

PART III

Beyond States



COVID, Corruption, and Democratic Institutions

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I. Emergencies: An Excuse for Abuse

Emergencies generally increase corruption risks and COVID was no exception. In March 2020, the Latin American Chapters of Transparency International published a document highlighting the main areas and types of corruption risk that governments would face in their response towards the pandemic.¹

The COVID-19 pandemic was a combination of factors particularly prone to corruption. The emergency itself on the one hand, and the fact that it affected mainly the health sector, one of the areas of public policies and public services which normally shows high levels of corruption. In a non-pandemic situation, an estimated U\$500 billion is lost to corruption in the sector every year.²

When emergencies affect the people so directly and in such a dramatic way, as COVID did, the institutional reaction is to resort to urgent measures and exceptional rules.³ The standard transparency and accountability mechanisms are weakened or completely bypassed. The decision-making power is concentrated on the executive, particularly through decree authority (in Latin American countries, '*decretos de necesidad y urgencia*', '*medidas provisionales*', etc).⁴ During the pandemic, many governments operated with lower standards of consultation, transparency,

¹ Transparency International, 'Coronavirus sparks high risk of corruption across Latin America', March 2020, available at: www.transparency.org/en/press/coronavirus-sparks-high-risk-of-corruption-across-latin-america.

² Transparency International – Health, 'The Ignored Pandemic', March 2019, available at: ti-health.org/wp-content/uploads/2019/03/IgnoredPandemic-WEB-v3.pdf.

³ KD Ewing, 'COVID-19: Government by Decree' (2020) 31(1) *King's Law Journal* 1–24, published online May 2020, available at: www.tandfonline.com/doi/pdf/10.1080/09615768.2020.1759398?needAccess=true. See also T Ginsberg and M Versteeg, 'The Bound Executive: Emergency Powers during the Pandemic', posted May 2020, available at: papers.ssrn.com/sol3/papers.cfm?abstract_id=3608974.

⁴ Idea International, 'Emergency Law Responses and the COVID-19 Pandemic', 2021, available at: www.idea.int/gsod/sites/default/files/2021-11/emergency-law-responses-covid19-pandemic-gsod2021.pdf.

oversight, or control in their processes, and they issued hundreds of emergency regulations, often on a fast track.⁵ On the other hand, people demand rapid and efficient responses to the crises without caring much about their institutional consequences. At the same time, because of fear and uncertainty, people tend to accept this move to a more authoritarian and discretionary decision-making process and tolerate the restrictions of freedoms, even in cases of clear abuses.

Although there are international standards on the limits that – even in time of emergencies – shall be respected to protect the rule of law and civil rights, these standards were not complied with in some countries. These standards refer to: a) the respect of the legality; b) the proportionality and reasonableness between the threat faced and the restrictions on civil rights and freedoms; c) the limited duration of the exceptional restrictions; d) the transparency and access to information about the decisions made; e) the existence of effective accountability mechanisms; and f) the effective legislative and judicial oversight.⁶ The reality was quite different: the pandemic was used as an excuse for abuse.

The measures adopted in Latin America – as in most of the countries around the world – included curbing some human rights, restricting travel, closing classrooms, suspending government services, ordering the temporary closure of businesses, controlling or curtailing news reporting, delaying elections, establishing extended quarantines, lockdowns, and curfews. In some countries the role of police, security and military forces in civilian governance increased with the pandemic response. This securitisation of the COVID response came at the expense of the abuse of human rights.⁷ In November 2020, Human Rights Watch denounced the abuses committed by police forces in Argentina.⁸

During the pandemic, unparalleled numbers of resources were mobilised including national budgets and stimulus packages from multilateral institutions which made efficient controls more important than ever. However, accountability mechanisms were reduced or paralysed, in part because of the reduction in bureaucratic activity but mainly based on the argument that the urgent situation demanded agile decision-making so there was no time for oversight. Not only the executive concentrated power at the expense of the legislative, but also

⁵ OECD, 'Government at a Glance 2021', July 2021, available at: www.oecd.org/gov/government-at-a-glance-22214399.htm.

