

The Probity Bill:

An attempt to slow corruption in education

Verónica Alvarado describes the development of the prevention, monitoring, sanction and surveillance measures for the Probity in the Education Sector Bill tabled in 2000, points out the gaps which make it possible for corruption to continue, and formulates recommendations for the fight against corruption in the sector to be continued.

KEYWORDS:

Corruption,
Corruption-free
education,
Ethics,
Probity,
Surveillance.

Proyecto de Ley de Probidad: un intento de frenar la corrupción en educación

Verónica Alvarado hace un recuento del proceso de generación de medidas de prevención, control, sanción y vigilancia propuesto en el Proyecto de Ley de Probidad en el Sector Educación del 2000, señala los vacíos existentes que posibilitan que la corrupción siga su curso y formula recomendaciones para persistir en la lucha anticorrupción en el sector.

PALABRAS CLAVE:

Corrupción,
Educación libre de
corrupción,
Ética,
Probidad,
Vigilancia.

VERÓNICA ALVARADO BONHOTE

Ms. Alvarado is a lawyer who specialises in legislation and education policy. She is on the board of directors of Foro Educativo.

ANY RESEMBLANCE IS PURELY COINCIDENTAL

Twelve years ago, members of Congress from several parties rustled up a series of excuses to avoid passing the Probity in the Education Sector Bill, and left it to be forgotten during a recess. There was little interest in passing it and no courage to speak up against it. This happened in the last plenary congressional session of the 2001-2006 government (*Congreso de la República*, 2006, pp. 2772-2794).

The story begins in 2003, when the Education Committee received reports of irregularities and acts of corruption from the length and breadth of Peru. Members of the public approached Congress in the hope that some congressperson might be interested in their cases, in view of the impunity or lack of timely interest on the part of the competent authorities.

In response to the reports, on June 23, 2004, Congresswoman Gloria Helfer Palacios submitted the Corruption in Education Bill (N° 10864), which was signed by twenty members of Congress from different political parties and had been drafted with the participation of civil servants, teachers, students and civil society organisations. The Bill was not passed, but it led to a number of entities applying some of its mechanisms. These included citizens' watch, the results of surveys of corruption in education circulated via the Ombudsman's reports on the right to education, the Grievance and Reports Committees (CADER), now disbanded, and the Education Ministry's National Committees Against Corruption in Education (2013-2014 and 2015-2016). Some progress was made in the fight against corruption with the enactment of laws to protect whistle-blowers of corruption and to sanction those who made reports in bad faith (DL 1327, 2017). Further laws included the non-applicability of statutory limits on crimes of corruption (Act No.: 30650, 2017).

CASES COMPILED FROM CONSULTATIONS AND THE CORRUPTION-FREE EDUCATION CAMPAIGN

a) Data collection from the competent entities

The Bill was drafted using information from reports published by the Ministry of Education, the Ombudsman's Office (2002-2003), the Education Community Service Office (*Centro de Atención a la Comunidad Educativa*, CACE, 2002-2003) and the Ministry of Education Public Prosecutor's Office.

In 2002, the reorganisation committee in charge of conducting a diagnostic of the regional education departments (*Direcciones Regionales de Educación*, DRE) stated that there was a corrupt power structure throughout the DREs, which concealed information and blackmailed honest regional civil servants. At the time, the committee recommended the reorganisation of the DRE to re-establish the principle of authority on the basis of ethical and technical leadership.

In 2002, the Ombudsman had received 2280 reports of failure to comply with obligations, unlawful actions, neglect of requests, failure to comply with administrative procedure deadlines, slow administration enquiries, the closure and arbitrary intervention of educational entities and schools, graft, lack of transparency, and others.

The Ministry of Education's Public Prosecutor's Office reported that most cases brought before the Judiciary were related to the falsification of papers (certificates and records), the abuse of authority, graft and corrupt civil servants (Helfer, 2004, pp. 36-42).

In 2002, the Education Community Service Desk (*Centro de Atención a la Comunidad Educativa*, CACE) was set up to deal with grievances, reports and queries. Despite its limited resources, that year the desk handled over 1750 reports of corruption related to irregularities in the procedure for requests, records, files and enrolment, crimes against the public trust, nepotism, failure to carry out duties, embezzlement, graft, disorder, corrupt civil servants and undue charges.

b) Consultation in the regions

The students, principals, civil society and DRE civil servants from three regions –Ayacucho, Lambayeque y Loreto–were invited to share their stories of corruption. The findings showed types of corruption similar to those in the reports received from the competent authorities (see Chart 1).

c) "Corruption-free Education" campaign

A campaign was organised in Metropolitan Lima, Ayacucho, Lambayeque and Loreto, as part of a strategy to encourage the public to see the importance of being vigilant to prevent and report acts of corruption in the education sector. A total of 725 reports were received from parents (44 %), teachers (17 %), students (15 %) and the public (19 %).

