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Handbook
for the Observation of Campaign Finance

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Foreword

Campaign finance issues have a significant impact on the quality of elections. Without adequate financing, candidates and parties have little chance of campaigning effectively or conveying their messages to voters. At the same time, state authorities and citizens have a legitimate interest in ensuring that the campaign finance system is equitable, transparent and limits the potential for corruption. So, campaign finance regulations must balance two needs: on the one hand, the need to respect freedom of expression and, on the other, the need to ensure a fair electoral process.

To achieve this balance, OSCE participating States have addressed the regulation of campaign finance in different ways. How they have chosen to go about it depends on their specific circumstances and depends on their approaches to the role of public and private funding in political life. In most countries, campaign finance regulations are evolving to meet new challenges, including growing demands for more transparency and more accountability.

As campaign finance has attracted increased attention from voters, regulators and electoral contestants, it has also become a key component of ODIHR's election observation methodology. For some time now, we have been deploying increased numbers of campaign finance experts on observation activities, providing dedicated sections on campaign finance within our observation reports, and including in those reports more recommendations on how to improve campaign finance.

This handbook provides guidance to election observers on how to approach campaign finance within the overall observation of an election. It combines explanations of technical aspects of campaign finance with practical advice for observers on how to approach the topic. We have developed this handbook as part of ODIHR's continued efforts to improve our methodology and to increase professionalism in the observation of certain specialized aspects of elections.

It is our hope that the use of this handbook will enhance the quality of observation and the quality of the recommendations made on campaign finance and, that in so doing, it will assist states throughout the OSCE region in their efforts to improve campaign finance rules and practice.

Mr. Michael Georg Link
ODIHR Director



1. INTRODUCTION

A. About This Handbook

The purpose of this handbook is to provide better guidance to ODIHR election observation missions and teams on how to approach campaign finance as part of the overall observation of an election. While ODIHR has included campaign finance in its general observation methodology, this handbook aims to establish a more systematic and comprehensive approach to observing this important part of the election process.[1] It has been developed on the basis of extra-budgetary contributions as part of ODIHR's continued effort to improve its methodology and to increase professionalism in the observation of certain specialized aspects of elections.

This handbook applies to all types of ODIHR observation activities (Election Observation Missions, Limited Election Observation Missions, Election

1 This handbook complements and should be read in conjunction with the *OSCE/ODIHR Election Observation Handbook* and other publications issued by ODIHR, including: the *Guidelines for Reviewing a Legal Framework for Elections*, the *Handbook for Long-Term Election Observers*, the *Handbook for Monitoring Women's Participation in Elections* and the *Handbook on Observing and Promoting the Participation of National Minorities in Electoral Process*. All are available at http://www.osce.org/odihr/elections/75352.

Assessment Missions, and Election Expert Teams). While regulations may vary according to the type of election or referendum, the principles and approach to the observation of campaign finance remain the same.

The handbook is aimed primarily at campaign-finance, political and legal analysts, but other core team analysts, as well as long-term observers (LTOs) and short-term observers (STOs) will also benefit from it. ODIHR expects that other international and citizen observer groups interested in improving campaign finance rules and practice will also use this handbook.

The handbook focuses on the following topics:

- An introduction to campaign finance, including: an outline of why the observation of campaign finance is important; the relevant OSCE commitments and other international standards; and ODIHR's approach to observing campaign finance (Section 1);
- An explanation of the general features of campaign finance systems (Section 2);
- How to review the legal framework related to campaign finance (Section 3);
- How to assess the contribution and expenditure limits of campaign finance (Section 4);
- How to assess the reporting and disclosure of campaign finance (Section 5);
- How to assess the oversight and monitoring of campaign finance (Section 6);
- How to assess the sanctions and appeals systems related to campaign finance (Section 7);
- How campaign finance rules affect the participation in elections of women, national minorities and persons with disabilities (Section 8),
- How to assess and present recommendations on campaign finance (Section 9);
- How to assist participating States in following up on recommendations (Section 10).

The handbook combines explanations of technical aspects related to campaign finance with practical advice for election observers on how to approach the topic. Checklists are provided at the end of each section to highlight key points of inquiry that observers may find useful in their work.

B. Importance of Observing Campaign Finance

Campaign finance issues have a significant impact on the quality of elections. Adequate financing for candidates and parties is vital to enable them to convey their messages to voters. At the same time, state authorities and citizens have a legitimate interest in ensuring that the campaign finance system is equitable and transparent, and limits the potential for corruption of the democratic process. Campaign finance regulations must, therefore, balance the need to respect freedom of expression and the need to ensure a fair electoral process. In order to achieve this balance, OSCE participating States have addressed the regulation of campaign finance in various ways, according to their specific circumstances and approaches to the role of public and private funding in political life. In most OSCE participating States, the regulation of campaign finance is evolving to meet new challenges, including demands for greater transparency and accountability. It is, however, misleading to assume that there is one ideal model to oversee campaign finance, and different regulatory frameworks are used throughout the OSCE region.

As campaign finance has attracted increased attention from regulators and electoral contestants, it has also become a regular component of ODIHR's election observation methodology. Given the increasing sensitivity about campaign finance among voters, candidates, parties, election administrators and the media, this provides an opportune moment to set out a more comprehensive and standardized methodology for observing this aspect of the electoral process.

C. OSCE Commitments and other International Standards

Campaign finance, like all aspects of the electoral process, should be assessed against OSCE commitments and other international standards for democratic elections, and against good electoral practice and national legislation. Existing commitments and standards for OSCE participating States in the area of campaign finance include those outlined in the **1990 OSCE Copenhagen Document**, as well as those provided by the United Nations (UN), the Council of Europe and the Commonwealth of Independent States (CIS). More detailed extracts of the international instruments, as referenced below, are provided in Annex B.

The principles of equal treatment and transparency in campaigns are referenced in the **1990 OSCE Copenhagen Document**, and both are part of the framework for an effective campaign finance system. Paragraphs 7.7 and 7.6 of the 1990 OSCE Copenhagen Document require participating States to "permit

political campaigning to be conducted in a free and fair atmosphere", with "legal guarantees that allow [candidates and parties] to compete on a basis of equal treatment before the law and by the authorities".

Paragraph 5.4 of the **1990 OSCE Copenhagen Document** provides related protection against the abuse of state resources by providing for "a clear separation between the State and political parties; in particular, political parties will not be merged with the State". Paragraph 5.10 is instructive with respect to possible campaign finance sanctions, providing that "everyone will have an effective means of redress against administrative decisions".

The fair implementation of campaign finance regulations and their effective oversight are provided for in paragraph 24 of the **1990 OSCE Copenhagen Document**, which states that participating States should ensure that any restrictions on fundamental freedoms "are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured".

The **2003 UN Convention against Corruption** (UNCAC) highlights the need for transparency, stating in Article 7.3 that "each State Party shall also consider taking appropriate legislative and administrative measures...to enhance transparency in the funding of candidatures for elected public office". Paragraph 19 of the **1996 UN Human Rights Committee General Comment No. 25** to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) provides for reasonable limitations on campaign expenditures "where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by disproportionate expenditure on behalf of any candidate or party".

In addition, the **2006 UN Convention on the Rights of Persons with Disabilities**, the **1979 Convention on the Elimination of All Forms of Discrimination against Women**, and the **1965 Convention on the Elimination of All Forms of Racial Discrimination**, all provide for special measures to encourage more balanced participation of these social groups. Some level of public campaign financing may contribute to this goal.

Reference is also found in **Recommendation Rec(2003)4 of the Council of Europe's Committee of Ministers** on common rules against corruption in the funding of political parties and electoral campaigns. It recommends that "the governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns," with specific mention of requirements relating to expenditure limits, disclosure, reporting, independent monitoring and supervision. It adds that political

parties should be subject to "effective, proportionate and dissuasive sanctions" for violations of political financing laws.

Further, the **Parliamentary Assembly of the Council of Europe Recommendation 1516(2001)** provides that "in order to maintain and increase the confidence of citizens in their political systems, Council of Europe member states must adopt rules governing the financing of political parties and electoral campaigns".

The **2002 Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the CIS** (CIS Convention), in Article 10, provides for "fair and open financing of elections, and election campaigns of candidates, political parties". Article 12 includes guidance on reporting, supervision, and sanctions related to campaign finance.

There is also a large body of good practice on campaign finance. The 2002 **Council of Europe's Venice Commission Code of Good Practice in Electoral Matters** (Code of Good Practice) further stresses the need for transparency, equality of opportunity, and effective oversight, in sections I.2.3 and II.3. Additional and extensive good practices are outlined in the **2010 Venice Commission and ODIHR Guidelines on Political Party Regulation,** as well as the collective reports of the **Council of Europe's Group of States against Corruption** (GRECO) that include assessments of party and campaign financing in the 49 GRECO members, all of which are OSCE participating States. Collectively, these reports and good practice have elaborated on specific procedures in regard to transparency, equal opportunities, accountability, prevention of conflicts of interest, reporting, oversight, sanctions, and measures that can be taken to enhance the participation of underrepresented groups (such as women and national minorities) through public campaign financing.

The judgments of the **European Court of Human Rights** (ECtHR) have played an increasing role in the implementation of campaign finance regulations. Some provisions of the **European Convention of Human Rights** (ECHR) have been interpreted in the context of campaign finance, including in relation to freedoms of expression and association. Campaign finance cases have also been ruled upon by a number of domestic courts, including, notably, the Supreme Court of the United States of America.

To meet these commitments and standards, campaign finance oversight bodies will benefit from having certain tools in place to help them perform their role effectively, consistent with good regulatory practice. As discussed in Section 6, these tools could include regulatory powers, published policies, adequate staffing and written internal procedures. The use of such tools helps

demonstrate that an oversight body is operating in accordance with good regulatory practice, that is to say consistent, impartial and proportional decision-making, as well as transparent and accountable actions.

D. ODIHR's Approach to the Observation of Campaign Finance

ODIHR observes campaign finance in a manner similar to how it observes other electoral components. ODIHR observers look at the legal framework and the procedures related to campaign finance; however, they are not in a position to audit or determine the level of accuracy of campaign finance contributions, spending or reports.

The full range of campaign finance activities does not entirely coincide with the period of an ODIHR election observation activity. Some procedures are conducted well in advance, while other key components occur after the observation period ends. A particular concern is that final campaign finance reports are often submitted several months after election day, at a point when the ODIHR mission has usually withdrawn. Nevertheless, core team members, as well as LTOs and STOs, can still collect sufficient information to make a well-informed assessment.

Certain core team members have specific roles to play in assessing campaign finance. In a situation where particular finance-related issues arise, ODIHR may deploy a dedicated Campaign Finance Analyst to provide more comprehensive analysis of the process. The Campaign Finance Analyst is tasked with:

- Reviewing laws, regulations, and procedures related to campaign finance and determining whether the legal framework is in line with OSCE commitments and other international standards;
- Meeting with the appropriate officials responsible for oversight of the rules to determine how they undertake and fulfil their remit;
- Meeting with candidates and parties to discuss their level of confidence in the campaign finance system and hear any concerns they might have. The views of political parties and candidates often provide a good indication of whether campaign finance laws are appropriate for the circumstances of a particular state;
- Meeting with civil society organizations and media that are active in political and campaign finance monitoring and considering their views on the effectiveness of the campaign finance system. Civil society and media may provide an alternative and impartial view of regulations and the oversight body;

- Assessing whether women, national minorities or persons with disabilities face any legal, administrative or practical obstacles in enjoying equal treatment and access to campaign financing; and
- Providing clear and implementable recommendations with a view to enhancing campaign finance legislation and practice in a given country, and supporting efforts to bring elections closer into line with OSCE commitments and other international standards.