⁶ UN International Covenant on Civil and Political Rights (1976) Art 4, available at: www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights; International Commission of Jurists, 'Siracusa Principles on the Limitation and Derogation Provisions on the International Covenant on Civil and Political Rights' (1985) available at: www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf. See also UN OHCHR, 'Emergency Measures and COVID-19: Guidance', April 2020, available at: www.ohchr.org/sites/default/files/Documents/Events/EmergencyMeasures_COVID19.pdf.

⁷ Amnesty International, 'COVID-19 Crackdowns. Police Abuse and the Global Pandemic', December 2020, available at: www.amnesty.org/en/documents/act30/3443/2020/en/.

⁸ Human Rights Watch: www.hrw.org/es/news/2020/11/20/la-pandemia-ha-dejado-al-descubierto-la-brutalidad-de-la-policia-argentina#:~:text=La%20Secretar%C3%ADa%20de%20Derechos%20Humanos,2019%20y%20marzo%20de%202020.

some special commissions were created with decision-making authority based on opaque delegation, no clear remit, and no clear accountable lines. Obviously, all these elements created fertile ground for corruption to flourish.

The second element of this combination which favoured corruption was the fact that the emergency was a pandemic. The health sector is one of the public policy areas most affected by corruption in normal times.⁹ According to the UN Office on Drugs and Crime (UNODC), approximately 10 to 25 per cent of all money spent on procurement globally in the health sector is lost to corruption yearly.¹⁰ The health service is identified as one of the more likely to be affected by bribery, which includes access to attention, beds in hospitals, tests, treatments, medicines, ventilators, and vaccines. Both these factors, corruption related to public procurement in the health sector and bribery or petty corruption in health services were documented in many countries in the region. Proética – Transparency International's chapter in Perú – opened a special channel to collect reports of bribery and corruption and provided legal assistance to the complainants or whistleblowers.¹¹ Transparencia Venezuela organised a similar reporting channel.¹² In 2020, more than 1,800 people around the world contacted Transparency International's Advocacy and Legal Advice Centres to report corruption and seek support for issues related to COVID-19.¹³

The main areas of corruption risks that could be anticipated were clear: public procurement of elements needed for the COVID response; management of subsidies, loans, and stimulus packages from multilateral bodies;¹⁴ use of special trusts and endowments to address the emergency; the distribution of special financial aid, credits, subsidies and loans to individuals and businesses to cover economic losses, and the access to the health care system. The consequences of corruption in these different areas undermined not only the effective response to the pandemic, but also affected people's health and even lives.

⁹ USAID, 'Global Health Anti-Corruption Integration Handbook', October 2022, available at: www.usaid.gov/documents/usaid-global-health-anti-corruption-integration-handbook.

¹⁰ UNODC, 'Guidebook on Anticorruption in Public Procurement and the Management of Public finances', September 2013, available at: www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf.

¹¹ Proética, 'Orientación legal anti-corrupción': www.proetica.org.pe/orientacion-legal-anticorrupcion-durante-la-pandemia-del-covid-19/.

¹² Transparencia Venezuela, 'Working in One of the World's Most Dangerous Hospitals during COVID-19', January 2021, available at: www.transparencia.org/en/news/working-in-one-of-the-worlds-most-dangerous-hospitals-during-covid-19.

¹³ See some stories on reported cases at: www.transparencia.org/en/citizens-report-covid-19-corruption.

¹⁴ UNODC, 'COVID 19 Fiscal Response and the Prevention of Corruption', available at: www.unodc.org/pdf/corruption/COVID-19fiscal_response.pdf; and D Santoro, 'COVID: Duras objeciones de la Auditoria General de la Nación', *CLARIN*, June 2022, available at: www.clarin.com/politica/covid-duras-objeciones-auditoria-general-nacion-compras-ministerio-salud-s-35-millones_0_eyW44dnVsr.html. See also, on the situation in El Salvador: Fund, 'El Salvador: A Recipe for Corruption', August 2020, available at: www.transparencia.org/en/blog/el-salvador-bloated-budgets-and-little-oversight-a-recipe-for-disaster.

