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Standards on Political Funding and Favours

The quality of government and the efficacy of democracy are damaged when corruption distorts political party and campaign financing — warping candidate competition and undermining elections. For example, electoral processes can be unduly influenced when sizeable and undisclosed amounts of money are ‘donated’ to political parties by organisations with their own political agendas. Political parties and candidates may also distort the process when they resort to buying votes rather than focusing on the quality of their campaign messages. Yet the damage may not be confined only to the electoral process. The quality of government is seriously compromised when decisions made by elected politicians benefit those who funded their ascent to power and not the broader public interest.

Table of Contents

1. The need to clean-up political finance
2. Transparency
3. Levelling the playing field
4. Ensuring the positive role of business
5. Parties also need transparency and accountability
6. Establishing a robust legal framework
7. Oversight that works
8. Getting the media's role right
9. What the public can do
10. Key recommendations

TI's Key Recommendations for Political Financing Standards

- 🌐 Detailed disclosure of assets, income and expenditure by political parties and candidates.
- 🌐 Limits on the duration and cost of election campaigns, and on large private donations.
- 🌐 Mechanisms to safeguard ethical standards in public life, including conflict of interest laws.
- 🌐 Adequately resourced, independent oversight bodies.

International Political Finance Provisions: An Overview

According to the UN Convention against Corruption (UNCAC) "each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties" (Article 7(3)).⁵

In more explicit terms, the African Union Convention on Preventing and Combating Corruption states that "each State Party shall adopt legislative and other measures to: (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (b) Incorporate the principle of transparency into funding of political parties" (Article 10: Funding of Political Parties).⁶

The Council of Europe (COE) has provided more in-depth recommendations to its members, although these are non-binding and drawn from guidelines. Areas addressed include private and public financing, as well as transparency and enforcement.⁷

1. The need to clean-up political finance

Public trust in democratic institutions has been eroded as scandal after scandal has revealed politicians sharing the spoils of power with their financial backers. Political parties are widely perceived to be the single most corrupt domestic institution, followed by the civil service and parliaments, according to Transparency International's Global Corruption Barometer (2009).¹

Faced with evidence of voter concern about the way electoral politics is financed, governments have begun to take steps to regulate political party and campaign financing. Many have introduced laws on disclosure of finances; requiring parties and candidates to report on the donations received, including the origin of the donation, the amount and party expenditure.² Other governments have banned certain types of donation considered to be more prone to corruption, such as donations from large corporations. Another route has been to reduce the need for money by providing state subsidies, shortening campaigns, providing subsidised access to the media or curbing the amounts that parties may spend legally.

There is no single model of regulating political donations, but there is a growing understanding that efforts need to go beyond the formal passage of laws. For example, Transparency International (TI) has developed a series of standards that emphasise the need for civil society, the media and internal political party and private sector controls to be implemented in addition to legal regulations.³ The development of these standards reflects the importance of the issue to the anti-corruption movement and is drawn from the body of knowledge that TI national chapters have accumulated through their work.

2. Transparency: the cornerstone of regulation

Transparency is the starting point for regulating how parties and candidates are funded. Transparency, through the full disclosure of their political financing policies and practices, provides the ability to verify that no malpractice has occurred and that regulatory frameworks are being effectively implemented. By increasing levels of transparency, voters are empowered to make informed choices about candidates on Election Day.

International law has increasingly recognised the importance of transparency for mitigating corruption in party politics and using disclosure of political financing as a means to improve it (see side bar). The United Nations Convention against Corruption (UNCAC), which entered into force in 2005, calls on states to 'enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties'.⁴ The African Union Convention goes a step further and is the only inter-state agreement to have mandatory provisions on political finance, requiring members to 'incorporate the principle of transparency into funding of political parties'. The Council of Europe has also carried out important work in this field, and in 2003 issued 20 political finance guidelines for its members that are largely focused on disclosure.

