreptitiously controlled a significant share of criminal activity. Under the rule of President Alberto Fujimori and his head of intelligence, Vladimiro Montesinos, Peru was governed according to a logic of private extraction and the elimination of sources of democratic opposition. In addition to the income from corruption, estimated at USD 600 million according to an expert who took part in the corruption investigations at the time and was interviewed in Lima in August 2013 under condition of anonymity, Fujimori and Montesinos made arrangements with drug trafficking groups, which were able to conduct their business in exchange for a contribution to the president's coffers. According to protected witnesses, the drugs were exported with the help of military aircraft and helicopters to 'Mexico, Spain, Portugal, Italy, Bulgaria and Russia' (Quiroz 2008: 415).

Evidence of arrangements between networks of corruption and criminality and the highest levels of the state has also been found in Guatemala, where the civil war forged strong links between army officers, criminals and civil politicians under the pretext of the counterinsurgency struggle (Beltrán and Peacock 2003; López 2010; Briscoe and Rodríguez Pellecer 2010). Alfonso Portillo, the president of the country between 2000 and 2004, as well as a government minister and several high-ranking officers in the security forces of the next president, Óscar Berger, have been put on trial in recent years as a result of pressure from the UN's International Commission against Impunity in Guatemala. President Portillo was accused of laundering USD 70 million, which resulted in his extradition to the USA in May 2013, while members of Berger's government, most notably his former minister of the interior, Carlos Vielmann, were accused of conspiracy to plan extrajudicial killings. There are suspicions that this network was also involved in drug trafficking (L. Fernández 2011).

These cases are far from isolated in Latin America. The phenomenon of mafia states, understood by Moisés Naím (2012) as places where 'government officials enrich themselves [...] by exploiting the money, power, political influence and global connections of criminal syndicates', has its roots in the long history of internal repression during the Cold War. The best-known examples are Panama and Bolivia during the 1980s. In Mexico, the logic of criminal control operated in a different manner, particularly during the political hegemony of the *Partido Revolucionario Institucional* (PRI). The cohesion of the governing party, together with its monolithic political control through a hierarchy that spanned the presidency, the senior echelons of the security system, state governors and local authorities, favoured the development of coexistence arrangements with criminal organizations (Astorga 2005; Knight 2012). According to one PRI ex-governor, quoted anonymously, a practical manual or 'ten commandments' existed to guide these permissive relationships, with instructions to criminal groups not to leave dead bodies in the street and to invest the 'profits' in the country. Other rules included not allowing drugs into schools, not creating media scandals, regularly handing over small consignments and minor traffickers, economic investment in local communities, not permitting the proliferation of groups, not making agreements with members of government structures such as police officers or legal officials, punishing errors with imprisonment rather

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than by killing, and maintaining order and respect in the territories under their control (Guerrero Gutiérrez 2009).

These coexistence arrangements disintegrated with the democratization of Mexico, which brought an end to the PRI's hegemony and fragmented the political system to levels not seen since the 1930s. Freed from their 'protection' by the central government, the criminal groups were able to multiply and compete, using ever greater levels of violence, in a marketplace with no supreme arbiter and in which both the police and the justice system were going through a complicated process of restructuring (Snyder and Durán-Martínez 2009: 263–65). Meanwhile, the local authorities and their security forces were prepared to reach an agreement with whoever made the best offer. According to a recent article based on a large number of legal documents, the Sinaloa cartel has in the past two decades bribed 'mayors and prosecutors and governors, state police and federal police, the army, the navy and a host of senior officials at the national level' (Keefe 2012). According to the Municipal Development Commission of the Mexican Senate, 195 of the country's 2457 municipalities were recently under the 'total hegemony' of drug traffickers (Ravelo 2010).

The examples of Peru, Guatemala and Mexico are key to understanding that the expansive power of organized criminality does not have its origins solely in economic factors or the displacement of illicit activities. It also depends fundamentally on the decentralization and dispersion of once authoritarian states with organic or 'strategic' links to illicit activities, which can be termed 'parallel' or 'shadow states' (Briscoe 2008). The residual elements of this *status quo ante* and its informal or clandestine mechanisms and channels for transactions between officials, politicians and criminals—strengthened by the latter's increased access to funds, technology and weapons—provide the key to understanding the general framework within which illicit networks have developed in Latin America.

However, in countries that were not characterized by this historical pattern of criminality coordinated by the central authorities, such as Colombia and Ecuador, there were still close ties between politics, the formal economy and illicit activity, and these, too, succeeded in establishing themselves within the institutional practices of their countries, particularly in Colombia (Thoumi 2003: 200–31). Neither of these two countries underwent a rapid process of democratization. However, at the end of the 1990s Ecuador experienced both a fiscal crisis and a crisis of political legitimacy, while Colombia suffered from internal armed conflict, economic collapse and political fragmentation. In both countries, these crises were followed by the launch of radical processes to re-establish or reform the state, which had a significant impact on the opportunities for infiltration by illicit networks.

These and other examples show how the nexus between politics and criminality should not be understood merely as an appendix to the problem of public security. Various examples reveal situations in which the involvement of public officials in illegal business is not just the result of 'a few bad apples' succumbing to a tempting opportunity within the state apparatus, but rather the result of an intrinsic legacy of states with a history of authoritarianism or complicity with crime, and of certain structural or modernization challenges within the state that are analysed below. In this way, illicit networks form part of the *modus operandi* of key democratic and state organs, including political parties, tax agencies, legal systems and police forces.



### 3.2.3 The new Latin America: refoundation, growth and mobility

Before exploring the creation and articulation of illicit nexuses in more detail, it is important to identify a final element of the analysis in this study. It is worth recalling that crime is the expression of failures in the collective development of society, notably in the post-war context of Central America (UNDP 2009), and that violence in all its forms expresses the suffering experienced within oppressive power systems (Zimbardo 2007). Furthermore, it is essential to recognize that the very foundations of the social contract in Latin America, which has traditionally been perceived as hierarchical and exclusive, have undergone a decade of profound and, according to some, revolutionary change (Guardiola-Rivera 2010).

The region has enjoyed rapid and sustained growth. Since 2004, regional GDP has grown each year with the sole exception of 2009, and at an average of 2.8 per cent (ECLAC 2012). Argentina, Brazil, Chile, Colombia, Ecuador, Panama and Peru have experienced economic booms, although the majority of these have been driven by agriculture, mining and fossil fuels. In Peru, for example, the value of mining exports grew by a factor of seven between 2000 and 2010, to a point where they accounted for 14 per cent of GDP (Loayza, Mier y Teran and Rigolini 2013: 2).

Inevitably, this massive expansion of economic opportunities has had an immense social impact. According to the World Bank (2012), 50 million people across the region have joined the middle class, although their new status remains fragile, intergenerational social mobility is still very limited and the poor quality of public services—such as education and health—has led to growing frustration and anger, as seen in street protests in Brazil, Colombia and Peru in 2013. At the same time, although inequality has continued to reduce gradually (López Calva and Lustig 2010), social perceptions in the majority of countries continue to be profoundly influenced by daily experience of segmentation and differentiation along class and ethnic lines: 55 per cent consider themselves to belong to the lowest level of society, and as a result 'Latin America views the world from the lower class' (Lagos and Dammert 2012: 11).

Rapid economic growth has had a range of effects on the development of illicit networks, some of which operate in contradictory directions. On the one hand, new economic opportunities in the formal sector, especially if they generate significant sources of employment, should in principle reduce the incentives for illegal activity. However, there is no firm correlation between growth and improvements in public policy and thus equality, particularly when this growth is based on extractive industries or when interest groups seek to exercise their influence over the process (van Dijk 2007: 48). The social changes produced by rapid economic growth—in particular, the formation of an emergent entrepreneurial class or the trend towards conspicuous consumption generated by increased affluence—may also foster new, materialistic aspirations that can only be satisfied in the short term through crime or corruption (UNDP 2013a: 22–23). According to an analyst interviewed in Guatemala City in July 2013 on condition of anonymity, this growing culture of aspiration underlines the decadence in the values of public officials and politicians in recent years: 'we live in a culture that believes that opulence is the best way to escape from membership of the middle class'.

The analysis is further complicated when the changes taking place at the heart of the state are considered. Although governments in Latin America encompass the full range of the ideological spectrum, the rise of a bloc of Bolivarian governments, led originally by Hugo Chávez in Venezuela, would appear to mark a regional shift to the left. Elected in 2006, President Rafael Correa of Ecuador is a key reference point for this movement. He has led a government of national 'refoundation' that has been highly successful in terms of economic growth and electoral popularity. The public sector has undergone a rapid expansion, from USD 6.67 billion in 2006 to 32 billion in 2013 (Central Bank of Ecuador 2005; Andes 2013).

Of course, the right wing ideology of Colombia's governments, from President Álvaro Uribe to President Juan Manuel Santos, and of the Guatemalan government of President Otto Pérez Molina, who is also a former army officer, and the lack of a clear ideological direction in the case of the administration of President Ollanta Humala in Peru mean that no single political trend is dominant throughout the region. However, economic growth, democratic agitation and voters who are less loyal to traditional parties and more open to populist messages mean that almost all governments in Latin America find themselves obliged to direct state machines that are more active and interventionist, and a regional trend towards redistribution and higher public spending (OECD 2011: 52; Mahon 2012). At the same time, and with the exception of a few regimes with strong party structures such as Brazil and Chile, these new leaderships tend to draw on a constantly shifting agglomeration of new movements, unpredictable governors and deputies—often with client networks and drawn from peripheral areas of the country— as well as campaign funders and key sectors to ensure continued governability and popular support, particularly from the media, unions and security forces. It was the security forces, for example, who booed President Correa of Ecuador and detained him for several hours in September 2010 during a salary protest that the government interpreted as an attempted coup (Gualdoni 2010). Similarly, police strikes in Argentina in December 2013—and the outbreaks of looting that followed as a result—highlighted the challenge posed to governments in the region by the capacity of the security forces to threaten social chaos in order to achieve their demands.

This is the difficult political situation in which governments in many Latin American countries must operate. While they accumulate electoral victories and fiscal power, or overhaul creaking state apparatuses, many of these governments—including supposedly authoritarian ones such as Venezuela (Sanjuán 2013)—find themselves exposed to fragmentation and constrained to build coalitions of interests that are vulnerable to illicit influences. Real power in these systems may belong to what one expert in Ecuadorean politics called the 'fixers and facilitators' of coalitions (anonymous interview, Quito, October 2012), whose priority is to ensure the stability of the regime at any price.

In this context, the increasingly competitive nature of electoral contests, and the high cost of campaigning in open channels, are very attractive to illicit influences. One member of the Guatemalan Congress with a detailed knowledge of the corridors of power in his country commented that, 'There is no problem obtaining money to fund campaigns. The problem is where the money comes from' (anonymous interview, Guatemala City, August 2013). However, the proliferation of ties and paths of influence between the political and criminal spheres means that this is far from being the only or even the most important channel between illicit networks and politics (Casas-Zamora 2013).

### 3.3 Existing and emergent illicit networks

#### 3.3.1 The local context

The best place to start a detailed, in-depth study of the new illicit structures in Latin America is at the municipal level, where there is no way to avoid relationships with grassroots criminal activity. Although international trafficking in illicit substances or arms is the most profitable, criminality is at its most tangible and intrusive in its control of territories and civil populations.

The four countries covered in this book present numerous examples of factional control of territorial enclaves by violent criminal groups. Three gangs—the Choneros, Queseros and Rusos—are embedded in various communities in Ecuador, each with a high level of participation in typical forms of criminal coercion from small-scale drug dealing to extortion from local businesses, working as hired assassins and sporadic links with the activities of larger criminal groups (Hoy 2012). As a result, the places where their activities are concentrated, and where the struggle for control of the illicit market is fiercest, suffer the highest rates of violence. Often, these struggles occur in marginal urban neighbourhoods or border regions, as is clearly illustrated by the murder rates mapped by local authority district in Guatemala, Honduras and El Salvador (UNODC 2013: 70; Gutiérrez 2013). In Ecuador, there has been an increase in the number of murders in Manta, a port in the province of Manabí where there is a significant flow of drugs based on cooperation between transnational groups, local gangs and the fishing fleet (anonymous interview, Guayaquil, October 2012), and the drug trafficking cartels co-opted former Provincial Governor César Fernández (see section 7.2).

A dynamic of what could be called civil and political coexistence with locally based illicit organizations interrupted by outbreaks of violent competition between criminal actors has been witnessed with ever greater intensity in Colombia and Guatemala. In Colombia, the development of new criminal bands (*bacrim*) as a result of the demobilization of paramilitary groups since 2003 has led to changes in the methods associated with illicit activities. The primarily counterinsurgent profile of the *Autodefensas Unidas de Colombia* has given way to a situation in which the emergent groups, above all the *Rastrojo* and *Urabeños*, aspire to exercise tight control over local populations and strategic territories, but without the same ideological objectives (Granada, Restrepo and García 2009). A similar technique has been deployed by Los Zetas in Mexico, which expand by threatening lesser criminals of all sorts (Rios and Dudley 2013).

As part of their power strategy, the *bacrim* groups in Colombia are involved in a wide range of illegal activities, including cocaine trafficking, land theft and extortion. There have been tactical alliances with different representatives of the state and armed groups, including some elements of the FARC guerrilla movement (Ortiz 2012: 26). As a result, the *bacrim* have established a significant presence in 209 of Colombia's 1123 municipalities (Ortiz 2012), basing their coercive role on the internal displacement of populations and the selective assassination of community leaders.

They also indulge in crude and dramatic demonstrations of power. In January 2012, the *Urabeños* proclaimed their dominance of the Caribbean coast of Colombia by calling an 'armed strike', forcing the suspension of all commercial activity in six departments in the north of the country in retaliation for the assassination of their leader (*Revista Semana* 2012b). Similar practices

of coercive terror on a mass scale include the forced strike imposed by the Primeiro Comando da Capital in São Paulo in 2006, the narco-blockades and 'exemplary murders' in Monterrey or Acapulco, Mexico, or the gun or bomb attacks on public transport in Guatemala (Briscoe and Stappers 2012: 21–22). These are perhaps the most extreme mechanisms for disseminating a group's criminal power.

This projection of power through the use of arms, and the respective struggles between rival groups to control places deemed strategic territories for illicit activity, have a particularly profound impact on whole communities. The wave of violence generated by the confrontation between Los Rastrojos, Los Urabeños and the FARC in the port of Buenaventura on Colombia's Pacific coast, combined with their infiltration of economic and public life in the region, for example, has particularly affected the local population. A report by the public Ombudsman of Colombia (2012) describes how these three organizations:

[...] Issue threats to leaders and social organizations, carry out murders and terrorist attacks, establish rules for coexistence, restrict the mobility of local inhabitants, control prices and impose tributes on local business, collect extortion money, control drug-dealing and prostitution, conduct hired assassinations, and practice torture and murder.

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Another recent example comes from the Mexican state of Michoacán, where certain communities have formed their own armed self-defence groups in an effort to chase off criminal organizations (ICG 2013), in this case the so-called Knights Templar, a group that, among other things, has created an extortion network targeting local avocado, lime and mango growers, and the producers and distributors of iron ore (Johnson 2013).

Violence at the level experienced in Buenaventura or Michoacán is, fortunately, uncommon. However, the entrenchment of illicit groups in significant regions of Latin American countries, where they coexist with communities and politicians, is more common according to numerous studies and investigations. Although the figures are difficult to verify, a former minister in the Guatemalan Government, interviewed on condition of anonymity in Guatemala City in August 2013, stated that money from organized crime helped to fund approximately 70 per cent of district electoral campaigns in the east of the country, which is home to some of the most important drug trafficking routes. A Peruvian expert estimated that 14 of the country's 1834 current mayors were supported by drug trafficking money (anonymous interview, Lima, August 2013). According to Philip Alston, the UN special rapporteur on extrajudicial, summary or arbitrary executions, there is an 'absolute lack of will' by the authorities in a town in the north of Ecuador, near the border with Colombia, to combat the presence of armed groups (UN 2010: 6).

Needless to say, the composition and character of criminal groups vary substantially according to the local situation. In some cases, such as on the Atlantic coast of Nicaragua or in the Alto Huallaga region of Peru, the infiltration of local populations by such groups and community acceptance of activities that outsiders view as criminal (UNODC 2012a: 35) mean that illegality does not necessarily undermine security. Such normative differences are generally far greater among communities that cultivate coca leaf or those living in general poverty. However, these are exceptional cases in which illicit networks are structured on the basis of a model of criminality that is almost benign—what

Mancur Olson terms 'stationary bandits' (Olson 1993). These systems of *pax mafiosa* are therefore always vulnerable to the regional trends noted above, which may drive criminals to increased territorial competition, the use of more sophisticated weaponry and increasingly profitable relationships with transnational cartels.

Meanwhile, the authorities in regions where criminal groups have a presence face the complex task of governing in a context of violent, hybrid power. One member of the Guatemalan Congress responsible for the selection and supervision of his party's local candidates stated in an anonymous interview in Guatemala City in August 2013 that criminal groups seek to interfere with local politics in order to control the granting of permits—for example, for the sale of alcohol—and to exercise influence over the police, who often depend on the local authorities for supplies of food and fuel. Similar cases have been observed in Peru and Colombia, where a range of armed groups, rebels and criminals seek to influence power at the local level to neutralize the risk of prosecution, conceal illicit income or exhaust municipal funds. In the 80 Colombian municipalities that went bankrupt between 1999 and 2011, for instance, electoral results had clearly favoured candidates with links to paramilitary groups (López Hernández 2011: 39; C. Torres 2010).

Mayors who resist such influences run obvious risks, but there are examples of heroic resistance. For example, the Solidarity Front was created in 2001 by 23 mayors in Colombia's eastern region to counter the human rights violations caused by multiple armed factions (Roldán 2010). However, according to the Guatemalan politician quoted above, such local leaders receive little or no support from state institutions or political parties: 'they only have the support of their families and their moral values'. As a result, they may opt for coexistence by signing overpriced contracts with legitimate companies owned by illicit actors, or by using other forms of mediation that favour these groups. A study of power networks conducted in the Guatemalan department of Petén, a strategic location for drug trafficking, clearly shows that major public sector contracts, private companies and NGOs often serve as a conduit between the licit and the illicit (*Plaza Pública* 2011b). The merits of such local pacts or arrangements are debatable, but they can become part of a country's public policy if negotiations with criminal groups focus more systematically on collective well-being. A case that has generated a lot of interest in Latin America was the declaration of a truce with urban gangs (*maras*) in El Salvador in 2012, accompanied by the introduction of pacification plans in municipalities where the *maras* had a major presence (Whitfield 2013; Peeters, Schulting and Briscoe 2013).

Of course, some politicians have no qualms about using such agreements to deepen their relationships with illicit groups, consolidate their client networks and reduce opposition to their rule. Indeed, the enthusiasm of some local authorities for creating and protecting spaces for coexistence with illicit groups contradicts the notion that their actions are the result solely of harassment and criminal threats. In addition, the balance of power between local politics and the criminal sector may change according to circumstances, or depending on how far the political partner is prepared to go in order to consolidate its power (Flores Pérez 2009: 127; Garay Salamanca and Salcedo-Albarán 2012: 81–94).

The development of hybrid local power relationships has played a particularly important role in Colombia, where first the guerrilla movement in the 1990s and then paramilitaries demobilized since 2003 sought to influence local power,

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while a new class of politicians with strong illegal connections in regions such as La Guajira, Valle del Cauca and Magdalena have sought to direct and use this support for their own ends. According to analysis by Colombia's Electoral Observation Mission, 447 municipalities were at risk from political violence, forced displacement and the presence of armed groups before the elections of 2011 (López Hernández 2011). At the same time, there is a general—although not universal—trend for political candidates with illicit connections to use illegal money to fund their campaigns, rather than directly threatening voters or opponents as was the case previously (Ávila and Velasco 2012).

The results of the most recent electoral processes show that the intensity of the trafficking of influence between local politicians and criminal groups has not lessened. It appears to have become the norm in Colombia. Candidates identified by experts as having links with criminality won seats in 12 of the 32 regional governments in 2011, and in over 30 municipalities. These candidates represented almost all of Colombia's political parties, with the exception of Polo Democrático Alternativo and the Greens (Medina and Duque López 2011).

### 3.3.2 The role of political parties

If they were restricted to peripheral or relatively poor spaces in their respective countries, the links between politics and criminality could be seen, according to the famous diagnosis of Guillermo O'Donnell, as 'brown areas' on the map of Latin America, where there is 'a continuous renegotiation of the boundaries between formal and informal legalities' (O'Donnell 2004: 41). If this were the case, these spaces would be vulnerable to 'reconquest' by the central government. Government discourse on the region, often with the support of the international community, emphasizes the need to re-establish the state in these territories to combat crime, ensure a governmental presence and provide public services to marginalized populations.

This task can be complicated, especially in urban or rural areas that have spent many years under the rule of criminal organizations with ties to formal authorities, or where the population doubts whether the state's efforts to achieve 'territorial consolidation' are sustainable (Felbab-Brown 2011; Isacson and Poe 2009). Examples of such attempts include the use of the 'pacification police' in Brazil, and pacification operations designed to re-establish the state in Medellín in Colombia (Operación Orión) and in Ciudad Juárez in Mexico ('*Todos Somos Juárez*' or 'We are all Juárez').

However, the greatest problem lies in the nature of the central government that seeks to project itself throughout the country. Instead of acting as a guarantor of the legal order, some central state institutions exhibit the same hybrid nature and illegal political practices as in the peripheries, although with different degrees of intensity depending on the country. An essential mechanism for the transmission of illicit practices to and from the central state has been the collapse of the major political parties that governed for much of the 20<sup>th</sup> century, a process that took place in each of the four countries studied. This happened first in Peru, where the economic and institutional crisis of the second half of the 1980s brought to power Alberto Fujimori, a president with no historical baggage or political machine. Between 1985 and 1995, the share of the popular vote won by traditional political parties fell from 97 per cent to 6 per cent (Levitsky and Cameron 2003).

The Peruvian democracy that re-emerged after the crisis of the 1990s (see section 6.2) has not ended the electorate's predisposition for charismatic candidates lacking any solid apparatus, or the rapid turnover of elected politicians—only 18 per cent of Congress was re-elected in the most recent elections (Levitsky 2013). While this brings a breath of fresh air to the corridors of power and an unwelcome degree of social mobility for the unfortunate losers, such a position also strengthens the ability of heads of client networks from Peru's periphery to obtain positions of influence at the centre of power. Lacking the capacity to organize and mobilize throughout the country, 'disposable parties' (Levitsky and Cameron 2003), anchored in personalized leaderships or traditional elites, seek local intermediaries and figures who can deliver votes and pay for their campaigns. This is apparently how the two alleged narco-deputies—Nancy Obregón and Elsa Malpartida, who were arrested in July 2013—came to be included in President Ollanta Humala's *Partido Nacionalista*, although it is important to note that some political analysts in Peru interpret their arrest as part of the persecution of two prominent leaders of the coca farming movement (Gorriti 2013).

Weak political parties and the consequent rise to legislative power of ethically dubious individuals drawn almost exclusively from the world of business are certainly not unique to Peru. In Guatemala, nine of the ten parties that took part in the 2011 elections had been in existence for less than a decade (ASIES 2011: 18). The candidates on district lists—which represent 127 of the 158 seats in Congress—must pay GTQ 1 million (USD 125,000) to top the electoral lists of certain leading parties, according to information from multiple sources obtained on condition of anonymity. Once elected, their loyalties—according to the same interviewees—primarily involve repaying their backers and satisfying their own interests. Opportunism and switching allegiances are chronic in Guatemala, as they are in Peru. However, few examples in the region withstand comparison to the case of the party of ex-President Álvaro Colom, *Unidad Nacional de Esperanza*. After winning 51 seats in the elections of September 2011, a series of splits and resignations left the party with only eight legislators by the start of 2012.

The same dynamics can be observed in Ecuador and Colombia, where the domination of the large traditional parties has been decimated by the effects of the crises and electoral reform of recent decades. Rather than form a traditional party, President Correa of Ecuador decided to rely on the *Alianza País* movement, which won a majority in the National Assembly in 2013, and is dependent on the recruitment of local leaders with no clear loyalties. In Colombia, new electoral rules, introduced with the best of intentions during the process of decentralization and democratization that began in 1988, had an unexpected impact on the distribution of political power. In particular, the introduction of the 'electoral quotient' and 'largest residue' methods—two variations of proportional representation—did much to promote the proliferation of small political parties in the 1990s. The new electoral system led to a fragmentation of the traditional duopoly of the Liberal and Conservative parties, giving rise to a bewildering range of mini-parties that sought to capitalize on the peculiarities of the new electoral arithmetic. A collateral effect was to empower local organizations, often in the form of clientelist structures or armed groups. As a result, instead of leading to pluralistic democracy on a national scale, these measures engendered captive democracy on a local scale.

This situation made possible the development of 'parapolitics' in Colombia. The subsequent scandal meant that, by 2012, 199 national deputies and senators



had been investigated for their links with paramilitary groups (EOM 2012). A series of recent reforms has sought to reverse this tendency towards party fragmentation; for example, there were only nine political parties registered for the 2014 elections, eight of which were already represented in Congress. The only new party, *Centro Democrático*, is led by former President Álvaro Uribe. However, these reforms have not reversed the effects of the indirect presence of illegal armed groups in Congress, which helped to change the legal and formal structure of the country as a result of the parliamentary approval given to various pieces of major legislation at the peak of paramilitary influence. There is evidence that ‘parapoliticians’ had a particular influence on legislation that touched closely on the interests of the armed groups, most notably the Justice and Peace Law of 2005—which reduced sentences and established amnesties for demobilized paramilitaries—and various laws on land and agrarian issues (López 2012: 267–363).

### 3.3.3 Crime within the central state

Nonetheless, it would be wrong to attribute all the blame for the consolidation of links between politics and crime to opportunistic participants. The state entities in which such politicians are active have a lengthy history of corruption that stretches back to colonial times (Elliot 2006; Quiroz 2008). More recently, Peruvian state entities have been used as a source income, while in Guatemala the state has long served corporate interests and the economic interests of the military. The degree of corruption and the collusion between state bodies and illicit activities also reached critical levels in the 1990s in Colombia and Ecuador. According to a report by the International Monetary Fund, the Ecuadorian financial crisis, which in 1998–2000 caused the collapse of 16 banks and destroyed the economy, was due in large part to the fact that ‘the enforcement of law and regulations was feeble’ (Jacome 2004: 39).

At the same time, public bodies have undergone lengthy reform processes inspired by free market principles, designed to implement more ‘efficient’ management models based in part on outsourcing to private companies. This neoliberal approach has had far-reaching consequences that go beyond the remit of this book. However, one aspect that is often ignored is how this process has shaped the willingness of civil servants to support the private sector and, increasingly, to establish close relationships with business interests. This process is not, of course, unique to Latin American democracies. However, in the context of weak institutions, economic crises and political fragmentation, public positions can offer economic opportunities, the limits on the legality of which are neither clearly identified nor monitored.

The importance of material motivations that have no connection to public service and the prevalence of influence-trafficking networks vary from country to country. Nonetheless, countries that have enjoyed economic growth or are expanding their state structures share an increased proximity between public officials and politicians, on the one hand, and public sector businesses, on the other. These businesses, particularly public sector contracts and tendering processes, generate major opportunities for illicit enrichment as a result of the personal contacts needed to finalize agreements. One Ecuadorian politician with a prominent role on a National Assembly commission dealing with international trade issues told how his salary: ‘bears no relation to the scope of the economic activities I negotiate’ (anonymous interview, Quito, October 2012).



In Guatemala, the temptation for civil servants or members of Congress to exploit their power to block contracts or public tenders appears to have been exacerbated by the dismantling during the 1990s of many of the bodies traditionally tasked with monitoring economic policy (UNDP 2008: 418). The bodies that replaced them did not enjoy the independence or powers required to perform their tasks. Several close observers of Guatemalan politics have reached the disheartening conclusion that public service has become a means of rapidly accumulating wealth (anonymous interviews, Guatemala City, August 2013), in some cases to exorbitant levels (Arana 2013). Cases reported in detail by anonymous sources for this investigation include: the extortion of subordinate staff, who have to pay part of their salary to their manager (up to 50 per cent in one case involving an official chauffeur); the overpricing of state contracts, with the difference paid to the official concerned; and the payment of members of Congress in exchange for voting with the government. One example came to light recently when the Guatemalan police arrested 11 tax officials accused of involvement in a network that stole and resold cars (*Prensa Libre* 2013b).

Even if they occur frequently and damage general respect for the legal order, examples of this kind are expressions of minor corruption. The more systemic, and potentially strategic, involvement of illicit networks in manipulating state bodies depends on other variables. The weakening of political parties and their infiltration by candidates with illicit connections, analysed above, is an example of a much wider phenomenon in Latin America that has been described by anthropologist Javier Auyero (2006: 166) as the rise of 'politics by problem-solving', in which political intermediaries 'strive to maximize their stock of state resources' in order to 'accumulate as much political power as they can' from their networks of beneficiaries. Although Auyero analyses this practice in the context of the clientelist relationships between political patrons and poor voters in the Greater Buenos Aires conurbation, its significance extends to many other levels of power.

The economic crisis, democratization and reform of the state apparatus that characterized the period 1992–2002 dramatically weakened the capacity of state institutions to exercise vertical control. The case studies of Montesinos in Peru and of a former member of Congress referred to in this volume by the fictional name of 'Sisyphus', who is currently a fugitive in Ecuador (see sections 4.3 and 7.3), provide examples of how certain individuals managed to accumulate unprecedented amounts of power as a result of their capacity to distribute resources and benefits from the public sector—above all, protection, impunity and funding—to individuals, political parties or state bodies through illicit channels.

The phenomenon of 'shadow intermediaries' has parallels in many other Latin American countries: Brazil, in particular the *mensalão* vote-buying scandal; Argentina, the scandals involving the government of Carlos Menem, most notably with regard to the businessman Alfredo Yabrán who committed suicide; and Guatemala, the plunder of Crédito Hipotecario Nacional (Gutiérrez and Méndez 2012). The downfall of the individuals involved does not mean that their extra-legal practices have been eradicated. As is noted above, the new states that emerged from the economic and political crises have dealt with the challenges of power by entering into coalitions with varying degrees of proximity to interest groups, financiers, security bodies, intelligence agencies and criminal actors.

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However, it is important to recognize that these coalitions are not always the result of an agreement, explicit arrangement or exchange between the authorities and criminal powers. Many mutual benefits can be derived from tacit, arm's length coexistence arrangements. According to a politician in Guayaquil, there is a relationship of 'profitable permissiveness' between illicit trade in the Ecuadorian port city and local political figures (anonymous interview, Guayaquil, October 2012). Suspicions regarding questionable manoeuvres in a group of companies rescued by the state following the financial crisis in Ecuador have been raised repeatedly in the country's press (*La Vanguardia* 2012) and were repeated in several interviews with informants conducted on condition of anonymity in Quito in October 2012. Similarly, a senior representative of the public prosecutor's office in Peru stated that 'indifference to the issue of drug trafficking has created a situation in which organized crime has penetrated the administration from top to bottom' (anonymous interview, Lima, August 2013; emphasis added).

In other cases, the connections established by the intermediaries are much tighter, although the importance of different business groups and the precise role of illicit interests remain unclear. For example, in Guatemala many people, including a former minister of finance in his memoirs (Fuentes 2011), recognize that the private secretary of the presidency plays a key role in government, as this post is the main channel of influence—and for the appointment of positions in the executive—for groups that have funded successful presidential campaigns. The suspicion that some of the funds used for these campaigns come from organized crime shows the risks attached to this type of intermediation in the president's office. According to a politician interviewed in Guatemala City on condition of anonymity in August 2013, 25 per cent of the funds for presidential campaigns come from organized crime.

Some central governments also suffer from the influence of illicit networks within their own apparatuses, with the result that these act as a counterweight within official structures. This is the case in the Colombian tax service, where a high-ranking official recognized in an interview granted on condition of anonymity in Bogota in October 2012 that the structure of corruption within his organization, which involved multiple levels of fraud, had existed for approximately 15 years. According to these sources, there are illicit ties between the tax service and fraudulent financial companies, such as DMG, the operator of a pyramid scheme that was put into liquidation in 2008. Some important officials in the service have been closely linked to the fraudulent sale of export permits for goods to Venezuela: it is alleged that of the 3400 permits issued, only 400 were legitimate. The informant also claimed that several local tax offices in La Guajira, Putumayo and Nariño, and in the Norte del Valle sub-region and the municipalities of Turbo and Buenaventura, were totally beyond the control of head office. The source asserted that the tax service was even struggling to control the customs post at Bogota El Dorado International Airport, where the heads of the service received COP 700 million (USD 370,000) in bribes every week.

There are other cases of parts or fragments of the state that, in one way or another, act in complicity with organized crime, often as a result of alliances that have been nurtured at the local level. In Guatemala, the national police, the prison service and the tax service are clear examples of this phenomenon. Leading experts and former heads of state bodies recognize the existence of illicit networks within these agencies, with connections with drug trafficking, extortion and other crimes (anonymous interviews, Guatemala City, August 2013). Several leading commentators on Guatemala recognize that, despite the

arrest of a series of local drug trafficking bosses between 2011 and 2012 (see section 8.3), Marlory Chacón is the new queen of the country's drug trade. Since 2012, she has been on the US Treasury Department's list of Specially Designated Narcotics Traffickers (US Treasury Department 2012), but allegedly continues to be linked to several prominent politicians and businesspeople.

However, it is as yet unproven that these niches of illicit activity and quasi-state protection of crime are connected through shared interests with the highest echelons of political power. It has been very difficult, as the Public Prosecutor's Office of Guatemala recognizes, for legal investigations to penetrate the control and protection structures of illicit networks (anonymous interview, Guatemala City, August 2013). Furthermore, although several former Latin American presidents have been tried for fraud, it is difficult to identify the exact nature of the permissiveness and proximity—be it one of 'looking the other way', an indirect link, a tacit arrangement or an explicit coalition—that may exist between the executive and illicit networks, and drug trafficking in particular.

During the course of this research and while preparing the case studies for this book, alleged relationships between former presidents and prominent drug traffickers in three of the four countries studied were mentioned by sources with extensive political experience. According to a high-ranking former official in one of the countries studied, the Sinaloa cartel has attempted to infiltrate important trade and control positions with the alleged blessing of members of the executive (anonymous interview conducted by digital means, July 2013). There have also been claims in Peru regarding the systematic sale by the presidency of reduced prison sentences for drug traffickers, the so-called narco-pardons granted to 400 imprisoned traffickers. However, it has not been possible to provide proof of these accusations within the framework of this study.

### **3.3.4 The link with the private sector and money laundering**

The analysis in this chapter has thus far not focused on the intensity and complexity of the current relationship between politics and criminality in Latin America. It has examined the composition of networks in terms of facilitating illicit trade, above all through the state's provision of protection or impunity and trafficking in influence that favours illicit networks. However, the expansion of these networks, their penetration of new countries and their participation in an increasingly diverse range of business activities are phenomena that cannot be explained without reference to the practice of money laundering.

The need to launder the income from crime has two overarching features that help explain the tendency of crime to expand. First, money laundering has now reached unprecedented dimensions. Based on an extensive comparison of official and academic studies and the work of NGOs, UNODC estimates that USD 1,600 billion is laundered annually through the financial system, of which some USD 53 billion comes exclusively from the cocaine trade. The income derived from this activity by Latin American groups is in the order of USD 15 billion (UNODC 2011a: 63–70). According to a Mexican government estimate in 2010, the flow of cash to Mexico from the sale of drugs in the USA amounts to USD 11 billion per year, approximately 1 per cent of Mexico's GDP (UNODC 2011a: 40). However, total income from illegal activity in Mexico—including purely local criminal activities such as extortion, theft, hired assassinations and fraud—equals USD 30–50 billion according to the academic John Bailey (Huérffano 2013).

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The second overarching feature is that contacts between the criminals who generate money and those who launder it now tend to be much less frequent and direct, obviating the need for a stable structure or network that integrates or connects the production, trafficking and distribution of illicit products. Francesco Forgione, former president of Italy's Parliamentary Anti-mafia Commission, explains that in the case of the 'Ndrangheta, the Italian mafia organization with perhaps the largest global presence, the laundering system 'runs parallel to the first [part, responsible for the supply of drugs] like a motorway lane, without ever crossing over [...]. It is this second level that is most difficult to uncover, because it almost always intervenes at the end' (Forgione 2010: 74).

The dispersal of illegal income together with the challenge of identifying links with the legitimate economy mean that it is difficult to know with any precision which sectors are funded by money from illegal networks. However, there is good reason to believe that the channels through which money is recycled into the formal economy have multiplied in recent years, creating a series of informal links between criminal groups and professional and legitimate sectors, above all lawyers, notaries public and financial advisers (Kruisbergen, Van de Bunt and Kleemans 2012). These links, in addition to the resultant professionalization and globalization of criminal investment in Latin America, have marked some of the most dramatic scandals caused by the wave of 'dirty money': the laundering of USD 1.1 billion by Mexican drug traffickers through branches of British bank HSBC (Mollenkamp and Wolf 2013); a similar case involving Wachovia Bank with a value of USD 110 million (Vulliamy 2011); and an estimated USD 3 billion directed by Latin American groups to their private investments in the Caribbean and Central America (UNODC 2011a: 94–5).

To better understand the potential effects of the proliferation of financial pathways that facilitate the nexus between politics and crime, it is worth considering the case of Ecuador. Of the four countries included in this study, it seems to be the only one in which illicit networks have not succeeded in establishing structured relationships with the highest echelons of power, with a few exceptions such as the case of the former governor of Manabí discussed in section 7.2. However, Ecuador has become an epicentre of money laundering, helped by the fact that the US dollar is its national currency. According to an evaluation by the Financial Action Task Force of South America (GAFISUD) conducted in 2011, Ecuador's campaigns against money laundering have delivered extremely poor results. Despite illicit financial flows estimated at USD 2 billion per year, only eight people were convicted for this activity between 2008 and 2011 (GAFISUD 2011: 52). On the basis of this evaluation, Ecuador is the only country in Latin America to be included on the FATF blacklist.

According to Ecuadorian experts in this area, large-scale money laundering may have had its origins in the office of Notary Public José Cabrera, in the coastal town of Machala. Cabrera operated an extremely successful banking system, laundering illicit money at a discount of 20 per cent while offering interest rates of up to 10 per cent per month to his 30,000 savers. It is estimated that he controlled USD 800 million and had a support network that included dozens of army officers and politicians, including a former minister of defence (Olmos 2005).

Following the collapse of Cabrera's bank after his sudden death in a Quito hotel, money-laundering mechanisms in Ecuador spread to many other business activities, leading to the extensive penetration of illicit activity into the formal

economy. In Guayaquil, a local politician interviewed on condition of anonymity in October 2012 identified various jewellery businesses and bakeries as front companies for the laundering of the assets of illicit Colombian networks. Meanwhile, Ecuador's Financial Intelligence Unit believes that illicit networks are making systematic efforts to exploit companies that handle large sums of cash, such as money transfer agencies or car dealers, and the agro-industry and construction sectors, particularly if these companies suffer from liquidity problems (*El Comercio* 2012l). Until they were banned in 2011, casinos also allegedly offered pathways for money laundering. The Latin American gambling group, Invermun, was investigated in Ecuador over allegations of money laundering. The company was also accused of bribing several judges, members of parliament and a member of President Correa's family (*El Comercio* 2012e).

The evidence from Ecuador suggests that multiple pragmatic economic contacts between illegal and formal actors, even if they do not necessarily involve direct contact between politicians and criminal groups, tend to undermine the political will to combat illicit flows. Indeed, permissiveness, and ambivalence or indifference to money laundering appear to be a common denominator among the authorities in all the countries studied.

In Peru, for example, experts in this area, including those within the legal system, criticize the weakness of the country's Financial Intelligence Unit, particularly for its lack of coordination with other parts of the legal system and its requirement for a court order to remove banking confidentiality from accounts suspected of being used for fraudulent operations (Macroconsult 2008: 325–81). The country's tax service has also been criticized for its tendency to tolerate money laundering as long as the currencies involved can be taxed (anonymous interview, Lima, August 2013). The monitoring of money laundering in Guatemala and other Central American countries is weak due to its dependency on reports issued by banks, the difficulty of obtaining access to bank accounts and long-standing tensions between the aims of the tax system, as well as a number of technical shortcomings (Stein, Schwarzbauer and Escobar 2012). Perhaps the most worrying effect of this passivity or weakness with respect to money laundering is the way in which the integration between crime and the formal economy is gradually occupying new spaces and opportunities, in parallel with economic growth throughout the region.

Two far-reaching changes are particularly significant in this regard. The first is the rapprochement between state financial policy and the increasingly complex efforts to launder money on a large scale, although the precise nature of this understanding remains unclear. In Guatemala, for example, a bond issue proposed by the government in 2013 but subsequently postponed was the subject of severe criticism. One expert in politics and security noted that the potential issue of USD 450 million would have provided an ideal opportunity to launder large quantities of illicit money that had been temporarily 'deposited' in construction companies (anonymous interview, Guatemala City, July 2013). There were also rumours of commissions charged by officials, and payments to obtain the votes of members of parliament (*Prensa Libre* 2013a). According to this expert, when the state paid these creditor companies, the criminal groups would exchange their cash for funds that were formally registered within the banking system. Recent cases and accusations in Argentina and Mexico also indicate that the purchase of public debt has become a method of laundering cash without exposure to the risk of criminal prosecution (Proceso 2011; Alconada Mon and Capiello 2013).

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The second far-reaching change, although still in its early stages, relates to the nature of the principal illicit activities and their reorientation towards new sources of wealth, above all mining and the extraction of fossil fuels. It is notable in Peru, for example, that profits from illegal gold mining (USD 3 billion in 2011) will soon exceed income from drug trafficking, despite the fact that the country is the world's second-largest cocaine producer (National Criminal Policy Council 2013). In Colombia there has also been a change in the economic priorities of various illicit actors following an extraordinary wave of investment in the exploitation of natural resources in peripheral regions of the country. Today, the traditionally marginalized regions that were subject to the control of guerrilla groups or paramilitaries—such as Caquetá, Córdoba and La Guajira—are growing faster than any other part of the country, with GDP growth rates of over 10 per cent (*Revista Semana* 2013a). If this trend continues, it seems highly likely that the criminal appetite will become increasingly focused on activities related to mining or other high-profit sectors, through the provision of armed protection services, extortion or the operation of their own illegal mines. Although it is unlikely that drug trafficking will cease to exist, or will no longer inject illicit money into the regional economy, current economic interests and opportunities very much point to greater coexistence and integration with firms in the legitimate economy. There is clearly a growing interdependence between companies, criminal groups and politicians, which can only increase the risks of inaction and the granting of impunity in the face of illicit activities.

### 3.4 Conclusion

The expansion of illicit networks throughout Latin America has its roots in the combination of informal cultures with the rapid expansion of a large-scale illicit market, based primarily on the demand for drugs in the USA and also, to an increasing extent in the past decade, in Europe and Latin America itself. However, focusing the analysis solely on the transnational illicit economy runs the risk of ignoring aspects that are essential to understanding the structure, power and social penetration of criminal activities. Above all, the formation of illicit networks—which consist of criminal actors, politicians and businesspeople—explains not just the ineffectiveness of the state response to crime and insecurity, but also the virulence with which illicit practices have become established in public institutions and public values. In the most extreme cases, such as Guatemala and Honduras, this trend has reinforced the fragility from which public policy in these countries has long suffered.

On the one hand, the debate in the region currently focuses on the perverse effects of the prohibitionist paradigm with regard to drugs and the criminal repression of certain illicit activities. In various ways, the reforms of their respective drug control systems proposed by the governments of Guatemala, Uruguay and Colombia seek to modify the harmful incentives to participate in illegal activities and to redistribute the high costs of prosecution. On the other hand, however, coexistence and complicity between criminal groups, the state and the formal economy have led to a diversification of activities and illegal connections that goes beyond drug trafficking. Illegal practices have adapted to the major institutional transformations that have taken place in Latin America in recent decades—the end of the dictatorships, the decentralization and fragmentation of power, economic growth and the 'refounding of the state'—to establish themselves within the operations of institutions that are vital to democracy, security and the economy.

However, this chapter and the case studies contained in this book stress that the illicit connections that arise are not easy to catalogue. The extraordinary diversification of organized crime networks and formal sectors has been accompanied by an important change in the strength and frequency of existing ties. The 'mafia state' has been replaced by states with numerous channels of illicit influence. Weakened political parties do not always control their own candidates. The increase in money laundering opens up multiple pathways for contact between the formal economy and illicit activities. As a result, awareness of the way in which these networks have proliferated should lead the authorities in Latin America and the international community to modify how they address the issue of criminality in the region. The analysis presented above suggests that the problem of illicit networks should not be treated as an invasion or occupation of legitimate institutions by external criminal forces. Nor is it advisable to seek to 'reconquer' territories or institutions by consolidating central state entities, especially when the latter sometimes play host to major illicit businesses. A more effective and nuanced approach to public policy would be based on an understanding of the dynamism and diversity of these networks as a basis for erecting a series of barriers, disincentives and monitoring mechanisms that would be more resistant to co-optation for illicit ends. In this regard, the response should be delivered through small institutional victories, rather than looking for a silver bullet.





**Figure 4.1 Colombia, Ecuador, Guatemala, Honduras and Peru**



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# 4 Comparative Regional Analysis of the Nexus between Illicit Networks and Politics in Latin America

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In a comment that neatly sums up the scale of the problem addressed in this book, and the obstacles that lie in the way of its solution, members of the inner circle of Pablo Escobar, the leader of the Medellín Cartel who was assassinated in 1993, would apparently joke that, 'The only reason half the country is not in prison for corruption is because Pablo always paid in cash and never with cheques' (Salazar 2012: 24).

This remark, quoted from a best-selling book about the life and death of a man who was one of the leading figures in the international drug trade, suggests that, from the very outset, large-scale illicit activity in Latin America has had extensive links with the political and official spheres. This chapter provides an overview of the case studies contained in this book, which do nothing to contradict this view. Rather, they clarify the nature and effects of these clandestine relationships. These relationships do not follow a universal pattern of criminal complicity that replicates itself in every country of the region, as if the state had been swept away by a wave of transgression or a 'mafia invasion'. Instead, ways of exploiting illicit opportunities have developed that vary enormously from country to country, with elements of great sophistication and subtlety, and that to a large degree reflect the historical and current institutional conditions of each location.

Latin America is home to criminal activities that contribute to the estimated USD 100 billion in annual illicit outflows from the region (Haken 2011; Justo 2011; Kar and LeBlanc 2013). According to a UN estimate of the value of all criminal activities, including those that are purely domestic such as the extortion of local businesses and theft, the total value of all the illicit economies in Latin America is around USD 240 billion (UNODC 2011a: 9). This is, of course, an approximate figure.

The region is host to a wide range of illicit enterprises based on flexible, horizontal links between specialized groups—above all between criminals, hired assassins, politicians, police officers, civil servants, businesspeople, bankers, lawyers and trade unionists—referred to in this study as 'illicit networks'. Latin America is also at the forefront of innovative legal efforts to combat the organized crime and illicit networks that extend to the state and the formal economy, but these campaigns have not been very effective.

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At the same time, it is difficult to assess the impact of this proliferation of illicit activities on development and governance in Latin America. It is hard to establish clear correlations and causal relationships between the presence of illicit networks—especially drug trafficking—and some of the more extreme manifestations of insecurity or abuse of power in Latin America, particularly the high rates of violence and crime, corruption in the public sector, the poor quality of police and legal systems, and unequal economic growth. For example, it is always possible to find cases that do not fit these templates, while the social or demographic roots of some violent or criminal trends have little to do with organized crime or drug trafficking (UNDP 2013b). The violence in inner city Caracas is a good example.

Nonetheless, there can be no mistaking the signs of the impact of illicit networks on public life in the region. In some countries, complicity between state actors, the formal economy and members of criminal networks has undermined the basis of collective life and democratic values. The case studies analysed in this volume include several such examples, such as the systematic intimidation of voters in a municipality on the outskirts of Colombia's second-largest city and the co-opting by criminal bands of extremely poor residents of a Colombian port city. In addition, there is the extraordinary tale of a former member of the Ecuadorian Congress who is currently being sought for his alleged links with a massacre of rival drug traffickers, and the odyssey through the courts of a Peruvian provincial governor suspected of having ordered the assassination of a hostile journalist in order to defend his criminal domain. There is also the detailed account of how a network at the service of illicit interests of every stripe has taken over a large part of the legal system of Guatemala, using lawyers as a Trojan horse. Although these case studies do not offer hard scientific evidence or numerical data about the harm caused by each of these different manifestations of collusion and complicity, taken together, they leave no room for doubt as to the impact on the lives of millions of Latin Americans and the delegitimization and weakness of local and national democracies in the region.

However, it is also important to recognize the limits of the case studies. Whether in the Pacific coast ports of Buenaventura in Colombia or Manta in Ecuador, within very poor communities in Guatemala or Peru or in a region, such as Intag in Ecuador, that is ideal for exploiting natural resources, the systems of the state and the formal economy have a huge number of reasons and motives for establishing relationships of variable geometry with specialists in illicit accumulation. Even when the participants in these businesses are prosecuted or imprisoned—as would appear to have been the case in Colombia throughout the past decade—criminal activities have a startling capacity for adaptation and renewal.

Condemning these practices from afar is easy, while understanding them from close up is more difficult but far more valuable if our aim is to improve state responses. Unfortunately, in some cases researchers found themselves in extremely dangerous situations. The risk to the researchers' safety meant that it has not been possible to include two case studies on Honduras in this book. A first draft of the research identified abundant evidence of links between senior political figures and drug trafficking. In the country with the highest murder rate in the world, where the legal and police systems perpetuate massive levels of impunity, and where the former head of the National Commission for the Fight Against Drug Trafficking, Alfredo Landaverde, was assassinated days after condemning the links between the police and organized crime (*El Heraldo* 2011b), there is good reason to be extremely cautious about publishing this

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information. A case study from Ecuador also had to be excluded because of Ecuador's 2013 communications law, which restricts the publication of detrimental information about the state or its officials.

This chapter draws on all the remaining case studies to identify the key issues that provide a basis for understanding the impact of illicit networks on people's lives, and the legislative challenges that the region faces in this regard. Section 4.1 considers the links between crime and state institutions; section 4.2 discusses fragmentation and the opportunities for illicit activities; section 4.3 examines the relationship between illicit networks and social groups; and section 4.4 addresses the process of political recomposition. These sections identify the similarities and differences between the individual case studies, which provide the basis for the recommendations presented in Chapter 10.

## 4.1 Crime and institutions

Studies of criminality and public policy proposals to address crime frequently make recommendations in support of better public institutions and a stronger state presence. The notion of 'democratic security', a term invented in the 1990s in the post-conflict context of Central America, was developed as an alternative to what was then the dominant doctrine of national security (Rosada-Granados 2010). A few years later, President Álvaro Uribe of Colombia adopted the concept of democratic security as his ideological hallmark. The authors of the case studies in this book debated whether this diagnosis of the need for 'more state' was uncontroversial or beyond dispute. On several occasions they stressed that the criminal phenomena they describe did not develop independently of the national institutions in the countries studied, but were either the direct result or a by-product of the way in which these states operate.

The intimate connection between the form of the state and the nature of the crime that occurs within it is particularly clear in the case of Guatemala. To start with, the country's history has been moulded by structures and cultures inherited from the colonial period, and by the extraction or monopolization of income by a narrow elite of European descent, a situation summed up by the leading Guatemalan historian, Severo Martínez Peláez, who argued that 'the colonial reality is our deepest reality' (Martínez Peláez 1998: 473). In addition to this heritage of unrepresentative, extractive, feudal power, Guatemala has also been affected by a long-running and brutal internal armed conflict that lasted for 36 years and gave rise to authoritarian and counterinsurgency structures that continue significantly to influence the opportunities for illicit activity in the country (Oficina de Derechos Humanos del Arzobispado de Guatemala 1998).

The first of the Guatemalan case studies presented in this book exposes the legacies of these historical features. The power that the lawyer and businessman, Roberto López Villatoro, known as the 'tennis shoe king', has accumulated on the commissions to nominate candidates for senior judicial and legal appointments, which he appears to use to favour shady interest groups, is clearly based on the corporatist structures that developed during the civil war. Quoting Edgar Gutiérrez, an expert in security and human rights issues, the authors note that 'the closest legal precedent to the nominations committees was the State Council of the de facto government of Efraín Ríos Montt', who ruled the country with an iron fist in 1982–83. 'The aim was to give more power to people with a high academic profile and to curb the power of the political parties,' but, the authors continue, the effect

of the nomination system has been to extend the 'politicians' way of working into both the public and private universities and professional associations.

Thus, experts in the trafficking of influence have exploited a system designed to protect the state from the supposedly detrimental influences of democratic representation in order to favour particular groups. The result has been the consolidation of a legal system that responds almost exclusively to privileged groups, in keeping with its traditions, although it is important to stress that the nature and composition of the groups that exercise influence has changed. Just as the studies of Colombia and Peru reveal the rise of new local political elites who are not part of the traditional dominant classes, the network of the tennis shoe king is rooted in clientelist relationships with lawyers who have limited economic resources. In this way, powerful coalitions have formed in key institutions within the nominations system, by offering perks such as invitations to dinner or drinks after the elections; threats that they would keep their posts only if they voted as he said; or promises of promotion if they voted as he wanted (Font 2011a).

This is just one example of a phenomenon that is common throughout the region. The end of the dictatorships in Latin America was followed by a far-reaching democratization of the states, a significant expansion in the number of groups or factions with access to power and a major reduction in class, gender and ethnic barriers to political participation. Despite these reforms, the ways in which political power is exercised—and the platforms constructed to influence political decisions—continue to be based to a large degree on mechanisms of privilege, exclusion, hierarchy and clientelism.

Illicit networks, in particular, gain in strength when they are able to exploit or manage this juxtaposition between historically submissive or feudal institutions and the emergence of new economic and interest groups. In this respect, the tennis shoe king operated as a link between opaque, closed state structures, on the one hand, and new interests that sought to reach agreement with or force an entrance into the circles of informal power, on the other. Although López Villatoro's operations complied with the letter of the law in Guatemala, other examples in this book clearly show how this model of intermediation between the state and new interest groups has been an important source of criminal activity and the propagation of illicit networks.

The best-known and most sinister case presented below is that of Vladimiro Montesinos, the former head of Peruvian intelligence and the power behind the administration of Alberto Fujimori until its collapse in 2000. As the author of this case study, Ricardo Uceda, notes, the military career of Montesinos had been marked by serious misconduct, including accusations of leaking classified information. Despite this, he became a successful lawyer who 'instead of settling matters during open hearings, would manipulate legal representatives'. His first meeting with Fujimori occurred shortly after the first round of the presidential elections of 1990, in which the first-time candidate, with authoritarian leanings and no party apparatus behind him, was up against the novelist and Peruvian literary giant Mario Vargas Llosa. Montesinos rapidly dealt with an accusation against Fujimori of tax evasion: Montesinos, with his ties to the Public Prosecutor's Office, channelled the file in such a way that it could never be used to bring actual charges. Montesinos further consolidated his reputation as a vital adviser to the future president by obtaining transcripts of telephone calls between members of Llosa's campaign team (see section 6.2). The case of Montesinos demonstrates the extensive opportunities to ascend to

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power by mediating between institutions that have been greatly weakened—in the case of Peru, as a result of the economic crisis that hit the country in the 1980s, combined with the historical legacy of corruption in the higher echelons of power—and emerging economic or democratic forces. Other cases demonstrate the drive to convert institutional power directly into illicit earnings.

In Honduras there is also evidence of criminal penetration of the structures of two of the most important branches of the state: first, the armed forces, where allegations of participation in drug trafficking can be traced back to the 1980s, when the country's army was a key ally in the US anti-communist campaign in Central America; and, second, the country's elected politicians. There are multiple links between drug traffickers, mayors and members of parliament. Up to 90 per cent of electoral campaign funding is estimated to come from organized crime, although it is impossible to confirm this statistic. No fewer than 23 mayoral and parliamentary candidates were placed under special supervision in 2012 for their alleged links to organized crime, but there has been no legal action taken against high-level politicians. One of the mayors most frequently suspected of links with drug trafficking, even by the government itself, is Alexander Ardón of the El Paraíso municipality in Copán, on the border with Guatemala. He denies any criminal activity, but has 20 bodyguards and describes himself as 'the king of the town' (*La Prensa* 2013).

This shows how the power of organized crime in some parts of the region, above all in the trafficking corridors of Colombia, Mexico, Guatemala and Honduras, is not just the result of the strategic exploitation of the informal operating methods of state institutions. In extreme cases, it also involves the direct usurpation of the legitimate power of a state that in many cases has had only a fragile presence in areas where illicit networks have provided security, employment and other essential services.

The second Guatemalan case study described in this book illustrates the trend towards the direct control of criminal territories: the case of Juan Ortiz, alias 'Chamalé', in the department of San Marcos on the border with Mexico, who was arrested on suspicion of being a key member of the Sinaloa cartel in 2011. When Ortiz entered the world of drug trafficking he was an evangelical preacher. Using his estimated USD 100 million fortune—an extraordinary amount in one of the poorest regions of Guatemala—Ortiz had succeeded in building extensive local support through his religious activity. According to Cristián Calderón and Jorge Dardón: 'In the months following his arrest, a number of workers on his farms organized a series of fairly large demonstrations [...] calling for his release' (see section 8.3). In addition to bemoaning the loss of his economic contribution to the town, above all due to the loss of employment on his palm oil plantations, many residents complained of a crime wave after his arrest. 'He may have been a *narco* and what have you', noted one person from the area, 'but at least with Ortiz crime was under control. Not because he focused on combating crime but because the thieves did not want to get into trouble with the strongmen around. Now, everything is out of control'. The same sentiments were expressed in a number of other case studies, such as in the municipality of Bello in Colombia.

## 4.2 Fragmentation and illicit opportunities

Although in certain cases illicit networks have assumed quasi-state powers over some regional strongholds, the speed with which these networks have

expanded throughout Latin America has not been the result of the concentration of criminal power. In general, large mafia organizations—which coordinate integrated manufacturing and distribution systems, the provision of security, the corruption of the public sector and money laundering—have been profoundly weakened by public exposure and police action. As has been noted in an analysis of the changes in the structures of criminal and terrorist networks in recent years, it is much more expensive for a criminal organization to lose the head of a structure that operates like a wheel, in which all of the divisions and specialist areas are connected by a central node, than for it to lose a link in a horizontal chain (Kenney 2007). For example, although the Sinaloa cartel or the Zetas in Mexico could be seen as the heirs to the first vertically integrated groups in Colombia, the new cartels in fact operate by means of pacts and agreements between a number of partners. Indeed, the Sinaloa cartel is often referred to as 'The Federation' due to the semi-autonomous way in which its leaders and subsidiaries operate (Keefe 2012).

Colombia is perhaps the most prominent example of this fragmentation of illicit activity. The case studies of Bello, a municipality on the outskirts of Medellín, and Buenaventura, the country's most important Pacific port, reveal the outcome of the splintering of the founding cartels, together with the ongoing specialization of functions on the part of different crime units and an increased, although still fragile, capacity for mediation between the various emerging groups.

According to Catalina Uribe, the author of the Bello case study, the illicit network known as the 'Oficina de Envigado' controls the principal drug trafficking routes in the department of Antioquia. Numerous arrests of its leaders and members do not appear to have had much impact on its core business. 'Despite a police and army crackdown on this network, the Oficina de Envigado seems to have survived, while its power structures have mutated. Its survival seems to be in part due to its networked structure. [...] The network has no homogenous or centralized structure; it groups together an estimated 350 different gangs operating in various zones'. Despite this, the system does not operate harmoniously, and internal disputes within the structure were the cause of around 6000 deaths in the city of Medellín between 2008 and 2011.

This fragmentation was not dictated solely by economic logic and organizational efficiency. It is notable that in Colombia there seems to be a correlation between the dispersal of criminal power since the 1990s and the fragmentation of political power that began with the process, better known as 'Process 8000', of reforming the party system under the constitution of 1991, and intensified after the scandal of the illicit funding of the Liberal Party. Mauricio Romero, the author of the Buenaventura case study, argues that the Liberal Party in the west of the country was thus weakened, creating a vacuum that was exploited by new drug lords, including those from the Norte del Valle Cartel (Gutiérrez 2007), to finance the small parties and movements that emerged.

A comparison of the political development of Bello and Buenaventura in Colombia reveals significant differences in the relationship between politics and illicit networks. In the latter, the decadence of the old liberal elites in the region led to the formation of a new alliance between 'politicians, paramilitaries and drug traffickers' that was successful in several national and local elections. This type of hybrid movement, according to Romero, was sheltered by the counterinsurgency discourse of the president at the time, Álvaro Uribe, and replicated in other regions of the country as part of the first wave of the phenomenon known as parapolitics

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(López 2010). A key characteristic of this new type of movement, and the basis of its success, was its capacity to consolidate bureaucratic and political posts within its informal networks of influence. The rise of former Senator Juan Carlos Martínez Sinisterra, who was arrested and imprisoned in 2009 for his links with paramilitaries and drug traffickers, illustrates this tendency, given his ability to 'mediate between the different levels of public administration' to distribute contracts and positions to his sympathizers. The most dramatic development, however, is the harmony between the trend for informal clientelist coalitions in politics and the restructuring of the illicit economy towards more expansive systems for co-opting partners. While Buenaventura became an epicentre of drug trafficking, the heads of the Norte de Valle cartel—such as Juan Carlos Ramírez Abadía, arrested in Brazil in 2007—funded large and expensive support and protection networks.

The costs of the business operation (i.e., bribes) were huge, according to Ramírez Abadía's records, as revealed by the Intelligence Department of the National Colombian Police (*Revista Semana* 2007b). In 2004, he was paying approximately USD 4 million in bribes every month to officials from the Administrative Department of Security, police, army, Public Prosecutor's Office, justice system, National Registry Office (*Registraduría*), Agustín Codazzi Geographic Institute, National Penitentiary Institute (INPEC) and the media. [...] In December 2004 alone, Ramírez Abadía paid out almost USD 3 million in end-of-year bonuses to state officials from the judicial and security services (see section 5.3).

The scale and range of these bribes strongly support the thesis that the new dominant force in regional politics in Colombia, the *Movimiento Popular Unido*, was not only aware of these payments but also approved of and exploited them to consolidate its own support networks. The Buenaventura case thus demonstrates how the fragmentation of criminality and politics provided an opportunity to construct a far-reaching clientelist and illicit network that, due to its flexibility and multiple relationships with different social, economic and political sectors, would be particularly difficult to destroy.

In Bello, although crime has proliferated to a similar degree, the political manifestations of illicit networks have been different, which demonstrates how the same dynamics can be expressed differently depending on the context. Politics there continues to be dominated by two families: the Suárez-Mira and the Arango. These are the heirs to the Liberal and Conservative parties that have historically dominated Colombia, although the parties' electoral vehicles—or what are referred to in Colombia as their political machineries—tend to change their name and insignia with each campaign. Although both these political forces have been the focus of serious accusations of complicity in criminal activity, they continue to exercise considerable influence in Bello through pacts and arrangements related to the distribution of municipal power. Rather than permit the rise of new political actors, as was the case of Martínez Sinisterra in Buenaventura, the control system constructed by Bello's two ruling families has involved silencing the opposition and intimidating voters. 'The only opposition force currently seems to be the Green Party, with two representatives on the council, who have been receiving threats since 2012', according to interviewed sources.

The stability or *pax mafiosa* that has been generated by means of coercion and terror in Bello, however, does not appear to have completely convinced the local population, or to have suppressed the fragmentation of control over illicit



activities. As a protest against the only candidate who stood in the municipal elections of 2011, 70 per cent of voters left their ballot papers blank, and a second local election shortly afterwards was marked by a flurry of threats against alleged opponents of the process. At the same time, the presence of 13 criminal bands in the district has led to a rise in the extortion of local businesses. Meanwhile, Bello's traditionally closed political class appears to be prepared to negotiate with different illicit groups to maintain its control over the local authority, although this approach seems unlikely to ensure its legitimacy with the general public in the long term.

In almost all the case studies of crime and politics in this book, it is possible to identify the fragmentation of criminal forces, whether for economic reasons or simply as a smokescreen to avoid criminal prosecution. Luis Valdez Villacorta, former mayor of the province of Coronel Portillo in the eastern rainforest region of Peru, is a controversial figure who was accused of ordering the assassination of a critical journalist and of involvement with drug trafficking and asset laundering. Ricardo Uceda, in his case study of the province, records the extraordinary catalogue of accusations against this individual and the great difficulty in convicting 'one of the Peruvian politicians most suspected of involvement in organized crime' (see section 6.3).

Part of the challenge of linking Valdez with these crimes relates to the 'outsourcing' of the illicit activities in which he is allegedly involved, combined with the inability of the police and the legal system to unravel such levels of complexity. Although seven individuals were initially found guilty of perpetrating the assassination of the radio journalist, Alberto Rivera, in 2004, any link between Valdez and the crime was obscured by a series of contradictions between the different witnesses in the case. In addition, according to the author of the case study, 'examining the case files of the legal proceedings and interviews with individuals linked to the investigations has not made it possible to link Valdez with any local or international gangs involved in drug trafficking'. In practice, the indications of participation in drug trafficking by Valdez, who was also a successful businessman in the timber industry, come from various export transactions that were a front for other operations in which he was allegedly involved. It is difficult to identify the exact chain of company or individual responsibility for every transaction. The crime that led to his arrest in 2008— police in the Netherlands finding drugs inside Peruvian timber—'died away. He has not even been mentioned in any statements relating to the case' (see section 6.3).

### **4.3 The new geometry of illicit relationships: communities, businesses and social classes**

Although one of the main aims of the case studies presented in this book is to identify the nature of the complicity between politicians and organized crime, this alone is insufficient for understanding the integrated nature of the connections between crime and the political class. In several of the cases described in this book, illicit networks have indirectly extended their scope into politics, based on their infiltration of other layers of public life, and above all on their complicity with communities, businesses and certain social classes. It is primarily these relationships between criminal groups and certain social or economic sectors— motivated by different collective demands—that have facilitated the development of a relationship of understanding, complicity or collusion with figures or groups in the political world. In these cases, the illicit networks seem to be characterized

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by triangular relationships that adapt to the demands of each party, which in some instances generates a degree of public legitimacy.

Several of the case studies in this book highlight the different levels of resistance by *local communities* to participation in illicit networks, but few reflect the levels of public acceptance and support for criminal activity in the smuggling in Puno, southern Peru, described in one of the studies. 'While there are no official figures', Catalina Uribe writes, 'several of the experts interviewed agree in their estimates that more than 60 per cent of Puno's population lives off informal trade with Bolivia, and that approximately 80 per cent of traders in Puno operate illegally'. The local community, which is marginalized due to its high levels of poverty and its ethnic composition, largely Aymara, Quechua and Urus, feels that smuggling is justified. Many state agencies, such as the customs service, the police, the army and the public prosecutor's office, have allegedly been co-opted by the structures of illegal trade. In addition, Emiliano Apaza, a member of Congress for Puno, was temporarily suspended from his duties because he had been convicted of smuggling before winning his seat in 2012.

The example of smuggling is particularly interesting because it indicates how the alleged nexus between crime and politics can, in some cases, demonstrate popular involvement in a profitable activity, the 'illegal' status of which is hotly contested by citizens. Exactly the same criticism of the existing legal situation can be seen in the coca-leaf production movement in Bolivia and Peru. These latter examples are unquestionably legitimate expressions of democratic representation. However, it is difficult to distinguish between the political demands of society and a group's connections with the political sphere in order to defend its corporate interests, particularly when these concern illicit activities. The Puno case study, for example, finds that illegal gold mining—an activity that involves child labour and sexual exploitation, and has triggered popular mass protests throughout the region—has established a stronger presence in political and state institutions than smuggling. This is due to its financial and organizational capacity and, crucially, to its need to 'make use of political forums to defend their interests' because 'mining is less socially acceptable'. The cases of the two former Peruvian deputies, Nancy Obregón and Elsa Malpartida, supporters of the coca-leaf production movement who were accused of drug trafficking in 2013 (Romero 2013), also show that, in practice, defending 'illegal' activities brings politicians into contact with a number of interest groups, some of which will be of a criminal nature.

