

Introduction

The Carter Center has been articulating criteria for the assessment of elections based on international public law, building on related efforts by leading groups in the election observation community. Campaign finance is one area requiring further work. IFES' Political Finance team has extensive experience developing assessment tools, building enforcement capacity and supporting civil society organizations in the field. To capitalize on a potential synergy, IFES and the Carter Center partnered to convene a range of experts and discuss the following questions:

What can international election monitors do to assess and strengthen campaign finance in emerging democracies? How can they complement the work of domestic monitors? Finally, since monitoring implies standards, what global best practices exist in the regulation of political finance?¹

These questions framed a two-day workshop at IFES' headquarters in Washington, DC. Representatives came from six overlapping communities: regulators, international election monitors, campaign finance reformers, intergovernmental organizations, international democracy assistance NGOs and civil society actors. (For a full list, see the appendix.)

With respect to global standards in regulation, delegates agreed on prioritizing reforms according to country needs. No country's political finance system conforms to the ideal – one that simultaneously guarantees transparency, equality and equity – but some contexts require more basic changes than others.

Participants agreed on an expansive role for domestic regulators and watchdogs. They acknowledged that the bulk of international monitoring missions will remain short-term. Because the entire electoral cycle requires regulation, however, long-term monitoring is necessary. Domestic actors therefore are best equipped to meet this need.

The following document summarizes points of consensus emerging from the conference, including policy instruments and monitoring strategies that the democracy community has agreed on, as well as what it has agreed to further develop.

Operationalizing “Political Finance” for Monitoring Purposes

Political finance refers to the material resources one uses throughout an electoral cycle to win the election. Panelists had practical and normative reasons for eschewing this operational definition, however. As a result, there was broad agreement on focusing on a society's most serious political problems as they relate to political finance.

First, the limited nature of international monitoring missions cannot satisfy the definition above. As

¹ Michael Svetlik delivered the opening remarks on Thursday. Svetlik is Vice President of Programs at IFES.

Michael Pinto-Duschinsky noted, this implies the campaign period, costs of maintaining a political party between electoral cycles, whether there is vote-buying, the even-handedness of the media and the behavior of interest groups. Structuring monitoring missions around this academic conception would be impossible.

Another consideration was the normative desirability of judging host societies against a set of international best practices. As policy instruments, laws on disclosure, contribution and expenditure limits, public funding, et cetera, represent different priorities: transparency, equality, and so on. Each law furthermore represents a tradeoff among competing priorities, as panelists' vigorous debate over the merits of contribution limits demonstrated. Because countries make different choices about these goals in light of their diversity, panelists proposed several ways to think about political finance in a monitoring context:

- *What the spirit of the law prioritizes.* Monitors might begin by asking, “What ethics are most apparent in the policy instruments a country has ratified?”
- *What the law explicitly states.* Some believed that monitors, in order to be impartial, should restrict their activities to issues covered in a country's legal framework.
- *From the perspective of anti-corruption.* One option is for monitors to focus on foul play: the abuse of state resources, manipulation of politicians by vested interests, et cetera.
- *From the perspective of democratic consolidation.* Another option is to focus on uses of resources that may undermine democratic consolidation in transitional countries. This perspective would prioritize major disadvantages for opposition parties over socially acceptable instances of petty corruption. Emphasis would be on meaningful competition among parties followed by willing, peaceful transfers of power.
- *From the perspective of a reform for which there is significant demand in the country.* If there is a particular reform on a country's social agenda, monitors could become partners in advancing it by observing in its spirit.
- *From the perspective of entry barriers to politics.* If some feature(s) of campaign finance, media reporting or regulator behavior make it especially difficult for candidates to seek office or the public to get information, monitors could focus on those features.
- *In terms of the country's most pressing political finance problem(s).* In this view, monitoring and commenting on every aspect of a country's political finance system is neither feasible nor appropriate. Missions should focus on countries' most critical problems.

Consensus developed on a fairly limited mandate, given the short duration and limited observational capacities of missions, that focuses on the most egregious problems. This approach has the benefit of flexibility: focusing on democratic consolidation where necessary, respecting countries' domestic norms and levels of demand for reform and, finally, being adaptable to developed country contexts. As Mark Stevens of the Commonwealth Secretariat noted, different missions with different organizational mandates will have different observational scopes, and the relative importance of political finance issues will vary on a country-by-country basis.

