

3 Disclosure and enforcement

Requirements to disclose the sources of party funding exist on paper in many countries, but there is much work to be done to ensure that disclosure is practised. Gene Ward provides an overview of disclosure, examining what it encompasses and where and to what extent it is effectively practised. A cautionary note is sounded by Marcin Walecki, who looks at how disclosure may be abused if the authority charged with monitoring the process is not independent. Kevin Casas-Zamora's contribution on media subsidies in Latin America illustrates the complexity of the disclosure task.

Civil society groups have played an important role in achieving increased disclosure. Transparency International provides three examples of NGO efforts that demonstrate that disclosure is necessary not only for sources of party funding, but also for candidates' assets and criminal records.

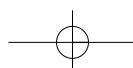
Besides appropriate disclosure rules, effective enforcement is an essential element in any successful political finance regime. Yves-Marie Doublet examines how regulation of political finance is managed in a number of countries. Alonso Lujambio relates the experience of the leading enforcement agency in Mexico.

The role of disclosure in combating corruption in political finance

*Gene Ward*¹

More is known about how to build a democracy than how to finance one. Escalating costs and corruption in democracies should alert all nations to the need for a better understanding of the role money plays in political processes. Secret money and corruption hurt the economy and polity of a nation, distorting the behaviour of politicians, stunting development and weakening citizen confidence in democracy. The perception – and, perhaps, the reality – is that many elected officials make decisions prompted more by the need to repay their contributors than to represent their constituents, while lawmakers bend or break the rules to stay in power and protect their wealthy sponsors. If this is indeed the case, what has or can be done about it?

Disclosure is one of five different types of effort to control the flows of money in politics, as seen in Table 3.1. Most countries have some form of public financing of political parties, yet half still rely on private funds from corporations, trade unions or foreigners – three sources considered very influential in determining the outcome of an election and with great potential for corruption. With regard to limits, restrictions on spending (41 per cent) are more popular than restrictions on contributions (28 per cent), though the majority of countries practise neither. Disclosure, or what this article



terms ‘full disclosure’ – where the public is informed of ‘who gave how much to whom for what purpose and when’ – appears to be the least practised of all (13 per cent).²

Table 3.1: Prevalent approaches to controlling money in politics

Type of approach	Percentage of countries utilising this approach to control money in politics (104 countries surveyed)
Public financing	79
Bans and prohibitions ^a	50
Spending limits	41
Contribution limits	28
Full disclosure	13

^a Primarily on corporations, trade unions and foreign donors.

Sources: These numbers are estimates by Michael Pinto-Duschinsky in ‘Financing Politics: A Global View’, *Journal of Democracy*, vol. 13, no. 4, October 2002, except for the author’s data on ‘full disclosure’, excerpted from *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (Washington, D.C.: USAID, 2003).

Why disclosure is important

Disclosure is to politics what financial statements are to business. The knowledge of quantities in business and politics must be reasonably exact before they can be controlled, curtailed or reformed. In political finance, unfortunately, estimates of campaign costs are more frequently used than accurate numbers, especially in developing countries, where much of what is discussed is highly speculative, anecdotal or otherwise lacking in empiricism.

Disclosure fulfils two very important functions: accounting and accountability, which serve as both preventive measures and monitoring tools in combating political corruption. The accounting function allows for the construction of itemised reports of funds received and spent by political parties and candidates. The accountability function is the presentation of these reports to the public so that voters can make more informed choices about their parties and candidates. There are four major benefits of the disclosure process:

The ability to ‘follow the money’. Disclosure is the cornerstone of *all* campaign and political party regulations. Without it there is no way to keep track of – and thereby enforce – limits, bans or prohibitions. The ability to ‘follow the money’, or construct an ‘audit trail’, is the first defence against system irregularities and can have an impact on democracy and governance.

Disclosure as a preventive measure. Disclosure serves to monitor and reveal information that can help close the revolving doors between business and politics, and prevent conflicts of interest. It provides watchdog groups and the media with informed analysis of political finance and creates more educated voters. Through ‘name and shame’ exercises, it also serves to warn elected and appointed officials that they must act in the public interest, not for private gain.



'... And you have 3 mansions, 2 planes and \$12 million?'

'... Not yet, but when I leave office, I will'

Fernando Santana, United States

Disclosure is the less polemical measure. This does not necessarily make it more effective as a control mechanism than limits, bans or prohibitions on money in politics, but it is an easier reform for which to win legislative support. Evidence for this is suggested by the number of countries that have passed asset disclosure laws as an indirect method of combating misuse of money in politics. Asset disclosure begins at the 'ethical' or personal level (opening up to scrutiny what an elected official owns and owes), but it can be extended to party and institutional levels. The existence of asset disclosure laws provides a useful indication of a country's readiness for other forms of political finance disclosure.

Disclosure builds confidence in the democratic process. In a democracy, the underlying principle behind disclosure is that the more transparent and open a nation's public and political finances, the more its citizens will trust the government. Hidden or secret methods of funding the electoral process breed scepticism and cynicism about democratic politics.

Two schools of thought with very different readings of the importance of disclosure are worth mentioning. One sees a moral equivalence between the 'secrecy of the ballot' and the 'secrecy of a donation', a position espoused in Sweden and also practised in Finland and Switzerland, where there are no disclosure requirements. The other school is concerned about the harassment visited upon political donors when discovered to

have backed the 'wrong' party or candidate, as has happened recently in Ukraine and Egypt (see Box 3.1, 'Ukraine: the authoritarian abuse of disclosure', below). As democracies mature, however, such incidences decrease and transparency more easily takes root. Getting transparency codified into law is a critical first step.

Box 3.1: Ukraine: the authoritarian abuse of disclosure

In line with most post-communist countries, Ukraine has high disclosure requirements, including reporting the names of donors to political parties. Yet undeclared funds used in election campaigns account for 60–90 per cent of the total.¹ While there are many reasons why such large amounts of money go undeclared, the biggest is the fear of politically motivated harassment. Disclosure can be abused by non-democratic regimes to deprive the opposition of the right to participate in the electoral process. It provides information that can be used by partisan enforcement mechanisms (including tax, fire inspection and police) against opposition parties, their contributors and the independent media.

