



# The state of political finance regulations in Latin America

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# Contents

<b>Acknowledgements .....</b>	<b>iv</b>
<b>1. Introduction .....</b>	<b>1</b>
<b>2. Changes to the landscape since 2012 .....</b>	<b>3</b>
<b>3. Conclusions and recommendations.....</b>	<b>16</b>
<b>References .....</b>	<b>19</b>
<b>About the author.....</b>	<b>26</b>
<b>About International IDEA .....</b>	<b>28</b>

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# 1. Introduction

Political finance has been debated in Latin America for a long time. Accusing opponents of receiving funding from foreign interests—be it the former Soviet Union, US multinationals or the Taiwanese Government—has been a well-rehearsed part of the repertoire deployed in Latin American campaigns for decades. Also, the pervasive presence of drug trafficking and other forms of organized crime in the region has long spawned well-founded concerns about the role of criminal networks in bankrolling parties and candidates (Casas-Zamora 2010; 2013a).

These concerns have been at the base of the region's often pioneering role in regulating political finance. Thus, Latin American countries were early adopters of state funding schemes, in some cases decades before they became part of the regulatory framework in the advanced democracies of North America and Western Europe. For instance, Uruguay introduced direct state funding schemes for parties in 1928, while a similar scheme was only introduced in West Germany in 1959.

The spread of democracy in Latin America since the late 1970s and, in particular, the consolidation of electoral processes as the sole legitimate way to access and retain power, has visibly increased the prominence of political finance issues in the region. Elections in Latin America are more competitive today than ever before, thus imposing increasing financial burdens on political actors. At the same time, after a generation of democratic practice, the region is in a much better position to tackle truly vexing issues for democracy, such as the regulation of political finance. Both the press and civil society have become more assertive and independent. While the need to create a more transparent political finance environment in Latin America is greater than ever, the opportunities to take positive action have also increased.

Some of these long-term trends, related to the consolidation of democracy in the region, have come to a head in the past four years. Latin America has seen a veritable explosion of corruption scandals, some of which involve fraudulent campaign finance practices. These episodes have led to large popular demonstrations, prosecutions of government officials and business executives at the highest level, and acute political crises. All this has lent a sense of urgency to the task of revising the current political finance regulations in the region.

Also, in line with the anti-corruption activism by civil society groups, often with decisive support from the international community, relevant societal efforts to bring transparency and accountability to political finance have recently emerged in Latin America. Unfortunately, there does not seem to be a corresponding flurry of activity to improve the capacities of electoral management bodies (EMBs) to monitor political finance. The effective enforcement of regulatory frameworks remains as challenging in Latin America as ever.

This Discussion Paper examines the main political finance-related events and trends in Latin America over the past four years, paying particular attention to some of the scandals, regulatory tendencies and pro-transparency practices that have emerged in the region. It concludes with several policy recommendations to enhance political finance transparency, accountability and enforcement in Latin America.

## 2. Changes to the landscape since 2012

The past four years have brought to the fore, in dramatic ways, the perils of political finance for democracy in Latin America, and the role of campaign finance as a critical node in political corruption schemes throughout the region. The period has also seen renewed regulatory efforts, which build further on the extensive normative edifice put in place by most Latin American democracies to deal with money in politics (see Casas-Zamora and Zovatto 2016). Proposals to cap private contributions, ban corporate donations, drastically restrict the purchasing of television advertising during campaigns, and enact harsher punishments for political finance violations, have received particular attention in the region since 2012. Alas, both the new and the old components of these normative structures are afflicted by very serious implementation problems. This is, arguably, the single most important challenge when it comes to political finance regulation in Latin America.

### Scandals in Brazil, Chile and Honduras

The recent wave of high-level corruption schemes uncovered in Latin America includes scandals in three countries—Brazil, Chile and Honduras—in which political finance irregularities feature prominently. While the motivations and modus operandi of political actors differ in each case, it seems fair to assume that in many countries the pressures of increasingly competitive elections and the flaws in the implementation of political finance controls have created obvious incentives for reckless fundraising practices.

#### ***Brazil: the Petrolão/Lava Jato case***

The first, and most visible, recent case is that of *Petrolão* (Big Oily) or *Lava Jato* (Car Wash) in Brazil, an affair that contributed decisively to the recent suspension of President Dilma Rousseff, pending impeachment procedures (*The Economist* 2015c, 2015d; Globo.com 2014; Kamm 2015; Fleischer 2015a, 2015b). The *Petrolão* case, Brazil's largest-ever corruption scandal, surfaced in March 2014, when a federal police investigation into money laundering led to the arrest of a former director of the Brazil's giant semi-public petroleum conglomerate, Petrobras (*The Economist* 2015a, 2015b).

Authorities estimate that the Petrobras heist may have reached USD 5.4 billion, of which USD 2.7 billion was spent on bribes for public officials. The inquiry has led to over 110 arrests and many new plea bargains that have catapulted the investigation further. It has exposed, in the words of Brazil's chief prosecutor, a 'complex criminal organization' that involved top Petrobras administrators, political leaders from six different parties, and corporate executives from the country's nine largest construction firms.

