

Overall Score:

**79 - Moderate**

Legal Framework Score:

**89 - Strong**

Actual Implementation Score:

**69 - Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>82</sup>Civil Society Organizations

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### 1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

**YES** | NO

#### References:

Yes.

Political Constitution of the Republic of Costa Rica.

Article 26. Everyone has the right to meet peacefully and unarmed, whether it is for private business or to discuss political affairs and examine the public conduct of officials.

Article 25. The inhabitants of the Republic have the right of association for lawful purposes. No one may be compelled to form a part of any association whatsoever.

**YES:** A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

**References:**

Article 26, Law of Associations

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

**References:**

If they are formalized as associations or foundations, they are legally responsible for their sources or funding.

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

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## 2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

**References:**

The government respects the Constitutional dispositions.

Political Constitution of the Republic of Costa Rica. Article 25. The inhabitants of the Republic have the right of association for lawful purposes. No one may be required to form a part of any association whatsoever.

Article 26. Everyone has the right to meet peacefully and unarmed, whether for private business or to discuss political affairs and examine the public conduct of officials.

**100:** CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

**75:**

**50:** CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | **25** | 0

**References:**

Despite the CSOs taking part in public debates in anti-corruption issues, their influence in policy making process in Costa Rica Parliament or in the executive process is not common. With a few exceptions, most of the political parties are not open to interacting with anticorruption/good governance CSOs.

**100:** Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

**75:**

**50:** Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

**25:**

**0:** Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

**References:**

During the study period, there are no reported cases of shutting down corruption/good governance CSOs by the Public Administration.

**YES:** A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

**NO:** A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

**References:**

There are no reported cases concerning the imprisonment of activists working on corruption issues.

**YES:** A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

**NO:** A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

**References:**

No activists working on corruption issues have been physically harmed in the past year.

**YES:** A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

**References:**

No activists working on corruption issues have been killed in the past year.

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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#### 4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 62. Collective labor agreements shall have force of law, if entered into by and between employers or employers' unions and legally organized trade unions, in accordance with the law.

Article 25. The inhabitants of the Republic have the right of association for lawful purposes. No one may be required to form a part of any association whatsoever.

Article 26. Everyone has the right to meet peacefully and unarmed, whether it is for private business or to discuss political affairs and examine the public conduct of officials.

**YES:** A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

**References:**

There are various trade unions working in Costa Rica protected by the Constitutional provision. For instance, the trade unions of teachers and professors, of workers of the University of Costa Rica, etc.

**100:** Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

**75:**

**50:** Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**25:**

**0:** Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

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## I-2. Media

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### 5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

**YES** | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 29. Every person may communicate his thoughts verbally or in writing and publish them without previous censorship; but he shall be liable for any abuses committed in the exercise of this right, in such cases and in the manner established by law.

**YES:** A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

**NO:** A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

**YES** | NO

**References:**

Article 28. No one may be disturbed or persecuted for the expression of his opinions or for any act which does not infringe the law.

Private actions which do not harm the morals or public order, or which do not cause any damages to third parties are outside the scope of the law.

However, clergymen or secular individuals cannot make political propaganda in any way invoking religious motives or making use of religious beliefs.

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

**NO:** A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

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## 6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

**100** | 75 | 50 | 25 | 0

**References:**

The government respects the legal disposition that guarantees the right to create print media entities.

Political Constitution of the Republic of Costa Rica.

Article 25. The inhabitants of the Republic have the right of association for lawful purposes. No one may be required to form part

of any association whatsoever.

Article 26. Everyone has the right to meet peacefully and unarmed, whether it is for private business or to discuss political affairs and examine the public conduct of officials.

**100:** Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

**YES** | NO

**References:**

Rejection or revocation of a print media license is subject to appeal.

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

**NO:** A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

**100** | 75 | 50 | 25 | 0

**References:**

In Costa Rica, obtaining a print medial license has no special requirements and the approval takes few weeks. The proceeding is regulated by the 1902 Ley de Imprenta, and only requires a permission from the Province Gobernatura, a requirement which in practice is now regulated by the municipal governments.

**100:** Licenses are not required or licenses can be obtained within two months.



**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

In practice, obtaining the permission is not expensive at all, because the administrative proceedings before the old Gobernaturas—nowadays held by municipal government—requires only some routine administrative processing with relatively low cost.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

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## 7. Are citizens able to form broadcast (radio and TV) media entities?

56

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

**References:**

The government respects the legal disposition that guarantees the right to create broadcast media entities.

Political Constitution of the Republic of Costa Rica.

Article 25. The inhabitants of the Republic have the right of association for lawful purposes. No one may be required to form part of any association whatsoever.

**100:** Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

**25:**

**0:** Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

**References:**

Indeed, there are two possible mechanisms to appeal if a license is denied or revoked. The first possibility is an administrative mechanism of revision before the technical institution. The second is a jurisdictional mechanism before the Administrative Court.

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

**NO:** A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

There is a restricted number of licenses, according to the specific spectrum of television and AM and FM radio frequencies. Therefore, acquisition of a license depends on the availability of frequencies in the market.

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

The TV and AM and FM radio spectrums are already taken, and there arent any to be had.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

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## 8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

**References:**

In Costa Rica, free access to the Internet is guaranteed. Private use of the Internet is permitted and the content online is not restricted even though the responsibility of the content online is determined by Article 29 of the Political Constitution.

**100:** The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

**75:**

**50:** Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

**25:**

**0:** Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

**References:**

The government respects the freedom of speech online. However, the citizens are responsible for the content published online.

Political Constitution of the Republic of Costa Rica.

Article 29. Every person may communicate his thoughts verbally or in writing and publish them without previous censorship; but he shall be liable for any abuses committed in the exercise of this right, in such cases and in the manner established by law.

**100:** The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

**75:**

**50:** In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

**25:**

**0:** The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

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## 9. Are the media able to report on corruption?

83

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 29. Every person may communicate his thoughts verbally or in writing and publish them without previous censorship; but he shall be liable for any abuses committed in the exercise of this right, in such cases and in the manner established by law.

**YES:** A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

**NO:** A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | **50** | 25 | 0

**References:**

Freedom of speech has been considered challenged in Costa Rica. On February 17, 2003, the Inter-American Court of Human Rights agreed to review the a sentence imposed by the Costa Rican jurisdiction against the journalist Mauricio Herrera and La Nación (a media agency) for defamation. In a succession of articles published by La Nación, Mauricio Herrera reported that Félix Przedborski (Costa Rican diplomacy agent) was implicated in acts of corruption.

On November 12 of 1999, the journalist was accused of defamation and ordered to pay ¢430.000, and the journalistic agency was condemned to pay ¢10.000.000 in damages. The sentence also established the incorporation of the name of the journalist into a list of convicted criminals.

In the late 2001, La Nación appealed to the Inter-American Commission of Human Rights which issued an opinion asking the Costa Rican jurisdiction to withdraw the sentence for violations of the freedom of speech of the journalist, as established in the Inter-American Convention of Human Rights. Even though the opinion of the commission was not binding, the case proceeded to the Inter-American Tribunal of Human Rights (whose sentences are binding to States' Parties of the Convention).

The sentence of the Inter-American Court considered the national tribunals, which required the journalist to prove the veracity of the facts transcribed from European newspapers to the national newspaper between January and December, 1995, to be a violation of human rights.

Henceforth, freedom of speech has been considered challenged in Costa Rica.

Source: Inter-American Court of Human Rights. See the resolution at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_107\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_ing.doc)

**100:** The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

**75:**

**50:** The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

**25:**

**0:** The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**References:**

The government respects the freedom of speech online. However, the citizens are responsible for the content published online.

Political Constitution of the Republic of Costa Rica

Article 29. Every person may communicate his thoughts verbally or in writing and publish them without previous censorship; but he shall be liable for any abuses committed in the exercise of this right, in such cases and in the manner established by law.

**100:** The government never prevents publication of controversial corruption-related materials.

**75:**

**50:** The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

**25:**

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

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## 10. Are the media credible sources of information?

30

10a. In law, print media companies are required to disclose their ownership.

YES | NO

**References:**

According to the Costa Rican Commercial Code, private corporations (sociedades anonimas) are not required to disclose their ownership. However, those media companies that participate in the Costa Rican stock market (Bolsa Nacional de Valores) must disclose the composition of their ownership every year. This regulation is included in Ley Reguladora del Mercado de Valores, No. 7732, December 17, 1997.

**YES:** A YES score is earned if print media companies are required by law to disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | **NO**

**References:**

According to the Costa Rican Commercial Code, private corporations (sociedades anonimas) are not required to disclose their ownership. However, those media companies that participate in the Costa Rican stock market (Bolsa Nacional de Valores) must disclose the composition of their ownership every year. This regulation is included in Ley Reguladora del Mercado de Valores, No. 7732, December 17, 1997.

**YES:** A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | **75** | 50 | 25 | 0

**References:**

Some journalists interviewed reported that during the last years in controversial national issues and debates they have suffered restrictions and also, some "editing" from their editors and directors. This wasn't true for all the media, but for some specific newspapers and in some TV news channels.

Source: See the web page of the Instituto de Prensa y Libertad de Expresión (Institute of Press and Freedom of Expression) at <http://www.iplexcr.org/>

**100:** Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

**75:**

**50:** Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

**25:**

**0:** Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

**References:**

Political parties received media coverage. However, some parties had better public exposure due to greater financing and to clear preference from the large media companies. The coverage of the last presidential campaign and the October 2007 referendum related to the Central American Free Trade Agreement (CAFTA) showed high disparity from most of the media companies towards the political parties and the antagonist actors involved in the public debate.

**100:** All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

**75:**

**50:** Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

**25:**

**0:** The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

**References:**

The last Costa Rican presidential election and the last October 2007 referendum related to CAFTA showed no equity in the access to state-owned media outlets.

**100:** The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

**75:**

**50:** The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

**25:**

**0:** The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.



## 11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

### References:

Freedom of speech has been considered challenged in Costa Rica. On February 17, 2003, the Inter-American Court of Human Rights agreed to review the a sentence imposed by the Costa Rican jurisdiction against the journalist Mauricio Herrera and La Nación (a media agency) for defamation. In a succession of articles published by La Nación, Mauricio Herrera reported that Félix Przedborski (Costa Rican diplomacy agent) was implicated in acts of corruption.

On November 12 of 1999, the journalist was accused of defamation and ordered to pay ¢430.000, and the journalistic agency was condemned to pay ¢10.000.000 in damages. The sentence also established the incorporation of the name of the journalist into a list of convicted criminals.

In the late 2001, La Nación appealed to the Inter-American Commission of Human Rights which issued an opinion asking the Costa Rican jurisdiction to withdraw the sentence for violations of the freedom of speech of the journalist, as established in the Inter-American Convention of Human Rights. Even though the opinion of the commission was not binding, the case proceeded to the Inter-American Tribunal of Human Rights (whose sentences are binding to States' Parties of the Convention).

The sentence of the Inter-American Court considered the national tribunals, which required the journalist to prove the veracity of the facts transcribed from European newspapers to the national newspaper between January and December, 1995, to be a violation of human rights.

Henceforth, freedom of speech has been considered challenged in Costa Rica.

Source: Inter-American Court of Human Rights. See the resolution at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_107\\_ing.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_ing.doc)

**YES:** A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

**NO:** A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

### References:

On December 2003, journalist Ivannia Mora, who had been working as executive editor in the magazine Estrategias y Negocios, which deals with economic issues, was assassinated. The owner of Estrategias y Negocios, through the Red Castle Group, Uruguayan businessman Eugenio Millot, was accused of ordering the journalist's assassination. The Public Prosecutor's office contended that Millot paid \$10,000 to Colombian hit men for the assassination because he was angry at the fact that Mora was

working for his direct competition, Summa magazine. The trial for this case took place between May and November 2006, concluding with a not guilty verdict for the six persons involved, due to errors in the procedures of the Public Prosecutor's office and the OIJ (Organism of Judicial Investigation). This verdict caused a severe negative reaction among journalists and the rest of the population.

On July 2001, journalist Parmenio Medina, who had been the conductor for 28 years of a humorous, sarcastic anticorruption radio program, La Patada, was assassinated. He had begun to question the management and destination of huge donations received by a religious radio station, Radio María de Guadalupe, directed by the Roman Catholic priest Minor Calvo. The trial for this case began in October 2005, with nine persons accused of participating in the assassination, including priest Minor Calvo and businessman Omar Chaves as intellectual authors. The process is not over as it has been delayed throughout several stages.

Source: See the news

at <http://www.teletica.com/archivo/tn7/nac/especial/periodista.htm>.; [http://www.nacion.com/In\\_ee/ESPECIALES/parmenio/noticias.html](http://www.nacion.com/In_ee/ESPECIALES/parmenio/noticias.html)

**YES:** A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

**NO:** A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

**YES** | **NO**

#### References:

On December 2003, journalist Ivannia Mora, who had been working as executive editor in the magazine Estrategias y Negocios, which deals with economic issues, was assassinated. The owner of Estrategias y Negocios, through the Red Castle Group, Uruguayan businessman Eugenio Millot, was accused of ordering the journalist's assassination. The Public Prosecutor's office contended that Millot paid \$10,000 to Colombian hit men for the assassination because he was angry at the fact that Mora was working for his direct competition, Summa magazine. The trial for this case took place between May and November 2006, concluding with a not guilty verdict for the six persons involved, due to errors in the procedures of the Public Prosecutor's office and the OIJ (Organism of Judicial Investigation). This verdict caused a severe negative reaction among journalists and the rest of the population.

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Source: See the news

at <http://www.teletica.com/archivo/tn7/nac/especial/periodista.htm>.; [http://www.nacion.com/In\\_ee/ESPECIALES/parmenio/noticias.html](http://www.nacion.com/In_ee/ESPECIALES/parmenio/noticias.html)

**YES:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

**NO:** A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

## I-3. <sup>81</sup>Public Access to Information

### 12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

#### References:

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed. State secrets are excluded from this provision.

Article 27. The right to petition before any public official or State entity, either individually or collectively and the right to obtain prompt resolution are guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (Article 2 of the same Law compels the legislative, executive and judicial branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**YES:** A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

**NO:** A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

#### References:

General Law of the Public Administration.

Article 342. Individuals may appeal administrative final or interim resolutions, according to the dispositions in the present Law, for reasons of opportunity or legality.

Law of the Constitutional Jurisdiction

Article 2- The duties of the constitutional jurisdiction are:

a) Guarantee, by the procedures of habeas corpus and Amparo, the rights and freedoms protected by the Political Constitution and the human rights recognized by international Law accepted in Costa Rica.

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

**NO:** A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

**YES** | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed. State secrets are excluded from this provision.

Article 27. The right to petition before any public official or State entity, either individually or collectively and the right to obtain prompt resolution are guaranteed.

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Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the legislative, executive and judicial branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

Organic Law of the Central Bank.

Article 14. Publication. The Central Bank of Costa Rica will offer the information available about the economic situation and the economic policies of the country.

**YES:** A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

**NO:** A NO score is earned if there is no such formal mechanism or institution.

---

### 13. Is the right of access to information effective?

55

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

**References:**

The information requests are given within a reasonable time period and the rules of the General Law of the Public Administration compel public officials to work under the principles of efficiency and efficacy. However, there are several institutions that have yet to improve their functioning to provide better service to the citizens.

**100:** Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

**75:**

**50:** Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

**25:**

**0:** Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

**References:**

Citizens can access an information mechanism at a reasonable cost. However, the information mechanism must be improved to grant a better service.

Source: See La cultura de acceso a la información en Costa Rica by Carolina Carazo at <http://eccc.ucr.ac.cr/pdf/CarolinaCarazo147-163.pdf>.

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the legislative, executive and judicial branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

#### References:

Citizens can access an information mechanism at a reasonable cost. However, the information mechanism must be improved to grant a better service.

Source: See La cultura de acceso a la información en Costa Rica by Carolina Carazo at <http://eccc.ucr.ac.cr/pdf/CarolinaCarazo147-163.pdf>.

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

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Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the legislative, executive and judicial branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

It depends, because there are NGOs working on transparency issues and fighting against corruption that promote a cost-free litigation. However, in other cases citizens have to make their legal claims paying high amounts for legal services.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

**25:**

**0:** The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**References:**

In many cases there is no explanation from public offices for denying a request for information.

**100:** The government always discloses to the requestor the specific, formal reasons for denying information requests.

**75:**

**50:** The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

**25:**

**0:** The government does not regularly give reasons for denying an information request to the requestor.

## II-1. Voting & Citizen Participation

### 14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

#### References:

Political Constitution of the Republic of Costa Rica

Article 93. Suffrage is a primary and compulsory civic function and is exercised before Election Boards through direct and secret vote by the citizens registered in the Civil Registry (as amended by Law No. 2345, May 20, 1959).

Article 90. Citizenship is the aggregate of political rights and duties pertaining to Costa Ricans over eighteen years of age (as amended by Law No. 4763, May 17, 1971).