There is ample evidence that the main opposition forces in Ukraine were harassed by the regime during the 1999 presidential elections and the 2002 parliamentary elections, and subjected to strong administrative restrictions.² For instance, in the presidential election, contributors to opposition candidate Oleksander Moroz's campaign were requested to report to local state tax inspection branches and explain the sources of their money, according to local press reports.³ Not surprisingly, most of Moroz's corporate donors insisted on full privacy and broke the disclosure laws. After the election, a dozen small retail companies, whose details had been published in Moroz's financial report, were subjected to harassment by different state inspectorates and several were forced into bankruptcy. Publishing houses such as Migrodinaka and Topografic, which produced campaign materials for opposition candidates, received similar treatment from administrative bodies after the election.⁴

The government of President Leonid Kuchma continued to harass opposition leaders and their supporters in the run-up to the 2002 parliamentary elections. Opposition activists were detained and the offices of papers that gave positive coverage to the opposition campaign were raided on the grounds they had allegedly evaded taxes. For instance, Borys Feldman, a business partner of former deputy prime minister Yuliya Tymoshenko, received a nine-year prison sentence for tax evasion and financial mismanagement.⁵

The risk that disclosure of financial support to the political opposition might expose donors to harassment in authoritarian and semi-authoritarian regimes is compounded by the patrimonial nature of the economic systems in such countries. Those engaged in economic activity in autocracies are generally linked to the regime, which magnifies the potential impact of commercial reprisals for supporting opposition parties. This influences the environment for opposition political parties since it excludes the private sector as an important transparent funding source for them.

In sum, where enforcement of campaign finance regulations is highly partisan, full public disclosure may be abused rather than used as an instrument of transparency. Full disclosure can allow an authoritarian regime to weaken opposition parties by undermining the financial support of their sympathisers or allied interest groups. For a democracy to function, a vibrant opposition, able to participate in free and fair elections, needs to exist. Ukraine has not yet reached this stage of political development and still uses its disclosure



laws to prevent democracy from progressing. In such a system, opposition parties will continue to need a high degree of privacy and freedom from harassment, while their donors are forced to remain anonymous.

Marcin Walecki (Oxford University, Britain)

Notes

1. Centre for Forecasting of Socio-Economic and Political Processes, 'Survey on Shadow Funding of the Ukrainian Political Parties', Kiev, January 1999; Anatolij Romaniuk, *Parliament*, nos 3–4 (Kiev: Laboratory for Legislative Initiatives, 2003).
2. For a detailed description of physical assaults, political harassment and the administrative restrictions imposed on opposition parties and their supporters, see OSCE, 'Ukraine Parliamentary Elections 31 March 2002', 27 May 2002; US Department of State, 'Ukraine – Country Reports on Human Rights Practices 2002', 31 March 2002; and Razumkov Centre, 'National Security and Defence Report' no. 12, Kiev, USEPS.
3. *Tovarysh*, no. 33 (August 1999).
4. Interview with Oleksander Moroz, leader of the Socialist Party, Kiev, March 2001.
5. International Helsinki Federation for Human Rights, *2002 IHF Annual Report*, www.ihf-hr.org/viewbinary/viewdocument.php?doc_id=2654

Full disclosure defined

The disclosure process is a labyrinth of data collection, analysis and dissemination. Figure 3.1 describes the ideal disclosure process. Reports are first prepared by political parties and candidates, then collected and audited by a governing body and, finally, viewed by the public. While this appears quite simple, there are unlimited permutations and obstacles that make the process almost unworkable in some countries.

In the absence of any international standards, pitfalls that mar the disclosure process include:

Deceptive interpretations. Few words in political finance are as overused and poorly defined as 'disclosure'. It can mean that a country has minimal political finance reporting requirements as opposed to not having any reporting requirements at all; that the government will share financial reports with the public, rather than keep them secret; or that the government will share information with the public, but will make it very difficult for it to be understood or accessed.

Limited access to data. Opening records to the public is the ideal, but some governments make accessing them difficult. For example, access may be given, but only through hand copying, which takes time. Ideally a country would allow a number of accessing options, including fax, photocopying or publishing the information in a gazette, newspaper or website. Also important is when campaign finance reports are due – before or after the election.

Poor quality of data. A more subtle form of deception is the quality of data that many disclosure laws produce. Most disclosure data is aggregated and largely unauditible, hence meaningless for the disclosure process. Also important is the data's accuracy.

Low quantity of data. Many countries claim disclosure, but fulfil only some of the variables required for full disclosure. For example, Argentine law requires political party disclosure, but turns a blind eye to candidates and their private fundraising activities,