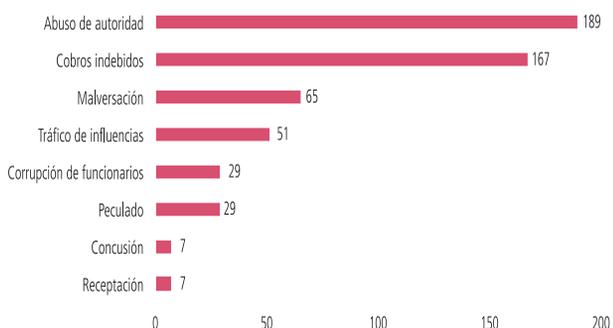
Chart 1

Institutional level	Students	Principals	Civil Society
Schools	Undue charges to pass courses	Falsification of papers	Undue charges for a place for students
	Extra-mural classes as a condition for passing courses	Bribes in different forms: for a pass mark, for hiring staff, for licences, permits	Charges for pass marks
	Illicit enrichment of principal and Apafa (Parent Association)	Collusion with publishing houses to recommend particular school text books	Fraudulent administration of Apafa
	Nepotism	Undue use of public resources	Nepotism
	Impersonation in exams (in higher education centres)		Falsification of school mark records
	Illicit appropriation of donations		Graft
Local education department (UGEL) DRE, Education Ministry	Undue charges for administrative procedures	Undue charges for staff job changes (reassignment, redeployment, hiring)	Undue charges for moving staff (reassignments, deployment, hiring)
	Influence peddling		Ghost employees
	Illicit appropriation of public resources	Abuse of authority	Abuse of authority
	Nepotism	Nepotism	Nepotism
		Undue charges for formal appointment	Undue charges for formal appointment
		Rigged competitions	Rigged competitions

Own formulation from Helfer et al. (2004, pp. 62-63).

Gráfico 1

Tipología



Elaboración propia a partir de Helfer y otros (2004).

The cases compiled showed the kind of offences presented in Graph 1.

Today, twelve years later, the cases remain the same. In 2014, the Ministry of Education reported the list of offences investigated in Metropolitan Lima with the higher rate of corruption: undue charges, presenting false documents, placing conditions on enrolment, misuse of public resources and goods, irregularities in preventive maintenance (Ministry of Education, 2015, pp. 3-4).

In 2014, the Ministry of Education’s Public Prosecutor’s Office reported as the most frequent offences graft,

embezzlement, collusion, incompatible negotiation and bribery.

This all shows that the causes have not been attacked. The validity of the arguments presented by the members of Congress in 2006 must be called into question. They maintained that it was not the right time to create ad hoc mechanisms for the education sector because this would duplicate efforts with entities created to resolve this problem nationwide. What is true however, is that the regulations in general for preventing and sanctioning cases of corruption remain distant from education management departments.

THE WAY PUBLIC POLICY IS BUILT IS AS IMPORTANT AS THE POLICY ITSELF

To get a more comprehensive overview of the problems, the Education Committee called a meeting with public and private entities linked to the fight against corruption, to conduct a joint analysis of the education diagnostic, means of prevention, monitoring measures and citizens’ watch mechanisms. The Ministries of Education and Finance, the National Anti-corruption Committee, the Public Defence Ministry, the Judiciary, the National Audit Office, the Ombudsman and the National Education Council took part, and also civil society organisations including Transparency, Proética, Acción por los Niños, Foro Educativo, Foro Solidaridad, la Universidad

Antonio Ruiz de Montoya, TAREA, Fe y Alegría. These have long-standing experience of promoting transparency and probity in education, and are willing to join forces to strengthen the fight against corruption.

This experience left one great lesson, which is that the initiative and commitment of the education sector alone are not enough: internal corruption does not act alone, it is propagated and filters through, weaving nets of impunity with entities beyond the sector, those in charge of protecting the public and sanctioning those who commit crimes. Hence, for fighting corruption the concerted action between the various competent authorities and the watchful eye of civil society are the foundation of an efficient strategy. Entities in the sphere of education still need to join forces.

MEASURES CONTEMPLATED IN THE BILL

The National System of Probity in Education ***(Sistema Nacional de Probidad en Educación)***

The Bill proposed establishing inter-connected actions to counter corruption in the sector, creating a National System of Probity in Education which would involve the National Education Council, the Ombudsman's Office, the National Audit Office and the National Anti-Corruption Council which would have duties involving prevention and surveillance; and engaging the Ministry of Education, the Judiciary, the Public Defence Ministry and the National Audit Office in order to carry out their monitoring and sanctioning functions more effectively.