Article 33. All persons are equal before the law and there shall be no discrimination against human dignity (as amended by Law No. 4123, May 31, 1968).

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

**NO:** A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

#### References:

Electoral Code.

Article 97. For the election of the President and vice-president, members of the national legislature and municipal legislators, the opening process will be prepared by the Supreme Electoral Tribunal the first of October before the date assigned to each electoral process.

For the election of mayors, representatives and members of the District Council, the opening process will be the first of August before the date assigned to these electoral processes (as amended by Law 7094 of May 27, 1988. Reformed by Law 7794 of April 30, 1998, in La Gaceta" No. 94 of April 18, 1998).



Article 98. The elections will be held regularly the first Sunday of February in the year corresponding to the change of President and Vice-president of the Republic, members of the national legislature and city counselors and representatives.

The change of these posts will take place every four years in the same election (...).

**YES:** A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

**NO:** A NO score is earned if no such framework exists.

---

## 15. Can all citizens exercise their right to vote?

100

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

### References:

All citizens are able to vote. However, a large percentage of the voting population has not participated in the electoral process in recent years.

Political Constitution of the Republic of Costa Rica.

Article 93. Suffrage is a primary and compulsory civic function and is exercised before Election Boards through direct and secret vote by the citizens registered in the Civil Registry. (As amended by Law No. 2345, May 20, 1959.)

Article 90. Citizenship is the aggregate of political rights and duties pertaining to Costa Ricans over eighteen years of age. (As amended by Law No. 4763, May 17, 1971.)

**100:** Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

**75:**

**50:** Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

**25:**

**0:** Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

**References:**

The Constitution requires that the secrecy of the voting process is respected.

Arts. 93 Political Constitution of the Republic of Costa Rica.

Article 93. Suffrage is a primary and compulsory civic function and is exercised before Election Boards through direct and secret vote by the citizens registered in the Civil Registry. (As amended by Law No. 2345, May 20, 1959.)

Article 90. Citizenship is the aggregate of political rights and duties pertaining to Costa Ricans over eighteen years of age. (As amended by Law No. 4763, May 17, 1971.)

**100:** Ballots are secret, or there is a functional equivalent protection, in all cases.

**75:**

**50:** Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

**25:**

**0:** Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

**References:**

Elections are held according to the Constitution.

**100:** Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

**75:**

**50:** Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

**25:**

**0:** Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

---

## 16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica

Article 98. All citizens have the right to organize themselves in parties in order to participate in national politics, provided that such parties are committed in their platforms to respect the constitutional order of the Republic.

Political parties shall express political pluralism, contribute to the formation and manifestation of popular will and be fundamental instruments for political participation. Their creation and the exercise of their activities shall be free within respect to the Constitution and the law. Their internal structure and operation shall be democratic (as amended by Article 1°, Law No.7675, of July 2, 1997).

**YES:** A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

**NO:** A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

**References:**

Universal Declaration of Human Rights (signed and ratified in Costa Rica).

Article 21. 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

**NO:** A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

**References:**

The right to create political parties is respected according to the Electoral Code and Political Constitution of the Republic. However, the process of creation tend to be expensive according to the legal requirements.

**100:** While there is no guarantee of electoral success, political parties can form freely without opposition.

**75:**

**50:** Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

**25:**

**0:** Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

**References:**

This international obligation is respected in Costa Rica.

Universal Declaration of Human Rights (signed and ratified in Costa Rica).

Article 21. 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

**100:** While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

**75:**

**50:** Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing do may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

**25:**

**0:** Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

**References:**

The current conformation of the Legislative Assembly is constituted as shown in the following chart:

- Liberación Nacional Party 25 members
- Acción Ciudadana Party 17 members
- Movimiento Libertario Party 5 members
- Unidad Social Cristiana Party 5 members
- Other Political Parties 5 members

**100:** The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

**75:**

**50:** The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

**25:**

**0:** The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

## II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica

Article 99. The organization, direction, and supervision of acts pertaining to suffrage are the exclusive function of the Supreme Electoral Tribunal, which enjoys independence in the performance of its duties. All other electoral organs are subordinate to the Tribunal.

Article 102. The Supreme Electoral Tribunal has the following functions:

1. To convoke to popular elections;

2. To appoint the members of the Electoral Boards, in accordance with the law;
3. To interpret, with exclusive and compulsory effect, all constitutional and legal provisions on electoral matters;
4. To hear appeals against resolutions issued by the Civil Registry and the Electoral Boards;
5. To investigate on its own or through delegates and render decisions on any claims made by parties as to political partiality of State officials in the performance of their duties or about the political activities conducted by officials who are forbidden to engage in them. A guilty verdict rendered by the Tribunal shall be compulsory grounds for removal and shall disqualify the wrongdoer to hold public offices for a term of no less than two years, without any criminal liability that may be established. However, if the investigation conducted includes charges against the President of the Republic, Cabinet Ministers, Diplomatic Ministers, the Comptroller General or the Assistant Comptroller of the Republic, or the justices of the Supreme Court, the Tribunal shall report the findings of its investigation to the Legislative Assembly;
6. To adopt, regarding the public force, pertinent measures to ensure that the elections are carried out under conditions of unrestricted freedom and guarantees. In the event that military recruitment is ordered, the Tribunal may also adopt suitable measures to ensure that the electoral process can not be disturbed, so that all citizens may freely cast their votes. The Tribunal may enforce these measures on its own or through its designated delegates;
7. To conduct the official count of the votes cast in the elections for President and Vice-Presidents of the Republic, members of the Legislative Assembly, members of Municipal Governments and Representatives to Constitutional Assemblies;
8. To issue the official declaration of the election of the President and Vice-Presidents of the Republic within thirty days following the date of the election, and that of the other officials mentioned in the prior subsection within the period established by law;
9. Any other functions entrusted to it by this Constitution or by the laws.

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

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## 18. Is the election monitoring agency effective?

80

18a. In law, the agency or set of agencies/entities is protected from political interference.

**YES** | NO

### References:

Political Constitution of the Republic of Costa Rica.

Article 99. The organization, direction, and supervision of acts pertaining to suffrage are the exclusive function of the Supreme Electoral Tribunal, which enjoys independence in the performance of its duties. All other electoral organs are subordinate to the Tribunal.

**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**

The staff appointments are generally impartial and preserve the integrity of the Tribunal Supremo de Elecciones. However, decisions taken during the last presidential elections and particularly during the October 2007 CAFTA Referendum show that some tribunal interpretations and resolution were partial and favored some actors.

**100:** Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The judges of the Supreme Electoral Tribunal and other functionaries of the Supreme Electoral Tribunal are a professional, full-time staff.

Political Constitution of the Republic of Costa Rica

Article 101. The members of the Supreme Electoral Tribunal shall hold office for a term of six years. The term in office of one regular member and two alternates shall be renewed every two years, but may be reelected.

The justices of the Supreme Electoral Tribunal shall enjoy the same immunities and prerogatives as the members of the Supreme Branches. (As amended by Law No. 3513, June 24, 1965.)

**100:** The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**References:**

Not only the declaration of election is published (according to the constitutional mandate of Article 102) but also other reports are published in their Web page ([http://www.tse.go.cr/infog\\_electoral.html](http://www.tse.go.cr/infog_electoral.html)).

Political Constitution of the Republic of Costa Rica.

Article 102. The Supreme Electoral Tribunal has the following functions: 8. To issue the official declaration of the election of the President and Vice-Presidents of the Republic within thirty days following the date of the election, and that of the other officials mentioned in the prior subsection within the period established by law.

**100:** Reports are released to the public on a predictable schedule, without exceptions.

**75:**

**50:** Reports are released, but may be delayed, difficult to access, or otherwise limited.

**25:**

**0:** The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

According to Article 154 of the Electoral Code, the competent authorities to acknowledge infringements and misdeeds will be the respective Penal courts. This is based on the constitutional disposition of Article 153: It corresponds to judicial power, aside from the functions determined by the Constitution, to hear civil and penal cases (&) whichever their nature and the quality of the persons that intervene; resolve definitely over them and implement those resolutions which are pronounced with the help of the public force if deemed necessary. This coincides with the principle of natural judge, and the fact that those who know the penal codes are those whom the law authorizes based on their competence in the matter, as these matters are of public interest under the tutelage of the Law.

These judges are specialists in the matter, so the administration of justice is benefited. Nevertheless, there is little normative clarity on the reach and competence of the TSE, the Comptroller and the Public Ministry about their responsibilities when dealing with electoral crimes and with funds provided by the state. For example, by resolution 2000-06326 of the Constitutional Court of the Supreme Court of Justice, it is said that it corresponds to the Office of the Comptroller General of the Republic to investigate and determine the pecuniary responsibility of popularly elected municipal officials (town councilors and representatives) in relationship to infringement of the ordinance norms for control and inspection of Hacienda Publica, complying with the due process; and to the Supreme Electoral Tribunal to determine in relationship to this, the annulment or cancellation of municipal credentials.

**100:** When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

**75:**



**50:** The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

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## 19. Are elections systems transparent and effective?

63

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

### References:

The Civil Registry is the electoral organism that elaborates the provisional voters lists (six months before the elections) and definitive (two months and fifteen days before the elections) according to articles 99 and 104 (incises 1 and 3) of the Political Constitution and articles 22, 23 and 24 of the Electoral Code.

According to article 95 (incise two) of the Political Constitution, the State is required to record the citizens in the Civil Registry. There are officials of the Civil Registry that work in hospitals collecting information on births and deaths. Additionally, morgue employees must report any decease that takes place during their shifts.

The Civil Registry is in charge of conceding nationality to foreigners. Within a month after the birth of a national, the corresponding declaration must be presented before any official of the Civil Registry.

The declaration of birth will be medically certified by the attending doctor. If these documents are missing, a written declaration of the person in charge of the birth process will suffice.

Furthermore, there are programs to give National ID cards to those high school students close to their 18th birthday. An early inscription process is available to those nationals whose birthday is on the same day of the election. Their ID card will be handed out on the day of the election.

Finally, the Civil Registry records the citizens of homes for the elderly and jails.

**100:** There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

**75:**

**50:** There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

**25:**

**0:** The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

**References:**

According to articles 19, 129 bis, 148, 159 and the Titles VIII and IX of the Electoral Code, the invalidation is only stipulated for functionaries and employees, considering the revoking of their actual posts. Furthermore, the political Constitution establishes that, once the election is declared, there is no applicable invalidation process.

Appeals are authorized by the Electoral Code for the annulment of a single vote. The control official presents it before the Supreme Electoral Tribunal. This institution has a month to solve it, before the official declaration of the corresponding election.

Regarding the Electoral Amparo, it is not considered an instrument legally permitted by Electoral Law. It was created through the Supreme Electoral Tribunal in its resolutions (the first resolution considering this mechanism is the 303-E-2000) as a procedure to solve conflicts relating to fundamental rights in the electoral scope and considering the lack of legal dispositions of the sort. It is considered the instrument that can be used by the Supreme Electoral Tribunal to create electoral institutes.

The court with competence for crimes committed against the electoral system is regulated in Title VIII of the Electoral Code and contains monetary penalties, prison and removal from the post. The Supreme Electoral Tribunal can send these cases to the Public Ministry.

**YES:** A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**NO:** A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**References:**

According to articles 19, 129 bis, 148, 159 and the Titles VIII and IX of the Electoral Code, the invalidation is only stipulated for functionaries and employees, considering the revoking of their actual posts. Furthermore, the political Constitution establishes that, once the election is declared, there is no applicable invalidation process.

Appeal is authorized by the Electoral Code for the annulment of a single vote. The control official presents it before the Supreme Electoral Tribunal. This organ has a month to solve it, before the official declaration of the corresponding election.

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The court with competence for crimes committed against the electoral system is regulated in Title VIII of the Electoral Code and contains monetary penalties, prison and removal from the post. The Supreme Electoral Tribunal can send these cases to the Public Ministry.

**100:** The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

**75:**

**50:** The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

**25:**

**0:** The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**References:**

Political Constitution of the Republic of Costa Rica

Article 102. The Supreme Electoral Tribunal has the following functions:

6. To adopt, regarding the public force, pertinent measures to assure that the elections are carried out under conditions of unrestricted freedom and guarantees. In the event that military recruitment is ordered, the Tribunal may also adopt suitable measures to ensure that the electoral process can not be disturbed, so that all citizens may freely cast their votes. The Tribunal may enforce these measures on its own or through its designated delegates;

Article 12. The Army is abolished as a permanent institution. There shall be the necessary police forces for surveillance and the preservation of the public order.

Military forces may only be organized under a continental agreement or for national defense; in either case, they shall always be subordinate to the civil power: they may not deliberate or make statements or representations individually or collectively.

Article 140. The following are joint powers and duties of the President and the appropriate Cabinet Minister: 1) To freely appoint and remove members of the law enforcement forces, employees and officials who hold positions of trust and others as determined in very qualified cases by the Civil Service Law (...)

Article 139. The following are the exclusive powers and duties of the occupant of the Presidency of the Republic: (...) 3) To hold the supreme command of the law enforcement forces. (...)

**100:** The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

**75:**

**50:** The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

**25:**

**0:** The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

**References:**

Electoral Code.

Article 89- Inspection of Electoral Proceedings. The political parties have the right to inspect the electoral process with the intervention of representatives legally approved by the corresponding electoral body. (...)

**YES:** A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

**NO:** A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**References:**

International observers are allowed to inspect Costa Rican elections, as well as national observers.

**100:** Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

**75:**

**50:** Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

**25:**

**0:** Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

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81  
II-3. Political Financing

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20. Are there regulations governing political financing?

100

20a. In law, there are regulations governing private contributions to political parties.

**References:**

Political Constitution of the Republic of Costa Rica.

Article 96. The State may not make any deductions from the compensation of public officials for payment of political debts.

The State shall contribute to finance the expenses incurred by political parties, in accordance with the following provisions:

1. The contribution shall be zero point nineteen percent (0.19%) of the gross domestic product of two years before the holding of the elections for President, Vice-Presidents of the Republic and members of the Legislative Assembly. The law shall determine the cases when a reduction of said percentage may be decided.

This percentage shall be allocated to cover the expenses incurred for the participation of political parties in these electoral processes and to satisfy the political organization and training needs. Each political party shall fix the percentages corresponding to these items.

2. The political parties that participate in the electoral processes indicated in this article and that obtain at least four percent (4%) of the votes validly cast at national level, or the parties registered at provincial level that obtain at least said percentage in the province or elect at least one member to the Legislative Assembly shall be entitled to State contribution.

3. Upon deposit of the appropriate bonds, the political parties shall be entitled to a partial advance of the State contribution, as determined by law.

4. In order to receive support from the State, parties are required to demonstrate their expenses before the Supreme Electoral Tribunal.

Private contributions to political parties shall be subject to the principle of publicity and shall be regulated by law.

The enactment and amendment of the law that establishes the procedures, control means and other regulations for enforcement of this article shall require the vote of two thirds of the members of the Legislative Assembly.

(As amended by Article 1°, Law No. 7675, of July 2, 1997)

**Electoral Code**

Article 176 (bis). Receiving of donations and contributions. It is prohibited for political parties to accept or receive, directly or not, from foreign natural and juridical persons, contributions, donations, loans or support, in money or in kind, to administrate or perform electoral campaigns.

None of the mentioned persons may acquire bonds or perform other transactions that bring about economic advantage for political parties. However, they are authorized to give contributions or donations determined for preparation, training and investigation of the political parties.

Article 176 (bis). Receiving of donations and contributions. National individuals and legal entities may contribute or donate, among other means of support, with money or in kind, to the political parties. This support may not exceed an annual amount of money equivalent to forty five times the basic minimum salary per month established in the Law of the Ordinary Budget of the Republic, at the moment of the contribution. (...) Donations, contributions or support of any kind in favor of a third party are prohibited.

The violation to this prohibition will be punished with the penalties established in article 152 of the present Code (Article 151 of the Electoral Code punishes the contravention stated in the previous article with a prison term of two to twelve months).

The party members in charge of the finances of political parties are required to inform the Supreme Electoral Tribunal about any contribution every three months. However, during the period between the beginning of the electoral process and the day of the election, they must present the Tribunal with monthly financial reports.

If the dispositions in the last paragraph are not followed, the Supreme Electoral Tribunal shall warn them to comply with this obligation within the next ten days.

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

**References:**

Electoral Code

Article 176 (bis). Receiving of donations and contributions. National individuals and legal entities may contribute or donate,

among other means of support, with money or in kind, to the political parties. This support may not exceed an annual amount of money equivalent to forty-five times the basic minimum salary per month established in the Law of the Ordinary Budget of the Republic, at the moment of the contribution. (...) Donations, contributions or support of any kind in favor of a third party are prohibited.

Violations of this prohibition will be punished by the penalties established in article 152 of the present Code (Article 151 of the Electoral Code punishes the violations stated in the previous article with a prison term of two to twelve months).