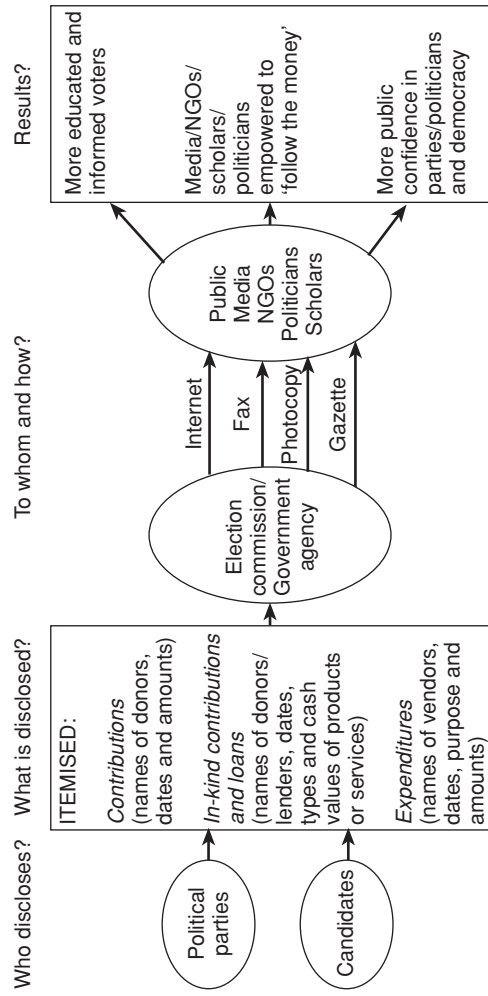


Figure 3.1: The ideal disclosure process

which are not reported at all. 'Full disclosure', the maximum extent of openness in reporting political contributions, requires information on: how much money a party and/or a candidate received; how much free in-kind support was given to the party or candidate (goods, services or loans); the names (and sometimes addresses) of the 'givers'; how much money the party or candidate spent during the campaign and on what; and names (and sometimes addresses) of companies or persons who received the money spent on goods and services provided to the campaign. Full disclosure also requires candidates to file financial assets (ownership and debts) as a requirement for running for office. Also important for full disclosure is the threshold placed on the size of donations before they have to be reported on a campaign report.

Limited public viewing. A recent survey of 118 countries by the International Foundation for Election Systems (IFES) shows that 17 per cent of them have 'hidden disclosure' and do not show party or candidate financial reports to the public (see Table 3.3).³ Such governments contend that they have disclosure, but this may simply mean 'for the government's eyes only' and not for the public, watchdog NGOs or the media. A critical question is whether such governments can be trusted not to misuse this information against opposition parties and their donors.

Misperceptions about disclosure. The fear that legitimate revenues may dry up if their sources are revealed through new disclosure laws is one of the steepest barriers to political parties' and candidates' appreciation of the value of disclosure and it has prevented many countries from reforming disclosure laws, or led them to institute 'hidden disclosure' rules instead. No research confirms that legitimate revenues to parties decrease when disclosed. The opposite may, in fact, be true, since money in politics flourishes in countries where it is most disclosed, as in the United States (see Box 4.3, 'Following the Enron money trail', page 74).

What does disclosure look like in the regions of the world?

Disclosure laws throughout the world range from the totally transparent to the totally opaque, with the latter predominating. Based on a survey of disclosure laws in 118 nations, USAID developed a composite snapshot of the state of disclosure. Table 3.2 illustrates the extent to which surveyed countries have disclosure laws on the books, by region and by type of disclosure law.

Outside of North America, disclosure laws are mostly to be found in Europe. In Eastern Europe, 89 per cent have some form of reporting campaign and party finances to the public, a remarkable achievement over little more than 10 years. All nations surveyed from the former Soviet Union (FSU) have disclosure laws. There is a considerable difference, however, between having a legal framework for disclosure and the actual practice of disclosure: despite numerous laws on their books, FSU nations and countries in Eastern Europe still lack enforcement.

A more detailed picture emerges when countries are grouped according to the type of reporting requirement: disclosure by political parties of income and/or expenditure accounts, disclosure by candidates of income and/or expenditure accounts and disclosure of the names of donors to political parties.

Table 3.2: Prevalence of public disclosure

Region	No. of countries surveyed	Percentage of countries requiring:			Names of donors to parties
		Public disclosure reports	Party income and/or expenses	Candidate income and/or expenses	
Africa	27	44	33	11	3
The Americas:					
North	3	100	100	67	67
Caribbean	12	25	0	25	0
Central	7	29	0	14	0
South	11	73	73	9	27
Europe:					
Western	16	81	69	38	56
Eastern	18	89	83	39	67
Asia	15	67	47	53	27
Pacific/Oceania	9	44	33	33	33

With respect to reporting party income and/or expenses, Caribbean and Central American nations stand out for having no disclosure requirements at all. In Africa, Pacific/Oceania and Asia, less than half of the countries require such figures to be reported.

With respect to disclosure of candidate income and/or expenses, South America rates lowest. The rate is also low among African, Central American and Caribbean nations.

The differences between party and candidate reporting requirements are significant. In some countries in Africa and the Caribbean, disclosure laws cover political party funding but exclude any requirement for candidates to disclose. This means that considerable amounts of money going to, and spent by, candidates remain hidden.

With respect to disclosure of the names of donors to parties, Caribbean and Central American countries have no such laws and only a handful of countries in Africa do. These three regions appear to be the bastions of secrecy for money in politics. While many South American countries require disclosure of party income and/or expenses, many do not require disclosure of party donor names, and disclosure of candidate income and/or expenses is very rare.

What does disclosure look like in country comparisons?

Table 3.3 is a categorisation of the 118 countries surveyed based on their ranking against three primary variables: disclosure by political parties of income and/or expenditure accounts; disclosure by candidates of income and/or expenditure accounts; and disclosure of the identity of donors to political parties. Countries with *high* public disclosure require reports from all three variables; *medium* countries require reports from two variables, while countries that have only one kind of disclosure are considered *low*. *Hidden* disclosure means that governments see the financial reports, but the public doesn't, while *none* means a nation has no reporting requirements.