The firms' executive officers and managers have been charged with setting up a cartel to secure Petrobras contracts through bribes, and to divert three per cent of their value to slush funds that finance political parties. Political funding from this scheme mainly, but by no means exclusively, benefited the Workers' Party (Partido dos Trabalhadores, PT), which has been in power since 2002. Close to 500 people and firms are under now police investigation. The *Petrolão* scandal has also rattled the nation's political elite: 49 politicians are under investigation, including 13 senators, 22 federal deputies, 2 governors, 13 former federal deputies and 1 former governor. Among them is former Brazilian President Lula da Silva, as well as the leaders of both the Senate and the Chamber of Deputies (Globo.com 2015; BBC News 2016).

The illegal slush funds uncovered by the *Petrolão* scandal are merely one element in a complex story of collusion and corruption at the highest levels of Brazilian business and politics (Maryknoll Office for Global Concerns 2015; Romero and Thomas 2014; Segal 2015). While plain personal enrichment and the extensive bribery required by Brazil's fractious coalition politics are probably the affair's main drivers, the episode has brought attention to the glaring limits of political finance regulations in the country. After all, neither the ban of all paid television advertising during campaigns, or of contributions from government contractors—both of which have in place for many years—proved able to quench Brazilian politicians' thirst for compromising corporate donations.

Brazil's elections are among the most expensive in the Americas, in both absolute and per-capita terms (Casas-Zamora and Zovatto 2016: 63), and even this does not take into account the vigorous and patronage-ridden competition demanded by sub-national elections in a federal, continent-size country.

### ***Chile: the Penta and Soquimich affairs***

While Brazil's recent brush with political finance scandals was the most prominent in the region, it was not the most surprising. That distinction goes to Chile, long considered Latin America's showcase for transparency.<sup>1</sup> Two cases in particular—the Penta and Soquimich affairs, which surfaced in 2014–15—have stirred public debate about the country's problems with tax evasion and illicit campaign finance (Bonney 2015a; *The Economist* 2014; Canepa 2015).

The Penta Group is one of Chile's largest financial conglomerates, with close to USD 30 billion in assets. In August 2014 its owners and top managers were charged with tax fraud, bribery and money laundering, and were eventually convicted in March 2015. Chile's National Prosecutor accused the Penta Group of espousing a 'culture of tax evasion' and generating a 'machine to defraud the state', through fake invoices and false statements, and providing illicit funds to the Independent Democratic Union party (Unión Demócrata Independiente, UDI). By October 2015, 21 people had been indicted, and some convicted, for taking part in a USD 2.8 million tax evasion scheme in 2009–10. The majority of these funds were diverted to a total of 10 election campaigns, 8 of which were run by conservative UDI party leaders and legislators (Bonney 2015b).

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1 Together with Uruguay, Chile has routinely topped the Transparency International (TI) Corruption Perception Index in Latin America. In 2015 it was ranked 23rd out of the 168 countries included in TI's ranking (TI 2015).

Soon after, public prosecutors discovered a similar ruse organized by the Chemical and Mining Society of Chile Sociedad Química y Minera de Chile, Soquimich), a firm worth USD 9.2 billion in assets and one of the world's biggest producers of fertilizers and lithium. Between 2009 and 2014, Soquimich had channelled close to USD 5 million in illicit campaign funds to eight political parties, covering the breadth of Chile's political spectrum. These funds, in fact, were alleged to have boosted the campaigns of President Michelle Bachelet and former president Sebastián Piñera.

The inquiry led to 15 felony charges against prominent leaders of Chile's two main conservative parties, and against high-level Soquimich managers (Craze and Quiroga 2014; Montes 2015a, 2015b; Ramírez 2015). A cabinet member and an ambassador linked to the Bachelet administration were compelled to resign amid the uproar. In March 2015, in response to these and other highly damaging scandals, Bachelet established a high-level Anti-Corruption Commission, which presented 305 policy recommendations, including substantial reforms to campaign finance rules. Some of the Commission's recommendations were adopted in early 2016 (*La Tercera* 2016).

### ***Honduras: the social security scandal***

The third troubling case comes from Honduras. A financial crisis within the government-run national insurance system, centred on the Honduran Social Security Institute (Instituto Hondureño de Seguridad Social, IHSS), prompted various investigations in 2014 that unveiled brazen misuse of funds. In February 2014 an Interpol arrest warrant was issued for the former IHSS director. However, it was not until September 2014 that investigators revealed the magnitude of the heist and its modus operandi through various sham companies.

Prosecutors later estimated that a crime syndicate that may have involved as many as 400 people swindled as much as USD 350 million between 2010 and 2014. Relative to the size of the economy, the irregularities uncovered at IHSS—equivalent to nearly 2 per cent of the country's gross domestic product (GDP)—dwarf the massive bribery scandal at Petrobras by a factor of 20. Press reports revealed how IHSS officials enjoyed an extravagant lifestyle while bankrupting the institution, the results of which caused the premature death of scores of patients for lack of adequate medical staff and supplies (Cernas-Benítez 2014; Figueroa 2014; Lakhani 2015; Rodríguez 2014).

The scandal gathered added impetus in May 2015, when a prominent television journalist disclosed documents showing that the ruling National Party had received campaign contributions from the firms implicated in the IHSS scam. These contributions, estimated to have amounted to USD 94 million, were used to finance the campaign of Honduran President Juan Orlando Hernández. While Hernández eventually recognized that he had received donations from these companies, he denied knowing about their illicit origin.

