Chapter 7

Chile

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This case study presents the proposed reforms to political funding and election oversight in the Republic of Chile put forth by the administration of President Michelle Bachelet. It details the measures to increase public funding, ensure transparency in finances, and create effective sanctions for violations.
Introduction

This chapter aims to explain in detail the bill put forward by President Michelle Bachelet (2014-18) on Democracy Strengthening and Transparency, which is currently under consideration by the Chilean Congress, and will become law of the republic in the second semester of 2015. The system of financing political parties and candidates in Chile is currently based on the Law 19,884 on Transparency, Limit and Control of Campaign Spending. The purpose of this law is to monitor campaign spending, meaning any payment made for the financing of equipment, office space, political parties and candidates.

The financing structure provided in the current legislation applies only over the period of time between the expiration of the declaration of candidates and the day of the respective elections. Only disbursements during this period will be considered as election expenses.

Current legislation combines a system of public and private funding. Public funding is understood as any contribution and reimbursement of election expenses incurred by candidates and parties by the state upon presentation of tickets or invoices. On the other hand, private funding is understood as any funding made to a party and candidate in the form of a grant, loan, or any free agreement, whether or not it has payment associated for the financing of election expenses. The current law allows for contributions from private individuals to electoral campaigns with a maximum of 2 000 UF (1 UF is equivalent to about USD 40) for one candidate or political party, and 10 000 UF for multiple candidates or political parties.

However, in order to strengthen transparency and political financing, Law 19,884 has a number of limitations, summarised in three main aspects: i) weak auditing powers of the Electoral Service; ii) a restrictive definition of informers, preventing citizen complaints; and iii) it erodes the principle of control and transparency of election income and expenses.

This initiative is part of the recommendations of international organisations, as well as various proposals that have emerged from the debate on the development and improvement of democracy in Chile since 2000. In particular, with the aim of responding to three central variables that have been diagnosed as the key areas for improvement, this initiative focuses its efforts on three essential pillars for the functioning of the democratic system: equity, transparency and democratic control.

Equity in political participation requires the State to assume a more active role in creating contexts for participation and competition among various political actors on equal terms, levelling the playing field so that unequal access to financing will no longer be decisive to the outcome of elections, and economic inequality does not replicate as political inequality.

Transparency, meanwhile, has a dual role in politics. On the one hand, it is a disincentive to corruption, and secondly, enables the democratic and citizen control of public funds. In politics, transparency is the key to ensuring that personal interests do not take precedence over general interest.

But transparency alone does not prevent conflicts of interest from arising in politics. It not only seeks to prevent and meet potential conflicts of interest, but what is required is to proscribe them from political activity. For this, rules are required that prohibit institutions that defend purely commercial or private corporate interests involved in
politics. Furthermore, it is essential to have an effective control system of such rules, which involves the strengthening of control and sanctions, in order to create a deterrent effect that encourages respect for democratic rules.

All of the above is at the core of the proposed policy reform, and comes to reflect an interest in raising Chilean democracy to the highest standards of probity and transparency, fairness in political competition and control of the main political actors, and in this way to contribute to and consolidate greater legitimacy and stability in the Chilean political system.

**State of the art/diagnosis**

Chile is in the process of undertaking major reforms, as democracy requires institutions to be able to adapt to new challenges. In this sense, one of the main challenges aims to find new value in political activity and raise its importance in society.

In recent years, a significant disaffection has been shown to parties and politicians both locally and internationally. One of the main reasons for this is related to the perception of interference of money in politics.

It is a fact that politics has an operating cost that needs to be settled. For example, the last presidential election, in the first round, cost CLP 10 623 534 969, while total expenditures on campaigns for deputies was CLP 14 104 479 095, and in the case of senators was CLP 11 128 078 256. These figures include the total spending of all candidates for each election. It is essential that it is the democratic system that controls the money, and not the other way round (Moboji, 2003). In this sense, the regulation of financing, including its institutional structure, has a direct effect on generating opportunities, barriers and incentives in the way that political actors behave and, therefore, on how democracy works. In this regard, to ensure fair competition, to monitor the effect of money and material resources on the results of political representation, to adequately protect freedom of expression and association, to ensure transparency, and to limit the space for influence peddling, corruption and circulation of illicit funds are crucial objectives to consider in the design of political financing systems (UNDP, 2015).

