



ANTICORRUPTION, TRANSPARENCY, AND INTEGRITY IN THE AMERICAS

Symposia Series: Summary and Conclusions

DECEMBER 2019

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FOREWORD

When heads of government from across the Americas gathered in Lima, Peru in April 2018 for the triennial Summit of the Americas, they did so under the banner of “Democratic Governance Against Corruption.” The choice of theme was appropriate. Over the preceding years, Latin America had been rocked by a series of unprecedented graft scandals, most notably the Lava Jato case that began in Brazil and eventually exposed the payment of hundreds of millions of dollars in bribes by the construction company Odebrecht in ten countries in the region.

Unsurprisingly, the elections in the region saw corruption rise to the top of the political agenda of many candidates. The 2018 Latinobarómetro poll showed that corruption was the first or second most important concern of voters in seven Latin American countries, including four that held elections that year: Brazil, Colombia, Mexico, and Paraguay.¹ The issue of corruption proved to be potent in those elections, with opposition candidates triumphing in all of them.

There was plenty for voters to be angry about. Beyond the headlines lay the reality of a region in which only three Latin American countries—Uruguay, Chile, and Costa Rica—received more than 50/100 on the annual Transparency International Corruption Perceptions Index (CPI).² Moreover, in 2019, in 18 countries surveyed in Latin America and the Caribbean, one in five public service users reported having paid a bribe to gain access to public services such as education or health in the previous year, equivalent to approximately 56 million people.³ The particularities of the Lava Jato revelations—the systematic collusion of public officials with Odebrecht’s specialized bribery department—seemed to confirm citizens’ worst suspicions. Latinobarómetro found that 79 percent of Latin Americans believe they are governed by the powerful for their own benefit rather than the good of the people, up from 61 percent a decade earlier.⁴ Satisfaction with democracy as a whole fell to just 24 percent.⁵ The warning signs are clear: in addition to its negative correlation with economic indicators such as level of development, sovereign borrowing costs, and macroeconomic stability, the perception and reality of widespread corruption pose a threat to democratic governance in the region.⁶

Against this sobering backdrop, however, there are also signs of clear progress in the region’s efforts to achieve greater transparency and public integrity. Prosecutors documented sophisticated bribery schemes and collaborated across borders to hold politicians and CEOs accountable. Legislatures strengthened institutional frameworks to buttress access to information reforms and prevent irregular campaign financing, conflicts of interest, and influence peddling. International organizations, the private sector, and civil society partnered with governments to achieve a unanimous “Lima Commitment” of 57 anticorruption measures at the Summit of the Americas.⁷

Unfortunately, progress is uneven. Prosecutions advanced more in some countries than others, and convictions were at times called into question by allegations of prosecutorial overreach. Public pressure for accountability sometimes proved inefficient to sustain a reform agenda or groundbreaking innovations such as the UN’s International Commission against Impunity in Guatemala. The Lima Commitment will count for little without sustained attention to its implementation.

The often-dizzying revelations and repercussions of recent years render this an opportune moment to take stock of the Americas' anticorruption efforts. With this in mind, in the spring of 2019, the Inter-American Development Bank and the Peter D. Bell Rule of Law Program of the Inter-American Dialogue hosted a symposia series on "Anticorruption, Transparency, and Integrity in the Americas."[†] Together, we convened three discussions featuring many of the hemisphere's preeminent experts and policymakers to identify the lessons learned from recent regional experience, analyze ongoing challenges, and outline the agenda for further reform. The events focused respectively on comparative corruption prosecutions, political finance and state capture, and the anticorruption program of new governments elected with strong transparency mandates. Our efforts dovetailed with complementary initiatives such as the Report of the Expert Advisory Group on Anti-Corruption, Transparency, and Integrity in Latin American and the Caribbean commissioned by Inter-American Development Bank President Luis Alberto Moreno.

To memorialize and further disseminate the conclusions of our symposia series, beyond the videos and summaries available on the Inter-American Dialogue website,^{††} this publication summarizes the key contributions and takeaways from each session. We trust it will continue to serve as a resource for policymakers, experts, and campaigners committed to deepening transparency, strengthening public integrity, and combating corruption throughout the Americas.

Lea Gimenez, *Division Chief, Innovation in Citizen Services, Inter-American Development Bank*

Roberto De Michele, *Modernization of the State Principal Specialist, Inter-American Development Bank*

Michael Shifter, *President, Inter-American Dialogue*



[†]This project benefited from the technical support of the IDB Transparency Fund, including its technical advisor Jacopo Gamba and its secretary Roberto de Michele. At the Inter-American Dialogue, the work was led by Peter D. Bell Rule of Law Program Director Michael Camilleri and Program Assistant Tamar Ziff.

