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No. 01/2005 STANDARDS ON POLITICAL FUNDING AND FAVOURS

The need to clean up political finance

Corruption in political party and campaign finance damages democracy because it undermines elections and distorts political competition. But the damage is not confined to the electoral process. The quality of government is marred when subsequent decisions by elected politicians are taken to pay back those who funded their ascent to power, rather than for the benefit of the population as a whole. Equally, when a political party resorts to paying for votes rather than focusing on the quality of its campaign message, democracy suffers.

Corruption in political finance erodes trust in the institutions of democracy, when scandal after scandal reveals politicians sharing the spoils of power with their financial backers. Transparency International's Global Corruption Barometer 2004 found that in 36 out of 62 countries polled, political parties were considered to be the most corrupt institution, followed by parliaments.

Faced with evidence that voters do care about the ways in which electoral politics is financed, governments around the world have taken steps to regulate political party and campaign financing. Many have introduced disclosure laws, whereby parties must publish details about who gave them money, how much, and what they used it for. Others have banned certain types of donations that are considered more prone to corruption, such as corporate donations. Another route taken by countries is to lessen the need for money by providing state subsidies, shortening campaigns, providing subsidised access to the media or curbing the amounts parties may legally spend. International IDEA has compiled a detailed list of regulations in 111 countries.

While there is no model for how to regulate corruption in politics, some attempts have been more successful than others. Transparency International's Standards on Political Party Funding and Favours (in boxes, below) reflect best practice. The Standards go further than external regulation, however, and

consider the importance of vigilance by civil society and the media and of internal political party and business controls. The development of the Standards reflects the importance of the issue to the Transparency International (TI) movement and responds to the body of knowledge built up by TI's National Chapters.

Transparency: cornerstone of regulation

In order for any political finance regulation to be implemented, there has to be a way of checking parties' and candidates' finances. Transparency of political finance, via disclosure, is therefore the

KEY RECOMMENDATIONS

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

starting point of any regulatory framework. Transparency also empowers voters to make informed choices on election day.

The importance of disclosure to the problem of corruption in politics is reflected in international law. The United Nations Convention against Corruption calls on states to "enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties. The African Union Convention goes a step further and is the only convention to have mandatory provisions on the subject of political finance, requiring members to "incorporate the principle of transparency into funding of political parties". The Council of

Europe has also carried important work in this field, and in 2003 issued guidelines for its members on political finance, which call for disclosure.

Despite this, surprisingly few countries have good disclosure laws. A study by USAID finds that of 118 countries studied, 28 have no disclosure laws and only 15 require parties and candidates to disclose income and/or expenditure accounts and disclose the identity of donors to political parties.

Political parties, candidates and politicians should disclose assets, income and expenditure to an independent agency. Such information should be presented in a timely fashion, on an annual basis, but particularly before and after elections. It should list donors and the amount of their donations, including in kind contributions and loans, and should also list destinations of expenditure. The information should be made publicly available in a timely manner so that the public can take account of it prior to elections.

Levelling the playing field

The motivation behind efforts to regulate campaign finance has not only been to curb corruption, but also to promote fair competition between political parties and to nurture emerging parties. This is usually done through the provision of public funding, whether in direct subsidies, or via indirect subsidies such as broadcasting time on public television stations, franking of campaign materials, use of telephones or public office space and tax relief on political donations.

Careful consideration should be given to the benefits of state funding of parties and candidates and to the encouragement of citizens' participation through small donations and membership fees. Consideration should also be given to limiting corporate and foreign support, as well as large individual donations. To control the demand for political financing, mechanisms such as spending limits and subsidised access to the media should be considered.

The aim in all cases is to reduce the comparative advantage of wealthy parties and stem the “arms race” for campaign funds. The provision of public funding has additional benefits in terms of transparency since disbursement is generally conditional on

presentation of party balance sheets including invoices for money spent.

Ensuring that business plays a positive role

Private interests must be prevented from subverting the democratic process through the purchase of control and favours. From the perspective of business, clear rules can help mitigate exposure to demands for bribes and subsequent reputational damage if quid pro quo donations or bribes are exposed; indeed the TI Business Principles for Countering Bribery identify political contributions as one of the high-risk areas where bribery takes place. Donations should not be used to gain advantage in business transactions, whether made to parties, candidates, elected officials or third-party organisations such as research institutes. It is worth mentioning that a significant failing of the OECD Anti-Bribery Convention, which proscribes bribery of foreign public officials, is that it does not prohibit bribery of foreign party officials.

Banning corporate money in political finance is one answer, but could be counterproductive if the result is to inhibit diversity of parties within a democracy, or drive donations under the table.

Where they are not banned, transparency and limits on donations are important. Companies should list all donations and publish their policy on political donations (defined broadly, to include donations to parties, candidates and third parties). They should not make political donations in countries where they have no legal presence and, in line with a movement toward enhanced shareholder activism around the globe, listed companies should give very serious consideration to the option of requiring shareholder approval for such donations.