Several other studies also depict poor, marginal communities that appear to be favourably disposed towards illicit activities. Once again, opposing interpretations and social theories come into play, and it is not clear whether citizens are being exploited or intimidated, are desperate or simply acting as accomplices and collaborators. In Buenaventura, for example, 'an analysis of press reports shows that half of all drug seizures in 2005–11 took place in urban areas [...]. Seventy per cent of drug seizures [in urban areas] are made from houses, commercial buildings or public locations such as the dock'. The author continues: 'the drug economy is a significant source of income for important sectors of the town's population. Young people see involvement in this chain as an opportunity to gain income and purchasing power in an environment of rampant unemployment and poverty' (see section 5.3).

Where participation in illicit activities is so common, people are obviously far less likely to reject politicians for such links, even when these are much higher

up the criminal scale. A lack of the 'antibodies' that defend societies and states from the influence of illicit networks can also be detected in the business sector, where direct or indirect relationships between certain companies and groups or individuals with criminal connections can subsequently be extended to political institutions.

The relationships between *criminal groups* and *the formal economy* are mediated in many different ways, and their impact on the political sphere is similarly varied. In the case of Buenaventura, the port authority—which has been in private hands since 1993—appears to operate in a modern, efficient manner, although it exists alongside a community mired in poverty and public corruption. This indifference to its surroundings contrasts with the far more obvious complicity in the case of the Intag region, an area of northern Ecuador that is rich in natural resources. Here, the case study tells the story of an individual given the fictitious name of Sisyphus by the author. In addition to being a landowner, Member of Parliament and alleged drug trafficker, Sisyphus was also the regional representative of the Canadian mining firm Ascendant Cooper in 2004–06.

The arrival of this company in the region and its eventual departure were related to a lengthy conflict between local inhabitants and multinational mining companies that were searching for new sources of metal ore. The first exploration of the region occurred in the 1990s, when a subsidiary of Mitsubishi began to prospect for minerals in Intag, although it did not manage to convince the locals of the benefits of the project. During a protest in 1997, 200 locals set fire to the company's camp. After a Quito lawyer obtained the title to the areas earmarked for prospecting, Ascendant bought the mining concessions. According to Bertha García and Cristina Chuquimarca, 'faced with staunch opposition from those who rejected the mining activities, Ascendant used various legal and illegal methods to set up in the area, including a campaign of misinformation, issuing various pro-ecology leaders with death threats and threatening them with criminal proceedings in order to intimidate them' (see section 7.3).

Part of this operation was outsourced to Sisyphus, who established the *Corporación de Desarrollo de García Moreno* (Codegam), an organization that supposedly existed for the purposes of social development, but the aim of which was to act as an intermediary between Ascendant and the people of Intag. Its services included managing USD 16.5 million to fund community development projects and win the trust of the local population. It also acted in far less benevolent ways—a number of violent acts were allegedly carried out by members of Codegam and their bodyguards. In response to this pressure, history repeated itself and a group of local people burned down Ascendant's camp in 2005. One year later, the company broke off its relationship with Sisyphus, before finally leaving the region in 2008, after the National Assembly had revoked almost all the mining concessions in the country.

The experience of Sisyphus as the intermediary of unscrupulous economic interests operating in unfamiliar territory bears some similarities to the activities of other people described in this book, such as Montesinos in Peru, who until his sudden demise had excellent relationships with the US Embassy in Lima, the tennis shoe king in Guatemala and Hugo Albeiro Quintero, the owner of a transport business and alleged head of a criminal band in the municipality of Bello. Although their careers were different—Quintero, for example, started out as a businessman before emerging as the vital link between the activities of ordinary criminals and local politicians—there are common threads. They

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operated as facilitators or intermediaries with abundant illicit contacts who are 'hired' to resolve the operational needs of groups or individuals in companies or official bodies. Sometimes these companies choose to look the other way while the activities they sponsor or exploit take place. In general, however, the collateral effect of their actions is to reinforce a style of rule that is anti-pluralistic and characterized by clientelist, authoritarian relationships.

One of the case studies on Ecuador illustrates an intriguing variation on this approach. The former governor of Manabí, César Fernández, was successfully prosecuted in 2003 for his links with drug trafficking. After serving as governor, his seafood business was hit by the climatic effects of *El Niño*, so Fernández apparently became the intermediary between the Sinaloa cartel and its transnational drug trafficking business by exploiting his two principal assets: his circle of political contacts, which he used to collect information about impending police actions; and his business premises. 'The police seized drugs from the warehouses of his chicken company, Papío, from his hangar at the Fermarsa packaging plant and from his home, as well as intercepting a light aircraft he owned that was allegedly being used for drug trafficking' (*El Universo* 2012a, see section 7.2). The arrest of Fernández, who had close links with the central government and the governing party, damaged the image of national politics and of the president at the time, Lucio Gutiérrez.

The third element of this new geometry of illicit relations is based on the dynamic of *certain social classes* or, more specifically, the social and political aspirations of groups or individuals who feel marginalized or excluded from the centres of power. According to a recent UNDP report on public security in Latin America, there are good reasons to interpret the growth of many common crimes, above all theft, as 'aspirational crime' provoked by the friction between continuing economic growth and deep-rooted inequality. 'The process of social mobility in the region can be seen to have expanded demand for consumer goods, such as electrical and electronic products, mobile phones, the internet, cars and other items. Their acquisition is usually seen as the main pathway to social integration, while failure to possess them is interpreted as a form of exclusion' (UNDP 2013b: 22–3).

Although this analysis is linked primarily to the phenomena of street crime and corruption, the role of economic aspiration as a driver of illicit networks is also clear in several of the studies. Many of the individuals analysed in their role as key intermediaries in these networks come from families with little tradition of power or wealth. Their capacity to move between political activity, business activity and illicit activity—most notably in the case of Sisyphus in Ecuador—reveals their ability to climb the socio-economic ladder, exploiting every opportunity, and offering at each stage the benefits of a network of contacts that encompasses several fields of influence.

Illicit networks can also, in some cases, promote wider processes of social mobility, with the promise of conquering arenas of power that would formerly have been inaccessible in highly unequal and segregated societies. For example, in Guatemala the tennis shoe king's ability to accumulate power drew, among other things, on his promotion of lawyers whose families were of Indian descent, poor or from rural departments of the country. Similarly, although the individuals described in this book do not necessarily employ the discourse of social struggle, their political power is very much anchored in the tenacious defence of local or regional interests that have often been disregarded by their

respective capitals. This characteristic can be seen in the so-called parapolitics scandal in Bello, in the case of Luis Valdez Villacorta and that of the politicians linked to illegal gold mining in Puno. Meanwhile, in Petén, a large northern department of Guatemala, regional social conditions have generated a kind of political microcosm, with particular effects on illicit networks. According to Jorge Dardón and Cristián Calderón: 'High levels of poverty and social exclusion meant that Petén's population were broadly in favour of proposals relating to social justice and the redistribution of wealth' (see section 8.3). The increase in public spending and investment in public sector contracts in the region was systematically exploited to launder money and overprice contracts in order to generate huge profits for politicians and local drug trafficking groups.

Clearly, much of this discourse does not go beyond mere populism. In practice, these politicians show little interest in changing the forms of government that reproduce inequality and exclusion in their regions. The case of former Senator Martínez Sinisterra in Buenaventura, a representative of the Afro-descendent community (see section 5.3), is a clear example of this. His links with the criminal sphere placed him at the service of illicit interests rather than those of the Afro-Colombian community. Martínez Sinisterra used his political capital to position himself as part of the new local elite within the community that he was supposed to represent, ultimately reproducing the power structures that he was meant to be combating to the detriment of the most marginal communities.

Such links also represent a significant obstacle to women's opportunities for political representation. It is no coincidence that all the case studies contained in this book focus on male politicians, although examples of both men and women were sought (see Chapter 2). In the few instances in which women are involved in the case studies, they are connected to illicit networks of politicians through family structures. This book does not suggest that organized crime has a particular interest in excluding women, or that women have less interest in being connected to illicit networks. Nonetheless, the cases suggest that illicit networks benefit from forging relationships with powerful political individuals, and in Latin America these tend to be men (iKnow Politics 2009: 2). This is hardly surprising, given that illicit networks seek not to destabilize local power structures but to consolidate and reinforce them, and the money and power of organized crime benefit existing elites and strengthen the dynamic of exclusion that prevents women from achieving the same levels of political participation as men.

#### **4.4 The recomposition of politics: parties, funding and members of parliament**

A common thread that runs through almost all the case studies included in this book is the fragmentation and weakening of political parties, which in many parts of Latin America have undergone a serious crisis of legitimacy and shed many of their policy platforms and ideological profiles. This process has played a key role in generating illicit networks, above all at the local level. To start with, it has exacerbated party dependence on flows of local or regional votes, which sometimes involve agreements with regional figures whose political and economic power comes from dubious sources, and whose ideological links with the parties they supposedly represent are minimal. At the same time, the fragmentation has undermined internal party structures of control, loyalty and discipline, which has permitted individuals at the local and national levels to use politics to develop a sphere of influence in order to subsequently exploit it on behalf of private interests.

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The effects of the fragmentation and weakening of political parties can be observed in several of the studies in this book. As is noted above, the electoral re-engineering process of the 1990s and the illicit funding scandals in Colombia increased the autonomy of political parties controlled by regional elites. In Bello, representation of the two classic parties went through a kind of 'privatization' process at the hands of two local families, the Suárez-Mira and the Arango. One important element in the Colombian case is the central government's clear lack of interest in the affairs of local authorities that are mired in corruption, even when the congressional representatives of these areas belong to the coalition that supports the government. In Buenaventura, for example, every mayor elected since 1988 has been investigated for maladministration or corruption. The last two were dismissed by the Attorney General and the two prior to that disappeared. Bogota's central-level authorities were thus limited to what was strictly necessary according to the local financial crisis manual (see section 5.3).

This gap between the centre and the periphery is typical of Latin America, where clear efforts to reform and modernize governance at the centre contrast with a reassertion of illiberal and authoritarian domains in far-flung regions. The story of Valdez Villacorta in Peru is a good example of the decline in the quality of local government. According to former Peruvian Prime Minister Juan Jiménez Mayor, there are currently 20,000 cases of corruption in the country's regions (see section 6.3). One of the most significant causes of this breakdown has been the fragmentation of national parties and their replacement by local and regional groupings, which won 65 per cent of the vote in the 2010 regional elections in Peru (see section 6.3). 'These movements, mostly formed around an individual or leader, generally only last for as long as the leader remains in power'. [...] 'They also tend to replicate the defects that eroded the previous organizations: bias, improvisation and even a lack of integrity' (see section 6.3). However, it is clear from the other studies of Peru, Colombia and Guatemala that these local leaders continue to play an important role in the strategic electoral plans of national political forces.

Another element that helps empower local actors is their capacity to fund their own election campaigns. This further fragments discipline within the party organization and facilitates access by illicit networks. At the same time, private funding has also flourished within national politics—a trend that is far from unique to Latin America, given that 55 per cent of the world's countries place no limits on private donations to political parties (Ohman 2012)—which helps explain the volatility of national parties in countries such as Guatemala. The chronic fragility of the political parties in this country, and their widely discussed exposure to criminal influences (see section 8.3), is due in large part to the absence of party structures and their dependence on the personal ties between the leader and a favoured group of funders (Sánchez 2008). The existing parties thus come to resemble precarious associations of mutual benefit between a metropolitan core, built around its leader, and a variety of self-funding individual politicians in the regions, strengthening the trend seen in Peru for improvisation, a lack of integrity and half-hearted control of the activities of party representatives.

Several of the studies (above all in Ecuador and Guatemala, together with the preliminary investigations conducted in Honduras) explore the thorny question of the role of illicit funding and, in particular, the role of money from organized crime in national politics. In the absence of anything more than a few legal investigations, it is difficult to assess all the accusations, but the accumulation of evidence points to serious shortcomings in the capacity to monitor political

behaviour in this field. However, it would be a mistake to assume that the corruption of national politics is simply the result of an avalanche of external resources corrupting opportunistic politicians. As was discussed at a workshop of experts organized by International IDEA and NIMD in Quito in 2013, abuse of power is also a product of the opportunism of political representatives in the executive and legislative branches, and their desire to convert official positions into sources of extra-legal income. For example, the election of Sisyphus to Ecuador's Congress in 1999, described in the Intag case study, occurred against a background of the systematic weakening of national parties, as a result of reforms in the 1990s that promoted an increase in the number of independent parliamentarians. When he first entered Congress, Sisyphus was 30 years old, but he rapidly obtained an important post on the commission responsible for overseeing political conduct, a position that he appears to have used to intimidate and possibly extort the managers of several public sector companies. Although he only held this position for two years, he demonstrated the opportunities that could be garnered from the unscrupulous use of public power.

The many variations of the improper use of these powers, whether through public procurement, appointments, the sale of votes, influence trafficking in the legal system or blocking legislation and regulations, reveal the different opportunities for corrupt activity available to politicians at the heart of the state. These examples of the relationship between politicians and illicit activity suggest that politics itself, in certain contexts, has undergone a process of hybridization in which 'clientelist, personal, political and criminal interests intermingle, and where everyone exploits the institutional architecture' (Villaveces 2013: 273).

It is no coincidence that in the various countries studied, most notably Guatemala and Peru, but also in the preliminary investigation of Honduras, parliaments appear, in the opinion of several of the experts who attended the Quito workshop in 2013, to have consolidated their positions as increasingly powerful but corrupt organizations within state structures. In theory, a strong parliament should provide transparent oversight of all state activities (Fish 2006). This was precisely the reasoning behind the introduction of impeachment in Honduras in January 2013, based on a recommendation of the Truth Commission following a coup d'état. The National Congress now has the power to launch impeachment proceedings and, ultimately, to remove the president from office. It wields the same power over the members of 13 official bodies, including the Supreme Court of Justice and the Supreme Electoral Court, where it also exercises control over the nomination of judges (Paz Aguilar 2014).

However, a combination of various processes—above all, party fragmentation, the strong ties between parliamentarians and their local bases, the growing relationships with external funders, and the key role of parliaments in a wide range of official decisions and projects—make parliaments particularly attractive to illicit networks, because of the many opportunities they offer to influence other sectors. It is therefore natural that, at the national level, illicit networks focus on parliaments as a means of securing their influence over the state.

## 4.5 Conclusion

Taken together, the case studies presented in this book illustrate in detail the realities and impact of illicit power on societies that have been through major and at times rapid transformations in the past three decades, whether due to the

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decline of authoritarian regimes, as in Guatemala, caused by dramatic economic and institutional crises, as in Ecuador and Peru, or because of a series of changes and conflicts that undermined traditional political structures, as in Colombia. The case studies discredit attempts to explain the presence and power of organized crime in Latin America by blaming the 'dark forces' of transnational crime and their desperate drive for expansion. While there is no question that international illicit trafficking has caused profound changes in some marginal and border areas, such as San Marcos in Guatemala, where it represents a de facto state power, it is also clear that transnational organized crime depends on the collaboration of local partners who provide local crime networks with relationships of influence that are rooted in the particularities of their country or region.

In sum, crime is shaped by the context in which it occurs. This context largely consists of the diverse objectives of members of illicit networks, who exploit criminal relationships in ways that reflect their own priorities. The practical utility of organized crime is therefore a feature of all the studies. Illicit connections expand client networks, make it possible to achieve material aspirations, resolve economic or legal problems, guarantee political power and, in some cases, deliver a precarious peace. In so far as economic growth, political transition and state reforms have not reached all regions or sectors, and have not completely reformed institutional practices, there is fertile territory for illicit networks to offer apparent solutions to a range of specific, short-term problems.

Each case study reveals the effects of these instrumental relationships. At the same time, they identify the systemic effects that may lead to the normalization of criminal relationships within the structures of power, the economy and society as a whole. On the one hand, these practices strengthen the relationships of power and submission, such as trafficking in influence, which are characteristic of the exclusionary states that have arisen throughout the history of Latin America. On the other hand, the ties that bind politics and crime impede efforts to identify better systems of security and justice, and thus to combat crime as a whole. It is no coincidence that the highest murder rates in Latin America are normally found in countries where illicit networks have the strongest presence in power and the legal system.

However, a third effect constitutes one of the greatest concerns for the future. To date, as the majority of the case studies show, illicit networks have focused on accumulating certain privileges and powers from the state—for example, coercive power, and access to public contracts, confidential information and favourable legal treatment—in order to promote their private interests. However, when criminal activity becomes integrated with politics, as is shown by the examples of local government in Colombia and certain other regions and institutions in Central America, there is a risk of creating a hybrid state that offers specific services to organized crime and facilitates agreements and arrangements between different parts of these illicit networks. In this eventuality, the state risks becoming a pivot between illicit factions, oiling connections and offering guarantees of compliance to the different parties.

The great majority of states in Latin America have embarked on processes of opening up to new sectors and social groups in recent decades. The threat from illicit networks, however, shows that it is essential to seek new ways to strengthen the autonomy and integrity of public service, reinforce control over peripheral parts of state and party institutions, and alter incentives so that politicians and society cease to see crime as a solution to their everyday problems.



**Figure 5.1 Colombia**



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## 5 Colombia

Colombia has been suffering the consequences of internal armed conflict for almost 50 years. There are numerous actors involved in this confrontation, and all of them have, in one way or another, relied on drug trafficking and other forms of organized crime to extend their power. In some cases, this trafficking has transformed the very nature of these groups or actors, converting their political positions into economic interests and turning them into just another of the many links in the illicit drug trade. This is particularly evident in the case of the former illegal paramilitary self-defence groups, and some argue that it can also clearly be seen among the leftist guerrilla groups. Although the state is not systematically involved in this illegal business, the problem has affected its legitimacy at all levels of government.

According to Juan Carlos Martínez Sinisterra, a former senator from the Colombian Pacific coast, 'You can't make as much money out of being mayor as you can from a boat'. He was convicted for his links with the Calima bloc of the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*, AUC) and is under investigation as of February 2014 for embezzlement and electoral fraud (*Congreso Visible* 2014; *Revista Semana* 2011). The former senator was not referring to just any boat that sets sail from Colombia's largest port, Buenaventura, on the Pacific coast, but to a boat carrying illicit drugs (*Revista Semana* 2011). The figures are mind-boggling given that, according to the World Bank (2011), the wholesale price of a tonne of 100 per cent pure cocaine can reach USD 30 million, 30 times its price in Colombia.

There is a close relationship between paramilitary and drug trafficking groups, as the Martínez Sinisterra case demonstrates. This example is a mere drop in the ocean of such scandals in Colombia. Cases of congressmen/women being investigated for their alleged relationships with paramilitary groups resulted in 60 convictions between November 2007 and July 2013 (*Verdad Abierta* 2013). Elected representatives and politicians from the local and regional levels have also been convicted for direct links with drug trafficking.

Pressure from academics, journalists and the judiciary has encouraged political parties to push through important political reforms to prevent and punish infiltration of the state by illegal groups. Despite these regulations—which were adopted in an attempt to protect the public sector from the tentacles of organized crime, in particular drug trafficking—this problem had not been tackled before the 2014 congressional elections (*Revista Semana* 2013b).

This chapter contains case studies from the Colombian municipalities of Bello and Buenaventura. The first gives detailed information on the political actors and criminals involved and highlights what some have called the 'co-opted reconfiguration of the state', in which illegal groups—in this case drug traffickers—attempt to '[...] infiltrate, penetrate and take advantage of parts of the state in order to subsequently reconfigure it to respond to and serve their own interests' (Garay Salamanca 2008: 59). This

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dynamic can also be seen from an opposing viewpoint in which the relationship is reversed, as the Martínez Sinisterra case demonstrates. This phenomenon has been called 'reverse capture' of the state, in which '[...] politicians wish to maximize their chances of electoral success and so rely on paras [paramilitaries] and narcos [drug traffickers] to do so' (Gutiérrez-Sanín 2010: 24). The case of Buenaventura offers an in-depth macro analysis of the issue of 'reverse capture' of the state, and can also be seen as an example of politicians seeking to ally themselves with illicit networks in order to extend their power.

The Bello and Buenaventura municipalities are located in departments that represent key examples of both phenomena, given the widespread presence of drug traffickers in both areas. The Antioquia department—in particular the municipality of Medellín and its metropolitan area, which includes neighbouring municipalities such as Bello—was the home of one of the three most

powerful cartels in Colombia's (and the world's) recent history: the Medellín cartel led by Pablo Escobar (Salazar 2001). The Valle department—which includes Buenaventura municipality—has suffered some of the highest levels of violence in Colombia in recent years (Forensis 2012) and has been the theatre of operations for the two next-most powerful drug trafficking organizations in Colombia: the Cali and Norte del Valle cartels. Buenaventura municipality has long been a key area for these two cartels because of its geographic location and illicit drug exporting infrastructure (see section 5.3).

## 5.1 Overview of national regulations in Colombia

*Catalina Perdomo<sup>2</sup>*

The Political Constitution of Colombia explicitly sets out the ethical standards that public officials must adhere to. Article 83 is particularly noteworthy, as it elevates the assumption of good faith to a fundamental duty of both public authorities and individuals. Article 209 indicates the principles that must underpin the actions of public administration. It also reiterates the need to act on the basis of a moral or, more accurately, ethical code.

Article 90 establishes the principle of state responsibility. The state can be held liable for 'wrongful damage' caused by public authorities and for the harm caused by the culpable individuals. There are specific provisions related to the liability of the President of the Republic, congressmen/women and senior state officials. For example, the constitution stipulates the reasons that would justify the removal from office of members of Congress (article 83), including the failure to attend sessions, a failure to take up office, a failure to follow the rules regarding ineligibility or conflicts of interest, and any openly criminal activity such as the improper use of public money or influence peddling.

Legislative Act 1 of 2009 introduced a fundamental amendment to article 107 of the Political Constitution. This act concerns the liability of political parties and movements when they support candidates, elected or otherwise, who have been convicted of crimes 'linked to illegal armed groups and drug trafficking or crimes against citizen participation mechanisms or against humanity'. Penalties include fines, the return of public money, temporary bans on fielding candidates and removal of the organization's legal status. The act also established the mechanism of the 'empty chair' (article 6), in which politicians and parties lose seats if they are formally linked to criminal cases

related to drug trafficking, support for illegal armed groups or crimes against humanity.

The constitution specifies ineligibility criteria for the most important political posts, such as president and congressmen/women (articles 179 and 197). It also establishes that no one may hold public office, elected or appointed, or enter into contracts with the state if they have been convicted of crimes against public property, crimes related to illegal armed groups, crimes against humanity or drug trafficking (the latter committed in Colombia or elsewhere). The text sets out the main forms of illicit collaboration as membership, promotion or financing of these organizations.

These reasons for being barred from office are of the utmost importance, as they should help purge the popularly elected bodies and the ranks of the public administration of their links with illegal armed groups, perpetrators of massacres and drug traffickers. These 'power groups' are the direct and immediate cause of the crisis in state legitimacy and the violence that is still experienced in Colombia today (Palacios 2001).

The Political Constitution also indicates that civil servants who have been fined for wilful misconduct (Law 599 of 2000, article 22) or gross negligence—when the crime was foreseeable or the error could have been avoided (Law 599 of 2000, article 23)—shall also be barred from office following the final court ruling. It is interesting to note that the constitution states that the system for barring governors from office must be no less strict than that for the president. This is not the case at the municipal level as, given their number and disparate nature, the municipalities are treated differently.

<sup>2</sup> With a contribution from Luis Roberto Wiesner.

The constitution also notes a series of incompatibilities for civil servants. These apply to officials who have civil or political authority or jurisdiction but also hold executive administrative posts or work in the electoral or supervisory bodies. Most of the generic situations it names are aimed at preventing officials from establishing financial relationships that might affect their impartiality or corrupt their use of power (Wiesner 1993, 1997). In the case of congressmen/women, these incompatible situations apply for their whole elected term and, should they resign, extend to the following year.

Article 110 of the Political Constitution includes an important prohibition: it bans public officials from contributing to political parties and movements, in order to prevent their financial power from being used to support political organizations. Legislative Act 1 of 2009 added a paragraph to article 109 of the constitution prohibiting political organizations from receiving foreign funding for their electoral campaigns and adding that 'no kind of private funding may be used for anti-democratic purposes or for disrupting the public order'. This ban is designed to prevent drug traffickers or illegal armed groups, for example, from interfering financially in elections. Article 136 prohibits Congress from decreeing support, rewards, compensation or pensions to individuals. This has theoretically curtailed the so-called parliamentary supports—amounts allocated to congressmen/women to finance specific public projects—although this practice remains common, if now concealed (Roll et al. 2010).

In addition to the constitution, it is worth mentioning Law 190 of 1995, which extends ineligibility to civil servants who provide false information or conceal the truth when making the disclosures required to take office. In order to ensure greater transparency in public life, candidates for public office are required to provide information on their previous economic activities and their involvement in companies and not-for-profit organizations. This law also established a number of duties related to transparency, for the benefit of investigative journalism. Public officials are obliged to reveal all necessary information to journalists when they are investigating the administration's

actions. Members of the judiciary—public prosecutors and judges—are even allowed to hand over general information about their investigations when there is an order for preventive detention, that is, when a person is being held on remand in the course of a criminal investigation.

Law 412 of 1997 removes the requirement that the state must have suffered financial loss in order for conduct to be qualified as 'corrupt' and prevents illicit behaviour from being considered a political crime even when entered into for political purposes. The first provision emphasizes a subjective aspect of conduct: the crime of corruption involves a deviation of duty or power, regardless of any financial damage. The second provision prevents corrupt officials from benefiting from the protections usually enjoyed by those accused of political crimes.

The Anti-Corruption Statute (Law 1474 of 2011) identifies and punishes corrupt behaviour in the private sector while in contact with the state. It re-establishes the National Ethics Commission (*Comisión Nacional para la Moralización*, CNM) and creates the National Commission of Citizens Against Corruption (*Comisión Nacional Ciudadana para la Lucha Contra la Corrupción*), a body intended to incorporate the most significant private sector actors such as trade associations, NGOs, universities, the media and unions. This law also states that the CNM must 'produce proposals to make the envisaged measures effective [...] with regard to politically exposed persons' (PEPs). However, the law does not define the concept of 'political exposure'.

Regulations governing PEPs are issued by the Financial Superintendency of Colombia (*Superintendencia Financiera de Colombia*) (Circular 007 of 1996). These include the potential link to money laundering or terrorist financing (ML/TF risk) as a threat to financial institutions. They also note some examples of PEP, such as people who handle public funds, hold public office and enjoy public recognition. In addition, '[...] it considers that political campaigns and political parties expose the entity to greater ML/TF risk [...]']

Law 134 of 1994 establishes public participation mechanisms and enshrines removal from office as a political right that applies to governors and mayors. The law establishes administrative participation as an individual right, through the creation of public oversight committees (*veedurías ciudadanas*) or monitoring boards (*juntas de vigilancia*) at all levels of the public administration and in the provision of public services. Law 563 of 2000 regulates the oversight committees and defines them as representative mechanisms enabling individuals and community associations to exercise control over public management at all levels, the political, administrative and legislative as well as electoral authorities.

The Law on Parties, Movements and Civic Groups (Law 1475 of 2011) makes the registration and support of candidates convicted of crimes related to drug trafficking or illegal armed groups, crimes against humanity and crimes that threaten the right to democratic participation a punishable offence. It also prohibits crimes against the existence

and security of the state, the legal order and the public administration as well as acts of corruption. It further stipulates sanctions for fostering links with illegal armed groups and for drug trafficking, crimes against humanity and crimes against democratic participation. The punishment consists of a ban on participating in the next elections in that constituency. Prohibited sources of funding include those related to illicit activities, and those intended for anti-democratic purposes or for the purposes of contravening public order, anonymous contributions, and contributions and donations from people whose assets have been seized, along with funding from the proceeds of the above crimes.

**Figure 5.2 Bello municipality, Colombia**



## 5.2 Bello municipality case study

*Catalina Uribe Burcher*

This case study seeks to explain the conditions that led to the establishment of relationships between political actors and illicit networks in Colombia, particularly in Bello municipality in the department of Antioquia. It seeks to shed light on the nature of these relations and how they are facilitated, as well as the effects of national and international public policy on ending such relations.

Special thanks must go to all the people who agreed to be interviewed during visits to Bogota, Medellín and Bello in 2012. The information provided by members of the public administration, academics, journalists and politicians was particularly useful. Given the security situation and the sensitivity of the issue, sources have been anonymized. Their information has been supplemented by additional documentation from academic journals, books and other media.

The study begins by analysing the background to the conflict and the main areas of organized crime in the country as a whole, in Antioquia and, specifically, in Bello. This contextual information is complemented by a brief description of Bello's political context and some of the main figures who make up the local landscape. This analysis will help the reader understand the relationship between criminal networks and the political apparatus in Bello. The study examines the actions of Hugo Albeiro Quintero—an infamous crime boss in the town— his company, Bellanita de Transportes, and how he used his political and financial connections to facilitate his illegal business dealings.

The relationships between politicians, economic actors and criminal networks in Bello illustrate the incentives to create such networks, the factors that help sustain them and the role of different state and non-state actors in combating or facilitating them. These factors include the networked nature of organized crime and the role played by facilitators linked to the local political machinery and the legal and illegal economy, who help forge these links and circumvent the mechanisms designed to prevent them. The study shows how these relationships help reduce the levels of murder and violence in the area, albeit at the cost of the legitimacy of local democratic politics.

### 5.2.1 Colombia, Antioquia and Bello: conflict and organized crime

For roughly 50 years, Colombia has been embroiled in an armed conflict involving, among others, its armed forces, leftist guerrilla groups such as the FARC, the National Liberation Army (*Ejército de Liberación Nacional*, ELN) and the Popular Liberation Army (*Ejército Popular de Liberación*, EPL), and armed actors from the right such as the AUC. However, the ideological divisions between left and right that fanned the flames of the conflict in its early stages have gradually become blurred, to the point where some members of demobilized armed groups have now regrouped into criminal gangs or *bacrim* (McDermott 2014).

Many of these groups, along with other organized criminal networks that are either independent of or associated with them, operate in many of the country's regions. Their activities have included arms trafficking; the production, processing and trafficking of drugs, such as marijuana, heroin and cocaine; illegal mining; human



trafficking; and money laundering. The production and trafficking of cocaine has clearly been one of the most profitable areas of activity for them, as well as one of the greatest causes of rural and urban violence in the country (Dombois 1989: 124, 126–32; Frasser and Salazar 2013; UNODC 2012b: 50; McDermott 2012; McDermott and Ortiz 2011; Pachico 2011a; *Verdad Abierta* 2012).

This phenomenon has been especially marked in Antioquia, in the municipality of Medellín and its metropolitan area in particular, as well as neighbouring municipalities to the south, such as Envigado and Sabaneta, and to the north, such as Bello and Itagüí. During the 1980s and 1990s, this area formed the epicentre of the narcoterrorism that was afflicting the country, which resulted in thousands of victims. The main players were the Medellín cartel and the infamous drug trafficker, Pablo Escobar. Following Escobar's death in 1993, the area continued to be affected by the presence of the violent groups that inherited his cocaine business. Many of these first assimilated the structures of the Medellín cartel, then disposed of existing groups using hired assassins and subsequently grew in strength in the vacuum created by the demobilization of the paramilitary groups under the Justice and Peace Law, Law 975 of 2005 (*InSight Crime* 2013). According to a number of the experts interviewed, these and other groups—including the Medellín cartel, 'Los Pepes', the urban militia of the FARC, the Metro bloc and the Cacique Nutibara bloc—operated in networks that involved numerous gangs. These networks have mutated over time, while the criminal gangs, 'Los Pachelly' and 'Los Triana' in particular, have endured in the service of one group or another, working almost independently according to the needs of the moment.

The 'Oficina de Envigado' network emerged in this context. For more than 30 years it has bred master criminals such as Diego Murillo, alias 'Don Berna', who was extradited to the United States and sentenced to 31 years in prison (*El Tiempo* 2013b), and Erickson Vargas, alias 'Sebastián', who was arrested in 2012 (*Revista Semana* 2012a). This illegal network exploited the inherited capacity of the paramilitary groups and hired assassins in the area, and created strategic alliances with important politicians and businessmen in order to maintain its local drug distribution network and protect its trafficking routes.

The Oficina de Envigado protects the 'white gold triangle', an area that connects the Bajo Cauca, where coca is produced; the Urabá region, from where it is exported; and Medellín, where the money is laundered (see Figure 5.3). This criminal network is also involved in extortion, illegal surveillance and the slot machine industry, among other things (*Revista Semana* 2009b). These activities generate an estimated COP 25 billion (USD 14 million) for the network every month (*El Tiempo* 2012). According to information obtained from demobilized paramilitaries, this illegal network is allegedly linked to the owner of one of the largest muffler stores in the Medellín municipality—Luis Fernando R. (alias 'Luifer'), and to a former employee of former Congresswoman Rocío Arias, known by the alias 'Don Luis', a regional politician who bribes other politicians and organizes corrupt payments to the state security forces and, allegedly, was a one-time associate of Pablo Escobar (*El Tiempo* 2012).

Despite a police and army crackdown on this network, the Oficina de Envigado seems to have survived, but its power structures have mutated. Its survival seems to be in part due to its networked structure, which enables it to recover when one of its links is attacked, and also to the support of the political sector and the legal economy (*Revista Semana* 2009b).

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**Figure 5.3 The 'white gold triangle'**

The network has suffered from fierce internal disputes, most recently in 2008–11, involving Maximiliano Bonilla, alias 'Valenciano', and Erikson Vargas, alias 'Sebastián'. According to *El Tiempo* (2009b), this conflict was the cause of around 6000 deaths in Medellín during this period. The network has no homogenous or centralized structure; it groups together an estimated 350 different gangs operating in various zones (*El Tiempo* 2012). This has apparently enabled those groups that survive military attacks and internal disputes to continue their business, stepping in to replace gangs that have disappeared. This panorama now seems to be changing, according to the experts interviewed. The Oficina de Envigado has gradually lost control of these gangs, some of which appear to be mutating into independent networks (anonymous interviews, Medellín 2012).

### 5.2.2 Bello politics

Armed structures have been operating in Bello municipality since the time of Pablo Escobar. There are thought to be 13 criminal gangs operating throughout the Medellín metropolitan area (anonymous interviews, Medellín and Bello 2012). Bello's socio-economic status is complex. After Medellín, it is the municipality in the metropolitan area that receives the most income from government subsidies, and its population is in the lower economic brackets when compared to the national situation—1–3 on a scale of 0–6 (Oxford Poverty & Human Development Initiative 2005; Corporación Semiósfera 2012a).

Economically, Bello's pioneering textile industry (Centro de Historia de Bello 2012) fell into crisis in the 1970s at the same time as the drug cartels were emerging in Antioquia (Spitaletta 2011a, 2011b). Politically, Bello has traditionally been a bastion of conservatism, under the leadership of President Laureno Gómez. It was in Bello that the so-called *planchadores* emerged, individuals who attacked with a machete anyone they considered to be their political opponent, during the 'Time of Violence' in Colombia, a mid-20<sup>th</sup> century period of atrocities committed by members of the Liberal and Conservative parties. Throughout the 1970s, however, the municipal council was almost fully in the hands of *Alianza Nacional para el Progreso*, a movement led by General Rojas Pinilla, Colombia's only dictator in the 20<sup>th</sup> century (Corporación Semiósfera 2012b).

As in most of Colombia's municipalities, the traditional parties—the Conservatives and Liberals—are in the majority in Bello. The most important political actors in recent years have been the Suárez-Mira and Arango families. Their political power became entrenched when Colombia's mayors and governors were first elected by popular vote. The main actors from both sides of the political spectrum are currently implicated in the investigations surrounding the so-called parapolitics scandal, when numerous national and regional politicians established links with illegal paramilitary actors following the dismantling of the paramilitary groups in 2005 (López Hernández 2010b; Romero Vidal 2007a).

Óscar Suárez-Mira appeared on the scene after studying law at university (Gaviria 2011). He was mayor of Bello in 1995–97, elected to the House of Representatives and later served as a Senator of the Republic. This latter post was obtained with the support of the *Partido Alas Equipo Colombia*, and with more than 71,212 votes (ROC 2011a; *Revista Semana* 2009a). Although the Senate elections are national, a quarter of his vote came from Bello, representing 81 per cent of the municipality's votes cast in the election (Gaviria 2011).

In addition to controlling the Conservative Party in Bello, Óscar Suárez-Mira has also led or supported several other political parties and movements in the municipality, either formally or informally, such as *Vamos Colombia*, *Cambio Radical*, *Partido Social de Unidad Nacional* ('Partido de la U'), *Movimiento de Inclusión de Oportunidades*, *Movimiento Colombia Viva*, *Movimiento Equipo Colombia*, *Movimiento Nacional*, *Movimiento Sí Colombia*, *Movimiento Alas Equipo Colombia* and *Bello Unido*, many of which are no longer in existence. The influence he gained in this way enabled him to include candidates who support his local powerbase—or so-called political machinery—on all the different party lists (anonymous interviews, Medellín and Bello 2012).

Óscar Suárez-Mira was investigated as part of the parapolitics scandal due to his links with former paramilitary leaders such as Diego Fernando Murillo Bejarano (alias 'Don Berna'), Freddy Rendón Herrera (alias 'El Alemán') and Hugo Albeiro Quintero (alias 'El patrón de Bello' or 'The Bello Boss') (*Revista Semana* 2007b). In 2013 the Supreme Court of Justice found Óscar Suárez-Mira guilty of aggravated criminal conspiracy, for which he was sentenced to nine years in prison (ROC 2013). Luis Alfredo Ramos—a well-known politician and former department governor who leads a Conservative Party faction that rivals Óscar Suárez-Mira at the department level—is thought to have been involved in the arrest of Óscar Suárez-Mira, according to interviews with some regional politicians (anonymous interviews, Medellín and Bello 2012). However, the court ruling refers to an alleged meeting involving various paramilitary chiefs and both Óscar Suárez-Mira and Ramos (ROC 2011a), which suggests that the relationship between the two was not so hostile, at least at the time of the meeting.

El Alemán—head of the paramilitary Élmer Cárdenas bloc, which had a significant presence in the Urabá region, in the Antioquia and Chocó departments—is thought to have forced people who were violently displaced from their lands to vote for Olga Suárez-Mira (Óscar Suárez-Mira's sister) in the 2006 elections to the national Senate (*Verdad Abierta* 2011; *El Espectador* 2013; *El Tiempo* 2007a). She won the election and is now a senator. The Supreme Court of Justice has ordered an additional investigation into this allegation (ROC 2013). Óscar Suárez-Mira is also under investigation as part of the parapolitics scandal, although she has not been arrested. She is thought to have 'inherited' the political wealth amassed by her brother (EOM 2010: 7). The Suárez-Mira siblings have allegedly supported the candidacies and funded the campaigns of other politicians, such as Congressman Germán Blanco; Antioquia Representative Gloria Montoya and Bello Councillor Nubia Valencia (anonymous interviews, Medellín and Bello 2012).

The Liberals in Bello are led by the Arango family, particularly Rodrigo Arango who is in prison on charges of corruption and accused of crimes against public property (*El Tiempo* 2000). Experts interviewed explained that since 1998 there had been an agreement in Bello between the Suárez-Mira and Arango families similar to that of the *Frente Nacional*—an agreement between the Conservative and Liberal parties from 1958 to 1974 to take turns in holding the presidency and divide the Congress equally between them—in that they alternated power between them within the municipality. This agreement between the two factions broke down in 2002 when the scandals related to paramilitarism in Bello began to emerge (anonymous interviews, Medellín 2012). Following the collapse of the alliance, the next two mayors were both linked to the Suárez-Mira faction—one of them was Olga Suárez-Mira herself—both of whom were suspected of electoral fraud such as vote buying and possible electoral transhumance (the

name given in Colombia to people registering to vote in districts other than where they live) (EOM 2010).

In the context of these clashes between Liberals and Conservatives, John Jairo Roldán lodged a lawsuit in 2007 on behalf of the Liberal Party against the results of Bello's mayoral elections, which they had lost by a margin of only seven votes. The complaint of electoral fraud alleged that votes had been bought and a series of irregularities had occurred (*El Mundo* 2008). However, it is rumoured that the Conservatives paid the Liberal Party around COP 2 billion (approximately USD 1 million) to withdraw the case and promised to support John Jairo Roldán in his efforts to obtain a seat in the Chamber of Representatives (anonymous interviews, Bogota and Medellín 2012). These efforts were successful in 2010, and a new agreement has allegedly been in place between the two parties ever since. One sector of the Liberals, known as *Liberales por el Cambio*, headed by Luz Imelda Ochoa, has apparently distanced itself from this bipartite alliance (anonymous interviews, Medellín and Bello 2012).

It has been difficult for any kind of political opposition to emerge in the municipality. According to some of those interviewed, this dates back to the extermination of the opposition in the 1980s and 1990s: the *Unión Patriótica* had 11 councillors elected, but they were all murdered. The *Polo Democrático Alternativo*, which was part of the faction known as *Petrismo*—supporters of Gustavo Petro, the mayor of Bogota in 2012–15—tried to participate in Bello politics in 2007. Threats against them led them to give up their ambitions. The only existing opposition is the Green Party, which has two representatives on the council who have been receiving threats since 2012 (anonymous interviews, Medellín 2012).

There has, however, been significant resistance to this form of governance within the municipality, most recently reflected in the 'blank ballot' protest. According to sources interviewed and Medina Uribe (2011), the agreement between the Liberals and Conservatives meant that only one candidate stood in the 2011 municipal elections, Germán Londoño. There had originally been more candidates, all of them from the Suárez-Mira camp, but they withdrew in line with the agreement and supported Londoño (anonymous interviews, Bello 2012). Only Luz Imelda Ochoa—who was previously a member of the Liberal Party but resigned to stand as an independent—tried to oppose Londoño, with the support of the Green Party and *Polo Democrático Alternativo*. In Colombia, candidates who wish to stand as an independent must obtain the support of a significant group of citizens, backed by a certain number of signatures (Law 130 of 1994 and Law 1475 of 2011), and a number of signatures backed her. Ochoa was not permitted to stand because the electoral authorities disallowed 60 per cent of the signatures gathered in her support. Nonetheless, faced with a situation in which the only candidate was going to be elected unopposed, many people chose to leave their ballot paper blank. For only the second time in Colombia's history, a blank ballot paper won the election—with 70 per cent of the vote (Medina Uribe 2011; Spitaletta 2011a, 2011b).

Further elections then had to be held in the municipality, but Ochoa was barred from running again (Legislative Act 1 of 2009, article 9). More candidates did stand in this new election, but according to various people interviewed most of these were from the Suárez-Mira elite. A candidate from the Suárez-Mira camp, Carlos Muñoz, won the election but more than 70 per cent of voters abstained (National Civil Registry 2013b).

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This high level of abstention has been attributed to alleged vote buying and pressure from organized criminal networks, actions apparently orchestrated by the Suárez-Mira family (*La Silla Vacía* 2011a). It was particularly important for these groups to neutralize the opposition, as, according to current legislation, the election could only be repeated once, meaning that the candidate with the most votes would be the winner (Legislative Act 1 of 2009, article 9) regardless of the number of blank ballots or the percentage of people turning out to vote (anonymous interviews, Medellín 2012). Since other forms of fraud or vote stealing were ruled out by the system of biometric identification in use in this election for the first time, the criminal networks ensured that Suárez-Mira's opponents did not turn out to vote (National Civil Registry 2011).

Interviewees from some political and social sectors in Bello indicated that many people received threats by the different criminal gangs into not voting—in communes 1, 6, 7 and 11 in particular (anonymous interviews, Bello 2012). These arguments are backed up by the enormous difference in participation rates between the first election, when more than 130,000 people turned out, and the second, when only around 73,000 voted (National Civil Registry 2013b), which could suggest an external factor neutralizing the opposition. Other accusations throw this vote into question, including the alleged financing of the Muñoz campaign by the municipal government—some of the media attributed the municipal deficit of around COP 60,000 million (approximately USD 32 million) to this (*TVNtucanal* 2012).

According to those interviewed, Germán Londoño, the municipal Treasury Secretary, is rumoured to be the power behind the throne in the Mayor's Office, as he is closest to Óscar Suárez-Mira (anonymous interviews, Bello 2012). In 2013, some of Bello's population called for Mayor Muñoz to be removed from office (National Civil Registry 2013a).

### 5.2.3 Criminal networks on the political scene

According to various people interviewed, the origins of Bello criminal gangs, and of hired assassins generally in the municipality, can be traced back in part to the activities of Jaime Arango, the father of Rodrigo Arango. According to these sources, he was the pioneer of the municipality's mafia, trafficking cigarettes and marijuana. Then came the Medellín cartel and Pablo Escobar, mentioned above. Some historians interviewed noted that Escobar drew a large part of his armed forces from Bello, exploiting the children of middle class workers affected by the decline in the textiles industry, many of whom chose to join armed gangs in Valle de Aburrá, where Medellín and the surrounding municipalities are located (anonymous interviews, Medellín and Bello 2012).

La Ramada was allegedly the most violent and dangerous gang of the period. It was established to act as the mafia's private army, supposedly under the complaisant eye of Bello's politicians and alongside Pablo Escobar's promises to invest in the area's neighbourhoods, for example, by providing lighting for sports fields and building houses. Bello thus became known as the 'home of assassins', which continued as the Oficina de Envigado's influence stretched across the whole region and the country, as this organization had important allies and criminal activities in Bello (anonymous interviews, Bello 2012).



According to a recent report by the National Institute for Legal Medicine and Forensic Science in Colombia (*Instituto Nacional de Medicina Legal y Ciencias Forenses en Colombia*), of Antioquia's 125 municipalities, Bello has the third-highest absolute number of murders, not including Medellín, but the murder rate per 100,000 inhabitants is relatively low compared to other municipalities in the department (Ricaurte 2011). There are around 13 criminal gangs in Bello municipality (anonymous interviews, Medellín 2012). This apparent contradiction between the low murder rate and the high number of criminal gangs can be explained by the fact that there are currently no conflicts between these gangs, which have signed a series of agreements to avoid confrontation (*El Colombiano* 2013). One anonymous social leader described the situation thus: 'Bello is now a peaceful and safe place. There are few robberies and, if you do suffer one, the next day the thief wakes up dead. We no longer have anything to worry about. Of course, you don't get involved in problems with the "kids" without paying for it, but generally it is all very peaceful' (anonymous interview, Medellín 2012).

Although the rate of murders and other crimes, such as theft, has fallen, the presence of these gangs has meant an increase in the extortion of money—or *vacunas* (vaccinations) as they are known locally—from local traders (*El Colombiano* 2013). The gangs also provide informal loans at usurious interest rates through what is known as *paga-diario* (daily payments), keeping a close eye on and, in some cases extorting, their debtors. Apparently, these debtors even include municipal councillors (anonymous interviews, Medellín and Bello 2012). The gangs also devote their time to murdering and stealing in other nearby municipalities, primarily Medellín, not to mention drug trafficking. The gangs have become involved, both directly and indirectly, in significant legal sectors of the municipality and metropolitan area's economy, for example the construction sector and casinos, primarily as a channel for laundering money.

The Bello gangs have exploited the municipality's institutional weaknesses in order to extract resources from it. For example, a number of people interviewed explained that these groups have established shell companies through which to implement fictitious projects financed by the municipality. Some of these projects include education services based on false contracts, over-invoicing and the reporting of non-existent students (anonymous interviews, Medellín 2012). This is another reason according to some experts and the media for the huge deficit in the municipality's finances (*TVNtucanal* 2012).

Shell companies have apparently been commonplace since the establishment of the Roundtable for Peace and Co-existence in Bello. This was an attempt to end violence in the municipality through a non-aggression pact between the gangs, which involved defining each group's area of geographical influence. In exchange, the municipal government gave the gangs social projects to implement in their areas. To be awarded these contracts, the groups had to establish foundations financed by the municipality's 0.5 per cent Industry and Commerce Tax (Decree No. 012/2006). The gangs submitted fake project proposals that were granted state funding (*El Tiempo* 2007a), which the groups simply appropriated (anonymous interviews, Bello 2012).

Olga Suárez-Mira, while mayor, was apparently one of the people who sponsored and promoted this initiative (EOM 2010: 7). The main element of this agreement, according to local sources, was acceptance of the most influential gang, 'Los Pachelly'. This group was headed by Gancho—who has since been murdered—and Hugo Albeiro (see below). These individuals supposedly

controlled the Puerta del Norte and Niquía sectors, and even the centre of Medellín, Colombia's second-largest city (anonymous interviews, Medellín and Bello 2012). Marta Morales—chair of the roundtable, a former director of the Bello Legal Centre and allied with the Suárez-Mira group—is now under investigation and on trial for her alleged connections with the gang (anonymous interviews, Bello 2012).

The roundtable operated from 2004 to 2007, but was then dismantled as the gangs were not keeping their side of the bargain. According to those interviewed, however, this agreement remains unofficially in place among the gangs, and the municipality's resources continue to be syphoned off into these fictitious foundations (anonymous interviews, Bello 2012).

Interviewees described how the support of Bello's political elites has enabled some of the municipality's gangs to take advantage of their special relationships with Bello's secretary of transport and travel, and the interior secretary to facilitate the movements of these groups (anonymous interviews, Medellín and Bello 2012). This support apparently includes not only concrete actions but also omissions. For example, Bello's 2012–15 Municipal Development Plan lacks clarity regarding the efforts and investments to be made in relation to the security issue, despite recognizing the challenge that organized gangs and vigilante groups represent to the municipality's security (Municipality of Bello 2012).

#### 5.2.4 Hugo Albeiro Quintero and Bellanita de Transportes

Hugo Albeiro Quintero, leader of 'Los Pachelly' gang, is from a family that wields significant power in Bello municipality. The Quintero family forms part of the municipality's powerful transport sector through its company Bellanita de Transportes. Its influence apparently extends much further through illegal activities, particularly the illicit network it is involved in which has forged links with paramilitary groups (anonymous interviews, Medellín and Bello 2012). This is an example of the 'revolving door' concept whereby people use their connections in the legal and illegal worlds to mutual benefit.

Hugo Albeiro Quintero inherited a relatively small company from his father, Hugo Quintero Céspedes (*Revista Semana* 2008a). The company grew significantly in Bello and Medellín, operating part of the 'Student Ticket' programme along with routes that form part of Medellín's metro system. It also had financial links with the companies *Taxis y Colectivos S.A.*; *Estación de Servicio y Serviteca O&C Ltda.*; *Colombia de Servicios de Transportes Especiales*, Colsetrans; *Inversiones Círculo de Socios S.A.*; and *Parqueaderos y Servicios El Diamante* (*El Mundo* 2009; *El Espectador* 2009a; *Revista Semana* 2008b).

The decisive factor in the company's growth was its use as a front for laundering money from the infamous paramilitary Vicente Castaño, alias 'El Profe', brother of the ringleader of the AUC paramilitary group, Carlos Castaño. This led to a massive influx of capital (*El Espectador* 2009a). Some of those interviewed explained that Hugo Albeiro Quintero's links with the underworld enabled him to control one of the most feared and powerful of Bello's gangs, Los Pachelly, for a number of years. According to other anonymous sources, this gang controlled—in one way or another—all of Bello's other criminal gangs, which at the time the region's experts and authorities considered more of a network than a simple gang (anonymous interviews, Medellín and Bello 2012).



The links between Bellanita de Transportes and drug trafficking apparently date back to the 1990s, when the paramilitary Metro bloc was dominant in the area. At that time, this paramilitary wing had approximately 90 groups linked to the drug trade and other illegal business activities, including the extortion of traders. One of the sectors most affected by extortion was the transport sector. It was supposedly for this reason that, over the course of the decade, the company became allied with the Metro bloc in order to protect itself from their attacks. At the turn of the millennium, when the paramilitary Cacique Nutibara bloc took over the area, Hugo Albeiro Quintero and Bellanita de Transportes became directly involved in the illegal drug trade and, eventually, Quintero forged an alliance with Don Berna and the Oficina de Envigado, as noted above (*El Colombiano* 2012). This alliance allegedly included carrying arms and drugs on Quintero's fleet of company buses (anonymous interviews, Medellín and Bello 2012). In addition, Quintero apparently provided the paramilitaries with motorbikes for their own transport needs (C.N. López Hernández 2007a: 108).

Through his relationship with the Oficina de Envigado, Quintero forged close ties with various criminals who formed part of this structure, which enabled him to control various illegal business interests in the area. These relationships included links with the disappeared paramilitary commander, Vicente Castaño, as recounted by the former paramilitaries Jorge William Duque and Evert Veloza, alias 'HH', in August 2008 (*Colombia News* 2008; *El Tiempo* 2010b). According to their version of events, in addition to laundering money for their group, Quintero apparently played host to Castaño on 16 August 2006 at his La Verde estate and, as part of an escape plan, helped him leave the area in one of his helicopters (*El Tiempo* 2010a; *El Colombiano* 2010). This is a clear indication of Quintero's close relationship with the paramilitary leaders.

According to additional sources, Quintero was also friends with Carlos Mauricio García Fernández, alias 'Dobleceño'—a retired army officer and former commander of the AUC's Metro bloc—who was listed on the payroll of Bellanita de Transportes as a beneficiary of health and pension contributions (*El Colombiano* 2010; *El Tiempo* 2010b; *El Espectador* 2009a), and Guillermo Ángel—owner of the Helicargo company and a partner in Agronoman, Urbanoman, Capicredito, Unigrupal, Rincón Alto, Grupo Gli Abiti and Aguas de La Cabaña—who has been investigated for money laundering and embezzlement, and was previously linked to the paramilitaries (*El Espectador* 2009b; Caracol Radio 2011). Quintero's relationship with Jáder Alberto Botero Jaramillo, alias 'Gancho'—who died recently—has also been mentioned. Jaramillo began his career in Bellanita de Transportes and eventually joined the Oficina de Envigado (*El Colombiano* 2010). According to media information (*El Tiempo* 2009a), Gancho eventually expanded into the vacuum left in Bello and Medellín's criminal underworld by the arrest of Quintero and Don Berna between 2008 and 2010 (see below).

Quintero has also been linked to Jorge Evelio Restrepo, who was demobilized from the Centauros bloc and supposedly worked on the manufacture and distribution of arms intended for the AUC's Metro bloc between 1999 and 2002, through the Industrias Miko company, in which both were partners. Quintero has also been linked to Byron Alfredo Jiménez Castañeda, an alleged member of the Norte del Valle cartel, who was arrested in the United States in 2007. Along with Vicente Castaño and Hugo Albeiro Quintero, Jiménez was apparently a partner in the Tax y Col Ltda company (*El Espectador* 2009a).

These wide-ranging and high-level connections with the underworld gave Quintero his nickname in the municipality, *El Patrón de Bello* (The Boss of Bello). It was clear that Quintero had effective control of street crime through his wide and illicit networks at the highest level (anonymous interviews, Bello 2012). His influence did not stop there, however, as he was well known for his philanthropic activities in Bello. Like Pablo Escobar, the local people considered him a generous man due to the Christmas presents he would hand out to local children and the charitable work he sponsored (*El Colombiano* 2010; *Revista Semana* 2009a). This goodwill helped him keep abreast of the security forces' actions in his area of influence, through information provided by the local people.

Finally, and highly relevant to this study, Quintero and his criminal group allegedly forged important links with almost every one of the municipality's politicians—certainly those with the potential to occupy the highest posts in the mayor's office—apparently enabling him to control significant parts of the legal economy and the security sector in Bello. Quintero forged alliances with politicians through Bellanita de Transportes, in order to prevent any disturbance to his illegal activities by the security services. In addition to providing money for political campaigns, Quintero offered logistical support in the form of buses and other forms of transport to help move politicians and voters around during elections (anonymous interviews, Medellín and Bello 2012; *Revista Semana* 2008a, 2009b; *El Tiempo* 2007a).

His main political relationships were with Óscar and Olga Suárez-Mira (anonymous interviews, Bello 2012; Spitaletta 2011a; *El Colombiano* 2010), who were allegedly close personal friends of Quintero (Gaviria 2011). In the ruling that convicted Óscar Suárez-Mira, mention was even made of a meeting between Suárez-Mira and Quintero on Quintero's estate, which was also attended by important paramilitary leaders and other key politicians. This became a key piece of evidence in the Suárez-Mira trial, which resulted in a prison sentence (ROC 2013). In his defence, Suárez-Mira never denied that such a meeting took place but only challenged its nature, claiming that it was not a discussion on reaching agreements with the paramilitaries (ROC 2013).

The 2006 municipal elections were supposedly influenced by illicit networks, particularly that of Hugo Albeiro Quintero, along with the Oficina de Envigado, at that time headed by Don Berna (anonymous interviews, Medellín and Bello 2012). Through Bellanita de Transportes, economic and logistical support was provided to both Liberals and Conservatives (*Revista Semana* 2008a). It is not known how these relationships between Quintero and the different politicians were forged, but different interviewees believe that one factor facilitating these relationships may be the small size of Bello's population, which means that people tend to know each other, particularly important figures involved in the municipality's industry and politics. Another factor was the importance of Bellanita de Transportes to the local economy. The company had created a virtual transport monopoly in Bello. For local politicians, it was therefore a key ally in terms of obtaining resources and support for their campaigns (anonymous interviews, Medellín and Bello 2012).

### 5.2.5 The shadow of Hugo Albeiro Quintero

The powerbase established by Quintero not only helped him gain useful business allies, but also created a string of dangerous enemies. Many of his former allies, friends and bodyguards turned against him when, amid the paranoia created by his business and his new alliances with the underworld, Quintero began to order the murder of many of Bello's citizens, including former business partners and friends (*Revista Semana* 2009a).

This paranoia was clearly justified following the extermination of the Metro bloc (a group supported by Quintero) at the hands of the AUC's Cacique Nutibara bloc. This pitted Quintero against the Oficina de Envigado (*El Colombiano* 2012) and resulted in full-on attacks, such as the one suffered by Quintero in October 2006 in which he was shot four times. Some attribute this attack to Daniel Mejía, alias 'Danielito', because Quintero supposedly refused to sell Bellanita de Transportes to him for a multi-million dollar sum (*Caracol Radio* 2009). Other versions say the attack was planned by the Oficina de Envigado because of Quintero's refusal to cede his position to Maximiliano Bonilla, alias 'Valenciano'. After the attack, Quintero's security included more than 40 guards, some in bulletproof bunkers with various firearms, protected by state permits (*El Tiempo* 2009a; *El Colombiano* 2010).

This wave of threats and insecurity culminated in Quintero's arrest on 25 September 2008 (*Caracol Radio* 2008) and subsequent prosecution on charges of conspiracy, establishing illegal armed groups and involvement in forced disappearances (*El Colombiano* 2010; *El Tiempo* 2009c; Ospina 2008). This led in 2010 to a seven-year prison sentence and a fine for the crime of aggravated conspiracy to establish gangs (*El Tiempo* 2010c; *El Colombiano* 2012).

According to a number of those interviewed, his arrest was linked to divisions between the Liberals and Conservatives. Both parties allegedly used information linking Quintero to organized crime and politics in Bello for political purposes, which created pressure to find and arrest him (anonymous interviews, Medellín 2012).

During his trial, accusations were made that Quintero had ordered the murder and disappearance of various people in Bello, including some of his former staff and friends, in order to prevent them from testifying against him. Multiple investigators and prosecutors involved in the case also received threats or were removed from their posts (*El Tiempo* 2010a, 2010b; *El Colombiano* 2010).

Many of those interviewed observed that Quintero's arrest was purely nominal and for media purposes. He supposedly continued to work from his prison cell and his company continued its illegal activities—even though part of the company passed into the hands of the state—and his political influence remained intact. For example, sources indicate that his company provided buses and other means of transport during the 2011 elections for campaigning purposes and to take voters to the polling stations (anonymous interviews, Bello 2012).

Hugo Albeiro Quintero was released on parole at the start of 2012 after serving three-quarters of his prison sentence (*Minuto 30* 2012; *El Colombiano* 2012). Some interviewees explained that this has given renewed strength to the Bello gangs, particularly Los Pachelly. They retain a monopoly over the transport system, setting tariffs and enjoying an exclusive hold over the sale of petrol, car

washing and other activities. Quintero has achieved this by applying pressure and threats within the transport sector association, despite the many complaints made by transport companies regarding the high price of petrol and car washes (anonymous interviews, Bello 2012). Although Hugo Albeiro Quintero's share of Bellanita de Transportes was seized during his trial, most of the company was apparently in the names of other family members and so presumably continues to operate as usual (anonymous interviews, Bello 2012).

### 5.2.6 Conclusion

Bello offers an interesting example of how the link between organized crime and a municipality's political class can produce significant dividends for both sides, while at the same time blurring and delegitimizing the role of democratic institutions. One factor that allowed the situation to occur and persist is the way in which crime structures operate as networks rather than unified groups in a hierarchical structure. This means that the different links in the chain—criminal gangs, businesspeople and politicians—provide their services without needing to be dependent on each other. In the case of gangs such as Los Pachelly, their power has been perpetuated on the basis of inter-gang agreements and providing their services to other illicit networks such as the Oficina de Envigado, enabling them to survive the vagaries of criminal power.

In terms of business links with crime, the case of Bello clearly shows how an important sector of the legal economy—in this case transport through Bellanita de Transportes—was used as a revolving door to maintain links with the illegal sector, in particular through money laundering and the provision of logistical support to politicians during elections. Institutional weaknesses within political parties, both government and opposition, meant they were able to exert little control over their members and candidates, or indeed over their politicians in elected positions.

Unlike in other places, this did not result in high levels of murder and crime in Bello, because the organized criminal networks were not fighting with the state for control of the territory. On the contrary, there was an understanding between these illicit networks and the authorities with regard to territorial control. The criminal groups thus benefited from a generally peaceful situation in which to go about their business: extortion, micro-trafficking drugs and involvement in public projects through shell companies (anonymous interviews, Medellín 2012).

The municipality's democratic legitimacy has been affected by this anomalous situation, particularly because of the power relationships it evolves within the municipality. The victory of the blank ballot protest in the 2011 local elections in Bello was an important illustration of the fact that the people rejected this dual structure of political and criminal illegality. Moreover, these relationships perpetuate certain political classes, in particular those who maintain their power through criminal alliances, preventing new alternatives from emerging. Democratic legitimacy has also been affected in terms of the questioning of electoral results, due to the pressure exerted by criminal organizations in apparent alliance with political actors.



## 5.3 Buenaventura municipality case study

*Mauricio Romero*

Buenaventura is the second-largest port in Colombia, the largest on the Pacific coast for the movement of container freight, and the largest in the country for cargo other than oil and coal (ECLAC 2012). Eighty-five per cent of its population is of African descent, and the region is the poorest and most backward in Colombia (UNDP 2007b). It is the second-largest town in Valle del Cauca department after the capital, Cali. Valle has suffered from one of the highest rates of violence in Colombia in recent years (Forensis 2012), and two of the three most powerful drug trafficking organizations in Colombia in recent decades operated on its territory: the Cali and Norte del Valle cartels; the third, the Medellín cartel, operated in Antioquia.

This case study demonstrates the 'globalization of crime' in Buenaventura and its surrounding area, and the complexities of this process. The underlying argument highlights the political and institutional dimension of this phenomenon and discusses how political fragmentation and changes in relations between the centre and the regions have interacted with criminal networks, as well as the unintended consequences of security and illicit-crop eradication policies. This interaction has given rise in the Colombian Pacific to what has been termed an 'ungoverned space', in which drug traffickers have taken advantage of the global demand for illegal drugs to supply the international market. This case study focuses on the unintended consequences of international policies, and national policies with international support, that 'create' these crisis zones. Previous studies have separately analysed the international aspects, in this case, crop eradication in the east of Colombia in the context of Plan Colombia and the anti-narcotics control of air and maritime space in the Caribbean, or the domestic aspects, in this case, the development of new crops along the Colombian Pacific coast and of new routes involving Mexico, Central America and other countries to the south of the continent, but overlooked the interactions between them (Hill 2009: 1).

### 5.3.1 National and transnational context: illegality, poverty and new global markets

#### 5.3.1.1 Norte del Valle cartel and the demobilization of the AUC

The situation in Buenaventura cannot be understood without first considering the drug networks and their activities in Valle department, as these have moulded the strategic importance of the port to these illicit interests. The Norte del Valle cartel managed to exert effective sovereignty over the north of the department since the turn of the millennium. Drug traffickers associated with this organization include Orlando Henao, alias 'El Hombre del Overol', Diego Montoya, alias 'Don Diego', Juan Carlos Ramírez, alias 'Chupeta', Hernando Gómez Bustamante, alias 'Rasguño' and Wilber Varela, alias 'Jabón'. Different factions competed following the death of Orlando Henao in 1998, led by Wilber Varela, Diego Montoya, Hernando Gómez and Juan Carlos Ramírez. Their members were drawn originally from the Cali cartel, but they began to operate independently in the second half of the 1990s when Gilberto and Miguel Rodríguez Orejuela, the leaders of the Cali cartel, were being pursued by the courts in Bogota and Washington, D.C. At the time of the extradition of the Rodríguez Orejuela brothers to the USA in 2003 and 2004, the Norte del Valle cartel was already

a powerful network of alliances and rivalries, exporting cocaine to the USA in association with Mexican cartels (López A. 2008). By 2012, this group was in decline following the death, arrest or negotiated handover to the USA of its main leaders. New leaders, however, were already in the pipeline (*El País* 2012). When one of the leaders of the Norte del Valle cartel, Juan Carlos Ramírez Abadía, was arrested in São Paulo in August 2007, a detailed account found on his computer revealed the scale of Ramírez Abadía's activities. Between 2003 and 2005, he exported approximately 120 tonnes of cocaine per year, primarily through the port of Buenaventura but with an influence stretching right along the Colombian Pacific coast. This accounted for approximately one-fifth of all the cocaine exported by Colombia during the period, which has been calculated at 500–600 tonnes per year (UNODC 2012a). At the time, Ramírez Abadía had ten warehouses in the Nariño, Cauca and Valle departments where drugs were stored centrally and prepared for export, including one in Tuluá in the Norte del Valle, and another in Buenaventura. In addition to the small consignments that were transported out to sea by speedboat or in submersible vessels to Central America and on to the USA, a number of the 54 shipments recorded in 2003 were quite large—three were of 10, 12 and 19 tonnes, and another three in 2004 were of 8 tonnes each. These were probably shipped out in containers from Buenaventura (*Revista Semana* 2007b).

This flow of cocaine into the US, European and Latin American markets was counterbalanced by a significant inflow of dollars. This money was shipped, by return, to Buenaventura, probably inside containers due to the amounts and volumes involved. The success of the cartel and its partners in the early years of the new millennium was affected by the formal demobilization of the AUC fronts. This exposed the leaders of the drug network to the Bogota authorities who, in cooperation with the US Drug Enforcement Agency (DEA), embarked on an intense pursuit of the Norte del Valle leaders. Their areas of influence were no longer governed by the paramilitary groups and networks of Carlos and Vicente Castaño, Diego Fernando Murillo and other AUC leaders, and so they were no longer able to hide on their territories. Such was the case of Diego Montoya, alias 'Don Diego', who spent periods of time in the territories of Ramón Isaza, the paramilitary leader of Magdalena Medio, when these operations by the Bogota authorities intensified (López A. 2008). The effects of this lack of protection soon became clear.

