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### An interview with anti-corruption prosecutor José Ugaz

José Ugaz, who is an advisory board member at Aperio Intelligence, previously served as Ad-Hoc Attorney of Peru working on the highest profile criminal cases in recent Peruvian history, including the investigation of former president Fujimori and his chief of intelligence, Montesinos. He also served as chairman of Transparency International from 2014-2017.

#### ***How do you think Fujimori's trial has affected his successors?***

Fujimori was the representation of the systemic corruption in the country. He did not just appear overnight as a politician to corrupt Peru, rather he was an expression of a structure and a system that are based on the logic of corruption. Of course, this reached its highest levels when Fujimori and Montesinos managed to organise their corruption through the National Intelligence Service of Peru and through the creation of a structure that was parallel to the state in order to steal the country's resources. In truth it could have been any of the presidents that followed Fujimori, but Fujimori was the face of this well organised network that completely captured the Peruvian state. So I would say that while Fujimori and Montesinos are important in the history of corruption in Peru, they are a product of the system.

#### ***How has this systemic situation manifested itself?***

The proof that the political corruption in Peru is systemic, is that shortly after Fujimori and Montesinos stepped down and were sent to prison, Alejandro Toledo came to power, and that was when Toledo's adviser was caught in the act of corruption. And now Toledo himself is accused of receiving USD 31 million from Brazilian companies. And then came Alan García's administration, in which the whole cabinet of Peru led by prime minister Jorge del Castillo Gálvez fell down due to corruption. They were caught having meetings in hotels with businesspeople representing Mexican interests in the cement and oil sectors. The whole cabinet had to resign because of an act of corruption. And now, Alan García is no longer alive, he took his own life because he was being investigated for corruption allegations related to the Brazilian construction company. And then came Humala. After two or three weeks in power, Humala's vice president had to resign because of a corruption scandal, in which he met with a private company, Grupo Wong, in order to help them in a private litigation case. Humala himself then ended up in pre-trial detention, being investigated for receiving Brazilian funds to his political campaigns from illegal origins. And then came Kuczynski, the so-called "deluxe" president, a wealthy businessman who supposedly did not need to be involved in corruption, and he has ended up under house arrest, accused of conflicts of interest after having conducted business through his own private companies while serving as the country's minister of economy and finance. So, I think what this sequence of events tells us is that we are facing a structural problem and not merely a problem with a specific political party or politician, which is why we need structural reform, and that is what the current administration is focused on doing.

#### ***What have president Vizcarra and his administration done so far in the fight against corruption and what are their greatest challenges?***

I believe that Vizcarra's government has done well to acknowledge that first of all, the main problem in this country is corruption, and secondly focusing on the type of corruption, one that is structural and needs deep reforms. The government has laid down reforms to the justice system, political reforms, and even a referendum. What happened in reaction to this is that the government has faced resistance from the political

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class, especially from the national congress, for carrying out these reforms, because this political class often represents corrupt interests and organised crime. This political class needs to radically change or disappear to allow for a reconstruction of politics. It is also true that, in Vizcarra's case, I think his mission of restructuring the state is not as broad as it should be. He states that the process should start with some key reforms, and in that regard I think he has done well. Tackling the origins of political funding, the internal democracy within political parties, the need to conform to new levels of discipline in the judicial system, the removal of parliamentary immunity – these are all appropriate measures, but they are only part of the problem. Solving the problem of systemic corruption requires more integral reform, and this is where we are going to see whether or not in the short term Vizcarra's policy has that integral vision.

***When we discuss Peru's legislature, isn't there a conflict in hoping that congress members approve legislation that goes against their own interests, such as the removal of parliamentary immunity?***

What the government has tried to do in this respect was precisely to say that 'following the approval of this legislation, which we ask you to approve, it won't be the congress which decides to remove immunity anymore but the judicial system.' The government has also recently raised the possibility that it would be the Constitutional Court of Peru or the National Board of Justice (JNJ) that makes this decision. But what the government has essentially said is: you cannot investigate yourselves, and there is a need for an external, independent entity that will be in charge of deciding in which cases immunity should be removed. In those cases you need an external autonomous body that decides when the immunity of a congressman is lifted or not: the judiciary, the Constitutional Court or the National Board of Justice. It could also eventually be the Office of the Public Defender as well.

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***What are the roles of the Peruvian judiciary and legislature in the fight against corruption? What should be the division of labour?***

The judiciary's main role in combating corruption is to put an end to impunity and punish those responsible for it. It should know the truth and be sanctioned when setting precedents. I think prosecutors and anti-corruption judges have somehow fulfilled this role so far. The congress should have the fundamental role of ensuring a legal framework so that the country can, on one hand, benefit from sustained economic development and on the other hand have the tools necessary to stop corruption so that it cannot continue to affect us as it does.

