

ISSUE BRIEF

# Combatting Corruption in the Northern Triangle: Prioritizing a Whole-of-Society Approach

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The Adrienne Arsht Latin America Center broadens understanding of regional transformations through high-impact work that shapes the conversation among policymakers, the business community, and civil society. The Center focuses on Latin America's strategic role in a global context with a priority on pressing political, economic, and social issues that will define the trajectory of the region now and in the years ahead. The Center's Central America programming has focused on providing insights, analysis, and galvanizing bipartisan support for sustainable solutions to the Northern Triangle's economic, rule of law, and security challenges. Past marquee work includes our 2017 Northern Triangle Security and Economic Opportunity Task Force, our 2020 Central America Economic Reactivation in a COVID-19 World report, and our ongoing 2021 work with the Northern Triangle Advisory Group. Other select lines of the Center's programming include: Venezuela's crisis; Mexico-US and global ties; China in Latin America; Colombia's future; a changing Brazil; Caribbean development; commercial patterns shifts; energy resources; and disinformation. Jason Marczak serves as Center Director.

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## INTRODUCTION

Public corruption and weak rule of law are arguably the most persistent and long-standing challenges for strengthening democratic institutions and sustaining inclusive economic development in the Northern Triangle. Guatemala, Honduras, and El Salvador have grappled with widespread corruption that has fueled mistrust in political and wealthy elites, eroded democratic norms, exacerbated poverty, widened social inequality, and contributed to the conditions that force migrants to leave their homes.<sup>1</sup>

According to the 2020 Corruption Perceptions Index from Transparency International, the Northern Triangle countries have a worse ranking than at least one hundred and three of the one hundred and eighty countries surveyed, with Honduras ranking at one hundred and fifty-seven, Guatemala at one hundred and forty-eight, and El Salvador at one hundred and four.<sup>2</sup> A confluence of internal and external forces in recent years—including the penetration of organized crime and narcotrafficking into local governance and national politics, and the fiscal measures that the COVID-19 pandemic and natural disasters have demanded—has opened new ground for corrupt practices and exacerbated old ones.

1 "Literature Review: Corruption as a Driver of Migration," U4 Expert Answer, Anti-Corruption Resource Centre, Transparency International, and CHR Michelsen Institute, December 2015, [https://knowledgehub.transparency.org/assets/uploads/helpdesk/Literature\\_review\\_corruption\\_and\\_migrations.pdf](https://knowledgehub.transparency.org/assets/uploads/helpdesk/Literature_review_corruption_and_migrations.pdf).

2 "Corruption Perceptions Index," Transparency International, 2020, <https://www.transparency.org/en/cpi/2020/index/>.



A demonstrator wearing a headband that reads, “No more impunity”, takes part in a march to demand the resignation of Honduras’ President Juan Orlando Hernandez in Tegucigalpa, Honduras on August 21, 2015. Protesters took the streets in Tegucigalpa, calling for the resignation of Hernandez over a \$200 million corruption scandal at the Honduran Institute of Social Security. Source: REUTERS/Jorge Cabrera

Breaking the vicious cycle of corruption in the region will require a holistic, long-term approach that brings together governments, civil society, and businesses under a common anti-corruption agenda with bold, innovative, and locally driven policy solutions. As the situation at the US southern border worsens, the Joseph R. Biden Jr. administration is devoting resources and strategic focus to addressing the drivers of migration (the previous brief in this series focused on the role of the private sector in unlocking economic growth in the Northern Triangle), placing a special emphasis on building capacities, strengthening existing cooperation with local partners, and finding new spaces for collaboration to combat corruption over the long term in Central America.<sup>3</sup>

This brief—the second of a three-part series by the Atlantic Council’s Adrienne Arsht Latin America Center and DT Institute—focuses on pragmatic recommendations to assist societies in Guatemala, Honduras, and El Salvador in tackling corruption and strengthening the rule of law, with a look at what has worked in the past and how to apply lessons learned. In close collaboration and through repeated consultations

with the Center’s Northern Triangle Advisory Group (NTAG), this brief highlights the following themes around corruption in the region: reforming the justice and electoral systems; combatting corrupt practices in public bids, tenders, and acquisitions; and confronting illicit campaign financing. If the in-region conditions are created to address these issues holistically, coordinated actions in these areas can help to curb corruption, support institutional resilience and inclusivity, and reduce unauthorized migration.

