



FOLLOW-UP MECHANISM FOR THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION

Committee of Experts

OEA/Ser.L.
SG/MESICIC/doc.592/21 Rev.1
August 23, 2021
Original: Spanish

PROPOSED INDICATORS TO PREVENT, DETECT, AND ERADICATE IMPUNITY FOR ACTS OF
CORRUPTION WITH REGARD TO RESULTS OF THEIR INVESTIGATION, PROSECUTION,
ADJUDICATION, AND SENTENCING

Proposed Indicators to Prevent, Detect, and Eradicate Impunity for Acts of Corruption with regard to Results of their Investigation, Prosecution, Adjudication, and Sentencing

I. INTRODUCTION

The Technical Secretariat, pursuant to the mandate conferred to it by the Committee in the “Methodology for Considering the System of Indicators to Prevent, Detect, and Eradicate Impunity for Acts of Corruption” (hereinafter Methodology) that was adopted at its Thirty-Fifth Meeting in **March 2021**, forwarded the Proposed Indicators, on **June 11, 2021**, in compliance with Chapter IV.B.1 of said Methodology.

With respect to these Proposed Indicators, a total of one hundred and forty-six (**146**) observations and suggestions were received from States by the deadline of **July 12, 2021**, as established by Chapter IV.B.2 of the Methodology.

In response to these observations and suggestions received from States regarding the Proposed Indicators, the Technical Secretariat, pursuant to Chapter IV.B.3 of the Methodology, proceeded to draft the first revised version of these indicators.

It should be noted that the aforementioned indicators have been chosen to serve States as **A GUIDE**, in objectively ascertaining results of their criminal investigation, prosecution, adjudication, and sentencing of acts of corruption, and adopt timely corrective measures to prevent them from remaining in impunity in such a way that they can be used, amended, or supplemented by States, depending on their particular needs and circumstances.

This tool is intended solely to help each State analyze its own internal needs, and especially the institutions that deal with acts of corruption. This tool is not intended to provide information to the Committee. Rather, it seeks to help each country generate its own indicators, based on the basic ones set forth in this document. Thus, the adopted indicators document will perform a similar function as a model law, based on which each State can select the indicators that are best tailored to its own system and use them to develop others that will provide better information for internal use.

II. PROPOSED INDICATORS TO PREVENT, DETECT, AND ERADICATE IMPUNITY FOR ACTS OF CORRUPTION WITH REGARD TO RESULTS OF THEIR INVESTIGATION, PROSECUTION, ADJUDICATION, AND SENTENCING¹

NOTE OF THE SECRETARIAT # 1:

Canada makes the following suggestion regarding the title to Section II:

“Given the decision by the Group of Experts of MESICIC in March 2021 to focus on criminal matters, we propose to reflect this in the title”².

- a. Indicators to determine the results of actions in relation to the performance of functions in connection to the criminal investigation and prosecution of acts of corruption, referring to aspects such as:

NOTE OF THE SECRETARIAT #2:

- With regard to subsection a., **Argentina** “(...) suggests clarifying whether the proposed indicators refer to investigations conducted exclusively by the judiciary or include investigations by administrative bodies (...)”³

NOTE OF THE SECRETARIAT #3:

- Regarding the title of subsection a., **Canada** suggests using the following alternative language:

“Indicators to assess results relating to the criminal investigation of acts of corruption [corruption-related offences]”.

1. Number of **complaints filed** on acts of corruption.

NOTE OF THE SECRETARIAT #4:

- With respect to indicator a(1), the **United States** and **Haiti** provides the following comments:

United States: “The methodology should clarify if this is acts of corruption as prescribed by domestic law or in accordance with the IACAC. It would make sense to focus on the former”⁴.

¹ Provide for a standard 5 years for providing data on these results, which is the same time span set by the Committee in recommendations regarding results with respect to acts of corruption provided in the country reports.

² For Canada’s comments to the proposed indicators, please see the document, “Canada’s Observations”, available at: <https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>

³ Further details regarding this comment can be found on p. 4 of the document “Observaciones en Argentina”, available at: <https://www.dropbox.com/s/29nqv4xrybwv11/Argentina.pdf?dl=0>

⁴ The comments by the United States to the proposed indicators are found at the following link: <https://www.dropbox.com/s/5pt8yjifise9955/USA.pdf?dl=0>

Haiti: “The indicators 1 and 2 of section (a) on corruption investigations and prosecutions only take into account the number of complaints. It may be due to the French translation of the English term “complaint”, which includes complaints and denunciations. In French, the two terms are not synonyms; contrary to complaints, denunciations are statements from third parties who have not been victim of the offense. Therefore, indicators 1 and 2 of section (a) ought to be enriched by taking the number of complaints and denunciations into consideration. The legislative and procedural norms applicable to corruption in Haiti also make a clear distinction between the complainants and whistleblowers”⁵.

NOTE OF THE SECRETARIAT #5:

- Furthermore, in relation to indicator a(1), **Canada, Chile, and Mexico** propose the following alternative language:

Canada: “Number of allegations of acts of corruption referred to or identified by police services”⁶.

Chile: “Number of complaints, accusations, or lawsuits filed with the Public Prosecutors’ Office (*Ministerio Público*) regarding acts of corruption.”⁷

México: “Number of complaints filed on possible acts of corruption”⁸.

NOTE OF THE SECRETARIAT #6:

- **Chile** suggests including two (2) new indicators following indicator a(1):

“Number of complaints of acts of corruption that the Public Prosecutors’ Office has provisionally set aside (*dispuesto el archivo provisional*).”