Information was one of the victims of the pandemic which exacerbated the risk of corruption. Access to information is essential to prevent, detect, and punish corruption. The ‘infodemic’ – reported by the World Health Organization¹⁵ – was of serious concern as well as misinformation and manipulation of the data about the illness and its consequences, the treatments, the statistics of affected people, etc, because they undermined people’s trust and public support of the response to the pandemic. At the same time, freedom of expression and freedom of the press suffered unreasonable restrictions,¹⁶ and criticism of governments’ decisions was suppressed in many countries.¹⁷ The right of access to information was formally suspended or the governments simply disregarded and did not answer the petitions.¹⁸ The role of civil society organisations, the press, and particularly investigative journalists was crucial in the fight for transparency and accountability.

Corruption is not just a financial crime and transparency is not just access to information. Integrity is a key element in the fight against corruption and what was not highlighted at the beginning of the pandemic but was then detected in many countries was the violation of public ethics rules and integrity standards by the authorities who allowed themselves to special treatment and behaved in clear contradiction with the rules and restrictions they had imposed on their fellow citizens. When these cases of misconduct (Partygates, VIP access to treatment and vaccines, the so-called Vaccinegates) were made public, the result was a decrease in the already low trust in institutions and leadership, that also contributed to the weakening of democratic institutions.

To mitigate the identified corruption risks, Transparency International and its national chapters in Latin America recommended the adoption of certain measures to address the pandemic: a) the decision-making process should be transparent, open and evidence-based; b) public procurement should be transparent and open contracting mechanisms should be implemented; c) prevention of

¹⁵ PAHO-WHO, ‘Understanding the Infodemic and Misinformation in the Fight Against COVID-19’, available at: iris.paho.org/bitstream/handle/10665.2/52052/Factsheet-infodemic_eng.pdf?sequence=16.

¹⁶ *Open Society*, ‘How COVID-19 Threatens Independent Journalism’, July 2020, available at: www.opensocietyfoundations.org/explainers/how-covid-19-threatens-independent-journalism.

¹⁷ *Freedom House*, ‘Democracy Under Lockdown’, October 2020, available at: freedomhouse.org/sites/default/files/2020-10/COVID-19_Special_Report_Final_.pdf. See also, UNESCO, ‘Journalism, press freedom and COVID-19’, 2020, available at: unesdoc.unesco.org/ark:/48223/pf0000373573; Coalition for Human Rights, Art 19 and Ifex, ‘Unhealthy Silence’, July 2021, available at: rightsindevelopment.org/unhealthy-silence/; and Committee to Protect Journalists, ‘COVID-19 and Press Freedom’ (several reports), available at: unesdoc.unesco.org/ark:/48223/pf0000373573.

¹⁸ *Alianza Regional*, ‘Acceso a la información en contexto de emergencia sanitaria’, May 2020, available at: www.alianzaregional.net/wp-content/uploads/2020/05/Estudio-regional_-AIP-en-contexto-de-emergencia-sanitaria-final-.pdf; and ‘Segundo informe’, July 2020, available at: www.alianzaregional.net/wp-content/uploads/2020/07/II-Estudio-Regional-AIP-en-contexto-de-emergencia-sanitaria.pdf.

conflict of interests and undue influence should be reinforced; d) accountability and control mechanisms should be in place and made more agile; e) due-diligence processes should be fulfilled; f) access to health care should be granted on an equal basis, avoiding privileges, discrimination and discretionary decision-making, and people should be clearly informed on the criteria applied to access them; g) access to economic aid, subsidies and credits should be distributed on the basis of equal, fair, and transparent criteria; and h) loans and stimulus packages from multilateral organisations should be accompanied by accountability and transparency mechanisms.

One significant difference in terms of corruption between COVID-19 and previous emergencies like the Ebola pandemic in 2014–16, the tsunami that affected Indonesia and Thailand in 2004, or the 1985 earthquake in Mexico was the fact that from the very beginning of the COVID pandemic there was a clear awareness of the corruption risks that the world would face and that reports on corruption cases were concomitant with the emergency and covered the whole world.

