

RECOMMENDATIONS ON POLITICAL FINANCING FOR OPEN GOVERNMENT PARTNERSHIP NATIONAL ACTION PLANS

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SUMMARY

The financing of political parties provokes distrust and cynicism - often for good reason - about the motives and activities of both the donors and recipients of political donations. Yet modern elections cannot be contested without money. Staff costs and campaigning expenses are necessary facts of political competition.

To ensure that elections are free, fair, and sufficiently funded, governments must enhance their political finance regulations. This promotes political integrity and participation and protects against undue influence. This briefing discusses:

- why tackling political financing is a priority for Open Government Partnership (OGP) members
- trends and good practice in regulation
- existing and model commitments in National Action Plans

The OGP has helped a handful of countries take steps to enhance the integrity of their political systems by publishing political donations data online and improving their regulatory environments. Yet there is much room for improvement across most OGP countries. Transparency International recommends that governments:

- Establish disclosure regulations for the income, spending, assets and loans of both parties and candidates on an ongoing basis and ensuring that all information is published on a single online portal, in open data format.
- Introduce limits on sources and amounts of donations to political parties and candidates.
- Give oversight agencies the powers and capacity to effectively enforce political finance regulations and receive and investigate public complaints, report on outcomes, and sanction those who breach regulations.

WHY IS POLITICAL FINANCE REGULATION RELEVANT FOR FIGHTING CORRUPTION?

Representative democracy is based on the premise that political parties contest one another in elections that take place on a level playing field. To do so, political parties need to finance their activities. Money helps parties recruit members, communicate with citizens, and develop policy proposals, for example. Yet money also threatens the integrity of the same democratic activity it facilitates.

A primary risk posed by finance to politics is the campaign donation. Donations to political parties and campaigns are a way for the public to participate in politics. However, donations are also tools used by vested interests – including illicit, private and international interests – to exert undue influence over the agendas of political parties and candidates. This can lead to policy that reflects the narrow interests of donors at the expense of the wider national interest that parties purport to represent. For example, influential donors to the US Republican Party threatened to withhold donations from those who did not support historic tax cuts to corporation tax, according to both the *Washington Post*¹ and *Politico*². One Republican senator stated: "My donors are basically saying, 'Get it done or don't ever call me again'".³

Political finance risks may also drive or exacerbate additional corruption risks. OECD research notes: "Policy on such matters as lobbying, organised crime, drug trafficking, and public contracting abuses cannot realistically be considered without taking account of the role in many countries of political finance".⁴ In 2018, a leaked email revealed that British tax inspectors refused to investigate a multinational telecoms company suspected of money laundering because it was the "biggest corporate donor to the [at the time ruling] Conservative Party"⁵.

Money poses a second threat to the democratic process: it can reduce political competition. Finance - or a lack of it - can exclude people from politics by raising the costs of effective participation in elections to levels which are unattainable for some. Research shows that poor people and marginalised groups - including women, ethnic minorities and indigenous groups – find it harder to access finance and are disproportionately excluded from politics⁶. In Brazil, for example, research has shown that, at the state level, male candidates receive on average more donations from every type of donor than their female counterparts.⁷

¹ "Leader of key GOP super PAC warns lawmakers: Oppose tax bill at your peril". *The Washington Post* (web). 16 November 2017.

² "Big donors ready to reward Republicans for tax cuts". *Politico* (web). 29 January 2018.

³ "Hill Republican dilemma: Dash to pass tax reform or face donor backlash". *CNN* (web). 13 November 2017; "Trump gives rich donors massive tax cuts, then asks them for campaign donations". *Newsweek* (web). 2 December 2017.

⁴ OECD. *Facts, Skeptical Thoughts and Policy Ideas*. 2013, available at: www.oecd.org/gov/ethics/Facts-Sceptical-Thoughts-Policy-Ideas.pdf [accessed 12/04/18]

⁵ "The UK Refused To Raid A Company Suspected of Money Laundering, Citing Its Tory Donations". *Buzzfeed News* (web). 19 April 2018.

⁶ International IDEA, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance*, 2014, available at: www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf [accessed 12/04/18]

⁷ International IDEA, *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance*, 2014, available at: www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf [accessed 02/05/18]

WHY IS IT IMPORTANT TO INCLUDE POLITICAL FINANCING TRANSPARENCY AND INTEGRITY COMMITMENTS IN OGP NATIONAL ACTION PLANS?

There are at least three reasons to address political finance in the OGP. Firstly, as the OECD notes, two outcomes of weakly regulated political finance – undue influence and policy capture – erode public trust in both government and political parties⁸. Worldwide, public trust is already in substantial decline and winning it back has become a priority for the OGP, which published a report on the issue in 2017⁹.