### REFORMING THE JUDICIAL SYSTEM TO STRENGTHEN THE RULE OF LAW AND REDUCE IMPUNITY

#### *Long-standing Challenges*

Understaffed, undertrained, and underinvested prosecutors’ offices and police forces, lack of independence in the selection of judges and court magistrates, the absence of protection for those officials, and the corrupt influence of criminal groups and narco-trafficking networks across all branches of government are

<sup>3</sup> “Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border,” US Department of Homeland Security, March 16, 2021, <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>.

among the main factors contributing to a weak rule of law, high levels of impunity, and pervasive graft in the Northern Triangle. The justice systems need reforms, capacity-building efforts, and resources that incentivize accountability and transparency over impunity and corruption. The 2014 Plan of the Alliance for the Prosperity in the Northern Triangle (A4P) provides an initial blueprint to update and expand upon for supporting national, regional, and international anti-corruption efforts, and rethinking efforts that fell short of their intended objectives.

### *Past and Existing Efforts at the National, Regional, and International Levels*

**National Efforts:** Efforts led by Northern Triangle governments have included the creation of courts and tribunals that have national jurisdiction over corruption and extortion cases. In Guatemala, this was accomplished through the establishment of the Special Prosecutor's Unit Against Corruption Impunity (FECI), created in 2008, and the 2017 Specialized Fiscal Unit Against Corruption in Honduras. However, in a step backwards, the legislatures in Guatemala and Honduras have passed secrecy and confidentiality laws and approved reforms that interfere with the legal authorities of these entities to investigate and take legal action against government officials, deputies, and even civil society organizations accused of civil or criminal acts, or have links to organized crime.

In El Salvador, prosecutorial power lies with the attorney general's office, in coordination with the police. But recent legislative elections gave absolute majority to President Bukele's New Ideas party. As in Guatemala and Honduras, the new legislative majority is likely to obstruct investigations that are currently underway, including cases related to pandemic spending. On the first day of the new legislative session in May 2021, the Salvadoran legislature took action to remove five Supreme Court judges—a worrisome trend by President Bukele and his party undermining the separation of power.

**Regional and Multilateral Efforts:** In Guatemala, the emblematic 2015 "La Linea" customs fraud investigated by the United Nations (UN)-backed International Commission against

Impunity (CICIG) and the attorney general directly led to the jailing of both then-President Otto Pérez Molina and then-Vice President Roxana Baldetti. In Honduras, in 2016, a case at the Honduran Social Security Institute—where an estimated \$300 million in public funds were embezzled—provoked civil unrest and sparked the creation of the Organization of American States (OAS)-backed Mission against Corruption and Impunity in Honduras (MACCIH).<sup>4</sup> Today, both CICIG and MACCIH have ceased operations following decisions by Guatemala's then-President Jimmy Morales and Honduras' President Hernández to terminate the mandates of the anti-graft entities. The decisions were widely criticized by the United States and the international community and seen as a step backwards in the fight against corruption in both countries.

El Salvador is currently the only country in the region that maintains an OAS-approved International Commission against Corruption and Impunity, known as CICIES. While it started out with considerable public skepticism, CICIES has supported investigations against potential offenders, while maintaining a relatively low profile. At the time of writing, the future of CICIES is uncertain. Following a congressional vote on May 1, 2021, that ousted Attorney General Raúl Melara and five supreme court judges, President Bukele has appointed Rodolfo Delgado as the new attorney general. On May 3, 2021, Delgado stated his intention of revising and reconsidering the future of the commission, citing the experiences of Guatemala and Honduras as examples to avoid.<sup>5</sup>

**US and International Efforts:** Political and financial support from the United States and the European Union have been crucial to promoting stronger and more transparent judicial institutions in the Northern Triangle.<sup>6</sup> As a result of the A4P under the Barack Obama administration, Northern Triangle countries committed to creating independent anti-corruption auditing mechanisms and developing plans to professionalize public service. Despite having gained momentum at the outset, they ultimately failed to fully deliver on these commitments due to a lack of national and international follow up, the gradual languishing of anti-corruption protests and the eventual demise of CICIG and MACCIH.<sup>7</sup> Also, during

4 Mike Lasusa, "Honduras Officials Investigated by Anti-Corruption Body," InSight Crime, August 17, 2016, <https://insightcrime.org/news/brief/honduras-anti-corruption-body-eyes-top-officials-in-social-security-scandal/>.

5 Beatriz Calderon, "Nuevo Fiscal General Revisará el Convenio con la CICIES y las 'Actuaciones' de Raúl Melara para 'Enmendar' Errores," La Prensa Grafica, May 3, 2021, <https://www.laprensagrafica.com/elsalvador/Nuevo-fiscal-general-revisara-el-convenio-con-la-CICIES-y-las-actuaciones-de-Raul-Melara-para-enmendar-errores-20210503-0015.html>.

6 "Promoting Swift and Accessible Justice in Honduras," EuroJusticia-JUSTHO, European Union, 2014–2018, <https://developmentpoles.com/en/eurojustice>; "Justice, Human Rights and Security Strengthening Activity (Unidos por la Justicia)," United States Agency for International Development, 2017, [https://pdf.usaid.gov/pdf\\_docs/PA00D5VP.pdf](https://pdf.usaid.gov/pdf_docs/PA00D5VP.pdf).