“Number of complaints of acts of corruption that the Public Prosecutors’ Office has opted not to investigate, in which that substantiated decision was approved by the judge responsible for procedural safeguards.”⁹

2. Number of complaints on acts of corruption where it was determined that it was not appropriate to open an investigation.

⁵ The comments by Haiti to the proposed indicators are found at the following link:

<https://www.dropbox.com/s/hejtao4npo3as5/Haiti%20-%20English.pdf?dl=0>

⁶ Further details on Canada’s proposal are found on page 4, “Canada’s Observations,” available at:

<https://www.dropbox.com/s/9xci50k9gkqukf/Canada.pdf?dl=0>

⁷ The arguments provided by Chile on the proposed alternative language is found on page 2 of document, “Propuestas con control de cambio aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwmf7hla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>

⁸ The comments by Mexico to the proposed indicators are found at the following link:

<https://www.dropbox.com/s/vfa5nbk6lfe5n2/M%C3%A9xico%20.pdf?dl=0>

⁹ The arguments provided by Chile for the addition of two new indicators is found on page 2 of document, “Propuestas con control de cambio aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwmf7hla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>

NOTE OF THE SECRETARIAT #7:

- Regarding indicator a(2), **Haiti** proposes to take into consideration both, the number of complaints and denunciations.¹⁰

NOTE OF THE SECRETARIAT #8:

- Likewise, with respect to indicator a(2), **Canada, Chile, and Jamaica** propose the following alternative language:

Canada: “Number of allegations of acts of corruption where it was determined that it was not appropriate to open an investigation”¹¹.

Chile: “Number of complaints of acts of corruption regarding which the Public Prosecutors’ Office has cited the discretionary prosecution principle (*principio de oportunidad*) and the substantiated decision it passed on to the judge responsible for procedural safeguards was upheld by the latter”.¹²

Jamaica: “suggest adding the words “for any reason” after the word “investigation”¹³.

3. Total number of **investigations opened** on acts of corruption.

NOTE OF THE SECRETARIAT #9:

- Regarding indicator a(3), **Chile** “suggests clarifying whether this indicator refers to investigations opened as a result of the complaints made.”¹⁴

NOTE OF THE SECRETARIAT #10:

- Furthermore, with respect to indicator a(3), **Chile and Mexico** propose the following alternative language:

Chile: “Number of complaints of acts of corruption that the Public Prosecutors’ Office has opted not to investigate and that substantiated decision was approved by the judge responsible for procedural safeguards.”

¹⁰ The complete observations by Haiti are found on page 1 of the document: "Haiti's Observations" available at: <https://www.dropbox.com/s/hejtao4npo3as5/Haiti%20-%20English.pdf?dl=0>.

¹¹ Further details on Canada's proposal are found on page 4, "Canada's Observations," available at: <https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>.

¹² The arguments provided by Chile regarding this proposal is found in page 2 of the document, "Propuestas con control de cambio_ aportes PJUD Chile", available at: <https://www.dropbox.com/s/ywjwmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

¹³ The complete observations by Jamaica are found on page 4 of the document, "Jamaica's Observations," available at: <https://www.dropbox.com/s/jrho8406gmh84bg/Jamaica.pdf?dl=0>.

¹⁴ The arguments provided by Chile regarding this proposal is found in page 4 of the document, "Propuesta de Indicadores_ aportes CGR Chile pdf", available at: <https://www.dropbox.com/s/h3zalw0a6uzm1sj/Chile%20-%20CGR.pdf?dl=0>

México: “Total number of investigations opened on possible acts of corruption.”

NOTE OF THE SECRETARIAT #11:

- **Canada** suggests including two (2) new indicators following indicator a(3):

“Total number of charges brought regarding acts of corruption”.

“Total number of persons charged with acts of corruption”.¹⁵

4. Number of cases on acts of corruption **at the investigation stage.**

NOTE OF THE SECRETARIAT #12:

- With respect to indicator a(4), the United States provides the following comment:

“Consistency in terminology (complaint, investigation, case) should be sought. We realize they may refer to different stages of a criminal investigation, but it’s not clear if the count is the number of persons accused of corruption, the number of acts of corruption, or the number of cases (which may have more than one accused person) of corruption. One way forward may be to specify all as related to a person and related acts.”

NOTE OF THE SECRETARIAT #13:

- Likewise, with respect to indicator a(2), **Canada and Chile** proposes the following alternative language:

Canada: “Number of ongoing investigations into acts of corruption”.

Chile: “Number of cases on acts of corruption in which the investigation is being litigated due to some presentation or petition filed by the Public Prosecutors’ Office, the accuser, the victim, or the accused with the Court of Guarantees.”¹⁶

5. Number of investigations on acts of corruption **suspended** for any reason.

NOTE OF THE SECRETARIAT #14:

- With respect to indicator a(5), **Chile, Guyana, and Mexico** propose the following alternative language:

Chile: “Number of cases of investigations on acts of corruption suspended for any reason.”¹⁷

¹⁵ Further details on Canada’s proposal are found on page 4, “Canada’s Observations,” available at: <https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>.

¹⁶ For more information on Chile’s proposal, please see page 3 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>

Guyana: “Suspended should be replaced with pending”¹⁸.

Mexico: “Number of investigations on possible acts of corruption suspended for any reason.”

