

U4 Expert Answer



Corruption in political party financing and electoral campaigns

Query

What are the mechanisms for preventing and curbing corruption in the financing of political parties and electoral campaigns from a comparative perspective? What are the experiences on institutional and regulatory frameworks for political party financing? Which institutions can control public funding to political parties and electoral campaigns?

Purpose

Our agency is currently engaging in political party development, in particular on party training and party financing, in Latin America in general and specifically in Peru, where the first-ever law on political parties is currently being considered by parliament. We may articulate a four-year programme on political party development leading up to the next general elections in 2006. Furthermore, political party systems are one of the two main topics on the agenda of the forthcoming meeting of Heads of State and Government of the Rio Group (Latin American countries) in late May in Cusco, Peru. Content

1. Regulatory framework
2. Institutional framework for ex ante and ex post control of political party financing and electoral campaigns
3. Conclusion
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Background

Money and politics are inextricably linked. Since democratic politics cannot proceed without substantial financial resources that allow parties and party officials to fulfil their legitimate role in a satisfactory way, political finance through private or public sources or a combination thereof is inevitable.

Yet, while political funds used to cover campaign expenses and the cost of running a party are acknowledged to act in favour of a functioning democracy, party funding is also potentially a source of corrupt influences. Given the harmful effect of corruption on the effectiveness and sustainability of the democratic system, explicit rules to prevent and detect corruption are usually in place in an advanced democracy.

1 Regulatory framework

"The number of channels through which money may be poured into politics not only leads to problems of definition and research, but makes political financing difficult to control as a practical matter as well"
(M.Pinto-Duschinsky, 2002: 70)

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Rules and norms regulating political party financing

Controlling unfair and illegal practices is a fundamental objective of any regulatory system. In the case of political parties, the need for regulation is - in the light of their role in the democratic process - compelling.

The comparative study of political finance regulations poses problems of reconciling the great variations of traditions and practices in the domain. Yet independently of the factors that determine the respective regulatory environment, like the electoral system or the prevalence of public or private funding in the financing of party politics, many systems face the same problems and respond to them in a common fashion, stressing the importance of transparency and openness for honest and democratic party financing.

Attempts to regulate political finance and lower the likelihood of corruption typically include, but are not restricted to:

Codes of conduct for political parties - to encourage a climate of open, free and fair political competition. Codes of conduct are not usually incorporated in law and can, therefore, proclaim standards that are difficult to embody in a statute. Setting out the standards of behaviour expected from each political party and its members, they send out a clear moral message and leave parties open to public criticism if they disregard the standards they themselves subscribed to.

• **Disclosure rules** - to enable the public to be aware of and closely monitor the interests potentially motivating party policies.

Such rules are designed to ensure that the sources of funding (and of potential influence on the policy) are made public and can be monitored. They usually require the listing of the amount, as well as the name and address of the contributor, but the threshold for disclosure differs substantially between countries and can range from zero to several thousand US Dollars.

Disclosure can also apply to party expenditures, either with or without thresholds. The way the information is to be disclosed varies, with several systems requiring public disclosure (e.g. Germany, the US, New Zealand), some applying a mixed system of public disclosure and confidential reporting to an oversight body (e.g. Canada) and others requiring the reporting to party and election officials (e.g. Korea). Again, the threshold for disclosure can vary.

Some countries also have rules requiring the declarations of assets and interests of candidates both before and - for those who have been elected - after the election. This step is usually recommended to lower the incentives for corrupt dealings by heightening the risk of detection.

• **Contribution limits (direct and indirect) and bans** - to ensure that no private contributor exerts inappropriate influence on the political system. Some countries, often with continental European traditions, operate a system of public party and campaign funding (while still allowing for private donations to take place) to reduce the scope for undue influence of private interests while supporting parties as an essential part of the democratic system.

Limits on private contributions generally regulate the maximum permissible amount of the contribution (for example, India, Israel).

Limits on private contributions can also regulate the source of funding. This may include prohibition of anonymous contributions, of foreign contributions (for example Canada, the US, India and Israel), and limits on the ability of corporations to make contributions (e.g. Germany, Israel, the US)

• **Expenditure limits** - expenditure limits can regulate both the amount and the type of expenditure with the goal to limit perverse incentives and the need for "dirty money", i.e. funding that exceeds legitimate amounts. They have increasingly come into the spotlight as a necessary prerequisite for controlling corruption in political finance.

