

Challenging the Norms and Standards of Election Administration: Political Finance*

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I. Introduction

James Kerr Pollock wrote in 1932 that “the relation between money and politics has come to be one of the great problems of democratic government. Healthy political life is not possible as long as the use of money is unrestrained.”¹ Indeed, money provides access to the basic tools of a modern democracy - for example, advertising, running political parties, selecting candidates, mobilizing voters and polling - and for this reason, political finance affects almost every aspect of democratic politics in both developing and consolidated democracies. Thus, the reform of political finance regimes is very high on the agenda in all democratic countries, as greater transparency in political finance and accountability on the part of party leaders are essential for democracy. For this reason, it is crucial to discuss the standards that every system of political finance should try to meet, and that will encourage parties to undertake more transparent and accountable financial operations. Yet, when discussing the topic of “standards” one should remember that opinions regarding political finance are in a state of evolution with many scholars recently changing their mind on a variety of issues such as public funding of political parties and spending limits. As the new research and evidence question many existing solutions, the future of political finance seems to be far from being decided for many democracies.

Since this is a growing and problematic field, it is important to consider the meaning and boundaries of “political finance” before analyzing any standards.² The narrowest definition of “political finance” would be money for electioneering or campaign finance. This money may be collected and spent by candidates for public office, by their political parties or by other individuals and organized groups of supporters. Political parties play a crucial part in election campaigns in many parts of the world, and since it is difficult to differentiate between the campaign costs of party organizations and their routine expenses, political party funds may reasonably be considered “political finance,” too. A leading German scholar of comparative politics, Karl-Heinz Nassmacher, rightly notes that there is a fundamental difference between campaign- and candidate-oriented North American and party-orientated European political finance. He suggests that “In Europe, the term political can appropriately be used as a synonym for party finance.”³ However, campaign and party funds are only two kinds of political money and not necessarily the most important. In fact, party expenses and campaign finance are not the only costs of democracy. Many extra-party actors and individuals are involved in political competition with clear political objectives like shaping public policy agendas, and influencing electoral

¹ Pollock (1932), p. 328

² For more details see also Michael Pinto-Duschinsky, *Financing Politics: A Global View*, *Journal of Democracy* (2002), pp. 69-86

³ Karl-Heinz Nassmacher, *Structure and impact of public subsidies to political parties in Europe*, in Herbert E. Alexander (ed.) *Comparative Political Finance in the 1980s* (Cambridge: Cambridge University Press 1989)

debates and outcomes. Nevertheless, for the purposes of this paper, “political finance” will be understood to mean only campaign and party finance.

The following pages present some ideas for the discussion of standards for political finance reforms. This paper argues that greater public disclosure, proper internal political party control, effective enforcement by regulatory regimes, and external stakeholder oversight are fundamental for any transparent and accountable political finance system. Before exploring standards in these four key variables, the following two sections of the paper analyse 1) the need for standards governing political finance and 2) the existing solutions and recommendations made by different global players. The paper concludes with an affirmation of the key elements of any political finance regime and the importance of assisting EMBs as they strive to reach existing and emerging standards in these areas.

II. Why Should Political Finance be Governed by Standards?

Political finance-related corruption undermines accountability and good governance in multiple ways.⁴ It not only separates the political elite from society but challenges the whole concept of fair democratic representation.⁵ When political parties are viewed as ineffective and corrupt, people hesitate to associate with them. Unregulated political money can also shape public debate and therefore influence the results of an election. In addition, the expense of running for office can prevent candidates from doing so, cause them to spend too much time raising money, or accept money from unacceptable sources, and could contribute to public cynicism regarding the political process. Unregulated political finance can also feed the greediness of political parties and candidates, and their increasing financial need can affect the other arenas of democracy. For instance, political parties with authoritarian tendencies can sometimes put pressure on state apparatus, civil society and economic society through the abuse of state resources, making physical threats, and by putting administrative pressure on potential sponsors. In order to prevent the above practices, a democracy must regulate the funding of, and spending on politics, be it for campaign or party activities.

The many complexities involved in controlling political finance mean that moves to implement existing restrictions, or to introduce new ones, need to be considered with particular care. Unfortunately, many of the countries that have recently reformed their political finance systems, with the notable exception of Canada, the United Kingdom, and the United States have not supported these efforts with the necessary research⁶ or public consultations.⁷ For example, the Fifth Report of the Committee on Standards in Public Life,⁸ published nearly a decade ago in 1998, is still the most comprehensive review of the options available to regulators in Europe.

⁴ See also Marcin Walecki, *Political money and corruption*, in Global Corruption Report, Transparency International (London: Pluto Press, 2004), pp. 19-30

⁵ As Larry Diamond and Richard Gunther suggest, “The combination of a more or less corrupt system of party and campaign finance with a stream of blatant scandals and a backlog of public aspirations for more responsive government that go unmet (while being amplified by a cynical media) generates growing public disillusionment with democratic politics and government.” Larry Diamond and Richard Gunther (eds.), *Political Parties and Democracy* (Baltimore: The Johns Hopkins University Press, 2001), p. XIII.

⁶ The UK Electoral Commission and the Elections Canada can serve as good examples. See in particular, ‘The funding of political parties - Report and recommendations’ The Electoral Commission (London: 2004)

⁷ In 2006 the UK Government has tasked Sir Hayden Phillips with undertaking an inquiry into how political parties are funded. See *The Review of the Funding of Political Parties*, London 2006.

⁸ Fifth Report of the Committee on Standards in Public Life “The Funding of Political Parties in the United Kingdom” (Cm 4057, October 1998), see http://www.public-standards.gov.uk/publications/5th_report.aspx.