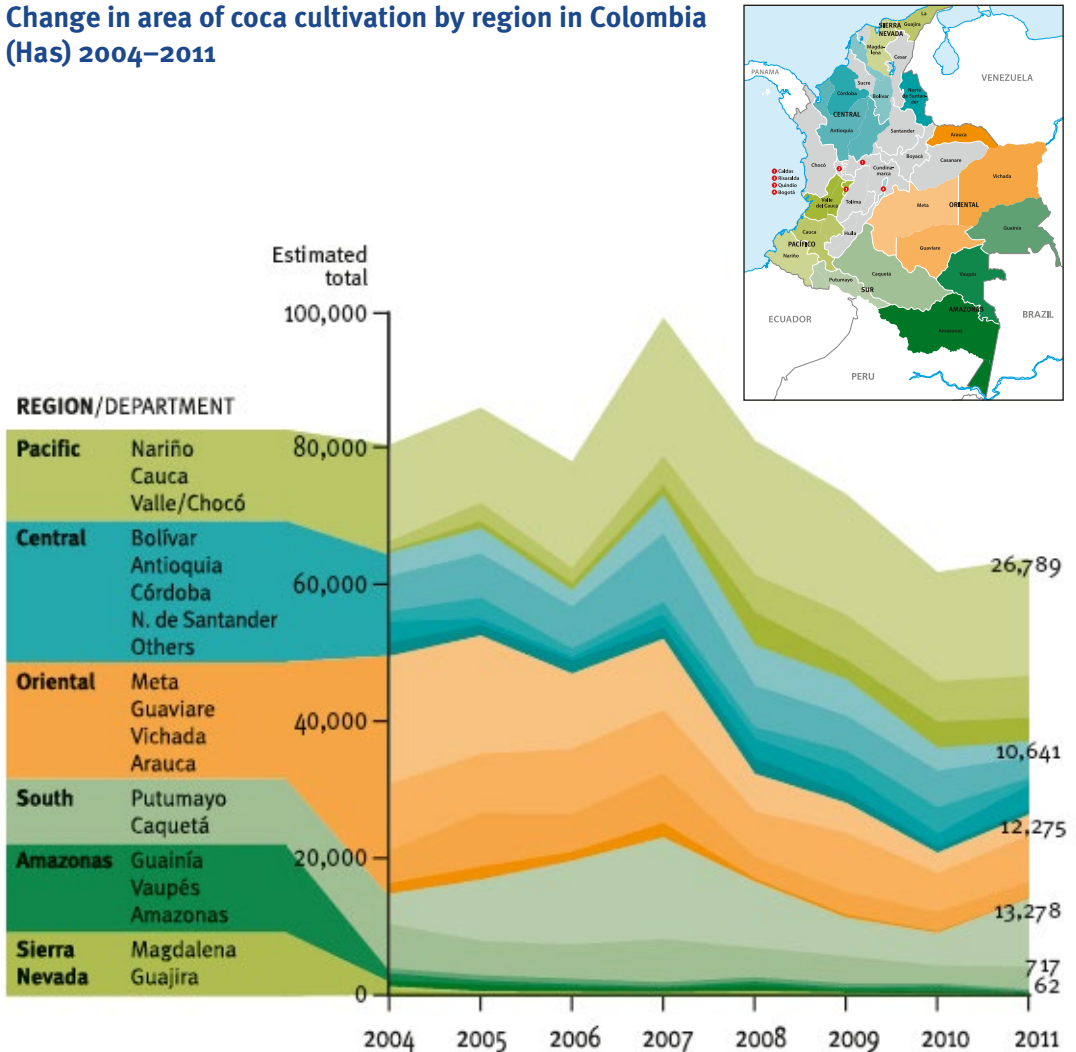
The worst year in the history of the cartel was 2007, the year after the AUCs' formal demobilization was completed. Three of its ringleaders were imprisoned or extradited: Diego Montoya, Juan Carlos Ramírez and Hernando Gómez. Moreover, in the first half of that year, the police found six hideouts in different houses around Cali in which Ramírez Abadía had stashed USD 90 million. According to the computer seized on the day of his arrest, between 2002 and 2006 he had USD 400 million hidden throughout the country (*Revista Semana* 2007b). In the first half of that year, the Drugs Squad also began to confiscate properties, and around 300 of Ramírez Abadía's properties were seized, with a total value of around USD 400 million. The properties of Gómez Bustamante and Diego Montoya were also confiscated. Montoya owned around 100 estates in the north of Valle, linked by a private network of roads that crossed six municipalities—Zarzal, Roldanillo, El Dovio, Versalles, La Victoria and La Unión—and along which he was able to move freely (*El Tiempo* 2007b).



### 5.3.1.2 Balloon effect: crops in the Pacific and traffic in Central America and Mexico

The impact of the drug cartels in Buenaventura cannot be fully understood without seeing their actions in the wider context of drug production in Colombia and the transnational scope of these networks. The area under coca cultivation between 2003 and 2010, the main years during which Plan Colombia was implemented in the east of the country, showed two major trends: an increase in coca crops in the Colombian Pacific and a decline in crops in the south and east of the country. There was also stabilization in the central zone (see Figure 5.5).

**Figure 5.5**  
**Change in area of coca cultivation by region in Colombia (Has) 2004–2011**



SOURCE: adapted from UNODC 2010b.



In 2004–09 the area cultivated for coca in the Colombian Pacific increased from 15,000 to 25,000 hectares, with the biggest increases in the departments of Cauca, Valle and Chocó. Moreover, Nariño department became an important producer of coca leaf after the turn of the millennium, once crop fumigations had begun in Putumayo as part of Plan Colombia. This increase in crops in the Pacific region offered the Norte del Valle cartel and its associated groups new opportunities for greater involvement in cocaine trafficking. This was linked to another trend observed during the same period: a decline in crops in the eastern region, where the area cultivated fell from 34,000 to 16,000 hectares, above all in Meta department and particularly in the municipalities under the influence of the FARC. This was a consequence of different government policies aimed at combating the group: Plan Patriota, a military plan targeting the eastern bloc of these guerrilla forces and their secretariat; the manual and aerial crop eradication programmes; and the Plan for the Integral Consolidation of Macarena, a civil-military plan aimed at winning back the population's support for the state in the Macarena region and in Meta department. This was part of the area that had had no military presence during the negotiations, in San Vicente del Caguán municipality, between the FARC and President Pastrana's government in 1998–2002. This geographic displacement of crops towards the west of the country linked to the coca eradication operations in the east and south has been called 'the balloon effect'.

As is noted above, a stabilization of crop levels was observed in the centre of the country in the period 2003–10, particularly in the area from the Gulf of Urabá to Venezuela where there had traditionally been a strong AUC presence by the *Autodefensas Campesinas de Córdoba y Urabá*, the *Mineros*, Central Bolívar and Norte blocs (MAPP/OAS 2009a, 2009b). The cocaine refined in this region is exported largely through Venezuela and the Caribbean. A parallel reading of these changes and continuities in the trends in coca growing during the early years of the millennium suggests that the different plans executed by the government reduced the total area cropped in Colombia and weakened the FARC's income from coca, but did not affect the armed groups that reorganized following the AUCs' demobilization—the so-called criminal gangs. These gangs have exerted territorial control in the north and the east of the country despite a crackdown by the central government authorities (Romero Vidal 2012).

The displacement of crops towards the Pacific was of particular importance to the transnational dynamics of the illicit networks operating in Buenaventura: the development of new routes through Central America and the air and maritime interdiction in the Caribbean made it necessary to seek exit points through the Pacific, given that the US, Mexican and Canadian markets—calculated in 2008 at 165, 17 and 14 tonnes per year, respectively—are almost completely supplied by cocaine from Colombia. The increased role of Mexican cartels in the trafficking of cocaine to the USA led Colombian drug traffickers to open up new routes and seek new allies and markets in the south of the continent and in Europe, which was reflected in the increase in the consumption of cocaine in Europe from 63 to 124 tonnes (UNODC 2011a). Moreover, the growth in international container trade made it easier to use containers to conceal drugs, through their 'contamination', which is considered in more detail below. All these factors put the Colombian Pacific coast, and particularly Buenaventura port, in a privileged position. Figure 5.3 shows cocaine flows from the Andean region, mainly Colombia, to the centres of consumption in the United States and Europe at the end of the last decade.

**Figure 5.6 Cocaine flows from the Andean region to the United State and Europe (tonnes / year)**



**SOURCE:** UNODC 2010c, p. 70.

### 5.3.1.3 Drug trafficking, containers and opportunities

It is no surprise that Buenaventura port is of strategic importance to the drug cartels operating in Valle. The port loads and unloads an average of 2100 containers every day, arriving and departing on container ships travelling to and from ports in the Americas, Africa, Asia and Europe. Significantly, the port—and the wealth that moves through it—represents the only hope of escaping poverty for thousands of local families, and an opportunity for leaders of local illicit networks to consolidate their wealth and control.

The port's strategic importance has made it necessary to roll out a tight security system in an attempt to isolate it from its environment of misery, violence, corruption and, above all, drug trafficking. Nonetheless, the contamination of the cargo or ships—as the police authorities call the illegal trafficking of drugs through the port—shows the extent to which such barriers are porous and permeable. This contamination of cargo, which appears to have displaced other traditional strategies (UNODC 2012a: 86), has facilitated the flow of cocaine to Central American and Mexican, West African and European ports, some in large shipments and others in small or fragmented packages. All are well camouflaged within legal container cargo, or hidden on board or in sailors' personal luggage. To complete the cycle, according to the Anti-Drugs Squad, on the return journey the ships bring in legal cargo concealing smuggled consumer goods and raw materials, chemical precursors for refining coca, arms, munitions and communication equipment (UNODC 2012a), along with dollars and euros, all duly packed and camouflaged in containers for later storage, for example, in the ringleaders' hideouts (*El País* 2009a, 2010, 2011; *Revista Semana* 2007b).

The use by drug traffickers of containers of legal cargo has been reported in the press since 2008. This does not mean that they were not used previously, but simply that their use was less commonplace or had not previously been identified by the police authorities. The methods of deception used are noteworthy. These include cargo hidden in brown sugarloaf made from sugar cane—intercepted in 2009 and 2011 in Valencia, Spain and Cartagena, Colombia, respectively but originating in Buenaventura (*El País* 2011), and drugs packed in plastic-lined blocks the size of building bricks, which were seized in Buenaventura in 2009 hidden among organic compost and bearing three different logos, suggesting that three main partners were involved in the shipment (*El País* 2010). According to the Anti-Drugs Squad, five major seizures were made between 2008 and 2011 (*El País* 2010) and, although the shipments were of less than two tonnes, it should be noted that a tonne of cocaine is worth approximately USD 13 million in Guatemala, 13 times more than in Colombia (World Bank 2011). Once inside the USA, the wholesale price of a tonne of near 100 per cent pure alkaloid is as much as USD 30 million (World Bank 2011). The largest seizures of coca have been made when it is hidden in containers, once it is in the port warehouses or on the access roads in the port zone. Half the seizures in Buenaventura noted in the press between 2005 and 2011 were thought to be intended for the USA, one-third for Guatemala and the rest for Europe—Spain and Belgium (*El País* 2011). With more than 2000 containers that on average pass through the port every day, however, it is impossible to check them all and many coca consignments go undetected by the authorities.

In terms of the cargo coming into Colombia from abroad, at the end of the past decade the seizure by the National Police of US dollars protected and camouflaged within containers of legal merchandise (according the National Police) revealed the growing importance of this method, which provides opportunities to repatriate profits even though the risks are also higher. In September 2009, USD 27.8 million found hidden in containers bound for Buenaventura among a legal cargo of ammonium sulphate—a chemical used to make detergents—was confiscated by the authorities in Mexico and Colombia in three operations (*El País* 2009a).

#### 5.3.1.4 Poverty and inequality

The opportunities for amassing wealth in Buenaventura are intertwined with a backdrop of poverty and lack of opportunity. Buenaventura currently has around 500,000 inhabitants, mostly of African descent, who have little influence over the national government. The most recent estimates of social deprivation in Buenaventura date from 2003 (DNP 2006). These shed light on some appalling conditions far below the national average, which is itself low down the scale of living conditions in Latin America. The average per capita income in the area is USD 440 per year, or 1.2 USD a day. Poverty affects over 80 per cent of the urban population, and nearly half the town's population (43.5 per cent) live in extreme poverty (DNP 2006: 5). Nationally, poverty and extreme poverty stand at 49.2 and 14.7 per cent, respectively. In other words, extreme poverty is almost three times higher in Buenaventura than in the rest of the country: 29 per cent of the population is unemployed and 35 per cent is underemployed. This means that 64 per cent of adults of working age are either unemployed or underemployed. And only 37 per cent of those who do have a job earn more than the minimum wage, which was approximately USD 300 per month according to 2012 figures. In areas other than employment—education, health, housing, and water and sanitation, for example—the situation is similar or worse.

### 5.3.1.5 Privatization of the port and political decentralization

Two other issues have exacerbated the municipality's situation and facilitated the port's divorce from its environment: the port's privatization in the wake of the 1992 constitution, by means of Law 1 of 1991, and the political decentralization that commenced in 1988. From 1959 until its privatization, the public sector company *Puertos de Colombia* (Colpuertos) ran the country's ports centrally (FIP-ANDI-NIR 2011). However, its uncompetitive labour costs, maladministration and inefficiency led to the company's break-up (Viloria de la Hoz 2000). A major crisis ensued in Buenaventura's economy, forcing the closure of hundreds of private sector businesses that had been servicing the needs of the port and its workers. In 1993, the port's administration was handed over to a joint venture company, the *Sociedad Portuaria Regional de Buenaventura*, under a contract that will run until 2034 (FIP-ANDI-NIR 2011: 13). Although the municipality has a 15 per cent stake in this company, the people and municipality have enjoyed few benefits.

Political and administrative decentralization, which began with the direct election of mayors and governors in 1988 and 1991, respectively, has also had unfortunate consequences for Buenaventura. This process ended the direct relationship that previously existed between the municipality and the central government, meaning that public administration in the local area was now solely represented by the mayor's office, which has little capacity to monitor the port company. There was also a lack of central government interest: customs and port control tasks were fulfilled only formally, but no leadership was provided to overcome the volatile situation in the municipality and the wider region. Central government actions were thus limited to what was strictly necessary according to the local financial crisis manual. For example, the municipality signed a fiscal consolidation agreement with the Treasury to reduce its debts by around USD 40 million (DNP 2006: 6). Nonetheless, two years later, Buenaventura remained near the bottom of the municipal rankings in terms of fiscal health, a position it has not managed to turn around (FIP-ANDI-NIR 2011). Other national measures have focused on security, a necessary but limited perspective given the needs of the municipality, its inhabitants and the wider region. For example, a 2006 document on Buenaventura by the National Council for Social and Economic Policy (*Consejo Nacional de Política Económica y Social*), while valuable, is no more than a statement of good intentions in the face of urgent long-term structural needs.

The relationship between the central government and the port company is much more fluid, given Buenaventura's importance to foreign trade and the powerful private interests that are at stake. In the above-mentioned document, half the planned national government investment in the municipality for 2006 was destined for maritime and land infrastructure works to improve land and sea access to the port, speed up the port's operations and thus increase shareholders' profits, with little impact on the poverty levels among the local population.

## 5.3.2 Corruption as a facilitator

### 5.3.2.1 Effective control of the port

In addition to strategies focused on violence and intimidation, corrupt politicians and civil servants have allowed various illegal actors and drug cartels to operate out of Buenaventura port. For example, to achieve the level of accumulation

described above by Ramírez Abadía and his partners in the Norte del Valle cartel at the turn of the century, significant sums were spent on bribing officials from numerous state institutions. According to the records found on Ramírez Abadía's computer, between 2003 and 2006 there were 16 army and police generals on his payroll, three admirals, seven army and police colonels, and two naval captains (*Revista Semana* 2007b). These officials moved the armed forces' ships to allow the transportation of drug shipments and provided information on the planned routes of naval patrols. On land, officials ensured that what Ramírez Abadía's records call 'intelligent highways' were in place where necessary, routes along which army or police patrols had been discontinued, relocated or simply warned to allow the passage of convoys carrying precursors for processing the coca base or the refined product ready for export, or for gathering information on friends or enemies.

The costs of the business operation (i.e., bribes) were huge, according to Ramírez Abadía's records, as revealed by the Intelligence Department of the National Colombian Police (*Revista Semana* 2007b). In 2004, he was paying approximately USD 4 million in bribes every month to officials from the Administrative Department of Security, the police, the army, the Public Prosecutor's Office, the justice system, the National Registry Office (*Registraduría*), the Agustín Codazzi Geographic Institute, the National Penitentiary Institute (INPEC) and the media. At least 20 members of the police were on the monthly payroll, receiving USD 3000–15,000 a month, depending on their rank and responsibilities. Other payments for various 'favours' fluctuated between USD 10,000 and 100,000 and included payments for dismantling a checkpoint, providing free passage for a consignment of coca, changing a witness statement in a court case, producing false ID papers for an associate or moving a convicted employee from one prison to another. In December 2004, Ramírez Abadía paid out almost USD 3 million in end-of-year bonuses to state officials from the judicial and security services.

The situation remains worrying, particularly with regard to the contamination of containers entering and leaving the port and the links that local politicians and port workers as well as numerous inhabitants have with these operations. According to the information gathered for this study, the perception is that the local authorities, dock workers, port officials and ship crews are all involved, along with young unemployed people who risk their lives to place the drugs where their contacts tell them to. Many young people are arrested and accused of belonging to drug networks in Buenaventura, Cartagena and Barranquilla (*El País* 2009b).

The underlying poverty and exclusion in which the local population lives facilitates this activity and perpetuates the chain of corruption that is characteristic of Buenaventura. In this case, poverty has been of great use to the criminal underworld, and its networks have been able to exploit the needs of the town's population. A retired police colonel currently working in the area states that: 'Given the poverty of the people, most are involved in drug trafficking, either looking after and housing the drug or specializing in methods of transporting it or getting it into the port. One example of this is the constant presence of stowaways who risk their lives to take drugs on board vessels or craft berthed in the port' (interview 2012). This description corroborates observations of police seizures of drugs in the municipality. An analysis of press reports shows that half of all drug seizures in 2005–11 took place in urban areas and the rest in the port or on rural roads and rivers as the consignment was bound for the urban centre. This gives an idea of the extent of the links

between the population and the drug trade. Seventy per cent of drug seizures are made from houses, commercial buildings or public locations such as the dock. In addition to those who belong to a 'drug trafficking network', as the police describe the families and groups of youths that work at the lowest levels of the chain connecting the port and municipality to this global flow, it can thus be seen that the drug economy is a significant source of income for important sectors of the town's population. Young people see involvement in this chain as an opportunity to gain income and purchasing power in an environment of rampant unemployment and poverty.

Other factors, such as the port's privatization, the municipality's involvement in the company running it and decentralization—which contributed to the relaxing of controls over the port—have exacerbated the region's social situation and increased the port's economic importance to local politicians (A. Sánchez 2012). The opinion of Kalmanovitz (2008), a distinguished Colombian economic historian, is revealing in this regard:

Buenaventura is also a drug trafficking route that is hotly contested by the FARC and the paramilitaries, which results in a murder rate of 116 per 100,000 inhabitants. The port, however, belongs to another world: it is, in fact, modern and multi-purpose, it efficiently handles hundreds of thousands of containers plus bulk cargo. It is in stark contrast to the corruption and negligence with which the town has traditionally been administered. The taxes paid in Buenaventura cannot be very high given this social environment of extreme deprivation. However, they have shown a declining trend since 2007, suggesting corruption in tax collection and poor diligence in covering its portfolio of debts. Transfers from the State are fairly high but are siphoned off by politicians or armed groups, who organize fake schools or EPS (service provision companies) that enable them to divert these funds [...]. The greatest contributor to the town is the Ministry of Transport, which owns the port lands. And guess what? It's in arrears with the municipality!

### 5.3.2.2 Political fragmentation, bureaucracy and illegality<sup>3</sup>

In order to understand the systematic use of corruption in Buenaventura, it is important to analyse the condition and transformation of local and regional politics over the past 20 years, and how the political actors working in this context have interacted with the illegal networks in the region. Three key features help to set the political scene in Valle del Cauca department: the reform of the political party system following the 1991 constitution, the weakening of the Liberal Party following the so-called 8000 Process, and the widespread opposition of the political parties in Valle del Cauca to the peace process with the FARC between 1998 and 2002.

The party system reform approved by the 1991 National Constituent Assembly contributed in part to Colombia's political fragmentation and factionalism. It

<sup>3</sup> This section draws on the work of Alejandro Sánchez, a lecturer in Political Science at the Pontificia Universidad Javeriana, Cali, on the political changes in Valle del Cauca in the past 20 years.

became much easier for the Cali cartel and its successors, the Norte del Valle cartel among others, to fund political campaigns in the west, north and east of the country. These campaigns included not only elections to Congress, regional assemblies and municipal councils, but also, following decentralization, elections for governors and mayors.

The 8000 Process—a legal investigation that discovered and sanctioned the Cali cartel's financing of the campaign that brought the Liberal Party's presidential candidate, Ernesto Samper (1994–98), to power—led to the dissolution of the historic Liberal majorities in Buenaventura, Valle and other regions. This process weakened the Liberal Party in the west of the country. New drug lords, including those from the Norte del Valle cartel (Gutiérrez 2007), exploited the ensuing vacuum to finance the small parties and movements that replaced Liberal influence.

Finally, most of these local movements and parties were opposed to the peace process initiated with the FARC guerrillas by President Andrés Pastrana (1998–2002). Opposition to the peace process created a sense of common interest among regional elites, sectors of the armed forces, drug traffickers and paramilitaries, which became coordinated over time as a successful national political project by Álvaro Uribe Vélez, who served as president in 2002–10 (Romero Vidal 2011). The AUC also exploited this opposition to attack different social movements and left groups between 1997 and 2006 (Romero Vidal 2007b), to promote the election of numerous national, regional and local politicians through armed intimidation of candidates, voters and election officials, and to generously finance politicians and their campaigns. The media dubbed the legal investigation of the collusion between politicians and AUC groups the 'parapolitics' process (Valencia 2007; C.N. López Hernández 2007a).

These three factors have intertwined to shape the current political panorama of the Valle del Cauca department. Parapolitics, for example, clearly has its origins in the effects of the 8000 Process: two important Liberal politicians of the region, Manuel Francisco Becerra and Carlos Herney Abadía, were convicted for their contacts with the Cali cartel during the 1994 elections. Prior to his conviction, Becerra had founded the *Fuerza Liberal Social Demócrata*, a group that became the greatest electoral force in Buenaventura. He was also appointed minister for education and elected Comptroller General of the Republic by Congress (*El Tiempo* 1997).

Prior to his conviction, Abadía had served as a Senator for the Liberal Party (*Revista Cambio* 2008). After losing his seat in the Senate, he had his wife, Esperanza Muñoz, elected in his place in 1998. By 2000, Abadía had consolidated the *Movimiento Popular Unido* (MPU), which was characterized by the strong financial muscle he exhibited in his campaigns. Through this party, Abadía had his son, Juan Carlos Abadía, elected as a deputy in the Valle Department Assembly at the age of 21. The 2007 election for Valle governor was another opportunity for the Abadía family and its allies to demonstrate their power, both legally and illegally. By then, under a new movement, *Por un Valle Seguro*, Juan Carlos Abadía had won the election with the support of Senator Martínez Sinisterra (*Revista Cambio* 2008). However, two years later, the attorney general's office dismissed him and disqualified him from holding public office for ten years due to his active political support for a presidential candidate, which is illegal under Colombian law (Case No. 2010-75976, 2010). He was also sanctioned for mismanaging the resources of the governor's office (*Revista Semana* 2012b).



The Afro-Colombian senator of Buenaventura and former Assembly deputy for the Liberal Party, Juan Carlos Martínez Sinisterra, also formed part of this political clan. In 2002, the MPU supported his election to the Senate. He was re-elected in 2006, this time with the backing of the *Convergencia Ciudadana* party. He was arrested and imprisoned in 2009 for his links with paramilitaries and drug traffickers in Valle and Chocó (López 2010). In 2010, however, Martínez Sinisterra helped found the *Partido de Integración Nacional* (PIN) along with other Congressmen/women convicted of associations with the paramilitaries. The party gained 10 per cent of the votes in the Congressional elections. In Valle, the PIN gained one Senator and two representatives in the Chamber of Representatives (López 2010). Martínez Sinisterra's capacity to mediate between the different levels of public administration is noteworthy, for example, by directing public expenditure to the areas in which his voters were based, awarding public contracts to his allies, appointing officials (even to the foreign service) and selecting candidates for elected posts.

Ex-Senator Martínez Sinisterra, the father of ex-Governor Abadía and ex-Comptroller Becerra were all linked to leaders of the Cali or Norte del Valle cartels. Rodríguez Orejuela, Juan Carlos Ramírez Abadía, Hernando Gómez Bustamante and Diego Montoya are all mentioned in the press reports or rulings of the Supreme Court as being involved in the relationships between these three Valle politicians and drug trafficking (ROC 2011b; *La Silla Vacía* 2013). The important factor in the Buenaventura case is that the gradual capture of positions in the local and regional public administration by political networks associated with corruption and drug trafficking enabled these illegal networks to gain allies within the different levels of the administration. An example of this political influence within the local bureaucracy can be seen in the complaint made by President Uribe, at the security council held in Buenaventura on 26 October 2006, regarding efforts by the interior minister of the mayor's office, Adolfo Chipantiza, to mediate the return of a consignment of more than half a tonne of cocaine seized by the navy days before. Chipantiza's involvement was confirmed by the commander of the Port Marine Corp, Colonel Héctor Pachón, who explained that the justification given was 'to avoid reprisals and a blood bath' (*El País* 2007). Moreover, the colonel stated that a request had been made to reduce the authority's presence in the river area, in order to leave some areas without the cover of naval forces. At the end of the security council, faced with complaints of police corruption, President Uribe ordered all members of the armed forces in the port to take a lie detector test. As a result of the president's intervention, the town's mayor removed Chipantiza from office the next day (*El Colombiano* 2006).

Chipantiza's request to the military commander clearly illustrates the possible benefits for drug lords and networks in having the support or protection of state officials—and their interest in financing politicians or bribing officials. This case demonstrates how the tentacles of the drug trade reach right to the very heart of institutions, including the justice system. The judge at the First Criminal Court of Buenaventura Circuit, Rodrigo Hernando Santacruz, dismissed a case taken against Chipantiza in 2007. The public prosecutor's office appealed and the case was taken to the Buga Municipality's High Court, where Chipantiza was sentenced to 64 months in prison and banned from holding public office for 10 years. The court also ordered an investigation into Judge Santacruz's action in this case, which illustrates the importance of central government intervention in local level corruption.



### 5.3.2.3 Vacuum of sovereignty

Underlying the systematic corruption and political fragmentation of Buenaventura that facilitates the contamination of legal cargo containers is what is known as the 'dark side of globalization', and its agents 'transnational uncivil society networks' (Heine and Thakur 2011). The Colombian Pacific coast—and its main port, Buenaventura—clearly fits this description. Here, legality coexists and intermingles with illegality, and state authority with parallel authorities. This kind of territory has been classified as an ungoverned space, an expression used in the academic literature and policies on international security to refer to territories in which state sovereignty is either not exercised or extremely weak (Lamb 2008). This description has prompted a discussion of spaces in which state sovereignty has been weakened and other sources of authority have emerged, although critics state that the links between these spaces and havens or refuges for terrorist networks depend less on the existence of the space per se and more on the kind of local actor that replaces state sovereignty (Clunan and Trinkunas 2010).

In a context such as Buenaventura, this vacuum of sovereignty creates opportunities for non-state players such as private sector national or transnational companies or illegal actors to compete or partner with the state to offer services linked to security, well-being and order. Moreover, in the context of a civil war and armed conflict such as Colombia, these realignments lead to what has been called the 'political order of war', which is not always confrontation and fighting but a local order that can extend into the post-conflict period (Staniland 2012: 2).

### 5.3.2.4 Conclusion

This case study has shown how an ungoverned space, a territory in which state sovereignty faces competition or is drawn into servicing illegal economic activities, emerged in Buenaventura. It also analyses the unintended effects of international coca eradication policies and counterinsurgency plans. The analysis offers an explanation for the situation in the Colombian Pacific coast and for the flow of cocaine from its north and south coasts across the continent, focusing on Buenaventura and the growth in its international container trade. It illustrates how the global economy is intricately linked to illicit activities, and vice versa.

The argument revolved around four factors. The first, geographic, is related to the location of powerful drug trafficking networks in the west of the country, initially grouped into the Cali and Norte del Valle cartels, and how these illicit networks have interacted with opportunities for globalization. In this particular case, these opportunities are the Colombian drug traffickers' response to the difficulties of using the routes across the Caribbean, the new markets in the south of the continent and the possibility of re-exporting cocaine from there to Europe. These changes established the Pacific coast as a priority platform for illicit trade.

The second factor is linked to the unintended consequences of the coca eradication policies in the east of Colombia and the state's recovery of sovereignty in the territories in which the FARC's eastern bloc had exercised sovereignty for decades. Coca cultivation transferred to the west and south-west, as did the focus of the armed conflict following the military offensive and

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coca eradication under Plan Colombia. The transfer of crops and armed conflict to the west provided a favourable environment, in addition to the networks of the Norte del Valle cartel. New routes opened up to export cocaine from the Pacific coast to Central America, Mexico and South America in response to US controls in the Caribbean.

The third factor was the changes in the relationship between the central government and the region following the port's privatization and the political decentralization of the early 1990s. The gulf between the interests of the centre and those of the western region in general, and of the port in particular, left the territory at the mercy of the new illegal interests that had been gathering strength there since the late 1980s. Moreover, the short-sighted vision of the legal private sector interests with regard to the development and well-being of the region must also be noted. The poverty and deprivation that exists along the coast, and in Buenaventura in particular, facilitates the functioning of the illegal economy. People have few opportunities to generate income through legal means.

The fourth factor was political and institutional. A situation such as that in Buenaventura and the Pacific coast does not arise without a fragmentation of political leadership. This occurred following the electoral reforms brought about by the 1991 Constituent Assembly and the 8000 Process. It was this political fragmentation in the regions that facilitated the circulation of drug money in electoral campaigns and the domination of institutional spaces by drug trafficking networks.

This combination of political fragmentation and drug traffickers' control of state agencies and spaces diverted the desired benefits of decentralization in Buenaventura. The political process that developed at the turn of the century, in which opposition to the guerrillas and to a negotiated peace drew on both legal and illegal means, offered drug traffickers an active role. Their involvement exacerbated the political fragmentation and institutional capture by illegal networks.

In sum, this study demonstrates how linkages between the global economy and local illicit activities are indirect, and mediated by domestic political and institutional processes and by the unintended consequences of international policies—factors that are not generally considered when analysing the globalization of such crimes. The analytical tendency to separate domestic from international policies prevents such connections being made.

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**Figure 6.1 Peru**



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## 6 Peru

Since the 1990s, a decade marked by the collapse of the political party system (Mujica 2012: 9–10) and the prevalence of what has been described as ‘competitive authoritarianism’ (Levitsky and Way 2004: 154), Peru’s political organizations have gradually improved. However, party structures are still seriously flawed (Tuesta 2012) and political institutions continue to suffer from an image problem—the Peruvian Congress is rated as one of the least credible in Latin America, with an approval rating of approximately 9–12 per cent (Tuesta 2013).

All these issues have contributed to the growing dominance of autocratic political leaders who act through political organizations that revolve around them rather than an ideology, and are usually subject to few internal or external control mechanisms. Perhaps the only parties that have thus far managed to maintain any degree of transparency—while still suffering from serious organizational problems and heavily reliant on the charisma of a few leaders—are the *Fujimoristas* and the Peruvian Aprista Party. Admittedly, the latter has lost much of its strength, in particular due to the departure of ex-President Alan García. García was one of its most important members, but was under investigation by the Peruvian Congress as of the start of 2014 for allegedly granting pardons to drug traffickers—presumably in exchange for financial contributions to the Aprista Party (*RPP Noticias* 2014; Multi-Party Investigative Commission 2013: 83). His predecessor, Alejandro Toledo, is also under investigation by the Public Prosecutor’s Office on suspicion of money laundering.

At the start of 2014, there were 18 political parties in Peru and 124 regional movements were registered with the National Electoral Board (Jurado Nacional de Elecciones, JNE), not counting the local organizations operating at the provincial and district levels or the different local parties, movements and organizations that are currently going through the registration process (JNE 2014). The sheer number of political organizations makes it hard to control and monitor them: more than 230 district political organizations registered for the 2010 elections to compete for 1605 district municipal seats (JNE 2010).

It is unclear whether organized crime in Peru is on the rise. There is also some definitional confusion in the national laws and international conventions. Peru’s Penal Code classifies many ‘associations’ of persons as organized criminal groups (ROP 2007; Ipenza Peralta 2013), but some of these would not qualify as such under international standards. The country has experienced an increase in the number of groups organized into networks, which rather than classically hierarchical are often leaderless organizations that form part of a chain with quasi-independent links. These structures have taken on a much more fragmented form, making them difficult to identify and it hard to differentiate between money coming from legal and illegal activities (Briseño 2012: 53).

Illicit networks in Peru are especially focused on activities such as drug trafficking, illegal logging, informal and illegal mining, and human trafficking (Briseño 2012: 50). Although more

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clarity is required on the true extent of organized crime-related activities in Peru—including money laundering, and arms and contraband trafficking—it is clear that the cultivation of coca leaf and the production of coca paste and cocaine are on the increase, as are illegal and informal mining (UNODC 2012c: 2, 50 and 56; Schipani 2013a). As regards the other activities associated with organized crime, money laundering in Peru generated around USD 5 billion in 2007–12, some 83 per cent of which came from activities linked to drug trafficking, according to estimates by the UN and the Financial Intelligence Unit (*El Comercio* 2012b, 2012c, 2012e). Unlike other countries in the region, such as Mexico, where money tends to be laundered abroad, this activity is undertaken in Peru. This is a reflection of a set of characteristics unique to Peru and a financial system that has traditionally suffered from a lack of financial control mechanisms (Briseño 2012: 53). Law no. 27765 of 2002 specifically addresses money laundering, and recent efforts have been made to improve controls in this area (*Peru 21* 2012). However, the situational weaknesses and the ‘network’ structure adopted by organized crime mean that money can easily be laundered in the country, since each link in the chain independently generates a relatively small amount.

The situation in Peru has improved since the 1990s, but in recent years the country has faced a growing challenge from illicit networks and their influence on the legitimacy of the political processes (Ávila 2012a: 31, 34–6). During the 2011 congressional campaign, for example, there were serious accusations surrounding the appearance on the political scene of major business figures involved in drug trafficking who seemed to be funding candidates (Antezana 2011a). Politicians appear to be diversifying their ties with organized crime to include links not only to drug trafficking but also to illicit networks involved in other activities, such as illegal mining. The challenges appear greatest at the local level, where weak political organizations and an impoverished state serve as ideal breeding grounds for organized crime.

## 6.1 Review of national legislation

*Catalina Perdomo<sup>4</sup>*

Peru has many mechanisms with which to regulate the conduct of politicians and their organizations. The constitution sets out the regulatory framework for political organizations and elected or appointed political actors. However, the applicable rules and regulations are established in national statutes, regulatory laws or supplementary regulations, and therein lies the greatest challenge.

### 6.1.1 Organic laws

The Organic Law on the National Electoral Board of 1995 governs the role of electoral authorities and any incompatibilities between them. The JNE governs the electoral system and oversees the register of political organizations. It decides which organizations are allowed to take part in elections, but lacks the authority to remove organizations that are not involved in political life from the register (JNE 2012). While its work is focused mainly on electoral activity, a significant proportion of its time and effort should be dedicated to verifying that political parties are operating properly.

The Organic Law on the Executive of 2002 regulates oversight of the elected representatives and authorities of the national government. Appointed public officials or political authorities can be audited or monitored in accordance with this law, or through the political control exercised by Congress. Certain provisions in the law are being ignored because there are no criminal or political penalties for failure to comply (National Assembly of Regional Governments 2012; Council of Ministers 2012).

The Organic Law on Regional Governments of 2002 governs the role of elected authorities and

employees of regional governments, while the Organic Law on Municipalities of 2003 governs the activities of local or municipal governments and their respective authorities. The law on regional governments poses two challenges. First, it establishes the absolute power of regional governors and councils, prohibiting immediate changes if there are allegations of maladministration or corruption. Second, it establishes that the penalties to be levied on regional councils and regional governors must be defined by Congress, which has in turn complained that there are no mechanisms by which to sanction such civil servants.

### 6.1.2 Ordinary laws

The Law on Political Parties of 2003 sets wide-ranging goals and objectives for political organizations, but in practice these are shaped by elections. The content of the law is also flawed. For example, one of the conditions for registering a political party is that it has committees in more than 32 per cent of the provinces in the country, and that these committees must have a charter. This requirement is merely a formality, since it does not translate into any real degree of institutionalization or functionality on the part of these committees.

More than 460 national parties, regional movements and district political organizations took part in the regional and municipal elections of 2010—and there are only 25 regions (JNE 2010). The large number of regional and local political organizations makes it difficult for the authorities to inspect their operations and funding. Thus, the sources of funding, affiliations and levels of engagement are difficult to detect. Monitoring compliance with mechanisms of

<sup>4</sup> With a contribution by Gerardo Távora.

internal democracy for appointing authorities and candidates is also problematic.

Another challenge relates to public funding for training, capacity building and research activities, and the day-to-day operations of political parties. Although public funding is required by law, it has never been applied in practice. It relies on the executive providing resources, which has never been done. Its impact has therefore been non-existent. The lack of public funding, combined with the high costs of political activism and the authorities' inability to oversee private sector funding, facilitate the infiltration of illicit funds, including from drug trafficking, into party funding and elections (Antezana 2011c). Indirect public funding, for example by giving access to public and private media, is scarce. The media reports on illicit sources of funding, but neither the Financial Intelligence Unit nor any other competent authorities have published any reports highlighting the fact that political organizations are receiving such funding. Illicit political agreements are another challenge. They involve informal funding that is impossible to detect, such as extraordinary campaign funding granted by congressional candidates to the leader of the political group, supposedly to cover campaign costs, but in reality they are potentially used to buy party support or candidacies. There tend to be direct agreements, or even auctions of congressional candidacies that are not recorded in the parties' accounts (*Diario La Primera* 2011).

The Law on Regional Elections of 2002 and the Law on Municipal Elections of 1997 govern the election of regional and local authorities, respectively. At the municipal level, incoherent rules and regulations are a challenge; for example, persons seeking re-election in municipalities face different restrictions than those running for other offices, without any explanation why. In addition, the Law on Transparency and Access to Public Information of 2002 and its respective regulations only provide for administrative penalties in the case of non-compliance, thereby limiting their scope.

The Penal Code includes criminal penalties for public officials or authorities that commit

illicit acts, but its effectiveness is questionable since many of the proceedings initiated by the public prosecutor's office or the judiciary have been allowed to expire without any penalties being handed down. According to the National Anti-Corruption Plan, 'the lethargy and passivity when it comes to applying penalties to the corrupt and the corrupter, the unnecessary and wilful deferment or delays in taking effective action, the imposing of institutional barriers [...] also constitute a form of corruption' (Council of Ministers 2008).

### 6.1.3 Regulations

A number of regulations govern the activities of elected and appointed public officials. First, the Internal Regulations of the Congress, despite serving as a set of regulations, have the status of a law. Although they establish certain parliamentary obligations, the penalties for non-compliance are relatively lax. For example, the maximum penalty for untruthfulness is suspension for four months, and the penalty for non-compliance with the requirement for congressmen/women to fill out a series of forms regarding their curriculum vitae and a sworn declaration of assets and income is a mere 120-day suspension. Without any real penalties, the established rules serve only as theoretical standards of behaviour. Second, the Code of Parliamentary Ethics of 2002 supplements the mechanisms of control and punishment. Any natural or legal person can make allegations, with documentary evidence, regarding any misdemeanours committed by a congressman/woman. The incident is reported to the Congress Ethics Committee, however, which means that in effect Congress is overseeing itself.

The 2003 Lobbying Law and its regulations seek to guarantee transparency. However, this law is little known, and the High-Level Anti-Corruption Commission is seeking to widen its impact and scope: '[...] failure to apply the rules on lobbying is a reality in our country [...], unregistered lobbyists continue operating, and some meetings that are taking place are still not being reported by public officials' (High-Level Anti-Corruption Commission 2010: 4–5).

The Special Administrative Tribunal, which is supposed to discipline persons who fail to comply with or breach this rule, has not yet been set up, even though this is required by law.

The regulations governing political organizations deal, above all, with matters of funding. The Regulation Governing the Supervision of Funding for Political Parties of 2011 sets out the formal rules for establishing the Inspectorate of Funding for Political Parties, which operates under the National Office of Electoral Processes (ONPE). The resolution on the Funding and Supervision of Party Funding of 2005 establishes rules for registering and reporting on the financial transactions of parties and alliances of political organizations throughout the country. However, not all political organizations—even those operating at the national level—adhere to these rules (*Peru 21* 2011). Regular reports issued by the ONPE monitor the main national political parties, but organizations operating at the regional level are not subjected to such scrutiny, since it is difficult to monitor so many political groups. Supervision is even more complicated when regional movements enter into agreements with national parties to take part in elections to Congress. The law establishes incentives for alliances between national parties and regional movements—for example, because only national parties have access to direct public funding, even if only in theory. In practice, however, many of these alliances are only superficial and aimed at making up for the poor regional impact of national parties. Most of these movements put themselves forward as independent organizations, in spite of their pacts with the national parties. This creates a grey area that is difficult to supervise, which makes it easier for criminal groups to fund public activity, especially at the regional level (Méndez 2010).

Clearly, the national parties face challenges related both to the influx of illegal funding (*Peru 21* 2011) and registering international support for political campaigns (*Peru 21* 2013). Figures such as the treasurer, who is crucial when it comes to monitoring the flow of funds into organizations, are not forced to take responsibility—or to face clear or credible penalties—if they break the rules. These figures also lack the autonomy required to supervise the leaders of their organizations, who tend to put trusted allies into leadership roles. This reflects the fact that there is still a lack of internal democracy within political parties, which greatly affects their institutional capacity.



Figure 6.2 Lima, Peru



## 6.2 Vladimiro Montesinos: a case study

*Ricardo Uceda*

Organized crime takes the form of networks that pursue illegal activities for economic gain, using violence and corrupting state bodies in the process. In Peru, the available evidence begs the question of whether organized crime has penetrated the state, or whether the state apparatus in the form of a mafia has been using organized crime to increase its power and line the pockets of its leaders.

This case study addresses the relationship between illicit networks and the public sector in Peru, establishing the possible factors that might be facilitating it. There was a clear link between the administration of Alberto Fujimori (1990–2000) and organized crime. This study analyses the case of Vladimiro Montesinos, a key member of the Fujimori administration, who was given a 20-year prison sentence by the Supreme Court for the illegal trafficking of weapons to a subversive foreign movement, FARC in Colombia, and for criminal association with a view to committing offences (ROP 2010). This case is of particular interest, as it is the only time in Peru's history that a high-ranking member of government has been convicted of organized crime-related offences.

Section 6.2.1 describes the main aspects of Fujimori's government, and the role of its de facto head of the National Intelligence Service (SIN) in Peru, Vladimiro Montesinos. It reveals not only that the administration was immersed in corruption, but also that organized crime was rife, and that the key protagonist in this situation was Montesinos. Section 6.2.2 recounts President Fujimori's final days in power. The narrators are three central figures, the first two of whom wrote books about the event: ex-Prime Minister Federico Salas-Guevara; ex-Minister of Justice Alberto Bustamante; and ex-ad hoc prosecutor for the cases against Fujimori and Montesinos, José Ugaz Sánchez-Moreno. Section 6.2.3 identifies the factors that facilitated the rise of Montesinos, which are all still present in Peru today. One such factor is that the political party system is becoming increasingly insignificant. This power vacuum gives crime bosses unimpeded access to political life, which has resulted in an ever-growing catalogue of crimes committed by people in high-ranking positions. Another factor is the unlimited control enjoyed by presidential advisers, which, as is highlighted below, was the smokescreen deployed by Montesinos.

It is clear that beyond the crimes committed, the accumulation of power in Peru—especially in the SIN—was ultimately seen as an enabler for criminal activities. Transparency International (1998) described Peru in the 1990s as a country rife with corruption. A more accurate description, given the events that took place at the end of the decade, is that during this period Peru was a mafia state.

### 6.2.1 Montesinos

The authoritarian nature of President Fujimori's time in office is insufficient to explain what happened in relation to the case against Montesinos. A smokescreen was created, behind which this public official controlled the central aspects of the state. In order to penetrate this smokescreen, the manner of his appointment, his personal characteristics and those of Fujimori, and the principal political and administrative mechanisms that oiled the wheels of the huge machine of corruption are all analysed below.

### 6.2.1.1 Who was Vladimiro Montesinos?

When mathematician Alberto Fujimori and writer Mario Vargas Llosa obtained the most votes in the first round of the presidential elections in 1990, the 45-year old Vladimiro Montesinos was an external informer for the SIN. Among other services, he was passing on terrorism-related information obtained from the public prosecutor's office, where his close ties to Attorney General Hugo Denegri afforded him extraordinary power. He was a lawyer who, according to numerous sources, preferred to manipulate legal representatives rather than settle matters in open hearings. His most recent success had been in quashing charges brought against a prominent army general, José Valdivia, who was accused of a massacre in Ayacucho. This success allowed Montesinos to re-establish his ties with the leaders of the army, from which he had been expelled in 1976.

His record with the Army Intelligence Service (SIE) during his time in the army is alarming. In 1974, during the military regime of Juan Velasco, and as an aide to Prime Minister General Edgardo Mercado Jarrín, he stole and kept secret documentation for three days, presumably related to purchases of arms from the Soviet Union by the then military government. The episode remained a secret because Mercado Jarrín never reported Montesinos, presumably to protect his own reputation. However, suspicion of his role as an aide to the highest military circles continued among a group of officials, and in 1976 he was sent to a garrison in the north, far away from the seat of power. From there, he falsified documents so that he would be invited to the USA. He was surprised, at an official meeting in Washington, D.C., by General Miguel Ángel de la Flor, the Peruvian representative to the Inter-American Treaty of Reciprocal Assistance, who reported his presence to Lima. Once discovered, he was arrested. During a search of his home, secret documentation was discovered to which he was not supposed to have access. A military tribunal later sentenced him to one year in prison (Páez 2009).

On his release, Montesinos qualified as a lawyer. However, his student record has disappeared from the Universidad Nacional Mayor de San Marcos, and there is no record of his grades, thesis or other documents to prove that he went through the education system. Once 'qualified', he started work as a defence lawyer for drug traffickers, among other clients. One of his clients was a leader of the Medellín cartel in the city of Leticia, Colombia, Evaristo Porras Ardila, who was arrested in Peru. In 1978, Porras Ardila escaped from a hospital, where he had been feigning illness. In 2001, José María Aguilar, on trial for drug trafficking and an anti-drug agency informer, told a congressional committee that Montesinos had helped Porras Ardila escape and stole his criminal record certificate from Peru. Witness statements from various convicted drug traffickers also claim that Montesinos had close ties with the Colombian mafias. His career as a lawyer was temporarily interrupted when in 1983 the army put him on trial for treason, focusing their attention on acts for which he had not been tried in 1974 (Páez 2009).

During the trial, witnesses who had initially told the SIE that they had seen Montesinos handing over information to North American public officials failed to corroborate their statements, and the charges were dismissed. However, declassified documents from the US State Department have revealed that in 1974, the US Embassy in Peru had an army informant who supplied information on the Soviet arms purchases by the military government. Telegrams sent by the then-ambassador, Robert Dean, also reveal that he invited Montesinos to the USA without informing his institution (*La República* 2010). Although he was

absolved, Montesinos was made *persona non grata* in the army, branded a traitor and banned from entering military facilities (Páez 2009).

The assistance that he provided to General Valdivia in 1990, however, helped him win friends among the leaders who would take over the army that year. His relationships in other spheres also started to improve. He was a trusted ally of the attorney general and had an efficient network of allies in the police and the judiciary. He also gained traction at the SIN after an old friend, the sociologist Francisco Loayza, introduced him there. This was particularly significant because Loayza was an adviser to the then presidential candidate Alberto Fujimori, and had asked the SIN, which operates under the president, to back Fujimori. Loayza later wrote in his memoirs that the head of the SIN, Edwin Díaz, agreed to back him after discussing the matter with Alan García (Loayza 1998: 14). It was in this way that Montesinos was introduced to Fujimori.

### 6.2.1.2 Who is Alberto Fujimori?

When Alberto Fujimori decided to run for President of the Republic, his only political experience was his participation in elections for dean of the Universidad Nacional Agraria La Molina. Among his peers he was known for being domineering and authoritarian—like so many of Peru's political leaders—and he governed the university with an iron fist until he ran for president. In 1989, at the end of his term as dean, he attempted to form a political movement that would eventually allow him to run for president. His first goal was to be elected senator.

The year 1990 marked a trend that saw the electorate reject candidates from the traditional political parties in favour of those from outside the political class. The previous year, television presenter Ricardo Belmont, who did not belong to the political system, had won the mayoral elections in Lima. However, his victory was attributed to his popularity rather than a rejection of the main parties. This trend continues today, and is one of the factors that promotes the discourse popular among new candidates, that they can change the system because they are political outsiders (A. Torres 2010: 172). This allows them to gain power, very often without any real remedies or policies to tackle the challenges facing the country.

In the second round, Fujimori was up against Mario Vargas Llosa, who was defending his unorthodox approach to combating hyperinflation. Fujimori offered stability without trauma, while Vargas Llosa announced a 'shock plan' to tackle the country's economic problems. The left and the American Popular Revolutionary Alliance (APRA) backed Fujimori, who on winning the election reneged on his promises and implemented the shock plan proposed by Vargas Llosa. However, even this policy U-turn gave no hint that Fujimori would organize a coup in order to gain greater powers, or that his government would exceed all previous levels of government corruption. He may have been prompted to take the former course of action when faced with the urgency of stabilizing the economy. The only thing that raised suspicion was the appointment of Vladimiro Montesinos as one of his key advisers.

### 6.2.1.3 The corrupter in the palace

As is noted above, Montesinos was introduced to the future president by the sociologist, Francisco Loayza, his closest adviser. Weeks prior to the second round of the elections, Deputy Fernando Olivera, who was backing Vargas

Llosa, accused Fujimori of tax fraud. He had under-reported his income from the sale of some property. This allegation threatened to derail his candidacy if charges were brought by the public prosecutor's office. Loayza told Fujimori that Montesinos was the right man to defend him.

Montesinos used his ties to the public prosecutor's office to manipulate the evidence in such a way that it could never be used to bring charges (Loayza 2008: 61). Montesinos immediately joined the group of political advisers, together with Loayza, and brought with him one key attribute that would prove invaluable to Fujimori in his fight against Vargas Llosa—the fact that he was an SIN informer. Montesinos supplied Fujimori with transcripts from telephone conversations between members of the writer's campaign team and manipulated Fujimori's paranoia over his personal safety. He told the candidate that there was a plot against him, and convinced him to take refuge in a military institution, from where Montesinos could easily watch his every move (Rospigliosi 2000: 18).

Presenting himself as an expert on security matters, Montesinos carved out a niche as Fujimori's adviser on the armed forces and the national police force. However, the vestiges of his chequered past remained, especially in the army, and those who knew his history were immediately alarmed. The then-head of the SIE, Colonel Rafael Córdova, wrote a briefing note containing details of his past and distributed it to high-ranking officers and Fujimori (Rospigliosi 2000: 20). Máximo San Román, an ex-vice president, ensured that it was delivered personally to the newly elected president. However, Montesinos was one step ahead of him. Following Loayza's advice, he informed Fujimori of the accusations that had been levied against him and of his convictions, as well as the resolution adopted in the last instance by the Supreme Council of Military Justice which proclaimed his innocence. He warned Fujimori that accusations would be levied against him and that people would whisper things about him to the president. Consequently, Fujimori was unfazed when negative comments surfaced about his adviser, and he had already decided to keep him by his side. One of Fujimori's first acts in office was to appoint Montesinos deputy director of the SIN (Uceda 2004: 258–61).

It would seem natural to assume that one reason Montesinos became Fujimori's security adviser was that nobody else in the winning candidate's inner circle was familiar with the topic, since none of them were from the military, even though Montesinos had not completed any relevant courses in the army and had been discharged at the rank of captain. Fujimori has maintained that he was not fully aware of Montesinos's chequered past, but it was common knowledge at the start of his administration (Caretas 2000b). Legally, however, as a member of the president-elect's body of advisers, Montesinos was now qualified to assume the role of deputy director, or even director of the SIN. The Peruvian legal system has no requirements for professional integrity or excellence. It only requires that people in such positions should not be facing prosecution.

Montesinos was able to manipulate the state because there was no effective control mechanism to prevent someone with his history from advising the president. When he was in the army, the military justice system and his bosses had shown leniency in his case. When he joined the government, having shaped the armed forces and the police according to his needs, it was easier for him to gain acceptance among Fujimori's supporters, including those who supported him on the international stage. At a reception in 1992, in the aftermath of the coup d'état, Fujimori met a Peruvian intellectual who was interviewed for

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this chapter. According to the intellectual, they had never spoken before but Fujimori knew of him. The president suddenly asked him: 'What do you make of Montesinos?'. The intellectual replied that he seemed to be a very questionable individual. Fujimori retorted: 'Well then, tell me, why do the North Americans think that he is trustworthy?' (confidential interview in Lima, 24 November 2011).

When Fujimori and Montesinos began working together at the Government Palace, they were linked by two illegal acts: the unlawful quashing of the investigation into Fujimori for tax fraud and the use of wire taps by the SIN to monitor Fujimori's electoral opponents.

#### 6.2.1.4 Organized criminal

Once in government, Montesinos could have started a new life that was far removed from his shady dealings with drug traffickers and corrupt operators in the judiciary, the police and the public prosecutor's office. However, evidence suggests that in 1991 he was still receiving backhanders from drug traffickers. On 16 August 1996, one of the drug traffickers, Demetrio Chávez Peñaherrera, alias 'Vaticano', said at his public trial that between 1991 and 1992 he had paid Montesinos USD 50,000 a month to allow light aircraft loaded with cocaine to take off from an airstrip in the vicinity of Campanilla, in Peru's central desert. The local drug traffickers were paying military officers based in Alto Huallaga to fight against Sendero Luminoso (the Shining Path cartel), and the territory of Campanilla was one of the most active areas (TRC 2003: 765). In 1994, Chávez Peñaherrera was arrested by the Colombian police.

When the Colombian judiciary handed Vaticano over to the Peruvian police, this created a serious problem for the military officers who had been receiving pay-offs, and for Montesinos too (Gorriti 2011). The fear was that, once he was back in Peru, he might talk. Chávez Peñaherrera was tried under the new anti-subversion legislation, repealed in 2001, which allowed him to be tried in secret by faceless judges and kept in solitary confinement. Once the scandal caused by his arrest had passed, the prisoner was accused of narcoterrorism and sentenced to life imprisonment in solitary confinement. However, in 1996 a court asked him to appear as a witness in a public trial related to another drug trafficking case. Chávez Peñaherrera took advantage of his appearance to speak about the pay-offs that he said he had made to Montesinos. At the hearing that followed, Vaticano appeared before the same court to deny what he had said at the previous hearing. One year later, when Fujimori was no longer in government and Vaticano was tried again, he swore at a public hearing that he had been drugged and subjected to treatment that affected his memory.

Montesinos was also incriminated by traces of drugs found in the presidential jet in 1996, but immediately absolved due to lack of evidence. However, in 2011 the Supreme Court sentenced him to 20 years for activities linked to organized crime. He was found guilty of organizing an operation to sell weapons to the FARC. According to a judgment by the High Court in Lima (ROP 2006c), which was later ratified by the Supreme Court, the weapons had initially been purchased, under his supervision, in Jordan by the Peruvian state.

This case came to light in 2000, which marked the beginning of the end for the Fujimori administration. On 10 August that year, the US Central Intelligence Agency (CIA) chief in Lima, Robert Gorelick, arrived unannounced at the offices

of the SIN with three other embassy employees and demanded an explanation from the SIN for some weapons that had been seized from the FARC in Colombia. The CIA had documents proving that they had been purchased by members of the Peruvian military in Jordan. The formal head of the SIN, Rear Admiral Humberto Rozas, told Montesinos, who realized that a scandal uncovered by the US or Colombia would expose him as he had orchestrated the deal. Montesinos immediately drew up a plan, codenamed 'Siberia', to investigate this sale of contraband weapons to the FARC. On 21 August he appeared at a press conference beside President Fujimori and Rear Admiral Rozas to explain how the SIN had dismantled the group that had supplied weapons to the Colombian guerrillas. They accused brothers José Luis and Frank Luis Aybar Cancho, who had in fact organized the operation with Montesinos (ROP 2006c).

The Cabinet—which never spoke in public about the affair—began discussing among themselves that something was not quite right in the regime (Bustamante 2003: 365). Evidence appeared in the press indicating that the Aybar brothers were regular visitors to the Government Palace (Caretas 2000a). A few days later a video was released in which Montesinos was clearly seen bribing a congressman; the regime had begun to unravel.

### 6.2.1.5 The influence of Montesinos

The appearance in 2000 of the famous 'vladivideos', amateur video footage of his bribes filmed by Montesinos, revealed that Montesinos offered money and gifts to judges, prosecutors, military personnel, police officers, key figures of the state and independent organizations, parliamentarians, the media, the business community and other figures who could serve the government. Having started from scratch in 1990 under Edwin Díaz, head of the SIN, Montesinos soon had Díaz fired, causing a rift between him and President Fujimori, and alienating his friend Francisco Loayza, who had recommended Montesinos to Fujimori for the position of head of the SIN and as Fujimori's lawyer (Loayza 1998). With the SIN now controlled by retired General Julio Salazar Monroe, Montesinos was free to appoint officials who would be willing to follow his orders to key military positions. At the end of 1991 he achieved his goal with the army, appointing Nicolás de Bari Hermoza Ríos as commander-in-chief, a position he retained until 1998 (Rospigliosi 2000).

For his part, Fujimori worked on stabilizing the economy. The shock plan implemented in August 1990, which resulted in brutal price rises, was generally accepted by the population, which was aware of the problems inherited from the previous government. The regime did not control Congress, however, and there relations went from bad to worse. The executive assumed the power to legislate on a range of issues. When some of that legislation, mostly related to matters of security, was not approved in a parliamentary review at the end of 1991, Fujimori decided to instigate a coup d'état.

President Fujimori was re-elected in 1995. Montesinos gained control over the part of the Cabinet responsible for overseeing the judiciary and internal security. The SIN had power over the judiciary, the public prosecutor's office, the police and electoral bodies, and it exercised control over almost all pro-government members of Congress, who in turn had a majority in parliament. On the path towards absolute power with Fujimori, Montesinos sidelined the two other chief advisers to the president: his brother, Santiago Fujimori, and former

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president of the Constituent Congress, Jaime Yoshiyama. Fujimori's second re-election in April 2000 was the outcome of an electoral process that was clearly rigged, resulting in a loss of legitimacy. He was sworn in without the presence of most of the former presidents who had been invited. When the final crisis came, an international mission was negotiating with the government and Fujimori's opponents for the introduction of democratization measures, which created the impression of a new coup d'état.

## 6.2.2 Implosion

Accounts of the events of the turbulent final days of the Fujimori regime are provided in memoirs written by two former ministers: Federico Salas Guevara (2001) and Alberto Bustamante (2003). The information has been corroborated by other sources, and further information has been gleaned from an unpublished book by former ad hoc prosecutor José Ugaz, which was made available to the author.

### 6.2.2.1 Bribery

On 14 September 2000, Minister of Justice Alberto Bustamante received a call during a meeting of the Interministerial Committee on Economic Affairs advising him that an important news story was about to break. Parliamentarian Fernando Olivera had announced that there was a video showing images of Vladimiro Montesinos handing over USD 15,000 to Member of Congress Alex Kouri at an SIN office. This was the first monthly payment to bring about Kouri's defection from the opposition to the government.

President Fujimori sent for his ministers. According to Bustamante, the president ordered the meeting to be filmed. He added that the events would affect the honour of his family and that he did not feel under pressure to continue in office. If they wanted another president, he said, he would resign. In the account given by Salas Guevara (2001), most of the ministers were prepared to back President Fujimori's decision. However at a certain point, the president changed his mind and called in Montesinos to demand his resignation.

The climate of anticipation was intense. Salas Guevara telephoned Montesinos in front of the gathering, albeit without the loudspeaker activated. The ministers could hear Salas Guevara explaining that he was speaking in the presence of all the ministers and that the general feeling was that he should resign. There was silence while Montesinos responded. Salas Guevara subsequently revealed that Montesinos had dismissed the idea of resigning, claiming that the issue would be resolved in the coming days. The prime minister insisted: 'You appear not to have understood. You must resign from your post' (Salas Guevara 2001: 142). The former minister later recounted the adviser's reply: 'Under no circumstances, damn it! I have 3000 armed men I can mobilize right now. If I want to, I can stage a coup d'état. I'm not about to be told what to do by a mere chairman of the Council of Ministers' (Salas Guevara 2001: 142).

### 6.2.2.2 Blackmail

On 20 September, former Prime Minister Salas Guevara reported that Montesinos had threatened him with a coup d'état. The chancellor, Fernando de Trazegnies,



favoured seeking political asylum for Montesinos as a third option between bringing him to justice and allowing him to stay on in government. The problem was that in spite of offers of assistance from the governments of Brazil, the USA and Panama, nobody was yet willing to take him in. Cuba had said that it would not accept someone who was the 'spawn' of the CIA. Venezuela refused, and Panama was not ready to agree. At the meeting, de Trazegnies suggested that some of the ministers should try to convince Montesinos to leave. Fujimori accepted reluctantly: 'If they think that they can persuade him, let them go ahead' (Bustamante 2003: 196). The ministers Salas Guevara, Carlos Boloña and Edgardo Mosquera visited Montesinos at the SIN, as he was seeing people by appointment only, and would not simply be called before the government.

Bustamante (2003) recalls the tensest moment in the meeting, when Montesinos explained that he was fed up with the pressure and complained about the attitude of the president and the ministers. He said that he was willing to stage a coup d'état 'because you have no idea of the videos and recordings I have. It is not just the president and pro-government members of Congress who will fall, but many members of the opposition and the business community too. Everyone will fall' (Bustamante 2003: 197). In the end, Panama agreed to grant Montesinos asylum and he left immediately.

### 6.2.2.3 The pay-off

At the same time, intense activity had been taking place at the Ministry of Defence. On 25 August 2000, Minister of Defence Carlos Bergamino requested PEN 69.6 million (approximately USD 15 million) from the Ministry of the Economy and Finance (MEF) to fund the Sovereignty Plan as part of the strategy to prevent the FARC from infiltrating Peruvian territory. A year later it would become clear that the plan never existed (ROC 2011c). The gathering of documentary evidence on the fraudulent plan began that same day, when the president of the Joint Chiefs of Staff of the Armed Forces, José Villanueva, requested this money from the MEF to deal with the threat posed by the FARC. Villanueva justified the request by citing the SIN's discovery of an international organization based in Peru that was supplying arms to Colombian guerrillas. Fujimori and Montesinos had made this discovery public just four days before, and the Ministry of Defence was now requesting an increase in the budget. On 19 September, President Fujimori, accompanied by ministers Salas Guevara, Boloña and Bergamino, signed Emergency Decree 081-2000 authorizing the Ministry of Defence to use up to PEN 69.6 million on national security activities, and authorizing the MEF to provide the funds for that purpose. All the signatories knew that it was to be used as illegal severance pay for Montesinos (ROC 2011c).

During the night of 22 September, the director of the Office for the Administration of the Ministry of Defence, General Luis Muelle, collected the money from the Banco de la Nación and gave it to Montesinos as the USD 15 million severance pay demanded by the adviser, wholly illegally, for his years of service as an adviser to Fujimori (*La República* 2009). That same night, Montesinos handed the money over to an arms dealer to be deposited in a Swiss bank account.

The rest of the Cabinet was not informed that Montesinos had been given severance pay, and the decree was not disclosed to Congress. Once Montesinos was in Panama, Bergamino discovered the offence and asked President Fujimori to return the money, which he did on 2 November. Former treasurer of

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the Ministry of Defence, Captain Henry Tunanñaña Guerra, told the judiciary that General Muelle had ordered him to accompany him to the house of the Minister of Defence to collect the money that Fujimori had deposited at the Government Palace. There were four suitcases containing a total of USD 15 million in new PEN 100 notes. Tunanñaña added: 'These were not the same notes withdrawn from the Banco de la Nación a month and a half earlier, because those had been in 50 and 20 dollar notes' (*La República* 2009). This gave rise to another question that has yet to be resolved. Given that Montesinos never returned the money: Where did the USD 15 million returned by Fujimori come from?

#### 6.2.2.4 The pressing of charges and escape

No sooner had Montesinos arrived in Panama than his security staff encountered immigration problems; they could not solve them and therefore had to return to Peru. On 1 November, Bustamante invited José Ugaz to his house, convinced that he was the best criminal lawyer in Peru. Bustamante wanted to bring criminal proceedings against Montesinos and he needed help. Ugaz proposed asking for an arrest warrant for Montesinos for having used state funds to bribe Congressman Kouri. However, the following day something happened that drastically widened the scope of the offences attributable to Montesinos: the Swiss Government informed the Peruvian Government that it had discovered accounts opened by the presidential adviser using funds of USD 48 million. Before the news became public, Bustamante advised the president to appoint an ad hoc prosecutor to press the corruption charges against Montesinos, arguing that the position should be offered to Ugaz. President Fujimori agreed (Bustamante 2003).

On 11 November, Carlos Escobar Gaviria, alias 'Osito', claimed that his brother, Pablo Escobar Gaviria, the head of the Medellín cartel, had donated USD 1 million to Alberto Fujimori's campaign in 1990. A few minutes later Ugaz, whose appointment had just been ratified by the attorney general's office, announced to the media that he was going to ask the public prosecutor's office to investigate President Fujimori on charges of laundering the proceeds of drug trafficking. It was a Saturday, and the request could not be formalized at the public prosecutor's office until the following Monday. As the application was being filed, Fujimori was fleeing the country, although the public believed he was travelling to Brunei to attend a meeting on Asia-Pacific economic cooperation.

#### 6.2.2.5 Outrage

On the morning of 19 November, the ministers received a call asking them to pick up a coded message that had been received from Tokyo. Fujimori had been out of the country for a week and there was no official information on his latest movements. He was supposed to travel from Brunei to Panama to attend another international meeting, but in reality he was in Japan. Three days earlier, Martha Hildebrandt, the President of Congress and a member of the pro-government majority, had been removed from office and replaced by Valentín Paniagua. For the first time in 10 years, the opposition presided over the legislative body. Rumours that President Fujimori had fled were circulating widely. On 17 November Ricardo Márquez resigned from the second vice-presidency, and two days later Congress declared the office of president of the republic vacant on the grounds that its holder was morally unfit. Fujimori's resignation, sent by fax from Tokyo, was also rejected, and the presidency was handed over to Paniagua.

### 6.2.2.6 Interpretations

From the scenes described above, which took place between September and November 2000, it seems clear that Fujimori failed to react immediately because he was being blackmailed (Bustamante 2003: 197). In practice, Montesinos had set a coup d'état in motion by refusing to resign, along with the commanders-in-chief of the armed forces working alongside him. The crisis would have gone on for longer if Switzerland had not decided to make the details of his finances public. From another perspective, the scenes also reveal the innermost workings of a mafia government in an extreme situation and invite reflection on the ministers' actions, especially those who, while agreeing to give their backing to the authoritarian regime, were apparently not engaged in the corruption.

Even though some ministers, including Prime Minister Salas Guevara and Minister of Justice Bustamante, reacted to the airing of the Kuori-Montesinos video by calling for the dismissal of Montesinos, nobody suggested reporting him to the prosecution service for the obviously illicit act that he committed when he bribed a member of Congress. From outside the justice system, the principal concern was to dispense with him by sending him into exile in Panama. This intention to avoid any further crises, rather than concern about legal matters, shows their loyalty to the government and to President Fujimori—which was only broken when he betrayed them and tendered his resignation by fax. At that point, but not without a certain amount of debate, they decided to declare their 'outrage'.

The group of ministers, acting outside the law, had agreed to be summoned by Montesinos and to consult him on public affairs, acknowledging his co-governance with President Fujimori. Three ministers signed the illegal Emergency Decree with Fujimori, sanctioning his multi-million-dollar severance pay, and the ministers of finance and defence knew that the funds were to be used for that illicit purpose. It is also possible that Carlos Boloña received some of the money (Caretas 2003b).

No minister resigned when it came to light that the government was rife with corruption, which became obvious once the Swiss bank accounts were discovered. Once again, their loyalty was to the president, over and above any concerns about legality. Only two members of the government resigned: Vice President Francisco Tudela, when Montesinos returned, and Minister for Justice Bustamante, when Fujimori asked him to sack the lawyer in charge of the case. This latter order was never carried out, since Fujimori did not wish to deepen the crisis.