The amount a political party is allowed to spend is regulated in a number of countries and can extend to limiting the ability of independent groups spending money on behalf of a party or candidate (e.g. Korea, New Zealand).

Limits on the type of expenditure can range from the prohibition of using party funds for personal uses to restrictions of the use of paid-for media advertising (e.g. India, Israel) and other campaign-related expenditures. Most importantly, however, they may forbid the use of state resources by the ruling party for party-political purposes (this is particularly important in developing countries and emerging democracies, as the exclusive use of state

resources by the ruling party created big inequalities to the opposition's disadvantage).

The extent to which these mechanisms are applied, and the regulatory level they belong to (i.e. constitution, electoral law, administrative regulations and codes) depends on the respective funding regime.

Effectiveness in preventing, curbing and sanctioning political corruption

Regulations controlling political finance are in no short supply. Yet, they are, all too often, honoured in the breach. International evidence shows that there is no universal prescription ensuring the successful implementation of such regimes. A number of factors can, however, be identified that are likely to impact on the effectiveness of the regulatory regime.

- **Quality:** The effectiveness of any regulation depends first of all on its quality. A balance has to be struck between the need for regulation and the closing of potential loopholes, and the practicality of its implementation. Evidence suggests that simplicity, which refers to both the amount of laws regulating different aspects of the same issue and the amount of agencies involved, is key to making a regulation a success. Ideally, laws will identify agencies or bodies within the party as being responsible for the political financial activity (to stipulate personal responsibility and to facilitate the task of monitoring by eliminating ambiguities), as well as state bodies to oversee and enforce the party finance regulations. However, the implementation of transparency provisions, including disclosure and reporting requirements involves costs and places an administrative burden on parties, in particular in transition and developing countries, without necessarily improving openness and accountability (for reasons related to the quality and timeliness of the information provided).
- **Political will and commitment:** Successful regulation of political finance laws also depends on the motivations underlying their enactment, which in turn impacts on their implementation. Evidence shows that lack of political will of both the designers of the law and of those subject to it has greatly undermined the effective implementation of finance regimes, in particular where politicians are writing the rules for themselves. Where new and complicated rules demand a change of attitude and a change of practices, implementation has to begin with an information campaign, providing training and

support services for those affected by them. This includes civil society who will be able to effectively monitor compliance to finance rules only if they are aware and kept abreast of new developments, and are given access to relevant information.

- **Norms:** The matter is further complicated, where the strive for greater openness leads to constitutional problems. Norms of protection of the right to privacy, freedom of speech and opinion, and political liberty may be perceived to clash with disclosure requirements and expenditure limits. For example, in the U.S., the Supreme Court determined that election spending limits were unconstitutional as they inhibited the First Amendment's freedom of speech guarantees (*Buckley v Valeo*, 424 US 1, 1976). The European Court of Human Rights, on the other hand, rejected the claim of a French candidate that his disqualification from the elections for overspending was not sustainable (*Pierre-Bloch v France*, 1998, 26 EHRR 202).

In sum, the problems of political financing are not amenable to simple legislative remedies. The attempt to close all potential loopholes will often breed the need for more, and more complex, legislation that is very difficult to implement. Simplicity of the regulatory framework, and the concentration on the strict implementation of a few key rules, is, if accompanied by effective accountability mechanisms which are enforced by strong oversight bodies and supported by political will, often recommended. For example, Klaus Nassmacher, in a chapter of the IDEA's Handbook on Political Party Funding, recommends a minimum set of requirements for political finance regulation, which includes the need to stipulate responsibility (of a body within the party) for political funds, realistic and enforceable transparency provisions (including disclosure rules), and the need to identify agency charged with the implementation of the regulations (Nassmacher, 2003: 4ff.)

Measures do, however, need to extend beyond the issues being regulated by the law, and may have to include a targeting of behavioural norms and expectations both in the field of politics and beyond, with the goal to treat corruption in general and in politics in particular the loathed and unacceptable undertaking it is.