Well-defined, acceptable, and stable political finance rules allow political parties to know what the government expects of them, and what they can expect from it (in terms of sanctions or other regulatory activity). As one scholar observed a few years ago, "The global nature of this problem raises questions about whether there is at least a global response that might be contemplated, if not yet a global solution."⁹

III. Are There Any Standards Governing Political Finance?

Different international standards have recently been advocated by a number of international governmental and non-governmental organizations (such as Transparency International¹⁰ in particular). Most of them have been broad, permitting considerable scope for national variation. Many of the proposals, such as those emerging from organs of the Organization of American States (OAS)¹¹, the Council of Europe¹², the African Union (AU)¹³ and the Association of Central Eastern European Election Officials (ACEEEO)¹⁴ are a clear indication in which direction future political finance regulations will move. Advocating a set of global standards, even if they are fairly general, is a positive development, yet the principles need to be sufficiently flexible to be relevant to all democracies and transition countries. Not surprisingly, most of them emphasize strategies based on public disclosure and address the question of monitoring. For example, the Convention against Corruption that was negotiated in Merida, Mexico, in December 2003, and which entered into force in December 2005, states in article 7 (3) that:

Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidates for elected public office and, where applicable the funding of political parties.

While approaches to controlling the effects of money on elections differ, the standard recommendation of all the above organizations focuses on transparency. The European Union and the United States government also emphasise the importance of transparent party funding. For instance, the US Congress "International Anti-Corruption and Good Governance Act Of 2002" states in section 202 (12) that:

The United States should attempt to improve accountability in foreign countries, including by... promoting financial disclosure by public officials, political parties, and candidates for public office.

In addition, an analysis of the contents of various documents produced by the EU institutions shows that the treatment of political party financing regulations has received extraordinary attention. In the case of Romania, Bulgaria, Croatia, Macedonia, and Turkey, these documents included strong recommendations regarding the transparency of party funding which candidate states and political actors needed to take into consideration in order to join.

⁹ Ewing "Corruption in party financing: the case for global standards", in TI Global Corruption Report 2001, p. 187

¹⁰ See Policy Position # 01/2005 Standards On Political Funding And Favours and # 02/2005, 'Political Finance Regulations' in particular.

¹¹ Statement of the Council of Presidents and Prime Ministers of the Americas, the Carter Center and the Organization of American States, Atlanta Georgia March 19, 2003

¹² See www.coe.int

¹³ The African Union Convention on Preventing and Combating Corruption (Article 10). The convention was adopted in Maputo on 11 July 2003

¹⁴ www.aceeeo.org

Although transparency is a necessary goal of political finance regulations, limiting such regulations to full transparency might not be sufficient. Public disclosure in political finance does not automatically increase good governance, although it can expose poor governance practices. Transparency can only identify problems or irregularities that should be addressed and solved. The public needs to trust both the agency charged with enforcing the rules as well as the political party eliminating its individual members' misconducts. Thus, it is equally important to make political parties remove corrupt individuals, improve internal and external control mechanisms, and follow up with proper enforcement.

The ambitious program of developing regional standards has recently been accelerated in Europe by the Council of Europe. Over the last decade the Council of Europe has adopted a number of documents concerning the regulation of party financing.¹⁵ However, its most recent Recommendation No (2003/4)¹⁶ seems to be its most comprehensive initiative, asking member countries to take a number of concrete steps to combat political finance-related corruption, ranging from full transparency in party accounts, through restrictions and prohibitions on sources of funds, to reasonable public funding, independent enforcement and meaningful sanctions. The Council of Europe also recommends that its member states adopt legislation regarding the financing of political parties based on more controversial principles, such as limits on party expenditure linked to electoral campaigns. Furthermore, in Recommendation No (2003/4) it prescribes that:

The governments of member states adopt, in their national legal systems, rules against corruption in the funding of political parties and electoral campaigns – in so far as states do not already have particular laws, procedures or systems that provide effective and well-functioning alternatives.

The Council of Europe has recently instructed "the Group of States against Corruption – GRECO" to monitor the implementation of this recommendation. One of the two themes covered by GRECO's Third Evaluation Round (launched on 1 January 2007), is the "transparency of party funding," as understood by reference to the Committee of Ministers' Recommendation No (2003/4). GRECO formally adopted an evaluation questionnaire designed to collect information which will form the basis of Third Round evaluations and which will be complemented by on-site visits to each of the Council of Europe member States.

Good practice in political finance has also been promoted by the OAS and the ACEEEO.¹⁷ The general principles and recommendations proposed by the above bodies are of particular importance for the less structured democracies of the Americas and Eastern Europe.

Indeed, in recent decades there has been a rush toward more complicated political finance regulations and more public subsidies. The rapidity with which legal changes

¹⁵ The Council of Europe has adopted a wide range of instruments related to party funding including among others: Parliamentary Assembly of the Council of Europe, Recommendation 1516 (2001), *Financing of political parties*, Adopted on May 22 2001; PACE Political Affairs Committee, Report "*Financing of Political Parties*", Doc. 9077, 4 May 2001

¹⁶ Recommendation No (2003/4) of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.

¹⁷ See www.aceeeo.org.

relating to political finance are occurring in various countries raises serious concerns about their purpose and proper implementation. In general, scholars and practitioners would agree that an effective political finance system should meet the following *minimum* requirements:

1. Equal opportunity to stand and compete in elections;
2. Preventing political actors from corrupting elections through systemic vote-buying or monopolizing the electoral process through the abuse of state resources;
3. Preventing the biased and partisan use of enforcement mechanisms against political opponents; and
4. Demanding that parties and candidates be transparent about how they collect and spend their money.