^{††}"Symposia Series: Anticorruption, Transparency and Integrity in the Americas," The Inter-American Dialogue, 2019, <https://www.thedialogue.org/symposia-series-anticorruption-transparency-and-integrity-in-the-americas/>

PANEL I: CORRUPTION PROSECUTIONS IN THE AMERICAS, A COMPARATIVE ANALYSIS

SUBJECT

Identifying lessons learned from the progress and challenges of grand corruption prosecutions in the Americas.

PANELISTS

- **Rodrigo Janot**, former prosecutor general of Brazil;
- **Claudia Paz y Paz**, former prosecutor general of Guatemala;
- **José Ugaz**, former ad-hoc attorney for Peru during the Fujimori-Montestinos trial and former chair of Transparency International;
- **Kevin Gingras**, former Foreign Corrupt Practices Act trial attorney at the US Department of Justice and former counselor to the director of the Federal Bureau of Investigation (FBI).

MODERATOR

Michael Camilleri, Director of the Peter D. Bell Rule of Law Program at the Inter-American Dialogue

FEB 5, 2019



[LEFT TO RIGHT] KEVIN GINGRAS; JOSÉ UGAZ; CLAUDIA PAZ Y PAZ; RODRIGO JANOT; MICHAEL CAMILLERI

On February 5, 2019, the Inter-American Dialogue and the Inter-American Development Bank convened the first of our “Anticorruption, Transparency, and Integrity in the Americas” symposia. The focus was on comparative corruption prosecutions, and the central question was why criminal cases had advanced more in some countries than others. The Odebrecht case provided a useful measuring stick. The construction company admitted to the U.S. Department of Justice to paying almost \$800 million in bribes in ten Latin American countries. Some of those countries had enjoyed significant success in holding the bribe-makers and bribe-takers to account. In other countries, the conduct detailed in the plea agreement had yet to be seriously investigated, or cases were focused on relatively low-level functionaries. Were these disparate outcomes driven by judicial independence, availability of legal and procedural means, prosecutorial strategy, cooperation among countries, or other factors?

Jose Ugaz began the conversation by diagnosing the corruption condition of the Americas. “Corruption in the Americas is not a temporary problem: it is embedded in the institutions of our states, it is historic and has been persistent to the point that aside from certain exceptions – Uruguay, Chile, the United States, and Canada in North America – the region has undergone cycles of high to very high corruption.” Ugaz cited Transparency International’s 2018 Corruption Perceptions Index⁸ as evidence: the CPI for the Americas is 44 out of 100 – 0 being totally corrupt and 100 being totally transparent – which is already below the median; without the four aforementioned countries, the CPI drops to 30. Corruption in most of Latin America is never confined to a particular administration: it encompasses political figures, criminal organizations, and business elites that join to create corrupt infrastructure within the state. This infrastructure has expanded to normalize both “petty”⁹ and “grand”¹⁰ corruption, the latter being associated with abuse of power at a high level that benefits few at the expense of the many, causing extensive damage to society and human rights. The Odebrecht scandal is an example of grand corruption, and although normally perpetrators of grand corruption tend to enjoy impunity, Lava Jato has challenged this norm in some countries.

Ugaz divided the countries implicated in Lava Jato into three categories according to the progress they have made in domestic investigations. The first category includes countries that have made great strides in prosecuting corruption: Peru, Guatemala, and Brazil. The second category includes countries that have had mixed results, with some successes and some setbacks: Argentina, Colombia, Ecuador, Panama,

and the Dominican Republic. Finally, the third category includes Mexico and Venezuela, where impunity reigns. Ugaz spoke to the Peruvian experience in prosecuting networks of grand corruption, and he attributed progress to several key factors: 1) the political will of the Vizcarra transitional government to advance anticorruption reforms and empower anticorruption investigations; 2) a new class of young, motivated judges that have replaced the judges ousted after an explosive influence-peddling scheme in Peru’s judiciary in 2018;¹¹ and 3) Peru’s experience in investigating and prosecuting the Fujimori-Montesinos scandal in 2000.