2 Institutional framework for *ex ante* and *ex post* control of political party financing and electoral campaigns

The absence of enforcement agencies can seriously hamper the implementation of political finance regulation. Compliance can be weak, facilitated by the absence of a public body having the authority, resources and incentives to administer it. Many countries have therefore identified public agencies responsible for dealing with aspects of political finance regulations, but the approaches differ across countries and political cultures.

Tools

Implementing agencies can dispose of a number of tools for enforcing compliance, which may include:

- The power to register parties if and where this is applicable.
- The power to monitor financial activity, i.e. supervise donations to and expenditure of parties, in order to identify irregularities in the financial flow. Many agencies also compile reports and make them accessible to a wider public in order to improve accountability and to act as a deterrent to corruption.
- The power to investigate potential infringements. It is not always possible to rely on political parties to complain where opponents exceed spending limits, as the parties themselves have 'understandings' that none will lay complaints before the regulating body (e.g. Bangladesh, 1991). The power to investigate situations proactively is therefore very valuable.
- The power to impose sanctions, either criminal or administrative, in case of financial misconduct of a party subject to the regulation. Most agencies (the commissioner of Canada Elections being an exception) do not have the power to initiate criminal proceedings but have to pass them on to the relevant authorities.

Organisations

Some democracies have decided to give responsibility for the implementation and enforcement of political finance rules to a designated agency.

Examples include:

- Government departments, e.g. ministries (e.g. Ghana, Liberia, Sierra Leone)
- The Attorney General
- The Speaker of the Legislature (e.g. Germany, Italy, Greece)

Others opt for an intermediate solution, e.g.

- Audit office, or state comptroller (Austria, Spain, Israel). For example, in Austria, the federal audit office audits state subsidies to parties and party-affiliated bodies.

Another, and increasingly popular option, in particular in countries with an Anglo-Saxon tradition of party systems, is the creation of an impartial and independent specific agency with administrative and enforcement functions (e.g. Australia (Australian Electoral Commission), Canada (Chief Electoral Officer- just one person), France (Commission Nationale des Comptes de Campagne et des Financements Politiques), US (Federal Election Commission)). Where such an agency exists, legislation usually determines the procedures for appointments, the definition of its powers and of specific activities (reports, investigations, sanctions), details of breaches to be sanctioned and of enforcement of relevant laws, and procedure for appeals.

Effectiveness

Generally speaking, for enforcement agencies to be effective in their efforts to regulate political finance, they need to dispose of a clearly defined area of competence, real powers to review processes and to hold office-holders accountable, and adequate human and financial resources to ensure the appropriate execution of its tasks (unlike, for example, in India, where the Election Commission cannot, due to lack of resources, adequately perform the extended powers it enjoys). This covers background work such as records management and the timely publications of reports, but extends to the recruitment of personnel qualified for controlling the financial and legal aspects of the electoral and political process. Lastly, they need to be independent and be seen to be independent.

Total independence cannot be achieved. Even independent agencies such as electoral commissions will usually, at least in part, comprise of members of

governing parties. However, some agencies have safeguards in place designed to protect committees from partisan influence, such as multiparty membership, and lifetime or one-term appointments only.

3 Conclusion

Ultimately, every political finance regime faces the "magic quadrangle" of transparency, accountability, practicality and the possibility of sanctions. "Practicality is essential in order to avoid bureaucratic red tape, but any legal framework requires proper administration. Sanctions have to be in place, but their real use is as a deterrent. Transparency is the most important requirement, but can never be achieved completely. Professional standards of accounting will facilitate external monitoring, but most of the original bookkeeping will be done by amateurs" (Nassmacher, 2003: 1)

- In the light of these difficulties and requirements, the most basic ingredients for making political finance regimes work are:
- The general rule of law in a society
- Political will and commitment spanning the entire political spectrum
- Information and public awareness as a prerequisite for monitoring and accountability, facilitated by an alert and free media
- And a system of clear rules and regulations specifying the requirements for legal funding and identifying the institutions and/or oversight bodies in charge of their enforcement.

4 Selected Resources

Keith Ewing, 2001: **Corruption in Party Financing: The Case for Global Standards**. In: Transparency International, 2001: Global Corruption Report. Berlin, Transparency International, 186-196
http://www.transparency.org/publications/qcr/qcr_2001

Preventing corruption in the funding of political parties is crucial to the quality of democracy. Crude electoral bribery and political malpractice, the capture of the political process and the absence of independent institutions all mar the democratic process. Many countries have identified campaign financing and the funding of political parties as serious problems and have taken steps to deal with them. But 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 response. In this paper, Ewing reviews international and regional efforts to deal with corruption in party financing and points to the importance of international pressure for finding sustainable national standards in party funding.