To achieve a fair and competitive system, a country must also offer a level playing field in which any political actor can participate, and in which political actors behave transparently and are accountable to the citizens. The main provisions of political finance laws serving the above purposes can include: prohibitions against corrupt and illegal practices (such as vote buying); disclosure rules; realistic spending and contribution limits; bans on certain types of contributions (such as foreign contributions, anonymous contributions, or contributions from business corporations) and spending; direct public subsidies, tax relief and subsidies-in-kind (including political broadcasting rules); rules concerning financial representatives, accounting, and audit; and rules and measures to control the use of public resources for campaign purposes.

Such provisions are sometimes contained in laws dealing specifically with party finance or election finance. Often they are included in broader laws addressing elections, political parties, or the prevention of corruption. However, the existence of a variety of separate laws often complicates the task of the regulatory body, or bodies, responsible for enforcing them. Moreover, as Michael Pinto-Duschinsky¹⁸ rightly points out:

The desirable scope of political finance regulations and subsidies is bound to remain a subject of debate. There is little doubt, however, that all too often laws express objectives (such as transparency of political donations) without considering in sufficient detail how to implement those objectives. There is, in short, too much law and too little enforcement.¹⁹

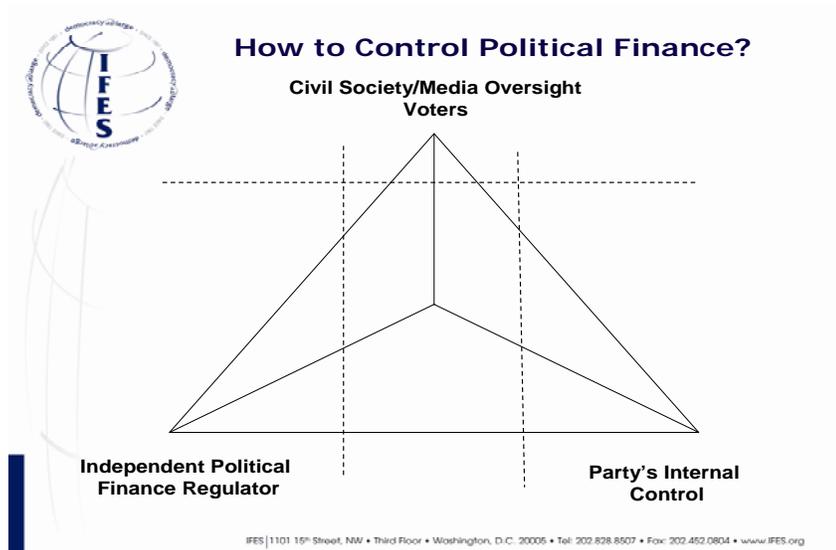
In developing electoral environments, establishing standards in political finance administration should be built into public expectations so that the relative roles and responsibilities are understood by all electoral actors. Furthermore, limits and prohibitions on political finance can only work if there are adequate rules for disclosure and effective enforcement. Without full and timely public disclosure, contribution and spending limits could not be monitored or enforced. Disclosure is also crucial to determine whether a party or candidate is complying with various bans, and in public financing systems, disclosure is necessary to calculate the amount of subsidies.

Although disclosure is a necessary condition for an effective control it is not a sufficient one. As illustrated below, it is crucial to apply a holistic approach to control political finance and devote as much attention to: 1) internal political party controls, 2) the

¹⁸ Dr Pinto-Duschinsky is the leading world expert on political finance and the Chairman of the International Political Science Association Research Committee No 20 on Political Finance and Political Corruption.

¹⁹ Pinto-Duschinsky (2002), p. 81

powers of the independent PFR, 3) external complaints allowing for civil society and media oversight. Without adequate enforcement, internal and external control, political finance subsidies and regulations - whether they involve limits, bans or simply disclosure requirements - have little meaning and are unlikely to be respected. Thus, all mentioned variables are fundamental to maintaining the legitimacy of political finance regulations and secure effective control. The following pages will discuss each of them in more detail.



IV. Proposing Standards in Four Key Areas of Political Finance

A. Disclosure

Disclosure is a necessary condition for any system of public control of political finance, and a variety of disclosure requirements are adopted.²⁰ Political parties are required to submit routine or periodic financial reports to public officials, and in most systems electoral committees and candidates are required to file special reports during or immediately after election campaigns. In general, disclosure may help achieve the following ends:

1. Financial disclosure contributes to an overall transparency of the electoral process, offering voters an opportunity to learn more about political contenders in order to make an informed decision at the polls.
2. Requirements to disclose sources of funding are likely to stimulate parties/candidates to raise and also spend their financial resources in ways that are acceptable to a majority of voters and do not provoke political scandals.
3. Disclosure emerges as an obstacle to corruption and trading in influence that are likely to be greater when financial transactions between political parties and companies are hidden from the public eye.

²⁰ For the most comprehensive study of political finance disclosure see *Money in Politics Handbook: A Guide to increasing transparency in Emerging Democracies*, USAID (Washington: Office of Democracy and Governance 2003)

4. Public disclosure can serve as a barrier to excessive campaign spending in particular countries/cultures where money in politics is viewed with suspicion, or money is not seen as all-powerful.

Still, regarding this simplest and least controversial principle of political financing, there is a wide gap between accepting such a principle and understanding the specific problems involved in regulating public disclosure.²¹ Any political finance system should require comprehensive disclosure of all financial transactions. Regarding receipts, the party or candidate should disclose the amount and nature of each contribution (*i.e.* whether cheque, cash or non-monetary ["in-kind"]), and the identity, address and employer/business of each contributor. In terms of expenditures, the law should require disclosure of all spending, including the date and amount of expenditure and its recipient, and all debts and liabilities incurred by the committee. The law should also require the disclosure of loans and advances received by the party, including the lender's identity and business/employment, the date and amount of the original loan or advance, and the date when the loan or advance was repaid.²²

An important issue to be stressed is the timing of disclosure reporting or, rather, the delay in reporting. Ideally, election reports should be submitted and published from one week to 10 days before an election, and following an election (usually 30 days after the election). With the technology available today, information can be sent to the regulatory body in "real time" and then posted on its website. In jurisdictions such as the United States, Canada, the UK, and Lithuania, computer software is provided to parties and/or candidates to ease the submitting of financial reports. These reports should be formatted in such a way that further statistical and/or audit study is simplified.