Secondly, political finance regulations are most effective when they are grounded in a comprehensive anti-corruption strategy. The International Institute for Democracy and Electoral Assistance (IDEA) states that optimal regulations need to address related issues such as “bank and tax secrecy norms, parliamentary immunity principles and regulations against money laundering, among many other rules that lie on the periphery of the field of political finance”¹⁰. The OGP approach to improving governance, through simultaneous commitments to transparency, participation and accountability, is well aligned with this approach. OGP members are already strategically addressing political corruption through commitments on high-risk areas, such as open contracting and beneficial ownership.

Thirdly, the OGP helps governments to deliver political finance policy. The open and participatory approach of the OGP can help to raise ambition of the policy that seeks to regulate the same politicians that will adopt it. The provision of formal timelines and accountability mechanisms helps governments to overcome some of the challenges of implementing commitments in their national contexts. Meanwhile, technical support, the opportunity for peer learning and the participation of civil society help governments to design policies based on a broad evidence base, best practices and new technologies.

⁸ OECD, *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, 2016, available at: www.oecd.org/corruption/financing-democracy-9789264249455-en.htm [accessed 12/04/18]

⁹ Open Government Partnership, *Trust: The Fight to Win It Back*, available at www.opengovpartnership.org/trust [accessed 03/05/18]

¹⁰ International IDEA, *The Global State of Democracy*, 2017, available at: www.idea.int/gsod/ [accessed 12/04/18]

TRENDS AND EXAMPLES OF GOOD PRACTICES IN POLITICAL PARTY FINANCE

Transparency

Many states have legislation that mandates the public disclosure of political finance data, however, the scope and rigour of these transparency provisions varies. A comprehensive approach helps to close some of the loopholes that can be used to maintain financial secrecy in politics. Good practice includes:

- applying disclosure regulations to the income (including non-financial income such as pro-bono services and in-kind donations), spending, assets and loans of both parties - on an ongoing basis and not only during election periods - and candidates¹¹.
- publishing sufficient information about donations including the date, donor name, recipient name and amount of each donation on a timely basis (such as in quarterly returns) on a single, online portal in open data format.
- ensuring that political campaigns run by third parties are also subject to regulations that reveal the identities of their donors.

The UK operates one of the more transparent and comprehensive frameworks for political finance disclosure – although it is not perfect. For elections and referenda, the electoral regulator publishes open data about spending by parties, candidates and non-party political campaigns. Outside of election and referenda periods, quarterly statements are published on the sources and amounts of donations and loans received by political parties and their members, members of the national and devolved legislatures, mayors and local councillors¹². However, not all of these transparency requirements apply in Northern Ireland and this loophole has been exploited. Prior to the Brexit referendum a donation of approximately US\$620,000 was made anonymously in Northern Ireland but spent in England during the Vote Leave or ‘Brexit’ campaign for the UK to leave the European Union¹³.

Participation

Citizens participate in politics by making financial donations to parties and candidates¹⁴ – alongside other types of contribution and collective action – while civil society organisations participate, often in innovative ways, to the oversight of party financing. Governments must protect the former and leverage the latter. Good practice includes:

- setting rules on donations to parties to prevent anonymous and illicit sources, and ensure that corporate or foreign interests do not diminish or marginalise the significance of donations made by eligible voters.
- limiting donation amounts to ensure that wealthy individuals or entities are not disproportionately influential on party policy positions.
- consulting and working with stakeholders who use transparency data for investigations, before, during and after publication to ensure they have the informational resources for effective scrutiny.

The Peruvian investigative journalism website Ojo Público (Public Eye) tracked the infiltration of organised crime interests into politics through campaign finance. During 2017, its journalists used reports from the National Police, the Public prosecutor's office, the judiciary, the congress and the financial intelligence unit to build a dataset of 856 individuals who have been investigated for “organised crime, corruption, environmental crimes, money laundering and illicit drug trafficking”. Ojo Público then analysed this data against publicly available campaign contributions made to 65 political parties over a decade. The analysis revealed that 54 per cent of the individuals actively supported political parties with financial contributions, which suggests that illicit interests have deeply penetrated Peruvian politics¹⁵. Ojo Público works with national radio stations, politicians and artists to ensure that its findings

¹¹Transparency International. *Policy Position No. 01/2009: Standards on Political Funding and Favours*, 2016.

¹² The Electoral Commission, *Political Parties, campaigning & donations*, 2018, available at: www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations [accessed 12/04/18]

¹³ “Mystery deepens over secret source of Brexit ‘dark money’”. *openDemocracyUK* (web). 16 October 2017.

¹⁴ OECD, *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, 2016, available at: www.oecd.org/corruption/financing-democracy-9789264249455-en.htm [accessed 12/04/18]

¹⁵ “Investigados por Crimen Organizado Financiaron las Campañas Electorales”. *OjoPúblico* (web). 24 October 2017.

are widely disseminated to voters¹⁶.