Research Questions That Short-Term Monitors Can Answer

Kevin Casas-Zamora of the Brookings Institution proposed several questions that could guide the work of observers even if their resources and mission durations were limited. Panelists discussed them at length. Points of consensus were as follows:

- *Is there vote-buying?* Are there media reports or visual evidence of people trading their votes for direct, immediate and material compensation?
- *Effectively speaking, how much disclosure is there?*² Weak legal frameworks, under-resourced regulators and lack of capacity can undermine transparency. On one hand, panelists agreed it would be impossible for short-term monitors to make sophisticated audits of these regimes. On the other, they agreed on the importance of transparency. Monitors can comment on the extent of disclosure that does exist, and they can assess how it corresponds to the resources they do observe going into parties' and committees' campaigns.
- *Did all significant actors have a base-line level of resources to be heard?* Even if panelists did not agree on positive means of fostering equality, they were concerned about the implications of gross, systematic imbalances for democratic politics. Monitors therefore should consider the abuse of state resources and other, structural causes of large disparity.³ Structural disparities can result when the groups supporting one party are overwhelmingly more wealthy than the groups supporting another. In this case, policy instruments favoring equality (i.e. public financing, expenditure limits, contribution limits) may be worth recommendation.

2 Magnus Öhman of IFES suggests a more technical investigation focusing on three smaller questions: (1) How strong is the legal framework with respect to disclosure? (2) Do parties and candidate committees provide reports in accordance with these requirements? (3) How accurate are the reports? Short-term monitors are least equipped to answer the third question, so domestic observers, possibly in partnership with long-term monitors, could work on this question in advance of the short-term mission's arrival.

3 Not all panelists agreed that looking for disparities was equivalent to assessing whether all parties and candidates had minimum levels of resources to get their messages out. Deriving a standard on "base-line level of resources" is difficult. Many would agree that the distinction between disparity and minimum resources blurs, however, when one group has the capacity to overwhelm the campaign messages of others.

- *How even-handed is the regulator?* Does the agency responsible for enforcing political finance laws single out groups for sanction? Do certain groups seem suspiciously exempted from sanctions?
- *How well resourced is the regulator?* Does the enforcement agency have the expertise, staff and technology needed to implement the laws as they exist?
- *How reasonable are burdens on the candidates and parties?* Are disclosure thresholds so low or deadlines so frequent as to eliminate the expectation of compliance?
- *How reasonable are burdens on regulators?* Is the legal framework commensurate with what a regulatory agency can be expected to enforce? As Commissioner Weintraub noted, no regulator can investigate every candidacy, contribution report or expenditure. There must be a balance between the goal of a policy and the enforcer's ability to achieve it.

Panelists also had several operational suggestions on how to get better answers to these general questions.

What International Observation Missions Can Do To Improve Their Work

Despite general agreement that (1) international missions are likely to remain relatively short-term (especially in relation to the long-term presence of domestic groups) and (2) political finance will remain one aspect of them, members of the group had several suggestions on how to improve their work.

- *Ground monitoring in international law.* To the extent that monitoring activities effect reform, they work mostly through moral authority. For monitoring to carry this authority, Pat Merloe of the National Democratic Institute argued efforts must be grounded in international law and free of private interests, whether of in-country actors, foreign countries or multilateral institutions. As pointed out by Avery Davis-Roberts, international law provides guiding principles for the assessment of campaign finance, such as non-discrimination, transparency, and prevention of corruption, that can undergird observation criteria and methods. International law enjoys legitimacy as a consensus instrument that binds all state parties.
- *Conduct an early assessment to decide whether and how to incorporate a political finance component into a monitoring mission.* Richard Chambers of IFES-Lebanon argued that desk assessments prior to missions would inform the size and level of expertise needed.
- *Deploy a political finance expert long in advance of the short-term mission.* Such a person would

be able to design and deploy sophisticated auditing research designs, enlist the help of domestic watchdog groups and determine what issues are most important so that international monitors have immediate guidance on arrival.

- *Learn more about political finance.* Panelists agreed on the need to increase knowledge among non-expert monitors. This learning would address best practices in legal frameworks with respect to different policy goals, what to expect in terms of regulator and internal party record-keeping and disclosure, techniques in monitoring and techniques in estimating party finance when regulators are not cooperative or capable.
- *Focus on the society's main problems in the report.* Monitors can better serve the end of reform if they focus on a key problem rather than launching a barrage of suggestions.
- *Develop a handbook.* Participants agreed on the need to develop and disseminate their own handbook on international campaign finance monitoring. The intended audience would be short-term monitors. Such a handbook would lay out clear research questions and specify practicable methods for answering them.⁴

Many of these points depend on cooperation – direct or indirect – with domestic monitors, and all panelists highlighted their importance.