However, he emphasized that because Peru has a history of such entrenched corruption, with little institutionalized respect for rule of law, none of these factors will necessarily prevent future corruption. The Fujimori-Montesinos prosecutions were successful because of the support from the transitional government of President Paniagua and a host of motivated judges and prosecutors. They resulted in more than 1800 people prosecuted in over 250 criminal processes, including Fujimori and Montesinos, who are still in jail, as well as \$350 million in recovered embezzled funds. But that fact in no way precluded the corruption of every subsequent democratically elected President. Corruption prosecutions by themselves are therefore not necessarily indicative of a betterment or change in political conduct, stated Ugaz. “They are merely a part of the process of sanctions and recovery of truth.”

“Corruption in the Americas is not a temporary problem: it is embedded in the institutions of our states, it is historic and has been persistent to the point that aside from certain exceptions the region has undergone cycles of high to very high corruption.”

Rodrigo Janot, former Prosecutor General of Brazil, identified several the factors that have empowered Brazil’s judiciary to vigorously prosecute Lava Jato. He highlighted the technical capacity and independence of Brazil’s judges and public prosecutors, who are hired through a public examination process and obtain lifetime tenure after two years

of service. They may only be removed by judicial conviction for a criminal offense, and they cannot be arbitrarily removed or retired from proceedings assigned to them. They also propose their own respective budgets and are self-administering entities. Janot also noted the importance of technology to sophisticated investigations like Lava Jato, which relied on advanced data-collection and analysis techniques that facilitated the efficient processing of large volumes of financial data, as well as the essential use of prosecutorial tools such as plea bargaining. Furthermore, the institutional knowledge of how bribery networks operate and how to investigate them acquired in prior corruption cases such as *Mensalao*¹² was also instrumental. Janot further acknowledged the importance of cooperation from U.S. and Swiss authorities in the Odebrecht case. Finally, he emphasized the essential element of political will, noting that while in the past law enforcement authorities in Brazil were reluctant to take on leading political and business figures, this had changed, as evidenced in the Lava Jato case.

In order to prosecute criminal networks, political will is essential, but it must be married to institutions with the requisite capacity and independence.

Claudia Paz y Paz, former Prosecutor General of Guatemala, detailed a number of factors that led to the success of the Guatemalan public prosecutor's office and the UN's International Commission Against Impunity in Guatemala (CICIG) in pursuing high-level corruption cases, including the La Línea case against former Guatemalan high-ranking officials. She underscored the essential role that CICIG had played in the Guatemala, recalling that while the Commission did not start out as a mission to combat corruption per se, its investigations of so-called CIACS (Cuerpos Ilegales y Aparatos Clandestinos de Seguridad) inevitably led to networks of illegality that often implicated Guatemala's political and economic elite. CICIG also strengthened the process for the selection of judges and created an environment in which those committed to combating corruption could assume influential roles and feel sufficiently protected to take on corrupt networks.

Based on her experience prosecuting these networks, Paz y Paz highlighted several factors underpinning the progress made in Guatemala. First, she pointed out the need for an adequate normative framework. This includes both criminal laws covering conduct such as illicit political financing and influence peddling, as well as modern prosecutorial tools for investigating organized crime. Second, she noted that political will is essential, but that it must be married to institutions with the requisite capacity and independence. CICIG strengthened the judicial infrastructure and buttressed it from politicization or interference. In this environment, the public prosecutor's office built specialized, multidisciplinary teams to proactively investigate complex organized crime schemes. Furthermore, through joint investigations between CICIG and its counterpart in the Special Prosecutor's Office Against Corruption (FECI), a methodology and knowledge base of criminal structures could be developed, recognizing that often crimes of corruption do not exist isolated from one another. Finally, Paz y Paz noted the fundamental role that civil society and the independent media played in both supporting the fight against corruption and, in the case of investigative journalists, denouncing cases of corruption. The financial and rhetorical support of the international community played a complementary role, especially insofar as it maintained CICIG in Guatemala for the duration of its mandate, which outgoing President Jimmy Morales allowed to expire in September 2019.¹³

Kevin Gingras, former prosecutor in the Foreign Corrupt Practices Act (FCPA) unit of the United States Department of Justice, shared the lessons he learned while helping prosecute the Odebrecht and Braskem cases. He emphasized that modern transnational bribery cases require a global response. "The more countries are engaged and working together in a robust enforcement effort to combat corruption, the easier it will be to share evidence, craft enforcement strategies that are targeted and efficient, and deter individuals and corporations who use national borders as an advantage in advancing criminal enterprises." He tied the increasing success in prosecuting international corruption to the rise in global efforts to cooperate against it. Gingras acknowledged that it is a challenge to build the requisite trust among prosecutorial agencies to share evidence and work across borders. In his experience, beginning investigations with informal cooperation and requests, such as phone calls or face-to-face meetings as opposed to formal requests for mutual legal assistance, and integrating a personal element in order to establish trust and build lasting partnerships, were crucial in the case of the FCPA unit's work with Brazil.

