

**Training in Detection and Enforcement (TIDE)**

# **Political Finance Oversight Handbook**



**Edited by Magnus Ohman  
2013**





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International Foundation for Electoral Systems



Training In Detection and Enforcement (TIDE) Political Finance Oversight Handbook  
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We welcome any comments on the handbook and look forward to continuing this discussion.

*Magnus Ohman, Editor*



## Introduction

Money plays a crucial role in modern politics, and while it has an important role to play in facilitating communication between stakeholders, oversight is necessary. The International Foundation for Electoral Systems (IFES) supports reform to enhance compliance with political finance regulations, increase the effectiveness of enforcement activities and reduce opportunities for corruption. As part of this work, IFES has produced this handbook to form the core of its Training in Detection and Enforcement (TIDE) program. This program promotes effective enforcement of political finance laws and regulations through analysis, training and technical assistance for political finance enforcers (PFEs).

The TIDE program responds to an increasingly acknowledged need by political finance enforcement agencies in many countries where weak enforcement in political and campaign finance is viewed as a major problem. This handbook is the product of extensive research and fieldwork by leading political finance experts and practitioners. It represents a comprehensive effort to consolidate the experience and knowledge currently available.

This publication has been revised and updated from a version originally published in 2005. Information has been reviewed and updated in light of changing circumstances and lessons learned. A separate section has been added on how to counteract the abuse of State (administrative) resources.

It is not the aim of this handbook to prescribe a monitoring method applicable in all contexts, nor to answer the question of how best to regulate political finance in all countries. Rather, it is a collection of lessons learned and best practices in both established and transitional democracies, organized in the form of practical guidelines and discussions of key concepts. Drawing on examples from over 90 countries, this publication shows both positive and negative examples of how political finance regulations can be enforced. IFES hopes this handbook will assist enforcement agencies carry out effective supervision of political finance in their own countries.

The handbook is divided into three major parts:

**Part One** focuses on the context of detection and enforcement of political finance. It introduces the terminology of political finance enforcement and the institutions involved, including interactions among these institutions. Chapter 1 presents definitions, problems and the context of political finance. Chapter 2 discusses the regulation of money in politics. Chapter 3 deals with basic issues pertaining to enforcement and Chapter 4 addresses underlying causes of non-enforcement.

**Part Two** delves into the practical aspects of detection and enforcement and addresses each step in the enforcement process. Chapter 5 focuses on strengthening the independence of political finance bodies and organization within the enforcement agency of units for detection and enforcement. Chapter 6 discusses various enforcement procedures, with an emphasis on disclosure, audits and maintaining internal controls. Chapter 7 covers investigative techniques, while Chapter 8 looks at prosecution and sanctions, as well as the relationship between enforcement agencies and courts. Chapter 9 discusses the use of

databases to increase the effectiveness of detection and enforcement and Chapter 10 examines the role of civil society organizations, media and academics in enforcement.

**Part Three** focuses on monitoring and counteracting the abuse of State resources in election campaigns and political party activities. This issue has become increasingly important in several parts of the world, and it is often difficult to handle for PFEs. Different options and approaches for regulators are discussed. Chapter 11 discusses concepts related to abuse of State resources, advocating for the need to see beyond financial resources only. Chapter 12 discusses ways of regulating this issue, while Chapter 13 addresses the difficult issue of enforcing such rules, identifying challenges and solutions in this field. Chapter 14 presents 100 ways in which State resources can be abused, helping regulators to recognize offences. A glossary at the end of the handbook explains key terms used throughout the text.

Used together with IFES training and assistance, this handbook is a tool to facilitate meaningful change that adds credibility to a country's electoral process and PFE institutions. The training offered by IFES is designed to complement each part of this handbook in a way that encourages PFEs to assess their own enforcement systems and identify strengths and weaknesses.

Assistance efforts seek to build on areas in need of strengthening identified before and during training. IFES assists by matching experts and practitioners specializing in each of these areas with key personnel from the relevant enforcement body, and providing useful sample materials from other enforcement bodies around the world. In short, IFES is here to help design and implement the methods, techniques and systems you choose for your country. It is our hope you will be able to use this information as you advance your country's political finance laws and procedures and implement and enforce them.

For further information, please see [www.IFES.org](http://www.IFES.org)

**Figure 1: List of Common Acronyms Used in this Publication**

Acronym	Meaning
ASR	Abuse of State Resources
CSO	Civil Society Organization
EMB	Election Management Body
GRECO	Group of States Against Corruption
MP	Member of Parliament
NAO	National Audit Office
NGO	Non-Governmental Organization
PFE	Political Finance Enforcer (the institution mandated to enforce legal regulations of political finance)
TIDE	Training in Detection and Enforcement (the IFES training program for PFEs for which this Handbook forms the core)

## **Part One**

# **The Context of Detection and Enforcement in Political Finance**

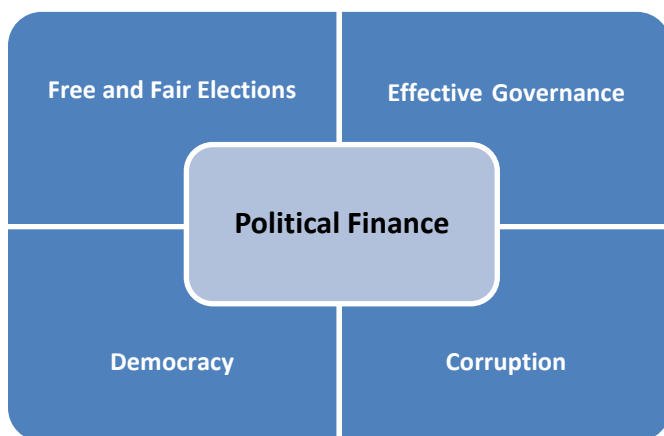
## Chapter 1: The Importance of Money in Politics

### Why is Political Finance Important?

Money functions as a medium of exchange, without which no modern society could function. Money is necessary for the provision of fundamental services such as health care, education and social security. Money is also an integral part of politics. This relationship, which we also refer to as political finance, has both positive and negative effects on the democratic nature and effectiveness of politics. In IFES' 2009 publication on global experiences in the regulation of political finance, IFES stated:<sup>1</sup>

On a general level, political finance exists in the cross section between many crucial aspects of political life. Free and fair elections, democratic politics, effective governance and corruption are all related to political finance, and the financing of political parties and election campaigns can positively or negatively affect them all. Sufficient funds can allow contestants to reach the electorate with their messages, but can also skew electoral competition. Also after elections, resources are needed for an effective dialogue with citizens, but public officials may have obligations to wealthy benefactors, which can impact not only how responsive politicians are to the wishes of the public, but also how effectively they manage public funds. Finally, financially secure political parties and politicians can more easily resist temptations of illegal donations, but undue influence of money in politics can also create vicious cycles of corruption and declining public confidence in the political system as a whole.

**Figure 2: The Centrality of Political Finance**



Democratic elections and democratic governance involve a mixture of ideals and, all too often, dubious or even sordid practices. Election campaigns, political party organizations and politically active groups all cost money. The financing of political life is a necessity – and a problem.

Little time goes by without a new scandal involving political money surfacing in some part of the globe. These scandals are frequently a signal that existing political finance regulations are not working properly. The frequency with which new laws

concerning campaign and political party finance are enacted and reformed can be seen as testimony to the failure of many existing systems of regulations and subsidies. Either laws are inadequate or they are not being enforced.<sup>2</sup> On the other hand, the nature of political finance is such that regulations need to

<sup>1</sup> Ohman & Zainulbhai (2009) page 13f.

<sup>2</sup> Pinto-Duschinsky (2002) page 69; See also Walecki (2004) page 19. It should, however, be acknowledged that a political finance scandal also indicates there is enough freedom of expression for someone to find out and publish

be constantly reviewed and changed as political, economic and administrative contexts change. No political finance law will be effective forever.

Whether it relates to widespread reform to deal with non-functional legislation or ongoing reviews to adjust existing regulations, the TIDE program provides tools for institutions that oversee political finance to arrive at the most suitable solution.

### Definition of Political Finance

What is political finance? In an overall sense, the term refers to the role of money in politics, and as such, it encompasses a wide range of activities.<sup>3</sup> Different types of political finance include:

- Financing campaigns in relation to elections for public office
- Financing political parties during, but also in between, elections
- Financing bodies such as party “foundations” and other organizations that, although legally distinct from parties, are allied with them and advance their interests
- The costs of political lobbying
- Expenses of newspapers and other media incurred and paid to promote a partisan line
- The costs of litigation in politically relevant cases
- Third-party, or “independent,” expenditures (spending by others than political parties and candidates)
- Activities of elected officials and other politically-exposed persons<sup>4</sup>

The wide reach and multifaceted nature of money in politics poses problems beyond definition. It also creates difficulties for legislation and enforcement aimed at transparency and appropriate behavior, as addressing problems in one area may open loopholes in others. This calls for a comprehensive approach to regulation and enforcement.

When regulations are enacted to control the campaign costs of political candidates and the finances of political parties, the effect can be that money is diverted into related, but uncontrolled, forms of political activity. For instance, what happens when money spent on policy research is subject to disclosure if conducted by a party organization, but not if done by a foundation with links to a political party? In such a situation, we should expect that foundations will be created as a device to escape legal controls.

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information about wrongdoings, and enough public awareness for people to become upset about these wrongdoings.

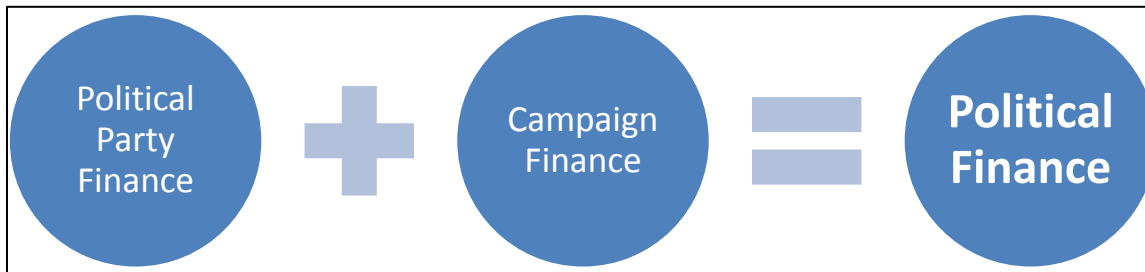
<sup>3</sup> For an example of a wide definition of “political,” see the Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, adopted by the Council of Europe Committee of Ministers on April 8, 2003. According to Article 6, “Rules concerning donations to political parties, with the exception of those concerning tax deductibility referred to in Article 4, should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party.”

<sup>4</sup> See the World Bank (2009).

Drawing a boundary line between "political" and "non-political" finance is not the only problem. It is necessary also to define the meaning of "finance." This is an issue of definition that has practical ramifications. A "financial" payment may arguably not be limited to money alone, but may involve resources with a monetary value. A political donor who gives a gift of USD \$1,000, and another individual who donates a computer to a political party, thereby saving the party the expense of purchasing a computer for USD \$1,000, have both given an equal financial advantage to the recipient party. "Political finance," therefore, includes the financial value of in-kind gifts. Indeed, gifts may include the free provision of professional services to a political party or candidate.

For the purposes of this handbook, "political finance" will be understood as campaign finance and political party finance. Campaign finance can also be described as "money for electioneering." This money may be spent by candidates for public office and by their political parties or other individuals/organized groups of supporters. It is used specifically to compete in an election and includes funds raised and used by campaigners other than candidates and political parties (so-called "third parties").

**Figure 3: Definition of Political Finance in TIDE**



Since political parties play a crucial part in election campaigns in many parts of the world, and since it is difficult to draw a distinct line between campaign costs of party organizations and their routine expenses, party funds may reasonably be considered a part of political finance. Party funding includes not only campaign expenses, but also costs of maintaining permanent offices; carrying out policy research; and engaging in political dialogue, voter registration and other regular functions of parties. The term "political party finance," which refers to the financing of these activities, is used in two main ways: sometimes it refers to party financing of both routine and campaign activities. And sometimes – especially in the U.S.– it is used to refer more narrowly to the finances involved in routine, non-campaign activities alone. In this handbook, the wider definition will be applied. It is worth repeating that there is no single political finance system that will work in every political environment or situation. There are many varying choices for regulating political finance in democratic systems throughout the world, and ultimately, the country's political, economic and social circumstances will determine the successful operation of any political finance system.

## Global Key Understandings in Political Finance

Over the years, a series of organizations have developed lists of lessons learned and key understandings relating to political finance and its oversight. Although each list reflects the different experiences and approaches of each organization, there are recurring themes. In 2009, IFES, together with other organizations, reached the following list of synthesized understandings regarding money and politics worldwide:<sup>5</sup>

- Money is necessary for democratic politics, and political parties must have access to funds to play their part in the political process. Regulation must not curb healthy competition.
- Money is never an unproblematic part of the political system, and regulation is desirable.
- The context and political culture must be taken into account when devising strategies for controlling money in politics.
- Effective regulation and disclosure can help control adverse effects of money in politics, but only if well-conceived and implemented.
- Effective oversight depends on activities and interactions by stakeholders (such as regulators, civil society and media) and must be based on transparency.

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<sup>5</sup> These key understandings were first published in Ohman & Zainulbhai (2009) page 16-21.

## Chapter 2: Regulating Political Finance

### A Brief History of Political Finance Regulations

Today, there is no country in the world that completely lacks regulations on how money can be used in election campaigns or politics, although in some places, this is limited to a ban on vote buying or on the abuse of State resources in campaigns.<sup>6</sup> However, this was not always the case. Many former colonies created few or no regulations on this issue after independence, with the first rules being put in place after the wave of democratization in the 1980s and 1990s (in Africa, Asia, Eastern Europe and Latin America). In some places, the first rules are even newer than that. Several countries in the Middle East and North Africa are currently introducing the first rules on these issues as a result of the Arab Spring. There are also older democracies that have only recently introduced noticeable rules on campaign finance (Iceland and Finland are examples of this), while some democracies still fight against the introduction of detailed rules (such as Sweden and Austria).

There are, however, some countries that have experimented with political finance regulations for much longer. Three examples to be discussed here are the United Kingdom (UK), the U.S. (U.S.) and a group of Latin American countries (Uruguay, Argentina and Costa Rica). In many ways, these nations have pioneered the regulation of money in the political systems. This does not necessarily mean the system they use today are better than those in other countries.

In the UK, the first campaign spending limits were introduced in 1883 through the Corrupt Practices Act introduced by then Prime Minister William Gladstone. This law not only limited spending during election campaigns; it also banned activities such as the buying of food or drink for voters and limited the number of carriages that could be used to transport voters to the polling stations. At this time, only a limited number of people had the right to vote, excluding all women and a majority of men. This was not the first rule to deal with political finance in the UK. Legislation dating back to 1868 regulated electoral petitions involving fraud, including vote buying. As early as 1695 the first Corrupt Practices Act provided a definition of corruption as it related to elections. These laws did not fully remove campaign finance problems in the UK – and indeed did not address money raised and spent by political parties. The current regulatory framework in the UK is a result of reforms dating back to around 2000.

The first regulations on campaign finance also came to the U.S. in the 19th century. Perhaps the first rule was a ban on election candidates forcing harbor workers to support them financially, introduced in 1867 through the Navy Appropriations Bill. A similar rule was introduced regarding all government employees in 1883. The first main step in this area was taken through the Tillman Act in 1907, which banned direct campaign contributions from private companies, an issue that would be at the center of attention again over 100 years later when the U.S. Supreme Court reduced restrictions on corporate

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<sup>6</sup>The text in this section was first published in the IFES Nigeria Political Finance Newsletter, Volume 3, No. 10 (October 2012).



campaign spending through the Citizens United Ruling. A number of additional laws were created in the 1920s through the 1940s, aimed at a phenomenon that, when discussed in relation to many emerging democracies today, is called “clientelism” (or “neo-patrimonialism”). At this time in the U.S., it was referred to as “bossism,” stemming from “bosses” running politics with close connections to criminal networks. Another big change in the regulatory system came as a result of the Watergate scandal in the 1970s, including the creation of the Federal Election Commission. With the peculiarity of the U.S. political system, decisions about political finance regulations have often de facto been taken by the Supreme Court rather than by politicians, spanning from the 1976 Buckley v. Valeo case that held the attempt to impose candidate spending limits as unconstitutional, to the 2011 Citizens United v. Federal Election Commission case that lifted the ban on campaign expenditures from corporate and trade union general treasury funds.

The Latin American examples (Uruguay, Argentina and Costa Rica) led the way in financial support from the State to political parties. It is generally held that Uruguay started this general trend in 1928, followed by Costa Rica and Argentina in the 1950s. Not until 1959 was this type of assistance used in Europe, in what was then West Germany – soon after it was also introduced in Norway. In contrast, direct public funding was not introduced in the UK until 1975, just two years before Nigeria. Venezuela and Nicaragua also introduced public funding of political parties before the UK, with Mexico and Ecuador following soon after.

Political finance regulations must be adjusted over time so they are suited to the particular situation in each country. This is shown by the examples of countries that have been working with this issue for centuries. In this way, that some countries have started regulating these issues later than others does not necessarily place them at a great disadvantage. The main difference lies often in how upset people become when they find out financial rules (legal or societal) have been broken. Establishing a popular culture of rejecting political finance corruption is more a matter of building national citizenship than it is about formal regulations.

### **Types of Regulations**

Countries around the world use a variety of regulations to curb the negative impact of money in politics without keeping democratic politics from thriving. These legal provisions concerning political financing may be separated into eight main types:

**Figure 4: Types of Political Finance Regulation**

Type of Political Finance Regulation	Comment	Examples
1. Financial conditions governing candidacy for public office	Regulations to reduce frivolous candidacies, ensure compliance with eligibility criteria and ensure those running for public office are not involved in illegal financial activities.	<ul style="list-style-type: none"> <li>• Financial deposits for candidates for public office</li> <li>• Rules concerning the declaration of assets by candidates for public office</li> </ul>
2. Enhancing financial transparency through disclosure (financial reporting)	Requiring political parties, candidates for public elections and sometimes third parties to report their financial transactions. Apart from campaign finance disclosure, political parties may be required to report on their ongoing finances. Reporting requirements are often based on regulations regarding bookkeeping by those obliged to submit reports.	<ul style="list-style-type: none"> <li>• Disclosure rules for candidates, political parties and/or third parties (See for example Political Action Committees in the U.S.)</li> <li>• Disclosure during and/or after an election campaign or ongoing at given intervals</li> </ul>
3. Bans on certain forms of contributions and expenditure	Intended to avoid influence from undesirable sources, and to prohibit certain forms of campaigning deemed unacceptable; adherence is often difficult to monitor.	<ul style="list-style-type: none"> <li>• Bans on certain types of contributions, such as foreign or anonymous contributions, or from corporations, trade unions or government contractors</li> <li>• Bans on certain types of spending, such as media advertising</li> </ul>
4. Limits on how much can be contributed or spent	Intended to reduce dependency on and limit the influence of particular donors (contribution limits) and to reduce overall spending in election campaigns or level the playing field (spending limits); adherence is often difficult to monitor.	<ul style="list-style-type: none"> <li>• Contribution limits (per contribution or during an established period such as an election campaign or a year)</li> <li>• Spending limits (per political party or candidate, sometimes adjusted by the size of each electoral area)</li> </ul>
5. Provision of public funding or subsidies	Regulated direct and indirect support to political parties and/or candidates. Often intended to level the playing field (together with spending limits) or to give all (relevant) actors a chance to be heard by the electorate; comparatively easy to administer and oversee, although monitoring the use of these funds can be complicated.	<ul style="list-style-type: none"> <li>• Public subsidies</li> <li>• Tax relief and in-kind subsidies, such as free or subsidized media access, transport or meeting spaces</li> </ul>
6. Ensuring State resources are not used to favor or hinder any political party or candidate	Intended to separate the State administration from the political sphere and to remove undue advantages of incumbency. Such regulations may be included in electoral and political party legislation, but may also be covered in laws on administration or the civil service; notoriously difficult to enforce.	<ul style="list-style-type: none"> <li>• General provisions requiring public servants to treat all political actors equally</li> <li>• Rules concerning the use of government resources by incumbents</li> <li>• Measures to control the use of</li> </ul>

		public resources for campaign purposes <ul style="list-style-type: none"> <li>• Political broadcasting rules requiring public media to avoid bias</li> <li>• Overall rules regulating potential conflicts of interest</li> </ul>
7. Regulations to counteract vote buying and related forms of undue influence	Almost all countries in the world ban vote buying, although the exact definitions vary. Some countries also use specific restrictions regarding attempts to influence those directly involved in election management.	<ul style="list-style-type: none"> <li>• Ban on giving/promise of gifts in return for votes or with the intention of influencing voting.</li> <li>• Ban on gift-giving by political actors during the pre-electoral period, regardless of intention or impact on voting</li> <li>• Sanctions against bribing polling station staff or other individuals involved in the electoral process.</li> </ul>
8. Effective enforcement of the above forms of regulation	Regulations regarding the institution(s) charged with enforcing above regulations, including investigation and sanctions for infractions	<ul style="list-style-type: none"> <li>• Regulating and enforcing bodies and their mandate</li> <li>• Provisions to insulate such bodies from political interference</li> <li>• Regulations on complaints procedures and sanctions</li> <li>• Other ethics and conflict-of-interest rules</li> </ul>

Political finance provisions are sometimes contained in laws dealing specifically with party finance or election finance. More often they are included in broader laws about elections, political parties or the prevention of corruption. Media laws and laws concerning voluntary associations and organizations may also contain provisions about political finance. Additionally, laws that do not directly regulate the funding of political parties and election campaigns may be relevant, such as administrative and penal codes. Some laws that often contain regulations relating to political finance are:

- Electoral laws
- Political party laws
- Laws on administration
- Media laws (especially if dealing with public media)
- Legislation focusing on corruption or conflict of interest
- Penal codes

It is important to acknowledge the warning contained in the French submission to the Council of Europe's study on "Trading in Influence and Illegal Financing of Political Parties:"

[I]t is impossible to combat illegal financing of political parties purely by means of regulations on party funding. What matters is to clean up the whole environment surrounding party funding...This places the illegal financing of political parties in the wider context of misappropriating procedures relating, for example, to town planning ventures, commercial development, public procurement, public service provision, use of local semi-public corporations or semi-public non-profit-making organizations, etc.<sup>7</sup>

Due to the range of provisions covering political finance, there are usually a number of different laws in any one country dealing with the issue. The existence of a variety of separate laws often complicates enforcement of these provisions, especially when different institutions are mandated to enforce different legal provisions.

### ***Financial Conditions Governing Candidacy for Public Office***

In a number of countries, electoral candidates must meet either or both of the following conditions: (1) declaration of assets and, often, a declaration of assets of family members, and (2) financial deposits for political parties and individual candidates.

1. Rules concerning declaration of assets are easy to enforce because the electoral authority may simply refuse to accept the nomination of a candidate if requirements have not been met (e.g., the declaration is incomplete). If the electoral authority rejects the nomination of a candidate because his or her asset declaration is unsatisfactory, it is then up to the candidate to initiate a legal appeal against the decision. However, it may be more difficult for the enforcing entity to verify the accuracy of the information submitted by candidates.
2. A system of financial deposits, which is found especially in countries with majoritarian electoral systems, deters frivolous candidacies. Some regimes introduce refundable or non-refundable application fees for independent candidates and political parties. The argument against such fees is that they discriminate against poor or even middle-income candidates. Such fees will have virtually no effect on a wealthy person, but if one wishes to support the right of political participation in practice, such fees may represent inequality. Non-refundable fees introduce a tax on political participation and impose direct and substantive restraints on the ability to stand for office. In case of refundable fees (financial deposits), the deposits are returned to entities that receive a certain percentage of votes cast. In recent years, deposits have been used in a number of countries for purposes other than deterrence of casual candidates. The deposit, if high enough, can be an incentive for candidates and political parties to abide by regulations relating to the timely disclosure of campaign accounts. Legal prosecutions of candidates and their agents for failure to complete their accounting obligations on time involve paperwork, expense and a considerable amount of time for election administrators. By contrast, the incentive of the

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<sup>7</sup> Council of Europe (1998) page 84.

return of a financial deposit as the reward for obeying laws on disclosure is far less burdensome for election officials and, arguably, more effective.

### ***Disclosure***

A cornerstone in effective political finance oversight is a comprehensive disclosure system. This system requires political parties and/or candidates to submit financial statements before, during and/or after an election campaign (for political parties, reporting can also occur on a regular basis). Third parties, such as contributors to election campaigns or media outlets selling air time for campaign advertising, may also be required to submit information about their transactions.

It is unlikely that other forms of regulation, such as bans or limits, will be respected where actors do not expect such violations to be detected through effective oversight. While details vary between different disclosure systems, the principle of enhancing transparency without unduly burdening those set to comply must prevail in all countries.

There are, however, many ways political parties, candidates and other actors can avoid disclosing information they may want to keep secret. Regarding regulations on the disclosure of political donations, techniques include donations disguised as commercial payments (e.g., advertisements in a party publication), loans (of money or equipment) or voluntary services (e.g., leave given by a corporation or government agency to employees, enabling them to carry out work for a political party or candidate).

### ***Bans***

Some countries forbid certain sources and types of contributions, for example: foreign contributions, anonymous contributions, contributions made in the name of another person and contributions from legal entities or government contractors.

Political finance laws that incorporate prohibitions are among the most difficult to enforce. Corrupt practices are present both at a high and low level. At a high level, corruption normally consists of some agreement to give a reward (such as a government contract) in exchange for a political contribution. The problem for the enforcement agency is to obtain evidence for what is normally a highly secret transaction. Some of the most celebrated examples of such dirty dealings have emerged as a result of press investigations and secret recordings of conversations between political fundraisers and contributors.

At a lower level, vote buying and similar illegal forms of political spending may be so widespread that they cannot be kept secret. The problem for the enforcement agency here is similar to problems involving the detection of other forms of street crime (e.g., the sale of drugs, illegal gambling, prostitution). First, the enforcement agency needs to catch those involved in the illegal transaction. Second, when those involved – normally junior criminals – have been caught, the enforcement agencies must establish that these perpetrators were acting under instruction from people at the top. Finally, courts must be prepared to impose penalties severe enough to deter criminals, not merely irritate.

There are different, but no less severe, difficulties relating to prohibitions against types of donors and donations. These are illustrated by the problems of bans on foreign donations and on corporate contributions. These bans may be ignored or circumvented through various money laundering techniques. Corporations, labor unions and wealthy individuals may engage in such activity for several reasons: to evade contribution limits, enhance eligibility for public funds or conceal the identity of the actual donor. Illegal, secret donations are sometimes attractive to a donor because they place politicians in the donor's debt and increase the donor's leverage when it comes to demanding privileges in return for the clandestine gift. If a corporation or a foreign donor wishes to obey the letter, although not the spirit, of prohibitions, there are often several ways to achieve this:

If bans apply to gifts for political parties, they can often be evaded by setting up "off-shore islands" of political parties – bodies such as party foundations, think-tanks or political education organizations that are legally distinct but closely connected to a political party.

Bans on foreign donations may be evaded because the term "foreign" is not tightly defined in the relevant legislation. For example, a "foreign" donation may be given through a branch of a foreign company located within the relevant country. This issue is complicated by allowing citizens of the country residing abroad to make contributions; in such cases, the origin of the provided funds are next to impossible for the regulating agency to establish with confidence.

Bans on corporate donations may be evaded through partners of a company each giving a donation to a party or candidate and being rewarded by a salary/bonus equivalent to the amount of the political payment.

A business corporation may release employees on paid vacations with the understanding they will work for a party or candidate.

Corporations may employ politicians as consultants to disguise what actually is a political gift as a payment-for-service. Alternatively, a company may provide employment at a generous rate to a member of the politician's family.

### ***Limits on Contributions and Expenditure***

Even if a legislature may not wish to ban a certain form of contribution or expenditure outright, it may wish to place limits on such activities. Limiting the amount individuals can contribute may reduce the risk of politicians becoming dependent on wealthy benefactors, and create incentives for grassroots fundraising. Limiting expenditures can reduce the advantages of competitors with access to funds, and it may also reduce the overall cost of election campaigns.

However, these limits are often very difficult to enforce effectively. According to the late Herbert E. Alexander:

[E]xpenditure limits are illusory in a pluralistic system with numerous openings for disbursements... [W]hen freedom of speech and association are guaranteed, restricting money at any given point in the campaign process results in new channels being carved

through which monied individuals and groups can bring their influence to bear on campaigns and officeholders.<sup>8</sup>

The problems of spending limits can be explained further:

- Since parties and candidates do not wish to be punished for breaking laws on spending limits, they will often disguise spending above the limit. Thus, spending limits make disclosure provisions harder to enforce.
- Spending limits may make life harder for opposition parties and candidates. This depends on what the limits are and whether they keep the playing field as level as possible. Ruling parties are able to take advantage of public resources available to members of the government for partisan purposes. In the period before a general election, government information services often produce what is effectively party propaganda in the guise of “public information.” Government employees may be released from public duties to perform services for a party instead. Government telephones, vehicles and the like may be used for political campaigning.
- Since spending limits apply only to the campaign, it becomes tempting to disguise campaign expenditures as routine, non-campaign items. For example, if spending is defined as “campaign spending” only if it is incurred during a set period of time before an election, it will be possible for a party to prepare campaign broadcasts and to conduct policy research in advance of that set period.
- In countries where opposing political parties flout laws concerning spending limits, non-aggression pacts are likely to occur. No party will bring accusations against another party for fear of being accused itself of disobeying the law.
- Activities that assist the cause of a party may be conducted by an independent interest group or lobbying organization. For instance, in the UK, a person who opposed abortion claimed the right to campaign against particular candidates whose views on the subject of abortion were in conflict with their own.<sup>9</sup> Spending by such third parties is subject to regulation in some jurisdictions (e.g., through disclosure, funding and spending restrictions), but enforcement of those rules can be difficult.

The only way to ensure only candidates and political parties participate in campaigning and campaign spending is to restrict the freedom of expression of interest groups and lobbying organizations. However, constitutional courts in the U.S., Canada and Europe have confirmed to varying degrees the rights of such interest groups to participate in public discussions during election campaigns.

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<sup>8</sup> Alexander (1989) page 118.

<sup>9</sup> Pinto-Duschinsky (2004). Regarding the UK case in point five.

A study of political finance in Taiwan refers to this problem of limits: “Taiwan is considering lifting some of the penalties for breaking limits on campaign spending and donations because it is recognized that limits have, in fact, reduced transparency.”<sup>10</sup>

In other contexts, transparency need not suffer from the imposition of spending limits. This is a balancing act in which meaningful audits can reduce the degree to which spending limits are undermined.

### ***Direct and Indirect Public Funding***

An increasingly common form of political finance regulation is the provision of public or government funds, either directly or through indirect support or subsidies. These may consist of some or all of the following:

- Public funding subsidies to political parties and/or candidates
- Free or subsidized media broadcasts by political parties and candidates
- Tax relief and in-kind subsidies, such as the provision of free transport, office space or postage

Once legislation about public funding has been enacted, the implementation of a subsidy scheme is relatively simple. The same applies to agreements about free political broadcasting. It is easy to monitor whether sums of money allocated by law to each political party are in fact given, and whether parties and candidates receive their due share of time for political broadcasts.

Because they are easy to administer, subsidies are recommended for countries where elections must be held amid conditions of political instability and violence.

However, several caveats are necessary. First, the simplicity of administering subsidies may not be a decisive argument in favor of using them. In all likelihood, there may be alternative formulas for allocating subsidies or free broadcast time among different parties and candidates. Each formula may arguably be determined by a distinct notion of fairness, and it may be impossible to reach a common, objective agreement about what constitutes a just formula. In practice, rival parties and political interests are likely to advocate whichever notion of fairness produces an outcome that benefits them.

Second, in a number of countries, especially those in Africa, laws on financial subsidies to political parties and candidates allow the legislature or the government to propose such payments, but do not oblige them to make the payments. Thus, the government may decide only shortly before the date of the poll to appropriate funds for this purpose.

Third, there have been examples of countries in which the government has failed to provide subsidies mandated by law at the set time. An extreme case was in Equatorial Guinea, where public funding was provided for the 1996 presidential elections, but only distributed four days before the poll.<sup>11</sup>

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<sup>10</sup> Manikas and Thornton (2003) page 18.



Fourth, although the allocation of free broadcasting time to political parties and candidates is simple to monitor, it is more difficult to ensure a media channel obeys rules concerning neutrality and political balance in news bulletins and other broadcasts before an election. Responsibility for enforcing regulations on the reporting of election campaigns in news broadcasts often lies with a specialized broadcasting agency, not the electoral authority.

The regulation of broadcasting, especially of publicly-owned media, has important implications for political financing. Although it is normally difficult to establish the precise financial value of a certain number of minutes of favorable reporting on a news program (sometimes known as “hidden advertising”), it is clear that such exposure has effects at least as important as political advertising paid for by parties or by candidates.

### ***Regulations to Prevent the Abuse of State Resources***

An increasingly common target for political finance regulations in many parts of the world is the risk for abuse of State (or administrative) resources in the political sphere. This issue is the subject of Part Three of this handbook.

### ***Regulations Aimed at Enforcement***

Some countries have created limitations on political finance without making any provisions for how compliance with these limitations will be monitored or infractions sanctioned. The enforcement of political finance laws is important, since a regulatory scheme is only as effective as the consequences for violating it. These issues are addressed later. Regulations regarding the role of PFEs are discussed in Chapter 5: Strengthening the Independence of Political Finance Enforcing Bodies and tools for applying sanctions.

### **Prevalence of Political Finance Laws**

In recent decades, there has been a trend toward more political finance regulations and more public subsidies. The rapidity with which legal changes relating to political finance occur makes it difficult to keep abreast of the developments, but International IDEA’s Political Finance Database provides a good overview of regulations worldwide.<sup>12</sup>

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<sup>11</sup> Ohman (1999) page 9.

<sup>12</sup> See further in Ohman (2012).

**Figure 5: Political Finance Regulations and Subsidies in 180 Countries<sup>13</sup>**

Regulations	Percentage of Nations Using Regulation
Ban on foreign donations to political parties (partial or complete)	67%
Ban on corporate political donations to political parties (partial or complete)	22%
Campaign spending limits for political parties (any)	29%
Contribution limits for political parties (any)	45%
Direct public subsidies	66%
Free or subsidized political broadcasts	70%
Regular disclosure requirements for political parties	73%
Campaign disclosure requirements for political parties	53%
Campaign disclosure requirements for candidates	60%

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<sup>13</sup> International IDEA database on political finance regulation ([www.idea.int/political-finance](http://www.idea.int/political-finance)). Data as of August 2013.

## Chapter 3: Basic Issues of Enforcement

### Definition of Enforcement

Political finance enforcement is the act of implementing or executing political finance regulations. A narrow definition would be “Control exerted by an enforcement agency that gives force and authority to a political finance enforcement system, as expressed in legal instruments.”

However, an ideal enforcement system includes not only a controlling body, but also all components found in a comprehensive judicial system such as investigation, prosecution, adjudication and sanctions. Such a system depends on the cooperation of various stakeholders and relies on the monitoring mechanisms provided by financial agents, auditors, banking institutions, anti-corruption watchdog organizations and media.

In a wider context, enforcement includes efforts to inform political actors about their responsibilities, and to provide guidance about what they need to do to abide by different requirements. The primary focus should be on prevention rather than penalties. Preventing violations has a better impact on public confidence in the political system than having to sanction politicians who break the rules. Prevention also normally requires less resources than investigation and prosecution.

While prevention should be the starting point of PFEs, it is likely that some actors may try to break the rules in any situation, and oversight of political finance activities is necessary. In a more narrow definition of enforcement as control, it can be defined as a complex institutional arrangement that combines a variety of instruments and actors, which may be classified as follows:

Key activities in effective enforcement are:

- Internal control (doctrine of agency, accounting standards, banking system)
- Financial reporting and audit
- Formal control by a PFE supported by investigation mechanisms
- External monitoring (civil society, media, competing parties, voters)
- Prosecution and sanctions (administrative, criminal and political sanctions)

This shows how the work of a PFE is only one crucial part of the enforcement of regulations. The first activity described falls largely outside the purview of this handbook, but is discussed in Chapter 6. The second, third and fifth activities are dealt with at length in Part Two and Part Three, whereas the fourth activity details the judicial system.

In practice, the PFE can detect possible law violations through three processes:

1. **Monitoring:** potential violations are discovered through review of financial reports or through an audit carried out by the PFE or entities reporting to it.
2. **Complaint:** an individual or an organization may file a complaint, which alleges violations and explains the basis for allegations.

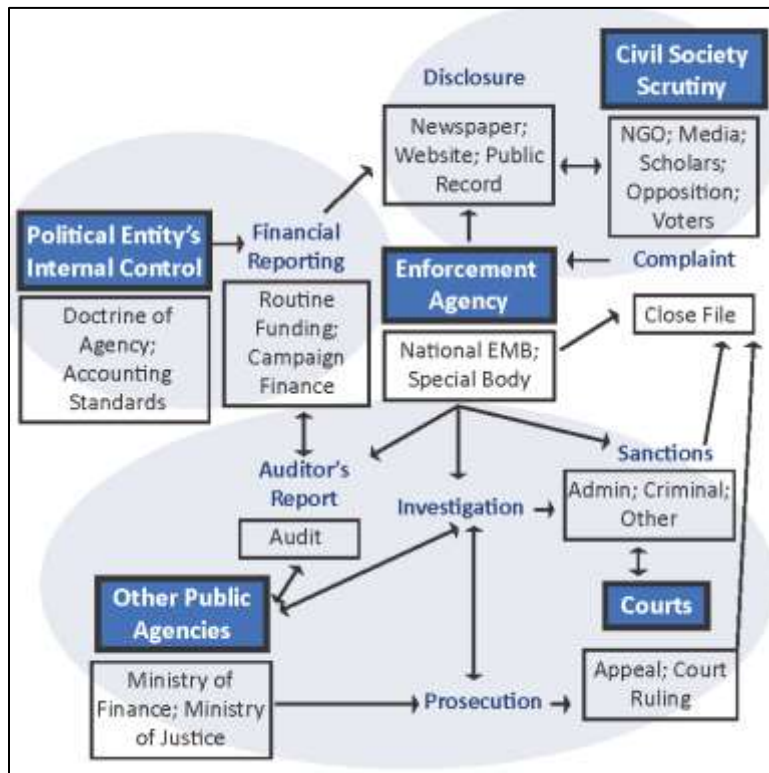
3. **Referral:** possible violations are discovered by other agencies and referred to the main political finance enforcement agency.

The first of these processes can lead to **internally-generated cases**, including those discovered by the PFE itself via reviews of financial reports and audits.

The second and third processes can provide the PFE with **externally-generated cases** that result from complaints made by all interested participants of the political process and those referred to the primary enforcement agency by other government agencies (e.g., Ministry of Justice).

The following figure provides an overview of the detection and enforcement process and illustrates the large number of actors that are often involved.

**Figure 6: The Detection and Enforcement Process**



## Requirements for Effective Enforcement

In determining the form of effective enforcement, there are four essential ingredients:

1. The laws themselves must be capable of enforcement. For example, a spending limit no candidate can abide by and still reach the electorate is bound to be ignored. Ease of proof is another essential requirement for a workable enforcement scheme.
2. All regulations must be suitable to the situation, including the capacity of political parties and candidates to track and report their finances. Regulations should not impose more administrative burdens on political parties and candidates than necessary to achieve legislative objectives.
3. Controls should be enforced vigorously, without bias or favoritism.
4. The agency charged with enforcement should be independent and non-partisan, free from influences of partisan political considerations (see Chapter 5: Strengthening the Independence of Political Finance Enforcing Bodies).

The penalties should be effective, proportionate and dissuasive.

## Stages of Enforcement

Alonso Lujambio, former General Council of Mexico’s Federal Electoral Institute, used the image of a chain to characterize political finance enforcement.<sup>14</sup> Enforcement should be seen as a process with different stages, in which the last stage leads to the beginning of a new process, making it an enforcement cycle. As with any cycle, while it has different stages, each stage influences the next; therefore, there is no actual beginning or end. It is important to note that different stages of enforcement are likely to be the responsibility of separate bodies. Thus, a clear specification of responsibilities is vital to enforcement success.

**Figure 7: The Enforcement Cycle**



<sup>14</sup> Lujambio (2004) page 56.

***Stage 1: Legislation and Implementation Planning***

Legal reform should take place well in advance of the next election to reduce the temptation for politicians to engage in short-term quick fixes rather than long-term strategic thinking. Planned reform allows sufficient time for proper administration of the law. The effectiveness of enforcement depends on the steps taken even before a law is enacted. There are several distinct tasks at this stage. First, it is necessary to consider whether the proposed legislation is clear, concise and realistic. Unclear or otherwise flawed legislative wording is a recipe for non-enforcement. Assume political actors unwilling to comply with regulations will seek any ambiguities as loopholes.

Sometimes legislation is enacted without a meaningful factual basis. To the extent possible, research should be conducted to understand the existence and extent of political finance problems that need to be targeted. Research to discover what other jurisdictions have done regarding political finance issues can also be helpful. Of particular importance is an open dialogue with different stakeholders in the political process. A regulatory framework introduced without input from political parties and other actors who will be obliged to comply with the rules will fail.

***Stage 2: Preparation and Training***

The regulatory body should develop long-term plans for the implementation of the legal requirements. In some situations, especially where a regulator sets out to enforce legal requirements that have long been ignored, it may be necessary to gradually increase enforcement – this is acceptable so long as no bias is shown regarding what actors are sanctioned.

When a new law is enacted, the authority responsible for implementing it will need to make certain preparations, including the development of reporting forms to be submitted by parties and candidates and relevant guidance materials.

It is also useful to provide trainings to relevant stakeholders. Such trainings should be provided for members of the regulatory body and for key officials of political parties and/or the candidates' campaign teams. It is also useful to provide briefings for journalists and representatives of relevant non-governmental organizations (NGOs). More and more PFEs also make effective use of their website in spreading information about political finance regulations and reporting requirements. In general, the more information the regulator can provide in an accessible format, the easier it will be for political parties and candidates to comply. These actors will also be unable to use the excuse that they were unaware or did not understand the reporting requirements and other regulations.

***Stage 3: Providing for Effective Administration***

These activities, which are closely related to those in the preceding stage, consist of routine tasks to ensure reporting forms reach the relevant candidates and party officials; that those with obligations under the laws are aware of them; and so forth. In many cases, this administration involves devoting a considerable amount of time to a large number of small political parties and fringe candidates. Where the focus of the regulations are on candidates rather than on political parties, reaching these candidates with information during the official campaigning period can be very difficult, as they are busy campaigning.

Therefore, it is important to carefully consider the most effective way of reaching relevant actors. For example, in some countries, it has proven effective to provide candidates with information about financial regulations during the candidate nomination process, as candidates normally have to appear in person to submit their nomination papers.

Apart from providing information to contestants, the regulator should also consider how it can best use information from the public to ensure compliance with regulations. For example, it can be effective to set up a formal mechanism for receiving complaints about breaches of political finance rules. If so, there must also be a procedure for how received complaints are analyzed and, when justified, formally investigated.

#### ***Stage 4: Compliance***

This stage of the process involves all the tasks of ensuring that laws are obeyed, short of initiating criminal investigations and legal proceedings. Typical activities at this stage include issuing reminders to parties and candidates who have failed to carry out their legal obligations on time; making spot checks on the accuracy of information received; initiating audits; and imposing administrative fines. The capacity of regulatory bodies to ensure compliance depends on the powers they possess to examine documents and premises. Issues relating to this stage are discussed at length in Part Two of this handbook.

#### ***Stage 5: Administrative Fines, Criminal Investigation and Prosecution***

If the PFE finds a reason to believe there has been a breach of the law, it will need to determine whether further investigation is warranted, and in the event evidence presented substantiates that a breach has occurred, what action should be taken. The regulatory body may have sanctions it can impose itself. In cases involving serious breaches, there may be grounds for prosecution and the next stage would be to turn over evidence to police or the authority responsible for initiating prosecutions. Naturally, the exact procedure for this will vary between countries, although it is notable that many countries lack detailed guidance in legislation of how investigation and criminal referrals are to be done.

#### ***Stage 6: Trial and Conviction***

In an ideal world, any enforcement agency's primary goal would be to close files, settle cases and conciliate, as it is usually less expensive and time consuming than making referrals to the court. However, when it comes to trial and conviction, this may be the responsibility of the ordinary courts or, in some jurisdictions, cases may be assigned to special election courts or other institutions for hearing complaints. Where the judicial system is not fully independent from political bias or influence, this stage can prove a serious hindrance to effective enforcement, as discussed in the next chapter.

#### ***Stage 7: Appeals Process***

Respect for the rule of law dictates that those affected by a decision should have the right to make and appeal to a higher level. Appeals can be one of the checks and balances on decisions made by an enforcement agency or administrative review of complaints. Each system handles appeals differently, according to its legal and institutional frameworks, but it is important the processes fulfills three criteria: respecting the principles of rule of law; being user-friendly; and being efficient, including not overbur-

dening the institutions involved in the appeals process. The latter also includes timeliness, as in some countries, political actors have come to use extensive appeals to drag processes out beyond the period when a sanction would have actual effect or until the perpetrator has gained immunity through winning public office.

### ***Stage 8: Review Process***

Just as no particular set of political finance regulations would fit more than one country, each country has to make sure its regulations stay relevant over time. The need for review is even more important in emerging democracies, where regulations are often introduced gradually and constant vigilance must be maintained against adverse effects of newly-implemented regulations.

Indeed, there should be constant review of the law and enforcement process to monitor their effectiveness, to build support for them and to identify new problems as they arise. Following an election, the relevant facts of the political finance situation as well as statistical and anecdotal analyses should be examined. Any need to update the laws, regulations or enforcement procedures should be pursued.

An enforcement agency should also take an interest in studies, surveys, research or other empirical data that might support changes in its enforcement approach. Further, there should be an effective response to these problems to ensure the underlying goals of the enforcement system continue to be met. Finally, there must be a commitment and desire to enforce the legislation from all the main players in the electoral game. Without such a commitment, even the best designed system can be obstructed.



## Chapter 4: Causes of Non-enforcement

Many countries have experienced problems in enforcing party finance regulations. This should not be a surprise, as there are many factors contributing to the failure of enforcing political finance laws. As early as 1966, the Canadian Barbeau Committee reported, “(1) the established parties have been unwilling to initiate action against each other; (2) the trouble and cost of contesting an election suit about election expenses is prohibitive to the private citizen; (3) no organized, non-political group has ever undertaken to bear the cost of a suit; (4) no governmental agency has felt itself responsible, or been made responsible, for prosecuting candidates violating the law on election expenses.”<sup>15</sup> This chapter attempts to explain the failure of some enforcement systems by examining the causes of non-enforcement.

All too often, no effort is made to ensure laws on the funding of parties and election campaigns are obeyed. The following table gives examples from countries around the world where enforcement is lacking.

**Figure 8: Examples of the Non-Enforcement of Political Finance Laws**

Country	Description
Argentina	“According to Transparency International of Argentina, however, only political party funds which comprise about 10% of revenues spent on campaigns is covered by the disclosure laws of Argentina. Another 90% of campaign funds are raised by Argentinean candidates themselves through the establishment of their own private non-profit organizations and entirely escape having to report to the government or the public. The point is there is a distance between the existence of the law and the practice of the law.” <sup>16</sup>
Armenia	“The Oversight and Audit Service did not have a proactive approach or an effective mechanism to examine the accuracy of the submitted reports, which lessened the value of parties’, bloc’s and candidates’ reporting. Only a few campaign finance violations were identified by the Central Election Commission (CEC).” <sup>17</sup>
Bangladesh	“After the postponed elections in 2007, the new caretaker government introduced significant amendments for regulating and bringing more transparency to political parties’ financing. Although the legal framework has been significantly improved, its full implementation remains a big challenge. Surveys found that:  Political finance remains a sensitive issues, with parties being reluctant to disclose sources of funding even to their members;  Parties’ internal bookkeeping is not properly carried out. The major political parties interviewed for this study tend to run their own accounts of income and

<sup>15</sup> Barbeau (1966) page 23. The Barbeau Committee was an advisory committee established by the Canadian government in 1964 to “inquire into and report upon the desirable and practical measures to limit and control federal election expenditures.” For more details, see Ewing (1992), page 46-52.