Today Peru has the High-level Anti-corruption Committee, chaired by the Judiciary and composed of the Prime Minister's Office (PCM), the Ministry of Justice, the Constitutional Court, the National Council of Judges, the Public Defence Ministry, the National Assembly of Regional Governments, the National Association of Municipalities and the National Agreement, with full voting rights. The Ministry of Education and other sectors also take part, but have only the right to speak. It is worth asking whether in order to deal with corruption in the education sector (large, medium or small scale corruption) it might be feasible to create a subcommittee to oversee prevention, monitoring and sanctions in education management bodies.

Probity plans

The Bill proposed the formulation of a national probity plan which would establish guidelines, objectives, ac-

tions and evaluation indicators for implementing measures for preventing and checking for corruption in the education sector. The plan would be regularly evaluated for improvements to be proposed.

In 2015, the Ministry of Education approved the 2015-2016 Institutional Anticorruption Plan (Ministerial Resolution N° 588-2015-MINEDU), with the aim of promoting probity in public and private activity, and of ensuring the prevention, investigation, verification and effective sanctions of corruption at all levels.

The plan was composed of a matrix of action, indicators, goals and the people in charge with four specific objectives: 1) Inter-institutional liaison and coordination regarding the fight against corruption; 2) Prevention of corruption; 3) Investigation, and the timely and effective sanctioning of corruption in administration; and, 4) Liaison and the active participation of the general public, civil society and the business sector in the fight against corruption.

This was an interesting initiative by the Ministry of Education and it motivated and raised the awareness of the civil servants working in the ministry about the importance of working transparently, complying with ethical standards of behaviour, being accountable, dealing with cases with due diligence, and fostering the open data policy. Nevertheless, the plan no longer exists, it was impossible to extend the experience to all the regions and the initiative never reached schools. The question here would be how to make initiatives like this one sustainable and to extend them to all the instances of education management, mainly to reach the schools.

Prevention measures for civil servants working in the education sector

The Bill proposed a series of measures to watch over the probity of education sector civil servants, when they enter and when they are promoted within the civil service; it allowed for the disqualification of a civil servant from working in the education sector if found guilty of corruption and established as mandatory the presentation of a sworn statement of income, goods and unearned income for those who handled public funds.

Most of these measures have been incorporated and approved in a variety of regulations, which is a great step forward. Today, the Teaching Career Act (Act

29944, 2012) establishes as one of the requirements for applying for a job in the civil service is that the applicant has not been convicted of corruption as a civil servant (Article 18.1, paragraph 'd'); and the preventive suspension of any education professional who is the subject of a complaint, until the administrative or judicial process has concluded (Article 44). Similarly, the Act stipulates that no civil servant convicted of corruption may enter the civil service in the education sector. The mandatory presentation of sworn statements in the law that regulates the publication of sworn statements of civil servants' income, goods and unearned income (Act 30161, 2014) stipulates that the sworn statement must be presented every year by those in charge of treasury systems, budget, accountancy, auditing, and logistics in government departments.

Other prevention and surveillance measures

The law also contemplates the participatory formulation of codes of ethics in each education management department, as an instrument that will give guidance to teachers and civil servants on how to take decisions and act ethically. There is in fact a Code of Ethics for the Civil Service which applies to the Peruvian public sector, but this is not a matter of repeating it in every school, but of looking at real and specific cases in each place and discussing the conduct to be expected for the best interest of the students. In its 2013 global report on corruption in education, Transparency International presents cases in countries where it has been shown that *"when codes of conduct exist and are enforced, there are higher levels of ethical behaviour. Codes of conduct for educators have the potential to motivate educators to think about their work in schools and their identity as educators, with a view to improving behaviour and reducing inappropriate practices"* (Transparency International, 2013, p. 267). Hence this is not a matter of regulatory documents that have to be enforced, but of opportunities to establish in a participatory manner ethical standards of co-existence, with a pedagogical focus through which the whole community learns. Might this not be an opportunity to develop competencies of co-existence and democratic participation? Would it not help develop the capacity to discuss matters and argue ethically within the competence of "building their identity"?

There are still no mechanisms for participation or surveillance to address corruption, even though the Education Act created the Regional Participatory Edu-

cation Councils (*Consejos Participativos Regionales de Educación*, Copare), the Local Participatory Education Councils (*Consejos Participativos Locales de Educación*, Copale) and the Institutional Education Council (*Consejo Educativo Institucional*, Conei). Studies show that they have operated partially. However, this is the foremost entity for watching, and requesting information with the support of the Transparency and Access to Public Information Act, demanding accountability and access to data, informing the education community about progress in the probity laws, creating channels by making the most of the social media etc. In its strategic objective 4, the National Education Project proposes strengthening the entities for participation and surveillance of civil servants' ethical behaviour as a way to achieve sound ethical standards in education management. For these entities established in the Education Act, recovering legitimacy and people's trust is a great challenge.