Key Takeaways

The experiences and analysis of these four leading prosecutors point to several factors that characterize successful grand corruption prosecutions:

1. Prosecutorial independence and political support.

In cases that implicate powerful political and business figures, the independence and zeal of judges and prosecutors is a *conditio sine qua non*. This was achieved in different ways by the countries that have shown the greatest progress in investigating Odebrecht, from the strong structural guarantees of independence that Brazilian federal prosecutors enjoy to the existence of an independent, UN-backed investigatory commission (CICIG) in Guatemala. At the same time, recent revelations of alleged misconduct by a judge and prosecutors in the Lava Jato case in Brazil offer a reminder that a lack of independence can undermine and threaten the legitimacy of even successful corruption prosecutions.

2. Appropriate legal frameworks.

The innovative use of prosecutorial tools such as plea bargaining is often essential when investigating complex criminal structures. Whistleblower protections and a modern criminal law framework that includes responsibility for juridical persons also play a key role.

3. Sufficient investigative capacity.

Corruption cases often require investigators to analyze vast swaths of information and complex, transborder financial movements. Following the money in these cases requires prosecutors and analysts to have both sophisticated training and adequate resources. The Brazilian federal prosecutor's office, for example, developed proprietary software to analyze the evidence it was collecting when an appropriate technological solution was not available on the market.

4. International prosecutorial cooperation.

The Odebrecht case is an example of groundbreaking cooperation between the US Department of Justice and its counterparts in Brazil and Switzerland that combined the unique leverage of each jurisdiction, including that of US prosecutors under the Foreign Corrupt Practices Act (FCPA). Likewise, in Peru, cases against four former presidents were based in significant part on evidence developed by Brazilian prosecutors.

5. Robust civil society and independent media.

In some countries, including Peru and Guatemala, civil society mobilization protected investigative institutions (at least temporarily) from efforts by political elites to undermine them, while investigative journalists at times enjoyed a symbiotic relationship with investigators, breaking leads where prosecutors were stymied.



PANEL II: POLITICAL FINANCE AND STATE CAPTURE IN THE AMERICAS

SUBJECT

Analyzing the campaign finance regulatory regimes in Latin America and the United States to identify vulnerabilities to corruption and discuss potential solutions.

PANELISTS

- **Ann Ravel**, Professor of Law at the University of California, Berkeley and a former member of the U.S. Federal Election Commission;
- **Delia Ferreira**, chair of Transparency International;
- **Eduardo Engel**, Professor of Economics at the Universidad de Chile, former President of Espacio Público and former head of Chile’s Presidential Advisory Council on Conflict of Interest, Traffic of Influence, and Corruption;
- **Kevin Casas-Zamora**, Senior Fellow at the Inter-American Dialogue, Secretary-General of International IDEA, and a former vice president of Costa Rica.

MODERATOR

Michael Camilleri, Director of the Peter D. Bell Rule of Law Program at the Inter-American Dialogue.

MAR 5, 2019



[LEFT TO RIGHT] KEVIN CASAS-ZAMORA; EDUARDO ENGEL; MICHAEL CAMILLERI; DELIA FERREIRA; ANN RAVEL

On March 5, 2019, the Inter-American Dialogue and the Inter-American Development Bank convened the second event of our “Anticorruption, Transparency, and Integrity in the Americas” symposia. The focus was on political finance and state capture.

CICIG Commissioner Ivan Velazquez has observed, “Illegal campaign financing is democracy’s original sin, the door to a vicious cycle of corruption.”¹⁴ While there is no politics without money, campaign finance without limits or transparency can corrode democracy and open the door to state capture by special interests. Recent experience in Latin America has exposed the infrastructure industry in particular, dependent as it is on lucrative government procurement contracts, as a recurrent source of illicit campaign contributions. Is this a problem of defective regulation or one of enforcement? Does Latin America need a new approach to campaign finance? Can any lessons be learned from other jurisdictions, such as the United States?

scuring the source or very existence of donations, a practice that can allow criminal money to enter campaigns. This is common practice because electoral bodies do not have the resources to spot and investigate these violations. Third, in the last 20 years, the influence of criminal networks in politics has increased as these networks stopped financing national politics and focused on local and sub regional politics, where politicians can more easily be coerced or paid off more cheaply and with less oversight. “It is much more productive to co-opt the local government of the municipality where illegal activity is taking place than to bribe the national government,” said Ferreira.