Having legislation in line with these capabilities will allow Chile to adopt international standards and to create democratic mechanisms that allow greater control and transparency of the activities associated with politics.

Currently, the legislation governing the relationship between money and politics is a matter of debate in the Chilean parliament. However, it should be noted that this debate is not new, but dates back to 2000, where under the administration of former President Ricardo Lagos (2000-06), the first regulations and standards on the relationship between the public and private world appeared. It has been a gradual process and today, in the current administration of Michelle Bachelet (2014-18), where a concrete commitment has been made to promote an agenda of Probit, Transparency, State Modernisation and Strengthening of Democracy, aiming to make progress and improve the quality standards of democratic in the country will advance and improve. So to fulfil this commitment, in December 2014 the bill on Democracy Strengthening and Transparency was sent to Congress. It seeks to strengthen the Chilean democratic system by introducing high standards of transparency, control and public financing to public and electoral activity, in order to ensure adequate public service of authorities and political parties.

The bill, based upon a detailed analysis of political and social reality, considers the recommendations provided by various international agencies for the proper functioning
and development of contemporary democracies. In this regard, greater democratic quality is closely linked to the search for greater social equality, the effective fight against poverty, and the expansion of the rights of citizens. Such is the conviction of the need to provide new tools for equal political participation that it has been proposed to establish institutional principles that achieve greater equity in the access to positions of popular representation.

**The need for democracy strengthening and transparency**

After 25 years of democratic rebuilding, Chilean society has evolved rapidly, where concepts that were previously questioned are today the basis of requirements for a more open, transparent and participative government. It is precisely in light of this evolution that the country’s institutions have lagged behind national momentum. One of the most concrete ways to advance concerns legal amendments to establish a new and improved framework for political activity, where access conditions and electoral competition can be improved; the role of political parties as articulators of social interests be revitalised; and the establishment of clear and strict rules on transparency, arrangement and access to information produced by political parties in view of the public resources received can be concretised.

The effort aims to address the aforementioned three key elements to respond to repeated requests from the public regarding government elements and the political system as a whole:

1. **the need for better politics quality:**
   a) promoting democratic governance and strengthening the political system.

2. **to raise the role of parties in the pursuit of the common good:**
   a) deepening the institutionalisation of political parties, the emergence of new leadership and the generation of long-term projects
   b) providing greater legitimacy to political parties to channel the general interests of society.

3. **to strengthen the role of government in promoting democracy:**
   a) improve standards of transparency and control to respond to new demands of citizens and for citizens to know how political parties are funded and spend money.

All democratic systems assume that for proper development, political parties must be provided with a financing system that complies with the principles of transparency and political equality in order to establish clear and concrete institutional conditions to achieve greater equity in access to elected office.

Thus, equal participation in democratic processes and effective realisation of the rights of political participation are fully viable only if there is a system of political financing that prevents contributions from individuals who could influence the behaviour and decisions of such entities and authorities later. This view is shared by various international organisations such as the Organisation for Economic Co-operation and Development (OECD), Transparency International and the European Council, who have sought to establish and promote basic international standards to regulate the public financing of political parties and candidates, against contributions of legal persons, arguing that the influence of corporate interests on politics must be controlled, and thus to
promote the autonomy of the parties regarding possible capture of private interests, reducing corruption and undue influence peddling, as well as being able to consolidate trust, institutional framework and transparency of political parties and democratically elected authorities.

Promoting a level playing field: Equity in political competition

**Increasing public funding**

**Double public contributions to political parties**

A permanent contributions fund to political parties will be created. The objective of this aims to strengthen the public role of political parties and enable them to develop research activities, and develop civic education, among others.