In addition to providing regulators with the ability to track campaign-related expenditures, pre-election disclosure provides the public with information that is critical to their voting decisions. Such was the U.S. Supreme Court's reasoning in *Buckley v. Valeo*,²³ one of the most important decisions in political finance legislation:

Disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows the voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is more likely to be responsive and thus facilitate predictions of future performance in office.²⁴

Furthermore, disclosure enhances the accountability of political parties and provides enforcement agencies, as well as civil society and media with all the information necessary for proper verification. However, for these objectives to be achieved, all financial reports covering routine and campaign funding should fulfil the following criteria:

²¹ Keith Ewing points to the example of the state regulations in the US — *Brown v. Socialist Workers' 74 Campaign Committee (Ohio)*²¹— with the result that Ohio disclosure laws were held unconstitutional to the extent that they applied to the US Socialist Workers Party.

²² For more information see relevant section of ACE Project at www.aceproject.org as well as IFES' TIDE Project at www.moneyandpolitics.net

²³ *Buckley v. Valeo*, 424 US 1 (1976).

²⁴ *Ibid.* p. 67.

1. Reports should provide for the full accounting of assets and liabilities by the reporting entity ('Baseline' financial statement – required just once, or on a cyclical basis);
2. Reporting forms should be based on requirements set forth by the independent body as a result of consultations with parties and candidates and should be supported by manuals/guides and training;
3. Reports should be based on a calendar timeline, such as an annual, biannual, or quarterly reporting schedule;
4. Reports should be introduced before the beginning of the reporting period;
5. Reports should be publicly accessible (e.g., Internet, newspapers);
6. Reports should be detailed and comprehensive (but not absurdly detailed) and should reflect conventional accounting standards;
7. Reports should include, in addition to contributions and expenditures, information about donations-in-kind, loans and credits received, and debts;
8. Reports should be standardized for routine and campaign;
9. Reports should be understandable to the public at large;
10. Reports should be available for future reference.

While disclosure is an important element that should be present in all political finance regulatory systems, there are some limits to the reporting that can be required from political parties.

Excessive reporting requirements may act as a deterrent to political participation 1) by increasing the level of intrusion into political parties' internal organization and candidates' personal lives and 2) by raising the costs of standing for elected office beyond the reach of ordinary citizens. The challenge is to create a political finance system that makes political finance regulation meaningful without becoming a barrier to full citizen participation and the development of multi-party democracy. This would depend on a number of factors, including level of democratization, sophistication of the party system, media freedom, and political values. Any funding system should also reflect the needs of smaller parties, and enable entry to the political arena. It is important that the accounting, reporting, and auditing requirements reflect the size of the political party. Thus, when considering the level of reporting details required for smaller parties, it should be recognized that accounts are often produced by volunteers rather than professional accountants.

Finally, though disclosure is desirable in most cases, there are countries in which it can be abused by non-democratic regimes. A study of Ukraine, for example, has demonstrated that donors who declared their financial support for opposition parties before 2002 were then harassed by the tax authorities as a punishment.²⁵ In potentially violent, repressive regimes, compulsory disclosure of political contributions has the effect of making it very difficult for opposition groups to organise political campaigns.

B. Effective internal (political party) control

In any organization where money and power are so intimately connected, internal mechanisms for political finance control are essential. If political parties do not put enough emphasis on their internal control mechanisms, further restrictions will be imposed, leading eventually to total supervision over every single transaction and action. It should be stressed that political parties, when facing a universal struggle

²⁵ See Marcin Walecki, *Ukraine*, in *Global Corruption Report*, Transparency International (London: Pluto Press, 2004)

against political corruption, require a certain degree of autonomy to introduce preventive measures. Political parties will attract corrupt individuals as any other organization does. This is inevitable, and political parties should be encouraged to adopt their own procedures to eliminate dishonest politicians and prevent their financial misconduct. Detailed and persistent internal control mechanisms can provide a crucial foundation for efforts to contain the abuses that are always liable to occur, regardless of the sophistication of legal frameworks. As Anderson (1977) explains:

[W]ith the best of intentions, most people make mistakes. The mistakes may be the 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.

In general, any PFR should encourage political parties to comply with requirements for professional and accurate bookkeeping. Maintenance of proper accounting records will help to ensure that a party is not unnecessarily exposed to avoidable financial risk, and that published financial information is reliable; accurate bookkeeping can contribute to the safeguarding of assets, including the prevention and detection of fraud.

As discussed earlier, the growth of restrictions and disclosure obligations will force many political parties (or even candidates) to appoint specific officials — “financial agents ” — who might have the following responsibilities: 1) keeping complete and accurate records of financial activities, 2) submitting reports about financial activity to the relevant bodies, 3) approving all contributions for compliance with legal restrictions; and 4) following accepted accounting procedures in performing record-keeping and reporting duties.²⁶

This system of internal control imposes serious and continuing duties on financial agents to monitor donations received. Political parties should consider the standards applying in the banking sector, such as the “know your client” rule in particular. Parties might accept some donations and decline others (of illegal or corrupt character), and report suspicious financial transactions to the relevant authorities. Financial agents often oversee compliance with these requirements and institute action (using intra-party disciplinary codes and codes of conduct) when necessary.