The actions of the independent prosecutor went against the culture of the government. Ugaz refused to confirm false information provided by the president—that there was a warrant for the arrest of Montesinos—and, as is noted above, asked the prosecution service to investigate Fujimori on suspicion of money laundering the proceeds of drug trafficking, once the relevant evidence emerged (unpublished manuscript by José Ugaz).

Naturally, many of the ministers acted as they did because the government was authoritarian and the central seat of power was excessively large and corrupt. It is worth noting, however, that even democratic governments have covered up human rights violations and corruption in Peru. Furthermore, it is not only in dictatorial regimes that public officials allow political power to dominate institutional channels.

### 6.2.3 The smokescreen

At this point the question arises as to how a person with a long history of unscrupulousness could, for all intents and purposes, seize control of Peru's state machinery. An initial answer can be found in the features of a society with largely ineffective control mechanisms. An authoritarian government with no counterweight and governing through closed circles is prone to corruption, and this was exacerbated by the weakness of the opposition. However, these arguments are insufficient to explain the extent of the corruption in Peru between 1990 and 2000. To a certain extent, there was a mafia in power, and while its influence did not fully penetrate the Cabinet, the head and arms of the executive were engaged in organized illicit activities to benefit the leaders and keep them in power. The situation has subsequently been re-examined on a number of occasions.

#### 6.2.3.1 Scope

When President Fujimori resigned, the SIN managed the state oversight structures. The public prosecutor's office launched an investigation into the Kuori-Montesinos video, but it was a mere formality. In his unpublished book, José Ugaz reveals that the case was not being dealt with by the prosecution service when Bustamante suggested investigating Montesinos. The first thing he decided was to report him to the public prosecutor's office for bribing Kuori.

The SIN was paying the attorney general, Blanca Nélide Colán, USD 10,000 a month (Caretas 2003a). The Supreme Court and much of the judiciary was dominated by a judge controlled by Montesinos, Alejandro Rodríguez Medrano. The armed forces and national police force were under the command of high-ranking officials who were friends of the highest echelons of government. The Congress of the Republic, plagued by defecting members who were complicit in various offences, was dominated by the monolithic ruling party. The Truth and Reconciliation Commission states: 'with the SIN as the nucleus of real power, the appointment of representatives who were either loyal to or had been bought by the regime and the legal and institutional changes that were gradually introduced, the division of powers and their autonomy became a fiction in the country' (TRC 2003: 115–16).

The ad hoc prosecutor faced an arduous task. One year later, some 208 investigations were reported, 1305 people were found to be involved and there were 117 arrests, including the public prosecutor, Colán, a Supreme Court justice, a provincial criminal prosecutor, a mayor, four members of Congress, an electoral magistrate, a director at the ONPE, three former ministers of state, 15 army generals and an admiral. Overseas bank accounts containing more than USD 200 million were frozen (Sánchez-Moreno 2001).

In 2001, the minister of justice, Diego García-Sayán, estimated that the negative impact of corruption on GDP between 1995 and 2000 was around USD 1.8 billion, approximately USD 872 million of which was directly stolen by members of the government according to a study by Proética (*La República* 2011). Nonetheless, the majority of motions to create investigative committees were blocked in Congress. The system of corruption depicted by García-Sayán shows that the government had direct links to organized crime. Figure 6.3 shows the system he exposed at the First National Anti-Corruption Conference in 2001.

When the causes were analysed, the focus was on political reasons, particularly the democratic deficit. The reflections were confined to the issue of corruption, and did not address organized crime.

### 6.2.4 The missing analysis

In 2001, the transitional government established the National Anti-Corruption Initiative (*Iniciativa Nacional Anticorrupción*, INA), a group of experts and leading public figures appointed to examine corruption in Peru and make recommendations. The INA established that corruption had existed in Peru before the previous decade but had become systemic between 1999 and 2000 for three reasons: the weakness of democracy, the concentration of power and the culture of secrecy. The type of government had allowed the creation of an organized network of corruption at the very heart of the country's political power (MOJ 2001). The INA's argument emphasizes anti-democratic political practices: a succession of dictatorships allowed corruption to flourish in Peru. In the 175 years between 1823 and 1998, there were 51 military and 31 civilian governments, and many of the civilian governments were as authoritarian as the military ones, if not more so. These and other factors allowed corruption to reach unprecedented levels during the presidency of Alberto Fujimori and his chief of intelligence, Vladimiro Montesinos. However, as Figure 6.3 shows, organized crime grew in Peru alongside corruption. It is interesting to note that there are no known studies from this perspective.

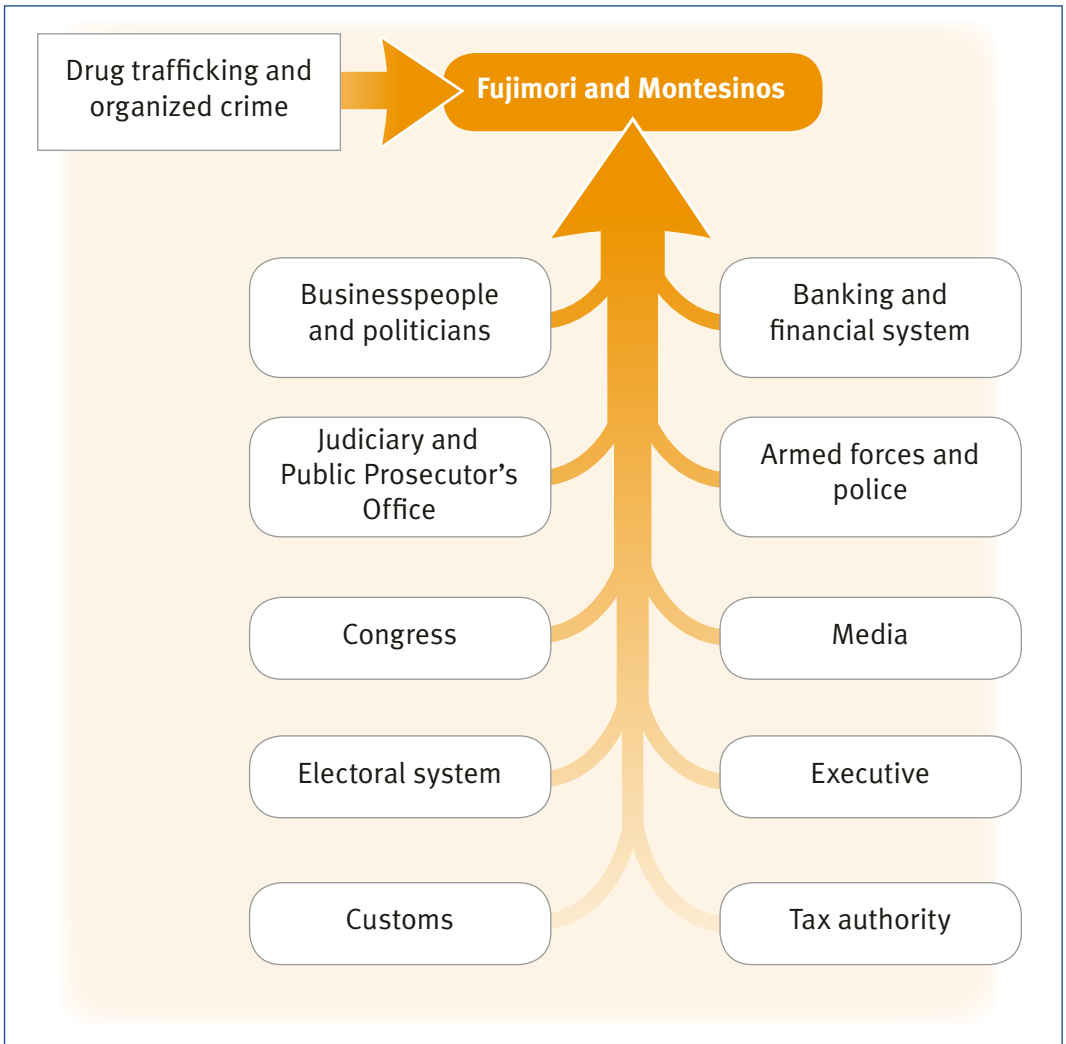
Prosecutor Ugaz illustrates this fact in his unpublished book. The scene in question dates back to the early days of his time as a prosecutor, when he had to decide the direction his work should take.

In the solitude of my office, I decided to put my thoughts in order. I asked for a flip chart, on the top of which I drew a box containing the letters 'VMT' (for Vladimiro Montesinos Torres), and I traced a vertical line down from the box, crossing it with a horizontal line, from which I drew several vertical lines. I asked myself in which spheres of the country's institutional life could the influence of Montesinos be seen. One after another they appeared: judicial, electoral, military, financial, the media, congress, the executive, the police... He was everywhere!

I wrote each of these spheres in a box and I sat at my desk looking at it. There was no doubt that this was a vast network with a massive impact, requiring a high degree of organization, hierarchy, chains of command, what the social sciences call the functional division of labour, a concept that was then borrowed by the field of criminology to characterize criminal organizations.

[...] It was not a matter of investigating a person who had committed various acts of corruption and other crimes with the help of other individuals, or a corrupt group within the government. Instead, what we were dealing with was a genuine criminal organization that was festering at the seat of power and whose structure we would need to understand in order to investigate it properly. [...] The hypothesis that we had adopted as the framework for our work was not irrelevant. Investigating a variety of perpetrators that have committed

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**Figure 6.3 The system of corruption during the regime of Alberto Fujimori**

**SOURCE:** First National Anti-corruption Conference, Proética, Lima, 2001

various offences is not the same thing as investigating a *criminal organization* [emphasis added], with its own structure, in which there are heads, mid-level leaders, low-level leaders, enforcers and other people who are merely circumstantial collaborators. Organizations obviously have a life of their own, and the dynamic in which they develop is different to that of individuals; they require funding in order to operate and entail various levels of decision-making and delegation of powers, as well as the distribution of profits depending on the position of an individual within the organization.

The infiltration of the state by this criminal network was facilitated by the institutions and political practices of the time. There were several contributory factors to this infiltration.

#### 6.2.4.1 Hollow politics

At the time, the political scene in Peru was fragile. Autocratic political leaders obtained power despite the vagueness of their messages to the electorate. Alfredo Torres (2010), an expert in public opinion in Peru, has identified the prevailing climate that allowed candidates who promised to shake up the system to be successful: 'citizens who were distrustful and disappointed by the performance of the central institutions of the democratic system, such as Congress and the judiciary, in an environment in which the prevailing image was one of growing corruption'. Torres also highlights the importance of an electoral system that facilitates the registration and participation of numerous political organizations in each electoral process.

This is precisely the environment in which President Fujimori was elected and the conditions that remain in place today. The disrepute into which Congress has fallen has reached its most dramatic moment and the judiciary, in spite of all of its efforts, cannot shake off the aura of corruption that surrounds it (IPSOS 2013). The parties are still affected by the history of autocratic government, and some members of traditional parties take part in the political process under the name of a new organization, believing this will help increase their popularity.

Political parties' weaknesses are reflected in organizations that offer weak programmes and fall back on the same discourse of promises to shake up the system in order to capture votes. It is also difficult to hold these organizations accountable for their actions because there are so many and it is impossible to monitor them properly. Furthermore, the fact that their programmes are so weak makes it impossible to measure how politically effective they are. A lack of specific government plans and proposals makes it hard to monitor their performance. Finally, the fact that they are allowed to regroup under a new name further limits voters' ability to measure their political effectiveness, since parties can easily reinvent themselves and promote a new, equally superficial discourse. Hence, the persistence of autocratic government has deepened the crisis facing political parties and their accountability as organizations to which progress and failures can be attributed. As the autocratic political leaders have disappeared from the political stage, no accountable political actors have replaced them. Furthermore, the government practices that were seen as highly detrimental in the time of Fujimori and Montesinos persist.

#### 6.2.4.2 Bad habits

Certain bad governmental practices have been allowed to persist, facilitating events such as those witnessed under President Fujimori and Montesinos. Some of these practices are described below. The analysis focuses on practices that construct a smokescreen that allows organized crime to flourish at the seat of power.

First, it should be noted that the president has most of the decision-making power and is backed by a team of advisers who tend to be family members (*Poder 360* 2012: 360). Within this closed circle, which escapes public scrutiny, loyalty is the most important virtue; members of the group are not legally required to show integrity or merit. Second, according to the constitution, the President of the Republic is the executive director of the government (Penal Code of Peru, article 118), while the president of the Cabinet only has three functions: to serve as government spokesperson, coordinate the executive and sign Presidential

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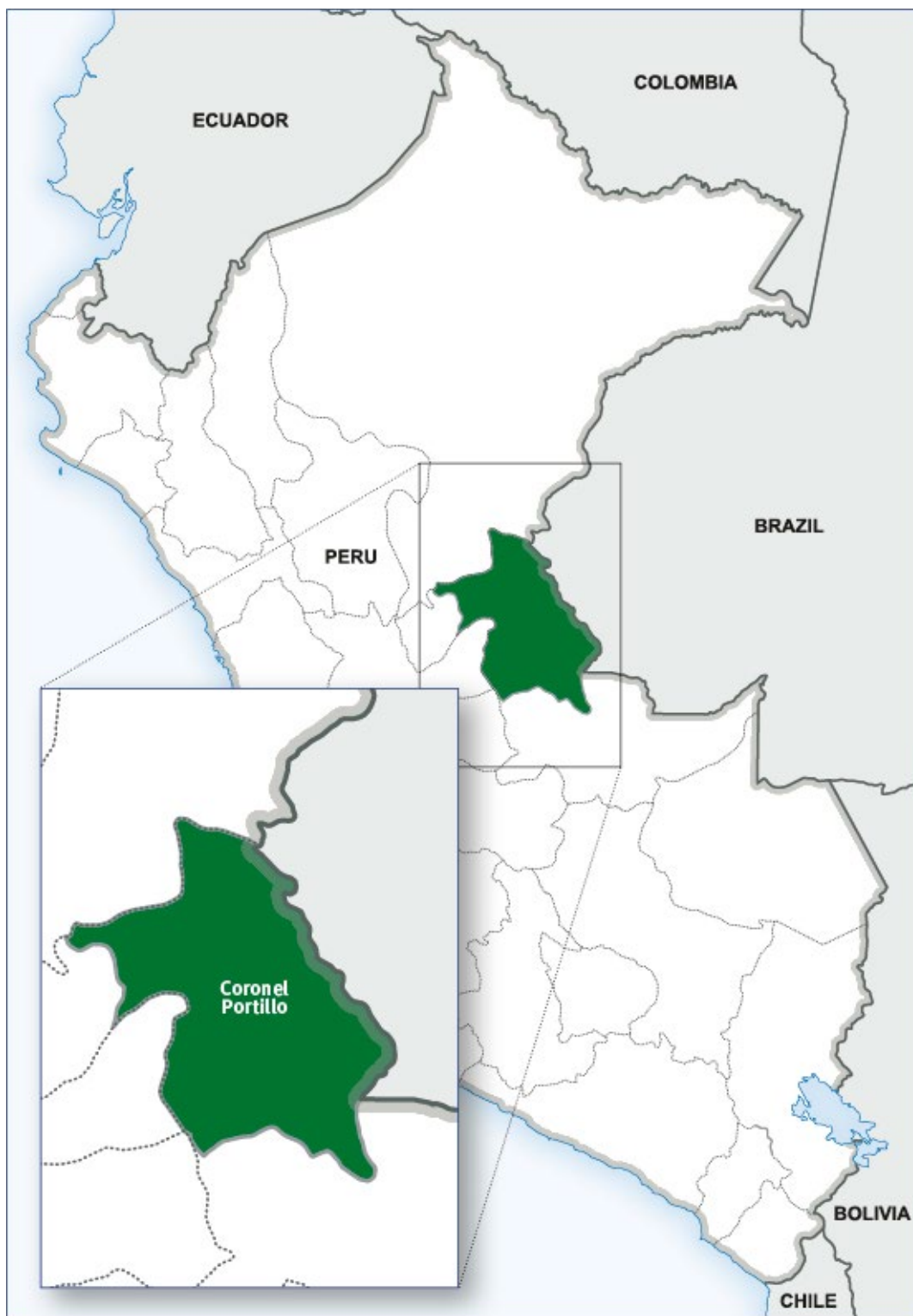
decrees. The president of the Cabinet also nominates ministers and approves their appointment. Some leaders interpret this distribution of responsibilities in a presidential regime as a duty to do everything, while others believe that the responsibilities are intended to be shared with the executive. Third, there is a large degree of discretion in the handling of the armed forces, surpassing the limits fixed by the constitution and the Law on Transparency and Access to Public Information (Instituto Prensa y Sociedad 2012). This discretion has increased as a result of recent provisions adopted by the executive using powers delegated by Congress that give it free rein to widen the scope of matters regarded as restricted and secret. Fourth, the president and his security adviser oversee the national police force above the minister of interior. The police force operates based on its loyalty to the president, rather than according to norms and criteria for efficiency. Corruption is widespread in this sector, which is currently regarded as the main point of access to the state by organized crime. Last but by no means least, members of the government do not publicly disclose all their assets and income. Only general information—not enough for proper scrutiny—is disclosed to the public, although more detailed information is kept by the comptroller general.

### 6.2.5 Conclusion

In spite of the measures adopted after the Fujimori scandal to safeguard the integrity of the country's political organizations, the conditions that would allow the situation to recur are still present. The ill-defined role of presidential adviser can still act as a smokescreen, or as a surrogate through whom the president acts. Peru needs to legislate so that a political adviser to the president is required to meet certain minimum requirements of professional and personal conduct, aptitude and suitability. However, it is harder to legislate against another recurrent factor in Peruvian politics: de facto governance by individuals not elected by the popular vote, or who, as advisers or close allies of the president, lack accountability. The law already punishes anyone who usurps power and the state official who allows this to happen. However, there will still be ministers who dismiss advisers to the president but fail to make it public or to report the situation. Changing this will require a huge political and cultural effort.



**Figure 6.4 Coronel Portillo Province, Peru**



## 6.3 Case study of Coronel Portillo Province

*Ricardo Uceda*

One of the Peruvian politicians most suspected of involvement in organized crime is the former mayor of Coronel Portillo province, Luis Valdez Villacorta. The province is in the department of Ucayali in the Peruvian desert, and Valdez Villacorta was mayor in 2003–08. After his arrest in connection with money laundering, he was suspended from his duties as mayor in a ruling by the municipal council. At the start of 2014, Valdez Villacorta was also under investigation for drug trafficking and for the murder of a journalist who criticized his administration. He was in his second consecutive term as mayor when he left office, having led a regional movement that grew around him. While in prison in Lima in 2010, the National Electoral Board banned him from standing for a third term on the grounds that his place of residence was not within the electoral jurisdiction for which he wished to run.

There was a consensus in the media that Valdez Villacorta had ties to organized crime. Nonetheless, despite the fact that investigations began in 2003, legal proceedings against him were still ongoing as of the beginning of 2014. Both mayoral terms were dogged by legal proceedings that attracted national and international attention. If the charges turn out to be true, then Ucayali will have effectively been governed for over five years by a drug trafficker with influence over the judiciary and the ability to resist pressure from the media and the Inter-American Press Association (IAPA), which had sought clarification of the events surrounding the murder of the journalist.

This study illustrates the difficulties faced in Peru when investigating politicians, particularly in connection with offences linked to organized crime. The focus of this study is on drug trafficking, money laundering and murder. The starting point is a detailed description of the Valdez Villacorta case and how it developed in the judicial sphere. The judiciary's ability to resolve cases involving this type of crime is considered, as well as the probability that this branch of government has also been infiltrated by organized crime, before focusing on the differences between what the media reports in cases of this nature and what is established during official investigations.

### 6.3.1 Context and history

Coronel Portillo is one of the four provinces that make up the department of Ucayali, which belongs to the region of the same name. The province is located in the centre of the Peruvian desert, bordered on the east by Brazil. It has a hot and humid climate and wooded territory through which several rivers flow. Some 85 per cent of the department's land is covered by natural forests, 12 per cent of which consists of nature reserves. It is the second-largest department and the eighth-most sparsely populated region in the country, with only 4.2 inhabitants per square kilometre. The economy is based on agro-ecological farming and the extraction of primary resources, most notably logging.

The timber industry is the leading source of jobs, employing approximately 45 per cent of the working population. In general, products are exported to Mexico, China and the USA (Salas Guevara 2009: 24). The logging companies have offices in the port of Callao in Lima, where the products clear customs. One

of the best-known incidents linked to Valdez Villacorta relates to a consignment of plywood shipped by his lumber company in 2003 that was seized by the police and found to contain 551 kg of cocaine.

### 6.3.1.1 Ucayali and drug trafficking

Ucayali department is no longer dominated by drug trafficking. It has seen an overall decline in its coca production, with the extent of coca plantations falling dramatically from an area of approximately 214 km<sup>2</sup> in 1994, when it was the country's second-largest producer of coca, to no more than 5 km<sup>2</sup> in 2004, before increasing to 28 km<sup>2</sup> in 2010, when it was the sixth-largest producer, accounting for under 5 per cent of the country's plantations (Novak, García and Namihas 2008: 14; UNODC 2012c: 31). In 1994, drug trafficking was the main driving force behind the regional economy, with a share of 22.8 per cent (Novak, García and Namihas 2008: 21), and the gross value of its coca plantations represented 57.6 per cent of total agricultural production in Ucayali. By 2006 this share had fallen to 13.9 per cent (Novak, García and Namihas 2008: 23).

In this economic context, 10 years after drug trafficking had taken hold of the region, at a time when new life was being breathed into agriculture, and industry and trade were growing, the highest public authority in the province of Coronel Portillo was accused of murder, drug trafficking and money laundering. Before setting out the facts it is important to provide a general description of the state of party politics in Peru and Ucayali, as well as background to the case of Luis Valdez Villacorta.

### 6.3.1.2 Parties and political movements

Ucayali demonstrates the growing weakness of the country's traditional political parties and of national politics in Peru. This is particularly acute in parliamentary elections, as well as the election of regional governments, municipal councils and mayors. Between the elections of 2002 and 2010, the proportion of candidates from regional movements in local elections grew by 30 per cent, while the traditional parties, such as Acción Popular, fell from 8 per cent to 5 per cent of candidates (see Figure 6.5).

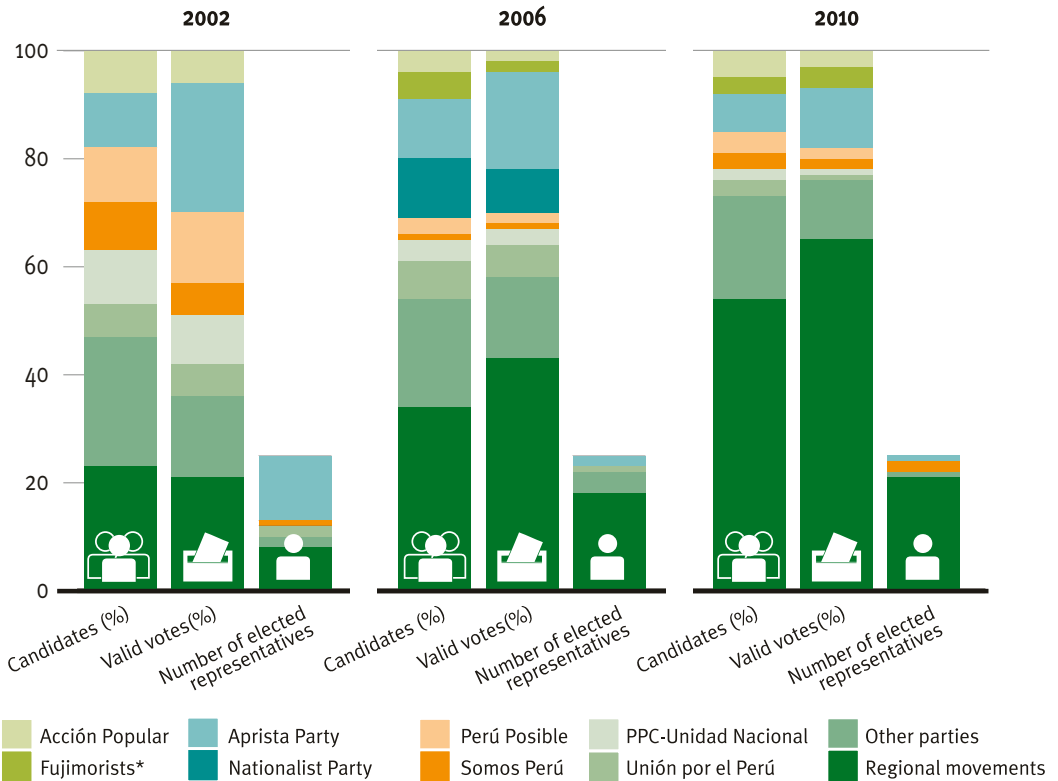
This trend is also reflected in the valid votes cast in the 2010 elections. While regional movements obtained a strong majority of 65 per cent of the total, the remaining 35 per cent of the votes was distributed among all the other parties (see Figure 6.5). The overwhelming number of votes gained by regional movements in 2010 gave them control of 21 of the 25 regions (Vera 2010).

These movements, mostly formed around an individual or leader, generally only last as long as the leader remains in power. They also tend to replicate the defects that eroded the previous organizations: bias, improvisation and, occasionally, a lack of integrity (Vera 2010; Remy 2010). Hinting at this, in 2013 Prime Minister Juan Jiménez described a 'terrible problem when it came to credibility in the eyes of the public' caused by corruption in regional and local government. He said that there were 20,000 corruption cases in the regions, according to the latest report by the Specialist Anti-Corruption Office (Loayza 2013).

Since there are few filters and anyone can form a political party, all those who comply with the minimum legal requirements can stand for election. Political

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**Figure 6.5 Parties and movements according to the number of candidates, votes and elected representatives in the regional elections of 2002, 2006 and 2010**



\* *Sí Cumple* in 2006 and *Fuerza* 2011 for the 2010 elections.

SOURCE: Vera 2010.

organizations lack internal requirements regarding individuals' political experience, prior social or civic work, professional experience or level of education when fielding candidates. It is becoming increasingly common for elected politicians to be tarnished with charges—and sometimes even convictions—for robbery, pimping, rape and other crimes, as was seen in the cases of Celia Anicama, Néstor Valqui and Walter Acha (Torres López and Rosales Vargas 2011; *El Comercio* 2013). It is harder for this to happen at the regional level, since the candidate is closer to the voters, but there have been some exceptions, most notably Luis Valdez Villacorta.

### 6.3.2 The case of Luis Valdez Villacorta

Valdez Villacorta was born in 1938 in the district of Vargas Guerra, in the department of Loreto. Before running for election as mayor of Coronel Portillo, he was one of Peru's largest timber exporters. He started working in the tannery industry in Pucallpa, after moving there at the age of 12. He worked his way up to become an exporter of leather, animal hides and live animals, as well

as importing textiles from China to sell in Iquitos. In 1967 he was one of the founders of the Pucallpa Chamber of Commerce, and in the 1970s he set up the companies through which he made his name as a timber magnate. During the 1980s he became involved in the business of assembling and selling agricultural machinery and motorcycles. When he entered politics, he was involved in philanthropic activities for wildlife conservation (Castilla 2008a).

In parallel with his legitimate business interests, anti-drugs police have documented Valdez Villacorta's alleged criminal career leading to at least two arrests for suspected participation in drug trafficking. No criminal charges were made against him, however, so when he was elected mayor in 2003 he had no criminal record. Importantly, his personal record with the JNE shows that he had no prior convictions for criminal activities and had not been fined for failing to fulfil any family, contractual or employment duties. The JNE also has a record of his main business activities in Pucallpa from 1975 onwards, chairing the board of directors at Triplay y Enchapes, before going on to Industrial Ucayali and finally Cerasac (JNE 2006). His persona, as a powerful and influential regional businessman, began to unravel the year he took office as mayor of Coronel Portillo, however, when drugs were discovered in one of his timber shipments intended for export.

### 6.3.2.1 Media coverage of the Valdez Villacorta case

A number of allegations were made against Valdez Villacorta in the media. While everyone has the right to a fair trial by a competent authority, the independent information disclosed by the media cannot be disregarded, and should be considered by citizens and subsequent investigations. The paragraphs below are based mostly on reports in the press.

### 6.3.2.2 Accusations of drug trafficking

Accusations of drug trafficking against Valdez Villacorta started to appear in the press in 2003, when drugs were discovered in a container of timber being exported by one of his companies (Zambrano 2003). In Pucallpa, the journalist Alberto Rivera referred to the event continuously in his radio programme, directly accusing Valdez Villacorta of involvement in drug trafficking, although police investigations placed him on the sidelines of the criminal activity when the driver who was transporting the container through customs in Callao confessed (ROP 2006a). Rivera—who had an aggressive and provocative style (*Unas dudas razonables* 2010)—was murdered in 2004, after a radio programme linked Valdez Villacorta to drug trafficking and claimed that the mafias involved might attempt to kill him (*La Ventana Indiscreta* 2010).

On 14 October 2005, the daily newspaper *El Comercio* published a report revealing past drug trafficking activities by Valdez Villacorta (Ramírez 2005). The newspaper recorded and photographed anonymous witnesses who said that in the 1970s, Valdez Villacorta owned boats that manufactured plywood and operated in the Amazon, from where consignments of drugs were exported to Leticia in Colombia. It also revealed documents from the Drugs Directorate of the Peruvian Police Force (*Dirección Antidrogas de la Policía Nacional del Perú*, DIRANDRO) quoted by a spokesperson for the US Consulate in Lima, who claimed that they were in the directorate's database. The documents apparently confirmed that Valdez Villacorta was banned from entering the US.

The DIRANDRO documents included an article published in *El Comercio* which revealed that the mayor had been imprisoned for drug trafficking in 1976 and released four years later. The document also mentions a report issued in Loreto in 1985 referring to Valdez Villacorta as a member of an international band of drug traffickers that was seeking to spend USD 50 million on purchasing drugs. The newspaper report stated that according to 'investigations carried out into information from IP-Wiesbaden [a German city where the Federal Criminal Bureau operates], an international drug trafficking organization was set to transport USD 50 million to Peru to purchase cocaine base paste, before transforming it into cocaine hydrochloride (CH) to be shipped and sold in Europe, Japan and the USA. Luis Valdez Villacorta was apparently part of the organization, together with Silfo Alván del Castillo and Mariano Loo Ríos' (Ramírez 2005). The report also published information obtained from 'intelligence channels', reiterating that Valdez Villacorta was the possible head of an illicit network and that his sawmills in Pucallpa and the shipping companies he owned provided the perfect cover for his illicit activities.

The newspaper also reported that on 14 June 1986, the Department Police Headquarters in Pucallpa had completed its sixth report in which it indicated that the individuals thought to be the main drug traffickers in its jurisdiction were being investigated. Although the report did not mention the results of the investigation, it did mention the individuals under investigation, including Luis Valdez Villacorta, José and Javi García Hidalgo and Eduardo Aguinaga Díaz. It also cited another report, dated 22 February 2002 and signed by the Finance Division of DIRANDRO, which included an investigation into Valdez Villacorta that had been requested by a member of the prosecution service in Lima. The results of the case are not known.

In January 2007, the magazine *Caretas* cited the reports mentioned the previous year by *El Comercio*, stating that the police had confirmed that the mayor of Coronel Portillo had spent four years in prison for drug trafficking and that this was a significant piece of information that should have been included in the investigation following the confiscation of cocaine in Callao in 2003. In December of that year, the newspaper *Peru 21* interviewed Óscar Benites, an individual who was tried for drug trafficking. Benites claimed that Valdez Villacorta and a known Peruvian drug trafficker, Fernando Zevallos, had conspired to send more than 350 kg of cocaine to Houston in the USA in the summer of 2001. The following year, the national public prosecutor's office lifted the secrecy surrounding the mayor's tax arrangements (*La República* 2008a).

In 2008, Óscar Castilla from the newspaper *El Comercio* returned to Ucayali to work on a story concerning Valdez Villacorta, the main sources for which were inhabitants of the area, the police and the US DEA. Based on the information obtained from DIRANDRO, Castilla revealed that Valdez Villacorta became heavily involved in drug trafficking between 1975 and 1990. He also mentioned the 'many charges' against the mayor during those years. Based on reports by DIRANDRO and other sources, he claimed that two cargo vessels belonging to Valdez Villacorta, the *Yacumama* and the *Yacuscapí*, were regularly used to transport drugs, sailing along the Brazilian Amazon before making connections in Colombia, Mexico and the USA (Castilla 2008b).

The newspaper articles and reports tying Valdez Villacorta to the drug trafficking organization of Alberto Rivera in Pucallpa increased when the police arrested Valdez Villacorta in his office in 2008 on money laundering charges. His arrest

was extended following an injunction, and he was initially held in prison before being placed under house arrest in 2011.

### 6.3.2.3 Money laundering charges

Since the crime of money laundering is committed in relation to an illegal activity—generally drug trafficking—published stories in the case of Luis Valdez Villacorta on both activities are closely related. In fact, the stories started to appear after the cocaine haul in Callao. On 25 April 2003, the television programmes ‘Cuarto Poder’, broadcast by América Televisión, and ‘La Ventana Indiscreta’, broadcast by Frecuencia Latina, aired reports on the alleged discrepancy between the income declared by Valdez Villacorta and the properties he owned, alongside the suspected involvement of two of his companies, Industrial Ucayali and Triplay y Enchapes, in illegal activities. At the time, Mayor Valdez Villacorta was the owner of four large companies involved in the extraction, manufacture and use of timber products.

In their coverage of the case, the programmes cited police sources, some of whom remained anonymous. In addition to the allegations against Valdez Villacorta that were raised in the above-mentioned police reports, other information was compiled which resembled pieces of a jigsaw. The companies had different establishments in the cities of Lima, Iquitos and Huánuco, and their legal representatives were his sons and sisters, alongside members of the Valdez Villacorta inner circle. Two of these individuals had been investigated for drug trafficking: María Julia Jiménez and Luis Cárpene, the director and general manager of Triplay y Enchapes, respectively. The police suspected both of being involved in a consignment of timber sent by the company to Jordan, in the same Russian aircraft that had previously been used to supply arms to the FARC in Colombia. This was suspicious because, according to an interview with officers from the Specialist Organized Crime Unit of the public prosecutor’s office (*Fiscalías Especializadas en Criminalidad Organizada*, FECOR), the value of the cargo did not seem to justify the high transport costs (interview with FECOR officials, 21 September 2012). It is important to stress that these allegations were subsequently refuted.

According to interviews with prosecutors from FECOR, there were also suspicions that Valdez Villacorta had ties to the drug trafficker Ramón Gonzales Lazo (alias ‘Moncho’), to whom he had sold his light aircraft company, Servicios Aéreo Ejecutivo S.A.—and the chairman of which, Raimundo Ferrari Ramírez, was under investigation by the police. The representative of Industrial Ucayali, Gustavo Lozano, was also under suspicion for not being able to produce books or reports on the movement of chemical supplies used by the company, which may have been diverted for drug trafficking purposes (interview with FECOR officers, 21 September 2012).

Suspicious extended to a large group of traders and business figures that, in addition to having business dealings with Valdez Villacorta, were constantly travelling to different parts of the world. All these individuals were investigated when the First Anti-Drugs Prosecution Unit in Callao asked the DIRANDRO Intelligence Bureau to find out whether Luis Valdez Villacorta had been involved in laundering the proceeds of drug trafficking. The official letter requesting the investigation claimed that it was needed due to the reports broadcast on the television programmes ‘Cuarto Poder’ and ‘La Ventana Indiscreta’ (interview with FECOR officers, 21 September 2012).

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It is worth noting that DIRANDRO was the main source of those media reports. Intelligence reports referring to prior drug trafficking charges and the alleged mafia connections of those individuals were leaked. The majority of the documents appear to be fakes and were never presented in proceedings against Valdez Villacorta. The first of the reports dates from 1985, but there are thought to have been many more that were erased in 1980 when Valdez Villacorta used his influence to have his record expunged, according to different journalists' accounts (Caretas 2007).

On 14 October 2008, police arrested Luis Valdez Villacorta in his mayoral office as part of a major operation that also apprehended 14 other people and seized goods valued at USD 250 million. *La República* (2008b) claimed that the Pucallpa mayor had been tripped up by a drug seizure in the Netherlands. The Peruvian police had received news of the haul of cocaine found among goods exported by Forestal Export HM, owned by Lester Marina, who had business ties to Luis Valdez Villacorta. All the individuals arrested, including Valdez Villacorta, were taken to Lima. Valdez Villacorta had to resign his position as mayor.

#### 6.3.2.4 Charges relating to the murder of a journalist

On 21 April 2004, two armed men—Ángel Mendoza and Lito Fasabi—entered the business premises of the 'Inversiones Apolo' glassworks in Pucallpa, which were owned by the journalist Alberto Rivera. Mendoza attacked Rivera, who tried to resist. Fasabi fired a fatal shot into Rivera's chest (ROP 2012j). Both men fled and were picked up a few blocks away by their accomplice, Erwin Pérez Pinedo, along with Alex Panduro, who was keeping watch. Pérez Pinedo was arrested and confessed to his role in the events. He claimed that his cousin, Tercero Gonzales, had come looking for him the previous day, asking him to give Rivera 'a scare' for 'destroying his home'. After agreeing, he asked Mendoza and Alex Panduro to beat the journalist up. Panduro initially agreed but subsequently refused and was replaced by Fasabi.

Tercero Gonzales told the police that it was Martín Flores, a radio journalist, who had asked him to beat up Rivera with the help of another person. Gonzales added that Flores took them to the man who was paying for the service, Roy Culqui, an employee at the municipal offices in Coronel Portillo, who handed over PEN 500 (USD 177) in advance, promising them the other half on completion of the job. At the trial, Pérez Pinedo maintained that it was Tercero Gonzales who had taken him to meet Flores and Culqui. In a conversation that he had witnessed from a distance, he had seen Flores hand over an envelope to Gonzales. During the trial, Gonzales also admitted to having paid Pérez Pinedo as a middleman for the attack on Rivera. He had given the money to Flores in front of Culqui and Pérez Pinedo. Gonzales testified that Flores had an interest in the attack on Rivera, who was bothering him personally (ROP 2012j).

After his arrest, Lito Fasabi claimed that he had shot the journalist on the orders of the mayor, which was the first time Valdez Villacorta had been directly implicated. According to public opinion, Valdez Villacorta had a motive for killing Rivera, who had directly accused him of being a drug trafficker as recently as the day before he was murdered, in an interview with the journalist Daniel Yovera for the television programme 'La Ventana Indiscreta', broadcast a few days later. During the interview he also claimed that a journalist such as himself ran the risk of being assassinated by mafia groups (La Ventana Indiscreta 2010).



The murder attracted intense media attention from the outset. Since Valdez Villacorta had been accused by one of the hit men, there was a growing expectation that he would face charges. According to the charges brought by the prosecutor in charge of the file, the director of the municipality of Coronel Portillo, the former judge Solio Ramírez, had been an accomplice of Valdez Villacorta and was present when Fasabi was given the money. Ramírez also had a motive, because Rivera had openly criticized his exercise of public authority. The testimonies of the people involved in the killing, which did not always agree and were even contradictory on some points, were covered widely in the media. At the trial at the High Court in Ucayali, the judge ruled in favour of Valdez Villacorta. The judiciary then transferred the case to Lima, to avoid allegations of pressure in an area where the accused was a powerful figure. However, he was also acquitted by the Supreme Court in Lima. Throughout the proceedings, the media complained continuously about the ineffectiveness of the justice system.

The public prosecutor's office stated in its charges that Rivera had been murdered as a result of his work as a journalist. Once Valdez Villacorta and Ramírez had taken the decision to have him killed, they asked a trusted employee, Roy Culqui, to choose the hit men. Culqui then sought out the director of the municipal water company of Coronel Portillo, Martín Flores, who in turn passed the request on to Tercero Gonzales. This third intermediary hired the driver Erwin Pérez Pinedo, who in turn subcontracted the job to another driver, Ángel Mendoza. They both looked for a third participant, Alex Panduro, then a fourth, Lito Fasabi. The prosecution service revealed that Panduro and Fasabi met with Mayor Valdez Villacorta and Municipal Director Solio Ramírez on the day before the crime. Ramírez gave them a firearm and Valdez Villacorta asked them to do a good job.

The press did not limit itself to publishing information on the crime and the witnesses. As the case was passed from one judge to another, the judges were heavily criticized each time Valdez Villacorta was acquitted. While stopping short of accusing him directly of the murder, the IAPA expressed its concern—inside and outside the country—after each acquittal. The Rivera case became emblematic of Project Impunity (*Proyecto Impunidad*), the IAPA regional campaign against impunity for the murder of journalists. The main Peruvian newspapers printed editorials expressing alarm at the levels of judicial impunity.

### 6.3.3 Files and judgements

#### 6.3.3.1 Accusations of drug trafficking

Almost all the historical information published by the press on Valdez Villacorta and his links to drug trafficking before 2003 came from DIRANDRO, but this intelligence was not included in any of the witness statements or investigations. The police have never proved the allegations or published them officially, which means that, of the allegations for which he was tried, the only one based on a concrete event was the discovery of drugs in a consignment being exported by his company. A brief summary of this event based on the account given in the official documents (ROP 2009a) is provided below.

On 18 October 2003, a truck arrived at the shipping terminal in Callao to drop off a consignment from Industrial Ucayali, bound for Puerto Quetzal in Guatemala. The shipment was from the premises of Neptunia S.A., which provided storage services to Industrial Ucayali. At the terminal, the containers were unloaded and

weighed. In theory, this information should have coincided with the weight of the containers when they left the Neptunia warehouse, and the records should make it possible to determine where the liability lies. The exporter, Industrial Ucayali, had weighed its consignment when it left its premises in Callao to go to Neptunia, sealing the containers with two seals. At Neptunia, the seals were broken and the load was weighed again, to check that it matched the original figures. The National Institute of Natural Resources and the National Agricultural Health Service also carried out inspections. The containers were then sealed with two security seals: one applied by Neptunia and the other by the customs authority. At the terminal, the cargo was weighed one last time before it was loaded onto the vessel.

When the truck from Neptunia arrived at the terminal, the weight of one of the containers was found to be lower than at the warehouse. At that point the driver of the truck, Rómulo Uribe, abandoned the vehicle and fled. When the police and a member of the prosecution service opened the container, they found 561 kg of cocaine hydrochloride under plywood boards prepared for export. The driver turned himself in three days later, and confirmed that one week prior to the drugs haul, a person referred to as 'Julio'—later identified as Julio César Gamboa Bazalar—had offered him money to place drugs inside the consignment of timber that was to leave Neptunia's warehouses. After agreeing, on 18 October he took the truck to a location in Callao where the contents of the container were switched. A number of accomplices were identified during the subsequent investigation.

The police report indicated that neither Industrial Ucayali, the storage company or the haulier were responsible. Uribe was implicated, as was Gamboa Bazalar and two other accomplices who had helped them. The public prosecutor's office brought criminal charges against all five individuals, but Valdez Villacorta was not implicated. The trial commenced the following year, and it culminated in the conviction of all of the accused except Gamboa Bazalar, who was on the run. In concordance with the law, an absentee defendant cannot be tried, and therefore his trial was put on hold. When the fugitive was captured in 2006, the story began to evolve.

Gamboa Bazalar was put on trial, and in his initial testimony to the police he claimed that he had been given the drugs by a man who was previously unknown to him, Roger Poémape Chávez. Poémape had allegedly told him that the drugs were 'from Valdez', and that he was to ask Valdez about them. Gamboa Bazalar assumed that he was talking about the mayor of Pucallpa, Luis Valdez Villacorta. Later, at the trial in the Criminal Court in Callao, he changed his statement and said that his initial testimony had been given under duress (File no. 1323-2009-0, 2009).

The testimony provided in 2006 would later have repercussions for Valdez Villacorta. The Specialist Prosecution Office for Drug Trafficking Offences in Callao launched an investigation on 20 August the following year and accused Valdez Villacorta and Poémape of belonging to a band of drug traffickers that was responsible for attempting to export the drugs discovered in 2003, citing the initial testimony of Gamboa Bazalar as proof. The prosecution service also considered the claim that he had been threatened by Poémape Chávez, which Gamboa made on television on the day of his arrest, to be relevant. A third person was implicated, Luis Cárpene Rosas, the business partner of Valdez Villacorta at Industrial Ucayali. He was overseeing the company's operations

on the day the events occurred. Cárpena organized the transportation of the plywood from his company's premises to the warehouses provided by Neptunia (ROP 2009a).

However, in 2008 the judge at the Eighth Criminal Court in Callao dismissed the accusations brought by the public prosecutor's office, discounting Gamboa Bazalar's testimony to the police on the grounds that his defence lawyer was not present when he gave his statement. The answers, he added, were obtained under duress by the police, who did not have the power to offer the detainee the advantages they promised him if he collaborated by confessing. At the time, Gamboa Bazalar was being interrogated on suspicion of falsifying documents, since he had been carrying falsified identification documents when he was arrested. The judge argued that the nature of the offence was such that there were no benefits to be gained from plea bargaining. The judge also discounted the statements that Gamboa Bazalar gave on television, regarding them as evidence that was not valid in a court of law (ROP 2009b). In the cases against Valdez Villacorta, there was an ongoing discrepancy between what witnesses were telling the press and what they were saying during trial.

The judge did not instigate an investigation into Poémape because the only evidence against him was Gamboa Bazalar's statements to the police and on television. The court also gave credence to the fact that Poémape—who still stands accused of drug trafficking (Aguirre 2012)—had produced official migration documents showing that he had not even been in Peru at the time he was allegedly organizing the consignment of drugs (File no. 1323-2009-0, 2009). The link to Valdez Villacorta was based on Gamboa Bazalar having heard Poémape refer to him on two occasions. Based on that information, the prosecution service concluded that he had played an active role, together with Poémape and Cárpena, in the failed attempt to export cocaine. The mayor of Pucallpa, who was not in Lima when the illegal consignment was discovered, had allegedly delegated the operations in question to Cárpena.

As in the case against Poémape, the court ruling in favour of Valdez Villacorta did not conclude that he was innocent, but rather that there was insufficient evidence to prosecute him as the head, director or leader of the organization. The court's main argument was that Gamboa Bazalar had retracted his initial statement, going so far as to claim that he did not know Poémape or Valdez Villacorta and justifying the inconsistency by claiming that the police had forced him to make his statement by beating him.

In Cárpena's case, the court noted that he had been incriminated due to his senior role in the company, but that there was no other evidence against him. Although he had supervised the transportation of the consignment from the premises of Industrial Ucayali to the premises of Neptunia, the crime was committed afterwards. As a result, he was not placed under investigation.

Following an appeal by the Second Specialist Office for Drug Trafficking Offences, on 20 May 2011 the Fourth Criminal Chamber of the High Court upheld the decision of the Eighth Court in every respect. The Anti-Drug Office at the Ministry of the Interior appealed the decision to the Supreme Court, seeking to have the judgment annulled. The anti-drug office argued that there were serious flaws in the judgment. At the time of writing, the Supreme Court has not ruled on the case.

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The story that a consignment exported to the Netherlands by Forestal Export HM in which drugs were found was in some way related to Luis Valdez Villacorta gradually died away. He has not even been mentioned in any statements related to the case. Even the supposed ringleader, Lester Marina, escaped charges after the police established that he had been the victim of falsified documents.

### 6.3.3.2 Money laundering charges

Prior to his political career, Valdez Villacorta was recognized as one of the most powerful businessmen in eastern Peru. He was even the subject of an academic study, from which it is possible to piece together an independent picture of his business activities, which is essential in order to examine the cases brought against him (Santos Granero and Barclay 2002).

Valdez Villacorta began his business activities in 1950 as a small trader operating along the length of the Amazon River. He would buy hides and leather to sell in Iquitos to a company called Comercial Menezes. In 1960 he founded a business that exported leather, hides and live animals, staying in that line of business for the next 15 years while diversifying into other activities. In 1964 he took advantage of the liberalization of the export trade and started selling fabric to the USA. By 1967, his company, Textil Universal, had become a leader in its field in Pucallpa. In 1969, Valdez Villacorta bought a cattle ranch on the outskirts of the city and opened Industrial Loreto S.A., a sawmill located in Iquitos, in the neighbouring department of Loreto. It became the largest exporter of sawn and seasoned timber to the USA. In 1970, Valdez Villacorta was importing chainsaws, outboard motors and motorcycles, which he sold from large stores that he set up in Iquitos. By 1973 he was the largest importer in Loreto, controlling 12 per cent of the total value of imports in the region.

In 1973 Valdez Villacorta became embroiled in controversy concerning his income when Pierre de Zutter, a journalist with the newspaper *Expreso*—one of the first papers to be commandeered by the military government of Juan Velasco Alvarado—accused him of making excessive profits from his business activities. Zutter highlighted the fact that Valdez Villacorta owned the second- or third-largest fortune in the Peruvian Amazon, was the primary beneficiary of foreign currencies imports and the twelfth-highest taxpayer in the country. Valdez Villacorta sent a letter to the newspaper objecting to the personal attacks made against him as a businessman who paid his taxes.

Thus, at that time the objections against Valdez Villacorta were not related to drug trafficking. When investigations were instigated against him in 2003, he had already accrued an enormous fortune compared to others in the Peruvian Amazon. Investigations into his companies had begun in 1999. Given the lack of controls on trade in the Peruvian Amazon, however, it was difficult to determine with any accuracy the precise extent of his fortune or whether its source was legal.

An investigation into money laundering was launched against Valdez Villacorta in 2008, which was still ongoing at the time of writing. The investigation began by looking into the discovery of drugs, in October 2003, in a timber shipment by one of Valdez' companies. Under Peruvian law, an investigation of money laundering is only allowed when a previous crime such as drug trafficking has been proved or is under investigation, since money that is laundered must be obtained illegally. This was the starting point for the investigation.

The prosecution service rejected calls by the police to investigate Valdez Villacorta on suspicion of money laundering in 2003, citing the fact that the police had determined that he was not in any way responsible for the drug trafficking operation discovered in Callao. However, in 2004, in the wake of reports broadcast on television that the mayor's assets were not compatible with his income, the Anti-Drugs Prosecution Unit in Callao asked DIRANDRO to look into whether Valdez Villacorta was involved in money laundering. The investigations conducted by the police and the National Customs and Tax Authority concluded that he was not involved in such activities, and the public prosecutor's office closed the case in 2005, citing the tax relief established for forest departments in the 1970s as a special source of income.

In 2008, another investigation was launched following the arrest of Bazalar. As is noted above, in the light of Gamboa's initial statement, which he later retracted in court, an investigation was launched into Valdez Villacorta on suspicion of drug trafficking. With that investigation under way, it was then possible to launch an investigation into possible money laundering. While Valdez Villacorta was acquitted of the drug trafficking charges several times, the money laundering investigation took several years to get off the ground. The prosecution service asked for him to be placed under arrest and he was held in prison from 2008 to 2010, before being released to house arrest where he remained until November 2012.

The police investigation found that the companies with which Valdez Villacorta was associated could not account for his fortune of USD 71 million (Romero Vidal 2011). His lawyers argued that many of the companies in question had no relationship whatsoever with their client, and that all the companies he ran directly were legitimate. According to one source involved in the police investigation, there were two main discrepancies: the sale of a consignment of timber for the equivalent of USD 4.6 million that was unknown to the supposed buyer, a small carpentry firm; and the exceptional growth in the capital assets of a brewing company. In the case of the latter, expert witnesses claimed that the increase could not be accounted for, since the company had been unsuccessful, reporting a loss for two consecutive years before reporting assets worth over USD 10 million in the third year (interview with FECOR officers, 21 September 2012).

Part of his defence involved the police investigations of 2004–05. A DIRANDRO report on his accounts for the period 1999–2004 concluded that the financial and economic resources of his companies arose from the business activities for which they were established, and that his equity and personal income were the fruits of the businesses that he had been running since the age of 23.

#### 6.3.3.3 Charges relating to Alberto Rivera's murder

On 14 November 2007, at the First Chamber of the High Court in Ucayali, Valdez Villacorta and Solio Ramírez were acquitted of charges that they had masterminded the murder of Alberto Rivera. The prosecution service had requested 25-year sentences for both. The court rejected the claims made against both accused by Lito Fasabi, which had first incriminated them; he later made a retraction in his closing statement before sentencing. According to the ruling, the factual evidence and witness testimony presented were contradictory and did not provide grounds for convicting the co-accused. By then the material

perpetrators of the assassination, Ángel Mendoza, Erwin Pérez Pinedo, Roy Culqui, Martín Flores, Tercero Gonzales, Lito Fasabi and Alex Panduro, had been convicted. They all confessed to their role in the contract killing, but their versions of who had paid for it and the motives behind it were not convincing. Culqui, a journalist hired by Valdez Villacorta, was also implicated. However, he never testified and eventually died of diabetes. Tercero Gonzales also made accusations against Valdez Villacorta, but the court deemed his testimony inadmissible. María Elena Hidalgo, a journalist for *La República*, interviewed Mendoza, Pérez Pinedo and Panduro. All three told of how the murder had been committed, and Panduro stated that the order had come from Valdez Villacorta and Ramírez, and that they had received threats or payments to prevent them from telling the truth. Hidalgo confronted Valdez Villacorta with their versions of events, but he denied everything. Claims made by journalists are not admissible as evidence if they are not included in the case file submitted to the court (Hidalgo 2008).

The civil party (*partie civile*, the injured party who can bring forward civil action for damages as part of criminal proceedings) asked for the case to be transferred to Lima because Valdez Villacorta was a highly influential figure in Ucayali and Solio Ramírez had been a high court judge there. The Supreme Court granted the transfer, and an appeal by the public prosecutor's office began in Lima. However, the trial collapsed due to the failure of the prosecution service to appear in 2009. The case recommenced and finally, on 8 February 2010, the Third Criminal Chamber for non-custodial defendants acquitted Valdez Villacorta and Solio Ramírez by a majority verdict. The chamber essentially followed the same rationale as that in Pucallpa. However, according to a majority of the Supreme Court justices, irregularities were discovered in the content and formalities of the proceedings, and a retrial was ordered. The problems related to the failure to verify the evidence, the fact that interviews and media sources were not taken into account, and the failure to verify why the witnesses had changed their version of events relating to Rivera at the trial. The final court ruling on the case was a majority verdict on 10 May 2012, in which the Supreme Court acquitted Valdez Villacorta and Ramírez.

A majority of the judges involved failed to examine the statements made by the half-brother of Rivera's mother, César Huamán, who claimed that Lito Fasabi had told him when he was handed over to the authorities that if anything bad were to happen to him, the mayor of Pucallpa would be responsible. He had signed a document accusing Valdez Villacorta and Ramírez. During the trial, however, Fasabi stated that he did not know the accused, and that he had signed the document—which was not written by him—because Huamán had offered him money (ROP 2012j). The testimonies of Erwin Pérez Pinedo, Tercero Gonzales and Martín Flores, three of the people convicted as material perpetrators and accessories to the assassination, also failed to incriminate Valdez Villacorta and Ramírez.

The civil party and the public prosecutor's office wanted the chamber to consider the testimonies provided by the perpetrators at various stages of the trial, which incriminated Valdez Villacorta and Ramírez, and, above all, the statements they had given to the press, which were never verified at the trial. The statements were made both before and after the individuals in question were convicted at the court in Ucayali. However, in spite of the statements, the verdicts were not annulled and were upheld by the Supreme Court. The majority of the judges regarded a number of the judgments of that court to be final, and played down

what the perpetrators and accessories had said after they were sentenced, despite the clear contradictions. At the time of writing, an appeal against the sentences has been lodged with another chamber of the Supreme Court.

### 6.3.4 Challenges facing investigations into organized crime

The Peruvian judiciary has faced huge challenges since 2001. It has had to investigate major corruption cases from the Fujimori era as well as hundreds of cases involving terrorism and human rights violations. Many terrorism cases had been unfairly tried and therefore needed to be reconsidered. The workload was immense: at one point Abimael Guzmán from the Shining Path organization was facing 1000 cases nationwide. There were also incidents highlighted by the Truth Commission that needed to be investigated and punished. This resulted in an almost 10-year backlog in the criminal justice system.

In 2006, the National Criminal Chamber began to hear organized crime cases. From 2008 the Chamber's responsibilities had to be adapted to handle matters such as drug trafficking, money laundering, extortion and kidnapping. In the process, the chamber was assigned cases related to tax and customs offences, but this was too much and the files were returned to the respective courts.

Of all of the organized crime cases, the ones that involved money laundering were the longest and most complex, due to the business and financial analysis required. In the case of Valdez Villacorta, for example, his drug trafficking and murder cases are in the final stages but nobody knows when the money laundering case will end. The first eight money laundering judgments were handed down by the National Criminal Chamber in 2009, followed by seven further judgments in 2010 and nine in 2011. Between 2009 and August 2012, 33 people were found guilty and 40 were acquitted, there were 11 cases that did not proceed to judgement and 42 cases in which the trial was deferred due to the absence of the defendants (interview with a judge from the National Criminal Chamber, 4 September 2012).

The investigation stage of a money laundering case, which can take up to five years, is the most difficult. Between 2007 and 2012, the specialist prosecution units responsible for handling organized crime and money laundering cases obtained 65 indictments and eight convictions. Five of those rulings acquitted the accused. The public prosecutor's office is currently investigating 1283 individuals, involving accusations of money laundering that amount to USD 350 million (interview with FECOR officers, 21 September 2012). According to sources at the public prosecutor's office interviewed for this study, around 300 officers are required to handle these cases, and three or four expert witnesses might be required for a single investigation. In the case against Valdez Villacorta, according to the people interviewed, the public prosecutor's office had to call 18 expert witnesses. Their investigation dated back to 1999, rather than to the start of his business career in the 1960s. However, the police force only has six experts to investigate all the money laundering cases in the country, and the public prosecutor's office has just four. Furthermore, according to the interviewed sources, none of those experts is an economist. The public prosecutor's office and Juan Jiménez, Peru's prime minister at the time, met on at least three occasions to discuss the poor technical capacity for investigation and the need to scale up the fight against money laundering. The public prosecutor's office has requested 100 additional experts, although it is not clear

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that it will receive all or even half this number. However, there will apparently be more specialists to assist with examining the assets of companies and producing reports that might provide grounds for getting a conviction (interview with FECOR officers, 21 September 2012).

### 6.3.5 Challenges facing the judiciary in relation to organized crime and politics

The charges of drug trafficking, money laundering and murder that have dogged Luis Valdez Villacorta, the former mayor of Coronel Portillo and leader of the regional movement *Todos por Ucayali*, since 2004 are the most significant example of the possible intrusion of organized crime into Peruvian politics since 2000. If the accusations are true, the three cases converge to form a scenario that is typical of crimes of this nature: money laundering commonly stems from drug trafficking, and the murder of journalists is a typical offence committed by bands of criminals intent on intimidating or seeking revenge on anyone who informs on or seeks to expose them.

The case arose in the context of the political fragmentation and dispersal of political parties that was happening at the time in Coronel Portillo and throughout the country, allowing figures with money, possibly from drug trafficking, to participate in politics and, thanks to their huge resources, win local or regional elections. Once in government, Valdez Villacorta used his network of business contacts and influence over public authorities—including some members of the judiciary—to tackle the charges, resulting in the transfer of the murder trial to Lima.

Investigations by the police, the judiciary and the media were unable to uncover any concrete evidence of ties between the regional movement *Salvemos Ucayali* and drug trafficking. The movement's leader is allegedly the head of an organized crime gang, but it could have more members from the world of organized crime among its ranks, or it could employ tactics seen in other countries in which organized crime controls municipalities or influences their local politics. Such tactics include electoral fraud, blackmail and intimidation using violent methods that sometimes include murder. The perpetrators are violent groups that are usually armed. The only known instance of conduct typical of organized crime was the murder of Alberto Rivera, for which Luis Valdez Villacorta is thought to be responsible.

### 6.3.6 Conclusion

All three trials related to Valdez Villacorta are ongoing: the drug trafficking trial is awaiting an appeal before the Supreme Court, the money laundering case is awaiting charges from the public prosecutor's office and the murder case is awaiting an appeal. Thus it is impossible to state whether Valdez Villacorta is guilty or innocent of the charges brought against him.

Examining the case files of the legal proceedings and interviews with individuals linked to the investigations has not made it possible to link Valdez Villacorta with any local or international gangs involved in drug trafficking. The existing intelligence files have not incriminated him, and the press has not conducted its own exhaustive investigation of the killing. The most noteworthy aspect of

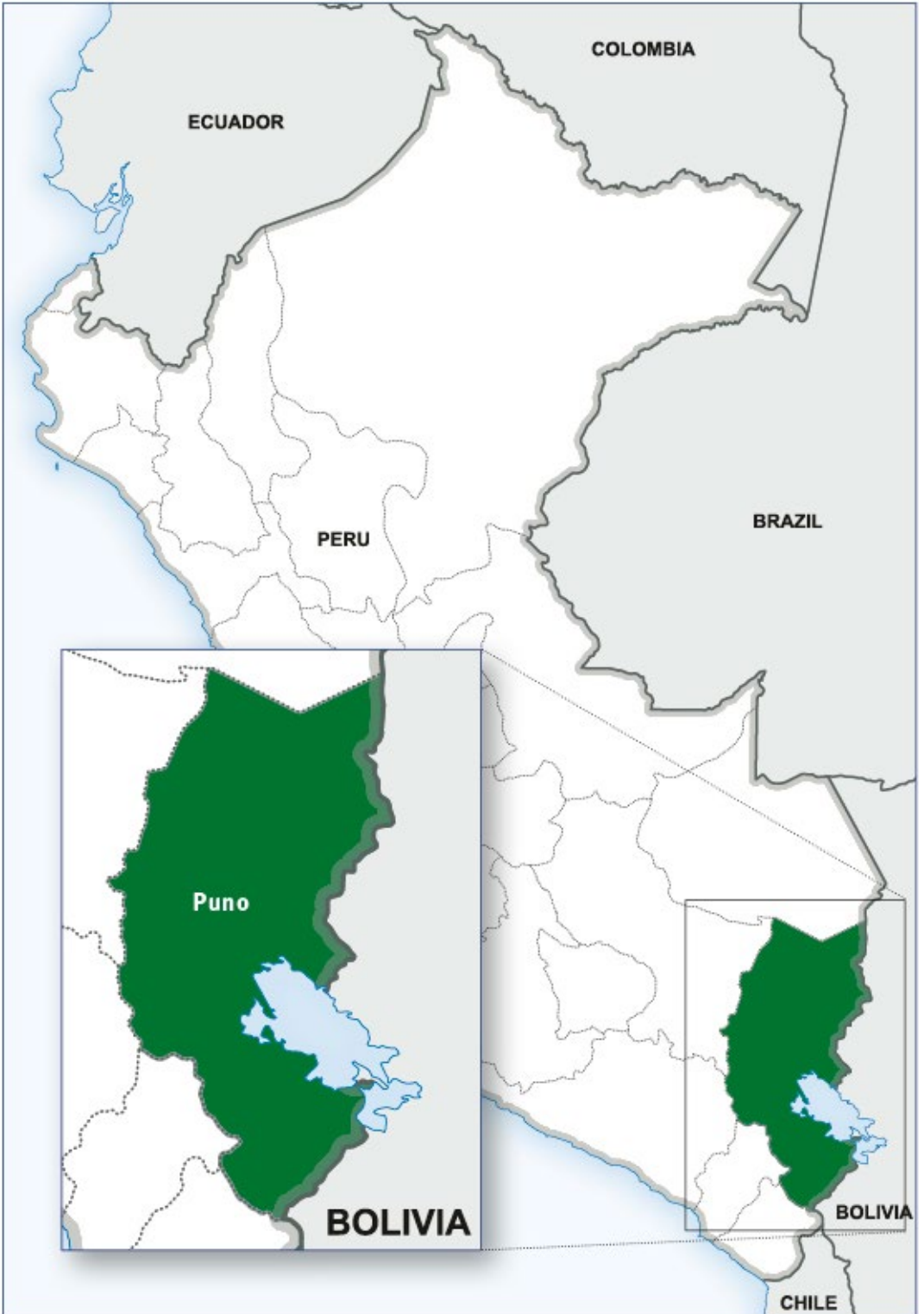


the trial was how the principal witnesses changed their positions. Moreover, the Peruvian police force and judiciary have been proved grossly incapable of handling such a complex case. The people of Ucayali have experienced six years of political uncertainty, and its governance has been severely affected by the ineffectiveness of the institutions involved. If an important province such as Coronel Portillo was apparently run by drug traffickers, it would take a long time to root out the mafias in other, less important, locations.

Although investigations into money laundering are lengthy, and those involving drug trafficking are notoriously difficult, it is clear that the handling of the cases by the police was flawed, given that the only report on drug trafficking was obtained thanks to the actions of the customs authority, which in turn made it possible to launch an investigation into money laundering. Although interviews were not conducted with the police to examine their problems and limitations, interviews were carried out with the judiciary and the public prosecutor's office, and the information set out above provides some idea.

The public prosecutor's office requires more experts to strengthen it and increase the effectiveness of its investigations into money laundering. The judiciary has increased its capacity to investigate money laundering cases by recruiting ten highly qualified experts. Finally, there are few studies of the relationships between politics and organized crime in the departments of eastern Peru. There is unofficial information on mayors or other authorities linked to drug trafficking, but no reliable information has been obtained on the ground.

Figure 6.6 Department of Puno, Peru



## 6.4 Case study of the department of Puno

*Catalina Uribe Burcher*

This case study explains the conditions under which relationships have been established between political actors and criminal networks in the department of Puno. It examines the nature of these links and what facilitates them, as well as the effects of state action on curtailing them. The case study begins with a general description of the political and social context in Puno and then analyses the specific features of organized crime there, examining the possible links between political figures and the actors involved in illegal business activities such as smuggling, illegal and informal mining, and drug trafficking. It concludes by considering some of the state's attempts to address organized crime in Puno, and thus indirectly to tackle the relationships between organized crime and politics.

This study goes beyond providing a factual reconstruction of specific events in an attempt to recreate the context and prevailing conditions. It draws on books, academic journals, and the local and national press, as well as interviews conducted in Lima and Puno in 2012 with individuals from the public administration, social leaders, academics, journalists, politicians and actors involved in state oversight. For security reasons, their details are not provided.

### 6.4.1 Puno: the social and political context

Puno is a hugely diverse region located on the border with Bolivia, and close to the borders with Brazil and Chile. It includes many ethnicities, such as Aymaran, Quechuan and Uruan. While trade has always been the region's most important economic activity, by the 1960s and 1970s agriculture and livestock breeding also played a major role (Rénique 2004).

Puno is characterized by a range of social factors that creates a complex backdrop to any type of social or political intervention. First, it is one of Peru's poorest regions, with high levels of infant mortality and illiteracy (INEI 2011a–d; Quispe 2013). Second, some groups in this ethnically diverse region have experienced exclusion, as well as internal and external divisions. Third, Puno's level of crime is generally high (Costa and Romero 2011: 42, 63), particularly in the cities of Puno and Juliaca (Inquilla 2013b), despite the low level of physical violence (National Criminal Policy Council 2013). It should be stressed that the number of victims of crime fell between 2011 and 2012 in the country in general, and in the department of Puno in particular (National Criminal Policy Council 2013: 3–4). Puno is also one of the regions with the highest levels of social conflict in the country (Valdivia 2012). Finally, Puno has the second-worst record for meeting its public spending targets in the country, in spite of the significant level of social need among its population (Peruvian Ministry of Economics and Finance 2004–13; *Pachamamaradio* 2012; K. Sánchez 2012; Quispe 2013).

Politically, Puno has traditionally been known for its level of organization and the strong presence of the left. Several Puno experts interviewed anonymously for this study explained how this was strengthened by the land reform of the 1970s, when social conflict over control of the land began. The growing population meant the small plots of land awarded under the reform were not sufficient to

satisfy the needs of the people. Internal armed conflict in the 1980s displaced many people, which exacerbated social conflicts.

The role of civil society organizations in Puno has clearly diminished in recent years. Several of the people interviewed in Puno suggested that although there is still a high level of social mobilization there, growing fragmentation has meant that many of the social organizations involved with issues of political oversight—which made important calls for greater transparency in the region's formal institutions—have disappeared. However, the disappearance of the groups has been accompanied by the emergence of other collective organizations that focus their efforts on areas such as mining.