If a Campaign Finance Analyst is not deployed, these tasks will typically be taken on by the Legal Analyst or Political Analyst, with the support of other core team analysts.

LTOs assess campaign finance processes in their areas of observation. To this end, they meet with appropriate officials, political parties and candidates at the local level. LTOs should be alert to indications that candidates may be spending more than the legal limits, not complying with disclosure requirements or using funds inappropriately or illegally.

STOs may also be able to observe certain aspects that may have a indirect impact on campaign finance, such as potential vote buying on election day and the abuse of state resources during the final stages of the campaign.



2. GENERAL FEATURES OF CAMPAIGN FINANCE SYSTEMS

Campaign finance is one specific element of broader political finance. While many stages of an electoral process involve money, it is beyond the scope of this handbook to cover all of them. This section explains the key features of campaign finance systems, as well as their connection to associated issues of abuse of state resources and vote buying. It is important that the main features of a campaign finance system be identified at an early stage, as systems vary considerably among OSCE participating States.

A. Political Party Financing and Campaign Financing

Political parties need appropriate funding to fulfil their core functions, both during and between elections. While an election observation activity focuses primarily on campaign financing, it is imperative to understand the broader framework in place for political finance, encompassing both campaign finance and political party finance. Legislation may not distinguish clearly between routine political party financing and campaign financing, requiring a careful consideration of both issues.

Political party financing encompasses monetary and in-kind contributions to and expenses incurred by political parties in their routine activities. Such activities could include, for example, party administration, such as salaries, renting of permanent offices, training of party members, intra-party meetings, policy development and citizen outreach.

Campaign financing refers to all contributions and expenses, monetary and in-kind, made to and incurred by political parties and candidates for electoral purposes. Such activities could include, for example, renting temporary offices and hiring staff, paying for campaign-related communications and transport, holding electoral rallies, conducting door-to-door campaigning, production of campaign materials and campaign advertising in mass media.

To ensure a transparent and fair campaign finance system, both routine political party financing and campaign financing must be considered in the legislation. Many issues, such as limits on the permitted sources of funding, may apply to both types of financing, while others, such as spending restrictions, may apply only during the election period. The timelines and level of detail of reporting on the two types of financing may also differ. The timeframe during which candidates and other electoral stakeholders have to abide by campaign finance regulations should be clearly defined by law.

B. Public Campaign Financing and Private Campaign Financing

Possible sources of funding can generally be divided into private funding – by individuals or legal entities – and public funding – by the state. Both allow for direct and in-kind contributions. Most OSCE participating States use a mixed campaign finance system that allows for both public and private financing.

Legal Entities
Legal entities include corporations, trade unions, non-governmental organizations, enterprises with government contracts, political parties and foundations.

Public campaign financing includes both direct and indirect funding and may be provided to political parties or directly to candidates. Direct public campaign financing comprises monetary subsidies allocated by the state to candidates/parties. Indirect public financing means that candidates/parties are granted access to some services free of charge or at a reduced rate, such as access to public media, use of state property for the purpose of campaigning, printing of electoral materials or use of state postal services.

Public campaign financing in the OSCE region, when used, is typically based on criteria such as parliamentary representation, winning a certain share of votes or the number of candidates presented by the party in an election. Such criteria can be applied either before or after an election.

Public campaign financing may:

- Increase the capacity of political parties and candidates to reach the electorate, thereby allowing voters to make more informed choices;
- Level the playing field between political parties and candidates with different levels of financial resources;
- Reduce political corruption by limiting the dependence of politicians on influential donors; and/or
- Influence the behavior of political parties, for example by requiring financial transparency in order to receive funds, or conditioning public financing on the participation of women or national minorities.

Private campaign financing includes financial and in-kind contributions from individuals and legal entities made directly to political parties and candidates for the purpose of an electoral campaign.

Fundraising activities represent the main tool for accessing private campaign finance, whatever the sources of private contributions. In addition, political parties may make donations to candidates, who may also make use of their personal resources. Parties and candidates may also take out loans to finance campaign activities.

Private campaign financing may:

- Engage voters and encourage citizen participation in elections;
- Demonstrate a party's or candidate's support among the public;
- Provide a form of free expression of political opinions;
- Reduce the role or interference of government in campaigning;
- Reduce the possibility of political corruption by limiting politicians' dependence on the state; and
- Reduce dependence on public financing that could produce overly bureaucratic parties governed from the top, without a connection to supporters on the ground.

C. Campaign Contributions and Campaign Expenditures

Definitions of campaign contributions and expenditures are fundamental to any campaign finance system.

Campaign contributions generally include any monetary donations, gifts having a pecuniary value and in-kind donations, given by an individual or a legal entity, made with the knowledge and consent of a candidate or a political party, for electoral purposes. Campaign contributions also refer to direct or indirect campaign funds disbursed by the state.

Monetary campaign contributions can be made by cash, bank transfer, credit card and check. In-kind contributions may be defined as all gifts, services or property provided free of charge or accounted for at a price below market value. Some states' legislation allows parties and candidates to take out loans to finance their campaign.

Campaign expenditures generally include any expenditure, monetary or in-kind, incurred by or on behalf a candidate or a party during an electoral campaign for electoral purposes.

Third-party financing refers to campaign expenditures made independently of any candidate or party with the aim of promoting or opposing a candidate or party, either directly or indirectly. Third-party financing is sometimes referred to as "non-party campaigning" or "independent speech".

It is a widespread practice across the OSCE region to place limitations on campaign finance contributions and expenditures, regarding their amount (quantitative restrictions) and/or their source or purpose (qualitative restrictions).

D. Campaign Finance Reporting and Disclosure

Reporting and disclosure of campaign finance are important measures to ensure accountability and transparency. The reporting of information to the oversight body enables the regulator to monitor compliance with the rules. Public disclosure requirements help inform the public of where political parties and candidates derive their financial support from, promoting transparency and accountability in the campaign finance system.

Campaign finance reporting is the key policy instrument for ensuring that electoral contestants comply with campaign finance legislation in a systematic and comprehensive manner. Such legislation will generally prescribe the

information political parties and candidates must submit about their campaign contributions and expenditures, and when and how those reports must be submitted. This information helps the oversight body to assess whether the parties and candidates have complied with the law.

Campaign finance disclosure is essential to providing transparency and accountability. Disclosure requirements vary across states, but may oblige electoral contestants to publicly disclose their assets and liabilities at the time of registration, as well as the identity of donors and the dates and the amounts contributed and expended during a campaign. In some states, the oversight body publishes the information, while in others the political contestants must publish it themselves. While promoting transparency, disclosure requirements should ensure that the required privacy and data-protection safeguards have been respected.

E. Oversight and Monitoring

Oversight and monitoring of compliance with campaign finance rules are important mechanisms for enhancing the transparency and effective implementation of regulations.

States often provide for an independent oversight body that monitors the implementation of campaign finance regulations, including the publication of reports. The regulatory authority's degree of independence may vary among states, which can affect public confidence in campaign finance scrutiny and effectiveness. Legislative safeguards may be incorporated into the rules governing the selection, composition and mandate of the authority, so as to avoid partisan influence or government pressure. To increase effectiveness, an oversight body may also have the right to issue directions and guidance, investigate alleged breaches of the rules and either impose or seek sanctions for violations.

While formal campaign finance oversight is to be carried out by an official regulator, monitoring of compliance with the regulations can also be undertaken by media, civil society organizations and international observers, which can play an important role in enhancing transparency of campaign finance and create safeguards against potential abuses. Also, international bodies such as GRECO can play an important role in setting out good practice as regards transparency, as well as monitoring states' compliance with campaign finance commitments and standards.

F. Sanctions and Appeals

Sanctions should be imposed on electoral contestants who violate campaign finance regulations. Sanctions should eliminate any benefit obtained from failing to comply with the law, punish those who fail to comply and deter future non-compliance. Sanctions must at all times be objective, enforceable, effective and proportionate to their specific purpose. A range of sanctions may be applied, including warnings, administrative fines, partial or total loss of public funds and, in the case of significant violations, criminal prosecution.

Recourse to judicial appeal should be provided whenever sanctions are imposed. While an oversight body may be authorized to determine a sanction, there should be an opportunity to appeal to an appropriate judicial body.

G. Abuse of State Resources

Paragraph 5.4 of the 1990 OSCE Copenhagen Document provides that participating States will maintain "a clear separation between the State and political parties; in particular, political parties will not be merged with the State". The abuse of state resources can be defined as undue advantage obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, in order to influence the outcome of elections. The abuse of state resources is difficult to address through formal regulations alone and also requires vigilance and monitoring by civil society and the media. While the abuse of state resources may be considered through the prism of campaign finance, ODIHR generally assesses this issue as part of its observation of the election campaign.

To allow for the effective regulation of the use of state resources, legislation should clearly define what use is permitted and what is prohibited. As the state and its institutions are involved in administering elections, providing public finance and regulating the campaign, there should be a strong requirement for equal treatment, impartiality and fairness of the system for all parties and candidates. Common problems that may be observed include the use of government offices or vehicles for campaigning and the campaigning of public sector employees during work hours. Rules to prevent abuses include requirements that public employees campaign outside of working hours or step down from office to campaign. Any permissible use of state resources should be treated as a type of campaign finance contribution and be reported accordingly.

In some countries, the abuse of state resources has been accompanied by pressure on public employees, including required attendance at campaign rallies or financial contributions to the ruling parties. These activities should be prohibited by law and prevented in practice as abuses of state resources.

H. Vote Buying

Vote buying can be defined as a form of electoral malpractice that is intended to increase the number of votes that a particular candidate or political party receives in an election by providing money or other benefits to constituents in exchange for their vote. It is often targeted at the more vulnerable sections of society, including women and national minorities. Since an element of pressure is often attached to vote buying and both parties involved in the exchange are interested in keeping the transaction secret, it can be difficult to obtain and verify first-hand accounts or to establish concrete evidence of the practice.

A broader definition of vote buying may also include clientelism, patronage and high-value gifts to voters or groups of voters to persuade them to vote for a particular candidate or party. This type of vote buying can be more difficult to define and observe, but it is prohibited in many OSCE participating States. There is an increased understanding in states' national legislation that any form of gifts to voters, beyond low-value campaign materials, can be considered vote buying. Any low-value campaign materials that are given to voters and allowed by law (for example, pens or key rings) should be treated as campaign expenditures and be reported on accordingly.

Although such practices can have an impact on the overall transparency and accountability necessary for an effective campaign finance system, ODIHR generally addresses vote buying separately, as a distinct form of electoral manipulation based on voter intimidation and coercion.



3. THE LEGAL FRAMEWORK FOR CAMPAIGN FINANCE

Campaign finance is a developing legal area, and in recent years many states have introduced or substantially reformed their legislation. A variety of campaign finance systems exist throughout the OSCE region, ranging from loose sets of legislation to tightly regulated legal frameworks. Campaign finance rules comprise regulations on contributions, expenditures, disclosure requirements, adjudication and enforcement. This section provides general guidance for how the legal framework should be assessed, with specific components of campaign finance addressed in more detail in the following sections.

A. Assessing Campaign Finance Legislation

A key role of observers is to assess the extent to which OSCE commitments and other international standards for democratic elections are reflected in campaign finance legislation and its implementation a given election. This requires careful examination of constitutional requirements, laws and election regulations. Previous court challenges to campaign finance regulations and the resulting jurisprudence should also be considered.