<sup>16</sup> Ward (2002) page 5.

<sup>17</sup> OSCE/ODIHR (2012b) page 13.

	expenditure through register books, but none of them has any registry of assets.” <sup>18</sup>
<b>Brazil</b>	“In Brazil the financial reporting requirement includes candidates of political parties running for office in the executive branch and the federal Senate, and for the positions of federal, state and district legislators. However, these accounts must be rendered to the financial committees of the parties themselves instead of an independent controlling entity.” (page 108) <sup>19</sup>
<b>Cambodia</b>	“Indicative of the government's inability to monitor party finances [as required by the Party Law] ... a senior government official stated, 'We do not even have the parties' addresses.’” <sup>20</sup>
<b>Colombia</b>	“In many countries, such as Colombia, enforcement of campaign finance laws tends to focus largely on presidential elections and to a much smaller degree on parliamentary elections. Meanwhile, local elections are almost entirely overlooked, and it is here that the capacity to monitor, audit and enforce campaign finance laws is weak to non-existent.” (page 10) <sup>21</sup>
<b>Estonia</b>	“While the submission of declarations of economic interests by higher civil servants to a parliamentary committee is reasonable, the committee as the recipient of electoral campaign declarations is a more contentious issue.  In national elections, that effectively means that parties end up being on both sides of the reporting process. On the other hand, the NEC was never effective when inspecting the accuracy of financial reports.” (page 21) <sup>22</sup>
<b>France</b>	“France has created a highly independent agency to enforce the regulation but given it very little power to monitor the actual flow of money and to audit the financial reports filed. Moreover a variety of laws has to be enforced which contain some unresolved contradictions.” (page 1) <sup>23</sup>
<b>Ghana</b>	“A political party in Ghana is required to provide funding details to the Independent Election Commission each year [...] While these conditions are mandated by law, there have been concerns about how well they are being applied in practice. For example, some civil society groups have signaled that regular party reporting is not commonplace and the commission has flagged broader issues of non-compliance.” (page 4) <sup>24</sup>
<b>Israel</b>	“Without the need for formal registration, legislation in Israel [...] obliges parties to include all branches in their financial reports. This, however, leaves loopholes for individual candidates, the party “penumbra” of parliamentary groups, party

<sup>18</sup> Transparency International (2009) page 11f.

<sup>19</sup> Zovatto (2003) page 95-114.

<sup>20</sup> Kovick and Thornton (2003) page 48.

<sup>21</sup> Kupferschmidt (2009) page 10.

<sup>22</sup> Kangur and Sikk (2008) page 21.

<sup>23</sup> Nassmacher (2003) page 1.

<sup>24</sup> Transparency International (2009) page 4.

	institutes or foundations and other organizations such as youth groups, and “third party” activities.” (page 4) <sup>25</sup>
<b>Latvia</b>	According to leading Latvian scholar Janis Ikstens, one of the problems typical of election campaign finance regulations in Latvia is:  “Low efficiency in enforcing the existing legal norms, which undermines the trust of the citizens in the system of public governance, decreases the legitimacy of the regime and does not promote the development of law obedient ethos among the parties.” (page 19) <sup>26</sup>
<b>Malaysia</b>	“Campaign finance limits ... are routinely violated.” <sup>27</sup>
<b>Namibia</b>	“Efforts to ensure accountability have fallen flat. No one mentions the issue – a situation that suits the parties receiving the funds” [said in 2004 by the Speaker of the National Assembly Mose Penaani Tjitendero] (page 1) <sup>28</sup>
<b>Nigeria</b>	“It appeared that INEC was overwhelmed by activities such as organizing the logistics of the elections... There were perverse incentives to abuse the system since the likelihood of being caught by the law is remote and even when a case of exceeding the limitation is established; the proposed punishment has no proportionality to the offence.” <sup>29</sup>
<b>Philippines</b>	“Laws on financial contributions refer specifically to elections ... They are...virtually impossible to implement... these are dead letter laws.”(page 9f) <sup>30</sup>
<b>South Korea and Thailand</b>	“In Korea and Thailand, for example, parties explained that many donors prefer to remain anonymous, so the public disclosure laws force parties either to reject the needed financial support or to break the law. In fact, many report that legislation, such as cumbersome reporting requirements, has simply driven practices underground. ‘The law has made us all criminals,’ reports one MP.” (page 9) <sup>31</sup>
<b>Zimbabwe</b>	“From the example of a political finance regime which neglects transparency provisions: Although Zimbabwe adopted British regulations on constituency campaigns (agents, spending limits, disclosure of expenses, etc.), two important aspects were not included in the constitution (Sections 84-92) or the Electoral Act. In neither document is there any reference to the auditing of expenses or provision for publication of expenses incurred.” (page 6) <sup>32</sup>

<sup>25</sup> Nassmacher (2003) page 4.

<sup>26</sup> Walecki (2006) page 18.

<sup>27</sup> Thornton (2003) page 371-426.

<sup>28</sup> Duddy (2010) page 1.

<sup>29</sup> Onyekpere (2011) page 3.

<sup>30</sup> Rocamora (2001) page 9f.

<sup>31</sup> Thornton (2002) page 9.

<sup>32</sup> Nassmacher (2003) page 6.

## Blatant Disregard Versus Subtle Avoidance

Various methods of avoiding compliance with political finance regulations call for different solutions. Violations that involve subtle money laundering schemes, elaborate methods of side-stepping laws and cunning legal tactics require enforcement skills similar to those needed to detect and prosecute serious white-collar crime. In contrast, political finance regulations are often disregarded blatantly and grossly with no attempt to conceal the fact that laws are broken.

Blatant disregard of political finance laws is probably the most common problem in many countries today, especially those where regulation, or at least attempts of enforcement, started recently. The enforcement methods required are straightforward themselves, but they require administrative capacity and political will, which are frequently lacking. Once more glaring forms of law-breaking are tackled, more subtle ways of avoiding laws are likely to be devised. At this stage, PFEs must develop more sophisticated methods of investigation.

The training required to assist regulatory bodies will vary according to whether they are confronted with blatant or subtle violations. This handbook will deal with both types, but will generally focus on ways to tackle the most common, blatant violations. Brazen and consistent violations occur in both advanced and developing democracies, as demonstrated by various examples in this publication.

Two American scholars, Michael J. Malbin and Thomas L. Gais, have reported on the more subtle forms of avoidance of political finance laws in the U.S. They analyzed the enforcement of a series of laws and subsidies involving disclosure, contribution limits, spending limits and public funding, introduced at the state level starting in the 1970s. One of the chapters was titled “Slipping and Sliding: How Interest Groups Have Adapted to Regulation.” In a section of the chapter called “Tactical Responses: Getting Around the Law,” the authors noted:

We were consistently impressed in our interviews by the remarkable and growing range of political tactics used by major interest groups in the states that we visited. Many of our respondents saw this resourcefulness as a direct response by the groups to the particular restrictions written into the laws of their state. As a party attorney in Florida said, the state's recent [political finance] reforms have “made people in the fund-raising community get a lot more creative.”<sup>33</sup>

The system of adaptation to new political finance laws described by the authors is rather like the “tax planning” industry in some countries. Those with sufficient wealth to employ economic advisers and corporate lawyers are best able to devise strategies to sidestep tax obligations without actually disobeying the rules. Since those with substantial wealth are able to pay for complex advice, and since the government agencies responsible for tax collection are often understaffed and confined to enforcing the laws as drafted, these tactics often prove successful.

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<sup>33</sup> Malbin and Gais (1998) page 79.

In the realm of political finance, the definition of political party, donation, expenditure and campaign may be ambiguous, leaving regulations vulnerable to misinterpretation or exploitation. For example, stakeholders with a vested interest may argue that what is a donation should be categorized as something else altogether. A donation may be provided in the form of an advertisement in a party journal, but may be justified as an ordinary business cost of the donor. Donations may alternatively be presented to a party foundation, a body legally separate from the political party, but closely connected. On the other hand, funds may be given for purposes unrelated to a particular political party or campaign.

## **Explanations for Non-enforcement**

### ***Lack of Political Will to Create Enforceable Regulations***

In a democratic system, laws are created by politicians. A problem in political finance is that politicians are set to create rules to regulate and control their own behavior. These politicians may not be willing to create rules that restrict how they or their political parties are able to act. Alternatively, they may create rules enforcing agencies find difficult to implement. Joo-Cheong Tham has described the regulatory system in Australia as “ineffective by design,” and such difficulties certainly exist in many other countries as well.<sup>34</sup> Without popular pressure on politicians to pass rules that are enforceable, the political finance enforcement system is unlikely to function well.

### ***Legal Loopholes***

Candidates and leaders of political parties may be prepared to break the law if this enables them to gain votes. Yet, they find it even more attractive to circumnavigate political finance laws without directly breaking them. Lawmakers must accept the reality that loopholes in the laws they enact will be discovered and exploited. Creating sound systems is very difficult, and may indeed be impossible, and legislators and PFEs may need to decide which loopholes produce the least harm. In some cases, social condemnation may be a more effective preventive measure than legal prohibitions.

### ***Ambiguous Laws***

Terms typically used in political finance laws such as donation, election campaign, political and political party are sometimes ill-defined or not defined at all.

For example, if a political finance law requires the disclosure and limitation of donations to an election campaign, it will be difficult to enforce the law if there is ambiguity about what constitutes a donation. Some laws fail to specify whether loans count or in-kind services count as donations.<sup>35</sup> Equally, the law will prove difficult or impossible to enforce if there is uncertainty about what constitutes a campaign cost as distinct from a routine cost of a party organization.

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<sup>34</sup> Tham (2001) page 78.

<sup>35</sup> For example, Ukrainian legislation as of late 2012 did not mention in-kind donations. Given the way that the legal provisions were worded, this could either be interpreted as a total ban on such donations or as a total absence of regulations of them (including reporting requirements).

***Unrealistic Laws***

Legislators and their advisers frequently underestimate inherent difficulties involved in implementing political finance legislation. In cases where major corruption seems to result from high spending on political campaigns, it may seem obvious the remedy is to impose limits on contributions or expenditures and ban certain undesirable sources and use of funding. As argued, a number of these obvious legislative solutions have been laden with problems. Over-ambitious, unrealistic laws are likely after a significant political change or financial scandal.<sup>36</sup>

Polish, Russian and Ukrainian examples show spending limits have proven irrelevant, having been introduced at unrealistically low levels. Not only have they failed to curb the political finance arms race, but this failure undermines confidence in the entire system of political finance regulation. For example, before a new law was passed in Russia in 2001, the legal spending limit for a political campaign was set to only a few thousand dollars for any candidate running for office in the Russian Parliament. Despite this low spending limit, analysts agree candidates must spend over \$1 million to win a seat. “By setting unrealistically low spending limits, ruling parties may gain political advantage because they may use State resources not counted under the limit.”<sup>37</sup> Similarly, it has been estimated that presidential candidates in the 2010 elections in the Philippines exceeded the spending limit by at least 10 times, meaning no candidate could abide the law and remain a serious contender. Unfortunately, as of early 2013, the Philippine Parliament has been unable to change the spending limit for presidential candidates.

***Unknown or Excessively Complex Laws***

The expectation that the law be obeyed is premised on knowledge of the law. However, individual candidates cannot comply with laws and standards if they are not aware of them. Thus, public education and awareness are critical elements of any serious enforcement strategy. One should also recognize detailed financial regulations can impose disproportionate administrative burdens on political players and may deter involvement in a political process that relies predominantly on volunteers, and where candidates and their officials may have little training in finance or accounting practices. Legislation that is extremely complex can act as a disincentive to political participation.

***Unsuitable Penalties or Failure to Specify Penalties***

Laws sometimes set out offenses but fail to specify any penalties for them. In other cases, the process of imposing sanctions is not described by law. While political finance oversight systems should be built on positive engagement with political stakeholders whenever possible, sanctions against violations are necessary for an effective system. There is little value in specifying parties or candidates must disclose donations if no penalty is imposed for failure to do so.

Sanctions must be sufficiently severe so political parties and candidates seek to comply with the law to avoid them. If sanctions are too mild, actors may prefer to accept them rather than adjust to the regula-

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<sup>36</sup> For a critical analysis of the role of the scandal in political finance reform, see Nwokora (2010).

<sup>37</sup> USAID (2003) page 14.

tion. In France, public funding has been partially withheld from parties that do not observe gender equality in their party lists for elections. At least initially, some political parties preferred the sanctions to opening their candidatures for women, leading to their collective loss of €7 million in public funding between 2003 and 2007.<sup>38</sup>

This does not mean that more severe sanctions will lead to increased compliance. If penalties for relatively minor transgressions are disproportionately severe, regulatory bodies may be reluctant to impose them.

### ***Collusion Between Opposing Political Parties and Candidates***

In many countries, it is assumed candidates and political parties who have been on the losing side will bring allegations against their political opponents, and this adversarial system will ensure that laws are obeyed. Therefore, the authority responsible for enforcing political finance regulations does not attempt to launch its own investigations into possible contravention of political finance laws.

Chairman of the UK Association of Electoral Administrators John Turner reported in 1998 on the prevailing British practice in his evidence to the Committee on Standards in Public Life. He was questioned by one of the commissioners about campaign spending limits on parliamentary candidates: “[H]ow does the present system work?... What are your responsibilities or lack of them?” Mr. Turner replied, in part:

Certainly they are not onerous, in the sense that we have no statutory duty other than to receive the returns as to election expenses at the appropriate time. We do not even have the burden of having to vet them, in terms of their arithmetic accuracy. Having received the return, save for a parliamentary election – when one must also publish a notice – that is about the limit of the duty that falls on a returning officer. Any vetting is left to opponents of, in particular, successful candidates or to anyone else with an interest in the matter and who takes the opportunity for public inspection.<sup>39</sup>

It is questionable if scrutiny from other stakeholders is a viable approach in many countries. Opposing candidates and parties can often not be relied on to report each other’s wrongdoing, as in many countries, laws are broken by most parties and candidates and this deters them from making accusations against each other. In addition, it often costs a great deal of money for candidates and parties to collect evidence and bring legal action.

One senior UK party official put it this way:

If we lost a seat by one vote and I could clearly prove illegal practices by the other side, I wouldn’t try. It would perhaps cost GBP £5,000 and they might be able to show that our man had slipped up in some way. But worse than that, it might start tit-for-tat petitions

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<sup>38</sup> GRECO (2009) page 6.

<sup>39</sup> Committee on Standards in Public Life (1998).

and no party could afford a lot of them. On the whole, we're both law abiding and it's as well to leave each other alone.<sup>40</sup>

In other parts of the world, political stakeholders habitually use the legal system to discredit their opponents. In such situations, complaints from one stakeholder about political finance violations by another may not be seen as credible by the PFE, judiciary or public.

### ***Constraint Against Prosecuting Governmental Bodies for Legal Infringements***

In many countries, the most significant legal infringement of political finance laws are those committed by government bodies on behalf of incumbent politicians. Typically, government resources (personnel employed on the public payroll; publicly owned vehicles; office equipment and telephones; and public information services) are used for partisan campaign activities to favor the government party. When this occurs, it is usually difficult for the PFEs to take action against the government – for both political and legal reasons. Government bodies often enjoy legal privileges that render them immune from prosecution.

The former Electoral Commissioner of Australia has written about this problem:

In addition to natural and [legal] persons who ought to be treated identically, there are “government persons” who may escape regulation. Where there is a doctrine of Crown or State privilege, it will be necessary to make provision (if this is constitutionally possible) to regulate state instrumentalities as well as private actors. At the very least, internal guidelines for ministers and their departments need to be developed to promote ethical, i.e. non-partisan, conduct within the executive branch.<sup>41</sup>

This issue is discussed in-depth in Part Three of this handbook.

### ***Lack of Administrative Capacity in a Regulatory Body***

Laws concerning political finance have become more extensive and complex in recent years. However, there has often been a failure to provide regulatory bodies with the additional legal, financial and human resources needed to carry out their additional functions. Important powers needed for effective enforcement include subpoena power, power to assess penalties and power to conduct audits.

A lack of administrative capacity of the regulatory body does not necessarily occur by accident. It can often result from the failure to plan and provide funds for administration of new laws during the period when those laws are still under consideration. However, inadequate administrative capacity can also be by design, so as to undermine the potential for effective enforcement of the rules.

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<sup>40</sup> Quoted in Wilson (1966) page 132.

<sup>41</sup> Hughes (2001) page 214.



The capacity and independence of the regulatory body is discussed further in Chapter 5: Strengthening the Independence of Political Finance Enforcing Bodies.

### ***Lack of Capacity in Judicial Bodies***

It is not enough for the bodies responsible for administering political finance regulations to do their work well. Once they find preliminary evidence of malpractice, it is usually necessary for them to turn to law enforcement agencies to conduct further investigatory work backed by legal powers of subpoena and access to documents that PFEs do not normally possess. If police authorities obtain sufficient evidence, the authorities responsible for public prosecutions must decide whether to bring a case to trial. Finally, the courts conduct the trial, and higher courts deal with appeals.

In many countries, court systems are slow-moving and vulnerable to corruption. Moreover, there tends to be little enthusiasm to give priority to cases involving politicians, especially if these are leading members of the governing political party. Also, in legal systems where the necessary independence exists, there can be a lack of understanding regarding the complex issues involved in controlling the negative aspects of money in politics without jeopardizing free speech or democratic elections.

### ***Political Constraints and Lack of Authority in Regulatory Bodies***

There are two reasons electoral commissions may be (and often are) reluctant to enforce political finance laws. First, electoral commissioners, because of the methods by which they are appointed, are frequently political loyalists or otherwise beholden to the president of the country or other leading members of the government. Second, even if electoral commissioners have a spirit of independence, they may be reluctant to challenge the government or legislature due to the fear that the commission's budget will be cut in retaliation for any prosecutions for political finance offenses.

These constraints on enforcement are difficult to resolve. There are alternative methods of appointment of commissioners designed to assure independence and professionalism, but none are ideal. With regard to the financial independence of the electoral commission, a balance needs to be struck between independence from political retaliation and financial accountability.

There are also cases where electoral commissions that are fully independent and fearless still fail to effectively address political finance enforcement, and this is often caused by a clash of institutional cultures. Many election management bodies see their main task as administering elections, and often wish to focus on the technical aspects of this work while they shy away from more political aspects of elections and politics. Getting involved in campaign finance enforcement is often seen as unnecessarily complicated, potentially jeopardizing the independence of and public confidence in the commission. In situations where capable, independent electoral commissions fail to effectively enforce political finance regulations over time, vesting authority in another institution should be considered. Several countries have separated the administration of elections and oversight of political parties, including political finance, during the last decade. Examples include Georgia, Serbia, Sierra Leone, Sudan and Zambia.

### ***Confusion of Roles in Different Regulatory Bodies***

In view of the normal reluctance of PFEs to build cases against prominent politicians for contravening the laws, they will typically try to pass the responsibility to another regulatory body. If there is any confusion about the responsibilities of the electoral commission, anti-corruption commission, income tax authorities, government auditors, legislature and so forth, the normal result will be that each body will make the excuse that some other body should be implementing the law.

A 2008 case study on Afghanistan showed the responsibility for asset disclosure of government officials included the (theoretical) participation of the President's office, Directorate of Administrative Affairs of the Council of Ministers, Culture Department of the same Directorate, as well as the Ministries of Health and Justice. The study found that in practice, no institution took responsibility for this activity.<sup>42</sup>

### ***Bad Habits***

Generally-accepted assumptions and habits prevailing in a society may often be more important than any of the specific reasons stated previously for non-enforcement. Both good and bad habits have a tendency to become accepted as a norm in electioneering standards.

The history of the UK during the 19th century illustrates the power of assumptions about what is or is not acceptable. In the early 19th century, electoral corruption was rampant. Laws were routinely broken. It was standard practice for the government to use secret service funds for electioneering, which usually meant bribery of voters. Vote buying and the dispensation of large amounts of alcohol made polling a loud, rowdy affair and involved huge candidate expenses. Half a century passed before electoral habits changed; reasons for the change are not altogether clear. New electoral laws played a part; increase in the size of the electorate also was important. Equally important was the development of a new set of understandings on the part of candidates and the public about what was and was not acceptable behavior.<sup>43</sup>

Such a shift in perceptions is evident in present-day South Korea and Thailand. These countries have made a major effort to implement rules about vote buying and campaign expenses. These official efforts have been encouraged by political elites, pressure groups and the press. Conversely, Indonesia saw a reversal in the efforts to oversee campaign finance in the 2009 elections. As long as vote buying and excessive largesse is seen by voters as welcome, not appalling aspects of campaigns, effective enforcement will be difficult to achieve.

### **Dangers of Biased Enforcement**

Almost as serious as the problem of non-enforcement is the practice of partisan enforcement. Political parties and candidates opposed to the government may find themselves subject to serious pressures from law enforcement agencies for minor or non-existent breaches of campaign finance laws. By con-

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<sup>42</sup> FEFA (2008) page 14f.

<sup>43</sup> See Stokes (2011).

trast, parties and candidates that support the government may be virtually free to disregard the rules. Where the State and ruling political party have de facto merged, effective sanctions against violations, such as the abuse of State resources, becomes next to impossible.

Biased enforcement is serious in countries where there is or has recently been a high level of violence. It may be argued that in such countries it is desirable that political finance laws not be enforced, as the enforcement of rules – for example, on disclosure of political contributions – may result in the harassment of those who supported opposition parties and candidates. In countries where there is a dominant ruling party, the enforcement of disclosure rules also may have the consequence of making it difficult for any opposition party to attract the support of potential contributors.

In circumstances of this kind, media can be an important tool in preventing biased enforcement of political finance laws. Unlike the regulatory body, media can delve into the political aspects of political finance. Naturally, this will only be possible where a certain level of freedom of expression is observed.

Another form of undesirable enforcement is corrupt enforcement. Corruption is liable to arise when those in charge of administering polling booths are rewarded for turning a blind eye to vote buying or ballot stuffing. The promise of career advancement and other awards can be tempting for members and staff of electoral authorities. Officials who have been bribed are subject to exposure or blackmail. For this reason, they are unlikely to carry out duties relating to enforcement, including the enforcement of political finance regulations.<sup>44</sup>

To protect itself against pressures to enforce political finance regulations in a biased manner, PFEs need to guard their independence jealously. This is discussed further in Chapter 5: Strengthening the Independence of Political Finance Enforcing Bodies.

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<sup>44</sup> Nadeau (2000) page 125.

**Case Study – Biased Enforcement***Russia*

Although non-enforcement is the most common shortcoming, politically-biased enforcement is also a significant problem. The following cases are examples of biased enforcement.

An assessment by IFES of the Russian elections in 1999 and 2000 refers to the “exceptional difficulties and scrutiny of which the Liberal-Democratic Party of Russia (LDPR) and its presidential candidate, Vladimir Zhirinovskiy, was an object, in particular.” The law governing the presidential candidate nomination process required candidates to submit detailed information about their income, assets, property and material liabilities, and the same information for all members of their immediate families. If there was a "serious inaccuracy" in the information, the candidate's nomination could be rejected by the Central Election Commission (CEC).

When it was discovered Zhirinovskiy's son had failed to disclose his ownership of a Moscow apartment, the CEC rejected Zhirinovskiy's candidacy. In his Supreme Court appeal, Zhirinovskiy noted the Election Code gave the CEC the power to reject a candidate only if the information submitted was "essentially" inaccurate, and he argued this omission was not essential, since the apartment represented less than one percent of the total amount of property disclosed. However, the court upheld the CEC's original decision. In response, Zhirinovskiy appealed to the Cassation Court. In the meantime, it came to light that Acting President Vladimir Putin had also failed to disclose ownership of a country house owned by his wife. The CEC dismissed allegations concerning the Putin case because the house in question was not completed, and as such, did not have to be reported. Ultimately, Zhirinovskiy won at the Cassation Court and was added to the ballot. In spite of his victory, valuable time was lost in his campaign.

Concerns about biased enforcement policies are not new. In 1985, the Chief Electoral Officer of Canada suggested:

Complaints received during an election alleging that a candidate has committed an offence must be handled judiciously, as that candidate's chances of being elected could be adversely affected if it became known that he or she was under police investigation. The same care must be taken outside the election period to protect the reputation of individuals. The possibility that the investigation may prove the complaint to be unfounded adds to my concerns.<sup>45</sup>

Thus, an important component of an enforcement mechanism relates to the degree of trust political parties and candidates feel in their enforcement agency. Trust is also an important condition in coordinating efforts of different enforcement agencies.

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<sup>45</sup> Quoted in Ewing (1992) page 225f.

## **Part Two**

# **Practical Aspects of Detection and Enforcement in Political Finance**

## Chapter 5: Strengthening the Independence of Political Finance Enforcing Bodies

### Finding the Right Structure for the Regulatory Body

As noted in the global key understandings presented in the introduction of this handbook, effective enforcement requires participation of several key stakeholders, including civil society and media. Even so, the institution(s) that functions as the formal PFE has a crucial role in ensuring effective oversight of money in politics. Where no such institution exists, transparency is hardly ever achieved. However, they need independence to have a significant impact. This chapter deals with how PFEs can maximize their independence.<sup>46</sup>

The first question to address is what type of political finance enforcement agency should a democracy have? In over 25 percent of countries studied by International IDEA, there was no body responsible for administration and enforcement of the regulations.<sup>47</sup> Moreover, the type of political finance enforcement agency will often depend on the primary duties of the agency. Of the countries with agencies responsible for enforcement of political finance, the most common institution relied on was a national electoral management body. Others use government departments, such as the Ministry of the Interior; Ministry of Labor and Administration; Ministry of Justice; or the Attorney General's office. Other bodies responsible for political finance enforcement might include parliaments; parliamentary speakers or related bodies; tribunals; or tax offices.

**Figure 9: Bodies Responsible for Receiving Political Finance Reports**

Electoral Management Body	Ministry	Auditing Agency	Court	Regulatory Body Specially Created for this Purpose	Other
83 countries (38%)	30 countries (14%)	20 countries (9%)	14 countries (6%)	17 countries (8%)	34 countries (16%)
<b>151 countries included;</b> the sum of the above is greater, as some countries use more than one type of body for this purpose. <sup>48</sup>					

<sup>46</sup> In this regard, institutions will also benefit from advice on increasing the independence and capacity of election management bodies in general. Two useful publications are López-Pintor (2000) and Spinelli (2011); the latter publication is a revised version published in Joe Baxter's memory – former IFES Senior Adviser for Election Administration.

<sup>47</sup> Ohman (2012) page 41.

<sup>48</sup> Data from the International IDEA Political Finance Regulation Database, as of August 2013.

**Figure 10: PFE Models**

There are effectively five models of PFEs:

### The Election Management Body

- This is the most common solution.
- It is often a reasonable choice since this institution normally oversees most other electoral matters. However, election management bodies (EMBs) are often very busy during election periods, and sometimes EMB staff see dealing with political finance as a distraction from their more administrative task of organising elections.
- Where the EMB has representatives from different political parties, issues that involve the sanctioning of political parties may prove particularly sensitive.
- *Examples include the Australian Electoral Commission, the Consejo Nacional Electoral in Ecuador and the Komisi Pemilihan Umum in Indonesia.*

### Specialty Body

- In most cases, this is an institution set up to oversee the activities of political parties overall, with political finance being one aspect.
- This approach can bring the necessary expertise and skills to oversee political finance, but some countries may have too many commissions already.
- *Examples include the Political Parties Affairs Council in Sudan, the Supervisory Committee for the Election Campaign in Lebanon and the Commission Nationale des Comptes de Campagne et des Financements politique in France.*

### Government Department

- In some countries, political finance oversight lies with the Ministry of Interior or Finance.
- This has the advantage that no new body needs to be created, and the Ministry will, in most cases, have access to significant capacity.
- Ministries are also led by politically-appointed ministers, so they may not have the necessary independence to make people confident that rules will be implemented without bias, and bans against the abuse of State resources will be implemented.
- *Examples include Benin, Greece and Slovakia.*

### Courts

- Another solution is to have courts take responsibility for political finance oversight.
- This can increase the possibility that sanctions are imposed in case of violations, although in many countries this does not seem to happen in practice. A problem could be that courts may be less able to adjust to the unavoidably political nature of political finance.
- *Examples include the Court of Accounts in Burkina Faso, the Commercial Court in Montenegro and the Constitutional Court in Portugal.*

### Other Institutions

- This could be anti-corruption agencies or other types of government institutions.
- In some countries, oversight is carried out by institutions within or directly connected to parliament. The merits and downsides of placing responsibility of political finance oversight with such bodies will vary from country to country.
- *Examples include the Management Commission of Parliament in Barbados, the Foreign Affairs Committee and Tax and Customs Board in Estonia and the Anti-Corruption Agency in Serbia.*

The special tasks exercised by enforcement agencies can include:

- Developing regulations that make legal provisions enforceable<sup>49</sup>
- Designing reporting procedures and forms
- Informing political parties and/or candidates about their reporting requirements
- Receiving audited or non-audited reports
- Publishing financial reports and auditors' reports
- Initiating inspection and public inquiries
- Executing sanctions

The responsibility for administration and enforcement of political financing can be performed by a single body or can be shared among several bodies. The International IDEA's Political Finance Database shows that of 151 countries for which data is available, 115 have a single responsible body, while 35 countries have two or more receiving financial reports from contestants.<sup>50</sup> Many other countries have multiple institutions involved in auditing such reports and investigating potential violations.

The effective implementation of political finance legislation can be made more difficult when different bodies are dealing with various aspects of the same subject. On the other hand, if the political finance framework is complex and requires various types of actors to submit financial reports, the best solution may be to use several regulators. While the election management body (EMB) may be best suited to receive and review reports on campaign finance, they may not have the capacity or institutional setup to effectively review annual reports from elected officials, for example.

In most cases, financial reports submitted by parties and auditors will be subjected to review by an enforcement agency, although the agency's scope of work, specialization and degree of independence will often determine how comprehensive such a review can be. Recent recommendations made by the OSCE, in "Guidelines on Political Party Regulations," stipulate that monitoring with respect to the funding of political parties and electoral campaigns should be done by an independent body:

Monitoring can be undertaken by a variety of different bodies, including a competent supervisory body or state financial bodies. Whichever body is tasked to review the party's financial reports, effective measures should be taken in legislation and in state practice to ensure its independence from political pressure and commitment to impartiality. Such independence is

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<sup>49</sup> This can, for example, include providing definitions of key terms and interpretations of various provisions. The extent to which political finance regulators have a right to do this depends on their overall legal mandate to create regulations.

<sup>50</sup> As of February 2013.



fundamental to this body's proper functioning and should be strictly required by law. In particular, it is strongly recommended that appointment procedures be carefully drafted to avoid political influence over members.<sup>51</sup>

Further, the Council of Europe recommends that its member States should promote the specialization of the judiciary, police or other personnel in the fight against illegal funding of political parties and electoral campaigns.

The importance of these issues are recognized globally. The below recommendations have been made by Transparency International in Armenia to improve the implementation of political finance regulations in that country:

The emphasis should be put on the increase of transparency, accountability and participation in the oversight and control over the campaign finance. **The most important recommendation in this aspect should be the radical change in the composition, powers and operations of the CEC Oversight and Review Service.** Most importantly, a majority of the staff should consist of representatives from civil society organizations and opposition parties. The Service should have much larger staff, with branches in all marzes [administrative districts] of Armenia. It should cooperate with NGOs and political parties and its activities should be more transparent. Public reports regarding financial flows connected with electoral funds should be more frequent (at least once a week during election campaign). If necessary, **it should become an independent (from CEC) body.** In order to investigate possible instances of quid pro quo donations, false in-kind contributions and third party financing, **ORS should be empowered with investigative functions** to trace suspicious cases. Examples of such cases are relatively large (compared to their salaries) donations by a large number of individual persons employed in one company known to be affiliated with a certain party or politician, expenses on the design and placement of large billboards or hidden payments to campaign activists.<sup>52</sup>

### Clarifying Responsibilities of Enforcement Bodies

An important step is to ensure all bodies involved in campaign finance regulation and enforcement have a clear mandate without overlaps that may cause confusion or inactivity. Such clear mandates can also assist the close cooperation between different institutions.

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<sup>51</sup> OSCE/ODIHR and the Venice Commission (2010) page 43.

<sup>52</sup> Hochtanyan (2008) page 10f. Emphasis in original.

### Case Study – U.S. Federal Election Commission and the Department of Justice

#### U.S.

In the U.S., the Public Integrity Section of the Criminal Division within the Department of Justice has developed a working relationship with the Federal Election Commission (FEC) and its staff. This helps agents and prosecutors quickly obtain the information they need from the FEC. The FEC Public Records Division has also been a resource in developing election crime cases. In fact, most violations of the Federal Election Campaign Act (FECA) either are not federal crimes, or, if they are, do not warrant criminal prosecution. The Department of Justice may refer all but the most aggravated campaign finance violations to the FEC. Early consultation with the Public Integrity Section helps the Department of Justice, the U.S. Attorneys' Offices and the FBI avoid unnecessary expenditure of departmental resources by encouraging the referral of appropriate matters to the FEC. Such consultations also enable the department to discharge its obligations under its Memorandum of Understanding (MoU) with the FEC. Finally, providing the FEC with information on closed criminal FECA matters in a timely manner has contributed to the commission's helpful approach to shared enforcement responsibilities.

Formalizing agreements through an MoU should be considered a best practice. There are, however, lessons to be learned from the U.S. experience, and two issues stand out. The first is timely forwarding of cases to the Department of Justice by the FEC. In the past, some cases that would fall under the Department of Justice's jurisdiction were forwarded after the statute of limitations had expired. The second concern is the ability of the FEC to continue to conduct an investigation while the case is open within the Department of Justice. The conduct of parallel investigations and the terms under which information is shared should be clearly addressed. Finally, the U.S. experience highlights the need to revisit such agreements as relevant legislation and the enforcement body itself evolve.

The work to ensure effective cooperation must be continuous, and setbacks are always possible. A July 2013 news article pointed to conflicts between FEC Commissioners and staff about the cooperation with the Ministry of Justice.<sup>53</sup>

Shared responsibilities require the effective coordination of enforcement efforts, which is most likely to occur where there is a cooperative attitude of mutual respect and support. Numerous and uncoordinated requests for assistance between agencies have the potential to jeopardize willingness to cooperate effectively.

In Afghanistan, the Independent Electoral Commission (IEC) was set to receive financial reports from each of the around 2,500 parliamentary candidates in the 2010 elections at the end of the campaigning period (two days before the elections). In the Afghan system, the commission reports any missing or inaccurate reports to the Electoral Complaints Commission (ECC). Given the large number of candidates and the anticipated low level of accountancy skills among many candidates, the IEC assumed many of these candidates would fail to submit accurate reports. This body collaborated with the ECC in advance to develop how the complaints procedure should be handled. This facilitated what proved to be a significant case burden for the ECC.

<sup>53</sup> The Washington Post (2013).

An important part of clarifying roles is for the PFE to have an established, published policy governing disclosure of the outcomes of its enforcement cases. This allows for a clear, public record about what matters have been referred to prosecutorial/investigative bodies and why. It also makes it easier for civil society groups to pick up on, publicize and apply pressure where those referrals have been dropped by law enforcement agencies.

## Secure Tenure of Commissioners at Political Finance Enforcement Bodies

A key aspect of ensuring practical independence of the institution in charge of regulating political finance is the secure tenure of its leaders. This includes both the process of appointing leaders and protocol for removing these persons from office, if necessary.

### Appointments

Which procedure is most likely to lead to PFEs who are well qualified and politically neutral?

If the head of government or Head of State has the sole influence over the appointment of electoral commissioners (or members of other independent bodies responsible for administering and policing political finance regulations), appointments may prove to be controversial, and members of electoral commissions may end up as government pawns.

A successful selection process should consider the following:

**Political Balance:** One method of appointment is to focus on political balance. This approach is used in the U.S., where the goal of political neutrality in the body responsible for administering political finance laws is viewed as impractical. The six member U.S. Federal Election Commission consists of an equal number of Democratic and Republican appointees, and enforcement requires the approval of four commissioners.<sup>54</sup>

Such a bipartisan system has been criticized as a recipe for compromise and inactivity. Also, the system of appointing party nominees as commissioners may not work outside of countries where politics is dominated by two major parties of reasonably similar strength.

### Case Study – Dangers of the Appointment of Electoral Regulators by the Head of the Governing Regime *Nigeria*

Prior to the 2007 presidential election in Nigeria, then President Umaru Yar'Adua promised to reform the electoral process once the election was over. However, two years after his election as President, his Cabinet rejected reforms that would have empowered the judiciary to select the chairman and board members of the electoral commission.

A panel, led by former Chief Justice Mohammed Lawal Uwais, recommended the presidency be stripped of the power to appoint the head of Nigeria's election regulator. However, the President has maintained the power to appoint the head of Nigeria's Election Commission.

*"Nigeria election reform U-turn", BBC News, March 12, 2009, <http://news.bbc.co.uk/2/hi/africa/7939139.stm>*

<sup>54</sup> The FECA limits the number of commissioners from any one political party to three. Commissioners are nominated by the President and confirmed by the U.S. Senate. It has operated for some time without a full complement of commissioners, which some have argued has hampered its effectiveness.

However, some scholars have argued political balance is necessary in many developing democracies because these countries normally (although not always) lack a tradition of political independence among civil servants. Politicians, practitioners, analysts and consultants sometimes believe party-based electoral commissions play a key role in consensus-building and good governance, and that an electoral authority can be party-based and still operate neutrally and independently. When there is no other tradition or existing body of widely-respected and independent civil servants, a multi-party composition may guarantee a balanced approach better than executive or judicial appointment. Multi-party electoral commissions can effectively contribute to establishing mutual confidence, transparency and neutrality.<sup>55</sup> The UK Electoral Commission was strictly non-partisan until 2010, when four additional commissioners nominated by political parties were appointed to “bring direct experience in political parties.” Commissioners with recent political experience constitute a minority on the commission whose members all serve in a non-executive capacity.

**Non-partisan Appointees:** A different approach is to consider people identified with a political party as virtually excluded from consideration for appointment as members of the regulatory body.

Such a system may work best if the neutral civil servants and public figures designated to make appointments are genuinely independent. This system presumes civil servants and other figures appointed by the current government to make the nominations will act in a genuinely neutral manner. It relies also on the assumption that “non-political” appointees are non-partisan.

A system where the government in power designates senior civil servants or other esteemed personalities to make nominations or appointments to the regulatory body works only in certain political cultures. There must be confidence in the genuine neutrality and capacity of those chosen by the government to be the selectors.

**Divided Responsibility for Appointments:** A third approach is to divide the responsibility for making nominations and/or appointments. For example, the President may nominate individuals who then need to be approved by parliament. Conversely, different bodies can be given the responsibility of nominating a candidate each, to be approved by the President. This is the case for the Political Parties Registration Commission in Sierra Leone.<sup>56</sup>

Another solution is that different bodies appoint a subset of commissioners. For example, the Central Election Commission of Russia has 15 commissioners, a third of them appointed by the President of the Federation, a third by the Duma (legislature) and a third by the Federation Council.<sup>57</sup> In such cases, the

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<sup>55</sup> Lopez-Pintor (2000) pages 63 and 123.

<sup>56</sup> Unfortunately, the law does not specify who should nominate the Commission Chair, which allowed the Sierra Leonean government to let the position stand vacant for years after the death of its previous inhabitant.

<sup>57</sup> Nadeau (2000) page 22.

power and appointment process of the Chair of the institution will be crucially important. If the Chair effectively controls the commission, much power will lay with the person who appoints that position. If the power of the Chair is limited, the commission may find itself without effective leadership.<sup>58</sup>

**The Judicial Approach:** A fourth approach is to require electoral commissioners to be senior judges and appoint them for relatively long terms of office. In Poland, the National Electoral Commission is composed of three judges of the Constitutional Tribunal designated by the President of the Constitutional Tribunal, three judges of the Supreme Court designated by the President of the Supreme Court and three judges of the High Administrative Court designated by the President of the High Administrative Court.

#### ***Length and Security of Tenure for PFE Commissioners***

Independently-appointed commissioners may be sensitive to political pressure if failure to make certain decisions can lead to removal from their post. The difficulty lies in finding a system where PFE leaders are confident that decisions unpopular with leading politicians will not threaten their position, while at the same time allowing for the removal of commissioners who prove incompetent or corrupt.

At one end of the spectrum are systems where a singular individual (often the President) can remove commissioners at will. The President of Gambia has removed the entire set of EMB commissioners more than once. At the other end of the spectrum, we find countries such as India and Ghana, where PFE/EMB commissioners have the same security of tenure as Supreme Court judges – removing them includes a form of impeachment process. In Pakistan, the process for removal of commissioners follows that of removing judges.

The length of the tenure is also relevant. If commissioners have to be reconfirmed often, their independence may be compromised. This is assuming that re-appointment is allowed, which is not the case in all countries, with Mexico as an example. In Pakistan, an extension is possible only once, and for one year only. Again, Ghana and a few other countries represent an extreme case where commissioners are appointed for life. Figure 11 shows the length of tenure for commissioners in PFE bodies in different countries.

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<sup>58</sup> Another solution has been found in Mexico, where the nine members with voting rights are independents appointed by parliament, whereas political parties nominate non-voting members.

**Figure 11: Length of Tenure of PFE Commissioners**

Country	Length of Tenure (years)
Pakistan	3
UK	3-5
Albania, Malawi	4
Australia, Bangladesh, Namibia, Sierra Leone, Sudan	5
Cape Verde, Costa Rica, India, Nepal, U.S., Zimbabwe	6
Mexico	6-9
South Africa	7
Philippines	7-9
Canada, Ghana, Malaysia, Poland	Life

### Ensuring the Financial Independence of Regulatory Bodies

If PFEs do their jobs too diligently and initiate inquiries into alleged illegal campaign financing of leading members of the government or legislature, they may find their operational budgets are threatened as a warning or retaliation.

Clearly, it is desirable to protect PFEs from threats to their budgets by powerful politicians. However, it is also necessary to ensure the staffing levels, salaries and other costs of enforcing political finance rules are adequately controlled to ensure that money is not wasted. This is especially important in countries with widespread poverty. EMBs have the same tendency as other bureaucracies to seek increases in their budgets. As Lopez-Pintor puts the issue:

[I]t is important to avoid using the electoral administration as an employment program. The system should be devised with a view towards sustainability and therefore should correspond to the limited financial capabilities of the national government.<sup>59</sup>

The ideal solution requires the PFE to be subject to financial discipline and accountability, but that the financial stick not be wielded by the government or by the legislature. These considerations are similar to those applied to the funding of the judicial system. How to best achieve this combination of financial independence and accountability will vary according to the institutions and culture of each country. The 1998 recommendations of the UK Committee on Standards in Public Life recommended the budget of the proposed electoral commission – set up soon after – “should be set in such a way as to preserve its impartiality and independence:”

One of the main prerequisites of the independence of the Commission is the independence of its budget. A body whose budget is determined by a government department and which subsequently has to fight for resources against competing priorities in government could never be perceived as truly independent. We there-

<sup>59</sup> Lopez-Pintor (2000) page 125.

fore believe it is essential that a mechanism should be developed for setting the commission's budget which stresses independence while at the same time retaining a degree of accountability to parliament for the proper exercise of public funds.

One model that might be considered is the mechanism for setting the budget for the National Audit Office (NAO). The NAO's budget is proposed by the NAO to the House of Commons Public Accounts Commission (which is distinct from the more familiar Public Accounts Committee). This body of MPs (Members of Parliament) examines the proposed budget before formally submitting it to the Treasury. By convention, once the Public Accounts Commission has approved the budget, there is no further interference.<sup>60</sup>

The complexity of this proposed arrangement and its reliance on convention is a sign of the difficulty of achieving impartiality and financial accountability at the same time. Other countries may need to seek other approaches to finding the best approach in their situation.

### **Acting Independently**

At the end of the day, it does not matter if the PFE is institutionally and financially independent with commissioners appointed in an impartial manner and with secure tenure if the institution does not act independently. Institutions that are influenced by political pressure, fear of conflict or hope of gain will quickly spoil their independence, regardless of the formal setup. Therefore, institutions tasked with implementing political finance regulations must be proactive, forceful and fair in their activities if they are to gain the confidence and trust of the public.

Remember also that the PFE must not only be independent, it must also be perceived to be so. It is a common mistake by institutions involved in political finance (as well as in election management) to think if it acts forcefully and independently, people will notice this and come to respect the institution's integrity. In most cases, the risk for misunderstanding and accusations is such that the PFE must engage in active public relations to show stakeholders and the public (the ultimate stakeholders) the regulatory body is acting professionally and without bias against or in favor of any candidate or party.

The perception of an institution often stems from how its leadership is viewed. Commissioners must be clear about any personal interests that may interfere with the actual or perceived independence of the institution. They could follow the example of the UK Election Commission, which publishes the corporate interests of each commissioner and any personal relations that could be seen as relevant (such that the brother-in-law of one of the commissioners once stood as local government candidate). They also publish information about the expenses incurred by the commission and all gifts commissioners receive.

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<sup>60</sup> Committee on Standards in Public Life (1998) Volume 1, 150.

Gifts noted might include the necktie a commissioner received from the Electoral Commission of Malaysia or a letter opener another received from the West Yorkshire and Greater Manchester Police force.<sup>61</sup>

As transparency is at the heart of many political finance regimes, it is important that the PFE conducts itself in as transparent a manner as possible. This means making publicly available the PFE's key policies and also how the regulator has applied those policies in practice.

### **Consultations with Different Stakeholders**

In the course of addressing its obligations, the enforcement agency should periodically review its programs and examine enforcement practices and procedures. It should also give the regulated community and representatives of the public an opportunity to bring general enforcement concerns before the agency. Those who directly interact with the agency, witnesses, other third parties and public can provide valuable information on how the political finance system operates in practice. By inviting a constructive dialogue concerning its enforcement procedures, the enforcement agency can seek general comments on the effectiveness of procedures and it gain important information on why certain activities do and do not succeed. Additionally, the enforcement agency can benefit from hearing about practices and procedures used by other law enforcement agencies.

Such consultation can assist the effectiveness of the work of the PFE (see further in Chapter 6). However, it can also assist in establishing the de facto independence of the PFE. As noted, an important component of the enforcement mechanism relates to the degree of trust political parties and candidates feel in their PFE and in each other. Through frequent communication, misunderstandings can be avoided and conflicts addressed at an early stage. Trust is also an important condition in coordinating the efforts of different enforcement agencies.

### **Organizing Units for Detection and Enforcement**

An important issue is how to organize units within the PFE that will deal with oversight of political finance, including (as appropriate) development of procedures; reporting structures and guidance materials; outreach to reporting entities; civil society and media; receiving and publishing financial reports; review/auditing of received reports; investigation of potential violations; and imposing sanctions.

The type of institution designated as PFE has a significant impact on the organization of its political finance unit(s), with the setup being different in each country. Even so, it is useful to see how the units have been organized in different countries. One country that, in recent years, has intensified its work with overseeing political finance is Mexico. The body that has been created for this purpose is one of the largest in any country. A recent IFES publication about the oversight work in Mexico noted:

In order to increase professionalism and impartiality in political finance monitoring and oversight, the reform created the *Unidad de Fiscalización de los Recursos de los Partidos*

<sup>61</sup> See <http://www.electoralcommission.org.uk/about-us/how-we-are-run/the-commissioners>



*Políticos* (Oversight Unit of Political Party Resources, hereafter UFRPP) (Zavala, 2008: 296). The UFRPP counts with autonomous management, which means that it may decide for itself how it structures its organization and the monitoring process, although a line of communication with the General Council is always open. The president of the IFE General Council proposes a candidate for the UFRPP's general director post, which has to be approved by two-thirds of the Council. The general director must have at least five years of experience in the field of managing an accounting process (Constitution, Art. 41, Base V, paragraph 10; COFIPE, Art. 79-80, 82 and 118).