The political parties have echoed this trend. The department currently has 14 political parties and nine movements registered (Infogob 2013a), and APRA and Acción Popular, parties that previously had a strong presence, have been gradually losing ground. Individual interests are now more frequently represented by individual politicians than by strong political parties, mirroring the trend witnessed throughout the country. For example, although Puno's most recent elections were contested by ten parties and 12 political movements (Infogob 2013c), the main players were political movements such as the Regional Democratic Party, the political project AQUÍ, the political movement *Raíces* and the Social Affirmation Movement (Infogob 2013b).

The weakening of political parties is also reflected in the changing pattern of relations between them and political movements. Several of the experts interviewed for this study pointed out that whereas political movements in the department used to seek alliances with parties prior to an election to bolster their capacity to compete, the parties are now so weak that the situation is reversed (anonymous interviews, Lima and Puno 2012). It is also important to highlight the high degree of fragmentation and the low turnout in the recent elections in Puno (Infogob 2012: 92, 98).

Another symptom of the weakening grip of political parties in the region is the unprecedented increase in the number of candidates (Infogob 2013d), due to a lack of internal party cohesion. Several of the people interviewed also mentioned the lack of state funding, which means that parties are unable to organize themselves or act effectively outside of electoral periods. It is common for parties to be formed before an election and disappear immediately afterwards (anonymous interviews, Lima and Puno 2012). This phenomenon is increasing as a result of the public's lack of faith in political parties and the widespread perception that the parties are corrupt. This lack of support for parties creates huge opposition to state funding for these groups, which means that the parties lack the resources to sustain their activities without depending on private donations. Public funding should certainly be subject to rigorous controls, and while it is not the only means of sustaining parties, it is vital for ensuring that different sectors of society have the chance to participate in democracy (Austin and Tjernström 2003: 8). Several of the experts interviewed for this study also expressed concern about the growing influx of funding from illegal activities for political campaigns in Puno (anonymous interviews, Puno 2012).

For many years Puno has suffered from an almost systemic absence of the central government. Thus, there is a general notion of 'us', the people of Puno living on the periphery and forced to live off their wits, and 'them', the people in

Lima and the rest of the country, at the centre of events but with no interest in the region's development (anonymous interviews, Lima and Puno 2012).

This situation worsened as a result of the weaknesses left in the wake of Shining Path and the Fujimori administration, heightening scepticism about the presence of the state and participation in political life. It was further exacerbated by the weakness of regional institutions in Puno. The department has one of the worst organized security committees. There is not even a strategic plan, which this type of public body would usually have. In Peru these committees are responsible for studying the problem of security and insecurity and drawing up specific policies for the safety of citizens in their province or district (Costa and Romero 2011: 153). According to several people interviewed, these factors have served to worsen the corruption that has affected the area for many years, since many politicians have no party to make them accountable for their actions or omissions (anonymous interviews, Puno 2012).

## 6.4.2 Organized crime in Puno

### 6.4.2.1 Smuggling

Smuggling is the dominant activity in Puno's economy, overshadowing legal activities such as agriculture and livestock rearing. Many people have suggested that almost all the population is directly or indirectly involved in smuggling. While there are no official figures, several of the experts interviewed agree that more than 60 per cent of Puno's population lives off informal trade with Bolivia, and that approximately 80 per cent of traders in Puno operate illegally (anonymous interviews, Lima and Puno 2012).

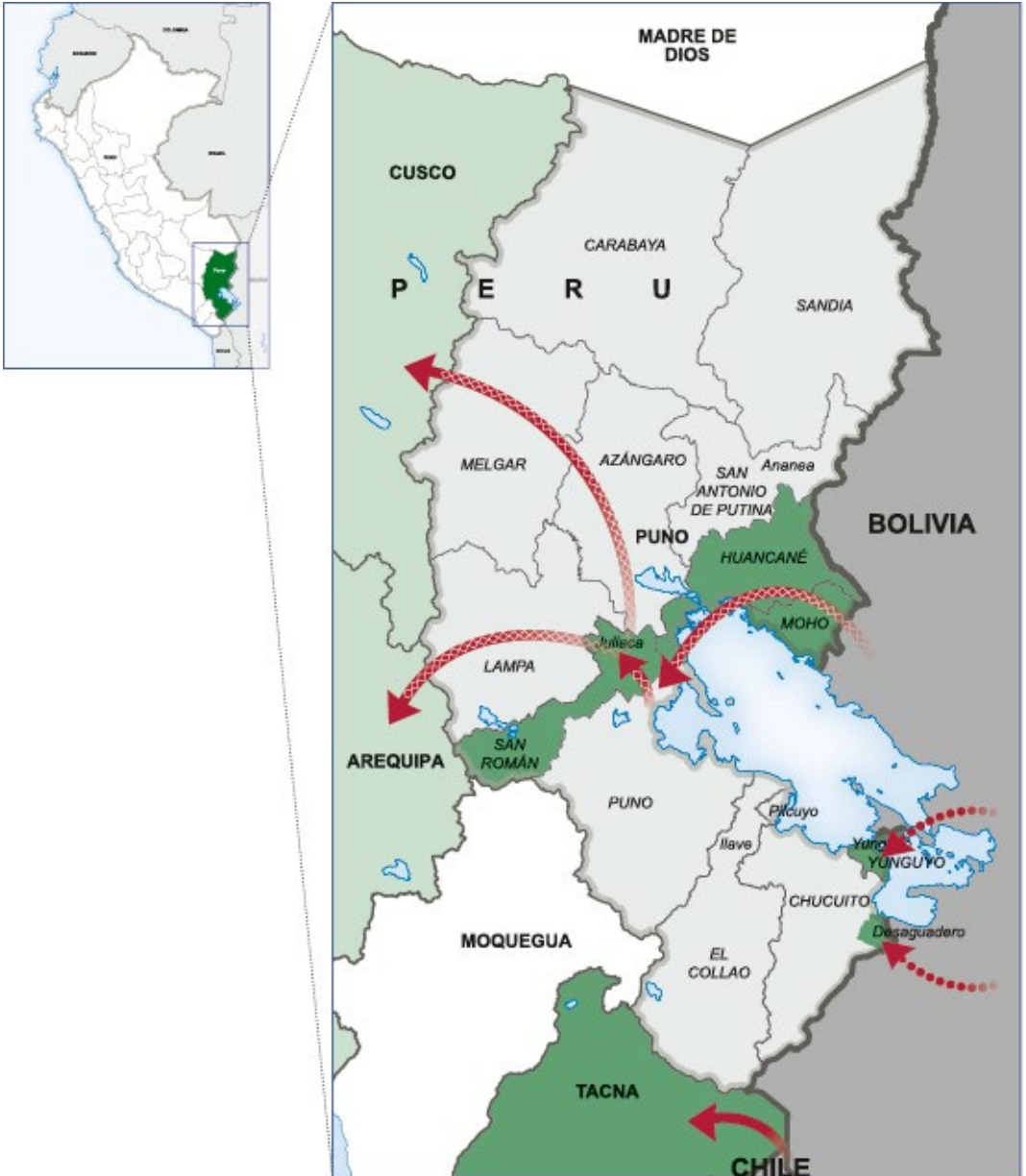
Traditionally, there has always been a significant volume of trade in goods between Peru and Bolivia through Puno, in the light of its strategic location, the close ties between communities on both sides of the border—many of whom are of Aymara origin—and the significantly cheaper prices of products such as televisions, household appliances, clothing and spirits in Bolivia compared to Peru (Calsín 2007: 12–13; Romo 2011). Some of the experts interviewed explained how the difference in prices is linked to fluctuations in purchasing power between Bolivia and Peru, and the fact that Peruvians trading in contraband do not pay taxes.

In Puno, there are two types of smuggling: *hormiga* (ant), on a small scale; and *culebra* (snake), on a larger scale. The former involves the informal and independent transport of small consignments of goods by a person or family as part of a system with no central organization (anonymous interviews, Puno 2012). Experts from Puno and public sector employees interviewed for this study described how the trade in ant smuggling has taken place across the border for many years, with reports in the 1980s of goods arriving from Bolivia through the districts of Yunguyo and Desaguadero (see Figure 6.7).

The same experts and authorities explained how snake smuggling first appeared in the north in the 1990s, particularly on the route connecting Bolivia to the province of Moho (district of Tilali), then in the province of Huancané and, finally, in the province of San Román (district of Juliaca) (see Figure 6.7). This illegal organization was known as the *culebra norte* (snake of the north) and is generally associated with organized crime, since it functions as a complex network that coordinates the transport of goods from abroad over Puno's porous borders

## Figure 6.7 Smuggling routes between Bolivia, Chile and Peru

### Smuggling in Puno



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(anonymous interviews, Puno 2012; Rodríguez 2007: 6). The network uses a convoy of around 40 trucks, also known as *lagartos* (lizards), for each crossing (Reynoso 2007: 8–9).

Officers in the armed forces and police interviewed for this study have described the operation of the 'snake of the north' network, which is composed of 20–25 people, each with their own activities and quasi-independent roles. Within

the organization, some of the most important activities involve logistics, the technology required to coordinate the operation as a whole and the handling of corrupt practices, as well as communications and community relations. The snake also uses armoured cars in front and behind, to counter any attempt to detain the convoy. There is rarely any need for violence, since the organization takes advantage of corrupt public officials to avoid any intervention from the armed forces or police. There is also believed to be some degree of coordination with the police in the province of Moho (anonymous interviews, Puno 2012).

The public officials interviewed described alleged payments by this network of USD 17,600–35,300 per convoy, depending on the cargo. This money penetrates to the highest ranks of the police force and the customs authority, even reaching as far as the public prosecutor's office, which ensures that the network is informed by the authorities when police operations are due or when 'facade' operations are expected. Facade operations are activities carried out by the armed forces and police that appear normal but take place when the snake is known to be inactive. According to the interviewees, the incoming goods generally arrive in Juliaca, from where they are sold directly or continue their journey to other departments in Peru, such as Arequipa, Cuzco and Lima (see Figure 6.7), for distribution—often concealed in tanker vessels carrying fuel and gas (anonymous interviews, Lima and Puno 2012).

The interviewees also mentioned the possible existence of another snake in the south from Tacna, on the border with Bolivia and Chile, a legal entry point for many used cars (see Figure 6.7). The entry of goods through Tacna is different, since it is a free zone for products coming from abroad. Anyone wishing to export goods must declare them, however, and when this does not happen, smuggling occurs. Although this snake supposedly functions in a similar manner to the one in the north, it is said to be less organized (anonymous interviews, Puno 2012).

Smuggling has a degree of social acceptability in Puno, and many people believe the region benefits from the activity as it gives its inhabitants access to cheaper goods (*Asociación SER* 2007a: 3). Several of the interviewees from Puno also reported that many people in the region complain about a degree of isolation from the central government, to the extent that they do not feel a duty to reciprocate by paying taxes (anonymous interviews, Puno 2012).

Experts have pointed out that actors who operate in conjunction with customs officers, the army, the police as well as other public bodies have a significant financial interest in smuggling. For example, *la bolsa* (the bag), a cash contribution allegedly collected from all of the trucks in the convoy, is used to bribe police along the route. A large proportion of the money used to fund electoral campaigns in the region allegedly comes from this activity. Smuggling is such a common occurrence in Puno that many people are not aware that the money comes from illegal activities (anonymous interviews, Lima and Puno 2012).

The interviewees also highlighted the fact that major political figures in the region are believed to have direct financial interests in smuggling. For example, Emiliano Apaza, a congressman from Puno, was suspended for 120 days in September 2012 and was reported to the Subcommittee on Constitutional Charges when it was discovered that he had received a four-year prison term for smuggling in 2010 (*El Comercio* 2012; Ccopari 2012a). The smuggling case linked Apaza to an attempt to 'launder' or legalize a truck loaded with



contraband that had entered the country from Bolivia (L. Fernández 2012). In June 2013 the subcommittee declared the charges inadmissible on the grounds that the smuggling operation for which Apaza had been convicted occurred before his election to Congress (*Peru 21* 2013).

Such decisions create huge obstacles for those attempting to put a stop to smuggling in Puno. Several of the people interviewed for this study explained that it has proved difficult to control smuggling, particularly in the city of Juliaca, due to the large number of traders in the area, the lack of army and police officers, and their apparent readiness to accept payments (anonymous interviews, Puno 2012). Although there are no in-depth studies on this issue, some of the experts interviewed in Puno have suggested that the only example of relative success in combating smuggling has been in household appliances, through the construction of shopping centres that sell products, pay taxes and have managed to compete on price with contraband items, thereby removing some of the demand.

#### 6.4.2.2 Illegal and informal mining

Illegal and informal mining is growing throughout the country, particularly in Puno, where it has increased gradually over the past 10 years (Hualpa 2012b). A key factor in this increase is the failure to grant mining permits in many areas that are suitable for mining, particularly alluvial gold mining. Together with the increase in gold prices since 2010 (*La Patria* 2010) and the precarious conditions for livestock breeding in the area, this has prompted many people to work in informal and illegal mining.

The difference between informal and illegal mining is the existence of the permit required to start a mining business. Exploration can only begin once a permit has been granted. If there is no formal agreement to back the mining activity, it is regarded as illegal, whereas informal mining occurs when there is a letter of undertaking in which the miner accepts, among other things, to comply with and implement the relevant environmental measures to prevent, control, mitigate or remedy the impact of their activities. The miner also agrees to meet the requirements for granting a permit to commence or recommence operations and to undergo inspections to monitor compliance with mining legislation (Ministry of Economy and Finance of Peru 2013).

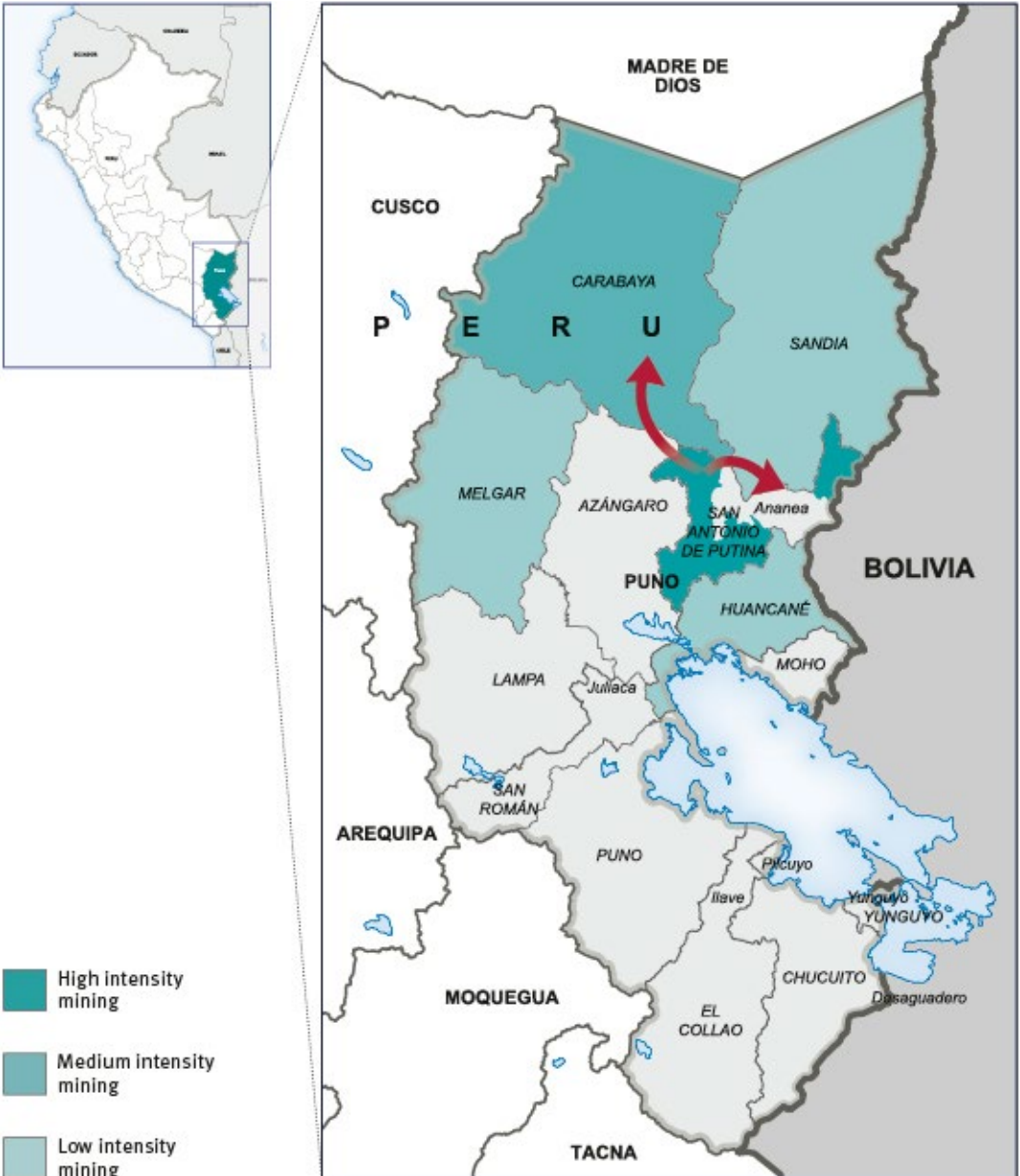
According to the interviews conducted for this study, informal mining is more common in Puno than illegal mining, since many areas have permits and agreements for exploration and mining, but many miners have yet to complete the registration process and—in the majority of cases—are only working with a letter of undertaking (anonymous interviews, Lima and Puno 2012) in accordance with Legislative Decree no. 1105 of 2012. Informal mining is particularly common in places where there is almost no government presence and a severe lack of basic social services such as education, health care, water and sewage systems, as well as a poor police presence, among other factors. These problems are particularly pronounced in the provinces of Huancane (district of Cojata in the Suches river basin), Sandia (district of Limbani in the Chaquiminas area), Melgar (district of Umachiri in the Ancocala area) and San Antonio de Putina (district of Ananea in the Pampa Blanca area), as shown in Figure 6.8. Although there are no studies to corroborate the volumes extracted, several of the experts interviewed estimate that the highest concentration of



informal mining is in San Antonio de Putina. Due to increasing state control, it is believed that a proportion of the illegal mining activity has started to move from the province of San Antonio de Putina to the Rinconada area (district of Ananea) and the province of Carabaya (anonymous interviews, Puno 2012).

Several experts have suggested that illegal networks involved in informal or illegal mineral extraction have started to arise throughout the country, but particularly in Puno. While not everyone involved in illegal or informal mining is part of an illegal

**Figure 6.8 Informal mining in the Department of Puno**



group, according to several of the people interviewed, there are clear signs that there are networks with a degree of coordination that qualifies them as networks of organized crime (anonymous interviews, Lima and Puno 2012).

Many such networks are alleged to have access to sophisticated machinery, and some even have mining permits in the area in which they operate and sell large quantities of gold. The so-called mining barons, however, are not directly involved in gold mining but instead are alleged to hire out machinery to miners and mediate conflicts between them. It is believed that large quantities of gold enter the legal market in Lima, and are added to the rest of the country's production, leaving no way to trace its origins (anonymous interview, Lima 2012).

The main consequence of illegal mining in Puno is the increase in construction and infrastructure, although this has also been accompanied by a clear increase in child labour and the sexual exploitation of women and girls, not to mention that the interests of the illegal groups are infiltrating political life in the department (anonymous interviews, Puno 2012).

Construction and infrastructure have increased thanks to the massive influx of money from mining in places such as Juliaca. However, this development has not addressed the social needs in the area but has instead served to heighten inequality. People involved in mining have seen their wealth grow exponentially, putting their standard of living beyond the reach of the indigenous population (anonymous interviews, Puno 2012).

According to the interviewed sources, in places where gold is mined it is common for young boys to be forced to work in the mines, and women and girls to be forced into providing sexual services (Costa and Romero 2011: 73). Women and girls are brought in from Bolivia or other parts of Peru, such as Cuzco and Arequipa, as well as from other regions within Puno itself, with promises of work as maids. Their identification documents are then confiscated, they are threatened with having to make various payments to cover their food and housing at the mining camp, and forced to provide sexual services to the workers. This has become a quasi-independent criminal network within the network of illegal and informal mining (anonymous interviews, Lima and Puno 2012).

Another of the challenges posed by illegal mining in Puno, as in the rest of the country, is the political interests associated with this activity. Several of the experts interviewed expressed alarm at the influence generated by such interests, including in political institutions such as Congress. While illegal and informal mining in the country, particularly in Puno, has been widely rejected by the population, giving rise to numerous citizen protests (Ombudsman of Peru 2012; Puno Regional Government 2011; Inquilla 2013a; *Asociación SER* 2007b: 2), mine owners—in particular those involved in illegal and informal mining—are allegedly helping to fund political campaigns (anonymous interviews, Lima and Puno 2012).

The leaders of some of the illegal mining networks have gained significant de facto political power in the region (Ccopari 2012c, 2012e), obtaining special privileges such as the construction of infrastructure to favour their operations and recognition of their production. Some have even managed to demand more state infrastructure by means of negotiation or protest. Furthermore, many have succeeded in entering the political arena to occupy positions such as mayor. Finally, the majority of employees at the Regional Department of Mining have trading links with informal mining (anonymous interviews, Puno 2012).

Some of the experts interviewed (Puno 2012) offered explanations for why mining has come to be more heavily represented in politics in Puno than activities such as smuggling. The following theories are particularly noteworthy:

1. Smuggling in Puno is so widespread that there are no strong, consolidated leaders able to represent the interests of traders coherently, but mine owners can effectively represent the interests of those in their industry.
2. Smuggling is regulated at the national level, unlike mining which is partly controlled at the regional level, at least for non-industrial and small-scale operations, which makes it harder to control local political interests related to smuggling than those related to mining.
3. In mining camps, almost everyone living in the area is involved—directly or indirectly—in mining, which makes it easier to achieve some degree of political and social organization among the people in these areas.
4. Since mining is less socially acceptable than smuggling, people with significant economic interests in this activity need to use political forums to defend their interests, which does not hold true to the same extent with smuggling.

One politician from Puno who is believed to have links to informal mining is Congressman Francisco Ccama, who is also the former chairman of the Centre for Mining Cooperatives in San Antonio de Poto in Puno (Ccama 2011). Ccama is alleged to have amassed large sums of money through the Centre, allowing him, among other things, to pay for his inclusion on the electoral list of the party for which he would later win his seat (anonymous interviews, Puno 2012; Ccopari 2012a). He had previously been accused of polluting the Ramis River as a result of gold mining in the Ananea area, although the investigation did not result in a conviction (*Peru.com* 2011). Once in Congress, Ccama became a member of the Energy and Mining Commission (Ccama 2011). Some of the experts interviewed for this study have highlighted how Ccama's term in office has been characterized by a lack of legislative initiatives relating to mining, which they believe can be explained by his interest in preventing the effective regulation of the industry. Similarly, much of his time in office has been spent exercising political control over infrastructure construction projects in Puno (Ccama 2012), many of which have involved key projects for the informal mining industry.

Another example is Tomás Cenzano, who was elected to Congress in 2006 and is believed to have economic interests in mining businesses in Puno. In particular, he has worked for Minera INTI S.A., Minero Metalúrgico Andino and Minería Elactiplano S.A. (Cenzano 2006), and is also believed to have owned a company that was stockpiling gold. Susana Vilca, formerly a member of Congress and mining minister, who is currently serving as director of the Institute of Geology, Mining and Metallurgy in Peru's Ministry of Mines, is also believed to have held various mining permits in Puno (Ccopari 2011). Although these individuals are not official spokespersons for mine owners, several interviewees believe that their appointment received strong backing from the owners (anonymous interviews, Puno 2012). It is also worth noting that in spite of these politicians' personal interests in mining, when they entered politics or were appointed to public positions related to mining, none of them declared a conflict of interest.

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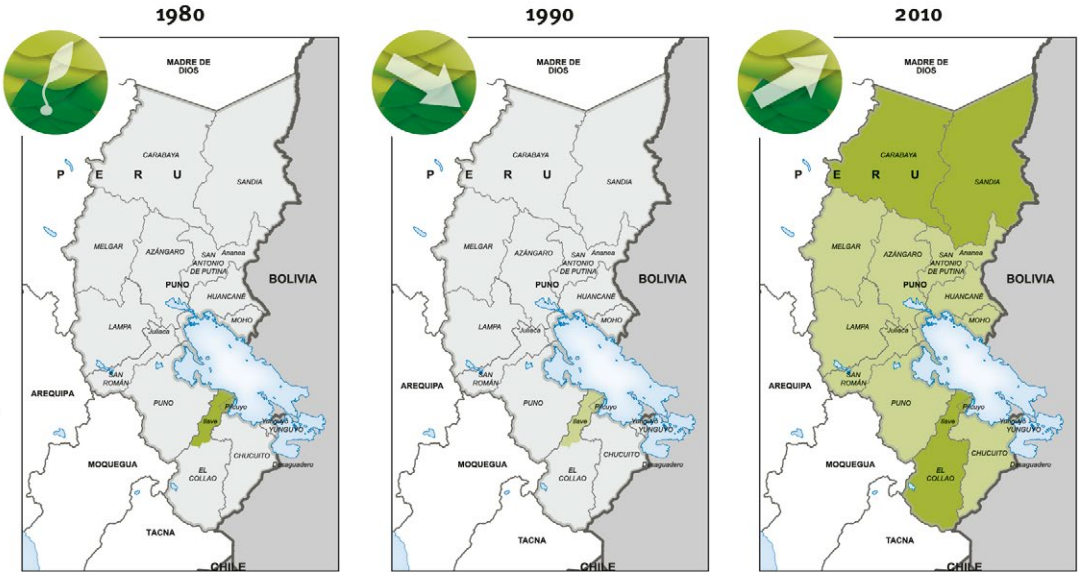
### 6.4.2.3 Drug trafficking

While drug trafficking does not yet equal the scale or impact of other illegal activities in Puno, such as mining and smuggling, in the past five years the production of drugs—coca leaf and cocaine in particular—has grown considerably in what appears to be an ongoing trend (Antezana 2011b; UNODC 2012a: 38–40). As several of the experts pointed out, the 1980s saw a boom in drug production in the department of Puno, especially in the province of Collao and the districts of Pilcuyo and Ilave. Production subsequently fell, partly as a result of state intervention at the time, which served to isolate activities (anonymous interviews, Lima 2012). However, since 2010 there has been a sharp increase in the cultivation of coca leaf and the production of cocaine base paste in Puno, and a 15-fold increase in the past seven years (Ccopari 2012d; *La República* 2012). According to several of the experts interviewed for this study, the problem is particularly pronounced in the north of the region in the provinces of Sandia (district of Alto Inambari), Carabaya (district of San Gabán) and El Collao (district of Ilave), all of which are desert regions with limited government presence (see Figure 6.9), although there are also some drug processing facilities in the district of Ilave. It should, however, be emphasized that some of the coca leaf production in Sandia is legal; the leaf is purchased by the National Coca Company (*Empresa Nacional de Coca*) (anonymous interviews, Lima 2012).

As several of the experts interviewed for this study explained, this increase can be partly attributed to the strict controls imposed in Colombia and other parts of Peru where drug trafficking is rife, which causes the displacement of trade to the areas in question, especially the Apurímac, Ene and Mantaro River Valley. In addition to the increase in production, there has also been an increase in the presence of organized criminal groups associated with the trade. Sources mentioned the presence of Colombian, Mexican and some Ayacuchano drug traffickers in the river valley area, meaning that Puno is now believed to provide a channel for transporting drugs with the involvement of local authorities (anonymous interviews, Lima 2012). Illegal drugs are transported from Puno to other parts of Peru, such as Ayacucho, as well as Brazil, Bolivia and, to a lesser extent, Chile (anonymous interviews, Puno 2012). Its strategic location and infrastructure have allowed this and other illegal and informal activities to flourish (Soberón 2012). Clandestine runways for transporting drugs by air have been discovered in the area, including one in Sandia. According to recent news reports, several police officers have been arrested, presumably while providing security and escorting consignments of cocaine from the river valley to Bolivia (Guerrero 2012).

The links between drug trafficking and the state in Puno are complex, and are not limited to the financial gains enjoyed by the police as a result of this business. Several sources have stated that the situation has not changed since Fujimori left power, and that the state has maintained direct ties to drug trafficking organizations. For example, it is believed that drug trafficking in Ilave has contributed significant financial resources to provincial political campaigns. In San Gabán (province of Carabaya), certain mayors and governors who held office in 2005–06 are suspected of having run coca plantations in that area and of using the proceeds to fund their entry into politics (anonymous interviews, Puno 2012).

**Figure 6.9 Cocaine production in the department of Puno, and drug trafficking to the Ayacucho area, Bolivia, Brazil and Chile**



Coca leaf production in the Callao province (Ilave and Pílcuyo districts)

Decrease in Coca leaf production

Increase in coca leaf and cocaine production, particularly in the provinces of Sandia, Carabaya and Callao



Drug trafficking from Puno to the Ayacucho zone, as well as to Brazil, Bolivia and Chile

### 6.4.3 State efforts to combat organized crime

The Peruvian state has attempted to implement measures to prevent, mitigate and punish activities linked to organized crime in the region. In particular, it has rushed through a number of regulations and Legislative Decrees to this end, focused specifically on controlling the pollution caused by the use of heavy

machinery in illegal mining, moving large quantities of earth and using mercury and other contaminating compounds (see Table 6.1).

A regulatory framework has also been created with a view to using letters of undertaking to trace the provenance of gold when it is sold. The government has also established a 60-day grace period for mine owners who sign a letter of undertaking, in accordance with the relevant decrees and as part of efforts to regularize their operations, allowing mining operations to continue while their permit is being processed.

**Table 6.1. Regulatory framework for illegal mining in Peru**



### Legislative Decrees of 2012

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<p><b>Nº 1099</b> Approves action to prohibit illegal mining in the department of Puno and environmental restoration in the Ramis and Suches river basins.</p>	<p><b>Nº 1100</b> Regulates the ban on illegal mining throughout the country and establishes ancillary measures.</p>	<p><b>Nº 1101</b> Establishes measures to strengthen environmental inspections as a mechanism to combat illegal mining.</p>
<p><b>Nº 1102</b> Introduces crimes related to illegal mining in the Penal Code.</p>	<p><b>Nº 1103</b> Establishes mechanisms for controlling and supervising the distribution, transportation and marketing of chemical supplies that might be used in illegal mining.</p>	<p><b>Nº 1104</b> Amends the legislation on loss of control.</p>
<p><b>Nº 1105</b> Establishes provisions for the process of registering and obtaining permits for small-scale and non-industrial mining activities.</p>	<p><b>Nº 1106</b> Relates to the effective combating of money laundering and other crimes related to illegal mining and organized crime.</p>	<p><b>Nº 1107</b> Establishes mechanisms for controlling and supervising the distribution, transportation and marketing of machinery and equipment that can be used in illegal mining, as well as mined products obtained through that activity.</p>

**SOURCE:** adapted from ROP 2012a–i.

One of the most important initiatives related to illegal and informal mining has been the process of registering and granting permits, which began in 2012. Although it has been a slow (Ccopari 2012b) and confusing process (Inquilla 2013c; *Asociación SER* 2012: 5), so far the response appears to have been relatively positive, despite protests by mine owners against the expedited decrees (Hualpa 2012a). One consequence of implementing the decrees has been a fall in the sale of gold within the country as a result of the requirement

to produce a letter of undertaking, although gold is being sold in other countries to mitigate this decline, reflecting the lack of suitable legislation related to transporting gold by air to support legislation controlling how it is sold (anonymous interviews, Lima and Puno 2012). Nonetheless, it is still too early to produce an in-depth assessment of the results of the initiatives.

Although many people have suggested that the large companies engaged in legal mining have the greatest interest in promoting the prohibition and criminalization of informal mining in order to maintain their control over mineral deposits, there is some speculation that the larger legal mining companies also have an interest in hindering the regulation of informal and illegal mining in the country in order to prevent changes to the current system of mining permits (anonymous interviews, Lima and Puno 2012). The current regulatory framework appears to be insufficient, since the regulation and control of mining is largely the responsibility of central government, and regional governments are poorly equipped to handle the problem. Local governments only have the power to intervene in what is classified as small-scale and non-industrial mining, using powers that were only granted in 2005 and 2006. Furthermore, in spite of these new powers, several public officials stated during the interviews that regional governments have not received the corresponding technical training or the support of qualified personnel to enable them to control these activities directly. Greater collaboration between the regional and national levels would help the regions shape national legislation to suit their own circumstances and needs (anonymous interviews, Puno 2012).

There are examples of government intervention in smuggling that has facilitated the registration and regularization of the activity. In the district of Puno, the registration of traders has been promoted by streamlining the administrative process (anonymous interviews, Lima 2012). Some of the politicians and social leaders interviewed also suggested that comprehensive intervention in this area should be accompanied by incentives such as access to loans and special funds to encourage traders to join the formal economy.

State action against drug production and trafficking has been in line with similar measures taken throughout the country and in the region. It has been characterized by strong-arm military tactics that fail to address the underlying social and political factors, particularly in the areas of Puno where drug production and trafficking are concentrated. Puno has a weak state presence and its political elite directly benefits from such illegal activity (anonymous interviews, Lima and Puno 2012). Moreover, the sole outcome of these strategies has been to shift the production and trafficking elsewhere, a phenomenon that is clearly reflected in the current displacement from Apurímac, Ene and the Mantaro River Valley to Puno.

#### **6.4.4 Conclusion**

The situation in Puno reflects the broader changes to the political and security landscape that have swept through the country in recent years. The ideological erosion of political parties and the political system as a whole has increased public scepticism about the role of the state. In Puno in particular, the central government is perceived as a distant entity that has failed to satisfy people's basic needs. The erosion of traditional parties has also fuelled the rise of autocratic political leaders.



Furthermore, organized crime has adapted to the current needs of the market, forming a dispersed network that allows it to survive state intervention. Combating organized crime, already a difficult task, is made all the more problematic in Puno due to the specific nature of the relationship between the state and criminal networks, and the social structures in the region which are dominated by informal trade and production. The region's political life is riddled with structures that conspire to allow illegal activities such as smuggling, mining and drug trafficking to flourish. The proceeds from illegal activities are used, among other things, to fund political campaigns. However, the problem is even more acute because many of these illicit activities, particularly smuggling, and the cash they generate have a high degree of social acceptability. The interests of certain politicians in such illegal activities mean that the influence of criminality on politics is both exogenous and endogenous.

To tackle organized crime effectively and restore the legitimacy of the state in this area, greater coordination is needed between national and regional governments. The current lack of coordination and cooperation between these two spheres is clearly one of the major problems hampering efforts to control illegal activities.



**Figure 7.1 Ecuador**



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## 7 Ecuador

Ecuador's recent history of democracy has been marked by serious instability. Three uninterrupted terms of democratic government followed the country's return to democracy in 1979. Political instability crept in during the fourth government, under President Abdalá Bucaram, and then became the norm. The country had ten different presidents over a nine-year period (Menéndez-Carrión 1990; Andrade 1999; León 2004). In the wake of this political fragility, some saw the popular election of Rafael Correa—who has remained in power since 2006—as providing the institutional stability which Ecuador needed (Acosta 2008).

However, this legacy of political instability continues to have serious repercussions for the capabilities of Ecuador's state institutions. Obviously, strengthening a country's state structures takes time. However, in the midst of these efforts, by virtue of their immaturity, state institutions are vulnerable to the influence of organized crime networks (US Department of State 2010; Garzón Real 2012: 31). This has created a vicious circle, since the institutions lack the strength required to confront transnational crime, and their precarious nature enables illicit actors to infiltrate them, thus continuing to weaken the institutions and making more room for illicit actors to exercise their influence.

State institutions are particularly vulnerable when they face new challenges, such as transnational organized crime at borders and ports. In this respect, Ecuador faces two additional challenges: its borders with Peru and Colombia, as both

countries have a long history of organized crime; and the policy of 'freedom of movement', which became a constitutional principle under the government of President Correa.

Illicit networks have accrued so much power that in certain cases they have been able to manipulate the public sector to suit their own ends. In Esmeraldas, for example, the 'Resurgir' case established alleged links between organized crime and a police commander (*El Telégrafo* 2012). This phenomenon is even more evident in strategic regions such as Manabí, Esmeraldas, Sucumbíos and Guayas, which have important harbours, border crossings and mining areas. Relations between the public sector and organized crime have developed from the bottom up, initially stemming from local powers which are generally more difficult to control and are less susceptible to scrutiny by supervisory bodies, the judiciary and the media.

The state's response to the spreading tentacles of illicit networks has often been marked by a lack of vision. Posturing by players such as the media and civil society has not helped. Instead, it has curtailed the state's capacity for supervision and control. The Communication Law of 2013 hampered the freedom of expression of journalists and the media in providing sustained coverage of corruption cases. Amid complaints about a potential reduction in public confidence and the threat of discrediting certain individuals, penalties were established for anyone making allegations against the state or its employees prior to a

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conclusive court ruling (OAS 2013e). In a situation in which illicit networks are being offered support from individuals within state institutions, this is a dangerous policy.

In addition, the strategies aimed at combating these illicit networks are mostly military in nature (ICG 2008a: 31), and do not take account of the limitations of such actions or the capabilities of the armed forces. Moreover, there seems to be no clear idea of precisely which 'enemies' these military resources should target, especially since the actors involved in organized crime have not been mapped out in any institutional study. For example, a recognition of the existence of organizations as networks rather than cohesive groups would require a change in tactics and a rethink of the functions of the military and the police (Natanson 2010).

Illicit networks such as the Mexican and Colombian drug cartels have clear interests in Ecuador (Pachico 2012b; Fox 2012; Farah and Simpson 2010). The manner in which these actors operate in Ecuador has changed over time. Whereas in the past these networks sought to establish a consolidated presence in the country, they are now looking to build ever-closer ties to national intermediaries that are operating independently. It is therefore more accurate to refer to these support contacts as networks rather than groups, since the dynamic more closely resembles a chain of different trading links than a cohesive structure. One example is the existence of a consolidated money laundering network in Ecuador—a key activity of international organized crime, which takes advantage of the country's institutional weaknesses (FATF 2013b).

In Ecuador, the principal activities related to organized crime are drug trafficking, contract killings and money laundering. Drugs produced in Colombia and Peru are trafficked through Ecuador, and a market has developed in contraband chemical raw materials used for processing drugs (Kraul 2011). The country has also become increasingly involved in the production of drugs, albeit still on a small scale (*El Universo* 2012b; ICG 2008a: 30; *El Nuevo Diario* 2012). Groups that carry out contract killings as well as other mercenary activities and act as private security services have expanded in recent years, from a relatively local phenomenon to one with national and regional influence. This is in spite of state efforts such as

the adoption of the Law on Private Surveillance and Security of 2003 (OHCHR 2006). According to specialists interviewed for the case studies below, money laundering has experienced a boom thanks to the dollarization of the economy and the large number of remittances. Organized crime in Ecuador is on the increase, pursuing a strategy of adaptation and making inroads into new economic sectors, as has recently been the case with mining.

## 7.1 Review of national legislation

Catalina Perdomo<sup>5</sup>

Ecuador's Constitution of 2008 introduced new independent bodies: the transparency and Social Control Authority and the electoral authority, the National Electoral Council (CNE). The aim was not to establish an exhaustive list of the tasks involved in securing transparency and social control. Instead, the text infers that the social control authority is a technical body tasked with monitoring public spending and defending citizens. It includes the comptroller general, who has overall civil and administrative responsibility for combatting corruption and embezzlement.

New authorities (*superintendencias*) were also set up. These include the public prosecutor's office, which, among other functions, is tasked with fighting organized crime and money laundering. It does this through the National Council for the Control of Narcotic and Psychotropic Substances (*Consejo Nacional de Control de Sustancias Estupefacientes y Psicotrópicas*), which monitors the chemicals used in the production of drugs and administers the assets seized, frozen or confiscated from drug traffickers (CONSEP 2012), and the Financial Analysis Unit (UAF), which is responsible for preventing, detecting and eradicating the crimes of money laundering and funding terrorism (UAF 2012).

The CNE has powers to safeguard the political rights of the people and ensure that citizens are politically organized. Its main functions include organizing elections, controlling electoral funding and spending, overseeing the operation of political parties, protecting the electoral register, and monitoring accountability on electoral issues and activities. Another new constitutional provision reinforces the right of *habeas data*, which guarantees that citizens have access to public information—including

documents, genetic data, databases or archives of personal information, reports and assets—and are able to use such information. The constitution grants greater weight to this right, and is supplemented by the Public Data System, which is open access and brings together information on identity, commercial property and special liens regarding company property.

The new constitution stipulates that it is state policy to provide for the security of citizens, which is defined as a duty to guarantee quality of life by combating delinquency and organized crime. This is the first time that the category of organized crime has been incorporated into Ecuadorian legislation, although it has yet to be established as a type of crime for which a person can be tried—while it is possible to be tried for 'criminal association' and drug trafficking.

### 7.1.1 Combating money laundering

Crimes such as contract killings, kidnapping and assault are common in organized crime, and money laundering is a necessary strategy to help these networks protect their finances, secure their earnings and ensure their survival. Money laundering regulations have been relatively overlooked in Ecuador and the Penal Code does not identify money laundering as a specific crime, and thus in itself it is not punishable. Instead, it has been tied in with criminal association (article 369).

Ecuador adopted the Repression of Asset Laundering Law of 2005 to control money laundering-related capital transfers between countries. The law establishes that criminal association with a view to transferring capital between countries using businesses or companies is illegal. It is also illegal to manage,

<sup>5</sup> With a contribution by Katalina Barreiro.

fund or provide technical assistance to that end. The law also lists the most relevant characteristics that help to identify those involved in money laundering.

Where there is evidence that money laundering has occurred, the UAF must ask the public prosecutor to launch an investigation. Ecuador has no official body that can instigate criminal proceedings for money laundering. Thus, criminal groups pass unnoticed through the regular systems that are in place. It is interesting to note that the law only provides for the monitoring of financial operations in the formal economy. The lack of specific functions to prevent and detect illegal financial operations is a gap that needs to be addressed. Another problem is that the Asset Laundering law describes how the UAF is to be established, but does not specify how it should combat money laundering. Resolution no. JB-2010-1683 by the Banking Authority is much clearer. The law also fails to outline mechanisms for comprehensive financial intelligence to control money laundering, and does not take into account the fact that money laundering is typically carried out at different times and by different actors, some of whom act exclusively outside the financial field, such as networks involved in politics and the electoral process.

GAFISUD (2011: 111) has indicated that the existing legislation is insufficient for determining the source of funds from clients who are deemed to be PEPs in Ecuador. It also refers to the danger of this legal vacuum, given the possibility of laundering money or funding terrorism by abusing a public or political position. It therefore proposes that persons close to PEPs—such as their spouses and relatives up to the fourth degree of kinship and second degree through marriage, or people who work closely with them—should be considered for investigation or monitoring. These suggestions have yet to be incorporated into anti-money laundering regulations.

### 7.1.2 Electoral processes

Ecuador's Electoral Code was adopted as a means of reforming the old Electoral Law. The

CNE is the highest electoral authority. Among other things, it is responsible for monitoring electoral canvassing and spending, and establishing administrative penalties. The Code of Democracy states that all political organizations must appoint a lawyer as their financial director, and that this person should also be responsible for maintaining separate bank accounts for the electoral process and party operating costs.

In terms of electoral costs, the code provides that the budgets of political parties are made up of resources provided by the electoral authority and the private sector. The term 'Political financing' is considered to apply only to political campaigning in the press and on radio, television and billboards. Although a large proportion of election resources is for advertising and campaigning, there are other items that might not be registered, the legality of which is difficult to determine, such as spending related to campaigns in small to medium-sized cities, candidacies promoted abroad, and in particular spending on security, travel and transportation, accommodation for delegations, and other services that are difficult to quantify or are not widely registered.

The law also establishes a maximum amount for electoral spending, and spending on advertising in particular, as well as a minimum amount for some contests. The CNE is responsible for monitoring these amounts, including the sources and destination of funding. It does this in conjunction with the Internal Revenue Service, the comptroller-general and the Electoral Tribunal. Details of electoral expenditure must be made public, and are audited by a chartered accountant.

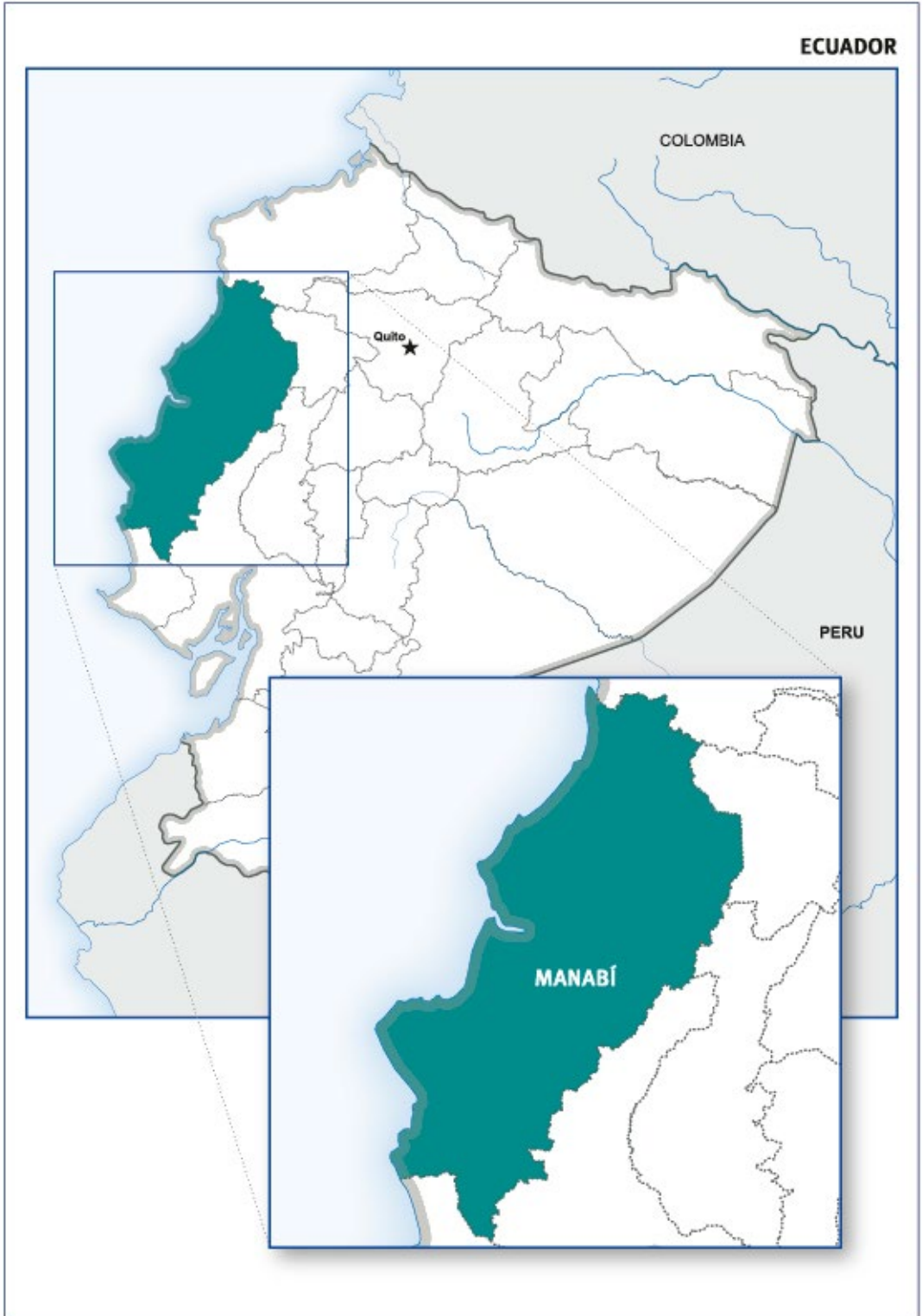
Political organizations are also required to submit annual reports detailing their income and expenditure to the CNE, signed by a chartered accountant. Supporting documentation must be provided to justify each donation. If there is no receipt, the donation is considered null. Anonymous contributions are prohibited, and a maximum amount has been set for contributions to parties by individuals and legal persons.

Immediate special audits are carried out to investigate violations of the Code of Democracy, and the cost is covered by whoever commits the infraction. In the event of excessive electoral spending, the political organization may be fined or suspended, depending on the gravity of the infraction. Political organizations are also penalized if their centre for political training is closed without just cause for 12 months and whenever an investigation into money laundering involving them is conducted at the request of the attorney general.

The code also stipulates a penalty fine equivalent to twice the amount of illegal funding received. Fines are also levied if donations in cash or in kind are not recorded in the report submitted to the electoral authority. Although campaigns have reportedly received funding from money laundering in the past ten years, none of these cases has been proved.

While there seems to be a clear procedure for monitoring the provenance of party funding, money laundering does not usually occur through normal channels. The law expressly bans parties from accepting contributions from illicit sources, but it does not establish any means of checking where funding comes from. There are additional challenges in scrutinizing funding and successive contributions of less than USD 10,000, and in monitoring political headquarters in distant or remote areas.

Figure 7.2 Province of Manabí, Ecuador



## 7.2 Case study on the province of Manabí

*Catalina Uribe Burcher*

This case study explains the conditions under which relations were established between political actors and criminal networks in the province of Manabí. It examines the case of the former governor of Manabí, César Fernández, who was convicted in 2003 for drug trafficking and related activities. The national authorities have acknowledged the presence of actors such as the Colombian and Mexican drug trafficking cartels in Manabí. They operate together in an organized manner, but this does not mean that they are hierarchical or homogeneous groups as in the traditional understanding of organized crime.

The case study explores the nature of these relationships and what is facilitating them, as well as the effectiveness of national and international public policy in curtailing them. It does not attempt to delve deeper into the anecdotal evidence that appeared in the media in relation to the César Fernández case. The study gives a general account of the primary landmarks in Ecuadorian democracy in recent years, and examines the principal characteristics of organized crime in the country, as well as the institutional challenges facing efforts to combat them. It then looks in more detail at organized crime in Manabí, which serves as background for the case against César Fernández.

The research for this case study involved several visits to Quito and Manabí in 2012 to interview different individuals related to the case. For security reasons, it is impossible to refer specifically to those individuals, who include public sector employees, journalists, academics, and members of the police and the armed forces, that were interviewed for this study. Written material from books and academic journals, as well as the local and national press is used to supplement the information from the interviews.

### 7.2.1 Democracy and organized crime in Ecuador

Like other democracies in the region, Ecuador has been affected by transnational organized crime. Although there are no clear estimates of the extent to which illicit networks operate in the country, experts interviewed for this study agree that drug trafficking, arms trafficking and illegal mining, for example, have been growing in recent years, extending their reach from other countries in the region (Pachico 2012b; Fox 2012; Farah and Simpson 2010). However, organized crime has yet to reach the same intensity in Ecuador as seen in Colombia or Mexico (Fuentes 2008).

Some of the experts interviewed suggested that illicit networks in Ecuador have in certain cases acquired enough power to destabilize state institutions, particularly in the defence sector, and that this is instrumental to their political and criminal strategy. There have been more obvious manifestations of this phenomenon in regions such as Manabí, Esmeraldas, Sucumbíos and Guayas, which contain important ports and maritime access as well as border crossings and mining areas. In the 'Resurgir' case in Esmeraldas, for example, ties were suspected between organized crime and ex-Police Commander Galo Carrera (anonymous interviews, Quito 2012; *El Telégrafo* 2012).



Two aspects are particularly important: Ecuador's borders with Peru and Colombia; and the 'free mobility policy' inspired by the Cartagena Agreement of 1969, which has reaped many benefits in terms of human rights, especially with regard to the protection of refugees, but also poses significant security problems (Ramsey 2012). There has been much debate over the state's capacity to control the movement of people and goods across its borders, especially given the difficulties of cooperating and coordinating with the authorities of neighbouring countries (anonymous interviews, Quito 2012). This has helped make Ecuador a strategic point for the transit of goods and people (Rodríguez 2011; ICG 2003: 9), including illegal drugs such as cocaine (UNODC 2013: 24; US State Department 2012: 206). Areas such as Esmeraldas and Sucumbíos, which border Colombia, and Manabí and Guayas, which have important ports and maritime connections, have been widely discussed in relation to the increase in drug trafficking in Ecuador.

The port sector is critical to the attempt to monitor the interests of important transnational illicit networks, particularly those involved in drug trafficking (UNODC 2013: 41). Some of the experts interviewed suggested that efforts to control Ecuador's ports and borders have in general been noteworthy by their absence (anonymous interviews, Quito 2012). Although security in the country has been bolstered in recent years, the legacy of political and institutional instability in Ecuador has meant that security, particularly at weak spots, has been insufficient to confront the challenges posed by illicit networks (anonymous interviews, Quito 2012). For example, the use of containers carrying agricultural and industrial products to conceal consignments of cocaine and other illicit substances is becoming more common (UNODC 2011b; *El Mercurio* 2011b; *El Comercio* 2012b), especially by breaking the container seals on medium-sized consignments (*El Diario* 2012a).

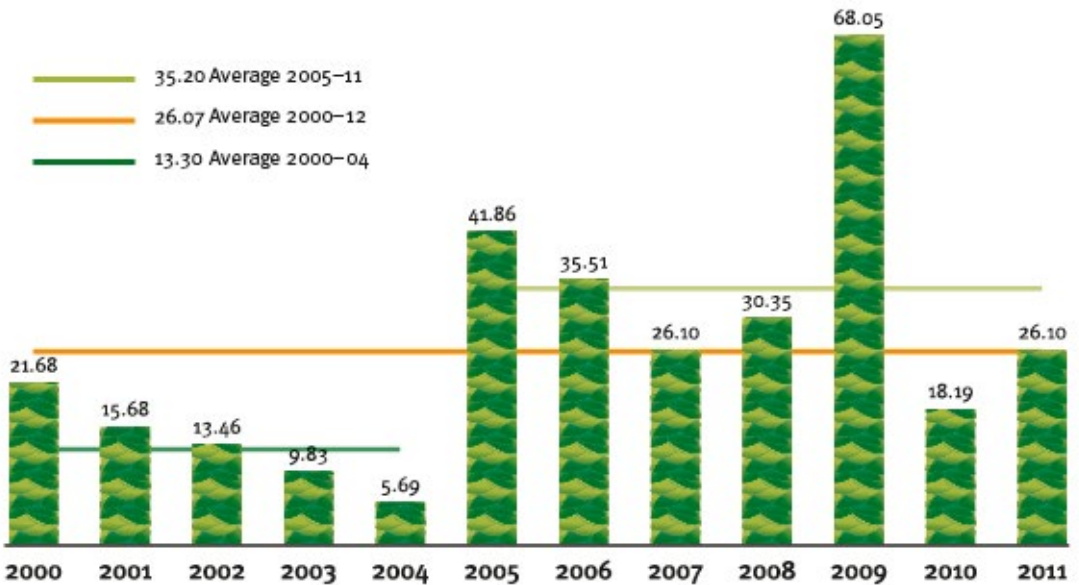
### 7.2.1.1 Principal organized crime activities

As is noted above, the principal activities related to organized crime are contract killings, money laundering and drug trafficking. Mercenaries and private security groups have expanded in recent years, which has broadened the sphere of influence of contract killings, despite measures such as the Law on Private Surveillance and Security of 2003 (OHCHR 2006).

Money laundering has also promoted the illegal activities of organized crime in Ecuador (*The Economist* 2010), as is demonstrated by the size of the financial system relative to the country's economy (anonymous interviews, Quito 2012). According to reports and interviews for this study, the dollarization of the Ecuadorian economy has boosted money laundering (GAFISUD 2011: 9). According to the UAF, 21 reports on money laundering cases—representing more than USD 1.5 billion—were referred to the public prosecutor's office in 2010 (GAFISUD 2011: 11). Much of the money laundering takes place outside the financial system, through the illegal transportation of cash (Bargent 2013), and in the informal economy and the construction sector. According to several people interviewed for this study, many companies in the construction sector offer direct loans despite having insufficient cash flow. The informal economy, in turn, has grown more robust, thanks to the influx of capital from illegal sources, mostly from the purchase of luxury goods and micro-laundering practices (anonymous interviews, Quito 2012).

Drug trafficking has become a regional phenomenon with significant repercussions. Ecuador is an important transit area for drugs produced in Colombia, and the smuggling of the chemical raw materials required for their processing is also common (Kraul 2011). According to data from the National Police Force in Ecuador, approximately 30,345, 68,050 and 18,190 kg of drugs were confiscated in Ecuador in 2008, 2009 and 2010, respectively (GAFISUD 2011: 9). The significant increase in drug seizures in Ecuador from 2000–04 to 2005–11 illustrates its importance as a transit area (see Figure 7.3). Although the number of seizures has also been affected by the extent of action by the police and the armed forces in recent years, it does provide an indication of the quantity of drugs that is passing through the country.

**Figure 7.3 Drug seizures in Ecuador 2000–11 (thousands of tonnes)**



Ecuador has also become increasingly involved in drug production, albeit still on a small scale (*El Universo* 2012b; ICG 2008a: 30). According to the analysis of a range of experts interviewed, the production of basic cocaine paste has been growing, and there is a real danger that it will continue to grow. This has been demonstrated by the recent dismantling of several laboratories that were processing coca and basic cocaine paste at strategic locations around the country, including near the borders with Peru and Colombia and in Manabí and Guayas (*El Nuevo Diario* 2012; *La Hora* 2012; *Vistazo* 2012; *El Mercurio* 2011a; *El Nuevo Empresario* 2012).

The way in which certain illicit networks operate in the country—including Mexican and Colombian cartels—has transformed in recent years (Pachico 2012b; Fox 2012; Farah and Simpson 2010). They have moved from maintaining a consolidated presence in Ecuador to seeking to join forces with national intermediaries that operate independently. It is therefore more accurate to refer

to them as a 'network' than a 'group'; they have a number of trading links that are not joined in a cohesive structure (anonymous interviews, Quito 2012). Thus, the presence of organized crime in Ecuador is on the increase, and its ability to adapt and make inroads into new economic sectors such as mining is also increasing.

### 7.2.1.2 Challenges in the institutional framework: the vicious circle

Ecuador's political institutions have been profoundly unstable in recent years. From the time when the country became a democracy to the current government, the rapid turnover of presidents has undermined its institutional capacity. However, since the implementation of the mechanisms provided for in the 2008 constitution, a degree of relative legal certainty has prevailed. The resultant institutional stability has allowed more wide-reaching public policies to be implemented, and the consolidation of institutions has left them better equipped to address the country's problems, particularly organized crime. For example, Plan Ecuador has changed how the border areas are being managed. The borders are particularly vulnerable, and a policy has been put in place to confront the challenge posed by the presence of organized crime in these areas, particularly at the northern border. The policy focuses mainly on fostering alternative economic models in these areas. However, as has often been the case with similar policy initiatives, there has been no continuity in its implementation (anonymous interviews, Quito 2012).

While the effort to bolster the country's institutions is understandably a slow process, mistakes in implementation have made these institutions, including the legal system, particularly vulnerable to the influence of illicit networks (US Department of State 2010; Garzón Real 2012: 31). This has generated a vicious circle: the weakness of the institutions tasked with combating illicit networks has given illegal actors an opportunity to infiltrate them, weakening them further—and the problem is getting worse (anonymous interviews, Quito 2012).

All the experts interviewed agree that the different legal bodies and agencies have suffered from the serious disruption and lack of coordination at the national level, in particular with the provincial offices. This situation has been further exacerbated by flaws in the decentralization process (anonymous interviews, Quito 2012). According to different experts, although the security sector has supposedly been decentralized, the financial and human resources required to implement these measures are still centrally controlled. The same experts have pointed out that the government is currently trying to devolve these authorities to the regional offices and empower them with adequate resources and capabilities.

### 7.2.2 Organized crime in Manabí

The province of Manabí is geographically strategic due to its proximity to the Pacific Ocean, its long beaches, large geographical area (18,894 km<sup>2</sup>) and important port. Manabí, and in particular the city of Manta, has for many years been considered an important centre of economic development in Ecuador, as it is the closest gateway to the east. It has also attracted great interest through the development of its fishing and palm oil industry, for the extraction of fats and oils. All these factors have been crucial to the development of both the legal and illicit economies of the province, and especially of drug trafficking and illegal migration. There has been a perceived decline in security in Manabí since the closure of the US military base in Manta (ICG 2008b: 10; Edwards 2007; Kraul 2011). Many

of the analysts interviewed attribute this more to a perception on the part of the population than a real change in the province. However, it is true that the base exercised a form of symbolic control, possibly discouraging activities related to drug trafficking in the area. Following its closure, the security system in the area was not properly reviewed, contrary to the provisions of a Development Plan for 2009–12 (anonymous interviews, Manta 2012). This situation is thought to be partly to blame for the success of the drug trafficking corridor connecting Manta and Esmeraldas in Ecuador with Tumaco in Colombia.

### 7.2.2.1 Organized crime

Manabí appears to have consolidated its position as a strategic location for groups trafficking drugs in the region, its ports and links to the sea are particularly important to that business (UNODC 2011a: 2). Its involvement in drug trafficking has been exposed in a series of incidents, such as the crash of a light aircraft carrying a large quantity of dollars on the Pedernales-Jama route in May 2012 (Dettmer 2012; *El Nuevo Empresario* 2012); interdictions of high-speed launches loaded with cocaine; the discovery by the police of a consignment of drugs in south-west Manta in 2013; and the sinking in 2012 of the fishing boat *Gema Felicidad*, which was carrying 285 packages of cocaine (*PP Verdadero* 2012).

Some of those interviewed attribute the importance of Manabí as a strategic location for drug trafficking to the transformation that this illegal trade has undergone in the past ten years. The increased supply from Peru and Bolivia, as well as the constant demand from the United States are key factors (anonymous interviews, Manta 2012). It is also thought that much of the supply has been rerouted to Venezuela via the Atlantic Ocean and to Manabí via the Pacific (UNODC 2011d: 2, 8, 50). Manabí is of special importance to the Mexican cartels because they can control drug production from Peru and transport the drugs through Ecuador. This has allowed them to shake off the control exercised by the Colombian cartels (Fox 2012).

Some of the experts interviewed explained that the port of Manta has been used mostly for the transportation of cocaine. When the volume outpaced the capacity of local fishermen, containers leaving the port loaded with tinned sardines and other products were used (anonymous interviews, Quito and Manta 2012). The cartels are also thought to be buying up large quantities of tuna products in which to hide the drugs, and using submersibles to transport narcotics along the coastline (*El Diario* 2011; *El Comercio* 2010). The 350-km long coastline prevents state forces, which have traditionally been concentrated on the northern border with Colombia, from patrolling it effectively (anonymous interviews, Quito and Manta 2012).

Manabí's size (18,894 km<sup>2</sup>) and its sparse vegetation in some parts of the province (CISMIL 2006: 24, 210) may have facilitated the operations of criminal networks, particularly in setting up plantations and operating drug processing laboratories. In the Canton of Pedernales, for example, laboratories were discovered and dismantled in Montecristi, Pallatanga and Pedro Carbo (*El Ciudadano* 2012).

Manabí has also been affected by the presence of groups of hired assassins (Alston 2011), the most noteworthy of which is *Los Choneros*—one of the largest organized crime groups in the country. These groups provide security services and armed support to criminal networks.

### 7.2.2.2 The case of César Fernández

People who are influential in certain industries often occupy the most important decision-making roles in the provinces. This was the case with César Fernández, an influential businessman and governor of Manabí in 1992–95 during the presidency of Durán Ballén. He is a good example of the interests that allow organized crime groups to forge ties with certain political actors in Latin America, and was involved with Colombian and Mexican cartels that transported cocaine along the coast of the province.

César Fernández began creating his empire in the 1970s and 1980s, when he and his family enjoyed considerable prestige as powerful businesspeople in the region, first in the spare car parts business and the poultry industry—with the chicken company Papío—and then in the shrimp trawling industry. His companies were mostly located in the town of Portoviejo and the northern part of the province. His wealth allowed him to enjoy great luxury, and he became one of the most influential men in the region and in the country on matters related to national politics (anonymous interviews, Portoviejo 2012; *El Universo* 2012a; *La Gente de Manabí* 2012). This privileged position allowed him to rub shoulders with national politicians, including ex-Minister Galo Montaña Pérez and Sixto Durán Ballén (*La Gente de Manabí* 2012). His dealings with Durán Ballén and his running mate Alberto Dahik supposedly led him to make a series of contributions, both financial and logistical, to their presidential campaign (anonymous interviews, Portoviejo 2012; *La Gente de Manabí* 2012). Once elected, Durán Ballén appointed Fernández governor, which in Ecuador is the provincial representative of the president.

Various specialists interviewed for this study indicated that his ties to drug trafficking began when his fortune was decimated by the El Niño weather phenomenon in 1997–98. This climatic anomaly had a serious impact on his shrimp business, and appears to have led to his involvement in organized crime, facilitating money laundering operations through his business connections in Manabí. He would later become more directly involved in collaborating with foreign cartels on the transportation of drugs (anonymous interviews, Quito, Portoviejo and Manta 2012).

Although Fernández had no official ties to the public sector, as an ex-governor and a member of the elite in the region he wielded a great deal of political influence. In addition, other members of the Fernández family continued to be involved in politics (anonymous interviews, Portoviejo and Manta 2012). His brother is an active member of the *Sociedad Patriótica* political party, his daughter ran for election to the National Assembly and his niece is currently an assembly member. These individuals are not necessarily involved in illegal activities. However, several of the experts interviewed alluded to his close ties to political and public institutions that, according to them, allowed him to maintain connections of strategic importance to his business. Several of those interviewed also mentioned that connections between Fernández and the police allowed him to obtain precise information on planned anti-drugs operations in Portoviejo (anonymous interviews, Quito 2012).

Fernández was arrested on 23 October 2003 as part of the so-called *Caso Aniversario* (anniversary case), during a meeting with members of the Sinaloa and Cali cartels, when they were allegedly organizing the transportation of 428 kg of cocaine hydrochloride to Guayaquil and on to Mexico (*El Universo* 2004b). At the same time, 'the police seized drugs from the warehouses of

his chicken company, Papío, from his hangar at the Fermarsa packaging plant and from his home, as well as intercepting a light aircraft he owned that was allegedly being used for drug trafficking' (*El Universo* 2012a). The connection between Fernández and the Sinaloa cartel was allegedly through Ismael 'El Mayo' Zambada García and Gilberto Rodríguez Orejuela, leaders of the Sinaloa and Cali cartels, respectively.

When this drug trafficking and political scandal came to light, it damaged the credibility of both ex-President Sixto Durán Ballén and President Lucio Gutiérrez. Numerous reports suggested that President Gutiérrez had close ties to Fernández, and the vice president at the time, Alfredo Palacio, claimed that César Fernández had supported the second round of the Gutiérrez presidential candidacy for *Sociedad Patriótica* (*El Universo* 2003). His relationship with President Gutiérrez led to Fernández running the office of the *Frente Independiente Alfredo Palacio*, and he provided *Sociedad Patriótica* with campaign headquarters in Portoviejo and supported publications that promoted Gutiérrez in *El Diario de Manabí*, as well as making financial donations throughout the campaign (anonymous interviews, Manta 2012; *El Universo* 2003). None of his contributions to the Gutiérrez campaign were reported to the Supreme Electoral Tribunal, leading the tribunal to fine the party for exceeding the limit on electoral spending (*Diario HOY* 2003). Other examples of close political ties include: his continued relationship with Gutiérrez after the elections; the minister for tourism at the time, Hernán Plaza, allegedly flew in a light aircraft owned by Fernández on several occasions (*Diario HOY* 2003); and the vice president appointed Fernández as representative of the Planning Office on the Board of Directors of *Corporación Reguladora de Manejo Hídrico* (*El Universo* 2003).

The resulting scandal affected the credibility of President Gutiérrez, and he was forced to reshuffle his ministerial cabinet and dismiss several employees, including Robert Chávez the then-governor of Manabí. According to surveys, only 15 per cent of the population believed in him, and 83 per cent of those questioned believed that people close to him had ties to drug trafficking (*Diario HOY* 2003). There was much speculation about whether the scandal would force him to resign. Certain sectors wanted impeachment proceedings to be brought against him, while others spoke of applying the penalties provided for in the Law on Election Spending and Election Material Control, according to which he would be forced from office if it could be proved that he had knowingly received contributions from drug traffickers. There were also a number of investigations by different regulatory bodies involving high-ranking government officials (*Diario HOY* 2003). The National Congress Supervisory Committee determined that Fernández had participated in person and had permanent contact with some members of *Sociedad Patriótica* during and after the Gutiérrez presidential campaign, but the committee found no conclusive proof that Fernández had made any financial contributions to the campaign (*El Universo* 2004a).