Accountability

In any system of political finance regulation there remain incentives and opportunities to break the rules. An impartial and robust enforcement approach is essential to detect and deter breaches of law. Good practice includes:

- ensuring the oversight body is effective in the enforcement of regulations by, for example, insulating from political pressure and making all appointments to the oversight agency under a transparent and accountable competitive process.
- equipping the oversight body with the powers and capacity to receive and investigate public complaints and sanction those guilty of wrongdoing.
- ensuring that the monitoring, investigations and sanctions work of oversight bodies is reported in a transparent and timely manner.

In Georgia, concerns about the opacity and impartiality of electoral oversight have led to a number of encouraging reforms. The State Audit Office (SAO), which enforces regulations, now publishes donations data every three weeks and sanctions parties and candidates which fail to comply in a timely manner. During the 2016 elections, the SAO investigated 1,016 donations and sanctioned 10 donors. The SAO also receives complaints about suspected breaches of regulations, which it can investigate itself or refer to the court or chief prosecutor's office¹⁷.

¹⁶ International IDEA, *The Global State of Democracy*, 2017, available at: www.idea.int/gsod/ [accessed 12/04/18]

¹⁷ OSCE, *Georgia, Parliamentary Elections 8 and 30 October 2016, OSCE/ODIHR Election Observation Mission Final Report*, 2017, available at: www.osce.org/odihr/elections/georgia/297551?download=true [accessed 17/05/18]

EXISTING COMMITMENTS

The OGP is an ideal forum for countries to commit to policies that make funding the democratic process fair and corruption free. Through the partnership, members can debate and develop common standards and inspire one another with good practice.

Croatia, El Salvador, Georgia, Panama and Serbia have made eight independently reviewed commitments to reform their political finance systems. In El Salvador, new legislation was passed to make political donation data public, and in 2018, for the first time and after several legal challenges, it was published for the period 2006-2017¹⁸.

Croatia and Georgia used the OGP to improve existing finance regulations and ensure that political donations were published online in a single, searchable database. Serbia's commitment amended the existing law to make an oversight authority subject to audit. Panama pledged to make transparent the use of public funding allocated by the state to political parties.

Three further countries – Australia, Lithuania and Mongolia – have made political finance commitments which have not been independently reviewed. Australia pledged an inquiry into its 2016 election to examine policy options for regulating foreign donations, the disclosure of donations, and the potential of new technologies to manage elections. Lithuania pledged to improve access to information on voting and elections including the provision of donations to candidates. Mongolia pledged to amend its law on political parties to improve the transparency of funding.

OGP PARIS DECLARATION AND TRANSPARENCY IN POLITICAL PARTY FINANCE

The Paris Declaration is a set of collective actions for governments and CSOs to join forces and work together to push open government forward and advance reform at the global, national and subnational levels.

Transparency on political party finance is one collective action within the Paris Declaration. Countries and CSOs committing to transparency in political party finance seek to ensure the collection and timely pre-election publication of detailed information on the finances, interests, and related information of political parties and electoral candidates in open data formats, with regular publication of updates.

To see what collective actions have been proposed on lobbying and to include your own, visit: <https://paris-declaration.ogpsummit.org/>.

¹⁸ "A Milestone in Transparency: El Salvador Publishes Donations to Political Parties for the First Time". *CISPES* (web). 14 March 2018.

WHAT ELEMENTS SHOULD A COMMITMENT ON POLITICAL PARTY FINANCING INCLUDE?

Successful political finance initiatives must identify and address a wider set of risks around political integrity – yet reforms also have some essential components.

Transparency International recommends that governments make the following three commitments:

Establish disclosure regulations for the income, spending, assets and loans of both parties and candidates on an ongoing basis. Ensure that all information is published on a single online portal, in open data format.

Governments must ensure that transparency regulations apply to all types of donation (including donations in-kind and loans) and expenditures, and that sufficient information about donations is published (including the date, donor name, recipient name and amount of each donation). Publishing data at regular intervals on a single, online platform in open data format, and consulting users about the scope and quality of releases helps to ensure data is useful and accessible to stakeholders.

Introduce limits on sources and amounts of donations to political parties and candidates.

Parties and candidates should only accept donations made by natural persons with citizenship rights, who donate an amount under a previously determined, transparent threshold. This helps ensure anonymous, illicit, corporate or foreign interests do not undermine citizen participation, and that the playing field is not unduly tipped towards wealthy individuals.

Give oversight agencies the powers and capacity to effectively enforce political finance regulations and receive and investigate public complaints, report on outcomes, and sanction those who breach regulations.

Oversight agencies must be mandated to independently investigate, receive and respond to public concerns effectively, collaborate with other oversight and law enforcement bodies, and impose meaningful sanctions on those guilty of wrong-doing. Transparent reporting of investigations undertaken, complaints received and actions helps to demonstrate impartiality and promotes public confidence.

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