In July 2015 news of the President's connection to the affair prompted a series of street demonstrations in the capital, Tegucigalpa (where as many as 60,000 people were mobilized), and other cities across Honduras (Berry and Natera 2015; Brodzinsky 2015; Elías and Meléndez 2015; *The Guardian* 2015; *The Economist* 2015d; Meléndez 2015). The protesters made repeated calls for the President's resignation, insisted on the installation of a United Nations-sponsored agency akin to Guatemala's International Commission

against Impunity (Comisión Internacional contra la Impunidad en Guatemala, CICIG) to strengthen legal accountability, and demanded greater transparency in the country's election finance. Amid these developments, in an unrelated case, the journalist who exposed the illicit campaign contributions was charged and convicted with defamation by the spouse of a National Party leader implicated in the scandal, in a court ruling that was widely perceived as an act of reprisal (Palencia and Farías 2015). In sharp contrast, not one person was detained for accepting illicit campaign funds. Nevertheless, the former IHSS director, its board members and two former vice ministers were placed under arrest.

In March 2016 the Organization of American States (OAS) agreed with the Honduran Government to establish a Support Mission against Corruption and Impunity in Honduras (Misión de Apoyo contra la Corrupción y la Impunidad en Honduras, MACCIH), loosely based on the CICIG model (Tabory 2015). This agency will provide international lawyers and prosecutors to oversee investigations conducted by Honduras' Attorney General's Office. Moreover, the new mission counts among its most urgent priorities the promotion of a thorough revision of political finance regulations in Honduras and the provision of technical advice.

These scandals are merely the most well-known and serious examples of the pervasive presence of illicit funding in Latin American elections, despite the existence of legal controls. If one recent trend is to be noted, it is the heightened awareness of the need to revise political finance regulations as a pivotal element of anti-corruption strategies in the region. Multilateral institutions and Latin American civil society groups are placing political finance reform at the heart of their increasingly loud demands for transparency and integrity in the region. However, this is not the only relevant trend. The increased appreciation of the vulnerability of local politics to the perils of political finance corruption also deserves a mention.

## **Weaknesses at the local level**

The scandals recently uncovered in Brazil, Chile and Honduras belong, in a way, to the visible side of politics—that which takes place at the national level, where the attention of the press is a given and political finance controls exist, even if they are poorly enforced. Yet, there is a growing sense in the region that the most problematic exchanges between politicians and firms take place at the local level. Moreover, as shown in several Latin American cases, at the local level the risk of organized crime penetration into the electoral process is most glaring (Casas-Zamora, 2013a).

This realization comes in the wake of three decades of efforts to strengthen political decentralization processes in the region, which have significantly increased the prerogatives and resources enjoyed by local authorities. To take one statistic, the proportion of national public expenditure in Latin America channelled through sub-national entities rose, on average, from 13.1 per cent in 1985 to 19.3 per cent in 2004 (Daughters and Harper 2007: 244–45).

Perhaps the most interesting document on political finance to come out of Latin America recently is a July 2015 report published by CICIG in Guatemala. The report offers a remarkable reconstruction of the dense links between local politicians, construction

firms and criminal syndicates, which are the lifeblood of the funding of political parties in Guatemala. According to the report, these networks, geared towards siphoning off public resources and laundering the proceeds of illicit activities, are one of the root causes of the chronic instability of Guatemala's party system.

Political finance networks, almost entirely articulated around members of Congress and local politicians, have become self-sustaining structures that are offered to the highest bidder, and that effortlessly switch from party to party during the election season as well as between elections. According to the CIGIC report, up to 75 per cent of the money spent in Guatemalan elections may come from state contractors and criminal structures (CIGIC 2015: 41).

Recent studies have found similar links in Brazil, Colombia and Mexico (Speck 2013; Casas-Zamora and Falguera forthcoming; Curzio 2013). In Mexico, a country afflicted by a drug-trafficking maelstrom over the past decade, the collusion of local politicians and criminal syndicates has been a growing concern. The murky events leading to the disappearance of 43 students in the southern state of Guerrero in September 2014 offer abundant reasons to suspect that these links are a fact of life in vast swaths of Mexico (Agencia EFE 2016; GIEI 2016).

The intention to clean up local politics and to improve oversight—including political finance oversight—of local elections was an oft-cited motivation behind the enactment of a wide-ranging electoral reform in Mexico in 2014, which included the re-centralization of election management and the tightening of political finance controls (Navarro 2014). Addressing local-level vulnerabilities to illicit and compromising funding practices is a tall order even for Mexico, which is endowed with a strong, well-funded and generally autonomous electoral authority. In virtually every Latin American country, the enforcement of political finance regulations at the national level remains a pending assignment.

## **Recent political finance reforms: Tougher rules, uncertain enforcement**

Over the past four years, far-reaching reforms of political finance rules have been enacted in five Latin American countries: Chile, El Salvador, Guatemala, Paraguay and Peru. The following sections examine each of these countries in turn. Other, more limited reforms have been introduced elsewhere.