6. Number of cases on acts of corruption **closed** without a decision taken on the merits of the matter.

NOTE OF THE SECRETARIAT #15:

- With respect to indicator a(6), **Haiti and Jamaica** provide the following comments:

Haiti: “During a criminal investigation in Haiti, a corruption case may close due to lack of concrete evidence and/or concrete and sufficient lead. This closure is never final, because the investigation can always be reopened if there is new evidence or lead as to the veracity of the alleged acts against the individuals under investigation. At the trial stage, there is no possibility that a corruption case could be closed without a substantive decision. Under the threat of being accused of denial of justice, the judge hearing the criminal case cannot under any circumstances escape his or her obligation of pronouncing the final verdict”.

Jamaica: “In respect of Indicators a (6), (8) and (9), do the words “decision taken on the merits” refer to a decision on whether to a matter should be prosecuted? If so, we would recommend clearer language to reflect this interpretation¹⁹.”

NOTE OF THE SECRETARIAT #16:

- With respect to indicator a(6), **Canada, Chile, and México** propose the following alternative language:

Canada: “Number of investigations into acts of corruption closed”.

Chile: “Number of cases regarding acts of corruption that have ended, without a decision taken on the merits of the matter.”²⁰

Mexico: “Number of investigations into possible acts of corruption closed, without a decision taken on the merits of the matter.”

Likewise, Chile suggests eliminating this indicator.²¹

¹⁷ For more information on Chile’s proposal, please see page 3 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>

¹⁸ The comments by Guyana to the proposed indicators are found at the following link:

<https://www.dropbox.com/s/ibqm5nl54rfihx5/Guyana.pdf?dl=0>

¹⁹ For more information on Jamaica’s observation, see page 4 of the document, “Jamaica’s Observations,” available at:

<https://www.dropbox.com/s/jrho8406gmh84bg/Jamaica.pdf?dl=0>.

²⁰ Chile’s proposal is found on page 4 of the document, “Propuesta de Indicadores _ aportes MP,” available at: <https://www.dropbox.com/s/5q2fhc69pd9gr9k/Chile%20-%20Ministerio%20Publico.pdf?dl=0>.

²¹ The arguments regarding this proposal by Chile can be found on page 3 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.



7. Number of investigations on acts of corruption **time-barred** because they were not concluded by the statutory deadline.

NOTE OF THE SECRETARIAT #17:

- Regarding indicator a(7), **Guyana and Haiti** make the following general observations:

Guyana: “Guyana does not have time -barred investigations.”

Haiti: “According to the criminal law of corruption in Haiti, the possibility of prescribing investigations into the facts set out in indicator 7 of corruption is virtually nil (...).”²²

NOTE OF THE SECRETARIAT #18:

- Furthermore, with respect to indicator a(7), **Canada and Chile** propose the following alternative language:

Canada: “Number of investigations into acts of corruption that did not result in charges before a statute of limitations or prescription period time-barred the initiation of criminal proceedings.”

Chile: “Number of investigations initiated into acts of corruption in which the prescription of the criminal proceeding has been decreed, because the running of the statute of limitations was not interrupted in time.”²³

8. Number of investigations on acts of corruption that are **at a point where a decision could be taken on the merits of the case investigated.**

NOTE OF THE SECRETARIAT #19:

- With respect to indicator a(8), **Guyana** requests the following clarification: “What is meant by ‘decision’? Is it decision ‘to charge,’ ‘not to charge,’ or ‘to settle’?”

NOTE OF THE SECRETARIAT #20:

- In addition, **Canada**²⁴ and **Chile**²⁵ suggest eliminating indicator a(8).

²² For more information on Haiti’s observation, see page 2 of the document, “Haiti’s Observations,” available at: <https://www.dropbox.com/s/hejtao4npo3as5/Haiti%20-%20English.pdf?dl=0>.

²³ For more information on Chile’s proposal, see page 3 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

²⁴ Canada notes that “this measure is more reflective of civil law jurisdictions than common law jurisdictions. We have proposed to make the next indicator (a10) more inclusive of both systems as a better alternative and thus recommend deletion.”

²⁵ For more information on Chile’s proposal, please see page 4 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>

NOTE OF THE SECRETARIAT #21:

- **Chile** also proposes the following alternative language:

“Number of investigations on acts of corruption formally filed against the accused by the prosecutor from the Public Prosecutors’ Office with the Judge Responsible for Judicial Safeguards (*Juez de Garantía*).”²⁶

NOTE OF THE SECRETARIAT #22:

- Finally, **Chile** proposes two (2) new indicators in this same section.

“Number of investigations on acts of corruption, in which the prosecutor from the Public Prosecutors’ Office asked the Court of Guarantees to dismiss the case against the accused.”

“Number of investigations on acts of corruption, in which the prosecutor from the Public Prosecutors’ Office filed the accusation against the accused with the Court of Guarantees.”²⁷

9. Number of investigations on acts of corruption sent to the competent authority for a decision to be taken on the merits.

NOTE OF THE SECRETARIAT #23:

- With respect to indicator a(9), **Guyana, Haiti and Mexico** provide the following comments:

Guyana: “Who is the competent authority referred to here?”