Thus, the law should encourage internal party control (see the following section) and should require each party or candidate to authorize one particular committee, and designate one specific individual, serving as the financial agent (“treasurer”), to be responsible for all receipts and expenditures of that political entity. Any political party or its committee should use only one bank account, which is fully reported and disclosed to the PFR, for all financial transactions. By permitting only one conduit for all financial activity, the law thus enables the PFR to effectively “follow the money” and track political finance activity.

²⁶ Most importantly, the system based on the “doctrine of agency” foresees that all funds should be channeled through the agent and that all expenditures must be authorized by the agent. In addition, the agent must check incoming donations and expenses to ensure that they are in conformity with the rules.

C. Enforcement

As Keith Ewing rightly suggests:

The case for a transnational standard for the funding of political parties is a strong one, based on a number of principles of universal application. These principles need to be sufficiently flexible to be relevant to all democracies. And, in addition to strategies based on transparency, controlling costs and regulating the source and size of contributions, there is also a need to address the question of enforcement.²⁷

The narrow definition of political finance enforcement is “control exerted by an enforcement agency which gives force and authority to a political finance system.”²⁸ Enforcement is essential to any political finance regulations, starting with disclosure. The reason is quite simple: without enforcement, regulations - no matter how well intentioned - have little value. However, an ideal enforcement mechanism should not only include a controlling body but requires a comprehensive system consisting of all the components found in a system of justice, namely: investigation, prosecution, adjudication, and sanctions. According to a leading scholar, Khayyam Paltiel, “Enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings. Anything less is a formula for failure.”²⁹

The status of the body entrusted with overseeing a political finance system clearly has an impact on the effectiveness of control of the political finance system, as well as on public confidence in it. However, there is no easy answer to the question: What type of PFR should a democracy have? Recent comparative research has shown that in 63 percent of the countries that have agencies responsible for the enforcement of political finance, most of them rely on National Electoral Management Bodies. An additional 28 percent of these countries entrust the task to government departments, such as the ministry of the interior, the ministry of labour and administration, the ministry of justice, the tax office, or the attorney general's office. Other bodies responsible for political finance enforcement might include parliaments, parliamentary speakers, constitutional courts, or tribunals.³⁰ The work of the above agencies is becoming even more challenging as the laws concerning political finance have become far more extensive and complex in recent years. What is more worrying is a failure of reform-minded politicians to provide regulatory bodies with the necessary knowledge and with the additional resources needed to carry out their new functions.

The effectiveness of any system will also depend on the cooperation of the various stakeholders, and relies on the monitoring mechanisms provided by parties' financial agents, auditors, banking institutions, government bodies, anti-corruption watch-dog organizations, and the media. An effective enforcement regime is one that enjoys legitimacy in the eyes of the parties, the candidates, the media and, especially, the electorate. The enforcement of a political financing law is particularly important, since a

²⁷ Keith Ewing “Corruption in party financing: the case for global standards”, in TI *Global Corruption Report 2007*, p. 195

²⁸ See Training in Detection and Enforcement (TIDE) Handbook, (Washington DC: IFES 2005)

²⁹ Khayyam Z. Paltiel, *Party, Candidate and Election Finance*, study no. 22, Royal Commission on Corporate Concentration (Ottawa, Ont.: Queen's Printer, 1976), pp. 108-109. In addition, Keith Ewing states, “History has taught the lesson that there is little point in enacting promising legislation which is unaccompanied by the necessary administrative support.” Ewing (1992), p. 85.

³⁰ See Training in Detection and Enforcement (TIDE) Handbook, (Washington DC: IFES 2005)

regulatory scheme is only as effective as the consequences of violating it. In practice, a political finance enforcement agency can detect possible law violations through three processes: 1) Monitoring - potential violations are discovered through a review of financial reports or through an audit; 2) Complaint - an individual, a political party or a civil society organization may file a complaint, which alleges violations and explains the basis for the allegations; 3) Referral - possible violations discovered by other agencies should be referred to the main political finance enforcement agency.

There are many democracies with problems of non-enforcement and the following reasons seem to be particularly problematic in many transition countries:

1. Ambiguous laws – terms such as “donation”, “campaign expenditure”, “campaign period” and “reporting” are often ill-defined or undefined;
2. Failure to specify penalties or setting inappropriate penalties – laws sometimes set out offences but they fail to specify any penalties for them. At the same time if penalties are disproportionately severe, regulatory bodies may be reluctant to impose them;
3. Lack of administrative capacity and lack of authority in a regulatory body – often the resources given to bodies responsible for administering political finance laws are not increased to keep pace with new complex laws and subsidies. In addition, the PFR may lack the powers needed for effective enforcement, including auditing, investigating or assessing penalties;
4. Political constraints and lack of an independent PFR can result in political loyalists, or even politicians who are reluctant to enforce laws against their colleagues. Furthermore, even non-partisan commissioners may be reluctant to challenge the government party due to personal fear or fear that the commission’s budget will be cut in retaliation.

Financial and operational independence of the regulator seems to be the major challenge - the state must take on this responsibility and, to fulfil it properly, the agency must do its job regardless of who is in power. Otherwise, efforts to enforce political finance rules and fight corruption and lawlessness might have the opposite effect. In the absence of the rule of law, an unaccountable government might choose selective and partisan implementation of political finance regulations. Such a choice can reduce electoral competition and lead to long periods of one-party domination. Given this risk of abuse, designers of political finance regulations must simultaneously seek to encourage disclosure and protect political donors from possible harassment or invasion of privacy. This is particularly true for countries in transition, during which the party in power tends to use the state apparatus to its advantage.

