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FINANCING DEMOCRACY  
IN THE AMERICAS

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CAMPAIGNS, AND ELECTIONS*

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**FINANCING DEMOCRACY IN THE AMERICAS**

*POLITICAL PARTIES, CAMPAIGNS, AND ELECTIONS*

**A CARTER CENTER CONFERENCE**

AMERICAS PROGRAM  
ATLANTA, GEORGIA  
MARCH 17-19, 2003

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AUGUST 2003

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## FINANCING DEMOCRACY IN THE AMERICAS

### FOREWORD

As democracy evolved in Latin America during the past two decades, people held high hopes that it would improve their lives and serve in a just and equitable manner. Yet many citizens have been disappointed in the performance of their governments. Confidence in democratic institutions, especially political parties, is low.

That disappointment also is shared by many in the established democracies of the Caribbean, in Canada, and in my own country where politicians are often viewed as more responsive to campaign contributors and special interests than to voters. Staggering sums of money are required to win election to national office, placing the presidency beyond the reach of many qualified candidates, even where some public funds are available.

It is time to strengthen our democracies. Although democracy demands compromise and can be tediously slow in producing decisions, it remains the best system we know for preserving human rights, civil liberties, and political choice. We must promote fairer electoral competition, more citizen participation, and better transparency and accountability.

Reforming the way we finance political parties and election campaigns is a vital step in this process. Sound political finance systems can restore faith in representative institutions and assure that democratic

methods remain the most legitimate means of resolving policy debates and selecting leaders.

The Inter-American Democratic Charter commits the democracies of the Americas to establish balanced and transparent political finance systems and to strengthen political parties. In support of that vision, The Carter Center convened a hemispheric



RICK DIAMOND

conference on Financing Democracy in the Americas. Participants reached agreement on the principles that campaign and party finance laws should honor and on the practical measures governments, citizens, and the international community can take to implement them. I am pleased to present this report on those proceedings.



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FINANCING DEMOCRACY IN THE AMERICAS

TABLE OF CONTENTS

Foreword by Jimmy Carter ..... 2

Table of Contents ..... 3

Preface and Acknowledgments ..... 4

Overview ..... 8

Conference Proceedings ..... 10

    Welcoming Remarks ..... 11

    Plenary Sessions ..... 14

    Keynote Speeches ..... 27

    Working Groups ..... 32

        Working Group on the Role of the Media ..... 33

        Working Group on Public, Private, and Mixed Systems  
        of Campaign and Party Finance ..... 38

        Working Group on Disclosure and Limits ..... 45

        Working Group on Enforcement ..... 51

    Concluding Statement ..... 56

Follow-up and Dissemination Activities ..... 63

Agenda ..... 64

Participants ..... 66

Background Papers ..... 71

The Americas Program ..... 106

The Carter Center at a Glance ..... 107

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## FINANCING DEMOCRACY IN THE AMERICAS

## PREFACE AND ACKNOWLEDGMENTS

Declining support for democratic institutions such as political parties and legislatures, recorded through Latinobarometro cross-time polling and other means, led the presidents and prime ministers gathered at the April 2001 Quebec Summit of the Americas to pledge action in support of democratic deepening. That support was expressed in the summit declaration, the action agenda, and the mandate to develop an Inter-American Democratic Charter (subsequently signed Sept. 11, 2001).

The Carter Center's Americas Program consulted on the development of the action agenda on democracy for the Quebec Summit and broadly on emerging regional norms with respect to democracy. Its conferences on Transparency in the Americas (1999) and Challenges to Democracy in the Americas (2000) raised the visibility of corruption and neopopulism as emerging regional problems and made recommendations for strengthening democracy, several of which were adopted at the Quebec Summit and the Organization of American States General Assembly meeting the following month. These included the recommendation that only democracies be invited to participate in the Free Trade Area of the Americas and that irregular interruptions of democratic governance be defined to include problems other than coups d'etat, such as undemocratic elections or violation of separation of powers.

The Carter Center gave input on the draft text of the Democratic Charter through the NGO consultative process that followed the Quebec Summit. The Democratic Charter helped define democratic governance beyond elections and indicated how the OAS would respond to interruptions of or alterations to the democratic process. The charter lists a pluralist system of political parties and organizations, as

well as transparency in government, as essential elements of representative democracy upon which future participation in regional diplomacy is conditioned.

One element of the charter commanded immediate attention as the keystone to reversing the erosion of public trust in the region's democratic institutions. Article 5 of the charter states, "Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing."

The Carter Center convened the conference Financing Democracy in the Americas to act upon that mandate by bringing the best political analysts and most experienced civil society and party leaders in the region together to exchange ideas on the problem of political finance. The conference built upon post-summit work by the OAS, the International Institute for Democracy and Electoral Assistance (IDEA), and Transparency International (TI), among others, to address growing regional concerns about campaign and party finance. Those early steps by collaborating organizations included:

- ◆ In June 2001, the Federal Elections Institute of Mexico convened a meeting of scholars and experts in Mexico City to analyze the problem of campaign finance worldwide.

- ◆ In December 2001, acting in coordination with its Office for Summit Follow-up, the OAS convened a meeting in Miami to address the weakness of political parties. The meeting resulted in creation of the Inter-American Forum on Political Parties.

- ◆ The forum undertook activities to strengthen parties and understand how they are funded. The first such activity was a meeting in Santiago, Chile,



## FINANCING DEMOCRACY IN THE AMERICAS



**OAS Secretary-General César Gaviria listens to the conference proceedings with Americas Program Associate Director Shelley McConnell.**

with the internationals—the Christian Democratic International, Socialist International, Liberal International, etc.—organizations based in Europe that network with ideologically like-minded affiliates in Latin America. These organizations fund educational and party-building activities by Latin American political parties.

◆ In October 2002, the OAS and the International Institute for Democracy and Electoral Assistance jointly convened a dozen scholars and policy practitioners in San Jose, Costa Rica, to design a 34-country study of campaign finance laws and practice in the Western Hemisphere.

◆ In December 2002, Transparency International convened in Buenos Aires, Argentina, a working meeting of Latin American civil society organizations that monitor campaign expenditures in an effort to hold parties and candidates accountable.

◆ The OAS then held the second annual meeting of the Inter-American Forum on Political Parties in Vancouver, Canada, Dec. 4-6, 2002.

This series of events reflected growing concern about campaign and party finance and their effects

on democratic governance in the hemisphere. The Carter Center sought to provide support to the other organizations at every step along the way, committing its staff to active participation during the meetings and in preparatory periods between them.

Building on these efforts, and in cooperation with the Organization of American States, The Carter Center convened the Financing Democracy in the Americas conference March 17-19, 2003. The OAS Unit for Promotion of Democracy advised on the working group themes and list of participants and helped develop background papers. Secretary-General César Gaviria agreed to co-chair and offer welcoming remarks.

Many talented people took time out of their busy schedules to participate in the conference, and some made the extra effort of preparing keynote addresses and remarks to the plenary sessions. The Carter Center offers special thanks to Bolivian Vice President Carlos Mesa, Chilean Minister of the Interior José Miguel Insulza, and U.S. Congressman Christopher Shays for their insightful comments at our opening dinner at King & Spalding. Working group chairs did a marvelous job of keeping forward momentum as their groups discussed the prepared questions, and in a heroic feat, the rapporteurs distilled those lengthy discussions into summary form. Consensus did not always come easily, and sometimes did not come at all, but every participant stuck with the problem until feasible recommendations emerged.

We want to give special thanks to the 10 members of the Council of Presidents and Prime Ministers of the Americas who provided leadership for this conference. The council is composed of 35 former and current heads of government who advise on and participate in the Carter Center's efforts to support regional democracy and improve inter-American relations. While in office, they faced the kinds of tough decisions that today's leaders



## FINANCING DEMOCRACY IN THE AMERICAS

face and worked to move forward policy agendas via democratic means despite deep economic and social constraints. Their recommendations are thus taken seriously as practical proposals for citizens, states, and the international system. Those policy recommendations include strategic proposals, best practices, and also “tool kit” remedies that have resulted from experiments in single countries but which show promise for others. The presence of these former leaders lends visibility to the difficult problems at hand and inspires confidence in the region’s ability to deal with those problems through concerted action.

One of the Carter Center’s strengths is to share information from multiple sectors and from around the region, effectively integrating information from the Caribbean, Canada, and the United States with information on Latin America. The conference reviewed the various systems of campaign and party finance in operation in the hemisphere and linked those issues to media use and campaign costs and to the question of “payback” after the elections when campaign donors seek favors from elected politicians.

The plenary sessions and keynote addresses captured the broad considerations underlying the theme, including the question of principles and values served by differing systems of campaign and party finance and the constraints imposed on policy by poverty and underdevelopment. In the working groups, participants rolled up their shirtsleeves to exchange experiences and pound out possible solutions. The working groups examined four themes: the role of the media; public, private, and mixed systems of finance; disclosure of contributions and spending, notably as a necessity for implementing limits on donations and expenditures; and enforcement, even in countries where rule of law is weak.

The Center’s efforts sought to complement and deepen those of the OAS and other groups working on political finance in the Western Hemisphere. We began by bringing on board two participant groups that have been largely absent from discussions to date—the private sector and the media. Both groups frequently are deemed part of the problem of escalating campaign costs and special interest politics. However, solutions will be hard to implement without the cooperation of these groups, and

**Americas Program Director Dr. Jennifer McCoy (far left) and Associate Director Dr. Shelley McConnell (far right) pose with the former presidents and prime ministers of the Americas who provided leadership for the conference: (left to right) John Compton, Osvaldo Hurtado, Andres Pastrana Arango, Carlos Roberto Reina, Jimmy Carter, Luis Alberto Lacalle, Leonel Fernández, Eduardo Frei, Lloyd Erskine Sandiford, and Miguel Ángel Rodríguez.**





## FINANCING DEMOCRACY IN THE AMERICAS

it is important to understand the pressures and incentives under which they are operating.

The Carter Center helped tie together the specialty subthemes of some of our colleagues—OAS efforts on political party strengthening, IDEA’s study of campaign finance laws and practice, and TI’s development of civil society monitoring tools. The conference also provided an opportunity to assess progress to date and assure that the efforts of the organizations involved are synergistic in nature.

Importantly, the conference provided a reality check from former presidents and prime ministers about what sorts of recommendations will be feasible and politically salable. While acknowledging that there is still a great deal we do not know about the dynamics of campaign and party finance, participants made initial efforts toward policy recommendations based on what we have learned so far and helped distinguish three levels of response that we can support—international, governmental, and civil society responses.