Haiti: “According to the standard criminal procedure in Haiti, depending on the seriousness of the offense, the competent authority for delivery of the decision on merits remains either the correctional court or the criminal court (...).”²⁸

Mexico: “It is not really clear what questions 8 and 9 are about and what is the difference between them.”²⁹

²⁶ For more information on Chile’s proposal, please see page 4 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>, and page 5 of the document, “Propuesta de Indicadores _ aportes MP,” available at: <https://www.dropbox.com/s/5q2fhc69pd9gr9k/Chile%20-%20Ministerio%20Publico.pdf?dl=0>

²⁷ For more information on Chile’s proposal, please see page 4 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>, and page 5 of the document, “Propuesta de Indicadores _ aportes MP,” available at: <https://www.dropbox.com/s/5q2fhc69pd9gr9k/Chile%20-%20Ministerio%20Publico.pdf?dl=0>

²⁸ For more information on Haiti’s observation, see page 2 of the document, “Haiti’s Observations,” available at: <https://www.dropbox.com/s/hejhtao4npo3as5/Haiti%20-%20English.pdf?dl=0>.

²⁹ For more information on this observations, see page 5 of the document, “México ANEXO 2 - Propuesta de Indicadores,” available at: <https://www.dropbox.com/s/vfa5nbk6lfe5n2/M%20C3%A9xico%20.pdf?dl=0>.

NOTE OF THE SECRETARIAT #24:

- Furthermore, with respect to indicator a(9), **Canada, Chile and Mexico** propose the following alternative language:

Canada: “Number of investigations into acts of corruption referred to the relevant authorities for prosecution, trial, adjudication, or other proceeding to determine the merits.”

Chile: “Number of investigations into acts of corruption following which an accusation was filed against the alleged offender.”³⁰

“Number of investigations into acts of corruption, in which the prosecutor from the Public Prosecutors’ Office informed the Judge Responsible for Legal Safeguards of the decision not to continue the proceedings”.³¹

Mexico: “Number of investigations into possible acts of corruption sent to the competent authority for a decision to be taken on the merits.”

NOTE OF THE SECRETARIAT #25:

- In addition, **Chile** proposes one (1) new indicator in this same section.

“Number of arrests made in cases of flagrant crimes of corruption.”³²

10. Number of pretrial **arrest warrants issued** for acts of corruption.

NOTE OF THE SECRETARIAT #26:

- With respect to indicator a(10), **Guyana and Haiti** provide the following comment:

Guyana: “What are pre-trial arrest warrants referred to here?”

Haiti: “The notion of an arrest warrant does not exist in the Haitian judicial system (...).”³³

³⁰ The proposal by Chile is found on page 5 of the document, “Propuesta de Indicadores _ aportes MP,” available at: <https://www.dropbox.com/s/5q2fhc69pd9gr9k/Chile%20-%20Ministerio%20Publico.pdf?dl=0>

³¹ The proposal by Chile is found on page 4 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

³² The arguments for this proposal by Chile is found on page 4 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

³³ For more information on the observation by Haiti, see page 2 of the document, “Haiti_observations_indicators_impunity,” available at: <https://www.dropbox.com/s/hejtao4npo3as5/Haiti%20-%20English.pdf?dl=0>.

NOTE OF THE SECRETARIAT #27:

- Furthermore, with respect to indicator a(10), **Chile** proposes the following alternative language:

“Number of arrests in corruption cases requested by the prosecutor from the Public Prosecutors’ Office that were ordered by a court having jurisdiction in criminal matters.”³⁴

11. Number of pretrial **arrest warrants executed** for acts of corruption.

NOTE OF THE SECRETARIAT #28:

- With respect to indicator a(11), **Chile** proposes the following alternative language:

“Number of pre-trial detentions of persons investigated or accused of acts of corruption requested by the Public Prosecutors’ Office and ordered by a court having jurisdiction in criminal matters.”³⁵

SECRETARIAT NOTE # 29:

- Regarding sub-section a, **Chile** proposes including the following two (2) new indicators:

“Number of reports of acts of corruption that have led to an investigation based on those reports.”

“Number of prominent, major, or nationally important cases regarding acts of corruption that are at the criminal investigation stage.”³⁶

b. Indicators to determine the results of actions in relation to the performance of functions in connection to the adjudication and sentencing of acts of corruption, referring to aspects such as:

SECRETARIAT NOTE # 30:

- **Canada** makes the following suggestion regarding the title to subsection b.:

“Indicators to assess results relating to prosecution, trial, adjudication and sentencing of acts of corruption”.

³⁴ The arguments for this proposal by Chile is found on page 5 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

³⁵ The arguments for this proposal by Chile is found on page 5 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

³⁶ The arguments for this proposal by Chile is found on page 5 of the document, "Propuesta de Indicadores_ aportes CGR Chile," available at: <https://www.dropbox.com/s/h3zalw0a6uzm1sj/Chile%20-%20CGR.pdf?dl=0>.

1. Number of **cases** on acts of corruption that have been received for **trial**.

NOTE OF THE SECRETARIAT #31:

- With respect to indicator b(1), **Canada, the United States, and Jamaica** provide the following comments:

Canada: “We note that both “trial” and “legal proceedings” are used; however the rationale behind the choice in each indicator is not always clear. We recommend that more clarity or explanation in the choice of terms be provided for the draft, since this is proceeding as a paper-based exercise. It may also be necessary to adjust indicators by using multiple terms to accommodate both common law and civil law legal systems, or alter the indicators.”³⁷

United States: “What exactly is envisioned here? Is this an indictment?”

Jamaica: “What is the distinction between cases on acts of corruption that “have been received for trial” in Indicator B(1) and cases which have “proceeded to the trial phase” in Indicator B(3)? ”

NOTE OF THE SECRETARIAT #32:

- Furthermore, with respect to indicator b(1), **Chile, Guatemala, and Mexico** propose the following alternative language:

Chile: “Number of cases on acts of corruption received by or filed with courts having jurisdiction over criminal matters.”