The UFRPP is headed by the General Direction, which creates the UFRPP's policies, directs its activities, manages its resources and functions as a central point of communication. As part of this latter function, it receives parties' finance reports and their questions about the monitoring process; creates collaborative agreements with the UFRPP's local counterparts and receives their requests for bank, fiscal and fiduciary information and presents resolution projects and monitoring agreements to the IFE's General Council. The General Direction manages two administrative bodies. The auditing authority receives and revises the financial documentation presented to it by political parties. It consists of six teams, each of which contains a subdirector, manager, senior auditors, auditors and junior auditors. Each team focuses on monitoring the party that is randomly assigned to them; the size of the team depends on the size of the party it monitors. The team members are rotated so as to prevent undue political influence. In addition, the UFRPP provides a course on the auditing of political parties in order to train new auditors in collaboration with the National Autonomous Mexican University's (UNAM) Faculty of Accounting and Administration. The resolutions and norms authority is in charge of ordering investigations after complaints and irregularities that arise in the monitoring process, and designs resolutions on the imposition of sanctions; each of the five teams consists of a subdirector, manager, draftsmen A and draftsmen B. The UFRPP counts with a total of 220 staff members – the majority of whom are lawyers and accountants – and has an annual budget of 60 million pesos.<sup>62</sup>

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<sup>62</sup> Molenaar & Martínez (2012) page 17f.

The case study on this page discusses the organizational structure for political finance oversight in the UK, although it should be noted that this structure is currently undergoing certain changes.

### **Case Study – Organizing the Work of the PFE**

*UK*

#### **1. The Guidance and Policy Section**

In accordance with the principles of good regulation, it is critical that those who are regulated understand the rules. In other words, we try to educate and advise those subject to the rules to enhance compliance. To this end, we have a small team that prepares written guidance that we publish. This team will also provide training to parties, either upon request or where our compliance activities suggest that training is needed. We try to get an early jump on training. For example, as part of the party registration process, which is handled by this team, we advise those applying to become a political party about their statutory obligations. Within the Guidance and Policy section, we have a small team that works on policy issues. For example, they took the lead in working with government officials on the recent Political Parties and Elections Act 2009 and drafted the Commission's briefings for Parliament. The final segment within this section works on risk assessment and horizon scanning. For example, in the recent general election, we followed the campaign activity closely in some carefully selected constituencies so that we could compare the observed activity with the submitted expenditure returns. They also monitor and analyze the data to detect trends and potential areas of risk.

#### **2. The Compliance and Enforcement Section**

The compliance team is responsible for statutory returns (the reports that parties and others must file with us). They notify parties of upcoming filing deadlines, monitor and log receipt of returns as they arrive and prepare this information for publication. They also will undertake compliance checks and attempt to resolve any apparent inconsistencies. For example, they will check to see that donations are from permissible sources. They will also issue penalty notices for late filed returns. We then have an enforcement team, which is staffed with investigators and case workers. They review and assess allegations of wrongdoing and where appropriate conduct reviews and/or investigations with a view to determining whether a breach of the law has occurred and if so, what the recommended action should be.

#### **3. The Audit and Business Services Section**

The head of this section is an accountant/auditor. He oversees the policy development grant program (public funding that is available to certain parties for policy development purposes) and has been working on revamping the content and format of party Statement of Accounts with the political parties. The Head of Audit may also provide assistance to our enforcement team where appropriate in cases. The business service team provides administrative support to the entire directorate, including the maintenance of the statutory registers. At present, this resource is also working on the development of a significant IT project that will allow parties to file returns electronically.

## Chapter 6: Enhancing Disclosure

Effective enforcement requires both strong authority and procedures that work. The agency's enforcement authority is the extent of its ability to detect and punish violations of the law. In addition to its official authority, the enforcement agency should create procedures that promote efficiency and neutrality in the agency. This chapter summarizes major recommendations in this area, with focus on the enhancement of financial reporting by political parties and candidates.

### Promoting Reliable Bookkeeping and Internal Control

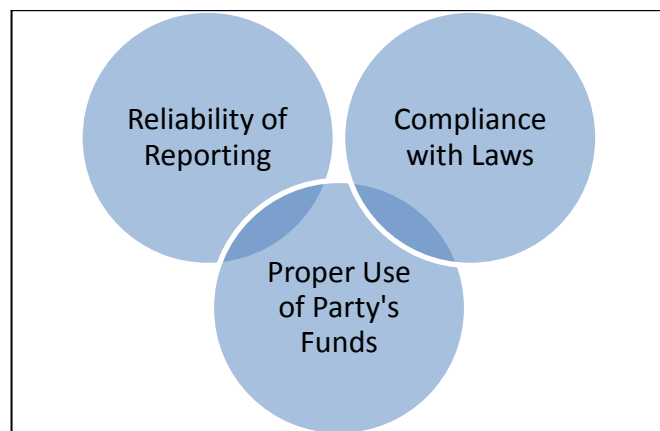
The first step to enhancing disclosure lies with political parties and candidates. If they are not keeping accurate records of their finances, it will be impossible for them to submit accurate financial statements. To make accurate reporting possible, the PFE can require political parties and the entities connected with political parties to keep proper books and accounts.

As R.J. Anderson once explained:

[W]ith the best of intentions, most people make mistakes. The mistakes may be end results of their work, needless inefficiencies in achieving those end results, or both. And sometimes, without the best of intentions, a few people deliberately falsify. Any organization wishing to conduct its business in an orderly and efficient manner and to produce reliable financial accounting information, both for its own and for others' use, needs some controls to minimize the effects of these endemic human failings. When such controls are implemented within the organization's systems they are described as internal controls.<sup>63</sup>

Internal control of a political organization can be broadly defined as a process put into operation by an organization designed to provide reasonable assurance regarding the achievement of objectives in the following categories: (1) reliability of financial reporting; (2) compliance with applicable laws and regulations; and (3) ensuring the organization's money is not being stolen and is used wisely.

**Figure 12: Advantages for Parties of Accurate Bookkeeping**



<sup>63</sup> Anderson (1977) page 143.

**Figure 13: Pros and Cons of Demanding that Transactions Go Through Designated Bank Account**

Pros	Cons
Makes it easier to track the identity of donors (if required that donations are made through bank transfers/checks)	Will not work unless banking system is widespread and accessible
Makes it easier to track spending (if required that expenses incurred through bank transfers/checks)	Where transactions are often made in cash, it can be cumbersome to demand that donations are deposited into a bank account and then withdrawn again before being spent.
Separates candidates' private funds from campaign finances	Difficult to prove if parties or candidates are receiving or spending money outside the campaign account.
Makes preparation of reports easier	
Facilitates reviews of report and provides supporting evidence, if challenged	

The first category relates to the preparation of reliable published financial statements, including interim and condensed financial statements and selected financial data derived from such statements. The second deals with complying with laws and regulations to which the political entity is subject. The third does not directly relate to political finance regulations, but will, in most cases, be the prime reason for political parties and election campaigns to establish detailed bookkeeping procedures. In consultations with political stakeholders, it is important to point out the advantages that effective financial management has for their own interests. Bookkeeping is not only a way of preventing and detecting fraud and mismanagement, it can also be used to detect the most effective fundraising and spending strategies and help the party reduce costs during times of limited income.

Political party accounts provide an essential element in bringing greater openness and transparency to the finances of political parties. In general, any political finance system should encourage political parties to comply with requirements for professional, accurate bookkeeping. However, it is important that the accounting requirements reflect the size of the political entity and its accounting unit. When considering the level of detail required for smaller parties and individual candidates, it should be recognized that accounts are often produced by volunteers, not professional accountants. For individual election campaigns, the reports are in many countries produced by the candidate her/himself.

#### ***Designated Campaign Bank Accounts***

In some countries, regulations prohibit anonymous contributions and require donations over a certain amount must to be made exclusively by bank check, wire transfer or bank credit card to a particular account designated by the political party or candidate. The goal is to identify every single donor through the banking system. Some countries also demand that campaign spending is done from the same account. Thus, all payments over a certain limit to or by a political entity should be made through a bank account, and the financial agent would need to ensure such regulations are respected.

The pros and cons of such an approach are presented in and it is clear the suitability of this approach depends on the situation in each country. Whether or not a system of this kind should be used, assuming that it is possible in the legal context, should be decided through a dialogue between the PFE, stakeholders who will be required to use such bank accounts and other relevant institutions such as auditing bodies and relevant civil society actors. A system of this kind will only work if banking secrecy rules are such that the PFE can access account information directly to verify submitted financial reports. This was done in Lebanon during the 2009 parliamentary elections, where new regulations were introduced to lift the banking secrecy exclusively for the accounts that candidates were required to maintain.

During an election campaign, political parties and their candidates can also be required to consolidate all existing accounts and funds into one centralized electoral fund. Regulations may demand that political parties maintain separate accounts for routine and campaign activities, and to conduct and report all party financial activities through relevant accounts.

### ***The Financial Agent***

In all presidential and parliamentary elections it is advisable to require (where the law so allows) political parties and/or candidates to designate a financial agent. An approach based on the “doctrine of agency” foresees that all funds should be channeled through and all expenditures must be authorized by the financial agent. Additionally, the financial agent must check incoming donations and expenses to ensure they conform with the rules.

This system of internal control can impose serious and continuing duties on the financial agents: to monitor donations received; report some and decline others; and submit proper accounts. The agent must oversee compliance with existing requirements and institute action, using intra-party discipline and codes of conduct, when necessary. The institution of a financial agent as an internal enforcement body can be a significant change to party structures, decision-making procedures and financial management practices.

Naturally, using a system of financial agents may not be possible in all situations, and problems may arise with such a system. For example, when the presidential candidates in the 2009 presidential elections in Afghanistan were required to nominate an official financial agent, they often changed their agent without informing the regulatory commission. On at least one occasion an agent formally accused his own candidate of physical abuse.

To negate the benefit of changing treasurers, some laws impose liability on former treasurers. Elsewhere, it is a breach of the law to fail to notify the party funding regulator when there has been a change of financial agents. Other problems involving financial agents have included their embezzlement

### **Responsibilities of the Financial Agent**

Keeping complete, accurate records of the political finance activity of the reporting entity

Submitting reports about financial activity to the relevant bodies

Approving all contributions and expenditures by the entity for compliance with legal restrictions

Following accepted accounting procedures in performing record-keeping and reporting duties

of party or campaign funds or refusal to provide documentation or information to the party if there has been some dispute.

In most, but not all countries, the financial agent is legally responsible for the activities of the election campaign. It is important that the responsibilities and authority of the agent are clearly identified. The PFE should strive to keep an accurate record of financial agents, and keep them informed of bookkeeping and reporting requirements, including any decisions the PFE makes during an ongoing electoral process.

### Disclosure as a Necessary Condition for Effective Enforcement

As discussed in Part One, disclosure is a cornerstone in ensuring effective transparency in political finance. Disclosure is a prerequisite for the enforcement of expenditure ceilings and contribution limits, and often for the allocation of public subsidies.

**Figure 14: Goals of Disclosure**



However, requirements for disclosure do not necessarily lead to accurate, complete reporting. Political parties and individual candidates may be tempted to avoid reporting or to report a distorted picture of their finances for a number of reasons. One reason is the receipt of larger donations in cash. In some cases, these may be kickbacks from contracts with public institutions or other illegal contributions. Alternatively, some donors may be excessively concerned with preserving their privacy and require no reporting as a precondition for contribution.

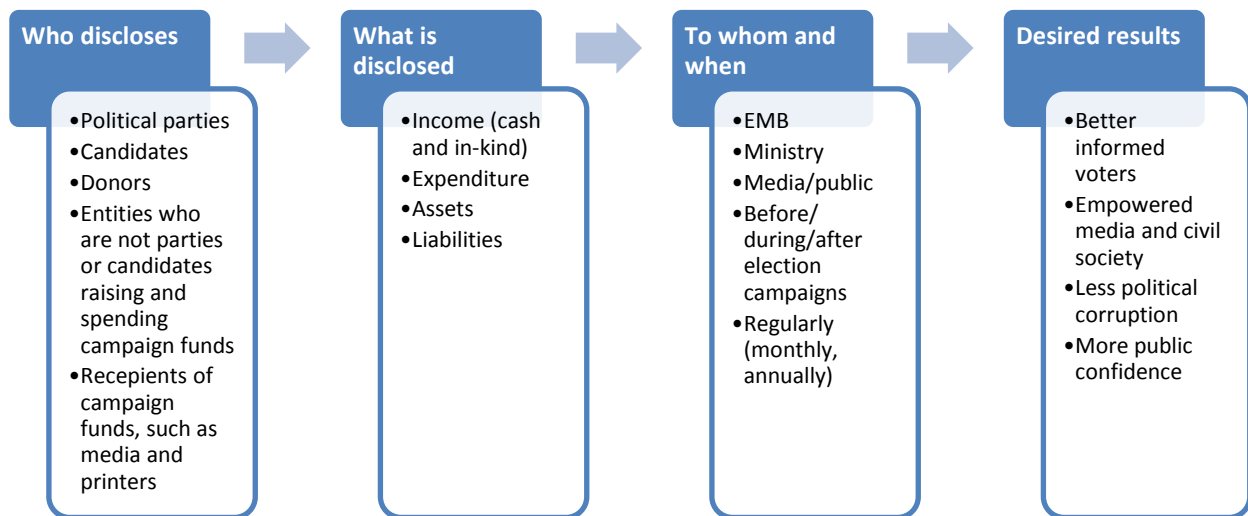
Another reason stems from the requirement to reveal not only finances of a party or candidate, but also resources spent on their behalf. Thus, imprecise and incomplete reports may be intentional to hide financial supporters or to decrease the overall amount of money reportedly spent on an election campaign. Additionally, unrealistically low ceilings set in legislation may encourage a party or candidate to report lower than actual income to comply with the maximum amount of donations allowed by legislation. This discussion highlights how illegal practices, and even certain laws and regulations designed with the best of intentions, may discourage compliance with disclosure provisions.

## Aspects of Disclosure Requirements

A variety of disclosure requirements may be adopted, depending on legal requirements and on what is the most suitable in each situation. In some countries, political parties are required to submit routine or periodic financial reports, while both political parties and candidates may be required to report in relation to election campaigns. Third party actors such as those who spend money in relation to election campaign or those who receive campaign funds (media outlets, printers, etc.) may also be required to submit financial reports. One of the trickiest areas to navigate is dealing with entities other than political parties and candidates who raise and spend funds related to election campaigns.

For political finance reports to enhance the accountability of political parties and election campaigners, as well as provide monitoring and enforcement agencies with all the information necessary for proper verification, the report structure should fulfill certain criteria.

**Figure 15: Aspects of Financial Disclosure**



**Figure 16: Criteria for an Effective Reporting System****Define Key Terms**

One problem with financial reporting systems is that key terms are not always clearly defined. It makes little sense to demand that all campaign donations should be reported, if, for example, it is not defined anywhere what counts as a donation.<sup>64</sup> If such key terms are not defined by law (and often they are not), the PFE will need to develop definitions for reporting and oversight, as it has a legal mandate to do so.

<sup>64</sup> A UK analysis of statement of accounts revealed that accounting units of the three largest political parties were using between 60 and 85 income categories in their statement of accounts.



Figure 17 provides examples of key terms and how they have been defined in some countries. It is not suggested that other countries should adopt these definitions wholesale. In each country, the definition must suit the legal and political context. Leaving these terms undefined is, however, a recipe for failure. These definitions are not taken from legal texts, but from guidance documents from the respective PFE, since the latter tends to use more easily-understandable language. Naturally, a strict legal definition is needed for court cases, etc.

**Figure 17: Examples of How Key Terms Have Been Defined In Different Countries**

Term	Definition Example	Country	Comment
Donations	“Money, goods or services given to a party without charge or on non-commercial terms.”	UK	This covers in-kind donations and services offered at a discount.
Expenditure	“Any purchase, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, any contract, agreement or other obligation to make an expenditure to support or oppose the nomination, election, or passage of a ballot measure.”	U.S. (North Carolina)	A term that commonly goes without a clear definition is expenditure. This is important for candidates, wherever one must determine personal and campaign finances.
Volunteer Work	“An individual may help candidates and committees by volunteering personal services. For example, you may want to take part in a voter drive or offer your skills to a political committee. Your services are not considered contributions as long as you are not paid by anyone. (If your services are compensated by someone other than the committee itself, the payment is considered a contribution by that person to the committee.)”	U.S.	In many countries, it is not clarified if work offered without pay to a political party or election campaign should count as in-kind donations.

**Case Study – Small Parties and Reporting, is there a need for a two-tier regulatory framework for political parties?**

*UK*

Of the nearly 400 political parties on the register of parties for Great Britain, not all are active at a national level. For example, 96 percent of the political parties submitted to the UK Electoral Commission in 2009 that their total income and expenditure was less than £250,000. Smaller parties consistently informed the commission they would be happy to report any relevant donations, but they rarely receive gifts that breach the £200 threshold, let alone the then £5,000 reporting threshold.

The commission argued there is little benefit to imposing the comprehensive regulatory framework on parties with limited financial activity. In comments to the 2000 Political Parties, Elections and Referendums Act made in 2003, the commission stated, “we do not believe that groups which operate exclusively at local level (i.e. contest local government elections only) should be subject to the same controls as larger parties which operate nationally. Given the income of most small parties, we consider it excessive to require them to submit quarterly donation returns (and detailed annual accounts) and consider that a more appropriate framework can be developed and implemented for these groups.”

At the time, the commission recommended a two-tier regulatory framework in which parties could register in one of two different categories. The first category would entitle them to contest only local elections, while the second would entitle them to contest elections at all levels. The new accounting and reporting requirements would reflect the level at which party accounting units operated.

The law was changed in 2006 so parties who do not receive a reportable donation for four consecutive quarters no longer have to submit quarterly donations reports. As of 2013, the commission has opted to limit mandatory use of standardized account formats to the larger parties; the issue of lessening the accounting burden is still under review.

***Varying Reporting Requirements for Different Political Parties and Candidates***

Some countries have many political parties. As of early 2013, Brazil had 31 registered political parties, while there were 68 parties in Nigeria and 130 in the Philippines. These figures pale in comparison to the 376 political parties registered with the Electoral Commission of the UK.

However, the number of registered political parties often bears no relationship to the number of parties with any impact on politics; the number of parties with seats in parliament was in early 2013, 23 in Brazil, five in Nigeria, and 11 in the Philippines and the UK. The U.S. has hundreds of political parties, but its system is dominated by only two. Many of the smaller political parties around the world will not only have limited political influence, but they will also have very little money and capacity to comply with requirements for bookkeeping and financial reporting. It is the normally the larger political parties that have a chance to influence politics, and it is their finances that are normally worth monitoring.<sup>65</sup> In the UK, for example, just under 94 percent of all reported donations went to the three largest political parties between 2001 and 2010.<sup>66</sup>

<sup>65</sup> There can be cases where smaller political parties are used to channel funds in support of larger ones, especially to avoid spending limits and to hide the sources of donations.

<sup>66</sup> The Electoral Commission United Kingdom (2010b) page 22.

In considering its approach to political finance enforcement, PFEs in countries with many political parties need to consider this challenge. The issue of developing criteria for which parties to audit is discussed in Chapter 7: Assessing Compliance, Auditing and Investigating Potential Breaches . However, it may also be relevant to consider if reporting requirements should be stricter for larger political parties than for others. In the UK, only political parties with an annual income or spending above £250,000 (around \$380,000 USD) need to have their accounts audited by a qualified auditor.

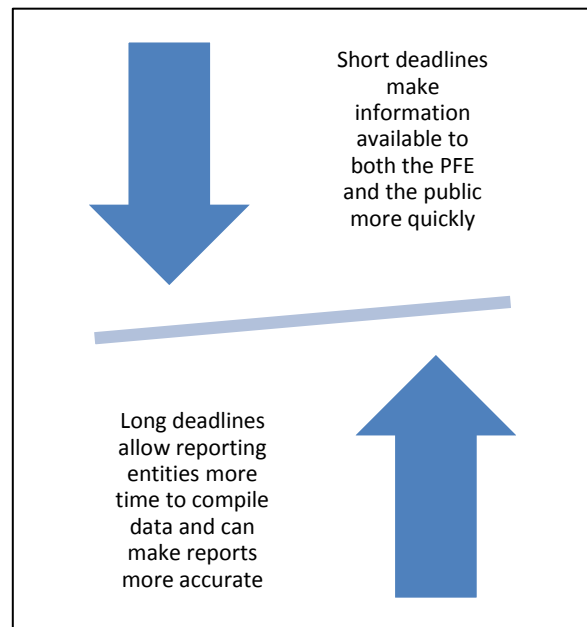
It is also logical to consider having stricter reporting requirements for presidential candidates than for parliamentary ones, while making putting only modest reporting demands for candidates to local government. Local candidates may have very limited accounting capacity, and it is important not to reduce political pluralism at the local level by imposing unreasonable campaign finance regulations.

### **Timing of Financial Reporting**

The timing of financial reporting is important. Annual financial reports by political parties must normally be submitted within one or two months of the end of each financial year, whereas deadlines for pre-election reports vary between the comparatively few countries that use such requirements.

Pre-election reports are often recommended by political finance experts, since information can be made available to the electorate before polling day, allowing them to make informed choices before voting. In practice, there are few countries that use such requirements. Among these are: Armenia, Bangladesh, Belarus, Croatia, Dominican Republic, Fiji, Ghana, Kyrgyzstan, Montenegro, Palau, Russia, Sierra Leone, Singapore, Slovakia, Uruguay, the UK and the U.S. In several of these countries, the pre-electoral reporting requirement is limited to a statement at the beginning of the campaign period regarding the party's or candidate's assets and liabilities. Such statements can be useful, as they provide a baseline against which the income and spending figures included in post-election reports can be compared. Others countries demand frequent reporting about income and spending during the campaign period. Sometimes, donations exceeding a certain amount must be directly reported to the PFE, such as in New Zealand, where it must be reported without delay if anyone donates more than \$30,000 – around \$25,000 USD – during a 12 month period.<sup>67</sup> In the U.S., larger do-

**Figure 28: Advantages of Short and Long Reporting Deadlines**



<sup>67</sup> This reporting requirement in New Zealand is technically part of regular, not campaign finance, reporting.

nations received in the run-up to an election must, in some situations, be reported within 48 hours of receipt.

Such reports can provide very useful information about the financial activities of electoral contestants. Two factors must be born in mind. The first is that unless data can be received and published prior to Election Day, there is little point in demanding pre-electoral reports. The second is that reporting requirements must not unduly burden those running for office, as is later discussed. Demanding frequent reports when political parties and candidates are heavily engaged in campaigning can prove problematic, and political finance transparency must be weighed against diverting parties' attention from the campaign. Where regulations require that donations be submitted to a designated campaign bank account, systems can be set up to report to the PFE without much effort from parties and candidates.

Regarding post-election reports, deadlines for submission also vary. There are two common ways of expressing the submission deadline for post-election financial reports: as a certain number of days after polling day or a certain number of days after the announcement of final election results. The latter is more common globally. At the one end, there are countries such as Macedonia and Slovakia where political parties have to submit reports within a few days of elections. At the other end of the spectrum, there are countries where reports must only be submitted half a year after elections (Burkina Faso, Ghana and, for some reports, Nigeria), with Tanzania's unprecedented record of eight months following elections.

The advantages of short deadlines are obvious. The PFE can receive financial information and carry out reviews early. Information can also be made available to the public while interest in the election is high. On the other hand, there are also problems with making deadlines too short, mainly connected to the phenomenon of the reporting period. The financial reporting period is the time during which entities required to submit reports are required to track their received donations and incurred campaign expenses. Often, the reporting period is the same as the official campaign period, but this is not always the case. It is surprising how often this period is not defined.

Political parties and candidates cannot complete their financial reports until the reporting period has ended. For reporting to be effective, there must be sufficient time between the end of the reporting period and the deadline for submissions for the reporting entity to compile all relevant data into its report. A number of factors play a role here; the type of election (a presidential candidate will have more data to collect than a local government candidate); details required in the reports; and the previous experience of those responsible for submitting financial reports. If parties and candidates have to subject their reports to auditing before submission, this will also take time.

Another factor is the technological level of each country. With the technology available today, information can, in some countries, be sent to the regulatory body in real time, and then posted on its website. In jurisdictions ranging from the U.S. to Lithuania, computer software is provided to parties and/or candidates for ease in submitting financial reports, as is discussed later in this chapter.

The OSCE/ODIHR and the Venice Commission have recommended the deadline for political party post-election reports should be “no more than 30 days after the elections.”<sup>68</sup> This may be reasonable in the Council of Europe countries. As Figure 19 indicates, using information from 58 countries worldwide, the average deadline for post-election reports is just over two months.

**Figure 19: Post-election Reporting Deadline For Political Parties**

Country	Days after Polling Day	Days after Announcement of Results	Country	Days after Polling Day	Days after Announcement of Results
Angola		60	Liberia	15	
Antigua and Barbuda		42	Macedonia	1	
Azerbaijan		10	Mauritius		40
Bangladesh	90		Moldova		30
Belgium	45		Monaco		90
Benin	60		Mongolia	15	
Bhutan	30		Montenegro	45	
Bosnia & Herzegovina	30		Mozambique		60
Botswana	90		Nepal		35
Bulgaria	30		New Zealand		50
Burkina Faso		180	Nigeria		180
Cape Verde		90	Papua New Guinea		90
Croatia		15	Paraguay	60	
Cyprus	45		Poland	90	
Dominican Republic	90		Russia		30
Estonia	30		San Marino	10	
Ethiopia		90	Sao Tome & Principe		90
Georgia		30	Serbia		30
Ghana	180		Seychelles		45
Greece	60		Sierra Leone		60
Guinea		30	Slovakia	3	
Guinea-Bissau		60	Spain	110	
Haiti		30	Sudan		30
Hungary	60		Tanzania	240	
Israel		85	Thailand		90
Jordan		5	Togo	30	
Kyrgyzstan	10		Ukraine	15	
Latvia		30	Uruguay	90	
Lesotho	50		Venezuela	60	

<sup>68</sup> OSCE/ODIHR & the Venice Commission (2010) Article 200.

The timing of reporting is often decided by law, and cannot be changed by the PFE. However, those working with enforcement of political finance regulations must still take into account the impact of existing deadlines. This relates not least to the existence of pre-election reports. Nicole Gordon from the New York City Campaign Finance Board argues:

Meaningful enforcement for many aspects of campaign finance reform must take place during the campaign season. If the Board did not take action during the campaign against certain kinds of potential violations, the public might not receive accurate and timely disclosure... Furthermore, penalties for substantial violations of the Act may otherwise come too late to ensure the integrity of the elections process. The Board is charged to publicize violations of the Act, and, indeed, media attention to violations is a far more potent deterrent than any monetary penalty the Board might assess.<sup>69</sup>

## Practical Considerations about Reporting Forms

### *Principles for Reporting Forms*

Reporting by political parties and candidates should be done according to an established template. The OSCE/OIDHR and the Venice Commission have recommended that, “The law should define the format of reports so that parties provide standard reports that disclose all categories of the required information and so that reports of parties can be compared.”<sup>70</sup> However, some flexibility in reporting structures may be useful, as it allows the PFE to engage stakeholders in an ongoing dialogue about the most effective form of reporting, and make minor changes, as required. Where legislation does not lay out a reporting format, which the case in most countries, the PFE needs to establish such a structure (assuming this is within its legal mandate).

Online submissions systems and systems based on specific software are more complicated, and the PFE should, if necessary, turn to an institution with the IT capacity for considering and developing such systems. In developing reporting forms that should either be filled in electronically, or that should be submitted in hardcopy format, certain principles should be adhered to – they are not presented here in order of importance. Taken together, these principles adhere to the overall maxim that the reporting system should ensure access to necessary information for effective monitoring of compliance with political finance regulations, without overburdening the political actors required to comply.

There are a number of practical issues that can have an impact on the ability of stakeholders to submit financial reports on time, opportunities for the PFE to review received data and for the timely publication of data received. Auditing of data is discussed in Chapter 7: Assessing Compliance, Auditing and Investigating Potential Breaches, whereas the publication of such information is the topic of Chapter 9: Using Databases to Enhance Transparency.

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<sup>69</sup> Gordon (2003) page 86.

<sup>70</sup> OSCE/OIDHR & the Venice Commission (2010) Article 200.

**Request All Information Required by Law**

Where there are legal requirements regarding the information political actors need to submit, the regulator must ensure all such information is covered in the reporting forms. However, it is more common that legislation gives only overall information about the data that must be submitted.

In such cases, the regulator needs to develop more detailed political finance disclosure regulations, assuming it is within its legal mandate to do so. Such regulations may include the reporting forms themselves; if they do not, the forms should be developed in close coordination with the regulation.

**Request Additional Information Necessary to Ensure Compliance with Legal Provisions**

As mentioned, legislation often lacks detailed instructions regarding the information political actors must submit. Often, legislation does not even specify if financial reports need to reveal the identity of donors. In such cases, the regulator must identify the information necessary for it to receive to monitor the accuracy of financial statements and compliance with political finance regulations.

For example, even if legislation does not require that political actors report the names of contributors, the regulator must have access to this information if it is to enforce a ban on anonymous donations or a limit the amount contributed over a certain period of time. Assuming the PFE has the legal mandate to do so, it must therefore expand reporting requirements, as these are explicitly stated in legislation.

**Do not Request Information the Regulator does Not Need**

Regulators should not add as much information as possible to the reporting forms. A first rule of thumb is that the regulator must have a clear idea of how it would use each piece of information it requests. That certain information could be useful is not a sufficient argument for requiring political actors to report it.

**Ensure the Reporting Format does not Overburden Political Actors Who Must Report**

An important principle is that the reporting system must be such that political actors can be reasonably expected to comply with the requirements without hindering their ability to run effective campaigns. As an example, reporting thresholds can be used to reduce the need for tedious reporting of unimportant transactions. This could mean that only expenses above a certain amount, or assets exceeding a certain current market value, should be reported. There is little point in demanding political parties to report on every single pencil in its possession. Demanding that receipts are given for every donation, signed by both the financial agent and the donor, can be a good way of tracking larger donations, but it is unreasonable to demand such records for donations of “pocket-money value.” Some countries use thresholds for donations that have to be reported in detail. In the U.S., the threshold is \$200 in a year, while in Canada and Australia the threshold is \$200 AUD and \$11,900 CAD, respectively (around \$200 USD and \$12,200 USD). Of course, a threshold of this kind opens the risk that wealthy interests will sub-divide their donations to escape publicity. If the threshold is set low enough, donors will have to do a lot of work to get around reporting requirements.

The principle of not overburdening political actors also relates to the frequency of report submission and to the time between the closing of books for a report (for example, at the end of a calendar year or shortly after an election) and the deadline for submission.

#### **Do not Use More Reporting Forms than Necessary**

In line with the principle to overburden the political actors, the reporting format should be as streamlined as possible. Actors should not be required to repeat the same information several times in different forms. The regulator should try to provide a logical sequence of forms so it is clear how the different forms and items therein relate to each other. For example, if a summary form asks for total value of donations in the form of real estate, the form listing individual contributions should require the actor to note the same information so it can be transferred to the summary form.

However, this principle does not necessarily mean reducing the number of forms is always advisable. The reporting format should, above all, be easy to understand. Combining many items on the same form can cause confusion. Consider if different actors should use the same forms for their reporting, or if candidates and political parties (if both need to submit reports) should use separate forms. The former solution will reduce the number of forms in use, but could also lead to various sections of forms only applying to some actors (such as “constituency contested”). Consider also if it is possible to use the same forms for campaign finance and for annual reporting.

#### **Avoid Terms and Concepts that are Not Clearly Defined**

While it is tempting for the regulator to ensure standardization through applying various terms and concepts, caution must be exercised to avoid confusion. Requiring political actors to break down their expenses into campaign and administrative costs, for example (and subcategories within each), may be a good idea, but unless clear rules are set for how expenses should be categorized, it will still be difficult to compare the information received.

This principle goes beyond defined concepts in accounting. For example, in some countries, the regulator asks the profession of contributors. Assuming this inclusion is not a legal requirement, the purpose of the regulator in asking about the profession of the contributor is often that this information will make it easier for them to judge if individual contributors can be expected to own the amounts they are reported to have contributed. However, unless there are legally-defined professions, such a requirement is unlikely to enhance transparency. Anyone can for example call themselves a “businessman” or “entrepreneur” or assist in detecting possible non-compliance with the law.

#### **If Forms are to be Formally Audited Before or After Submission, Ensure Compliance with National Accounting and Auditing Standards**

One way of dealing with the aforementioned difficulties is to make use of formal principles and rules for accounting and auditing in the country (see the next chapter). This will be a necessity in cases where reports have to be formally audited either before or after submitted. The national accounting or auditing institution can be an important partner.



It should however be remembered that political actors often have a lower accounting capacity than the corporations and institutions auditors deal with regularly, and the reporting requirements may need to be adjusted to ensure they are adapted to targeted users.

### **Use a Format from which Data Can be Easily Captured**

This is important if the stakeholders e-mail reports they have filled in electronically. In such cases, systems can be set up that automatically capture information from the various documents and places it into a central database. Macros can be used to facilitate the filling in of forms, but note that various anti-virus software warn against files containing macros, as they are sometimes used for hiding viruses.

### **Develop/Reform the Reporting Format in Dialogue with the Political Actors who Must Report**

The last, but arguably also the most important, advice is for the PFE to develop the reporting format in close collaboration with the political actors who must submit the forms. Their input on what is possible and feasible should be taken into consideration by the regulator, as this is likely to improve both the quantitative and qualitative compliance. Naturally, the regulator retains the final decision (not least since the political actors may try to get out of reporting sensitive information). After each reporting deadline, the regulator should gather the political actors (in particular political parties) and discuss reforms of the reporting system that may be required.

Input from actors with an interest in the process, but without an obligation to report themselves, should also be considered (for example, from civil society groups). Note, however, that such groups sometimes have an exaggerated opinion about the capacity of political actors to comply with reporting requirements. Outside groups may also wish to go straight to an advanced reporting system, bypassing the gradual adjustment to detailed reporting necessary in most countries.

Throughout 2007, the Political Parties Registration Commission of Sierra Leone held monthly meetings with financial staff from registered political parties to discuss reporting format. All parties were given drafts of reporting forms and changes were made based on their input.

### **Provide Written Guidance and Offer Advice to Those Having to Complete the Forms**

The benefits of providing guidance to political parties and candidates far exceeds the cost. Drafting written guidance can also be a test to ensure reporting forms are fit for their purpose. Additionally, this type of outreach and assistance to political parties and candidates can help increase compliance with reporting requirements, which in turn can boost public confidence in the electoral process. It can help to remove misunderstandings between political actors and the PFE that may otherwise undermine the credibility of the system. Finally, it can be informative for the regulator to monitor the type of requests for advice received, as these can highlight problems with the forms that the PFE can then address.

### ***Considerations Regarding Hardcopy vs. Electronic Submission of Financial Reports***

The two main options regarding submission of financial reports are hardcopy (paper copies) or submission in electronic format. The main advantages and disadvantages of each system are outlined in Figure 20.

**Figure 20: Main Advantages and Disadvantages of Hardcopy And Electronic Submission of Financial Reports**

	Advantages	Disadvantages
Hardcopy submission	<p>Easy for political parties and in particular candidates to enter information.</p> <p>Creates a physical paper trail that is safe against computer crashes and cyber-attacks.</p>	<p>Difficult for PFE and the public to analyze data, especially if filled in by hand.</p> <p>Publication of data is only possible as scans or through time-consuming data capture.</p>
Electronic submission	<p>Data can quickly be submitted to the PFE, which can also publish the information more quickly, in some cases instantly.</p> <p>Easier to review/audit data that has been submitted electronically.</p> <p>Enables search facilities and easier cross-party analysis.</p>	<p>Requires those who have to report have access to computers, Internet connection and sufficient IT knowledge</p> <p>Sensitive to data corruption or cyber-attacks.</p>

The main conclusion is that electronic submission is preferable whenever suitable, given the capacity of stakeholders, as it allows for easier review, analysis and publication of received information. However, electronic submission will not work if reports must be submitted by a large number of political parties or candidates in countries where few have access to computers or to the Internet. The PFE must not threaten the freedom to run for office by imposing unreasonable IT demands on political parties or candidates.

### ***Electronic Submission of Financial Reports***

There are three main forms of electronic submission: asking stakeholders to fill in forms using software such as Microsoft Excel (or free versions of similar software); providing software to stakeholders that they use to enter data and submit to the PFE; or building an online reporting system where stakeholders enter data that becomes directly available to the PFE. The last solution has many advantages, as it allows for immediate review and publication of data, and it is especially suitable if stakeholders are required to submit frequent reports, for example, reporting all donations within a certain number of days. A system of this kind requires that all stakeholders have a reliable Internet connection and a higher level of IT-capacity. The UK Electoral Commission uses a system of online submission called Party and Election Finance (PEF) online, and the Australian Electoral Commission use a similar system called eReturn.<sup>71</sup>

Providing software for those required to report allows them to enter data also when not online, and the system is less sensitive to cyber-attacks. In the U.S., where some, but not all, federal election reporting

<sup>71</sup> See <http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate> and [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm)

are required to make electronic submissions, the Federal Election Commission (FEC) provides software, called FECFile, via its website. In this case, data entered is uploaded to the FEC from within the software itself, but it is also possible to have the software output files the reporting organization e-mails to the PFE; use of this software is voluntary. Elections Canada uses a similar software, Electronic Financial Return.<sup>72</sup>

Requiring electronic forms to be completed and e-mailed to the PFE puts the least demand on the IT-capacity of the political parties or candidates. With such a solution, the reporting forms should be provided in a format readily useable on a majority of computers, and the users should only be able to input the required information, not to alter the reporting form itself. The Latvian Corruption Prevention and Combating Bureau (KNAB), for example, uses this type of reporting system.<sup>73</sup> The system used for receiving and opening submitted forms must have an up-to-date virus protection to safeguard against infections.

Note that, in some countries, legal provisions or administrative procedures may require submitted documents to be signed by the candidate or a particular representative of a political party.<sup>74</sup> In such cases, there are two options that can still allow for electronic submission. One is to investigate a method for electronic signatures that meets the legal requirements for recognized electronic signatures. There are a number of solutions available, but none are completely fool-proof, and some are rather complicated. This is unlikely to be a suitable approach for reports that have to be submitted by a large number of individual candidates, especially where IT capacity is limited.

The second option is to require financial reports to be submitted in both electronic and paper format, with the latter being signed, as required by legislation. The submitter should be held responsible for any discrepancies between the two versions.

### ***Distributing Reporting Forms***

The PFE should make the reporting forms readily available. They should be distributed to reporting organizations and be available on the PFE website. Attention should be given to ensuring candidates have access to the forms. There can normally be independent candidates who cannot be reached through any political party, and, in some countries, political parties may not have the capacity to effectively distribute reporting forms to candidates.

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<sup>72</sup> See further <http://www.fec.gov/electfil/FECFileIntroPage.shtml> and <http://www.elections.ca/content.aspx?section=pol&document=index&dir=pol/sof&lang=e>

<sup>73</sup> [http://www.knab.gov.lv/lv/finances/for\\_parties/form/](http://www.knab.gov.lv/lv/finances/for_parties/form/)

<sup>74</sup> Also, if there are no such legal requirements, verifying the identity of the submitter can be an issue with solutions where data is e-mailed by the political party/candidate to the PFE, as it can be difficult to distinguish genuine submissions from fake ones. Various solutions can be considered, including providing stakeholders with a password to use in submission e-mails, or to only accept submissions sent from e-mail addresses the stakeholder has previously verified with the PFE.

Therefore, it is generally recommended that reporting forms that candidates are required to submit during the campaign or after an election should be distributed at the time of nomination. If the PFE is not the institution in charge of candidate nomination, it may need to communicate with the institution that is to ensure effective distribution of forms.

### ***Maintaining Received Reporting Forms***

It is important that financial data that has been received from those submitting reports is not lost or altered. The PFE needs to establish a procedure for how it will maintain received information. Such procedures should be written down so they are available to all concerned PFE staff and, as suitable, to the public.

### **Hardcopy Reports**

As soon as hardcopy reports are received, they should be reviewed and a record kept of the forms and number of pages received. The PFE should, if practicable, consider issuing a formal receipt to the submitting entity and stamp the forms with the date received. The PFE should also photocopy or scan all forms and store the original forms safely.<sup>75</sup> To ensure that no original forms are lost, reviews and audits of data should be made from the photocopies or scans, apart from in exceptional cases.

It may also be advisable to let individuals wanting to inspect submitted records review such photocopies, subject to any redaction required by freedom of information laws, unless there are legal requirements that the originals must be made available. Visitors should in turn be allowed to make photocopies of submitted forms (at cost), unless there are regulatory hindrances to such a practice.

### **Electronic Reports**

If electronic reports are received via e-mail, a copy of each file should be stored on a secure hard drive, and any review or preparation of data for publication should only be made from copies of these electronic documents. This allows the PFE to go back to the original documents in case data is lost or corrupted; having an unaltered version of the document is also useful if it has to be introduced as evidence in court proceedings. Depending on the format in which the data is submitted and the quantity, it may be advisable to print out received reporting forms.

If data is uploaded onto an online system by stakeholders, the database should be backed up frequently. Ideally, the system should be designed so changes to any data does not overwrite or delete previous information, only adding another version. This allows PFEs to track changes over time and reverse any changes that may have been made incorrectly. Protection must also be available against cyber-attacks.

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<sup>75</sup> In case data capture is not intended for publication of the information, scans of original forms can be published directly. See Chapter 9: Using Databases to Enhance Transparency.

**Examples of Reporting form Structures**

Naturally, the exact structure to be used for reporting forms in each country will depend on the legal requirements and regulations. Even so, it is useful to look at the way reporting forms have been developed in different countries for hardcopy or electronic submission, although we do not examine special submission software or online solutions in this publication.

Figure 21 gives examples of reporting forms commonly used in different countries for financial reporting by political parties, candidates or both.

**Figure 21: Sample Reporting Structure**

Reporting Form	Comment
<b>Financial Summary Form</b>	<p>Especially if contestants have to submit significant amounts of information, it is useful if they also submit summaries of that data. If political parties are required to submit information about the finances of their candidates, the amount of information may be particularly difficult to handle without a summary form.</p> <p>The summary form can be used by the PFE for quickly publishing relevant information on its website or other format, as pulling information from a collection of forms would be time and labor consuming.</p> <p>However, if contestants are only required to submit limited information, a financial summary form may be superfluous. Also, when information is submitted electronically, it may be easier for the PFE to pull the relevant information directly from the other reporting forms.</p>
<b>Income</b>	<p>Unless legislation specifies the information that should be provided about donors, the PFE should determine the required information (above a certain amount, if such an approach is legally allowed and politically suitable). This would normally include, at a minimum, the name and address of the donor, and, in some countries, an identification number. Some systems also ask for the employer of the donor, something that can be useful in preventing or detecting corporations channeling donations through its employees to bypass donation bans or limits.</p> <p>The income form should also specify if each donation was made in cash or in-kind. In the latter case, details should also be provided about the type of donation (service, product etc.), as well as the value (estimated at the current market value).</p> <p>The date that the donation was received should also be reported.</p>
<b>Spending</b>	<p>Contestants should report on individual expenses (above a certain amount, if such an approach is legally allowed and politically suitable).</p> <p>This should include information about the recipient of the expense, its nature and value, as well as the date that the expense was incurred.</p>

<b>Assets</b>	<p>Political parties should be asked to report on assets it owns above a certain value, if such an approach is legally allowed and politically suitable. This can include buildings, vehicles and office equipment, as well as assets in bank accounts, bonds, etc.</p> <p>For candidates, they should report on interests in corporations and other legal persons, as this is important from the perspective of conflicts of interest. In some countries, candidates should also report on the assets of family members (to avoid candidates transferring ownership to people close to them)</p>
<b>Liabilities</b>	<p>In many countries, political parties and candidates are also required to report on their liabilities, in particular, loans and obligations. This is also relevant from a conflict of interest perspective. Information should be provided about repayment conditions and maturity date of liabilities.</p>

## Chapter 7: Assessing Compliance, Auditing and Investigating Potential Breaches

While disclosure is an important element of a fair democratic process, its significance is reduced in the absence of effective compliance assurance mechanisms. Many scholars and practitioners have found that, while an excellent legislative framework for political or campaign finance disclosure is necessary, it is not sufficient to provide meaningful control over money in politics.

Indeed, in many cases, the failure of enforcement does not result from the existence of complex schemes on the part of those wishing to give and receive illegal political donations. Instead, the failure reflects that no attempts were made to enforce rules in existence. Those involved in illegitimate political financing know this and take few precautions to hide what they are doing. A report by a senior IFES official on 2004 elections in Georgia describes the damaging effects of a perceived lack of scrutiny of financial reports submitted by candidates and political parties:

... Another defect to note is the lack of effective analysis and verification of the disclosure filings made by election contestants. People I spoke with during my trip concede that until candidates and parties think that the information they provided is actually being scrutinized for accuracy and completeness, the contents of the filings will be suspect. In short, the fact that candidates and parties know that the information they are providing isn't being properly checked means that they will continue to make filings for the sake of making filings without rigorous regard for accuracy.<sup>76</sup>

### Prioritization System

A major challenge in any country is finding an appropriate entry point for auditing or investigating potential political finance violations. Given the magnitude of the tasks, it is critical to begin at a point where the goals are feasible and tangible results can be realized within a timeframe that builds support for further legal and behavioral reforms. Small gains can provide essential levers to sway public and official opinion. Entry points should be chosen to tackle high profile problems such as lack of disclosure, submitting false information or funding from illegal sources.

It is simply a fact of life that an enforcement agency will never be able to consider all possible breaches of political finance laws, for many different reasons. An agency should adopt a system to objectively analyze cases to decide which warrant the use of its limited resources.

Some agencies use a prioritization system to focus resources on the most significant enforcement cases. Such a system can aid the management of a heavy caseload and complex financial transactions. For ex-

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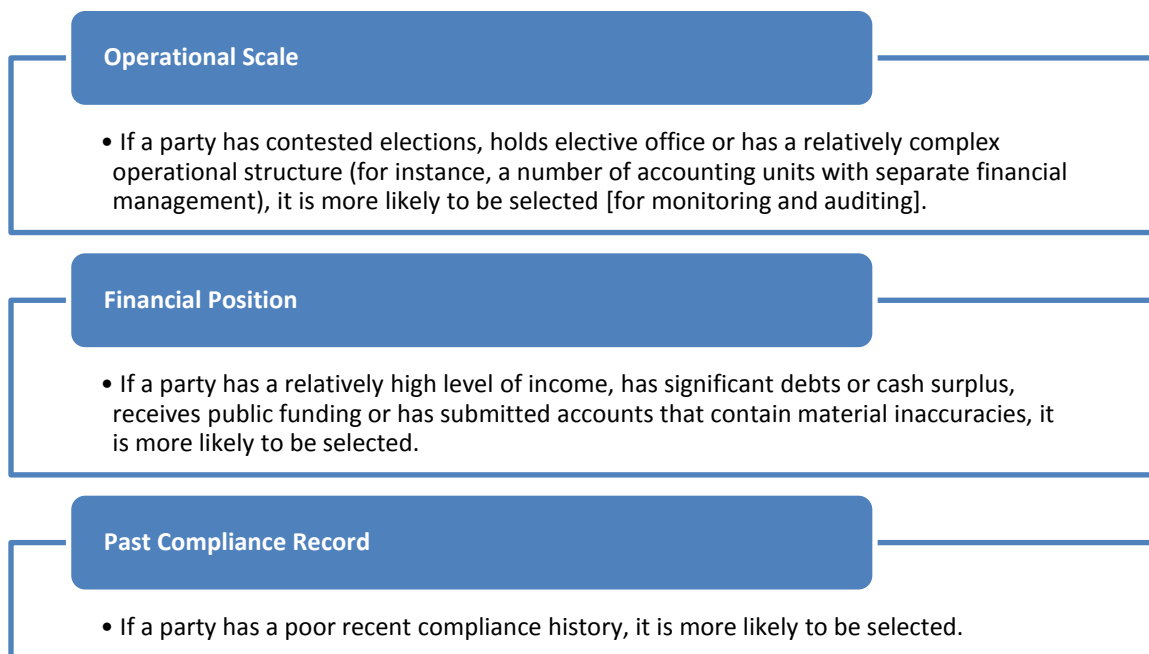
<sup>76</sup> Svetlik (2004).

ample, the FEC developed an Enforcement Priority System (EPS) in 1993 to deal with an increasing case-load. The system allows the agency to focus on what it views as the most significant cases; such a system introduces an objective rating system and allows for prompt dismissal of cases viewed as less significant. Under such a system, the agency can use different formal criteria to decide which cases to pursue.