The Center also used this opportunity to draw attention to new research by launching several reports at its conference. The Center invited USAID to release *Money and Politics*, its forthcoming report on disclosure, at the event. To explore the connection between campaign finance and the media, the Center cooperated with Duke University in releasing a new Spanish-language edition of *Television and Elections*, which treats issues such as free television time, paid propaganda, candidate debates, and the regulations affecting media use during campaigns.

The conference concluded with a press conference by the Council of Presidents and Prime Ministers of the Americas, who presented a final statement expressing their consensus on principles

that the hemisphere should follow in developing laws, regulations, and practices affecting campaign and party finance. That statement is included in this report. It is remarkable that 10 former presidents and prime ministers from countries as different as Chile, Honduras, Colombia, the United States, and St. Lucia recognized common problems and arrived at common principles to inform an array of policy options on such a complex problem.

The success of this endeavor was due in large part to the hard work of Carter Center staff members. Americas Program Director Dr. Jennifer McCoy set strategic direction for the project, and Dr. Shelley McConnell, associate director of the Americas Program, was conference director. Together, they framed the issues and researched key problems and solutions. The Carter Center also extends heartfelt thanks to consultants Barbara Petit and Dawn Chapman, who coordinated logistics; Senior Program Associate Laura Neuman, who authored a background article for the conference and assisted behind the scenes; Program Assistant Daniel Gracia; Americas Program interns Robert Schwartz and Ruth Michael; and all the volunteers and operations staff of The Carter Center for their enthusiastic contributions.

The conference received generous support from The Coca-Cola Company, together with the Atlanta Consulate of the Republic of Germany; Atlanta, Georgia—Gateway to the Americas; Delta Air Lines; King & Spalding law firm; the Open Society Institute; the Organization of American States; and the U.S. Agency for International Development. Financing Democracy in the Americas would not have been possible without this vital support.

In memoriam  
Carlos Roberto Reina



## FINANCING DEMOCRACY IN THE AMERICAS

### OVERVIEW

Citizens throughout the hemisphere increasingly question the integrity of political processes with opaque methods of financing and access. After a quarter-century of democratic governance, money-conscious voters in Latin America's troubled economies have begun to ask whether elections really allow them to hold governments accountable for enacting promised reforms or whether instead politicians respond primarily to the special interest groups who fund their campaigns. Democracy remains a valued good, but questions are being asked about how much it costs, who pays, and whether the need to raise funds distorts policy agendas.

Questions about how best to finance democracy are echoed in North America. Facing escalating campaign costs in an increasingly sophisticated media environment and similar questions about privileged access to decision-making by special interests, both Canada and the United States have made changes in their campaign finance legislation. In the Caribbean, traditionally stable party systems have suffered from corruption scandals and increasing concerns that drug money may flow into party coffers.

Public financing of parties and election campaigns can create opportunities for all citizens, regardless of financial resources, to run for office, but such financing competes with other priorities on the

**Columnist Andres Oppenheimer, Peruvian civil society leader Percy Medina, and Mexican legislative leader Beatriz Paredes converse during a coffee break.**





## FINANCING DEMOCRACY IN THE AMERICAS

public agenda. Private financing depends on donations by individuals and corporations and often is supplemented by the private fortunes of leading candidates, profits from businesses affiliated with the party, auxiliary support from civil society organizations run by party leaders, and donations from international foundations linking parties with shared ideologies. The temptation to dip into public coffers or accept illicit funds is ever present, and even legitimate contributions can come accompanied by expectations of future influence on policy or special access to government contracts. Campaign finance scandals have deeply damaged governments in the region, such as the Samper government in Colombia and the Mahuad government in Ecuador, and raised questions about propriety in the United States as well.

To address these issues, The Carter Center convened a conference March 17-19, 2003, on Financing Democracy in the Americas: Political Parties, Campaigns, and Elections. The third in a series of major conferences sponsored in large part by The Coca-Cola Company, the Financing Democracy conference brought together top government officials, multilateral organization representatives, business leaders, media professionals, scholars, and civil society leaders from the Western Hemisphere to discuss how elections and parties can be financed in ways that will be correctly perceived as honest contributions to the public good.

As with the Carter Center's highly successful past conferences, Transparency in the Americas and Challenges to Democracy in the Americas, the Financing Democracy conference included a mix of plenary sessions and working groups resulting in constructive, practical proposals for improvements.

Participants examined the role of the media in forcing up campaign costs, informing the electorate, and empowering candidates—for good or for ill—to reach out to voters absent traditional party-building. They reviewed evolving campaign finance rules throughout the hemisphere, exploring the role for public finance and whether limits on campaign spending can be enforced given proper disclosure. They explored methods for strengthening institutions and discussed prospects for international cooperation.

Based on their discussions, participants suggested action items for governments, civil society, and the international system. Members of the Carter Center's Council of Presidents and Prime Ministers of the Americas summarized these recommendations in a brief public statement. The plenary sessions and working group discussions underlying these conclusions are more fully elaborated in this report. Carter Center staff members are currently assisting the council in disseminating these ideas through engagement with the OAS and regional summit preparations, government advising, and transnational networking with civil society organizations.



No nation has solved the problem of how to finance a campaign so that the electorate will trust the results.

CONFERENCE PROCEEDINGS



## FINANCING DEMOCRACY IN THE AMERICAS

### WELCOMING REMARKS

**F**ORMER U.S. PRESIDENT **JIMMY CARTER** opened the proceedings by recalling that during his presidency the majority of Latin American nations were dictatorships. The firm commitment to human rights led to an evolution toward democracy in almost every country in the hemisphere. Yet democracies require constant improvement, and the international community and civil society can help. For example, through international and domestic election monitoring, election practices have improved markedly in many countries. President Carter affirmed that the purpose of the present conference was to share information and develop recommendations that could improve democratic practice with respect to campaign and party finance.

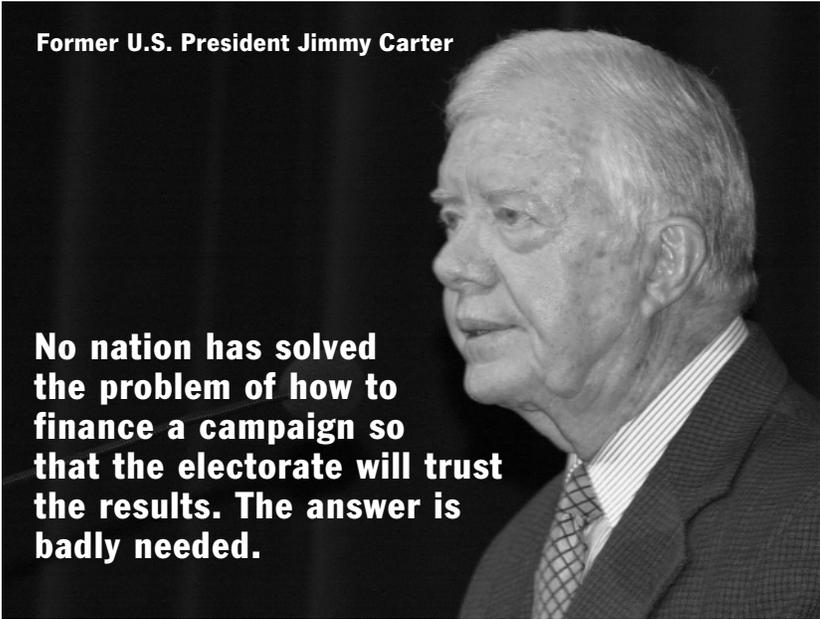
Transitions to democracy generate high public expectations for good governance and socioeconomic improvements, but those remedies are not quickly achieved. Democracies are slow-acting and compromises are necessary, generating disappointment and even eroding confidence in political institutions. In many countries in the hemisphere, including the United States, we have seen low levels of trust in political parties, the political process, and our leaders. Such was the case when the 2000 presidential election in Florida experienced problems, and from that came a request that former President Ford and former President Carter head a commission to revise U.S. laws and make sure that ballots will be clear and counted equally. The commission's recommendations have since been partially implemented.

The question of how to finance U.S. campaigns has been thrown into sharp relief by the staggering amounts of money now needed even to seek the

nomination of one of the two major political parties. A serious candidate needs \$50 million to seek the nomination, and George W. Bush raised over \$100 million. Such amounts suggest potentially strong candidates who are not themselves wealthy may be unable to mount a viable campaign for the presidency.

The United States is among those democracies in the region that can and should improve its democratic practice with respect to campaign and party finance. "No nation has solved the problem of how to finance a campaign so that any qualified candidate can participate and the electorate will trust the results," President Carter said. "The answer is badly needed."

**Former U.S. President Jimmy Carter**



**No nation has solved the problem of how to finance a campaign so that the electorate will trust the results. The answer is badly needed.**

OAS Secretary-General **César Gaviria** explored the crisis of confidence that has struck the region's democracies. Low rates of growth, declining per capita incomes, increased poverty rates, and expanding inequality have been accompanied by expanding information technologies that create new and healthy demands for social justice.



## FINANCING DEMOCRACY IN THE AMERICAS

Citizens tend to equate all of the problems in their societies with the democratic system, leading to a loss of faith in public institutions. Although democracy, political freedoms, and civil rights have taken root in the region, these problems underscore the need to strengthen political parties, civil society, oversight institutions, electoral practices, and campaign finance systems. Secretary Gaviria endorsed the Carter Center's conference on financing democracy as timely in light of these developments.

Secretary Gaviria explored the contours of debate on how best to finance political parties and campaigns, a political problem all democracies face and which is by no means confined to the Western Hemisphere. He endorsed direct public funding of campaigns but also acknowledged fears that such funding would drive up campaign costs even further, invite governments to be overly involved in party organizations, and generate unhealthy competition for scarce state resources which should be earmarked for basic social services. Nonetheless he insisted that, "Parties should have at their disposal the best technical and human resources to address new challenges in a manner that best articulates their fellow citizens' aspirations."

Absent adequate sources, illicit funding may fill the gap. This is a growing cause for concern throughout the Americas, even threatening the legitimacy of democratic systems. "The rise of illicit money can significantly distort electoral processes, calling into question the transparency of our elections, and, as a result, seriously compromising the legitimacy of democratic systems," warned Gaviria.