An accountable system of political finance presupposes that other democratic institutions are sufficiently organized to discipline political actors, and may need to be reconsidered where such conditions do not exist. In countries where a strong and independent PFR is feasible, the following recommendations³¹ could enhance enforcement:

1. Obligations, offences and penalties must be clearly identified in law. The PFR should outline clearly who is to be held accountable for which infringement of the law.
2. Lawmakers must anticipate that parties and candidates will seek ways to get around limits and disclosure requirements. Therefore violations and the corresponding penalties should be clearly provided for in the law. At the same

³¹ Based on ACE update prepared by the NYCCFB (www.aceproject.org)

- time, it should be recognized that penalties such as fines or imprisonment are not the only response, or even the best response, to some types of infractions. Other avenues, particularly administrative sanctions, can often be more effective.
3. The system should encourage political parties and candidates to monitor their own financial activities, prevent financial misconduct, and comply with the requirements of professional bookkeeping and reporting.
 4. Sufficient resources - in the form of training, consultations, and professional personnel offered to the regulated community - are also necessary to enable timely and effective reviews and audits.
 5. Enforcement requires that an enforcement agency has the capacity to monitor for compliance, review and audit financial reports, investigate alleged infractions, negotiate and, where necessary, apply the appropriate penalties.
 6. Public trust and participation are fundamental to any effective enforcement regime. External complaints should be encouraged and treated seriously.

In order to function properly, the enforcement agency must also remain independent and possess adequate resources to monitor and investigate party/candidate finances. Its autonomy and independence must be supported by its budget, but it, too, should be accountable to Parliament for the proper use of public funds. Furthermore, if too little enforcement renders political finance rules meaningless, too much enforcement can paralyze the system by rendering it overly rigid.³²

In addition to ensuring the presence of a strong and independent enforcement agency, an effective political finance regulatory system also incorporates four other elements that aid the enforcement function: Auditing; External Complaints; Investigation; and Sanctions.

- **Auditing**

One method of attempting to assure the accuracy and integrity of financial accounts submitted by parties and/or candidates is to require that they be examined and certified by professional auditors. An audit is an examination of an entity's financial statements, financial records, and banking information which have been 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. There can be several possible levels for audit reviews:

1. Field audits and simple visits to campaign offices (to establish that an actual campaign is being conducted and that records are being properly maintained, among other observations that may be made);
2. Statement review (looking for violations that appear on the face of statements filed by a campaign);
3. Review of back-up documentation (Are copies of cheques from contributors available and do they match the reported contributions in the filed statements?); and
4. Evaluation of overall campaign information (How does this particular campaign compare against an "average" one? Is rent reported? Are certain expenditures unusually high?).

³² Diane R. Davidson, *Enforcing Campaign Finance Laws: What Others Can Learn From Canada*, Election Law Journal 2004

Audits also look at internal controls to ensure compliance with the legal and regulatory requirements, and internal controls for financial reporting and safeguarding assets. 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 later on, and help regulators uncover activities that are prohibited - before any public funds are dispersed. Auditing, in which the agency is authorized to review all reports to determine whether they are in compliance with the rules and to conduct field audits, including random audits, of the entities required to file financial reports, is a precondition for any serious enforcement system. In some cases, agencies do have random audit authority, although they rarely have the resources necessary to conduct them.

- **Investigation**

While random checks and audits are part of the regular apparatus of control, PFRs need to watch for signs of irregularities that warrant closer scrutiny. Ideally, the legal burden of proof should always be on the political party or the candidate to show compliance with political finance regulations. The tendency in a number of democratic countries is for the political finance enforcement body to have the power, either on its own initiative or in response to complaints, to make enquiries concerning all aspects of political finance. The enforcement agency can investigate, for example, any allegation or suspicion that a political party or candidate has failed to disclose the names of substantial donors or illegally accepted foreign donations. Any successful enforcement agency should have its own written policy on initiating, continuing or terminating an investigation. Agencies should also take into account public interest factors in decisions related to investigations. In many systems, anonymous complaints are not considered; however, in some countries, a citizen may file an application for investigation if he/she has strong proof that the party or candidate has acted illegally.

- **Sanctions**

As a starting point, any political finance system should clearly define violations of disclosure or reporting requirements, such as: 1) Hiding financial activity by use of separate accounts or surrogates; 2) Failure to file reports; 3) Submission of false or incomplete reports; 4) Late filing of reports; and 5) Failure to provide adequate documentation. It should also identify (and impose) effective, proportionate sanctions that can deter malfeasance. Though there is considerable diversity in the penalties currently in use around the world, the more serious of these penalties - the dissolution of a political party, for example - should be used with the utmost restraint, given the essential role political parties play in any democracy. Experience from many countries has shown that effective enforcement more often results from financial penalties (including denial of public funding) than from severe criminal sanctions.³³ PFRs in many established democracies have resorted to small administrative fines as a method of punishing minor infringements and encouraging voluntary compliance with the law. An interesting case comes from Poland where after the 1993 parliamentary elections, dozens of committees failed either to submit an "election expenses return" within the time stipulated by the law or did not write one. The most controversial case was that of the Solidarity Trade Union, which managed to win nine Senate seats and later created its own Senatorial Caucus. Solidarity submitted its election expenses return two days after the stipulated time and subsequently lost a substantial state subsidy equivalent to

³³ For more information on different penalties imposed globally see IFES TIDE Manual or the International IDEA *Handbook on Funding of Political Parties*

approximately US \$68,850. After this incident no major political party or committee was late with the election expense return.

Criminal prosecutions that take place after elections do not immediately impact voter behaviour,³⁴ and some experts counsel against the severest sanctions, arguing that some of the penalties are too severe for the circumstances and might discourage enforcement. Laws that are on the books but are routinely ignored do not serve as deterrents and can undermine the rule of law.