7 "Fact Sheet: The United States and Central America: Honoring Our Commitments," White House, Office of the Press Secretary, January 14, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/01/15/fact-sheet-united-states-and-central-america-honoring-our-commitments>.

this time, El Salvador presented a bill criminalizing bulk cash smuggling, an effort supported by the United States Bureau of International Narcotics and Law Enforcement, that has led to the arrest and prosecution of money laundering crimes.<sup>8</sup> Since the asset forfeiture law was implemented in 2014, the Salvadoran Attorney General's office has made great advancements in seizing and forfeiting criminal assets. From 2014 through November 2019, the attorney general's office seized 1,141 assets valued at over \$182 million. These efforts also led to the arrest of the leader of an MS-13 cell with significant reach in the United States, who has since been sentenced to prison on money laundering charges. In 2016, the Guatemalan Congress passed a law allowing "semi-freedom" through electronic monitoring as part of the transition to an innocent-until-proven-guilty judicial system – and in an effort to reduce prison overcrowding. Despite initial expectations of less-crowded jails, the law has not been effectively enforced due to longstanding practices of justice operators making excessive use of pre-trial detention.<sup>9</sup>

US and European Union (EU) efforts have also helped to organize civil-society efforts to demand more transparent and open processes that ensure the independence of the judicial branches and the selection of judges and magistrates. This civilian oversight has helped mitigate potential interference by other branches of government (particularly from members of the legislature). Lastly, US and EU embassies have played an important role in providing advice on legislation and criminal enforcement policies, and effectively vetting candidates for prosecutors and nominations for supreme court judges. Not only are these efforts important to combat corruption, but also to unlock further US funding.<sup>10</sup>

### *Recommendations and Thinking Ahead*

**Public Sector:** Reforming the selection process for judges and magistrates is necessary but will require significant—and currently nonexistent—political will. Including nonpolitical actors (for instance, academia through law schools, bar associations, and civil-society organizations) in the nomination and selection processes would help to ensure that potential

candidates' profiles are more aligned with the qualifications required to be appointed as judges or magistrates, under conditions of equality and based on merit. Importantly, judges and prosecutors of high moral integrity are better able to resist political pressure and private interests.<sup>11</sup> In addition, reinforcing early-career training for lawyers in morals and ethics is crucial.

Similarly, reforms to optimize the public administration system—including reforming bureaucracies, campaign-financing laws, and how courts function—across the Northern Triangle are necessary and long overdue. If done right, reformed laws would strengthen transparency in the public sector. This was a commitment included in the A4P but was discontinued, partially due to lack of oversight and monitoring from the Trump administration. Reforming civil-service laws so that careers in public administration are based on merit is necessary for rooting out nepotism and political patronage, which are the currencies of corruption.<sup>12</sup> Despite the obvious national differences, case studies from Organisation for Economic Co-operation and Development (OECD) countries like Costa Rica, Chile, and Uruguay offer lessons learned for similar policies that could be implemented in the Northern Triangle. Adapting best practices—such as strengthening strategic human resources management, improving multi-level governance, developing a stronger, shared identity and organizational culture across the public sector, and exploring new ways of multi-stakeholder engagement in policy-making processes—could help to limit high turnover among personnel due to political transitions and weak or politicized senior-level management.<sup>13</sup>

**Private Sector and Civil Society:** A private-sector and civil-society alliance that results in an education campaign in the media—radio, television, and newspaper ads—across the region would help to advance a national and regional anticorruption agenda. Such a campaign could empower society action by quantifying the cost of corruption and showing how much is lost in potential government services for everyday citizens.

8 International Narcotics Control Strategy Report (Volume II), Money Laundering, Bureau of International Narcotics and Law Enforcement Affairs, March 2020, <https://www.state.gov/wp-content/uploads/2020/03/Tab-2-INCSR-Vol-2-508.pdf>.

9 Ley de Implementación del Control Telemático en el Proceso Penal, Decreto 49-2016, [http://perso.unifr.ch/derechopenal/assets/files/legislacion/l\\_20191208\\_04.pdf](http://perso.unifr.ch/derechopenal/assets/files/legislacion/l_20191208_04.pdf)

10 Combating Corruption in Latin America: Congressional Considerations, May 2019, <https://www.everycrsreport.com/reports/R45733.html>.

11 Thelma Aldana & Iván Velásquez, The Right Livelihood Foundation, 2018, <https://www.rightlivelihoodaward.org/laureates/thelma-aldana-ivan-velasquez/>.