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**OAS  
Secretary-General  
César Gaviria**

The proliferation of elections has not been accompanied by development of clear rules guaranteeing the transparency of campaign finance, and that rules deficit has bred corruption and attempts to trade monetary contributions for favors from elected officials.

Secretary-General Gaviria admitted that such poor practices are difficult to stop but took note of three types of institutional arrangements attempted in the region to date: systems relying solely on voluntary accountability, implemented where there are strong parties and a robust and loyal opposition; systems with ceilings on private campaign contributions and with government-funded expenditures for publicity, implemented in consolidated democracies that can rely on effective oversight bodies but still struggle to close loopholes; and systems that emphasize state financing and guarantee the transparency of the origin and destination of public funds, not only through formal procedures but also by ensuring that the political environment is competitive and open. This latter type of system is vulnerable to the very close relationship between the state and the political parties.



## FINANCING DEMOCRACY IN THE AMERICAS

All three systems of campaign and party finance have shortcomings, Secretary Gárriga noted, inviting us to explore via the conference which institutional arrangements best match the problems and peculiarities of each country. Campaign finance systems should reflect four objectives. The first is to prevent corruption, whether it comes in the form of a simple quid pro quo or money is derived from criminal activity. Second, they should ensure political equality by avoiding huge discrepancies in access to power based on money. Third, they should lower the cost of election campaigns through such measures as free access to certain media during campaigns and shortening the campaign period. And finally, most essentially, campaign finance systems should help preserve the credibility and integrity of the political system and of politics itself.

The welcome session concluded with remarks by **Dr. Jennifer McCoy**, director of the Carter Center's Americas Program. Dr. McCoy lamented that politics has become a dirty word for some citizens who associate politics with corruption. Faced with a skeptical public, we need to show that parties are a vital component of healthy democracies. "It takes money to run campaigns and build parties," she said. "The challenge is to prevent that money from controlling politicians once they reach office."

"We must find ways to motivate citizens to invest in democracy," McCoy said, "which, in turn, requires that we implement effective and transparent systems of accountability so that citizens can rest assured that their investment is wisely spent." She urged conference participants to work together to develop a set of tools to manage campaign and party finance and to assure that those tools can be feasibly implemented in countries where resources are scarce.

**Dr. Jennifer McCoy**  
Director, Americas Program



**We must find ways to motivate citizens to invest in democracy, which, in turn, requires that we implement effective and transparent systems of accountability.**



## FINANCING DEMOCRACY IN THE AMERICAS

## PLENARY SESSIONS

*The First Plenary: Contextualizing the Political Finance Problem*

The first plenary session began by describing the context in which regional democracies are now struggling to function, particularly persistent poverty and inequality. A second speaker emphasized the weakness of political parties in the face of such economic challenges, noting both declining public support for democratic institutions and the regional commitments made to strengthen them. Next the panel reminded participants of the values that laws and regulations for campaign and party finance seek to uphold. The session ended with a comparative description of the laws and enforcement institutions for political finance that are currently in place in Latin America, the subregion most at risk for democratic reversals.

**Elena Martinez**, regional director of the Latin America and Caribbean Bureau of the United Nations Development Program, set the scene for discussion of political finance. She began by reminding the audience of the progress made in the Western Hemisphere toward democracy and the commitment in the Inter-American Democratic Charter to defend that progress. Democracy has an enormous advantage as a self-correcting system, but in much of the Western Hemisphere it is losing vitality as citizens lose confidence in democratic institutions' ability to remedy economic ills. Latin America has high poverty levels—44 percent lived in poverty in 2002, 7 million more people than in 2001. The region also has the highest levels of inequality in the world, with a Gini coefficient of .493 compared to a world average of .381.

Although countries that achieved growth in the 1990s were able to reduce poverty, they saw

increased inequality. It is now clear that the majority of countries will have difficulty reaching the Millennium Development Goals to halve poverty by 2015. Only seven of 18 Latin American countries

**The excessive marketing and media saturation of electoral campaigns, the lack of accountability, and the role that money plays in politics have together contributed to the emptiness of politics.**

**Elena Martinez**  
UNDP regional director  
for Latin America and the Caribbean



could achieve those goals and only if they achieve unprecedented rates of per capita production. Even small reductions in inequality could dramatically improve this scenario. In Latin America, countries that underwent structural adjustment and market opening grew at a fraction of the rates they had grown between the 1950s and the 1980s. Economists ignore this fact at their peril.

This is the first time in history that an entire region has experienced poverty, inequality, and democracy all at once. The subject of a democracy is not voters, it is citizens, meaning the men and women who strive to live free, develop, and have justice. Democracy is more than a regime, it is a way of organizing society. Economic, social, and political development is indispensable for democracy. According to Latinobarometro surveys, 60 percent of Latin Americans say that democracy is the best system, but of those, half would accept a military regime if it solved their economic woes.

Martinez also emphasized the crisis of leadership affecting the region and said the weaknesses of the



## FINANCING DEMOCRACY IN THE AMERICAS

political institutions are negatively impacting governability. “The excessive marketing and media saturation of electoral campaigns, the lack of accountability, and the role that money plays in politics have together contributed to a practice of politics void of content, and hence the lack of credibility in politics, its agents, and actors,” she said.

In closing, Martinez warned that if democracy does not deepen beyond its current electoral forms, and poverty and inequality are not remedied, the minimalist democracy in the region today will not survive. The key challenge is to diversify the forms of market-based economic organization to support democracy. And we must also reform the state, which should be more than a mere bureaucratic network in search of a zero deficit and should instead be able to integrate the society and economy with democracy. Unless we have a state capable of establishing liberty and democracy throughout the national territory, democracy will die a slow death. The range of policy options available to citizens and the input citizens can have in the debate of public agendas are central issues for democracy. The trend today reflects the tendency to reduce the scope of issues open to public debate. Furthermore, the state must be internally powerful enough so that elected officials can deliver on their promised platforms. If democracy is not perceived as an instrument for development, it would inevitably lead to citizens’ perception that democracy is irrelevant in their lives. And progressively there will be fewer and fewer women and men willing to defend it.

**Elizabeth Spehar**, executive coordinator of the OAS Unit for the Promotion of Democracy,

focused attention on political parties and their role in effective democracy. Concern for the role of parties in a democracy was clearly expressed at the Quebec Summit and in Article 5 of the Inter-American Democratic Charter which states, “The strengthening of political parties and other political organizations is a priority for democracy.” She welcomed the new interest in this topic, which for years has been considered too sensitive for treatment by multilateral institutions, noting that multilateral banks in particular now accept that “politics matter” when looking at economic and social development and that the role of parties must be considered when setting out to reform political institutions.

Spehar drew on Latinobarometro data, noting that confidence in political parties in Latin America is as low as 19 percent, 53 points behind

**Elizabeth Spehar, executive coordinator  
OAS Unit for Promotion of Democracy**

**Institutionalized, democratized,  
and transparent political  
parties do not come for free.**



the church and 30 behind television. Membership numbers are low in political organizations across the board. One reason that citizens may be alienated from organizational life is that parties do not reflect the social and ethnic pluralism of their societies and women are not fully integrated into the leadership



## FINANCING DEMOCRACY IN THE AMERICAS

positions in their parties. Consequently, parties are perceived as out of touch with the citizenry and unable to understand and offer concrete solutions to pressing social and economic needs.

Nonetheless, parties remain the principal vehicle for aggregating interests and seeking and holding power in a democracy. It is essential to improve their relationship with the public and strengthen parties by fostering internal democratization and inclusiveness, transparency, effectiveness in articulating and carrying out a political platform, and effectiveness in government or opposition. Neighborhood associations, labor unions, and other civil society organizations are an important complement to political parties in a well-functioning democracy, but where they dispute power with parties they generate nonconstructive controversy.

Citizens are concerned about corruption and the influence of money in politics, including the money used to finance parties on a regular basis and during election campaigns. To understand the existing systems for political finance in the Americas and to extract lessons learned from these realities, the OAS has partnered with International IDEA to conduct a comprehensive study of the laws and also the practice of political party and campaign finance in all 34 OAS member countries. The OAS has also founded the Inter-American Forum on Political Parties, in which parties are the primary, but not the only, participants, to establish, promote, and bring into effect an inter-American agenda for the reform and modernization of political parties and party systems in the hemisphere.

One thing is certain—parties need reasonable amounts of money to fulfill their vital role in a healthy democracy. “It is paradoxical that on the one hand, many cry out for fundamental changes for political parties: that they choose leaders democratically, that they formulate thoughtful national plans to address complex economic and social problems,

that they reach out in a meaningful way to minorities, women, and youth. Yet few admit that this will necessarily require money,” Spehar noted.

“Institutionalized, democratized, and transparent political parties do not come for free.”

Four important aspects of political party finance are 1) access to the media, 2) public and private financing regimes, 3) disclosure, and 4) enforcement, themes that were adopted for the working groups of the conference. “Most believe that campaign spending limits and some sort of equitable and affordable access to the media is needed for elected leaders to concentrate more on governing and less on raising money,” Spehar said. Public financing ought to be examined, as it can help provide equal opportunity for political parties, but unless it is accompanied by spending limits, it can drive up campaign costs. Disclosure is essential for such limits to work. USAID is publishing a handbook on disclosure, which the OAS will translate into Spanish and distribute to member states and which indicates that although 85 percent of the countries surveyed have some sort of disclosure requirement, only 15 percent have full disclosure. Noncompliance with existing legislation results from a lack of enforcement more than the loopholes that inevitably exist in legislation, and that absence of enforcement reflects either a lack of political will or a lack of resources or both.

**Burt Neuborne**, professor of law and legal director of the Brennan Center for Justice at New York University Law School, set out to deconstruct the values at stake in a political finance system if we are to make democracy the best that it can be. How does one ensure that the campaign creates an informed electorate? How do we create a civic culture that will support democratic politics? How do we see to it that an election is the expression of the people’s will? Since incumbents are likely to steer campaign finance reform toward systems that benefit



## FINANCING DEMOCRACY IN THE AMERICAS

themselves, we need to examine the available options and the values underlying them to determine how best to protect and promote democracy.

Democracies fund themselves using one of five models. The dominant model is a laissez-faire system in which money is provided by interested persons, sometimes subject to disclosure. A limited regulatory model limits the size of contributions but not expenditures. Such a system emerged in the United States as an illogical product of interbranch conflict. Full regulation limits both contributions and expenditures. A public subsidy system provides government subsidies to parties and candidates,

overlooks the fact that respecting one person's autonomy may involve crushing another's, such as when the autonomy of the wealthy crushes the autonomy of the poor.