The Importance of Domestic Monitors

While participants agreed to work further on the precise relationship that should exist between domestic non-governmental organizations and the international monitoring mission, they highlighted several best practices in how to use these groups.

Hani Zainulbhai of IFES noted that domestic groups can feasibly audit regulator capacity, media behavior and legal frameworks. Drawing on lessons learned from IFES' work with NGOs in Nicaragua, she argued that civil society organizations trained in detection techniques can supplement regulation where the latter is lacking, and she showed how the same groups can turn transparency into election issues through public information campaigns.

Several panelists argued that domestic NGOs should work at lower levels of government in especially hostile contexts. Where the abuse of state resources is a priority but national governments obstruct

⁴ Long-term and domestic monitors already have two such handbooks. The *Training in Detection and Enforcement Manual* (IFES) instructs regulators on how to gain information about campaign finance when parties and candidates are dishonest. *Monitoring Election Campaign Finance: A Handbook for NGOs* (Open Society Justice Initiative) instructs watchdog groups on how to estimate finances when parties, committees and regulators lack the capacity or will to collect information.

monitoring, conducting audits at the sub-national level might yield more information through more cooperative governments, or by avoiding detection, even if compromising the data gathered.

Finally, many emphasized forming coalitions of domestic NGOs in which each group works on the policy dimension in which it has a comparative advantage. Some groups are better media watchdogs, for example, while others may be more skilled at detecting the abuse of state resources.

Indicators and Evidence

Each of the preceding prescriptions raises the question of what to measure. The Carter Center's Avery Davis-Roberts called on the community to develop standard indicators. Others pointed to the need for evidential rigor in arriving at conclusions. Gerald Mitchell of the OSCE reminded the group that monitors' pronouncements can affect politics in intended and unintended ways, so the basis for any conclusions drawn about a country's political finance system must be sound.

While the group agreed to address the evidence question in future meetings, some basic principles emerged. First, they should be direct measures of the intended effects of political finance policy instruments. Second, the concept of "electoral cycle" is a potential heuristic device for such a methodology. Since political finance straddles election cycles, some panelists suggested analyzing the full electoral cycle for particular moments at which particular research strategies might be especially useful. Third, the remainder of the country's institutional context should inform assessment; what are the implications of different electoral systems, federalism and term limits for our expectations of actors' financial behavior?

The more narrow question of research methods came up on both days. Michael Pinto-Duschinsky distinguished between academic- and enforcement-oriented designs, the latter generally being simpler and more efficient to deploy. Overall, however, five methods received repeated citations:

- *Interviews* are the most universal instrument, useful to supplement audits of regulator capacity, party financing, domestic NGO strategy and questions for which qualitative information about actors' experiences is needed.
- *Content analysis*, most agreed, was the province of domestic NGOs monitoring access to and behavior of the media.
- *Constituency sampling*, potentially with the use of *more sophisticated statistical techniques*, would be useful for monitoring regulator capacity, detecting abuse of state resources and describing the patterns of party and candidate receipts and expenditures. Such methods would not be practical for short-term, international observers. Most likely, a long-term, in-country expert would have to design and implement cross-sectional studies like these.

- Several panelists suggested *field experiments* as means of assessing monitoring methodologies themselves. As with constituency sampling, experimental research would require a longer time horizon than a single observation mission.

Overall, a separate workshop could be devoted to the development of indicators and assessment methodologies for each of the major policy instruments: disclosure, contribution limits, expenditure limits and public funding.

Global Standards in Political Finance Regulation

Against the backdrop of monitoring, panelists also considered what global standards, if any, exist in the domestic regulation of political finance. While suggestions were highly informed by the monitoring perspective, a diversity of experience meant sensitivity to difference in countries' ability and need to implement reform.