Guatemala: “Number of cases filed (regarding crimes and individuals linked to them) involving acts of corruption that have been accepted for trial”.

Mexico: “Number of cases on possible acts of corruption that have been received for trial.”

NOTE OF THE SECRETARIAT #33:

- Finally, **Chile** proposes including one (1) new indicator following indicator b(1):

“Number of cases on acts of corruption received by or filed with criminal courts subject to the judicial inquiry procedure (*procedimiento inquisitivo*) and heard by criminal court judges or special status magistrates (*Ministros de Fuero*).”³⁸

2. Number of cases on acts of corruption **that are being analyzed, to determine whether to proceed to the trial phase with respect to them**.

³⁷ Canada makes further observations on page 5 del document, “Canada’ Observations,” available at: <https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>.

³⁸ The arguments for this proposal by Chile is found on page 5 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

NOTE OF THE SECRETARIAT #34:

- With respect to indicator b(2), **Guyana and Jamaica** provide the following comments:

Guyana: “Is this indicator in relation to pre -charge or pre -trial?”

Jamaica: “We request clarification on the meaning of cases “that are being analyzed, to determine whether to proceed to the trial phase”. Which entity would be conducting this analysis? Would it be a judge or a prosecutor?”

NOTE OF THE SECRETARIAT #35:

- Furthermore, with respect to indicator b(2), **Chile, Guatemala, and Mexico** propose the following alternative language:

Chile: “Number of cases on acts of corruption in which a formal investigation has been ordered into one or more of the accused.”

Guatemala: “Number of cases (involving individuals in proceedings for corruption offenses in criminal courts of first instance who are ordered to stand trial (a los cuales se les dicta auto de apertura a juicio)) on acts of corruption that are being analyzed, to determine whether to proceed to the trial phase with respect to them.”

Mexico: “Number of cases regarding on possible acts of corruption that are being analyzed, to determine whether to proceed to the trial phase with respect to them.”

NOTE OF THE SECRETARIAT #36:

- **Chile** proposes including two (2) new indicators following indicator b(2):

“Number of cases on acts of corruption in which one of the accused has been ordered to stand trial.”

“Number of proceedings for acts of corruption in which the injunction was filed at the behest of the Public Prosecutors’ Office, or, where applicable, by the accuser.³⁹”

3. Number of cases on acts of corruption that have proceeded to **the trial phase**.

NOTE OF THE SECRETARIAT #37:

³⁹ The arguments for this proposal by Chile is found on page 6 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwvf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

- With respect to indicator b(3), **Chile, Guatemala, and Mexico** propose the following alternative language:

Chile: “Number of proceedings for acts of corruption in which the accusation was filed by the Public Prosecutors’ Office, or, where applicable, by the accuser.”

Guatemala: “Number of cases (proceedings filed with trial courts [tribunales de sentencia] penal) on acts of corruption that have proceeded to the trial phase.”

Mexico: “Number of cases on possible acts of corruption that have proceeded to the trial phase.”

NOTE OF THE SECRETARIAT #38:

- **Chile** proposes including four (4) new indicators following indicator b(3):

“Number of proceedings on acts of corruption in which the accusation was lodged by the (initial proceedings) criminal court judge or special status magistrate.”

“Number of cases on acts of corruption in which the oral proceedings were prepared using the simplified procedure before the Judge Responsible for Procedural Safeguards (*juez de garantía*).”

“Number of cases on acts of corruption in which judgment was handed down in the simplified procedure because the accused admitted his or her liability before the Judge Responsible for Procedural Safeguards (*juez de garantía*).”

“Number of on regarding acts of corruption in which judgment was handed down because the accused accepted the abbreviated procedure before the Judge Responsible for Procedural Safeguards (*juez de garantía*).”⁴⁰.

4. Number of **trials** on acts of corruption begun.

NOTE OF THE SECRETARIAT #39:

- With respect to indicator b(4), **Chile, Guatemala, and Mexico** propose the following alternative language:

Chile: “Number of cases regarding acts of corruption, in which oral proceedings were prepared using the regular procedure to be heard by the Oral Proceedings Criminal Court.”

Guatemala: “Number of trials on acts of corruption begun. (Hearings held, by type, start of arguments).”.

⁴⁰ The arguments for this proposal by Chile is found on page 6 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwvf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

Mexico: “Number of trials begun regarding acts of corruption.”

NOTE OF THE SECRETARIAT #40:

- **Chile** proposes including one (1) new indicator following indicator b(4):

“Number of proceedings on acts of corruption suspended prior to the start of oral hearings.”⁴¹

5. Number of **trials** on acts of corruption **suspended** for any reason.

NOTE OF THE SECRETARIAT #41:

- **Jamaica**, with respect to indicator b(5), asks to confirm “if this would include a discontinuance of a prosecution. In Jamaica (and other Commonwealth Caribbean islands), the prosecutor may enter a "nolle prosequi" at any stage before the court renders judgment, in order to discontinue criminal proceedings. The nolle prosequi is not an acquittal, and the prosecutor may bring back or re-indict the matter. Is Indicator B (5) to be interpreted to extend to a discontinuance of that type?”

NOTE OF THE SECRETARIAT #42:

- With respect to indicator b(5), **Chile, Guatemala, and Guyana** propose the following alternative language:

Chile: “Number of proceedings on acts of corruption suspended after the start of oral proceedings”.

Guatemala: “Number of trials on acts of corruption suspended for any reason. (Hearings suspended, by type, start of arguments)”.