However, Ferreira also mentioned two hopeful developments in the region. The first is the enforcement of criminal sanctions of financial elites in cases of grand corruption, who have long colluded with public officials but largely avoided the consequences that sometimes befell corrupt public servants.

While there is no politics without money, campaign finance without limits or transparency can corrode democracy and open the door to state capture by special interests.

Delia Ferreira emphasized that the current political tools to prevent state capture by corrupt groups are inadequate, and she presented three concerning trends in regional corruption. First, she observed that the nature of corrupt financing has changed, with the Odebrecht case revealing a modus operandi whereby overvalued public contracts are used as a means to launder public money for illicit campaign financing purposes. This corrupt methodology “totally changes the panorama of how financial and electoral oversight and monitoring bodies should operate,” said Ferreira. Second, Ferreira fretted that these grand corruption schemes are not being investigated by electoral tribunals themselves or other bodies exclusively dedicated to campaign finance oversight. Instead, if they are discovered, it is usually by prosecutors or journalists.

In Argentina, for example, which was recently rocked by the Notebooks campaign finance scandal,¹⁵ there are solid campaign finance regulations that are simply ignored for lack of oversight. Politicians and campaigns brazenly spend above the legal limit and report a fraction of it, ob-

Now, heads of companies are being investigated, going to trial, and even being incarcerated. This, Ferreira suggested, is hopefully having a dissuasive effect on the appetite for bribery in the business sector. The second positive development is civil society indignation and the public’s demand for transparency, which should continue to be harnessed for anticorruption reform.

Kevin Casas-Zamora made a point to distinguish campaign financing, which is a necessary facet of democratic activity, and bribery. He noted that the region does not lack for political finance regulation. “Most Latin American countries ban foreign and anonymous contributions and limit private donations; many have electoral spending caps; most impose transparency obligations for parties and candidates; and they all back extant controls with sanctions that range from minor fines to harsh electoral penalties.” Some countries, such as Chile, Uruguay, and Costa Rica, have comprehensive campaign finance infrastructure which can regulate and enforce political finance regulations to avert de facto bribery and state capture. In most countries in Latin Amer-

ica, however, corruption operates in the gap between law and enforcement. The issue is extensive noncompliance: with the exception of Mexico, Casas-Zamora emphasized that there is a void of information regarding who finances politics in most of the region. At the very least, the Odebrecht scandal clearly proved that the bans on foreign political financing – which exist in most of the affected countries – are effectively moot.

Gaps in federal oversight are exacerbated by an almost total neglect of local level political financing, which is extremely important for everyday governance and public confidence.

Casas-Zamora also pointed out that gaps in federal oversight are exacerbated by an almost total neglect of local level political financing, which is extremely important for everyday governance and public confidence. For example, in Guatemala, a 2015 CICIG report¹⁶ showed that 75 percent of funding for political parties came from organized crime, largely illicit schemes connected to public works. Casas-Zamora reiterated the need for a holistic approach to campaign finance regulations, where safeguards are incorporated into the political finance infrastructure rather than relying on outside agencies to detect and investigate transgressions. Recent campaign finance reforms in the region have focused too narrowly on beefing up existing legislation, rather than incentivizing enforcement.

Eduardo Engel agreed that, “poor regulations and lack of enforcement of existing regulations of political finance lie at the heart of most of the corruption scandals that have hit Latin America in recent years.” According to Engel, Chile can serve as a model in this regard. The Chilean Congress passed a number of campaign finance reforms in recent years on recommendation of the Presidential Advisory Council that Engel chaired. These included public financing for campaigns, greater transparency in political financ-

ing, bans on corporate contributions, and stricter political propaganda rules. The reforms also granted greater power, resources and autonomy to the Chilean Election Regulatory Service (SERVEL), while stiffening the penalties for violations. Engel argued that the reforms have been effective in reducing private money in politics, lowering the size of political donations, and facilitating the entry of new political parties.