In the opinion of various experts interviewed, the ties between Fernández and the Gutiérrez campaign reflect a model of conducting business—both legal and illegal—that takes advantage of a political framework in which corrupt practices, such as bribery or direct *quid pro quo* blackmail, are not typically engaged in. Instead, Fernández sought to curry favour with the circles of power at the national and regional levels, and to secure future 'favours' or special treatment from public servants. According to these experts, this was his true intention when Fernández offered assistance to the campaign (anonymous interviews, Quito 2012).

Fernández was eventually indicted on charges of drug trafficking and sentenced to 16 years in jail. Many of his properties in Manabí were seized or lost as a result of his numerous debts, including the chicken company Papío, a mansion, a jet and other aircraft. However, he apparently managed to conceal many of his properties behind front men and family members, in particular a hangar inside Reales Tamarindos airport, a packing company and an apartment in Manta (*El Comercio* 2012c).

Fernández also had his sentence reduced on two occasions. The First Penal Chamber of the National Court of Justice reduced his sentence to 12 years because of his age, no drugs were found at the time of his arrest and his offence was not a 'crime against humanity'. His sentence was then reduced by a further six years when he took advantage of the 'two for one' scheme for good conduct (*Diario HOY* 2010; *El Comercio* 2012f). Many people attribute these sentence reductions to the political influence of his niece, an Assembly member (anonymous interviews, Quito 2012). Fernández was released in 2010 after serving six years and six months. The case files are not public, but are currently with the First Chamber of the National Court of Justice following the granting of an application for judicial review (see Figure 7.4).

In 2012, a new case was brought against César Fernández for his alleged links to drug trafficking. Operation *Jaque Mate* (checkmate) at the sea port in Guayaquil and José Joaquín de Olmedo airport found more than 100 kg of drugs in containers and luggage (*El Comercio* 2012i; Ministry of the Interior of Ecuador 2012). The containers were used in a *gancho ciego* (rip-on rip-off) operation, which involves placing drugs in consignments entering the port but bound for export (*El Comercio* 2012h). Various vehicles were also seized, as well as money, weapons and communications equipment (*El Comercio* 2012j).

There also appears to be evidence linking Fernández to the fugitive Colombian drug trafficker Daniel Mora Asanza. Fernández acted as a coordinator, and it seems that he was also involved in money laundering (*Diario HOY* 2012). Preliminary investigations uncovered the existence of a significant international criminal network operating in Guayaquil, Quito and Santo Domingo, in which Fernández was involved (*El Diario* 2012c; *El Nuevo Empresario* 2012; Ministry of the Interior of Ecuador 2012).

### 7.2.2.3 Conclusion


This case study illustrates the intricate and mutually beneficial ties between organized crime and political actors in Latin America. It also highlights the many economic sectors and layers of society involved in the chain. Ecuador's geographically strategic position and ports have made it particularly useful to the interests of illicit networks, allowing them to gain inroads into the country, especially through contract killings, money laundering and drug trafficking.

The government has tried hard to combat this phenomenon by strengthening the investigative capacity of the public prosecutor and giving it more independence from the Criminal Investigation Police, and improving the investigation and criminal intelligence system, especially in relation to organized crime. Nonetheless, Ecuador still faces significant institutional challenges in combating illicit networks, including its ongoing process of democratic stabilization and the need to bolster its security policies, especially in the light of the additional challenges posed by other policies such as 'freedom of movement', and the need for cooperation and coordination between national and local powers.

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## Figure 7.4 Official Letter no. 0201-12-DPCJ-M-RS<sup>6</sup>



Consejo de la Judicatura  
DIRECCION PROVINCIAL DE MANABI


Oficio N°.0201-12-DPCJ-M-RS  
Portoviejo, Agosto 27 del 2012

**Señora  
Catalina Uribe  
OFICIAL DE PROGRAMA IDEA INTERNACIONAL  
Ciudad.-**


De mis consideraciones:

En atención al Oficio AD-180/12, de fecha 17 de agosto del 2012, tengo a bien adjuntar el oficio No.2156-PTGP-M, de fecha 25 de Agosto del 2012 y recibido el 27 de agosto del presente año, suscrito por el Abogado Byron Guillem Zambrano, Presidente del Primer Tribunal de Garantías Penales de Manabí, en el que indica que el proceso instaurado en contra del señor César Enrique Fernández Cevallos y otros, por delito de Tráfico de Sustancias Estupefacientes se remitió a la Primera Sala de la Corte Nacional de Justicia, por haberse concedido RECURSO DE REVISION, por lo tanto no pueden conferir las copias certificadas que está solicitando.

Atentamente,



Ing. Rafael Saltos Rivas  
**DIRECTOR PROVINCIAL DE MANABI  
DEL CONSEJO DE LA JUDICATURA**



Elaborado por: MZ	Revisado por: JP
Distribución: RM	C.C.

**SOURCE:** Judicial Council at the Provincial Office in Manabí, 27 August 2012, Portoviejo.

<sup>6</sup> The following is an informal translation of the letter:

"Dear Madam:

Regarding Official Letter AD-180/12, dated 17 August 2012, please find enclosed Official Letter no. 2156-PTGP-M, dated 25 August 2012 and received on 27 August of the current year, from Mr Byron Guillem Zambrano, a barrister and Presiding Judge at the First Criminal Court in Manabí, indicating that the proceedings brought against Mr César Enrique Fernández Cevallos and other individuals, on charges of Drug Trafficking, has been referred to the First Chamber at the National Court of Justice, following the granting of an APPEAL. As a result, they are unable to provide the certified copies that you have requested.

Kind regards,

Rafael Saltos Rivas

PROVINCIAL DIRECTOR OF THE JUSTICE COUNCIL IN MANABÍ"



**Figure 7.5** Intag region, Ecuador



### 7.3 Case study on the Intag region

*Bertha García and Cristina Chuquimarca*

Since the birth of the Republic of Ecuador in 1824, the country's economy has relied on the export of raw materials. The processes of industrialization and export substitution were able to start anew in the 1970s, supported by oil exploration in the hands of a military dictatorship that lasted for nine years. Its oil resources—together with a political landscape characterized by political parties known for their regionalism and poor representation at the national level, populist leaders, and a political culture that was personality-driven and heavily focused on the role of the president—weakened political institutions and increased the divide between rich and poor.

After two periods of military dictatorship (in 1963–65 and 1972–79), government bodies lacked the necessary robustness to manage public affairs effectively. On several occasions, successive governments have been forced to task the armed forces with overseeing strategic institutions such as the customs authority, the ports, and the oil and energy sector. The social development and infrastructure projects associated with funds from international institutions were managed by executive boards affiliated directly with the President of the Republic, to the detriment of the ministries which became largely ineffective. The lack of political and institutional control over the armed forces contributed to a significant degree of military autonomy. It was impossible to rein in their business ventures, which included offering private security services using army premises, helicopters and active personnel.

The political reforms that took place after the second period of military dictatorship did nothing to strengthen the political party system. Further reforms implemented during the so-called neoliberal era (1994–2006) promoted a National Congress that was largely personality-driven. Small groups would emerge in Congress that changed party according to circumstances, serving as links or mechanisms to accommodate the formation of 'mobile majorities' which were susceptible to the fluctuations in the interests at play and therefore also to growing corruption.

Congress became a forum for the 'particracy', the pejorative term used to describe a political class that used its power to corner key positions in higher representative bodies and in the public sector. The constitution of 1998 secured this state of play by incorporating the above-mentioned reforms into its body of law. As a result, the political fabric of the country unravelled, fostering 'movementism' and legislative agreements that were not in line with the country's interests. Among other things, this led to the overthrow of three presidents in five years (1998–2003), following coups d'état engineered by the legislature with some level of military involvement or collusion. All of the above happened in the context of several attempts to transform the economy, which ended up dissolving what few controls existed on the financial sector. Between 1999 and 2000, the majority of private banks went out of business and the country adopted the US dollar to rein in inflation.

The case presented below is an example of local tendencies to form criminal associations in situations characterized by weak democratic institutions, particularly local institutions, which in turn stem from the economic and political crises described above. In such situations, institutions tend to be easily infiltrated

by actors and interests that take advantage of the permanent or occasional absence of legality.

The case study analyses the sphere of political and commercial activities that facilitates illicit networks. It examines the political activities undertaken by a real person who is referred to by the fictitious name 'Sisyphus'. This person is the central nexus of a system of illicit associations that developed over a 10-year period. While this case has been the subject of an investigation into the mining industry in Intag, and is thus in the public domain, the web of relations and connections that implicate Congress has not been investigated until now—so fictitious names are used throughout.

The methodology used included investigatory techniques such as interviews with key players in situ, participant observation in the area, an analysis of National Congress files, a documentary analysis and press review, geopolitical analyses and the creation of maps to show the location of natural resources that might offer extraordinary benefits, as well as an analysis of the legal case files. As part of the methodology, an exploratory strategy describes a sequence of events from 1998, when the first political activity took place, to 2010, when Sisyphus registered his intervention as an employee of *Corporación de Desarrollo de la Parroquia García Moreno del cantón Intag*—a joint public–private institution involved in mediating between local settlers and mining companies in Intag, Cotacachi canton and the province of Imbabura, in the north of the country.

### 7.3.1 Impact of the Ecuadorian crisis on the regions and provinces: the case of Intag

Sisyphus became involved in Ecuadorian politics in 1998, before he turned 30, having been spurred on by connections outside of politics. He did not have a history of activism, but acted in response to a call by one of the most important political parties in Ecuador (known as 'the party' in this study) for new candidates willing to compete in the elections that year. The party won the general election, and Sisyphus achieved notoriety, made strategic connections and acquired significant political power in the turbulent period from 1998 to 2002, which left in its wake a coup d'état and an interim president who was also from the party.

Years later, Sisyphus was implicated as the mastermind behind the killing of hired assassins with ties to Óscar Caranqui, known to be the leader of a drug trafficking network, who was himself assassinated in a high security prison in Guayaquil. Sisyphus was tried but went on the run. He was put on the list of 'most wanted' individuals by the Ministry of the Interior. The killing of hired assassins was his most visible act, and showed the swift path he had taken in search of personal power accomplishments based on various methods of coercion and lucrative involvement in public sector and private businesses. Each of his positions constituted another step towards his ultimate goal: positioning himself in a geographically strategic area, the location and importance of which would offer a wealth of opportunities.

The hypothesis is that Sisyphus entered politics with a view to accumulating power, making inroads into certain economic activities and reaping the benefits. His rapid and unusual success in this undertaking, thanks to the system of extortion of the National Congress Supervisory Committee that he organized and the type of activities that he subsequently undertook in the mining sector, cannot be explained without taking into account the political context in Ecuador

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during this period of approximately ten years. The geographical context of the north of the country, where Sisyphus planned his activities, is important. Although Sisyphus did not achieve all of his goals, an analysis of his case helps to identify the strategic links between the public sector and illicit networks, and demonstrates the extreme vulnerability of certain institutions in Ecuador.

This investigation revealed a number of irregularities that corroborate the hypothesis: (1) the manner in which Sisyphus entered politics, positioning himself in the party with the most electoral options in 1998; (2) his activities in Congress, especially on the Supervisory Committee; (3) the way in which he capitalized on political power when in government, allowing him to make inroads into strategic forums in the region and in the national economy; and (4) the purchase of geopolitically important land, probably illegally. These points are described in sequence in their settings—political, corporate and criminal—and in the context of the extortion of the Ecuadorian Congress and the geostrategic relevance of the purchased land.

### **7.3.2 Political scenario: a system of extortion of Congress, 1998–2004**

Sisyphus was an astonishing figure, given the ease with which he won political positions without any experience in the field. His story is re-examined below, based on an interview with a key political actor and activist in the party, referred to as 'our source'.

Sisyphus was born in Otavalo and came to the legislature as an assistant to a deputy from the province of Imbabura, who was also a director of the Socialist Party. The deputy had enjoyed notable political and social importance since the era of the return to democracy at the start of the 1980s. According to our source, who at one time presided over the Supervisory Committee of the Ecuadorian Congress, as soon as the parliamentary term commenced, Sisyphus took another step forward on his path to Congress, backed by another key figure within the party, referred to below as 'the strategist', who was campaign director for and a close friend of the party's presidential candidate, Jamil Mahuad, a modernizer.

Mahuad's narrow victory in the second round of the presidential elections was interpreted as an indicator of 'the rationalization of Ecuadorian politics'. The legislators from the party and its allies formed a majority in Congress. The strategist became secretary to the presidency. According to our source, at the time of the presidential campaign, Sisyphus received the strategist's backing to run for Congress for the province of Pichincha. The strategist fought to have Sisyphus included on the candidate list after the party's main parliamentary candidate, who had occupied key positions during Jamil Mahuad's term as mayor of Quito.

The strategist fought hard for Sisyphus. According to our source, 'Nobody knew him well, but they ended up giving in'. At the time, the allocation of seats in Congress was in accordance with a vertical structure: candidates who reached a quota of the popular vote were elected as principles, and the remainder were put on the list of reserves. The first candidate—referred to below as 'the minister'—was given the education portfolio at one point during the parliamentary term, and Sisyphus substituted for her in Congress, occupying a position on the Supervisory Committee. Our source recalls 'how, when her departure from the ministry was

imminent, the minister expressed concern over Sisyphus. She had information of shady dealings in which he was involved'. The issue was related to the asset disclosure made by Sisyphus when he was about to enter parliament, which was required by the Code of Ethics for the legislature that existed at the time but has since been repealed. Sisyphus declared his Campo Serio property in Intag, which years later would be the subject of a dispute with Óscar Caranqui, since he had loaned Sisyphus the money to buy the property and had not been repaid.

Months later, our source was informed by the office of the president that it was time to act on the need for supervision and political judgement that had until then been repressed to make way for 'political strategy'. Sisyphus then began to take part in court appearances and injunctions, especially those relating to customs inspectors. Our source notes: 'In the course of my duties, I started to notice some strange goings-on in the movements of the deputies in question. Finally, one evening, a few minutes apart, I received petitions from four deputies on the committee. It was the same text, only with a different signature; even the punctuation was similar. I became concerned and called the secretary of the committee, telling him that this seemed a bit strange to me'.

The secretary of the committee alerted him that the congressmen were being manipulated by the individual referred to below as 'Congressman X', a member of the *Partido Roldosista Ecuatoriano* (Ecuadorian Roldosist Party), who had been implicated in corruption cases on many occasions. According to our source, the activities of the deputies were unusual. For example, around 15 days before the start of the case, the schedule for the appearance of the implicated officials was noted in the agenda. However, on the morning of the appointed day, one of the deputies quashed the summons. At that point, our source 'felt that I was at great risk, personally, because the press did not know all of the details. I was worried, and I spoke to the secretary, and it was then that I realized that he too was involved in some way. I asked the secretary to put me in contact with Congressman X, the congressman from the Roldosist Party'. During that conversation, it was made clear that Sisyphus was involved.







Our source interpreted this as a serious situation, because a member of congress who is involved in an audit can obtain information and data that any other citizen would have great difficulty in accessing. He can then use this to his own advantage, and whether he uses this facility for illicit ends depends on how honourable he is. In this case, the group of deputies was asking for warrants to carry out audits in order to discover shady dealings by public officials and then threaten them with a public appearance before the Supervisory Committee. If the threatened person accepted their demands, the members would end the proceedings. Sisyphus and his group constantly repeated this manoeuvre.

In the words of our source, 'at the audit [...] you ask for documented information, and you ask the official to appear before the committee to explain. This is what they were involved in. Sisyphus was a member of this group, controlled by Congressman X from the Roldosist Party'. Those involved in this activity were Congressmen Y and Z from the party Izquierda Democrática and Sisyphus of the party. 'As a result of this process, [in January 2000], Mahuad was toppled, and the process of dividing the party into blocs began. Sisyphus then joined the *Movimiento de Integración Nacional* [the National Integration Movement], which became the bloc of Gustavo Noboa'—the vice president who assumed the presidency after President Mahuad was deposed on 21 January 2000, following an indigenous uprising supported by units of the army.

### 7.3.2.1 Cases investigated by Sisyphus and his allies in Congress

The activities of Sisyphus on the Supervisory Committee are key to understanding the chain of events described below. It is important to note that names that appear in the congressional files have not been included in Table 7.1 in order to avoid implying that they were linked to illicit activities. The aim is to strengthen the evidence that Sisyphus had a vested interest in cases involving large sums of money. In the cases he investigated, he had access to highly confidential information about companies, public sector employees and businesses, among other things.

**Table 7.1. Investigations conducted by Sisyphus**

 Case investigated	 Actors investigated	 Description
 <b>Contracts between <i>Corporación Aduanera Ecuatoriana</i> (CAE) [the Ecuadorian Customs Corporation] and companies that inspect goods</b>	<ul style="list-style-type: none"> <li data-bbox="463 748 551 775">– Chairman and director of CAE</li> <li data-bbox="463 789 939 817">– Companies that inspect goods: SGS, COTECNA, ITS, Bureau Veritas</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="850 866 1110 953">Possible irregularities committed by companies tasked with appraising imported goods at source and destination, in an attempt to prevent them from renewing their contracts and uncovering any corruption or damage to the state</li> </ul>
 <b>Fraud by Banco del Progreso against the Internal Revenue Service in Ecuador</b>	<ul style="list-style-type: none"> <li data-bbox="463 1106 1030 1133">– Chairman of the Human Resources Committee at the National Judicial Council</li> <li data-bbox="463 1148 1139 1206">– Judges of the Fifth chamber of the High Court in Guayas and prosecuting judge for Guayaquil</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="850 1244 1147 1303">Investigation of the legal proceedings instigated by the Internal Revenue Service against Banco del Progreso</li> </ul>
 <b>Contracts between the state company Petroproducción and companies offering security services</b>	<ul style="list-style-type: none"> <li data-bbox="463 1481 509 1508">Director of Petroproducción</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="850 1561 1142 1619">Claims of irregularities when subcontracting protection and physical security services in the Peruvian Amazon district</li> </ul>



**The company Petroecuador, awarding of contracts and changes to the oil formula**



CEO of Petroecuador



Possibly unjustified changes to the oil formula and the renewal of the fuel oil contract with the companies Glencore, Citizens and PMI



**National Electricity Council involvement in electrical companies**



Executive director of the National Electricity Council and the Ecuadorian Institute of Electrification



Appointment of auditors to the country's electrical companies and exacerbation of the administrative chaos within those organizations



**The company Andinatel's procedures for hiring employees and managing the company**



CEO of Andinatel



Questions about the procedures used when awarding contracts and hiring staff, and possible losses for the state



**Pacifictel: handling and administration of resources**



CEO of Pacifictel



Investigation of the actions and decisions of the CEO



**Empresa Ecuatoriana de Aviación [Ecuadorian Aviation Company], taxes**



- CEO of Empresa Ecuatoriana de Aviación
- National director of the Internal Revenue Service



Possible tax evasion by Empresa Ecuatoriana de Aviación, resulting in losses for the state

**SOURCE:** adapted from the virtual archives of the Ecuadorian Congress.

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In a review of the files relating to the case against Corporación Aduanera Ecuatoriana (CAE), which was carried out at the time of the crisis, when the task of overseeing it was entrusted to the army, one document stood out—an official letter dated 17 February 1999 addressed to the then-chairman of CAE, in which the chairman of the Congress Supervisory Committee requested cooperation with an enquiry into the BID-Aduanas project to whom we refer to below as ‘the general.’ This retired general had occupied high-ranking positions in the armed forces, and at the time was involved in work aimed at modernizing the customs authority. Two years previously, he had been accused of trafficking in influence with a view to promoting contracts for the sale of crude oil to a foreign company. This was reported in the newspaper *Vistazo* on 21 August 1997.

That date is important, since it may well have been when Sisyphus first came into contact with the general. They were both linked later, when Sisyphus became a powerful figure in Intag, Cotacachi canton, in the province of Imbabura, and the general was serving as a public relations officer, appointed by Ascendant Cooper to mediate between the communities in Intag who were protesting against the mining company.

Although Sisyphus was a mediator in this case and was required to remain neutral, he had ties with the Ministry of Energy and Mines, and with Ascendant Cooper. The settlers also saw him as a ‘swindler’ who was taking advantage of the situation to buy up land illegally. This included accusations of the extortion of those affected by the situation.

### 7.3.3 The corporate scenario: Sisyphus and his geostrategic interest in Intag

By 2003, Sisyphus had completed his term in Congress and accumulated significant political power. He had become directly involved with the interim president, becoming his spokesperson in the legislature, and in the political movement the interim president was attempting to organize ahead of the 2004 elections. Taking advantage of his new position, he created ties to businesses in the mining sector.

The general context of this case is the government’s strategic proposal to commence large-scale mining operations throughout the country. In particular, settlers in Intag, which is of great importance in mining terms, but whose settlements were surrounded by tropical forests teeming with natural resources, opposed the plan. The declaration that the area was of strategic importance for mining awoke in Sisyphus a wave of ambition, based on the additional opportunities that might be on offer there.

In this context, Sisyphus mediated as a representative of Codegam, a joint venture that brought together the interests of mine owners and the Ministry of Mines to develop extractive industries in Intag. By now, Sisyphus had political contacts and relatives in the government, and was a high-ranking director in the interim president’s new political party.

#### 7.3.3.1 Background to the mining conflict

The foundations of the conflict were laid in the 1990s, when Bishimetals, a subsidiary of Mitsubishi, arrived in the parish of García Moreno in Intag to carry



out a prospecting study in order to determine—among other things—the type and quantity of minerals in the subsoil. Mining activity had been boosted by the creation of the Project for the Development of Mining and Environmental Control in 1995 (Bermeo and Larrea 2000), which sought to change mining legislation and collect geo-referenced information on mineral deposits.

At the same time, certain figures from the region, particularly small landholders, got together in an attempt to obtain more information on the mining and the consequences for the population—including the relocation of communities, the effects on agriculture and water sources, and health risks. This gave rise to the environmental organization Decoin (Bebbington 2006: 32). The organization was given an environmental impact study drawn up by the Japanese International Cooperation Agency in 1996, which stated that mining could lead to massive deforestation, the contamination of water sources, desertification, the uprooting of families and delinquency, among other negative results (Zorrilla 2010). In 1997, this study, together with the deterioration in relations between Bishimetals and the population, prompted '[...] around 200 residents from communities threatened by the project to set fire to the Bishimetals mining camp'. Some of the people thought to be involved were reported by the Ministry of Energy and Mines but, following lengthy legal proceedings, the case against the accused was dismissed in 1999 (Intag e.v. Freundeskreis ND).

In 2000, the Cotacachi canton, under Mayor Auki Tituaña, a politician with indigenous roots, approved an ecological ordinance that prohibited unsustainable activities in the territory and declared the conservation and sustainable management of the water sources, soil, forests and biodiversity of the canton priority interests. The National Institute of Agrarian Development (INDA)—previously an important body known as the Ecuadorian Institute for Land Reform—responsible for regulating the mechanisms for land allocation, was bankrupt by that stage, and did not have the capacity to oversee the legal aspects of land allocation. Moreover, it was vulnerable to manipulation by individuals involved in the elections. In Intag, around 65 per cent of buildings were unregistered, in spite of the fact that since 1999 Cotacachi had been responsible for overseeing the addition of rural buildings to the land registry (Bretón and García 2003: 174–5).

### 7.3.3.2 Ascendant Cooper: Codegam and its conspicuous business strategies

In 2002, Roque Bernardo Bustamante Espinoza—a partner in the law firm of 'Bustamante and Bustamante', part of the Bomchil Group, an association of independent Latin American law firms, and an expert on cases related to oil, gas and mining—acquired the Golden 1 and Golden 2 mining concessions, located in Junín, in the Intag canton (Rivera J. 2007). The municipality of Cotacachi submitted a request for constitutional protection to the courts in Imbabura, and subsequently to the Constitutional Court, claiming that the tendering process for the concession was illegal since it was only open to one bidder. However, the voices of dissent were not taken seriously. The population was not consulted, and the Regional Department of Mining—a branch of the Ministry of Mines—refused to provide any information on the matter to the municipal authorities. One publication from the area spoke of 'the lawyers for globalization', referring to Bustamante and Bustamante and making the point that in Ecuador there is a lot of expertise on offer to international business, and that this service is being provided by a few groups of national lawyers.

At a plenary session of the Constitutional Court of Ecuador, the highest legal and political authority, five of the nine judges ruled in favour of Roque Bustamante, taking less than 24 hours to reach their verdict (Zorrilla 2010). Nonetheless, organizations from and inhabitants of Intag came together with organizations from Imbabura and Pichincha to stage several demonstrations, voicing their concerns about the planned mining activity on the national and international stage. In 2004, before the legal proceedings had ended, Bustamante sold his mining concessions to the Canadian firm Ascendant Cooper, a mining company, and a subsidiary of Ascendant Holdings (Intag e.v. Freundeskreis ND).

Later, Decoin accused Ascendant Cooper of purchasing land illegally, with the complicity of the INDA. According to one local source interviewed for this study, faced with staunch opposition from those who rejected the mining activities, Ascendant used various legal and illegal methods to set up in the area, including a campaign of misinformation, issuing various pro-ecology leaders with death threats and threatening them with criminal proceedings in order to intimidate them.

In April 2004, Sisyphus addressed the Regional Assembly in Intag, making statements against the then-mayor of Cotacachi, Auki Tituaña. Sisyphus acted as just another settler in the area, since he owned two properties: the Campo Serio ranch in the parish of Selva Alegre, and the Brillasol ranch, in the parish of García Moreno. However, the purchase of his properties drew criticism from local inhabitants, and their disapproval was registered by local newspapers and during the interviews conducted for this study. A detailed investigation by daily newspaper *Diario HOY* revealed that the sworn declaration of assets that he submitted when running for Congress (1999–2001) included several properties in his name in Quito, Otavalo and Cotacachi, for which he was not paying any taxes. He also apparently used fraudulent transactions to acquire the Campo Serio ranch, since the real cost of the property was a lot higher than what he paid the original owner, who had been forced to sell following a dispute with Banco de Fomento over an outstanding loan. Since he was already a congressman, Sisyphus had left it up to the person who handled the transaction on his account to make the necessary arrangements with the manager of Banco de Fomento (J. Rivera 2007).

Months later, Sisyphus set up and presided over Codegam, the aim of which was to act as an intermediary between Ascendant and the people of Intag. According to the Ecumenical Human Rights Commission, Codegam, which was funded by Ascendant Cooper, offered USD 16.5 million for proposed community development, which was to include training centres for agricultural and mining work; the construction of roads, medical centres and schools; and housing (CEDHU 2006b: 33). In conjunction with the local authorities in Intag, Codegam organized information sessions to discuss the benefits of mining. In April 2005, Codegam and the authorities passed a resolution that refused to recognize the authority of Auki Tituaña, and established García Moreno as a new canton in Imbabura. It also asked foreigners—meaning caseworkers and international workers from Decoin—to leave the Intag area (CODEGAM 2005).

Together with bodyguards working for Sisyphus, Codegam committed several acts of violence: they used weapons to intimidate settlers, community leaders and international observers (Decoin 2004a, 2004b); and attempted to kidnap one of the Spanish volunteers working on development projects in the Manduriacos Valley, part of the subtropical area in Cotacachi (Intag e.v. Freundeskreis ND). In

the wake of these events, outraged residents from various communities burned down Ascendant Cooper's mining camp (Zorrilla 2010).

One year later, the mining company hired private security firms to occupy the land covered by the concession. However, the settlers impeded their entry and there was a violent showdown. The so-called paramilitaries—as they were known by the people of the area—set up camp in the desert, where they were rounded up and disarmed by the locals.

In May 2006, Ascendant Cooper broke off relations with Codegam, and later with Sisyphus, who threatened to take legal action for unfair dismissal. However, according to Intag newspapers, in December of the same year 'Ascendant leased a helicopter from the Armed Forces. [...] The company would use it to fly in 56 hired security guards to set up camp in Junín. According to a military source, before flying to the mining concession, the pilot landed at Campo Serio to refuel. At the same time, a resident of García-Quirós García saw Sisyphus in the company of the head of security at Ascendant, [...] travelling to the ranch in García Moreno [Brillasol]' (J. Rivera 2007).

The properties acquired by Sisyphus in the Intag area were in strategic locations. The first, consisting of 2000 hectares, is in Brillasol, a parish of García Moreno, located between two important ecological reserves. The property is mostly made up of mountains, lush vegetation and rivers, and is a considerable distance from the populated centre of Brillasol. According to an investigation by the newspaper *Diario HOY* (2001), Sisyphus had managed to acquire a collection of six farms on the property, which he called 'San Alfonso', 'San Eduardo', 'San Sebastián', 'San Marcos', 'Dianita' and 'Felicitas', all of which he claimed to have bought at the age of 22. According to the same source, before entering Congress, his main economic activity was buying and selling livestock. At Brillasol, his main activity was the cultivation of exotic wood forests.

The second property, consisting of 100 hectares, is Campo Serio in the parish of Selva Alegre. This farm is difficult to access, one hour from the population centre. However, the property had electricity in 2001, even though some neighbouring areas did not. In the vicinity of his properties, there are some prime examples of the informal property market. Some witnesses and documents assert that he expanded his property holdings through unfair deals with peasant farmers or even extortion. A similar situation arose in 2003, when Ascendant tried to buy up the properties of small farmers located in the vicinity of the Golden 1 and Golden 2 mining concessions, now the Llurimaguas concession.

### 7.3.4 The criminal scenario

In January 2007, Sisyphus was linked to a quadruple murder at his Campo Serio ranch. He was accused of having ties to Óscar Caranqui, who had been convicted of drug trafficking (*La Hora* 2007). The newspaper reported that '[...] according to an anonymous source, [...] a police vehicle carried out a raid at the property in connection with the investigation into Caranqui and Sisyphus' (J. Rivera 2007).



Sisyphus was also involved in *Caso Madera* (Operation Wood) conducted by the Drug Squad in 2006, which resulted in the seizure of 153 kg of cocaine in wooden bed frames destined for Holland. Since 2007, Sisyphus has been a fugitive from justice, and is wanted by Interpol on charges of 'crimes involving the use of arms and explosives, organized crime and transnational crime'

(Interpol 2007). Since 2011 he has been listed by the National Police as one of the most wanted persons from the province of Imbabura, and is classified as highly dangerous (*El Norte* 2011).

After a legal battle lasting several years, INDA declared that the land purchase by Ascendant was illegal. It was proved that land trafficking was involved, which led to the executive director of INDA being tried alongside some of his colleagues (Stevens 2008: 3). In 2010, an executive decree shut INDA down, and called for it to be investigated by the public prosecutor on grounds of possible acts of corruption. Its powers have been transferred to the undersecretary of land and land reform.

Ascendant Cooper left the region in 2008, when the National Assembly—formerly the Congress—passed the Mining Mandate, which cancelled 88 per cent of the mining concessions in Ecuador, including those held by Ascendant in Intag. In March 2010, during legal proceedings brought against Ascendant and the Toronto Stock Exchange—the institution that had funded the mining company, ‘the lawyer for the [Toronto] Stock Exchange accused the former company Corporación de Desarrollo de García Moreno (CODEGAM) of having carried out all of the violent acts in question’ (Rivera 2010: 6). As is noted above, Sisyphus was the director of that company.

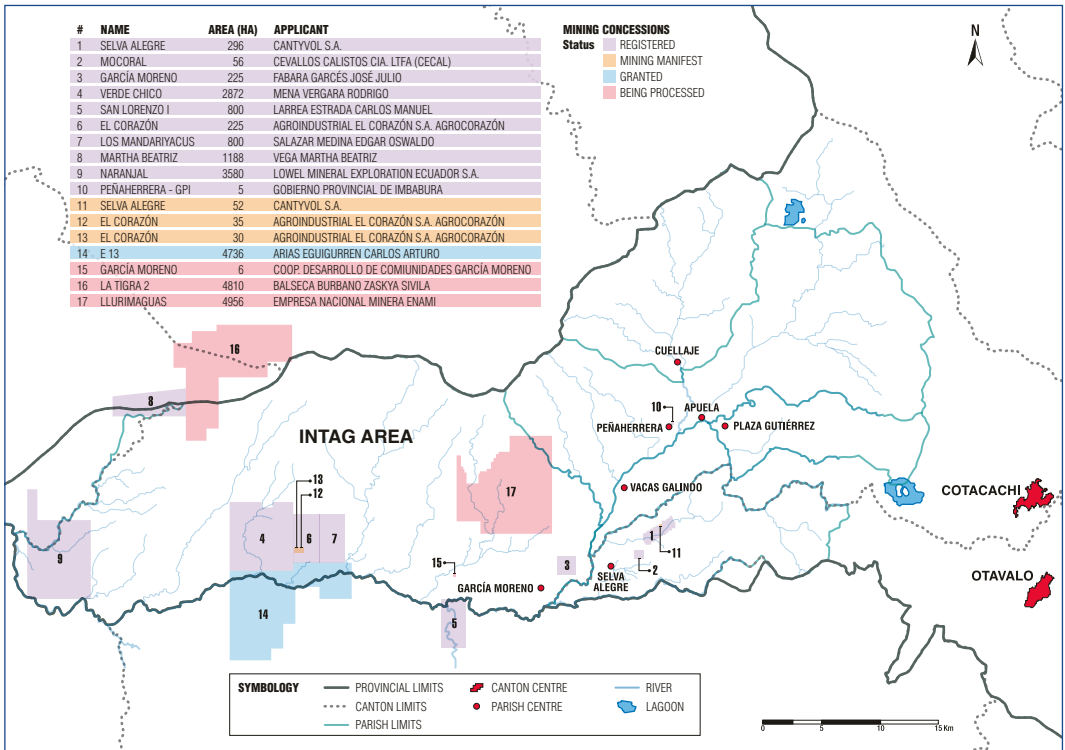
**Table 7.2. Legal proceedings brought against Sisyphus by the state judiciary, 1998–**

N.	JUDICIARY 	CASE/CRIME 	YEAR
1	Chamber for civil, labour-related, tenancy, child and adolescent cases	Termination of contract on grounds of grievous damages	2004
2	Second Criminal Court	Murder	2007
3	Second Criminal Court	Murder	2007
4	Fourth Criminal Court	Injury	2010
5	First Civil Court	Bill of exchange	2005
6	Second Civil Court	Bill of exchange	2006
7	First Criminal Court in Pichincha	Drugs	2009
8	Fourth Criminal Court Second Criminal Court in Pichincha	Narcotics	2007 2008
9	Tenth Criminal Court	Dismissal	2010
10	Twentieth Civil Court	Insolvency	1998

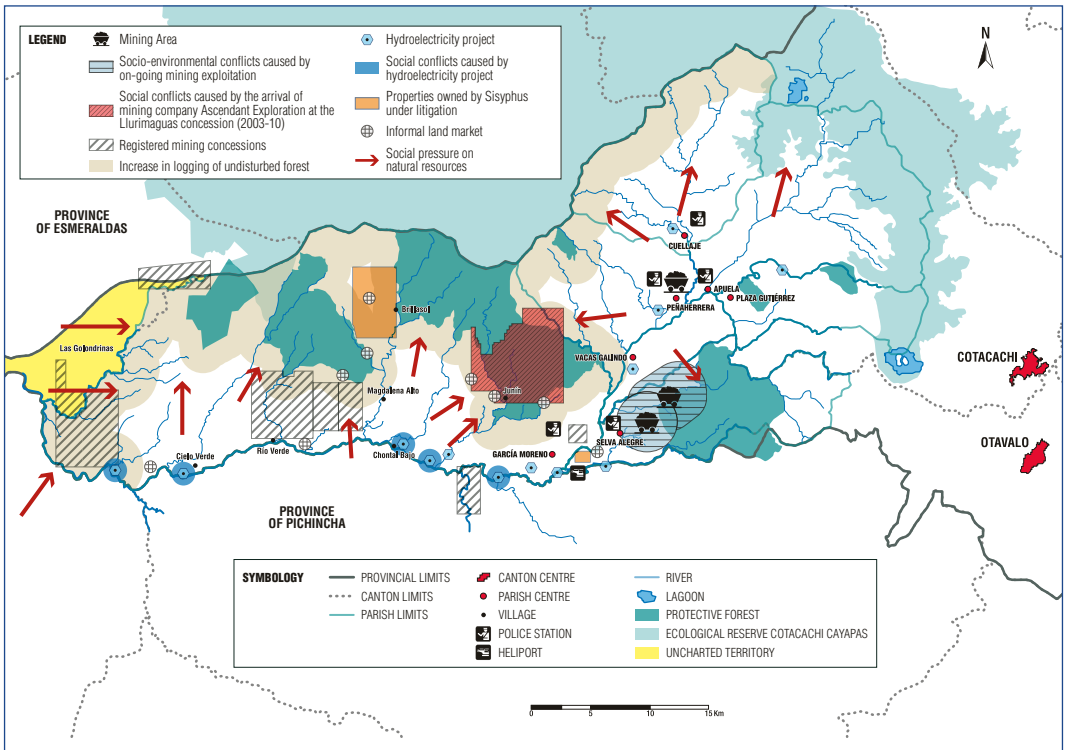
**SOURCE:** adapted from <http://www.funcionjudicial.gob.ec/>.

The importance of the geopolitical conditions in the area in which Sisyphus conducted his activities, particularly his criminal activities, after his term as a legislator should be stressed. Figures 7.6 and 7.7 show the strategic importance of the properties he acquired in the Intag region, and the significance of how he positioned himself in the areas neighbouring the García Moreno canton, amid the locations of the conflicts over the mining concessions, and close to woodlands in protected areas that are difficult to access and can be used as hiding places. The data also illustrate how Sisyphus shared a geographical area with Óscar Caranqui, another drug trafficker who was prosecuted, from the start of 2000. Since the pattern of drug-related trade in Ecuador involves its northern and southern borders, and given the use of major roads leading to the ports on the Pacific coast, transporting drugs in the same containers as any other goods, the hypotheses of the Drug Squad—expressed in interviews conducted for this study—point to collusion by Sisyphus and a series of intermediaries in the transport industry and local businesses.

**Figure 7.6. Mining concessions in the Intag area**



**SOURCE:** based on graphics provided by geographer Luisa Andrade, January 2012.

**Figure 7.7. Conflicts in the Intag area**

SOURCE: based on graphics provided by geographer Luisa Andrade, September 2012.

The factors that support this hypothesis on the potential for successful illicit activities by Sisyphus in the region include the proximity of his holdings to Colombia, and the ease of access to the Pacific ports along major roads or secondary access through the Las Golondrinas area that links the land owned by Sisyphus with the provinces of Pichincha, Santo Domingo, Esmeraldas and, indirectly, Manabí—the location of another drug trafficking enclave—as well as the existence of more than 20 informal border crossings between Ecuador and Colombia, used for contraband and the illicit trafficking of goods, drugs and people.

### 7.3.5 Conclusion

This chapter has clearly demonstrated the existence of a vast array of opportunities for illicit ties and alliances within Ecuador's institutions. These can be explained—for the most part—as the consequence of a lengthy political and economic crisis. The Sisyphus case study shows how he succeeded in quickly climbing the rungs of political power, and gained access to the indiscriminate exchange of privileges and coercion, spurred on by the strategic information he was able to obtain.

The National Congress Law and a Code of Ethics were drawn up after 1998, obliging members of congress to account for their assets before taking office,

but these laws were immediately repealed by the government that followed. The Code of Ethics never imposed specific controls on the activities of members of congress in their work for strategic committees, such as the Budgetary Committee or the Audit Committee. Nor have political parties enjoyed any level of control, particularly in recent years which have seen a waning of their powers. Faced with exorbitant spending on electoral campaigns, places on the congressional candidate list have been awarded to individuals who could cover these costs, rather than people who had demonstrable track records. While the issue of spending on electoral campaigns has changed since the 2008 constitution, the new electoral institutions do not have sufficient means to control how public funds are used by candidates while exercising public functions.

The case study also highlights how political actors leverage high-ranking representative positions to deal with strategic economic players such as the mining industry, which has been a priority for Ecuadorian governments since the mid-1990s as a means of boosting state resources.

Mining has, among other things, fuelled an illegal property market and led to abuses of the rights of peasants and indigenous populations. This has been aided and abetted by many layers of legal intermediaries or frontmen who have facilitated transactions and dispossessed original owners. A massive campaign of land registration throughout the country began in October 2011. It is highly probable that there is a link between historical cases such as the Sisyphus affair and the fact that, due to extortion, so many properties lack title deeds.





**Figure 8.1 Guatemala**



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## 8 Guatemala

The hopes that emerged following the Guatemalan peace process rapidly dissipated in the face of the challenge of restructuring the country's democratic institutions in a context of increasing organized crime. The political structures that needed to be built following the end of the conflict, such as political parties, central and local governmental and judicial institutions, and a state security apparatus, are still only slowly being reshaped in the face of great challenges.

None of Guatemala's political parties has managed to get a candidate re-elected as president, and new and smaller political organizations emerge at each election. Corruption scandals tarnish the highest levels of government and state officialdom, including ex-President Alfonso Portillo (see section 8.2). Impunity is so rampant that, in 2006, an international delegation was established—the International Commission against Impunity in Guatemala (CICIG)—to support the investigation of clandestine and illegal security organizations and their alleged links to the state. Corruption in the ranks of the military and police forces has delegitimized them, as has their inability to maintain security in regions such as Peten or in sectors of Guatemala City itself (ICG 2011). All this has taken place against a backdrop of growing violence and organized crime, alongside unbridled levels of murder, kidnapping and extortion (UNDP 2007, 2013b).

Paradoxically, the end of the armed conflict attracted drug traffickers to the country, particularly from Colombia: 'During the last

stages of the war, a section of the armed forces, worried about the diminishing possibilities of providing large-scale financial support to the counterinsurgency operations, devoted itself to clandestine business dealings, preparing the way for "sympathetic civilians" to become embroiled in smuggling and for cooperation with the various criminal underworlds' (Kruijt 2011: 28). The major Guatemalan drug lords who have been arrested or identified to date have thus all been military commanders at some point in their lives, which may indicate that the drug cartels initially used the military to build support structures within the state.

The overwhelming control of the Colombian cartels over routes across Guatemalan territory was beginning to wane thanks to the DEA and Colombian authorities' dismantling of the Medellín and Cali cartels. This opened the path for smaller drug cartels, which in turn were forced to give way to the growing Mexican organizations. The Mexican groups were finding it increasingly difficult to operate in their own country, and so took advantage of the official end of Guatemala's internal armed conflict in 1996 and the subsequent state restructuring. The Mexican Gulf and Sinaloa cartels thus reinforced their presence on Guatemalan territory, with a tacit agreement on co-existence and mutual respect (see section 8.3). In 2008, however, a group known as Los Zetas appeared on the scene, using extreme violence to redefine the drug trafficking routes.

The sectors of Guatemalan society that support the drug traffickers operate primarily as transport

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networks, service providers and poppy suppliers (ICG 2011). It is less clear whether they process drugs, control the price of their products or are able to influence the market for them. While these illicit networks do not aim to displace the territorial control of the state, given the state's failings, they do sometimes provide public services in order to conceal their business dealings or to ingratiate themselves with the local population. 'In its place, they hope to be able to co-opt, bribe officials in

order to protect the source of their illicit gains. In fact, a total collapse of the state would not be to the advantage of the drug trade' (Ramsey 2011). The case studies below are examples of the relationship between organized crime and certain sectors of the Guatemalan state.

## 8.1 Overview of national regulations

Catalina Perdomo<sup>7</sup>

### 8.1.1 Political parties and civic committees

Guatemalan legislation stipulates that only candidates nominated by political parties or civic committees (temporary locally elected political organizations) may stand in general elections. The law presumes that political organizations act as intermediaries between the people and the political powers, but in reality they have come to form mere 'electoral vehicles' rather than representative organizations of different political ideologies (*Prensa Libre* 2010). One theoretical and rational explanation for this lack of a strong structure among Guatemala's political organizations is that there are no true barriers to establishing a party, which encourages the creation of organizations that have only weak structures.

The Law on Elections and Political Parties governs access to political organizations and the nomination of electoral candidates. The Supreme Electoral Court may impose sanctions on political organizations that violate these regulations, such as warnings, fines of USD 15–125 (although this may change in the coming reforms), temporary suspension or permanent closure.

The reform of the Criminal Code included a broad classification of 'electoral crimes'. Article 407 is noteworthy, as it defines 'illicit electoral financing' as funding that comes from sources of a criminal or anonymous nature or that is not recorded in the political organization's accounts. This article also makes electoral contributions above a certain amount a crime, along with receiving electoral funding from abroad, diverting contributions from a political organization and obstructing the monitoring of a political organization's funds.

Politicians seeking positions of power are, until their appointment or election, subject to the internal regulations of the political party that nominates them or in which they are active. This means they are subject to the provisions of the organization's statutes in terms of internal disciplinary processes, and to the authority and sanctioning power of the corresponding disciplinary committee. Although the Electoral Law requires parties' statutes to include rules governing the functioning of a disciplinary committee, there are no legal requirements regarding how it should operate or what powers of sanction it should have. This lack of regulation dilutes the disciplinary and political responsibility of party members and representatives in relation to their duties. It is also worrying that a political actor's responsibility towards his or her party disappears once she or he is elected or appointed.

The need to regulate what has become known as *transfuguismo*, or a change in party affiliation, has also been noted. This phenomenon has been justified in Guatemala from two perspectives: in accordance with the law, members of congress are representatives of the people, and are therefore elected by them and not by political parties; and public officials may be appointed by a political party other than the one that supported them during the election, on the understanding that their appointment is personal and not on behalf of a party. This justification further undermines any efforts to ensure a political party's responsibility with regard to the actions of its supposed representatives and erodes the very aim of political organizations by turning them into simple vehicles for accessing power.

Political parties have access to both public and private funding. Decrees 10-2004 and

<sup>7</sup> With a contribution by Juan José Morales.

35-2006 stipulate that public financing should be allocated at USD 2 per vote, and that the Supreme Electoral Court may audit private financing. This audit is not limited to requirements regarding members' contributions, which have to be regulated by the statutes of each party. It also establishes that: the financing of political parties by foreign individuals or anonymous sources is prohibited; funds must be channelled through the political organizations; a public record must be kept of contributions; and a monetary ceiling must be set for each campaign and for personal contributions. Nonetheless, effective control over the private funding of political parties remains elusive, and initiatives such as a criminal sanction for illicit electoral financing have been discussed but have not materialized.

### 8.1.2 Actors exercising public authority

The main criteria determining the conduct of politicians when in office are 'functional independence' and 'legality'. Public officials must therefore be able to justify their actions in terms of loyalty to the state rather than to the political organization that nominated them. Administrative actions must, moreover, be taken within the context of the law. 'Arbitrary' actions must be avoided, and may be subject to administrative review.

The Law on the Civil Service establishes the broad outlines of conduct for public officials and civil servants. This regulation stipulates that observance of the law is the overriding duty of a public servant, subordinating the obligation to follow a superior's instructions and noting that discretion may be needed in cases in which the law requires confidentiality and the observance of administrative guidelines for behaviour. There is an exception to the principle of general public responsibility—a prerogative that can be considered a 'freedom of parliamentary expression' which protects members of congress from being accused of libel, slander, inciting crime or even treason due to opinions stated in parliament.

The Law on Probity and the Responsibilities of Public Officials and Employees governs

administrative, civil and criminal responsibility. It includes the responsibilities: to support the work of detecting cases of corruption by implementing mechanisms that result in their being reported; to reinforce procedures to determine the responsibility of public servants; and to establish administrative procedures that facilitate the reporting of acts of corruption. Moreover, all officials have a duty to report illicit acts or corruption. Anyone failing to do so could receive a prison sentence.

If undue payments have been made or the funds or assets under his or her responsibility have been improperly used, no public official can be exempted from his or her responsibility by arguing that they were following a superior's instructions. This responsibility is not only administrative but also criminal and civil in nature. No public official or civil servant is required to follow instructions that are illegal or might involve committing a crime.

All public officials have a duty of transparency (Law of Probity and Responsibilities of Public Officials and Employees). According to article 21 of the regulations governing the General Law on Decentralization, 'The work programmes and budgets that are under decentralized responsibility must state the concrete objects and results intended, along with measures and indicators that will enable their achievement to be verified'. This is supplemented by a duty of accountability and a requirement to enable access to public information, although the latter is tempered by the obligation to respect confidentiality and secrecy. The article highlights the role of people involved in the Special Verification Unit (*Intendencia de Verificación Especial*, IVE), as they are required to maintain confidentiality with regard to any information they receive in relation to legislation on the laundering of money and other assets.

Politicians must submit a sworn assets declaration within 30 days of taking up their post. Public offices and banks are obliged to provide information to verify these statements, as are any private individuals or legal entities that the declarant mentions as debtors or creditors. Politicians must also submit an 'assets statement' when they leave office, and

continue to have administrative responsibilities such as confidentiality of action where this is a legal requirement.

### 8.1.3 Fight against organized crime

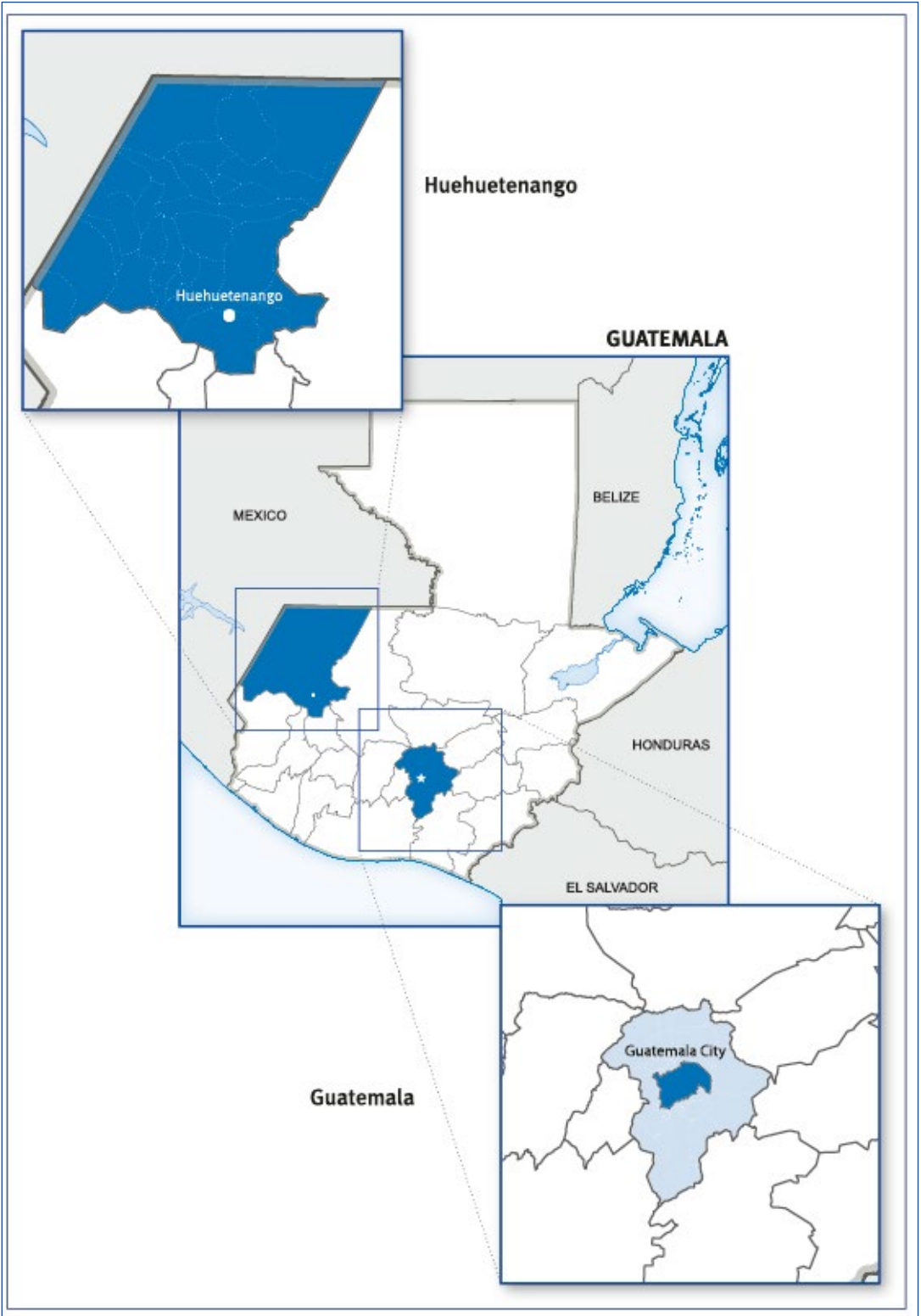
In March 2009, in the context of the 'know your customers' policy, the IVE sent banks and financial institutions guidelines on how to monitor the active accounts of PEPs. These guidelines define a PEP as anyone who holds a relevant public office or who has done so in the previous two years, leaders of political parties, and the heads and ministers of foreign governments. The guidelines also include anyone whose level or position exposes them to inherent risks, including the parents, brothers or sisters, spouses or children of PEPs.

The entities bound by the Law on Money Laundering, particularly banks and other supervised financial institutions, may incur administrative fines, and those responsible may be criminally prosecuted in the case of a

culpable (when there is a lack of due diligence) or wilful (when the action is conscious and voluntary) breach of the regulations. This includes handling PEP accounts without due care and attention.

This law is supplemented by the Law on Seizure of Assets, which aims to prevent organized crime from using legal means to transfer and circulate the assets, profits, benefits and products of their crimes, and from concealing or dissimulating the nature, origin, location, destination, movement or real ownership of those funds, aware that they are the proceeds of illicit or criminal activities—that is, money laundering. It is also supplemented by the Law against Organized Crime, which includes offences considered inconsistent with public office and that may be committed by organized crime, such as bribery, fraud, illegal charging of fees, illicit enrichment and the use of frontmen.

**Figure 8.2 Zone of Huehuetenango and Guatemala City, Guatemala**



## 8.2 Case study on the network of López Villatoro, the ‘tennis shoe king’

*Jorge Dardón and Christian Calderón*

Roberto López Villatoro is originally from Huehuetenango, on the border between the Guatemalan municipalities of La Democracia and La Libertad and the Mexican municipalities of Amatenango de la Frontera and Comitán de Domínguez. Having relatives on both sides of the border helped the López Villatoro family build up their smuggling business (interview with former customs official, 2012). Its position on the border makes smuggling virtually a way of life in Huehuetenango. López Villatoro apparently began working as a smuggler and counterfeiter of commercial brands before specializing as a small importer of Mexican sports shoes, which he would sell in the west of Guatemala. Although he was accused of importing his products illegally, the problem did not arouse any great interest among the public at that time.

López appeared on the country's political scene during the presidential campaign of 2000, when he financed the then-candidate Alfonso Portillo Cabrera. During the campaign, López married Zury Ríos, the daughter of the former dictator and general, Efraín Ríos Montt, who was also originally from Huehuetenango municipality, and ex-wife of the secretary of Congress in 1993–95, José García Bravatti.

When the *Frente Republicano Guatemalteco* (Guatemalan Republican Front, FRG), a political party founded by Ríos Montt, won the elections and Alfonso Portillo Cabrera was elected president of the republic, Zury Ríos became vice president of the foreign relations committee in Congress and Ríos Montt became president of Congress for the four years of Portillo's administration. López Villatoro quickly began to play an important role in the new administration, considerably expanding his influence, and the media began to follow him closely. He also became the central government's official supplier of sports shoes and, not long after, of other products too. The media began to refer to him as the ‘tennis shoe king’. He was first publicly mentioned in 1999, when the Van and Fila international sports shoe brands lodged a complaint with the Guatemalan courts regarding the counterfeiting of their brands—a case that was never resolved (Figueroa Ibarra 2003: 163; Gereda Valenzuela 2009).

The intimate details of the López-Ríos relationship are not known. Perhaps it was a marriage of love or merely one of convenience in which the joint resources that the marriage could provide the FRG were the most important consideration. However, they had no children and were divorced after the Portillo administration ended. Some have speculated that the main objective of the Ríos Montt family and the FRG during the Portillo administration was to remove the obstacles preventing the dictator from returning to power, this time as president. To do this, they are said to have embarked on a process of co-opting the legal institutions in order to obtain a legal declaration that Efraín Ríos Montt's presidential aspirations were legitimate. Roberto López Villatoro was involved in these efforts (Flores 2013; Romero Vidal 2009). Ríos Montt achieved his objective and the Constitutional Court approved his presidential candidacy for the 2003 elections. However, Ríos Montt came third and the FRG fell into a period of decline that, by 2011, had resulted in its virtual disappearance from the political scene—it only managed to get one representative elected, Luís Fernando Pérez Martínez (ROG 2011).



As a result of this experience, members of the FRG probably realized that if they wanted to increase their power, it was essential to influence the legal apparatus. Manipulating how judges are selected, for example, is possible if you have the money and the necessary means. Many people are interested in controlling these processes, because judges are able to thwart many agreements in the context of their work. According to different sources interviewed for this research, representatives of the FRG were aware of this and took action to influence Guatemala's justice system. This knowledge and their use of it would later give new direction to Roberto López Villatoro's career, which extended beyond the Portillo period and blossomed particularly during the administration of President Álvaro Colom. The network that was used to ensure that the Constitutional Court validated Ríos Montt's candidacy could also be used to promote other interests.

It is interesting to note that, in addition to his role in facilitating state political processes, López Villatoro continued his personal business affairs and became an important supplier to the state (*Prensa Libre* 2001). During Álvaro Colom's government, Social Cohesion—one of the main programmes of that administration—bought 20,000 pairs of shoes valued at GTQ 2.2 million (USD 275,000) from him through the Grupo D'Internacional company (Gerreda Valenzuela 2009). López Villatoro's shoes were distributed through different programmes established by Colom's administration with the apparent aim of preparing the ground for the ultimately unsuccessful presidential candidacy of Sandra Torres de Colom (*La Hora* 2009; Carrillo 2011). Some analysts maintain that López Villatoro's business dealings were still ongoing in 2013 (Berganza 2013).

This section presents a case study on how criminal support networks aimed at benefiting an individual or political group are built up within the state through privileged relationships with members of the country's political structure. Roberto López Villatoro is an example of a person who was close to the structures of power and who presumably used his relationships with politicians and illicit networks to favour his political allies and personal business interests. Such relationships between PEPs and criminal networks have delegitimized and weakened the Guatemalan political system.

The section discusses nominations committees (*comisiones de postulación*), which are key bodies in the election of senior civil servants to the judiciary in Guatemala. It describes the tennis shoe king's interest in these committees and gives examples of how he supposedly manipulated them in order to safeguard his interests and those of his party. The case of the selection of the comptroller general is discussed, as well as other important examples such as that of the attorney general and the Supreme Court of Justice.

### 8.2.1 Nominations committees

Nominations committees were created in 2009 to propose candidates for different high-level posts to the president or Congress in order to help depoliticize the selection of judges, prosecutors, attorneys general and comptrollers general, as well as other members of the judiciary. These include members of public and private university authorities, and representatives of professional associations (Legislative Decree No. 19-2009). Previously, these appointments were made by the president or Congress, which meant that the process was influenced primarily by affinities and political loyalties rather than the professional merit of the candidates.

The nominations committees arose in the context of the political reforms that took place in Guatemala following the brief seizure of power by former president Jorge Serrano Elías in 1993. The negative images of the Congress of the Republic and the Supreme Court of Justice were also contributory factors. In particular, according to different sources consulted for this study, José Lobo Dubón and Juan José Rodil, the respective presidents of these bodies, were manipulating President Serrano. The country's legislative agenda apparently depended on the president's willingness to grant benefits or commissions to these important figures, in particular in relation to the electricity system that was being reformed at the time (Rodríguez 2013).

The closest legal precedent to the nominations committees was the State Council of the *de facto* government of Efraín Ríos Montt (Gutiérrez 2008). Although the constitution granted broad powers to the president, this council was created as an advisory body made up of different sectors of society, such as academia, business associations and politicians. The aim was to give more power to people with a high academic profile and to curb the power of the political parties in order—supposedly—to improve the quality of governance. The Supreme Electoral Court can also be seen as a precedent as it has been elected by a nominations committee since 1984.

However, it is still not clear that the committees have managed fully to depoliticize the process of electing senior members of the judiciary and their officials (Mayora 2012). In fact, the committees are said to have politicized the public and private universities and professional associations. The committees 'are networks woven by *de facto* interests and they have grown in such importance that everyone, including the parties themselves, is now fighting to control them' (Gutiérrez 2008). The appointment processes for university deans and rectors, as well as for the management teams of the lawyers' and economists' professional associations, have turned into quasi-electoral campaigns (Gutiérrez 2008).

### 8.2.2 López Villatoro's interest in the nominations committees

Although Ríos Montt's and the FRG's attempts to regain power were unsuccessful, the sources consulted for this study suggest that Roberto López Villatoro and his network continued the structure they had established, albeit with no clear objective since the presidency was no longer within their grasp. It was not long before López Villatoro found a new aim: the network that had served to establish judges favourable to Efraín Ríos Montt could also be used to favour other people (anonymous interviews, 2012).

Individuals allegedly close to and supported by López Villatoro won a number of elections in Guatemala. The media began to note that supervisory bodies such as the Public Accounts Office and the courts were not acting as they should, and appeal court judges were issuing release orders that lacked any solid legal basis to the benefit of people accused of all kinds of crimes (EFE 2009). There was clear manipulation of many legal processes—inappropriate orders being granted for the protection of constitutional rights (*amparos*), department-level courts ruling on cases over which they had no jurisdiction, bail being granted to people regardless of the crimes they were accused of—which demonstrated the existence of a parallel control structure.

The media and CICIG investigated and found signs within these institutions of the presence of the network controlled by López Villatoro (*EFE* 2009). According to an article in *El Periódico* (Gerreda 2009), the tennis shoe king sought out Alfonso Portillo, who had taken refuge in Mexico following the end of his administration. The aim of the visit, according to the article, was to gather the funds necessary to promote the candidacies of two aspiring judges to the Constitutional Court: Hilario Roderico Pineda and Napoleón Gutiérrez.

The tennis shoe king also had alleged relationships with the Guatemalan Bar Association (*Colegio de Abogados y Notarios de Guatemala*, CANG) and San Carlos University (USAC). With regard to the former, López Villatoro allegedly worked through the group known as the Justice for Change Movement, while in the case of USAC he was accused of financing Carlos Sierra's campaign for rector. Similarly, he allegedly gained influence over the USAC Faculty of Legal and Social Sciences (Girón 2009).

The control he exerted over USAC's Faculty of Law and the CANG formed a pillar of López Villatoro's network. Through these institutions, the tennis shoe king allegedly managed to influence all the elections that were of interest to him. Gerreda (2009) accused López Villatoro of financing one of the campaigns for the dean of USAC's Faculty of Law, as well as for the Congressional Negotiating Committee (*comisión negociadora*), both of which are key bodies in the election of judges in Guatemala. Moreover, the journalist indicated that the tennis shoe king was organizing a group of 2000 lawyers in relation to selecting the list of candidates for the governing board of the CANG—a body that would subsequently be able to influence the election of members to the nominations committee.

López Villatoro apparently discovered that it was easy to manipulate both organizations. According to different sources consulted for this study, many of those involved in the elections for the Faculty of Law, along with members of the CANG, have very little income or live off of occasional work obtained in the public sector. Some of these lawyers, qualified professionals who have not achieved their expected level of income, can allegedly be won over with the promise of additional funding. In the CANG, moreover, there are a good number of lawyers working for public bodies (Velásquez 2010). This is the case, for example, for the office of the public prosecutor, the Public Accounts Office, the attorney general's office, the Institute for Public Criminal Defence and the state courts.

According to numerous sources consulted for this report, López Villatoro was able—through his allies in these bodies—to control the public officials needed to influence the voting processes. He did this by offering perks such as invitations to dinner or drinks after the elections, threats that they would keep their posts only if they voted as he said or promises of promotion if they voted as he wanted (Font 2011a). Moreover, although it is theoretically a requirement for professionals to be licensed, in practice only the public administration requests this. Generally, apart from enabling you to obtain work in the public sector, belonging to a professional association rarely offers any concrete benefit to professionals. This means that there is poor participation in such associations, and that involvement is limited primarily to professionals who work for the state in one way or another.

Elections to positions in organizations such as the Bar Association can therefore be won with just a few votes, although theoretically the association

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should have thousands of members. The professionals who participate in these associations and their elections are thus a captive group of voters open to influence. Given that there are so few licensed professionals, these people are easy to identify in order to offer to buy their vote. In many cases, it is enough to pay their association fees in order to secure their support in elections (personal communication from participants in the processes and direct observation of the elections in the USAC School of Political Science). These challenges apply not only to the CANG but also to groups such as the Association of Economists, Public Accountants and Auditors (CECPAA) and the Guatemalan Association of Public Accountants and Auditors (CCPAG).

Elections within USAC also raise many concerns. In one election for the university's representative on the Constitutional Court, the alleged buying of votes of members of the Higher University Council, which was to elect the representative, was leaked to the press (Revolorio 2003; *Incidencia Democrática* 2006). USAC plays an important role given that, although not stipulated by law, its rector chairs most committees. In addition, unlike other universities, USAC is known for its involvement in national politics, and hence for its significance to and participation in other sectors of society. However, elections to posts within San Carlos suffer from the same level of apathy and lack of interest as the professional associations, making them prone to the interests and control of opportunistic or corrupt networks.

In the case of USAC's Faculty of Legal and Social Sciences, different sources consulted for this study stated that there are a number of lawyers whose greatest ambition is to obtain tenure on its faculty. These people are most likely to support the candidate for deanship who offers them this possibility. 'Operators' within the faculty try, for their part, to ensure that those who aspire to posts and positions do not receive them on a permanent basis, because once such a post has been allocated they lose any hold over the individual. This competition for academic posts within the faculty is responsible for a large part of what is known as 'university politics' (personal communications with participants in the processes).

### 8.2.3 Election of the comptroller general of the nation

The control exercised by the Public Accounts Office over the judicial system's supervisory network is very significant given that, depending on its actions, a great deal of corruption can go unnoticed. This explains why there is allegedly a political and corruption network devoted to controlling the internal processes related to electing its officials (*El Periódico* 2007).

Elections to the post of comptroller general of the nation are held every four years. A nominations committee submits a list of six candidates to the Congress of the Republic. The committee is made up of a representative of the country's university rectors, of the deans of the universities' faculties of accountancy and audit, and a similar number of representatives from the professional associations of economists, public accountants, auditors and company secretaries, elected by their general assemblies. A representative of Guatemala's university rectors chairs the nominations committee (Guatemalan Political Consitution, article 233).

The post of comptroller general is often not independent of the current government (MPJ 2010). On the contrary, this official frequently fails to report

or investigate the inappropriate management of public resources. According to a number of the sources interviewed, many of Guatemala's political parties aspire to have someone in this department who can protect their interests and, possibly, overlook acts of corruption. Being able to influence the professional associations and bodies responsible for appointing members of the nominations committees—CECPAA and CCPAG—is thus crucial for such interest groups, and they seek to influence this selection process.

This was the case with the elections for comptroller general in 2010, in which influence was applied in the votes cast by the CECPAA and CCPAG. According to different sources consulted, the groups competing were *Fortaleza Profesional, Unidad, Excelencia Profesional* (EP) and the *Alianza Integral para el Cambio* (AIC). The results established the EP and the AIC as the successful groups, with their lists sweeping to victory and filling the nominations committee responsible for electing the new comptroller general. The winning groups were mainly supported by public sector professionals, primarily from the Supervisory Agency for Tax Administration, the Banking Authority, the Public Accounts Office and the Ministry of Public Finances; 54 per cent of CECPAA's members voted, along with 52 per cent of CCPAG's (Montenegro 2010: 11).

Members of the EP were accused of receiving support from the *Unidad Nacional de la Esperanza* (UNE) party, while the AIC was accused of being part of the network of influence of the outgoing comptroller, Carlos Mencos. The losers challenged the elections (Velásquez Carrera 2010). The International Commission of Jurists called for transparency in the campaigns for elections to the Bar Association, as some campaigns had involved lavish expenditure (Zardetto 2007). Alleged pressure from political parties and the central government was noted, which was aimed at ensuring their involvement in the activities of the respective committees (Velásquez Carrera 2010).