Guyana: “Guyana would prefer for the word suspended to be replaced with the word dismissed.”

NOTE OF THE SECRETARIAT #43:

- **Chile** proposes including one (1) new indicator following indicator b(5):

“Number of proceedings on acts of corruption suspended after the start of the procedure, be it in the summary or trial phase”.⁴²

⁴¹ The arguments for this proposal by Chile is found on page 7 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁴² The arguments for this proposal by Chile is found on page 7 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

6. Number of **legal proceedings** on acts of corruption that have been **time-barred** because they were not concluded by the statutory deadline.

NOTE OF THE SECRETARIAT #44:

- With respect to indicator b(6), **Guatemala, Guyana, and Haiti** provide the following comments:

Guatemala: “The system does NOT provide for this.”

Guyana: “There is no deadline for conclusion of trials in Guyana”.

Haiti: “The earlier remarks concerning the prescription of criminal acts apply to indicator no. 6. In the event of legal proceeding against an alleged perpetrator of criminal offenses, the Haitian criminal procedure does not provide for a legal closing period which could lead to limitations of such proceedings. Although the examining magistrate is required to comply with a 3-month time frame to make his order, the expiry of that time-limit does not entail the limitation of judicial proceedings. Failure to comply with this deadline, the examining magistrate is only at risk of prosecution and penalties for denial of justice.”

NOTE OF THE SECRETARIAT #45:

- With respect to indicator b(6), **Canada and Chile** propose the following alternative language:

Canada: “Number of legal proceedings on acts of corruption that have been ended because they were not concluded within the time requirements recognized under domestic law”⁴³.

Chile: “Number of legal proceedings on acts of corruption that resulted in the acquittal of one or more of the accused in the simplified or abbreviated procedure, because the criminal action was declared or claimed to have proscribed due to the running of the statute of limitations.”⁴⁴

7. Number of **trials** on acts of corruption **concluded**.

NOTE OF THE SECRETARIAT #46:

- With respect to indicator b(7), **Canada, Chile, Guatemala, and Mexico** propose the following alternative language:

Canada: “Number of other legal proceedings (e.g. guilty pleas, etc.) on acts of corruption concluded”⁴⁵.

⁴³ Please see the comments by Canada on page 5 of the document, “Canada’s Observations”, available at:

<https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>

⁴⁴ The arguments for this proposal by Chile is found on page 7 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁴⁵ Please see the comments by Canada on page 5 of the document, “Canada’s Observations,” available at: <https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>

Chile: “Number of cases on acts of corruption, in which the Judge Responsible for Procedural Safeguards (*juez de garantía*) ordered the start of oral proceedings.”⁴⁶

Guatemala: “Number of trials on acts of corruption concluded (number of proceedings that concluded either thanks to a judgment being handed down or for some other reason.”

Mexico: **First**, switch the order of the indicators, that is to say, put indicator B(8) in the position currently occupied by indicator B(7) and vice versa. **Second**, in indicator B(7), change the text to read: “Number of trials concluded on acts of corruption.”⁴⁷

8. Number of **legal proceedings** on acts of corruption that are **ready for a decision to be taken on the merits**.

NOTE OF THE SECRETARIAT #47:

- With respect to indicator b(8), **Guatemala and Jamaica** provide the following comments:

Guatemala: “The system does NOT provide for this.”

Jamaica: “Please clarify if “ready for a decision to be taken on the merits” refers to the stage after the prosecution and defense have presented their case and the judge or jury is deliberating on the verdict.”

NOTE OF THE SECRETARIAT #48:

- With respect to indicator b(8), **Canada, Chile and Mexico** propose the following alternative language:

Canada: suggests eliminating B(8) and instead proposes this new indicator: “**Number of legal proceedings on acts of corruption resulting in a conviction**”.

Chile: “**Number of cases on acts of corruption, in which the court conducting the oral proceedings handed down a verdict.**”

Mexico: **First**, switch the order of the indicators, that is to say, put indicator B(8) in the position currently occupied by indicator B(7) and vice versa.

NOTE OF THE SECRETARIAT #49:

- Chile** each propose one (1) new indicator to follow indicator b(8):

⁴⁶ The arguments for this proposal by Chile is found on page 8 of the document, “Propuestas con control de cambio_ aportes PJUD Chile,” available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁴⁷ For more information on this observation by Mexico, see page 5 of the document, “México ANEXO 2 - Propuesta de Indicadores,” available at: <https://www.dropbox.com/s/vfa5nbk6lfe5n2/M%C3%A9xico%20.pdf?dl=0>.



Chile: “Number of legal proceedings on acts of corruption in which a Judge Responsible for Procedural Safeguards (*juez de garantía*) handed down an acquittal in the simplified or abbreviated procedure.”⁴⁸

9. Number of **legal proceedings** on acts of corruption where the defendant was found not guilty.

NOTE OF THE SECRETARIAT #50:

- With respect to indicator b(9), **Chile and Guatemala** propose the following alternative language:

Chile: “Number of legal proceedings on acts of corruption in which, at the end of the oral hearings, an Oral Hearings Criminal Court handed down an acquittal.”

Guatemala: “Number of legal proceedings on acts of corruption where the defendant was found not guilty (judgment of acquittal).”