Some instances of non-compliance may be so small and inadvertent that the PFE should consider the matter, regardless of available resources. The UK Electoral Commission's enforcement policy states that it "will only use its investigatory powers where it is reasonable and proportionate to do so."<sup>77</sup>

Similarly, the UK Electoral Commission developed and published criteria for prioritizing its other regulatory activities such as audit, guidance and campaign monitoring. The commission's premise is that "an intelligence-led process is essential in identifying those who would gain most benefit from our audit activity. This approach also ensures that audit activity is focused on meeting the commission's objectives in relation to transparency of party finance, rather than relying on a 'hit and miss' approach with audit activity determined only by random sampling selection."<sup>78</sup> The criteria developed by the commission is outlined in Figure 22.<sup>79</sup>

**Figure 22: Audit Assessment Criteria Used by the UK Electoral Commission**



<sup>77</sup> The Electoral Commission Enforcement Policy December 2010 at page 7.

<sup>78</sup> The Electoral Commission United Kingdom (2010a) page 6.

<sup>79</sup> The text in the table is taken from Ibid, page 3.



In other countries, the regulator may be required to review financial reports from thousands of election candidates, without the staff or financial resources to do so. Especially in countries where campaign finance oversight is a new phenomenon, the regulator seldom has the chance to make even the most cursory review of all received reports. It may in such cases be necessary to select certain candidates for review. For example, it is often more relevant to investigate the finances of successful candidates than of those who received a handful of votes.

If a regulating agency decides to adopt a prioritizing mechanism, clear criteria should be used to select which parties and candidates are to be audited. Such criteria could include those parties and candidates against which a credible complaint has been lodged or those the enforcement body has “reason to believe” may have committed violations. Campaign history can also be helpful, especially if a candidate, treasurer or committee has conducted violations in the past. In a jurisdiction that offers public funds, political parties or candidates receiving such funds should be given special priority in selection for auditing. Other selection criteria include parties or candidates that exceed a given threshold of gross income or total expenditure in any financial year or during an election campaign. Regulators considering such an approach must investigate if it is legal to do so in their particular case, and contemplate if doing so may harm the institution’s perceived neutrality.

The agency should continually review the system and its criteria to ensure the best use of its limited resources. There is always a risk that political actors will try to use the system so they are not selected for auditing; this is a downside to the regulator being transparent about policies and activities.

## **Audit**

The regulating agency should seek the most suitable method for investigating received political finance records, given the agency’s legal mandate and capacity. Without controls of the submitted data, there will be no incentives for political parties or candidates to be honest in their disclosure efforts.

At its most advanced level, formal examination and certification of political finance records is carried out by professional auditors. This is similar to the requirement that applies in many countries to the annual accounts of business corporations. Auditing is a systematic, objective process of gathering and evaluating evidence about actions and events reported by the individual or organization being audited. The auditor will ascertain the degree of correspondence between the reported activities and established criteria, and communicate the results to users of the reports.

An audit is an examination of an entity’s financial statements, financial records and banking information prepared by the entity’s financial agents for other interested parties outside the entity, and of the evidence supporting the information contained in those financial statements.

Auditing of political finance accounts can be done by a professional, independent auditor selected by the political parties and candidates; by the enforcement body; or directly by a government agency, such as another enforcement body, tax authority or auditing agency. There are three main ways to organize an audit of reports from political parties and election candidates, outlined in Figure 23.

**Figure 23: Approaches to Auditing**

Audit Approach	Examples	Comment
<i>Require submitted reports to be audited before submission</i>	Austria, Canada, Germany, UK (parties with income/expenses over a certain limit), Georgia, Sierra Leone (annual party reports)	Can be excessively demanding/expensive for those submitting reports
<i>The PFE conducts its own audit using an internal auditing department (temporary or permanent)</i>	Bosnia & Herzegovina, Montenegro, Ethiopia, Tanzania, Thailand, UK for Policy Development Grants.	Resource demanding and there is a significant variation in work burden. Good solution for ensuring gradual learning and capacity building.
<i>The PFE uses external auditors to audit received financial reports</i>	India, Indonesia, Cap Verde (if the EMB considers this necessary), Uganda	Can be a more feasible if reports are submitted infrequently and PFE capacity is limited. Requires national accreditation system for auditors

In the case of candidate account auditing, the number of candidates in an election may exceed the number of accredited auditors in that particular country. This may motivate the PFE to apply objective criteria to determine which candidates' accounts to audit. Distinctions may, for example, be drawn based on whether the candidate was elected, the electoral margin of victory or the level of reported expenditure.

Several levels for audit reviews are possible:

- Field audits and simple visits to campaign offices to establish, for example, that offices exist in practice, an actual campaign is being conducted and records are being properly maintained.
- Statement review, which looks for violations that appear on statements filed by a campaign.
- Review of back-up documentation, such as whether or not copies of checks and receipts from contributors are available and if they match reported contributions in filed statements.
- Evaluation of overall campaign information, for example, how a campaign compares with others and if certain expenditures are unusual.

Audits also look at internal controls to ensure compliance with the legal and regulatory requirements, and internal controls for financial reporting and safeguarding assets (sometimes called "supervisory audits," as opposed to audits undertaken as part of enforcement cases). The timing of any audit review can be very important. In a jurisdiction that offers public funds to campaigns, an early field audit/visit can help the campaign correct errors early on, saving it from problems down the road, helping regulators uncover activities prohibited before future public funds are disbursed.

**Audit Program**

The enforcing agency must start with an overall plan for the review of received financial reports. Effective audit procedures must address the following questions:

- Who will conduct the audit?
- When will the audit be conducted?
- What will be audited?
- Which parties and candidates will be audited?
- Who will pay for the audit?

Once the enforcement body has decided on the direction it wants to take, it should either develop an auditing program with input from stakeholders, or instruct political entities to establish their own auditing programs. In the latter case, the program should be drafted in accordance with guidelines set forth by the enforcement body to ensure consistency. Grounded in existing laws and procedures and international auditing standards, the audit program should begin by clarifying how the audits will be undertaken. Where a national association of registered auditors exists, such a body can assist in developing the auditing plan for political party and candidate financial reports.

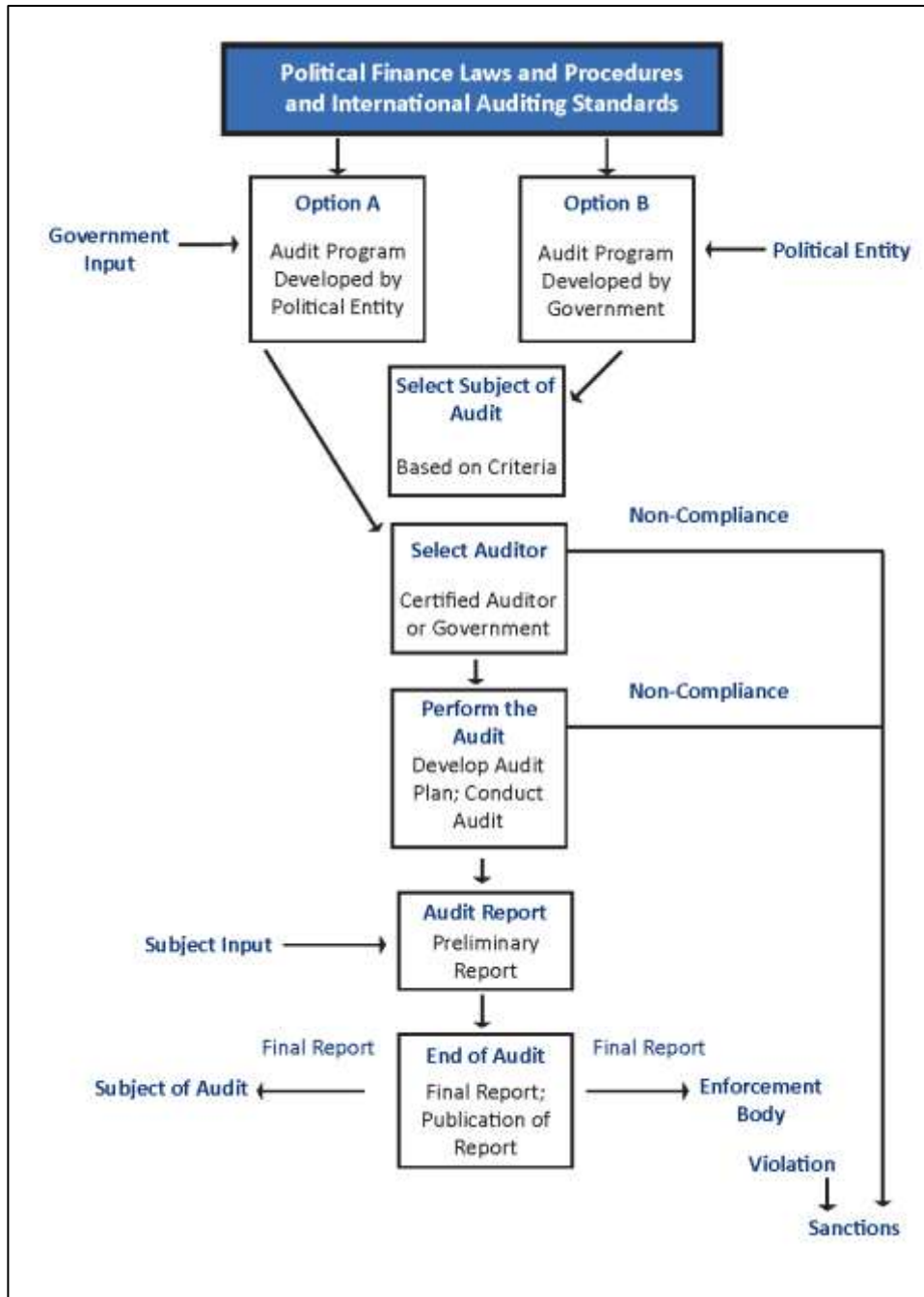
Clear guidelines should be established that detail what is being audited and how the audit is to take place. These guidelines should take into account the laws and regulations of the country; accounting and reporting requirements of political parties and candidates; and international auditing standards.<sup>80</sup> Those who may be audited should be included into this process for them to better understand the issues they face and better ensure compliance. If external auditors are used, these guidelines should be clearly defined in a manual for auditors. The enforcement body should conduct regular training and provide legal and procedural updates to certified auditors involved in the process.<sup>81</sup>

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<sup>80</sup> Information about international standards can for example be found on the website of the International Auditing and Assurance Standards Board ([www.ifac.org/IAASB](http://www.ifac.org/IAASB)).

<sup>81</sup> The Institute of Chartered Accountants of India have for example issued a “Guidance Note on Accounting & Auditing of Political Parties,” available at: [http://adrindia.org/sites/default/files/Guidance\\_Note\\_on\\_Accounting\\_Auditing\\_of\\_Political\\_Parties.pdf](http://adrindia.org/sites/default/files/Guidance_Note_on_Accounting_Auditing_of_Political_Parties.pdf).

Figure 24: Audit Flowchart



If a political party or candidate is required to select an auditor, clear criteria should be set for how and when the auditor is appointed. Some countries state the selected auditor must not be a member of the political party he or she is auditing. In Austria, each political party is required to provide a list of five auditors, from which the Federal Minister of Finance selects the auditor to review reports from the party in question.

Regarding timing, criteria may require that an audit be carried out by the end of a defined period following the end of the financial year. However, if a special audit is required by the enforcement body, it must be carried out within three months of the date of the order.

The audit should be performed according to international auditing standards by auditors who have a clear understanding of the subjects they are auditing. The auditor should present a plan that has been approved by the enforcement body and reviewed by the subject of the audit, and that conforms to guidelines set forth in the audit program and manual for auditors.

### ***Auditor's Report***

Whenever time allows, the auditor should complete at least two reports, preliminary and final, that cover the complete scope of the audit as set forth in the audit program and defined in the manual for auditors. The preliminary report should go through peer review prior to release to the enforcement agency and the subject of the audit. Following comments made by the subject of the audit, the auditor will revise the report and issue a final report. Once the audit report is complete, all findings should be presented to the enforcement body and be made available to the public.

### ***Challenges Facing the Audit***

It is important to note the challenges that arise through the use of auditors. These problems should be taken into account when designing the auditing program.

First, it is unwise to assume the professional standards of auditors are high enough to be immune from political or commercial influence. There are ways to reduce the danger of appointing politically-biased auditors. In Poland, for example, this is done by a system of selection of auditors (paid from public funds) by lottery.

Second, professional audits are costly. It is necessary to determine whether political parties and candidates whose accounts are to be examined must pay, or whether the costs are to be covered by public funds.<sup>82</sup> There are three main approaches: the political party/candidate can be required to pay for the auditor out of its own funds; the political party/candidate can be required to pay for the auditor out of its own funds and then be reimbursed from public funds; or the enforcement body can pay for the auditor directly out of public funds. Each of these options pose problems. If political parties are obliged to pay for professional accountants, this forces them to divert money from electioneering to meet the requirements of complying with the legal controls over their funds. It is unreasonable to impose onerous, expensive duties on parties in the form of complex laws. If the costs of auditors are to be met out of public funds, this creates other difficulties. PFEs in many countries have insufficient funds and staff to carry out their compliance and enforcement duties, so it may be better to provide extra money to them rather than professional auditors. On the other hand, when payment comes from public funds, the audi-

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<sup>82</sup> In Canada, for example, auditors of election candidates get a direct subsidy from the EMB, amounting to 3 percent of the candidate's election expenses (not more than \$1,500). If the fee charged by the auditor is higher than the subsidy, the candidate has to pay the difference.

tor's fee will not depend on the findings, and there will be less room for accusations of political pressure.

Third, a stipulation that their accounts must be professionally audited imposes a heavy burden on small political parties. Highly-developed systems of control intended to detect sophisticated fraud are unsuitable for small-scale political organizations. Indeed, such requirements make it impossible for such organizations to exist.

In conclusion, the use of audits does not guarantee accuracy of financial reports submitted by political parties or candidates, and as such, is no assurance of full transparency. Public scrutiny will still be necessary, especially to build trust in the political finance oversight system. Nonetheless, auditing is a powerful tool in detecting and enforcing regulations on what political parties and candidates are and are not allowed to do with their finances.

### **Performing Random Checks**

If the PFE does not have the resources to carry out auditing, random checks on the accuracy of financial reports may still serve as a powerful deterrent against violations, and have been used successfully by many enforcement agencies.

PFEs need to check the accuracy of, at least, a random sample of financial accounts submitted for compliance with legal requirements. Additionally, informing candidates and parties in advance that such spot checks will be made and that penalties are liable if errors and omissions are discovered, could help to reduce illegitimate behavior, although only if these actors believe such checks will actually be made.

To ensure usefulness of random audits, the entities to be audited should be selected randomly from a pool of parties or candidates that meet established criteria, such as a specific threshold of financial activity. Expertise in statistical techniques (method of conducting strategic random selection, measures of statistical significance) should be sought when conducting random audits. While random checks and audits are part of the regular apparatus of control, PFEs will still need to search for signs of irregularities that warrant closer scrutiny.

Random checks can include contacting reported donors to ask if they indeed donated funds as reported by a political party or candidate.<sup>83</sup> Reported recipients of campaign spending can be contacted to establish if they received the reported amount from the party or candidate in question.

### **Receiving Complaints**

Any enforcement agency will be able to detect only a fraction of all the violations if it relies exclusively on its internal monitoring of financial reports submitted by obliged entities. As a complement to formal

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<sup>83</sup> A next step could be to check if the income of that person makes it reasonable to assume the donation actually originated from her or his resources to detect potential indirect donations. This approach can be complicated, and is best reserved for cases of larger donations.

disclosure, the regulating agency should be able to rely on external complaints of suspected wrongdoing. In an ideal system, any civil society organization, journalist or individual who believes a violation has occurred should be able to file a complaint with the agency.

The complaint process can require a formal, written document satisfying specific criteria for a proper complaint, or can have a more liberal character, with the enforcement agency taking action based on press articles or informal allegations. The process can also be combined with the overall elections complaints procedures by the EMB, which often serves as the PFE, or by other institutions. There may also be a separate complaints procedure for issues relating to political party and/or campaign finance. Some political finance systems also give the enforcement agency the discretion to act on information it receives anonymously, while others do not, as is such at the federal level in the U.S.

An interesting case was the 2010 local government elections in Georgia, where the CEC, on several occasions, applied sanctions as a response to submissions received from national NGOs regarding the abuse of State (administrative) resources. In total, 34 complaints submitted by national NGOs were fully or partially upheld by the CEC or courts. Fines were imposed on several occasions and a principal of a public school was dismissed for allowing campaigning on school premises.<sup>84</sup>

An unusual model is used in Mongolia, where voters who report having received money from an election campaign are rewarded with 10 times the given amount as a bonus for reporting vote buying, assuming the case is proven. It is not known if this provision has actually been employed in Mongolia.

In addition to complaints, the enforcement body should ideally have the authority to act on more informal information received from other sources, including other public bodies (e.g., tax authorities, Ministry of Justice), media and anonymous individuals. The Electoral Law in Afghanistan gives the Electoral Complaints Commission the right to, “consider issues within their jurisdiction on their own initiative and in the absence of a formal complaint or challenge.”<sup>85</sup>

Naturally, the PFE cannot and should not be expected to investigate everything it hears. The Australian Election Commission (AEC) conducts a preliminary investigation on all indications it receives of mismanagement, but only conducts an in-depth analysis if it finds “reasonable grounds” a violation has incurred:

The AEC undertakes a preliminary assessment of all potential contraventions that come to its attention, whether directly or via other avenues such as media reports, using information from the source of the complaint and routine inquiries to determine whether further investigation is warranted. In moving to issue a notice of investigation, section 316(3) requires that the AEC has “reasonable grounds” for believing that the person on whom the

<sup>84</sup> Central Elections Commission of Georgia (2010). Also NGO Media Centre (2010). The responsibility for political finance oversight has since been moved to the State Audit Office of Georgia.

<sup>85</sup> Electoral Law 2010, Article 62 (2).

notice would be issued can provide evidence of a contravention or possible contravention. In practical terms, that means the AEC requires some credible evidence in support of an allegation before it can mount an investigation. Allegations, including those made in the media or in Parliament, need to be more substantial than hearsay before they can be investigated by the AEC under the power of section 316(3).<sup>86</sup>

In transitional regimes, and particularly in post-conflict societies, voters who are in the best position to observe questionable campaign practices may be reluctant to come forward with a formal complaint, as they often fear reprisals. In order to encourage individuals to share information with the enforcement agency, it is recommended that complainants be given whistleblower protections against reprisals.

### **Investigation of Wrongdoings**

A clear distinction should be made between an audit, which is administrative in nature, and an investigation. As a necessary part of the audit process, auditors should have extensive communication with candidates, official agents, etc. Actions taken during an audit do not necessarily suggest an offense has taken place. Some actions are administrative in nature and do not require, for example, an official cautionary measure aimed at formally advising suspects of their rights against self-incrimination. The main feature that separates an administrative audit from an investigation is the existence of an adversarial relationship. Further, investigation, in most cases, is not automatic, while an audit can be. In some countries, the power of the PFE is different in carrying out administrative audits and investigating potential breaches.<sup>87</sup> Nevertheless, the administrative audit can, at some point, become similar to an investigation and an adversarial relationship can arise. Moreover, the results of random audit can lead the agency to do a full investigation of information on misconduct.

While random checks and audits are part of the regular apparatus of control, PFEs need to watch for irregularities that warrant closer scrutiny. The tendency in a growing number of democracies is for the political finance enforcement body to have the power, either on its own initiative or in response to complaints, to make inquiries concerning all aspects of political finance (at least those relating to political parties or election campaigns). The enforcement agency can investigate, for example, allegations or suspicion that a political party or candidate failed to disclose names of substantial donors or illegally accepted foreign donations. In many systems, anonymous requests are not considered, but in some countries, a citizen may file an application for investigation if he or she has strong proof a party or candidate acted illegally.

In many countries, irregularities are investigated by State enforcement bodies, such as the police. Sometimes, for example, in Poland, involving tax authorities at the direct request of the National Electoral Commission can be efficient. At the same time, concern has been expressed about a mechanism where-

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<sup>86</sup> Australian Election Commission (2011) page 1.

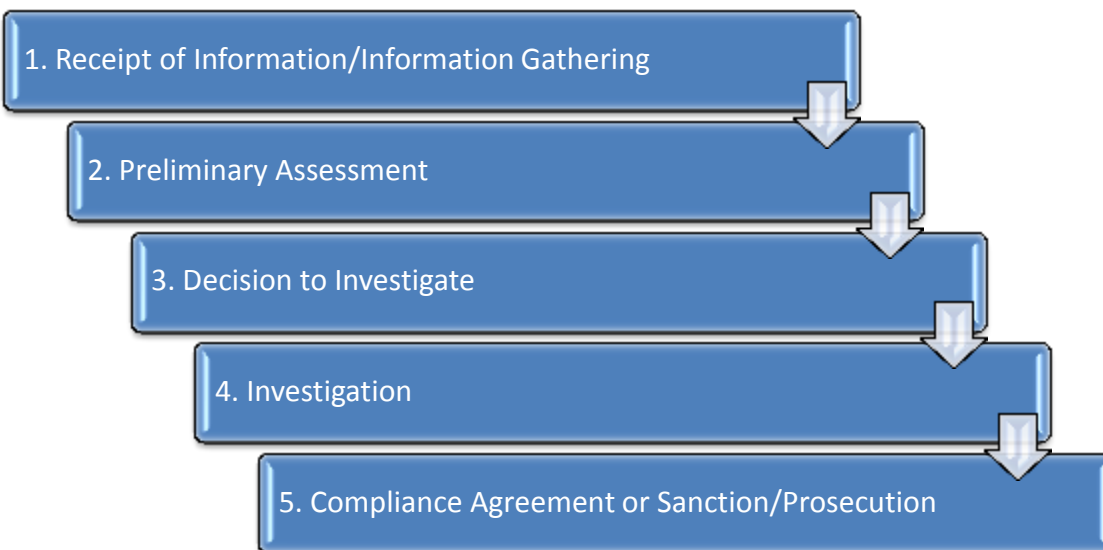
<sup>87</sup> In the UK, for example, if evidence of wrongdoing were to arise during an audit, the audit would cease and the matter would be handled through the enforcement/investigation procedures.



by an independent enforcement agency is empowered only to report suspicious transactions to other public bodies (e.g., attorney general, tax inspection, Ministry of Justice, etc.), which then decide whether to investigate. Some believe this allows too much opportunity for law enforcement to be influenced by partisan political considerations, which could render the process ineffective, regardless of the independence and ability of the PFE.

Following receipt of a complaint or acting on its own initiative, an enforcement agency may conduct an investigation into possible violations of rules. Regulators may also undertake a full investigation when information from a random audit warrants further action. An agency may use its investigative powers, and an investigation may include, but is not limited to, field investigations; desk and field audits; issuance of subpoenas; taking sworn testimony; issuance of document requests and interrogatories; and other methods of information gathering. In general, an investigation can be divided into five stages, illustrated in Figure 25.

**Figure 25: Steps in the Investigation Process**



When enforcing political finance regulations, the agency should respect all safeguards available to an individual under the law. It is imperative that auditors and investigators clearly state that they are carrying out an investigation. In some cases of suspected non-compliance, an investigation may lead to the presentation of information before the courts, and the courts can rule that individuals are entitled to the appropriate protection available to someone suspected of a criminal offense.

In the U.S., criminal campaign finance fraud investigations at the federal level involve the following steps:

1. Initial coordination with the Public Integrity Section of the Department of Justice
2. Determining whether a core prohibition of the Federal Election Campaign Act was violated
3. Determining whether there was an effort to conceal an illegal contribution
4. Identifying others involved in the action
5. Determining whether criminal prosecution is warranted
6. Initiation of a grand jury investigation or a Federal Bureau of Investigations full field investigation
7. Non-prosecution of straw donors, or conduits
8. Prosecution of persons making or receiving the illegal contribution

#### Case Study – Request for an Investigation

##### *U.S.*

Any person may request the Office of Campaign Finance (OCF) in Washington, D.C., to undertake an investigation by submitting a complaint in the form of a signed statement alleging a potential violation of the Campaign Finance Act or the Standards of Conduct. The written statement should be as specific as possible, identifying the full name and address of the complainant and respondent, plus a clear and concise statement of facts. The statement should be verified by the complainant under oath and include supporting documentation, if any. A request for investigation should be forwarded to the Director of the OCF.

Within 10 days of receipt, the Director will acknowledge a written request for investigation with a notification as to whether the allegation will be investigated. If the Director opens an investigation, the matter will be referred to the OCF Office of the General Counsel. The General Counsel will have 90 days to investigate and submit a recommendation to the Director. Upon request to the Board of Elections and Ethics, with a showing of good cause, the investigatory period may be extended up to 90 days. At the conclusion of an investigation, the General Counsel will submit a recommendation to the Director, which may include: dismissal of the matter; a call for a supervisor to take action against an employee for a violation of the Standards of Conduct; or the imposition of civil penalties for a violation of the Campaign Finance Act. Upon receipt of the recommendation, the Director may agree and so order, or disagree and order a different remedy. A party affected by an OCF order may appeal to the Board of Elections and Ethics within 15 days of issuance of the order by the Director. If a fine is imposed by the Director, it is due on the 16th day following the issuance of a decision. The OCF also initiates investigations as a result of information gleaned from the media and staff review of reports and other documentation filed with the OCF.<sup>88</sup>

<sup>88</sup> Manila Channel (2013).

### **Investigating Campaigning on Internet and in Social Media**

As social media becomes an increasingly important tool in election campaigning, PFEs must find ways to monitor campaign finance violations that may occur in this space. Compared to traditional campaign types, social media is not very expensive, and political parties and candidates are unlikely to exceed spending limits through their use of Facebook, Twitter and similar services.

However, a concern is how to guarantee that fundraising through Internet-based services respects potential bans on anonymous donations or donations from abroad. In the 2009 presidential candidates in Afghanistan, several candidates used their websites to raise funds, and it was not possible for the Independent Election Commission to verify if funds raised came from abroad, which is banned by Afghan law. Setting up an online fundraising system is easy – companies like PayPal offer specific services for this – and tracing the origins of donations will be difficult unless this issue is considered in advance.

Political parties and candidates may commit other violations online. In the Philippines, the Commission on Elections (COMELEC) stated in 2013 they were investigating possible vote buying in relation to an Internet campaign in which a senatorial candidate promised to give away iPads to winners of a competition. Ironically, the theme of the competition was the fight against corruption. As the competition was removed as soon as the case became public, it was important that COMELEC staff took screenshots of the relevant webpages.

**Case Study – Investigation "Threshold Test and Standards"***Canada*

In Canada, a recommendation to initiate, continue or terminate an investigation is based on "Threshold Test and Standards." When a commissioner believes, on reasonable grounds, that an act or omission constituting a specific offense under the Canada Elections Act (also known as, "the Act") has been committed, is about to or likely will be committed, the commissioner may order an investigation according to the circumstances. Relevant factors must be considered when a recommendation is made to initiate, continue or terminate an investigation; they include the following:

- Reasonable grounds to believe the allegation deals with an alleged offense committed by an election officer or a specific offense committed by anyone under the Act
- Reasonable grounds to believe the allegation is founded on specific and verifiable leads, facts, information or physical documentary evidence, and deals with an act or omission that could constitute a specific offense under the Act
- Reasonable grounds to believe that public interest relating to the act or omission constituting an offense under the Act would justify committing investigative resources; in other words, ignoring investigations on purely technical matters
- Reasonable grounds to believe the act or omission constituting an offense under the Act requires applying for an injunction, and whether sufficient grounds exist to believe there is a reasonable prospect of identifying the suspect and obtaining sufficient information to apply for an injunction
- Sufficient grounds to believe the alleged offense was committed and an investigation would provide sufficient, substantial, admissible and reliable evidence
- Sufficient grounds to believe there is a reasonable prospect of identifying the suspect and obtaining compelling information or evidence to prove that an offense was committed by the alleged offender
- Reasonable grounds to believe substantial, reliable and admissible evidence may be obtained from available avenues of investigation such as the complainant, access to public records and documents, inspection of election documents, and interviewing election officers and witnesses
- Reasonable grounds to believe suspects would agree to cooperate and provide information and evidence, whether self-incriminating or against other individuals (desirable but not absolutely required)
- Whether all reliable, substantial, available and admissible information or evidence on which to reach an informed decision have been collected
- Whether an assessment of the credibility of the information, the weight of the evidence and the reliability of witnesses has been assessed on objective indicators or factors
- Whether any consideration should be given to any possible effect on the personal circumstances of anyone connected to the investigation
- Whether the inherent operational expenses associated with a more selective or comprehensive investigative approach (referral to other investigative agencies) to the various categories of offenses would be warranted and justified under the circumstances

## Chapter 8: Imposing Sanctions

The existence of rules and regulations can help mold societal norms on acceptable behavior, and consequently, alter the actions of political actors who fear public condemnation and a loss of votes if violations are uncovered. However, the practical experience from around the world is that regulations need to be combined with appropriate, effective and enforceable sanctions if they are to have the desired impact. Failure to apply sanctions can also seriously harm the credibility of PFEs who risk being seen as lacking courage or a sincere interest in their mandate.

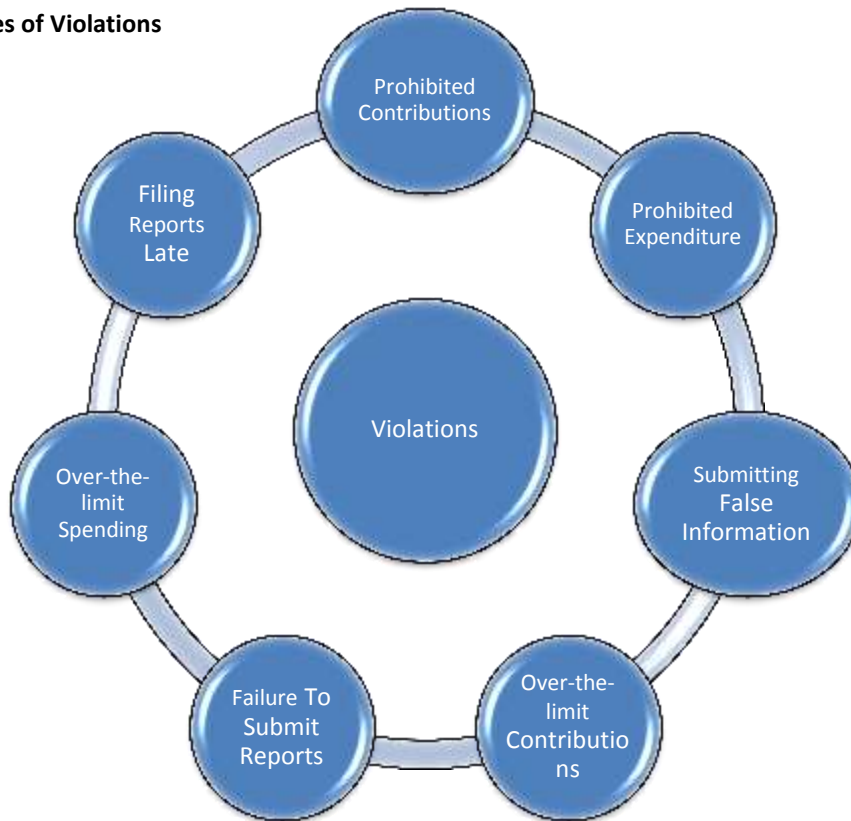
This chapter provides an overview of the different sanctions available in different countries and some practical recommendations concerning the imposition of administrative penalties and criminal sanctions. Overall, it is clear the imposition of sanctions is the weakest link in many systems of political finance oversight.

### Violations and Sanctions

One of the first steps for any agency is to clearly outline what types of violations and sanctions exist and who is to be held accountable for infringement of the law. Illegal political finance activity usually refers to contributions or uses of money that contravene existing laws on political financing. The concept is based on legalistic criteria, assuming a political act is corrupt when it violates formal standards of behavior set down by an established political system.

However, what is formally legal or illegal in a country may not fully coincide with what is considered legitimate or illegitimate behavior by the people in that country, or even by international standards. Some potentially illegal acts are not necessarily corrupt (foreign funding of democratic opposition), and some corrupt acts are not necessarily illegal (campaign contributions from organized crime are not explicitly illegal in a number of countries).

Violations of political finance law can range from minor infringements, such as a late submission of financial reports, to major fraud. Political finance enforcement agencies should specify particular violations, some of which are illustrated on the next page.

**Figure 26: Examples of Violations**

It is important that the law establish sanctions proportional to the offense. If the sanction is too mild, actors may choose to accept it rather than abstain from the illegal action. On the other hand, a major problem with overly severe penalties is that they may disproportionately damage new and relatively inexperienced political parties, or that such penalties are never implemented. In either case, public confidence in the electoral system may be diminished.

There must always be someone accountable for violations, whether an individual or an organization. Violations may also be found against agents of the candidate or party, and in some instances, against donors. In some cases, liability for violations is to be shared by the candidate, the candidate's committee and the treasurer.

In other cases, it is impossible to determine who should be held accountable for violations of the law. If the political party was held responsible for every unlawful action related to its finance, it would risk being penalized for actions over which it had little or no control. For example, in the case of political provocation, whereby a supporter of one political party makes an illegal donation or buys votes on behalf of another party he or she wants to be penalized. In Lebanon, the regulations used in the 2009 parliamen-

tary elections made it possible for opponents to spend money in favor of opponents, thereby forcing opponents to exceed their legal spending limit. Such expenditure could be incurred outside the electoral district where the opponent was running.<sup>89</sup>

The Electoral Commission in the UK referred a sitting cabinet minister to the police for failing to report donations received in connection with his candidacy to become Deputy Leader of his party. He immediately resigned from the Cabinet. Following an investigation, the police referred the matter to the Crown Prosecution Service (CPS). However, the CPS concluded it was unclear whether the candidate was the person responsible for dealing with donations under the law and brought no charges against him for the reporting failure.<sup>90</sup>

If responsibility for violations is clearly understood and it is clear who is accountable for which type of infringement, prosecution will be more likely. Yet, when personal responsibility is assigned to an individual financial agent, any adverse publicity surrounding convictions will not threaten immediate voter reaction at the polls, which is arguably the most effective deterrent to improper conduct in many countries. Because prosecutions will normally occur after an election, the candidate who has benefited from violations may well be in office by the time his aides are prosecuted. In such cases, it is important that if elected officials gain immunity against prosecution through their election, and if so, whether exceptions are made for violations relating to how they were elected.

Experience in many countries shows more effective enforcement can result from monetary fines and the possibility of limiting public funding than from severe criminal penalties. In post-communist countries, the statute book sometimes contains a relatively harsh enforcement regime for offenses involving the funding of election campaigns and political parties. Yet, the practical value of these sanctions will be nil if no one expects enforcement, which is indeed the case in many countries.

The difficulty of using criminal sanctions effectively is related to the fact that many prosecutors are reluctant to regard political finance offenses as criminal law. According to Keith D. Ewing:

At the end of the day, however, effective and severe sanctions are not the province of the criminal law only. Potentially more significant would be powers to prevent individuals from standing for election, to prevent them from taking their seats when elected, and to have a political party deregistered. Although the last is unlikely ever to be used in the case of the large parties, there are no doubt other sanctions which could be employed, such as the refusal of election expense rebates or the denial of income tax credits for contributions to their funds.<sup>91</sup>

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<sup>89</sup> Ohman, Magnus (2009) *The Political Finance Framework in Lebanon*. IFES, Washington. Page 9.

<sup>90</sup> Crown Prosecution Service (2008).

<sup>91</sup> Ewing (1998) page 230.

Finally, it should be noted that even civil or administrative sanctions are not suitable in cases of honest mistakes; then self-correction of financial reports is the best approach. For instance, the New York City Campaign Finance Board will not assess penalties for acceptance, which means deposit of a check, of a prohibited contribution if the campaign returned the check before the agency notified the campaign of the violation, even though the deposit of the check itself would be technically a violation. Such a case would be noted as a “VNP,” or violation no penalty, without assessing a monetary fine. It would be part of public record. Imposing a penalty on an honest, administrative error that is self-corrected is not dissuasive in terms of preventing future non-compliance, and therefore serves little purpose.

### **International Norms in the Sanctioning of Political Finance Violations**

There is limited guidance in international documents regarding sanctioning of political finance violations. The United Nations Convention Against Corruption states, “Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.”<sup>92</sup> However, similar general guidance is not available regarding private persons. The African Union Convention on Combating Corruption only states that countries should, “Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties,” not what sanctions should be applied in case of violations.<sup>93</sup>

There is, however, some guidance in documents from European institutions relating to penalizing political finance violations. The starting point should be the Council of Europe Recommendation Rec (2003)4 of the Committee of Ministers to Member States on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, which states (Article 16) that:

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.

It is unclear what the difference between “effective” and “dissuasive” is in this context, but presumably the first refers to the possibility to impose the sanctions, whereas the latter focuses on sanctions having the intended effect of deterring future non-compliance. By “proportionate,” it is meant that the regular principle of Rule of Law – that there should be a balance between violation and sanctions – can be applied to mean a more severe violation should subsequently incur more severe sanctions.

Further information is available in the 2000 Venice Commission Guidelines for Financing of Political Parties (Articles 13-15):

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<sup>92</sup> UNCAC Article 26.4. UNCAC (2004) page 21.

<sup>93</sup> African Union (2003) page 13.



Any irregularity in the financing of a political party shall entail sanctions proportionate to the severity of the offence that may consist of the loss of all or part of public financing for the following year.

Any irregularity in the financing of an electoral campaign shall entail, for the party or candidate at fault, sanctions proportionate to the severity of the offence that may consist of the loss or the total or partial reimbursement of the public contribution, the payment of a fine or another financial sanction or the annulment of the election.

The above-mentioned rules including the imposition of sanctions shall be enforced by the election judge (constitutional or other) in accordance with the law.

The first paragraph of the recommendation focuses on a particular sanction, namely the loss of public funding. Almost all European countries today use some level of public funding for political parties (Azerbaijan, Andorra and Malta are the only exceptions). The second paragraph includes the same recommended sanction for campaign-related offences by political parties and candidates – direct public funding of candidates is rare in Europe – but it also mentions fines and the possibility of annulling an election. Notably, it does not refer to criminal sanctions such as imprisonment. Finally, it is stated that sanctions should be implemented in accordance with the law.

In 2010, the OSCE/ODIHR and the Venice Commission issued Guidelines for Political Party Regulation, including the following recommendations on sanctions (Articles 215-217):

Irregularities in financial reporting, non-compliance with financial reporting regulations or improper use of public funds should result in the loss of all or part of such funds for the party. Other available sanctions may include the payment of administrative fines by the party. As noted by the Council of Europe’s Committee of Ministers, political parties should be subject to “effective, proportionate and dissuasive sanctions” for violation of political funding laws. Sanctions for violations of law are more fully discussed below in paragraph 200.

As noted below in paragraph 200, all sanctions must be proportionate in nature. In the area of finance violations, this should include consideration of the amount of money involved, whether there were attempts to hide the violation, and whether the violation is a reoccurring violation.

While criminal sanctions are reserved for serious violations that undermine public integrity, there should be a range of administrative sanctions available for the improper acquisition or use of funds by parties.

The references to “paragraph 200” are likely typographical errors, and the actual reference should be to paragraph 224:

Sanctions should be applied to political parties found in violation of relevant laws. Sanctions at all times must be objective, enforceable, effective and proportionate to their specific purpose. The use of sanctions to hold political parties accountable for their actions should not be confused with prohibition and dissolution based on a party’s use of violence or threat to civil peace and the democratic constitutional order of the country. Prohibition and dissolution based on such extreme circumstances is not a matter of holding parties accountable for legal violations, but is in fact done because is it necessary in a democratic society. Where a party is a habitual offender of legal provisions and makes no effort to correct its behaviour, the loss of registration status might be appropriate. The loss of registration status may be significant where there is state financial support for parties.

These paragraphs reiterate earlier recommendations, although it now directly recommends using loss of public funding as a key sanction. It also elaborates, stating that the basis for proportionality can relate to the amounts involved in violations if there were attempts to hide the violation or they were reoccurring. Criminal sanctions are now mentioned (although only for serious violations) and, importantly, it is pointed out that there should be a range of sanctions available to make proportional penalizing possible. The general discussion about sanctions also notes that loss of registration status may be an appropriate sanction for habitual violations. A distinction is made between this and the dissolution of political parties that act against democratic principles, although it should be noted that in many countries there is no legal distinction between the loss of registration status and dissolution.

#### **Case Study – Sanctions for Non-Compliance with Disclosure Requirements**

##### *U.S. and Georgia*

The District of Columbia’s Public Disclosure Commission in the **U.S.** handed out three fines in June 2011 against a House Republican political committee, a Democratic county executive and an advocacy group for immigrants. This included \$1,700 that was suspended from the House Republican Organizational Committee because the group spent surplus funds in October 2010, but failed to report it until one of their staff noticed the error two weeks after the political finance disclosure report was handed in.

In a **Georgia** election, subjects who do not submit a report on the election campaign fund are banned from taking part in elections, including any relevant upcoming elections. Moreover, in terms of legal sanctions, the Central Election Commission might not take into account the votes received by those violators of campaign finance regulations. After the 2004 general elections, only 12 of 16 parties registered with the Central Election Commission submitted financial reports. As a result of the CEC decision, four parties – Union of Democratic Revival; National Democratic and Traditionalists Party; National Alliance of United Georgia; and National Revival – were not allowed to take part in subsequent elections.

To summarize, the European standards, as expressed by the CoE and OSCE, mean countries should have a range of enforceable, proportionate and effective sanctions available against political finance violations, with an emphasis on partial denial of public funding and fines rather than criminal sanctions and the de-registration of political parties.

In an American context, the Administrative Conference of the U.S. (ACUS) has advocated for the use of administrative penalties since 1972, when it stated that, “federal administrative agencies should evaluate the benefits which may be derived from the use (or increased use) of civil money penalties as a sanction.”<sup>94</sup> This principle was applied when the Federal Election Campaign Act was passed as the FEC is specifically empowered to impose civil monetary penalties for breaches of the campaign finance laws.<sup>95</sup> Thus, the authority to impose administrative penalties is fundamental to any agency's effective enforcement.

A clear system of sanctions should be established for any political party or candidate that fails to meet disclosure requirements by failing to file a declaration; filing incomplete or false information; or failing to present the financial report in a timely manner. Effective and appropriate sanctions are also needed against violations of other political finance regulations, such as exceeding contribution or spending limits.

## Principles of Political Finance Sanctions

Sanctions against political finance violations should adhere to the following underlying principles.

### ***Enforceable***

There is no point in having sanctions that are not applied when violations occur. It is necessary to design sanctions that can be enforced when needed. This has several implications. There must be clarity in the criteria (the violation) to trigger a sanction, the sanction itself and the process of imposing it.

In relation to how sanctions are applied, one question to consider is the use of administrative versus criminal sanctions. To quote a report on Sweden by the Group of States against Corruption (GRECO), “GRECO has held on several occasions that as a complement to ordinary criminal sanctions, which may be cumbersome to apply in practice, more flexible sanctions ought to be introduced in respect of less serious violations of the political financing rules, which do not necessarily require a criminal court procedure.”<sup>96</sup> This issue is important in countries where institutions such as the judiciary may be tainted by allegiance to certain political forces. In such cases, it may be beneficial if the political finance oversight institution has access to sanctions it can impose.

The need for more flexible, proportional sanctions was also identified in the UK and in 2009; parliament amended the party finance laws to provide for a suite of civil sanctions for most criminal offences estab-

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<sup>94</sup> Administrative Conference of the U.S. (1991) page 67.

<sup>95</sup> See FECA, 2 USC at Section 437g.

<sup>96</sup> GRECO Sweden (2009) page 17.

lished by the Political Parties, Elections and Referendum Act 2000. The UK EC now has a range of sanctions at its disposal, including fixed and variable monetary penalties, compliance notices, restoration notices, enforcement undertakings and stop notices.

Political finance enforcers in Canada and the U.S. have resorted to small administrative fines as a method of punishing minor infringements and encouraging voluntary compliance with the law. This system, similar to the system of specified fines for illegal parking in many cities, has the advantage that it is easy and inexpensive to administer. In the U.S., determining which cases should be subject to criminal prosecution is done by the Justice Department. Two main factors are considered: the dollar amount involved in the illegal activity and the level of criminal intent it reflects.

Another factor is the statutory limitation period for sanctions. Investigating political finance violations takes time, and the responsible institutions must first find out there is something to investigate. Whereas some countries have no statutory limitation period and others have limits of several years, certain European countries demand that cases of political finance violations are concluded within months. As GRECO has reported regarding Romania, its "...six month period is clearly too short... Representatives of the PEA [Permanent Electoral Authority] themselves confirmed the inadequacy – in the context of their responsibilities and activities – of this limitation period. Other GRECO countries evaluated to date are confronted with the same issue even though the statute of limitation is one year."<sup>97</sup> Similarly, it was noted in the GRECO report on Moldova that:

To ensure that the bodies assigned responsibility for supervising the financing of political activities can perform effective oversight, they must be allowed sufficient time to conduct their enquiries and investigations in this complex, sensitive field. In addition, to be effective, these bodies must be able to open, or re-open, a file some years after information or relevant data have been reported and be able to compare data over a number of years.<sup>98</sup>

Unfortunately, unless there is the political will and capacity within institutions set to apply sanctions against political finance violations, no type of sanction will be enforceable.

### ***Proportional***

Sanctions must also be proportional to the violation incurred, so a more serious violation will trigger a more serious sanction than a minor violation would. In terms of political finance violations, criteria to measure seriousness can include the amounts involved, whether there have been attempts to hide the violation and if violations have occurred repeatedly. Failure to adhere to milder sanctions, such as warnings, should also trigger more serious penalties.

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<sup>97</sup> GRECO Romania (2010) page 32.

<sup>98</sup> GRECO Moldova (2011) page 25.

Focus should be on violations that have a direct political effect rather than technical mistakes. As Craig C. Donsanto has argued regarding the process in the U.S.:

A fair, flexible, yet workable enforcement process is the core of any campaign finance law's effectiveness. Most violations of the FECA [Federal Election Campaign Act] are committed as a result of ignorance, negligence, misunderstanding or mistake. Those offences are customarily pursued by the FEC administratively, with the usual penalty being that the offending transaction is 'backed-out,' the missing information added to the public record, and the parties to the transgression required to pay a small monetary penalty and agree to mend their ways. On the other hand, purposeful and financially large violations of the Act committed by offenders who know what the law requires or forbids and flout notwithstanding that knowledge are subject to prosecution under Section 437g's criminal penalty.<sup>99</sup>

It should also be considered that, given the varying financial situation of different political parties, a sanction such as a fixed fine may have a dissimilar impact on different parties. Suspending public funding for a certain period can, in some situations, answer this problem since larger political parties in European countries receive more public funding, and suspending one month's worth of public funds will mean a larger amount for a larger party. However, this is only relevant in countries where public funding makes up a large, reasonable part of parties' incomes – in countries with lower levels of public funding, smaller parties tend to be more dependent on public funding.