Despite these mandates and recommendations, surprisingly few countries have good disclosure laws — or implement what they have in place. A comprehensive study in 2003 by USAID found that of the 118 countries reviewed, 28 had no disclosure laws. Of the remaining countries, only 15 required parties and candidates to disclose income (and/or expenditure accounts) and make public

the identity of donors to political parties.⁸ Subsequent research on particular regions and countries has revealed other challenges to disclosure, such as inconsistencies between existing policies and current practice.⁹ For example, a TI study of eight Latin American countries showed that disclosure, both for a party's day-to-day operations and during electoral campaigns, was the weakest of all the dimensions assessed of political financing regulation in the region.¹⁰ Even where good laws do exist, such as in the US, independent findings show that there are often significant enforcement gaps.¹¹ However, organisations are using disclosure policies on political financing that are in place to access information that can provide citizens with evidence of how regulations are being manipulated or stretched to their limits.¹²

3. Levelling the playing field

The motivation to regulate campaign financing has not only been driven by the need to curb corruption, but also the desire to promote fair competition between political opposition forces and nurture emerging parties. 'Levelling the playing field' among parties is usually done by providing them with public funding through direct or indirect subsidies. Indirect subsidies can include tax relief on political donations as well as free or reduced costs for television air time, campaign materials, telephone usage and public office space.

The aim in all cases of offering subsidies is to reduce the comparative advantage of wealthy parties and stem the 'arms race' for campaign funds. Public funding has additional benefits as provision is generally conditional on the presentation of party balance sheets, including invoices for money spent. The full advantage of public subsidies can only be wholly realised, however, if there are low thresholds for accessing public money, thus enabling smaller parties and minority candidates to participate in the programmes (see side bar).

4. Ensuring the positive role of business

Private interests must be prevented from subverting the democratic process through the purchase of control and favours. According to the TI Business Principles for Countering Bribery, political contributions are one of the high risk areas of a company's operations for bribery to take place.¹³ TI has consistently called for companies, their employees and agents to not make direct or indirect contributions — whether these are made to parties, candidates, elected officials or third-party organisations such as research institutes — as a way of obtaining any advantage in their business transactions. In situations where political contributions are made, they should be publicly disclosed by the company. TI has included this dimension of transparency in political contributions as part of its assessment of Fortune 500 companies and their public disclosure of strategies, policies and management systems to combat bribery and corruption.¹⁴

Banning corporate money in political finance has been one answer for preventing business from distorting political processes. However, such an approach could be counterproductive by inhibiting the diversity of parties within a democracy or by driving donations under the table. Rather than bans, the introduction of ceilings on (corporate) donations is often more effective to prevent illicit influence on parties and candidates.

Canada: Encouraging Grassroots Political Finance

'Big Money in little sums' has become a political reality for Canadian political parties, thanks to an innovative combination of public regulation through tax credits and organisational efforts to reach out to citizens through direct mail. The establishment of federal and provincial tax credits for political donations has helped to encourage small donations from individual citizens and local businesses.

Once an individual candidate is nominated, his or her agent may begin to issue receipts for tax credits for donations while registered parties may issue these receipts continuously. The federal tax credit is calculated based on a percentage formula.

In the 1980s the value of tax credits in Canada was equal to roughly 30 per cent of the total income of federal parties and they accounted for more than two-thirds of the government's total contribution to parties and candidates.¹⁵

Germany: Setting the Bar Low for Public Funding

In Germany, the threshold for receiving public funds is significantly lower than the one required for having parliamentary representation (five per cent of the vote).

Any party can access state funding if it receives 0.5 per cent of the vote in national elections and one per cent of the vote in state (*Länder*) elections.¹⁶

Legal Shortfalls in Regulating Business's Role in Party Funding

Even when there are clear policies within a business not to use political donations for a company's own ends, there are some shortcomings in the current legislation that may create considerable corruption risks.

For example, the OECD Anti-Bribery Convention, which proscribes bribery of foreign public officials, does not prohibit bribery of foreign party officials.

As a result, companies may not be properly mitigating their exposure to demands for bribes and the subsequent reputational risk that is caused.