In addition to the above, it states that at least 10% of funds received by the parties shall be for activities to promote the participation of women in politics.

A decreased campaign spending limit is also established, by defining a distinct reduction for each type of election.

The objective is that campaigns are more austere, where advertising spending, radio appearances or street signs do not trespass on the city’s daily life. This measure presents a challenge for candidates, since they must find new ways of campaigning and attracting citizens to their political ideas.

**Framing private funding**

A limitation is established on the contribution that a candidate can make to his own campaign so that the money a person has would not be an advantage when applying for public office. In this line, ideas are favoured over access to campaign finance itself.

Contributions from legal entities are prohibited. The reasons for regulating and gradually eliminating such contributions consider both normative arguments as effective equity. Indeed, the constitutive nature of legal persons is established that legal persons, besides not having the right to vote, usually represent interests and not preferences. Its aim is to maintain and increase their assets so the link with politics cannot be other than related to the political system to that end.

The limit on contributions from individuals to political campaigns is decreased. This seeks to ensure that contribution from an individual to a candidate does not result in possible future pressure from donor to the representative.

Anonymous donations are regulated and reserved contributions are eliminated. Also, electoral advertising in public spaces is prohibited, only exceptionally allowing electoral propaganda in public squares and parks flos, when previously authorised by the Electoral Service and prior to a report by the City Council to such effect.

Finally, regulation of expenditures on media by political parties and candidates is established. This specifies that the press and radio stations are only allowed electoral propaganda if they inform SERVEL of their fees within the time limits fixed by law, thereby discouraging discretion in price schemes that could favour one candidate or party over another.
With the above, the role of money is limited in democracy, slashing the amount that candidates and parties can spend on a campaign, and reducing the impact and dependence on private contributions themselves, and in election campaigns.

Ensuring more transparency

In order to qualify for public financing contributions, any political party shall appoint a General Manager of the Funds, established in Chile, who will be personally responsible for civil and criminal misuse of State funds delivered to the party. While in the case of private financing, parties must permanently keep public all available information about such contributions through their websites: the monthly balance of income and expenses, updated quarterly, and broken down into specific categories. All contributions, whether public or private, should be made publicly available.

Transparency in politics discourages corruption and allows citizen control. This is the key to ensuring that private interests do not take precedence over general interest. It is for this reason that only low amounts of anonymous donations are allowed and these will vary according to the type of election.

In this regard, OECD member countries have adopted similar regulations in this area, in order to promote transparency and confidence in political parties. One such measure concerns the regulation of financial contributions from private donors to ensure transparency of donations, avoid damaging political activities and ensure the independence of political parties (OECD [2011], Integrity and Transparency in Political Finance).

Integrity

There are several mechanisms in Chile that seek to ensure the integrity of public service. Of these, three are important to note, given the effect they have on public officials’ actions and the way citizens can exercise control over their representatives:

1. The Law on Access to Public Information (2008), obliges the authorities and officials of the state administration to strictly comply with the principle of transparency in public service: that is, to respect and promote the publicity of acts, resolutions, procedures and documents management, as well as all base information, and to facilitate the access of any person to such information, either by publishing all information described above on line (active transparency), as well as providing any person with the possibility of requiring all the history of documents appropriated in accordance with the provisions of the law (passive transparency).

2. The Lobby Act, which regulates lobby and the conduct representing particular interests for authorities and officials, constituting a breakthrough for providing tools to public activities that make its exercise more transparent. The entry into force of this law represents a profound change in the relationship between the state and the people, establishing the duty of the authorities and public officials (having the status of “passive subject”), the recording and publicising of: i) the meetings and hearings requested by lobbyists and special interests managers aiming to influence a public decision; ii) any travels made in the exercise of their functions; iii) any gifts received as authority or official.
3. The Statement of Assets and Interests, which aims to expand the legal obligation of high responsibility officers to show to the public the absence of conflict to exercise their positions in the various departments of the State. This has been deepened with the Law of Probity in Public Service, which increases the number of subjects who must make this declaration of assets and interests. Declarations of assets and interests are one of the mechanisms that draw close and clear the link between the authority and administration official to public scrutiny. It fosters a culture of transparency and probity in public administration, to discourage corrupt and abusive practices, because it allows the public to be informed about the financial position of the respondents.