NOTE OF THE SECRETARIAT #51:

- **Chile** proposes including one (1) new indicator following indicator b(9):

“Number of legal proceedings on acts of corruption in which a Judge Responsible for Procedural Safeguards (*juez de garantía*) handed down a conviction in the simplified or abbreviated procedure.”⁴⁹

10. Number of **legal proceedings** on acts of corruption where a sentence was imposed.

NOTE OF THE SECRETARIAT #52:

- With respect to indicator b(10), **Chile and Guatemala** propose the following alternative language:

Chile: “Number of legal proceedings on acts of corruption in which, at the end of the oral hearings, an Oral Hearings Criminal Court handed down a conviction.”

Guatemala: “Number of legal proceedings on acts of corruption where a sentence was imposed. (Number of convictions).”

- **Canada** suggests eliminating indicator b(10).

⁴⁸ The arguments for this proposal by Chile is found on page 8 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁴⁹ The arguments for this proposal by Chile is found on page 8 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

NOTE OF THE SECRETARIAT #53:

- Furthermore, **Chile** proposes including one (1) new indicator following indicator b(10):

“Number of legal proceedings on acts of corruption in which a conviction was handed down by the (initial proceedings) criminal court judge or special status magistrate.”⁵⁰

11. Number of **legal proceedings** on acts of corruption where an **imprisonment order** was issued.

NOTE OF THE SECRETARIAT #54:

- With respect to indicator b(11), **Canada, Chile, and Guatemala** propose the following alternative language:

Canada: “Number of legal proceedings on acts of corruption resulting in a sentence of imprisonment”.

Chile: “Number of legal proceedings on acts of corruption resulting in a sentence of imprisonment.”⁵¹

Guatemala: “Number of legal proceedings on acts of corruption where an imprisonment order was issued (Number of imprisonment sentences handed down).”

12. Number of **legal proceedings** on acts of corruption where an **imprisonment order** was executed.

NOTE OF THE SECRETARIAT #55:

- With respect to indicator b(12), **Chile and Guatemala** propose the following alternative language:

Chile: “Number of legal proceedings on acts of corruption resulting in a sentence of imprisonment that will be enforced.”⁵²

Guatemala: “Number of legal proceedings on acts of corruption where an imprisonment order was executed. (Number of imprisonment sentences handed down)”.

- **Canada** suggests eliminating indicator b(12).⁵³

⁵⁰ The arguments for this proposal by Chile is found on pages 8 and 9 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁵¹ The arguments for this proposal by Chile is found on page 9 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁵² The arguments for this proposal by Chile is found on page 9 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁵³ Canada makes further observations, available at page 5 of the document, "Canada's Observations," available at: <https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>.

13. Number of **legal proceedings** on acts of corruption where a **sentence ordering fines and/or restitution was issued**.

NOTE OF THE SECRETARIAT #56:

Canada with respect to Indicator b(13), notes: “We recommend separating this indicator into two to reflect the distinct role and purpose of fines (punitive) and restitution (to cover harms or losses suffered by victims directly resulting from the offence)”.

NOTE OF THE SECRETARIAT #57:

- With respect to indicator b(13), **Chile and Guatemala** propose the following alternative language:

Chile: “Number of legal proceedings on acts of corruption resulting in a pecuniary or asset-related penalty, such as a fine or confiscation of the proceeds from a crime.”⁵⁴

Guatemala: “Number of legal proceedings on acts of corruption where a sentence ordering fines and/or restitution was issued (number of sentences imposing a fine)”.

NOTE OF THE SECRETARIAT #58:

- Furthermore, **Canada** proposes including two (2) new indicators following indicator b(13):
“Number of other legal proceedings (e.g. guilty pleas, etc.) on acts of corruption concluded.”
“Number of legal proceedings on acts of corruption where a sentence ordering restitution was issued.”

14. Number of **legal proceedings** on acts of corruption where a **sentence ordering fines and/or restitution was executed**.

NOTE OF THE SECRETARIAT #59:

- With respect to indicator b(14), **Guatemala** states that “The system does not provide for this.”
- Additionally, **Canada** suggests eliminating indicator b(14)⁵⁵.

⁵⁴ The arguments for this proposal by Chile is found on page 9 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.



NOTE OF THE SECRETARIAT #60:

- Likewise, regarding the same b(14) indicator, **Chile** proposes the following alternative language:

“Number of legal proceedings on acts of corruption in which the fine or confiscation was enforced.”⁵⁶

15. Number of **legal proceedings** on acts of corruption where **any other type of sentence** was issued.

NOTE OF THE SECRETARIAT #61

- With respect to indicator b(15), **Guyana** provide the following comment:

“Sentences are either imprisonment or a fine in Guyana”.

NOTE OF THE SECRETARIAT #62:

- Furthermore, with respect to indicator b(15), **Canada, Chile, and Guatemala** propose the following alternative language:

Canada: “We do not see that there is much information to be gained from this indicator and recommend its deletion”.

Chile: “Number of legal proceedings on acts of corruption resulting in a sentence other than imprisonment or a fine, such as disqualification, suspension or just restrictions of freedom.”⁵⁷

Guatemala: “Number of legal proceedings on acts of corruption where any other type of sentence was issued (number of proceedings ending in ways not involving a sentence)”.

16. Number of **legal proceedings** on acts of corruption where **any other type of sentence** was executed.

NOTE OF THE SECRETARIAT #63:

- With respect to indicator b(16), **Canada** provide the following comment:

⁵⁵ Canada’s observations on this point are found on page 6 of the document, “Canada’s Observations,” available at:

<https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>.

⁵⁶ The arguments for this proposal by Chile is found on page 9 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁵⁷ The arguments for this proposal by Chile is found on page 9 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

Canada: “Please see our comment regarding the indicator for execution of imprisonment orders”.