Table 3.3: Money in politics: transparency laws

Level of public disclosure	Countries
High (13%)	Armenia, Australia, Brazil, Canada, Denmark, Greece, Japan, Lithuania, New Zealand, Philippines, Russia, Thailand, Ukraine, United Kingdom, United States
Medium (22%)	Argentina, Azerbaijan, Belgium, Benin, Bosnia and Herzegovina, Colombia, Czech Republic, France, Germany, Hungary, Ireland, Italy, Latvia, Lesotho, Macedonia, Moldova, Netherlands, Norway, Papua New Guinea, Poland, Portugal, Romania, Singapore, Slovakia, South Korea, Tanzania
Low (25%)	Austria, ^a Bangladesh, Barbados, Belarus, Bolivia, Botswana, Bulgaria, Chile, Costa Rica, ^a Ecuador, ^a the Gambia, Ghana, India, ^a Indonesia, ^a Israel, ^a Jamaica, Kenya, Mali, ^a Malta, Mauritius, Mexico, ^a Morocco, ^a Namibia, Nicaragua, ^a Nigeria, Peru, Spain, Taiwan, Tonga, Trinidad and Tobago
Hidden (17%)	Algeria, Central African Republic, Dominican Republic, Finland, Gabon, Guatemala, Guyana, Honduras, Lebanon, Malaysia, Maldives, Niger, Panama, Paraguay, Senegal, Seychelles, Togo, Tunisia, Turkey, Venezuela
None (23%)	Albania, Angola, Antigua and Barbuda, Bahamas, Belize, Croatia, Dominica, El Salvador, Fiji, Grenada, Kiribati, Madagascar, Malawi, Mozambique, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, South Africa, Sri Lanka, Sweden, Switzerland, Tuvalu, Uganda, Uruguay, Vanuatu, Zambia

^a Public access to some, but not all, financial reports filed.

It is important to distinguish between 'high' disclosure and the 'full disclosure' previously discussed in this article. Even with a weaker definition, the number of countries considered to have high public disclosure is only 13 per cent. This very small figure should confirm suspicions that the practice of disclosure is not widespread.

Twenty-three per cent of the countries surveyed had no disclosure laws and another 17 per cent had 'hidden disclosure', meaning that for all practical purposes 40 per cent of nations in the world told their publics nothing about money in politics. If countries with low or medium disclosure are added to this group, 87 per cent of countries surveyed have hidden, partial or no disclosure.

What can be done to enhance disclosure?

Each country requires a tailored approach to increase disclosure, based on the resources available and its readiness to tackle the issue of money in politics. It is up to democracy practitioners to select the appropriate path, or combination of paths, with the highest potential for impact. The role of civil society in this endeavour is crucial, and can be helped by strengthening ties between NGOs, the media, research scholars and reformist politicians. Political parties and leaders can also be engines of political finance reform. Some illustrative approaches include:

Supporting reform-minded parties and political leaders. At a workshop for reform-minded political and party leaders in Bangkok in early 2002, coordinated by the National Democratic Institute for International Affairs and the Council of Asian Liberals and Democrats, participants conducted research and addressed strategies for preventing corruption within their own parties, as well as their societies. This event was one of the first to bring the topic of political party corruption into the open. The next meeting will include members of the NGO and academic communities and subsequent plans include engaging the press in disseminating political finance reform action plans.

Facilitating the development of a reform agenda. Parties that are not in power are usually in the best position to benefit from reform and may supply the largest number of reform-minded politicians with whom to work. For example, the Millennium Democratic Party of South Korea and the Democratic Progressive Party of Taiwan were opposition parties when they engaged in transparency reforms. They are now ruling parties.

Increasing accountability and improving reporting. Even where disclosure laws are plentiful, political party accounting and reporting may not be accurate. While in some cases inaccuracy may be deliberate, some parties simply lack the accounting capacity or resources to enable them to comply with reporting requirements. One project aimed at countering this problem is a software database, developed by IFES, that supports bookkeeping and the posting of campaign finance reports on the Internet. It is currently being pioneered in Lithuania, Latvia, Romania and Hungary.

Strengthening enforcement. Complex, unclear or absent laws and regulations make it difficult for enforcement bodies to do their work, including sanctioning non-compliance. Assistance can include careful analysis of two areas. First, whether laws and regulations provide the independence, autonomy, authority, resources and clear guidance that enforcement bodies require. And second, whether they clearly delineate which bodies are responsible for which functions, the powers of each, professional qualifications of members and the extent of their budgetary autonomy. The Organization of American States has launched a hemispheric study of money and politics, including disclosure, and the Mexican Federal Electoral Institute has organised a number of conferences addressing this issue.

Developing capacity. Staff may lack the skills to enforce political finance controls. Training and technical assistance must be given in key enforcement functions, including compliance, oversight and sanctions. For example, IFES is testing a diagnostic tool for analysing a country's strengths and weaknesses in enforcing campaign and party finance laws and developing a training programme for shoring up investigative and detection techniques in several compliance settings.

Linking with anti-corruption programming. Asset disclosure is becoming increasingly popular within the context of countering corruption and is relatively easy to verify. President Vicente Fox of Mexico posted his personal finances on the Internet as an example to 150,000 federal employees who were required to do the same under the terms of a new law. In contrast, a court case involving the lack of asset disclosure by Thai prime minister Thaksin Shinawatra nearly led to his dismissal. Introducing

limited, relatively mild asset-disclosure reforms within the umbrella of anti-corruption programming helps lay the foundation for broader reform in the longer term. This link is reflected in increasing dialogue about party finance in the anti-corruption efforts of the World Bank, the United Nations, Transparency International and the Soros foundations.

International monitoring of campaign and party financing. At a British Council-sponsored anti-corruption and political finance workshop in March 2002, a group of Peruvians spoke in favour of campaign and party finance reform in their country, but said they needed outsiders, either regional or international, to assist in their efforts to ensure parties adhere to international standards. Since then the conviction has grown that campaign finance monitoring should assume a similar international status to that accorded to election monitoring, though it might risk accusations of interventionism, as occurred with election monitoring when it was pioneered more than 10 years ago. In mid-2003, at least one prominent South American NGO was close to piloting this concept.

Disclosure: revealing the cost of democracy

Our knowledge of the history and current reality of political finance is incomplete. The chief frustration is the paucity of data, due to a lack of adequate disclosure accompanied by adequate enforcement. Each nation moves at its own pace – it took the US Congress 64 years, from the time it first placed public disclosure on the books in 1910, to finally call for serious enforcement after Watergate – but a priority must be bringing electoral finances in line with other democratic advances.