- *Reform should be problem-driven.* It is a waste of time to make laws concerning practices that are not problems. Reform and enforcement will be more successful when there is a problem and, therefore, demand for solutions.
- *Reform should be prioritized.* If vote-buying is a country's main problem, it does not make sense for monitors to fixate on public funding.
- *Freedom of information should inform all regulation.* While its architecture may be difficult to implement, some level of disclosure is essential to monitoring the operation of other laws and policy instruments. Are the parties receiving public funding as prescribed by law? Are they complying with expenditure limits?
- *Regulation must encompass the whole electoral cycle.* Political money changes hands at all times and in many forms. As several experienced panelists noted, focusing on campaign behavior at election time alone will cause one to overlook many structural features of a country's political finance system.
- *Regulation requires independence.* Different models of regulatory structure exist with regulators accountable to different institutions, but the most effective oversight bodies will be formally and effectively independent of interference by legislatures, cabinets, particular parties and other organized interests. Independence, as Gerald Mitchell notes, also implies adequate resources for a regulator to implement its mandate and the authority to apply sanctions without repercussions.

- *Parties are partners in enforcement.* While one may conceptualize a necessarily antagonistic relationship between political parties and campaign finance regulatory agencies, their cooperation is integral to easing enforcement of a political finance system. For Transparency International, internal party procedures are one of three pillars of the group's work, according to Tinatin Ninua. Groups explicitly focused on political party development can advance this goal in their work. Sef Ashiagbor of NDI stressed the need to give parties incentives to build compliance systems: trading public financing systems for disclosure, for example.
- *Regulations should be feasible for parties, candidates and regulators to implement.* If the transaction costs of compliance are too high, nobody will abide by the law, nor will anyone expect enforcement. As Gerald Mitchell of the OSCE notes with respect to disclosure, transparency must be balanced against the capacity of parties and regulators to achieve it.
- *Where disclosure is a priority, effective timing is essential.* All agreed that disclosure is meaningless unless it is frequent and well in advance of election day. Not only do voters need time to learn the sizes and sources of parties' benefactors. The media, watchdog groups and academics need time to process and present the information. Sheila Krumholz of the US-based Center for Responsive Politics explained how her staff maintains highly accessible data at OpenSecrets.org, but that work depends on regular and frequent disclosure by the regulator.
- *Where disclosure is a priority, double-ledger accounting conventions are a basic necessity.* Institutionalizing this practice among parties and in the business sector is essential. One, it reduces the transaction costs of complying with disclosure provisions; parties and candidates do not need to special books for the regulator when they already have running records. Two, accurate double-ledgers throughout a society's economy permit audits; they allow watchdogs and regulators to follow the money.
- *Disclosure is meaningless unless regulators make information publicly available.* Gerald Mitchell stressed the point that civil society must have ready access to usable reports. Novel uses of Internet and database technology moreover can make this information easier to interpret and reorganize for research purposes.

Participants spent considerable time discussing the details of disclosure regulation and monitoring. Chapter II, Article 7(3) of the United Nations Convention against Corruption (UNCAC) obligates state parties to make good faith efforts to improve transparency in election candidate and political party financing. The means to this end is disclosure of receipts and expenditures. This is with good reason. Disclosure is the reform from which all others flow.

Because fears of rising costs are misplaced, and because disclosure is fundamental to sound implementation of all other policy instruments, Steven Griner of the Organization of American States reports that his organization has shifted its policy emphasis away from costs and in favor of disclosure. Without transparency, it is impossible to implement public financing systems: to know how much to disburse to parties and committees on the bases of their current accounts, or to know how public money is being used. Likewise, disclosure is essential to contribution and expenditure limits. Without information about who gives how much how many times, regulations on donors are not enforceable.⁵ Finally, proper disclosure of party and candidate expenses is necessary for enforcing spending caps.⁶

Promoting Equality: A Point of Disagreement

Members of the group had divergent opinions on whether political finance systems should be engineered to foster equality. The question about equality operates on two levels: with respect to the balance of resources among parties and candidates, and with respect to the overall accessibility of politics.

On the latter point, panelists overwhelmingly agreed that the 'rising costs of campaigns' was not a cause for worry. According to Ellen Weintraub of the US Federal Election Commission, for example, Americans are estimated to spend the same amount of money annually on Halloween as they do in a four-year presidential election cycle. Several participants from countries other than the United States were surprised to learn this. Overall, though, panelists agreed that politics are accessible from a campaign finance point of view.

On the other hand, participants did not agree on the proper role for equality-inducing mechanisms. There was a general preference for public financing over contribution and expenditure limits, but many were strongly averse to leveling mechanisms. According to IFES-Lebanon's Richard Chambers, for example, the very purpose of a political party is to compete for votes and resources. Many thought the imbalances that emerge among parties are, more often than not, indicators of their levels of support rather than of any structural inequality.

While participants did not agree on the desirability of policy instruments favoring equality, they did settle on a standard for monitoring purposes (see below).