**YES:** A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

**YES** | NO

**References:**

Electoral Code

Article 176 (bis). Receiving of donations and contributions. National individuals and legal entities may contribute or donate, among other means of support, with money or in kind, to the political parties. This support may not exceed an annual amount of money equivalent to forty-five times the basic minimum salary per month established in the Law of the Ordinary Budget of the Republic, at the moment of the contribution. (...) Donations, contributions or support of any kind in favor of a third party are prohibited.

The violation of this prohibition will be punished by the penalties established in article 152 of the present Code (Article 151 of the Electoral Code punishes the contravention stated in the previous article with a prison term of two to twelve months).

**YES:** A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

**YES** | NO

**References:**

There are specific limitations and amounts regulated by the Electoral Code.

**YES:** A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

**NO:** A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 96. (&)

4. In order to receive support from the State, parties are required to demonstrate their expenses before the Supreme Electoral Tribunal.

Private contributions to political parties shall be subject to the principle of publicity and shall be regulated by law.

The enactment and amendment of the law that establishes the procedures, control means and other regulations for enforcement of this article shall require the vote of two thirds of the members of the Legislative Assembly (As amended by Article 1°, Law No. 7675, of July 2, 1997).

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 96. (&)

4. In order to receive support from the State, parties are required to demonstrate their expenses before the Supreme Electoral Tribunal.

Private contributions to political parties shall be subject to the principle of publicity and shall be regulated by law.

The enactment and amendment of the law that establishes the procedures, control means and other regulations for enforcement of this article shall require the vote of two thirds of the members of the Legislative Assembly.

(As amended by Article 1°, Law No. 7675, of July 2, 1997)

Article 194.-The Supreme Electoral Tribunal, through the Office of the Comptroller General of the Republic, will be the competent body to control and verify the expenditures of the political parties. For this, it will dictate the corresponding normative regulations.

The parties are required to irrefutably justify their expenditures for inspection by the Office of the Comptroller General of the Republic, in accordance to the dispositions of this code and the Regulation dictated by the Supreme Electoral Tribunal. For this, the parties are required to present a document duly certified by Public Accountant before the Comptroller, in which all expenditures are detailed.

All the original receipts must be kept and classified by the parties to receive the payment as established in Article 187. Amended by Law N° 7653, November 28, 1996, La Gaceta" N° 246, December 23, 1996).

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 96. (&)

4. In order to receive support from the State, parties are required to demonstrate their expenses before the Supreme Electoral Tribunal.

Private contributions to political parties shall be subject to the principle of publicity and shall be regulated by law.

The enactment and amendment of the law that establishes the procedures, control means and other regulations for enforcement of this article shall require the vote of two thirds of the members of the Legislative Assembly (As amended by Article 1°, Law No. 7675, of July 2, 1997).

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

**NO:** A NO score is earned if there is no such agency or entity.

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## 21. Are the regulations governing political financing effective?

21

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

**References:**

In Costa Rica, this principle has been historically violated by the practice of partially hiding, faking or restraining the amount and source of private contributions to political parties.

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.



**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

**References:**

In Costa Rica, this principle has been historically violated by partially hiding, faking or restraining the amount and source of private contributions to political parties.

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

**References:**

The current mechanism of control is highly ineffective. There are significant amounts donated to the political campaign that are not reported.

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

There are some investigations, but the mechanisms of control are frequently avoided by using external accounts or parallel expenditure schemes.

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

Only in few cases have there been penalties imposed on political parties for illegal political financing. Most of the cases are not detected and the system is highly ineffective.

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

**References:**

There is some formal auditing, but the current mechanism of control is clearly ineffective because of the existence of parallel accounts and other mechanisms for evasion.

**100:** Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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## 22. Can citizens access records related to political financing?

83

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

There is disclosure of information. However, the data is inaccurate and generally false.

**100:** Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The financial records of political parties and candidates are available at a reasonable time period in the Web page of the Electoral Tribunal.

Source: See the data at [http://www.tse.go.cr/indice\\_donaciones.html](http://www.tse.go.cr/indice_donaciones.html)

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed. (Article 2 of the same Law compels the legislative, executive and judicial branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well.)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

The financial records of political parties and candidates are free at the Web page of the Electoral Tribunal.

Source: See the data at [http://www.tse.go.cr/indice\\_donaciones.html](http://www.tse.go.cr/indice_donaciones.html)

Political Constitution of the Republic of Costa Rica.

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Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well). The financial records of political parties and candidates are available at a reasonable time period in the Web page of the Electoral Tribunal.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

**References:**

There's a specialized jurisdiction to solve any infringement of the government on the civil rights of the citizens and it is established in the Law of the Administrative Jurisdiction (Law 29/1998).

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

75

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**References:**

Generally, the Costa Rican chief executive does not give reasons for policy decisions. Although some of them are public by direct request of the media.

**100:** The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

**75:**

**50:** The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

**25:**

**0:** The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

**YES** | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 49. A contentious-administrative jurisdiction is established as a function of the Judicial Branch for purposes of guaranteeing the legality of the administrative function of the State, its institutions and any other entity of public law.

The misuse of power shall be grounds to challenge administrative acts.

The law shall protect, at least, the personal rights and legitimate interests of those governed (as amended by Law No. 3124, June 25, 1963).

**YES:** A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | **50** | 25 | 0

**References:**

Most of the time, the chief executive can theoretically be held responsible for his or her illegal actions. But in some big and complicated cases (involving the role of politicians and public goods) the judiciary has failed to act.

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

**75:**

**50:** The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

**References:**

The executive order (called decreto ejecutivo in Costa Rican legislation) is restricted only to administrative decisions, but cannot include new regulations or policies. That is the so-called "reserva de legalidad".

**100:** The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

**75:**

**50:** The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

**25:**

**0:** The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

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## 25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

**References:**

Political Constitution.

Article 9. The Government of the Republic is popular, representative, alternative and responsible. (&)

Article 11. Public officials are mere depositaries of authority and cannot usurp powers which the law has not vested upon them. They must take an oath to observe and comply with this Constitution and the laws. The action to establish their criminal liability for their acts is public.



Law of the Constitutional Jurisdiction

Article 56. The third branch of the Supreme Court will consider:

2) The criminal procedures against the members of the Supreme Powers and other public officials alike.

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

**YES** | NO

**References:**

Political Constitution.

Article 9. The Government of the Republic is popular, representative, alternative and responsible. (&)

Article 11. Public officials are mere depositaries of authority and cannot usurp powers which the law has not vested upon them. They must take an oath to observe and comply with this Constitution and the laws. The action to establish their criminal liability for their acts is public.

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

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## 26. Are there regulations governing conflicts of interest by the executive branch?

63

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

**YES** | NO

**References:**

Law against the Illicit Enrichment of the Public Officials

Article 7. The Office of the Comptroller General of the Republic will establish a registry of the belongings of government officials. In this registry, it will declare the belongings, leases and rights of the functionaries and employees required to do so by the Political Constitution, the law and the Comptrollers office, according to the decree approved by the Office of the Comptroller General of the Republic (&)

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 21. Officials are required to declare their patrimonial situation. The following officials are required to declare their patrimonial situation to the Office of the Comptroller General of the Republic, according to the present Law: the members of the national legislature, the president of the Republic, the vice-presidents, the heads of Ministry, the ministers (&) or the officials named with this status; the vice-ministers, the general proprietary and substitute magistrates of the Judicial Power and of the Supreme Court of Elections, the comptroller and the sub-comptroller of the Republic, the defender and the attached defender of the inhabitants, the attorney general and the general attached attorney of the Republic, the general district attorney of the Republic, the deans, the comptrollers or the sub-comptrollers of the national centers of education, the General Regulator of the Republic, the superintendents and managers of all financial entities; the major ministry officers, the members of the boards of directors, except the control officials unable to vote, the executive presidents, the managers, sub-managers, the internal auditing officials and sub officials, the procurement officials of the entire Public Administration and public businesses, all municipal officials and municipal mayors (alcaldes).

Also the customs employees, the employees who proceed with public bids, other government officials who guard, administer, control or collect public funds, establish revenues or income for the State, who approve and authorize distributions of public funds, according to the enumeration contained in the Regulation of this Law, which also will be able to include subjects of the private sector that administer, guard or are concessionaires of public funds, possessions and public services, who, hereinafter, will be bound by the dispositions of this Law.

The comptroller and the sub-comptroller of the Republic will send an exact copy of these declarations to the Legislative Assembly, which, regarding its members, will have the same faculties that the present Law assigns to the Office of the Comptroller General of the Republic regarding the rest of the public officials.

**YES:** A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

**YES** | **NO**

#### References:

Law against the Illicit Enrichment of the Public Officials

Article 7. The Office of the Comptroller General of the Republic will establish a registry of the belongings of government officials. In this registry, it will declare the belongings, leases and rights of the functionaries and employees required to do so by the Political Constitution, the law and the Comptrollers office, according to the decree approved by the Office of the Comptroller General of the Republic (&)

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 21. Officials are required to declare their patrimonial situation. The following officials are required to declare their patrimonial situation to the Office of the Comptroller General of the Republic, according to the present Law: the members of the national legislature, the president of the Republic, the vice-presidents, the heads of Ministry, the ministers (&) or the officials named with this status; the vice-ministers, the general proprietary and substitute magistrates of the Judicial Power and of the Supreme Court of Elections, the comptroller and the sub-comptroller of the Republic, the defender and the attached defender of the inhabitants, the attorney general and the general attached attorney of the Republic, the general district attorney of the Republic, the deans, the comptrollers or the sub-comptrollers of the national centers of education, the General Regulator of the Republic, the superintendents and managers of all financial entities; the major ministry officers, the members of the boards of directors, except the control officials unable to vote, the executive presidents, the managers, sub-managers, the internal auditing officials and sub officials, the procurement officials of the entire Public Administration and public businesses, all municipal officials and municipal mayors (alcaldes).

Also the customs employees, the employees who proceed with public bids, other government officials who guard, administer, control or collect public funds, establish revenues or income for the State, who approve and authorize distributions of public funds, according to the enumeration contained in the Regulation of this Law, which also will be able to include subjects of the private sector that administer, guard or are concessionaires of public funds, possessions and public services, who, hereinafter, will be bound by the dispositions of this Law.

The comptroller and the sub-comptroller of the Republic will send an exact copy of these declarations to the Legislative Assembly, which, regarding its members, will have the same faculties that the present Law assigns to the Office of the Comptroller General of the Republic regarding the rest of the public officials.

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

**NO:** A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422).

Article 20. Donations and Gifts Regime. The gifts given to a public official as a manner of courtesy or diplomatic custom will be considered property of the Nation, when their value is higher than the basic salary, according to the definition of article 2 of the Law N° 7337, according to the examination held by the Dirección General de Tributación (Revenue Directorate), if considered necessary. The registry and handling of these gifts will be determined by decree; these gifts or the amount resulting from their sale could be given to public aid, health or education agencies, or to the historic and cultural patrimony, as it corresponds. Honor emblems and honorific, cultural, academic or scientific prizes are excluded from these regulations.

Article 16. Prohibition to receive salary contributions. Public officials are only able to receive contributions or benefits stipulated in the Public Law Regime, according to their service contract and legally registered in the public budget. According to this, it is forbidden to receive any other contribution, benefit or salary from natural or juridical persons, national or foreign, regarding the compliance with his duties, in the country or outside its territory.

Civil Service Statute, Law N° 1581-53

Article 39. The duties of the public officials are: (&)

c) To decline benefits, gifts or rewards given regarding the compliance with his duties.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

**References:**

This provision is included in the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422).

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

**References:**

There are no specific prohibitions or restrictions upon the president, ministers or other public officers on entering the private sector after leaving the government. Only in the Law Against Corruption and Illicit Enrichment in the Civil Service (Law N° 8422), Article 53, there is a simple limitation on taking part, after a year leaving the government, in any company that were beneficiary of a public contract signed or approved by the public officer.

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | **25** | 0

**References:**

These regulations are generally ineffective because of the existence of various mechanisms to hide benefits to companies related to public officers, by using the secrecy of the stockholders registry in the so-called sociedades anónimas.

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**References:**

Despite the stipulations of the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422), bribes are common, as well as gifts to public officers.

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

**References:**

Yes, there are formal auditing processes, but these can be easily avoided by the secrecy of banking accounts, third person beneficiaries and also by the secrecy of the stockholders registry.

**100:** Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

## 27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

### References:

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 24. Confidentiality of declarations. The content of the asset disclosure is confidential, except for the own public official, and the intervention of the special commissions of the Legislative Assembly (...).

**YES:** A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

### References:

Even though the Office of the General Comptroller of the Republic audits the asset disclosure of the public officials (See, Mauricio Herrera Contraloría verificará el contenido de las declaraciones juradas available in La Nación newspaper of October 31, 2007), the information presented by the mentioned functionaries is not publicly available.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some additional delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Even though the Office of the General Comptroller of the Republic audit the asset disclosure of the public officials (See, Mauricio Herrera Contraloría verificará el contenido de las declaraciones juradas available in La Nación newspaper of October 31, 2007), the information presented by the mentioned functionaries is not publicly available.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

**References:**

The functions of the ruling political party are separated from the exercise of the official government functions.

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

**75:**

**50:** The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

**25:**

**0:** The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

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## III-2. Legislative Accountability

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### 29. Can members of the legislature be held accountable for their actions?

67

29a. In law, the judiciary can review laws passed by the legislature.

**YES** | NO

#### References:

Political Constitution of the Republic of Costa Rica.

Article 10 CP. A specialized Chamber of the Supreme Court of Justice shall declare, by the absolute majority vote of its members, the unconstitutionality of provisions of any nature and acts subject to Public Law. The jurisdictional acts of the Judicial Branch, the declaration of the elections by the Supreme Electoral Tribunal and any other acts established by law cannot be challenged following this procedure.

This Chamber shall also:

- a) Solve any conflicts of jurisdiction between State branches, including the Supreme Electoral Tribunal, as well as any other entities or bodies established by law.
- b) Hear any consultations on constitutional amendment bills, ratification of international agreements or treaties and other bills, as provided by law.

(As amended by Law N° 7128, August 18, 1989. See also the Transitory Provisions concerning this article, included hereinafter in the section of Transitory Provisions).

Organic Law of the Judiciary.

Article 8. The judges are not allowed to:

1. Implement laws, norms or acts of any kind, contravening the Political Constitution or international and communitarian law binding inside the country. If they have doubts about the constitutional nature of the mentioned norms or acts, they are required to bring the question before the constitutional jurisdiction.

Law of the Constitutional Jurisdiction.

Article 73. The unconstitutionality procedure will be used:

- a) Against the Law and general dispositions, even the ones created by private subjects, which infringe by action or omission, any constitutional norm or principle.
- c) When the process of creating laws or legislative agreements violates any substantial requirement or procedure instituted in the Political Constitution or in the internal dispositions of order, direction or discipline of the Legislative Assembly.
- d) When any law or general disposition infringes article 7, paragraph 1, of the Constitution, or by opposing a public treaty or international convention.

**YES:** A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).



29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**References:**

The judicial mechanism is frequently used to evaluate the compliance of the laws passed by the legislature according to the Political Constitution principles.

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

**Comments:**

The last paragraph of Article 100 permits the prosecution of members of the Assembly only if:  
-they have been previously suspended by the Assembly.  
-in case of flagrante delicto or when the representative waives his protection.

**References:**

Political Constitution of the Republic of Costa Rica.

Article 110. A representative is not liable for any opinions expressed at the Assembly. During legislative sessions, he cannot be arrested on civil grounds, except by authorization of the Assembly or with the consent of the representative.

From the time he is declared elected as representative or as an alternate representative, until expiration of his legal term in office, he may not be deprived of his freedom on criminal grounds, unless he has been previously suspended by the Assembly. Such immunity does not apply in case of flagrante delicto or when the representative waives it. Nevertheless, a representative who has been arrested for flagrante delicto will be released if the Assembly so orders.

**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

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30. Are there regulations governing conflicts of interest by members of the national legislature?

57

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

**References:**

Law against the Illicit Enrichment of the Public Officials

Article 7. The Office of the Comptroller General of the Republic will establish a registry of the belongings of government officials. In this registry, it will declare the belongings, leases and rights of the functionaries and employees required to do so by the Political Constitution, the law and the Comptrollers office, according to the decree passed by the Office of the Comptroller General of the Republic (&)

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 21. Officials are required to declare their patrimonial situation. The following officials are required to declare their patrimonial situation to the Office of the Comptroller General of the Republic, according to the present law: the members of the national legislature, the president of the Republic, the vice-presidents, the heads of Ministry, the ministers (&) or the officials named with this status; the vice-ministers, the general proprietary and substitute magistrates of the Judicial Power and of the Supreme Court of Elections, the comptroller and the sub-comptroller of the Republic, the defender and the attached defender of the inhabitants, the general attorney and the general attached attorney of the Republic, the general district attorney of the Republic, the rectors, the comptrollers or the sub comptrollers of the national centers of education, the General Regulator of the Republic, the superintendents and intendents of all financial entities; the major ministry officers, the members of the boards of directors, except the control officials unable to vote, the executive presidents, the managers, sub managers, the internal auditing officials and sub officials, the procurement officials of the entire Public Administration and public businesses, all municipal officials and the municipal mayors (alcaldes).