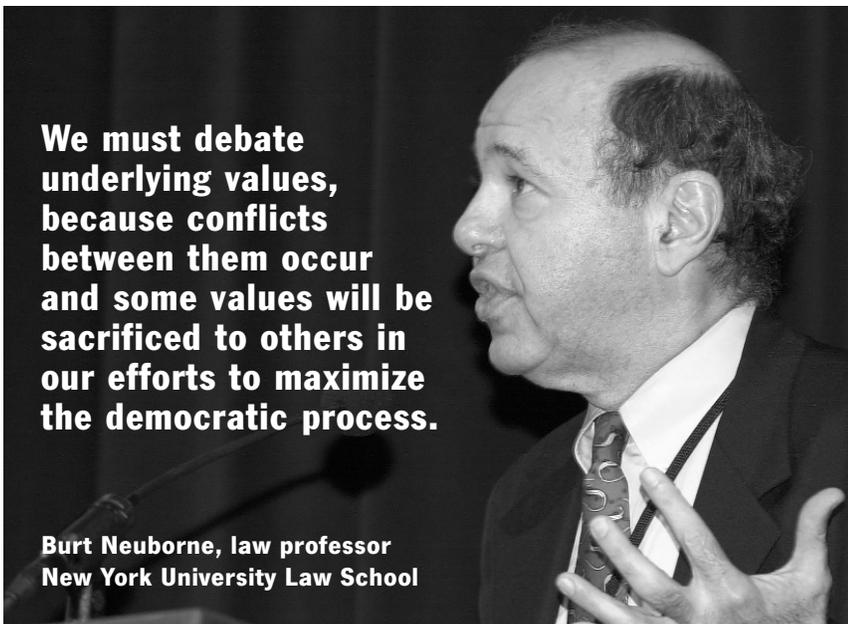
Political equality of citizens is another central value, and democracy is premised on it. Conflicts in a democracy should be based on the merit of ideas, not the power of the people involved. Every democracy must decide how much inequality is tolerable. Political finance systems can have the effect of preserving power in the same hands.

Transparency, or the absence of corruption, is another democratic value. Quid pro quo corruption is obvious, but much subtler forms exist, and learning how to deal with them is essential. One example is the legislator who cannot make independent decisions because he needs to satisfy contributors to his campaign and raise money for re-election.

An informed electorate is also essential for a healthy democracy. If we lower the amount of money in the political finance system, e.g. through limits on campaign spending, we may inadvertently decrease the electorate's knowledge of issues and candidates and thereby hamper informed choice at the polls. An informed electorate also requires disclosure of contributions before the election, not after, so that citizens can more accurately assess how candidates might act after election.

Flexibility is another important value when establishing laws and regulations. Government regulations have unanticipated consequences, and we need to build in safety valves to deal with these. Bureaucratization can also decrease flexibility, so we need to build in measures that will permit spontaneity.

Enforceability is essential. Absent enforcement,



**We must debate underlying values, because conflicts between them occur and some values will be sacrificed to others in our efforts to maximize the democratic process.**

**Burt Neuborne, law professor  
New York University Law School**

whether they be complete, limited, or targeted subsidies. Finally, a mixed system will combine government subsidies with private contributions, thereby maximizing the money in the system without unfairly balancing it.

Reformers may wish to consider how each system serves democratic values. Liberty is one such value, emphasizing the right to be left alone and the respect for human freedom and dignity. It seems to argue in favor of a laissez-faire system but



## FINANCING DEMOCRACY IN THE AMERICAS



Former Colombia President Andres Pastrana and APRA leader Jorge Castillo listen to the plenary presentations.

laws and regulations cease to be respected. This lack of enforcement contributes to negative views of politics and politicians and to public cynicism about democracy. We must develop rules that can be applied in the real world, keeping our feet on the ground and our heads out of the clouds.

Finally, we must consider the effects that reforms have on the status quo. Critics argue that campaign finance reform will serve incumbents. This is particularly true where reforms are designed to limit spending, since newcomers must build name recognition and advertise their programs to become known and compete effectively with incumbents. We want to avoid designing political finance systems that lock in the current array of political options as the only ones available.

These values—liberty, political equality, transparency, an informed electorate, flexibility, enforceability, and impact on the status quo—cannot all be equally honored at once. As we engage in reforming our political finance systems,

Professor Neuborne urged, “We must debate underlying values, because conflicts between them occur and some values will be sacrificed to others in our efforts to maximize the democratic process.”

**Daniel Zovatto** took up the task of explaining the various political finance systems that exist in Latin America, the sub-region in the hemisphere where reforms are now coming under consideration and where lending support could have an important impact for

democracy. Defining political finance as the income and expenditures of political parties, in cash and in kind, for electoral and ongoing activities, Dr. Zovatto elaborated seven interconnected ideas essential to our understanding of political finance. He began by noting that money in politics is both a necessity and a problem. The relationship between money and politics is complex but also key for the health and quality of democracies. The right relationship generates equality, guarantees transparency and the efficient use of public resources, and prevents influence trafficking and inflows from illicit sources.

The topic of political finance was not among those initially treated during the third wave of transitions to democracy, which began in the 1970s, but has been receiving more attention recently as democracies have tried to consolidate. Although it is not a new theme, it has special characteristics that derive from past politics. We must acknowledge the perception, be it correct or not,



## FINANCING DEMOCRACY IN THE AMERICAS

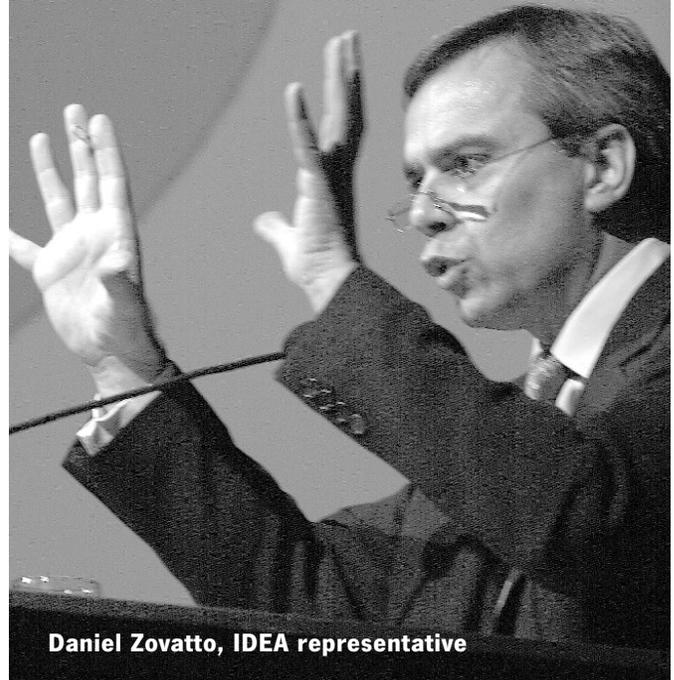
that the cost of politics has risen significantly while the resources of political parties have decreased. This has created a cash-flow problem that parties are tempted to resolve by accepting illegal funds, sometimes from narcotraffickers or organized crime. In short, the pathological relationship between money and politics generates corruption, aggravating the crisis of confidence that Latin Americans feel with respect to democratic institutions and placing parties under suspicion.

Dr. Zovatto then mapped out the various systems in use in Latin America, providing comparative data to the extent that it is known, with the caveat that the laws are not always the best indicators of actual practice.

Seventeen of the 18 Latin American countries studied have mixed systems of political finance, with the exception being Venezuela, where politics are entirely privately financed. Fourteen of those 17 countries have both direct and indirect forms of public finance (such as subsidized media access), while two have only indirect public funding and one has only direct public funding. Of the 15 countries where direct public funding is given, 11 permit it to be used both for electoral activities and for ordinary party development, whereas the other four limit its use to elections. Private funds remain the principal source of political finance. The effect of public finance has been more additive than substitutive, and more study is needed to learn how to strike an appropriate balance between public and private funds.

Allocation systems for public funding vary by country. In nine of the 15 countries, the formula is determined by the number of votes cast, i.e., the number of votes received by parties in national (presidential or parliamentary) or municipal elections, thereby reinforcing the status quo distribution of power. In five countries the distribution of funds is determined by a combined criterion: Part of the

**Political finance reform should be seen as an integral part of broader policy reforms.**



funds is assigned according to the number of votes cast, and part is distributed equally among the parties. In one country the distribution is again determined by a combined criterion: Part of the funds is assigned according to the number of votes cast, and part is distributed according to parliamentary representation. Twelve of the 15 countries require that parties meet some sort of qualification in order to receive funds. Although funding could theoretically be employed to redress inequalities in the political system, such as the relative absence of women candidates and party leaders, such mechanisms have not been used in Latin America.

Thirteen of 18 countries regulate the source of funding. The main prohibitions exclude foreign donations (11 of 18 countries), anonymous donations (10 of 18), and contributions from companies or individuals who hold contracts with the state



## FINANCING DEMOCRACY IN THE AMERICAS

(nine of 18). Seven countries limit the size of private contributions, but these rules are not always enforced. Most countries grant parties cost-free media time on state and/or private media, but this applies predominantly to state-owned media and only during the official campaign period. Nonetheless, access to the media remains inequitable, especially with respect to television. Only 11 of the 18 countries have disclosure laws, and these have varying degrees of thoroughness. Levels of transparency in funding remain low.

In 16 of the 18 countries, it is the electoral authorities who enforce campaign and party finance rules, either alone or in combination with other agencies. Sanctions for violation of these rules range from fines to reduction or suspension of public funds to suspension or cancellation of the party's registration and other measures. Yet the weakness of oversight and enforcement mechanisms is the Achilles heel of political finance in Latin America. Impunity is common, and rules are honored in the breach. Civil society groups and the media have become more active in monitoring compliance, which helps advance enforcement but does not substitute for the formal mechanisms of government.

Dr. Zovatto urged that better use of public funding will increase legitimacy and can generate fairness in electoral competition. This can be accomplished by controlling the factors that increase campaign costs and by practicing transparency and disclosure. We must regulate private finance, but do so realistically so that it is enforceable. We should also guarantee equitable access to the electronic media, especially television, but be careful to balance the integrity of the electoral process with protection of freedom of expression. Echoing Dr. Spehar's concern about gender inequities, Dr. Zovatto urged that we put in place mechanisms to compensate for them. Finally, the administration of public resources should be handled by an independent

agency with integrity, and the enforcement regime should provide for a range of appropriate sanctions.