Colombia: Encouraging Party Disclosure

In the run-up to Colombia's regional elections in October 2007, TI's national chapter, *Transparencia por Colombia* (TC), organised a series of workshops in Colombia's main cities with candidates and party accountants to strengthen their internal processes for greater accountability. As a result of these events, 'transparency pacts' were signed with 16 political parties, requiring their candidates to disclose the identity of donors and publish all donations on their party website and in the press at least one week before the elections.

In spite of the high level of engagement and promises, only one candidate fulfilled her commitment to the agreement. Three other parties finally did respect different parts of the original pact and published partial information of their finances and for certain candidates. As a result of the failure of parties to abide by their earlier pacts, citizens lacked information on 64,000 candidates that were running in national, state and municipal elections.¹⁹

The TI chapter has publicised the breakdown of the pacts and the weak policies that political parties have in place policies which limit the public disclosure of their finances. Greater party disclosure, as the chapter has stressed, is paramount in a country where the risk of drug traffickers, paramilitary groups, organised crime and clientelistic networks influencing policy decisions through political donations is a real and constant threat.

To ensure a positive role for business where political donations are a legitimate part of the democratic system, the emphasis should be on transparency and limits on donations. For example, companies should list all donations and publish their policy on political donations (defined broadly to include donations to parties, candidates and third parties). Moreover, companies should not make political donations in countries where they have no legal presence. In line with a movement towards enhanced shareholder activism around the globe, listed companies should also give very serious consideration to the option of requiring shareholder approval of donations and board oversight. Unfortunately, most companies are opting out of handing over controls and decisions on political financing. A review of Standard & Poor's 100 companies revealed that only one-third had board oversight of their political spending.¹⁷

5. Parties also need transparency and accountability

The aim of campaign finance regulations is not to hamper the performance of political parties. Representative democracies cannot function without them. Furthermore, political parties and candidates to elected office need money to communicate their platforms and policies to voters. This need for financing has become more acute in recent decades as election campaigns have become more sophisticated and party membership wanes. Television spots, social media strategies and costly opinion polls have to some degree replaced door-to-door canvassing by party volunteers as the method of choice for campaigning. The challenge is to limit the opportunities for corruption, while promoting political equality and recognising the demands on political parties and candidates.

Yet if parties are not committed to clean politics and electoral competition, regulation is unlikely to succeed (see side bar). Political parties need to demonstrate willingness to abide by external regulations. As practice has shown, clear and simple regulations are more successfully enforced and easier for political parties and candidates to comply with than laws that are unclear or difficult to monitor. Party representatives in the legislature need to support good laws governing campaign finance and ensure that such laws are effectively enforced through the creation of strong oversight bodies.

TI maintains that parties also need to introduce internal reforms, such as fair candidate-selection procedures and transparent funding requirements for internal elections. Increasing levels of transparency within parties can strengthen their internal accountability and democracy as well as pay off during election time when voters elect those parties championing transparency and integrity.¹⁸

6. Establishing a robust legal framework

Campaign finance regulations need to be analysed with reference to the broader legal framework and political context. Party finance laws must interface with other regulations that have a bearing on the funding of politics and behaviour of political actors, such as parties and trade unions (assuming the country has introduced bans on trade union donations).

As a means of fighting political corruption, party funding laws are one piece of the legislative puzzle. For example, conflict of interest laws are a complementary yet essential component of anti-corruption legislation, including laws that regulate the conditions under which an elected official may hold a position in the private

sector or in a state-owned enterprise. Also, laws that mandate periodic declarations of assets held by parliamentary parties are a way to monitor and determine whether abuses of power are occurring. Since they can be used as vehicles for channelling illegal funding, political foundations (affiliated with parties and parliamentarians) and party officials and their families additionally need to come under the oversight of government and civil society. Finally, time restrictions to prevent elected politicians from moving into corporate positions and clear immunity rules serve to limit the influence of business on government.