According to the Pro-Justice Movement (MPJ), the internal elections to the UCAS rectorship and the deanship of its Faculty of Economic Sciences had been tumultuous. These elections had taken place, coincidentally, shortly before the nominations committee was formed. Thus, those interested in influencing the nominations committee also participated in determining the university's next senior administrators.

The administration of the Public Accounts Office was also involved in the process of electing the new comptroller general. Carlo Mencos was comptroller general from 2006–10. His election was made possible by the support of professionals from the Public Accounts Office, who formed part of professional groupings such as the EP which plays a significant and dominant role in both professional bodies. According to information from the MPJ, four of the seven places allocated to the professional associations on this committee were held by EP members, whose position is favourable to the national government.

This alliance of Mencos's allies was joined by the rector of USAC, Estuardo Gálvez, and the deans of the faculties of Economic Science of the Rural University (Carlos Humberto Echeverría) and Meso-American University (Carlos Enrique Chián Rodríguez). These figures '[...]' formed an alliance to bring candidates of interest to them to the nomination process' (Montenegro 2010: 5).

Rumours abounded that Nora Segura de Delcompare—who was being promoted by the EP and the government, including the party in power, the

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FRG—would be the new comptroller general. The AIC, which had three seats on the nominations committee, and the dean of USAC's Faculty of Economic Sciences, Rolando Secaida, also supported Segura de Delcompare. It was suspected that factions in the AIC and the professional associations were initially closer to the opposition party, but 'as the selection process went on, these groups became more favourable to candidates linked to government circles [...]' (Montenegro 2010: 5). Thus, some committee members who were not direct representatives of the groupings leaned towards one of the two factions, as was the case of the USAC dean, Rolando Secaida, who favoured the AIC. Towards the end of the process, both the EP and the AIC supported candidates related to the government's current administration, after which the EP established itself in the membership of the nominations committee, on the list of aspiring candidates and in the dissemination of information, which affected candidates from the opposition.

According to different sources consulted, 34 participants were registered in the elections process, of whom only 25 fully met the requirements given in the official notification. Only four (11.7 per cent) of the registered candidates were women. Of these four, only two remained on the official list once their compliance with requirements had been verified: Ana María Tsoc and Nora Liliana Segura de Delcompare.

### 8.2.3.1 The role of the Congress of the Republic

As established in the constitution, a plenary sitting of the Congress of the Republic elected the head of the Public Accounts Office for 2010–14. Congress and the MPJ held three joint meetings to discuss the issue. Some political groups within Congress, such as *Libertad Democrática Renovada* (Líder) and *Gran Alianza Nacional* (GANNA), also organized public interviews with the candidates to better understand their workplans. There is no record of other political groups holding interviews, but the candidates are thought to have held meetings with representatives of some of the other blocs that participated in the election (anonymous interviews, 2012).

Prior to the final vote in Congress, it was rumoured that the candidate with the best chance of getting elected was Nora Liliana Segura de Delcompare; she was closely connected to the government of the time, had the support of the outgoing comptroller general and had been lobbying different political groups. On 6 December 2010, it was confirmed that she would be the new official to head up the institution, having obtained 84 of the 113 votes cast in the chamber. She had the support of members of the FRG, *Partido Unionista*, GANNA, *Bancada Guatemala, Líder*, the *Partido Político Victoria* bloc, *Plan de Avanzada Nacional*, *Junta Directiva del Congreso* (headed by pro-government member Roberto Alejos), UNE, *Unidad Nacional Revolucionaria Nacional Guatemalteca* (URNG) and Eduardo Meyer, independent.

### 8.2.3.2 Coordinating the interest groups

One of the main obstacles to electing the comptroller general was the delay caused by Congress and the Constitutional Court. The reason for this was the time it took to resolve disputes over the membership of the nominations committee. This delay was further exacerbated by the professional associations that took more time than expected to elect their representatives. In all, the

nominations committee commenced its work three months late (Montenegro 2010). According to various sources consulted for this report, this could have made it easier to manipulate the results, as potential opponents of the pro-government position had less time to react to strategies to restrict the opportunity for flexibility, which, through repeated use, had reached a high level of sophistication. The delays in establishing the nominations committee severely limited the time available and put pressure on the schedule to the extent that some stages, such as the interviews, were not conducted properly. In addition, 'the selection of candidates for the post of comptroller took place in the context of commitments previously made by the EP and AIC groups, who filled the nominations committee and put a strategy in place that also enabled them to control the list of aspiring candidates registered. These groupings were in line with the UNE and *Partido Patriota* factions respectively although, in the end, both organizations favoured the pro-government candidates' (Montenegro 2010: 19).

It is notable that many of the nominations committee members noted their 'dissatisfaction' with three elements of the Law on Nominations Committees, all of which related to the requirements for assessing the candidates: conducting an evaluation of ethical merits; establishing recognized integrity; and deciding on reported impediments. According to the MPJ, this disagreement was based on the fact that the nominations committee lacked 'pre-established mechanisms and procedures; and because they consider it inappropriate to comment on the ethical nature and integrity of aspiring candidates' (Montenegro 2010: 20).

There were conflicts within the nominations committee caused by allegations of shady deals and pressure being exerted by central government representatives. Actors such as the committee's chair, Estuardo Gálvez, played an important role in reaching agreement and, above all, in creating an ad hoc list of candidates, which did not include the central government-supported candidate (Montenegro 2010). Another factor that limited full compliance with the requirements of the Law on Nominations Committees, particularly in terms of access to information, transparency and publicity, was the committee's lack of resources. The nominations committee had an extremely limited budget, which made it impossible to carry out all its duties (Méndez Arriaza 2009; Montenegro 2010). This lack of resources, and subsequent limited compliance with legal requirements, was apparently exploited by networks that aimed to secretly influence these processes.

If nominations committees met the requirements of the Law on Free Access to Information and the Law on Nominations Committees, it would be possible to establish whether commitments were being made against a backdrop of shady political dealings, and thus identify the possible interests of committee members and ascertain the alleged influences on the current central government. Knowing the position of each of the individuals on these committees is key to promoting transparency in the process and an informed discussion on the part of external actors (Mack 2009; Montenegro 2010).

#### **8.2.4 López Villatoro's network becomes public**

The direct influence of López Villatoro on the election of the comptroller general is unclear. However, media attention began to focus on him, and protests were organized by some social organizations due to complaints made against him by Carlos Castresana, head of the CICIG, in 2009. Castresana also frustrated



some of the candidates supported by López (*El Mundo* 2010; *Noticias de Guatemala* 2009). He opposed the appointment of the attorney general, Conrado Reyes, and the appointment of various judges to the Supreme Court of Justice, whom he believed had links to drug traffickers, crimes of varying natures and political groups:

[Castresana] highlighted three candidates as being linked to Roberto López Villatoro, the so-called tennis shoe king who he says is responsible for manipulating the Public Prosecutor's Office and the judiciary. The representative of this international committee identified Boanerge Mejía, dean of the Faculty of Law at San Carlos University, as being part of this alliance; along with the President of the Bar Association and Artemio Tánchez, President of the Disciplinary Committee of the same association. If Castresana's accusations are true then we face serious problems as this would mean that the next public prosecutor will be in the service of a group interested in derailing investigations or accommodating them to their own interests (*Prensa Libre* 2010).

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The head of CICIG stated that López Villatoro was coordinating 'the interests of parallel structures' and that he had 'been co-opting judges for years with the aim of directly or indirectly controlling the Supreme Court and the Court of Appeals' (*Noticias de Guatemala* 2009). According to Castresana's complaint, López Villatoro had established a group of judges and lawyers that he influenced in exchange for study trips to Spain, and had lobbied for the appointment of four of the six judges to the court who were later accused of acts of corruption. Castresana further identified three members of the Supreme Court's nominations committee as being 'operatives' of López Villatoro: Petrona Reyes, Ángel Barrios and Guillermo España (Gerreda Valenzuela 2009). He highlighted the fact that the vice president of the CANG at that time, a key association in the election of the nominations committee, was López Villatoro's ex-wife, Evelyn Morales (Girón 2009). The accusations made against these people allegedly involved in López Villatoro's network prevented them from sitting in the court. Castresana's complaints also made it difficult for Conrado Reyes to remain in the public prosecutor's office.

The tennis shoe king later admitted that he had been present at negotiations regarding candidates for the universities' deanships (Girón 2009) in the context of establishing the nominations committees. He also indicated that he had been in negotiations with Gloria Torres, President Colom's sister-in-law, regarding the appointment of judges to the Supreme Court of Justice. He argued, however, that these negotiations had had no effect on the choice of court judges, as they had broken down prior to their appointment (*La Hora* 2011).

It was presumably in the interests of López Villatoro, Gloria Torres and—as later became apparent, Sandra Torres—to have a Supreme Court that was 'friendly' to the presidential aspirations of President Colom's wife (*La Hora* 2011). In particular, they were allegedly seeking to ensure the complicity of a series of judges in order to ignore a section of the Guatemalan Constitution that prohibits candidates from standing if they are a direct family member of the President of the Republic (*El Nuevo Día* 2011). In fact, 'on 8 July 2011, the First Chamber of the Court of Appeal for Criminal Matters, Drug Activity and Environmental Crimes granted temporary protection from the Supreme Electoral Court's decision rejecting her registration, thus momentarily giving Sandra Torres the right to



participate once more as a presidential candidate in the general elections, an act that led to a press conference in which the former First Lady conducted herself gloriously' (*El Nuevo Día* 2011). Nonetheless, jurists from the Supreme Court of Justice ultimately decided that her candidacy was unconstitutional (*El Nuevo Día* 2011).

It is interesting to note that Julio López Villatoro, a member of Congress and the brother of the tennis shoe king, was one of the main opponents of establishing the original UN-led Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala, and its successor the CICIG. Subsequently, following Carlos Castresana's resignation due to the lack of political will to overcome the problems with the justice system, Julio asked to head up a process to reform the CICIG—having denounced corruption in the processes of appointing the attorney general and the Supreme Court of Justice, both of which involved his brother (Palma 2010a).

### 8.2.5 Conclusion

Private individuals in Guatemala are operating an illicit network in order to gain economic space, illegal profit and political influence. These people are working through fairly coordinated structures that they hire out to the highest bidder—legal or illegal—using loopholes in the law and exploiting the arguments that these permit. Politics is their vehicle of choice for achieving their interests, which stretch far beyond purely financial motives.

The illicit structure linked to the so-called tennis shoe king is an example of how an illicit network coordinates with the political system, balancing the interests of actors who are clearly political and those who are business financiers. Their objectives are to maintain their respective positions and for the established network to facilitate and guarantee benefits to and the protection of all their members, both legal and illegal.

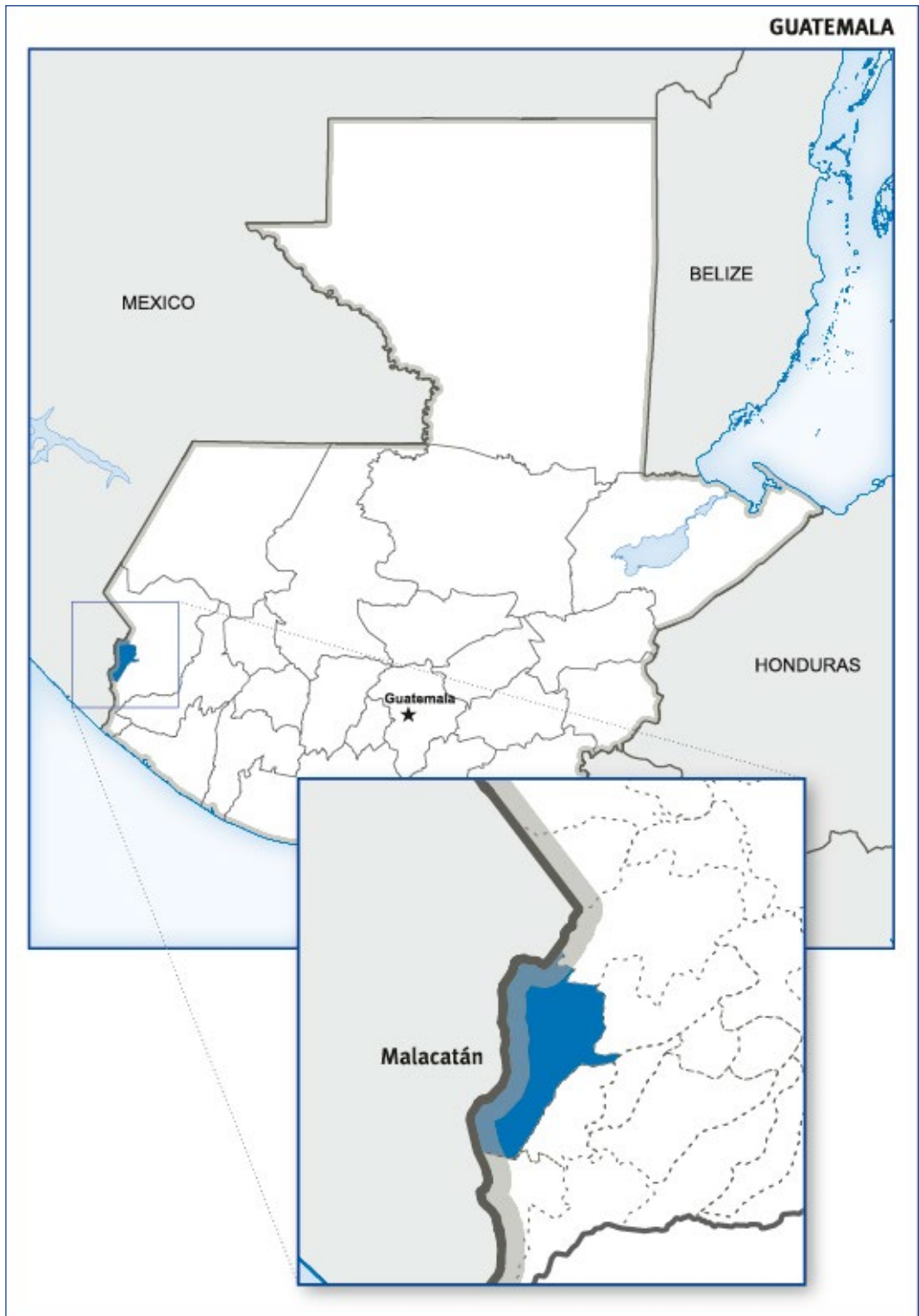
To begin with, López Villatoro exploited his knowledge of how the Supreme Court of Justice was formed in order to make deals with the judicial body (interview with Miguel Castillo, political analyst, 2012). However, in this process, López Villatoro apparently saw how other actors were able to offer far more money to control these posts. It is therefore thought that he extended his network of influence to the election of senior officials in other key state bodies: the attorney general, the comptroller general, judges in the Constitutional Court and the Supreme Electoral Court, and the public prosecutor. López apparently sought alliances with the entities involved in the process of selecting and appointing officials to these bodies. Such was the case with the CANG and the Association of Economists, Auditors and Public Accountants; and the deans from the faculties of Law and Economic Science at USAC and its rectorship, along with the political groupings of these bodies and of some private universities.

Given the lack of information on this issue in Guatemala, there is a need for more case studies, and historical and socio-political approaches to understand the extent to which these illicit networks should be seen not just as groups conducting criminal activities, but also as structures that dominate the political system and place conditions on or limit progress in democratic processes in countries in transition to democracy, such as Guatemala. Studies of this kind would broaden our understanding that the challenge of consolidating

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democracy in Latin America also involves supporting traditional processes aimed at promoting civic participation and including marginalized sectors, as well as designing strategies and policies to establish the rule of law—which these illicit groups and networks prevent and which is clearly fundamental to the functioning of a truly democratic system.

**Figure 8.3 Municipality of Malacatán, Guatemala**



### 8.3 Case study on the network of Juan Alberto Ortiz Lopez, alias 'Chamalé' and 'Brother Juanito'

*Jorge Dardón and Christian Calderón*

A system of patronage involving the political authorities and criminal groups has existed in Guatemala since at least colonial times, particularly in the relationships between smugglers and customs authorities, the police and military forces (Martínez Peláez 1998; MacLeod 2008; Wortman 1982). During Guatemala's long dictatorships, the proceeds from contraband were another perk that the president of the time could grant or take away from his friends. Corruption, although widespread, was centralized and could be eradicated at the president's will, especially if the beneficiary were to jeopardize the existing order by his voracity or excessive ambition. To be accused of, tried for or even murdered due to corruption generally meant that you had fallen out of favour with the president (Jonas 2000).

In the middle of the 1970s, peasant farmers began to grow poppy in the San Marcos department at the behest of Mexican traffickers, to which they delivered the paste to be processed into heroin in Mexico (Fernández Ordóñez 2011: 1–2). Central America, and particularly Guatemala, did not begin to attract the attention of criminal organizations until the end of the 1980s, however, when the armed conflicts in other countries in the region began to wane:

[...] At the start of the 1980s, when the war and the persecution of 'communists' became more brutal, organized crime also began to establish itself in Guatemala through drug trafficking. During the last stages of the war, one segment of the armed forces, worried about the diminishing possibilities of providing large-scale financial support to the counterinsurgency operations, devoted itself to clandestine business dealings, preparing the way for 'sympathetic civilians' to become embroiled in smuggling and for cooperation with the various criminal underworlds (Kruijt 2011:28).

The relationship between criminal organizations and political forces has not been fully studied. Guatemala has been accused of falling into various different categories, including that of a 'failed state', a definition also applied to Honduras and Nicaragua, but no solid conceptual definitions have been offered that could lead to proper analysis or subsequent conclusions (Ramsey 2011). Moreover, a failed state can be a disadvantage to the development of activities such as drug trafficking. One of organized crime's strategies is to '[...] be able to co-opt [and] bribe civil servants in order to protect the source of their illegal gains. In fact, the total collapse of the state would be a disadvantage to the drug trade, as it would mean even more insecurity, leaving the drug traffickers open to more competition' (Ramsey 2011).

Two things resulted in Guatemala attracting the interest of drug traffickers: the surveillance of the Caribbean by high-power radars installed by the DEA, which made the Bahamas unfeasible as a refuelling point for the Colombian cartels; and the US invasion of Panama, which prevented it from becoming a warehouse for drugs and a money laundering paradise (Fernández Ordóñez 2011: 1).

Corruption has been 'democratized' in Guatemala since 1985. It has moved from being centralized within the presidency to being increasingly dominated by Congress. This is primarily due to the measures taken to control executive power, through the semi-parliamentary elements adopted in the 1985 constitution. Moreover, corruption has become fragmented with the collapse of the political parties and their replacement by electoral mechanisms at the service of ambitious individuals, which has ironically been assisted by an Electoral Law that sought to facilitate the functioning of political parties. The ever-increasing presence of electoral campaigns in the media, and the high costs these involve have opened up an additional channel through which corruption can become entrenched at different levels of the political process.

Efforts to limit executive power have enabled parliamentarians to free themselves from presidential control and negotiate directly with financiers and parallel powers of all kinds, even receiving rewards for their favours in the context of their legislative work. The president's participation remains essential in the business dealings of the executive and its departments, but individuals who want to do business at the state's expense no longer need the president's permission.

The abating of the conflict and the changes in the state structure coincided with the search for new drug trafficking routes. The Colombian cartels began to establish a presence in Guatemala, exploiting these factors. The illicit networks sought contacts with local inhabitants to use their services to transport and store narcotics. Colombians thus retained control over the operations and supervised drug movements. The Colombian cartels operated by sending advance parties into the country to settle in the cities and towns legally and illegally, to act as the representatives of their respective cartels. This vanguard contacted Guatemalans who might be willing to get involved in drug trafficking, such as haulage contractors, livestock traders and fishermen, and hired them to form part of their networks (López 2010: 11–13).

The first network to establish contacts in Guatemala was the Medellín cartel, which not long after merged with the Cali cartel (Fernández Ordóñez 2011: 4). Given the situation at that time, many of the partners of these cartels in Guatemala were military chiefs and their civilian allies in each region; typically heads of Civil Defense patrols and military commanders. They also contacted politicians to gain protection, primarily in border towns or towns with ports or airports, such as Izabal, Zacapa, Chiquimula, Escuintla, Huehuetenango and San Marcos (Fernández Ordóñez 2011: 5). The major Guatemalan drug lords that have been arrested or identified to date have all been army commanders, such as the former mayor of Zacapa, Arnoldo Vargas; Juan José León Ardón—known as 'Juancho León'—murdered by Los Zetas; Byron Berganza, now a prisoner in the United States; and the recently arrested head of the Zacapa cartel, Waldemar Lorenzana. This indicates that, at least to some extent, the drug cartels initially used military commanders to gain a foothold on which to build their support structures (Jonas 2000). With the hurried signing of the peace accords, demobilized insurgents also joined these organizations. These people had extensive first-hand knowledge of the territory, particularly the more remote areas or borderland 'dead spots', as this was where the insurgents had been cornered by the military (Fernández Ordóñez 2011).

The overwhelming power of the Colombian cartels over routes crossing Guatemalan territory began to wane as the DEA and the Colombian authorities dismantled the Medellín and Cali cartels. This fuelled the creation of smaller

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cartels that were then forced to give up territory to the Mexican organizations. The Mexican Gulf and Sinaloa cartels extended into Guatemala and co-existed peacefully (Pinto 2012). Some reports from the Guatemalan Anti-Drugs Squad even demonstrate that they cooperated by sharing routes and transport networks. However, things turned violent when Los Zetas broke away from the Gulf cartel to set up its own network, launching a strategy of savage assault on its parent organization. Los Zetas burst on to the Guatemalan scene in 2008 after eliminating the ‘strongmen’ in the departments of Zacapa, Alta Verapaz and Petén. These territories were important for establishing routes through areas that were poorly monitored and had no official Mexican or Guatemalan presence.

The relationships between the political authorities and criminal groups also grew closer following the decline of the ideological parties as they had existed during the armed conflict. The counterinsurgency networks that had remained in place after the war, with their practices and leaders intact, were privatized and outsourced. The economic crisis that began in the 1990s also played a role in drug activity.

As a result, the new Guatemalan political class that emerged during the democratic transition is permeated by the vices of the past, but is also further weakened by the factors mentioned above. Many of these individuals act within the framework of the mafia and have enormous resources that support their illicit links. This context facilitates the formation of illicit networks aimed at controlling and dominating the Guatemalan political system. The case study of Juan Ortiz, also known as ‘Chamalé’ or ‘Brother Juanito’, provides an example of a criminal network that benefits from its close ties to members of Guatemala’s political system.

### 8.3.1 Background: Malacatán, local growth and illicit economic networks

The municipality of Malacatán, which is in the border department of San Marcos, has grown in recent years, resulting in an upsurge in organizations such as sports clubs, business associations—such as a subsidiary of the Chamber of Commerce—and peasant farmers’ and workers’ associations. As a border region, the local economy is boosted by smuggling: ‘Given the proximity of Mexico and the high customs tariffs charged, apparently to protect “national industry”, Malacatán has always lent itself to what the “charros” [Mexican cowboys] call “fayuca” [smuggling]’ (interview with retired teacher, Malacatán market, 2012).

For example, illegal petrol smuggling has offered an alternative income for families in financial difficulty. Other sources of contraband include chicken, meat and eggs. People trafficking has yet to play as large a role as it does in other municipalities such as Tecún Umán, but it is still significant and many of the municipality’s hotels rely on it (Pinto 2012). The same crossing points that are used to traffic petrol, chicken and eggs also tend to be used for migrants. It is unclear whether these activities are linked with drug trafficking, as they are in Mexico. According to interviews conducted for this study, they are unrelated: ‘Goods smuggling has been around since the border was created and is a poor person’s activity. I don’t think the drug traffickers do this, although in Mexico Los Zetas are involved in it’ (interviews with officials from the Department for Municipal Planning, 2012).

In recent years, the power of the drug traffickers, people traffickers and smugglers has increased to the extent that, in municipalities such as Ixchiguán, they have even taken local police officers hostage on a number of occasions to force the release of lorry loads of contraband fuel or eggs (Pachico 2012a). Another increasingly popular source of income is the remittances that are sent home from the United States—particularly from Los Angeles, Chicago and Washington, D.C. According to people interviewed for this chapter, the municipality's prosperity can be put down to these remittances, rather than drug trafficking and money laundering: 'The drug money does not stay in Malacatán. Brother Juanito bought farms in Catarina and houses in Xela, not here. He does not even hire his thugs locally; he brings them in from the east' (interview with retired teacher, Malacatán market). The fact that *coyotaje* [migrant smuggling] is a legal practice also facilitates and reduces the cost of migration for the people of Malacatán and its neighbouring municipalities of Catarina, Pajapita and Tecún Umán.

Despite the local people's reluctance to recognize the presence of illicit drug trafficking in the area, reports from the Guatemalan, Mexican and US intelligence agencies all concur that this region is one of the most active drug trafficking areas in Guatemala, from the sowing and transportation of marijuana and opium to other drugs such as cocaine (*Publinews* 2013). According to officials in the Mexican intelligence service, Malacatán is the main port for contraband flowing into Guatemala—particularly arms, drugs, migrants and petrol, which is controlled by the Sinaloa and Gulf cartels as well as by Los Zetas. 'The only local cartel responsible for the sowing and movement of poppy was Chamalé, a partner of El Chapo [see below]. The area of Tecún Umán, on the border with Mexico, is a strategic point for the trade in these narcotics' (*Proceso* 2011). This is why it was especially important for the traffickers to establish relations with the elite in this department, which controls the movement of poppy. In an interview, Sandino Asturias Valenzuela, general coordinator of the Guatemalan Studies Center (*Centro de Estudios de Guatemala*), said that the organization headed by El Chapo—the Sinaloa cartel—always ensured that it had local support in the areas in which it worked. In his words, 'Between San Marcos and Huehuetenango are the most clandestine routes, protected by the local population in exchange for money and payments in kind made by El Chapo's organization' (*Proceso* 2011).

All this has developed against a backdrop of poverty and a limited state presence. San Marcos is predominantly agricultural and has one of the highest levels of poverty in the country. The Ministry of Planning and Scheduling of the Presidency, the National Institute of Statistics and the Rafael Landívar University jointly produced a 2002 Map of Poverty in Guatemala. According to this study, 'In departments such as Huehuetenango, Sololá, Totonicapán, Baja Verapaz and San Marcos—or the so-called poverty belt to the north and north-west of the country—around three-quarters of the people are poor' (Arias Ortiz 2005: 17).

The weak presence of public institutions and the supplanting of the state by illegal actors have facilitated the development of illegal activities. According to the former Guatemalan minister of the interior under President Álvaro Colom, 'The Ministry of the Interior admits that the absence of the armed forces of either country in [the border] zone has enabled the United States to head up operations to locate crops, seize consignments and arrest drug traffickers' (*Revista Proceso* 2011). Given the central government's inability to do its job, security operations that theoretically should have been undertaken by national bodies have had to be conducted by foreign actors.

Moreover, in 2005, Hurricane Stan devastated a majority of the houses in the communities. Asturias (interviewed in Malacatán, 2011) states that the drug traffickers operating in the zone gave money to the peasant farmers to rebuild their homes, implying that the state's responsibilities were being usurped not only by foreign countries but also by illegal actors.

### 8.3.2 Juan Alberto Ortiz López, alias 'Chamalé' or 'Brother Juanito'

The 2011 arrest of Juan Ortiz revived the discussion on drug trafficking, its role in the economy and its links with Guatemalan politics. Ortiz was a well-known landowner in Malacatán. According to the investigations conducted for this study, he acted as a direct link to Joaquín Archivaldo Guzmán Loera ('El Chapo'), head of the infamous Sinaloa cartel. In December 2010, *El Periódico* (2011) published an investigation based on information provided by the Ministry of State Intelligence, which explained how Ortiz and El Chapo worked together to control the local power networks in San Marcos and the border municipalities, where a large part of the cocaine from Colombia and Peru was being moved from Guatemala into Mexico and on to the United States.

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Chamalé owned properties—including livestock farms and palm oil plantations—in Guatemala and Mexico. Ortiz owned a cable company in Malacatán, and was the pastor of the evangelical church on one of his farms in the same municipality. More than ten houses were registered in his name across the municipalities of Coatepeque, Quetzaltenango, Tecún Umán and Malacatán. In 2006, the anti-drugs authorities raided four of his estates near the Mexican border. According to information provided by the minister of the interior, Carlos Menocal:

His fortune is no less than USD 100 million, obviously not all in his name. [Ortiz] has used figureheads and frontmen, we do not yet have concrete figures but we are investigating and we believe he had a consortium of companies that formed an association with a criminal structure.

Among the business areas that may be linked to the accused are farms, businesses, cable television companies, magazines and local radio stations. The farm where he lived, which appears in the video of La Estrellita (un *narcocorrido* or drug ballad in which the suspect played a role), is believed to have a value of USD 5 million alone (*Foros Univisión* 2011).

According to Pachico (2011b), at the time of his arrest, in addition to exporting cocaine to the United States, Ortiz had become the dominant force in marijuana and poppy production in Mexico, and was based high up in the San Marcos *altiplano* (*Nuestro Diario* 2010).

Ortiz started out as a fisherman on the Ocós and Champerico shark boats with Mauro Salomón Gómez. He allegedly exploited this knowledge to help in the maritime transportation of cocaine consignments for 'El Chapo' Guzmán's Sinaloa cartel (*El Periódico* 2011). In addition to his skill in transporting drugs to Mexico, Ortiz was noteworthy for the way in which he constructed networks of allies. He demonstrated this skill in Catarina and Malacatán, where he set up his base (CERIGUA 2011).



Mauro Salomón had been Chamalé's most notable right-hand man but subsequently established his own network and tried to take control of Chamalé's territory, creating great enmity between the two. According to information from the media and people interviewed for this report, this enmity and the open competition it created eventually resulted in the arrest of both men. The following is an excerpt of a local interview on the arrest of Juan Ortiz.

Juan Ortiz began his business dealings some 10 years ago. I do not know if he began as a poppy grower, like many narcos began, or if he went straight into coca. Whatever the case, gradually, he began to climb. His genius lay in the fact that he sought to deal directly with El Chapo, rather than being satisfied with dealing with middlemen.

In contrast to most drug dealers, he was a very reserved and discreet person. No luxury houses, no wild parties. He could have been any landowner. So it was not hard for him to move around undetected. The police, who were on his payroll, did not bother him at all, and only those who knew him well suspected something strange about his income. As he was then a pastor, many people found it difficult to believe that he was involved in untoward things, even the tourism and recreational centre was discreet, and welcomed by families as it was one of the few entertainment centres in the region that did not serve alcohol.

Everything began to change when he met Salomón, a less refined drug dealer who was often surrounded by women, lived in luridly painted houses, carried handheld and automatic weapons, and held wild parties and travelled in luxury cars. To begin with, Ortiz was the decent boss and Salomón his 'tearaway' subordinate but, gradually, Ortiz began to change. First it was some nonsense about being a doctor of I don't know what ... although I don't think he even finished high school [...].

Then came the rest: luxury houses, the latest cars, 'Brother Juanito's' involvement in mundane activities such as beauty pageants in San Marcos and Malacatán [...]. To begin with, his Christian brothers said 'No, this is pure gossip, who would believe that "Brother Juanito" could be involved in such dealings'. When they could no longer deny it, they said he was doing it for the business, to get money to be able to help people and preach the word of God, and that when he had enough he would retire and devote his time to legal things. As he gave them money for churches, they said nothing. They never acknowledged the fact that he began to have women and set them up in houses. Even now, the brothers deny that this is true. In other words, 'Brother Juanito' may be a *narco*, but a womanizer, no, that is not possible. [...]

I think what happened is that Salomón made a very good right-hand man, and 'Brother Juanito' began to worry that he was going to take over. So, to show him who was boss, he began to compete with him in terms of cars, women, arms, and so on, and it turned out that he liked this life. In the end, to demonstrate his power, along came Brother Ovidio's drug ballad and the video of his house on YouTube. Now the money for the beauty pageants was no longer a simple

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contribution and he began, as they say in polite society, to demand 'sexual favours' in return.

Gossip has it that Brother Juanito began to be so worried by Salomón that his failed capture in Tikal Futura was organized by him. If this is true, it was a mistake, because he began to attract the attention of the *gringos* and was unable to fill the vacuum left by Salomón.

Source: interview with retired teacher, Malacatán market, November 2011.

According to local statements, prior to the rivalry with Salomón, Chamalé was a discreet drug trafficker, his behaviour barely noticed in mafia circles. Following his rift with Salomón, Chamalé adopted the typical behaviour of a drug trafficker, which was easy for the authorities to identify: lavish spending, womanizing and scandalous behaviour. This lifestyle facilitated his arrest: 'The authorities observed Ortiz's different financial, romantic and social movements, including with his ten mistresses, and this gave them clues on how to catch him' (*Prensa Libre* 2011a).

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In the months following his arrest, a number of workers on his farms organized a series of fairly large demonstrations, in both Malacatán and Guatemala City, calling for his release. Apart from stating their absolute faith in the innocence of Brother Juanito, the demonstrators indicated their fear of losing their jobs on his farms if Ortiz were deported to the United States (*Prensa Libre* 2011b). Many of the protestors were women, particularly the wives of the day workers on the palm oil plantations that Ortiz owned in Pajapita and Catarina, as well as members of the church where he was pastor.

This uncertainly related not only to the region's working environment, however, but also to its security situation. According to interviews conducted for this study, his arrest left a vacuum in the area that was liable to result in a war between possible successors. 'The bad thing is that without Chamalé in charge, the local strongmen are not under control and, if his absence continues, they will kill each other to gain supremacy. The losers will be the local population' (interview with fruit seller, Malacatán market, 2012). Furthermore, as noted by another person from the area: 'He may have been a narco and what have you but at least with Ortiz crime was under control. Not because he focused on combating crime but because the thieves did not want to get into trouble with the strongmen around. Now, everything is out of control' (interview with minibus driver, La Virgen-Malacatán route).

The deportation Juan Ortiz to the United States was still going through the Guatemalan courts as of the end of 2013, and was turning out to be a slow and complex process. It is possible, as has been the case with other deportations, that it will take a further two to five years. The Guatemalan justice system has not reported the freezing of his bank accounts.

### 8.3.3 The alliance between Juan Ortiz and politicians

The drug traffickers' contacts allegedly included a number of Guatemala's political parties, ranging from the UNE to the *Partido Patriota* (*Plaza Pública*

2011c; López 2012). Few cases have been proved in this regard, however, and most are merely conjecture on the part of the media (López 2013; Rios and Dudley 2013; Zamora 2011).

It is rumoured that Ortiz provided funding for different political campaigns at the highest level in order to maintain good relations with whoever might be in power next. He presumably donated money to campaigns in exchange for non-interference in his export and money laundering activities. It is also suggested that the security organizations informed Chamalé of future operations against him, although it is unclear how they eventually managed to arrest him if this was the case.

Although it was not in the media, either for lack of evidence or through a desire to avoid conflict, Chamalé apparently managed to establish contact with elected representatives in San Marco, at least from 2000 until the time of his arrest (López 2009, 2010, 2013). Following his arrest, none of these representatives supported him. Nor, as far as is known, did they visit him in prison. Most are thought to have received donations from Ortiz, but there has been no reliable proof of this in the media (interviews in Malacatán, November 2011).

These alleged contacts between Ortiz and the region's elected representatives can be explained by the need for regional politicians to obtain the protection and approval of local illicit power networks. 'Regional politicians [...] are much more likely to seek benefits from, and the protection of, drug traffickers than national ones. They are also much more likely to withstand the onslaught of political violence in the country' (Pachico 2011b).

Apparently at least one of the region's politicians, the former mayor of Malacatán, Luis Alberto Contreras Colindres, was on good terms with Ortiz. He has made no comment on his arrest but, according to people interviewed for this study, he always managed to get Ortiz to support his projects. He is the only regional politician whose relationship with Ortiz was out in the open. While not ignoring members of parliament, Ortiz prioritized his relationships with mayors, as did other illicit networks such as those of the Mendoza and Lorenzana families, or criminals such as Otoniel 'El Loco' Turcios—now in prison. It seems likely that mayors were able to obtain some personal gain from the construction companies owned by Ortiz, which were implementing public works such as the project in the San Marcos *altiplano* (interviews in Malacatán, November 2011). The media have not investigated or reported on this to date.

### 8.3.3.1 Relations with networks in Petén: the Torres clan

The northern part of Petén department has little government presence, uncontrolled immigration and extremely weak legal institutions. Until 1998, this department did not even have a decent road connecting it to the rest of the country. As a result, Petén suffers from high levels of poverty and violence. According to 2006 data and socio-economic indicators, while 34 per cent of the Guatemalan population falls within the lowest income category, this rises to 43 per cent in Petén (UNDP 2013a). The data on violence is similarly revealing. While the murder rate in Guatemala was estimated at 41.5 per 100,000 inhabitants in 2010—one of the highest in Latin America—it was 59.6 per 100,000 in Petén (UNDP 2013a).

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Since 1985, Petén has witnessed the incursion of organized groups of smugglers and illegal loggers, primarily the Lorenzana and Mendoza families from the Zacapa and Izabal, respectively (Hernández 2012). These families seemingly began to get involved in the cross-border movement of cocaine controlled by the Colombian Medellín and Cali cartels. In turn, they exploited the weak or non-existent state presence in the department to establish a base there. According to different sources interviewed in the area, politicians in Petén did not take long to realize that if they wanted to be successful, they would need to get on well with the new 'businessmen'. The Torres Casanova sisters and their mother, the mayor of Melchor de Mencos municipality, Teresa Casanova de Torres, established their political careers on this basis (interviews in Malacatán, November 2011).

High levels of poverty and social exclusion meant that the population of Petén was broadly in favour of policies linked to social justice and the redistribution of wealth (*InSight Crime* 2011b). All the department's successful politicians—including the mayor of San José Petén, Julián Tesucún, Teresa Casanova de Torres and her daughters (Gloria, Nora and Sandra) as well as the Barquín family and Manuel Baldizón (founder of the *Líder* party that came second in the second round of elections in 2011)—included these agendas in their political campaigns (Morales 2013).

Increased public expenditure and public works thus formed a cornerstone of the region's public agenda. The Mendoza and Lorenzana families apparently used their alliances with local politicians to exploit this trend and launder money from smuggling and illegal logging through public sector projects, and to develop relationships that ensured an enabling environment for their businesses. In exchange, the politicians supposedly benefited from increased political stature linked to public sector investment projects and gained additional sources of corrupt income (Castañeda and Mérida 2005). Ordinary citizens were willing to ignore the clear overpricing of municipal projects provided they were of a minimum standard of quality. Problems only arose when the greed of those involved meant that such projects no longer reached this minimum standard (Orozco 2011).

The politician who seems to have most successfully exploited this kind of alliance was Manuel Baldizón, the godson of Teresa Casanova de Torres (*Plaza Pública* 2011b). Baldizón and Luis Francisco Barquín were even elected to the strategic Congressional Finance Committee, and Baldizón in particular turned this committee into an important source of power and business dealings (*InSight Crime* 2011b: 10). Teresa Casanova apparently exploited the lack of legal certainty over land ownership in Petén to appropriate and sell various plots for herself and her daughters (*El Periódico* 2008).

In 1999, Casanova's daughter, Sandra Torres, met Álvaro Colom, nephew of the well-known left-wing politician, Manuel Colom Argueta, and successful civil servant in the first National Peace Fund. This led the Torres Casanova daughters towards a political career that their mother could only dream of. Sandra Torres married Álvaro Colom and supported his presidential aspirations. In 2007, after seven years of being part of the URNG, Colom—with Torres at his side—became president of Guatemala.

Different sources consulted for this study felt that Álvaro Colom's victory in the 2007 presidential elections forced Chamalé to prioritize his relationship with the Torres sisters, particularly Gloria Torres (interviews in Malacatán, November

2011), to whom the Colom administration gave the role of liaising between the central government and local authorities (Fernández 2011). She was known as the 'first sister-in-law of the nation'. Gloria subsequently became the UNE's presidential candidate.

Juan Ortiz was allegedly in constant communication with Gloria Torres and tried to call her at the time of his arrest (interviews in Malacatán, November 2011). Chamalé also supposedly called the then-minister of defence, General Abraham Valenzuela, who was removed from his post because of suspicions over their relationship (Zamora 2011; López 2012). After this episode, the then-head of military counterintelligence, Valenzuela's brother, was also removed from his post for the same reason (*Plaza Pública* 2011a). Neither Torres nor Valenzuela has faced criminal charges for their alleged relationship with Juan Ortiz.

President Colom's sister-in-law denied the accusations and stated that her relationship with Ortiz was limited to the fact that they were both involved in the same party, the UNE. She claimed that she had never had any contact with the drug trafficker (Palma 2011). The fall of Chamalé was apparently the start of a growing distancing from her sister, Sandra Torres, her virtual expulsion from the UNE and her subsequent prosecution for receiving illegal payments from various municipalities, starting from the time of President Colom's administration (Font 2011b). Torres later became adviser to Mario Estrada's *Unión del Cambio Nacional*. Estrada was identified as having links with drug trafficking and was a close ally of former President Alfonso Antonio Portillo (Duarte 2007).

Chamalé's apparent links with politics began to wane, primarily due to the circumstances of his arrest. His disputes with the drug trafficker, Mauro Salomón, which had until then been discreet and low profile, exposed him as a drug lord. The DEA decided to act and, following failed arrests such as that of Lorenzana, excluded a number of untrustworthy military and police officials from the arrest. Valenzuela's brother was in charge of military anti-drugs intelligence, and many blamed him for the failure to arrest Lorenzana (Zamora 2011). Because the operation was led by the DEA, possible political allies of Chamalé were unable to use their influence to prevent his arrest.

Relations between drug traffickers and politicians are normally more complex than the media suggest. The alleged relationships between Chamalé and these politicians were not in place at the start of his illicit activities. When Juan Ortiz began his criminal career, he did not need such contacts. These apparently developed naturally as he began to rise through the illicit drug trafficking ranks in Guatemala.

### 8.3.4 Conclusion

Drug traffickers use corruption and people's materialistic desires to penetrate different sectors of society. This corruption is governed predominantly by economic factors, given that the incomes of those responsible for combating drug trafficking are less than the bribes offered by the traffickers to the police and justice officials in most of the countries in which drugs are produced. It is therefore very easy to use illicit cash to manipulate the law. In this sense, payments to politicians can be compared to the payments legal traders make to extortionists: 'protection' money to avoid problems. For the politicians, this relationship can change suddenly, depending on the political and media landscape.

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The fact that there is no programmatic or ideological loyalty in these payments does not prevent politicians and drug traffickers from developing friendships over time. The continuation of the relationship depends on the politician's skill in remaining in power, and the drug trafficker's skill in carrying on his business and remaining at liberty. In reality, however, it is simply a matter of business, as is particularly evident at the local level and clearly demonstrated by the Chamalé case.

The story of Juan Ortiz also shows that relations between drug traffickers and politicians are not limited to the local level. Influence is beginning to be transferred to and consolidated at the national level, as criminal activities increase. The mafia groups need a weak state in order to shield their activities, whereas if political institutions are virtually non-existent, politicians need the corrupt resources of these groups to enable them to shore up their personality-based power and patronage systems. This perverse cycle of corruption and illegality thus becomes self-perpetuating.

These links between formal and informal actors mean that illicit practices become the norm, and necessary to both groups outside the law and those who act within a framework of legality. The practices and forms of this relationship can be clearly seen in the case of Chamalé, which shows how the mafia can provide a source of funding for electoral campaigns—at the central or local level—in exchange for protection payments to politicians. This, in turn, makes the politicians amenable to the drug traffickers' business dealings and illegal affairs. The logic is to ensure a 'win-win' situation, provided that this does not affect the interests of the politicians.

It is interesting to observe a clear similarity in the way some of these politicians and *mafiosos* operate by ensuring the presence of family groups in their organizations. The drug traffickers weave a network around their friends and relatives in order to guarantee the stability of their economic activities and build a social power base at the local and regional levels. In Guatemala, these networks have been established as family businesses. The existence of both mafia and political clans operating from within this familial framework facilitates perverse relationships and associations between the two groups. This can be clearly seen in the relationships that are believed to have been formed between Ortiz and the Torres sisters.

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## 9 Comparative Regional Analysis of Legislation to Combat Organized Crime and its Links with the Political Sphere

*Catalina Perdomo*<sup>8</sup>

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Influencing and penetrating the public and political spheres is one of the many strategies that organized crime uses to disguise the illegal nature of its activities. Illicit networks have found a number of creative ways to infiltrate the state, but one common trend is the use of corruption (OAS 1996). This poses problems and threats 'to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice' (UN 2003: 1). As a result, the unhealthy relationship between organized crime and politics undermines the democratic system due to both the existence of the relationship itself and the means it uses to cement this relationship: corruption. The prevention, detection, punishment and eradication of corruption therefore play a vital role in combating the influence of organized crime in public and political structures.

However, when the phenomena of organized crime and corruption are analysed, they tend to be considered from different perspectives. While organized crime is usually analysed from a security perspective, corruption is generally considered in terms of governance, in particular as a problem of weak public institutions. Although the state has to treat organized crime as a criminal issue, illicit networks often infiltrate politics in order to safeguard and consolidate their operations. Thus the broad spectrum of laws related to the control of the public sector and corruption must be adapted to take into account the creative and bold strategies employed by organized crime.

For example, the majority of rules in political funding legislation are directed at legal funding. The regulation of political funding is generally inadequate in Latin America, perhaps because of the scale of corruption and because the legislative vacuum facilitates the flow of illicit money into politics. Only 17 of the 33 countries in the region require political parties to regularly report contributions and candidates to declare contributions received during campaigns (International

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<sup>8</sup> With contributions by Luis Roberto Wiesner, Gerardo Távora, Katalina Barreiro, Juan José Morales and Esther Gabriela Leva.

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IDEA 2014). Analysing the implementation of such laws, particularly regulations that address the issue of illicit money in politics, is an even greater challenge.

Examining recent experience in Latin America should help states identify the incursion of organized crime into politics. Many of these countries have extensive experience in this area, and regional legislation has explicitly identified this issue. The preamble to the Inter-American Convention against Corruption includes two important references to the issue: the first recognizes that corruption is instrumental to these groups' achievement of their illicit aims; and the second identifies the increasingly close relationship between corruption and income from illicit narcotics trafficking, one of organized crime's most important activities (OAS 1996).

The absence of domestic legislation can only partly explain the growing relationship between organized crime and politics. Even if there were adequate laws in place, there would also need to be sufficiently robust legal institutions to facilitate their interpretation and enforcement. Semi-public organizations, such as political parties, and the private sector also have a key role to play in enforcement. Perhaps most importantly, the efficacy of such rules depends on the degree to which implementation can be decentralized and applied effectively by local government.

In many legal systems, it is necessary to classify punishable behaviour in order to prevent and penalize it. However, crime—and particularly organized crime—often seeks ways to evade the law without breaking it. In addition, laws need to be accompanied by creative political strategies, because the relationship between organized crime and politics does not always take the most traditional or obvious forms.

This chapter presents the main trends in the legislative frameworks of the countries examined in this study: Colombia, Ecuador, Guatemala, Honduras and Peru. It identifies lessons learned, highlights shortcomings and makes recommendations. It draws on the case studies discussed in the other chapters of this book to illustrate the relevance of some of the legal mechanisms, and it summarizes the conclusions of a workshop organized by International IDEA and NIMD on the relationship between politics and organized crime, which took place in Quito, Ecuador, in 2013. The chapter ends with some general conclusions.

## 9.1 Trends in the legislative frameworks

This section analyses the legal mechanisms related to the prevention, detection, punishment and eradication of the relationship between organized crime and politics in democratic systems. The issues addressed here in no way exhaust the range of possible legislative mechanisms, but they do cover some of the most important legal initiatives: (1) regulations on the behaviour of public officials; (2) mechanisms to promote state transparency; (3) mechanisms to increase the legitimacy of political parties; and (4) instruments to fight organized crime. These general issues are broken down into specific aspects identified in the chapters written by local experts, at the Quito workshop, in OAS reports and elsewhere in the literature.

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### 9.1.1 Regulating the behaviour of public officials

Adapting the legal system to include measures to promote transparency and prevent conflicts of interest is one of the initial steps in the fight against corruption (UN 2003: 5). In this respect, it is essential that national legislation includes rules regulating the disqualification and incompatibilities of state officials, and procedures for appointing and promoting public servants and awarding state contracts. States should also have specific mechanisms that require public officials to report acts of corruption and to register their assets before taking up and after leaving their posts.

### 9.1.2 Provisions regarding disqualification, incompatibility and conflicts of interest

Figure 9.1 identifies the five types of legal provisions in this area, and the map shows each country's provisions. This diagram indicates that almost all of the countries included in this study have both constitutional provisions and legislation governing conflicts of interest and the incompatibility of certain activities and interests with public office. However, the practical mechanisms to implement these laws are inadequate.

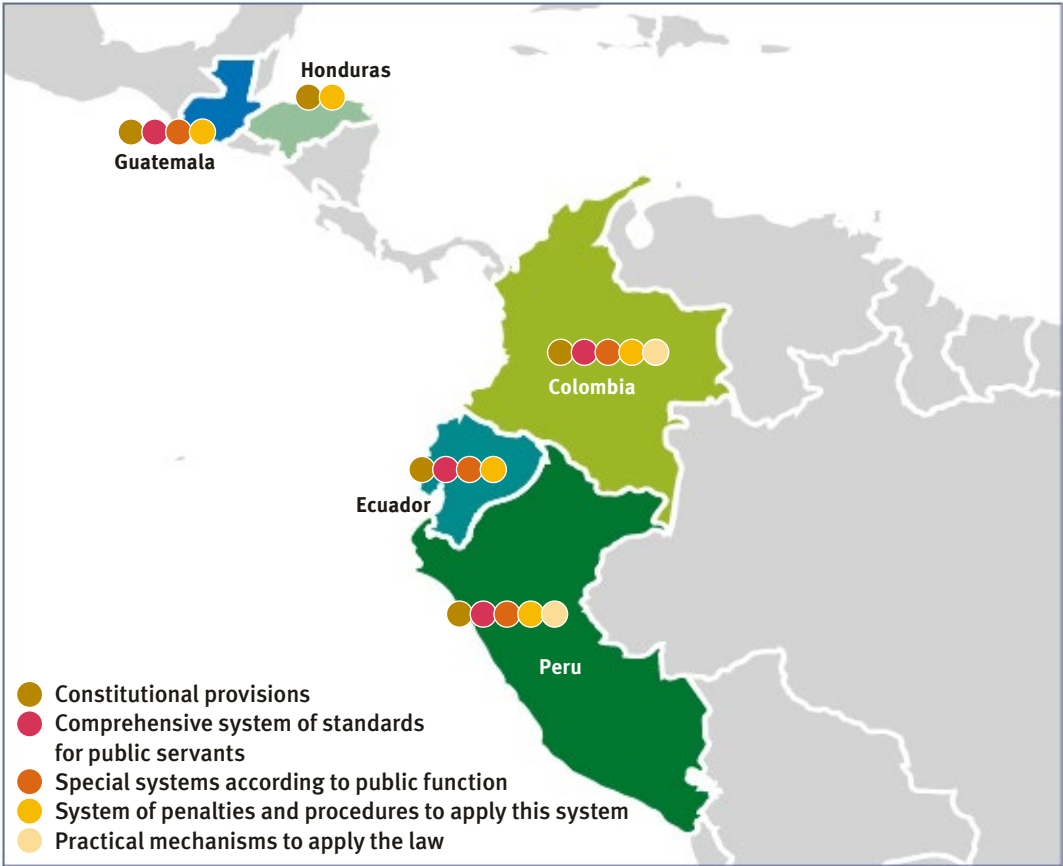
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One conclusion of the Quito workshop was that weaknesses in or non-implementation of the provisions relating to the disqualification, incompatibility and conflicts of interest of public officials provide a route for criminals to enter the public sector. Participants argued that the problem is the lack of political will to implement existing laws and regulations. Peru's National Anti-Corruption Programme agrees: 'To judge by a quick review of the main institutions of the state, it would appear that the main problem has not been the lack of legislation. The problem lies, rather, in the difficulty of applying and enforcing the law. In other words, in the lack of a political will to ensure that the law is implemented, and in the absence of sanctions and rewards to enforce this implementation' (OAS 2004b: 8).

Educating public servants is a basic way to create political awareness of the importance of provisions regarding disqualification, incompatibility and conflicts of interest. The Committee of Experts of the Follow-Up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC) concluded that Ecuador, Guatemala, Honduras and Peru need to create mechanisms to evaluate and guarantee the effectiveness of their regulations in this respect. It also recommended introducing training on these issues for public officials in Ecuador, Honduras and Peru.

However, such mechanisms must go beyond merely assessing and raising awareness of the problem. They must extend the scope of the measures to ensure that they are adopted at the provincial, department, municipal and district levels. Practical mechanisms should also be promoted that facilitate compliance by public servants and instil the obligation to report conflicts of interest, a duty that is not generally considered important. Furthermore, the provisions governing disqualification and incompatibility must be supported by mechanisms to confirm the accuracy of candidates' statements about their background. For example, the case study of the department of Puno in Peru, in Chapter 6, mentions a member of Congress who had been convicted of smuggling but had lied about his criminal record on his declaration. Because there were no mechanisms to check the accuracy of his statement, this fact was only discovered long after he had taken up his position.

**Figure 9.1 Provisions regarding disqualification, incompatibility and conflicts of interest**



**SOURCE:** based on MESICIC reports and analysis of legal frameworks by country experts.

It is worth noting the *Peruvian* initiatives to create Decentralized Anti-Corruption Offices (Supreme Decree no. 038-2001-JUS) and establish a National Record of Dismissal and Removal from Office, to prevent any public official who is included in this database from serving for a period of five years, regardless of the institution or individual concerned (OAS 2004b). *Colombia*

adopted a similar mechanism, the Unified Personal Information System, which includes a single record sheet for all state officials and links 201 of the 206 national public institutions: 'The purpose of this system is to detect potential disqualification or ineligibility to hold a position, and to exchange information with monitoring and investigation bodies' (OAS 2003: 8).

In *Ecuador*, the current Civil Service and Administrative Career Law could be expanded, as it does not explicitly provide '[...] measures to prevent conflicts of interest following the performance of public functions' (OAS 2004a: 6). This gap has, in the past, facilitated the establishment of relationships between organized crime and politicians after they have left office, as is shown by the case of 'Sisyphus' in Chapter 7. The legislation could be expanded in this regard in *Guatemala* and *Honduras* too. Other laws could also be revised or expanded to cover the issues raised in the countries studied

here. For example, in *Ecuador* and *Guatemala* the framework legislation establishing the conditions for disqualification and conflicts of interest of public servants—the Civil Service and Administrative Career Law in Ecuador, and the Integrity and Responsibilities of Public Officials and Employees Law and the Civil Service Law in Guatemala—could be expanded with respect to conflicts of interest to include detailed information about how to act in specific situations that the state considers to pose a particular risk; they currently only refer to general situations (OAS 2004a: 6, 2005a: 7–8).

With the approval of Legislative Act 1 of 2009, the system of disqualification and incompatibility in *Colombia* amended article 122 of the country's constitution on the general disqualification of public officials. This initiative was passed at the height of the investigation and prosecution of numerous members of the Colombian Congress due to their political relationships with paramilitary groups, the so-called 'parapolitics' scandal described in Chapter 5. The new act applies to anyone who aspires to public office, whether by

popular election or by appointment, or seeks government contracts. This disqualification includes convictions for crimes affecting public property, crimes against humanity and drug trafficking, whether committed in Colombia or abroad. In addition, it includes disqualification due to convictions arising from the membership, promotion or funding of illegal armed groups, an issue that is the subject of debate in the peace negotiations between the government and the FARC (León 2011).

The Civil Service Law of *Honduras* contains provisions on disqualification, incompatibility and conflicts of interest, but various levels of public servants are excluded from the legislation (OAS 2005b: 7). This is worrying for three reasons: (1) most public servants are not covered by the regulations; (2) privileges are created for certain ranks of public servants; and (3) the system is confusing because it includes different categories, ranks and classes of public servant. In addition, the categories of potential conflicts of interest do not distinguish between those related to the public body to which the

official belongs, and those related to the interests of the officials themselves (OAS 2005b). As a result, this act, according to MESICIC, cannot be considered to constitute a 'comprehensive system of measures in this regard' (OAS 2005b: 8). Although the Code of Ethical Conduct for Public Servants in Honduras establishes that public officials must not influence decisions on the basis of political, party or sectarian arguments, and that it is forbidden to appoint relatives to public institutions, these provisions are almost completely ignored.

### 9.1.3 Procedures to regulate public sector contracts

Illicit networks exploit weak states in which officials are easy to corrupt due to their vulnerable employment position, including the instability of their posts, low salaries, a lack of commitment to their career, few or no expectations of promotion and the absence of rewards for good performance. In the majority

of cases analysed in this book, the authors mention the lack of employment incentives for public servants as one of the factors that facilitates associations between organized crime and public officials. Illicit networks sometimes succeed in establishing internal structures within states to promote their interests and enable them to manipulate the appointment, promotion and dismissal of officials. More efficient systems for appointing and promoting public servants would make it harder for criminal networks to influence them.

The vulnerability of these systems, and the consequences of this vulnerability, are clear. In the case of the tennis shoe king in Guatemala, discussed in Chapter 8, one individual managed to manipulate the state's legal system by influencing the weak mechanisms for selecting judges in various courts and other judicial bodies. He thus established a quasi-illegal structure within the state to manipulate the decisions of the nation's judges in favour of his associates or clients. Vladimiro Montesinos created a similarly corrupt system in Peru that was so extensive that some called the government a 'narco-state'.

This section analyses in more detail the systems for appointing and promoting public servants. Because well-regulated and transparent public sector procurement processes are also important in the struggle against corruption and organized crime, this topic is addressed more generally. The case studies of Bello and Buenaventura in Colombia show how organized crime launders money from illicit sources and consolidates its alliances with public officials working on state contracts. Figure 9.2 classifies regulations on public sector contracts according to their effectiveness and the comprehensiveness of the regulations in each area.

The basic elements of a selection procedure include stages and deadlines for the recruitment and selection of civil servants, suitable means of verifying candidates' aptitudes—such as exams, interviews, evaluation systems and analyses of past performance—selection criteria and the justification of decisions, releasing the results of selection processes and mechanisms for appeal, including relevant corrective measures (OAS 2008b). While the main purpose of these measures is to ensure the appointment of suitable candidates, they also help protect against arbitrary and non-transparent appointments that make it easy for illicit networks to establish themselves within public institutions.

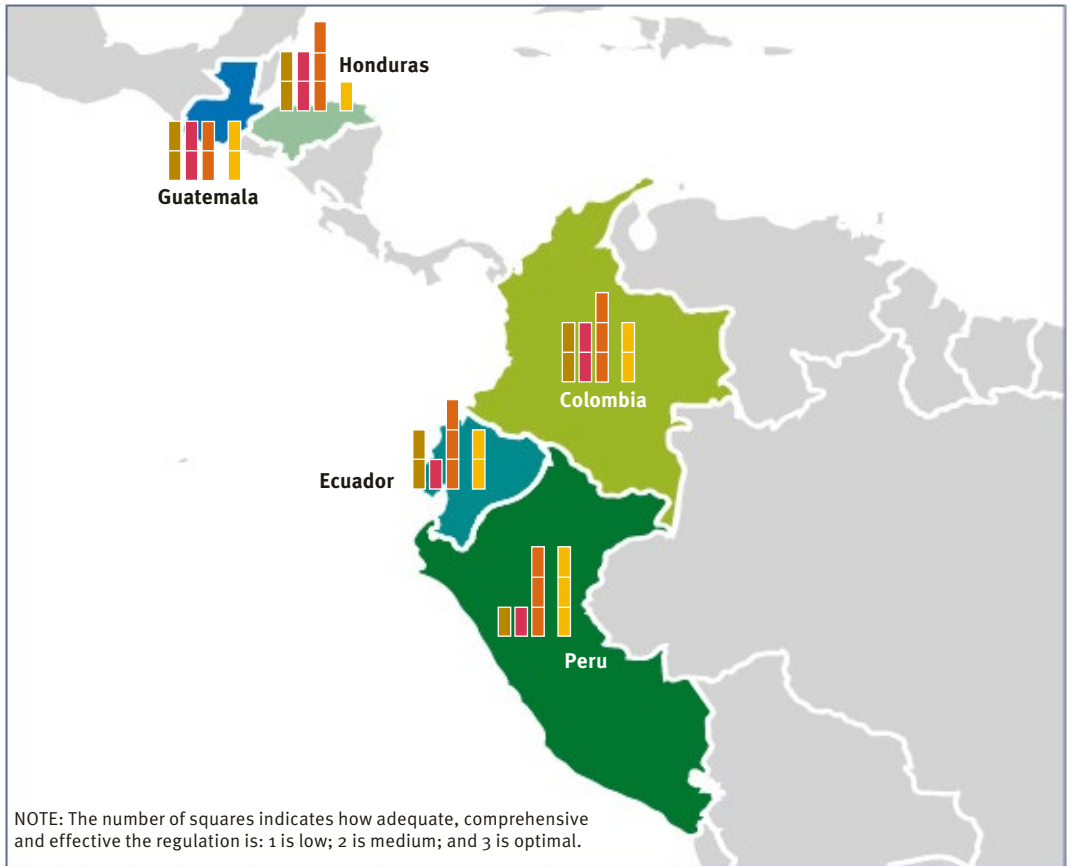
In *Guatemala*, while some civil service systems require criminal and police record checks prior to the appointment of staff, this does not apply to the legislative branch. This not only makes the legislature more vulnerable, but also undermines consistency in appointment systems (OAS 2008a). In both *Guatemala* and *Honduras*, the selection mechanisms for officers of the legislative and judicial branches

of the civil service could be strengthened (OAS 2006b, 2008a). In *Guatemala*, several bodies conduct selection exams, but the candidate with the highest score is not necessarily appointed. *Honduras* has no regulated selection process for permanent staff of the legislative branch, and the Staff Selection Committee of the Supreme Court of Justice proposes candidates for positions without any regulated selection criteria.

Promotion mechanisms for public officials should be based on a clear career system and be subject to requirements of quality and performance established in advance in a single piece of legislation covering all public servants.

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**Figure 9.2 Public sector contract procedures**



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**Processes for appointing and promoting public servants**

- Selection and promotion procedures
- Prevention of the inappropriate use of exceptions
- Authorities implement and monitor these measures

**Public sector procurement processes**

**SOURCE:** based on MESICIC reports; analysis of legal frameworks by country experts; OAS (2008b).

It is important to note that in *Peru*, although a unified regulation for the civil service is being drafted that includes basic aspects such as '[...] requirements to access public employment, access mechanisms, characteristics of a public career, promotions, duration of the career, etc.' (OAS 2009: 47), the country still lacks legislation on the selection process for public sector appointments and career paths within it. Some

branches of the state have mechanisms that regulate their administrative careers, while others do not. The latter is the case in *Colombia*, where pending legislation includes an Administrative Career Statute governing the legislative branch and an ordinary law regulating judicial careers (OAS 2007). *Guatemala* has no legislation to regulate careers in the public prosecutor's office (OAS 2008a).

Mechanisms must also be in place to prevent the improper use of exceptions, placements, temporary appointments and positions for which there are no restrictions on appointment and dismissal. Some countries have mechanisms to ensure that the selection system is fair and that public servants enjoy stable employment, but these are immediately followed by a list of exceptions that allow for the arbitrary and 'temporary' appointment of state officials.

This is the case in *Ecuador*. While its Civil Service, Administrative Career and Salary Standardization Law establishes a maximum period of the current tax year for temporary service contracts, it also states that exceptions will be made if required due to the nature of the work. This exception '[...] makes it possible to extend contracts in light of service requirements, [and] could over time give rise to continued contract renewals that are not

subject to a competitive, merit-based procedure' (OAS 2006a: 6, 7). A similar situation occurs in *Guatemala*, where neither the Legislative Body Civil Service Law nor the Local Government Service Law specifies the maximum duration of provisional, emergency or temporary positions (OAS 2008a), creating a situation in which these temporary positions can be prolonged unduly.

Figure 9.2 denotes the existence of authorities that implement and monitor appointment and promotion systems, and related functions within monitoring bodies. It should be noted that no attempt is made here to measure the effectiveness of such institutions.

For example, while *Guatemala* has authorities at the national level and within the different branches of government to administer the civil service system, there is no such office at the municipal level, which is where the state is

weakest. This is despite the fact that the law provides for such an authority and that MESICIC has recommended its creation since 2008 (OAS 2008a; National Office of the Civil Service 2013).

Requirements related to public sector procurement processes should be clearly established in order to help guarantee the transparency, fairness and efficiency of the process and enable effective monitoring and control by the competent authorities and the general public.

*Colombia* has general public procurement systems and an endless number of special systems for a limited number of bodies. According to data from *Transparencia por Colombia*, between 2005 and 2006, approximately 50 per cent of the resources allocated to public sector procurement were allocated through bodies with special systems. This was done using mechanisms such as procurement between state bodies (with the aim of evading the general regulatory system) and procurement via bodies with special systems that are more permissive

(OAS 2007). The existence of special systems or regulations for different bodies means that parties tendering for contracts and those responsible for monitoring have to be familiar with an excessively broad range of rules, which acts as a disincentive for both participation in public sector procurement processes and the monitoring of such processes. This is also the case in *Ecuador*.

In complex cases—such as *Ecuador*, *Guatemala* and *Honduras*—reference is made to exceptional

situations such as emergencies, circumstances requiring secrecy, the national interest or social benefit to avoid the general provisions governing procurement procedures. If an exceptional situation is not defined, this creates a loophole for arbitrariness and abuse. In *Guatemala* and

*Honduras*, the mechanisms for appealing against the award of contracts could be significantly strengthened, both by specifying the procedures for appealing against decisions and by creating a system that is straightforward to operate and monitor.

### 9.1.4 Obligations on public officials to prevent corruption

This section analyses the existence of measures obliging all public officials to fight corruption in public affairs. Figure 9.3 shows whether there are laws in place that oblige civil servants to report acts of corruption and declare their assets, and penalties for failing to do so. Each category is highlighted in a different colour, and the map of each country uses this colour code to illustrate the various obligations.

It is often easier for staff within these institutions to identify and report such cases because they are familiar with the rules and procedures. For example, in the case of Vladimiro Montesinos described in Chapter 6, a member of Congress publicly denounced the corruption and the scandal subsequently led to the uncovering of a criminal network within the Peruvian state.

In some of the countries studied, there is a defined duty on all state officials to expose or report any crime or action that harms the public sector, but there is no specific duty to report corruption as such. In all the countries analysed here, all citizens have an obligation to report corruption, but there is nothing specific regarding this requirement for public officials. The duty of public servants in this regard should be specifically stipulated in law, together with the respective penalties (OAS 2004a). This would facilitate monitoring of this provision within the state and help raise awareness of it.

Special measures are needed to protect whistleblowers and witnesses, particularly in the context of cases that may concern the relationship between politics and organized crime, an issue that was also raised in the Quito workshop. It is important to stress that criminal sanctions have only a limited effect, particularly because the preventive effect of such rules is directly related to the certainty that offences will be punished. In states where the legal system is weak, measures such as the protection of whistleblowers, which may include job protection, could do far more to encourage the reporting of these acts.

It is interesting to note that in Colombia, over 80 per cent of public officials said that they did not report cases of corruption for fear of reprisals (OAS 2003).

It is also advisable to create further protection measures, in addition to those provided by the state, given that the authorities that provide this service—such as the police, the army or the intelligence services—may be co-opted by corrupt or illicit networks, increasing the risk for whistleblowers. This was mentioned at the Quito workshop in 2013, with reference to Colombia and Honduras.



**Figure 9.3 Obligations on public officials to prevent corruption**



**Obligation on public officials to report acts of corruption**

- Existence of laws or rules
- Specific penalty for officials who fail to observe these regulations

**Obligation on public officials to declare their assets**

**SOURCE:** based on the analysis of legal frameworks by country experts and MESICIC reports.

Thus far, this discussion has focused on protecting people's physical safety, but, as the draft legislation on the protection of whistleblowers in *Peru* states, there is also a need to establish measures that counteract '[...] any act or practice, whether formal or informal, that

affects either directly or indirectly [...] the wealth, contractual conditions, employment relationship, personal and professional reputation, and other values held dear by protected individuals' (OAS 2004b: 18).