The increasing risk of corruption, the decline in democratic institutions and the loss of trust in institutions and leadership during the pandemic is clearly shown in different reports, surveys, and indexes. The emergency reinforced already registered trends towards authoritarianism, the deterioration of democratic governance, the undermining of rule of law, as well as the pervasive presence of corruption. These trends are still predominant in the region.¹⁹

According to Transparency International's Corruption Perception Index 2021, the fight against corruption has been stagnant in the Americas for three consecutive years with an average of 43 points out of 100 possible, and if we consider only Latin American countries the average drops to 37 points.²⁰ The situation is not better in terms of the state of democracy. The results of the EIU Democracy Index 2021 reflect the continuing negative impact of the COVID-19 pandemic on democracy and freedom for a second successive year.²¹ Latin America suffered a big setback in 2021. The change in the region's score in 2021 was the biggest year-on-year decline experienced by any region. Only two countries – Uruguay and Costa Rica – qualified as 'Full' democracies. The WJP Rule of Law Index 2022 offers consistent results with the status of the rule of law weakening around the world for the fifth consecutive year. In Latin America, 11 countries registered a decline in their rule of law scores.²²

¹⁹ DF Rubio, 'La corrupción en Las Américas: Un desafío para la democracia', NDI, Summit of the Americas, Los Angeles, US, June 2022 (printing in process).

²⁰ Transparency International, 'Corruption Perception Index 2021', January 2022, available at: www.transparency.org/en/news/cpi-2021-americas-a-region-in-crisis.

²¹ *The Economist Intelligent Unit*, 'Democracy Index 2021', February 2022, available at: www.eiu.com/n/democracy-index-2021-less-than-half-the-world-lives-in-a-democracy/.

²² *World Justice Project*, 'Rule of Law Index 2022', October 2022, available at: worldjusticeproject.org/rule-of-law-index/insights?s=09#two-year-trend-.

II. Risk Zones

The deterioration of rule of law, checks and balances, transparency and accountability opened a window of opportunity for corruption in a wide range of areas. As for the type of corruption reported, bribery, conflicts of interest, undue influence, clientelism, cronyism, and petty corruption were prevalent.

Public Procurement was a major area of concern from the start of the pandemic. The whole world simultaneously demanded the urgent supply of the same kind of products. This massive demand determined the shortage of goods, a huge increase of prices, and the surge of new and improvised providers.

To face the emergency, one of the first measures adopted by governments was to resort to direct contracting, avoiding the relative long and competitive bidding processes, and bypassing normal checks and oversight. Unknown providers were hired without the most elementary due diligence, many of whom had conflicts of interest with government officials. Overprices, substandard supplies, lack of contract fulfilment, goods paid in advance and never delivered, fraud and money laundering were some of the facts reported.

Transparency was one of the victims of the pandemic. In many countries the government stopped publishing information about public contracts, open contracting portals were disabled, and access to information petitions were not answered. In Latin America, the media,²³ mainly investigative journalists,²⁴ and civil society organisations – among them all Transparency International's chapters – played a key role in monitoring, sharing information, and reporting suspicious cases.

In Honduras, Colombia, Argentina, México, Perú and Chile, Transparency International chapters created publicly accessible COVID-Contracts Monitors which collected disperse or unavailable information about the use of public resources in response to the pandemic. These monitors disclosed hidden or opaque information and facilitated the assessment of the processes followed and the decisions made. A few examples are enough to show the importance of the organisation's work.

In Perú, the government facilitated access to information related to the resources transferred to local governments and Proética created two, user friendly monitors to inform about the resources devoted to the COVID response and to follow the effective use of these resources with weekly updates,²⁵ and published

²³ DW, 'COVID-19 en América Latina: Escándalos de corrupción no dan tregua', July 2021, available at: www.dw.com/es/covid-19-en-am%C3%A9rica-latina-esc%C3%A1ndalos-de-corrupci%C3%B3n-no-dan-tregua/a-58181894.

²⁴ *Redpalta*, 'Las Compras en pandemia', available at: www.redpalta.org/compras-pandemia/, and 'Los beneficios a farmacéuticas en compras de vacunas COVID', available at: www.redpalta.org/post/los-beneficios-a-farmaceuticas-en-compra-de-vacunas/. See also, *Connectas*, 'Huellas de la pandemia. Pandemia de corruptos', available at: www.connectas.org/coronavirus-corrupcion/.