Aside from these basic outlines, little is known about campaign and party finance in Latin America, and more study is required. That work should be targeted based on what we already know. Campaign finance reform is sometimes called "never-ending legislation" because parties are inventive in finding loopholes or interpreting rules to suit their interests, but that should not make us hesitate to move forward. "Political finance reform should be seen as an integral part of broader policy reforms," Zovatto advised. There are no perfect systems or absolute truths, but there is better policy, and we should pay attention to both the desired and undesired effects of systems in place.

### *The Second Plenary: A Reality Check With Key Groups*

The second plenary session looked at practice and the role of key actors in political finance systems. Speakers came from the business sector that makes campaign donations and is called upon to comply with regulations governing them; the television industry, which is both an information agent and a profit-making enterprise during campaigns; civil society groups who monitor campaign spending and politicians' voting patterns in relation to donations; and researchers seeking to understand how campaign and party finance systems work and can be improved.

**Larry Noble**, executive director and general counsel of the Center for Responsive Politics, asked, "Why do donors give money to campaigns?" and examined the problem of payback in U.S. politics. Most candidates in the United States finance their campaigns primarily from private funds, creating a need to continually generate new funds for re-election, which Noble described as "a constant hunger that must be constantly fed."



## FINANCING DEMOCRACY IN THE AMERICAS

While some argue that donors give to candidates and causes with which they already agree, others argue donors give their support in order to get something in return, notably access to politicians once they reach office. Donors are looking for influence over the political process, including favors that shape lawmaking. For most donors, campaign donations are made as a business decision,

**Most societies believe that giving money for favors constitutes bribery and is wrong. We think politicians should do what is in the greater good, not base decisions on who has given money to their campaigns.**

**Larry Noble, executive director  
Center for Responsive Politics**

justified as an investment that will bring later profits or as a maneuver to counterbalance donations made by a competitor. A “bribery theory” of contributions suggests that donors give money to create influence, but an “extortion theory” of contributions suggests donors respond to demands from politicians simply to assure they can do business at all. It seems likely that at least some businesses give donations in order to improve their access to decision-makers.

“Most societies believe that giving money for favors constitutes bribery and is wrong,” Noble said. “We think politicians should do what is in the greater good, not base decisions on who has given or may give money to their campaigns. This is the heart of the challenge.” Citizens often conclude the donor’s power is much greater than theirs, and that perception creates disenfranchisement and disillusionment. Transparency in campaign finance is key to empowering citizens to make informed choices at the polls. Pre-election disclosure of donations allows citizens to cast their ballot with fuller information about the candidate and his supporters.

The impact of funding lies less in the value of any one contribution than in the collective value of an industry or special interest. It is essential, therefore, not only to disclose donations but to have sufficient information about the donor to aggregate the data. After politicians reach office, citizens can examine policy proposals and nominations for government appointments in light of this aggregate donation data. These data can be collected and presented by nonpartisan agencies and disseminated publicly with the help of technology such as the Internet and via the press and civil society organizations. The public is smart; presented with the numbers, citizens can draw their own conclusions as to how and why things happen. Conversely, when the information on campaign contributions is absent, it is difficult to understand government decisions.

**Alexandra Wrage**, senior counsel international for Northrop Grumman Corporation and founder of the anti-corruption organization TRACE, provided a private-sector perspective on transparency in campaign finance. She agreed that Noble's extortion theory is increasingly appropriate as transnational corruption shifts from supply side to demand side. The shift appears to be driven by the increasingly tight regulations under which multinationals must operate.



## FINANCING DEMOCRACY IN THE AMERICAS

Wrage argued three central points. First, she stated that corporations have the will and the means to comply with reasonable campaign finance laws and regulations, especially in the wake of recent corporate scandals. Second, corporations benefit from greater transparency. Corruption introduces uncertainty and risk into the business environment and results, at best, in legally unenforceable agreements. In addition, corrupt transactions undermine free trade, foster a permissive atmosphere for other business crimes, undermine employee confidence in management, and put a company's value and reputation at risk. Finally, corporations have the tools for compliance available to them because of laws, such as the U.S. Foreign Corrupt Practices Act, under which U.S. firms have operated for more than 25 years. The tools developed for compliance with these laws would translate readily to compliance with campaign finance laws.

Under existing anti-corruption laws, U.S. companies have strong incentives to establish, fund, and enforce compliance programs for their employees and business intermediaries. The presence of such programs can help company executives detect and deter rogue employees who may otherwise be tempted to engage in corrupt acts that they perceive could benefit the company or themselves.

In establishing comprehensive compliance plans, multinational corporations frequently choose the highest common denominator of the laws in all the countries where they work and implement those rules across the board in order to avoid the problems inherent in compliance programs that differ by country. "If we proceed together, so that no company is required to go first or go it alone," Wrage said, "most multinational corporations will be committed partners in implementing compliance with campaign finance laws."

Wrage added: "Corporations are not idealistic; they have legal obligations to maximize shareholder

**Most multinationals will be both serious and effective in their efforts to increase transparency in political contributions.**

**Alexandra Wrage**  
Senior counsel international  
Northrop Grumman Corp.



returns. They operate within a strict regulatory environment, however, and if they have detailed guidelines and clearly defined goals, you will find that most multinationals will be both serious and effective in their efforts to increase transparency in political contributions."

One type of business that drew special attention at the conference was the media, and Chilean Megavision Chairman **Ricardo Claro** shared his perspective on the media's role in campaigns. He characterized the media as public interest agents, not mere businesses. His television channel's editorial line is intended to increase respect for citizens, government, the Catholic Church, and Chile's economic system. There are laws governing television, and owners understand that television services must abide by the law and show permanent respect for such national values as democracy, freedom, peace, and the family.



## FINANCING DEMOCRACY IN THE AMERICAS

During campaigns in Chile, parties and candidates are prohibited by law from purchasing political advertising on television. They present their ideas during the time slots given by the media free of charge, allocated in accordance with each party's political weight in the legislature. These spots make general reference to candidates and the party platform. Further information flows to the public in the form of televised news programs, panels composed of party representatives airing their opinions, and candidate debates of the issues. "Sometimes television can create polemics," Claro conceded, "but the channels should provide citizens with impartial and independent information." Television owners know they have an obligation to respect pluralism and provide balanced news coverage that features all the candidates.

Television news contributes to public knowledge of the candidate and can sell a candidacy by fostering name recognition, much like selling a brand. However, political programs are unpopular with the viewing audience and carry low ratings, leaving television channels with little incentive to feature candidates outside of required time slots. Moreover, there is no consistent pattern demonstrating that television time increases a candidate's chances of victory; indeed, in Chile's 1997 election, the candidates who appeared most frequently on television tended to lose their races.

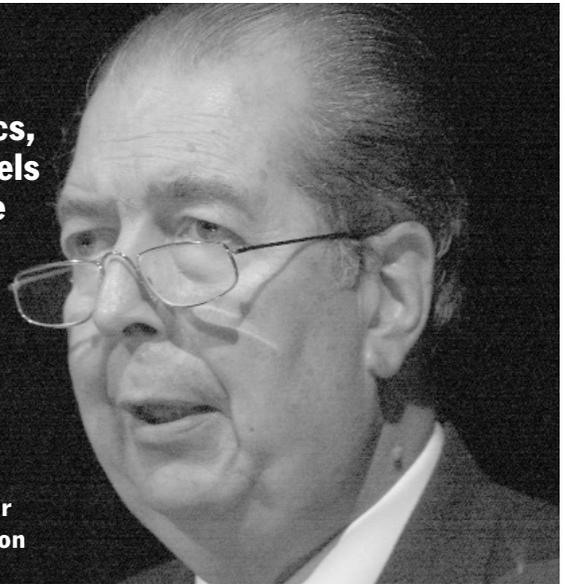
Advertising is a lucrative business. Newspaper circulation has declined so that only 10 percent of Chileans read editorials, while television and radio audiences have grown. Television advertisements are expensive to produce, and television airtime usually costs much more than radio. However, during elections television advertising is free and limited, while radio can charge for publicity in

unregulated amounts. Thought should be given to this inequitable side effect of Chile's advertising prohibitions for broadcast media. Overall, however, Chile's media regulations are useful in serving the public interest, despite having caused some dislocation and painful restructuring in the television industry.

**Christian Gruenberg**, director of international relations for Poder Ciudadano, demonstrated how civil society organizations (CSOs) can contribute to improving campaign and party finance. "The regulation of political finance should balance meeting the economic needs of the political parties for

**Sometimes television can create polemics, but the channels should provide citizens with impartial and independent information.**

**Ricardo Claro, chair of Chile's Megavision**



developing their activities and reducing the possibilities of corruption and capture of those parties by economically powerful groups," Gruenberg said.

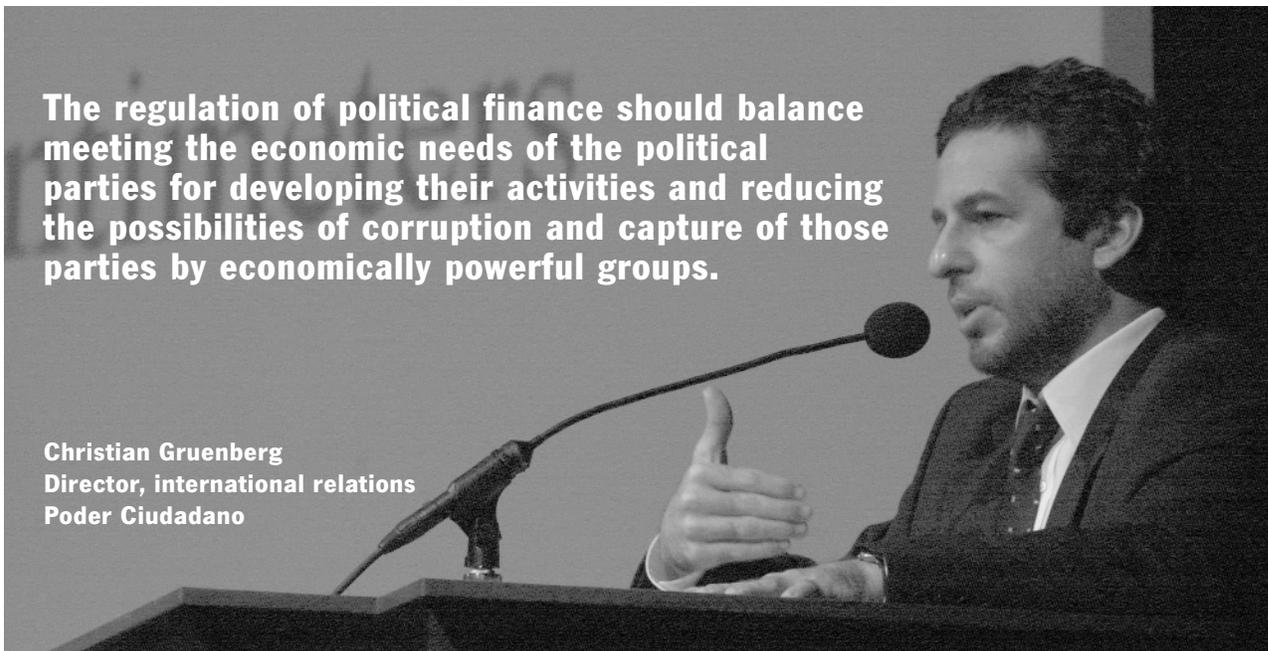
Gruenberg reported on a collaborative effort by CSOs to measure and monitor campaign spending in Argentina, Brazil, Chile, Mexico, Peru, the Dominican Republic, Costa Rica, and Venezuela. The organizations involved work with Transparency International, the Lima Accord group of election monitors, and the Inter-American Network for Democracy. The results contribute to Transparency