To make a sanctioning system proportional, there must be a range of sanctions available. These should include warnings (or something similar) to allow parties to rectify minor violations that may be inadvertent, and range to serious criminal sanctions in case of widespread and reoccurring fraud. It is unlikely any sanctioning system can achieve proportionality unless effective systems exist by which political actors have to forfeit contributions they have received against the regulations.

In many cases, the exact criteria to take into account when deciding on a sanction are not expressly stated in legislation. In such situations, decisions must be made about what factors to take into account when deciding on a particular sanctions.

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<sup>99</sup> Donsanto (1999) page 10.

**Figure 27: Factors in Determining Size of Sanction**

The amount involved in the violation	Receiving a prohibited donation of \$1,000,000 should carry a tougher sanction than receiving \$1,000.
The detrimental impact of the violation	A technical infringement with no direct effect should carry limited sanctions, while widespread vote buying that threatens the fairness of an election should carry severe sanctions.
If the violation was committed intentionally	While ignorance of the law is no defense, intentional violations should be sanctioned more severely.
If attempts have been made to hide the violation	Actors who report possible violations themselves should normally not be sanctioned. However, those who have attempted to hide violations should be sanctioned more severely than those who have not.
If the violation is a repeat offence	Actors who continue to commit violations should face more severe sanctions.
If the actor has refused to abide by earlier ruling	Actors who refuse to abide by earlier rulings (for example, to return a prohibited donation) should be sanctioned more severely.
Possible detrimental impact on the democratic process or pluralism of imposing the sanction	Sometimes a particular sanction may be suitable in other regards, but it should not be imposed in case doing so would negatively impact the democratic process. This can, for example, be the case if a particularly large fine would bankrupt a political party. See further in the next section.

If criteria for deciding the severity of a sanction is not decided by law, the PFE should clearly establish (and make public) the standards that will be used, and as necessary, how these standards will be interpreted.

### ***Dissuasive***

It will not be possible to control the role of money in politics if sanctions are not available that can dissuade political actors from misbehaving. What constitutes dissuasive sanctions will vary between countries; sanctions in each system must align with the incentive structures of political parties and candidates. Individuals who engage in serious fraud should risk imprisonment, even though that may not require separate penalty provisions relating to political finance.

The type of sanction that discourages future non-compliance will also depend on the nature of the violation at issue. In some instances, loss of public funding may serve as a deterrent against breaking the law, for others, the adverse publicity attached to being found guilty of breaching the law is sufficient. At the other end of the spectrum, imprisonment may deter those inclined to commit serious fraud. More draconian sanctions, like dissolution or deregistration of a political party, raises interesting questions. On one hand, it may be a reasonable sanction and help deter serious, long-term disregard for party funding regulations. However, imposing this type of sanction on an organization for the actions of its officers or members has serious implications, and requires the dissuasive impact to be balanced against the freedoms of political association and the goal of encouraging political participation.

While the responsibility of political parties for actions undertaken by individuals within it must be limited, it is not unreasonable that dissolution serve as an ultimate sanction in cases of serious disregard for political finance regulations over time.<sup>100</sup> There may be situations where the freedom of association needs to be balanced against public confidence in the political system.

Regarding the last item in Figure 27, when considering the proportionality of sanctions, it is important to consider the impact of violations and sanctions on democratic pluralism. The OSCE/ODIHR has stated that “[p]rior to the enactment of any sanction, the regulatory authority should carefully consider the sanction’s aim against a possible detrimental effect to political pluralism or the enjoyment of protected rights.”<sup>101</sup> In other words, while political finance regulations are intended to protect the integrity of political systems, sanctions used against political finance violations must not themselves obstruct political pluralism or the freedom of expression.

To be dissuasive, it is also valuable if all sides engaging in violations can be targeted. As GRECO noted in their report on Spain, “the available sanctions are directed solely at the recipient of the contribution, i.e. the political party, and not at the donor/other entities upon which the law imposes obligations and whose infringements may thus go unpunished; the introduction of additional types of sanctions in such cases would be necessary.”<sup>102</sup>

### **Types of Sanctions**

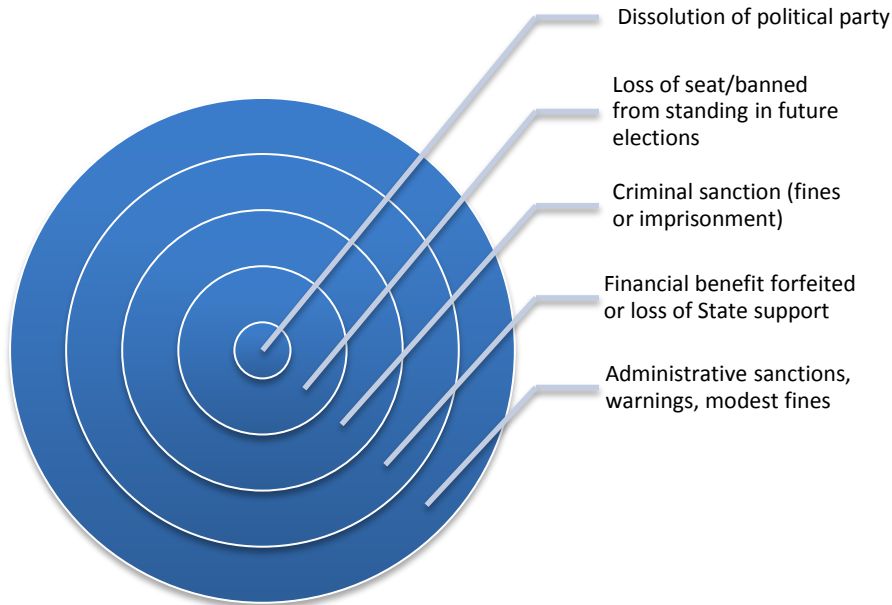
As noted, there needs to be a range of sanctions available to respond to various types of political finance violations, as illustrated in Figure 28.

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<sup>100</sup> As the OSCE/ODIHR has stated, “Dissolution of political parties based on the activities of party members as individuals is incompatible with the protections awarded to parties as associations. This incompatibility extends to the individual actions of party leadership, except cases in which they can be proven to act as a representative of the party as a whole.” OSCE/ODIHR & the Venice Commission (2010) page 24.

<sup>101</sup> OSCE/ODIHR & the Venice Commission (2010) Article 227.

<sup>102</sup> GRECO Spain (2009) page 21.

**Figure 28: Examples of Sanctions****Warnings**

One potentially useful sanctioning tool is to issue warnings. This sanction has several advantages; it is easy and quick to apply (and thereby easily enforceable), and it can have a significant impact where political parties fear being seen by the public as corrupt. This is sometimes referred to as “political sanctions,” costing violators votes by naming and shaming them.

However, there are also disadvantages. If public attention is not focused on issues relating to political finance, or if parties and politicians are expected to behave in a corrupt manner, evidence that they actually do misbehave may not amount to an effective political sanction. In such cases, warnings are unlikely to have a significant effect on political finance transparency. Casas-Zamora showed that while formal rules required political parties in Costa Rica to submit financial reports, “most [parties] do not do so, even after repeated warnings from the electoral authorities.”<sup>103</sup>

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<sup>103</sup> Casas-Zamora (2005) page 146.



For warnings to have effect in such situations, failure to adhere to them must automatically trigger more serious sanctions. This is not always the case, and GRECO has noted about Turkey that, “if the Court finds any contravention by a political party... the Court passes a decision of warning against the party concerned, asking it to remedy the contravention (failure to obey such a warning is not subject to any sanction).”<sup>104</sup>

In other words, in countries where voters are unlikely to penalize violating political parties and candidates, warnings should be used to provide the violator a chance to rectify the situation and avoid a more serious sanction.

### ***Compliance and Restoration Notices***

A compliance notice sets out action that the party or person in breach of the law must undertake so the breach does not continue or recur. A restoration notice sets out action that must be taken to restore the position to what it would have been had there been no breach. It is helpful to use these in combination with a financial penalty.

Few countries use this type of sanction. However, they became available in the UK in December 2010.<sup>105</sup> In a recent case where a political party had a history of submitting accounts late, the commission issued a penalty notice for the late filing, as well as a compliance notice requiring the party to submit a plan for completing and submitting the next set accounts on time. The notice also required the party to update the commission on progress against the plan. The party’s next set of accounts were filed on time.

### ***Temporary Suspension of Public Funding (For Example, Until Report is Submitted)***

European institutions often favor the denial of public funding as a sanction for political finance violations, which is logical, given the high dependency on public funds among European political parties. There are two versions of this sanction – withholding funding until a certain situation is rectified, and denying political parties (or candidates) funding whether or not they rectify the situation.

The logic between these two approaches differs. The focus of the former is for the situation that led to the sanction to be rectified, such as the submission of campaign finance reports. In the latter situation, the focus is on preventing the actor from behaving in the same manner in the future.

If financial transparency is a priority, the former approach is reasonable. There are, however, some problems. The GRECO report on the Czech Republic noted, “(temporary) suspension of public funding allows parties/movements to test the legality of their actions, safe in the knowledge that they can rectify their mistakes (and that the public funding will be reinstated retroactively).”<sup>106</sup> If parties will receive suspended public funding once they submit their reports, they may find it advantageous to delay their submission, for example, until public interest in an election has waned.

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<sup>104</sup> GRECO Turkey (2010) page 14.

<sup>105</sup> The Commission can also issue a penalty of up to £20,000 if a party fails to comply with a compliance notice.

<sup>106</sup> GRECO Czech Republic (2011) page 22.

***Losing Right to Public Funding for Specified Period/Amount***

The second approach is to punish the violator by denying it a certain amount of public funds. This solution can be made proportional by adjusting the amount (or period) in relation to the violation.<sup>107</sup>

There is, however, one consideration that affects both the proportionality and the dissuasiveness of denying violators public funding – their relative dependency on such funds. In countries where public funds constitute a majority of parties' income, loss of public funding can be an effective sanctioning tool. This is the case in Norway:

The Norwegian authorities indicate that against the background of the relatively high public funding provided to political parties (i.e. about €40 million for an electorate of approximately 3.5 million voters) and the relatively modest level of private donations and other income sources for political parties at county and municipal level, the withholding of grants is considered to be an effective, proportionate and dissuasive sanction within the meaning of Article 16 of Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.<sup>108</sup>

However, in countries where public funding makes up a minor portion of the amounts raised by political parties (the larger UK parties would be an example, as would be most parties in Africa), withholding public fund is unlikely to prove dissuasive. The only real reason for denying parties public funds in these contexts is a moral argument that State funds should not be provided to actors that ignore rules established by the State. Other sanctions will be needed to ensure compliance with these rules.

As noted, different political parties within a country may also depend on public funds to varying degrees, and the impact of a loss of such funding may not be in proportion to the violation incurred. In many cases, larger political parties are more capable of raising private funds, and may thereby be less effected by withheld public funding.

***Fines***

Fines are the most common form of sanctions used in many parts of the world, and the popularity of the tool can be explained by its simplicity and relative ease with which it can be enforced. There are mainly two types of fines. The first are small, "on-the-spot" financial sanctions against minor violations, often added to a warning to show an offence has occurred. The UK Electoral Commission issues fines at a fixed

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<sup>107</sup> Such a proportional approach is, however, not always adopted. In Bulgaria for example, "the most effective measure remains the loss of the entire state grant, but this again, is a severe measure since under article 36 paragraph 1, the entitlement to the grant is definitely lost until the next elections (and not in proportion to the seriousness of the offence or temporarily until certain deficiencies have been addressed)" GRECO Bulgaria page 28.

<sup>108</sup> GRECO Norway (2006) page 15.

amount of £200 (around \$300 USD) for minor offences.<sup>109</sup> Such fixed fines are intended to put emphasis on warnings without being unduly burdensome for the PFE or the recipient. The opportunities to appeal this type of fine are often limited.

The other type of fine is meant to penalize larger offences, and is often proportional to the offence. In countries where public funding dominates party income, the difference between denying public funding and imposing fines may be minor, as political parties will (de facto) use public funds to pay the fines. In such situations, the fine is less suitable than denying public funding, as it requires the State to pay out money, only to demand its return.

In countries where public funding only constitutes a minor part of party income, fines may be a more effective sanction than loss of public funds. In deciding on the size of fines, both the principles of proportionality and dissuasiveness should be considered. One of the largest fines issued in political finance cases was the \$8 million that the Empire Sanitary Landfill company in the U.S. was ordered to pay in 1997, after it was found that funds had been secretly provided to candidates, including Bill Clinton.<sup>110</sup>

The PFE should be aware that, in cases where the amount of fines are expressed directly in the national currency in legislation, the actual value of these fines will diminish over time due to inflation. It is better to express the value of fines in a manner that takes inflation into account; this could include using a multiple of a minimum salary.

Another important issue is whether fines are expressed as a fixed amount, a range or a maximum amount (for example, “\$500 to \$1,000” or “not more than \$1,000”). Such options mean relevant factors must be taken into account, such as the seriousness of the infringement and/or whether it was intentional.

### ***Forfeiture of Received Donations***

Actors that receive funding against the existing rules should be required to either return this to the donor or transfer funds to the State coffers. In practice, they should transmit an amount equivalent to the donation in question or the current market value of any prohibited in-kind donations. Allowing parties to return funds to the donor is preferable if there may be uncertainty whether donations are allowed or not.<sup>111</sup> There should be a time limit when funds must have been returned or transferred. Sanctions of this kind do not exist everywhere. In examining practices in France, GRECO noted:

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<sup>109</sup> For prescribed contraventions (and for those triable in a Magistrate’s Court), fines vary from £250-£5,000), while for offences triable in either a Magistrate’s Court or a Crown Court, the fines vary from £250 - £20,000. The commission can also issue non-compliance penalties up to a maximum of £20,000. More information is available at <http://www.electoralcommission.org.uk/party-finance/enforcement/sanctions>

<sup>110</sup> There was no evidence that the candidates in question knew that they were receiving illegal funds. New York Times (1997) page 1.

<sup>111</sup> This can, for example, concern situations where political parties must not raise more than a certain amount over a determined period. In these cases, they should be allowed to return donations received after the limit was

The French authorities confirmed after the visit that there is currently no legal possibility to confiscate illegal donations to political parties. They also indicated that the current legislation does not provide for the possibility to confiscate illegal donations made to political parties and that, in principle: auditors would require parties to sort out the situation (by giving back to a legal person any donation made by it or reimbursing the sums that would exceed the ceiling allowed for donations).<sup>112</sup>

Unless a regulation of this kind exists, political parties and candidates may be tempted to receive significant donations in blatant violation of regulations, as few sanctions are likely to match the amounts the actor may receive. It is even conceivable that party officials or staff may consider taking a shorter prison sentence if the party can keep a particularly sizeable donation.

There is also the possibility of combining a forfeiture sanction with a fine by demanding that donations received against the rules should be transferred to the State and multiplied by a factor of two or three. This means that if a Slovak political party willfully accepts an illegal donation of €1,000,000, the Ministry of Finance can require the party to pay an amount of €2,000,000. Similar rules exist in Germany and Croatia, whereas, in Hungary, the amount of the illegal donation must be paid to the State budget, upon which the same amount is also withdrawn from the party's public funding.

### ***Imprisonment***

The most serious sanction available in many countries is imprisonment. Prison sentences should be reserved for the most serious of violations, which should include intentional acts of serious fraud. This hardly applies to the Macedonian requirement that, in cases of political parties "failing to report the sources of election campaign funding," the campaign manager can be sentenced to three years in prison.<sup>113</sup>

Imprisonment may be most dissuasive when targeting those who have direct control over the correctness of political parties' financial records, such as financial secretaries and auditors. In many parts of Central and Eastern Europe, public confidence in formal auditing processes is low.

While fairly rare, there have been several cases of senior politicians sent to prison for political finance related violations. While the impeachment of the South Korean President in 2004 failed, the "former Millennium Democratic Party (MDP) Chairman was... [sentenced] to six years in jail and 400 won in fines on charges of taking illegal political funds from several firms."<sup>114</sup>

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reached to the respective donor. The institution in charge of enforcing regulations of this kind should also strive to provide clear information on what is and what is not allowed, if possible, including giving advice on a case-by-case basis.

<sup>112</sup> GRECO France page 33.

<sup>113</sup> GRECO Macedonia (2010) page 14.

<sup>114</sup> Pinto Duschinsky (2006) page 189.

In some countries where prison sentences are used for political finance violations, regulations are contained in legislation other than the Electoral or Political Party Law, such as the Criminal Code or one relating to accounting.

### ***Loss of Nomination for Election or Elected Seat***

A major goal for almost all political parties is to win elected office. Sanctions targeting their ability to do so can be highly dissuasive, but there may be few violations for which such sanctions can be considered proportional.

The OSCE/ODIHR believes this sanction should be applied “only as determined by a court of law after compliance with applicable legal protections for due process of law and only if the legal violation likely impacted the electoral result.”<sup>115</sup> It is unclear how a court is to determine whether, for example, a foreign donation received against regulations may have impacted electoral results. Countries that use this type of sanction do not include such requirements, such as Bulgaria and Romania, where elected officials may lose their seat for violations including the receipt of prohibited funds.<sup>116</sup> In Armenia, this type of sanction was applied in 2003 when “the registration of one candidate was repealed for failure to submit a financial statement.”<sup>117</sup>

A successful Westminster parliamentary candidate in the 1997 election and her agent were convicted of election fraud for failing to declare all election expenditures. As a result of her conviction, the first under this law in over 100 years, the candidate was disqualified from the House of Commons. Although the conviction was quashed by the Court of Appeal, she lost her seat at the next election.<sup>118</sup>

This type of sanction should be used with outmost caution, so as not to jeopardize the right of citizens to be elected, as protected by Article 25 of the UN International Covenant on Civil and Political Rights. The UNHCR General Comments state that “[a]ny restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria.”<sup>119</sup>

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<sup>115</sup> OSCE/ODIHR and the Venice Commission (2010)p 45.

<sup>116</sup> “...if a person who has been elected councillor or mayor is found to have used election campaign funds provided in violation of the provisions of article 68 on the prohibited sources of funding, ‘at the proposal of the parties, coalitions and initiative committees, having taken part in the elections, and the prosecutor’, the respective district court shall declare the election invalid and the received sums shall be adjudicated in favour of the state” (GRECO report on Bulgaria, page 17).

“...if by final court decision, one or more candidates who have been elected are convicted of an offence in connection with the financing of political party or the election campaign, their mandate of parliamentarian or as local elected official can be cancelled by the judge (Article 46 paragraph 1, Law no. 334/2006). There are no similar rules for holders of an Euro-MP mandate, nor for a presidential mandate.” (GRECO report on Romania, page 22). Similar sanctions are also available in Malta.

<sup>117</sup> GRECO Armenia (2010) page 14

<sup>118</sup> R v Fiona Jones, Desmond Whichler [1999] EWCA CRIM 1094, Court of Appeal of England and Wales.

<sup>119</sup> UNCHCR (1996) CCPR/C/21/Rev.1/Add.7, paragraph 15.

One of the most high-profile cases related to then Brazilian President Fernando Collor de Mello, who was impeached in 1992 in connection with an influence-peddling scheme run by his campaign treasurer. While Collor resigned before the impeachment process was completed, he was still found guilty and his political rights suspended for eight years.

However, it can be reasonable that in countries where candidates submit separate financial statements that submission is made part of the candidate nomination process and/or a requirement for taking up the elected. GRECO also reports that “[t]he experience in other countries has shown that ineligibility – as one of the sanctions that can be imposed on an elected official or candidate – can be a powerful tool, also from a preventive point of view.”<sup>120</sup>

### ***Suspension of Activities***

Another sanction is the suspension of political parties, meaning it is legally required to cease normal activities. This can include nominating candidates for elections, fundraising, advocacy and campaigning activities. The suspension can either be for a certain period or until a certain condition has been fulfilled, such as the submission of required financial statements. This system is not common. In Europe, it is found only in Hungary, the Czech Republic and Latvia. Currently, it is only being applied in practice in latter two.

The Czech Political Party Law (Article 14.2) explains, “A political party or movement whose activities have been judicially suspended may only act in matters whose objective is to remove the cause of suspension.” There must be clear rules on how political parties can end their suspension and for appealing a decision of suspension.

Suspensions of political parties must not be used as a tool to stop certain groups from participating in elections. Therefore, in cases where sanctions are imposed close to an election period, solutions should always be sought either allowing parties to end a suspension in good time before the election, or having the suspension come into effect after the election is concluded. This is assuming the party has at that time not already fulfilled the necessary criteria for avoiding the penalty.

Where deregistration (dissolution) is a potential sanction it is recommended that such a penalty is preceded by suspension, to ensure those involved in the political party realize the seriousness of the situation. In the case of political parties that have ceased to function in practice, suspension will only be a formality.

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<sup>120</sup> GRECO Bulgaria (2010) page 28.

### ***Deregistration of Political Party***

There are two issues to take into account relating to the deregistration or dissolution of political parties. The first is that non-compliance with reporting requirements can be used as one indication among several that a political party is not active (not presenting any candidates in consecutive elections would be another). In countries where it is important that a political party is active to maintain registration, there is little harm done to the democratic process by deregistering inactive parties, as long as the group can continue activities in another format and apply for new registration as a political party if it should fulfill the necessary requirements for party registration later.<sup>121</sup>

It is a different situation to de-register active political parties. Doing so can jeopardize the freedom of association as guaranteed by the UN International Covenant on Civil and Political Rights (Article 22). To satisfy the requirement of proportionality, deregistration should only be considered for the most serious violations. For example, the Council of Europe recommends that donations from foreign sources should be banned (Rec 2003/4, Article 7). However, it is unclear if they would agree with the Turkish solution, where “a political party which receives financial assistance from a foreign State, an international organization or a foreign natural or legal person in violation of article 68, paragraph 10 of the Constitution is to be closed down upon decision of the Constitutional Court.”<sup>122</sup>

The rules for introducing and appealing a deregistration process must be clear and guarded against political influence. The Czech approach may be useful to consider. There, the dissolution of a political party can only happen after a one year suspension of the party’s activities, during which the party should reasonably have a chance to rectify the violation that lead to its suspension. If this does not happen, the President can submit a motion to the Supreme Administrative Court to dissolve the party in question.<sup>123</sup>

### **Involvement of the Judicial System**

Enforcement of political finance rules is dependent not only on existing laws, but a willingness to comply and determination of regulators to detect violations and punish offenders. In a legal system that gives the last word on political questions to judges, enforcement may face an additional hurdle, namely the courts’ decisions. Karl-Heinz Nassmacher rightly suggests that enforcement will also depend on such

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<sup>121</sup> This opinion does not significantly differ from that expressed in the OSCE/ODIHR (2010) Guidelines for Political Party Regulation; “[i]f a party originally met all requirements for registration, then it should be able to continue party activities outside of elections. At a very minimum, rather than losing their rights as a formal association, parties which did not receive adequate support in an election should be able to continue their association under the laws governing general associations” (page 23). In some countries, the view of political parties is more relaxed, for example, in Sweden where political parties do not have to register to exist, or in the UK, where parties must register but two people are sufficient to do so (there were 399 registered political parties in the UK in September 2013).

<sup>122</sup> GRECO Turkey (2010) page 15.

<sup>123</sup> GRECO report on the Czech Republic page 13. This system seems significantly more secure than the Polish version, where the National Electoral Commission takes the case to the District Court in Warsaw, which decides on deregistration. Political Parties Law of Poland, Article 38c.

who is to sue, what issues are to be deliberated and which principles a court will favor in its ruling—political equality or political freedom.<sup>124</sup>

Some scholars and practitioners dealing with political finance argue “more and more election-related financing is deemed to fall outside the purview of the regulation as it is interpreted by agencies, amended by legislators or restricted by court rulings.”<sup>125</sup> From an international perspective, court involvement in electoral politics and in enforcing political finance rules is a relatively new, although a seemingly growing phenomenon. The saliency of courts in the electoral process can be seen as a combination of three factors:

1. Since the late 1940s, West European, East European, Asian and Latin American nations have gradually established strong judicial institutions and equipped them with more powers than ever before.
2. The introduction of public funding of parties and candidates has, in most countries, been accompanied by disclosure requirements that carry with them legal sanctions for violations.
3. There is a growing public demand for political accountability and increasing uneasiness with a situation in which corrupt politicians are allowed to retain their posts untouched when a cloud of suspicion and mistrust hangs over their actions; this is combined with a decrease in trust in political actors overall.

Courts are generally prohibited from engaging with major political institutions and can therefore be in a vulnerable situation when intervening in the political process. This is especially so when court decisions affect the careers of elected representatives in legislative institutions. A court decision is more likely to become a political issue when it has invalidated, rather than upheld, a policy choice made by political branches. This general observation applies to disclosure cases as well.

When a court clears a politician or party of a charge of violating electoral rules, the losing side may be disappointed. However, their frustration tends to be directed at the political body that has allegedly not complied with the prescribed norms, not the court. On the other hand, when the court decides against an elected official or party, it becomes the chief offender. Further, in exercising judicial review in matters relating to political finance, the court takes a position at odds with the political majority in many cases.

Nevertheless, as Figure 29 demonstrates, court involvement in enforcing disclosure requirements is becoming common practice not only in Western countries, but in an increasing number of emerging democracies. It seems that more data is becoming available as courts are more willing to exercise their authority and intervene when disclosure requirements are circumvented or limitations on financial activities breached by parties and candidates.

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<sup>124</sup> Nassmacher (2003) page 154.

<sup>125</sup> Ibid, page 154.



**Figure 29: Political Finance Court Cases: Disclosure of Financial Reports**

Country	Court Cases
<p><b>New Zealand</b></p>	<p><b>Facts:</b> The requirement of submitting reports by political parties was put into question.</p> <p><b>Decision:</b> The Court of Appeals upheld the need for adequate financial reporting by political parties. Detailed disclosure assists the supervising body so that they are satisfied that statutory limits have been complied with. Disclosure is also of value in that it increases public confidence in the political system and enables the electorate to make informed choices about which party or candidate to support.<sup>126</sup></p>
<p><b>South Africa</b></p>	<p><b>Facts:</b> The Institute for Democracy in South Africa (IDASA) declared that respondents (the four main political parties in parliament - including The African National Congress) were obliged to share access to their donation records relating to all the donations they received during the a period of time in 2003-2004 due to a constitutional provision. Court proceedings began in 2003 as a result of refusal of political parties to disclose the information requested.</p> <p><b>Decision:</b> The court ruled against IDASA in the case, due to the fact that the argument of disclosing records of political donations was a complex policy issue best dealt with through legislation. The relief asked sought by IDASA was not appropriate in light of claims they had made. Despite this loss for IDASA, the judge’s decision states “the [...] conclusion does not mean that political parties should not, as matter of principle, be compelled to disclose details of private donations.” (page35) Additionally, the court put forward the notion that if funding of political parties was regulated by specific legislation, it would be in the interest of greater openness and transparency for South African democracy.<sup>127</sup></p>
<p><b>U.S.</b></p>	<p><b>Facts:</b> Ted Stevens, a Republic Senator from Alaska, was discovered to have made false statements about more than \$250 000 he had received from the oil company Veco, which he then used to remodel his home. The Senator falsified his financial reports and failed to report these corporate gifts on his Senate disclosure forms. Stevens was put under federal investigation.</p> <p><b>Decision:</b> In July 2008, Stevens was found guilty on all seven counts of making false statements and corruption. When he ran for re-election for Senate, he lost narrowly at the polls. Despite the guilty verdict and the fact he the senator was facing up to five years in prison for criminal charges, the conviction was dismissed six months later on the grounds of gross prosecutorial misconduct.<sup>128</sup></p>

<sup>126</sup> Electoral Commission v. Priscilla Tate (1999).

<sup>127</sup> B.M. Griesel (2003).

<sup>128</sup> Johnson and Kane (2008) page 1.

Figure 30: Political Finance Court Cases: Contributions

Country	Court Cases
Canada	<p><b>Facts:</b> The case concerns a claim challenging the constitutionality of s. 33(1) of the Public Service Employment Act, which prohibits public servants from "engag[ing] in work" for or against a candidate or a political party.</p> <p><b>Decision:</b> The Federal Supreme Court decided that those restrictions apply to a great number of public servants who in modern government are completely divorced from the exercise of any discretion that could be in any manner affected by political considerations. The need for impartiality and indeed for the appearance thereof does not remain constant throughout the civil service hierarchy. Section 33, therefore, is over-inclusive and, in many of its applications, goes beyond what is necessary to achieve the objective of an impartial and loyal civil service. This section should be redrafted by the legislature.</p> <p><i>Osborne v. Canada</i> (1991). Files Nos. 21201, 21202, 21203.</p>
Japan	<p><b>Facts:</b> On June 30, 2000, Nakao Eiichi – who had served as Japan’s Minister of Construction from May until November 1996 – was arrested for bribery. It had been discovered that Nakao had a relationship with Tokyo-based general contractor Wakachiku Construction Corp. that had allowed the Minister to receive a total of 60 million yen in exchange for public work contracts and support for other activities. Persecutors provided proof of these transactions, which also led Wakachiku to contribute money to the political fund management organizations of four other ministers.</p> <p><b>Decision:</b> The Tokyo High Court ruled against Nakao and sentenced him to 24 months in prison and to a 60 million yen fine. The court was critical of the former minister, calling his crime “vicious.” From 1995 to 2000 (the period of time when Nakao was accepting bribes), legislation had passed that made political donations to individual politicians or their personal fundraising operations illegal. However, before the sentence was handed down, Nakao ran for re-election in the July 2000 elections and failed to retain his seat.<sup>129</sup></p>
Israel	<p><b>Facts:</b> In February 2005, the Attorney General indicted Omri Sharon, son of the Prime Minister of Israel, Ariel Sharon, for campaign finance violations during his father’s campaign for the leadership of the Likud party and the 2001 national elections. Although Prime Minister Ariel Sharon was not charged, he was found to have accepted illegal donations of NIS 5.9 million to enhance his chances of winning the 2001 national elections.</p> <p><b>Decision:</b> The Tel Aviv Magistrate’s Court sentenced Omri Sharon to nine months in prison and a NIS 300,000 fine for raising illegal campaign contributions for his father. It was found that the money had been funneled through a number of corporations, including a U.S.-based company. As the trial went on, Omri Sharon announced his resignation from the Knesset. Additionally, Ariel Sharon was required to return 20 percent of the illegal contributions he had received; which he did by borrowing from the bank.<sup>130</sup></p>

<sup>129</sup> Blechinger (2000) page 1.

<sup>130</sup> Navot (2006) page 177, Haaretz (2006).

<b>Germany</b>	<p><b>Facts:</b> In March 2002, allegations of bribes paid to Germany’s Social Democrat Party by a waste-management company created a huge scandal, implicating Chancellor Gerhard Schroder and his campaign for re-election in the fall of 2002. The claim was that bribes were paid to the party in order to build a €353 million waste-disposal plant in Cologne.</p> <p><b>Decision:</b> Although Gerhard Schroder was re-elected as head of the Social Democrats, the election was the closest Germany had seen in 50 years and resulted in deteriorated relations with the U.S. as the Chancellor campaigned on an anti-American campaign. Additionally, in the spring of 2002, Norbert Reuther – a former leader of Cologne’s Social Democrats – was arrested for accepting illegal political donations from the waste management company. Last, this receipt of illegal contributions by the party has led to a tarnishing of Germany’s reputation: Peter Eigen, head of Transparency International, states that “It [Germany] is much more corrupt than previously thought.”<sup>131</sup></p>
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**Figure 31: Political Finance and Court Cases: Issue Advocacy and Third Party Expenses**

Country	Court Cases
<b>Canada</b>	<p><b>Facts:</b> The appellant challenged the Referendum Act, which governs referendums in Quebec. He argued that if he wishes to conduct a referendum campaign independently of the national committees, his freedom of political expression will be limited to unregulated expenses. Conversely, if he wishes to be able to incur regulated expenses, he will have to join or affiliate himself with one of the national committees.</p> <p><b>Decision:</b> The Federal Supreme Court, in rejecting the appeal, said the spending limit system would lose all its effectiveness if independent spending were not also limited. The Act promotes an informed vote by ensuring that some points of view are not buried by others. The objective is to ensure fairness of a referendum on a question of public interest. In this light, the regulation of referendum spending pursues one of the objectives underlying freedom of expression, namely the ability to make informed choices.</p> <p><i>Robert Libman v. Attorney General of Quebec (1997).</i></p>

<sup>131</sup> Economist, The (2002), Pinto-Duschinsky (2002) page 2, The Wilson Quarterly (2002) page 1. Pinto-Duschinsky (2002) page 69-86.

UK	<p><b>Facts:</b> Before the British parliamentary elections in April 1992, Mrs. Bowman arranged to distribute thousands of copies of a leaflet calling for voters “to check on candidates’ voting intentions on abortion” in constituencies throughout the UK. Bowman was charged with an offence under the Representation of the People Act 1983, which prohibits expenditure of more than five pounds sterling by an unauthorized person during the period before an election on conveying information to electors with a view to promoting or procuring the election of a candidate. The case was brought before the European Court of Human Rights.</p> <p><b>Decision:</b> The Court found that the Act sets a total barrier to publishing information with a view to influencing the voters of Halifax in favor of an anti-abortion candidate. It is not satisfied that it was necessary to limit her expenditure to five pounds to achieve equality between candidates. It accordingly concluded that the restriction in question was disproportionate to the aim pursued.</p> <p><i>Bowman v. the UK (141/1996/762/959).</i></p>
UK	<p><b>Facts:</b> After the Broadcast Advertising Clearance Centre declined to clear one of its television advertisements for broadcast, the civil society group Animal Defenders International initiated proceedings in the European Court of Human Rights, arguing the ban on paid political advertising in the UK constituted a breach of freedom of expression under Article 10 of the European Convention of Human Rights.</p> <p><b>Decision:</b> In April 2013, the court found that ,while protecting freedom of expression is of paramount importance in democratic societies, the arguments presented by the UK government that the ban helped to maintain the presentation of balanced views. The court also noted the lack of consensus on the matter among European countries – most countries do not ban political advertising, but a number do – gave the UK more leeway to decide its policy in this matter.</p> <p><i>Animal Defenders International v. the UK, (Application no. 48876/08)</i></p>
U.S.	<p><b>Facts:</b> In January 2008, Citizens United (a non-profit corporation) released advertisements on broadcast television that publicized their documentary, which was critical of Senator Hilary Clinton. The Federal Elections Commission declared this was “electioneering communication.” This was illegal under the Bipartisan Campaign Reform Act of 2002, as Citizens United, a corporation, was using general treasury funds to advocate the defeat of a candidate running for federal election through the use of media. The case was initially brought to D.C. District Court, where provisions under both acts such as <i>McConnell v. Federal Election Comm’n</i> and <i>Austin v. Michigan Chamber of Commerce</i> were upheld. However, in March 2009, Citizens United appealed to the Supreme Court.</p> <p><b>Decision:</b> Justice Kennedy delivered the opinion of the court that struck down <i>Austin v. Michigan Chamber of Commerce</i> (1990) due to the significant departure this decision made from First Amendment principles on freedom of speech. The court overruled the part that upheld restrictions on corporate independent expenditures. The judgment of the District Court was reversed with respect to the constitutionality of applying restrictions on corporate independent expenditures. However, the court also explained “disclosure is a less restrictive alternative to the more comprehensive regulations of speech.” Following the judgment, the court upheld registration and disclosure requirements.</p> <p><i>Citizen United v. Federal Election Commission 558 U.S. 310 (2010)</i></p>

<p><b>Israel</b></p>	<p><b>Facts:</b> The petitioners, who represented a faction in a city council, established a non-profit association. The association conducted election operations with volunteers. After the elections, the association asked the faction to cover its expenditures (out of the election funding granted by the State). The faction asked that these costs be regarded as election expenditures. The request was denied by the State Comptroller.</p> <p><b>Decision:</b> The Supreme Court turned down the petition. The court said if the association had paid the volunteers, then it could have asked to regard those expenses as election expenditures. But when the association did not have real expenses and intended to use the money for its future activities, those expenses could not and should not be regarded as election expenditures.</p> <p><i>H.C. 823/90 Bat Yam 1 v. State Comptroller, 44(2) PD 692.</i></p>
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To what extent the judiciary can be an effective proponent in increasing political party and campaign finance will depend on the situation in the country, in particular the independence and capacity of the judicial system.

Public confidence in the judiciary will also be of great importance in cases where enforcement of political finance regulations and investigations of potential violations is the responsibility of judicial bodies. Where public confidence in the judiciary is low, people are unlikely to bring cases of potential violations (such as vote buying) to the attention of the courts.

## Chapter 9: Using Databases to Enhance Transparency

### Introduction

There are two main reasons for making received financial statements available to the public. The first the electorate has a right to know about the financial dealings of those seeking to represent it in public office. Receiving complete, accurate information in a timely manner can help voters make informed decisions.

The other reason is that non-governmental organizations and media can play an important role in scrutinizing financial records of political parties and election campaigns. In no country can a PFE audit all statements it receives to ensure complete accuracy. Making the information public creates the opportunity for people to review and scrutinize submitted financial reports. This is important as the public may have information, unavailable to the regulator, which calls into question the information reported to the PFE.

At a bare minimum, the PFE can make received reports available in hardcopies at its office for people to review. Given logistical and practical limitations, this is often an ineffective way of making information public. In some countries, information is published in official gazettes, but this often only allows for summaries to be published, and few normally read such publications.

With its capacity to present vast amounts of data in a comprehensive manner, Internet-based databases present a more useful alternative. While Internet access is limited in many countries, nongovernmental and media often do have access to the Internet, and these groups tend to be the target for money and politics (MAP) databases, as the information normally needs to be interpreted and modified to be easily understandable for people without experience in accounting and auditing. The alternatives for publishing financial information in databases is closely related to the structure set up for reporting

### Main Alternatives in Money and Politics Databases

Using Internet-based databases to present campaign finance information does not require many financial or human resources. It may also not always be necessary to use the flashiest presentations of existing data in all circumstances. In new democracies, it may be sufficient to ensure the information is publicly available in any format.

One approach is to publish scanned copies of received financial reports (normally as a PDF). This requires only basic computer hardware and software, and unless the number of reports submitted is high, the data capture process is not labor intensive. This approach is suitable in cases where a small number of reports are submitted in hardcopy by political parties or candidates. It also has the advantage of presenting the original data to the database user, thereby reducing the risk of data capture errors affecting the process.

A downside with this approach is the inability for users to search for and analyze information in the database. As such, the approach is not suitable when the body of data is sizeable or difficult to access through the original submission format. Naturally, this approach is not suitable where submissions have

been made electronically by the political party or candidate, unless submission is made as a PDF, which is not advisable. One way to offset the downside of this approach could be for the PFE to provide some basic analysis of information when it publishes scanned copies. For example, the PFE could provide summary totals of income and expenditure reported, which it should be compiling as a part of its efforts to monitor trends and effectiveness of the law.

The second approach is to use some form of data capture to present the submitted information in a searchable format. Advanced software is not necessarily required, although the demands on IT capacity at the PFE will be higher.

If reports are submitted in electronic format, the creation of a database should be straightforward. Detailed instructions and templates, and possibly trainings, must be provided to those submitting reports to ensure a smooth data capture process. If those required to report cannot access to computers, electronic submissions are not suitable. If reports are submitted in hardcopy format, the PFE will need to transfer the data to electronic format. Optical mark recognition (OMR) scanning techniques are unlikely be useful given the number of variables normally included in the submissions. Therefore, the information would, in most cases, need to be entered into electronic format by hand, which can be a demanding exercise.

In case manual data capture is done as part of the election result collation process, it can be studied if this capacity can be used for campaign finance data capture before and/or after the result collation takes place. In other words, if staff have been trained to enter election results (or other information such as candidate data), it may be possible to use the same staff to enter data from political finance reports.

Making the data available for download should be considered, especially if the amount of information is substantial. Doing this increases transparency further and it should not require much additional work for the PFE. Suitable formats are .csv or .xml; even if the database is created using basic software such as Microsoft Excel, it can be saved in these formats for publication, (although formatting is normally lost, especially for csv) in the conversion.

## **Examples of Money and Politics Databases by Political Finance Enforcers**

***Federal Election Commission (U.S.)*** <http://www.fec.gov>

There is a special focus on campaign finance databases in the U.S.<sup>132</sup> The most extensive database of any PFE is that of the Federal Election Commission (FEC), an independent regulatory agency with campaign finance oversight as its main role.

In the FEC database, information is available from summaries for election campaigns and candidates down to individual contributions. The name, employer/occupation, city and zip-code is available for each contribution made, although no street address for privacy reasons, and data is normally uploaded

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<sup>132</sup> A Google search for "campaign finance database" showed the first non-U.S. site listed on the 16th page of results. A main reason is that many U.S. states, counties, etc. maintain their own campaign finance databases.

within hours of electronic receipt. The data in the FEC database is available for download in database-friendly formats (.csv and .xml).

### **Electoral Commission (UK)** <https://pefonline.electoralcommission.org.uk/search/searchintro.aspx>

Like its U.S. counterpart, campaign finance is a major part of the mandate of the UK Electoral Commission, and its website includes information on donations and borrowing going back to 2001. A new version called Party Election Finance (PEF) Online was recently developed. The information is also available for download (csv or pdf format). In the UK, political parties report to the UK Electoral Commission, while candidates submit their reports to the local returning officer, who makes them available for public inspection. Subsequently, the UK Electoral Commission database focuses on party finance (ongoing and campaign finance).

Figure 32 gives information on MAP databases by PFEs in 17 countries.<sup>133</sup>

**Figure 32: MAP Databases in Different Countries**

Country	Agency	URL	Type of Database
Afghanistan	Independent Electoral Commission	<a href="http://www.iec.org.af/Content.asp?sect=4&amp;page=campaign">http://www.iec.org.af/Content.asp?sect=4&amp;page=campaign</a>	Data captured (not searchable)
Australia	Australian Election Commission	<a href="http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm">http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm</a>	Searchable database with information available for download (PDF)
Bosnia & Herzegovina	Central Elections Commission	<a href="http://www.izbori.ba/map">www.izbori.ba/map</a>	Searchable database ( <i>database now defunct</i> )
Brazil	Tribunal Superior Eleitoral	<a href="http://www.tse.gov.br/internet/partidos/balancetes_mensais.htm">http://www.tse.gov.br/internet/partidos/balancetes_mensais.htm</a>	Various information, including monthly balance sheets for parties, in zip and XLS formats; in Portuguese only.
Canada	Elections Canada	<a href="http://www.elections.ca/scripts/webpep/fin/welcome.aspx?lang=e">http://www.elections.ca/scripts/webpep/fin/welcome.aspx?lang=e</a>	Searchable database on finances of political parties, campaigns and nominations
Cayman Islands	The Cayman Islands Elections Office	<a href="http://www.electionsoffice.ky/downloads/ge2009/electionexpensesreturns2009.pdf">http://www.electionsoffice.ky/downloads/ge2009/electionexpensesreturns2009.pdf</a>	Summary of election contributions and expenditure; as PDFs

<sup>133</sup> All URLs were accurate as of writing.



Costa Rica	Tribunal Supremo de Elecciones	<a href="http://www.tse.go.cr/contribuciones_partidos.htm">http://www.tse.go.cr/contribuciones_partidos.htm</a>	Information on donations to parties at different levels; PDF, in Spanish only.
Estonia	Vabariigi Valimiskomisjon	<a href="http://www.vvk.ee/index.php?id=10921">http://www.vvk.ee/index.php?id=10921</a>	Summary for the 1995 to 1999 period only; In Estonian only
Latvia	Central Elections Commission	<a href="http://www.vrk.lt/lt/pirmas-puslapis/pppkfk/">http://www.vrk.lt/lt/pirmas-puslapis/pppkfk/</a>	Detailed information on donations to parties and campaigns; Data available in XLS or PDF; in Latvian only
Lithuania	Central Elections Commission	<a href="http://www.vrk.lt/lt/pirmas-puslapis/far/">http://www.vrk.lt/lt/pirmas-puslapis/far/</a>	Financial reports since 2011 available as a scanned PDF; in Lithuanian only
FYR Macedonia	State Elections Commission	<a href="http://www.sec.mk/arhiva/2009_pretsedatelskilokalni/2009/index06de.html?option=com_content&amp;view=article&amp;id=93&amp;Itemid=92">http://www.sec.mk/arhiva/2009_pretsedatelskilokalni/2009/index06de.html?option=com_content&amp;view=article&amp;id=93&amp;Itemid=92</a>	Scanned reports; in Macedonian only.
New Zealand	Elections New Zealand	<a href="http://www.elections.org.nz/parties-candidates/registered-political-parties-0/party-donations">http://www.elections.org.nz/parties-candidates/registered-political-parties-0/party-donations</a> <a href="http://www.elections.org.nz/parties-candidates/registered-political-parties-0/party-donations">http://www.elections.org.nz/parties-candidates/registered-political-parties-0/party-donations</a>	Party and presidential candidate donations available in summaries and scanned reports, some information in XLS format
Palestine	Central Elections Commission Palestine	<a href="http://www.elections.ps/template.aspx?id=59">http://www.elections.ps/template.aspx?id=59</a>	Scanned reports and/or summaries
Panama	Tribunal Electoral	<a href="http://www.tribunalelectoral.gob.pa/elecciones/partidos-pol/subsidios.html">http://www.tribunalelectoral.gob.pa/elecciones/partidos-pol/subsidios.html</a>	Summaries of party contributions, PDF and XLS format; in Spanish only
Peru	Oficina Nacional de Procesos Electorales	<a href="http://www.web.onpe.gob.pe/finanzaspublicas.php">http://www.web.onpe.gob.pe/finanzaspublicas.php</a>	Data for download (zipped XLS and PDF files) on donations to political parties by trimester; in Spanish only
Poland	National Election Commission	<a href="http://pkw.gov.pl/finansowanie-partii-politycznych-i-kampanii-wyborczych/finansowanie-nawigacja.html">http://pkw.gov.pl/finansowanie-partii-politycznych-i-kampanii-wyborczych/finansowanie-nawigacja.html</a>	Summaries and scanned reports for election campaigns and annual party statements since 2001; in Polish only
Portugal	Tribunal Constitucional Portugal	<a href="http://www.tribunalconstitucional.pt/tc/contas.html">http://www.tribunalconstitucional.pt/tc/contas.html</a>	Annual and election campaign accounts in PDF format; in Portuguese only

Sierra Leone	Political Parties Registration Commission	<a href="http://www.pprcsl.info/index.php?option=com_content&amp;task=view&amp;id=16&amp;Itemid=32">http://www.pprcsl.info/index.php?option=com_content&amp;task=view&amp;id=16&amp;Itemid=32</a>	Scanned reports and summaries
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## General Recommendations

Using an Internet-based database to publicize campaign and political party financial disclosure information can be an effective way of enhancing transparency in political finance. These recommendations can help make the database better and more useful for its audience.

### *Focus on the Audience and Its Needs*

Even where the publication of campaign finance information is a legal requirement, a database of this kind is not a goal in itself, and the demand it can fill should be investigated. It is advised that the PFE seeks early consultation with key stakeholders, including media and NGOs so the database and the way it is presented can be optimized. A recommendation is to develop the database in coordination with a small reference group of representatives of such stakeholders. As discussed, input should be sought at each step by those required to submit reports to ensure the process is not unduly burdening.

In many countries, the main audience for the database may not be the population as a whole, but rather journalists and NGO activists who may use the information to put attention on key issues.

### *Maximize Visibility*

The best database will be useless if it cannot be found on the website of the PFE. Several of the databases discussed are well hidden on their respective site. Make sure a link to the database is available on the front page, and if the database is intended to cater for an international audience, the database also needs to be translated and placed on the foreign language version of the website; at least a summary should be provided in relevant languages.

Apart from this, the PFE should strive to draw attention to the database through press releases and other activities. This is important during the election period and when reports are published.

### *Consider the Privacy of Donors*

One issue that needs to be considered is what information should be provided about those who have made donations to a political party or candidate. The principle of transparency dictates that as much information should be published as possible. If users of the database cannot identify the donors, their ability to make judgments about the financial dealings of those seeking to represent them will be undermined, as will their ability to scrutinize the accuracy of the information submitted by political parties and candidates.