What About State Resources in Clientelist/Patrimonial Societies?

5 Several participants noted that disclosure also must cover loans and in-kind or non-monetary contributions. Monitoring in-kind contributions poses obvious problems for short-term international observers.

6 On the fundamental nature of disclosure, Gerald Mitchell also stressed how the OSCE emphasizes this policy instrument in its reporting on campaign finance among member states.

Many participants wondered how to monitor the abuse of state resources in patrimonial systems, and some of them, like IFES' Magnus Öhman, questioned whether monitors should address this dimension of corruption at all. This raises the question of whether a global standard on abuse of state resources meaningfully applies to this class of countries.

The problem is that, when rent-seeking becomes a chief source of wealth, the logic of an election is fundamentally different from what it is in societies with strong public-private distinctions. Voting becomes an immediately distributional act. For Denis Kadima of the Electoral Institute of South Africa, the practice is so culturally embedded that corruption loses meaning as a concept.

For other panelists, a focus on the 'reasonable and feasible' lead to the conclusion that monitoring clientelism is unlikely to contribute to a significant reform payoff.

Immediate Action Points

Participants agreed that the workshop was a useful first step toward incorporating political finance in international election monitoring missions and raising its profile in longer term democracy assistance efforts. Several specific action items emerged:

- *Incorporate a political finance module in BRIDGE.* Building Resources in Democracy, Governance and Elections is a mobile, flexible training program for election administrators.⁷ Bjarte Tora of the International Institute for Democracy and Election Assistance (IDEA) noted how political finance monitoring could find a place in the BRIDGE curriculum. Marcin Walecki (IFES) and Skye Christensen (BRIDGE and IFES) noted that efforts are underway to adapt the *Training in Detection and Enforcement (TIDE)* manual into modules of varying specificity. TIDE trains political finance regulators in effective enforcement, especially where resources are thin or political will among parties is lacking.
- *Raise the visibility of political finance on ACE Project.* The ACE Project website (www.aceproject.org) assimilates best practices in election assistance and administration. It is at once a library and live forum where users can post questions and get answers from expert practitioners. Several conference participants agreed on the need to give political finance a higher profile in order to place it on the international election assistance agenda. As a first step, resources from IFES' www.moneyandpolitics.net could be used to seed a larger political finance library.
- *Write a monitoring handbook.* While resources on legal frameworks, enforcement and NGO investigation techniques are available, no guide exists to assist international monitors in their

⁷ BRIDGE is a joint initiative of IFES, the UN Development Program, Australian Electoral Commission and International IDEA.

work. Many participants expressed willingness to work on this tool. The handbook would prime monitors in main political finance issues and variables in regulatory systems, lay out research questions for monitors and prescribe methodologies for answering them.

- *Develop indicators.* Research questions and methods raise questions about measurement. While several potential methods emerged (statistical analysis, interviews, et cetera), the need exists to conceptualize political finance issues and operationalize them through feasible indicators.

Conclusion

The political finance monitoring discussions of 22-23 January 2009 had three immediate conclusions. First, there is immediate work to do. Second, the conversation began a learning process among democracy assistance and monitoring organizations unaccustomed to the issues in political finance regulation. This will lead to a larger role for campaign finance in not only election monitoring but political party assistance. Moreover, it will increase demand for programs assisting domestic groups working on campaign finance, as the short-term nature of international monitoring makes these in-country partners essential. Third, because practitioners with diverse experience in democracy assistance came together to think about campaign finance, there was conceptual progress on how to approach monitoring and advance reform in all moments of the electoral cycle.

The conversation on global standards was equally fruitful. Not every country can implement real-time Internet disclosure, public finance matching systems and independent enforcement overnight. There are some basic principles that can inform reform in all countries, however: regulatory independence, feasibility of enforcement, the primacy of disclosure and the importance of sequencing according to countries' needs.

At the end of the day, however, laws must be enforced, and people must live by the rules. On one hand, stable institutions will be compatible with actors' interests. This is why sequencing and moderation are important. As Sef Ashiagbor reminds us, reform that sticks must be reasonably incentive-compatible. On the other hand, if one actor is to follow a set of rules, he needs assurance that his opponent will do the same. As Roel von Meijenfeldt of NIMD argues, leadership is fundamental. In monitoring and democracy assistance more broadly, getting the legal framework right is important, but it is equally incumbent to find the right in-country partners.

Appendix I: Participants

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