Disclosure mechanisms across the world have thus far proven inadequate for keeping track of money in politics, given that the majority of leaders in democracies are still not required to reveal who funded their victories.⁴ Intelligent guesses continue to be the only method of estimating what it costs society to run a democracy. Adequate disclosure would allow both governments and the public to keep track of the amounts, sources and destinations of campaign finance. Without these declarations of accounts, governments and citizens risk never knowing the price of their democracy, or the identity of the major influences behind it, whether corporate, union, general public, special interest groups – or drug lords and other criminal syndicates.

Political finance is a vital issue for democracy and development. No matter how flawless a country's elections, how active its civil society, how competitive its political parties and how responsible its local authorities, money in politics undeniably influences the quality of democracy and governance. Only through greater transparency will we fully understand the extent and nature of this influence.

Notes

1. Gene Ward, PhD, is a senior adviser in political finance at the USAID Office of Democracy and Governance, United States. The views expressed about the data or about disclosure in this paper are views of the author and do not represent the views of any organisation with which the author may be affiliated.

2. For example, Pinto-Duschinsky ('Financing Politics: A Global View', *Journal of Democracy*, vol. 13, no. 4, October 2002) notes that a majority of countries have some form of public disclosure law regulating party and campaign finance. A more detailed examination of these laws reveals, however, that a majority of countries do not tell their publics how much money both parties and candidates spent and few, if any, identify the source of contributions. While technically correct, it is therefore misleading to say that a majority of nations in the world have political finance disclosure.
3. All survey data used in this paper are from *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (Washington, D.C.: USAID, 2003). With USAID sponsorship, IFES collected data on 118 countries based upon its availability between January and June 2001. The 118 countries comprised 79 per cent of the world's 121 electoral democracies (as defined by Freedom House) and 61 per cent of the world's 193 sovereign nations.
4. For example, Larry Diamond notes that 'a good portion' of the money siphoned off from the public good in corrupt societies is diverted to political parties. See Diamond, 'Moving Up Out of Poverty: What Does Democracy Have to Do With It?', paper presented at World Bank workshop, 'Moving Up Out of Poverty: Understanding Growth and Freedom from the Bottom Up', Washington, D.C., 15–16 July 2003.

Box 3.2: Media discounts for politicians: examples from Latin America

There is little question about the crucial role the mass media plays in modern election-eering. Less clear are its implications for the funding of parties and elections. The narrow focus on the growth of media expenses in many democracies has obscured other aspects of the problem that are, arguably, as important from a political finance perspective. Chief among them is the phenomenon of hefty price discounts granted to parties and candidates during the campaign season by privately owned media outlets, particularly television networks. This practice has in many cases given rise to severe electoral inequities, as well as questionable exchanges between public decision-makers and media owners.

- In Uruguay, the family-controlled groups that have owned the country's three private television networks since the 1950s have come to operate, with the acquiescence of public authorities, as a powerful business cartel. Examples of this were the government's 1994 decision to turn Montevideo's cable television market into a closed shop jointly controlled by the three private networks, as well as its 2000 ruling banning the import of satellite television decoders unless done by the existing cable operators (this decision was later reversed). In exchange, while political actors rarely pay official advertising rates, discounts offered to factions of the long-ruling Colorado and National parties during elections reach up to 95 per cent of the price.¹ The impact of these rebates is compounded by the networks' frequent practice of condoning campaign debts.² The main left-wing competitor party, the Broad Front, has long denounced these practices, deeming them media discrimination.
- In Costa Rica, the legal requirement that media firms publicise their advertising rates and give equal treatment to all parties does not prevent them from making donations in kind to specific parties. In the case of the winning party in 1998, reported party outlays stood at less than one-quarter of the official price of purchased advertising time, a discount amounting to a net donation of US \$1.7 million,



probably the largest contribution by any economic sector in the entire election cycle.³ The weight of government advertising, and the fact that frequencies are owned by the state and licensed to private companies for negligible annual fees, are major incentives for media owners to be generous towards future state authorities.

- In Guatemala, terrestrial television is monopolised by a private operator, Miami-based Mexican entrepreneur Remigio Angel González. Since the mid-1980s this monopoly has granted González extraordinary political influence in the country. During the 1999 presidential campaign, González put the weight of his monopoly behind the candidacy of the eventual winner, Alfonso Portillo, reportedly donating most of his advertisements.⁴ In return, according to interpretations in the local press, González's son-in-law and legal adviser, Luis Rabbé, was appointed minister of communications and infrastructure – entrusted with the task of regulating the operation of his father-in-law's channels. Rabbé was dismissed in June 2001, following a congressional corruption probe. Despite President Portillo's commitment to auction two state-owned television frequencies, González's monopoly remains intact.⁵

The evidence that the level of spending on media in some countries is much lower than previously thought has clear policy implications. The most critical political finance issue in these countries is not too much expenditure on television but that some parties pay *too little* for their publicity and, to varying degrees, become addicted to enormous rate discounts. This effectively turns media owners into singularly large and powerful political donors.

A number of countries have taken steps to limit the influence of media owners on elections. Most West European countries, as well as some East Asian countries and Chile and Brazil in Latin America, ban the purchase of campaign advertising by parties and candidates. In some cases, the electoral authority buys the advertising from private channels and then proceeds to distribute it between the parties. Alternatively, the government may provide advertising slots in the state-owned network (typical of Western Europe) or private channels may be forced by law to donate airtime, as in Chile. Yet another route, practised in Canada, is rigorously monitoring in-kind donations, including TV discounts. Rather than capping television expenditure, it is transparency of the dealings between parties and media outlets that needs to be secured.

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Notes

1. Kevin Casas-Zamora, 'Paying for Democracy in Latin America: Political Finance and State Funding for Parties in Costa Rica and Uruguay', University of Oxford, PhD thesis, 2002.
2. Ibid.
3. Figures from Servicios Publicitarios based on expenses reported by parties to the electoral authority.
4. *La Prensa Libre* (Guatemala), 14 February 2000 and 5 March 2000.
5. In August 2003 González continued to own all the privately owned television networks. His monopoly has attracted criticism from the OAS and the Inter-American Press Society.