The Campaign Finance Analyst should assess all sources of legal provisions regulating or otherwise affecting campaign finance. Issues not addressed in the primary campaign finance law may, in some cases, be covered by other elements of the legal framework, such as the constitution, political party law, data protection law or administrative law. The analyst may need to consider instructions issued by the regulatory body or electoral commission. When preparing an assessment, the analyst should also consider which international instruments the country has signed and ratified, referring to them as needed.

The analyst should also consider previous assessments of the country's campaign finance law, as well as the broader legal framework. Such analysis may be found in past OSCE/ODIHR election observation reports, legal opinions issued jointly by the OSCE/ODIHR and the Council of Europe's Venice Commission, and the reports of GRECO and citizen observer groups. Additionally, campaign finance reports filed by electoral contestants in past elections may be consulted.

In addition, the analyst should be mindful that the assessment should constructively suggest corrections, improvements and good practices that could be incorporated into legislation, even if the assessment finds serious shortcomings.

Lastly, it should be kept in mind that even, where the legal framework provides a thorough technical foundation for the administration of campaign finance rules, the system will only be effective if it is well implemented. This requires that the oversight body and other public bodies involved have adequate resources and operate in good faith, with the political will to impartially uphold the letter and the spirit of the law.

B. The Structure of the Legal Framework

States use various legislative approaches for regulating campaign finance. Provisions on campaign finance may be elaborated in the constitution, either explicitly or through relevant constitutional case law. There may be a specific law on campaign finance or a law on broader political finance that incorporates campaign finance and political party funding. In other states, provisions on campaign finance are included in the electoral legislation, while party funding provisions are incorporated in legislation on political parties. There could be additional provisions in criminal legislation, such as the penal code, as well as legislation governing anti-corruption measures, auditing, media, gender equality or taxes.

Although a participating State has the flexibility to determine the structure of the legal framework for campaign finance, the primary instruments should be written, as opposed to being based on custom or a collection of administrative policies. Written law provides the benefit of equity, certainty, visibility and transparency. It enhances the consistent application of law and makes the matter subject to judicial interpretation and review, as well as open to recourse by citizens.

In general, the legal framework for campaign finance – like all electoral legislation – should respect certain principles:[2]

- The rules governing campaign finance legislation should be as clear and precise as possible, including the key terminology. Interpretation of the regulations should not be a matter of subjective opinion.
- Relationships between the campaign finance oversight body and other electoral authorities and government bodies, as well as between national and local stakeholders, should be clearly defined. The oversight body's mandate and areas of responsibility should be clearly delineated to avoid conflicts of interest or overlapping jurisdiction.
- The legislation should be enacted sufficiently in advance of elections to give voters and all participants in the process – including authorities, contestants and media – enough time to become informed of the rules. The late adoption of campaign finance legislation can undermine trust in the process and reduce the opportunity for contestants and other stakeholders to become familiar with and prepare for implementation of the rules.
- Campaign finance rules should ensure equality of opportunity for parties and candidates alike. Special measures may be incorporated to encourage more balanced participation of underrepresented groups, such as women, national minorities or persons with disabilities.
- It is important that campaign finance and electoral law be well aligned, avoiding gaps, ambiguities and contradictory provisions.
- The law should clearly establish timeframes for which campaign finance regulations are applicable, including dates for reporting and disclosure, and statutes of limitations for violations.
- Campaign finance rules should be adopted in an inclusive manner and be published and made available to the public in a timely and accessible manner.

2 For more detailed information on assessing electoral legislation, see the *OSCE/ODIHR Guidelines for Reviewing a Legal Framework for Elections* available at: http://www.osce.org/odihr/elections/104573.

- Campaign finance legislation should be in line with OSCE commitments and other international standards for democratic elections.

C. Campaign Finance Legislation v. Instructions

In a democratic system, the legal framework for elections is adopted by the legislative branch. There are limits, however, to the number of procedural regulations that can be included in a law. Most campaign finance laws, therefore, allow for a regulatory body to further clarify issues. The exact mechanism for providing clarification may vary but, generally, the oversight body will issue some form of instructions, directions, or orders. This may include detailed instructions on how to complete reports, the provision of detailed reporting templates, or confirmation of the financial amounts applicable for a given election. The law should require that such instructions be directly based on provisions in the campaign finance legal framework.

The role of instructions in campaign finance should be clearly understood. Effective campaign finance legislation should create a balance that gives the regulatory bodies the necessary flexibility to respond to specific needs without acting as a 'substitute legislator' or undermining the principle of legislative control.

Certain principles should be respected when instructions are issued by a regulatory body:

- Substantive fundamental rights, such as transparency, may not be restricted by an instruction.
- Legislation should clearly define the scope of a regulatory authority's mandate to issue instructions.
- The law should clearly state that instructions must not be contrary to or inconsistent with campaign finance or broader legislation.
- Electoral contestants and other stakeholders should be provided with the possibility to file complaints and appeals arising from the adoption and implementation of instructions.

D. Balancing Campaign Finance Legislation and Fundamental Freedoms

Campaign finance legislation should be designed to respect the fundamental freedoms of expression and association. The ECtHR, as well as the highest national courts of some participating States, have found instances of

violations of these basic human rights in states' campaign finance legislation. Since freedoms of expression and association are of fundamental importance for a democracy, the legislation should be carefully scrutinized in this respect.

Legislative provisions inevitably have some impact on freedoms of expression or association. Such provisions may include: contribution and expenditure ceilings, limiting public funding only to parties represented in the legislature, limited campaign timeframes, prohibition of paid political advertising in broadcast media, limitations on a voter's individual campaigning or limits on third-party spending. The key question is whether such limitations are justifiable.

The outcomes of judicial decisions across the OSCE region indicate significant differences between jurisdictions. The Supreme Court of the United States, for example, has struck down a number of legislative provisions, beginning with its decision in 1976 that campaign expenditure limits were unconstitutional, through its 2014 decision that struck down the aggregate limit on the amount individuals may contribute to electoral contestants. In 2010, the Court overruled earlier decisions and invalidated a ban on independent corporate campaign expenditures.[3] In contrast, the ECtHR has given greater weight to the state's need to protect the democratic debate and electoral process when balancing regulatory objectives against the goal of preserving the right to freedom of expression. For example, in 1998 the ECtHR considered a case against the United Kingdom on whether a limit of £5 on third-party campaign expenditures violated the right of freedom of expression under Article 10 of the ECHR. The Court ultimately concluded that the limit was set too low, but recognized the state's legitimate purpose in restricting such expenditures.[4]

Limits on paid political broadcast advertising have also been considered by the ECtHR. On several occasions, the ECtHR has ruled that a ban on paid political advertising constituted a breach of Article 10 of the ECHR that may violate freedom of expression of small political parties, since they receive minimal coverage in the media and paid advertising might be the only way for them to obtain coverage.[5] However, in a case involving a different legislative framework, the ECtHR concluded that a ban on political advertising constituted a permissible attempt to "protect the democratic process from distortion by powerful financial groups with advantageous access to influential media".[6]

3 See United States Supreme Court decisions in *Buckley v. Valeo* (1976), *McCutcheon v. FEC* (2014) and *Citizens United v. FEC* (2010).

4 See *Bowman v. United Kingdom*, judgment, ECtHR, (1998).

5 See *TV Vest & Rogaland Pensjonistparti v. Norway,* judgment, ECtHR (2008), and *VgT v. Switzerland,* judgment, ECtHR, (2009).

6 See *Animal Defenders International v. United Kingdom,* judgment, ECtHR, (2013).

These decisions illustrate how important the broader legislative context is to the ultimate outcome in such cases. The key consideration in this respect is whether political parties and candidates are able to convey their messages to voters and whether voters have adequate access to political information. The Campaign Finance Analyst should carefully assess, in consultation with the Legal, Media and Political Analysts, the effect of any prohibitions and limitations, and the extent to which they comply with OSCE commitments and other international standards.

E. Points of Inquiry

- What legislation regulates campaign finance? Is this supplemented by instructions from the campaign finance oversight body or election administration?
- Was legislation governing campaign finance recently amended? If so, was the legislation adopted far enough in advance of the elections to allow proper preparation by all involved? Was the process inclusive and public?
- Are the laws and regulations made available to the public in a timely and accessible manner?
- Are the objectives and principles of the legislation clear?
- Are the roles and responsibilities of the oversight body, contestants and other electoral stakeholders clearly defined in the law?
- Does the campaign finance legal framework define the key components of political party and campaign financing?
- Are other key terms related to campaign finance defined in the legal framework?
- Have there been any important court cases related to campaign finance, either at the national or the international level? If so, what issues were challenged, and what was the outcome?
- Have other organizations, such as GRECO, assessed the campaign finance legislation and issued recommendations? Were these recommendation considered and followed?
- Do candidates and parties regard the laws and regulations as appropriate and fair?
- Do electoral contestants feel that party and campaign funding regulations leave them sufficient scope to express their views to voters?
- Do citizen observers and other groups consider the legislative framework to be adequate, or have they identified weaknesses that need to be addressed?



4. CONTRIBUTION AND EXPENDITURE LIMITS

A wide variety of campaign finance systems exist across the OSCE region, ranging from those that rely primarily on private financing to those based predominantly on public funds, but most systems are a mixture of both. In all cases, some degree of limitations on contributions and expenditures are a standard feature of the campaign finance system. In some instances these limitations may not be specifically defined for campaign finance, but rather be features of broader political finance legislation.

Limitations on contributions can be means to minimize the possibility of corruption or the purchasing of political influence. Limitations on expenditures may be imposed to ensure equality of opportunities among the various political forces. Such limitations may be defined by the monetary amount (quantitative restrictions) or by their type (qualitative restrictions).

Contribution and expenditure limits depend on the type of election, the circumstances and approaches of a country and the costs involved in reaching the electorate through the media and other campaign methods. Limits should be clearly defined in the law and be realistic to ensure that all electoral

contestants are able to run an effective campaign, recognizing the cost of modern elections. It is good practice for limits to be indexed against inflation, rather than set as absolute amounts. The limits should be enforced fairly and impartially.

Quantitative and Qualitative Limitations

Quantitative limitations are defined in monetary terms and may include limitations on the amount that individuals or legal entities may donate. Alternatively, they may constitute a limit on how much a candidate or party may spend during an election campaign.

Qualitative limitations are defined by the type of transaction. This may be a source of contributions, for example foreign, state, or anonymous donations. Alternatively, it may refer to limitations on the type of expenditure, for example paid political advertising.

A. Public Campaign Finance Contributions

Public campaign financing is often seen as a means to level the playing field between electoral contestants, to promote political pluralism, and to avoid undue reliance on wealthy donors. When used, direct public campaign financing of political parties and, in some cases, candidates should be provided equitably and based on objective criteria.

The system for allocating direct public campaign financing should also be considered. Some systems allocate money prior to an election, based on the results of the previous election or proof of a minimum level of support. Others provide payment after the election, based on the final results. Generally, a pre-election disbursement of funds, or at least of some percentage of financing, best ensures the ability of parties to compete on the basis of equal opportunity.

It is in the interest of political pluralism to condition the provision of direct public financing on attaining a lower threshold of support than the electoral threshold for the allocation of mandates in parliament. When public financing is provided, it is typically allocated to at least the parties represented in the current parliament. However, to promote political pluralism, financing can also be provided to non-parliamentary parties, including new parties and independent candidates who demonstrate a minimum level of support. In any case, it is important that the mode of allocation of public subsidies be set forth in relevant legislation and known by political stakeholders in advance.