12 A decade of civil service reforms in Latin America (2004–13), 2014, [https://publications.iadb.org/publications/english/document/Serving-Citizens-A-Decade-of-Civil-Service-Reforms-in-Latin-America-\(2004-13\).pdf](https://publications.iadb.org/publications/english/document/Serving-Citizens-A-Decade-of-Civil-Service-Reforms-in-Latin-America-(2004-13).pdf).

13 Integrity for Good Governance in Latin America and the Caribbean An Action Plan, OECD, October 2018, <https://www.oecd.org/latin-america/regional-programme/Integrity-for-Good-Governance-in-Latin-America-and-the-Caribbean-Action-Plan.pdf>.



Protesters shout slogans and hold a sign which reads as “No more corrupt”, during a demonstration in Guatemala City, Guatemala on April 25, 2015 against a political corruption scandal following arrests coordinated by International Commission against Impunity in Guatemala (CICIG). Today, the CICIG has ceased operations following decisions by Guatemala’s then-President Jimmy Morales to terminate the mandate of the anti-graft entity. The decision was widely criticized by the United States and the international community and seen as a step backwards in the fight against corruption in Guatemala. Source: REUTERS/Jorge Dan Lopez

**US and International Community:** Agencies like the United States Agency for International Development (USAID) and EuroJustice should continue to strengthen public prosecutors’ offices through training in best practices and capacity building that incorporates the use of innovative technologies and open data. Such efforts, coupled with hiring additional human resources to improve efficiency in indicting and convicting perpetrators (consequently reducing the backlog of cases), could go a long way. The United States should also put in place a program to support and protect Northern Triangle prosecutors and judges once they leave office. Such a program should include employment opportunities outside of those countries to protect former officials from threats posed by criminal organizations and gangs, while providing

them with incentives to do their job honestly while in office. Additionally, political and technical support from US and EU embassies can help to bring together civil society to oversee and demand open procedures, which can strengthen the independence of the judicial branch.

## COMBATTING CORRUPT PRACTICES IN PUBLIC PROCUREMENT

### *Long-standing Challenges*

Public procurement is one of “the largest government spending activities” and, as such, is highly susceptible to corruption.<sup>14</sup> In 2019, the estimated cost of corruption in Central America

<sup>14</sup> Carlos Pimenta and Natalia Rezai, “Public Procurement in Latin America” in *Public Financial Management in Latin America: The Key to Efficiency and Transparency* (Washington, DC: Inter-American Development Bank, 2016), <https://www.elibrary.imf.org/view/IMF071/22577-9781597822268/22577-9781597822268/ch08.xml?language=en&redirect=true>.

was \$13 billion, or around five percent of the region's gross domestic product (GDP).<sup>15</sup> With the COVID-19 pandemic, the number will likely be much higher as governments operate under states of emergency and many traditional processes are sidestepped.<sup>16</sup>

But, governments and public institutions are not the only ones under scrutiny when it comes to corruption in public procurement. Because of the inherent nature of public procurement (buying goods and supplies or building infrastructure), the private sector also has a role in pushing for increased transparency and governance and going beyond job creation.<sup>17</sup> This can have a strong effect in the Northern Triangle, where monopolies and duopolies inhibit open-market competition.<sup>18</sup> While some companies—national and multinational—do abide by the law, others collude with government officials on anticompetitive and illicit tactics to monopolize contracts and hamper competition.<sup>19</sup>

Additionally, while foreign assistance and loans include transparency clauses as part of the terms and conditions required prior to disbursing funds to recipient countries, there is no such language for national investments and funding.<sup>20</sup> The notion that others' funds should be tied to such expectations, while there is less concern with using national funds adequately, is highly problematic. In the particular case of Guatemala, for example, all lists of territorial infrastructure plans are confidential, including the bidding process for private construction projects and the chosen bids.

### *Past and Existing Efforts at the National and Regional Levels*

**National Efforts:** To date, governments in the region have responded to crises of legitimacy superficially, mainly by increasing bureaucracy through the creation of new anti-corruption bodies that lead to duplicating functions. For instance, in Honduras, after a series of corruption accusations by the National Anticorruption Council (CNA) and the local Transparency International chapter (ASJ) regarding irregular purchases of medical products during the COVID-19 pandemic, the Juan Orlando Hernández administration created a Transparency Ministry with a mission that overlaps that of the CNA.<sup>21</sup> This decision appears to be part of a strategy to promote and protect the government's anti-corruption and anti-impunity agenda, when in fact, the work of the Transparency Ministry hinders the fight against impunity by rendering CNA's capacities redundant and doing little to address structural issues of corruption in public procurement. The Transparency Secretary, Maria Andrea Matamoros, has criticized Transparency International's Corruption Perception Index and defended the actions of the Honduran government.<sup>22</sup>