MONITORING AND SANCTIONING MEASURES

In the face of impunity and the hopelessness of many educators involved, the Probity Bill proposed a special procedure for reports and grievances related to corruption to be dealt with swiftly. Today we know that if processes are properly established, if there are enough human resources and if they are suitable and competent, reports can be attended within the period established in the laws in force. It is important to have political will to modernise and optimise the administrative and criminal procedures and have the adequate technology infrastructure for all the local and regional education departments in the country to be inter-connected with the Ministry of Education so that up-to-date, and reliable information can be accessed. This issue is still pending.

Anti-corruption legislation has also made progress by establishing the protection of corruption whistle-blowers, the sanctioning of reports made in bad faith and the automatic dismissal of the civil servant convicted of the crime of corruption.

However, today neither students, parents nor teachers have a safe and reliable place where they can make a report. They are still afraid of reprisals. There need to be windows with staff trained to handle cases of this kind. The Grievances and Reports Committees (CADER) were an interesting option at one point, and channelled reports, both internal disciplinary and criminal court processes. They provided the public with a service.

SOME CONCLUSIONS

In the current scenario of accusations of corruption at all levels, once again people look to schools as the places where citizens who are ethical and committed to democratic values are formed. They forget that corruption has reached them as well and that in some cases students pay to pass their courses, they see how principals or parents associations (Apafa) illicitly take resources earmarked for other purposes, or they are pressured into buying particular school texts, and face many other forms of corruption. Some people refer to this as “low-level corruption” because it does not involve large sums of money, but it is doubly harmful because it teaches students to tolerate it and be complacent about it. Although this article has described some progress with the regulations proposed in the Bill, some important issues have still to be resolved: the necessary coordination between different authorities concerned with the fight against corruption; the importance of having probity plans that can be evaluated, and from which lessons may be learned; strengthening the entities for participation and surveillance

established in the Education Act; establishing codes of ethics through participation, encouraging discussion and learning; the pressing need for the modernisation and interconnection of information systems between the Ministry of Education, the regional and local education departments, in the framework of an open data policy; the importance of having reliable places for students, parents and teachers to lodge their reports or complaints about acts of corruption; and the implementation of a risk analysis for preventing corruption throughout the education sector.

Finally, to ensure success, experts recommend working on several fronts: on the education front against corruption, keeping students, teachers, parents and the public informed and raising their awareness to “recognise and resolve the ethical dilemmas which arise, and which effectively combat corruption when it occurs”; and producing anti-corruption movements where organised civil society can create mechanisms for monitoring education management entities and demand accountability and responsibility (Hallak and Poisson, 2009, pp. 310-314).¹

BIBLIOGRAPHY

CONGRESO DE LA REPÚBLICA DEL PERÚ. (2006). Diario de debates, segunda legislatura ordinaria de 2005, tomo IV, sesión 20 (matinal). Lima, 11 de julio de 2006.

PODER EJECUTIVO (2017). Decreto Legislativo 1327, Decreto Legislativo que establece la protección de denunciantes de actos de corrupción y sanción de denuncias realizadas de mala fe. Lima, 6 de enero de 2017.

HALLAK, Jacques y Muriel POISSON (2009). Escuelas corruptas, universidades corruptas: ¿qué hacer? París: IIEP.

HELPER PALACIOS, Gloria and others (2004). Educación libre de corrupción: sistematización de una experiencia participativa en la elaboración del Proyecto de Ley Anticorrupción en el sector Educación. Lima: Comunicación Visual.

CONGRESO DE LA REPÚBLICA DEL PERÚ (2012). Ley 29944, Ley de Reforma Magisterial. Lima, 25 de noviembre de 2012.

CONGRESO DE LA REPÚBLICA DEL PERÚ (2014). Ley 30161, Ley que regula la presentación de declaración jurada de ingresos, bienes y rentas de los funcionarios y servidores públicos del Estado. Lima, 28 de enero de 2014.

CONGRESO DE LA REPÚBLICA DEL PERÚ (2017). Ley 30650, Ley de reforma del artículo 41 de la Constitución Política del Perú. Lima, 20 de agosto de 2017.

MINISTERIO DE EDUCACION DEL PERÚ. (2015). Plan institucional anticorrupción del Ministerio de Educación 2015-2016. Lima: Minedu.

MINISTERIO DE EDUCACION DEL PERÚ. (2015). Resolución Ministerial 588-2015-MINEDU, Aprueba el Plan Institucional Anticorrupción del Ministerio de Educación 2015-2016. Lima: Minedu.

TRANSPARENCY INTERNATIONAL. (2013). Global Corruption Report: Education. New York: Transparency International.