On the other hand, people making modest donations have to not be harassed or questioned about their political beliefs by anyone checking the database. This can be important in situations where party loyalties are strong and anyone wanting to support another party may be viewed with hostility, or where the dominance of the government party is such that anyone supporting the opposition may get into trouble.

Two questions to be considered are if there should be a threshold for publication, and if the address of donors should be published. Even if all donations must be reported to the PFE, perhaps only donations above a certain level should be published in the database to protect the identity of regular donors. Many older democracies use reporting thresholds, which mean information about smaller donors will not be in the database either. The 2009 regulations in Afghanistan demanded that all donations above 5,000 Afghanis (around \$100 USD) should be recorded and reported to the PFE, but that only the identity of those who donated more than 50,000 Afghanis (around \$1,000 USD) in total would be published.

Most political finance databases do not publish the complete address of donors. This is the case in the UK, while in the U.S. and Canada, only the postal code of the donor is published. In Australia, however, the entire address of the donor is reported on the PFE website. In some cases, certain sensitive information may also be kept from publication. In the U.S., the Socialist Workers Party sought and gained a court order that information about their donors should not be made public, and in the UK, information about donations made in Northern Ireland, where the political situation has been sensitive, is not released to the public.

What the best solution will be in each country depends on the political situation and social atmosphere, and should be decided through a dialogue with stakeholders.

#### ***Information Should be Published in a Timely Manner***

While historical data can be of interest for academics, information on political party and campaign finance normally has a short best-before date. This is important relating to any financial reports submitted during a pre-election period, when the PFE needs to make the received information publically available as soon as possible to assist voters in making informed decisions.

The need for speed should be taken into account both in decisions on database formats (more complicated systems can take more time) and in the capacity needed for capturing and publicizing the received data, especially if manual data capture is required. It is important to bear in mind that a basic publication approach (publishing scanned copies of submitted reports) can be used to provide access to the relevant information while a more advanced, searchable database is being prepared. Combining different approaches can maximize the rapid availability of accessible data.

#### ***Sustainability and Reliability are of the Essence***

With modern technology, it is easy to create advanced databases with mapping possibilities, graphs and tables. However, it is important to take into account not only the demand from the intended audience, but also the capacity of the PFE to maintain the system that is put in place. Enhancing campaign finance transparency is a long-term endeavor, and it makes little sense in creating advanced structures if these cannot be maintained.

It is regrettable that international financial support to electoral processes often decline as the election administration in a country improves. Sustained donor assistance cannot be relied upon;; Bosnia & Herzegovina is a case in point. While the Central Election Commission does an excellent job auditing and

reviewing submitted financial reports, its database for political finance data proved unsustainable and had to be discontinued. The commission is currently working on a new system.

It is also important to ensure the technology used is robust and that the system will not crash. This requires stress testing of the technology and a back-up plan, should the system fail.

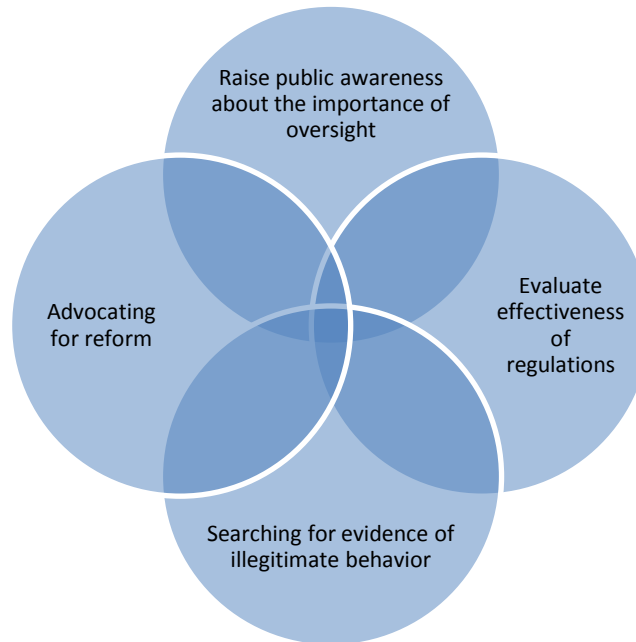
## Chapter 10: The Role of Civil Society in Enforcement

This chapter looks at ways civil society can play positive roles in the enforcement process. It has become a common assumption of international development agencies and international financial institutions that civil society organizations are capable of playing important roles in checking poor or corrupt performance by public bodies. Many well-known civil society organizations (CSOs) have monitored spending on election campaigns and, thereby, shown whether political parties and candidates are obeying the relevant political finance laws and whether the regulatory bodies are enforcing them properly. Other groups monitor abuse of State resources or analyze financial reports submitted by political parties and candidates. IFES is aware of monitoring activities that have been carried out in 24 countries as of early 2013.

CSOs have a legitimate and important role to play in promoting good government. Because they do not contest elections themselves, they are able to raise special issues and bring pressure on politicians and government authorities – however, in some cases, the political neutrality of CSOs may be doubted. CSOs vary in their technical expertise and number of people they represent. In most cases, they have significant, positive parts to play in improving the quality of enforcement of political finance laws. In particular, they may focus the attention of the press and of the public on the shortcomings of enforcement, thereby providing an incentive for improved performance.

Political finance enforcers should adopt a positive approach to those groups observing the use of money in the political process, and engage such groups in a manner that can assist overall transparency, while maintaining each institution's independence.

The main roles of civil society organizations in the oversight of political finance is shown in Figure 33.

**Figure 33: Role of Civil Society in Enhancing Political Finance Oversight**

Pressure from civil society organizations and the mass media is necessary to create an atmosphere that promotes stronger, more effective enforcement. Recent examples from Afghanistan, Lebanon, the Philippines, Moldova and Nicaragua demonstrate the significance of civic society's role in the fight against political corruption and confirm the involvement of mass media is a necessary condition for serious political finance reform. NGOs and independent media have emerged as reliable watchdogs of political party and campaign finance in many contemporary democracies.

Naturally, not all NGOs are politically neutral without interests or connections to political forces like political parties or politicians. Therefore, it cannot be taken for granted that information from NGOs is always neutral, unbiased and correct. Unlike PFEs, NGOs do not have to show they are formally independent from political influence. However, it is as important (sometimes more important) for NGOs to show their independence and seriousness through their actions. Figure 34 shows the different roles, strengths and weaknesses of State control (by the PFE and related institutions) and of social oversight, respectively. The table was developed by Bruno Speck and first published in a U4 publication.<sup>134</sup>

<sup>134</sup> Speck (2008) page 4.

**Figure 34: The Role of State Control and Social Oversight**

	State Control	Social Oversight
<b>Role</b>	Guarantee compliance with the law	Empower citizens to support or reject parties; oversee State control
<b>Criteria</b>	Law and regulations	Standards of behavior accepted by society;
<b>Powers</b>	Investigative and sanction misbehavior	Uncover and denounce unacceptable political finance links
<b>Weaknesses</b>	Depending on reporting of misbehavior Poor performance	Depending on disclosure; lacking awareness of political finance
<b>Sanctions</b>	Political, civil, criminal sanctions	Protest and withdraw support
<b>Corrupt links between donations and favors</b>	Hard to prove causal link	Reasonable doubt suffices for withdrawal of political support
<b>Reform debate</b>	Technical expertise	Defending the public interest

**Example of an Implementation Diary**

- June 30** Candidates submit asset declaration as part of nomination process
- July 6** Political parties submit first campaign finance report
- July 15** All political parties should have been allowed first round of TV airtime
- July 20** Parties receives pre-election direct public funding
- July 31** Political parties submit second campaign finance report
- Aug 15** All political parties should have been allowed second round of TV airtime
- Sep 12** Political parties and candidates deadline for submitting post-election finance report

**Compliance Checklist or Implementation Diary**

Using a compliance checklist or implementation diary is a relatively simple, inexpensive tool NGOs may use in engaging in political finance issues. It involves keeping records of how and when political parties and candidates adhere to political finance regulations. The implementation diary should be part of an NGO’s toolkit if they wish to play a role in the enforcement of political finance laws.

Such a diary is useful in countries where political parties and candidates are entitled to direct or indirect public funding – such as free advertising time on television and radio and advertising space in newspapers – and parties and candidates are required to file financial accounts by a particular date.

In the case of entitlements to free political advertising, a group seeking to keep an implementation

diary needs to arrange for members to monitor all relevant broadcasts and newspapers and record the time and length of free broadcasts or advertisements. In the case of submission of financial accounts, the NGO should arrange for a member to make the relevant inquiry on the day the reports are due and

ascertain whether the reports were actually received at regular intervals thereafter. A separate note needs to be kept for each political party and candidate.

Once financial reports have been filed, the NGO should review the reports and check whether the required information has been submitted (the formal completeness rather than the substantial accuracy of the reports). While this may be a crude procedure, it may prove effective in countries where parties and candidates disregard the legal reporting requirements, and regulatory bodies fully expect them to disregard the law. By establishing and publicizing the fact that parties and candidates have failed to meet their disclosure obligations, the NGO will put pressure on both the regulatory body and on the political actors to ensure the relevant reports are submitted.

The mere fact that required information is submitted will not guarantee its accuracy, but it constitutes a useful first stage in compliance. It permits the regulatory authority to move to the next stage, which is to check that the information submitted is correct.

### **Analyzing, Interpreting and Simplifying Information**

In jurisdictions where political parties, candidates or donors are obliged to disclose financial information, these reports are often not easily accessible. In many countries, especially where reports are submitted in paper form, the only way to access them is to go to the PFE office. In others, the information may be available in summary format or need to be systemized to be understood. In such cases, gathering bits and pieces of information and comparing them with other sources may be necessary to make the information meaningful.

Even where detailed reports are available in clear formats, they are often complicated. Long lists of names of individual or corporate donors to political campaigns or detailed party accounts may mean little to members of the general public. Apart from a few items of information that may appeal to their readers, media outlets also have the tendency to avoid the time-consuming task of analyzing the published accounts unless there is a whiff of scandal.

Malbin and Gais have reported on the situation in the U.S. resulting from the increasing quantity and complexity of the financial information disclosed under the terms of modern legislation. They argue that political finance disclosure, if it is to be truly effective, needs to reach members of the public before they vote in an election. Access to information on the financial backers of each party and candidate may influence their voting choices:

This [volume of reported financial information] raised two problems. First, the sheer complexity of the reports means that it takes a greater staff commitment [by political finance enforcement agencies] to interpret them...It has also become a problem for newspapers and other media outlets. In most of the states we visited [for purposes of research into political finance enforcement], very few newspapers allocated even one reporter's time to analyzing campaign finance documents. Newspapers that once made [a commitment to reporting on political finance] are now cutting back. From a journal-



istic perspective, absent a scandal, the [material] seems complex, repetitive, and less of a news story. As a result, newspapers are giving less space to reporting disclosed information at a time when the increasing volume and complexity of the reports would require more of an effort, not less, if the public is to get the relevant information in time for an election decision.<sup>135</sup>

NGOs can play a significant role by undertaking the job of analyzing the data in official reports on party and candidate financing. One approach is to produce accessible databases targeting the population at large and/or journalists interested in political finance who do not have the time to go through the raw information. Such databases can be useful both in cases where the regulator publishes its own database that is not easy to use, and in cases where the regulator does not publish the information at all. In many countries where submitted reports are public, the only way to access them is at the offices of the regulator. Examples of both such cases are as follows:

**OpenSecrets** <http://opensecrets.org>

As extensive as the database of the U.S. FEC is, its legal mandate limits how the organization can collate and interpret information on this site. NGOs face no such limitations, and there are several examples of databases by U.S. NGOs that further interpret the data available on the FEC database. The best known example is OpenSecrets.org, which is run by the NGO Center for Responsive Politics. Among many things, the site allows users to search for multiyear contribution records, showing contributions made by people over time. It also shows the assets of elected politicians, including net worth changes over time and their commercial interests.

**Képmutatás** <http://kepmutatas.hu/kampanymonitor>

In a joint initiative between Transparency International Hungary and Freedom House, *képmutatás* (which means corruption) aims at enhancing transparency in Hungarian campaign finance. It included a limited database on campaign finance in the 2010 elections. It is available in Hungarian only.

**Ásclaras** <http://asclaras.org.br>

This website (roughly translating to “clearly” in Portuguese) by Transparency International Brazil analyses information from the *Tribunal Superior Eleitoral*, and it includes financial data going back to 2002. This site allows users to access detailed information about the finance of political parties and candidates. It is available in Portuguese only.

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<sup>135</sup> Malbin and Gais (1998) page 46.

## Political Finance Monitoring by NGOs

The term “political finance monitoring” may refer to any attempt to review and detail the operation of a political finance system. It is a diagnostic tool that captures how systems operate in practice, as opposed to how they are designed to function through a given regulatory framework. Monitoring by NGOs can be used as a basis for assessing political parties' and candidates' sources of funding and campaign costs. Such assessments can then be used to challenge the accounts submitted by parties and candidates to the PFE.

One of the first methods of political finance monitoring was developed by Poder Ciudadano.<sup>136</sup> The main feature of the Transparency International Argentina model was its focus on total expenditure by parties and candidates on national election campaigns. In particular, the number of minutes of advertising on television and radio, the number of column-inches of advertising in certain newspapers and the number of posters using commercial poster sites in a geographic area were recorded. The commercial value of such advertising was estimated, and on this basis, the overall cost of the election campaign was calculated.

Where there are strict legal limits on spending on electioneering, such an exercise may establish, beyond reasonable doubt, that some of the parties and candidates are spending more than is allowed. However, the Transparency International Argentina method of monitoring was open to criticism because it concentrated solely on campaign spending and on national and metropolitan politics. Also, it focused on estimated spending on mass media; the method assumed (and stated) that mass media spending makes up the bulk of total political spending in many countries.

This simple methodology has been modified and improved gradually by NGOs in Armenia, Latvia, Romania, Russia, Slovakia and Ukraine, among others. A monitoring methodology has been developed by the Open Society Justice Initiative (OSJI).<sup>137</sup> Its *Monitoring Election Campaign Finance – a Handbook for NGOs* provides a methodology that helps NGOs monitor different types of campaign expenditure; contributions to political parties and candidates; and the misuse of State or public resources for election campaign purposes. The authors also suggest evaluating enforcement records:

Assessment of the legal framework is not complete, however, without an evaluation of the observation and enforcement of existing provisions. Seemingly sound legal provisions may be dysfunctional in practice, or be poorly observed or enforced. It is important to identify the root of the problem and to determine whether the existing provisions are: (a) too vague to allow for effective enforcement; (b) too complicated to allow for effective enforcement; (c) too restrictive to be observed in practice; (d) adequate but lacking an effective enforcement framework; (e) adequate but enforced in a discriminatory fashion. Where the legal and institutional framework has shortcomings, moni-

<sup>136</sup> This is the Argentinean chapter of the Berlin-based anti-corruption organization, Transparency International (TI).

<sup>137</sup> See [www.osji.org](http://www.osji.org).

toring should provide evidence of this. Where it is more-or-less sound, monitoring should assess the extent to which relevant provisions are effective in practice and highlight any problems with their implementation. In both cases, the findings should then be used to advocate targeted reforms.

The OSJI initiative was the first systematic effort to consolidate the experience and knowledge of a wide variety of campaign finance monitoring efforts. Since then, political finance monitoring has been covered in a number of countries

## Litigation

A potentially significant tool for voluntary organizations is sponsorship of court cases on important matters of election and party law. The aim of such litigation may be to close a legal loophole and, thereby, make it possible to implement an otherwise ineffective law.

In India, the strict limits on campaign spending by candidates were virtually unenforceable because expenditures made by political parties and a candidate's supporters did not count against the limit unless they had been authorized by the candidate, even when made with the candidate's knowledge. Proof was required the candidate had authorized the expenditure – a standard that was almost never possible to meet.<sup>138</sup> The intent of the law was clarified in a 1996 judgment of the Supreme Court in a key case brought by Common Cause (*Common Cause v. Union of India and Ors*, AIR 1996 SC 3081). The ruling meant that when a candidate knew campaign spending was being incurred in his support, the onus would be on the candidate to demonstrate that the expenditure was unauthorized. Otherwise, such spending would normally count against the legal limit. The Supreme Court gave the following judgment: “[The] expenditure ...in connection with the election of a candidate to the knowledge of the candidate or his election agent shall be presumed to have been authorized by the candidate or his election agent. It shall, however, be open to the candidate to rebut the presumption.”<sup>139</sup>

Following this case, the Indian Election Commission “called on all political parties at national and state levels to submit for its scrutiny the details of expenditure incurred by them both on the general party propaganda and also on the election campaigns of individual candidates in every general election.”<sup>140</sup> The basis of this request was that party expenditures on the election campaigns of individual candidates would be presumed to have been authorized by the relevant candidates unless the relevant party accounts were submitted and showed evidence to the contrary. The judgment has been seen as an example of the important role of public interest lobbies in the field of political finance law.

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<sup>138</sup> Devi and Mediratta (2000) page 840.

<sup>139</sup> Ibid, page 840.

<sup>140</sup> Ibid, page 842.

A further example of political finance litigation is the case brought in 2003 by the Institute for Democracy in South Africa (IDASA) against five major South African parties (the ANC, DA, NNP, IFP and ACDP).<sup>141</sup> The objective of the case, brought before the High Court of South Africa in Cape Town, was to establish that political parties are obliged to disclose the identity of those making donations of at least SAR 50,000 under the terms of a law on freedom of information (Promotion of Access to Information Act POATIA). IDASA had been calling for reform of the law to require disclosure of substantial donations since 1997, the year the Public Funding of Represented Political Parties Act was passed. IDASA asserted in its court papers that, because of the receipt of public funding and the public role political parties play in a representative democracy, they are “public bodies” for the purposes of the right to access information enshrined in the Constitution of South Africa. IDASA’s litigation against the country’s major political parties to reveal their sources of funding was part of its campaign to bring transparency and accountability to the system of private donations.

While the court rejected the case in 2005, the judge noted “[this decision] does not mean that political parties should not, as a matter of principle, be compelled to disclose details of private donations made to their coffers...[IDASA] have nevertheless made out a compelling case – with reference both to principle and comparative law – that private donations to political parties ought to be regulated by way of specific legislation in the interest of greater openness and transparency.”<sup>142</sup> IDASA decided not to continue the case, noting “we have every confidence that [the governing ANC] will now match its words with deeds – and that legal reform will follow soon.”<sup>143</sup> As of early 2013, no notable reform has been forthcoming in this area.

It is in the nature of the judicial process of many countries that the PFE may become a party to litigation of this kind, even when there are no claims that it has done wrong. While the institution must defend its interests and integrity in such court cases, it is important not to react negatively by default, but to look at the intention and potential value of each case and respond accordingly. Even court cases where the regulator is brought in as defendant may have positive long-term effects on its work to enhance transparency in political finance.

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<sup>141</sup> The African National Congress, Democratic Alliance, New National Party, Inkatha Freedom Party and the African Christian Democratic Party. The NNP dissolved itself in 2005.

<sup>142</sup> IDASA (2007) page 3.

<sup>143</sup> Ibid, page 3.

## The Role of Academic Experts and Formal Education Initiatives

Individual scholars who concentrate on party and election funding and networks of such scholars are also capable of making valuable contributions. Experts are valuable if they live and work in the country where reforms are being considered, but foreign advisers may also have a role. Outside experts may be influential because they can be afforded greater prestige than local experts. However, in the medium and long term, there is no substitute for local knowledge. Visiting consultants will not be able to stay long enough to make a lasting impact. They will also rarely have the determination or the legitimacy of specialists with a permanent stake in the country, nor of course the contextual understanding of a local specialist.

Political scientists and legal experts have regularly had key roles in assisting and advising parties and governmental authorities. Academic publications also have led to increased press coverage of political financing. The training of a small number of scholars specializing in political financing within each country, especially in newly-emerging democracies, is a high priority. A useful model of an organization devoted to a technical study of issues relating to money in politics, which includes experts from different political parties, as well as specialist lawyers and election administrators, comes from the Campaign Finance Institute (<http://www.cfinst.org>) in the U.S. Its publications and activities are less mass-media newsworthy, but more authoritative than those of most public interest lobbies.

In 2010, the Association of Schools of Public Administration in the Philippines (ASPAP) developed an academic curriculum entitled “Understanding Campaign Finance, a Learning Module.”<sup>144</sup> The curriculum is being made available to ASPAP member schools and universities, as well as other educational institutions. It is likely to become a great tool in increasing understanding of the relevant issues among a wide range of students. It is not least important to ensure that people who will work in public administration are made aware of the dangers of abuse of State resources and other vices that may directly affect their professional life.

### Case Study – Media reporting leading to political finance reform

#### *Kazakhstan*

Although a law on procurement had been passed in Kazakhstan in May 2002, officials were still having serious difficulties implementing regulation. In 2004-05, several scandals uncovered by local and international media, including the infamous Baikonur affair, forced the government to address embezzlement and other occurrences of fraud. This main scandal concerned an agreement between Russia and Kazakhstan for the use of the Baikonur space facility. After the agreement was made for the Russians to rent the complex, it was discovered that enterprises who were supposed to supply the space and equipment had inflated the price from \$19 million to \$46 million and pocketed the difference. As the Russian audit chamber started a joint investigation with Kazakh authorities, the Kazakh newspaper *Respublika* discovered the person aware of the missing funds, and who allegedly participated in the deal, was Imangali Tasmagambetov, head of the presidential administration. He had been Prime Minister when the agreement had been made. This fraudulent affair, which involved senior officials, increased pressure of the government to combat corruption and eventually led to the President signing a new anti-corruption decree in April 2005.

<sup>144</sup> Association of Schools of Public Administration in the Philippines (2011).

## The Role of Mass Media

Reforms of political finance, especially measures aimed at enhancing transparency, are often driven by scandal.<sup>145</sup> As Craig Donsanto has emphasized, “[h]ow a country responds to a political finance scandal is a crucial determinant of the strength of its democratic institutions.”<sup>146</sup>

Over the last few decades, mass media in an increasing number of countries have published more materials disclosing irregularities in the funding of politics and exposed cases of political corruption. Involvement of the mass media is a necessary condition for the ongoing fight against political corruption. Examples from both established democracies and transitional countries show the public receives information about political finance-related corruption mostly from the media, not the institutions directly responsible for monitoring political finance.

In this context, the role of the media as a political commentator comes to prominence. Among various activities devoted to encouraging greater transparency and accountability of political finance, investigative journalism is one of the most effective anti-corruption tools.

The mass media has become increasingly active in addressing issues of political finance and political corruption. They make an important contribution to anti-corruption reforms by describing in detail particular cases of conflict-of-interest or political finance-related corruption. Well-balanced pressure from the mass media seems necessary to create an atmosphere that promotes anti-corruption initiatives and serious enforcement.

Yet, the general characteristic of transitional countries is limited knowledge of political finance and conflict of interest issues and access to information. Some journalists and activists either possess information they cannot verify and publish, or they have a vague understanding of the problems. Further, in most cases, public control over political finance is conducted only by a small group of journalists. Overall, a lack of the necessary expertise, knowledge and methodology in investigative journalism can become a major obstacle for the mass media in dealing with political finance-related corruption in the early stages of democratic transition. In some cases, limitations on freedom of the media do not allow for reports on the abuse of State resources in elections. The availability of new media types have reduced this problem in many countries.

Political finance enforcers should strive to see the media as an ally in enhancing transparency in political finance. PFE staff may find journalists are sometimes ignorant, unprepared and all too willing to misunderstand information provided to them. The PFE may be criticized for being insufficiently active in political finance oversight, or for bias in enforcement. The best cure is to ensure as much information as possible (and suitable) is provided to the media quickly and clearly. The PFE should hire a spokesperson with an in-depth understanding of how journalism works, possibly a spokesperson with a background in me-

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<sup>145</sup> Zlotnikov (2006) page 185.

<sup>146</sup> Donsanto (2006) page 11.

dia. This person should create a rapport with media outlets and oversee the press releases and other materials published by the PFE.

Larger institutions will most likely have a media or outreach department that deals with these issues. It is important that any PFE staff member who deals with the media receives a solid grounding in the political finance regulations in place and procedures for investigation, audits etc. People who speak on behalf of the PFE should be briefed about key cases – not that many PFEs will not publically discuss ongoing cases, while publishing their findings openly once a case has been closed. If the PFE has a general website, it should make a separate space for information about political finance, including legislation, procedures, press releases and sanctions. This is also where information from received financial reports should be published (see Chapter 9: Using Databases to Enhance Transparency).

## **Part Three**

# **Detection and Enforcement of Rules Against Abuse of State Resources**



## Chapter 11: About the Abuse of State Resources

### Introduction

This part of the handbook deals with three separate, but closely related, issues: how to understand State/administrative resources and the way they can be abused; how to regulate the (ab)use of State resources in political and electoral affairs; and how to implement or enforce such regulations.<sup>147</sup>

In relation to elections, the institution set to oversee and counteract the abuse of State resources (ASR) is, in many cases, the EMB. Other agencies with an overall mandate to control the finances of political parties, anti-corruption agencies and/or the regular legal system will also have important roles to play in some countries. This issue often spans beyond traditional electoral management issues and relates closely to regulation and oversight of State institutions, budgeting and actions by security institutions.

### Definition of State Resources

The term “State resources” (sometimes referred to as “public” or “administrative” resources) is defined in this book as resources belonging to the government of a political entity – encompassing both political and administrative entities at national, regional and local levels – or belonging to an entity fully or partially owned by the State/State institution.

State resources are sometimes exclusively thought of as financial, focusing on funding streams and the government budget and assets. This is logical, but it must be acknowledged that there are many forms of resources that can be used to support, or abused to undermine, democratic governance, and which are not financial in nature. To understand how incumbents may abuse their position to pervert the electoral and political process, a wider definition of State resources is therefore needed.

In discussing abuse of State resources, there is a risk that all State activities are seen as abuses. It is important to note that these resources have no positive or negative value, although through their application, they can easily acquire either (or both). Any State must have access to resources to develop the country and implement reforms. A State without resources will lack both capacity to fulfil its necessary tasks and public confidence.<sup>148</sup>

However, State resources can also be abused by those who have access to them to ensure that their continued access to these resources is not threatened. This opens possibility for the abuse of State resources – a topic increasingly acknowledged as a serious threat to democracy.

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<sup>147</sup> Earlier versions of sections of Part III of this handbook has previously been published as Ohman (2011b).

<sup>148</sup> An illustration of this is the vicious spiral of tax avoidance seen in many countries. If the State cannot prove tax funds are being put to good use, people will avoid paying taxes, which will further reduce the capacity of the State, which will further reduce public confidence, and so on.

One way of categorizing State resources is:<sup>149</sup>

<b>Institutional Resources</b>	Non-monetary material and personnel resources available to the State, including publically-owned media and other communication tools
<b>Financial Resources</b>	Monetary assets, normally through the budget of various levels of government, as well as publically-owned and/or managed institutions
<b>Regulatory Resources</b>	The mandate to pass laws and regulations that control allowed and prohibited behavior in the polity; this regulatory prerogative regards anything from the criminal code to the order in which candidates should appear on the ballot paper
<b>Enforcement Resources</b>	The use of security and law enforcement institutions on implement laws and rules set up using regulatory resources; this is related to the State having a monopoly on the legitimate use of violence <sup>150</sup>

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<sup>149</sup>The Open Society Justice Initiative (2005), uses the categories “institutional resources” (including what we term “financial resources”), “regulatory resources” and “legislative resources” (both of which we include under “regulatory resources”), “coercive resources” and “State media” (we refer to the former as “enforcement resources” and include the latter under “institutional resources”).

<sup>150</sup>Weber (1919).

## Definition of Abuse of State Resources

The abuse of State resources (ASR) for political gain is defined as any use of State resources to support or undermine a political actor, such as a political party, coalition or a candidate for public office.<sup>151</sup> The definition of ASR excludes situations when all relevant actors receive support in an equitable manner, such as through organized provision of public funding to political parties or candidates.

For the purposes of this discussion, we define ASR as activities aimed at political gains in one form or another. This is thereby different from regular forms of corruption, if by that term we mean self-enrichment. To give a practical example – if a government minister steals money from his budget for his or her political party, that is ASR. Whereas, if the same minister puts the money in his or her pocket, that is self-enriching corruption.<sup>152</sup> While both activities are detrimental to the public good, the former is arguably more politically damaging, since it threatens to undermine democratic politics.

A difficulty is that almost all governments will, in one way or another, use their incumbency to further their chances for re-election.<sup>153</sup> This is to be expected, and to some extent, we may need to accept it. The question is at what point does “harmless” politicking turns into destructive abuse of power. While it is not possible to define this point exactly, Levitsky and Way have stated the following criteria:

- (1) state institutions are widely abused for partisan ends
- (2) the incumbent party is systematically favored at the expense of the opposition
- (3) the opposition’s ability to organize and compete in elections is seriously handicapped<sup>154</sup>

In most cases, the political parties and politicians most prone to engage in ASR are those in government. However, this may not be the case in all situations. A political party that is in opposition nationally may hold significant power in parts of the country and abuse State resources in its strongholds. Incumbent politicians may attempt to abuse their position to avoid challengers if they are in the opposition camp. Finally, political parties and politicians with good contacts in administrative circles may abuse their influence even if they are out of office altogether.

In its crudest (and very common) form, ASR means public resources are diverted from their intended use to support political parties or candidates. Slightly less obvious ways of abusing State resources is when

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<sup>151</sup> Most countries have at least some legislative bans against abuse of State resources, as is discussed further in the next chapter. However, an activity can be considered ASR even if it is not prohibited in the laws of a particular country. To take a blatant example; for public media to open call for people to vote for the government party is ASR, even if the statute books do not include a ban on such activities. Naturally, institutions such as PFEs will have limited influence over forms of abuse not formally prohibited.

<sup>152</sup> This distinction can assist us in separating different activities, although from a philosophical standpoint, ASR is a form of corruption, and corruption including public means entails ASR.

<sup>153</sup> The OSCE/ODIHR and the Venice Commission (2010) page 42 have referred to this as, “a natural and unavoidable incumbency advantage.”

<sup>154</sup> Levitsky & Way (2007) page 9.

the public media is campaigning for the government party, or at least ignoring the opposition, or when public employees are requested to be involved in campaigning or collecting names in favor of government parties.

While ASR often aims at providing support to the government side, it may also directly target the opposition, or in some situations, outside challengers. Areas where voters support other political forces may be denied development projects, and security forces may be used to intimidate those not supporting the government. In these cases, the focus is not to seduce voters by mobilizing material benefits, but to threaten them by mobilizing the security apparatus.

The political situation of individual countries should also be considered. Where one political party has been in power for a long time – perhaps during part of this period governing through a non-party system – the distinction between the government and the government party may be blurred. Many people may not even understand the distinction between the two. In other cases where power occasionally does change, large parts of the public administration are seen as spoils after winning the election. The U.S. system in the second half of the 19th century is an example.

## **Impact of Abuse of State Resources on the Democratic Process**

### ***Impact on Democracy***

The main problem with ASR is that it reduces the uncertainty of the outcome by making the playing field fundamentally uneven. If those who have already been elected abuse the resources of the State to ensure they continue to win elections in the future, the democratic process is jeopardized and the voice of the people will not be heard. As the opposition becomes unable to compete with the advantages of the incumbents, the electoral competition becomes highly unequal. In discussing the 1994 elections in Mexico, Castañeda compared it to a “soccer match where the goalposts were of different heights and breadths, and where one team included 11 players plus the umpire and the other a mere six or seven players.”<sup>155</sup>

It is important not to exaggerate the effect of ASR on the prospects for power alternation. While incumbents have access to substantial resources, they also risk blame for anything going wrong in the country, even if the cause is, for example, a global financial situation. Additionally, ASR may also backfire, either because the government party becomes seen as corrupt or because it finds itself unable to keep up with the demands for largesse. There have been a number of cases where government parties have been seemingly invincible, but have suffered resounding electoral defeat. Mexico and Ghana in 2000; several elections in Thailand; Moldova in 2009; and Zambia in 2011 are only some examples of such turnover.

One important question is why some politicians engage in such behavior, while others do not. This question is complicated. Part of the answer is that the less politics are influenced by a winner-takes-all ap-

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<sup>155</sup> Quoted in Levitsky & Way (2006) page 7. Note that the government party lost the following elections in 2000.

proach, and the more incumbent politicians believe they can regain lost power democratically, the more likely these politicians will be to build a system focused on due process. This also means that pervasive ASR will hinder politicians from developing long-term thinking. If the opposition should win elections, it is justified for them to try to break undue links between the current regime and the administrative apparatus. However, the risk is that the new government may engage in large-scale ASR out of fear that remaining links between State machinery and the former government party will jeopardize reforms and democratic development. For an outside observer, it is difficult to make a distinction between justified attempts to protect the State from undue influence and abuses aimed at entrenching the new regime.

### ***Financial Impact***

Apart from the impact on democracy, ASR is always a waste of the often limited resources available to the State in many countries. Long-term planning and strategies become impossible if funds need to be diverted for campaigning. Launching or completion of development projects may equally be delayed to coincide with campaign periods.

### ***Impact on Rule of Law***

ASR can also seriously undermine the rule of law. If courts and security forces come to act in the interest of the government party rather than the country; if civil servants are indoctrinated to treat citizens in accordance with their political adherence; and if laws are passed to benefit some political actors and undermine others, the rule of law will seriously suffer. Speck and Fontana combine the financial and rule of law impact under the concept of cost to public administration, which they say, “come[s] from the reduced integrity and efficiency of public service, since the diversion of resources incurs financial costs for the institutions involved.”<sup>156</sup>

While the democratic, and to some extent, financial effects of ASR can be reduced dramatically in a short time through an alternation of power, the harmful effects on the rule of law may last much longer.

### ***Other Impacts***

In addition to the democratic and financial impact of ASR, there can be other negative effects. By excluding the opposition from development, such practices may lead to growing dissatisfaction among affected groups, and this frustration may lead to violence.<sup>157</sup> Such a connection was found in a survey on electoral violence in the Maldives in 2011.<sup>158</sup>

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<sup>156</sup> Speck & Fontana (2011) page 3.

<sup>157</sup> DFID (2010) page 11 mentions ASR as a risk for electoral violence.

<sup>158</sup> Maldivian Democracy Network (2011).

## Chapter 12: Regulating Abuse of State Resources

ASR is less well regulated than other aspects of political finance in many countries. We will therefore start by looking at how such regulations have been structured in different countries. This is not to imply that creating formal regulations will automatically solve the problems – many, if not most, of the regulations in this chapter are often honored more in their breach than observance. However, creating formal rules is a way of setting down what is acceptable behavior. Without rules of this kind, there will technically (formally) be no violations for the PFE to detect and enforce, and the prospects for counteracting ASR will be limited.

### International Documents on Abuse of State Resources

Although State resources have presumably been abused for as long as there have been incumbents (some politicians in Ancient Rome would have had more access to bread and circuses than others), there are, as of yet, few documents in international law and regulations that directly address ASR.

**Figure 35: International Documents on the Abuse of State Resources**

Document	Text
CIS, Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Commonwealth of Independent States	Article 3(6) "The candidates do not have the right to take advantages of their official position or advantages of office with the aim of being elected. The list of breaches of the principle of equal suffrage, and measures of responsibility for such breaches are determined by laws."
SADC Parliamentary Forum, Norms and Standards	Paragraph 3.i "The electoral law should prohibit the Government to aid or to abet any party gaining unfair advantage"
"Copenhagen Document"; Document on the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE	The Participating States 3. "... recognize the importance of pluralism with regard to political organizations." 5.4. "a clear separation between the State and political parties; in particular, political parties will not be merged with the State 7.6. The States will provide "...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 the authorities"
Venice Commission, Good Practice in the Field of Political Parties	Paragraph 1.2.3.iii "Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to...public funding of parties and campaigns."  Paragraph 41 "Apart from different forms of funding provided for by law, any party must refrain from receiving assistance, financial or in-kind, from any public authorities, particularly those directed by its members."  Paragraph 42 "No party may receive clandestine or fraudulently obtained financial aid."

Council of Europe, Committee of Ministers, Recommendation (2003)4 on corruption	§1 "Objective, fair and reasonable criteria should be applied regarding the distribution of state support." §5 (c) "States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties."
The Carter Center, Statement of the Council of Presidents and Prime Ministers of the Americas - Financing Democracy: Political Parties, Campaigns, and Elections	Page 2 "Unfair incumbency advantages should be addressed and the use of state resources that are not made available to all candidates in the electoral campaign should be prohibited."
OSCE/ODIHR, Legal Framework,  OSCE/ODIHR, Observation Handbook (Fifth Edition)	Page 21-22 "...the legal framework should ensure that state resources are not misused for campaign purposes and that they are used only with strict adherence to the applicable legal provisions"  Pages 18, 47 "Regulations on campaign financing should not favour or discriminate against any party or candidate.... —Government office space, vehicles, and telecommunications equipment should not be used for partisan purposes unless equal access is provided to all contestants."
Electoral Institute of Southern Africa and Electoral Commissions Forum of SADC, PEMMO	Paragraph 4.7 "The use of public resources for political campaigns and political party activities should generally be avoided but, if permitted, access thereto must be equitable and paid for, and conditions of such access and payment must be clearly provided for in the law."
United Nations Convention Against Corruption (UNCAC)	Article 19 "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position."

## Ways of Regulating Abuse of State Resources

There are several ways legislation can address the abuse of administrative resources. These can be categorized under five headings, or types of regulations:

1. Require all public entities (or entities with a public connection) to act impartially; a general type of regulation. See following points 1 and 2.
2. Banning public entities (or entities with a public connection) from engaging in activities that directly favor or disfavor any political actor; specific bans on certain types of behavior. See points following 3-10.
3. Banning political actors from receiving favor from public entities (or entities with a public connection). See point following 11.

4. Banning public entities and entities with a public connection from certain types of behavior regardless of whether there is an intent or effect to favor or disfavor any political actor; at all times or during particular periods, such as election campaigns. See following point 12.
5. Indirect regulations from the perspective of ASR, which normally have a wide scope. This will include regulations that seek to make the State administration insulated from political influence as well as regulations on political finance disclosure and the provision of public funding. See following points 13 -16.

The following list of points provides practical examples of methods of regulating ASR; note that the list is not exhaustive. Examples are provided to show how such regulations have been used in different countries; it does not mean these rules have been enforced in practice.

1. ***Compelling State agencies and employees/public servants to act impartially in all matters***

The most general form of regulation is to demand impartiality in the behavior of State actors. Such a regulation is unlikely to be sufficient on its own, lacking as it does detailed information on the type of activities that are banned, but it can function as a powerful statement of principle by which all those working within the State must abide.

The United Nation General Assembly has in its resolution on an International Code of Conduct for Public Officials noted “The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties”.<sup>159</sup> In the European context, the Venice Commission has noted “Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities.”<sup>160</sup>

2. ***Specific requirements for State agencies and employees/public servants to act impartially in relation to political parties and election campaigns***

This is a slightly more specific version of the first example, focusing specifically on political parties and candidates. Both methods apply to all forms of State resources discussed, including regulatory and enforcement resources. Again, regulations of this kind can establish an important principle, but they are unlikely to be sufficient on their own. The Electoral and Political Parties Law in Guatemala bans public officials from using their position to support or undermine any candidate.<sup>161</sup>

3. ***Banning the use of administrative resources in election campaigns, except when provided as part of legally-regulated public funding of political parties and/or election campaigns***

Another method is to ban certain types of resources from being used in relation to election campaigns. This can relate to specific funds (the Polish Presidential Election Law states that campaign expenditures

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<sup>159</sup> United Nations General Assembly (1997) Article 6.

<sup>160</sup> Venice Commission, Code of Good Practice, sec. I.2.3.iii

<sup>161</sup> The Carter Center (2004) page 6.



cannot be met by the State or local government budgets in Article 86), but it can also relate to institutional resources, such as the use of public servants in campaigning; see point 7.

One example is the Parliamentary Elections Law in Lebanon, which states “Public utilities, governmental institutions, public institutions, private or public universities, faculties, institutes and schools, and houses of worship may not be used for electoral events and rallies or for posting pictures or for electoral promotion purposes” (Article 25).

4. ***Banning public agencies from providing funds to political parties or candidates, except when provided as part of legally-regulated public funding of political parties and/or election campaigns***

This is similar to the form of regulation above, but instead of placing focus on the resources being used it emphasizes the actors that must not benefit. Normally, this type of regulation focuses mainly on financial resources. For example, in Afghanistan, government agencies are banned from providing financial support to electoral candidates, unless it “provides equal facilities to all candidates.”<sup>162</sup>

5. ***Banning provision of funds from agencies with relation to the State, such as partially state-owned corporations or organizations to political parties or candidates***

Taking a step away from direct State institutions, there is a need to regulate the behavior also of institutions that have a close connection to the State. The Council of Europe Parliamentary Assembly has recommended that European countries should maintain “a ban on donations from state enterprises, enterprises under state control, or firms which provide goods or services to the public administration sector.”<sup>163</sup> Note that regulations of this kind are normally intended to both stop public money being misused for the benefit of political actors, and to hinder quid-pro-quo donations where companies with government contracts provide funding to win further contracts in the future.

In Slovenia, the Elections and Referendums Act states “The elections campaign shall not be financed by budgetary funds and funds of companies whose invested public capital exceeds 25% and companies in which they have a majority holding, except by the funds provided to the political parties from the budget in compliance with the act regulating political parties” (Article 4). Similar provisions exist in countries such as Brazil, Burundi, Finland and India.

6. ***Place special demands on political neutrality on key sections within the State structures, such as election management and law enforcement agencies***

While the entire State machinery must be neutral in elections, some institutions are of particular importance, including the justice system and those working directly with election management. The Parliamentary Election Act in Poland states that “Members of [electoral] commissions are prohibited from

<sup>162</sup> IEC (2010) Article 3.

<sup>163</sup> Council of Europe Parliamentary Assembly (2001) Recommendation 1516.

involvement in election campaigning for any candidate for deputy or senator or for any list of candidates” (Article 34.3).

**7. *Banning State employees/public servants from participating in electoral campaign activities***

Apart from countries where campaigning is dominated by media advertising, personnel resources are often crucially important for the campaign efforts, and it is important that public servants are not used to engage in campaign activities. In other words, public servants constitute an important institutional resource that must not be abused.

Such bans are common practice in many countries, such as Venezuela where State employees “may not abandon their normal working duties to participate in electoral activities or those of political parties, voter groups, or candidatures for positions obtained through public elections.”<sup>164</sup> Whereas, the Venezuelan ban relates to the activities of State officials on duty, many countries ban senior State officials, such as judges, from participating in campaign activities altogether.

The Constitution of Malawi includes provisions making it illegal for police officers to “exercise functions, powers or duties for the purposes of promoting or undermining the interests or affairs of any political party or individual member of that party, nor shall any member of the Malawi Police Force, acting in that behalf, promote or undermine any party or individual member of that party” (Article 158).

**8. *Requiring some or all public servants to resign from their position before standing for elected office***<sup>165</sup>

The purpose of this type of regulation is to reduce the temptation of people with access to public funds to use this access in running for elected office. Some countries where regulations of this kind exist are Australia, Barbados, Canada, Ghana, Ireland and Sierra Leone.<sup>166</sup>

A difficulty here is that its implementation could actually facilitate ASR, if the public employers decide not to re-hire persons who unsuccessfully stand for office for the opposition, while allowing those who stood for the government party to return to their posts. This type of regulation should therefore be combined with strict rules regarding neutrality and transparency in public hiring practices.

**9. *Requiring publically-owned media to be impartial in reporting on political actors and election campaigns and to devote equal time to all competitors***

Media has become increasingly important in campaigning in many countries, and where publically-owned media has a strong position, its neutrality will be a necessity for credible elections. According to

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<sup>164</sup> EUEOM (2006) page 40.

<sup>165</sup> A regulation of this kind does not directly address the ASR, as it would be possible for a public servant to stand for election without getting involved in such activities. However, the purpose of such regulation is to reduce the risk of such abuse taking place, another reason can be to avoid the politicisation of the public service or government administration.

<sup>166</sup> Ohman (2011a) page 9.

the political party finance database by International IDEA, 66 percent of the 171 countries for which it has data have regulations on the provision of free airtime to political parties.<sup>167</sup>

In Moldova, the Electoral Code states, “It is prohibited to air, apart from the air time granted free of charge during debates, spots and TV or radio reports, on the activity of the electoral contestant or on their or their trustees participation in meetings with the voters, on working visits of the electoral contestants who hold offices at republican or rayon level. No electoral candidate shall be entitled to privileges due to the offices they hold” (Article 47.4).

**10. *Clearly specify the rules for relevant authorities on the issuing of permission regarding rallies and other campaign activities, and limitations that may be imposed on such activities***

A common abuse of enforcement resources is for State officials to refuse the opposition the right to campaign effectively by banning rallies and other campaign activities. In the Former Yugoslav Republic of Macedonia, the Electoral Code establishes that “permission for holding a pre-election rally shall be issued by a person in charge of the institution, under equal conditions for all election campaign organizers” (Article 82.3).

**11. *Banning political actors, such as political parties and candidates, from receiving funds from sources discussed in points 2, 3 and 4***

The purpose of this type of regulation is to penalize the recipient of banned funding, and by the threat of sanctions help to alter their incentive structure. For example, the electoral law of Slovakia states that “The Candidate for the President cannot receive a gift nor other not-to-be-paid-back performance from the State, nor organs of state administration or organs of municipal government.” (Article 18.2). Regulations of this kind are also found in Cambodia, Chile, Côte d'Ivoire and Germany. Only rarely can this type of regulation be applied effectively to State resources that are not financial.

**12. *Banning activities that may indirectly benefit the incumbent by for example advertising the success of ministries or other state agencies***

One effective approach is to ban certain types of activities during the pre-election period, whether or not it can be shown that the intent or effect of such activities was to favor or disfavor any political actor.

In Mexico in 2006, the EMB banned the promotion of social development programs for 40 days before elections are held, as this can be used to entice voters to support the incumbent regime.<sup>168</sup> Similarly, the Code of Conduct issued by the Indian Election Commission makes a number of restrictions on what incumbent politicians and State authorities can and cannot do during the campaign period, including banning them from:

- (a) announce any financial grants in any form or promises thereof; or (b) (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or (c) make

<sup>167</sup> See [www.idea.int/political-finance](http://www.idea.int/political-finance).

<sup>168</sup> EUEOM (2006) page 25f.

any promise of construction of roads, provision of drinking water facilities etc.; or (d) make any ad-hoc appointments in Government, Public Undertakings etc. which may have the effect of influencing the voters in favor of the party in power”<sup>169</sup>

To reduce the risk of indirect support being given to the incumbent government in Guatemala, the “constitution also forbids officials from issuing propaganda about public works and other achievements during campaigns. These bans are obviously intended to deny the incumbent party any unfair advantage over its competitors.”<sup>170</sup> Also, the Omnibus Election Code in the Philippines bans “any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations” 45 days before an election (Article 261.2).

**13. *Regulating the provision of public funding to political parties and/or election campaigns to ensure a formal process that does not unduly benefit any political party or candidate.***

The final two methods are indirectly related to counteracting ASR. The provision of regulated public funding to political parties or (less often) candidates is often seen as a way of reducing the dependency of political actors on private benefactors. However, it can also function as a provision of public funds in a regulated manner to both government and opposition, and so, if combined with direct methods to stop ASR, it can reduce the illegitimate benefits of incumbency.

Two thirds of the countries in the world now use public funding, and international institutions such as the Council of Europe and the Southern African Development Community Parliamentary Forum calls on their member States to provide public funding to political parties in a regulated, fair manner.

**14. *Requiring political parties (and candidates) to report on their finances (on-going and in relation to elections), to facilitate the detection of abuse of administrative resources***

Transparency is a key principle of political finance oversight in general, and counteracting the ASR is no exception. Around two-thirds of all States now require political parties to submit financial reports, whereas less than half have such regulations for candidates. In practice, the number of countries with effective disclosure is much smaller.<sup>171</sup> The issue of financial reporting is discussed at length in Chapter 6.