²⁵ *Proética*, 'Lupa en las transferencias. Monitoreo al gasto público' available at: www.proetica.org.pe/lupa-sobre-las-transferencias-monitoreo-ciudadano-al-gasto-publico-en-estado-de-emergencia/, and

several analysis on the open data provided through the official platforms (which covered only 10 per cent of the total amount of resources used for coping with the emergency), including those referring to conflicts of interest and overpricing.²⁶ Additionally, Proética conducted social audits to detect and report any wrongdoing in public procurement, misuse of funds, any problem related to the providers, lack of reporting, and discrepancies in the information provided through the official channels.²⁷ Another interesting initiative of Proética was the Monitor of Corruption cases.²⁸

In Honduras, ASJ (Asociación para una Sociedad más Justa) produced a series of audits and reports on the use of public resources in the response to COVID.²⁹ The results of these investigations were published by *Revistazo*.³⁰ One of the corruption scandals disclosed – an authentic paradigmatic case – was the suspicious purchase of nine mobile hospitals.³¹ The intermediary was an unknown company with just a mailbox address in the US, but the manufacturer was a Turkish company that was not a party to the agreement. The purchase order was signed although the Public Health Secretary had expressly stated that there was no need to buy this type of hospital. Significant overpriced was reported. The ASJ team quoted the same mobile hospitals directly with the same manufacturing company from which the government bought the hospitals, at a price of US\$2 million less, and with other companies, very similar hospitals were quoted for US\$4 million less each. Despite the urgency adduced to justify the purchase of nine hospitals, the provider did not deliver the hospitals on time.³² The contract did not include any guarantee in case of unfulfillment or defective products.

Although, in Argentina, the emergency direct procurement regulation ordered that the information should be published, the official data platforms were not providing complete and up-to-date information about the contracts signed by

'Seguimiento de la ejecución del gasto', available at: www.proetica.org.pe/seguimiento-al-avance-de-la-ejecucion-presupuestal-destinado-al-estado-de-emergencia-por-covid-19/.

²⁶ Proética, 'Análisis de datos abiertos sobre contrataciones públicas en el marco de la emergencia sanitaria contra el COVID', available at: www.proetica.org.pe/contenido/analisis-de-los-datos-abiertos-sobre-contrataciones-publicas-en-el-marco-de-la-emergencia-sanitaria-contra-el-covid-19/, and 'Reporte #2', available at www.proetica.org.pe/contenido/reporte-n-02-que-nos-dicen-los-datos-abiertos-sobre-las-contrataciones-publicas-para-atender-la-emergencia-sanitaria/.

²⁷ Proética, 'Reporte de veeduría ciudadana', available at: www.proetica.org.pe/wp-content/uploads/2020/10/476154892-OPERATIVO-VIRTUAL-EN-EL-ESTADO-DE-EMERGENCIA-COVID-19.pdf.

²⁸ Proética, 'Observatorio de casos de corrupción', available at www.proetica.org.pe/contenido/observatorio-de-casos-de-corrupcion-en-medio-de-la-pandemia-mas-de-1400-investigaciones-en-fiscalias-en-todo-el-pais/.

²⁹ ASJ, 'Auditoría y veeduría de las compras por emergencia para combatir el COVID-19', available at asjhonduras.com/covid19/index.html.

³⁰ *Revistazo*, 'Especial COVID-19. Transparencia salva vidas', available at: revistazo.com/covid-19/.

³¹ ASJ, 'Auditoría y veeduría de las compras por emergencia para combatir el COVID-19 – Informes hospitales móviles', available at asjhonduras.com/covid19/informe_hospitales.html.

³² *Revistazo*: revistazo.com/al-menos-57-defectos-reclamo-invest-h-a-fabricante-de-hospitales-moviles/, and revistazo.com/mr-hispanopreneur-el-hombre-detras-del-covid-desastre-de-47-millones-de-dolares-en-honduras/.

the government.³³ Poder Ciudadano created the ‘ComprasCOVID’ monitor – an open and usable database – which included all the information about COVID contracts, which rapidly became the to-go site to find information,³⁴ and mapped the risks in emergency contracting.³⁵

Transparencia por Colombia monitored and audited the use of public resources and contracts signed by the government during the pandemic. Several problems were detected and reported, from overpricing, to lack of capacity of some providers, undue use of the emergency framework for purchases not related to COVID, the resort to private law agreements to avoid public law controls, and possible conflicts of interest in contracts that benefited campaign donors.³⁶ Chile Transparente monitored COVID-contracts with similar results.³⁷