## FINANCING DEMOCRACY IN THE AMERICAS

**The regulation of political finance should balance meeting the economic needs of the political parties for developing their activities and reducing the possibilities of corruption and capture of those parties by economically powerful groups.**

**Christian Gruenberg**  
Director, international relations  
Poder Ciudadano



International's regional project in Latin America, whose goals are to develop a tool kit of mechanisms for improving transparency, conduct research and diagnosis, help develop and uphold international standards, and pursue collective action among civil society groups.

The groups adopted techniques for monitoring political party spending on mass media. Methodologically, this is a source of data to which citizens have access. Strategically, the media are important because advertising is a major cost in most campaigns. Television is particularly vital to the political equation because it is the institution in which citizens have the second highest confidence ratings (after the church), according to Latinobarometro polling data.

By measuring the length of publicity spots on television and radio and then calculating their cost based on the published prices for airtime, civil society groups can measure a portion of the media expenses of a given campaign. Similarly, they can measure the space bought in newspapers and calculate their cost.

One finding is that where official advertising is

not banned during election campaigns, candidates from the governing party can use public funds for what is, in practice, electoral advertising. For example, government advertisements dropped 78 percent after the April 2000 presidential election in Peru, 93 percent after the October 1999 presidential election in Argentina, and 50 percent after the October 2001 presidential election in Argentina. The patterns suggest that governments are indeed contracting additional advertising in the months prior to the vote, which may reflect an indication of an effort to affect the outcome by promoting the party in power.

Civil society studies suggest that candidates are underreporting their expenditures. As measured by civil society groups in Argentina, media costs alone in the Duhalde campaign went 34 percent over the amount his campaign reported spending, while De La Rúa's spending appeared to be 44 percent over his claims and Cavallo 47 percent above what he had reported. Since political parties typically receive a 40 percent discount, the calculations by civil society may have been too high, but the figures still



## FINANCING DEMOCRACY IN THE AMERICAS

show some underreporting. The same data for the mayoral race in Buenos Aires in 2000 showed differences of more than 60 percent between reported expenditures and measured cost of media time for the top three candidates, clearly indicating underreporting even assuming the discount.

Civil society groups attempting to measure the impact of various systems of campaign finance noted the direct relationship between access to free media and spending levels. In Chile, where parties and candidates are prohibited from purchasing paid television advertising, campaign spending is far lower than in other countries, including smaller countries. In Brazil, which also bans purchase of television advertising, spending per capita is also lower than in Venezuela, Peru, Mexico, the Dominican Republic, Argentina, or the United States. This lends support to the thesis that bans on paid political advertising may be an effective way to limit campaign spending without formally placing ceilings on expenditures, and bans are comparatively simple to enforce.

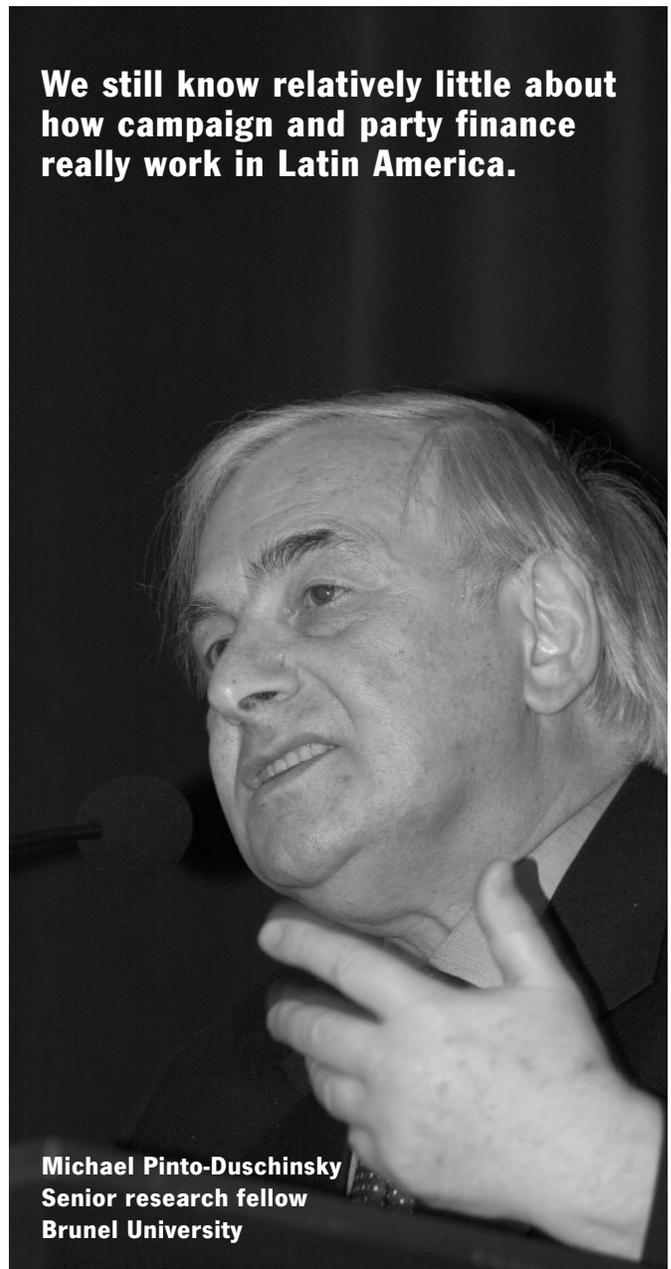
The panel concluded with cautionary remarks by **Michael Pinto-Duschinsky**, who noted that we still know relatively little about how campaign and party finance really work in Latin America and warned that some of the prevailing assumptions are probably false and are used as the basis for controversial policy prescriptions. He pointed to the regional tendency to focus on what the laws say ought to happen rather than what really does.

Meanwhile, the research that has been completed creates serious doubts about the conventional wisdom on the United States and United Kingdom that overall spending on politics is skyrocketing. Pinto-Duschinsky's own research on the United Kingdom and that by a group of researchers at the Massachusetts Institute of Technology on trends in political spending in the United States show that when statistics of overall political spending

are adjusted for inflation, the increase is small. The research covered local as well as national campaigns, as well as the costs of party organization, and suggests that political spending as a percent of gross domestic product has been flat for decades.

In addition, a recent piece of research on political funding in Latin America by Dr. Kevin Casas finds

**We still know relatively little about how campaign and party finance really work in Latin America.**



**Michael Pinto-Duschinsky**  
Senior research fellow  
Brunel University



## FINANCING DEMOCRACY IN THE AMERICAS



**Senator Trevor Munroe of Jamaica's governing People's National Party and Senator Bruce Golding of the opposition Jamaica Labour Party sit together to learn about options for political finance reform.**

that in Costa Rica, for example, the costs of television advertising in national campaigns is no more than 10 percent and that political costs have not been escalating. In the narrow field of Latin American laws and subsidies relating to parties and elections, we know more than we did just five years ago when this topic gained salience in the hemisphere. But actual patterns of political income and spending remain a matter of conjecture. As Alonso Lujambio of Mexico's Federal Electoral Institute has pointed out, we need to know not only about the costs of television advertising but also about informal costs such as gifts of bags of beans by candidates to electors in poor rural areas as inducements for voting for them.

"The evidence seems to point to the surprising conclusion that old-fashioned, face-to-face politicking costs more than the new mass marketing, media-

heavy approach," says Pinto-Duschinsky. He concludes that research should cover not just national legislative races and presidential elections; it should embrace all kinds of campaigns, including local elections and party primaries as well as the expenses of parties between elections. We should expand the scope of research beyond the costs of television and other forms of political advertising to include investigations into the forms and extent of vote-buying, the use of state resources for partisan campaign purposes, and the costs of party organization and of traditional forms of machine politics. This research effort should be backed up with resources and should welcome the efforts of younger scholars from a variety of countries in Latin America.



## FINANCING DEMOCRACY IN THE AMERICAS

### KEYNOTE SPEECHES

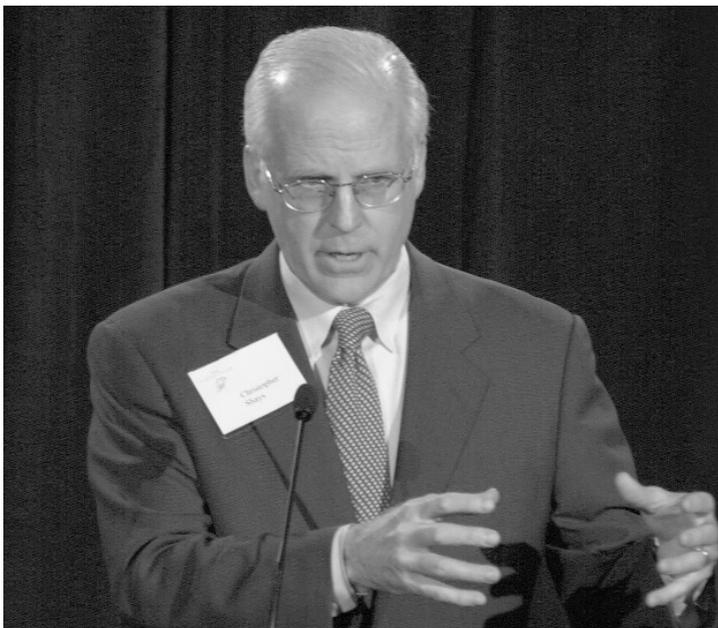
Three keynote addresses were offered at the opening night dinner. Congressman Christopher Shays, who played a leading role in sponsoring campaign finance reform in the United States, commented on the challenges involved in building legislative coalitions for reform among legislators whose campaigns succeeded under the status quo rules. Chilean Minister of the Interior José Miguel Insulza spoke about the emerging consensus to regulate political finance in his country. Bolivian Vice President Carlos Mesa emphasized the limited room for maneuver that politicians have with respect to reforming policy in poor societies where weak states are trapped between international pressures for austerity, confrontational opposition parties, and demands for favors from their own coalition members and campaign supporters.