Recurring themes in these legislative efforts include reinforced controls over private donations (including bans on corporate contributions); rules to individualize accountability for political finance violations; more severe penalties against transgressions, including harsh electoral sanctions; new rules geared towards creating a more level playing field with regards to media access during campaigns; and efforts to connect political finance controls to other types of transparency-enhancing rules. However, these changes have left the crucial question of the enforcement of political finance controls largely unaddressed.

### ***Chile: an emerging integrity ecosystem***

In the Chilean case, the most recent political finance reforms came about as a direct result of the significant political fallout from the Penta and Soquimich affairs (see *Tele13* 2016; *La Tercera* 2016). Some of the key changes introduced include:

1. A ban on contributions from private firms or legal entities.
2. A lowered ceiling for individual contributions, which are now capped at 10 per cent of each constituency's spending cap. In the course of one election cycle, individuals may not contribute more than 1000 *Unidad de Fomento* (UF, approximately USD 38,000) for local elections, or more than 2000 UF (approximately USD 76,000) for congressional or presidential elections.<sup>2</sup>
3. Candidates' own contributions are capped at 25 per cent of the allowed electoral expenses.
4. Minor individual contributions of up to 40 UF (approximately USD 1,500) may remain shielded from publicity, although the contributor's identity may be known by the recipient candidate.
5. Pre-election public funding has been doubled to the equivalent of approximately USD 0.75 per vote obtained in the previous election, with post-election reimbursement increased to approximately USD 1.5 per vote.
6. Spending ceilings are cut by 50 per cent, except in the case of local elections.
7. Those who violate key political finance provisions—for instance by giving or receiving contributions that exceed by 40 per cent the legal ceilings, or providing electoral authorities with false financial information—are liable to be sanctioned with hefty fines and up to five years in jail.
8. Elected officials found guilty of gross violations of political finance provisions may see their election overturned.

These changes were voted in with overwhelming political support from across the board. The legislation was part of a much broader package of reforms proposed by the Anti-Corruption Commission appointed by President Bachelet. In addition to political finance provisions, the reform package included changes to rules on lobbying and conflicts of interest, norms governing declarations of assets by public officials, corporate governance, and the creation of systems to monitor transparency and integrity levels in the public and private sector (*Consejo Asesor Presidencial contra los conflictos de interés, el tráfico de influencias y la corrupción* 2015). Most of the changes are yet to be considered by Congress. Nevertheless, the Chilean reforms embody a crucial emerging notion: the idea that political finance rules ought to be seen as part of a much broader integrity-enhancing 'ecosystem'. In the absence of such a system, political finance rules are of limited value to protect the integrity of political institutions, no matter how strict they might be on paper (International IDEA et al 2015).

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2 The *Unidad de Fomento* is an indicator routinely indexed by Chile's economic authorities. In June 2016, 1 UF was equivalent to CLP 26,015 or approximately USD 38, at the prevailing exchange rate.

### ***El Salvador: a failed attempt at reform***

The Salvadoran case is peculiar, in that it constitutes political finance reform that failed even before its provisions were implemented. The reform that created the 2013 Political Parties Act produced three major changes:

1. It required parties to diligently provide information on public and private financing.
2. It prohibited donations from anonymous sources, foreign sources, professional associations and trade unions.
3. It created transparency and oversight mechanisms, such as the registration of donations, among others.

In September 2014 El Salvador's Constitutional Court deemed unconstitutional the articles related to these three changes, and required the Legislative Assembly to rewrite the corresponding parts of the Act. The Assembly's revisions re-established the obligation on political parties to report private funds raised and the names of donors, but also added as a requirement the prior and express consent of these donors. They also required parties to create units for access to information, and established procedures and criteria for determining what information will remain confidential.

However, the Assembly did not re-establish any donor prohibitions or transparency and oversight mechanisms. As a result, the redrafting of the rules created a political finance reporting system which is, for all practical purposes, voluntary (see *Diario Oficial* 2014, 2015). Therefore, political finance in El Salvador remains shrouded in secrecy.

### ***Guatemala: moving towards openness***

The very serious allegations made by the CICIG report in Guatemala—which were divulged in the middle of the massive, unrelated corruption scandal that toppled President Otto Pérez-Molina in late 2015—gave impetus to an overhaul of the country's political finance rules. Unlike many previous reform attempts which failed to pass Congress, the Political Party and Electoral Law was sanctioned in May 2016 (Congreso de la República de Guatemala 2016; *La Prensa Libre* 2016). Specifically, the new law introduces the following reforms:

1. Specific proportions of public funds are allocated to parties' training activities and subnational organization.
2. Parties and candidates will not be allowed to purchase electoral advertising. Only the Supreme Electoral Tribunal will be allowed to purchase advertising during the campaign, at special rates, and will distribute it equally between all the parties.
3. Party authorities at the national and local levels are made responsible for compliance with political finance regulations and are liable to administrative or criminal penalties in case of violation.
4. Parties that violate political finance rules may be punished with fines (up to USD 250,000), suspension of public funding, or even the cancellation of the party's registration.

5. The General Accounting Office will share with the electoral authority the responsibility to oversee political finance, while banking and telecommunication authorities as well as other public officials will be obliged to share information to monitor political finance activities.

The new media access rules mark a remarkable transformation in a country where, until very recently, private broadcasters exerted a disturbing influence over political actors (see Casas-Zamora and Zovatto 2016: 85; CICIG 2015: 48–49). As in Chile, the decision to introduce information-sharing practices points towards a more comprehensive understanding of the tasks required to monitor political finance.