On the other hand, civil society has created apps that show that citizens are able to hold the government and other sectors accountable. For example, the Association for a More Just Society (ASJ), in partnership with the Anticorruption Legal Assistance Center (ALAC) and the Public Ministry (MP) in Honduras, launched the initiative "Say it here Honduras," a mobile tool that provides citizens with a mechanism for reporting corruption.<sup>23</sup> The initiative lasted almost five years, but eventually disappeared due to lack of funding and a reduction in citizens' corruption complaints. Similarly, in El Salvador, the Government Integrity Project (GIP), funded

15 Imelda Cengic, "Report: Central America is Losing US \$13 Billion to Corruption," Organized Crime and Corruption Reporting Project, October 31, 2019, <https://www.occrp.org/en/daily/11028-report-central-america-is-losing-us-13-billion-to-corruption>.

16 "Corruption Could Cost Lives in Latin America's Response to the Coronavirus," Transparency International, March 31, 2020, <https://www.transparency.org/en/news/corruption-could-cost-lives-in-latin-americas-response-to-the-coronavirus>.

17 "Corruption, Economic Development, and Governance: Private Sector Perspectives from Developing Countries," Global Corporate Governance Forum, International Finance Corporation, 2006, <https://www.ifc.org/wps/wcm/connect/2cbf2146-95a5-4ba1-b7d7-73bcf64b611a/Final%2BPrivate%2BSector%2BOpinion%2528Issue%2B2%2529.pdf?MOD=AJPERES&CVID=jtCxIjH>; <https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/US%20Foreign%20Aid%20Central%20America.pdf>.

18 "Making Anti-Corruption Reforms Stick in the Northern Triangle," Council on Foreign Relations, March 12, 2021, <https://www.cfr.org/blog/making-anti-corruption-reforms-stick-northern-triangle>.

19 Jeff Ernst, et al., "US Foreign Aid to the Northern Triangle 2014–2019: Promoting Success by Learning from the Past," Woodrow Wilson International Center for Scholars, December 2020, <https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/US%20Foreign%20Aid%20Central%20America.pdf>.

20 Shakira Mustapha and Rodrigo Olivares-Caminal, "Improving Transparency of Lending to Sovereign Governments," Overseas Development Institute, July 2020, [https://cdn.odi.org/media/documents/200710\\_debt\\_transparency\\_final\\_v2.pdf](https://cdn.odi.org/media/documents/200710_debt_transparency_final_v2.pdf).

21 "Nueva Secretaría de Transparencia Nace con los Antecedentes del Gobierno Actual," Criterio.Hn, November 10, 2020, <https://criterio.hn/nueva-secretaria-de-transparencia-nace-con-los-antecedentes-del-gobierno-actual-cna/>.

22 Honduras: New Ministry of Transparency as an obstacle to the fight against corruption, Justicia en las Américas, February 2021, <https://dplfblog.com/2021/02/23/honduras-new-ministry-of-transparency-as-an-obstacle-to-the-fight-against-corruption/>

23 "Consulta el Estado de tu Denuncia de Corrupción en Dilo Aquí Honduras," ASJ Honduras, <https://asjhonduras.com/webhn/en/tag/dilo-aqui-honduras/>.

by USAID and implemented by Tetra Tech, was a joint government and civil society initiative aimed at improving transparency, accountability, and public-services delivery at the national and municipal levels by improving the monitoring of public resources.<sup>24</sup> But this approach had some limitations, as it did not lead to the adoption of institutional integrity as a matter of national policy. It would have had greater impact if applied as a tool to strengthen efficiency, transparency, and accountability of public organizations. One concrete action could have been to require by law that all government agencies disclose their allocated budgets on official online webpages—from payroll to funds and resources spent on executed programs, projects, and initiatives.

Crime Stoppers is a similar program implemented in Guatemala. It is an international platform that encourages citizens to anonymously report criminal and corrupt acts in their communities through a website or phone call. This information is then transferred to local police and courts, helping to create new investigations. Crime Stoppers is funded by private donors in Guatemala, and could be replicated regionally to foster accountability while helping people lessen the fear of reporting crimes. Because these platforms can be downloaded via mobile applications, anyone with a smartphone and an Internet connection can report any act of corruption—from contraband and extortion to drug trafficking or irregularities in public works.