Control, enforcement and supervision

Currently, electoral bodies are one of the main solutions to secure, monitor, control and sanction the open, clean and fair elections, and to generate and increase confidence in the elections, playing a key role in the consolidation of democracy. They are called legitimacy providers within each electoral process to resolve conflicts that may occur in the context of modern democracies.

Clearly, to ensure that the rules become effective, the mere determination of an act as wrongful is not enough, but also require an adequate system of control, supervision and sanctions, which must be accompanied by a strong institutional framework that allows this organism to supervise the effective implementation of the regulation.

In the Chilean case, the Electoral Service (SERVEL) is the highest body of electoral administration in the country, and one of its specific functions is to ensure compliance with the electoral law. In particular, the control function of the financial statements of the candidates or political parties is exercised exclusively by this body. The structure of the Electoral Service is comprised of 276 permanent staff by 2013, which is exponentially increased at election time by people that perform specific functions only during this period. Of the permanent staff, 80 are professionals, equivalent to 29% of the total, while the remaining 71% are technical, administrative and support staff. SERVEL’s current capabilities are limited, since it is not a body with effective control capability, and in practice, mainly plays an administrative role. To change this situation it is essential that the new Electoral Service may exercise control and the power to levy sanctions before, during and after elections, particularly as related to campaign finance. The goal is to strengthen the supervisory organ and effectively hand over power and real capabilities to control and monitor compliance, thus ensuring that the rules are applied to all participants.

In this context, the reform of the electoral body in Chile to expand its institutional capacity appears imperative to achieve higher levels of legitimacy and improve the quality of democracy. The bill identifies this flaw in the system and addresses the need to strengthen the transparency and legitimacy of the electoral process by creating a suitable institutional framework to the requirements it entails a stronger and consolidated democracy.

A strong body is needed with oversight and sanction powers appropriate for the role it plays in democracy, protecting transparency in the electoral processes. To achieve this, the political reforms that are being carried out seek to provide SERVEL with the necessary tools to effectively monitor the compliance of the rules governing the financing of democracy. The supervisory body, in order to monitor campaign spending, should have
sufficient powers to monitor accountability, conduct and order audits of annual statements of public account, and should have the power to enter the premises where political parties or candidates are based and the ability to access the books of accounts and documents, to monitor the financial status of the subjects under their supervision, among others, as well as during campaign time as on election day itself. This is the only way in which an in situ and ex post control can generate disincentives for any behaviour outside the law, and can create incentives for better performance of both parties and election campaigns.

**Penalties as mechanisms to ensure effective compliance**

The proposed mechanism for effective compliance with the rules is the application of a series of sanctions, mainly financial, relative to the crime committed. Thus, the strengthening of the supervisory body will be linked to a strong system of sanctions, a theme on which our country had a number of shortcomings, due to the inability of SERVEL audit noted above.

The objective is to implement a general administrative disciplinary proceeding, which shall determine the penalties payable by the offending party or candidate determined by SERVEL by taking into consideration a number of factors, such as damage to public property or the number of infractions, among others. In addition, penalties will be established for the candidate or General Manager of the Funds of political parties that obtain State contributions through misrepresentation or deception.

In this matter, the relationship between SERVEL, as the body in charge of the electoral administration, and the Electoral Court (TRICEL), which, in the Chilean legal system certifies national elections, resolves complaints and proclaims the elect, becomes very important.

To have a solid monitoring and compliance body, it’s imperative that the work of these two entities be co-ordinated. In this sense, the initiative establishes that in those cases where violations of the law of parties may involve the suspension, dissolution or inability to fill management positions, the competent court to resolve this issue will be the TRICEL.