### ***Paraguay: comprehensive but unenforced reforms***

Paraguay is currently ranked 130th of 168 countries included in the Transparency International (TI) Corruption Perception Index (TI 2015). Only Venezuela ranks lower in Latin America. Paraguay's 2012 Political Finance Law was, in principle, an attempt to rein in a peculiarly opaque side of politics in a country long infested with corruption. The new law appears comprehensive in its intent. It includes, among others, the following provisions:

1. Bans on contributions from foreign sources (except for party training and education), state contractors and anonymous donors.
2. Private contributions, either from individuals or firms, are capped at 5,000 times the annual minimum wage (equivalent to approximately USD 63,000).
3. Public funding to be distributed annually to parties which received at least 2 per cent of the vote in the previous election, equivalent to a sum between 5 per cent and 15 per cent of the daily minimum wage (approximately USD 0.6–1.9) per vote obtained.
4. Electoral expenditures are capped at 10 per cent of the daily minimum wage (approximately USD 1.3) per voter and per constituency.
5. Parties must submit an annual report to the electoral authority, as well as a post-electoral report, detailing all their income sources and expenses. This report will be public and will be audited by the State's accounting office.
6. Parties must appoint a campaign manager who will be personally responsible for any violation of political finance rules.
7. Those found guilty of violating financial controls, including donors, will be liable to fines and criminal sanctions of different kinds. Parties that violate spending limits may be liable to fines and lose their right to receive state subsidies for up to five years.

Unfortunately, if the first election held after the enactment of this legislation offers any guide, each and every provision of this law remains unenforced, and the finances of Paraguayan parties and candidates remain as obscure as ever. To this we will return below.

### **Peru: relevant but modest reforms**

In late 2015, in the run-up to the 2016 general elections, Peru enacted a new normative framework to regulate political finance (*La República* 2015). While relevant, the enacted changes are slightly more modest than those seen in the other countries described above. They include:

1. Capping private donations from individuals and firms by limiting the amount that parties (approximately USD 240,000, previously USD 72,000) or candidates (approximately USD 36,000) may receive from a single source.
2. Strengthening the public funding system, which will distribute approximately USD 1.2 per vote in each 5-year election cycle among eligible political parties. Although public funding was introduced in 2003, the provision was made contingent on the availability of public funds. As a result, public funding had not been disbursed prior to the 2016 elections.
3. Obliging parties to report all of their funding sources to the electoral authorities.
4. Strengthening of sanctions in the event of political finance violations, including fines of up to 30 times the amount of proven illegal contributions and, eventually, the temporary cancellation of the offending party's registration.

It is too early to gauge the effectiveness of these changes. However, the challenges of implementation appear daunting in a country where party organizations are extremely fragile, elections are volatile, and sub-national elections are riddled with corruption. The latter problem deserves particular attention, given the increasing evidence of the influence of organized crime on local elections and the extreme opacity of political finance at that level (*El Comercio* 2014; OAS 2014b).

### **Other cases: Brazil and Mexico**

Some of the themes developed in the reforms described above appear in more specific legislative changes recently adopted or under discussion in other Latin American countries. Particularly worthy of mention is a 2015 decision by the Brazilian Supreme Court to ban corporate contributions, on the basis of their distortion of electoral fairness and generation of undue influence over elected officials. This ruling, which came in the wake of the grave revelations of the *Petrolão* case, was later disputed by Congress, which approved legislation reinstating corporate donations as a legitimate funding source.

These provisions were eventually vetoed by President Rousseff, who sided with the Supreme Court's opinion. If properly enforced this change has the potential to significantly alter fundraising dynamics in Brazilian politics, given that corporate sources provide approximately 80 per cent of the funding for candidates, according to one estimate (*La Razón Digital* 2015). The Brazilian and Chilean bans on corporate contributions also echo a decision made by Costa Rica in 2009 (Casas-Zamora 2013b). The enactment of similar measures in other Latin American countries in the near future appears probable.

One of the recurring themes in this normative wave is the strengthening of rules to demand accountability for political finance violations and punish perpetrators. Rules to

individualize responsibility for compliance with regulations—resembling the figure of the ‘electoral agent’ of British origin—are becoming increasingly common, as are stiff sanctions that now routinely include criminal penalties and even electoral penalties, such as the loss of seat for politicians found guilty of grievous transgressions.

This approach was showcased in Mexico’s 2014 political and electoral reforms, which introduced the possibility that the newly created National Electoral Institute (Instituto Nacional Electoral, INE) could annul federal and local elections. Under the reforms, an annulment can take place in instances when spending caps have been exceeded by over 5 per cent; when electoral advertising has been purchased outside the allocation defined by the electoral authorities; or when a campaign has benefited from illicit funding or from the abuse of state resources.

Controversially, these violations are presumed to have affected the electoral outcome if the gap between the winner and the runner-up is less than 5 per cent of the vote. By their nature, these provisions place very taxing responsibilities on the shoulders of the electoral authorities, which must audit the parties’ financial reports in record time and, almost certainly, contend with an upsurge of post-electoral disputes. So far, the application of the new rules, tested for the first time in Mexico’s June 2015 mid-term elections, has been reasonably successful, although questions remain about the quality and thoroughness of the financial audits carried out by the INE (OAS 2015: 4).