**Regional Efforts:** Best practices from other Latin American countries, such as Colombia, Chile and Costa Rica, point to the use of new technological tools such as blockchain—which is designed to prevent data from being modified or manipulated—to facilitate digital government and promote transparency.<sup>25</sup> As identified in a previous Atlantic Council report, an effective way to reduce corruption in public bids and contracts is to digitize paperwork and implement e-government for transparency in acquisitions.<sup>26</sup> In Mexico, big data, artificial intelligence, and digital signatures like DocuSign have been used to implement digital audits of public purchases, and to effectively oversee corruption in public contracting.<sup>27</sup>

### *Recommendations and Thinking Ahead*

**Public Sector and Civil Society:** To improve transparency in public-procurement procedures, government agencies offering concessions should require bidding companies to subscribe to a memorandum of understanding (MOU), to ensure compliance with integrity provisions in the process of awarding contracts. An agreement could be chartered in which both parties commit that they will not engage in corrupt practices for the extent of the contract and agree to oversight by civil-society groups.<sup>28</sup> Publishing public-procurement information will allow civil society and other actors to play a leading role in identifying and denouncing corruption, especially if a government does not have the capacity to prosecute corrupt actors.

**Private Sector:** To promote integrity in public procurement and government concessions, incentives and deterrents for the private sector should be combined to reduce corruption. There are a number of frameworks and tools available to companies for adopting strong anti-corruption policies. One of those is Transparency International's Business Principles for Countering Bribery to effectively deal with the challenges and risks posed by bribery. The OECD has also created a set of Principles of Corporate Governance to provide guidance and suggestions to develop and implement good corporate governance and promote transparency by setting up efficient internal control and compliance mechanisms to reduce the opportunities for fraudulent practices.<sup>29</sup>

**US and international community:** Technology—specifically blockchain—may help to address some of the most flagrantly expensive forms of corruption. The national Ministries of Technology can partner with multilaterals to synchronize and implement transparency mechanisms in public spending at a national level, which can then be replicated at subnational and local levels. The US Department of Commerce's Commercial Law Development Program should continue its work of strengthening regional trade facilitation through capacity-building efforts with public and private sector to enhance transparency initiatives such as inclusive public consultations

24 "El Salvador Government Integrity Project," Tetra Tech, <https://www.tetratech.com/en/projects/el-salvador-government-integrity-project>.

25 "Blockchain," BuiltIn, <https://builtin.com/blockchain>.

26 María Fernanda Pérez and Tamar Ziff, Hacking Corruption: Tech Tools to Fight Graft in the Americas, Atlantic Council, June 18, 2019, <https://www.atlanticcouncil.org/in-depth-research-reports/report/hacking-corruption-tech-tools-to-fight-graft-in-the-americas/>.

27 Alejandro Landa Thierry and Aldo Gonzalez, "Mexican Businesses May Consider Electronic Signatures for Signing Legal Documents Amid COVID-19," Holland & Knight, March 27, 2020, <https://www.hklaw.com/en/insights/publications/2020/03/mexican-businesses-may-consider-electronic-signatures-for-signing>.

28 What are Integrity Pacts? European Commission, 2015, [https://ec.europa.eu/regional\\_policy/sources/conferences/integrity\\_pacts/what\\_are\\_integrity\\_pacts.pdf](https://ec.europa.eu/regional_policy/sources/conferences/integrity_pacts/what_are_integrity_pacts.pdf).

29 Tools to reduce private sector engagement in grand corruption during the award of public contracts, concessions and licenses, Anti-Corruption Resource Center, April 2013, <https://www.u4.no/publications/tools-to-reduce-private-sector-engagement-in-grand-corruption-during-the-award-of-public-contracts-concessions-and-licenses.pdf>.

through automated processes. It could expand the scope of the program to include working with procurement agencies in the Northern Triangle to improve the transparency and effectiveness of its procurement systems and procedures, primarily in citizen security institutions. Another priority should be to improve access to government contracts for small and women-owned businesses, like they do in the Dominican Republic.<sup>30</sup>

Beyond publishing procurement data in an open format, the next step in improving the public procurement process is to create a fully digitized and automated e-procurement portal.<sup>31</sup> The case of Brazil and Paraguay, with the “electronic reverse auctions,” may be applied to the Northern Triangle countries. When specific government agencies and institutions purchase goods through reverse electronic auctions, a virtual “auction” kicks off. If a Health Ministry announces an intention of buying N95 masks and other personal protective equipment, suppliers are able to bid online for the Ministry to buy from them. This enables competition, transparency, and streamlines communication of the public bidding process.<sup>32</sup> But there is a caveat: open data in government will only work if it can be understood and used by citizens. The secrecy and confidentiality surrounding the plans has provoked mistrust for decades and represents an important setback in public procurement transparency.