Donations to political parties, candidates and elected officials should not be a means to gain personal or policy favours or buy access to politicians or civil servants.

Parties, too, need rules for transparency

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

equality and recognising the demands upon political parties and candidates.

Any effort to curb corruption in campaign finance needs to directly engage with political parties. If parties are not committed to clean politics, regulation is unlikely to succeed. Political parties need to demonstrate willingness to abide by external regulations. Not only are clear and simple regulations more successfully enforced than laws that are unclear or difficult to monitor, but they are easier for political parties and candidates to comply with. Party representatives in the legislature need to support good laws governing campaign finance and ensure that such laws are effectively enforced, by backing the creation of strong oversight bodies. TI maintains that parties also need to introduce internal reforms, such as fair candidate-selection procedures and transparency funding requirements for internal party elections.

Parties and candidates must themselves practise transparency and demonstrate commitment to ethical standards in public life.

Establishing a robust legal framework

At the same time, campaign finance regulations need to be analysed with reference to the broader legal framework and political context. Party finance laws need to interface with laws such as political party laws or trade union laws (in the case where bans on donations from trade unions are introduced) that have a bearing on the funding of politics and behaviour of political actors.

As a means of fighting political corruption, party funding laws are one piece of the puzzle. Conflict of interest laws (including laws that regulate the conditions under which an elected official may hold a position in the private sector or in a state-owned enterprise), periodic declarations of assets held by parliamentarians and party officials and their families, time bars against elected politicians moving into corporate positions, and clear immunity rules are all necessary to limit the influence of business on government.

Governments must implement adequate conflict of interest laws that regulate the circumstances under which an elected official may hold a position in the private sector or a state-owned company.

Oversight that works

A strong regulatory framework is important, but insufficient to counter political corruption. Countries with sophisticated regulations

continue to suffer scandals. One reason for this is that regulations are not adequately enforced, because oversight bodies are inadequately equipped, laws are too complex and cumbersome to be practicable, or there is a lack of political will to allow enforcement bodies to carry out their functions free from political interference. (For more details see Policy Position # 02/2005, 'Political Finance Regulations'.)

Oversight bodies must be adequately resourced, and must be supported by an effective judicial system. Oversight bodies must be able to investigate possible cases of corruption – if checks are merely procedural rather than probing, they are unlikely to succeed in detecting or deterring corrupt practices. Sanctions should also be suitable to the offence. Candidates should not be disqualified for minor failures to comply with reporting requirements, for instance. Certain infractions must be punished harshly, however, such as using the proceeds of organised crime to fund political parties.

Public oversight bodies must effectively supervise the observance of regulatory laws and measures. To this end, they must be endowed with the necessary resources, skills, independence and powers of investigation. Together with independent courts, they must ensure that offenders be held accountable and that they be duly sanctioned. The funding of political parties with illegal sources should be criminalized.

Getting the role of the media right

The media has a dual role to play in the fight against corruption in electoral processes. First, it is a forum for the business of politics. A large, if not the largest share of campaign spending goes towards media campaigns and, in addition, media outlets sometimes provide in-kind donations to parties by giving discounted or free airtime to their favoured contender. Controls or bans on campaign broadcasting, and the provision of free airtime on public stations are important remedies. Hidden advertising – campaign messages masquerading as news – is another, more negative aspect of this role, which should be permanently regulated by the broadcasting authority.

The second role the media plays during elections is that of watchdog. Journalists are often at the frontline of those monitoring ties between moneyed interests and political power – and here they depend on properly functioning disclosure laws in order to do their job. Media reports are also the trigger for enforcement agencies to investigate suspected corruption in the financing of political parties, for instance by cross referencing news stories about campaign

rallies with invoices presented by the party or candidate.

Candidates and parties should have fair access to the media. Standards for achieving balanced media coverage and media integrity must be established, applied and maintained. The media should play an independent and critical role, both in election campaigns and in the broader political process. Instruments such as conflict of interest legislation should be used to prevent political control of public and private media from creating a bias in the coverage of politics.

What the public can do

Citizens must be active and vigilant if they are to help stop corruption in politics. Civil society groups have already shown that this is possible, by monitoring campaign spending and scrutinising party accounts. The evidence produced by such efforts – including proof that campaign spending is higher than that declared by parties and candidates, and that state resources such as public television and the time of civil servants are misused to favour incumbents – has in some countries been the starting point for debate over campaign finance laws.

Civil society voices are especially important in the debate over campaign finance

because of an inherent contradiction governing the regulation of this sphere. Those responsible for designing the regulations are the same people who will be affected by them: elected politicians. Civil society organisations can contribute by participating at hearings of legislative commissions entrusted with revising campaign finance legislation or through partnerships with monitoring bodies charged with supervising accounts, for example. In the end of course, it is critical that information about reform of political finance – including obstacles to reform – enter the public domain, to heighten awareness of the standard to be expected, and to enable a better informed electorate, who can register their concern at the voting booth.

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

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