***Peru is a member of the UN and the Organization of American States (OAS), and its request to join the OECD is currently under consideration. What role, if any, does the international community or countries like the US have in supporting Peru's efforts against corruption?***

There are several international instruments like the Inter-American Convention Against Corruption, which is managed by the OAS. The convention has a follow-up mechanism, but to me it seems quite modest and has little impact. Then there is the UN Convention Against Corruption, which serves more as a global tool that has slightly improved the normative framework, but I would not call it a "game changer" either. The US government has worked to some extent, with its Foreign Corrupt Practices Act, to apply its anti-bribery law abroad, and the same could be said for the OECD. But what I think is more interesting, is to look at the extent to which the Inter-American Commission on Human Rights (IACHR) has been incorporating the issue of corruption as an element that impacts human rights. The Commission has already issued two resolutions, so I think in the short or medium term we may begin to see that the relationship between human rights and political corruption can open up a series of steps that would allow us to combat the problem of corruption from another perspective that may be more effective.

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### ***In what ways have political corruption affected the Peruvian economy?***

All cases of corruption have two types of impact. The first is a material impact, effectively the loss of money, which in the case of an underdeveloped country like Peru is manifested in an increase in poverty. For example, by halting the work on the gas pipeline in the south we have lost several billions of dollars. In 2017, it was estimated that 150,000 Peruvians were not able to get out of extreme poverty as a direct consequence of corrupt practices. So there is definitely an economic impact that ends up hitting the poorest in our society, who are the ones who end up paying the price for corruption. But the other very serious consequence of political corruption has to do with the institutional weakness that it generates through the loss of confidence. Here in Peru everybody suspects everybody, and nobody trusts the authorities. And the political crisis that we are living in at this moment is directly linked to this loss of trust. Therefore, there are material, economic consequences of corruption, and there are also immaterial consequences of corruption that have to do with the institutional crisis and the crisis of confidence in the country.

### ***How do you think recent cases, namely the Odebrecht scandal, affect foreign investors looking to invest in Peru?***

Evidently, in an environment that is contaminated by corruption, one who seeks to invest needs to conduct some kind of cost-benefit analysis and check the likelihood of their investment being involved in corruption. For example, how much would it cost an investor if they enter into a corruption scheme and what legal security does the country offer. Interestingly, the macroeconomic indicators have not changed significantly, which means that there is still a flow of investment coming into Peru from abroad because Peru is still an attractive country. However, evidently the impact on foreign investment caused by the extent to which the political crisis continues to grow and the outcome of cases of corruption that are yet to be resolved, is going to be negative. The good news is that the Peruvian justice system has responded well, and I would say that after the Brazilians, Peru has had the best reaction. Now we have all these powerful corrupt actors, politicians and businessmen, sitting on the bench accused and who must respond to the justice system. That is a good sign for investors, since it means that they can reach this country and know that justice will somehow protect them.

### ***Do you think the corruption in Peru is different from other countries in Latin America?***

In terms of corruption, I don't think there is a big difference between Peru and the rest of Latin America, except very specific countries like Uruguay, Chile and recently Costa Rica as well. The region in general: South America, Central America and the Caribbean, has suffered greatly from this model of systemic corruption. These are problems of systemic and structural corruption that are a result of a colonial model that made Latin American countries poorly organised from the very beginning of their history, with a centralised clientelist administration, based on neo-patrimonialism, that did not differentiate between state funds and private businesses. All of this has caused the creation of systemic corruption, which in addition to Latin America we can also see in other parts of the world, like Asia, Africa and Eastern Europe, where the situation is not very different.

***President Vizcarra's efforts in fighting corruption and increasing regulation have so far gained positive results, namely his victory in approving his constitutional reforms in December 2018. However, he still has a long and challenging way to go in order to reach a Peru that is clean of corruption. Decades of corrupt leaders have caused many Peruvians a deep loss of faith in the political and judicial systems, and it is possible that at least the same amount of time will be required to restore it.***

**About the author:** Maor (Mario) Levin is the head of the Latin America practice at Aperio Intelligence. Prior to joining Aperio, Mario worked in the UK and Mexico as a team leader in an international business intelligence company, specialising in asset tracing, contract compliance, and enhanced due diligence. Mario also has extensive experience in corporate finance and intelligence research, having previously worked as an economist and having served in the Israeli Military Intelligence. Mario holds a BA in Economics from the Ben-Gurion University in Israel and University Carlos III de Madrid (graduated with honours), and a MSc in International Relations from the London School of Economics and Political Science (LSE).