D. External Stakeholder (Civil Society and Media) Oversight

Any enforcement agency will be able to detect only a fraction of violations if it relies exclusively on its internal monitoring of financial reports submitted by the obliged entities. Thus, an effective agency must also engage external stakeholders in the process of monitoring political finance. External complaints of suspected wrongdoing are essential to detect violations. In an ideal system, civil society organizations, journalists, and even individuals who believe that a violation has occurred, or is going to occur, should be able to file a complaint to the regulatory agency. Press reports can be a particularly good source of information. The complaints 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. In transition regimes, and particularly in post-conflict societies, voters who are in the best position to observe questionable campaign practices may be the most reluctant to come forward with a formal complaint, since they often fear reprisals. Therefore, in order to encourage individuals to share information some political finance systems even give the enforcement agency the discretion to act on information it receives anonymously. Given the complex nature of political finance regulations, and the importance of receiving external complaints, it is essential that countries invest in public awareness campaigns, media training, and other forms of educating external stakeholders on political finance regulations and on the process for filing complaints.

V. Conclusion

Illicit party and campaign financing is certainly not a recent development and it has long been a common phenomenon in many democracies. Yet, it has only recently started to be perceived as a major source of decline in public trust, although claims that political corruption has significantly increased are not always sustained. There are several factors that make the extent of the problem of political corruption difficult to characterize. First, there is no reliable and objective way of evaluating whether, over the past thirty years, parties and candidates have become more corrupt. Second, what seems to be a growing number of scandals may also result from an increase in the detection of illegal acts, better enforcement, more aggressive investigative journalism, and the specialisation of anti-corruption NGOs. Thirdly, some of the recent scandals also result from a lack of compliance with overambitious regulations (particularly unrealistic spending limits). However, what does seem clear is that with the growth of transparency, public frustration with political corruption has increased. Furthermore, as some leading experts on democratisation have observed:

³⁴ "Because prosecutions will almost always occur after the election, any adverse publicity surrounding convictions does not threaten immediate voter reaction at the polls, which is supposedly the most effective deterrent to improper conduct. By the time his aides are prosecuted, the candidate who has benefited from violations of the act may well be already in office." Dawid W. Adamany and George E. Agree *Political Money* (Baltimore: The Johns Hopkins University Press, 1975), p. 103.

Citizens seem to be applying higher standards of ethical behaviour to their representatives and rulers and they are better informed about corrupt practices, thanks to the Internet and to comparative indicators such as that produced by Transparency International. The media have become more inclined to publicise funding scandals; the judiciary more disposed to prosecute those who engage in such acts; the citizenry more likely to react by punishing even those just suspected of corruption.³⁵

Given the diversity of political systems and differing levels of democratic development, there is no single or best solution for every regime to combat political finance-related corruption. Rather, systemic differences will always produce a range of effective practices. However, it is important to establish standards in political finance administration to which these diverse practices should aspire. Standards set public expectations and allow all electoral actors to understand their respective roles and responsibilities. To increase the effectiveness of political finance control mechanisms, this paper has argued that greater public disclosure, proper internal political party control, effective enforcement by regulatory regimes, and external stakeholder oversight are fundamental for any transparent and accountable system.

Disclosure and enforcement are essential in order for other political finance regulations to be meaningful, and internal (party) and external (NGOs and Media) control mechanisms must be enhanced rather than undermined. Contemporary analyses of global political finance also show a growing gap between legal requirements and actual practice. Public trust in the regulatory system as a whole is more important than any quantity of restrictions and bans. Political finance regulations and their enforcement should serve to build a climate of trust in the electoral process and should not be used for partisan purposes.

The funding of political parties in some established democracies might be more transparent than that of a decade ago, but many newly democratizing countries still continue to search for a better way of regulating money in politics. Success will come over the long term as new, more realistic, reforms emphasizing disclosure and effective enforcement are proposed, designed and enacted. It took established democracies and their election administrations decades to build the capacity to detect political finance irregularities, move from systemic electoral fraud to individual acts of corruption, educate political parties and civil society, train enforcement agencies and introduce the necessary preventive measures.

³⁵ Schmitter and Trechsel (2004), p.

Appendix:

Summary of Proposed Political Finance Standards

A. Disclosure

- i. Any political finance system should require comprehensive disclosure of all financial transactions.
- ii. Receipts: the party or candidate should disclose the amount and nature of each contribution (i.e. whether cheque, cash or non-monetary ["in-kind"]), and the identity, address and employer/business of each contributor.
- iii. Expenditures: the law should require disclosure of all spending, including the date and amount of expenditure and its recipient, and all debts and liabilities incurred by the committee.
- iv. Loans/advances: the law should also require the disclosure of loans and advances received by the party, including the lender's identity and business/employment, the date and amount of the original loan or advance, and the date when the loan or advance was repaid.
- v. Timing: ideally, election reports should be submitted and published from one week to 10 days before an election, and following an election (usually 30 days after the election).

B. Internal (political party) Control

- i. Political parties should be encouraged to adopt their own procedures to eliminate dishonest politicians and prevent their financial misconduct. Detailed and persistent internal control mechanisms can provide a crucial foundation for efforts to contain the abuses that are always liable to occur, regardless of the sophistication of legal frameworks.
- ii. Political Finance Regulators should encourage political parties to comply with requirements for professional and accurate bookkeeping.
- iii. Political parties (or even candidates) should consider appointing specific officials — "financial officers" — who might: 1) keep complete and accurate records of financial activities, 2) submit reports about financial activity to the relevant bodies, 3) approve all contributions for compliance with legal restrictions; and 4) follow accepted accounting procedures in performing record-keeping and reporting duties.
- iv. The law should require each party or candidate to authorize one particular committee, and designate one specific individual, serving as the financial agent ("treasurer"), to be responsible for all receipts and expenditures of that political entity.
- v. Any political party or its committee should use only one bank account, which is fully reported and disclosed to the PFR, for all financial transactions. By permitting only one conduit for all financial activity, the law thus enables the PFR to effectively "follow the money" and track political finance activity.