Engel also summarized the findings from a comprehensive study that he and colleagues conducted on the Odebrecht case,¹⁷ in which inflated public infrastructure contracts were used to fund illicit payments to politicians and political parties, often to finance campaigns. The study found that while Odebrecht’s bribes were relatively small during the relevant period – the company confessed to \$788 million in bribes while it did sales of \$286.8 billion between 2004 and 2014 – most of the \$2.4 billion in profit Odebrecht made during this period was “due to bribes.” The creation of a dedicated bribe-management arm called the Division of Structured Operations made Odebrecht an efficient corruptor, with a bank subsidiary in Antigua and a series of shell companies that shielded illicit payments from view and made it easier for bribe recipients to hide illegal proceeds. Perhaps most strikingly, the study exposed a significant vulnerability in public procurement, as bribes were facilitated through hidden “addenda” in contract renegotiations that were not disclosed or scrutinized. In projects where Odebrecht paid bribes, these contract negotiations amounted to 71.3 percent of initial investment estimates, compared to 6.5 percent where Odebrecht paid no bribes. This suggests that initial bidding processes have sufficient guarantees of transparency and oversight, but contract negotiations allow corruption to creep into the procurement process, with inflated costs often channeled back into the political system via illicit campaign contributions.

Ann Ravel offered an overview of the electoral finance system of the United States, including the significant loopholes in campaign finance law that have developed over time. Most existing campaign finance legislation was introduced after the Watergate scandal in 1972, which included a strengthening of the Federal Election Campaign Act (FECA) and the creation of the Federal Election Commission (FEC) as the oversight body for campaign finance. FECA has reporting requirements for the funding sources of candidates and campaign committees, and contribution limits for individuals or organizations giving to political campaigns. As soon as someone becomes a federal candidate, they must begin reporting their finances within 15 days or as soon as \$5,000 is raised or spent for the campaign. Detailed financial reports must be filed every

quarter, and additional reports before the primary and general elections; this requires setting up a committee, designating a treasurer, and maintaining a reasonable degree of transparency. Furthermore, FECA limits contributions to candidates to \$2,800 from individuals per election and \$5,000 a year from political action committees (PACs), with all individual contributors over \$200 per election cycle identified and a ban on contributions from corporations, national banks, labor organizations, federal government contractors, and foreign nationals.

However, the U.S. campaign finance regulatory infrastructure has been weakened over time. Notably, the Supreme Court struck down any expenditure limits for campaigns and decided that there could be no limits on how much citizens spend in support of a candidate so long as they do so “independently” (i.e. not directly contributing to the campaign committee.) The lack of a limit on “independent” spending, and a very broad interpretation on what constitutes “independence,” has given rise to PACs (Political Action Committees), which ballooned into SuperPACs after the 2010 Citizens United v. FEC decision that allowed unlimited independent spending by corporations. PACs and SuperPACs can amass donations from various sources to fund campaigns on behalf of candidates as long as they are still technically “independent” from the formal cam-

paign. Today, SuperPACs are the avenues through which wealthy interests can promote their personal agendas; between 2010 and 2018, 11 donors gave a combined \$1 billion to promote candidates or agendas through this mechanism. The true sources of spending often go undisclosed, in a phenomenon called “dark money.” While SuperPACs must disclose the source of donations, wealthy donors who want to wield political influence in secret often set up front organizations, or many layers of front organizations, to funnel the money. “Dark money’ is really only dark to the American people,” said Ravel, “as the public officials receiving the money know who is paying them and what agendas they need to push.”

The electoral oversight body that could be addressing some of these loopholes is largely paralyzed. The FEC is structured in such a way as to require that there be no more than three Commissioners from the same political party and requires four votes out of the six to take any action at all, even open an investigation. In practice, there are three Democratic and three Republican commissioners, and the Republicans often choose to vote as a bloc and block any enforcement action, even when the General Counsel recommends an investigation. The FEC also suffers from a lack of resources to proactively identify electoral improprieties and relies on activists or outside groups to do so.

Poor regulations and lack of enforcement of existing political finance regulations lie at the heart of most of the corruption scandals that have hit Latin America in recent years.

Key Takeaways

The discussion among the experts confirmed that political finance remains a critical vector of vulnerability in the region's efforts to combat corruption, as evidenced by the Odebrecht case among others. While most countries are not lacking for campaign finance laws, much still needs to be done to prevent money from becoming a means of undue influence and policy capture by narrow private interests. In order to clean up political finance, several things need to be taken into account:

1. The need for better enforcement of existing political finance legislation.

All commentators agreed that generally speaking, the challenge in Latin America is less one of adequate laws than lack of enforcement of the laws, particularly the weakness and lack of independence of Electoral Oversight Bodies (EOBs). When campaign finance violations are discovered and investigated, it is often by outside agencies such as tax offices, courts, or NGOs or investigative journalists. EOBs, in contrast, often limit themselves to auditing the official accounts submitted by the campaigns. Increasing resources, staffing and technical training for EOBs is therefore an essential first step in closing the door of campaign finance as an entry into corruption, including through the incorporation of technological applications to facilitate access and monitoring of campaign finance information, as was done in Colombia with *Cuentas Claras*¹⁸ and Uruguay with *¿Quién Paga?*^{19 20} Special focus should be given to enforcing regulations at a local level, and developing local regulations where an absence exists. Where EOBs are not independent, as in the United States, they risk being captured or paralyzed.