7. Oversight that works

While a strong regulatory framework is necessary, it is not sufficient to counter corruption in political finance. Countries with sophisticated regulations continue to suffer scandals. One reason for this is that regulations are not adequately enforced. Oversight bodies may be inadequately equipped, laws may be too complex and cumbersome to be practicable, or there may be a lack of political will to allow enforcement bodies to carry out their functions independently and free from political interference.²⁰

To be effective, oversight bodies must be adequately mandated, resourced and supported by an impartial and working judicial system. They must also be able to investigate possible cases of corruption. If investigations and checks are merely procedural rather than probing, they are unlikely to succeed in detecting or deterring corrupt practices. Sanctions should also be suitable to the offence. For instance, candidates should not be disqualified for minor failures to comply with reporting requirements. Other infractions must be punished harshly, however, such as using the proceeds of organised crime or stolen assets to fund parties.

8. Getting the media's role right

The media have a dual role to play in the fight against corruption in electoral processes and political financing: as a forum for politics to play out and as a watchdog to investigate and report on wrongdoing.

A large, if not the largest, share of party spending during elections goes to media campaigns, making media an important platform for waging electoral contests. Media outlets sometimes even provide in-kind donations to parties by giving discounted or free airtime to their favoured contender. Controls on campaign broadcasting (including a full ban) and the provision of free airtime on public stations are important remedies. Another area of regulation must include oversight of campaign messages masquerading as news ('hidden advertising'). This is one of the more negative aspects of the media's role in electoral contests and it should be permanently regulated by the broadcasting authority.

The media's function as a watchdog also benefits from clearer and stronger campaign regulations. Journalists are often at the frontline of monitoring ties between moneyed interests and political power and depend on properly functioning disclosure laws in order to do their job. Editorial choices and op-ed stories that take on an active critique of perceived political spending abuses that violate existing laws also help to keep a balance between party, government and private interests. Finally, media reports can be the trigger for enforcement agencies, which are set up by regulations, to detect and investigate suspected corruption. For instance, they may cross-reference news stories about the

Bangladesh: Monitoring Campaign Spending

As part of the country's general elections in December 2008, Transparency International Bangladesh (TI-B) conducted a survey to analyse candidate spending.

It found that 77 out of the 88 candidates surveyed had spent on average at least twice as much as the maximum allowed by law. In addition, at least three of the 88 surveyed candidates had allegedly acquired funds by laundering money.²¹

Based on its findings, TI-B called upon the Electoral Commission (EC) to audit expenditure reports of candidates to ensure transparency and help bring necessary legal action against any violations of the law.

The Election Commission declared that it would appoint chartered accountants to verify the financial statements, threatened to take 'legal action' against candidates who failed to disclose their financial statements and promised to disqualify candidates found guilty of falsifying them.

However, nearly eight months after the elections, no accountants had been appointed and the Electoral Commission had not made any official statement to certify the accuracy of candidates' expenditure reports.

Despite reported progress made in the overall organisation of the election, the findings suggest that the Electoral Commission (EC) has yet to develop the capacity to enforce the country's campaign laws.

The TI chapter has repeatedly recommended that the EC enforces the electoral code of conduct, monitor the spending by candidates regularly and take meaningful measures to ensure public disclosure of expenditures.

Examples of Civil Society in Action

The Lebanese Transparency Association (LTA), TI's national chapter in **Lebanon**, carried out a monitoring project assessing the 2009 parliamentary elections in which campaign spending was regulated for the first time in the country's history.

LTA's grassroots monitoring, covering 26 Lebanese electoral districts with the help of 79 volunteers in the field, uncovered cases of abuse of public resources and widespread acts of vote buying, including cash handouts ranging from US\$ 60 to US\$ 3,000 per vote.²² Various incentives were provided by parties to voters, including travel and accommodation expenses to Lebanese expatriates to fly to the country and vote.

TI's **Armenia** chapter led similar monitoring activities in its parliamentary elections in 2007. Work focused on scrutinising the financial flows of political parties and the use of administrative resources for election campaigning. The methodology included reviewing the legal framework, analysing media coverage and estimating the campaign costs in major cities.

Findings revealed that critical problems occurred in election campaign funding and oversight practices. The project data was used in June 2007 by the opposition during the Constitutional Court appeal on the results of the parliamentary elections.