Also the customs employees, the employees who proceed with public bids, other government officials who guard, administer, control or collect public funds, establish revenues or income in favor of the State, who approve and authorize distributions of public funds, according to the enumeration contained in the Regulation of this Law, which also will be able to include subjects of the private sector that administer, guard or are concessionaries of public funds, possessions and public services, who, hereinafter, will be bound by the dispositions of this Law. The comptroller and the sub comptroller of the Republic will send an exact copy of these declarations to the Legislative Assembly, which, regarding its members, will have the same faculties that the present Law assigns to the Office of the Comptroller General of the Republic regarding the rest of the public officials.

**YES:** A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

**References:**

There are no restrictions against legislators entering the private sector after leaving the government. Generally, legislators temporarily sell their stock in private companies while in Parliament to a "ghost" owner and re-buy after leaving the government.

**YES:** A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422).

Article 20. Donations and Gifts Regime. The gifts given to a public official as a manner of courtesy or diplomatic custom will be considered property of the Nation, when its value is higher than the basic salary, according to the definition of article 2 of the Law N° 7337, according to the examination held by the Dirección General de Tributación, if it is considered necessary. The registry and handling of these gifts will be determined by decree; these gifts or the amount resulting from their sale could be given to public aid, health or education agencies, or to the historic and cultural patrimony, as it corresponds. Honor emblems and honorific, cultural, academic or scientific prizes are excluded from these regulations.

Article 16. Prohibition to receive salary contributions. Public officials are only able to receive contributions or benefits stipulated in the Public Law Regime, according to their service contract and legally registered in the public budget. According to this, it is forbidden to receive any other contribution, benefit or salary from natural or juridical persons, national or foreign, regarding the compliance with his duties, in the country or outside its territory.

Civil Service Statute, Law N° 1581-53

Article 39. The duties of the public officials are: (&)

c) To decline benefits, gifts or rewards given regarding the compliance with his duties.

Law of Contratación Administrativa

Article 96 (ter). Dismissal process without employer responsibility:

A dismissal without employer responsibility will be carried against a public official who violates the following prohibitions: (&)

c) To receive or ask for gifts or benefits from the potential or ordinary private procurement persons of the institution where he works.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

**References:**

That provision is included in the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422).

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

As explained previously, these provisions are ineffective and national legislators easily get involved in private activities – even in those with interests in contracting, procurement and policy decisions with a direct interest in that official’s decisions while a government employee.

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

Regulations are ineffective and cases of bribery, gifts and other violations of law are not uncommon among legislators.

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**References:**

Yes, there is auditing, but it is easily avoided because these regulations are generally ineffective due to the existence of various mechanisms to hide benefits to companies related to public officers, by using the secrecy of the stockholders registry in the so-called sociedades anónimas.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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### 31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 24. Confidentiality of declarations. The content of the asset disclosure is confidential, except for the own public official, and the intervention of the special commissions of the Legislative Assembly (...).

**YES:** A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Even though the Office of the General Comptroller of the Republic audits the asset disclosures of the public officials (See, Mauricio Herrera Contraloría verificará el contenido de las declaraciones juradas available in La Nación newspaper of October 31, 2007), the information presented by the mentioned functionaries is not publicly available.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Even though the Office of the General Comptroller of the Republic audits the asset disclosure of the public officials (See Mauricio Herrera Contraloría, verificará el contenido de las declaraciones juradas available in La Nación newspaper of October 31, 2007), the information presented by the mentioned functionaries is not publicly available.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

## 32. Can citizens access legislative processes and documents?

100

32a. In law, citizens can access records of legislative processes and documents.

**YES** | NO

### References:

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**YES:** A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

**NO:** A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

### References:

The result of the legislative processes is available at a reasonable time at both the Official Newspaper

(<http://www.imprenal.go.cr/>) and at the Web site of the Legislative Assembly (<http://www.asamblea.go.cr/>).

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

#### References:

The result of the legislative processes is available for free at the Web site of the Legislative Assembly

(<http://www.asamblea.go.cr/>) and the cost of the Official Newspaper is less than a dollar (<http://www.imprenal.go.cr/>).

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.



75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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56  
III-3. Judicial Accountability

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33. Are judges appointed fairly?

92

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 121. In addition to other powers vested upon it by this Constitution, the Legislative Assembly has exclusive powers to:

3. Appoint the regular and alternate magistrates of the Supreme Court of Justice.

Article 158. The Magistrates of the Supreme Court of Justice shall be elected for eight years and shall be considered as reelected for equal terms, unless otherwise decided by the Legislative Assembly by a vote of two thirds of its members.

Vacancies shall be filled to complete the full eight-year terms.

Organic Law of the Judicial Branch.

Article 14. When a post of administering justice is available, with the exception of the charge of Magistrate, to fill this post, the Court or the Council should request from the Judiciary Council a list of three candidates from the ones available. If the election is opened and any candidate comes forward, the procedure established in the Judicial Career Law will be followed (&).

**YES:** A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

**References:**

Political Constitution of the Republic of Costa Rica.

Article 159. The following is required to be a Justice:

1. To be Costa Rican by birth or by naturalization, with residence in the country for no less than ten years after obtaining the appropriate naturalization certificate.

However, the Chief Justice of the Supreme Court shall be Costa Rican by birth;

2. To be a citizen in the exercise of his rights;

3. To be a layman;

4. To be over thirty-five years of age;

5. To have a degree according to the law issued or legally recognized in Costa Rica and to have practiced the profession for at least ten years, except in the case of judicial officials with not less than five years of judicial experience.

(The first paragraph of this section was so amended by Law No. 2026, June 15, 1956.)

Before taking office, Justices shall provide an official bond as provided by law.

Organic Law of the Judicial Branch.

Article 14. When a post of administering justice is available, with the exception of the charge of Magistrate, to fill this post, the Court or the Council should request from the Judiciary Council a list of three candidates from the ones available. If the election is opened and any candidate comes forward, the procedure established in the Judicial Career Law will be followed (&).

**100:** National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

**75:**

**50:** Most national-level judges selected meet these qualifications, with some exceptions.

**25:**

**0:** National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

**YES** | **NO**

**References:**

Article 121. In addition to other powers vested in it by this Constitution, the Legislative Assembly has exclusive powers to:

3. Appoint the regular and alternate magistrates of the Supreme Court of Justice.

Article 158. The Magistrates of the Supreme Court of Justice shall be elected for eight years and shall be considered as reelected for equal terms, unless otherwise decided by the Legislative Assembly by a vote of two thirds of its members.

Vacancies shall be filled to complete the full eight year terms.

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

**NO:** A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

## 34. Can members of the judiciary be held accountable for their actions?

92

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

### References:

#### Penal Process Code

Article 142. Reasoning. The resolutions will have a clear and precise reasoning concerning facts and law applied to coincide with their decisions, as the value given to the proof presented.

The simple enumeration of these elements will never imply reasoning. The same case applies for the mention of tests, affirmations, treatises, common phrases, the description of the facts or the mention of the elements of proof.

There is no reasoning when not using the rules of objectiveness regarding the primary elements of proof.

The resolutions without reasoning are not binding.

#### Civil Process Code

Article 155. Requirements for the sentence. The sentences should consider every one of the topics that were discussed, with the correspondent division of the response for each, when there are several of them. They can not consider other topics than the ones presented before the judge, and the principle of non ultra petita must be followed. The sentence will also imply: (&)

3) In separate enumerated paragraphs beginning with the word Considering, the judge will make:

ch) A concrete declaration of the facts that the tribunal considers proven, quoting the elements of proof demonstrating them and their correspondent pages in the file.

d) When presented, a summary of the facts brought by the subjects, concerning the resolution, that the tribunal considers not proven, with the reasoning for considering this.

e) An analysis on the merits presented by the subjects, of the exceptions presented and the matter of the cost of the procedure, with the reasoning and quotes of treatises and laws applicable (&)

**YES:** A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

**NO:** A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

### References:

It is extracted from a legal regime, the necessity of compelling the judges to give reasons for their decisions. In Costa Rica, this disposition is functional.

**100:** Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

**75:**

**50:** Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

**25:**

**0:** Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

**References:**

Organic Law of the Judicial Branch.

Article 184. The Court of the Judicial Inspection is a dependent organ of the Supreme Council; it exercises regular and constant control on all the officials of the Judicial Power, included those of the Organism of Judicial Investigation and with the exceptions indicated in the two previous articles; it watches the adequate fulfillment of their duties; it proceeds with the complaints to that they present themselves against these officials; it investigates the information acknowledged about any possible violation and solves the matters concerning the disciplinary regime, not excluding the attributions given to other organs and functionaries of the Judicial Branch.

Article 59. It is a duty of the Supreme Court of Justice:

12) Exercise the disciplinary regime of its own members and the ones of the Supreme Council of the Judicial Power, according to legal dispositions.

Article 66. It is a duty of the Court to name, special and temporary, permanent commissions. The following are permanent commissions:

5) The one about labor relations that shall intervene, for petition of the interested persons, about the conflicts derivative of the establishment and application of labor policies in general and about the disciplinary regime, regarding the employees of the Judicial Power (&)

Article 67. The Supreme Council of the Judicial Power is a subordinate organ of the Supreme Court of Justice and its required to administrate and discipline this Power, according to the Political Constitution and what it is established in the present Law, with the purpose of ensuring the independence, efficiency, prudence and correctness of the tribunals and to guarantee the benefits of the judicial career.

Article 81. It is a duty of the Supreme Council of the Judicial Power: (&) to enforce the disciplinary actions against the judicial officials, according to the present Law and not interfering with the faculties of the Supreme Court, the President of the Court and the Tribunal of Judicial Inspection.

**YES:** A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

**References:**

As part of the Judicial Power, the agencies in charge of discipline for the national judges are protected from political interference according to the disposition of article 9 of the Political Constitution.

Political Constitution of the Republic of Costa Rica

ARTICLE 9. The Government of the Republic is popular, representative, alternative and responsible. It is exercised by three distinct and independent branches: Legislative, Executive, and Judicial.

None of these Branches may delegate the exercise of their own functions.

**YES:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

According to the legal dispositions, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations, but some improvements must be performed to make it a more efficient institution.

Source: See the web page of the Inspección Judicial at <http://www.poder-judicial.go.cr/inspeccionjudicial/>

Organic Law of the Judicial Branch.

Article 177. The Supreme Council is required to make periodic visits to every judicial office, which they can do personally or by delegating them to one of its members.

Article 178. The inspections to the judicial offices shall be made at least once every three months and, subsequently, informs shall be created to evaluate the functioning of the administration of justice in the zone.

**100:** The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

**References:**

Yes, the judicial disciplinary agency (Organismo de Inspección Judicial) imposes sanctions and penalties on offenders. There have been, however, some cases of impunity.

**100:** When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

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### 35. Are there regulations governing conflicts of interest for the national-level judiciary?

61

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

**References:**

Law against the Illicit Enrichment of the Public Officials

Article 7. The Office of the Comptroller General of the Republic will establish a registry of the belongings of government officials. In this registry, it will declare the belongings, leases and rights of the functionaries and employees required to do so by the Political Constitution, the law and the Comptrollers office, according to the decree approved by the Office of the Comptroller General of the Republic (&)

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 21. Officials are required to declare their patrimonial situation. The following officials are required to declare their patrimonial situation to the Office of the Comptroller General of the Republic, according to the present law: the members of the national legislature, the president of the Republic, the vice-presidents, the heads of Ministry, the ministers (&) or the officials named with this status; the vice-ministers, the general proprietary and substitute magistrates of the Judicial Power and of the Supreme Court of Elections, the comptroller and the sub-comptroller of the Republic, the defender and the attached defender of the inhabitants, the general attorney and the general attached attorney of the Republic, the general district attorney of the Republic, the rectors, the comptrollers or the sub comptrollers of the national centers of education, the General Regulator of the Republic, the superintendents and intendents of all financial entities; the major ministry officers, the members of the boards of directors, except the control officials unable to vote, the executive presidents, the managers, sub managers, the internal auditing officials and sub officials, the procurement officials of the entire Public Administration and public businesses, all municipal officials and the mayors (alcaldes).

Also the customs employees, the employees who proceed with public bids, other government officials who guard, administer, control or collect public funds, establish revenues or income in favor of the State, who approve and authorize distributions of public funds, according to the enumeration contained in the Regulation of this Law, which also will be able to include subjects of the private sector that administer, guard or are concessionaries of public funds, possessions and public services, who, hereinafter, will be bound by the dispositions of this Law. The comptroller and the sub comptroller of the Republic will send an exact copy of these declarations to the Legislative Assembly, which, regarding its members, will have the same faculties that the present Law assigns to the Office of the Comptroller General of the Republic regarding the rest of the public officials.

**YES:** A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

#### References:

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422).

Article 20. Donations and Gifts Regime. The gifts given to a public official as a manner of courtesy or diplomatic custom will be considered property of the Nation, when its value is higher than the basic salary, according to the definition of article 2 of the Law N° 7337, according to the examination held by the Dirección General de Tributación, if it is considered necessary. The registry and handling of these gifts will be determined by decree; these gifts or the amount resulting from their sale could be given to public aid, health or education agencies, or to the historic and cultural patrimony, as it corresponds. Honor emblems and honorific, cultural, academic or scientific prizes are excluded from these regulations.

Article 16. Prohibition to receive salary contributions. Public officials are only able to receive contributions or benefits stipulated in the Public Law Regime, according to their service contract and legally registered in the public budget. According to this, it is forbidden to receive any other contribution, benefit or salary from natural or juridical persons, national or foreign, regarding the compliance with his duties, in the country or outside its territory.

Civil Service Statute, Law N° 1581-53

Article 39. The duties of the public officials are: (&)

c) To decline benefits, gifts or rewards given regarding the compliance with his duties.

Law of Contratación Administrativa

Article 96 (ter). Dismissal process without employer responsibility:

A dismissal process without employer responsibility will be carried against a public official who violates the following prohibitions: (&)

c) To receive or ask for gifts or benefits from the potential or ordinary private procurement persons of the institution where he works.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

**References:**

That provision is regulated by the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422).

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

**References:**

There are no specific restrictions on judges entering the private sector upon leaving government service.

**YES:** A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

**References:**

Not applicable, due to lack of regulation.

**100:** The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**



**50:** The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | **50** | 25 | 0

**References:**

The so-called Oficina de Inspección Judicial has been effective regulating some cases of bribery, governing gifts and hospitality among members of the Judiciary. However, there are some cases that are impossible to detect.

**100:** The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | **75** | 50 | 25 | 0

**References:**

There is a specific provision included in the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422). According to this provision, auditing the asset disclosure of the judiciary is responsibility of the Office of the General Comptroller of the Republic. See [http://cgrw01.cgr.go.cr/portal/page?\\_pageid=37,110206&\\_dad=portal&\\_schema=PORTAL](http://cgrw01.cgr.go.cr/portal/page?_pageid=37,110206&_dad=portal&_schema=PORTAL).

**100:** National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

**50:** National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

**0:** National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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### 36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

#### References:

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 24. Confidentiality of declarations. The content of the asset disclosure is confidential, except for the own public official, and the intervention of the special commissions of the Legislative Assembly (...).

**YES:** A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

#### References:

According to the legal provision of article 24 of the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422) it is not possible to access to an asset disclosure.

The only information available is the publication of the Judicial Branch finances at its web page at <http://www.poder-judicial.go.cr/>

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Enrichment in The Civil Service (Law N° 8422) it is not possible to access to an asset disclosure.

The only information available for free is the publication of the Judicial Branch finances at its web page at <http://www.poder-judicial.go.cr/>

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## III-4. Budget Processes

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37. Can the legislature provide input to the national budget?

83

37a. In law, the legislature can amend the budget.

**References:**

Political Constitution of the Republic of Costa Rica.

ARTICLE 180. The regular and extraordinary budgets constitute the limit of the action by Public Powers in the use and disposal of State funds, and can be amended by laws proposed by the Executive Branch or by legislative decisions.

Any proposed amendment that implies an increase in or the creation of expenditures shall be subject to the terms of the foregoing article.

However, when the Assembly is in recess, the Executive Branch may alter the intended use of an authorized item or open additional credits, but only to meet urgent or unforeseen necessities in the event of war, internal commotion or public calamity. In such cases, the Office of the Comptroller may not withhold approval of expenditures so ordered and the respective Decree shall imply the convocation of the Legislative Assembly to special sessions to act upon it.

ARTICLE 181. The Executive Branch shall submit to the Office of the Comptroller the liquidation of the regular and any extraordinary budgets, not later than the first day of March following expiration of the year in question. The Office of the Comptroller shall submit it to the Assembly, along with its opinion, not later than the next first day of May. The final approval or disapproval of the items corresponds to the Legislative Assembly.

**YES:** A YES score is earned if the legislature has the power to add or remove items to the national government budget.