2. The public procurement – political finance link.

Recent corruption scandals in the region, including that of Odebrecht, point to the public procurement – political finance link as a particular area of vulnerability and concern. The immense profit that companies stand to gain from government contracts, and that government officials consequently stand to gain from funneling contracts to companies, creates the potential for a corrupt symbiosis that has become evident in the region. This calls for increased scrutiny on processes of public procurement, including by tightening regulations around contract renegotiations and monitoring the overlaps between parties with interests in government contracts and their political donations. Harnessing big data and other emerging technologies can be useful in this regard.²¹

3. The relative utility of disclosure versus limits on campaign finance.

In many countries in the region with strict campaign finance limits, these limits are flouted by orders of magnitude. In Mexico, for example, a study by *Mexicanos Contra la Corrupcion y la Impunidad*²² estimated that for every peso declared by a gubernatorial campaign, another 15 pesos in undeclared money entered the campaign, and that these campaigns cost as much as ten times as much as the legal spending cap. Is the solution to this challenge better enforcement of existing limits in order to reduce the influence of money in politics, or is it more realistic to trade strict limits for full transparency on the theory that while money is inevitable in democracy, undisclosed money is the problem? Our experts were divided on the question. A better solution may be public financing of campaigns, which was introduced as part of Chile's recent reforms. However, this is politically difficult and must be well designed. In the United States, where optional public money for presidential elections²³ has been available since the 1970s, presidential candidates beginning with Barack Obama in 2008 began bypassing public funding because of the capacity to raise more money privately.

PANEL III: ANTICORRUPTION AND LATIN AMERICA'S NEW LEADERS

SUBJECT

Analyzing how new administrations elected in Latin America on anticorruption platforms plan to carry out their agendas and follow through on their commitments.

PANELISTS

- **Félix Ulloa**, Vice President of El Salvador;²⁴
- **Wagner de Campos Rosário**, Minister of Transparency (Controladoria-Geral da União) of Brazil;
- **Benigno López**, Minister of Finance of Paraguay.

MODERATOR

Michael Camilleri, Director of the Peter D. Bell Rule of Law Program at the Inter-American Dialogue.

MAY 23, 2019



[LEFT TO RIGHT] MICHAEL CAMILLERI; BENIGNO LÓPEZ; FÉLIX ULLOA; WAGNER DE CAMPOS ROSÁRIO

On May 23, 2019, the Inter-American Dialogue and the Inter-American Development Bank convened the third of our “Anticorruption, Transparency, and Integrity in the Americas” symposia. The focus was on Latin America’s new governments and their anticorruption programs. From Mexico to Brazil, Latin American voters in 2018 and 2019 rejected business-as-usual politics in favor of candidates who promised to upend the political establishment and clean house. In many cases, combating corruption was at the core of the political message that swept these new leaders to power. Elected on anticorruption mandates, these leaders have a unique opportunity to make lasting institutional changes, but also the responsibility to meet citizen expectations of more honest and accountable governance.

Félix Ulloa lamented that “El Salvador’s indicators are some of the worst in the region according to Transparency International’s 2018 Corruption Perceptions Index.” He recalled that three former presidents of El Salvador have been accused of corruption and related crimes,²⁵ and affirmed the intention of President-elect Nayib Bukele to recover and better channel the government funds misappropriated due to the corruption of past administrations. As such, the Bukele administration will make accountability central to its government agenda, he said. Corruption prevention will be facilitated by e-governance tools to enhance transparency and by penal code reform to abolish the statute of limitations for crimes of corruption and designate grand corruption as a crime against humanity. At the same time, the administration will take additional steps to prosecute corrupt actors, through both the establishment of an International Commission Against Impunity in El Salvador (CICIES)—modeled after similar initiatives in Guatemala (CICIG) and Honduras (MACCIH)—and the appointment of a presidentially-appointed Anti-Corruption Commissioner.²⁶ The Bukele administration hopes that these concurrent lines of action will lead to El Salvador’s entrance into international bodies such as the Financial Action Task Force (FATF-GAFI).