Administration and Cost of Elections (ACE) Project <http://www.aceproject.org/>

The Administration and Cost of Elections (ACE) Electronic Publication represents the first-ever attempt to provide a globally accessible information resource on election administration. It provides user-friendly, operationally oriented information on options, detailed procedures, and the administrative and cost implications associated with organising elections.

Three leading international organisations that provide electoral assistance have worked together to produce the ACE Electronic Publication. The project partners are the International Foundation for Election Systems, the International Institute for Democracy and Electoral Assistance, and the United Nations Department of Economic and Social Affairs

Karl-Heinz Nassmacher, 2003: **Monitoring, Control and Enforcement of Political Finance Regulation** In: Reg Austin, Maja Tjernstrom (IDEA), 2003 Handbook on Funding of Parties and Election Campaigns.
http://www.idea.int/publications/funding_parties/upload/chapter_8.pdf

The monitoring of political party funding and the enforcement of financial controls are the final steps in the process leading to the regulation of money in politics. Using the concept of the "magic quadrangle", i.e. a combination of transparency, accounting, and the practicality requirements and sanctions that all political finance regimes face, Nassmacher explores the methods used by political actors to circumvent rules and regulations and strives to explain the reason for and possible remedies against inadequately enforced funding regimes.

This article forms part of the forthcoming Handbook on Funding of Parties and Election Campaigns, which develops strategies of law enforcement and the promotion of transparency in party and campaign funding on the basis of a survey of funding laws, and experiences with their application. In addition, the handbook carries a database of some 120 countries showing funding regulations and related issues.

National Democratic Institute for International Affairs, 1998: **Funding of Political Parties: An International Comparative Perspective.**

http://www.ndi.org/files/037_ww_funding.pdf

This study examines the legal framework and regulatory systems of public and private funding in eleven countries in a comparative fashion. It represents the different approaches in seven tables covering the central issues, and summarises the main findings in a short abstract.

Michael Pinto-Duschinsky, 2002: **Financing Politics: A Global View.** In: Journal of democracy, Vol.13 No.4, October 2002

http://muse.jhu.edu/journals/journal_of_democracy/v013/13.4_pinto01.pdf

Political finance, corrupt political financing and the number of channels through which money finds its way into politics cause problems not only of definition, but also of control. The financing of politics is a necessity, yet it is also a predicament. In this article, Michael Pinto-Duschinsky explores the link between political finance and political corruption and discusses the difficulties most commonly associated with two of the more popular means to control corruption in party funding, the provision of parties with public subsidies and the enactment of laws regulating political finance. He argues that issues linked to political will and human nature, such as unrealistic regulations and the evasion thereof, are to blame for the existence and persistence of corruption in political finance, rather than the (unproven) upward trend in political spending. He concludes that despite the relative lack of in-depth research into the facts behind political financing, one of the key lessons to emerge is the need to prioritise the enforcement of key regulations over overly ambitious statutes.

Pinto-Duschinsky bases his arguments on the comparative analysis of over one hundred countries rated "free" or "partly free" by Freedom House in 2001. The text contains useful tables on regulations and subsidies, as well as a number of case references.

Jeremy Pope, 2000: TI Source Book 2000: **Confronting Corruption. The Elements of a National Integrity System.**

<http://www.transparency.org/publications/sourcebook>

(See in particular Chapter 6 and Chapter 18)

Chapter 6:

Elected parliaments can be at the forefront of the fight against corruption. An elected parliament has the legitimacy to hold the executive accountable. However, a corrupt political elite--often sustained by illicit political party financing--and obscure practices in both public appointments and decision-making processes are major obstacles to reform.

Chapter 18:

A government's legitimacy is based on the belief of its people in its right to govern. The way in which this mandate is acquired is crucial to the readiness of all to acknowledge it: a lack of legitimacy almost inevitably breeds a climate in which corruption can blossom. The mechanisms through which elections can be held in a fair and transparent way is of utmost importance wherever leaders seek to legitimate their rule through the electoral process.