**NO:** A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | **50** | 25 | 0

**References:**

The establishment of guidelines and general and specific terms, in the matter of budgetary and wage policy, of employment, investment and indebtedness, is the responsibility of the Autoridad Presupuestaria (Budgetary Authority), in conformity with the Article 21 LAFPP and Article 10 of its regulation. These, as established in Article 10 of this last one, are elaborated having as reference the macroeconomic programming that will be made in joint form by the Ministerio de Hacienda (Ministry of Revenue) and the Central Bank of Costa Rica, in coordination with the Ministerio de Planificación y Política Económica (Ministry of Planning and Economic Policy). These terms are of obligatory observance by all the bodies and entities included in interjections a), b) and c) of the Article 1 LAFPP, as indicated in Article 23. For that reason, they must be published no later than March 31 of the year that precedes the exercise in question. These terms constitute fundamental limits in the process of budgetary elaboration, as specified in Article 45 of the regulation, which indicates that when some of these elements limit the expenditures by specific allotment, group or sub allotment, the necessary adjustments will be made in the productive processes and in the sub allotments of expenditures that are used for each one of them, for a rational use of the budgetary resources destined to each process of production.

**100:** All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

**75:**

**50:** Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

**25:**

**0:** The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**References:**

The legislature is able to monitor the budget process and, by Constitutional disposition, is able to provide inputs and changes.

**100:** Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

**75:**

**50:** Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

**25:**

**0:** Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

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### 38. Can citizens access the national budgetary process?

50

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

**References:**

The procedure is conducted in a transparent manner according to the dispositions of the Political Constitution. There are even limits to the motions of the members of the national legislature to avoid premeditated delays to the final determination of the National Budget.

**100:** Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

**75:**

**50:** There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

**25:**

**0:** Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

**References:**

Influence from citizens is very limited. State universities and other institutions have applied political pressure on some specific items.

**100:** Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

**75:**

**50:** Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | **50** | 25 | 0

**References:**

Public information on that is limited. In general, citizens do not have access to the details of the itemized budget.

**100:** Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

**25:**

**0:** Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

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39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

**References:**

Regulation of the Legislative Assembly (Agreement 2883 of March 9, 1994)

Article 65. Ordinary Permanent Commissions. The Ordinary Permanent Commissions are the following: Government and Administration, Economic Affairs, Finance Affairs, Social Affairs, Juridical Affairs and Agricultural and Natural Resources Affairs.

Article 66. Attributions of the commissions. These commissions will have the following attributions:

c) Finance affairs commission: It shall analyze the national budget and financial matters.

**YES:** A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

**NO:** A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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40. Is the legislative committee overseeing the expenditure of public funds effective?

38

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**References:**

Yes, there is an obligatory report, but generally is not analyzed and taken into account in a non-partisan manner.

**100:** Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

**75:**

**50:** Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

**25:**

**0:** There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | **25** | 0

**References:**

The decisions of the Committee are highly politicized and influenced by partisan interests.

**100:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

**75:**

**50:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

**25:**

**0:** The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | **25** | 0

**References:**

The decision of the Committee are highly politicized and influenced by partisan interests.

**100:** This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

**75:**

**50:** This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

**25:**



**0:** This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

**References:**

Independent investigations have been undertaken in some extraordinary cases, but are not common.

**100:** When irregularities are discovered, the committee is aggressive in investigating the government.

**75:**

**50:** The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

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## Category IV. Administration and Civil Service

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### IV-1. ~~67~~ Civil Service Regulations

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41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

**YES** | NO

**References:**

Political Constitution of the Republic of Costa Rica

Article 191. A civil service statute shall regulate the relations between the State and public employees for the purpose of guaranteeing the efficiency of the administration.

Article 192. With the exceptions that this Constitution and the civil service statute may determine, public employees shall be appointed on the basis of proven ability, and may be removed only on the grounds for justified termination as set forth in the labor legislation; or in case of a forced reduction in services, either because of lack of funds or striving to have a better organization of such services.

General Law of the Public Administration.

Article 113. 1. The public official will have to redeem his functions so that they satisfy the public interest, which will be considered to be the expression of the coincidence of individual interests of the citizens. 2. Public interest will prevail over the interest of the Public administration when it could be in conflict. 3. In consideration of public interest, the values of juridical safety and justice for the community and the individual will be assumed as a priority, and mere convenience may not prevail.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 3. Duty of righteousness. The civil official will be forced to face his management to the satisfaction of the public interest. This duty will be evident, fundamentally, on having identified and having attended to the collective priority needs, in a planned, regular and efficient way, without discriminating the inhabitants of the Republic; also, on having demonstrated honesty and good faith in the exercise of the authorities that gives the law; to insure that the decisions that he should adopt while complying with his attributions and to the objectives of the institution are impartial and, finally, to administrate the public resources according to the principles of legality, efficacy, economy and efficiency (&)

Civil Service Statute, Law N° 1581-53

Article 39. The duties of the public officials are:

- a) To comply with the present law and its regulations and to comply with the inherent obligations of their posts.
- b) When necessary, to keep the confidentiality of the labor matters even after ceasing to work for the State, excluding any criminal act (&)
- c) To decline benefits, gifts or rewards given regarding the compliance with his duties.
- d) To dignify their work and their social life; and
- e) To respect the citizens, in their relations concerning their compliance with the public service, so that any claim against the civil service is avoided.

Also, article 40 of the same law establishes prohibitions for government officials.

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica

Article 191. A civil service statute shall regulate the relations between the State and public employees for the purpose of guaranteeing the efficiency of the administration.

Article 192. With the exceptions that this Constitution and the civil service statute may determine, public employees shall be appointed on the basis of proven ability, and may be removed only on the grounds for justified termination as set forth in the labor legislation; or in case of a forced reduction in services, either because of lack of funds or striving to have a better organization of such services.

Civil Service Statute, Law N° 1581-53

Article 39. The duties of the public officials are:

- a) To comply with the present law and its regulations and to comply with the inherent obligations of their posts.
- b) When necessary, to keep the confidentiality of the labor matters even after ceasing to work for the State, excluding any criminal act (&)

- c) To decline benefits, gifts or rewards given regarding the compliance with his duties.
  - d) To dignify their work and their social life; and
  - e) To respect the citizens, in their relations concerning their compliance with the public service, so that any claim against the civil service is avoided.
- Also, article 40 of the same law establishes prohibitions for government officials.

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

**YES** | NO

**References:**

General Law for the Public Administration

Article 152. 1. The administrative act will be revoked for opportunity reasons, merit or convenience, with the exceptions instituted in the present law.

2. The annulment will only take place when there is a grave difference with the public interest, not regarding the time passed, to the rights created or the nature and further circumstances of the juridical relation that is subject of the annulment.

**YES:** A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

**YES** | NO

**References:**

Law against the Illicit Enrichment of the Public Officials

Article 16. Within a month after ceasing work as a public official, and considering the requirements of this condition, public officials considered in article 7 are required to make a new declaration of possessions, assets and rights, in which they will declare any variation since the last declaration.

Failure to comply with this norm will produce an immediate investigation from the General Comptroller of the Republic, to determine whether in the variations in the assets of the former public official indicate the possible commission of a crime crime. (&)

Article 17. Any former civil official can not be employed again without complying with the obligation in the last article.

**YES:** A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

**NO:** A NO score is earned if no such rules exist.

## 42. Is the law governing the administration and civil service effective?

58

42a. In practice, civil servants are protected from political interference.

100 | 75 | **50** | 25 | 0

### References:

Political interference has been common during the last decades, and especially during recent years. For instance, the recent Costa Rican debate over the national referendum of the Central American Free Trade Agreement (CAFTA) showed the strong influence of certain political and economic actors over public officials and institutions, in many cases twisting arms and putting strong political pressure to obtain specific benefits and approvals.

**100:** Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

**75:**

**50:** Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

**25:**

**0:** Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

### References:

The Constitutional disposition of article 192 is often respected when appointing and evaluating government officials.

Political Constitution of the Republic of Costa Rica

Article 192. With the exceptions that this Constitution and the civil service statute may determine, public employees shall be appointed on the basis of proven ability, and may be removed only on the grounds for justified termination as set forth in the labor legislation; or in case of a forced reduction in services, either because of lack of funds or striving to have a better organization of such services.

**100:** Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

**References:**

Cases of nepotism, cronyism and patronage have been common in public contracts, hiring and other administrative activities.

**100:** Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

**75:**

**50:** Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

**25:**

**0:** Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | **75** | 50 | 25 | 0

**References:**

Every competence for government officials is determined by law or decree and it is protected from the intervention of other officials by the General Law of the Public Administration. When two government officials have doubts about which one is responsible for a given case, the superior body will decide between the competent authorities (according to articles 59 and subsequent of the mentioned law).

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

**75:**

**50:** Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

**25:**

**0:** Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | **50** | 25 | 0

**References:**

Most of the times civil official bonuses constitute only a small fraction of total pay, but sometimes they represent a bigger fraction of their payment.

**100:** Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

**75:**

**50:** Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

**25:**

**0:** Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | **50** | 25 | 0

**References:**

The Government does not adequately publish civil service information.

**100:** The government publishes such a list on a regular basis.

**75:**

**50:** The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

**25:**

**0:** The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

**References:**

In cases it is not applicable, a legal procedure will decide the responsibility of the government.

**100:** The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

**75:**

**50:** The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

**25:**

**0:** The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

**100** | 75 | 50 | 25 | 0

**References:**

In the past year, the government has paid civil servants on time.

**100:** In the past year, no civil servants have been paid late.

**75:**

**50:** In the past year, some civil servants have been paid late.

**25:**

**0:** In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | **50** | 25 | 0

**References:**

There is not an explicit prohibition. Nevertheless, it is extracted from article 16 and 17 of the Law against the Illicit Enrichment of the Public Officials that the review of a new declaration of possessions, assets and rights is supposed to avoid any corruption and further employment to the civil servants that create obstacles to the fulfillment of this verification. Also, further employment would be denied if considering article 20 of the Statute of the Civil Service, which obliges the review of the qualifications of the former civil servant to assign any future employment. However, there are several cases of violation of these principles.

Source: [http://www.nacion.com/In\\_ee/2007/octubre/23/pais1289006.html](http://www.nacion.com/In_ee/2007/octubre/23/pais1289006.html)

**100:** A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

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### 43. Are there regulations addressing conflicts of interest for civil servants?

50

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

**YES** | NO

**References:**

Article 230 of the General Law for the Public Administration.



**YES:** A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

**NO:** A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

**References:**

There are no specific prohibitions or restrictions upon the president, ministers or other public officers wishing to enter the private sector after leaving the government. Only in the Law Against Corruption and Illicit Enrichment in the Civil Service (Law N° 8422), Article 53, officials may not take part in any company that was beneficiary of a public contract signed or approved by the public officer.

**YES:** A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

**YES** | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422).

Article 20. Donations and Gifts Regime. The gifts given to a public official as a manner of courtesy or diplomatic custom will be considered property of the Nation, when its value is higher than the basic salary, according to the definition of article 2 of the Law N° 7337, according to the examination held by the Dirección General de Tributación, if it is considered necessary. The registry and handling of these gifts will be determined by decree; these gifts or the amount resulting from their sale could be given to public aid, health or education agencies, or to the historic and cultural patrimony, as it corresponds. Honor emblems and honorific, cultural, academic or scientific prizes are excluded from these regulations.

Article 16. Prohibition to receive salary contributions. Public officials are only able to receive contributions or benefits stipulated in the Public Law Regime, according to their service contract and legally registered in the public budget. According to this, it is forbidden to receive any other contribution, benefit or salary from natural or juridical persons, national or foreign, regarding the compliance with his duties, in the country or outside its territory.

Civil Service Statute, Law N° 1581-53

Article 39. The duties of the public officials are: (&)

c) To decline benefits, gifts or rewards given regarding the compliance with his duties.

Law of Contratación Administrativa

Article 96 (ter). Dismissal process without employer responsibility:

A dismissal process without employer responsibility will be carried against a public official who violates the following prohibitions: (&)

c) To receive or ask for gifts or benefits from the potential or ordinary private procurement persons of the institution where he works.

**YES:** A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

**NO:** A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

There is no regulation prohibiting civil servants from entering the private sector upon leaving government service.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**References:**

These regulations are generally ineffective because of the existence of various mechanisms to hide benefits to companies related to public officers, or by using the secrecy of the stockholders registry in the so-called sociedades anónimas.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | **50** | 25 | 0

**References:**

Mechanisms of control are generally ineffective.

**100:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

**75:**

**50:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

**25:**

**0:** Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

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#### 44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 24. Confidentiality of declarations. The content of the asset disclosure is confidential, except for the own public official, and the intervention of the special commissions of the Legislative Assembly (...).

**YES:** A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

**NO:** A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Even though the Office of the General Comptroller of the Republic audit the asset disclosures of public officials (See, Mauricio Herrera Contraloría verificará el contenido de las declaraciones juradas available in La Nación newspaper of October 31, 2007), the information presented by these functionaries is not publicly available.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Even though the Office of the General Comptroller of the Republic audit the asset disclosures of public officials (See, Mauricio Herrera Contraloría verificará el contenido de las declaraciones juradas available in La Nación newspaper of October 31, 2007), the information presented by these functionaries is not publicly available.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## IV-2. Whistle-blowing Measures

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45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

81

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

### References:

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 8.-Protection for the accuser of good faith and information that institute administrative procedures. The Office of the Comptroller General of the Republic, the administration and the internal auditing offices of the public institutions and businesses will keep secret the identity of the citizens that, in good faith, present claims for corruption acts.

The information, documents and other evidences from the investigations held by the internal auditing offices, the administration and the Office of the Comptroller General of the Republic that might result in administrative procedures will be confidential during the preparation of the corresponding report.

Once the corresponding report is made and until the final resolution of the administrative procedure, the information kept in the file will be classified as confidential information, except for the subjects involved, who will have free access to every document and proof in the mentioned administrative file.

However, the judicial officials might request the pertinent information, on behalf of the possible existence of a crime against the honor of the accused.

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**References:**

The legal provisions of the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422) are somehow respected, but there are recent cases revealing violations to this dispositions.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 8.-Protection for the accuser of good faith and information that institute administrative procedures. The Office of the Comptroller General of the Republic, the administration and the internal auditing offices of the public institutions and businesses will keep secret the identity of the citizens that, in good faith, present claims for corruption acts.

The information, documents and other evidences from the investigations held by the internal auditing offices, the administration and the Office of the Comptroller General of the Republic that might result in administrative procedures will be confidential during the preparation of the corresponding report.

Once the corresponding report is made and until the final resolution of the administrative procedure, the information kept in the file will be classified as confidential information, except for the subjects involved, who will have free access to every document and proof in the mentioned administrative file.

However, the judicial officials might request the pertinent information, on behalf of the possible existence of a crime against the honor of the accused.

**100:** Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 8.-Protection for the accuser of good faith and information that institute administrative procedures. The Office of the Comptroller General of the Republic, the administration and the internal auditing offices of the public institutions and businesses will keep secret the identity of the citizens that, in good faith, present claims for corruption acts.

The information, documents and other evidences from the investigations held by the internal auditing offices, the administration and the Office of the Comptroller General of the Republic that might result in administrative procedures will be confidential during the preparation of the corresponding report.

Once the corresponding report is made and until the final resolution of the administrative procedure, the information kept in the file will be classified as confidential information, except for the subjects involved, who will have free access to every document and proof in the mentioned administrative file.

However, the judicial officials might request the pertinent information, on behalf of the possible existence of a crime against the honor of the accused.

**YES:** A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

**References:**

The legal provisions of the Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422) are somehow respected, but there are recent cases revealing violations to this dispositions.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 8.-Protection for the accuser of good faith and information that institute administrative procedures. The Office of the Comptroller General of the Republic, the administration and the internal auditing offices of the public institutions and businesses will keep secret the identity of the citizens that, in good faith, present claims for corruption acts.

The information, documents and other evidences from the investigations held by the internal auditing offices, the administration and the Office of the Comptroller General of the Republic that might result in administrative procedures will be confidential during the preparation of the corresponding report.

Once the corresponding report is made and until the final resolution of the administrative procedure, the information kept in the file will be classified as confidential information, except for the subjects involved, who will have free access to every document and proof in the mentioned administrative file.

However, the judicial officials might request the pertinent information, on behalf of the possible existence of a crime against the honor of the accused.

**100:** Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

**References:**

The Comptroller's Office, the Ombudsperson's Office and the Fiscal General de la Republica, have electronic mechanisms to receive claims or report corruption cases.

**YES:** A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

**NO:** A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

63

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

There is a small but permanent staff in the Comptroller's Office, the Ombudsperson's Office and the Office of the Fiscal General de la Republica.

**100:** The agency/entity has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0



**References:**

There are specific items to cover those functions in the budget of the three referred institutions.

**100:** The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

**References:**

There are some unexplained delays and unsolved cases.