**15. *General efforts to increase the independence of the State administration***

As long as the State administration (public institutions and employees) are under political influence, they will find it difficult to resist pressure from the political power to ASR. Apart from the specific regulations listed, efforts must be made to insulate the administration from the political government, which should decide on policy matters only. Hiring and promotions should be through merit rather than political con-

<sup>169</sup> Election Commission of India (2007) p vi.

<sup>170</sup> The Carter Center (2004) page 6.

<sup>171</sup> Ohman and Zainulbhai (2009) page 108.

tacts, and there should be clear regulations on political involvement in administrative matter. Building a professional sentiment of civil rather than political service may be the best way to counteract ASR.<sup>172</sup>

#### **16. *Term limits for elected officials***

In an ideal situation, term limits for elected office are not needed, as voters will decide if they want to re-elect an incumbent politician or not. However, this ideal situation requires that incumbents do not abuse their position to deter contestants. The main rationale for term limits is that they reduce the advantages of those already holding elected office. Most countries with directly elected heads of State limit the number of times a sitting President can be re-elected. Normally, only one consecutive re-election is allowed (making two terms in total), but a number of countries ban direct re-election. These include Israel, the Philippines and South Korea, as well as several Latin American countries such as El Salvador, Guatemala, Honduras, Mexico and Paraguay.

Term limits for parliamentarians are much less common. In certain scenarios, it could be considered whether or not such limits could help to reduce ASR.

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<sup>172</sup> In this regard, efforts of the type used in the Philippines to train people in administrative positions may be especially useful. See page 132.

## Examples from National Legislation

Figure 36: National Legislation Against the Abuse of State Resources

Country and Law	Text
<p><i>Slovakia</i></p> <p>Law... the Election of the President of the Slovak Republic... 1999</p>	<p><b>Article 18.2</b></p> <p>The Candidate for the President cannot receive a gift nor other not-to-be-paid-back performance from the State, nor organs of state administration or organs of municipal government.</p> <p>(NB. The Constitution of Slovakia also notes that “Political parties and political movements, as well as clubs, societies, and other associations are separated from the state” Article 29 (4).)</p>
<p><i>Malawi</i></p> <p>National Constitution</p>	<p><b>Article 158</b></p> <p>(3) No government or political party shall cause any member of the Malawi Police Force acting in that behalf to exercise functions, powers or duties for the purposes of promoting or undermining the interests or affairs of any political party or individual member of that party, nor shall any member of the Malawi Police Force, acting in that behalf, promote or undermine any party or individual member of that party.</p> <p>(4) No government or political party shall cause any member of the Malawi Police Force, acting in that behalf, to deploy resources, whether they be financial, material or human resources, for the purposes of promoting or undermining any political party or member of a political party or interest group, nor shall any member of the Malawi Police Force, acting in that behalf, cause such deployment:</p> <p>Provided that nothing in this section shall be construed as derogating from the duty of the Police to uphold the rights and afford protection to all political parties, persons and organizations equally, without fear or favour, in accordance with this Constitution and subject to any law.</p>
<p><i>Poland</i></p> <p>The Act of 12 April 2001 on Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland</p> <p>Act of 27th September, 1990 on Election of the President of the Republic of Poland</p>	<p><b>(Parliamentary Act) Article 34.3</b></p> <p>Members of [electoral] commissions are prohibited from involvement in election campaigning for any candidate for deputy or senator or for any list of candidates...</p> <p><b>Article 90.2</b></p> <p>2. It shall be forbidden to affix election posters to the interior and exterior walls of government buildings or those of local administration and courts or on the territory of army and civil defence units as well as quartered units subject to the minister for internal affairs.</p> <p><b>Presidential Act; Article 86</b></p> <p>1. Election campaign expenditures cannot be met from the sources derived from:</p>

	<p>1) State Budget;</p> <p>2) State organisational units;</p> <p>3) budgets of local government units, municipal unions and self-government councils;</p> <p>4) State-owned enterprises, and other economic subjects with the participation of the State Treasury, units of local administration, municipal unions and other municipal legal persons, as well as associations and other corporations of units of local administration – excluding public companies;</p> <p>5) legal entities and organisational units, excluding political parties, which have used public funds within the two years of proclamation of election;</p> <p>6) subjects dependent, in the meaning of the Act on Public Trading in Securities, on subjects listed in sub-paragraphs 2 to 5.</p>
<p><i>Cambodia</i></p> <p>Political Parties Law (1997)</p>	<p><b>Article 29</b></p> <p>Political parties shall be banned from receiving contributions of any form from government’s institutions, associations, NGOs, public enterprises, public establishments, public institutes of foreign firms, except only for the case as stated in article 28 of this law [article 28 deals with the regulated provision of public funding].</p>
<p><i>Czech Republic</i></p> <p>Act 247/1995 on elections to the Parliament of the Czech Republic</p>	<p><b>Article 16 The Election Campaign</b></p> <p>(1) Each mayor may reserve a space for election posters 16 days before the date of the elections. He/she must ensure that any such space can be used equally by all political parties, movements and coalitions, or by all candidates standing for the Senate.</p>
<p><i>Croatia</i></p> <p>Civil Servants Act 2006</p>	<p><b>Article 6 Prohibition of Discrimination and Favouritism</b></p> <p>(1) In their work, civil servants shall neither discriminate nor favour citizens based on age, nationality, ethnic or territorial affiliation, linguistic and racial origin, political or religious beliefs or affinities, disability, education, social status, sex, marital or familial status, sexual orientation, or some other grounds contrary to the Constitution or legally-established rights and freedoms.</p>
<p><i>Slovenia</i></p> <p>Elections and Referendum Campaign Act (ZVRK)</p>	<p><b>Article 4</b></p> <p>(1) Pre-election meetings shall not be allowed in the premises of state authorities, authorities of self-governing local communities, public institutions and other entities of public law, nor in the premises of religious communities, except when a religious community is the organizer of a referendum campaign. The elections campaign shall not be financed by budgetary funds and funds of companies whose invested public capital exceeds 25% and companies in which they have a majority holding, except by the funds provided to the political parties from the budget in compliance with the act regulating political parties.</p>
<p><i>Former Yugoslav Republic of Macedonia</i></p> <p>Electoral Code. Official Gazette</p>	<p><b>Article 82</b></p> <p>(3) The permission for holding a pre-election rally shall be issued by a person in charge of the institution, under equal conditions for all election campaign or-</p>

<p>of the Republic of Macedonia No 40, 31 March 2006</p>	<p>ganizers.</p> <p>(4) The facilities, equipment or other property of the state bodies and bodies of local self-government and the City of Skopje may not be used for the purposes of election campaigns.</p> <p>(5) As an exception, the facilities of the bodies from paragraph (4) of this Article may be used if there are no other appropriate facilities in the place that may be used for the purposes of election campaign.</p> <p>(6) Permission shall be issued by the person in charge of the institution, under equal conditions for all election campaign organizers.</p>
<p><i>Moldova</i></p> <p>Electoral Code</p> <p>Law No 1381-XIII of 21.11.97 (as at March 27, 2007, with all modifications)</p> <p>Monitorul Oficial al R.Moldova No 81/667 of 08.12.1997</p>	<p><b>Article 32</b></p> <p>(7) Members of electoral councils or bureaus entitled to deliberative vote may not campaign for or against candidates running for eligible public office; engage in any other political activity on behalf of any electoral contestant; be affiliated with any of them; make any financial or other contribution, directly or indirectly, to any electoral contestant. In local elections members of electoral councils and bureaus entitled to deliberative vote may not be relatives by blood or by law with a candidate running in elections.</p> <p><b>Article 45</b></p> <p>(6) Trustees of candidates having public functions may not use public means and goods for electoral campaigns.</p> <p><b>Article 46. Guaranteed Rights of Electoral Candidates and Contestants in Elections</b></p> <p>(1) The electoral contestants shall participate in the electoral campaign on an equal basis and have equal access to mass media, including radio and television, financed by the state budget.</p> <p>(2) All electoral contestants shall be guaranteed equal opportunities for technical and material support and funding of the electoral campaign.</p> <p>(4) Candidates for parliamentary elections may use all state-owned means of transportation (except taxi) on the soil of the entire country free of charge. In local elections candidates shall exercise this right within the relevant electoral district only.</p> <p>(5) During the electoral period, candidates may not be fired or transferred to another place of work or position without their consent. also may not have a criminal case filed against them, arrested, detained or be subjected to any administrative sanctions without the agreement of the electoral body which registered them, with the exception of cases of flagrant offences.</p> <p><b>Article 47</b></p> <p>(4) It is prohibited to air, apart from the air time granted free of charge during debates, spots and TV or radio reports, on the activity of the electoral contestant or on their or their trustees participation in meetings with the voters, on working visits of the electoral contestants who hold offices at republican or rayon level. No electoral candidate shall be entitled to privileges due to the offices they hold.</p>



	<p>(11) For the time period of electoral campaign, as well as for the time period of conducting a referendum, air time granted to Parliament, Presidency, and Government press service may not be used to electioneer or to campaign for or against the issues put up for referendum.</p>
<p><i>Kazakhstan</i>                  Constitutional Act of the Republic of Kazakhstan                  “On Elections in the Republic of Kazakhstan”                  September 28, 1995 N 2464                  (unofficial translation)</p>	<p><b>Article 27 (5)</b>                  The candidates-officials of the state bodies are forbidden to use advantages of their official or service position.                  Under use of an advantage of an official or service position, the present Constitutional Act understands the following:                  1) Attraction of persons who are under subordination or other career dependence to conduct a pre-election campaign, except for cases when the indicated persons conduct propaganda as proxies of the candidate;                  2) Use of the premises occupied by the state bodies for accomplishment of the activity promoting election of a candidate, a political party which has put forward the party list if other candidates, political parties are not guaranteed the use of the indicated premises on the same conditions.                  Observance of the limitations stipulated by the present item should not interfere with execution by the officials of their official duties.</p>
<p><i>Philippines</i>                  Omnibus Election Law, No 881 (1985)</p>	<p><b>Prohibited Acts Include (Article 261)</b>                  (g) Appointment of new employees, creation of new position, promotion, or giving salary increases. - During the period of forty-five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.                  As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: Provided, however, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.                  (2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.                  (h) Transfer of officers and employees in the civil service. - Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission.</p>

(i) Intervention of public officers and employees. - Any officer or employee in the civil service, except those holding political offices; any officer, employee, or member of the Armed Forces of the Philippines, or any police force, special forces, home defense forces, barangay self-defense units and all other paramilitary units that now exist or which may hereafter be organized who, directly or indirectly, intervenes in any election campaign or engages in any partisan political activity, except to vote or to preserve public order, if he is a peace officer.

...

(v) Prohibition against release, disbursement or expenditure of public funds. - Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

(1) Any and all kinds of public works, except the following:

(a) Maintenance of existing and/or completed public works project: Provided, That not more than the average number of laborers or employees already employed therein during the six-month period immediately prior to the beginning of the forty-five day period before election day shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work within the said period of forty-five days;

(b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: Provided, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility. No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph. This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

(2) The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries

	<p>shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and</p> <p>(3) The Ministry of Human Settlements and any other office in any other ministry of the government performing functions similar to said ministry, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.</p> <p>(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. - During the period of forty five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or</p> <p>(b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.</p> <p>(x) Suspension of elective provincial, city, municipal or barangay officer. – The provisions of law to the contrary notwithstanding during the election period, any public official who suspends, without prior approval of the Commission, any elective provincial, city, municipal or barangay officer, unless said suspension will be for purposes of applying the "Anti-Graft and Corrupt Practices Act" in relation to the suspension and removal of elective officials; in which case the provisions of this section shall be inapplicable.</p>
<p><i>Afghanistan</i></p> <p>Final Decree on Electoral Law, February 2010</p> <p>Decree on the non-interference in the Electoral Affairs of Elections 1388 (2009) S/No 38</p>	<p><b>Article 7 Non-interference of Governmental Officials In Electoral Affairs</b></p> <p>Officials and staff of Governmental departments and individuals with local power cannot directly or indirectly intervene in electoral affairs. Use of any governmental resources, facilities and properties in benefit or loss of candidate or candidates is not permitted. The unequal use of governmental and public resources according to the orders of this law is prohibited.</p> <p><b>Article 1.</b></p> <p>The officials of the government institutions, including the Ministers, Directors of the Independent Directorates, Deputy Ministers, Judges, Attorneys, Heads of the government institutions, Governors, Deputy Governors, and all officials of the Ministry of Defense, Ministry of Interior, General Directorate of National Security, are obliged to observe the following points during the conduct of elections:</p> <p>1 Non-interference in the electoral process, except where predicted in the law.</p> <p>2 Refrain from actions that influence the voters to unveil whom have they voted for, or to force them to vote for a specific candidate or committing any action that can interrupt the principle of free, confidential and direct voting.</p>

	<p>3 Non-interference in the meetings, preparation of meetings, gatherings, peaceful rallies during the electoral process.</p> <p>4 Refrain from misusing the government resources and facilities in favor or against any candidate.</p> <p>5 Refrain from collection, misshaping of the posters or other electoral campaign materials and resources of the candidates.</p> <p>6 Ensure the security of the candidates and voters,</p> <p>7 Restrain from designation or termination of individuals on government positions for the purpose of electoral campaigning.</p>
<p><i>Timor Leste</i></p> <p>Presidential Election Law 2006</p>	<p><b>Article 63 Breach of Duties Of Neutrality And Impartiality</b></p> <p>Members of the electoral administration or collaborating with it who breach the duties of neutrality and impartiality shall be punished with coercive detention of up to 2 years or fine of up to 1,000 US dollars.</p>
<p><i>Lebanon</i></p> <p>Parliamentary Elections Law, Law No. 25, 2008</p>	<p><b>Article 71</b></p> <p>1- Public utilities, governmental institutions, public institutions, private or public universities, faculties, institutes and schools, and houses of worship may not be used for electoral events and rallies or for posting pictures or for electoral promotion purposes.</p> <p>2- Civil servants and employees of public institutions, municipalities, and municipal unions may not use their powers in favor of any candidate or list.</p>
<p><i>Uganda</i></p> <p>Parliamentary Election Law 2005</p>	<p><b>25 Use of Government resources</b></p> <p>(1) Except as authorised under this Act or otherwise authorised by law, no candidate shall use Government or public resources for the purpose of campaigning for election.</p> <p>(2) Where a candidate is a Minister or holds any other political office, he or she shall, during the campaign period, restrict the use of the official facilities ordinarily attached to his or her office to the execution of his or her official duties.</p> <p>(3) For the purposes of enforcing this section the Commission shall, by writing require any candidate to state in writing the facilities ordinarily attached to any office held by that person to which subsection (2) applies and the candidate shall comply with the requirement.</p> <p>(4) This section applies with the necessary modifications to an employee of a statutory corporation or company in which the government owns a controlling interest and a member of a commission or committee established by the Constitution as it applies to a public officer.</p> <p>(5) A person who contravenes any provision of this section commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.</p>
<p><i>Egypt</i></p> <p>Law No. 174 for the year 2005</p>	<p><b>Article (21):</b></p> <p>In the election propaganda, compliance shall be observed with the provisions of</p>

<p>On Regulating the Presidential Elections</p>	<p>the Constitution, the law, the PEC resolutions as well as the following rules:...</p> <p>5. prohibition of using State-owned, public- sector or public-business- sector owned buildings, facilities and means of transportation in the election propa- ganda in any form;</p> <p>6. prohibition of using public utilities, place of worship, schools, universities and others public or private educational institutions for the election propaganda purposes</p> <p><b>Article (22):</b></p> <p>State-owned audio-visual media shall maintain equality between candidates when used for election propaganda purposes. The PEC shall have the compe- tence to take such measures as it deems necessary in case of violating the pro- visions of this article.</p>
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## Chapter 13: Implementing Regulations on Abuse of State Resources

### Particular Problems in Implementing Regulations Against Abuse of State Resources

Unfortunately, there are many examples of PFEs failing to address ASR effectively, or at all. Some brief examples from observer reports:

#### Georgia 2010

It is important to clearly define the mandate of the supervisory institution overseeing the proper use of administrative resources. Previous elections have shown that the Central Election Commission (CEC) cannot perform this role effectively. Thus, it is important to either elaborate the mechanisms for increasing the effectiveness of the CEC or to identify another institution responsible for the oversight.<sup>173</sup>

#### Cambodia 2008

“Probably the most significant feature observed by this delegation was the overwhelming presence and dominant position of the ruling CPP party. The use of state resources by the CPP... was also observed by this delegation and reported orally to the NEC, although with no much effect.<sup>174</sup>

#### Yemen 2006

Disappointingly, neither the SCER nor the Office of the Public Prosecutor took any steps to enforce the Elections Law or to seek punishment for clear and repeated violations.<sup>175</sup>

#### Angola 2008

“The weak role of CNE as an oversight body became even more evident during the campaign period, when it failed to fulfil its role in of taking any remedial action in response to violations of election laws by the ruling party. For example, the CNE did not... act to stop the abuse of state resources by the ruling party.<sup>176</sup>

It is easy to condemn PFEs that fail to enforce regulations on issues as important as ASR. However, we must recognize the often very formidable problems the PFE faces when they try to do so.

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<sup>173</sup> Transparency International Georgia (2010) page 3.

<sup>174</sup> European Union Election Observation Mission (2008).

<sup>175</sup> European Union Election Observation Mission (2006) page 21.

<sup>176</sup> Human Rights Watch (2009) page 20.

***Legislation Often Created by Persons and Institutions that May Engage in ASR***

Politicians create the legislation and overall framework for combating ASR in the country, while at the same time these politicians are those who may benefit from engaging in some activities, either now or in the future. Governments, which often hold a legislative majority, may prove unwilling to pass legislation that will de facto include a control over its own behavior.

While opposition political parties may champion efforts to combat ASR, they may not be fully in favor of a system that includes effective control and sanctions of such misconduct, in case they should one day gain power and wish to do the same. There may be an implicit concurrence of views among government and opposition leading to effective measures not being passed, leaving the PFE with incomplete legislative and regulatory support for counteracting ASR in elections and in political life in general.

***Abuses Most Often Conducted by Persons or Institutions of Power***

This problem is closely related to the previous issue, but focuses on culprits of abuses rather than those creating regulation. While “regular” electoral fraud like vote buying, ballot stuffing and intimidation can often be conducted by different groups of people, ASR is often limited to those in a position of political power, normally in government, including persons in leadership or with the support of others holding such positions.

In some countries, ASR becomes an endemic part of government party strategy for parties to remain in power over time. In these situations, the independence of the PFE will be targeted to ensure maintenance of the status quo, and any attempts to enforce regulations against ASR may be met with hostility.

***Addressing ASR Can Expose the PFE to Serious Political Pressures***

Since activities connected to ASR are normally conducted by those in power, their interest in maintaining their position may lead them to pressure the PFE to ignore cases of ASR, or fail to pursue penalties in such cases. In some situations, the future careers or the safety of PFE commissioners and officials who take a firm stand on ASR may be jeopardized.

This is a situation that PFEs share with various anti-corruption institutions the world over. The United Nations Convention Against Corruption states that countries should introduce legislation against the “use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention” (Article 25.b).

***PFE May be Accused of Bias***

Since the opportunity to abuse State resources is often only available to the political party/parties in power (and by incumbent politicians), addressing this issue can lead to an accusation that the PFE is acting in the interest of the opposition.<sup>177</sup>

The one-sidedness of ASR can become a problem for a PFE that finds itself constantly in battle with the government side, leaving it little time to investigate dealings of the opposition, which may abuse State resources just as much if they gain power.

***Lack of Independence of Judiciary May Jeopardize Effective Sanctioning***

Even if the PFE decided to deal actively with ASR, issuing more serious sanctions will often require it to refer cases to the court system or to an official complaints mechanism outside of its own control, and even if it has its own sanctioning mandate, these sanctions will normally be open for appeals to the judiciary. Such a system can help to protect rule of law, but in situations where the judicial system is effectively under the control of the incumbent regime, it may hinder the effective enforcement of ASR regulations.

**Solutions**

The severe problems with implementing rules against ASR outlined emphasize the need for concerted efforts to create effective, impartial enforcement mechanisms. Unfortunately, while there is general acknowledgement of the need to counteract ASR, there is little in the way of agreement regarding how this should be done. For example, the ASR recommendations in the OSCE/ODIHR/Venice Commission Guidelines for Political Party Regulation (2010) do not go beyond calling for clear definition of what constitutes abuse and banning state employees having to attend rallies or paying a particular party (page 43), and the Council of Europe Committee of Ministers simply argue, “States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties” (Rec 2003, 4, Article 5c).

***Determination to Fulfill Mandate***

Many PFEs, especially those that also function as EMBs, will be reluctant to engage in matters relating to ASR for all the reasons discussed. Many EMBs find dealing with matters of political finance jeopardizes its independence and ability to conduct activities it sees as more directly relevant to its mandate, such as the technical administration of elections.

However, it is important to realize that an EMB may fully fail in its mandate of delivering free and fair elections if it does not deal with ASR, regardless of how well the elections are administered technically. All painstaking preparations of boundary delimitation, voter registration and Election Day operations may have no beneficial impact on national democracy if the incumbent regime uses State resources to outspend or harass the opposition. Any professional EMB must therefore consider the elections they

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<sup>177</sup> Incidentally, this is also a challenge facing CSOs that decide to monitor ASR.



organize in their proper context, although limitations in the EMB's mandate may require it to seek cooperation with other agencies to effectively counteract ASR.

### ***Maintaining Full Independence***

Chapter 5: Strengthening the Independence of Political Finance Enforcing Bodies, discussed different aspects of the independence of the PFE. There is no point when such independence is more important than when a PFE needs to enforce regulations against State officials or the government party for abusing State resources in their favor.

As discussed, the violators may often be senior government party officials, ministers or even the head of State. The PFE must therefore guard its independence jealously, even regarding very minor issues. Any action that can be seen as relinquishing the PFE's independence must be avoided, and the PFE must maintain both its perceived and actual independence.

To assist this independence, PFE staff and leadership should have no recent political connections. Preferably employment to key positions should be closed to those who have held elected or party office during the last few years, and there should be a ban on people in key positions to seek elected office within a certain period after leaving employment with the PFE. The movement of personnel between the PFE and the political sector can be detrimental to the actual and perceived independence of the enforcement institution.

### ***Maintaining Own Mandate for Sanctions***

In situations where the judicial system is closely connected to the incumbent regime, the PFE may be unable to achieve effective enforcement if it is dependent on courts to impose sanctions. In such cases, the PFE should maintain its own sanction system for violations as far as possible.

This will allow the institution to impose minor sanctions against abuses, which can help bring increased attention to the issue, and which could lead to the court system to take cases (or appeals) seriously that fall within their scope of authority. One of the most effective sanctions could be a stop order, whereby the PFE can simply order an actor to stop a certain action perceived as favoring a certain political party or candidate until the elections are over. Clear rules must be available to establish the situations in which the PFE can use such sanctions.

### ***Seek Regulations that do not Depend on Proving Intentional Bias***

Proving that a certain activity benefitted an incumbent political party or candidate can be a difficult task. It gets even more difficult if it has to be proven that producing such benefits was the intention of the activity. Therefore, PFEs should, whenever possible, seek to break the causal link in regulations between activities and their effects, and simply state that certain actions are not allowed during a determined pre-election (campaign) period.

The likely effect of such an approach is not that the abuse of administrative resources would cease, rather that it would happen before the beginning of the determined period. However, pushing the abuse of administrative resources further away from the election date is likely to reduce its effectiveness, and

may make such a strategy less attractive. Activities that could be banned might include increasing the salaries in the public sector, although such a regulation would most likely be very unpopular among such staff) the announcement and inauguration of new public works; and the use of non-urgent and not electorally-related public awareness campaigns.

In an earlier paper on political finance in Georgia, Marcin Walecki discussed this option in terms of a “special period of fairness.”<sup>178</sup> He also discussed the similar option of banning certain activities at all times, still not directly tied to evidence of campaigning.

#### ***Develop Awareness Within Sanctioning Institutions about Regulations against ASR***

It can also be useful for the PFE to ensure that sanctioning institutions, be they regular courts or specific electoral dispute resolution institutions, are familiar with regulations against ASR. This can include meetings or trainings of personnel regarding the existing regulations and the sanctions against violations. Naturally, the independence of each institution must be maintained, and activities of this kind are unlikely to significantly improve the situation if the judiciary is biased.

International partners can be useful in this regard. In 2011, IFES trained staff at the offices of Serbian prosecutors ahead of national elections on the rules regarding political finance, including those against ASR.

#### ***Encourage State Institutions to Develop Internal Guidelines on Acceptable Behavior***

The PFE can also take a leading role in working with State institutions in developing guidelines about how staff may or may not behave in relation to political issues, and how resources of such institutions should be used. The PFE can establish general guidelines based on the legal situations in the country and international norms in counteracting ASR. Government institutions can, based on such guidelines, develop binding internal guidelines for staff and leadership.

To take but one example, there is no reason for a ministry or other State institution to take out advertisements during a pre-electoral period to highlight the achievements of the institution since the last election. State institutions do not run in elections, and while highlighting their work may be beneficial in increasing public understanding and support in general, doing so during a pre-electoral period is unnecessary and almost infallibly amounts to ASR. If such advertising cannot be banned outright (see the prior solution), State institutions should be encouraged to develop internal guidelines that prohibit such behavior.

#### ***Being Public about Findings***

In some situations, the PFE may not have the mandate to penalize abuses of State resources, or it may be impossible for it to do so through a lack of cooperation of other agencies. Also in such cases, however, the PFE can gain both public credibility and put pressure on other agencies to act by publically announcing its findings regarding legal violations or illegitimate behavior relating to ASR.

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<sup>178</sup> Walecki (2009) page 5.

In other words, where a mandate including effective sanctioning powers is not given to the PFE, or where the right to appeal to the mainstream legal system renders such a mandate impotent, the PFE may need to resort to “naming and shaming” those who violate regulations on ASR.

### ***Seek to Build Awareness and Encourage Popular Rejection of Abuse of State Resources***

There are various ways legislation and different forms of regulation can be used to counteract the abuse of administrative resources. However, two factors speak against formal regulations ever being sufficient to put an end to such activities. The first is that legislation is passed by parliament, and the majority of members (normally) belong to the government party or parties, which means that, in this context, they regulate themselves. The second is the more general point that there is a limit to how much we can regulate political behavior through formal rules. Societal norms and standards determine what is and what is not seen as acceptable conduct to a large extent.

Civil society groups and media have an important role to play in building popular opinion on political behavior, making people understand how ASR is not only a threat to democracy, but also a waste of public resources, as such spending does not form part of carefully thought-out plans on societal needs and cost-effective implementation.

Efforts can also target particular groups with special importance in the long-term combat against the ASR. As Speck and Fontana have pointed out, “[w]hen abuse is widespread, a long-term strategy is necessary, namely strengthening the professionalism and independence of the civil service. To the extent that members of the civil service are independent from political appointment and obey standards of efficiency and public interest, the abuse of supplies becomes more difficult.”<sup>179</sup> More specially, initiatives can aim to increase the awareness of ASR among civil servants and emphasize the detrimental effects of such activities on the effectiveness of State administration. An example of such projects is the curriculum developed by the Association of Schools of Public Administration in the Philippines (ASPAP) on understanding campaign finance, which aims at increasing the understanding of key issues among those preparing for a career in public service.<sup>180</sup>

Naturally, building such opinion takes a significant amount of time, but before this is done, the abuse of administrative resources is destined to haunt the political process. It should also be acknowledged that pressure from below is necessary, but it must be followed by action from above to have effect. Popular pressure must be combined with political action by leaders, as “[u]ltimately, the quality of political leadership and the rejection of providing popular support to political parties for engaging in such activities are required if this abuse is to be removed altogether.”<sup>181</sup>

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<sup>179</sup> Speck & Fontana (2011) page 11.

<sup>180</sup> The curriculum was developed by ASPAP as a partner in the Pera At Pulitika consortium, supported by IFES since 2007.

<sup>181</sup> Ohman (2010) page 9.

## Conclusion

There is no doubt that ASR is an issue many PFEs will find it very difficult to tackle. They are not alone. In a recent publication, Speck and Fontana noted “the abuse of State resources for political gain has been largely neglected.”<sup>182</sup> They also note that political finance experts have focused on regulating private funding of political parties and election campaigns, while public sector reform specialists have mainly targeted bribery. However, they rightly argue:

“Experts from both fields should work together to find solutions that will improve both the quality of democratic competition and the efficiency of the public sector. In so doing, they must face the fact that the two questions are linked. It will not be enough to fight vote trading through explicit rules with harsh sanctions defined by the electoral law as long as access to basic public services is scarce, forcing citizens to resort to political intermediaries when they want to enroll their children in school or obtain a business permit. Similarly, companies that depend on arbitrary decisions by officeholders will continue to grease the wheels by financing parties and candidates as long as they do business with the state. If opposition parties can mount a real electoral challenge, then funders are likely to finance them as well, thus diminishing the risk of unfair political competition. Increasing the efficiency of public administration makes it harder for public services to suffer abuses by incumbent parties.”<sup>183</sup>

Technological advances and international and domestic election observation efforts have, to some extent, helped reduce polling day fraud, and so improve the quality of the electoral process in many countries. However, as long as those in power can maintain their position by abusing the State resources available to them, the democratic process will remain in jeopardy.

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<sup>182</sup> Speck & Fontana (2011) page 10.

<sup>183</sup> Ibid.

## Chapter 14: 100 Ways to Abuse State Resources

### Introduction

This chapter illustrates the problems discussed in preceding chapters by outlining different manners through which State (or administrative) resources can be abused in different countries.<sup>184</sup> We have limited our discussion to 100 ways, but many more could be identified. The purpose is to assist those wishing to counteract such practices by helping them to know what to look for. Do note that it is often difficult to make a clear distinction between legitimate behavior and the ASR, and many of the ways noted in this chapter often exist in a grey area of legality. In some situations, actions listed as ways of abusing State resources may indeed be laudable, assuming safeguards against abuse are put in place and these actions serve other purposes. For a discussion about definitions and about understanding ASR, please see Chapter 11: About the Abuse of State Resources.

These 100 ways of abusing State resources have been sorted under four headings. Naturally, other classifications can be made, and some activities could be placed under different headings, but these categories are useful for understanding the range of ways in which State resources can be abused.

<b>Institutional Resources</b>	Material and personnel resources available to the State, including publicly-owned media
<b>Financial Resources</b>	Monetary assets, normally through the State budget
<b>Regulatory Resources</b>	The ability to pass laws and regulations that benefit one political group or disadvantages others
<b>Enforcement Resources</b>	The use of security and law enforcement institutions

No further categorization has been done of the 100 ways listed here, although several interesting ones could be considered. For example, it is often possible to separate ways that hinder the opposition from free campaigning from those that favor the ruling party by different means. Another useful distinction can be made between ways of abusing State resources that threaten citizens (use of force); bribe citizens (use of material incentives); and misinform citizens (false government propaganda).

As will be clear from the following list, ASR can be committed by a series of actors in favor of political parties or election candidates (occasionally referred to as “competitors”). State resources can be used in favor of opposition parties and candidates – for example, if the political leadership is highly unpopular within the public administration or if different parties control different areas of local government. In most cases, however, the benefactors of the ASR can be found in the government party or parties or among elected leaders.

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<sup>184</sup> Developed from an original idea by Marcin Walecki, former IFES Senior Adviser for Political Finance.

Using information from 47 countries, we have for all of these 100 ways of abusing State resources included a real life example where observer groups or other commentators have argued that such an abuse has taken place.<sup>185</sup> We cannot verify all these accusations are accurate – the intention is to show how such abuses can be organized in actual electoral contexts.

## **Institutional Resources**

Institutional resources are material and personnel resources pertaining to public office. Material resources of the State range from vehicles to offices, to office equipment and other infrastructure, which may be used by incumbent political forces to provide themselves with advantages vis-à-vis non-incumbents. For example, ordinary public officials may be used as election campaign staff for a political party, or senior public officials affiliated with a political party may use their official position to benefit the party or its candidates. Public premises, office equipment and communication may also be used to favor a certain party, candidate or coalition.

Institutional resources should be considered separate from financial resources – the use of ready money from public resources, through or outside the official budget – even though the distinction is not always easy to make.

### ***Official Announcements of Support for the Party/Candidate by State Officials***

#### **1. Public Speeches**

[Georgia] “On September 11 the President, together with the Mayor, attended the opening of the entertainment park in the district of Gldani, where he announced the campaign of the ruling party opened and called on citizens to support its candidate Gigi Ugulava. On September 12, at the opening of the ice rink in Tbilisi Sport Hall, where again the President was present together with the Mayor, the President praised the Mayor for the construction of the ice rink, saying: ‘If he (Gigi Ugulava) is re-elected, I am giving you my word that Tbilisi Sport Hall will be three times bigger than Dinamo Stadium.’”<sup>186</sup>

#### **2. Banners/Posters/Billboards/Leaflets**

[Liberia] “The erection of the giant-sized billboards has generated huge debate in the country, with claim by the opposition political parties that the billboards were being used by the governing party to campaign, ahead of the official campaign date. The billboards, said to have been erected by the ruling Unity Party (UP), the opposition political parties maintained that the ruling party were using them to campaign under the ‘canopy of showcasing the government’s deliverables/achievements.’”<sup>187</sup>

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<sup>185</sup> Naturally, if a country is not mentioned among the examples below this does not mean State resources may not be abused there.

<sup>186</sup> Transparency International Georgia (2006) page 5.

<sup>187</sup> Heritage (2011) page 1.

### 3. Advertisements

[Sri Lanka] “The mission has directly observed several instances of state-sponsored advertisements (by State corporations and statutory boards), both in the State and private media, promoting Mahinda Rajapakse election.”<sup>188</sup>

#### ***Engagement of State Employees or Officials in Campaign Activities***

#### 4. State Employees Asked to Collect Signatures for a Candidate/Party

[Georgia] “in some cases, teachers have been instructed to collect signatures and ID numbers of voters on behalf of the ruling party (Kvareli, Telavi, Gurjaani and Gori).”<sup>189</sup>

#### 5. State employees are requested to work as members of a campaign staff for a political party/candidate

[Mongolia] “A total of 1,141 civil servants were actively involved in electoral campaigns working more than 4,761 hours canvassing votes.”<sup>190</sup>

#### 6. State Employees Called to Participate (Semi-voluntarily) in Campaign-Related Meetings

[Sri Lanka] “73 teachers from schools in the Colombo District were called to attend a meeting on 18.03.2010 at the Sri Lanka Freedom Party (SLFP) Borella Office at 10 am. President, Sri Lanka Nidahas Guru Sangamaya, Borella Branch addressing the participants pledged that all their problems could be resolved if UPFA Colombo District candidate Thilanga Sumathipala is elected to parliament.”<sup>191</sup>

#### 7. Developing Official Information Materials Supporting the Government Party or Candidate

[Ukraine] “OPORA observers observed the distribution of the booklet “Chernihiv initiatives of BYT” around the city. The booklets contained quotes by the Chernihiv oblast council speaker Natalia Romanova which should be considered direct campaigning. It is worth mentioning, that she was referred to as the oblast council speaker in that booklet and not as a Parliamentary candidate. The leaflet was distributed with an evidently understated circulation of 2,500 since OPORA’s observers estimated there were at least 30,000 copies of the booklet being distributed.”<sup>192</sup>

#### 8. Preparing and Distributing Campaign Materials

[Ethiopia] “Many EU observers reported examples of State institutions supporting the EPRDF [Ethiopian People’s Revolutionary Democratic Front] campaign. For example, ruling party posters were seen in offices of the administration in numerous regions, including Afar, Addis, Oromia, Ahmara, SNNP [The Southern Nations Nationalities and Peoples’ region] and Harari. Police and armed militia were also seen acting in support of the EPRDF, for example, by wearing EPRDF symbols and instructing citizens to at-

<sup>188</sup> European Union Election Observation Mission (2005) page 20f.

<sup>189</sup> Transparency International Georgia (2008) page 9.

<sup>190</sup> Schafferer (2004) page 4.

<sup>191</sup> Transparency International Sri Lanka (2010b)

<sup>192</sup> OPORA (2007) page 8.

tend an EPRDF rally in Dessie Town (Amhara) on May 5 and in Gambela town on May 7. In the latter case, police also distributed anti-CUD [Coalition for Unity and Democracy] banners.”<sup>193</sup>

### **9. Requiring Public Servants to Contribute to Governing Party or Election Campaign**

[Bolivia] “‘Voluntary’ contributions are extorted from civil servants. During the 2009 campaign, it was revealed that civil servants’ paychecks were being docked by 5 to 50 percent, with the funds used to finance the campaigns of the President and Vice President. A bonus paid to civil servants later that year was considered compensation for the forced contributions. The continuation of the civil servants’ employment was alleged to be conditioned upon the contributions (La Prensa 2009a, 2009b).”<sup>194</sup>

### **10. Campaigning by Senior State Officials Legally Banned from Involvement in Campaigns**

[Russia] “According to electoral legislation...campaigning... is forbidden for senior State officials, including the President. On November 28, Putin gave an interview to TV journalists containing further statements of a campaigning nature: ‘Concerning United Russia, I am not a member of the party. However, it is exactly the political force I have relied upon and that has constantly supported me. I am absolutely sure that if we speak about the balance of political forces, which allowed us to achieve certain results in the work of the current state Duma, this political balance was struck due to the position taken by centrist parties, and above all United Russia.’”<sup>195</sup>

### **11. Using Training Or Education of Civil Servants to Emphasize Message of Government Party**

[Ethiopia] “Meanwhile, the World Bank’s Public Sector Capacity Building Programme, which is used to train civil servants, is simultaneously a vehicle for government officials to indoctrinate trainees on the ruling party’s ideology, and to target opposition supporters in the name of weeding out underperforming staff.”<sup>196</sup>

### **12. Closing Public Offices to Facilitate Participation of State Employees in De Facto Campaign Events**

[Venezuela] “Opposition leaders claimed the giant crowds in Caracas were only possible because the government shut down many of its offices, sent civil servants to the march and bussed in others from outside the capital.

“We are in the presence of a brutal use of state resources to mobilise thousands of people from around the country to Caracas. What counts here is what happens Sunday when votes will put an end to this abuse of power,” said Carlos Ocariz, director of Capriles’ campaign.”<sup>197</sup>

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<sup>193</sup> EUEOM Ethiopia (2005) page 16.

<sup>194</sup> Speck & Fontana (2011) page 7.

<sup>195</sup> Center for Anti-Corruption Research and Initiative Transparency International Russia (2004) page 80.

<sup>196</sup> Human Rights Watch (2010) page 5f.

<sup>197</sup> Huffington Post (2013)



***Use of Public Premises for Campaign Purposes where Other Candidates do not have Equal Access*****13. Public Premises Used as Campaign or Party Staff Offices**

[Poland] “... deputies’ offices were commonly used for the needs of local campaign staffs of various candidates.”<sup>198</sup>

**14. Government Offices Used for Party Meetings with Voters and Donors**

[Sri Lanka] “President’s official residence is an asset of the public which is maintained by the public. Many resources remain at the disposal of the Executive President given his security consideration and the exalted office he holds. However, the PPPR [Programme to Protect Public Resources] monitored the systematic abuse of these resources during the presidential election 2010. Among the main abuses were the use of the premises to hold meetings in support of the President, and the provision of meals and refreshments to participants of such meetings.”<sup>199</sup>

**15. Public Premises such as Sport Stadiums or Town Halls Used for Campaign Rallies**

[Sri Lanka] “Zonal Director of Education Anuradhapura, B.M.N Abeyratne through letter dated March 10, 2010 organized a meeting of all the school principals in the Anuradhapura District. The meeting was held during the morning hours of 17.03.2010 at the main hall of the Swarna Pali Balika Maha Vidyalaya, Anuradhapura. Chief Minister North Central Province, Berty Premlal Dissanayake during his speech urged all school principals to cast their preference for his son, former deputy minister Duminda Dissanayaka who is a candidate at the Parliamentary Election 2010.”<sup>200</sup>

***Engagement of State Companies, Institutes, Think Tanks, State Enterprises or State-Supported NGOs Campaign Activities*****16. Conducting Electoral and Opposition Research Officially for Think-Tank Or Institute, but in Practice for a Particular Party/Candidate**

[Republic of Korea] “Park Geun-hye’s main think tank is the Nation’s Future Research Center, launched in 2010. It is a policy research group responsible for having incited the “battle of welfare policies” among rival parties in this year’s general elections... Usually, key players in the think tank of a successful presidential candidate end up acquiring main posts in the administration.”<sup>201</sup>

**17. Developing, Publishing or Distributing Campaign Materials**

[Malawi] “It was reported that regulatory agencies were used to print out campaign material.”<sup>202</sup>

<sup>198</sup> Stefan Batory Foundation (2005) page 6.

<sup>199</sup> Transparency International Sri Lanka (2010a) page 17.

<sup>200</sup> Transparency International Sri Lanka (2010b).

<sup>201</sup> The Korea Herald (2012).

<sup>202</sup> EUEOM (2009) page 16.

## ***Use of Public Transport or Communication Resources in Favor of a Particular Party or Candidate***

### **18. Candidates' Travel (Unrelated to Official Business)**

[Nicaragua] "In Boaco, the PLC [Partido Liberal Constitucionalista] mayor was observed using public vehicles and property for the campaign and in El Ayote (RAAS) the municipality used its vehicles and buildings for the PLC campaign."<sup>203</sup>

### **19. Travel of Campaign Staff Members and Activists**

[Nigeria] "These included the distribution of funds and motorbikes throughout Zamfara State by the agency responsible for the poverty Alleviation Programme (ZAPA) and the use of 60 official cars for election rallies by the incumbent candidate in Zamfara State. In Borno State, the incumbent Governor was videotaped while using government vehicles on the campaign trail, from which he threw bundles of money into the crowds. Several cases of the use of State resources for campaigning were observed. For example, in the State Government premises in Abia, EU observers saw three buses with the PPA Governor's campaign slogans painted on them."<sup>204</sup>

### **20. Transportation of Campaign Materials**

[Sri Lanka] "A vehicle bearing the number plate 253-3819 belonging to the Urban Development Ministry is being used to paste posters in the Matale District."<sup>205</sup>

### **21. Transportation of Citizens to Meetings and Rallies**

[Sri Lanka] "69 buses were released from the Nuwara Eliya, Gampola, Nawalapitiya, Keptipola and Ragala SLTB depots to transport supporters for a meeting on 20.03.2010 held at Simisitha Ground at the Nuwaraeliya town. It is confirmed that 50 litres of diesel were pumped to each of these buses."<sup>206</sup>

### **22. Transportation of Selected Voters to Elections (Such As Voters From A Party's Strongholds)**

[Malaysia] "Under Malaysian election law transporting voters to and from voting centers on Election Day is forbidden, particularly if the car is considered a public vehicle, rented as a taxi or bus. However it seems such practice is common, and neither BN [Barisan Nasional] or PR [Pakatan Rakyat] take this law seriously. Supporters used private vehicles to pick up and drop voters from and to voting centers."<sup>207</sup>

### **23. Use of Public E-Mail Services**

[South Africa] "Western Cape Premier Helen Zille wants to know who instructed a senior official to send an email to ANC [African National Congress] members telling them to reject the province's Community

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<sup>203</sup> EUEOM (2006) page 54.

<sup>204</sup> EUEOM (2007) page 19

<sup>205</sup> "Parliamentary Election 2010 – First Report on abuses of state resources released" March 28, 2010.

<http://www.tisirilanka.org/?p=4545>

<sup>206</sup> "Parliamentary Election 2010 – First Report on abuses of state resources released" March 28, 2010.

<http://www.tisirilanka.org/?p=4545>

<sup>207</sup> ANFREL (2008) page 16

Safety Bill... Zille says it is clear that Irish-Qhobosheane, who is charge Civilian Secretariat for Police Service, used her work email for this. ‘The e-mail also constitutes an abuse of State resources to promote a party political agenda. Furthermore, it is intended for the explicit purpose of manipulating a public participation process for party political ends.’”<sup>208</sup>

#### **24. Use of Public Telephone Or SMS Services**

[Sri Lanka] “Upon the instructions of the Telecommunication Regulatory Commission of Sri Lanka (TRCSL), a short text message was transmitted to all subscribers of mobile phone connections by the President wishing them for the New Year 2010. The mobile service providers stated that they had provided this service based on a directive from the TRCSL.” (Presidential elections were held less than four weeks after this event. The TRCSL is headed by the Secretary to the President).<sup>209</sup>

### ***Campaigning by Elected Officials While in Official Capacity***

#### **25. Campaigning at Public Events**

[Ghana] “Our observer reported that the Policy Fair, which is a State-sponsored event intended to showcase government policies and programs, was turned into an NDC campaign program. At the policy fair, the Regional Minister, who is acting as the DCE [District Chief Executive] for Sunyani West Municipal Assembly and also the NDC [National Democratic Congress] parliamentary candidate for the same Constituency, Hon. Kwadwo Nyamekye-Marfo, the Minister of Information, Hon. Fritz Baffour and other speakers at the event elaborated on the achievements of the ruling NDC highlighting infrastructural development.”<sup>210</sup>

#### **26. Campaigning During Official Press Event**

[Liberia] “They opted to use the platform of the Ministry of Information to debunk LDI’s [Liberia Democratic Institute] allegation of the abuse of incumbency and political corruption by the ruling Unity Party. During his regular press briefings on Thursday, August 25, 2011, Minister Cletus Sieh lashed at the LDI for mentioning in its report that the ruling Unity Party abused incumbency and committed political corruption in Lofa when it included in the official dedication program the commissioning of UP sub-offices in Zorzor and Voijama.”<sup>211</sup>

#### **27. Use of Official Openings Of Hospitals, Schools, Roads, etc. for Campaign Purposes**

[Ghana] “In Greater Accra, a sitting MP commissioned publicly-funded streetlights and launched an NPP [New Patriotic Party] branch office at the same event.”<sup>212</sup>

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<sup>208</sup> Eyewitness News (2012).

<sup>209</sup> Transparency International Sri Lanka (2010a) page 26.

<sup>210</sup> GII, CDD-Ghana and GACC (2012).

<sup>211</sup> Front Page Africa (2011).

<sup>212</sup> CDD-Ghana (2004) page 3.

***Use of Specific Public Non-Election-Related Events or Activities by State Officials at Public Expense to Promote Particular Party/Candidate***

**28. Public Information Meetings by Government Institutions on Non-Electoral Issues**

[Ghana] “In the Northern Region, an officer in the Information Services Department screened a film showing telephone booths, water wells under construction, and road improvement projects. The film was in English but the officer provided commentary in Dagbanito the effect that it was the incumbent government, which made all this development possible. He also suggested that future plans of the government include bringing such goods to the area.”<sup>213</sup>

**29. Public Holiday Events and Public Festivals Used for Campaigning**

[Ukraine] “For example, during the celebration of the Donbass Liberation Day all the students were organized to stand together while holding Party of Regions campaign materials and were instructed to hand them out to people entering the park. They all were told to yell ‘Hooray’ when any speaker made reference to the Party of Regions or Yanukovych.”<sup>214</sup>

**30. Events for Marginalized Groups Such as Youth or Women Used for Campaigning**

[Russia] “On November 28, 2003, a mass cultural and sports event entitled Unity of Youth is the Future of Russia” was held in a local Sports Palace. The organizer of the event and owner of the Palace was the Department of Youth Affairs of the Samara Regional Administration. The event was planned long in advance as part of the Samara Region’s implementation of the national Year of Youth project. In actuality, the event was an undisguised campaign event for United Russia. The premises of the Sports Palace were filled with campaign posters for United Russia.”<sup>215</sup>

**31. Sports Events, Film Festivals and Public Concerts Used for Campaigning**

[Ukraine] “The head of Lebedynsky rayon administration S.Hrytsay, his deputies, department heads and village mayors from the rayon participated in a large theatrical performance entitled “Cossack games” held in the village of Mykhailivka. At the event flags with the OU-PSD [Our Ukraine – People’s Self-Defense Bloc] logo were prominently featured. Information was publicized that the holiday was sponsored by OU-PSD.”<sup>216</sup>

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<sup>213</sup> CDD-Ghana (2004) page 3.