## **Strengthening rules on access to the media**

The possibility of annulling an election as a consequence of violations in rules pertaining access to media during campaigns, as seen in Mexico, is an unprecedented practice. This is a symptom of the growing importance ascribed to regulations concerning access to the media during campaigns in Latin America, a trend in which the Mexican experience has proved very influential. There, a far-reaching 2007 reform banned paid political advertising on television and radio, thus creating a model of electoral communication entirely dependent on a complex system of media time allocation governed by the federal electoral authorities.

This reform, intended to create a more level playing field during campaigns, had precedents in Brazil and Chile, and further afield in several countries in Western Europe, where paid television advertising has long been prohibited.<sup>3</sup> Other Latin American countries, such as Argentina, Paraguay and Peru, have used systems of media time allocation across private and public broadcasters, which nonetheless refrain from banning paid advertising. Yet another group of countries, including Bolivia and Uruguay, provides parties with free access to state-owned broadcasters.

The regulation of media access is an area of political finance that, in all likelihood, will see more legislative action in the near future in Latin America. Indeed, the model adopted in Brazil, Chile and Mexico has been replicated, firstly in Ecuador since 2009

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3 Brazil prohibits paid electoral advertising on television, instead guaranteeing the parties a free publicity segment during the election campaign. Chile prohibits paid advertising on free-to-air television but provides free segments. However, it is possible to take out electoral advertising on radio stations and cable television, and in the print media.

and now, as we have seen, in Guatemala.<sup>4</sup> Meanwhile, Costa Rica is considering the allocation of media time on public and private broadcasting services, complemented by a limited allowance for paid political advertising (Sobrado-González and Picado-León 2015). In fact, future legislative action may well be directed towards revisiting some of the recent reforms in Mexico, where the model adopted in 2007 has been widely criticized by the parties as giving an inordinate power to electoral authorities to micro-manage their campaign efforts and curtail freedom of expression (OAS 2015: 5–6).

## The glaring flaw: weak enforcement

While interesting and valuable, the normative efforts described in this analysis fail to address the problem that lies at the heart of the region's political finance predicament: the limited interest in enforcing existing legislation and the correspondingly weak capabilities to do so. While, as shown above, there is increased recognition that a strong set of sanctions against violations is a cornerstone of any political finance system, there is not enough emphasis, as yet, on enhancing the credibility of the sanctions already in place.

Examining the capabilities of the region's electoral authorities goes well beyond the objectives of this paper. Yet, a few scattered pieces of evidence give an idea of the problem at hand. The reports from the electoral observation missions undertaken by the OAS, which over the past five years have incorporated the regulation and enforcement of political finance rules as one of the elements of the electoral process to be observed, provide a treasure trove of findings regarding the exceedingly low levels of transparency that afflict political finance throughout the region.<sup>5</sup>

The 2013 general elections in Paraguay, which saw the first attempt to implement the ambitious regulatory framework introduced in 2012, offers a good example of the challenges facing the region. The final report of the OAS Election Observation Mission included a damning indictment of the lack of enforcement of the new political finance provisions:

The OAS Mission considers the approval of the Law No. 4,743 of 2012, that regulates the funding of political parties, an important step forward and, had it been applied, it would have strengthened the fairness and transparency of the electoral process. In the absence of enforcement, the Mission witnessed the presence of weak government control mechanisms to oversee private politico-electoral funding and the lack of limits to campaign expenditures.  
(OAS 2013: 44)

Moreover, and tellingly, the political finance scandals described above have not been uncovered by the authorities in charge of monitoring the parties' financial affairs, but by other overseeing bodies—including judicial and tax authorities—as well as investigative

<sup>4</sup> According to Ecuador's Democracy Code, in effect since 2009, the state finances 40% of campaigns by means of the Electoral Promotion Fund (exclusively for media subsidies). At the same time, parties are prohibited from directly purchasing radio and television airtime, print advertising and advertising on billboards.

<sup>5</sup> The OAS election monitoring reports can be accessed online, <<http://www.oas.org/es/sap/deco/moe.asp>>.

journalists. The connection of these episodes of corruption to political finance practices was a realization that came well after they had been uncovered.

The only visible effort in the region to improve the capacities of electoral authorities to monitor political finance comes, arguably, from Honduras. In this Central American country, the political finance reforms that are currently under the consideration of Congress include the creation of the National Office of Financial Control for Electoral Funding, as an autonomous body ascribed to the Supreme Electoral Tribunal (Tribunal Supremo Electoral, TSE). This office would be entrusted with overseeing political finance and disbursing state funding for parties and candidates (*El Heraldo* 2016). Even this proposal leaves unanswered the question of the human and political resources that will be given to this office, in a country where the electoral authority is chronically underfunded and faces very serious challenges in the organization of credible elections. Nevertheless, the reforms, which are largely being undertaken under the aegis of the OAS-sponsored MACCIH, are a sign that actors beyond the political system are active in promoting political transparency in the region.

## **Other initiatives in favour of political finance transparency and regulation**

One interesting recent occurrence in the region's political finance landscape concerns the growing attention that international actors are devoting to political finance, in the context of the fight against corruption and impunity. This is most visible in two Central American countries: Honduras and Guatemala.