NOTE OF THE SECRETARIAT #64:

- Furthermore, with respect to indicator b(16), **Chile and Guatemala** proposes the following alternative language:

Chile: “Number of legal proceedings on acts of corruption resulting in a sentence other than imprisonment or a fine, such as disqualification, suspension or restrictions of freedom, compliance with which was subsequently verified by the enforcement judge.”⁵⁸

Guatemala: “Number of legal proceedings on acts of corruption where any other type of sentence was issued (not provided for in the system)”.

17. Number of **sentences** for acts of corruption **that were time-barred or where liability was discharged** because they were not concluded by the statutory deadline.

NOTE OF THE SECRETARIAT #65:

- With respect to indicator b(17), **Canada, Guyana and Haiti** provide the following comments:

Canada: “We have several questions regarding this indicator. First, while we are familiar with the concept of a proceeding being time-barred, we are not familiar with the concept of a sentence being time-barred. Second, is there a need for B15? In our system, the indicator for B6 will capture both i) proceedings that are ended when a trial is in process and exceeds time limits and ii) when charges are stayed at the end of the trial if it is determined after the conclusion of the trial that there was unreasonable delay. For this reason, we see B15 as duplicative of B6 and we request its deletion. Otherwise, we request the changes noted since Canada has jurisprudential precedents regarding unreasonable delay rather than a statute of limitations”.

Guyana: “This indicator is not applicable to Guyana”.

Haiti: “The risks of impunity reflected in the indicator 17 of section (b) are not taken into account in the criminal proceedings in Haiti. Once the criminal proceedings are initiated, they will continue until the final decision is taken. Judicial proceedings in criminal cases are not required to observe a time limit which may lead to the limitation of conviction or the acquittal of the accused”.

NOTE OF THE SECRETARIAT #66:

- Furthermore, with respect to indicator b(17), **Canada, Chile and Guatemala** propose the following alternative language:

⁵⁸ The arguments for this proposal by Chile is found on page 10 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfmf7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

Canada: “Number of sentences for acts of corruption that were time-barred or where liability was discharged for failure to conclude within the time requirements recognized under domestic law”.

Chile: “Number of legal proceedings on acts of corruption in which the sentence was declared by the criminal law enforcement court to have prescribed under statutes of limitation.”⁵⁹

Guatemala: “Number of sentences for acts of corruption that were time-barred or where liability was discharged because they were not concluded by the statutory deadline. (Not provided for in the system)”.

NOTE OF THE SECRETARIAT #67:

- Furthermore, **Canada and Chile** propose including three (3) new indicators following indicator b(17):

Canada:

“Number of appeals where a conviction for an act of corruption was overturned”.

“Number of appeals where a sentence for an act of corruption was altered by the appellate court”.

“Number of appeals where a sentence for an act of corruption was upheld by the appellate court”.

Chile:

“Number of cases on acts of corruption received for trial as a result of a criminal complaint.”

“Number of cases on acts of corruption received for trial as a result of investigations initiated ex officio by the competent authority”.

“Number of legal proceedings on acts of corruption that resulted in sanctions in which the facts giving rise to the proceedings are defined as other offenses in the criminal code.”⁶⁰

NOTE OF THE SECRETARIAT #68:

Costa Rica, in relation to the System of Indicators, proposes the inclusion of a section C, titled “**Indicators to determine the results of actions undertaken in pursuit of the adjudication**”

⁵⁹ The arguments for this proposal by Chile is found on page 10 of the document, "Propuestas con control de cambio_ aportes PJUD Chile," available at: <https://www.dropbox.com/s/ywjwfm7htla7e5u/Chile%20-%20PJUD%20.pdf?dl=0>.

⁶⁰ The arguments for this proposal by Chile is found on page 6 of the document, “Propuesta de Indicadores_ aportes CGR Chile,” available at: <https://www.dropbox.com/s/h3zalw0a6uzm1sj/Chile%20-%20CGR.pdf?dl=0>.

and sentencing of acts of corruption, at the *appeal stage*.” It further proposes that the section contain the following indicators:

“Number of legal proceedings on alleged acts of corruption in which a decision on the merits was adopted and an appeal was lodged against it.”

“Number of legal proceedings on alleged acts of corruption in which a decision on the merits was adopted and another kind of remedy was lodged against it.”

“Number of legal proceedings on alleged acts of corruption in which a decision on the merits was adopted and the decision was modified as a result of the remedies filed.”

“Number of legal proceedings on alleged acts of corruption in which a decision on the merits was adopted and a new trial was ordered as a result of the remedies filed.”

“Number of legal proceedings on alleged acts of corruption in which a decision on the merits was adopted and was upheld after the remedies were exhausted.”

NOTE OF THE SECRETARIAT #69: (General Comments)

Canada makes general comments regarding the System of Indicators that can be found in the document “Indicators July 2021 Canada comments.”⁶¹

Paraguay makes the following general comment regarding the Proposed System of Indicators: “... with respect to the proposed system of indicators, Paraguay wishes to state that, having analyzed the document remitted, it agrees with it and has no need to add to or amend any the proposed indicators.”⁶²

DLCI02809E01

⁶¹ The complete observations by Canada are found on page 2 of the document, “Canada’s Observations,” available at: <https://www.dropbox.com/s/9xci50k9gnkqukf/Canada.pdf?dl=0>.

⁶² The comments by Paraguay to the proposed indicators are found at the following link: <https://www.dropbox.com/s/vbbc3iv46hnt2l7/Paraguay.pdf?dl=0>