Box 3.3: NGO monitoring efforts: Latvia, Ecuador and India

TI Latvia successfully pushes for improved disclosure

Latvia's 2002 elections to the Saeima (parliament), the fourth since the country gained independence from the former Soviet Union, were a watershed for the transparency of



political party financing. This was largely due to a civil-society monitoring project by TI Latvia and the Soros Foundation, which uncovered a dramatic increase in the cost of campaigning, especially on TV and billboard advertising.

The project began monitoring advertisements in January 2002, early enough to provide the public with information about the cost of elections before voting took place in October.

The project revealed that spending on advertising more than tripled since the 1998 elections. In total, parties spent US \$10 million, or about 4 lats (US \$7) per voter. This is 10 times more per voter than in the 1997 British general election and just under four times more per voter than in the 2002 French presidential and Swedish parliamentary elections.¹

To meet the target of making information on party expenditure available ahead of the election, work was done to tighten disclosure laws: it was clear parties would not disclose if not legally obliged. Parliament was lobbied through a mixture of public roundtables and media attention. Within six months, in June 2002, the Saeima approved the first major amendments to the 1995 party finance law.

Now Latvia has one of the fullest disclosure systems in the region. Parties must post all donations on the Internet within 10 days of receipt and provide a list of all donors' names. A monitoring body, the anti-corruption bureau, was given the task of verifying the declarations. It released its first findings in September 2003, including information about third-party donations and falsified signatures.

The Alliance of the Latvian Green Party and the Latvian Farmers' Union were asked to return about US \$120,000 in donations from dubious sources, and criminal charges were filed in connection with alleged falsified signatures. These donations were identified and publicised prior to the elections by TI Latvia and Soros.

One of the project's key objectives was to detect hidden advertising in the media. TI Latvia and Soros had identified several cases of political advertisements masquerading as news in the 2001 municipal elections. In 2002 they were joined by 54 NGOs and the official media monitoring body in urging media owners to abstain from such behaviour.

The situation appeared to improve during the 2002 elections. Most news on TV, radio and in the newspapers was genuine, though the number of articles marked 'paid' increased. NGOs are now pressing for political advertisements on TV to be restricted, or banned outright. Although the head of the parliamentary anti-corruption commission supports the proposal, it faces opposition from stations that do not want to forfeit the lucrative business.

Ecuadorian NGOs force media companies to respect ceilings

CLD, TI's Ecuadorian chapter, identified the political system as a major factor of corruption several years ago and decided to observe the presidential elections in October and November 2002 with a view to monitoring campaign expenditures.

Other civil society organisations and individuals became interested and a new organisation, Citizen's Participation Ecuador (PCE), was created. PCE built on previous electoral monitoring experiences by TI chapters in Peru, Argentina and Costa Rica.

The monitoring experience in Ecuador was restricted to spending on newspapers, television and radio. PCE hired a company to follow all political advertisements, both paid and unpaid.

A major concern was to ensure that PCE received information on campaign expenditure in the media on a daily basis to allow it to keep the public informed. PCE's daily press bulletin, *Campanazo* (or 'bell ringing'), was printed daily on the front pages of all newspapers.



This allowed PCE to pinpoint precisely when candidates exceeded the ceiling for campaign expenditure and to request that the national electoral tribunal (TSE) issue a prohibition against further spending. On 17 September 2002 the TSE announced a ban on advertising by any party that had exceeded its campaign-expenditure cap and notified media that they must not air advertisements for the PRIAN and Patriotic Society parties, since both had exceeded their limits. A large number of media outlets complied with the order; the TSE is debating what sanctions should be applied to those that did not.

To obtain a complete report on campaign expenditures, PCE asked the TSE for copies of all reports filed by the presidential candidates and their parties. The TSE is obligated to provide such reports upon request, since they are considered public information. But the TSE ruled that the information be deemed confidential until it had finished revising it and had issued its own report. PCE filed a lawsuit against the decision on the grounds that it infringed the citizen's right to information and was unconstitutional.

By mid-2003 the constitutional court had still not issued its judgment, but PCE is confident it will finally obtain the requested information and be able to present an accurate portrait of financing and expenditure during the 2002 presidential campaign.

Indian NGOs monitor disclosure of candidates' assets and criminal records

The last few years have seen some innovative monitoring initiatives in India. This year, the legal background to these efforts has been complicated by a dispute between branches of government over disclosure regulations for political parties and candidates. In response, NGOs are pooling resources to ensure that requirements are complied with.

They have plenty of experience to draw on. In 1999, the NGO Lok Satta documented massive electoral fraud in Hyderabad (Andhra Pradesh), alleging that 22 per cent of votes were bogus, cast by people who did not live in the district, by fictitious voters or by people who did not, in fact, vote. In the 2002 Gujarat assembly elections, the Association for Democratic Reform in Ahmedabad published a newspaper advertisement inviting citizens of the 183 state constituencies to denounce crimes committed by candidates. Criminal allegations were subsequently made against 138 candidates, 63 of them from the two major political parties.

NGOs intend to be no less vigilant this year, but their work may be hampered by the standoff between the judiciary and the legislature. In May 2002, the supreme court ordered candidates to provide details to the election commission of any criminal charges filed against them, past or ongoing; of assets belonging to themselves and dependents; of liabilities, in particular dues pertaining to governmental or financial institutions; and educational qualifications. But the order was rejected in July 2002 by representatives of all political parties, who passed a more limited version of the disclosure law. In March 2003 the supreme court reiterated its original judgment. Given the politicians' resistance to increased disclosure requirements, it is unclear whether the initial instructions to the election commission – achieved through such NGO initiatives as the People's Union for Civil Liberties' petition to the high court of Delhi – will be respected.