Public funding can also take the form of indirect support, such as allocation of free air time and print space in public media, use of locations to display

electoral materials, postage on mailings to voters, use of public meeting halls, subsidized transportation for campaign activities or forms of tax relief.

State resources should not be diverted or misused for campaign purposes. All state resources used for campaign purposes, such as media, buildings and event venues, must be made available to all electoral contestants on the basis of equal treatment, and disclosed or reported accordingly. It should be noted that the abuse of state resources is contrary to OSCE commitments and other international standards (see *Section 2.G. Abuse of State Resources*). While there is a natural and unavoidable incumbency advantage, legislation must take care to not perpetuate or enhance such advantages. Incumbent candidates and parties should not use state funds or resources, which effectively come from all taxpaying citizens, to their own advantage.

In this respect, LTOs can play an important role in observing possible abuse of state resources in the regions and meeting with local stakeholders to be informed of their views on the issue. In particular, citizen observer organizations are often well informed about possible abuse of state resources and may constitute a good source of information for forming an overall assessment.

B. Private Campaign Finance Contributions

Private campaign finance contributions are widely considered to be a form of political participation. Private financing is important because it may enable small and new parties and independent candidates to enter the political arena and to compete in elections. Private donations may also be an important source of finance for those parties/candidates that do not qualify for public campaign funding.

However, some OSCE participating States have established limits on private campaign financing of political parties and candidates in order to promote fair competition during elections and lessen incentives for corruption and undue influence in politics. Such limitations may take the form of a ceiling on the amount a donor may contribute to a candidate or political party, or a limit on the aggregate amount that a candidate or party may accept.

Regulations may limit the overall monetary contribution an individual or a legal entity may make to a candidate/party (quantitative restrictions). Additionally, regulations may prohibit contributions from certain sources, such as foreign persons or organizations, legal entities, state bodies or public enterprises, or anonymous donations (qualitative restrictions). If anonymous donations are

permitted, it becomes very difficult to enforce other types of limitations or prohibitions on contributions.

The precise nature of any prohibited source of contribution should be clearly identified in the law, and rules should be established for handling contributions from illegal or unidentifiable sources. This may include returning a donation, transferring it to the state budget or allocating it to a humanitarian organization of the party's choice.

Legislation should regulate in-kind contributions, such as subsidized advertising and printing, office and equipment rental. Good practice is followed if legislation defines how in-kind contributions are valued, for example based on market prices. Additionally, if an individual or legal entity forgives an outstanding debt for goods or services, this should be considered an in-kind contribution, subject to the limitations that apply to contributions and, where applicable, counting towards expenditure limits.

Legislation can also regulate whether candidates and parties are entitled to spend their own private funds, and set a limit. In some states this issue is not addressed, while in others private funds are subject to the same rules that govern other donations.

It should again be underlined that any limitation on private campaign financing must be reasonable and proportionate to an individual's right to freedom of association and expression.

C. Provisions on Loans

The legal framework should clarify the rules governing loans extended to political parties and candidates to finance their campaigns. While some states prohibit parties and candidates from taking out loans to cover election expenses, others permit borrowing from financial institutions, legal entities or private individuals. This is often the case in states where candidates are allowed to spend as much of their own money as they wish. In such instances, loans may be permitted as a means to level the playing field for candidates, regardless of their financial resources.

If this option is permitted, legislation should provide certain rules and limitations, including: permissible lenders, the maximum value of loans, the maximum repayment period and the terms of repayment, including interest. In some participating States, the law requires that all such loans be made on a

commercial basis. The legislation should also explicitly extend disclosure and reporting rules to the receipt and repayment of loans.

It is good practice to permit only bank loans and credit-card debts, and not loans from other corporations or from individuals. Indeed, any debtor-creditor relationship involving legal entities and individuals bears the risk of creating dependency and having legislators or other office-holders dependent on their creditors. In this way, donors might use loans rather than donations to exert pressure on political parties and officeholders. Moreover, if loans are not treated as donations under the rules, then donors may use loans to circumvent contribution limitations and other requirements. For example, donors may avoid contribution ceilings by giving a loan instead of a donation to a candidate or party, and then not requiring the loan to be repaid.

D. Campaign Finance Expenditures

Several OSCE participating States have imposed limitations on campaign expenditures in order to promote a level playing field for candidates and to ensure that the free choice of voters is not undermined by disproportionate expenditure on behalf of any candidate or political party.

In this respect, a state may determine maximum campaign finance spending limits in elections. However, the aim of such restrictions must be balanced with the equally legitimate need to protect other rights, such as freedoms of association and expression. Electoral contestants must be permitted to expend sufficient resources to convey their political message.

The maximum spending limit usually consists of an absolute sum or a relative sum, determined by factors such as the voting population in a particular constituency and the costs of campaign materials and services. Whichever system is adopted, such limits should be clearly defined in the law and, ideally, be indexed for inflation to ensure that they stay relevant for subsequent elections. Limitations should also apply to all electoral contestants, including third parties, to prevent them being used as vehicles to circumvent spending limits (see *sub-section F*).

In states with expenditure ceilings, it is imperative that the law clearly define what constitutes a campaign expenditure. This enables candidates and parties to classify their expenses in reports and ensure that their expenditures are in compliance with the spending limits. In-kind contributions should count towards the expenditure ceiling according to their market value; otherwise these ceilings may be circumvented. In this respect, the legislation or

instructions issued by the oversight body should provide clear and objective methods for calculating the market value of in-kind contributions.

It is also necessary that the law define the time period during which electoral contestants have to abide by regulations governing campaign finance expenditures. Often this will coincide with the official campaign period.

A party or candidate might attempt to circumvent campaign finance requirements by conducting campaign activities during a 'pre-electoral' period or outside the official campaign period. A clear distinction is required between what is accounted for as political spending, such as informing voters about the programme of a political party outside an electoral period, and what falls under campaign spending. Contributions and expenditures ahead of the official campaign or 'pre-electoral' period – which may be covered by broader political finance regulations – should be subject to proper review and, if necessary, sanctions.

It is important that legislation does not unduly prohibit spending and political expression before the official start of the campaign, since the free exchange of ideas, especially political ideas, should always be allowed. However, it is possible to set certain specific limitations, provided that these are reasonable and proportionate to the objective of a fair electoral campaign. This may include prohibitions on leafleting or direct calls to voters that ask them to vote for a specific party before a given date.

In addition, certain types of campaign expenditures may be prohibited. For example, some states may impose limitations or bans on paid political advertising in broadcast media. Such prohibitions are usually historically based and intended to focus attention on the substance of campaigns and reduce campaign costs. Any such prohibition should be non-discriminatory and should not unduly limit the ability of parties and candidates to make their views known to voters, nor unduly limit the ability of voters to learn about the views of election contestants. This is especially important if there is limited access to state media for political contestants (see *Section 3.D*). When paid political advertisements are allowed, electoral contestants should be guaranteed equal access and treatment with respect to purchasing advertising. When limitations on paid advertising exist, candidates and political parties should be given the opportunity to reach out to the electorate through free and equal access to broadcast media.

E. Campaign Finance Expenditures on Election Day

Candidates and parties often have substantial expenditures on election day, even though in many participating States the official campaign period ends 24 hours earlier. If the campaign officially ends before election day, certain expenses incurred on polling day, such as advertisements or rallies. LTOs and STOs can observe and describe such expenditures. The Campaign Finance Analyst should assess whether these expenses must be reported as campaign expenditures under the laws of a particular state and, if so, whether they are actually reported.

F. Provisions on Third Parties

Legislation in some states covers campaigning, fundraising and spending by individuals and organizations that are not legally tied to any candidate or party but campaign for or against candidates or parties, or on specific issues. Instead of giving donations, these persons and entities, usually known as "third parties" or "non-party campaigners", spread information to the public directly. Third parties should be free to fundraise and express views on political issues as a means of free expression, and their activity should not be unconditionally prohibited. However, it is important that some form of regulation be extended to third parties that are involved in the campaign, to ensure transparency and accountability.

Financing and spending by third parties is often less transparent than that of political parties and candidates. When third parties spend considerable amounts of funds on an election campaign, this may raise concern about the applicability and efficacy of spending limits, and reporting and disclosure requirements for those entities. Indeed, depending on legislation, third parties can be used as a way to circumvent contribution and spending limits, especially when limits do not apply to expenses incurred by those entities.

G. Points of Inquiry

- What are the sources of funding available to political parties and candidates?
- Does the campaign finance system provide for public and/or private campaign financing?
- Does the law provide definitions of campaign contributions and campaign expenditures? If applicable, does the legislation clearly define what counts towards the contribution and expenditure ceilings?

- If public financing is provided, how is the amount calculated? On what criteria does an electoral contestant qualify? Is such funding provided before or after the election?
- Does the law provide for indirect public financing? Is it provided on an equitable basis to all electoral contestants?
- Are there limitations on the amount of contributions (individual or aggregate amounts) and/or limitations on the sources of contributions (e.g., anonymous donations, donations from foreign sources or state-owned entities)? If so, are these restrictions reasonable?
- Does the legislation provide rules and limitations on the use of candidates' and parties' own resources in financing their campaigns?
- Are candidates and parties permitted to take out loans to fund electoral campaigns? If so, does the legislation provide rules and limitations on their use?
- Do political parties and candidates believe rules governing campaign contributions (public/private) enable them to conduct effective campaign operations?
- Is there a limit on the amount a political party/candidate can spend? If so, what is the limit? Do parties/candidates consider the limits on expenditures to be appropriate?
- Are there any limitations on the type of expenditure, for example paid political advertising? Do parties/candidates consider such limitations to be appropriate?
- Are third parties defined in the law? Is third-party campaign financing regulated?
- Is the length of the official campaign period defined in the law? If so, do political parties and candidates regard this as too long or too short?
- Does legislation effectively cover the pre-electoral period? If so, are there provisions governing political and/or campaign financing during this timeframe?
- Does legislation regulate expenses incurred on election day?
- Does legislation contain explicit provisions to prevent circumvention of the rules?



5. REPORTING AND DISCLOSURE

Reporting and disclosure requirements can promote accountability, transparency and public confidence in the integrity of an electoral process. For campaign finance laws or regulations to be meaningful, it is essential for them to require disclosure through clear, detailed and periodic reporting on contributions and expenditures.

Timely and transparent reporting and disclosure are important elements for effective institutional oversight and establishing public confidence. However, it is important to avoid regulations that could place undue burdens on parties, candidates and oversight bodies. If reporting obligations are too onerous, they could be construed as undue administrative hurdles that limit competition.

The frequency and content of reporting varies across the OSCE region. In some states, parties and candidates are required to report on their assets and liabilities at the start of the campaign. In other states, parties and candidates have to report regularly on income and expenditure during the campaign and after the elections.

Timely disclosure can also inform voters and enable them to assess the relative level and type of financial support for candidates and political parties before deciding for whom to vote.

A. Reporting Requirements

Reporting rules are crucial for ensuring that political parties, candidates and third parties comply with campaign finance legislation. States should require parties and candidates to maintain records and report on all direct and in-kind contributions, as well as all campaign expenditures during a campaign period. Such requirements assist regulatory bodies in overseeing whether rules are being followed and provide a paper trail that can assist further investigations. For campaign contributions, it is good practice to report on the date, source, amount and type. For expenditures, it is good practice to report on the date, purpose, amount and recipient.