The lack of transparency was almost absolute in relation to the purchase of COVID vaccines. Open Contracting Partnership and Transparency International highlighted the data that should be shared during the vaccine procurement cycle. Publicly collecting and sharing this information would have supported (and it will support in the long term) governments and civil society in strengthening the planning, implementation, and monitoring of the related contracting processes in a way that builds public trust.³⁸ Unfortunately, opacity was the rule, and it created the opportunity for dubious negotiations.³⁹ The arguments in favour of secrecy were the defence of patent rights and commercial interests of the developer labs. These were not valid grounds on which to deny information. The people were not interested in the vaccines’ formulas but had – and have – the right to know

³³ *Poder Ciudadano*, ‘Observatorio de compras y contrataciones públicas en el marco del COVID-19’, May 2020, available at: poderciudadano.org/wp-content/uploads/2020/12/ROCC-Contrataciones-publicas-en-Argentina-durante-el-estado-de-emergencia.pdf.

³⁴ *Poder Ciudadano*, ‘ComprasCOVID19’, available at: comprasCOVID19.poderciudadano.org/. See also, Poder Ciudadano – ROCC, ‘Contrataciones públicas en Argentina durante el estado de emergencia’, June 2022, available at: poderciudadano.org/wp-content/uploads/2020/12/ROCC-Contrataciones-publicas-en-Argentina-durante-el-estado-de-emergencia.pdf.

³⁵ *Poder Ciudadano*, ‘Mapa de riesgos normativos en los procesos de compras de emergencia en Argentina. Transparencia, rendición de cuentas y control social para combatir el COVID-19’, December 2020, available at <<https://poderciudadano.org/wp-content/uploads/2020/12/Mapa-de-riesgos-normativos-COVID19.pdf>>.

³⁶ *Transparencia por Colombia*, ‘Balance del monitoreo a la contratación pública COVID-19’, September 2022, available at <<https://www.redpalta.org/compras-pandemia/>>.

³⁷ *Chile Transparente*, ‘Análisis de compras públicas en el contexto de la crisis sanitaria del COVID-19’, June 2020, available at: www.chiletransparente.cl/analisis-de-compras-publicas-en-el-contexto-de-la-crisis-sanitaria-del-covid-19-mayo-2020/.

³⁸ Open Contracting Partnership and Transparency International – Health, ‘Open Contracting for the COVID-19 Vaccine. A Good Practice Guide’, July 2021, available at: www.open-contracting.org/wp-content/uploads/2021/07/OCP2021-C19-vaccine-guide.pdf.

³⁹ Transparency International – Health, ‘For Whose Benefit’, May 2021, available at: ti-health.org/wp-content/uploads/2021/05/For-Whose-Benefit-Transparency-International.pdf; *Poder Ciudadano*, ‘Observatorio de vacunas COVID-19. Primeros hallazgos y recomendaciones’, June 2022, available at: vacunas.poderciudadano.org/wp-content/uploads/2022/06/Observatorio-Vacunas-COVID-19-Informe-Primeros-Hallazgos-VF.pdf, and ‘Análisis de disponibilidad de la información’, September 2022, available at: vacunas.poderciudadano.org/wp-content/uploads/2022/09/Inf.-Analisis-de-Disponibilidad-de-la-Informacion.pdf.

which vaccines were bought, how many doses were purchased, what was the price paid, when the supplies would arrive and which conditionalities were attached to the agreements.⁴⁰ In Latin America, the scarce information available was the result of the work of Transparency International's chapters which, in some cases, had to file lawsuits to get information.⁴¹ Transparencia Mexicana led the work on vaccine contracts in the region, coordinating the access to information petitions and centralising the information about the contracts.⁴²

Social aid packages, public subsidies, and loans were distributed by governments to support the population as the lockdowns produced a parallel economic pandemic.⁴³ The criteria to access this aid were not always clear and transparent and as the situations were so different and unprecedented the regulations approved were subjected to continuous modifications and presented several loopholes and inconsistencies. This created the space for clientelism, favouritism, and other forms of discretionary and discriminatory decision-making. This affected not only individual persons but also the business sector.⁴⁴

Bribery risk in the health care system was detected as soon as the pandemic was declared. The problem of 'informal payments' is pervasive in the health sector.⁴⁵ The 2019 Global Corruption Barometer – Latin American edition – reported that

⁴⁰ K Husmann, 'Global access to COVID vaccines. Lifting the veil of opacity', *U4*, October 2021, available at: www.u4.no/publications/lifting-the-veil-of-opacity-in-covid-19-vaccines-to-combat-the-pandemic.pdf.