In Honduras, it is remarkable that the MACCIH undertook the promotion of political finance reform as its first order of business on being installed in early 2016. It has already produced a legislative proposal, which President Hernandez has sent to Congress for discussion.

In Guatemala, as we have seen, in 2015 the UN-sponsored CICIG released a devastating report on the parlous state of political finance practices in the country (CICIG 2015). The report laid out in detail the functioning of the illicit networks that provide the bulk of funding to Guatemalan political actors, as well as the oversized role that wealthy interests and media owners play in the finances of parties and presidential candidates. Anyone who read this report could grasp the extent to which Guatemala's democratic institutions and public policies were compromised—politically as much as ethically—by a rotten political finance system. The report ended with a set of recommendations that, in some cases, were taken up by Guatemalan political actors in the process of drafting the recently sanctioned political finance reforms. There is no doubt that the CICIG report proved instrumental in pushing forward efforts to overhaul political finance laws in Guatemala.

These internationally-driven initiatives in favour of political finance transparency and regulation have been complemented by growing activism on the part of civil society groups. Perhaps the most successful example of this is the development in Colombia of the digital application *Cuentas Claras* (Clear Accounts) by Transparency International's national chapter, *Transparencia por Colombia*, with the support of the United States-based National Democratic Institute (NDI). The application allows parties

and candidates to report, in a standardized digital format, their income sources and expenses, generating in the process an online database (with information per party, candidate, donor, type of income source, type of expense, among other categories) that citizens can easily consult.<sup>6</sup>

*Cuentas Claras* was donated to Colombia's National Election Council (Consejo Nacional Electoral, CNE), which adopted the application as its official reporting tool in 2010. In 2013 the CNE made its use by parties and candidates compulsory. Currently, its use among political actors in Colombia is nearly universal: 93 per cent of candidates used it to report their sources of funding and expenses during the campaign leading up to the 2014 legislative elections (Transparencia por Colombia 2014: 39). Political actors and international observers generally acknowledge that the availability of *Cuentas Claras* is a valuable step towards political finance transparency in Colombia (Casas-Zamora and Falguera forthcoming; OAS 2014a: 2). Nonetheless, the system has a serious limitation in so far as it only collects, organizes and disseminates the official financial information that parties and candidates make available, which is widely considered a very limited approximation of the reality of political finance in Colombia (Casas-Zamora and Falguera forthcoming).

Another recent civil society-based initiative is Uruguay's digital portal, *¿Quién paga?* ('Who pays?'). The portal is very similar to *Cuentas Claras*, and was developed by the journalistic website *Sudestada.com.uy* in the run up to the 2014 Presidential and Congressional elections.<sup>7</sup> Unlike *Cuentas Claras*, this application is yet to be adopted by Uruguay's electoral authorities. Nonetheless, it helps organize the financial information collected and already publicized by the country's Electoral Court according to a variety of useful categories.

Since 2012 the civil society organization *Acción Ciudadana* (Citizen's Action)—Transparency International's chapter in Guatemala—has made available online a series of monitoring reports detailing the media expenses incurred by Guatemalan parties and candidates. More recently, the group has complemented these reports with an online system that allows citizens to consult the information in several different ways.<sup>8</sup> *Acción Ciudadana*'s work to monitor electoral expenses provided an important input for CICIG's groundbreaking 2015 report, and builds on previous efforts to monitor parties' media outlays made by other civil society groups in Latin America, most notably *Poder Ciudadano* (Citizen's Power, yet another Transparency International chapter) in Argentina.

In some ways, the combined actions of international organizations and domestic civil society groups are having a greater impact on increasing political finance transparency in Latin America than the route—well-worn by now—of enacting new legislation devoid of any enforcement mechanism.

6 On *Cuentas Claras* see <<http://www.cnecuentasclaras.com>>.

7 On *¿Quién paga?* see <[see http://www.sudestada.com.uy/10913/-Quien-paga#](http://www.sudestada.com.uy/10913/-Quien-paga#)>.

8 On *Acción Ciudadana* see <<https://accionciudadana.org.gt/formulario>>.

### 3. Conclusions and recommendations

Awareness of the importance of political finance regulation for democracy has never been greater in Latin America. After three decades or more of democratic experience, the region is better prepared to deal with issues, such as the proper role of money in politics, which even highly developed democracies often find intractable.

As has been noted before, the investigation and regulation of electoral financing are based on ‘assumptions of modernity’ (Torres-Rivas and Aguilar 1998: 283). That is, they presuppose the existence of electoral institutions and consolidated oversight bodies, political parties with a minimum of institutionalization, and a skilful, diligent and independent press that is protected from political intimidation. The regulation of political financing is, somehow, a second-generation political reform that democratic systems can only reasonably undertake once basic tasks such as registering the citizens or eliminating electoral fraud have been completed.

Such is, largely, the situation in Latin America. The region’s unprecedented interest in political finance has a lot to do with the consolidation of its democratic systems. But this is only one part of the story. The other part is far less positive, and concerns the series of high-level corruption that have shaken the region’s political institutions in the past few years. These scandals have elicited social and institutional reactions that are new for Latin America. To the extent that political finance practices have played a critical role in some of these cases, they have brought to the fore the perils inherent in the role of money in politics.