The law should set out precisely what reporting is required, the timeframe and the method of public disclosure. It is good practice to require the following reports:

- Initial reports before the campaign begins, to ensure that accounts are properly opened (if applicable). Such reports should include the party or candidate's bank account information and the name and function of the persons accountable for the party or candidate's campaign finances;
- Interim reports during the campaign period, to provide an opportunity for oversight bodies to address any potential problems encountered before election day;
- Final reports after the election and certification of results, to provide a complete and comprehensive account of all campaign financing. The deadline for submitting the final report to the oversight body should be precisely defined in the law. It is critical that the timeframe be sufficient to allow those with reporting obligations time to assemble the information, yet not too long, to allow the oversight body to undertake a thorough and expedient auditing and, where necessary, initiate proportionate and timely sanctions.

Reports should clearly distinguish between the party as a whole, individual candidates and, where applicable, lists of candidates. They should contain enough detail to be useful and understandable to the general public. It is good practice for authorities to introduce a standard template and guidance for reporting, which enables timely analysis and meaningful comparison between different parties and candidates. Reports should clearly distinguish between

contributions and expenditures. Further, reporting formats should include the itemization of all contributions and expenditures into standardized categories as defined by the regulations. Itemized reporting should include the date and amount of each transaction, as well as copies of proof of the transaction (for example, receipts, checks, bank transfers and loan agreements).

Political parties and candidates should appoint a financial agent who is responsible for controlling campaign finances. The agent should keep accurate and detailed records for every transaction. It is good practice to keep a book of accounts for all contributions received and all expenditures made.

Many states take a proportional approach to reporting requirements. It is not uncommon for states to establish a threshold to exclude reporting of very small transactions, on the grounds that the administrative burden outweighs the benefit derived. Similarly, thresholds may apply so that only donations above a certain amount are subject to immediate pre-election reporting. Other examples of differing requirements include lower thresholds for reporting donations to local party branches, subjecting financial reports above a certain level to pre-submission audits or imposing auditing requirements only on parties that receive public funding. When such exceptions are provided, it is important that the thresholds be carefully considered so that they do not undermine the overall integrity of the campaign finance system.

B. Disclosure Requirements

Disclosure implies the need for transparency towards the public regarding political finance, thereby promoting accountability of political stakeholders. Disclosure rules should clearly define who is subject to these requirements, what has to be disclosed and when. This information should be made public by the candidate or party and/or the oversight body, preferably on the Internet and in a user-friendly format.

Disclosure rules differ from one country to another throughout the OSCE region. When considering disclosure requirements, the need to provide transparency should, at times, be balanced against donors' wishes to preserve the privacy of their political preferences, particularly if disclosure may result in serious political repercussions. In many states, information relating to the donor's name and address, as well as the amount of the donation, is made public. In others, disclosure of donors' identities is required above a certain monetary threshold. In yet other states, the identity of certain categories of donors is not made public, as it has been deemed that this disclosure may put such persons at physical risk.

In all cases, the legal analyst should carefully assess the balance between public disclosure and protection of personal data, and give consideration to the state's data-protection laws. Generally, the information to be disclosed should enable the public to identify a donor, the amount of the contribution and when it was made. The legal framework should also clearly state the permitted uses of information obtained from public campaign finance reports and the sanctions for misuse of such information.

To enhance transparency, some states require that all donations go through a dedicated campaign finance bank account. In such cases, consideration should be given to the extent of the banking system throughout the country, as well as the level of information technology used. In countries with few banks outside of major cities, or with limited Internet penetration, it may be an unreasonable burden to require candidates to use dedicated bank accounts for all campaign financing.

Legislation should regulate the disclosure of in-kind contributions. Good practice is for legislation to define how in-kind contributions are valued and require reporting according to the same transparency standards that apply to monetary donations. Contributions by candidates to their own campaign should be disclosed. Third parties active in the campaign should also be required to disclose their donors and electoral expenses. Otherwise, third parties could be misused to avoid disclosure requirements.

In respect of loans, it is beneficial that legislation require that all loan details be publicly disclosed, including lender identity, total amount, interest rate and repayment period. The status of the loan should be regularly reported until it is completely repaid.

International observers are not in a position to assess the accuracy of reports disclosed by candidates or parties, due to the scope of their mandate. Furthermore, some aspects of reporting could require audits and investigations, which are beyond the scope and capacity of an OSCE/ODIHR election observation mission. However, it may be possible for observers to spot blatant discrepancies in public reports, for example if a candidate or party undertakes a widespread poster campaign but does not report reasonable expenditures for such materials.

It is important that citizen observers, media and the general public have timely and sufficient access to campaign finance reports. Reports should be made publicly available without unnecessary delay, and be easy to understand. It is important that the law establish clear and timely deadlines for oversight bodies to publish reports and ensures that they are easily accessible to the public

for an extended period of time. It is an increasingly good practice to publish reports on the Internet in a standardized and searchable format, as well as through newspapers with a high circulation. Electoral contestants may also publish their reports directly as an additional measure of transparency.

C. Points of Inquiry

- Are there reporting requirements in the law? If so, at what junctures? Is interim reporting required before election day, or only final reporting after election day? Are post-election reporting deadlines timely?
- Do parties comply with reporting requirements? Are reports submitted by the deadlines?
- Do reporting obligations require contestants to reveal the source and financial amount of contributions and the purpose and financial amount of expenses?
- Is there a standardized format for campaign finance reports? If so, is there guidance or advisory assistance available to those who must complete them?
- Are reporting and disclosure obligations overly onerous? Do they represent an undue administrative hurdle that could limit or distort electoral competition?
- Are electoral contestants required to make all campaign finance transactions through a single bank account?
- Do electoral contestants have to appoint a financial agent, responsible for all campaign finance transactions?
- Are there disclosure requirements in the law and, if so, do they adequately cover the elements necessary to enhance transparency?
- Are financial reports publicly available on the Internet in a user-friendly format? Are they easily accessible? Do they provide sufficient information?
- Does the legislation require loans, debts and in-kind donations to be reported and disclosed?
- Do reporting and disclosure obligations apply to third parties?
- Is disclosure sufficiently detailed to allow effective public oversight?
- In states where donors' identities may be exempt from disclosure, what are the grounds that prohibit such disclosure? What is the procedure for securing such an exemption?
- Does the legal framework specify what personal information is subject to public disclosure, the purposes for which it may be used and the penalties for its misuse?



6. OVERSIGHT AND MONITORING

States should provide for independent oversight and monitoring of campaign finance. To ensure the effectiveness of campaign finance rules, it is critical that responsibility for supervision be given to an independent and professional regulatory body, mandated to provide guidance to electoral stakeholders, check campaign finance reports and investigate potential breaches, and that it be endowed with sanctioning power in order to promote the effective implementation of the law and ensure the accountability of all stakeholders. The law should specify who has the authority to oversee campaign finance regulations, to which body campaign finance reports are submitted, how reports will be reviewed, who has the power to investigate potential breaches, and the format and modalities of how reports, audits, and case outcomes are made public. In several countries, these responsibilities are granted to a single oversight body; in others, a range of bodies may be involved.

The observation of campaign finance by international organizations is also important. As part of a wider election observation activity, it can provide an external assessment of campaign finance regulations and practice against international obligations and commitments for democratic elections.

Recommendations made by international observers can assist states in improving their campaign finance systems. International monitoring of campaign finance may also enhance the confidence of political stakeholders.

A. Institutional Oversight

A regulatory body should be tasked with institutional oversight and given responsibility for enforcing campaign finance regulations, which includes providing guidance on how to comply with the law, monitoring compliance with reporting and disclosure requirements, conducting audits, investigating potential breaches and imposing sanctions when required (see *Section 7*). The regulatory body may also be responsible for publishing information, including the financial information reported to it, as well as the outcome of its audits and investigations.

Oversight can be provided by a variety of organs. In many countries, different tasks will be handled by different state bodies. In several OSCE participating States, primary responsibility falls to the national election administration body. This can have the advantage of consolidating responsibility and resources with the body specifically tasked with overall responsibility for administering elections. However, there may be disadvantages. For example, the election administration body may not have the necessary capacity, skills or human and financial resources to take on this task. Additionally, where election administration bodies are composed of political party representatives, the task might not be perceived as being handled impartially. In other countries, specialized bodies are mandated with responsibilities to provide complete or partial oversight of campaign finance activities. Such bodies may include:

- A specialized agency to regulate party and campaign financing;
- The state comptroller, auditor or court of audit;
- An anti-corruption commission;
- The state tax office; and
- Courts/election courts.

Whichever body is tasked to monitor campaign finance, effective measures should be taken in legislation and practice to ensure its independence and commitment to impartiality. In particular, it is important that appointment and dismissal procedures be carefully drafted to avoid political influence over members. Appointees should be guaranteed security of tenure.

Independence from political influence is crucial for the credibility and effectiveness of oversight bodies; otherwise a partisan regulator could pressure the opposition and favour government parties and candidates. Even if there is no actual bias, an independent composition of the regulator can help avoid perceived partiality and, thus. foster trust in the oversight body. Appointments to the regulator should be independent from political pressure, and should include checks to increase its impartiality, neutrality and financial independence.

If more than one institution is involved, there should be a clear designation of responsibilities to avoid uncertainty, confusion or overlapping jurisdictions. The role of the oversight body in handling complaints and executing sanctions is discussed in Section 7.

B. Institutional Responsibilities

In assessing campaign finance, it is important to identify what powers and functions have been delineated for the oversight body or bodies. Responsibilities should be clearly defined in the law and may include:

- Providing guidance on how to comply with requirements and informing other electoral stakeholders of the rules;
- Establishing reporting forms and reporting procedures;
- Receiving, auditing and publishing financial reports;
- Initiating inspections and public investigations;
- Handling and adjudicating complaints;
- Imposing sanctions; and
- Publishing decisions on adjudicated complaints.

There should be clear procedures for how the oversight body is to use its powers and fulfil its functions. For example, the body may be given the power to monitor accounts and conduct audits of financial reports submitted by political parties, candidates and, where applicable, third parties. It is critical that these powers be exercised in a non-biased, non-discriminatory manner. To this end, the legislation should outline the key aspects of any auditing and investigation process, to ensure that adequate safeguards are in place. Legislation also may specify the process and procedures for determining how reports are selected for auditing. Alternatively, the legislation may require the oversight body to publish a policy that addresses such issues.

Auditing alone may be ineffective if the oversight body is mandated to make certifications solely on the basis of information submitted to it, without examining whether that information is realistic and accurate and presents a complete picture of a contestant's income and expenditures. To strengthen the process, several countries grant an oversight body investigative powers to assess the accuracy of campaign finance reports and their compliance with the rules.

In all cases, it is good practice for the oversight body to set out in writing how it will approach and fulfil its monitoring and enforcement responsibilities. Topics that may be covered include the criteria for beginning inspections and investigations, timescales, the types of investigative techniques and an outline of the decision-making framework. It is also good practice for there to be clarity about when the oversight body will apply the sanctions available to it under the law. The publication of this type of information provides advance notice to all stakeholders and a basis for holding the oversight body to account.

Violations of campaign finance rules can undermine public confidence in the democratic process. It makes sense, therefore, to try to prevent such violations. The oversight body can play a significant role in reducing the number of inadvertent violations by providing advice and guidance. The legislation may require the body to perform outreach activities, such as issuing clear manuals and training at the earliest stage possible, so as to make electoral stakeholders aware of the regulations.

In many states, the oversight body is given responsibility for developing the format for election reports, as well as procedures for their submission and publication. These are important tools for ensuring the transparency of campaign finance. In developing the formats and procedures, it is good practice for the oversight body to consult with political parties and candidates and other stakeholders, helping ensure that the forms and procedures are fit for the purpose and not unnecessarily burdensome.