⁴¹ More information can be found at the following links: *ASJ-Revistazo* (Honduras), 'Vacunas abiertas': revistazo.com/vacunasabiertas/; *Chile Transparente*, 'Análisis de las negociaciones que el estado chileno ha realizado para la adquisición de Vacunas contra el COVID-19', July 2021, available at: www.chiletransparente.cl/antecedentes-de-las-negociaciones-que-el-estado-chileno-ha-realizado-para-adquirir-vacunas-contra-la-covid-19/; *Poder Ciudadano* (Argentina), 'Observatorio vacunas COVID-19': vacunas.poderciudadano.org/, and poderciudadano.org/poder-ciudadano-presento-un-amparo-para-que-el-ministerio-de-salud-de-la-nacion-haga-publicos-los-contratos-de-compra-de-vacunas-contra-el-covid-19/; *Proética* (Perú), 'Que la falta de transparencia y el abuso del poder no pongan en riesgo el proceso de vacunación', February 2021: www.proetica.org.pe/wp-content/uploads/2020/10/476154892-OPERATIVO-VIRTUAL-EN-EL-ESTADO-DE-EMERGENCIA-COVID-19.pdf; *Transparencia por Colombia – Revista Destapate*, 'Un grito por la transparencia: vacunas y movilización social', September 2021, available at: transparenciacolombia.org.co/2021/09/29/publicacion-numero-3-de-la-revista-destapate/.

⁴² *Transparencia Mexicana*, 'Análisis de la transparencia en 39 contratos de vacunas contra el COVID-19 en el mundo', February 2022, available at: www.tm.org.mx/transparencia-en-contratos-vacunas-contra-covid-19-en-el-mundo/.

⁴³ *Oxfam*, 'Shelter from the Storm', December 2020, available at: www.oxfamargentina.org/2-700-millones-de-personas-no-han-recibido-proteccion-social-frente-a-la-crisis-economica-derivada-de-la-covid-19/.

⁴⁴ *El Economista* (Argentina), 'El gobierno detectó irregularidad en los beneficiarios del ATP – COVID stimulus program for the business sector', February 2021, available at: eleconomista.com.ar/economia/el-gobierno-detecto-irregularidad-beneficiarios-atp-n41237. See also *El Destape*, 'El gobierno define sanciones a empresas por irregularidades en el ATP', July 2021, available at: www.eldestapeweb.com/economia/programa-atp/el-gobierno-define-sanciones-a-empresas-por-irregularidades-en-el-atp-202111915560.

⁴⁵ C Incaltarau, AV Horodnic, CC Williams and L Oprea, 'Institutional Determinants of Informal Payments for Health Services: An Exploratory Analysis across 117 Countries' (2021) 18 *International Journal of Environmental Research and Public Health* 12421, available at: www.mdpi.com/1660-4601/18/23/12421/pdf.

an average of 10 per cent of the respondents said that they had had to pay bribes to receive attention at public clinics and hospitals.⁴⁶ The scarcity of resources created the opportunity for petty corruption mainly at hospitals that struggled to cope with COVID-19 and faced increasing shortages in staff, beds, ventilators, and other equipment. People were asked to pay for a bed, or for the possibility to be connected to a ventilator. Healthcare staff reported that they were bribed to get personal protective equipment. When vaccines were available at the end of 2020, the cases of bribery to get priority access to the vaccine were also reported.