Wagner de Campos Rosário noted that Lava Jato exposed entrenched government corruption in an unprecedented way while galvanizing efforts by various state entities – the public prosecutor, the police, the justice system – to identify and combat corruption. He acknowledged the steps taken by the Bolsonaro administration to strip corrupt actors of influence and begin to recover lost funds: in 2019, 68 public servants were dismissed for corruption-related offenses, and 672 sanctions were applied to companies, while 435 companies were prevented from seeking contracts with the public sector. Meanwhile, through comprehensive leniency agreements between six companies and the Attorney General of the Union (Advogado-Geral da União), interfacing with the Comptroller General of the Union (CGU), the Brazilian

government has managed to recover billions of reais for the state.

The Bolsonaro administration is also overseeing the continuation of the Pró-Ética Business Program, which was developed in 2010 and aims to publicly recognize the companies that begin to adopt measures for the prevention, detection and remediation of acts of corruption. Pró-Ética consists of an evaluation of integrity programs of the companies that voluntarily present information for analysis of the technical team of the CGU. Meanwhile, in order to facilitate the reporting of acts of corruption, Brazil developed the Ombudsman System of the Federal Executive Power (e-OUV), an online tool that allows the reception of and response to citizen inputs (which include complaints, claims, solicitations and compliments) by “ouvidorias”, or listening centers. Any citizen can register an input to the 306 existing ouvidorias, with the possibility of expressing themselves anonymously in order to protect whistleblowers. In 2019, in order to take the next step in turning potential leads into enforcement action, the federal government created the National Network of Ombudsmen within the CGU in order to process information collected by the units of ouvidorias.

Benigno López, Paraguay’s Finance Minister, began by emphasizing the economic progress of Paraguay compared to ten or fifteen years ago, when it approached economic default. It is currently one of the fastest growing economies in Latin America, having nearly doubled the middle class and sharply reduced poverty.²⁷ López observed that economic growth and the expansion of the middle class increase citizen demands for better public services and a stronger judiciary that can fight corruption. For this reason, transparency and combating corruption had been central themes of the campaign of President Abdo Benítez.

López acknowledged that Paraguay ranks as one of the most corrupt countries in Latin America on Transparency International’s Corruption Perceptions Index.²⁸ He suggested that in contrast to some other countries in Latin America, the challenge in Paraguay is not the existence of corruption scandals but the absence of such scandals. Institutions, particularly the judiciary, need to be strengthened so that corrupt behavior is uncovered and punished. López insisted on the need to strengthen the government’s human resources, and discussed ambitious plans to increase access to public information through the use of technology. Acknowledging Paraguay’s reputation as a money laundering hub and its past inclusion on the FATF gray list, López mentioned a series of legislative proposals aimed at addressing these issues and improving Paraguay’s efforts to prevent transnational crime.

Key Takeaways

Our speakers offered differing national and political perspectives, but each of them conveyed a strong awareness of the need to deliver on their respective government's pledges to combat corruption. With varying degrees of specificity, they all presented plans of action that addressed both the accountability and prevention sides of the equation. In some cases, these plans were quite innovative, particularly the CICIES proposal that was a key campaign promise of President Nayib Bukele in El Salvador. In other cases, such as Brazil's private sector integrity pacts and Paraguay's digital transparency efforts, current programs build on efforts already underway. And while Brazil's plans can leverage a strong existing institutional framework, those of Paraguay and El Salvador must account for the weakness of such frameworks, by strengthening human resources in the case of Paraguay or bringing in the international community to buttress domestic institutions in the case of El Salvador.

Of course, for the governments of Brazil, El Salvador, Paraguay, and many other countries in the region, the crucial test will be actually implementing a successful anticorruption program and convincing citizens that they are committed to transparency. Events in the months since our event serve as a reminder of how challenging this can be. Brazilian President Jair Bolsonaro fired the head of a statistics agency after it reported satellite data showing a sharp rise in deforestation in the Amazon.²⁹ President Abdo of Paraguay faced protests and cabinet resignations after revelations that he negotiated an agreement with Brazil on the Itaipu Dam in secret.³⁰ And CICIES, while formally installed in early September 2019, remains nascent and lacks the investigative functions that require congressional approval.

The mandates for change of these governments remain a powerful opportunity to make meaningful strides in preventing and combating corruption. The governments' capacity to deliver on these mandates remains an open question, and one their citizens will continue to assess with their voices and ultimately their votes.



ENDNOTES

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²Transparency International publishes an annual CPI ranking, where 0 is highly corrupt and 100 is very clean.

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About the Peter D. Bell Rule of Law Program

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