**Concrete measures to respond to citizens and adopt international standards on money and politics**

Modifications to campaign spending and contributions to campaigns:

- Double public contributions to political parties.
- Election expenditure limit on campaign period is reduced.
- Contributions by legal persons are prohibited to election campaigns.
- The contributions by natural persons is regulated by lowering the limit on the amount an individual can donate to one or more candidates or parties during a campaign.
- The contributions of candidates to their own campaigns are regulated.
- Transparency rules are established where all contributions made to candidates or their parties during the campaign period must be made through the website of the
Electoral Service. It is further stated that public contributions should be open and transparent.

- No party may contract services with companies that do not respect labour standards.
- There shall be no reimbursement owed for the number of votes obtained if there is any pending fine.
- Finally, contributions to political training institutes are regulated, stating that these contributions are public and may only be made by political parties or individuals.

Regulation of electoral propaganda with fairness and respect for citizenship:

- The concept of election expenditure expands, not only considering this as one that seeks to influence the vote, but also aimed at promoting candidates.
- A period of 90 days is established for conducting written press and radio campaigns and 30 days for campaigns in the street.
- The role of radio as media and broadcast power is enhanced, creating opportunities for radial debate and disseminating information spots with election information.
- The obligation is established for radios to report their rates to the Electoral Service.
- Use of public spaces is regulated where the installation of electoral propaganda is permitted.

With respect to enforcement and penalties:

- The powers of the the Electoral Service and auditing standards are strengthened.
- A system of penalties and efficacy more severe is established, with sanctions including dismissal from office in the case of non-compliance.

On permanent contributions to political parties:

- A permanent contributions fund to political parties will be created to strengthen the public role of political parties and enable them to develop research activities, and develop civic education, among others.
- In addition to the above, it states that at least 10 % of funds received by parties shall be for activities to promote the participation of women in politics.

Challenges

The improvement of the parties financing system should be part of the discussion of the political system as a whole. The success of any reform will be primarily attained based on the ability of the Government and Congress to adopt an integral view of the political system, as it is already being done with the presentation of the project that seeks to strengthen political parties, regarding the institutional strengthening of the Electoral Service, and the already approved constitutional autonomy of this body of electoral administration and management.
Political periods that fit properly is a complex issue and it represents the main challenge to give Chile a modern political system that can respond to a new society, and where it is necessary for institutions and processes to function in a co-ordinated way, meeting the needs of citizens. To the extent that the triad: money in politics (campaigns and parties), reform of the law on political parties, and strengthening the electoral management body work in harmony, it is highly likely that the objectives pursued in the reform plan can be successfully achieved and can provide the political system greater legitimacy in its role as co-ordinator of social interests.

**Note**

1. The current bill establishes a sanctioning administrative procedure and a series of fines for violations to the Law on Transparency and Control Limit Campaign Spending (Law 19,884). These fines are applied by the Director of the SERVEL and their amounts depend on the percentage of the amounts of money given or received illegally.

   Besides this sanctioning administrative procedure applied by the SERVEL, our system provides the possibility of jointly applying appropriate criminal penalties on the candidates or their representatives for the crimes they would have committed. The most common criminal offenses in these cases are tax fraud and embezzlement of public funds, which are punished with imprisonment and fines, following the declaration as guilty in a due court proceeding.

   Thus, the competent court may judge the facts at the same time the SERVEL provides the necessary background information. During the proceedings the parties may be summoned to declare and to gather records for finally passing sentence, in strict compliance with the rules of due process. It is noteworthy that the judicial process will take place and give sentence independently of what the SERVEL decides, so it may happen that while one discards the charges, the other finds it guilty. Criminal liability does not depend on what the SERVEL determines on administrative grounds.

   On the other hand, a disciplinary procedure can be developed by the Comptroller General of the Republic in the event a civil servant or an authority is involved in illegal practices. In these cases, any person may present the corresponding complaint, duly providing the background on which it is based.
References