**100:** The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | **75** | 50 | 25 | 0

**References:**

In many cases, the internal reporting mechanism initiates investigations. However, there are unsolved cases.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

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## 81 IV-3. Procurement

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### 48. Is the public procurement process effective?

93

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

**YES** | NO

#### References:

General Law of the Public Administration.

Article 113. 1. The public official will have to redeem his functions so that they satisfy the public interest, which will be considered to be the expression of the coincidence of individual interests of the citizens. 2. Public interest will prevail over the interest of the Public administration when it could be in conflict. 3. In consideration of public interest, the values of juridical safety and justice for the community and the individual will be assumed as a priority, and mere convenience may not prevail.

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

**NO:** A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

**References:**

There is a program of the Office of the General Comptroller of the Republic ensuring the professional training of the public officials ([http://cgrw01.cgr.go.cr/portal/page?\\_pageid=37,344738&\\_dad=portal&\\_schema=PORTAL](http://cgrw01.cgr.go.cr/portal/page?_pageid=37,344738&_dad=portal&_schema=PORTAL)).

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

**References:**

Most of the cases are enforced. However, still some unsolved cases and leniency in certain circumstances.

**100:** Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422). Article 21. Officials are required to declare their patrimonial situation. The following officials are required to declare their patrimonial situation to the Office of the Comptroller General of the Republic, according to the present Law: the members of the national legislature, the president of the Republic, the vice-presidents, the heads of Ministry, the ministers (&) or the officials named with this status; the vice-ministers, the general proprietary and substitute magistrates of the Judicial Power and of the Supreme Court of Elections, the comptroller and the sub-

comptroller of the Republic, the defender and the attached defender of the inhabitants, the general attorney and the general attached attorney of the Republic, the general district attorney of the Republic, the deans, the comptrollers or the sub comptrollers of the national centers of education, the General Regulator of the Republic, the superintendents and intendents of all financial entities; the major ministry officers, the members of the boards of directors, except the control officials unable to vote, the executive presidents, the managers, submanagers, the internal auditing officials and sub officials, the procurement officials of the entire Public Administration and public businesses, all municipal officials and municipal mayors (alcaldes). Also the customs employees, the employees who proceed with public bids, other government officials who guard, administer, control or collect public funds, establish revenues or income for the State, who approve and authorize distributions of public funds, according to the enumeration contained in the Regulation of this Law, which also will be able to include subjects of the private sector that administer, guard or are concessionaires of public funds, possessions and public services, who, hereinafter, will be bound by the dispositions of this Law.

The comptroller and the sub comptroller of the Republic will send an exact copy of these declarations to the Legislative Assembly, which, regarding its members, will have the same faculties that the present Law assigns to the Office of the Comptroller General of the Republic regarding the rest of the public officials.

**YES:** A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

**NO:** A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

**YES** | NO

**References:**

Ley de Contratacion Administrativa

Article 5. Principle of equality and free competition. 1- In the procedures of administrative contracting out, the equality of participation of all the potential bidders will be respected. 2- The regulations of the present Law or the dispositions of the specific procedures of each contracting out will not include regulations that prevent the free competition between the potential bidders.

(<http://www.cesdepu.com/foro/lcaforo.htm>).

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

**YES** | NO

**References:**

Ley de Contratacion Administrativa

Article 7. Beginning of the procedure. The contracting out procedure will begin with the administrative decision to promote the bidding, emitted by the head official or the competent subordinate. This decision will be first in the correspondent file and will contain a justification of its origin, a description and estimation of cost of the objective, as well as the chronogram with the tasks and the people in charge of its execution. The justification of the beginning of the contracting out procedure will be in accordance

to what is established in the National Development Plan. When it is applicable, it will be in accordance to the operative annual plan, the budget and the program of institutional acquisition, as it corresponds. (<http://www.cesdepu.com/foro/lcaforo.htm>)

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

**References:**

Ley de Contratacion Administrativa

Article 81. Terms and Competent organs. 1- Individuals can object the bid of the public bid and the brief bid, within the first third of the term to present/display bids. 2- The objection will be presented before the General Comptroller's Office of the Republic, in the cases of public bid and, in other cases, before the contracting administration. (<http://www.cesdepu.com/foro/lcaforo.htm>)

**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

**References:**

Ley de Contratacion Administrativa

Article 90. Ending of administrative procedure. 1- The final resolution that ends a claim procedure will also end the administrative procedure. 2- Within the three days after the communication, any interested individual will be able to oppose the final act, without effect of suspension, before the Contentious-Administrative Superior Court (&).(<http://www.cesdepu.com/foro/lcaforo.htm>)

**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

**References:**

The Administration or the Office of the General Comptroller of the Republic will prohibit the participation in procedures of administrative contracting out, for a period of one to five years according to the gravity of the violation, to the natural or juridical person who acts against the prohibitions established in article 100 of the Ley de Contratacion Administrativa. (<http://www.cesdepu.com/foro/lcaforo.htm>).

**YES:** A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

**References:**

Yes, the prohibition works in most cases. However, there are some contractors that have been selected in procurement bids, even though have had previous and multiple legal problems.

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

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## 49. Can citizens access the public procurement process?

96

49a. In law, citizens can access public procurement regulations.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**YES:** A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

**References:**

Ley de Contratacion Administrativa

Article 42. – Basic Structure. The procedure of public bid will be developed according to the regulations applicable, and the following minimum criteria will be respected: (...) d) The publication, in the Newspaper, of the invitation to participate, as well as of the modifications of the bid and the result of the procurement decision. According to this, the Imprenta Nacional (National Print Shop) is required to make publications within three days following the receipt of the request presented by the administration. (& <http://www.cesdepu.com/foro/lcaforo.htm>).

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

**References:**

The information requests are given within a reasonable time period and the rules of the General Law of the Public Administration require public officials to work under the principles of efficiency and efficacy. However, there are several institutions that yet have to improve their functioning to provide a better service to the citizens.

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

**References:**

The procurement regulations are available for free at the Web site of the Legislative Assembly at [http://cgrw01.cgr.go.cr/portal/page?\\_pageid=37,83891,37\\_166183,37\\_83932&\\_dad=portal&\\_schema=PORTAL](http://cgrw01.cgr.go.cr/portal/page?_pageid=37,83891,37_166183,37_83932&_dad=portal&_schema=PORTAL)

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present law, are of public interest. (&)



Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**References:**

Major public procurements are effectively advertised, even though the criteria and reasons of selection have been polemic in some cases.

**100:** There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**References:**

All public procurement bids are carried out by public institutions and controlled by the Office of the General Comptroller of the Republic and the Legislative Assembly. Citizens can access these results as they are public due to the publicity of the documents.

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Records of public procurement results are publicly available through a formal process.

**75:**

**50:** Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

**25:**

**0:** This information is not available to the public through an official process.

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## IV-4. Privatization

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### 50. Is the privatization process effective?

42

50a. In law, all businesses are eligible to compete for privatized state assets.

**YES** | NO

**References:**

Article 33. All persons are equal before the law and there shall be no discrimination against human dignity (as amended by Law

**YES:** A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

**NO:** A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

**References:**

There are no legal dispositions concerning the privatization processes. The legislature passes the specific laws to decide whether an institution or patrimony of the State is subject to privatization or not according to the attribution given in Article 121 incise 14 of the Political Constitution of Costa Rica.

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

**NO:** A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | **25** | 0

**References:**

There are not legal dispositions concerning the privatization processes, but certainly cases of corruption in privatization processes should be seized by the same legal framework of general corruption legislation. In the past, there were extended privatization-corruption cases (for instance, CODESA during the 70's). — Traffic of influences and legislation in own benefit (for instance, the so-called CERTIFICADO DE ABONO TRIBUTARIO mechanism was a typical example) have been a common practice in Costa Rican politics.

**100:** Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

**75:**

**50:** Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

## 51. Can citizens access the terms and conditions of privatization bids?

40

51a. In law, citizens can access privatization regulations.

YES | **NO**

### References:

There are no legal dispositions concerning the privatization processes.

**YES:** A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

**NO:** A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

**100** | 75 | 50 | 25 | 0

### References:

All the laws, even those concerning the privatization, are published in the Official Newspaper.

**100:** There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | **NO**

**References:**

There are no legal dispositions concerning the privatization processes. The legislature passes the specific laws to decide whether an institution or patrimony of the State is subject to privatization or not.

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | **50** | 25 | 0

**References:**

There are no legal dispositions concerning the privatization processes. The legislature should pass the specific laws to decide whether an institution or patrimony of the State is subject to privatization or not.

**100:** Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

**References:**

There are no legal dispositions concerning the privatization processes. The legislature should pass the specific laws to decide whether an institution or patrimony of the State is subject to privatization or not.

**100:** Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## Category V. Oversight and Regulation

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### V-1. <sup>92</sup>National Ombudsman

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52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

#### References:

Law of the National Ombudsman (Law 7319-92).

Article 1. General Attribution. The Office of the National Ombudsman is the organ required to protect the rights and interest of the inhabitants of the country.

This organ ensures that the functioning of the public sector is according to the moral, justice, the Political constitution, the laws, the conventions, the treaties, the pacts signed by the government and the general principles of law. In addition, he promotes the rights of the inhabitants.

Also, Article 12 of the same law describes the competence and obligation to comply with their duties over the entire public sector.

**YES:** A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

**NO:** A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

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### 53. Is the national ombudsman effective?

98

53a. In law, the ombudsman is protected from political interference.

YES | NO

#### References:

Law of the National Ombudsman (Law 7319-92).

Article 2. Independence. The National Ombudsman Office is related to the Legislative Power and acts with functional, and administrative independence.

The Legislative Assembly will make a yearly evaluation of its performance based on the report presented by the ombudsman.

**YES:** A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

#### References:

The government respects the legal disposition of article 2 of the Law of the National Ombudsman.

**100:** This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

**75:**

**50:** This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**References:**

Since the establishment of the Defensoria de los Habitantes in 1993, no ombudsperson has been removed from office. In fact, his or her removal would require an extraordinary measure and a special vote from Parliament.

**100:** The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Yes, the National Ombudsman (Defensoría de los Habitantes) has a professional full-time staff.

**100:** The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).



100 | 75 | 50 | 25 | 0

**References:**

Indeed, the appointments of the staff have been highly professional and competitive and preserve the independence of the Defensoria de los Habitantes.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Law of the National Ombudsman (Law 7319-92).

Article 29.- Financing. The financing for the Nacional Ombudsman Agency will be included in the Budget of the Legislative Branch.

However, there are no detailed amounts stipulated by law.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**References:**

In its web page, the National Ombudsman Agency makes publicly available reports (<http://www.dhr.go.cr/index2.html>). Furthermore, the National Ombudsman created an Inter-Institutional Link of Transparency to guarantee free access to public information concerning the performance of the public sector and the management of the public funds. Through this system, the National Ombudsman ensures citizen participation and the fight against corruption.

**100:** The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Yes, the Defensoría de los Habitantes has the competence to initiate investigations on its own.

**100:** The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

**75:**

**50:** The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

Following the pattern of the Scandinavian ombudsperson offices, as well as the Defensor del Pueblo institution in Spain, the Defensoría de los Habitantes in Costa Rica issues resolutions that are not legally coercive (no penalties), but are recommendations with enough moral and institutional status to create pressure on public officials.

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

Historically, the Costa Rican government has generally observed the recommendations, resolutions and other documents issued by the Defensoría de los Habitantes. However, in some cases the last two Costa Rican administrations have ignored them.

**100:** Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

**References:**

The Defensoría de los Habitantes is, indeed, one of the most effective and quick responses to citizen complaints of all the public agencies.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

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#### 54. Can citizens access the reports of the ombudsman?

100

54a. In law, citizens can access reports of the ombudsman(s).

**YES** | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**YES:** A YES score is earned if all ombudsman reports are publicly available.

**NO:** A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

The reports of the national ombudsman are frequently publicized online.

**100:** Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting,

custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

The reports of the national ombudsman are frequently publicized online.

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## V-2. Supreme Audit Institution

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55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES

NO

### References:

Political Constitution of the Republic of Costa Rica.

The Office of the Comptroller General of the Republic.

Article 183. The Office of the Comptroller General of the Republic is an auxiliary institution of the Legislative Assembly in its surveillance of the Public Finances; but it has full functional and administrative independence in the performance of its duties. A Comptroller and an Assistant Comptroller shall be in charge of the Comptroller's Office. Both officials shall be appointed by the Legislative Assembly for a term of eight years, two years after the start a presidential term. They can be reelected indefinitely, enjoying the immunities and prerogatives of the members of the Supreme Branches.

The Comptroller and the Assistant Comptroller are responsible to the Assembly for the performance of their duties and may be removed by it by a vote of no less than two-thirds of its members, if their unfitness or misconduct is demonstrated in the proceedings conducted for the purpose.

Article 184. The powers and duties of the Comptroller's Office are:

1. To supervise the execution and liquidation of the ordinary and extraordinary budgets of the Republic; No order of payment against State funds shall be issued unless the respective expenditure has been countersigned by the Comptroller's Office; and there shall be no obligation for the State unless it has been so countersigned;
2. To examine and approve or disapprove the budgets of the Municipal Governments and the autonomous institutions, and supervise their execution and liquidation;
3. To submit a report on an annual basis to the Legislative Assembly, at its first regular session, covering the preceding fiscal year, including a detail of the work of the Comptroller and any opinions or suggestions he may deem necessary for a better management of public funds;
4. To examine, audit and close the accounts of State institutions and public officials;
5. Any other powers vested upon it by this Constitution or the laws.

Law against the Illicit Enrichment of the Public Officials

Article 20. According to the Organic Law of the Office of the Comptroller General of the Republic, it is an exclusive duty of this institution to initiate a secret administrative procedure to investigate the facts sanctioned (penalized) by the present Law, without interfering with the same attribution of the individuals.

In these investigations, the public officials, entities and organisms are required to provide every proof available to the Office of the Comptroller General of the Republic as to permit access to the institutions and collaborate in any necessary way.

The public official and former public officials are required to declare under oath according to the guarantees of article 36 of the Political Constitution and article 276 of the Penal Process Code.

When the Office of the Comptroller General of the Republic considers that the elements of illicit enrichment are present, it will send the investigation to the Public Ministry.

The negligence or hiding of facts, informs or data produced by the public official will be considered a grave violation and will be sanctioned according to the labor law, without excluding further responsibilities assigned according to the present Law or the criminal Law.

Every person aware of facts that might constitute illicit enrichment is required, without any responsibility, to secretly promote the initiation of the investigations before the Office of the Comptroller General of the Republic.

**YES:** A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

**NO:** A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

---

## 56. Is the supreme audit institution effective?

100

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

### References:

Political Constitution of the Republic of Costa Rica.  
The Office of the Comptroller General of the Republic.

Article 183. The Office of the Comptroller General of the Republic is an auxiliary institution of the Legislative Assembly in its surveillance of the Public Finances; but it has full functional and administrative independence in the performance of its duties (...)

Organic Law of the Office of the Comptroller General of the Republic (Law 7428)

Article 2. Independence. In the compliance of its duties, the Office of the Comptroller General of the Republic has absolute functional and administrative independence, regarding any Power of the State, public entity or body. Its resolutions are only bound by the Political Constitution, International conventions and treaties and the Law.

The Comptroller General of the Republic and the Sub-comptroller General of the Republic will answer for their actions to the Legislative Assembly.

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**References:**

According to the legal disposition in article 183 of the Political Constitution, the removal of the General Comptroller of the Republic corresponds to the entire Legislative Assembly. Considering this, the removal will always be justified within the internal discussion in the Assembly by two thirds of its entire composition.

Political Constitution of the Republic of Costa Rica.

The Office of the Comptroller General of the Republic.

Article 183. (...) The Comptroller and the Assistant Comptroller are responsible to the Assembly for the performance of their duties and may be removed by it by a vote of no less than two-thirds of its members, if their unfitness or misconduct is demonstrated in the proceedings conducted for the purpose.

**100:** The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0



**References:**

The Office of the General Comptroller of the Republic has a professional, full-time staff. In principle, the General Comptroller of the Republic has a regular position and a considerable number of other functionaries are also employed by this institution.

Organic Law of the Office of the Comptroller General of the Republic (Law 7428)

Article 3. Representation. The representation of the Office of the Comptroller General of the Republic corresponds to its head, the General Comptroller, who will be able to delegate it in the General Sub comptroller. In the temporary absence of the Comptroller, the Sub-comptroller will have all rights regarding this representation.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**References:**

In effect, the appointments of the staff of the General Comptroller are professional and competitive and preserve the independence of the institution.

**100:** Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The General Comptroller has assured a permanent budget from the National Budget Law, as well from the Ley Orgánica de la Contraloría General de la República (Law-428).

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**References:**

The Office of the Comptroller General of the Republic makes reports publicly available on its Web site ([http://cgrw01.cgr.go.cr/portal/page?\\_pageid=37,106335&\\_dad=portal&\\_schema=PORTAL](http://cgrw01.cgr.go.cr/portal/page?_pageid=37,106335&_dad=portal&_schema=PORTAL)).