Another factor to consider in assessing campaign finance is the resources of the oversight body. In some states, legislation clearly sets out a broad range of responsibilities for the oversight body or bodies, but the functions are not undertaken in practice. This may be due to a number of factors, including lack of funding. The designated institution or institutions should be given the necessary financial, human and operational resources to fulfil its mandate, as well as sufficient time to undertake its duties comprehensively and effectively.

C. Civil Society Monitoring

Civil society organizations are sometimes in a position to monitor campaign finance for a longer period and at a deeper level than is normally possible for international observers. Although international observers must make their assessments on the basis of their own observations, information developed by citizen observer groups can be valuable in identifying issues and providing data.

In several states, civil society organizations assess and directly monitor campaign contributions and spending. Where campaign finance reporting is required, civil society organizations frequently scrutinize the accuracy of these reports. It is often possible for such organizations to estimate campaign costs (for example, the costs of billboards, media advertising, printing costs and the costs of renting campaign venues) in order to assess whether a candidate or party has reported accurately and has stayed within spending limits.

There have been a number of good examples of campaign finance monitoring by civil society organizations within the OSCE region, at times with support from international organizations. A number of citizen observer groups have also published reports on their methodology for observing campaign finance. In some instances, civil society organizations have also promoted codes of conduct for campaigning, including provisions on campaign finance.

D. International Monitoring

The importance of campaign finance, as well as broader political finance, has increasingly been recognized by a range of international organizations as an essential component of democratic elections. This may include the monitoring of campaign finance through election observation activities, as described in this handbook, which includes specific reporting on the implementation of regulations and recommendations for further improvement.

In addition, it may include separate international reviews of election-related legislation and the extent to which campaign finance laws are in line with OSCE commitments and other international standards for democratic elections.

E. Points of Inquiry

- Does the legal framework provide for effective institutional oversight of campaign finance?
- Is the legislative framework clear on which body, or bodies, is responsible for the oversight of campaign finance regulations? Is it the central electoral authority or a specialized agency or court?
- Is the oversight body independent – structurally and operationally – from political influence? Do the appointment process and the composition of the oversight body ensure its independence and impartiality?
- Is the legal framework designed to safeguard impartial enforcement by the oversight body? Are the rules enforced impartially?
- Does the body have clear policies and procedures in place and are these followed in practice? Are decisions based on clear and objective criteria?
- Does the oversight body have sufficient human and financial resources?
- Are officials adequately trained and do they understand their roles?
- Does the regulatory body have sufficient time to provide thorough oversight of campaign financing?
- Is the body mandated to undertake thorough verification of campaign finance reports? Is it allowed to request information from electoral contestants and to conduct on-site verifications?
- Do electoral contestants have confidence in the integrity and effectiveness of the oversight bodies? Do they believe that the bodies are implementing the law fairly and effectively?
- Does the body provide guidance (e.g., manuals, training, hotlines etc.) to political parties and candidates? Is the guidance clear and accurate? Do political stakeholders feel sufficiently informed in regard to legal requirements?
- Are oversight activities transparent and open to scrutiny by civil society and international organizations? How is the oversight body held accountable?
- Are civil society organizations undertaking any campaign finance monitoring exercises? What is their methodology, and are their reports made public?
- Has there been any monitoring of campaign or political finance by other international organizations? What are their findings? Have prior recommendations been implemented?



7. SANCTIONS AND APPEALS

Even where campaign finance legislation is clear and the oversight body fulfills its role of providing guidance and advice to parties and candidates in meeting their statutory obligations, violations of the law may occur. Sometimes those who are responsible for compliance on behalf of the electoral contestants are non-professional volunteers who commit minor, inadvertent errors. Some breaches may arise because a party or candidate simply has not given sufficient priority to compliance. Other breaches may be intentional attempts to circumvent the rules. Ideally, the sanctioning regime should be flexible enough to properly address the full range of violations in a way that is effective, proportionate and dissuasive.

Legislation pertaining to sanctions and appeals mechanisms varies considerably throughout the OSCE region. To maintain the integrity of the campaign finance system, strengthen public confidence in the electoral process, and hold political parties and candidates accountable, effective enforcement of campaign finance regulations is crucial.

Where sanctions are imposed, it is essential that the sanctioned parties have the right to appeal and have recourse to a fair hearing by an impartial tribunal that can provide an effective remedy.

A. Effective, Proportionate and Dissuasive Sanctions

OSCE commitments and international obligations on complaints and appeals mechanisms provide that states should require the infringement of campaign finance rules to be subject to effective remedy, including effective, proportionate and dissuasive sanctions. Together with training and information programmes, sanctions are the main tool at the disposal of the oversight body to enforce campaign finance regulations.

Effective sanctions can be interpreted to mean enforceable, which requires clarity on what is legally required so that violations of campaign finance rules can be pursued. The law also needs to be clear about who is responsible for breaches, what sanctions are available to the oversight body, and clear deadlines and procedures for how they are to be applied.

Proportionate sanctions imply that the gravity of the violation must be taken into consideration. The most severe infractions should entail more severe sanctions. Criteria should be articulated so that there is transparency and impartiality in their application. Factors that might be considered include the size of the violation (in monetary value or scope of practice), intent, repeat violations, failure to follow advice or to take remedial action and any attempt to conceal the breach.

In many states, sanctioning options have historically been limited to set fines or criminal sanctions. As a result, minor infractions or violations accompanied by compelling mitigating circumstances were often subject to the same sanction as more significant breaches. Some states have now introduced a range of sanctions to allow for greater proportionality, including administrative and criminal penalties. The range of sanctions might include formal warnings (e.g., a breach is noted but no further action taken); fixed monetary penalties for minor reporting failures; variable monetary penalties where the amount of the penalty will increase when certain variables are present (e.g., repeat violations); compliance notices that require parties and candidates to take corrective action (e.g., requiring the responsible person to undergo training); forfeiture of unlawful donations; loss of state funding; stop notices (allowing the oversight body to seek a judicial order requiring activity to cease, as in the case of a party that is on the verge of exceeding an expenditure limit); and referral for criminal prosecution.

Dissuasive sanctions should serve not only to punish those who fail to comply with the law but also to discourage future non-compliance. This will depend on the nature of the breach and the context. However, it is particularly

important that a balance be struck between penalties that are too weak to act as a sufficient deterrent and sanctions that are excessively harsh.

Sanctions for violations of campaign finance laws can help deter corruption and unlawful behaviour in electoral campaigns. However, if used inappropriately or selectively, they may limit political pluralism or deter citizen participation in the democratic process by raising concern about being unduly audited or sanctioned. It is, therefore, essential that sanctions be deployed carefully and impartially. The more serious sanctions, such as dissolution of a party, should only be a measure of last resort, as determined by a court, in compliance with due process of law and only for the most serious violations.

B. Imposing Sanctions

Oversight bodies generally have administrative jurisdiction over the implementation of campaign finance regulations and can impose specific sanctions for certain breaches of the rules. However, in cases of criminal prosecution, only a court may impose the sanctions. It is important that the oversight body be able to turn to law enforcement bodies if serious violations are suspected.

Sanctions are most meaningful when they can be imposed during the election period or shortly after the end of the period, especially in states in which the statute of limitations is rather short (see *sub-section 7.B*). The Campaign Finance Analyst should be prepared to analyse the legal provisions pertaining to sanctions in order to identify their implications for candidates and political parties who are found to have violated the law.

Proceedings on sanctions and appeals should be transparent and accessible to the public. This requires not only access to the decisions themselves, but also that decisions include the substantive reasons and explanations supporting them.

Candidates should enjoy equal treatment in the enforcement of regulations, and their implementation should not benefit one candidate or party over others. Observers should be alert for any sign of biased enforcement of campaign finance regulations.

Whatever the country and the campaign finance system, the existence of loopholes and their potential exploitation by candidates and political parties is an issue that has to be addressed by an election observation mission. When regulations are circumvented, there is a risk that oversight bodies become less efficient and that the enforcement system is undermined.

C. Statutes of Limitations for Breaches of Legislation

The legal framework in some states contains special provisions on statutes of limitations – defined time limits by which legal proceedings must be initiated – for campaign finance violations. In others, however, general statutes of limitations apply. For example, if the statute of limitations is shorter than one year and parties submit financial reports only once a year, it may be too late for violations to be adjudicated. Therefore, in states where the general statute of limitations for minor offenses is short, the statute of limitations for campaign finance violations should be longer than for regular misdemeanors. Many states follow this practice, and it could be beneficial that the statute of limitations for administrative violations remain in force until one year after the final campaign finance report becomes public.

D. Appeals

OSCE commitments and other international obligations establish the right to an effective remedy provided by a competent administrative, legislative or judicial authority. When sanctions are issued against candidates or political parties, it is important that all decisions be recorded in writing and justified, and that the subject be informed in a timely manner. This provides the basis for any potential appeal.

Legislation should provide clear guidance on the process for appeal against regulatory decisions. The relevant authority may be different depending on the breach of law and the nature of the sanction. Minor sanctions could result in conciliation proceedings, whereas more severe cases would result in bringing the matter to a criminal court. Legislation should define the legal ways to appeal the oversight body's decisions and the deadlines by which appeals should be filed and decisions granted.

Proceedings on appeals should be transparent and accessible to the public. Transparency requires not only that decisions be taken in a way that ensures public access to proceedings and documents, but also that the decisions supporting them include substantive reasoning. It must be clear that a decision has a legal and factual foundation and is not arbitrary or perceived to be so.

E. Points of Inquiry

- What sanctions are established for violations of campaign finance laws and regulations? Does the legislation provide for an adequate range of sanctions to address non-compliance?

- Are sanctions effective? Do sanctions have a deterrent effect? Are they proportionate to the nature of the offense?
- Is there clarity about who can be subject to these sanctions? Do sanctions apply only to candidates and political parties, or do they include donors and third parties?
- What regulatory body can impose sanctions? Is it the same body responsible for general oversight of campaign finance legislation or is the responsibility vested in another body?
- Are there guidelines or criteria in place to assist the oversight body in applying sanctions?
- Do all contestants enjoy equal treatment in the enforcement of sanctions?
- In practice, are sanctions imposed for campaign finance violations? If so, are they imposed in a timely manner?
- Are statutes of limitations provided? Are they aligned with the final reporting on campaign finance?
- Does the law foresee appeal of the oversight body's decisions?
- Do sanctioned candidates and political parties have recourse to a fair hearing by an impartial tribunal? Do all contestants have equal access to a court of appeal?
- Does the legal framework provide reasonable deadlines for submission, consideration and resolution of a complaint?



8. WOMEN, NATIONAL MINORITIES AND PERSONS WITH DISABILITIES

Election laws and procedures can affect different parts of society in different ways, particularly those groups that may be under-represented in politics. This is true in regard to campaign finance as well, because unequal access to campaign funding contributes to an uneven political playing field. This section provides observers with information to help assess whether the rules and systems in place in a particular election are disadvantageous to women, national minorities or persons with disabilities.

A. Women

The number of women elected to office in most OSCE participating States remains significantly lower than the number of men, due to a broad variety of factors. One contributing reason is that women frequently have less access to financial resources for campaigning than men, which can be partially explained by their lower average salaries, donors' preference for giving money to well-known candidates and even the benefits of incumbency. Indeed, at

the time of publication women's representation in national legislatures stands at around 26 per cent across the OSCE region. Campaign finance may, therefore, be a serious obstacle for women candidates, or even for women seeking nomination as candidates.

While it is important to respect the free internal functioning of parties with regard to candidate selection and platform choices, public campaign financing may be used as a means to encourage more balanced participation of men and women as candidates. Such an approach is in line with Article 4 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which provides for temporary special measures to accelerate de facto equality.