C. Enforcement / Regulatory Regimes

- i. An ideal enforcement mechanism should not only include a controlling body but might require a comprehensive system consisting of all the components found in a system of justice, namely: investigation,

- prosecution, adjudication, and sanctions.
- ii. The status of the body entrusted with overseeing a political finance system clearly has an impact on the effectiveness of control of the political finance system, as well as on public confidence in it. There is also an important factor of independence which should always be taken into consideration.
 - iii. The effectiveness of any system will also depend on the cooperation of the various stakeholders, and relies on the monitoring mechanisms provided by parties' financial agents, auditors, banking institutions, government bodies, anti-corruption watch-dog organizations, and the media.
 - iv. An effective political finance regulatory system also incorporates four other elements that aid the enforcement function: Auditing; External Complaints; Investigation; and Sanctions.
 - v. In order to function properly, the enforcement agency must also remain independent and possess adequate resources to monitor and investigate party/candidate finances. Its autonomy and independence must be supported by its budget, but it, too, should be accountable to Parliament for the proper use of public funds.
 - vi. An accountable system of political finance presupposes that other democratic institutions are sufficiently organized to discipline political actors, and may need to be reconsidered where such conditions do not exist. In countries where a strong and independent PFR is feasible, the following recommendations could enhance enforcement:
 1. Obligations, offences and penalties must be clearly identified in law. The PFR should outline clearly who is to be held accountable for which infringement of the law.
 2. Lawmakers must anticipate that parties and candidates will seek ways to get around limits and disclosure requirements. Therefore violations and the corresponding penalties should be clearly provided for in the law. At the same time, it should be recognized that penalties such as fines or imprisonment are not the only response, or even the best response, to some types of infractions. Other avenues, particularly administrative sanctions, can often be more effective.
 3. The system should encourage political parties and candidates to monitor their own financial activities, prevent financial misconduct, and comply with the requirements of professional bookkeeping and reporting.
 4. Sufficient resources - in the form of training, consultations, and professional personnel offered to the regulated community - are also necessary to enable timely and effective reviews and audits.
 5. Enforcement requires that an enforcement agency has the capacity to monitor for compliance, review and audit financial reports, investigate alleged infractions, negotiate and, where necessary, apply the appropriate penalties.
 6. Public trust and participation are fundamental to any effective enforcement regime. External complaints should be encouraged and treated seriously.

D. Engaging External Stakeholders

- i. An effective political finance regulatory strategy must also engage external stakeholders in the process of monitoring political finance. External complaints of suspected wrongdoing are essential to detect violations. In an ideal system, civil society organizations, journalists, and even individuals who believe that a violation has occurred, or is going to occur, should be able to file a complaint to the regulatory agency.
- ii. The complaints 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. In transition regimes, and particularly in post-conflict societies, voters who are in the best position to observe questionable campaign practices may be the most reluctant to come forward with a formal complaint, since they often fear reprisals. Therefore, in order to encourage individuals to share information some political finance systems even give the enforcement agency the discretion to act on information it receives anonymously.
- iii. It is essential that countries invest in public awareness campaigns, media training, and other forms of educating external stakeholders on political finance regulations and on the process for filing complaints.

Further Readings and Select Bibliography

Political finance has been a sub-field of political research for almost five decades. One survey of the field since 1970 found over 1000 published articles, monographs, and books dealing with this issue alone.³⁶ Among recent studies of political financing in a single country (which constitute the bulk of the literature) are works on: Austria³⁷, Britain³⁸, Canada³⁹, France⁴⁰, Germany⁴¹, Poland⁴², Spain⁴³, and the United States⁴⁴. Aside from case studies on political funding within a particular country, there have been a number of edited volumes which have included chapters on several Western⁴⁵ and Latin American countries. Furthermore, in 2001 Karl-Heinz Nasssmacher edited a volume containing comparative analyses of political finance in more than 15 countries⁴⁶, and in 2002 a study comparing 18 Post-Communist countries was published by IFES. Most recently Kevin Casas-Zamora has published his brilliant study of political finance and state funding for parties (*Paying for Democracy*, ECPR Press 2005).

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- IFES (TIDE Project) at www.moneyandpolitics.net
- ACE Project www.aceproject.org
- Political Finance in Post-Conflict societies (IFES&USAID: Washington D.C.,2006)
- International IDEA, 'Funding of Parties and Election Campaigns Handbook' (2003) and Political Finance Database, www.idea.int/parties/finance/db

³⁶ See Bibliography on Political Finance, 1970-1999 compiled by Mareen Bergemann and Karl-Heinz Nasssmacher in Karl-Heinz Nasssmacher (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance* (Baden-Baden: Nomos, 2001), pp. 417-499.

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⁴¹ Hans Herbert von Arnim, *Die Partei, der Abgeordnete und das Geld: parteienfinanzierung in Deutschland* (Munich: Knauer, 1996).

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⁴⁴ Anthony Corrado, Frank J. Sorauf, Thomas E. Mann, Daniel R. Ortiz, Trevor Potter, *Campaign finance reform: a sourcebook* (Washington, D.C.: Brookings Institution Press, 1997).

⁴⁵ These have included Heidenheimer (1970), Alexander (1989), Seidle (1991), Wiberg (1991), Gunlicks (1992), Tsatsos (1992) and Alexander and Shiratori (1994).

⁴⁶ Karl-Heinz Nasssmacher (ed.), *Foundations for Democracy: Approaches to Comparative Political Finance* (Baden-Baden: Nomos, 2001).