<sup>214</sup> OPORA (2007) page 8.

<sup>215</sup> Center for Anti-Corruption Research and Initiative Transparency International Russia (2004) page 125.

<sup>216</sup> OPORA (2007) page 6.

**Abuse of State-Owned Media**<sup>217</sup>**32. Outright Support Given by State Media Outlets to One Party or Candidate**

[Ukraine] “Newspaper *Nash Rayon* (‘Our district’) founded by the Fruzenska rayon council of Kharkiv, published an article entitled ‘Party of Regions Goes for the Pre-term Elections, and We Will Win!’ The article was not marked as political advertisement or campaigning material.”<sup>218</sup>

**33. State Media Giving Undue Attention to One Candidate or Political Party**

[Uganda] “President Museveni received 79.7 percent of overall election related coverage on UBC [Uganda Broadcasting Corporation] TV, while Dr. Besigye received 11.5 percent. The remaining three presidential candidates received less than 9 percent of coverage.”<sup>219</sup>

**34. State Media Ignoring the Campaigning of Some Political Parties or Candidates**

[Tunisia] “ ...Article 8 of the constitution, which guarantees protection of the media and freedom of expression, was not being observed by state officials. Journalists received instructions to cover opposition activities only on the request of the government. Opposition campaign advertisements on radio and television were easily outnumbered by RCD [Rassemblement Constitutionnel Démocratique] ads, and on State television the opposition ads ran when the fewest viewers would be watching.”<sup>220</sup>

**35. Certain Competitors Consistently Portrayed in a Negative Light, Whereas Others are Given Uncritically Positive Coverage**

[Azerbaijan] “State-controlled television and newspapers waged an unlimited propaganda war to discredit opposition parties by blaming them for all of Azerbaijan’s failures over the past decade. Pro-democratic parties were accused of being agents of foreign countries, sponging off of grants from foreign foundations and destroying Azerbaijan by violating the peace, prosperity and stability created by President Aliiev.”<sup>221</sup>

**36. Refusal to Accept Advertisements from Certain Political Parties or Candidates**

[Zambia] “[State-owned] ZNBC [Zambia National Broadcasting Corporation] authorized the sale of air time to political parties for political advertisements. The [opposition] MMD [Movement for Multi-Party Democracy] prepared 14 radio and television spots and in July submitted them to ZNBC for broadcast-

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<sup>217</sup> Note the importance of abuses of publicly-owned media for the outcome of an election or the political process as a whole is related to the importance of how citizens get their information. The levels of coverage, consumption and trust in public media outlets are essential factors. For example, the Carter Center noted that no political party in Guatemala made use of the equal airtime provided by the public radio station TGW due to its limited range. The Carter Center (2004) page 5.

<sup>218</sup> OPORA (2007) page 8.

<sup>219</sup> European Union Election Observation Mission (2006) page 27.

<sup>220</sup> Freedom House (2007)

<sup>221</sup> Central Asia-Caucasus Institute (2000).

ing. ZNBC refused to air the spots, ostensibly on the ground that they violated advertising ethics, because the advertisements attacked the governing party rather than merely promoted the MMD.”<sup>222</sup>

## Financial Resources

Abuse of public funds is among the most important category of administrative resources used to illegally promote the electoral prospects of parties/candidates. Governments always spend money, and the exact distinction between regular State activities and ASR is not always easy to make. However, it can be argued that the period preceding a general election should be a time when new public projects are not launched, new bridges not inaugurated and salary increases for public servants not introduced. Those wishing to monitor the abuse of State resources should also be aware that financial resources can sometimes be especially difficult to observe.<sup>223</sup>

### *Direct Distribution of Public Funds to Voters*

#### **37. Cash Handouts to Voters in a Context Connected to Campaigning, or in a Manner that Indicates that Funds Come from a Political Party or Candidate**

[Guatemala] “During the week of Nov. 3-7, Carter Center field observers received first-hand reports in several locations within the departments of El Quiché and Sololá that such payments [of public funds] were being made not by public officials but by functionaries of the [government party] FRG[Frente Republicano Guatemalteco]. The payments themselves were moreover conditioned on affiliation with that party, and in some cases on subsequent participation in FRG campaign activities. Center observers verified reports that other public goods—ranging from roofing materials, farm implements, and fertilizer to scholarships in public schools—were similarly being offered to the population at large in exchange for FRG party affiliation.”<sup>224</sup>

#### **38. Distribution of Relief Supplies**

[Zambia] “Observers have been on the ground in Zambia since August 12, sharply criticized the MMD [Movement for Multi-Party Democracy] for abusing the advantages of incumbency, including by handing out maize from a publicly funded food relief program at campaign stops.”<sup>225</sup>

#### **39. Handouts of Vouchers for Utilities or Medical or Other Supplies**

[Ukraine] “” The OSCE/ODIHR EOM noted that presidential candidates in executive positions had difficulties in distinguishing between their campaign activities and official functions. At a campaign event in Kyiv region on 16 December, Prime Minister and candidate Ms. Yulia Tymoshenko handed out land certificates to village councillors for distribution in the villages. Prior to the start of the event, Bloc of Yulia

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<sup>222</sup> NDI/TCC (1992) page 42.

<sup>223</sup> For example, money can be transferred to an election campaign through various secretive means, and there is no way of knowing if a campaign banner has been produced with funds from a private donor or with funds illegally acquired from the State budget.

<sup>224</sup> The Carter Center (2004) page 11.

<sup>225</sup> EUbusiness (2011)

Tymoshenko (BYT) campaign materials were distributed to participants. The press also reported that Ms. Tymoshenko or her campaign representatives were handing out land certificates to voters.”<sup>226</sup>

#### **40. Distribution of Agricultural Products**

[Zambia] “...the MMD [Movement for Multi-Party Democracy] used different governmental agricultural support programmes to try to influence, in particular, the vote of the rural population. These included the distribution of subsidised fertilisers, buying maize at high prices and distributing food to the rural poor. These policies were used as campaign tools exclusively by the ruling party, thereby creating an unlevel playing field among parties and candidates in rural areas.”<sup>227</sup>

#### **41. Distribution of Free Education Materials**

[Ghana] “Mr. Peter Nortsu-Kotoe, turned a state organized and sponsored program into a campaign event when he presented one thousand (1,000) dual desks to thirty-two (32) basic schools in the district. The event took place at District Assembly premises at 9:00am and was attended by School heads of beneficiary schools, the public, and constituency representatives of NDC... he stated that, “this shows that the NDC deserves a second term.”<sup>228</sup>

#### **42. Providing Handouts Particularly to Supporters of the Governing Party**

[Mozambique] “Around two million people are threatened by famine in Mozambique due to drought ... . Witnesses said some people, believed to be ruling party supporters, were given preference in the queue at the state grain depot and were allowed to buy extra amounts of meal.”<sup>229</sup>

### ***Financial Activities that Benefit a Political Party or Candidate***

#### **43. Money Given to a Party or Candidate Outside of a Regulated Public Funding Mechanism**

[Liberia] “.The official protocol announced the dedication of the UP local offices in Zorzor and Voinjama Districts. The report said two offices were commissioned as state financed national development projects. The LDI [Liberia Democratic Institute] report further indicated that those projects were financed by State resources and the celebrations were overshadowed by partisans’ rallies and events.”<sup>230</sup>

#### **44. Public Funds Used to Pay for Political Party Activities**

[Mozambique] “In Mozambique, there were reports that public funds had been used to pay for Frelimo’s [Frente de Libertação de Moçambique] infrastructure, in particular to fund the Escola Central

<sup>226</sup> OSCE/ODIHR (2009) page 4.

<sup>227</sup> European Union Election Observation Mission (2006) page 19.

<sup>228</sup> GII, CDD-Ghana & GACC (2012).

<sup>229</sup> Matlosa & Mbaya (2004) page 44.

<sup>230</sup> In Profile Daily (2011).

da Frelimo, Frelimo's party school, through money misappropriated from the State-owned enterprise Aeroportos de Moçambique (Canal de Moçambique 2009; Notícias 2010)."<sup>231</sup>

#### **45. Government Materials Given to a Particular Political Party or Candidate**

[Gambia] "*The Daily Observer* newspaper reported on 21 November that the Ministry of Petroleum had donated 1700 tee-shirts to the president's campaign."<sup>232</sup>

#### **46. Expenditure of an Authorized Component of the Election Budget on Purposes Not Expressly Authorized and Legitimate**

[Georgia] "since 2012 the Georgian Budgetary Code allows spending institutions a 100% intra-programme line item retrenchment, replacing the previous 5% limit. This unlimited freedom of intra-programme line item retrenchment means spending institutions can now shuffle their line items around within their programmes with the consent of the Minister of Finance rather than the Parliament. We believe this amendment encourages electorally motivated public spending."<sup>233</sup>

#### **47. Withholding Financial Assistance or Development Projects for Areas where Many or Most Voters Support Opposition Parties**

[Uganda] "It has been observed and reported that most NRM candidates use government projects such as the National Agricultural Advisory Services (NAADS) and the Northern Uganda Social Action Fund (NUSAF) as tools to press voters to adhere to the NRM should they wish to benefit from such projects."<sup>234</sup>

#### **48. Government Institutions Rent Premises or Other Facilities from the Government Political Party, Thereby Guaranteeing the Party Income**

[Mozambique] "In the city of Beira, where the opposition won municipal elections in 2003, the new administration found that several public buildings belonged to the former ruling party and the city therefore had to pay rent to Frelimo [Frente de Libertação de Moçambique] (Savana 2010)."<sup>235</sup>

#### **49. Celebrations of a Particular Political Party or Politician Paid with Public Funds**

[South Africa] "Asked why the public should have to bear the brunt of the costs for visiting heads of state, as well as the revamp of buildings and heritage sites, Khoza said the ANC [African National Congress] was a national heritage in itself. 'It is 100 years old and it liberated the country. The ANC should be treated as part of our collective heritage as a nation. But the party will secure the bulk of the costs.' ... Roy Jankielsohn, leader of the Democratic Alliance in the Free State, wrote a letter to public protector

<sup>231</sup> Speck & Fontana (2011) page 5.

<sup>232</sup> Commonwealth (2011) page 18.

<sup>233</sup> Transparency International Georgia (2012) page 2.

<sup>234</sup> EUEOM (2011) page 13.

<sup>235</sup> Speck & Fontana (2011) page 4.



Thuli Madonsela asking her to investigate and rule on whether provincial government resources allocated to the centenary celebrations constituted an abuse of state resources for party-political purposes.”<sup>236</sup>

***Increased Spending During Pre-Electoral Periods on Items that will Enhance Popularity of the Government (Thereby Government Party/Parties)***

**50. Increase in Salaries or Financial Support to State Employees**

[Georgia] “In September [Mayoral elections were held in October] Tbilisi City Hall introduced vouchers for school teachers in Tbilisi. The 100 GEL voucher was to be used for gas payment. The voucher is signed by the mayor and also displays his picture. It also uses the same colors and design as some of the campaign materials produced by the ruling party.”<sup>237</sup>

**51. Increase Spending on Marginalized Groups During Pre-Election Period**

[Uganda] “The passing of a supplementary budget in January 2011 led to large scale suspicion and outcry among opposition politicians. The supplementary budget with a size of \$257 million USD, approved by parliament on January the 4th, came barely six months after the original budget was posted and only two months after it was approved (Mwenda and Sserunjogi 2010; Nanjobe 2011). Among the expenditure in the budget was a \$33.6 million USD allocation to State House, which the opposition claimed was going to be used for the campaigns (Karugaba and Bekunda 2011). While these allegations were rejected by the NRM party, some of the posts seem very ad hoc, such as the request for \$4.2 million USD to facilitate jobless youth (Nanjobe 2011).”<sup>238</sup>

**52. Increase in Pensions, Child Support Payments, Welfare Payments, Student Grants, Transport Compensation**

[Ukraine] “The Yanukovich government doubled pensions and increased other payment to the population as pre-election bribes.”<sup>239</sup>

**53. Discounts or Subsidies on Goods/Public Services such as Transport, Housing Services, Electricity, Fuel, Heating, Etc. (Or Refusal to Remove Such Subsidies in Spite of Exorbitant Costs)**

[Nigeria] “With general elections scheduled for December 2007, the government continued to provide the KSh 0.60 [power] subsidy throughout 2007. The subsidy was removed only in July 2008, when consumer power prices (excluding fuel and exchange rate components) were adjusted upward by 21 percent on average.”<sup>240</sup>

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<sup>236</sup> Mail & Guardian (2011).

<sup>237</sup> Transparency International Georgia (2006) page 8.

<sup>238</sup> Helle (2011) page 7.

<sup>239</sup> Kuzio, Taras (2005) page 59.

<sup>240</sup> World Bank Group Energy Sector Strategy (2010) page 95.

#### **54. Use of Public Non-Budgetary Funds for Other Popular Purposes Unrelated to Defined Purposes of the Funds.**

[Armenia] “It is well known that current community leaders manipulate their administrative resources to conduct their pre-election campaigns. The Mayor of Yeghegnadzor published municipality program 2002-2004 titled ‘Capital Investment Program.’” Municipality staff were also involved in program development. The Mayor used the program as pre-election campaign material.”<sup>241</sup>

#### ***Introduction of Previously Unannounced Publicly-Funded Projects not Included in Development Plan, Which Benefit Incumbent Regime***

##### **55. Building or Renovation of State or Municipal Housing**

[Malaysia] “Both the Federal and Malacca State governments of BN [Barisan Nasional] have made a range of development offers and pledges to secure votes. According to Malaysiakini and other sources, the list included: 102 grants for housing lots for second-generation settler families at Felda Tun Ghafar Machap...Application approved for 7,000 square feet of land by 50 second-generation Chinese settlers with a 99-year lease and a low premium of RM 12,500...Application approved for the 20-year-old demand of Machap Baru villagers to build 80 units of low- and medium-cost houses, to be sold at below RM60,000 each.”<sup>242</sup>

##### **56. Building or Renovation of Public Roads**

[Kenya] “Prime Minister Raila Odinga on May 19... commissioned tarmacking of the road in what many claimed was a campaign ploy... The commissioning of the road was cited by election observers as one of the electoral offences committed and the IIEC [Interim Independent Electoral Commission] was challenged to take action. Observers said it was misuse of State resources to occasion undue influence on voters.”<sup>243</sup>

##### **57. Building or Renovation of Health Institutions**

[Peru] “Early in the campaign period, the President promised not to inaugurate public works, but he did continue to travel the country intensively to inspect existing public works projects. There were also several examples where the inauguration of a public site was explicitly linked to the reelection campaign, such as the opening of a public health clinic that was advertised on the same flyer as a pro-Fujimori slogan.”<sup>244</sup>

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<sup>241</sup> IYC (2002) page 4.

<sup>242</sup> BERISH (2007).

<sup>243</sup> Nairobi Star (2011).

<sup>244</sup> NDI/TCC (2000) page 20.

### **58. Building or Renovation of Social Service Facilities (Homes for Groups such as Pensioners or Students, Orphanages, etc.)**

[Bolivia] “During the 2009 elections, ministers inaugurated public works or delivered services while promoting the MAS [Movimiento al Socialismo-Instrumento Político por la Soberanía de los Pueblos] campaign through distribution of campaign material. There was also the timely launching of new services, such as a subsidized housing program for newlyweds, to coincide with the campaign.”<sup>245</sup>

### **59. Introducing Temporary Public Sector Jobs During Campaign Period**

[Montenegro] “The Law on Political Party Financing prohibits the recruitment of non-permanent positions in the public sector, including public sector companies, from the date on which elections are called. [Footnote, ‘The ban on temporary recruitment is designed to prevent the free choice of voters from being influenced by offers of employment during the campaign’]. After NGO reports of a number of violations of this prohibition, the OSCE/ODIHR LEOM identified 45 vacancy notices for temporary positions advertised during the campaign. These violations blurred the line between state activities and the campaign of the ruling coalition.”<sup>246</sup>

### **60. Introduction of Health Service Projects (Free Vaccination, etc.) and Distribution of Medicine**

[Burma] “Members of Union Solidarity and Development Party (USDP) in Shan State North’s capital Lashio have been informing people that during its campaign period, the party will also provide free health care, according to local residents.”<sup>247</sup>

### ***Pre-Election Outreach Activities by State Agencies Purportedly to Raise Awareness About Activities, but Giving Special Attention to the Government (Institutional Advertising)***

#### **61. Advertising by Ministries, State-Controlled or State-Funded Agencies or Companies of Their Achievements During Previous Period**

[Serbia] “ The broadcasting of ads that highlighted the successes of particular government ministries in the first 100 days in prime-time slots on national television can easily be construed as veiled support to the governing-coalition candidate and therefore, as an abuse of State resources. Moreover, these ads were broadcasted even before 100 days had passed since the government was sworn in (!), probably in efforts to leave a stronger impression during the campaign.”<sup>248</sup>

#### **62. Advertising by State-Related Agencies Congratulating President on His Birthday, Celebrating a National Holiday, etc. During Pre-Election Period.**

[Croatia] “Pre-Campaign Examples: On May 14, on the occasion of the 75th birthday of President Tudjman (an unofficial event), state-owned HRT [Hrvatska radiotelevizija] provided live television coverage celebration at the Croatian National Theatre, a public institution. The ceremony included a three-

<sup>245</sup> Speck & Fontana (2011) page 15.

<sup>246</sup> OSCE/ODIHR (2012a) page 7.

<sup>247</sup> Burma Election Tracker (2010).

<sup>248</sup> Transparency Serbia (2004) page 88f.

hour play casting President Tudjman as the culmination of over a millennium of Croatian historical achievements.”<sup>249</sup>

**63. Campaigns Purportedly Aiming to Raise Awareness About a Particular Process or Fact, but Giving Undue Attention to a Political Actor**

[Georgia] “Although the ad contains instructions on how to use the [public utilities service] voucher, the emphasis is not solely on the voucher: the characters in the video are expressly underscoring their gratitude towards the City Hall and namely the Mayor. Moreover, one of them directly states: ‘Gigi knows exactly what people need.’”<sup>250</sup>

**Regulatory Resources**

Elections, election campaigns and other political activities do not happen in a vacuum. The regulatory framework, from the national constitution, to legislation, to by-laws and local regulations affect the rules of the political game, but are themselves also affected by politics. A Weberian legal-rational ideal would have all such rules politically neutral. But in many countries, laws and regulations are altered or interpreted to strengthen the position of those in power and to make it more difficult for those in opposition.<sup>251</sup>

***Regulations Make it More Difficult for Opposition to Organize or Participate Effectively***

**64. Party Registration Requirements Make it Difficult from Opposition Parties to Register or to Form Electoral Coalitions**

[Georgia] “After the announcement of the Presidential Decree on the appointment of elections, the political parties that had not participated in previous parliamentary elections but had a representative in the parliament had only one day to submit their registration documents to the CEC [Central Election Commission] in order to register as an election subject for the 2006 local government elections.”<sup>252</sup>

**65. Setting Thresholds for Parliamentary Representation so High as to Exclude Effective Opposition**

[Turkey] [Relating to the 10 percent threshold for parliamentary representation] “The provision has particularly blocked Kurdish representation, as pro-Kurdish parties failed to gain seats due to the threshold... BDP’s [Barış ve Demokrasi Partisi/Partiya Aştî û Demokrasiyê] Sakik emphasized ... ‘It is unique in the world. How can our governing political parties tolerate doing politics by hiding behind this [threshold].’”<sup>253</sup>

<sup>249</sup> OSCE (1997) page 8.

<sup>250</sup> Transparency International Georgia (2013b)

<sup>251</sup> Weber (1919).

<sup>252</sup> TI Georgia (2006) page 2.

<sup>253</sup> Daily News (2013)

## **66. Setting Candidate Eligibility Criteria or Nomination Procedures so as to Hinder Opposition Candidates from Registering**

[Pakistan] “[In 2013] candidates were no longer required to appear in person before returning officers for submission of their nomination papers... Both the treasury and opposition benches supported the bill, accusing former military ruler Pervez Musharraf of amending the law [immediately before the 2002 elections] to prevent then PPP [Pakistan Peoples Party] Chairperson Benazir Bhutto and PML-N chief Nawaz Sharif, who were in exile, from filing their nomination papers.”<sup>254</sup>

## **67. “Gerrymandering” – Manipulating the Electoral District Boundary Delimitation Process to Benefit Government Parties and Reduce Participation of the Opposition**

[Zimbabwe] “Delimitation also proved an easy way to get rid of [the government’s] individual critics in parliament. The most significant case was the division of Margaret Dongo’s Sunningdale constituency in Harare.”<sup>255</sup>

### ***Biased Decisions by Electoral or Dispute Resolution Agencies***

## **68. Biased Appointment of EMB or Dispute Resolution Officials**

[Russia] “The appointment procedure for election commissions has failed to guarantee their independence and how in practice election commissions were composed in such a way as to make them likely to show bias in favor of United Russia. These concerns seem to have been borne out by the actions of election commissions at all levels.”<sup>256</sup>

## **69. Biased Decisions by the Electoral Management Body to ban Opposition Parties or Ban Them From Running in Elections**

[Kyrgyz Republic] “Election authorities used the election law to bar four parties because their charters did not explicitly state that they planned to contest elections.”<sup>257</sup>

## **70. Biased Decisions to Ban Opposition Candidates from being Registered**

[Togo] “Gilchrist Olympio, Togo's main opposition leader, has been barred from standing against Eyadema in presidential elections on June 1 and few expect that any of the remaining six opposition candidates will shift him from power... Eyadema, 67, changed the constitution in December 2002 so that he could stand for another five-year term. And at the last minute Olympio was banned from standing against him on the grounds of administrative irregularities in his nomination papers.”<sup>258</sup>

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<sup>254</sup> Pakistan News Today (2013)

<sup>255</sup> Laakso (2002) page 338.

<sup>256</sup> Center for Anti-Corruption Research and Initiative Transparency International Russia (2004) page 80.

<sup>257</sup> Karatnycky, Motyl & Schnetzer (2001) page 223.

<sup>258</sup> IRIN (2003).

### **71. Allowing Candidates in Government Office to Register as Electoral Candidates (In Countries Where Banned)**

[Democratic Republic of the Congo] “The intent of the law is to prevent the use of public resources for individual campaigns or political party benefit. Carter Center observers in South Kivu were told by opposition parties that a PPRD [Parti du Peuple pour la Reconstruction et la Démocratie] legislative candidate in Bukavu was able to register while serving as Mayor (an appointed office).”<sup>259</sup>

### **72. Biased Decisions by Electoral Management to Deregister Nominated Candidates**

[Russia] “The OSCE monitoring team noted a number of cases of deregistration of single-mandate constituency candidates (none of them from United Russia) on questionable grounds. For example, less than a week before election day, the Supreme Court upheld decisions by election commissions to deregister five candidates on federal party lists and two from single-mandate constituencies. The deregistration of the former Prosecutor-General from both the single-mandate candidacy and the CPRF list of candidates, and of Anatoly Bykov from the Achinsk electoral district after a complaint by the United Russia candidate, also bore clear signs of discriminatory action by election commissions.”<sup>260</sup>

### **73. Refusal by Dispute Resolution Agency (Court or Otherwise) to Hear Justified Complaints from the Opposition**

[Kazakhstan] “The OSCE/ODIHR EOM is aware of 15 election-related complaints filed before election day to district and city courts, and of 5 filed to the Supreme Court; all were denied review or dismissed. In several cases filed in Almaty district courts challenging maslikhat decisions on PEC [Precinct Election Commission] compositions, the courts refused to hear the cases, based on the application of an erroneous deadline. In another case, contrary to the Election Law, the Supreme Court refused to consider a complaint on the grounds that the CEC [Central Election Commission] has sole prerogative to determine violations of the Election Law and de-register candidates, with no recourse to courts.”<sup>261</sup>

### **74. Biased rulings during election dispute resolution in favor of the government political party/candidate or against opposition**

[Belarus] “The role of the judiciary, including the Supreme Court, in the provision of legal redress remained minimal throughout the process. During the campaign, the local judiciary summarily sentenced a significant number of opposition campaign activists for holding unsanctioned meetings with voters and infractions of the campaign provisions. Representatives of the opposition frequently informed OSCE/ODIHR EOM observers of their lack of confidence in the independence and impartiality of the election administration and the judiciary.”<sup>262</sup>

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<sup>259</sup> The Carter Center (2011) page 37.

<sup>260</sup> Center for Anti-Corruption Research and Initiative Transparency International Russia (2004) page 82.

<sup>261</sup> OSCE/ODIHR (2011) page 8.

<sup>262</sup> OSCE/ODIHR (2006) page 20.

### ***Biased Decisions by Other State Entities that Favor a Certain Party or Candidate***

#### **75. Registering Civil Servants at Their Place of Work in the Voter Register, to Create Controls Over How They Vote**

[Indonesia] “Another common practice was for government institutions or agencies to register their employees en masse using their place of employment or office as their residence address. Group registration was a common practice exercised by governmental institutions mainly to control how their employees voted in the elections. The civil service was GOLKAR’s [Partai Golongan Karya] most important stronghold and therefore each civil servant was considered to be a GOLKAR member.”<sup>263</sup>

#### **76. Placing Restrictions on Private Media, such as Strict Licensing Regulations or Draconian Defamation Legislation**

[Moldova] “Private Pro TV, perceived as one of the few sources willing to offer diverse political viewpoints, faced problems in December 2008 with the extension of its license. Following concerns expressed by the diplomatic community, the Pro TV was able to continue broadcasting and a tender for new licenses was postponed until after the elections.”<sup>264</sup>

#### **77. Dismissal of State Employees Who Support Opposition**

[Georgia] “According to information we have obtained, as of December 11, 2012, 493 employees had been dismissed from the Ministry of Internal Affairs across the country... Police officers told the representatives of TI Georgia’s Zugdidi office that the new management of the Department has even told them that officers serving during the reign of the UNM [United National Movement] must leave.”<sup>265</sup>

#### **78. Transfer of State Employees Who Support the Opposition**

[Ghana] “Another incident of potential incumbency abuse in this subcategory involves the transfer of a District Assembly driver from the Eastern Region possibly for reasons of suspected opposition NDC [National Democratic Congress] sympathies. He has been placed at the Treasury Department where no car is available for him to drive.”<sup>266</sup>

#### **79. Opposition Supporter or Community Leaders Targeted by Tax Authorities**

[Ukraine] “The [tax authority] became one of the crucial ‘administrative resources’ during elections. In the course of the Ukrainian ‘tape scandal’... conversations from the presidential office became public. In one of the passages the president instructs the head of the tax administration in the run-up to the 1999 presidential elections:

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<sup>263</sup> Lopez Pintor & Gratschew (2002) page 47.

<sup>264</sup> Moldova source page 6f.

<sup>265</sup> Transparency International Georgia (2013a)

<sup>266</sup> CDD-Ghana (2004) page 3.

The [tax] militia will have to work seriously [...] It's necessary for a tax worker to go to every collective farm head in every village and say: dear friend, you understand clearly how much material we have on you so that you could go find yourself in jail tomorrow."<sup>267</sup>

### ***Political Finance Laws or Regulations that Financially Favor Incumbent Political Parties***

#### **80. Setting Thresholds for Public Funding of Political Parties so High that Only Government Party or Parties Qualify**

[Zimbabwe] "In Zimbabwe, only political parties that received at least 15 seats qualified for public funding, something only the governing ZANU-PF [Zimbabwe African National Union – Patriotic Front] managed to do in both the 1990 and 1995 elections, before the Supreme Court ordered the threshold to be altered to 5 percent of the votes."<sup>268</sup>

#### **81. Creation of Public Funding Regulations Where a High Proportion of Such Funds Go to the Government Party or Candidate**

[Namibia] "Of the total amount distributed to the four eligible parties in 2004/2005 in Namibia, the governing SWAPO [South West Africa People's Organization] received 77 percent."<sup>269</sup>

#### **82. Creation of Public Funding Regulations With a Low Threshold and Equal Distribution, Aimed at Encouraging Fragmentation Within the Opposition.**

[Gabon] "At the National Conference held in March 1990, the delegates were invited to form political parties, which would receive financial aid from the government. More than 70 self-declared parties were created. Each was granted 20 million francs CFA (around \$34,700 USD at the exchange rate in 1990) and a four-wheel drive vehicle in order to be able to conduct the legislative electoral campaign. Most of these parties disappeared after receiving the State funding and have not reappeared since."<sup>270</sup>

#### **83. Bans on Use of Private Funding in Election Campaigns<sup>271</sup>**

[Belarus] "The Electoral Code provides that the electoral campaign is financed exclusively from the State budget. Neither this article nor any other article in the code establishes the requirement that a specific monetary amount must be provided to electoral contestants. Private donations can only be made to the State budget, to be equally distributed between candidates. The limitation on private donations, coupled with the lack of a guarantee for timely access to a minimum amount of State funds, means that candidates and political parties have no ensured mechanism for communicating political messages. Con-

<sup>267</sup> Fritz, Verena (2004) page 164.

<sup>268</sup> Ohman (2009) page 64.

<sup>269</sup> Ohman (2013 forthcoming).

<sup>270</sup> Ohman (1999) page 10.

<sup>271</sup> In a few countries, the use of private funding has been banned in campaigns, ostensibly to reduce corruption. In practice, it has tended to leave the opposition cash strapped, thereby increasing the advantage of misusing administrative resources. This is not necessarily the result of such endeavours however, as experiments in several U.S. states have shown through so-called "clean elections" or "fair elections" legislation.



versely, the Electoral Code fails to ensure that voters are able to learn of contestants' views and qualifications."<sup>272</sup>

#### **84. Rules Providing Generous Funding of Organizations Related to Certain Political Parties**

[Uganda] "Despite the adoption of a multi-party system, the Movement structures remained intact, active and funded by the state throughout the election period. The President and his party utilized State resources, particularly through the old movement structures, in support of their campaign, including use of government cars, personnel and advertising, and received overwhelming and positive coverage on State television. The NRM [National Resistance Movement] as a political organization, and the NRM as a political system with its organs, shared many of their senior staff. In many districts (for example, Kyenjojo, Bundibugyo, Kamwenge and Kabarole in the Western Region, and all Buganda Districts) they operated from the same premises."<sup>273</sup>

#### **85. Tax Advantages for Major Donors**

[Egypt] "Our results suggest that in Egypt, elections only cause a contraction in fiscal resources, while public expenditures are not affected by the electoral cycle... Our analysis suggests that resorting to private funds in exchange of tax breaks or lower taxation of large donors for example, can be one of the alternative sources of financing campaigns ahead of elections."<sup>274</sup>

#### **86. Tax Advantages to Industries with Connections to the Regime**

[Honduras] "Businesses such as fast food franchises have long been exempt from taxes because they supposedly promote tourism even though many of them 'are neither in tourist zones nor do they attract tourism,' said Lopez Steiner. Such tax breaks have been 'approved as payments for political favors and as a result of the financing of election campaigns, which are always linked to tax favors,' he said."<sup>275</sup>

#### **87. Modification of Taxation or Customs Charges that Reduces Costs of Government Party Procurement**

[Mozambique] "Frelimo [Frente de Libertação de Moçambique, government party] reportedly imported 300 tons of paper for party use, but the material was later sold on the local market by a university paper store. This form of "legalized smuggling" includes manufactured products like vehicles, paper, building material and even perishable goods. There is also evidence of undue use of customs authority to favor Frelimo. The [Carter] Center was told of a case in which a small party tried to import 500 television sets, but the customs authority denied this application. Another party reported that an importation of construction material worth \$600,000 was refused. There is broad awareness of the discretionary power of

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<sup>272</sup> OSCE/ODIHR and Venice Commission (2006) page 13.

<sup>273</sup> EUEOM (2006) page 24.

<sup>274</sup> Youssef (2011) page 16, 22.

<sup>275</sup> Bloomberg BusinessWeek (2013)

the State apparatus in either refusing or admitting applications for imports in the name of political parties.”<sup>276</sup>

### **88. Provision of Indirect Public Funding Organized to Deprive the Opposition of Real Benefits**

[Belarus] “Observers reported that some campaign venues designated by local authorities were either too small, were located on the outskirts of cities and towns, or were otherwise difficult to reach... [foot-note;] For example, in Orsha only two indoor venues were designated. One was too small for a public meeting and the other (with an approximate capacity of 300) was far from the town center. In this town, the [opposition] Milinkevich campaign held an outdoor meeting that the police deemed to be illegal.”<sup>277</sup>

## **Enforcement Resources**

While it may not always be thought of as ASR, activities by the police, military and other security agencies can have a significant impact on the electoral fate of political parties and candidates. It is imperative that such agencies behave in accordance with strict principles of neutrality in elections.

### ***Actions by Security Agencies that Threaten or Disrupt Activities of the Opposition***

#### **89. Refusal by Security Agencies or Local Authorities to Give Certain Competitors Approval for Party Conferences, Rallies, etc.**

[Belarus] “Frequently, local authorities and the police used the provisions of the Law on Mass Events to prevent the holding of opposition election-related gatherings, including meetings of campaign activists held in residences. This curtailed the freedoms of association and public assembly. Those organizing unsanctioned public meetings were often detained and fined. Shortcomings in the Law on Mass Events were compounded by the approach taken by local courts which, particularly during the latter stages of the campaign, used Article 31 of the Code on Administrative Offences to place those persons that had organized or participated in unsanctioned campaign events under administrative arrest.”<sup>278</sup>

#### **90. Unjustified Breaking Up of Rallies or Other Campaign Events by Competitors**

[Russia] “Russian riot police rounded up scores of opposition activists, including leaders of liberal parties, protesting against President Vladimir Putin's government yesterday, a week before parliamentary elections... Those detained included Boris Nemtsov, a likely contender in next March's presidential election, police said they detained several dozen demonstrators but an opposition activist put the number at 200.”<sup>279</sup>

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<sup>276</sup> Carter Center (2005) page 34.

<sup>277</sup> OSCE/ODIHR (2006) page 13.

<sup>278</sup> OSCE/ODIHR (2006) page 14.

<sup>279</sup> Yorkshire Post (2007).

### 91. Restricting Freedom of Movement in Relation to Campaign Events by Competitors

[Moldova] “[Opposition] Parties complained about the obstruction and intimidation by police of voters willing to attend their rallies. The Liberal Democratic Party (PLDM) complained that in some cities the police stopped busses with party supporters planning to attend a rally in Chisinau on March 22. The OSCE/ODIHR EOM confirmed such instances in Orhei and Balti.”<sup>280</sup>

### 92. The Arrest or Detainment of Candidates Without Due Cause

[Ethiopia] “Observers confirmed arrests and imprisonment of CUD [Coalition for Unity and Democracy] candidates in Debre abor/Gonder in Betucha Angalo/Oromia and in Addis Ababa... The EU EOM recorded no arrests of EPRDF [government party] supporters for campaign offences.”<sup>281</sup>

### 93. Arrest of Detainment of Political Party or Campaign Activists Without Due Cause

[Ukraine] “September 15, three members of the community organization Vidsich were detained by police in Kyiv while handing out flyers against Party of Regions candidate Maksym Lutsyki (SMD 222). They were charged with obstructing the work of the police, an administrative offense. At their trial on September 19, the police could not ascertain how they had obstructed the work of the police... On September 15, in Zhytomyr, the organizer of a rally in support of TVi was detained by police, found guilty of organizing a rally without permission and given a warning.”<sup>282</sup>

### 94. Harassment of Individuals Who Financially Support Opposition Political Parties or Candidates

[Armenia] “One such exemplary case the public witnessed during 2008 presidential elections, when these businesses tried to support opposition parties or candidates, the authorities swiftly launched against them harsh reprisals.”<sup>283</sup>

### 95. Refusing the Opposition Permission to Put Up Campaign Materials

[Russia] “the local authority initially issued a verbal order forbidding the appearance of any billboards except for those of the United Russia candidate. When this barrier was overcome through argument, the billboards of the other candidate’s party were not lit.”<sup>284</sup>

### 96. Seizure of Opposition Campaigning Materials

[Belarus] “Visits to campaign offices by police and seizure of campaign material ostensibly to verify if campaign material was produced in accordance with Belarusian legislation, particularly in line with campaign finance regulations... [footnote] For example, on 21 February in Mogilev, the Head of Milinkevich’s local campaign office was detained for six hours and 26,170 legally produced campaign leaflets were

<sup>280</sup> International Election Observation Mission Moldova (2009) page 6.

<sup>281</sup> EUEOM Ethiopia (2005) page 15f.

<sup>282</sup> Mission Canada (2012) page 18, footnote 25.

<sup>283</sup> TI Armenia page 9.

<sup>284</sup> Center for Anti-Corruption Research and Initiative Transparency International Russia (2004) page 95.

seized. The materials were returned on 24 February. In Brest, the Milinkevich HQ, located in a house, was searched on the pretext of finding illegally produced alcohol. During the search campaign material was seized.”<sup>285</sup>

**97. Increased Presence of Military or Security Forces in Opposition Strongholds to Intimidate Voters and Reduce Turnout**

[Uganda] “The deployment of police forces, the army and other paramilitary groups in Kampala and in the countryside, is intended to deter security threats, according to the Uganda People’s Defense Force (UPDF) and the police. But oppositions say heavy military presence on the streets intimates voters.”<sup>286</sup>

**98. Training or Cooperation Between State Security Forces and Militia Faithful to the Government**

[Philippines] “In Tawi-Tawi, opposition candidates complained that private armies run by warlords had been telling the common people to vote for government-backed candidates.”<sup>287</sup>

***Biased Provision of Security to Candidates or Promises to Release Prisoners if their Families Act in Favor of the Government Party***

**99. In Situations of Insecurity; Provision of Protection only to Some Candidates**

[Afghanistan] “Both male and female candidates expressed frustration with the provision of security by local law enforcement, FEFA [Foundation for Free and Fair Elections in Afghanistan] observers reported. In many provinces, candidates complained that police were unresponsive to their requests for protection, or provided security only to candidates favored by local officials. A favored candidate in Nangarhar was provided two police cars full of officers for his campaign, while other candidates were refused any police protection, and a nearly identical case was reported in Jawzjan province.”<sup>288</sup>

**100. Promises Made that Prisoners Will Be Released if their Families Act in Favor of Government Party**

[Georgia] “Specifically, the families of individuals who are in pre-trial detention have been promised that the individuals will be released if they collect the signatures of a certain number of supporters along with their personal numbers. A parent of a prisoner in the village of Chandari in the village of Gurjaani District was promised that his son would be released if he compiled a list of 100 people who supported the ruling party’s majoritarian candidate. Residents of Tbilisi were instructed to provide lists containing 400-500 signatures. The family of a wanted suspect in Poti was promised that the search would stop if they compiled a list of supporters (containing signatures and ID card number).”<sup>289</sup>

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<sup>285</sup> OSCE/ODIHR (2006) page15.

<sup>286</sup> Sudan Tribune (2011).

<sup>287</sup> ANFREL (2007) page 22.

<sup>288</sup> FEFA (2010).

<sup>289</sup> Transparency International Georgia (2008) page 10.

## Glossary

Term	Explanation
<b>Abuse of State Resources</b>	The use of State and public sector powers and resources (including coercive capacities, personnel, financial, material and other resources) by incumbent politicians or political parties to further their own prospects of election, in violation of legal and/or other norms and responsibilities governing the exercise of public office.
<b>Administrative Resources</b>	Euphemism used in some countries (especially in the Former Soviet Union) to describe (the abuse of) State resources.
<b>Allocation criteria</b>	Criteria used to calculate the public funds provided to eligible political parties or candidates (can be used for either direct or indirect public funding).
<b>Audit</b>	An audit is an examination of an entity's financial statements, financial records and banking information prepared by the entity's financial agents for other interested parties outside the entity, and of the evidence supporting the information contained in those financial statements. Most countries have established auditing criteria that must be followed for a formal audit.
<b>Campaign Expenditure</b>	Expenditures incurred by or on behalf of a registered political party or candidate to promote the party or candidate during an election cycle or in connection with future elections, including expenditure that has the aim of damaging prospects of another party or candidate.
<b>Campaign Finance</b>	Refers to transactions related to an electoral campaign. Transactions may include formal financial or in-kind donations or expenditures. Formal transactions that occur within the scope of the law may be augmented by public financing of campaigns. Informal transactions occur outside the scope of the law and range from vote buying to unaccounted in-kind support from private and government enterprises, to abuse of public resources.
<b>Campaign Income</b>	Income raised by or on behalf of a registered political party or candidate to finance the election campaign of a party or candidate.
<b>Campaign Spending Limit</b>	A maximum amount that a candidate's campaign can spend during the election period.
<b>Campaign-related Funding</b>	The allocation of resources acquired and spent by electoral candidates and political parties during an election cycle.
<b>Ceiling</b>	An upper limit on campaign expenditures. Sometimes also refers to the upper limit on what individuals and political parties may contribute.
<b>Conflict of Interest</b>	The situation where a person has incompatible interests that hinder her or him from acting for the common good. For example, when government officials take campaign contributions from people whose economic interests are affected by government policy-making.
<b>Contribution Limit</b>	A maximum amount of money that an individual or political party may contribute to a candidate's campaign or to a political party.
<b>Contributions</b>	Money, or anything else of value (such as mailing lists, telephones, billboard space) given to a candidate's campaign or political party by an individual or organization.

Term	Explanation
<b>Co-opted Politician</b>	An elected official who receives significant financial support from wealthy donors that, in turn, influence the official to make certain policy choices.
<b>Cost of Corruption</b>	Amount lost due to public funds being diverted or withheld.
<b>Direct Public Funding</b>	Money provided to political parties or candidates by the government during election campaigns or for regular party financing – usually as bank transfers, but sometimes as hard cash or checks.
<b>Disclosure</b>	The requirement that candidates and political parties report the amounts and sources of their campaign contributions to the electoral management body, government auditing agency or electoral enforcement agency. Effective disclosure works when these accounts are detailed and made available for public scrutiny.
<b>Donations</b>	See <b>Contributions</b> .
<b>Eligibility Criteria</b>	Criteria used to determine which political parties or candidates that should be provided with direct or indirect public funding.
<b>Enforcement Agency</b>	Refers to a body overseeing and controlling the operation of a political finance system. It ensures that parties, committees and candidates comply with the limitations, prohibitions and disclosure and reporting requirements. The agency has the duty to enforce obligations arising out of political finance regulations.
<b>Equitable Playing Field</b>	An electoral contest in which competing candidates have resources that are commensurate to their abilities to fundraise and receive campaign contributions with which to run their campaign.
<b>External Contribution</b>	Money donated to a candidate's campaign or political party by an individual residing outside the country in which the election is being held.
<b>Floor</b>	A minimum or set amount of finances or other public resources (e.g., free media or postage) available to all eligible candidates in a public funding system.
<b>Formal Transactions</b>	Donations and expenditures that occur within the scope of the law and can be augmented by public financing of campaigns.
<b>Hidden Advertising</b>	Material that appears in the media as objective reporting or analysis but in reality promotes one candidate or party or attempts to discredit another.
<b>Hybrid Funding System</b>	A system of financing elections and political party activities by which a portion of the campaign funds used by candidates comes from the government, usually in the form of a grant that matches private money raised.
<b>Independent Expenditure</b>	An expenditure of money for advertisements or other communications that expressly advocates the election or defeat of a party or candidate, which is not made in conjunction or coordination with any the party/candidate or their campaign committee.
<b>Indirect Contribution</b>	Where someone officially makes a contribution to a political party or candidate with money belonging to someone else. For example, a foreign donation can be given via a citizen to circumvent bans on foreign funding.
<b>Indirect Public Funding</b>	Resources with a monetary value that are provided to political parties or candidates by the government for the election campaign or for regular party financing, such as transport or free media time.

Term	Explanation
<b>Individual Contribution</b>	Money contributed to a candidate's campaign committee or a political party by a single person (or more than one person on a single check).
<b>Informal Transactions</b>	Financial donations and expenditures that occur outside the scope of the law. They can range from vote buying to unaccounted, in-kind support from public and private enterprises, and to the abuse of public resources.
<b>In-Kind Contribution</b>	A contribution of goods, services or property offered free or at less than the usual charge.
<b>Institutional Advertising</b>	Advertising by government institutions to raise awareness or appreciation of the work of a the institution. While acceptable in itself, such advertising can be used to support the governing political party or President.
<b>Level Playing Field</b>	An electoral contest in which competing candidates have equal resources with which to conduct their campaigns.
<b>Loophole</b>	A way of avoiding or getting around the law, usually associated with an omission or ambiguity in the law itself.
<b>Matching Funds</b>	Public money given in a specific ratio to candidates who succeed in raising pre-scribed amounts of private money in individual contributions of a certain size. This is commonly found in the U.S..
<b>Money Laundering</b>	Making a campaign contribution to an elected official (or a political party) through one or more third parties as a device for disguising the source of a contribution and getting around contribution limits.
<b>Money Trail</b>	The flow of campaign and regular party financing through the political system. Following the money trail is one of the methods journalists and regulatory bodies use to monitor illicit contributions and expenses.
<b>Monitoring</b>	The systematic and objective observation and documentation of a particular process over time.
<b>Payoff</b>	The return on a campaign investment made by a vested-interest contributor e.g., special appointments (such as ministerial positions), tax breaks, subsidies, regulatory exemptions or uncompetitive bids for government projects.
<b>Political Corruption</b>	The abuse of entrusted power by political leaders for private or group enrichment or for the preservation of power
<b>Political Finance</b>	Candidates and political parties' income and expenditures, which are formal and informal, as well as financial and in-kind. These transactions may occur within or outside of the campaign period, or they may not be directly related to a campaign at all.
<b>Political finance Enforcer (also Enforcement Body or Enforcement Agency)</b>	A government body or agency mandated to oversee and control the flow of the country's political finance system. It ensures that parties, committees and candidates comply with the limitations, prohibitions and disclosure and reporting requirements. The agency has the duty to enforce obligations arising out of political finance regulations. The term "political Finance regulator" is sometimes used for such bodies.

Term	Explanation
<b>Political Party Expenditures</b>	In presidential systems, money spent by political parties on behalf of their presidential and congressional candidates in the general election. In parliamentary systems, money spent by political parties during the election campaign.
<b>Political Party Finance</b>	Non-campaign financial or in-kind donations to political parties, organizations and associations, and expenditures made by these groups. Political parties may receive public financing, often as the result of garnering a certain percentage of the vote in an election.
<b>Private Funding System</b>	A system of financing elections and political party activities by which the majority of a candidate's or political party's campaign income and expenditures are funded from private contributions.
<b>Public Financing/funding</b>	Campaign funding or regular party funding supplied by the government to eligible candidates or political parties.
<b>Quid Pro Quo</b>	From the Latin, "something for something," what vested-interest campaign contributors get from elected officials as a result of their strong financial backing (this may include a tax breaks, subsidies, appointments, regulatory exemptions or uncompetitive bids on government contracts).
<b>Regular Party Funding</b>	Non-campaign-related finances, including donations and expenditures, of political parties, organizations and associations spent on an annual basis to maintain routine party operations.
<b>Tainted Politics</b>	A corrupt political system that is heavily influenced by dirty or illicit money and undermines the rule of law.
<b>Third-Party Contributions and Expenditures</b>	Goods or services paid or expenditures incurred on behalf of a candidate or political party by a separate, unconnected entity.
<b>Transparency</b>	The degree to which an institution's finances, policies, methodology, and operations are made available or known to the public.
<b>Unequal Access to Office</b>	A concern that certain socio-economic constituencies lack minimum financial resources to run a campaign or get meaningful representation.
<b>Uneven Playing field</b>	The risk that large sums of money can give unfair advantage to certain candidates and/or political parties, effectively diminishing the competition.
<b>Vote-buying</b>	A form of political swindling that is intended to increase the number of votes a particular candidate or political party receives in an election by providing money or other benefits to constituents in exchange for their vote.
<b>Vouchers</b>	A form of in-kind public financing by which eligible candidates and/or political parties receive certificates entitling them to a specified amount of free campaign resources, such as postage or media time.



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As the global leader in democracy promotion, we advance good governance and democratic rights by:

- Providing technical assistance to election officials
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