Poder Ciudadano, TI's Argentine chapter, closely monitored the country's 2007 presidential elections. Media monitoring by the chapter found that there was unbalanced coverage of the different candidates, leading to distorted and limited information for voters in **Argentina**.

Poder Ciudadano concluded that Argentina's press, TV and radio stations had favoured the leading party's candidate.

The chapter developed a list of recommendations to guarantee transparency in the next presidential elections. The most urgent of these was the need for the executive branch of government to address the regulation of state resources.

number of campaign rallies held with invoices presented to them by the party or candidate.

9. What can the public do?

Citizens must be active and vigilant if they are to help stop corruption in political financing. Civil society groups have already shown that this is possible by monitoring campaign spending, scrutinising party accounts and empowering citizens to cast informed votes. The evidence produced by such efforts — including proof that campaign spending is higher than what parties and candidates declare and that state resources (e.g. civil servants) are misused to favour incumbents — has in some countries been the starting point for debate over campaign finance laws and related legislation (see side bar).

Since electoral regulations are created and implemented by the same elected politicians who they are meant to regulate, civil society voices are especially important in national discussions on campaign finance. When they are given the space and voice to participate, civil society organisations (CSOs) can contribute to developing effective regulations and help to overcome this inherent contradiction of political finance laws. CSOs can participate in the hearings of legislative commissions entrusted with revising campaign finance legislation or form partnerships with monitoring bodies charged with supervising accounts. Often these supervisory bodies do not have the will or the capacity to enforce rules properly, offering civil society a critical and complementary role in ensuring that political financing laws are used in practice. It is critical that information about political finance reforms — including obstacles to reform — enter the public domain to heighten awareness of the standard to be expected and to enable a better informed electorate who can express their concerns at the ballot box.

10. Key recommendations

Below are recommended actions that each stakeholder group should take to promote better standards for political finance:

Civil Society

- 🌐 Civil society should actively participate in promoting adequate legislation in the field of political finance and in monitoring political finance and its impact on political representation.
- 🌐 The legal framework, both regulatory and institutional, must enable civil society organisations, in conjunction with independent media, to undertake such activities. This framework should also provide access to information, the opportunity for civil society input on pending legislation and legal remedies, among other measures.

Media

- 🌐 Candidates and parties should have fair access to the media. The media should play an independent and critical role, both in election campaigns and in the broader political process.

- ☉ Standards for achieving independent, balanced and fair media coverage and media integrity must be established, applied and maintained.
- ☉ Conflict of interest legislation and other instruments should be used to prevent political control of public and private media from creating a bias in the coverage of politics.

Private Sector

- ☉ Donations to political parties, candidates and elected officials should not be a means to gain personal or policy favours or buy access to politicians or civil servants.
- ☉ Decisions on public policy engagement and political spending must be decided among a company's board and in consultation with shareholders.

Political Parties

- ☉ Parties and candidates must practise transparency and demonstrate commitment to ethical standards in public life.
- ☉ Political parties, candidates and politicians should disclose assets, income and expenditure to an independent agency.
- ☉ Reports should be presented publicly in a timely fashion, on an annual basis, but particularly before and after elections, so that the public can take account of it when they vote.
- ☉ Reports should list donors and the amount of their donations, including in-kind contributions and loans, and should also list destinations of expenditure.

Governments

- ☉ Careful consideration should be given to the benefits of state funding to parties and to the encouragement of citizens' participation through privileging small donations and membership fees.
- ☉ Consideration should be given to limiting corporate and foreign support, as well as large individual donations.
- ☉ To control the demand for political financing, mechanisms such as spending limits and subsidised access to the media are recommended.
- ☉ Public oversight bodies must effectively supervise the observance of regulatory laws and measures. In order to do so, they must be endowed with the necessary resources, skills, independence and powers of investigation. Together with independent courts, they must ensure that offenders be held accountable and that they be duly sanctioned.
- ☉ The funding of political parties with illegal sources should be criminalised.
- ☉ Governments must implement adequate conflict of interest laws that regulate the circumstances under which an elected official may hold a simultaneous position in the private sector or a state-owned company.

Standards on political funding and favours

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