Congressman Christopher Shays acknowledged that campaign finance reform is not easy. In the United States it can cost legislators their jobs, and

elsewhere it can sometimes cost more than that. Incumbents are disinclined to change political finance rules that helped get them elected, so campaign finance reform often requires that reformist legislators offend their peers and their leaders and even lose friends.

In the United States, it helps that legislators are accountable to their constituents. Congressmen do have allegiance to their party, but ultimately are fueled to do what is right by their allegiance to the voters. “Your country is too important and the people you represent are too important for them to see anything less than your best effort and your total and complete conviction that you are willing to lose an election over this issue, and maybe even more, that you are willing to press the most politically powerful people,” Mr. Shays said.

It also helped that the particular reform he was seeking to implement, known as the McCain-Feingold bill after its Senate sponsors, was in essence a restoration of three earlier laws that had



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**U.S. Congressman Christopher Shays**



## FINANCING DEMOCRACY IN THE AMERICAS

limited corporate, union, and individual private donations. Posing the question of campaign finance reform in these terms, 80 percent of Mr. Shays' constituents agreed that our democratic process was being harmed by unlimited contributions from unions and corporations.

Legislators can always envision a better reform bill than the one under discussion and can reject it on the excuse that it is too weak, so consensus-building becomes essential. In the United States, nongovernmental organizations pressuring for campaign finance reform became important allies, giving the bill their stamp of approval.

And last but not least, leadership matters. Newt Gingrich, the Republican head of Congress, and President Bill Clinton had publicly committed to campaign finance reform in a bipartisan gesture and could be held to that promise. John McCain also exercised essential leadership by drawing attention to this issue against the best advice of his staff and despite poorly designed opinion polls that suggested this was not an important issue for the public. Congressman Shays attested that when he needed motivation he looked to historic leaders such as George Washington who rejected a third term because "he knew that the best contribution he could make was to have people depend on a process and not on a person."

**Minister José Miguel Insulza** recognized that there is a new energy around the topic of political finance in Chile, driven in part by unfortunate scandals.

Currently, Chile has few campaign and party finance rules. "The reality of political financing in my country is that it is, at best, largely unregulated and sometimes plainly illegal," he said. True, small amounts of free airtime are provided to parties and independent candidates on television, but more of a campaign is needed, and so each candidate is left to finance his campaign however he or she can.

**I believe that this is by far the largest weakness of Chilean democracy and that the delay in facing it has had and continues to have serious consequences.**

**José Miguel Insulza**  
Interior minister, Chile

The electoral law does not cover campaign finance, and the political parties' law has only minor rules about acceptable sources and light disclosure requirements. Worse, the law is not enforced, so accounts reported blatantly understate real expenditures.

A culture of secrecy has developed around campaign finance. "Nobody wants to admit that most of the money comes from private sources with no legal regulation, avoiding the taxation system, and many times from companies that will later declare this money as an expense," he said. This unruly and shadowy form of finance exposes candidates and parties to undue influence of private donors.

"I believe that this is by far the largest weakness of Chilean democracy and that the delay in facing it has had and continues to have serious consequences," Minister Insulza asserted, referring to the lack of a strong regulatory framework for political finance. Campaign finance reform efforts were rejected by the opposition several years ago. Legislation introduced in the lower house was accepted in general form, but each article was weakened to the point



## FINANCING DEMOCRACY IN THE AMERICAS

where the law could have no impact. Now the Senate has approved in committee a stronger version that restores much of the initial intent, and public consternation over recent scandals has created a window of opportunity for getting this meaningful legislation passed.

There are a variety of reasons why legislators are reluctant to pass strong political finance legislation. Some are concerned that it will lead donors to withdraw their contributions. Others do not want to publicize the enormous difference in resources between certain candidates' campaigns. For many, it simply was not a priority issue until recently. But underlying these is a more fundamental problem of an ideology that despises politics and sees no role for political parties. There is a vision of politics as corrupt and useless, rejecting parties, campaigns, government, and public officials. This view is encouraged by some business and media leaders whose preferred approach to politics is to condemn it even as they themselves run for office. Thus the citizenry is not interested in giving public finance to campaigns and parties. This is a negative development everywhere on the continent.

Contextual events now offer a solution, having placed political finance reform squarely on the agenda. The problem is older than the current government, but it is we who must offer solutions, beginning with respect for the ongoing court cases and decisive action to modernize the state and correct the problem. President Ricardo Lagos, like President Frei before him, required all high officials to declare their net worth and demanded full transparency with respect to income so that government officials only receive one salary. The governing party also reached accord with opposition parties to push forward legislation on political financing of campaigns and elections, on the regulation of lobbying, on declaration of assets and conflicts of interest by elected officials, and on merit-based

selection of the civil service, among other things. The proposal is for legislation that will give partial public financing, place limits on spending and on private donations, require transparency in private donations, and assure government neutrality in elections. The definition of these issues is crucial for their effectiveness. Minister Insulza warned that "[i]f the public financing is insignificant, if the limits are too high, if transparency is restricted to only a few donors, and if there are no institutional forms of enforcement, the problem of political financing in Chile will not be solved, and it must be solved for the sake of our democracy."

On May 20, 2003, two months after the conference, the Chilean Congress approved the country's first legislation on "limits, public transparency, and financing of politics," which will be applied in the next municipal elections in December 2004.

In a broad-ranging intellectual tour de force, **Bolivian Vice President Carlos Mesa** explained the roots of Bolivia's recent political crisis and explored its significance for other countries in the region. The police revolt in La Paz on Feb. 12, 2003, resulted in a confrontation with the soldiers guarding the Presidential Palace, leading to the tragic death and injury of many citizens and forcing us to ask how such an event could occur in a country that has been democratic for two decades.

Bolivia adhered to structural adjustment policies faithfully, and its citizens were forced to tighten their belts in spite of their predominant poverty. The capitalization of the five major state-owned enterprises, the pension reform, popular participation, and the education reform marked the main reforms of the first half of the 1990s. The citizenry still awaits the harvest of the positive results of these policies, and today it is very difficult for politicians to insist on their requests for new sacrifices from the population. We must admit that there is no correlation between political practice and the



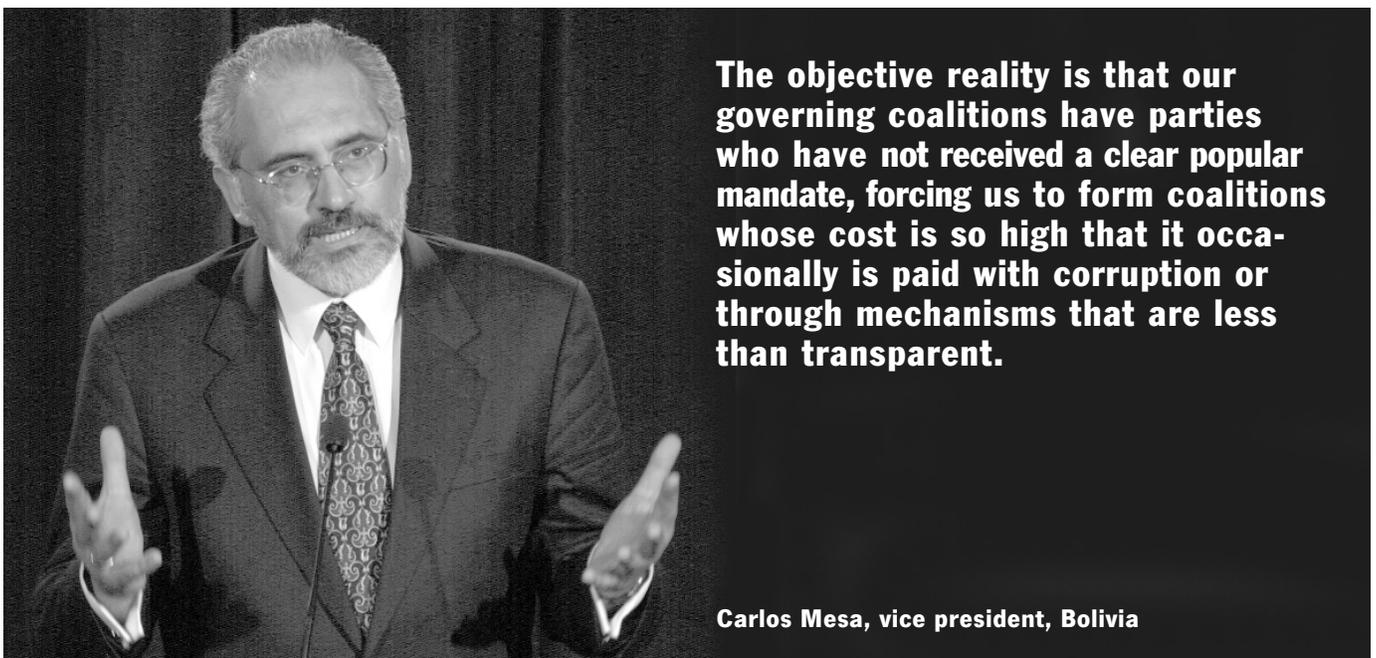
## FINANCING DEMOCRACY IN THE AMERICAS

national economy. The economic reform set forth a new model to replace statism, but parts of that model are not yielding the expected results, inasmuch as high levels of dependence and economic fragility persist. We must overcome this situation or run the risk of a social explosion. The current administration has the responsibility to respond to these challenges, but it is also the responsibility of those who conditioned the current macroeconomic policies, not taking into account flesh and blood citizens who must bear the results of those policies.