**100:** The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

**25:**

**0:** The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

**References:**

Yes, in fact the resolutions of the General Comptroller are compulsory and coercive according to law. Noncompliance exposes public officers and agencies to prosecution by law.

**100:** Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**References:**

Law against the Illicit Enrichment of the Public Officials

Article 9.-The fact that a government official is not included in the enumeration listed in the first paragraph of article 7 does not inhibit the Office of the General Comptroller of the Republic from making the investigations that it considers pertinent, to the effect of establishing the possible illicit enrichment of any public official.

The Office of the General Comptroller of the Republic will be able to look into and investigate the private businesses and activities of the officials bound to this law during an administrative inquiry. Any public entity remains authorized to request to the Controller's office to investigate its administration when it thinks that there are actions that could result in a formal denunciation, without limitation for the Comptroller's Office to do it on its own initiative.

**100:** The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

**75:**

**50:** The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

**25:**

**0:** The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

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## 57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**YES:** A YES score is earned if all supreme auditor reports are available to the general public.

**NO:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The audit reports are available at a reasonable time period at the Web page of the Office of the Comptroller General of the Republic.

Source: See the informs of different investigations at [http://cgrw01.cgr.go.cr/portal/page?\\_pageid=37,83891,37\\_166183,37\\_83996&\\_dad=portal&\\_schema=PORTAL](http://cgrw01.cgr.go.cr/portal/page?_pageid=37,83891,37_166183,37_83996&_dad=portal&_schema=PORTAL)

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

#### References:

The audit reports are available for free at the Web page of the Office of the Comptroller General of the Republic.

Source: See the informs of different investigations at [http://cgrw01.cgr.go.cr/portal/page?\\_pageid=37,83891,37\\_166183,37\\_83996&\\_dad=portal&\\_schema=PORTAL](http://cgrw01.cgr.go.cr/portal/page?_pageid=37,83891,37_166183,37_83996&_dad=portal&_schema=PORTAL)

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered of State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

**References:**

Tributary Code

Article 99.-Concept and faculties. Tributary Administration is considered the administrative organ entrusted to perceive and to control the taxes, whether the Fisco or of other active subjects which are public entities in accordance with the Articles 11 and 14 of the present Code. The above mentioned body can dictate general norms to the effects of the correct application of the tributary laws, inside the limits established by the pertinent legal and regulatory dispositions. Concerning the Tributary Administration of the Revenue Ministry, when the present Code grants a power or faculty to the General Direction of Taxation, it will be understood that it is also applicable to the General Direction of Customs and to the General Direction of Revenue, in their respective competences.

**YES:** A YES score is earned if there is a national agency formally mandated to collect taxes.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

---

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

According to the Statute of the Civil service, the functionaries in the public sector are chosen professionally and for full-time positions.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The tax agency receives regular and permanent funding, as established in the National Budget Law. Also, there are regulations imposed by the Ley Orgánica del Ministerio de Hacienda. <https://www.hacienda.go.cr/NR/rdonlyres/652715CB-A02A-44F9-94A9-57B8413DC418/13002/ActTitulo206.pdf>

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

60. In practice, are tax laws enforced uniformly and without discrimination?

100

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**References:**

The Constitutional disposition of article 33 is respected in Costa Rica.

Article 33 CP. All persons are equal before the law and there shall be no discrimination against human dignity (as amended by Law No. 4123, May 31, 1968).

**100:** Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

**75:**

**50:** Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

**25:**

**0:** Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

---

## 61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

### References:

The Ministry of Revenue (Ministerio de Hacienda) works as a customs and excise agency.  
(<https://www.hacienda.go.cr/NR/rdonlyres/652715CB-A02A-44F9-94A9-57B8413DC418/13002/ActTitulo206.pdf>)

**YES:** A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist.

---

## 62. Is the customs and excise agency effective?

50

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

### References:

There is a professional staff in the custom and excise agency, but many posts are generally underpaid. That circumstance generates lack of competitiveness and efficiency in some crucial functions.



**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | **50** | 25 | 0

**References:**

The custom and excise agency budget is included in the general budget of the Ministry of Finance (Ministerio de Hacienda). Also, the custom and excise functionaries are protected by the civil service general framework, and, in general terms, it constitutes a permanent-professional staff. However, many posts still underpaid and that circumstance generates lack of competitiveness in some crucial functions.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

**References:**

Cases of corruption are recurrently reported at border customs (Peñas Blancas, frontier with Nicaragua, and Paso Canoas, frontier with Panama), basically on import invoices and other import maneuvers.

**100:** Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

**75:**

**50:** Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

**25:**

**0:** Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

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## V-4. State-Owned Enterprises

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64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

### References:

Political Constitution of the Republic of Costa Rica.

The Office of the Comptroller General of the Republic.

Article 184. The powers and duties of the Comptroller's Office are:

4. To examine, audit and close the accounts of State institutions and public officials;
5. Any other powers vested in it by this Constitution or the laws.

Organic Law of the Office of the Comptroller General of the Republic (Law 7428)

Article 4.- Competence. The Office of the Comptroller General of the Republic will have competence over every entity and body of the Hacienda Pública.

The Office of the Comptroller General of the Republic will have possible competence over:

- b) The private persons guarding or administrating, by any right, the public funds and activities indicated in the present Law.

**YES:** A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if this function does not exist.

---

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

The Office of the Comptroller General of the Republic.

Article 183. The Office of the Comptroller General of the Republic is an auxiliary institution of the Legislative Assembly in its surveillance of the Public Finances; but it has full functional and administrative independence in the performance of its duties (...)

Organic Law of the Office of the Comptroller General of the Republic (Law 7428)

Article 2. Independence. In the compliance of its duties, the Office of the Comptroller General of the Republic has absolute functional and administrative independence, regarding any Power of the State, public entity or body. Its resolutions are only bound by the Political Constitution, International conventions and treaties and the Law.

The Comptroller General of the Republic and the Sub-comptroller General of the Republic will answer for their actions to the Legislative Assembly.

**YES:** A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The Office of the Comptroller General of the Republic has full-time staff to comply with its duties of control over the state-owned companies.

**100:** The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

The Office of the Comptroller General of the Republic has regular funding assigned by the Legislative Assembly in every national budget approved in the legislature.

**100:** The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Law against Illicit Enrichment of Public Officials

Article 9.-The fact that a government official is not included in the enumeration listed in the first paragraph of article 7 does not inhibit the Office of the General Comptroller of the Republic from making the investigations that it considers pertinent, to the effect of establishing the possible illicit enrichment of any public official.

The Office of the General Comptroller of the Republic will be able to look into and investigate the private businesses and activities of the officials bound to this law during an administrative inquiry. Any public entity remains authorized to request to the Controller's office to investigate its administration when it thinks that there are actions that could result in a formal denunciation, without limitation for the Comptroller's Office to do it on its own initiative.

**100:** When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The

agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

There is a significant percentage of penalties imposed on offenders, but still a significant number of cases are unsolved by the Office of the General Comptroller of the Republic. For instance, the case of the National Airport management by a foreign firm is still unsolved and has generated extensive national discussion over the past years.

**100:** When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

**50:** The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

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## 66. Can citizens access the financial records of state-owned companies?

75

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**YES:** A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | **50** | 25 | 0

**References:**

The financial records of the state-owned companies are not regularly updated.

**100:** State-owned companies always disclose financial data, which is generally accurate and up to date.

**75:**

**50:** State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

**25:**

**0:** Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | **75** | 50 | 25 | 0

**References:**

The performance of the Office of the Comptroller General of the Republic is effective. However, the excessive amount of legal obligations and cases to review sometimes affects its performance.

**100:** Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

The information requests are given within a reasonable time period and the rules of the General Law of the Public Administration obliges the public officials to work under the principles of efficiency and efficacy. However, there are several institutions that yet have to improve their performance to provide a better service to the citizens.

Political Constitution of the Republic of Costa Rica.

Article 30. Free access to administrative departments for purposes of information on matters of public interest is guaranteed.

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 7. Free access to Information. Considering the actions and behavior of government officials, the budget accounting, custody, auditing, administration, investment and expenditure of public funds, as the information necessary to ensure the efficacy of the present Law, are of public interest. (&)

Law of the National System of Archives.

Article 10. Free access to every document produced or guarded by the institutions stipulated under article 2 of the present Law is guaranteed.

If the documents are considered a State Secret and have restricted access, this condition will expire thirty years after their creation, and shall be handed over for verifiable investigations of scientific or cultural nature, as long as other constitutional rights are not infringed (article 2 of the same Law compels the Legislative, Executive and Judicial Branches and the rest of the public entities. The public and private archives that agree to comply with these dispositions may be required as well).

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

**References:**

To obtain financial records of state/owned enterprises sometimes might be difficult, not because of their economic cost, but because the information is not always available. Some high ranking offices still use the concept of confidential information to hide financial and technical information. Costa Rica lacks the habeas data constitutional remedy, and, sometimes this obligation is not fully fulfilled, despite the requirements of the Comptroller Office agency or the specific demand of the Constitutional Chamber, using the Recurso de Amparo remedy.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 90 V-5. Business Licensing and Regulation

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### 67. Are business licenses available to all citizens?

88

67a. In law, anyone may apply for a business license.

YES | NO

**References:**

Article 33 of the Political Constitution. All persons are equal before the law and there shall be no discrimination against human dignity (as amended by Law No. 4123, May 31, 1968).

Commerce Code Article 17. It is considered mercantile, independently of its purpose: a) The society in collective name; b) The society in simple silent partnership; c) The society of limited responsibility; and d) The corporation.

Article 19. The constitution, modification, dissolution, merger and any other act that modifies the structure of a business society will necessarily have to be recorded in a public document, published in the Official Newspaper and inscribed in the Mercantile Record. The business societies inscribed in the Mercantile Record will have legal capacity (personería jurídica). (&)



Article 1. According to the present Law: a) Foreign Company is any natural or juridical person who, being foreign, holds commercial activities within the country, by itself or by means of subsidiary or subsidiary divisions. b) "Representative of Foreign Companies" is every natural or juridical person that, continuously and with autonomy with or without legal representation-, prepares, promotes, facilitates or ensures the sale or distribution of goods or services given or sold by Foreign Companies. The productive sector has been forced to quickly join a very competitive, complex and changing sector due to the dynamics of International Trade. Government institutions involved in this process have also been forced to adjust to this dynamics in order to help the private sector execute its export activities.

PROCOMER, as the main export promotion entity, has accepted the task of facilitating the processes required by the export sector for its exports, centralizing, streamlining and simplifying the process. This has been achieved through the creation of the One-Stop Office of Foreign Trade (VUCE), pursuant to Decree #23141, published on 27 April 1994, and Law 7638, published in La Gaceta (official newspaper) dated 13 November 1996.

General Requirements: If the user is a physical person, the following must be provided: Personal identification card; Residency permit (When foreigners do not have a residency permit, they shall use special codes: 000 for cash export with commercial value and ZZZ for exports with no commercial value).

If the user is a juridical entity, said business corporation shall be duly registered at the Public Registry. A payment of one thousand colones (¢1,000) shall be made at the One-Stop Office to register or renew the Exporter Register, both the electronic and the manual versions. (<http://www.procomer.com/tramites/index.cfm?queHacer=loadPage&page=actualiz>).

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

**NO:** A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

**References:**

Commerce Code, Article 23. When a business society is not constituted into a public document according to the law, any individual concerned will be able to prove the existence of a society and the conditions under which it has worked, by using any mechanism to prove it. The associated members have the same right to verify any contract between them.

**YES:** A YES score is earned if there is a formal process for appealing a rejected license.

**NO:** A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

**References:**

Sometimes, the procedures and requirements make the process very slow and bureaucratic. It depends on the kind of business sought and the technicalities involved in it.

**100:** Licenses are not required, or licenses can be obtained within roughly one week.

**75:**

**50:** Licensing is required and takes around one month. Some groups may be delayed up to a three months

**25:**

**0:** Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

To set up a company has low cost. However, the process to obtain the required permits and licenses to develop some activities (import, export, etc.) could be intricate and exhausting.

**100:** Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

---

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

**References:**

There are various legal dispositions concerning the basic business regulatory requirements. For instance, the General Decree to Concede Sanitary Authorization of the Ministry of Public Health, the Sanitary Registry for the Functioning of Establishments related to Registry and Control, among others. These and other regulations are available at the Web page of the Ministry of Public Health (<http://www.ministeriodesalud.go.cr/trarequisitos.htm>).

**YES:** A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

**References:**

The General Decree to Concede Sanitary Authorization of the Ministry of Public Health establishes the requirements.

**YES:** A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

**References:**

The regulations are stipulated in the Laboral Code (Law No. 2, August 23, 1943).

**YES:** A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

---

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

75

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**References:**

The General Decree to concede Sanitary Authorization from the Ministry of Public Health and Environmental Law (Ley del Medio Ambiente) is not adequately implemented in Costa Rica in all cases. In some specific cases, the mechanisms of control are less rigorous and effective.

**100:** Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**References:**

The General Decree to concede Sanitary Authorization from the Ministry of Public Health and Environmental Law (Ley del Medio Ambiente) is not adequately implemented in Costa Rica in all cases. Particular cases of bribery and other corruption activities have made possible deforestation in protected areas, for instance, as well as damages to environmental regulated zones.

**100:** Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**References:**

The General Decree to concede Sanitary Authorization from the Ministry of Public Health and Environmental Law (Ley del Medio Ambiente) is not adequately implemented in Costa Rica in many cases. For instance, regulations regarding sanitary disposal of waste water are widely violated by companies, making the pollution of rivers a continuous and critical problem in the country.

**100:** Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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Category VI. Anti-Corruption and Rule of Law

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VI-1. <sup>86</sup>Anti-Corruption Law

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70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

**References:**

Penal Code

Attempted Crimes

Article 24. Attempted crimes are held when the execution of a crime is started, by acts directly related to its accomplishment and this is not possible for causes not related to the actor.

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

**References:**

Yes.

Penal Code.

Article 214. Simple extortion. A prison sentence of two to six years will be imposed to the one that, in search of unjust profit, forces another with intimidation or grave threat to take a patrimony disposition harming him or a third party.

**YES:** A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

**NO:** A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 47. Receiving, legalizing and hiding possessions. A prison sentence of one to eight years will be imposed on the persons that ensure, transform, invest, transfer, guard, administrate, receive or give a legal appearance to possessions or rights, knowing they were a result of illicit enrichment or illegal activities of a public official, in the exercise of his duties.

Article 55. International Bribes. A prison sentence of two to eight years will be imposed to the person that offers or gives to a public foreign official or an international organism or entity, directly or not, any bribe, benefit or illegal advantage, to compel this official, by exercising his duties, to perform or omit any act or illegally manage the influence of his post before another official. The penalty will be three to ten years if the bribe is paid to compel the official to go against his duties. The same sanction will be imposed on the officials that accept the bribe according to the last paragraph.

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

**YES** | NO

#### References:

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 47. Receiving, legalizing and hiding possessions. A prison sentence of one to eight years will be imposed to the persons that ensure, transform, invest, transfer, guard, administrate, receive or give a legal appearance to possessions or rights, knowing they were a result of illicit enrichment or illegal activities of a public official, in the exercise of his duties.

Article 55. International Bribes. A prison sentence of two to eight years will be imposed to the person that offers or gives to a public foreign official or an international organism or entity, directly or not, any bribe, benefit or illegal advantage, to compel this official, by exercising his duties, to perform or omit any act or illegally manage the influence of his charge before another official. The sanction will be of three to ten years of prison, if the bribe is paid to compel the official to go against his duties.

The same sanction will be imposed to the officials that accept the bribe according to the last paragraph.

Penal Code.

Improper bribery. Article 340. A prison sentence of six months to two years will be imposed to the civil official who, for himself or another, receives a gift or any other undue advantage or accepts the promise of a compensation of this nature to do an action regarding his functions.

Law of Contratación Administrativa

Article 96 (ter). Dismissal process without employer responsibility:

A dismissal process without employer responsibility will be carried against a public official who violates the following prohibitions: (&)

c) To receive or ask for gifts or benefits from the potential or ordinary private procurement persons of the institution where he works.

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

**YES** | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 55. International Bribes. A prison sentence of two to eight years will be imposed to the person that offers or gives to a public foreign official or an international organism or entity, directly or not, any bribe, benefit or illegal advantage, to compel this official, by exercising his duties, to perform or omit any act or illegally manage the influence of his charge before another official. The penalty will be of three to ten years of prison, if the bribe is paid to compel the official to go against his duties. The same sanction will be imposed to the officials that accept the bribe according to the last paragraph.

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

**YES** | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 45. Illicit Enrichment. A prison sentence of three to six years will be imposed on the person that, taking illegitimate advantage of the public service or the custody, handling or administration of public funds, services or possessions, personally or through a natural or juridical person, benefits his patrimony, obtains possessions, enjoys rights, cancels debts or fulfills obligations affecting his patrimony or the patrimony of juridical persons directly or indirectly concerning him.