Public integrity standards constitute a central piece in the public ethics ecosystem. presidents, ministers, parliamentarians, government officials and public servants shall behave honestly; they must not abuse their position for their private benefit or for that of their families, friends, followers, and cronies; they shall declare their interest and assets and avoid conflict of interests. The violation of these duties is a form of corruption that is unfortunately common. The concentration of power and the weakening and bypassing of accountability mechanisms generated a window of opportunity for those in power who – having access to inside information, and the unrestricted authority to create and modify the rules – believed that because there was an exceptional and urgent situation, they had been graciously granted a status of privilege and impunity. The ‘Olivosgate’, in Argentina, was a scandal related to the visits and parties organised by the presidential family at the official residence in violation of lockdown regulation.⁴⁷ Other scandals were related to the privileged access to vaccines for public officials, cronies and VIPs in violation of the established priority criteria (‘Vacunasgate’; ‘VacunatorioVIP’), in Perú,⁴⁸ Argentina,⁴⁹ Chile,⁵⁰ and Ecuador.⁵¹

III. The Aftermath

The detrimental effect of the pandemic on the status of democracy has not been reversed in Latin America. The economic crisis that followed the pandemic with its consequence of recession, inflation, unemployment, and debt crisis has given governments another emergency to justify the concentration of power and to

⁴⁶ Transparency International, ‘Global Corruption Barometer – Latin America – 2019’, available at: www.transparency.org/en/gcb/latin-america/latin-america-and-the-caribbean-x-edition-2019.

⁴⁷ *La Nación*: www.lanacion.com.ar/politica/alberto-fernandez-habla-por-primera-vez-tras-la-confirmacion-de-los-festejos-en-olivos-nid13082021/; <<https://www.lanacion.com.ar/politica/la-dura-respuesta-de-la-periodista-que-revelo-la-foto-de-olivos-a-un-colega-de-c5n-nid14082021/>>; and www.lanacion.com.ar/lnmas/hablo-guadalupe-vazquez-la-periodista-que-difundio-la-foto-del-escandalo-de-olivos-nid15082021/.

⁴⁸ *El País*: elpais.com/internacional/2021-02-17/el-vacunagate-convulsiona-peru-mas-de-460-personas-influyentes-recibieron-en-secreto-dosis-de-sinopharm.html.

⁴⁹ *DW*: www.dw.com/es/llueven-denuncias-sobre-vacunaci%C3%B3n-vip-en-argentina/a-56638653.

⁵⁰ *France 24*: www.france24.com/es/am%C3%A9rica-latina/20210220-america-latina-desigualdad-vacunacion-escandalos.

⁵¹ *BBC*: www.bbc.com/mundo/noticias-america-latina-56218624.

keep enforcing some of the exceptional rules approved during the pandemic. The permanent emergency is not new in Latin America and generates the normalisation of what shall be an exceptional and temporary legal arrangement. This is the case particularly of some populist governments in the region.

Lack of trust in democratic institutions and leadership and the prevailing social discontent contribute to weaken democracy and undermine rule of law. According to the 2021 report of the *Latinobarómetro*, less than half of Latin Americans are committed democrats and a growing number say it is the same to live in a democracy or an authoritarian regime.⁵² The dissatisfaction with the performance of democracy has increased too. The region's average of satisfaction with the way in which democracy works is only 25 per cent and has constantly declined in the last seven years.

As Winston Churchill is credited with saying, one should 'never allow a good crisis go to waste'. To strengthen democracy, prevent corruption, and rebuild trust there are some lessons that should be learned after this pandemic to be better equipped to face similar emergencies in the future. It would be advisable to review the rules, standards, procedures, and institutional arrangements applicable in case of emergency, particularly the following principles should be guaranteed: a) access to information shall be guaranteed; b) exceptional and concomitant accountability mechanisms and tools shall be applied to oversee the decision-making process; c) public procurement procedure shall guarantee transparency, elementary due-diligence, and robust contractual arrangements to avoid fraud; d) justice service shall be considered essential and shall not be discontinued or suspended; e) freedom of expression shall not be censored – this includes opinion, press, media and social media; and f) all restrictions on civil liberties shall be reasonable, proportional, transparent, accountable, and of limited duration.

Strengthening democracy and democratic values is our collective responsibility to prevent future abuse of emergency powers. Constitutions, rule of law, checks and balances, transparency, accountability, and integrity systems must never be put in quarantine again.

⁵² *Latinobarómetro*, 'Informe 2021', available at: www.latinobarometro.org/latContents.jsp.