## CONFRONTING ILLICIT CAMPAIGN FINANCING: IMPROVING ELECTORAL LAWS

### *Long-standing Challenges*

Weak political-finance systems, unforced electoral legislation, lack of political will for reforms, and deficient auditing and oversight bodies to investigate, monitor, or sanction the misuse of resources, have long affected campaign-finance transparency. Illegal financing of campaigns is an endemic problem in Central America. It has led to the perpetuation of a corrupt political class, and for decades, led to the region’s ranking as the worst of eleven components evaluated in the Political Election Integrity Index (PEI).<sup>33</sup> The continuous

penetration of organized crime into politics has aggravated the problem, particularly at the local level. Collusions between local politicians and criminal networks, mainly drug cartels, introduce dirty money into electoral politics, which is very difficult to trace.

### *Past and Existing Efforts at the National Level*

**Guatemala:** In 2016, the Guatemalan Congress approved reforms to the Electoral and Political Parties Law (LEPP).<sup>34</sup> The reforms established mechanisms for the control and oversight of political organizations; prohibited anonymous contributions; set limits on campaign spending; and imposed a more robust system of sanctions, including the creation of a Specialized Unit for the Control and Oversight of Political Party Finances within the Supreme Electoral Tribunal. As a result, US courts convicted former Guatemalan presidential candidate Mario Estrada, and other officials (at least one former mayor and some congressional candidates) after discovering their political campaigns had been infiltrated by drug-trafficking money. Although a positive step forward, the centralized structure of this unit has limited the possibilities of monitoring campaign expenditures, particularly at the local level.

**El Salvador:** Although the enactment of the Political Parties Law of El Salvador in 2013 included the regulation of private donations, candidates are not obligated to report contributions. Auditing is discretionary to the parties, and there is no oversight body or unit to investigate, monitor, or sanction the misuse of resources, which reduces the transparency of political campaigns. This lack of oversight makes it easier for candidates to amass wealth and political power by illicit means. US agencies can help local electoral bodies with technical assistance to in reforming these laws to foster greater accountability.

**Honduras:** In Honduras, the Clean Politics Law (Ley de Financiamiento, Transparencia y Fiscalización de Partidos Políticos y Candidatos) was passed in 2016 as a result of MACCIH’s collaboration with the TSE and Congress. The law seeks to enforce greater controls and transparency for

30 Commercial Law Development Program, Central America and the Caribbean, <https://cldp.doc.gov/countries-regions.html>.

31 María Fernanda Pérez and Tamar Ziff, Hacking corruption: Tech tools to fight graft in the Americas, Atlantic Council, June 2018, <https://www.atlanticcouncil.org/in-depth-research-reports/report/hacking-corruption-tech-tools-to-fight-graft-in-the-americas/>.

32 Carlos Pimenta and Natalia Rezaí, “Public Procurement in Latin America.” International Monetary Fund. <https://www.elibrary.imf.org/view/books/071/22577-9781597822268-en/ch08.xml?language=en>

33 “Political Integrity Lacking in Latin America and the Caribbean, Especially Around Elections,” Transparency International, September 23, 2019, <https://www.transparency.org/en/news/political-integrity-lacking-in-latin-america-and-the-caribbean-especially-a>; Rossana Andía and Yukihiko Hamada, “The Integrity of Political Finance Systems in Latin America: Tackling Political Corruption,” Institute for Democracy and Electoral Assistance, 2019, <https://www.idea.int/sites/default/files/publications/integrity-of-political-finance-systems-in-latin-america.pdf>.

34 “Decreto Número 26-2016,” Congress of the Republic of Guatemala, 2016, <https://www.tse.org.gt/images/descargas/decreto262016.pdf>.



A woman holds a mock Guatemalan bill which reads, “They stole a billion (\$129 million) of these”, during a demonstration against a political corruption scandal, in downtown Guatemala City, Guatemala on April 25, 2015. The scandal refers to the arrests made on April 16, which were coordinated by the International Commission against Impunity in Guatemala (CICIG) and the Public Ministry authorities of Guatemala, involving 20 senior officials who are accused of leading a massive network of customs fraud and tax evasion operating in the ports of the Central American country. Juan Carlos Monzon, the private secretary to Guatemalan Vice President Roxana Baldetti and a current fugitive, was among those who faced arrest. Source: REUTERS/Jorge Dan Lopez

political financing. It represents an important step forward, as it establishes a new financing and oversight regime, sets limits on campaign spending, limits private donations, and prohibits anonymous contributions. In addition, the Financing, Transparency and Oversight Unit was created to sanction illegal financing—including the dissolution of political parties that do not comply with the regulations.

Although the Clean Politics Law filled an important gap in political financing in Honduras by strengthening the legal and institutional framework to oversee the income and expenditures of parties and candidates, the Clean Politics Unit that oversees compliance with the law is drastically underfunded and understaffed. Therefore, illicit financing continues, as many candidates and public officials—including President Hernández and the attorney general—have been accused of drug trafficking and face criminal charges. The DEA and US prosecutors have uncovered conspiracies between corrupt politicians, police, and military personnel, and some of the most powerful drug kingpins in the world,

including President Hernández’s brother, who was sentenced to life in a US prison. These actions send a powerful message of zero tolerance to Honduran political and business elites involved in organized crime and narco-activity.