Several organisations have launched initiatives to ensure the election commission's guidelines are implemented, in line with the supreme court ruling. In one municipality near Bangalore (Karnataka), in August 2003 the Public Affairs Centre collected copies of the candidates' affidavits. There were significant differences in the quality of disclosure. Similarly, 'election watches' were established for the state assembly elections in November 2003² with the help of the National Campaign for the People's Right to Information. Delhi's election watch has organised electoral-roll verification and plans to widely disseminate

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candidates' affidavits and previous work records. Transparency International India was involved in all these activities.

While it is too early to say how effective these efforts will prove, civil society organisations are optimistic. But the same organisations warn against the possibility of co-option by branches of government with an interest in undermining certain parties. Monitoring is therefore essential to ensure that disclosure requirements are uniformly enforced, and are not used to target opponents. 'Many of us seeking reform have great respect for the political process', said Jayaprakash Narayan of the NGO Lok Satta. 'We are working hard to improve, not undermine, democracy.'

Inese Voika (TI Latvia)

Valeria Merino Dirani (Corporación Latinoamericana para el Desarrollo, Ecuador)

Michael Schied (Transparency International)

Notes

1. Valts Kalniņš and Lolita Čigāne, 'On the Road toward a More Honest Society: The Latest Trends in Anti-Corruption Policy in Latvia', January 2003, www.lai.lv/9on_the_road_to.doc
2. Elections will be held in Mizoram, Delhi, Rajasthan, Madhya Pradesh and Chhattisgarh. The guidelines issued by the election commission apply in all states.

Enforcement: how regulation of political party finance is managed in practice

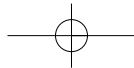
Yves-Marie Doublet¹

The field of political finance has witnessed numerous legal developments, but mechanisms to ensure that legislation is enforced are rarely more than a matter of formality. Enforcement agencies charged with supervising political party finance often lack legitimacy and possess only limited investigative powers. They are seldom able to provide effective checks at the national level, given the constitutional status of parties and the variety of their sources of funding and expenditure. Despite these restrictions, however, enforcement bodies are increasingly empowered to control political party finance in countries around the world. This brief review illustrates what types of regulatory bodies, investigative approaches and sanctions for violations are employed in some European and other selected countries.

Types of enforcement bodies

In some cases, political bodies play a regulatory role: a parliamentary committee in Belgium, the president of the Bundestag in Germany and a six-member federal election commission in the United States.

Other countries have independent audit bodies, such as the electoral commission in Australia, the campaign accounts and political funding committee in France and the constitutional tribunal in Portugal. In Britain, parliament confirms appointments of members to an electoral commission.



In a relatively small number of countries, the national accounting office regulates party funding, as is the case in Bulgaria, Hungary, Israel, Italy and Spain.

In stark contrast to these systems, the Japanese framework of regulations does not empower any enforcement agency to monitor violations or apply sanctions.

Methods of investigation

There are generally two levels of control: one by a certified accountancy firm – individually commissioned and paid by each political party – and one by a regulatory body.

Two chartered accountants from two separate audit offices must certify party accounts in France. While these accountants adhere to confidentiality principles, they must inform the party managers of any irregularities they discover.

German auditors may require a party's executive committee and its representatives to furnish any information and proof they need to fulfil their assignment. Rather than assessing or evaluating presented information, the auditors only control it, an approach difficult to reconcile with the investigative nature of their work.

In Germany the second level of control involves the president of the Bundestag, who examines statements of party accounts from the formal and legal points of view. He may call for further information or select another accountant.

In Britain, the election commission is empowered to require an authorised person to produce books, documents or records relating to the party. The commission may also authorise an individual to enter the premises of a political party to inspect its books. In Spain, however, members of the audit office have only limited powers to go beyond the information provided by political parties, to whom they generally have strong ties.

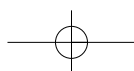
Sanctions for party funding violations

Three kinds of sanctions may be used to punish offences in political party financing: financial, penal and electoral.

The penalty most commonly applied to an offender is the loss of public subsidy. This sanction can be imposed in France, Germany, Russia, Spain and many countries in Latin America (see 'Campaign finance reform: is Latin America on the road to transparency?', Chapter 2, page 32).

If a party obtains donations illegally in Germany, the president of the Bundestag can claim back three times the amount of the illegal donation; if the donation was incorrectly published, or the statement falsified, the president can claim twice the amount of the donation, or the false amount. If the party does not produce its statement of accounts on time, it loses its entire allocation of public funding.

Provisions entailing criminal penalties are rarer but are in force in Britain, Canada, France, Italy, Spain and the United States. German electoral law provides for a two-year prison term or a fine for those found guilty of supplying false information about party income and assets. Sanctions of three years in prison or a fine apply to any accountant who conceals information.



In Britain, parties that break the law are liable to a civil penalty; in addition, the party treasurer also carries criminal liability. Seventy offences are on the books and the electoral commission may pass a file to the criminal prosecuting authorities. In Italy, the accounting office has the power to impose a fine for any violations of funding rules.

In the United States, electoral funding violations are treated as civil infractions and handled through the Federal Election Commission (FEC) enforcement process. Sanctions were strengthened in 2002 to a maximum of 300 per cent of the illegal contribution and up to US \$50,000 in fines. Aggravating factors must be on hand for an infraction to be pursued as a criminal matter: the violation must surpass a monetary threshold of US \$2,000 and have been committed knowingly and wilfully. Despite these provisions, the FEC has developed a relatively poor reputation for effective law enforcement over the years.

The most effective sanction is electoral, namely disqualification, or the loss of a mandate, as is the case for the head of a political party in Québec. In France, candidates who fail to abide by transparency regulations governing party funding will not be disqualified unless their campaign accounts are rejected.

Closely related to the development of a sanctions regime is the problem of determining who should be sanctioned – the politician or the party. One view holds that activists and party members are not responsible for their leaders' illegal behaviour. In most countries, however, candidates are largely shielded from liability, except when they were actively involved in a particular violation. In Germany, the executive committee member responsible for the party's financial affairs is the one who risks sanctions for wrongdoing. A similar approach was adopted in the United States, where the committee treasurer – not the candidate – shoulders the burden if illegal contributions are accepted or reports are filed inaccurately.