These serious episodes have rendered urgent the task of revisiting existing legislation—something which has already born visible fruits in Brazil, Chile and Guatemala and which will almost certainly lead to new legislative efforts throughout the region, as well as to a renewed interest in the subject matter from journalists and social activists. All of this is welcome news. Whether as a result of democratic progress or of pervasive corruption, the issue of political finance regulation is at the centre of debates in today’s Latin America. In all likelihood, it is there to stay.

The events of the past four years suggest that political actors, international institutions and civil society groups would do well to channel this newly found interest in political finance issues in four directions.

## **1. Increase institutional capacities to monitor and enforce political finance**

Tightening controls over private funding—including by banning corporate donations—and strengthening sanctions against legal violations are among the most visible normative trends in Latin American political finance. The emphasis on creating robust and varied penalties is a particularly welcome change in the region's regulatory discussion. This adds power to the very extensive normative corpus that Latin America has built over the past generation. This regulatory corpus is far from effective in most cases, but the fact that it exists should count as progress and remains much better than the alternative of political finance *laissez-faire*.

However, in Latin America as in other regions, it is time to start paying more attention to the effective enforcement of the political finance controls in place. Having sanctions on the books is important but what really matters is the credibility of those sanctions. This calls for a renewed effort to increase the legal, human and financial resources at the disposal of overseeing authorities (usually EMBs) for the task of enforcing political finance rules. Honduras' proposal to create a specialized unit within the electoral authority in order to monitor political finance—a model that other countries, such as Costa Rica and Mexico, already employ—is a good start.

## **2. Pay attention to the local level**

There is now enough evidence showing that the local level of politics is the weakest link in terms of political finance corruption and, in particular, of the penetration of organized crime into campaigns in Latin America. Yet, partly as a result of the weak institutional capabilities to enforce laws, the local level has remained largely unregulated from the standpoint of political finance. Moreover, this is an electoral arena that only rarely features as a priority for media coverage, except for local outlets with limited investigative capacities.

Making sure that political finance controls—notably reporting and auditing rules—cover local candidates and are effectively applied to them is essential. In some cases, the parties' central organizations may be required to establish robust internal reporting mechanisms. Yet, in large federal countries (e.g. Brazil or Mexico) or in countries where party organizations have been all but eviscerated (e.g. Guatemala or Peru), asking the parties' headquarters to control the finances of their local standard bearers may be too much to ask. In these cases, financial oversight should simply be handled by the electoral authorities.

Moreover, as suggested by the Guatemalan case, it is vital to reinforce controls over the adjudication of public works at the local level, which is at the heart of many illicit funding structures and money laundering networks in Latin America. Paying attention to the local dimension of political finance is urgent. As a senior fundraiser for one of the main parties in Costa Rica neatly observed: 'If the corruption of organized crime is to filter through campaigns in Costa Rica, it would happen at the local level' (Casas-Zamora 2013b: 130). Even this judgement may be too sanguine for most countries—evidence that it has already filtered through in Colombia, Guatemala, Mexico and other Latin American countries is abundant and growing.

### **3. Develop applications to simplify access to political finance information**

The experience of digital applications such as *Cuentas Claras* and *¿Quién Paga?*, and of Acción Ciudadana's database on media outlays, offers a very promising avenue for watchdog groups to have an impact on improving political finance transparency levels in Latin America. With the new technologies available, developing these and other kinds of digital applications is a low cost affair. This being so, spreading the development and adoption of these applications also offers a potentially rewarding route for international cooperation agencies.

One can easily imagine the OAS or the European Union, through their strong election monitoring programmes, working with civil society groups and election management bodies in Latin America to spread the use of these and other transparency-enhancing applications. While the impact of these digital instruments on political finance transparency is largely contingent on the quality of the official information fed into them, even in the worst cases these applications fulfil a critical role for transparency: namely, making political finance information easily available and, above all, digestible for citizens and journalists. After all, the value of political finance transparency rules for the democratic process mostly lies in informing voters' decisions in a timely way.

### **4. Embrace a holistic approach to political finance regulation**

Latin America's recent corruption scandals are highly complex schemes, in which political finance fraud is only one element in a larger story of malfeasance. This explains Chile's decision to embed political finance reform in a broader set of integrity-enhancing reforms, and Guatemala's recently introduced reforms forcing banking and telecommunications authorities to share relevant financial information with electoral authorities. Guatemala's CICIG report even calls for the relaxing of bank secrecy rules when it comes to political finance, a principle that has already been adopted in countries such as Mexico and Costa Rica.

If political finance rules are to be effective in protecting democratic institutions, their connections to other norms that lie in the periphery of political finance must be understood. The effective regulation of campaign finance is a part of an 'ecosystem' of integrity-enhancing rules, which also includes norms against conflicts of interest, rules with regards to lobbying activities, asset-declaration provisions, reforms to banking and taxation secrecy rules, changes to rationalize parliamentary immunity norms, protections for whistleblowers and freedom of the press.

If fighting impunity and preserving the integrity of public institutions are the ultimate goals, all these variegated rules must be designed and enforced in a concerted way. Adopting a holistic approach to political finance is the way to go in Latin America and beyond.

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