In line with CEDAW, some OSCE participating States have introduced measures in their legal frameworks for public campaign financing as a means to promote women candidates. Throughout the OSCE region, various measures to promote women's participation have been implemented by connecting public funding and gender equality. The first way is to create financial incentives, in the form of additional public funding for political parties that include a certain number or percentage of women candidates. A second means is to deny or withdraw a percentage of public funding when political parties do not include a specified number of women candidates. Finally, some funds can be earmarked for specific campaign activities related to gender equality, although consideration should be given to how rules will be monitored and enforced. Other legal measures can be introduced to support women candidates, including tax-relief provisions or free childcare.

Additionally, the provision of sex-disaggregated reports on campaign finance by the oversight body and/or political parties can be helpful in establishing the extent of any disadvantages faced by women in campaign finance. Such data can then be used as a basis for formulating measures to address possible inequalities.

B. National Minorities and Persons with Disabilities

While increased attention has been placed on the impact of campaign finance regulations on women's participation, many of the issues identified in this section also apply to other categories of voters that are traditionally under-represented, including national minorities and persons with disabilities.

As with women, measures to encourage the political participation of national minorities and persons with disabilities through public campaign financing are

possible. Article 1.4 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Article 5.4 of the 2006 Convention on the Rights of Persons with Disabilities (CRPD) provide for special measures to accelerate or achieve de facto equality of national minorities and persons with disabilities.

A limited number of OSCE participating States have introduced special public campaign financing for national minority political parties, with criteria based on parliamentary representation, electoral results or the number of registered minority voters. In areas with significant national minority populations, the law, regulations and guidance materials should be translated into minority languages. On a lesser scale, some OSCE participating States are considering introducing campaign finance provisions that would assist persons with disabilities, including, for example, subsidies for sign-language interpretation. The Campaign Finance Analyst should consider whether regulations have an impact on these groups and whether there has been any attempt to address the issues confronting them.

C. The Role of Political Parties

Political parties can play a key role in creating a more level playing field for women, national minorities and persons with disabilities. The introduction of internal party measures and transparent procedures for the equitable distribution of campaign resources are two possible ways to facilitate this.

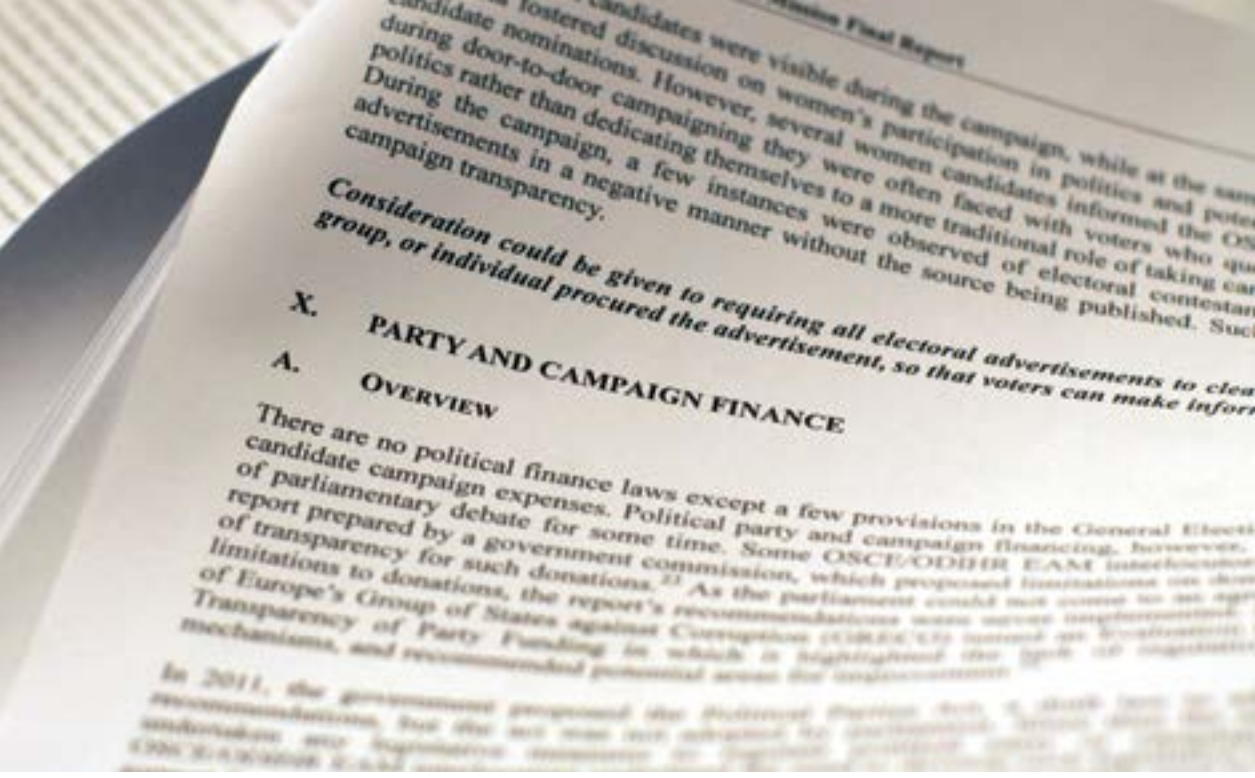
There are a number of voluntary measures parties can adopt to support the campaign financing of these social groups, including:

- Organization of training and capacity development for such candidates, particularly those competing for the first time or facing incumbents, with a focus on the campaign finance system and its provisions, as well as how to access campaign resources;
- Introduction of internal party provisions to regulate the fair allocation of campaign financing and other resources between women and men, as well as to national minority candidates and persons with disabilities. This could be implemented through party statutes, rules of procedure or bylaws;
- Establishment of special party funds for women, national minority or disabled candidates, administered by the party leadership or dedicated party committees. These funds can be used to help organize electoral campaigns; and

- Introduction of fair and transparent procedures and criteria for candidate nomination and selection, to ensure that women, national minority and disabled candidates with limited access to campaign financing are not disadvantaged.

D. Points of Inquiry

- If public campaign financing is provided, are there any requirements related to the promotion of under-represented groups?
- Have political parties adopted any internal measures to support the financing of candidates from under-represented groups?
- Do under-represented groups have equitable access to public campaign financing? Are there any eligibility requirements for receiving public funding that may be difficult for under-represented groups to meet?
- Are there requirements or other financial advantages to encourage gender equality in political parties? Has the state introduced any financial incentives or sanctions to support women candidates?
- Have other measures been introduced, such as free childcare or tax relief for women candidates?
- Have political parties introduced fair and transparent procedures for the equitable allocation of public or party financing to women and men candidates? Does this include the allocation of indirect public or party funding, for example, access to airtime and media sources, or use of party premises or resources for campaigning?
- Are sex-disaggregated data available on income and expenditures of men and women candidates? If so, do women candidates receive and spend comparable amounts to men candidates on campaigning?
- If there are special provisions for national minority representation, do campaign finance regulations effectively account for this? This may include rules for special access to public media or a lower threshold to qualify for public funding.
- Do persons with disabilities have equitable access to public campaign financing? Have any provisions been introduced to help defray the additional financial costs arising from their disability when participating as candidates? Are there any eligibility requirements for obtaining public funding that may be difficult for persons with disabilities to meet?



9. REPORTING: MAKING ASSESSMENTS AND RECOMMENDATIONS

Assessment of the campaign finance system should contribute to the overall assessment of an electoral process. It is vital, therefore, that reporting on campaign finance be factual, accurate and balanced. This assessment should also form the basis for any recommendations that an election observation mission may make in this area in order to assist OSCE participating States in improving their electoral processes in line with their commitments.

The Campaign Finance Analyst, or the analyst assigned to cover campaign finance, will have the primary responsibility for looking into the campaign finance regulations, gathering and consolidating all relevant information, analyzing it and drafting the sections dedicated to campaign finance in the mission's election reports.

The campaign finance section of an observation report should explain and assess the finance system as concisely as possible, in a way that is understandable to a non-technical audience but in enough depth to present a nuanced

assessment. The evaluation of the campaign finance regulations should identify positive elements and any weaknesses.

As highlighted in earlier sections of this handbook, many of the assessments that should be made of campaign finance may be complemented by other core team analysts. For example, the Campaign Finance Analyst should work together with the Legal Analyst to assess whether the legal framework adequately regulates campaign finance and whether there have been any complaints or appeals that affect this aspect of the electoral process. The Campaign Finance Analyst, together with the Political Analyst and LTOs, will evaluate the opinions of political parties, contestants and other electoral stakeholders about the campaign finance system.

The basis for making assessments and recommendations about campaign finance are the OSCE commitments and other international standards for democratic elections, as outlined in Section 1.C and provided in more detail in Annex B. Where appropriate, international good practice should also be considered and referenced. Assessments should also consider national legislation. All of these should be taken into consideration in the mission's assessment of the degree to which the campaign finance system is consistent with OSCE commitments.

While OSCE commitments apply to all participating States, the Campaign Finance Analyst should also consider a given country's specific rules, political context and other relevant international commitments (for example, ratification of UNCAC or ECHR). Depending on the campaign finance system in place, what may be applicable in one context may not be in another.

The observation mission should make recommendations on how the campaign finance system can be improved. It is crucial that such recommendations be clear, implementable and drafted in line with the principles mentioned above. The electoral recommendations of the final report are the guiding benchmarks of any follow-up before the next elections. Recommendations should be supported by concrete findings detailed in the report.



10. FOLLOW-UP

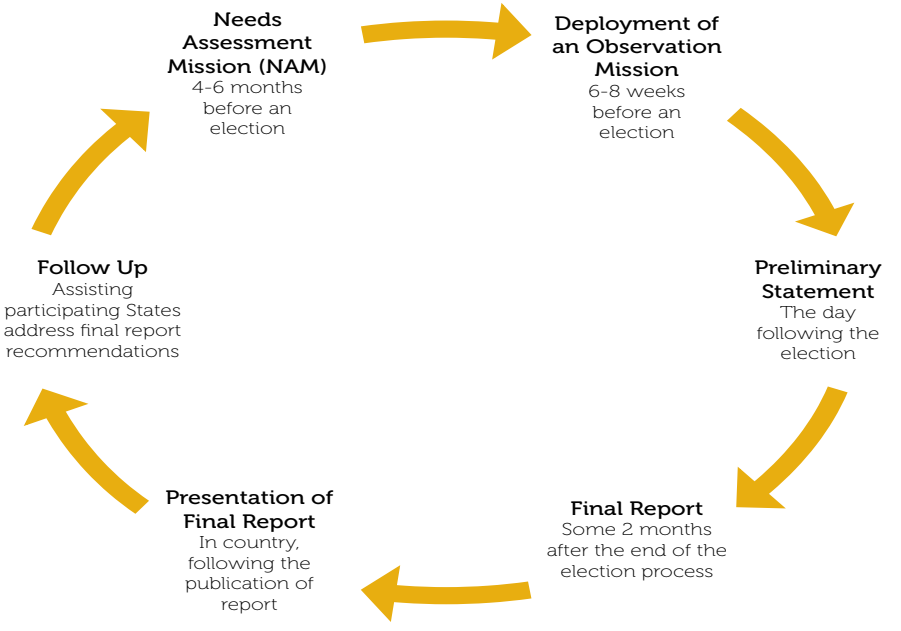
Successful follow-up to recommendations depends largely on the political will of a state to improve the electoral process ahead of the next elections. The OSCE participating States have repeatedly committed themselves to following up on recommendations and emphasized ODIHR's role in assisting them. Participating States have been increasingly reporting to OSCE bodies regarding their experiences following up on ODIHR electoral recommendations. Signatories of the 2005 Declaration of Principles for International Election Observation[7] have also increasingly emphasized the importance of follow-up on recommendations, both by governments and by the international community, which can potentially build momentum in this process, ideally by co-ordinating activities.