Note

1. Yves-Marie Doublet is senior lecturer at the Ecole Nationale d'Administration, France.

Enforcement: the experience in Mexico

*Alonso Lujambio*¹

The enforcement of regulations governing political party and campaign financing has proved challenging in Mexico in recent years, first during the democratic transition phase and now during the period of democratic consolidation. These have been difficult years because, given the particular problems associated with financing under the post-revolutionary hegemonic party system, the democratic transition process strengthened legal controls and, consequently, led to a multitude of enforcement dilemmas. Adding a further level of complexity, Mexico has 33 party financing laws (32 state laws and one federal), often with competing jurisdictions.

But while financing regulations may be difficult to enforce, this does not mean they should not exist. For rules that cannot be verified directly, such as by auditing reports, there are indirect alternatives, such as the incentives for compliance created by disclosure and the investigation of subsequent complaints. While the hundreds of millions of dollars in public funding for campaigns (US \$300 million in 2000) is scrupulously audited, effective enforcement of the ceiling on private donations is much harder to verify. At the Mexican Federal Electoral Institute, our biggest headaches are third-party donations and, in the worst cases, double accounting. It is here, where direct verification is impossible, that disclosing the names of donors and sums involved can serve as an indirect enforcement mechanism.

In order for disclosure to work, certain conditions must be met. Citizens must be able to file complaints easily (even anonymously); they should be given access to simplified regulations; and regulations and caps must be widely known. The specific mechanism used to publicise the information is also important. It may include reference to personal documents, for instance, and may vary as to how widely the data is disseminated.

After analysing the Canadian experience, in late 2002 we published the names and amounts of all donations to political parties in 2000 on the Internet. In the first few weeks, the website was consulted hundreds of thousands of times. Afterwards, the level of interest waned, but not before people had been prompted to file complaints about false or imprecise information. This, without doubt, will help inhibit future unlawful acts.

The chain of enforcement is broken, however, when the authority responsible for compliance lacks tools to carry out an in-depth investigation of alleged illegal acts. The electoral authority needs to be able to compare statements given by political parties with information about bank accounts, tax declarations (where applicable) and the cost of campaign publicity. But in Mexico we have run into difficulties: the electoral authority's competence to penetrate bank secrecy norms is under debate. The judicial branch of government has established that the Mexican Federal Electoral Institute may have access to bank data. This access currently may only be exercised on a case-by-case basis, depending on the rulings of the electoral court. It is indispensable to create legal instruments that acknowledge this faculty.

The lack of access to data from banks, the tax office and private companies limits the effectiveness of disclosure as an enforcement mechanism. If cash and anonymous donations are prohibited and all donations must be made by cheque or identifiable bank transfer and registered in annual tax statements, and all political party income and expenditure must go through bank accounts, then the electoral authority needs to be able to analyse that information. Without such necessary evidence, it cannot sanction wrongdoers and so these cases cannot serve as examples to inhibit future infractions.

We also run into difficulties when it comes to spending limits. In Latin America, caps on expenditure are less common than on income. In their absence, we can do little more than monitor spending (specifically that which leaves a trace, such as spending on radio and television airtime) and make inferences from this about income. But when

market rates for radio and television spots vary for the different parties, it is difficult to extract definitive conclusions from monitoring efforts. The European approach is to control or eliminate the market completely by providing state airtime for campaign spots. Chile and Brazil have followed this route. In Mexico, we have opted not to control the market, but, for now, to make its motivations transparent. In the future we will publish information on the unit value of every promotional radio or television spot paid for by political parties so that this might lead to improved transparency and equity in the treatment the mass media affords political parties.

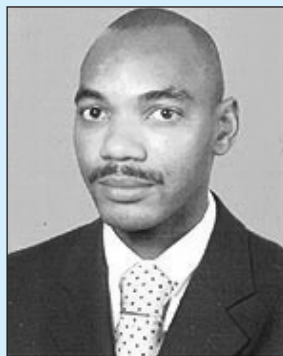
An additional party financing worry in Latin America is the illegal deviation of public resources to particular parties and candidates. Given the importance of the issue, a specialised electoral body, with proper investigative powers, including the power to access information, is needed to enforce the political party financing law directly. But even then, the authority would need support. For this, it is vital that congress audit public spending by the executive branch of government. For it to do so scrupulously, horizontal accountability, underpinned by a true separation of powers, needs to be achieved, which in Latin America is a long way off.

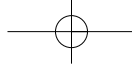
Note

1. Alonso Lujambio is electoral councillor and president of the political party finance control committee and of the committee for international affairs of the general council of the Mexican Federal Electoral Institute.

Box 3.4: António Siba-Siba Macuácuá: posthumous TI Integrity Awards winner 2003

António Siba-Siba Macuácuá was a senior auditor at the central bank of Mozambique. He was hurled to his death from the top of the stairwell of Banco Austral on 11 August 2001, while investigating allegations of corruption there. He was just 33.





Two days later, Siba-Siba had been due to submit a report on the financial situation of Banco Austral, the largest commercial bank in Mozambique. He had been appointed emergency chair of the privatised bank after it collapsed in April 2001 following fraud by highly placed people. He attempted to recover bad debts from senior members of government and in the ruling Frelimo party. He cancelled contracts signed by the previous board, including one with Nyimpine Chissano, son of President Joaquim Chissano, who had been paid US \$3,000 per month despite his total lack of banking experience.

The group of prominent Mozambicans who nominated Siba-Siba for the TI award says his murder 'was meant to send a signal that organised crime was very much in control'. His death has been linked to that of Mozambique's leading journalist Carlos Cardoso, who was gunned down in November 2000 while investigating corruption during the privatisation of Banco Austral. His killers were convicted in early 2003.

Siba-Siba's murder remains unresolved.