**YES:** A YES score is earned if using public resources for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

**YES** | NO

**References:**

Law Against Corruption and Illicit Enrichment in The Civil Service (Law N° 8422)

Article 45. Illicit Enrichment. A prison sentence of three to six years will be imposed to the person that, taking illegitimate advantage of the public service or the custody, handling or administration of public funds, services or possessions, personally or through a natural or juridical person, benefits his patrimony, obtains possessions, enjoys rights, cancels debts or fulfills obligations affecting his patrimony or the patrimony of juridical persons directly or indirectly concerning him.

Law of Contratación Administrativa

Article 96 (ter). Dismissal process without employer responsibility:

A dismissal process without employer responsibility will be carried against a public official who violates the following prohibitions: (&)

c) To receive or ask for gifts or benefits from the potential or ordinary private procurement persons of the institution where he works.



**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

**YES** | NO

**References:**

All the criminal regulations concerning money laundering are stipulated in the Penal Code (<http://www.asamblea.go.cr/ley/leyes/4000/4573.doc>).

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

**YES** | NO

**References:**

All the criminal norms concerning conspiracy to commit a crime are stipulated in the Penal Code (<http://www.asamblea.go.cr/ley/leyes/4000/4573.doc>).

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

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71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

**References:**

Costa Rica does not have a sole public agency addressing corruption issues, but a systemic group of agencies interacting and fulfilling different roles. Within the range of the Executive Power, the Procuraduría de la Ética Pública— created by Law N 8242 of April 09 of 2002— has the exclusive and special mandate to address corruption issues in the public administration.

Within the structure of the Judiciary, the Public Prosecutor (Ministerio Público) is required to investigate and prosecute cases of corruption and public mismanagement and has played a crucial role during the last years, especially in the scandals of ALCATEL, FISCHER and other big legal cases that jailed two former presidents of Costa Rica and a number of prominent politicians in 2004 and 2005. According to its own 1997 Ley Orgánica and the general law, the Public Prosecutor has functional independence and its procedures are regulated by the Penal Process Code.

Within the structure of the Legislative Assembly, there are, also, two other institutions which play important roles on this matter: the General Comptrollers Office (Contraloría General de la República) and the Ombudsperson (Defensoría de los Habitantes de la República).

**Penal Process Code**

Article 62. Attributions. The Public Ministry will carry out the criminal process in the manner established by the law and will carry out the pertinent and useful procedures to determine the existence of a criminal action. It is responsible for the preparatory investigation, under jurisdictional control in the acts that need it. The representatives of the Public Ministry will have to formulate their requests and conclusions in a motivated and specific form.

Article 63.-Objectivity. In the exercise of his function, the Public Ministry will adapt its acts to an objective criterion and will look over the effective fulfillment of the guarantees recognized in the Constitution, the International and community law that operate within the country and the law. It will have to investigate not only the circumstances that allow verification of the accusation, but also those that are of use to free the accused from responsibility; also, it will have to formulate the requests and instances according to this criterion, even when in benefit of the accused.

**YES:** A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

**NO:** A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

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72. Is the anti-corruption agency effective?

83

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

**References:**

In general, there are acceptable levels of independence in the different institutions devoted to the fight of corruption and the partisanship is not rampant and common, as in other areas of the public administration.

For instance, the Procurador de la Etica en la Función Pública has been protected by the levels of independence of the General Attorney Office. The Public Prosecutor Office, also, has gained independence and prestige during the last 10 or 15 years. The same is valid for the General Comptroller Office and the Ombudsperson. There have been cyclical attempts of political interference from the Executive Power in some specific events, but in general those institutions have protected acceptable levels of independence.-

**YES:** A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

In general, there are acceptable levels of independence in the different institutions devoted to the fight of corruption and the partisanship is not rampant and common, as in other areas of the public administration.

For instance, the Procurador de la Etica en la Función Pública has been protected by the levels of independence of the General Attorney Office. The Public Prosecutor Office, also, has gained independence and prestige during the last 10 or 15 years. The same is valid for the General Comptroller Office and the Ombudsperson. There have been cyclical attempts of political interference from the Executive Power in some specific events, but in general those institutions have protected acceptable levels of independence.-

**100:** This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

**75:**

**50:** This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

**References:**

According to the specific Leyes Orgánicas and by Constitutional mandate, in the case of these 4 institutions (Procuraduría de la Etica Publica; Public Prosecutor; General Comptroller Office and Ombusperson) the procedure of removal is not easy and it requires special requirements and justifications. In general terms, the head of those offices are protected from political interference and retaliation.

**100:** The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director(s) can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

**References:**

Supposedly, and according to law, appointments to these 4 institutions are based on professional criteria and, in most of the cases, the head of these offices have shown high standards and capabilities. However, there have been cases of direct political influence in some appointments or in some agency decisions about relevant issues affecting private business.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

The 4 agencies have full- time, permanent staff, regulated by their specific Leyes Orgánicas and the Ley de Servicio Civil.

**100:** The agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Yes, there is a permanent budget for the 4 agencies, as part of the regular National Budget.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**References:**

Yes, the 4 agencies comply with the obligation of presenting before the Parliament regular reports. However, only in some specific cases these reports are made public and subject to general scrutiny of citizens.

**100:** The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**References:**

The four agencies have different powers and capabilities to exercise their duties. The Public Prosecutor Office is the most influential and effective, as result of its specific mandate related to the public prosecution of cases for violations against common goods. Nevertheless, the General Comptroller Office, the Ombudsperson and the Procuraduría de la Ética Pública have their range of influence.

**100:** The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

**75:**

**50:** The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

**25:**

**0:** The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

The Procuraduría de la Ética Pública is very recent and, therefore, it is premature to evaluate its results. Citizens generally prefer

to submit their claims to the Public Prosecutor Office. However, the Procuraduría de la Etica is created to initiate investigations whenever necessary and appointments are being made to achieve this legal mandate.

The General Comptroller Office and the Ombudsperson have, also, autonomy to initiate public investigations and, eventually, submit the cases to the Public Prosecutor Office.

**100:** When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

**75:**

**50:** The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

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### 73. Can citizens access the anti-corruption agency?

75

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

#### References:

There is a prompt response, but the efficiency may be improved. The challenges to the obligations of the Public Ministry are stated in its Annual Inform available at <http://ministeriopublico.poder-judicial.go.cr/transparencia/memorias.html>.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

**References:**

The range of cases varies according to kind of legal violation or type of corruption. Many cases are submitted to the Ombudsman, or directly to the Public Prosecutor Office.

The Procuraduría de la Ética Pública is less known than the other institutions, as a result of its recent creation. In the case of the General Comptroller Office, most of its investigations is ex-officio, and not generated by citizen claims.

**100:** Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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86  
VI-3. Rule of Law

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74. Is there an appeals mechanism for challenging criminal judgments?

67

74a. In law, there is a general right of appeal.

YES | NO

**References:**

Organic Law of the Judicial Branch

Article 66. Concerning their legitimate area and within the territory of their jurisdictions, the superior tribunals have the following duties and attributions:

B. In Civil Law: (& 1) To revise the appeal processes against cases and incidents decided by the civil tribunals (&)

C. In Commerce Law: (& 1) To revise the appeal processes against cases and incidents decided by the commerce tribunals (&)

Article 63. Concerning their legitimate area and within the territory of their jurisdictions, the Court of Appeals have the following duties and attributions:



2. In Civil Law: (& 1) To revise the appeal processes against cases and incidents decided by the civil tribunals (&)
3. In Commerce Law: (& 1) To revise the appeal processes against cases and incidents decided by the commerce tribunals (&)
3. In Criminal Law: (& 1) To revise the appeal processes against cases and incidents decided by the penal tribunals (&)

**YES:** A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

**NO:** A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | **50** | 25 | 0

**References:**

There is high percentage of appeals delayed by the Judiciary. The Judiciary mechanism is still slow and bureaucratic.

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

**References:**

It is depends on the legal representation and the complexity of the case. In some instances, legal expenses and honoraria could be very high.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

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## 75. In practice, do judgments in the criminal system follow written law?

75

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

### References:

Since the adoption of the new Criminal Process Code, the judgments in the criminal system are oral. However, judgments in the criminal system are conducted according to the established code and following strict procedures. There are no exceptional cases in which individuals are treated by a separate process.

Sources: See the article of Martín Castro Gargurevich "Nuevo Código Procesal Penal: principales cambios y desafíos." at [http://www.cajpe.org.pe/Nuevoddhh/Art%C3%ADculo\\_Nuevo\\_Modelo\\_Procesal\\_Penal.pdf](http://www.cajpe.org.pe/Nuevoddhh/Art%C3%ADculo_Nuevo_Modelo_Procesal_Penal.pdf).

### Penal Process Code

Article 326. Beginning. The judgment is the essential phase of the process. It will be carried out on the base of the accusation, orally, publicly, in a contradictory and continuous manner.

Article 333. Orality. The hearing will be oral; thus the accused and other subjects will follow this principle. Those who are unable to speak or unable to do it in an intelligible way in Spanish, will formulate his questions or responses in writing or by means of interpreters, reading or translating the questions or the responses. The resolutions of the court during the hearing will be dictated verbally; all those involved in the process will be notified of the courts pronouncement, which will be duly recorded.

**100:** Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

**75:**

**50:** Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

**25:**

**0:** Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

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## 76. In practice, are judicial decisions enforced by the state?

100

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

**References:**

The state follows the resolutions of the national judges.

**100:** Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

**75:**

**50:** Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

**25:**

**0:** Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

---

77. Is the judiciary able to act independently?

100

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

**References:**

Political Constitution of the Republic of Costa Rica

ARTICLE 9. The Government of the Republic is popular, representative, alternative and responsible. It is exercised by three distinct and independent branches: Legislative, Executive, and Judicial. None of these branches may delegate the exercise of their own functions.

A Supreme Electoral Tribunal, with the rank and independence of the Government Branches, has the exclusive and independent responsibility of the organization, direction and supervision of suffrage-related acts, as well as any other functions vested in it by this Constitution and the laws (added by Law N° 5704, June 5, 1975).

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts ).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

The government respects the legal disposition of Article 9 of the Political Constitution.

**100:** National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

**75:**

**50:** National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

**25:**

**0:** National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

**References:**

Organic law of the Judicial Branch

Article 49. (&) The conflicts will be distributed among the Courts, fundamentally by matter. If there is no rule applicable to distribute the work or competence between the Courts, the Supreme Court will decide the correct distribution with an agreement that must be published in the Judicial Newspaper.

The distribution of territorial jurisdiction for the remaining judges is also stipulated in the Organic law of the Judicial Branch.

**YES:** A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

**NO:** A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**References:**

Organic Law of the Judicial Branch.

Article 18. When the Supreme Court or the Supreme Council of the Judicial Power has doubts about the reprimand of any judicial official, incurring in a loss of confidence, it will be able to separate him from his post for the sake of a better public service. (&)

Article 26. In fulfillment of the conditions and procedures established in this Law, the functions of those who serve judicial positions are terminated for:

1. Death of the official or employee.
2. Ending of the period of his appointment or the issue concerning him, or the absent employees return, except for what is declared in articles 64 and 65 of this Law, as for substitute Magistrates.
3. Withdrawal of appointment.
4. Separation for the sake of a better public service.
5. Accepted resignations.
6. Inability to work for more than six months.
7. If the case stipulated in Article 25 of the present law occurs between a judge and his superior.
8. Marriage according to the prohibition of article 25, incises 1 and 2.
9. Being found guilty, with a firm sentence, for any crime concerning the deprivation of his functions or public services, and for being declared bankrupt.

Article 27. The officials in judicial posts will be suspended by the following causes:

1. To be imprisoned preventively and while this measure lasts.
2. A formal accusation is initiated into a judgment for any crime committed in exercise of his functions. The suspension will occur if the Supreme Court or the Supreme Council, as it corresponds, think it suitable, for the nature of the attributed facts and to obtain a better public service. Considering this, the competent judicial authority will communicate to the Court or Council the resolution in the penal procedure, in the procedural moment in which the sentence is firm.
3. Granted License.
4. Imposition of the disciplinary correction of suspension.
5. Preventive Separation. (As amended by Law N° 7728 of December 15, 1997).

**YES:** A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO:** A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

---

## 78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

**References:**

No judge has been physically harmed for adjudicating corruption cases.

**YES:** A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

**References:**

No judge has been physically harmed for adjudicating corruption cases.

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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## 79. Do citizens have equal access to the justice system?

86

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**References:**

Article 33 of the Political Constitution institutionizes the prohibition of discrimination. In accordance with this disposition, judicial decisions are not affected by racial or ethnic considerations.

Political Constitution of Costa Rica

Article 33. All persons are equal before the law and there shall be no discrimination against human dignity (as amended by Law No. 4123, May 31, 1968).

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

**25:**

**0:** Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**References:**

Article 33 of the Political Constitution institutes the prohibition of discrimination. In accordance with this disposition, women have full access to the judicial system.  
Political Constitution of Costa Rica

Article 33. All persons are equal before the law and there shall be no discrimination against human dignity (as amended by Law No. 4123, May 31, 1968).

**100:** Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**75:**

**50:** Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**25:**

**0:** Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

**References:**

Penal Code.

Technical Defense. From the first moment of the criminal prosecution until the execution of the sentence, the accused has right to a professional and technical assistance and defense. For that purpose, he can choose a personal defendant but, in case of not doing so, a public defender shall be assigned.

The right to defense can not be declined.

**YES:** A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

**NO:** A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**References:**

There is an office of Defensores Publicos (Public Defenders) which is free for any citizen in criminal cases.

**100:** State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

**25:**

**0:** State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

In legal non-criminal cases, as civil, commercial or administrative cases, the litigation could be very expensive for a citizen who earns a median yearly income.

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits.



79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**References:**

In legal non criminal cases, as civil, commercial or administrative cases, the litigation could be very expensive for a small retail business.

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

**75:**

**50:** In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**References:**

Geographic location is not a problem in Costa Rica, because the Judiciary has an extended circuit of tribunal and legal offices.

**100:** Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

**75:**

**50:** Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

**25:**

**0:** Courts are unavailable to some regions without significant travel on the part of citizens.

## VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

50

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

### References:

The police and public guardian corps have been historically appointed by political criteria and many of their members change every four years, as a result of the change of administration in the Executive Power.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

### References:

There is a permanent budget of the Costa Rican police and guardian corps, but it is clearly limited and insufficient to respond to the problems of violence, robbery and other criminal violations.

**100:** The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

**References:**

During the last decade, the law enforcement agency has not been easily influenced or pressured by political groups. On the contrary, in 2004 the Fiscalia initiated criminal cases against former presidents Calderon and Rodriguez, and sent them to jail, as well as other important public officials in a unprecedented action by the Costa Rican legal system. Nevertheless, in some specific cases evidence of political interference still exists.

Law of Police.

Article 3. Subordination to the civil society. The forces in charge of the public safety will only be of police and they will be subordinated to the civil society. The organization of these forces will be adequate for the compliance with the police service. Their members should refrain from deliberating or claiming beyond the limits of the civil authority.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

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## 81. Can law enforcement officials be held accountable for their actions?

92

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

**References:**

Law of Police.

Article 49- Attributions. The following attributions correspond to the Staff Council:

a) To consider the claims originated against resolutions of any leader of the police departments.

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

**NO:** A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

**References:**

This mechanism is relatively new in Costa Rica and there are no accurate statistics about the time/period responses as a result of citizens' complaints.

**100:** The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

**YES** | NO

**References:**

Penal Process Code

Article 62. Attributions. The Public Ministry will exercise the criminal action in the form established by the law and will initiate the pertinent and useful procedures to determine the existence of a criminal action. It is responsible for the preparatory investigation, under jurisdictional control in the acts that need it. The representatives of the Public Ministry will have to formulate their requests and conclusions in motivated and specific form.

Article 63.-Objectivity. In the exercise of his function, the Public Ministry will adapt its acts to an objective criterion and will look over the effective fulfillment of the guarantees recognized in the Constitution, the International and community law that operate within the country and the law. It will have to investigate not only the circumstances that allow verification of the accusation, but also those that are of use to free the accused from responsibility; also, it will have to formulate the requests and instances according to this criterion, even when in benefit of the accused.

**YES:** A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

**NO:** A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**References:**

The Public Ministry initiates investigations when a claim against an illegal act of the enforcement officials is presented.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

**References:**

Law of Police.

Article 17. Grave violations. Even when not constituting crimes, the following acts will be considered grave violations: the subordination of the members of the police to orders or instructions of foreign governments or entities, as accepting any promise or benefit of a monetary nature for the exercise of his functions or taking advantage of this service, for any natural or juridical person rather than the Costa Rican State. For these violations, and after a hearing, they will be dismissed.

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**References:**

Only the members of the national legislature are immune to criminal proceedings under the internal law of Costa Rica, unless they have been previously suspended by the Assembly or in case of flagrante delicto or when the representative waives it.

**100:** Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

**75:**

**50:** Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

**25:**

**0:** Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.