### *Recommendations and Thinking Ahead*

**Public Sector and Civil Society:** Independent civil-society groups should review electoral laws in the three countries to identify gaps and loopholes, mainly with the implementation of clear and rigorous sanctions; this would help to ensure consistency and enforcement. All political parties must be required to submit financial reports through an open website created and supervised by political finance oversight agencies in each country. Local civil society organizations could partner with USAID to finance this online portal and provide workshops to train political parties, campaign donors, and independent media on how to use it effectively. Providing public access to information about political financing makes it easier to monitor and analyze the origin of funds. The

financing and designation of the unit that regulates electoral finance should be independent—and not under the control of those who are chosen through the electoral processes they are overseeing.

**Private Sector:** Electoral laws in each country should require that private entities disclose all donations and contributions to both individual candidates and political parties. The laws should impose penalties for donors that do not comply with the legal campaign spending ceilings. Active civil-society participation is required to push for campaign-financing reforms. The Biden administration should provide additional financial and technical resources for capacity-building efforts that support civil-society organizations' oversight of electoral process.

**US and international community:** USAID, along with cooperation agencies from European countries, should join efforts with diplomatic missions in the Northern Triangle to promote increased transparency in electoral legislation. Electoral laws should be reformed to provide for an autonomous regulatory body that has sufficient funding and a mandate to sanction illicit financing in national and municipal politics, including, for instance, in the case of El Salvador, oversight of financial support received from the Salvadoran diaspora. As well, a mobilized, empowered, trained, and continuously involved civil society and independent media will be important factors in pushing for electoral reform to be part of the political agenda. Developing a campaign—endorsed by the United States, the European Union, and embassies in the three countries—with specific messages targeting different audiences would spark higher public interest and demands that parties enact legislative changes.

## CONCLUSION

There is no one answer for ending the multifaceted corruption that plagues the Northern Triangle. This brief puts forward ideas to help guide US engagement and support with the region, chief among them reforming the judicial system, combatting corrupt practices in public procurement, and confronting illicit campaign financing. These proposals are a result of consultations with the Atlantic Council's Northern Triangle Advisory Group, a group of thirty public, business, and civil society leaders that focus on generating support for innovative policy solutions to some of the most pressing challenges in the Northern Triangle, which are similarly many of the root causes of migration in the region.

For change to occur, implementation of judicial and campaign-financing reforms will require political will from all sectors of society, and sustainable mechanisms for oversight and tracking via comprehensive metrics. The international community must show a zero-tolerance approach to corruption and augment local capacities to enforce sanctions. As well, it is vital to set a precedent by penalizing dishonest public and private leaders—especially those with links to organized crime and drug trafficking—through the US Departments of Justice and Treasury.<sup>35</sup>

Pressure from US members of Congress on democratic promotion, the separation of powers, and the independence of the judiciary in the Northern Triangle should be maintained to foster reforms and to pass legislation to sanction corrupt officials (i.e., Leahy and Magnitsky Laws and Engel List). The Biden-Harris administration should create a task force with officials from the US Departments of Justice and State to help local prosecutors fight corruption in the Northern Triangle.<sup>36</sup> This initiative would help judicial institutions to move forward on specific corruption cases and investigations that have been intentionally delayed.

The Biden-Harris administration has shown determination in becoming a reliable partner to ensure that all the lost progress regarding corruption and impunity in Central America is regained—and that it sticks. The recently launched Western Hemisphere Drug Policy Commission Report recognizes significant advances in the fight against corruption but

35 The "Engel List" focuses exclusively on creating a list of corrupt and undemocratic actors in the Northern Triangle. Furthermore, the authority provided in the Global Magnitsky Human Rights and Corruption Accountability Act could also be applied to hold corrupt government officials accountable through travel and financial sanctions (e.g., revoking US visa privileges).

36 U.S. weighing anti-corruption task force for Central America -envoy, Nasdaq, April 2021, <https://www.nasdaq.com/articles/u.s.-weighing-anti-corruption-task-force-for-central-america-envoy-2021-04-22>.

emphasizes the need for a more timely strategy.<sup>37</sup> Such a strategy should include mechanisms through which results are measured, accountability is exercised, and misuse of foreign aid is punished. The road ahead is not an easy one but inroads to fight corruption will yield significant benefits across society.

## ACKNOWLEDGEMENTS

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<sup>37</sup> Report of the Western Hemisphere Drug Policy Commission, December 2020, <https://foreignaffairs.house.gov/2020/12/engel-releases-western-hemisphere-drug-policy-commission-report>

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