While all countries in this study require state officials to declare assets, liabilities and income, these systems lack effective monitoring, a shortcoming highlighted at the Quito workshop in 2013. Such a mechanism is essential for investigating allegations of illicit enrichment, and may be useful in identifying agreements between politicians and illicit networks.

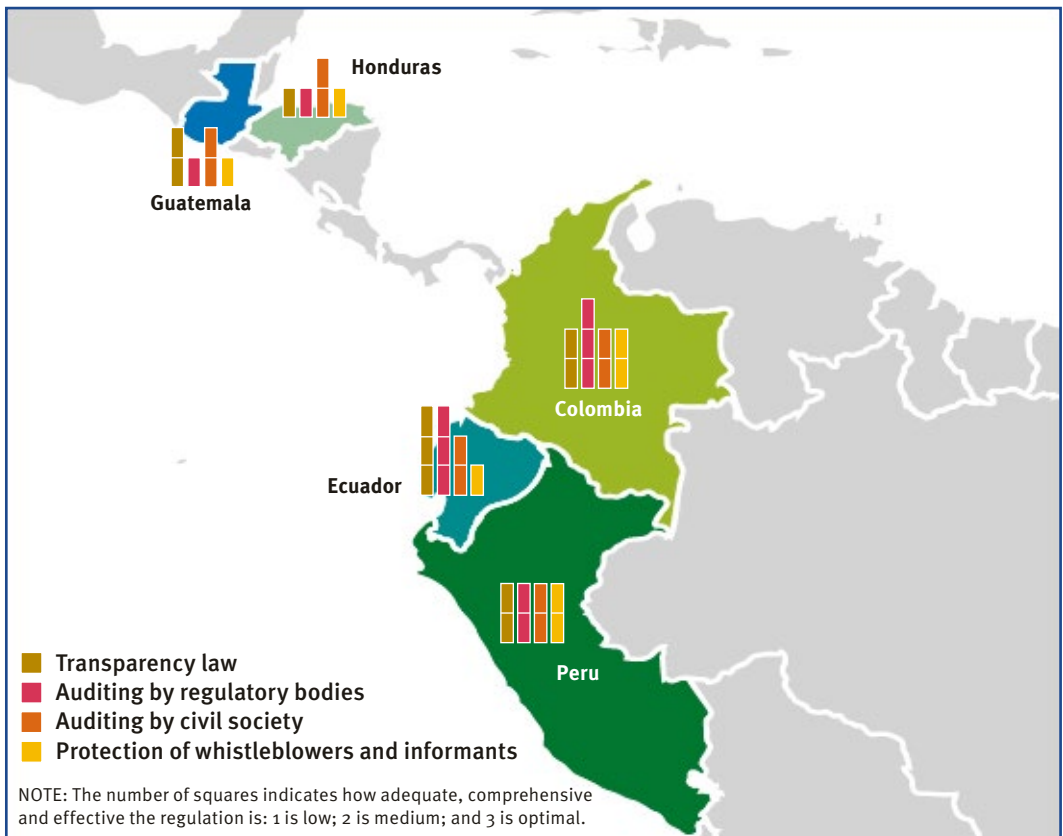
Forexample, in *Colombia*, it was only at the request of MESICIC in 2003 that ‘the head of [Information System for the Control and Monitoring of the Declaration of Assets and Incomes of Public Servants] [...] was approached in order to clarify the situation, and it was established that the most frequent inconsistencies relate to gaps in income and earnings, registration of amounts

corresponding to a single month, fall in income and earnings and net wealth’ (OAS 2003: 16). The monitoring of this information would be more efficient if it were public, as civil society organizations and journalists could use it for oversight purposes. In *Guatemala* and *Honduras*, for example, this information is confidential, and in *Peru* part of the information is reserved.

## 9.2 Mechanisms to promote transparency in the public sector

State actions that actively promote the management of public affairs so that citizens can monitor and control them constitute one of the most important mechanisms for preventing corruption (UN 2003). Provisions to promote more transparent state administration include laws that guarantee access to information and transparency; external regulation of public auditing processes; promoting the participation of citizens and investigative journalists; and mechanisms to protect whistleblowers.

**Figure 9.4 Mechanisms to promote transparency in the public sector**



**SOURCE:** based on the analysis of legal frameworks by country experts and MESICIC reports.

### 9.2.1 Transparency laws

The transparency laws in the countries studied tend to regulate access to public information, in particular with regard to procedures and penalties for and exceptions to the publication of information by public bodies.

In the wake of the Montesinos scandal and the exposure of the network of organized crime and corruption, *Peru* was one of the first countries to adopt citizens' oversight mechanisms. The Transparency and Access to Public Information Law of 2002 initially provided for the possibility of criminal prosecution but was later amended by subsequent legislation to involve only administrative sanctions.

In *Ecuador*, the Transparency and Access to Information Law of 2004 introduced the right to

freedom of information. This was reinforced by the constitution of 2008, which guaranteed public access to documents, genetic data, banks or files of personal data, reports and state assets. This right was further extended with the adoption in 2010 of the National Public Data System Law, which invoked the right to information about the administration of state funds and added the right to universal access to information and communication technologies, on the basis that this is a fundamental tool in exercising the right to freedom of information held in electronic formats.

While *Honduras* passed a law on transparency in 2006, there is no mechanism for implementing this legislation, as it makes no provision for the punishment of institutions or officials who violate it. It also lacks complementary legislation on the management of information by institutions,

which means that the law is applied on a purely discretionary basis. It is too soon to assess the application and effectiveness of such laws in *Colombia* and *Guatemala*, as they were only introduced in 2013.

### 9.2.2 Auditing by regulatory bodies

State institutions can be audited by organizations within the public sector, such as regulatory bodies, by civil society organizations or by individuals. In each case, timeliness, effectiveness and independence are the keys to preventing, detecting, punishing and eradicating corruption (OAS 1996) and its possible links to illicit networks.

The *Peruvian* state recognized that the Montesinos crisis '[...] reflected the weakness of the legal instruments that existed to protect public resources, combined with a weakening of the institutions that make possible adequate

monitoring of the public sector' (OAS 2004b: 25). Of course, the work of civil society in this respect is fundamental, and progress must be made in creating tools and mechanisms that ensure its participation in and control over public institutions.

All the countries analysed have various authorities that conduct audits of the state from different perspectives, including comptrollers general, the public prosecutor's department, civil service authorities and special inspection bodies. The problem lies in the regulation of these public auditing processes, which sometimes are confusing or contradictory, have limited scope, or have little or no power to impose penalties. Some of these institutions lack independence from

the executive and legislative branches, which prevents them from effectively performing their control and monitoring duties.

In *Peru* the power of the comptroller general was reduced in 2009. The most serious aspect of this is that the reform, adopted under Emergency Decree no. 081-2009, affects one of the sectors that is most vulnerable to corruption: public investment agreements at the regional and local levels in which private sector companies participate. This reform reduces the time periods for reports by the comptroller general, and makes

them no longer binding (OAS 2013a). The case studies included in this publication illustrate that private enterprise is one of the pathways through which organized crime enters the public sector (see the case of Bello in Colombia in Chapter 5) and that there are greater risks in an association between these two sectors at the local level (see, for example, the cases of Bello, Buenaventura, Manabí and Puno in Chapters 5, 6 and 7).

The high levels of impunity with respect to auditing processes designed to fight corruption are particularly worrying (International IDEA and NIMD, expert regional workshop, Quito, 2013). This is the product, among other things, of the lack of capacity and ineffectiveness of monitoring and investigation bodies, which is in turn the result of various factors including the lack of financial and human resources and specialist, as well as technical experience. Furthermore, there is a lack of commitment to adopt effective processes—perhaps due to the fact that these bodies lack political independence—which is a decisive factor in this regard. As is clear in the case of the tennis shoe king in Guatemala (see Chapter 8), illicit networks strongly covet control over the legal system and regulatory bodies.

In *Honduras* it is worrying that state officials tend to resign when an investigation into alleged corruption begins, and that the Administrative High Court then usually suspends the investigation without issuing a ruling. The result is '[...] that the official accused of corruption has a clean record, enabling him to freely obtain a position in any other state institution, in the absence of any findings against him' (OAS 2013b: 8). Nor are there any provisions to punish corruption in Honduras, because the public prosecutor's office cannot seize the assets that

a public official transfers to third parties following the instigation of a corruption investigation. In *Guatemala*, the difficulties faced by the public prosecutor's office make it impossible to implement disciplinary penalties for minor offences, even if these involve suspending or removing the offender from his or her position (OAS 2013c). It is therefore necessary to review both legislative and administrative aspects in order to prevent scenarios that promote impunity and, ultimately, serve as an incentive to corruption.

In *Colombia* and *Peru* the neutrality of the regulatory bodies made it possible to investigate and ultimately punish the guilty parties in the parapolitics and Vladimiro Montesinos cases, respectively (see Chapters 5 and 6). In Colombia, the Supreme Court of Justice worked independently of the executive and legislative branches to launch investigations

and punish members of Congress with links to illegal paramilitary or vigilante groups (see the Buenaventura case study in Chapter 5). In Peru, the independence of an ad hoc public prosecutor appointed specifically to investigate the Montesinos case established the scope of the corruption and organized crime (see Chapter 6). While these are important examples, the first

occurred in the context of political polarization, in which the Supreme Court of Justice was seen almost as part of the opposition to the government of the time, while in the second case this independence only occurred in an ad hoc body, as the other legal and monitoring bodies

were apparently under Montesinos's influence (see section 6.2). In other words, these cases do not provide a structural template that would ensure the independence of monitoring bodies but instead reflect exceptional political situations.

Of particular relevance to this study is whether monitoring bodies have access to information gathered by financial intelligence units, which tend to be responsible for preventing and investigating asset laundering. In Peru, cooperation between the Anti-corruption Office and the Financial Intelligence Unit of the Banking and Insurance Authority has not been put on a proper institutional footing. Thus agreements to access certain important information, such as records of migration and convictions, have not yet been approved.

The comptroller general in *Peru* also encounters barriers to accessing information held by institutions that are protected by banking secrecy, which makes it impossible to monitor the accounts of some public institutions (OAS 2013a). A similar situation occurs in *Honduras* as a result of problems coordinating between the Administrative High Court and the National Banking and Insurance Commission (OAS 2013b), while in *Guatemala* it is increasingly common for public funds to be managed through trusts, over which the comptroller general has limited inspection powers (OAS 2013c).

In *Colombia*, there is also a need to create additional mechanisms to coordinate information on suspected cases of corruption and, above all, with regard to financial actions that may be related to them. In this respect, the Supreme

Court of Justice informed the local mission of the MESICIC in 2013 that '[...] although crime is advancing rapidly, incorporating sophisticated methods for disguising money looted from the state and obtained by illicit means, the justice systems continues [...] to lack the technological tools that would enable it to cross-check information in an effective manner' (OAS 2013d: 9). The court therefore proposed a system that, in addition to enabling coordination between regulatory bodies, '[...] would permit links with other government bodies that, as part of their normal tasks, monitor the management of public resources with the Ministry of Taxation, or gather information about suspicious financial operations, such as the Financial Information and Analysis Unit, or that record the assets of public servants, such as the Public Affairs Administration Department' (OAS 2013d: 9).

### 9.2.3 Auditing by civil society

As is noted above, civil society has a key role to play in regulating state actions. This involvement includes having the tools to identify and respond to citizens' concerns, and facilitating access to information, stimulating participation, strengthening the culture of overseeing public affairs, and permitting criticism and opposition. The majority of the case studies included in this book came to light and, in some cases, were investigated thanks to the reports of social organizations or investigative journalists.

All the countries studied in this book provide a range of mechanisms and spaces for citizen participation, both direct and indirect. Some of these have achieved a degree of success in areas such as participatory planning and budgeting. However, levels of citizen participation are still low, particularly at the

local level. Because they can go unnoticed, illicit networks exploit this weakness to establish relationships with local politicians (International IDEA and NIMD, expert regional workshop, Quito 2013).

For example, although *Guatemala's* Rural and Urban Development Councils Law provides a legal framework to promote citizen participation in drawing up local development plans for the public sector at the municipal, department, provincial and national levels, in practice citizen participation is minimal, particularly where the social fabric is still fragile.

Mechanisms for direct participation, such as recalls, referendums, popular consultation and

legislative initiatives, are less effective in countries such as *Colombia, Ecuador, Guatemala* and *Peru*. For example, in Colombia, of the 209 direct participation initiatives presented by citizens, only 4 per cent have been successful over the past 20 years (OAS 2013d). In Peru, the Citizen Participation and Control Law (Law 26300 and subsequent modifications) contains a number of provisions that need to be reviewed, as they may undermine its effectiveness (OAS 2013a).

Other forms of citizen participation, such as Internet portals to enable political analysis and monitoring, have had a greater impact in *Colombia, Guatemala, Honduras* and *Peru*. In *Colombia*, multimedia tools have been used to present investigative journalism pieces, which have provided a platform for independent political information and whistleblowing. The most important of these are *La Silla Vacía*,

*Congreso Visible, Razón Pública* and *Vote bien. Plaza Pública* and *El Periódico* in *Guatemala*, *Instituto de Defensa Legal* in *Peru* and *Revistazo* in *Honduras* are excellent examples of investigative journalism that would benefit from more creative Internet tools to attract more readers. However, the potential for such initiatives to prosper depends on effective access to public information and, often, on financial support.

In *Honduras*, the regulations governing the handling of state documents need to be supplemented by a National Records Law. The Transparency and Access to Public Information Law alone is not sufficient to ensure the safekeeping of the documentary evidence that could be used to prosecute a public official in that country, as there is no organized system for storing and classifying such evidence.

In other countries the problem is even more complex. In *Ecuador* the right to freedom of expression took a step backwards with the adoption of the Communication Law of 2013. This establishes obligations for journalists and the media, such as: reporting all information deemed to be of public interest; condemning behaviour that harms the environment; and a ban on discrediting or undermining the public

credibility of any person. The OAS special rapporteur for freedom of expression noted that this last measure meant that '[...] any sustained criticisms for corruption, which could lead to a reduction in the public credibility of the official concerned, could be considered by the competent government body as an instance of "media lynching" and be subject to the corresponding penalties' (OAS 2013e: 4). *La Vanguardia* was a source of investigative journalism and reporting, but it had to close in mid-2013 as a result of this law (Otis 2013). In the specific cases of corruption involving organized crime included in this book—Chamalé, the tennis shoe king, Juan Valdés Villacorta, Montesinos and Bello—some of the main sources of the accusations were journalists' reports and investigations.

### 9.2.4 Protection mechanisms for informers

Only *Colombia* and *Peru* have specific protection mechanisms for those reporting organized crime and corruption, respectively. Unfortunately, neither country addresses the two situations together. In *Colombia*, witness protection programmes, accessed via the public prosecutor's office, were established in 1997. One of these programmes is dedicated exclusively to witnesses in cases of kidnapping, terrorism and drug trafficking. The protection programme includes a change of identity, financial assistance, psychological support, medical care and resettlement (UNODC 2008). It should be noted that, while in *Colombia* the public prosecutor's office has a protection programme for witnesses, victims and parties to disciplinary processes, people reporting acts of corruption do not qualify for protection. Furthermore, the public prosecutor's office does not conceal the identity of whistleblowers.

In 2010 *Peru* adopted the Law for the Protection of Informants in the Administrative Sphere and for

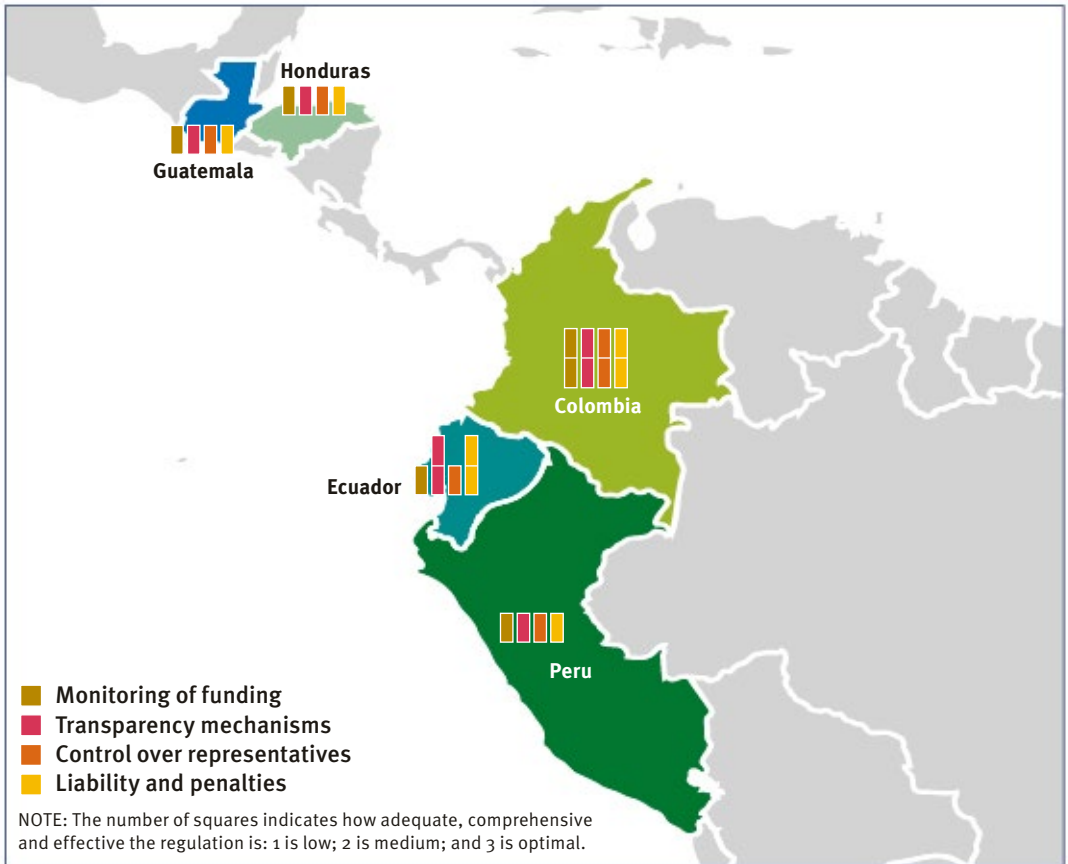
Effective Collaboration, also known as the 'law for the protection of informants of acts of corruption'. Despite the strengths of this law, there is a need to afford the same levels of protection to public officials and private individuals. At present, only two of the law's five provisions apply to private individuals: those on anonymity and compensation (OAS 2009). In other words, physical protection is limited for informants who are not state employees, and there is no protection of job security or family members.

*Ecuador*, *Guatemala* and *Honduras* do not have specific provisions for protecting informants in cases of corruption or organized crime. The mechanisms in place in *Ecuador* and *Guatemala* only protect an individual's physical safety, and there are no safeguards for witnesses' identity or job security.

### 9.3 Tools to increase the legitimacy of political parties

The weakness of political parties is one of the principal factors that enables illicit networks to establish relationships with politicians and individuals in the public sector (International IDEA and NIMD, expert regional workshop, Quito 2013). Their weakness is reflected in the fact that many of these organizations have few or no mechanisms of internal democracy, have only existed for a short period of time and their main aim is to provide a front for purely electoral ambitions. In addition, gaps and weaknesses in electoral systems, in particular with regard to mechanisms to control campaign funding, enable illegal money to enter politics. The lack of mechanisms with which to manage political parties transparently means that such alliances go unnoticed. It is therefore important to establish mechanisms for political, administrative and criminal responsibility for the improper behaviour of parties and their representatives. It is also necessary to adopt mechanisms to enable political organizations to control who their candidates are (International IDEA and NIMD, expert regional workshop, Quito 2013).

### Figure 9.5 Tools to increase the legitimacy of political parties



**SOURCE:** based on the analysis of legal frameworks by country experts.

*Colombia* had one of the worst records of infiltration of politics by organized crime, as discussed in the Bello and Buenaventura case studies (see Chapter 5). This included penetration by drug trafficking networks; by illegal armed groups, such as paramilitaries and the FARC; and by powerful cartels active in local procurement processes. This situation pushed

the country to adopt a promising set of reforms in 2011. Since it is not yet possible to measure their effectiveness, the country is rated as medium in Figure 9.5. The law has delivered some results already, and it is hoped that its effects will be greater in the congressional and presidential elections in 2014.



### 9.3.1 Monitoring of funding

One of the most important gaps in almost all of the countries studied—*Ecuador*, *Guatemala* and, to a degree, *Honduras*—is that the rules tend only to regulate the funding of political organizations during electoral campaigns. This means that there is no regulation between elections and reinforces the view that political organizations are merely electoral vehicles.

Some countries also regulate parties' daily operations, although this legislation is applied only sporadically. In *Peru*, Law 28094 on Political Parties sets out provisions regarding the direct public funding of political organizations in article 29. In particular, it mentions the obligation to allocate these resources to spending related to training, education, research and other operating costs subsequent to the electoral period. Unfortunately, public funding depends

on the availability of government resources. Since this is not a public spending priority, this aspect of the legislation has not been implemented. Furthermore, given the limited or non-existent public resources available to fund parties, almost all such funding comes from private sources. Although these resources are regulated by law, the excessive number of political organizations in the departments, regions and electoral districts makes it difficult for the electoral authorities to monitor this and related legislation effectively.

In *Honduras*, the regulation of funds for political parties and campaigns does not specify what constitutes effective control of financial operations, and only requires reports on income and expenditure, detailing the source and destination.

In *Colombia*, certain forms of funding for the operation of parties and their electoral campaigns are specifically prohibited, including those derived from: illicit activities, people who are under investigation for asset laundering, from anonymous individuals, and individuals or organizations '[...] *accused or under investigation* [*italics added*] in criminal proceedings for crimes related to the funding, membership or promotion

of illegal armed groups; drug trafficking; crimes against the public sector; crimes against the mechanisms of democratic participation and crimes against humanity' (Law 1475 of 2011, article 27). The general public funding of parties (not just during electoral campaigns) is regulated, together with the obligation to allocate resources to improve their inclusiveness, representativeness and policy programmes.

*Colombia*, *Ecuador* and *Guatemala* have a general limit on campaign expenditure, and *Colombia*, *Guatemala* and *Peru* also place limits on individual contributions and ban anonymous and foreign funding. *Colombia* only accepts foreign funding when it constitutes technical aid that is not used in electoral campaigns. In *Honduras*, political parties must notify the Electoral Tribunal of contributions and donations greater than 120 times the current minimum salary. However, the country has not defined the funding of political campaigns or parties by illicit networks as a crime. *Ecuador* and *Guatemala* have an explicit ban on receiving contributions from illicit sources, while in *Ecuador* the definition

of illicit sources refers primarily to drug trafficking. In *Guatemala*, the concept of 'of a criminal nature' in relation to campaign contributions is not defined. In *Peru*, only undeclared contributions are banned.

It is worth noting that *Ecuador's* Democracy Code was adopted in 2008. It includes many legal provisions governing electoral affairs. However, at the start of 2014 the code was still subject to appeal, with the result that the Election Spending and Election Material Control Law of 2000 remains in force, in particular with regard to issues such as the monitoring, reporting and regulation of election spending. This situation is

confusing and legally ambiguous, as there are two pieces of legislation regulating the same issues. According to the new Electoral Code, the National Electoral Commission is responsible for campaign material and spending on publicity for

campaigns in the press, and on radio, television and billboards. It does not monitor spending on items such as candidate security, transport, accommodation for campaigners, or other services that are difficult to quantify and record.

In order to promote greater transparency in the funding of political parties and to support equal opportunities in political participation, countries could strengthen their electoral strategies and the legal framework for political parties by limiting the duration of election campaigns, placing hard limits on election spending, developing formulae to make the sources of funds more transparent, and imposing penalties for people or organizations that break these rules.

The Electoral Observation Mission of the European Union recommended such initiatives in the context of the November 2013 elections in *Honduras*. More specific recommendations to achieve more effective control of spending by political parties included making the electoral authority the only institution authorized to commission election material. This would require media and advertising organizations wishing to

publish party political material to register with this authority, and would mean that the parties could only commission services with these companies through this institution. The EU mission also stressed the need to ensure that any breach of the campaign funding rules or transparency laws detected by or reported to the electoral authority should be punished during the election campaign (EU EOM 2013).

### 9.3.2 Transparency mechanisms

In *Colombia* and *Ecuador*, political parties are required to submit reports on their electoral activity and general operations. In *Colombia*, party operations must be reported annually, and reports must cover political aspects, administrative decisions and financial performance. This is an important issue, as accountability is usually seen as relating only

to financial matters. In *Ecuador*, *Honduras* and *Peru*, parties are obliged to keep accounting records of their election campaign for a certain period of time. Only in *Guatemala* and *Ecuador* is information on election expenditure, accounting records and contributions to campaigns required to be public and freely accessible.

In *Honduras*, the Supreme Electoral Court is obliged to publish parties' annual financial statements in a written publication with a national circulation, but this provision is rarely

implemented. In *Colombia*, reports on the administration of election campaign funds are submitted to the National Electoral Commission, but this information is not made public.

It is important to note that the accounting records submitted in these countries tend to omit information about cash contributions to election campaigns, that is, transactions that occur outside the banking sector. Particularly at the local

level, much of the economy operates outside the banking sector, and significant sums are transferred informally without being properly reported. Moreover, it is precisely at the department and municipal levels that democracy is at its weakest, and the risk of infiltration by illicit networks is greatest.

### 9.3.3 Control over representatives

Almost all of the countries analysed have a legislative gap in terms of parties' obligations to control their representatives. *Colombia*, *Ecuador* and *Peru* have gender quotas, bans on representatives switching parties and obligations with regard to lists of members. However, beyond this, with the exception of *Colombia*,

party rules are responsible for establishing the criteria for members and representatives, and parties are not held responsible for candidates who may have links with organized crime, drug trafficking, or criminal networks involved in public procurement and corruption.

As an example of good practice, it should be noted that in *Colombia* parties are held responsible for the criminal and disciplinary history of their candidates, and of their elected representatives once in power. Parties and party leaders can be penalized for registering candidates who do not meet the minimum requirements or who are disqualified or ineligible. They are also held liable for endorsing candidates who have been convicted of crimes involving links with illegal armed groups, drug trafficking, crimes against democratic participation mechanisms and crimes against humanity. Furthermore, both leaders and parties are held responsible if their representatives are found guilty of such offences while in office. It is also an offence to

register candidates who, even if not elected, had been found guilty before being endorsed, or who are found guilty during their period of office. The crimes covered by this legislation are links with illegal armed groups and drug trafficking activities, and must have been committed before the endorsement of the candidate (Law 1475 of 2011, article 10). To facilitate the application of this legislation, Colombia has introduced a unified criminal records portal (Ministry of the Interior and Justice 2011), which allows political parties to access information, such as court rulings and arrest warrants issued by different state bodies, in a single location (Ministry of the Interior and Justice 2013: 2, 3).

Although this is an innovative strategy, political parties in *Colombia* have used other means to perpetuate the alliances with criminal organizations that ensure their political power. One example is the phenomenon referred to as 'politics through a third person', whereby illegal political structures are maintained despite the disqualification of individual politicians as a

result of investigations or convictions by using relatives or others with close links to the original politician who have no criminal or disciplinary record (Ardila Arrieta 2013). It is therefore necessary to establish strategies that go beyond the criminal and disciplinary background of potential candidates to the underlying political and criminal support structures.

### 9.3.4 Responsibility and penalties

The weakness of parties and their links with illicit networks are due in part to the fact that these organizations are not subject to either disciplinary or legal controls, and in many cases are not even held politically responsible (International IDEA and NIMD, expert regional workshop, Quito 2013).

*Colombia* and *Ecuador* are the only examples where the political penalties imposed on parties go beyond fines. In *Ecuador* these penalties apply in the event of being investigated for illicit or banned contributions, the unjustified closure of a party's political training centre or investigation for asset laundering. In *Colombia*, the penalties apply to all offences included in article 10 of Law 1475 of 2011: from receiving banned funds to endorsing candidates with the characteristics described above.

The penalties differ between the two countries. In *Ecuador*, individual party members are punished: the person responsible for the organization's

financial management, elected and unelected candidates, and contributors. The penalties imposed include the loss of political rights for two years, fines and removal from office, depending on the circumstances. In *Colombia* the penalties are applied to the leaders and members of each party's governing and administrative bodies, and the party is penalized as an organization. Individual penalties include being given a caution and being suspended or expelled from political organizations, while parties may have their funding suspended or withdrawn, their legal status removed, or their right to register candidates in a given district suspended, and may even be dissolved.

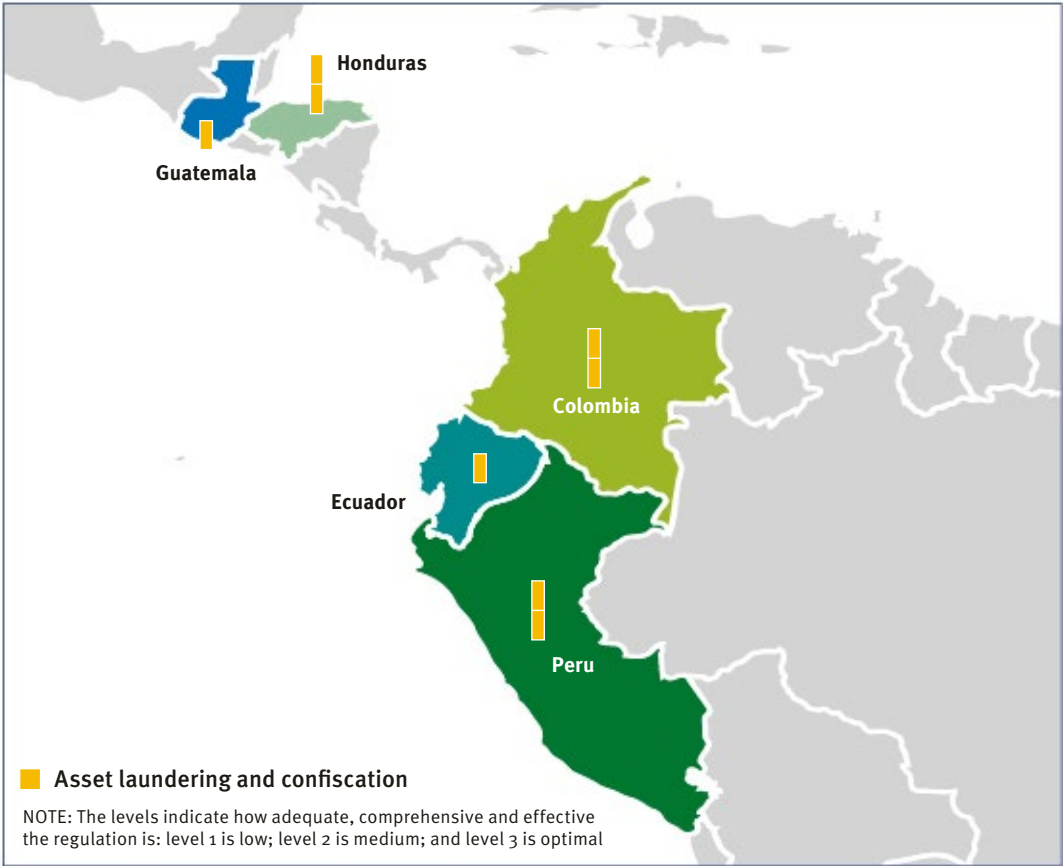
In *Guatemala* the penalties are purely financial, and the level is very low, ranging from USD 15–125. In *Honduras*, fines are imposed in the event of a failure to register and submit accounting records detailing private contributions in cash or in kind. In addition to the limited scope of parties' liability, the Supreme Electoral Court consists primarily of prominent members of the country's main political parties and parliamentarians,

as a result of which this regulatory body lacks independence (*El Herald* 2011a). In *Peru* it is almost impossible to verify the implementation of the system of responsibilities and penalties, due to the large number of political organizations participating in local elections. In the 2010 elections, 286 district political organizations registered to compete for the 1605 posts of district mayor (National Elections Board 2010).

## 9.4 Instruments to fight organized crime

Since illicit networks usually operate in a dynamic, creative manner, the solution lies not only in issuing regulations but also in finding innovative ways to prevent or mitigate such behaviour (International IDEA and NIMD, expert regional workshop, Quito 2013). There are a number of mechanisms to prevent, detect and punish organized crime that the legal systems of these countries should consider.

Asset laundering is innate to all criminal activities that seek illicit enrichment or the accumulation of resources. This is how criminals hide the illegal origin of their assets and protect their property. Thus there must be tools to prevent, detect and penalize this behaviour, including the expropriation of assets on the basis that criminals do not have any rights over property that has been acquired illegally. Specifically, the state must have tools to access these assets in order to punish criminal groups and confiscate the resources that enable them to perpetuate their criminal activities. Figure 9.6 assesses the existence and use of such tools in the five countries.



SOURCE: based on the analysis of legal frameworks by country experts, reports by GAFISUD, CFATF and MESICIC.

### 9.4.1 Asset laundering and confiscation

Some of the challenges in *Ecuador* with regard to asset laundering derive from the fact that this practice is not explicitly defined as a crime in the Penal Code, but often dealt with under the heading of 'illicit association'. Although asset laundering is defined and treated as a specific offence in other legislation, such as the Repression of Asset Laundering Law, the country's criminal law should be consistent. At the same time, an investigation into asset laundering to determine whether an offence has occurred can only be launched following a complaint. In other words, there is no clear way to launch a

criminal prosecution within the framework of a financial intelligence-gathering operation.

In *Guatemala*, few criminal cases involve the crime of money laundering. A more frequent charge is the illegal transportation of cash. It is therefore necessary to establish whether asset laundering only occurs sporadically in Guatemala, or whether the problem lies with the legislation and the legal authorities. The second explanation seems more likely, and may reflect the lack of tactical, technical and operational coordination between the authorities responsible

for identifying and tracing property suspected of being the product of asset laundering.

Of great relevance to this study is the fact that, according to the GAFISUD report of 2012, *Ecuador* does not have regulations that would enable it to establish the origins of the assets of PEP. The report calls attention to the danger posed by this legal vacuum, which enables the laundering of assets through people who either hold or have held public positions, or are leaders of political organizations. According to the most recent Caribbean Financial Action Task Force (CFATF) report on *Honduras*, 'It is unclear whether Honduran law criminalizes organizations for money laundering', that is, whether political organizations are liable for this crime because of their corporate status. The CFATF report on *Guatemala* notes with concern the existence of pre-trial hearings that protect public officials, particularly in local government, by warning suspects of investigations, the tracing of assets and the possibility of confiscation in corruption cases. In addition, the definition of PEP in Guatemala does not include the characteristics recommended by CFATF, not least because it

excludes those associated with politicians, such as relatives.

The GAFISUD report on *Peru* notes that it is necessary to revise the provisions relating to the constitutional protection of banking secrecy and the confidential nature of tax information, as these make it difficult for the Financial Intelligence Unit to exchange information with international partners in this area. More serious still is the fact that, although the Financial Intelligence Unit may request information that is protected by banking secrecy, it is not clear that the Banking and Insurance Authority must provide this. There are also weaknesses in the Financial Intelligence Unit in Honduras, which 'does not have effective, timely access to information from other government sources' (CFATF 2009: 171). Furthermore, in *Honduras* this institution lacks operational independence, its own budget and the power to take decisions about spending priorities. In *Ecuador*, the law defines the establishment of a Financial Intelligence Unit, but does not identify its functions with respect to preventing and detecting asset laundering.

Failure to monitor informal financial and commercial institutions seems to be a common issue in these countries. The scale of these informal sectors is unclear, but such informal or undocumented settings are conducive to asset laundering.

In *Ecuador*, the law provides for the monitoring of financial operations within the formal, commercial system for which records are held, while in *Peru* the regulations only apply to financial institutions supervised by state authorities. In *Colombia*, while financial cooperatives and foreign exchange dealers are not informal institutions, there is a need to strengthen provisions so that they can be monitored more effectively and, above all, to identify the final beneficiaries of their financial transactions.

In *Colombia*, Basic Legal Circular 007 of 1996 of the Banking Authority of Colombia stated that political campaigns and political parties were at high risk of asset laundering and the funding of terrorism. In other words, in the midst of the 'Process 8000' scandal, long before the parapolitics and FARC-politics cases—in which

politicians were linked to drug traffickers and paramilitary organizations, such as the AUC, and guerrilla groups such as the FARC—it had been recognized that political parties and campaigns were susceptible to corruption involving links with organizations and individuals operating outside the law (see Chapter 5). The regulation includes specific rules for: accounts opened and managed by political parties and campaigns, focusing on donors and contributors; cash contributions and donations; suspicious operations; limits on donations, contributions and transfers; maximum amounts for deposits and withdrawals; the financial powers and competencies of party and campaign managers; and disclosure procedures. It is worth asking why, if this regulation was introduced almost two decades ago, Colombian politics continues to be infiltrated by illegal money.

*Ecuador* has failed three times since 2008 to approve a law on the confiscation of property. *Colombia*, *Guatemala*, *Honduras* and *Peru* all have legislation specifying the illicit activities that justify the confiscation of property by the state. All four countries include similar crimes, such as illicit enrichment, asset laundering, drug trafficking, corruption—including embezzlement, soliciting bribes and bribery—people trafficking and kidnapping. It is worth noting that environmental crimes are included in *Peru* and *Colombia*, paid assassination in *Guatemala* and *Honduras*, but only *Guatemala* specifies organized crime.

In *Honduras*, *Guatemala* and *Colombia*, the law stipulates that individuals who provide timely, effective information that leads to the confiscation of property will be rewarded with a specific percentage of the proceeds from the disposal of the confiscated assets. *Peru* does not offer this incentive, and provides for the proscription of proceedings after 20 years. All four countries have a fund for the deposit and management of the proceeds of confiscated property (Gamboa Montejano and Valdés Robledo 2012).

## 9.5 Conclusion

Despite the range of issues analysed above, certain trends illustrate the factors that facilitate alliances between organized crime and politics in Latin America. As is noted in the introduction of this chapter, there is a clear need to integrate the understanding and interpretation of corruption and organized crime in order to establish more effective deterrent measures and penalties. Moreover, because illicit networks are able to deploy extensive resources and strategies to infiltrate politics, legislation needs to be designed intelligently and supported by additional strategies.

There are two main areas of concern regarding mechanisms to regulate the behaviour of public officials. First, while there are comprehensive provisions regarding disqualification, incompatibility and conflicts of interest, these are not applied effectively. Second, the processes of selecting and promoting civil servants are weak and riddled with loopholes. The author of the Montesinos case study repeatedly asked during the course of his investigation how such an individual had managed to occupy such a senior position. Maybe this is where the answer lies.

With respect to mechanisms to promote transparency in the public sector, it is worrying that public sector recruitment and procurement processes are characterized by special systems for a vast number of 'exceptional' sectors or situations in order to avoid the general procedures established by the law. Since many illicit networks exploit public sector procurement, for example to consolidate alliances or launder illicit money (see Chapter 5), the existence of such loopholes presents a real danger. It is also important to note that the mechanisms for protecting informants and witnesses are weak, and lack special provisions for cases involving corruption or organized crime. For example, Alberto Rivera, the journalist who reported on the dangerous combination of criminal activities in Coronel Portillo province in Peru, was assassinated (see section 6.3). At the same time, many countries have only limited monitoring by civil society, either because the mechanisms for direct participation are ineffective or because there is a weak sense of ownership of participatory spaces at the local level.

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The greatest weakness lies in the regulation of political parties. The monitoring of party funding is generally limited to inspecting their accounts at election time. Political parties and movements have a lifecycle that extends beyond elections. In countries where the banking sector has a weak presence, particularly at the local level, the failure to account for cash contributions means that there is a huge gap in oversight.

While the most straightforward way for illicit networks to establish political relationships is by making payments to political parties, taking advantage of their vast resources, they can also build alliances by becoming embedded in the political system itself, establishing candidates and bureaucratic contacts who will favour their interests, as shown in the case studies of Buenaventura and the tennis shoe king in Chapters 5 and 8. In the countries analysed, political parties tend not to be held responsible at the political, disciplinary or criminal levels for the candidates they endorse—or for the actions of their representatives. This is directly related to the system's inability to effectively penalize political organizations. Penalties are generally based on financial fines that are frequently derisory or simply not applied.

Nor do strategies to combat organized crime view politics as a dangerous means of consolidating and perpetuating such activities. Weak coordination between supervisory bodies and financial intelligence units in tracing asset laundering is a concern, in particular with regard to political organizations, which in many countries lie beyond the reach of these bodies.

In addition to these technical considerations, it is also important to understand that the required reforms depend, for their adoption and effective implementation, on a series of factors that will be difficult to achieve without the political will of political leaders. These laws and regulations must be drawn up and approved by politicians, while monitoring to ensure their implementation depends on the existence of effective independent regulatory bodies. Political culture is also a somewhat intangible but fundamental factor. Even if laws and regulations are passed, the political culture must still promote the values of public respect and public service to society—not just among public servants but within the population as a whole.

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# 10 Conclusions and Recommendations

Catalina Uribe Burcher

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The aim of this book is to understand some of the mechanisms by which alliances are forged between illicit networks and political and economic actors in Latin America. It strives to go beyond describing specific incidents to contribute to the debate about the policies and legislation required to combat this phenomenon by providing a factual basis for improving the effectiveness and relevance of these instruments. To achieve this goal, International IDEA, NIMD and the Clingendael Institute worked with local researchers to document a series of case studies that provided examples of these corrupt dynamics and analysed the legal situation in these countries to identify the status of legislation designed to prevent, mitigate or punish such relationships.

The first section of this chapter synthesizes some of the key observations regarding the context in which illicit networks have developed in the region as a whole. The second section looks at the relationships between these networks and the political sphere, describes some of the laws and measures identified to combat these links, and offers a number of recommendations for legislators and regulatory and state security agencies in the region, based on the good practices observed.

As is explained in Chapter 1, the book in general, and this overview chapter in particular, draws a general picture of the crime situation in the region and the relationships between illicit networks and politicians. It explores some of the key means by which criminal activities are facilitated, including the main incentives and two of the factors that sustain them: the *economic vectors* that mould the social context within which these relationships occur; and the *reconfiguration of criminal activity* in Latin America that has increased the flexibility of these structures. This section is complemented by a critical analysis of the measures usually adopted by the security forces to confront the phenomenon.

The chapter then analyses three general characteristics of the relationships between illicit networks and politics. First, it assesses the implications of the need to *govern with organized crime*, especially for the development and political participation of marginal groups. This analysis must take into account the scarce resources available to combat the problem of specific incidents of corruption as well as the background criminality that complicates it. This is

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particularly important given the lack of understanding of the phenomenon, apart from the scant information revealed by investigative journalists (which makes the protection of these journalists even more important). Second, it considers the nature of the *tacit* and *explicit agreements* on which the relationships between politicians and organized crime are based, and highlights the role of civil society and regulatory bodies in preventing such agreements. Third, the chapter analyses the historical and geostrategic conditions that have facilitated and, indeed, continue to facilitate these relationships. The historical analysis discusses the importance of the concentration of power within restricted elites—in both *authoritarian* and *participatory regimes*—in creating the conditions for these relationships to develop and thrive.

With respect to the *geostrategic* characteristics that have left certain areas vulnerable to the creation of these relationships, the importance of the local level is highlighted. The interests of criminal activities are located at this level, but it is especially difficult to control.

The analysis of the historical and geostrategic context is supplemented by a description of the political-institutional factors that also influence these relationships:

- the increasing *fragmentation of political parties* in the region, a problem that has been exacerbated by difficulties in implementing rules governing funding;
- the *politicization and modernization of the bureaucratic apparatus of the state*, thanks in part to local politicians' ability to distribute bureaucratic positions among their networks; and
- links between *public officials and business interests*, a development that highlights the importance of strengthening the regulation of public tendering and procurement processes, as well as systems for appointing and promoting public servants.

The chapter ends with an analysis of the *economic factor*—the capacity to inject economic resources of illicit origin into political institutions with the help of political actors. This factor drives the institutional weaknesses identified above, and makes it particularly important to strengthen the mechanisms that regulate the activities of PEP. Each of these issues is described in detail below.

## 10.1 Criminal context

### 10.1.1 Incentives

The region has suffered greatly from the presence of illicit networks, which have exploited the spaces of opportunity for illicit activity in Latin America. The incentives that fuel such networks include the transformation of geographic zones characterized by institutional and social practices with a limited respect for legality, in addition to informality, coercive leadership and exacerbated individualism. The ever-closer and more diverse integration with international illicit trade networks has often paralleled or replaced traditional export sectors that have gone into decline.

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### 10.1.2 Economic vectors

The region has enjoyed rapid and sustained economic growth since 2004. This has had a range of effects, including a significant growth in the middle class and reductions in inequality, although this process has not been without obstacles and limitations, and has highlighted social problems including segmentation, and class and ethnic differentiation. These processes have also affected the development of illicit networks in Latin America. To start with, there has been no clear correlation between the economic growth and institutional stability, probably because this growth has been driven in certain cases by the rise of extractive industries, and accompanied by the influence of powerful interest groups. Economic growth has also excluded a section of the population, stimulating materialist aspirations that, in some cases, can only be achieved in the short term by means of crime or corruption, what some analysts call 'aspirational crime' (see section 4.3).

### 10.1.3 Reconfiguring criminal activity

The structure of organized crime in Latin America has shifted from dominant monopolistic organizations towards horizontal networks that do not vertically integrate the entire production and distribution chain. Similarly, criminal organizations have fragmented and diversified, generating new networks of specialized suppliers who come together to conduct specific operations. Their smaller size and the range of their connections enable these suppliers to rapidly take advantage of new opportunities.

#### The security forces

The general responses of central government to this increase in criminality have focused on *controlling petty criminals*, often through a discourse of 'zero tolerance', while efforts to combat criminal structures or leaders have mostly been sporadic and involved a strong military presence. Furthermore, the organizations responsible for implementing the rules, particularly the judiciary, generally lack the strength and capacity to do so effectively.

There is also a lack of *coordination* between national, regional and global efforts to combat transnational organized crime, even though this issue has attracted more attention in recent years. A particularly serious problem is the lack of *local authorities' capacity* to assimilate and implement controls on the actions of illicit networks.

## 10.2 Relationships between illicit networks and politicians

### 10.2.1 Governing with organized crime: overall impact on political participation and development

The presence of illicit networks in Latin America presents a complex challenge to implementing democratic projects. Although many of these relationships are mediated by the shared economic interests of criminals and politicians, who work together through illicit networks, it is impossible to ignore the complexity of governing in the context of hybrid, violent power in which organized crime has a powerful presence. Given the risks of resisting these influences, many leaders have made arrangements that enable them to coexist with illicit actors.

However, a fine line separates these agreements from other types of functional alliance from which politicians derive concrete benefits.

Where real alliances between organized crime and politics have developed, they have allowed illicit networks to become part of the *modus operandi* of key democratic bodies and of the state. Such alliances have penetrated political parties, tax agencies, legal systems and police forces, as a legacy of authoritarianism and complicity with crime, and of certain structural or modernizing changes within the state (see below). Another feature common to several countries in the region is the fact that despite numerous efforts to combat them, these phenomena increasingly appear to have become normalized within key sectors of politics and the economy, and in society as a whole.

The impact of this normalization on economic development and political representation differs according to the context. These effects range from undermining or usurping a state's control of its territory to a more diffuse impact on the political and business culture of a given area. The situation is particularly worrying in the case of fragile states, where relationships between illicit networks and state institutions threaten stability and territorial integrity, and reduce the state's capacity to deliver basic services such as health care. Since illicit networks usually benefit from maintaining the status quo, they tend to reinforce the existing power structures of the traditional elite, leaving little space for participation by minority or marginalized groups and communities, including women. Where marginalized groups have achieved greater representation, organized crime has adapted by forging alliances with them, so that their representatives cease to serve the interests of their constituents and come to serve illicit interests instead.

### Legislation: progress and challenges

Legislators in the region explicitly recognized the problem of the relationships between illicit networks and politicians in the Inter-American Convention against Corruption. Nonetheless, there is still a general lack of legislation addressing this issue, and existing laws need

to be more closely coordinated. The current legislative emphasis on punishment is necessary but not sufficient. Creative political strategies involving other social and political sectors taking responsibility for these behaviours are also needed.

### Academics and analysts

The phenomena of organized crime and corruption tend to be considered separately. While organized crime is usually analysed from a security perspective, corruption is generally considered in terms of governance,

in particular as a problem of the weakness of public institutions. These two spheres need to be linked so that the responses to organized crime recognize the way in which it operates at the level of state political power.

### Investigative journalism

Much of the available information about the activities of organized crime and its links with the state has been obtained by investigative journalists, despite the great risks involved.

In particular, websites dedicated to political reporting and analysis have had a major impact on the monitoring of corruption cases.

### General recommendations

- Protect investigative journalists—both their physical safety and their capacity and freedom to work and publish their findings.
- Limit state and political interference with the work of journalists. Penalties for libel and for damaging people's reputations should be strictly limited, and the possibility of criminal and civil prosecution should not be allowed to prevent journalists from doing their job.

## 10.2.2 Tacit and explicit agreements

Relationships between criminals and politicians are not always the result of an agreement, explicit arrangement or exchange between the authorities and criminal powers. The mutual benefits may arise from coexistence that is purely tacit and based on toleration and a degree of distance between the parties, what has been called 'profitable permissiveness' (see section 3.3.3). Other relationships are closer and more explicit, particularly where intermediaries are involved.

### Civil society

It is impossible to talk of a consistent, region-wide response to the relationships between politicians and criminal networks. In some cases, there is even a quasi-consensus and political support for criminal acts, particularly when the community disputes the illegal nature of the activity. In communities where participation in illicit activities is relatively common among different sectors of society, social rejection of

possible connections between these networks and politics is substantially lower. However, a community's acceptance does not necessarily lead to more interaction between illicit networks and politicians. On the contrary, organized crime needs alliances with politicians most to defend their interests where their illicit activities generate heated public reaction.

### General recommendations

- Facilitate access to information, which requires an adequate system for managing and archiving state documents.
- Establish mechanisms to increase state transparency by publishing decisions regularly.

- Regulate public or independent auditing of state institutions.
- Strengthen mechanisms to protect whistleblowers and informants, including those who report corruption.

### Specific recommendations

- *Colombia:*
  - » Expand general protection mechanisms for witnesses and informants in corruption cases, and ensure the anonymity of whistleblowers.
  - » Improve mechanisms to protect state officials who report corruption.
- *Honduras:*
  - » Establish specific penalties for institutions or officials who violate the rules on accessing public information.
  - » Specify criteria for accessing information, so that access is not provided on an arbitrary basis.
  - » Supplement the regulations governing the handling of state documents with a General Records Law.
- *Ecuador:*
  - » Review the restrictions imposed on the freedom of expression by the Communication Law of 2013.
- *Peru:*
  - » Continue to make progress towards creating spaces and tools to facilitate civil society participation in and monitoring of public institutions.
  - » Expand the protection of witnesses and informants in cases involving organized crime and corruption—in particular physical protection, job security and protection for family members.
- *Guatemala:*
  - » Strengthen citizen participation through the use of existing mechanisms, particularly in places where the social fabric is fragile.
- *Ecuador and Guatemala:*
  - » Provide mechanisms to protect the identity and job security of informants and witnesses.
- *Ecuador, Guatemala and Honduras:*
  - » Specify systems to protect informants, particularly witnesses involved in cases related to corruption and organized crime.
- *Colombia, Guatemala, Honduras and Peru:*
  - » Publicize state officials' declarations of assets and income.

- *Colombia, Ecuador, Guatemala and Peru:*
  - » Improve the effectiveness of direct participation mechanisms.

## Regulatory bodies

The role of regulatory bodies is particularly important, but it depends to a large degree on the existence of a clear mandate, genuine independence and the capacity to act.

## General recommendations

- Grant clear mandates giving these bodies a mandate to pursue investigations and impose effective penalties.
- Guarantee their political independence, in particular from the executive and legislative branches. Ensure that the mechanisms for selecting members guarantee adequate separation between these bodies.
- Provide them with the capacity to perform their functions, particularly at the local level. This means adequate financial and human resources and specialist technical expertise, together with access to information from other authorities such as the police, the judiciary, financial intelligence units and the banking system.
- Ensure that the different regulatory bodies are adequately coordinated.
- Provide them with mechanisms and competencies to investigate and punish offenders, even if the officials under investigation have resigned or retired.

## Specific recommendations

- *Peru:*
  - » Strengthen the power of the comptroller general, particularly with regard to public investment agreements at the regional and local levels.
- *Honduras:*
  - » Reform the summary administrative procedures of the Administrative High Court so that these reach a conclusion even when the officials under investigation have resigned.
  - » Strengthen provisions designed to penalize corruption, particularly enabling the public prosecutor's office to access public officials' assets that have been transferred to third parties.
- *Guatemala:*
  - » Strengthen the capacity of the public prosecutor's office to implement disciplinary penalties.



### 10.2.3 Authoritarian vs. participatory regimes

Alliances between illicit networks and politics have not been uniform or linear across the region. They have developed in the context of specific factors that vary from place to place, including the political regime in which they operate. In particular, it is interesting to note the differences between countries that have had authoritarian regimes and those that have not. For example, in formerly authoritarian Peru and Guatemala, democratic transitions towards more decentralized and dispersed models of government have not swept away the organic or 'strategic' links with illicit networks of the *status quo ante*, particularly the mechanisms or channels of informal or clandestine transactions between officials, politicians and criminals. In countries where criminality was not coordinated by the national government, such as Ecuador and Colombia, other factors have favoured links between criminals and politicians, such as internal armed conflict, economic instability and the fragmentation of political parties.

A common thread is that, during the process of confirming and consolidating the state—regardless of its history of authoritarianism—the foundations were laid for relationships between politicians and criminals that drew on the concentration of power in the hands of a few elites. These elites represented the interests of a few individuals who took the opportunity to shift between political and economic spheres, both legal and illegal, in order to exploit the power of the state to advance their economic interests.

### 10.2.4 Weak points: the local connection

Throughout the region, the clearest trend is the collusion between local authorities and illicit networks through locally based civil and political coexistence. Although the scope of illicit networks is transnational, their operations depend on the localities in which the criminal activity is performed, whether these are ports for the transport of drugs or money, borders for the exchange of contraband, mining centres, or cities with small or medium-sized enterprises through which money can be laundered. It should be stressed that these are purely economic interests, and that connections mediated by shared ideological objectives are becoming increasingly rare.

### 10.2.5 Fragmentation of political parties

The fragmentation of political parties is partly the result of shifting trends among voters, who have abandoned the traditional parties in favour of individual politicians or new political movements with populist messages that need to win the support of key sectors of society—in particular the media, trade unions and the security forces—in order to maintain popular support and be able to govern. In Peru and Colombia, this fragmentation has been intensified by a series of legislative reforms that, probably unintentionally, weakened traditional parties.

The operating environment of these fragmented parties has meant that the importance of policy programmes and ideology has declined, and parties have become increasingly dependent on their ability to build coalitions of interests—and, thus, on the help of the individuals who 'facilitate' these coalitions, which are vulnerable to illicit influences. Furthermore, this fragmentation is an obstacle to the process of ensuring that provisions for internal party democracy are implemented effectively. This is a vicious circle in which the lack of loyalty and discipline within parties exacerbates their fragmentation, and this in turn

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increases the lack of loyalty and discipline. One result is that national parties have become increasingly dependent on pacts with regional and local figures who have sufficient political and economic power to deliver the votes the parties need, despite the flimsiness of these individuals' ideological connection to the parties they supposedly represent. Some of these figures derive their economic power—or at least a portion of it—from their participation in illicit activities.

### Political funding

Some of the failings and weaknesses frequently observed in the legislation in this area include:

1. the focus on issues of legal funding and, in particular, on monitoring campaign funding;
2. the tendency for the monitoring of campaign funding to only include aspects such as electoral publicity in the mass media, while neglecting other important areas of expenditure such as logistics;
3. the lack of coordination with anti-corruption legislation;
4. the failure to implement these rules, which normally depends on the availability of government funds, for example public funding for political parties;
5. the low priority given to the provision of public resources for political organizations, which makes it difficult for them to survive and retain their independence from private funding; and
6. the lack of regulatory capacity to monitor compliance with these rules, particularly at the local level.

### General recommendations

- Strengthen mechanisms for *internal democracy* within political parties, and improve their capacity to monitor and check the backgrounds of their candidates and political structures, including for possible criminal involvement, particularly at the local level.
- Support the *sustainable operation* of political organizations beyond the electoral period, so that they strive for a long-term existence and are able to develop comprehensive political programmes with a solid ideological basis.
- Implement adequate mechanisms to *monitor and penalize* parties, including political, administrative and criminal responsibility for the improper behaviour of political organizations and their representatives, in particular related to candidates' criminal and disciplinary backgrounds. To be effective, these penalties must be proportionate to the benefit obtained from such improper behaviour.
- Implement an obligation to report not only on general financial issues but also on administrative and political decisions that have a direct impact on the possible participation of illicit actors.
- Ensure that information on election spending, accounting records and campaign contributions is public, continuous, up to date and freely accessible, and includes not only resources that go through the banking system but also those in cash and in kind, particularly during local campaigns.

## Specific recommendations

- *Peru:*
  - » Improve the application of regulations governing the routine operations of political organizations, particularly public funding.
  - » Strengthen political organizations' capacity to prevent the further fragmentation of political parties.
  - » Increase the capacity of the Electoral Commission to monitor the funding of political organizations, particularly in the departments, regions and districts.
  - » Expand the ban on contributions to political campaigns and parties, particularly those from illicit sources.
  
- *Colombia:*
  - » Publicize political parties' reports on the administration of election campaign funds.
  - » Regulate the use of third persons or 'frontmen' to act as links between illicit networks and political parties.
  
- *Honduras:*
  - » Specify the regulation of funds for political parties and campaigns, paying particular attention to defining what constitutes effective control of financial operations.
  - » Define organized crime funding of political campaigns or parties as an offence.
  - » Require parties to systematically publish their annual financial statements in a written publication with national circulation.
  - » Expand the system of setting out the responsibilities of political parties.
  - » Increase the independence of the Supreme Electoral Court by restricting the appointment of politicians and members of parliament to this institution.
  
- *Ecuador:*
  - » Expand the definition of electoral expenses to include expenditures not related to communications and advertising.
  
- *Guatemala:*
  - » Expand the disciplinary, criminal and political penalties for representatives and members of political parties, and modify financial penalties to reflect the benefits obtained from illicit actions.
  
- *Ecuador and Guatemala:*
  - » Clarify the nature of the illicit or criminal origin of banned contributions to political campaigns and parties.
  
- *Ecuador, Guatemala and Honduras:*
  - » Expand regulation of the funding of political organizations outside the electoral cycle.

- *Ecuador, Guatemala, Honduras and Peru:*
  - » Stipulate that political parties will be held liable for endorsing candidates linked to organized crime and other illicit networks.

### 10.2.6 The politicization of the bureaucracy and the process of reforming the state apparatus

The relationships between organized crime and politics are complex; they include individual criminals and politicians and extend to a large part of the state's administrative apparatus. Politicians in the region tend to distribute bureaucratic posts among their informal networks of influence in order to maintain their power at different levels of the administration. As a result, the interests that motivate politicians—and that sometimes respond to illicit motives—also guide the operation of the state towards the same interests.

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However, the influence that organized crime exercises over some local and national public institutions has not solely been a consequence of the politicians' capacity to influence the bureaucratic apparatus of the state. It has also arisen as a result of the increasingly close relationships between public officials and business interests. These relationships have been facilitated, in particular, by recent state reform processes inspired by free market principles designed to implement more 'efficient' management models based on increased outsourcing to private companies. These processes have meant that public officials' choices are determined by their close relationships with business interests, many of which operate on the cusp between legality and illegality. Officials' lack of job security provides an additional incentive to associate with criminal actors.

At the same time, state reform processes have opened up a space for other important actors within these corrupt dynamics: 'shadow intermediaries'. These are individuals who have managed to capitalize on their connections with politics and state institutions without being formal members. They connect the formal and informal economies and facilitate the flow of both licit and illicit money into the public sector.

#### Tendering and public procurement

Legislation in this area is fundamental to promoting transparency, particularly rules covering disqualification, incompatibility and conflicts of interest,

and those requiring public officials to report corruption and declare their assets both before taking office and after leaving it.

#### General recommendations

With respect to the rules regulating *public procurement* in general:

- States should have a clear, unified public procurement system.
- States should limit the existence of special systems, which are normally designed to circumvent general requirements.

- Adequate monitoring and appeal mechanisms are needed to fight corruption.

With respect to the rules regulating *disqualification, incompatibility and conflicts of interest*:

- These should be sufficiently broad to cover conflicts of interest that arise after the individual has left public employment.
- All ranks of public servants should be covered by the rules.
- Practical mechanisms should be available to promote the dissemination, understanding and application of these rules, in order to support their implementation—particularly at the local level.
- Improve the channels by which officials report conflicts of interest, including technical platforms and effective mechanisms for information exchange.
- Create a single authority to centralize information held in legal records and the banking system to corroborate the accuracy of candidates' statements and background information.

### Specific recommendations

- *Ecuador and Guatemala*:
  - » Supplement the rules on disqualification and conflicts of interest for public servants with specific guidelines for potentially dangerous situations.
- *Guatemala and Honduras*:
  - » Strengthen appeal mechanisms with regard to awarding public contracts.
- *Ecuador, Guatemala, Colombia and Honduras*:
  - » Reduce the use of special systems and exceptional situations to evade the general provisions in public procurement procedures.

### A system for appointing and promoting public servants

This system is important to ensure that the executive, legislative and judicial branches are less permeable to the influence of organized crime.

### General recommendations

- Establish clear stages and deadlines.
  - Provide appropriate methods for verifying candidates' abilities.
  - Establish quality and performance criteria in advance in a single piece of legislation that covers all public servants.
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- Publish the results.
- Establish appeal mechanisms.
- Appoint an authority to monitor the implementation of these control mechanisms, particularly in the municipal sphere.
- Prevent the improper use of exceptions, placements, temporary appointments and positions for which there are no restrictions on appointment and dismissal.

### Specific recommendations

- *Ecuador:*
  - » Review the exceptions in the Regulations of the Civil Service, Administrative Career and Salary Standardization Law to prevent the improper extension of temporary service contracts.
- *Guatemala:*
  - » Require the legislative branch to submit a criminal record statement when appointing staff.
  - » Improve the mechanisms for appointing public officials to require the selection of individuals who have scored the highest in selection exams.
  - » Regulate the system for entry into the public service for officials of the public prosecutor's office.
  - » Specify the maximum terms for temporary, emergency and placement positions to prevent these from being extended unduly.
  - » Establish authorities at the municipal level to administer the civil service system.
- *Honduras:*
  - » Create clear rules that cover all public servants and generally improve the application of existing rules in this area.
  - » Regulate the process of selecting officers for the legislative branch.
- *Peru:*
  - » Speed up the issuing of the unified regulation for the civil service, including rules on the selection process for entry into the public sector in all branches of the administration.
- *Colombia:*
  - » Speed up the issuing of the Administrative Career Statute and the regulation of judicial careers.
- *Ecuador, Guatemala and Honduras:*
  - » Expand the Civil Service and Administrative Career Law to cover potential conflicts of interest after the official has left the service.

### 10.2.7 Participation in the formal economy through money laundering

The expansion of illicit networks has had a major impact on the practice of money laundering. While such networks have grown considerably throughout the region, their restructuring—as explained above—has made contact between criminal operators and those who launder the money less frequent and more indirect. This makes it difficult to determine which sectors are financed with money from organized crime. There is substantial evidence that the pathways through which illicit money is recycled into the formal economy have multiplied in recent years with the exploitation of new spaces and opportunities. This process has been facilitated by economic growth throughout the region, and following the reorientation of criminal groups towards new sources of wealth, above all in mining and the extraction of fossil fuels.

#### Preventing, detecting and punishing asset laundering

One of the most important mechanisms for punishing asset laundering is the confiscation or seizure of assets obtained by illicit means. The tools that regulate the activities of PEP are

particularly important in this area because they make it possible to focus on people who hold or have held public positions or who are leaders of political organizations.

#### General recommendations

- Apply the rules to individuals as well as organizations, including political parties.
- Expand controls to informal financial and commercial entities, which have a major presence at the local level.
- Enable the authorities to launch investigations without a prior complaint.
- Provide mechanisms to allow the authorities to access relevant banking information without restrictions related to banking secrecy and tax confidentiality, and to access other information held by different authorities.
- Ensure the operational and financial independence of financial information units.
- Create mechanisms for tactical, technical and operational coordination among the authorities responsible for identifying and tracing property suspected of being related to asset laundering.
- Remove time restrictions on the confiscation of assets.
- Conduct special monitoring of potential asset laundering during political campaigns and through political parties, focusing on donors and contributors; cash contributions and donations; suspicious operations; limits on donations, contributions and transfers; maximum amounts for deposits and withdrawals; and the financial powers and competencies of party and campaign managers.

## Specific recommendations

- *Peru:*
  - » Clarify the Banking and Insurance Authority's power to grant information to the Financial Intelligence Unit and institutionalize cooperation between them.
  - » Facilitate the comptroller general's access to information protected by banking secrecy provisions.
  - » Review the constitutional provisions that protect banking secrecy and tax confidentiality to enable the Financial Intelligence Unit to exchange information with international partners.
  
- *Honduras:*
  - » Improve coordination between the Administrative High Court and the National Banking and Insurance Commission.
  - » Clarify the regulations that hold organizations liable for money laundering.
  - » Strengthen the capacity of the Financial Intelligence Unit to access relevant information from other government sources, and make it operationally and financially independent.
  
- *Guatemala:*
  - » Improve tactical, technical and operational coordination among the authorities responsible for identifying and tracing property suspected of being related to asset laundering.
  - » Expand the comptroller general's powers to inspect trusts.
  - » Eliminate pretrial hearings that protect public officials by enabling those suspected of corruption to launder the proceeds of this behaviour.
  - » Expand the definition of PEPs to include other people associated with politicians, such as their family members.
  
- *Colombia:*
  - » Create additional mechanisms to coordinate investigations between regulatory bodies in cases of alleged corruption, particularly with regard to financial movements.
  
- *Ecuador:*
  - » Include asset laundering as a separate crime in the Penal Code, and expand the competence of investigative bodies to initiate investigations independently.
  - » Expand the regulations that make it possible to establish the origins of the resources of PEPs.
  - » Regulate the functions of the Financial Intelligence Unit with respect to the prevention and monitoring of asset laundering.

International IDEA, NIMD and the Clingendael Institute will continue to support discussion of these and other recommendations in order to strengthen the capacity of civil society and state security and regulatory bodies to prevent, mitigate and punish the relationships between organized crime and politics in the region.



The three organizations have promoted a number of workshops and mechanisms to support coordination between legislators and state security agents, and to generate innovative ideas about understanding and combating this phenomenon. They also seek to connect this debate to similar initiatives in other regions linked to transnational illicit networks—such as Eastern Europe, West Africa and the Asia-Pacific region—in order to share lessons learned and highlight measures that have contributed to combating corruption and organized crime.

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Organized criminal networks are global phenomena that distort local and global economic markets, spark violence and blur the role of the state in providing basic services, all in the interest of increasing the wealth of these networks. The main weapon used by such networks is corruption—of politicians and of many of the state apparatuses in the countries in which they operate. This undermines the basic principles of democracy and puts the state at the mercy of illicit economic interests.

This is a global challenge. Latin America has particularly suffered from this issue for a number of reasons. The strong presence of illicit networks dedicated to illegal mining, the trafficking of exotic species, arms trafficking and, in particular, the production and sale of illegal drugs such as cocaine has created a massive inflow of illicit money. The high cost of political activity in the region and difficulties in controlling political contributions has allowed organized crime to penetrate the political landscape. However, efforts made in different Latin American countries to confront these networks have seen significant achievements. There is a range of positive and negative experiences on how these problems can be confronted that will be useful for countries in the same region and on other continents.

This book focuses on experiences in Colombia, Ecuador, Guatemala, Honduras and Peru. The authors draw on research that illustrates how relationships are forged between criminals and politicians. They identify numerous mechanisms for tackling these relations, and discuss both the achievements and the challenges concerning their practical application.

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