Election observation is not an end in itself, but is intended to assist OSCE participating States with the implementation of their election-related commitments. The utility of an election observation activity can only be maximized if the recommendations it provides are given full and serious consideration and are implemented effectively. An effective follow-up process can improve the

7 International organizations that have endorsed the Declaration and the accompanying Code of Conduct pledge their commitment to assuring integrity and transparency in international election observation. See: http://www.osce.org/odihr/16935.

impact and usefulness of election observation activities. It is part and parcel of the electoral cycle, and should start as soon as the final report with its recommendations has been published.

Figure 1: Election Observation Cycle



Following the publication of the final report, ODIHR generally undertakes a visit to present the final report and its recommendations to the electoral stakeholders. These visits represent the first step in a co-ordinated follow-up process and serve as a reminder to OSCE participating States between elections of their obligation to improve their electoral processes in line with OSCE commitments. In addition, these visits provide a better understanding about the willingness and ability of states to address particular recommendations in the future. Visits to present the final report also serve as a reminder of ODIHR's expertise and ability to assist by commenting on draft laws that include campaign finance elements, or in providing expertise on the impact of particular aspects of campaign finance in the electoral process.

Following the presentation of the election observation final report, follow-up visits provide the opportunity to look at various aspects of ODIHR's assistance in greater detail and in more depth. Such follow-up visits can focus on providing support to the participating State with a more in-depth assessment, including recommendations on particular areas of concern. Follow-up visits

are tailored around ODIHR's assessment and are the most efficient way to address past recommendations.

Assistance in follow-up to recommendations pertaining to campaign finance can take the form of advice on how better to comply with international standards and good practices, as well as analysis of draft or final legislation aimed at improving campaign finance regulations, with a view to bringing it more in line with OSCE commitments. As always, ODIHR stands ready to assist participating States in these endeavors upon their request.

Points of Inquiry:

- Are there any changes planned or ongoing which involve campaign finance? If so, what are they and are they in line with past recommendations and OSCE commitments and other international standards?
- Is there any scope for ODIHR to assist in the follow-up to recommendations on campaign finance?
- What form of assistance would be most suitable to support the participating State and its institutions to meet past recommendations and to bring its electoral process closer into line with OSCE commitments with respect to campaign finance?

ANNEXES

A) Glossary of Terms

Abuse of state resources: Undue advantages obtained by certain parties or candidates, through use of their official positions or connections to governmental institutions, to influence the outcome of elections.

Campaign contributions: Any monetary donations, gifts having a pecuniary value and in-kind donations, given by an individual or a legal entity, made with the knowledge and consent of a candidate or a political party, for electoral purposes. Campaign contributions also refer to direct or indirect campaign funds disbursed by the state.

Campaign expenditures: Any expenditure, monetary or in-kind, made by or on behalf of a candidate or a party during an electoral campaign for electoral purposes.

Campaign finance disclosure: A requirement that the sources and amounts of campaign finance contributions and the nature and amounts of campaign expenditures of electoral actors be made public.

Campaign finance reporting: A requirement that electoral actors submit, throughout the campaign or at a set time after the elections, reports on their campaign contributions and expenditures to an oversight body.

Campaign financing: All contributions and expenses, monetary and in-kind, made to and incurred by political parties and candidates for electoral purposes.

Institutional oversight: The role performed by a regulatory body to monitor and assess electoral actors' compliance with campaign finance regulations. Oversight of campaign finance can also be carried out by civil society and international organizations.

Legal entities: May include corporations, trade unions, non-governmental organizations, enterprises with government contracts, political parties or foundations and other organizations.

Political party financing: Monetary and in-kind contributions and expenses made to and incurred by political parties in their routine activities.

Private campaign financing: Financial and in-kind contributions from individuals and legal entities made directly to political parties and candidates for the purpose of an electoral campaign.

Public campaign financing: Direct and indirect funding provided to political parties and/or candidates. Direct public campaign financing comprises monetary subsidies allocated by the state to candidates/parties. Indirect public campaign financing means that candidates/parties are granted access to some services for free or at a reduced rate, such as access to public media, use of state property for the purpose of campaigning, printing of electoral materials or subsidized postal services.

Qualitative limitations: Are defined by the type of transaction. This may be a source of contributions, for example foreign, state, or anonymous donations. Alternatively, it may refer to limitations on the type of expenditure, for example paid political advertising.

Quantitative limitations: Are defined in monetary terms and may include limitations on the amount that individuals or legal entities may donate. Alternatively, they may constitute a limit on how much a candidate or party may spend during an election campaign.

Statutes of limitations: Deadlines by which legal proceedings for campaign finance violations must be initiated.

Third-party financing: Campaign expenditures made independently of a candidate or party with the aim of promoting or opposing a candidate or party, either directly or indirectly. Third-party financing is sometimes referred to as "independent speech" or "non-party campaigning".

Vote buying: A form of electoral malpractice intended to increase the number of votes that a particular candidate or political party receives in an election by providing money or other benefits to constituents in exchange for their vote.

B) Selected OSCE Commitments and other International Standards

1990 OSCE Copenhagen Document

(5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

(...)

(5.4) a clear separation between the State and political parties; in particular, political parties will not be merged with the State;

(...)

(5.10) everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(...)

(7) To ensure that the will of the people serves as the basis of the authority of government the participating States will

(...)

(7.6) respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

(7.7) ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(...)

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

2003 United Nations Convention Against Corruption

(7.3) 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

1996 United Nations Human Rights Committee General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights

(19) ... Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party...

2006 United Nations Convention on the Rights of Persons with Disabilities

(5.4) Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women

(4.1) Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

1965 United Nations Convention on the Elimination of All Forms of Racial Discrimination

(1.4) Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

2003 Council of Europe Recommendation Rec(2003)4 of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns

(...)

Recommends that the governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns which are inspired by the common rules reproduced in the appendix to this recommendation, – in so far as states do not already have particular laws, procedures or systems that provide effective and well-functioning alternatives, and instructs the "Group of States against Corruption – GRECO" to monitor the implementation of this recommendation.

(...)

III. Electoral campaign expenditure

(9) Limits on expenditure
States should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns.

(10) Records of expenditure
States should require particular records to be kept of all expenditure, direct and indirect, on electoral campaigns in respect of each political party, each list of candidates and each candidate.

(...)

V. Supervision

(14) Independent monitoring
(a.) States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns.
(b.) The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication.

(15) Specialised personnel
States should promote the specialisation of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns.

VI. Sanctions

(16) Sanctions
States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.

2001 Council of Europe Recommendation 1516 of the Parliamentary Assembly on Financing of Political Parties

(3) In order to maintain and increase the confidence of citizens in their political systems, Council of Europe member states must adopt rules governing the financing of political parties and electoral campaigns.

(...)

(8.b) As regards expenditure during election campaigns
States should impose limits on the maximum expenditure permitted during election campaigns, given that in the absence of an upper threshold on expenditure there are no limits to the escalation of costs, which is an incentive for parties to intensify their search for funds.

(8.c) As regards transparency
Financing of political parties must be fully transparent, which requires political parties, in particular:
i. to keep strict accounts of all income and expenditure, which must be submitted, at least once a year, to an independent auditing authority and be made public;
ii. to declare the identity of donors who give financial support exceeding a certain limit.

(8.d) As regards control
States should establish independent auditing bodies endowed with sufficient powers to supervise the accounts of political parties and the expenses linked to electoral campaigns.

(8.e) As regards sanctions
In the case of a violation of the legislation, political parties should be subject to meaningful sanctions, including the partial or total loss or mandatory reimbursement of state contributions and the imposition of fines. When individual responsibility is established, sanctions should include the annulment of the elected mandate or a period of ineligibility.

(8.f) As regards "third parties"
The legislation on financing political parties and on electoral campaigns should also apply to entities related to political parties, such as political foundations.

2002 Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States[8]

(12.1) The financing of measures connected with elections is executed at the expense of budget resources.

(12.2) The states shall assure, in the cases and in accordance with the

8 Translation provided by the European Commission for Democracy through Law (Venice Commission). See: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-EL(2006)031rev-e.

procedure stipulated by the constitutions and laws, allocation to the candidates, political parties (coalitions), participating in elections, on fair terms, of budgetary resources, as well as the possibility to create an off-budget fund at the electoral body, or to form their own financial electoral fund for the purpose of financing their election campaign, and to use for those purposes their own funds, voluntary money donations made by physical and/or national legal entities in amounts and in accordance with the procedure stipulated by the laws. Use by the candidates, political parties (coalitions) of other funds apart from those that have come to the said funds, has to be forbidden and to entail responsibility in accordance with the laws.

(12.3) Any foreign donations, inclusive of those from foreign physical and legal entities, for candidates, political parties (coalitions), participating in elections, or to other public unions and organisations, which directly or indirectly, or in another manner relate to or are under a direct influence or control of the candidate, political party (coalition), and facilitate or contribute to accomplishment of goals of the political party (coalition) are not allowed.

(12.4) This Convention signatory states shall provide for an open and transparent nature of all money donations to candidates, political parties (coalitions), participating in elections, in order to avoid any prohibited donations to candidates, political parties (coalitions) that have put forward the candidates (lists of candidates) in elections.

(12.5) The candidates, political parties (coalitions) participating in elections should, with periodicity stipulated by the laws, submit to the electoral bodies and/or other bodies, mentioned in the law, information and reports on receipt of all donations to their election financial funds, on their donors as well as on all their disbursements from those funds on financing of their election campaign. The electoral bodies shall provide for publication of the said information and reports in mass media and means of telecommunications mentioned in the laws.

(12.6) This Convention signatory state may form or place powers relating to execution of the control or supervision over observance of rules and manner of financing of the election campaign of candidates, political parties (coalitions) on a special body or bodies, officials or electoral bodies.

(12.7) The list of violations of conditions for and manner of making donations, as well as financing of activities of candidates, political parties (coalitions)

and the list of measures for warning of, prevention of violations of regulations on financing of elections and election campaign of candidates, political parties (coalitions) should be stipulated by the laws, other normative legal acts.

2002 Council of Europe's Venice Commission Code of Good Practice in Electoral Matters

(...)

(I.2.3.) Equality of opportunity

(a.) Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to:

i. the election campaign;

ii. coverage by the media, in particular by the publicly owned media;

iii. public funding of parties and campaigns.

(b.) Depending on the subject matter, equality may be strict or proportional. If it is strict, political parties are treated on an equal footing irrespective of their current parliamentary strength or support among the electorate. If it is proportional, political parties must be treated according to the results achieved in the elections. Equality of opportunity applies in particular to radio and television air-time, public funds and other forms of backing.

(c.) In conformity with freedom of expression, legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections.

(d.) Political party, candidates and election campaign funding must be transparent.

(e.) The principle of equality of opportunity can, in certain cases, lead to a limitation of political party spending, especially on advertising.

(...)

(I.3.1.) Freedom of voters to form an opinion

(a.) State authorities must observe their duty of neutrality. In particular, this concerns:

i. media;

ii. billposting;

iii. the right to demonstrate;

iv. funding of parties and candidates.

(...)

See also: **2010 Venice Commission and OSCE/ODIHR Guidelines on Political Party Regulation (particularly paragraphs 159-217)**