The violent incidents that occurred in La Paz took place in an explosive context whose contours were set by the demands of the International Monetary Fund (IMF) and the government's need to compromise between social obligations and budgetary constraints. In the wake of that tragedy, the IMF rapidly reached agreement with the government on outstanding differences that had bogged down negotiations for six months, showing that flexibility is economically viable. It should not take bloodshed to generate such flexibility.

In Bolivia there has also been a breakdown of state-society relations that is echoed in other countries, Vice President Mesa said. Political parties lack credibility and are thought by the majority of the public to be synonymous with corruption, refusing to change their structure or mentality with respect to their responsibility in government. Political parties that should be the protagonists in this democratic scenario insist on privileges that divorce them from their base and produce increasingly conflictive state-society relations. We must also keep in mind that the mass media persist in maintaining a very hard critical stance that is often unfair when reporting on the government's handling of day-to-day affairs, fueling a pessimistic viewpoint that oftentimes presages societies' present and future doom.

In Bolivia there is little public finance for campaigns (and in spite of this fact, public opinion considers it excessive) and even less control over use of the media and clear rules of the game, so that mounting a political campaign requires using one's



**The objective reality is that our governing coalitions have parties who have not received a clear popular mandate, forcing us to form coalitions whose cost is so high that it occasionally is paid with corruption or through mechanisms that are less than transparent.**

Carlos Mesa, vice president, Bolivia



## FINANCING DEMOCRACY IN THE AMERICAS

own resources from a successful business or else accepting donations from the private sector. Companies that donate funds often expect privileges in return, including special access to government contracts. This restricts the freedom of any elected official who finds his policy constrained by the need to repay certain debts.

In countries where no single party can obtain a majority in the legislature, agreements with minority parties who can leverage their votes are negotiated in exchange for political posts. “The objective reality is that our governing coalitions have parties who have not received a clear popular mandate, forcing us to form coalitions whose cost is so high that it occasionally is paid with corruption or through mechanisms that are less than transparent,” Mesa mentioned. The financial structure of political campaigns imposes a logic that institutionalizes the allocation of high- and medium-level government posts on the basis of political affiliation and not necessarily based on merit. Mesa warned that if political parties cannot forego that logic, they will lose legitimacy and be replaced by other parties, as has occurred in many countries.

The result of this form of party politics and relationship with society leads to “a growing process of dissolution of the state and dissolution of the concept of compliance with the law.” State-society relations are characterized by confrontation. The link between the opposition and the state is expressed not in legislative bargaining but in blockades and strikes that result in an almost permanent state of emergency during which no policy-making gets done. Confronted with the need to defend the constitutional order in the face of demands that are often irrational or excessive and that the state cannot possibly meet, government leaders are sometimes forced to use repression, which creates a human rights problem.

In a historic watershed, Bolivia’s indigenous population now has significant representation in the legislature, led by the coca-grower advocate Evo Morales, whose electoral support was barely 1.5 percent below that of President Gonzalo Sánchez de Lozada. In turn, a difficult situation has emerged because the United States, which places drug policy at the top of its foreign relations agenda with Bolivia, has labeled the opposition leader a criminal drug trafficker. Inasmuch as government, not Morales, is the international interlocutor, an uncomfortable triangle has been created in which legislative consensus is lost as the government tries to pursue policies within a framework acceptable to external as well as internal pressures. Where political parties do not represent the citizenry, adhering instead to their own pursuit of privilege and power through tactics such as roadblocks, Congress cannot mediate state-society relations.

Vice President Mesa concluded by urging that we rethink the “end of history” thesis, which posits that the decline of competing ideologies has left market economics and liberal democratic politics as the inevitable path for development. We cannot accept the status quo for lack of better ideas. These hypotheses—whose value cannot be ignored—have clearly proven to be insufficient. The world is mired in confusion about how to resolve problems such as those generated by the contradictions he described. Hence, today more than ever, Latin Americans must propose their own solutions.



## FINANCING DEMOCRACY IN THE AMERICAS

## WORKING GROUPS

The heart of Carter Center conferences is the working groups, where participants break up into subgroups of roughly 20 people to share their experiences with respect to specific problems and make practical recommendations for improvements.

**Topics:** To support the ongoing work of other organizations, the Carter Center agreed to use the four themes that the OAS had identified as important in their work on campaign and party finance and party strengthening. These were access to the media, the nature of funding systems (public, private, and mixed), disclosure of donations and expenditures, and enforcement. We amplified those themes slightly, asking about the role of the media beyond the access issue and linking disclosure to limits on campaign contributions and expenditures to emphasize that such ceilings cannot function without disclosure.

**Preparation:** The Carter Center prepared a lengthy briefing book and sent it in advance to the participants so that they could have background information with which to engage the discussion. Where the Center's research revealed gaps in the literature, we attempted to remedy those gaps by generating papers on access to information as a means to obtain disclosure and on patterns of party funding in nonelection years. To assure that the working groups were focused and productive, Carter Center staff members drafted guidelines for discussion and issued them to participants in both English and Spanish. The guidelines identified points of departure to avoid rehashing old debates and posed questions to direct discussion toward innovative ideas.

**Participants:** The working groups were composed of participants from many walks of life, assuring that various viewpoints were presented. Each group included a core of experts to act as a resource for the discussion. Participants from the sectors with the most at stake on each topic were well-represented. For example, there was a concentration of media owners, editors, and journalists in the group examining the role of the media and a concentration of business leaders in the group on disclosure, because the private sector is a major donor and disclosure rules would likely apply to them. In addition, several members of the Council of Presidents and Prime Ministers of the Americas were requested to participate in each group, and as former candidates with hands-on experience in campaign finance and party-building, they took an active role.

**Procedures:** A moderator was appointed for each group, and a rapporteur took notes. The morning session was dedicated to diagnosing the problems related to each topic, and the afternoon session to developing recommendations for action at three levels—the international system, governments, and civil society. In each group, two experts offered brief introductory remarks to stimulate discussion. Participants then set to work, articulating their concerns and debating controversial points with a frankness encouraged by the fact that the working group discussions were not for attribution. Moderators closed the groups around the diagnosis of the problem and recommendations for action, and these were summarized by rapporteurs and presented at a report-out session the following day.

The points of departure and guideline questions for each working group are presented in the following pages, together with opening presentations, diagnostic analysis, and recommendations produced by each group.



Media  
is part  
of the  
problem  
and part  
of the  
solution.

WORKING GROUP ON  
THE ROLE OF THE MEDIA



## FINANCING DEMOCRACY IN THE AMERICAS

# THE ROLE OF THE MEDIA

### *Discussion Guidelines*

#### *Points of Departure*

The group should bear in mind key messages from the plenary sessions and background papers, such as:

- ◆ A diversity of rules exists with respect to media access, including unregulated systems and those where regulation is prohibited as a limit on press freedom.
- ◆ Countries differ in treatment of television advertising, including some in which media time is allocated on public television stations, those where it is also allocated on private stations, and those where purchase of spots beyond allocated time is prohibited.
- ◆ Countries requiring television or radio to provide free time for public interest advertisements, including campaign advertisements, often do so by

invoking a legal claim to public ownership of the airwaves and do not always offer compensation to the private media.

- ◆ Where television advertising beyond designated public interest spaces is prohibited, television stations lose an important source of revenue.
- ◆ Television stations frequently offer discounts to candidates and parties but are rarely transparent about precisely what price is paid, complicating civil society efforts to determine whether candidates have superseded spending limits.
- ◆ Some countries require discounts be reported as campaign contributions, but enforcement of such provisions is difficult.

#### *Diagnostic Questions*

*Is the increased use of expensive television advertising the most important factor in campaign costs?*

It has been argued that television advertisements are the major expenditure for most campaigns, at least in national races, and that the increasing importance of the television media for reaching

voters explains rising campaign costs. Others contend that campaign costs are sometimes high even where purchase of television ads is prohibited (e.g. Japan), and therefore the rising costs of campaigns must be explained by other factors, such as the form of electoral system in use. In addition, traditional mobilizing factors (rallies, caravans, door-to-door canvassing) remain important in many countries and can be expensive. Finally, old-fashioned patronage and vote-buying can drive up costs tremendously.

**George Vickers from the Open Society Institute chairs the working group on the role of the media with advice from former La Paz Mayor Ronald Maclean-Abaroa.**





## FINANCING DEMOCRACY IN THE AMERICAS

*What aspects of media coverage are important in determining electoral outcomes? Is balance in news coverage more important than political advertising? What is the relative power of television versus radio or print press?*

The media are typically depicted as facilitating agencies who present information about a variety of candidates and parties. Others argue that it is more accurate to view them as powerful actors attempting to influence the outcome of the vote. These critics point to affiliations between certain media and individual candidates, including family and social class ties, and to partial news coverage that can favor or disadvantage individual candidates. In addition, media decisions about whether to accept political advertising for a candidate, and at what price, may affect the candidate's chances. Media professionals respond that they are not so powerful; on the contrary, they are subject to substantial pressure from candidates and parties, especially those who hold government office. They point out that many media outlets are suffering financially and therefore vulnerable to government taxation and withdrawal of government advertising.

### **Exploring Alternatives**

*Will limits on purchase of television advertisements harm the public's ability to make an informed choice at the ballot box?*

One purpose of campaign advertising is to assure that voters know who the candidates are and distinguish sufficiently among them to make an informed choice based on party platforms, character, etc. Without informed choice, elections are not considered to meet international standards. Chile and Brazil are countries where purchase of television advertising is prohibited. Does this affect voters' capacity to make an informed choice?

*Where media time is allocated to candidates and parties, what guidelines should govern the formula for allocating time?*

Free media slots are allocated based on a variety of formulas, some of which provide time based on past party performance (seats in the legislature) and others of which emphasize equality among registered parties in each race. The former method favors the status quo, and the latter makes it easier for new parties to form. A more progressive method might give new parties additional time, because they have a greater burden in establishing name recognition than do established parties. The formulas available reflect value choices, such as equity, fairness, and stability.

*What can be done to improve the media's ability and willingness to investigate violations of campaign finance regulations in an objective manner? Specifically, will access to information laws help?*

Most investigative reporting is conducted by print press. Even so, few newspapers in Latin America and the Caribbean have specially trained investigative units that permit long-term investigations and pay journalists on salary rather than by the word. Violence against journalists involved in corruption investigations is still a problem. So-called *desacato* laws exist in over a dozen countries, pressuring journalists to self-censor. Nonetheless, important investigations of campaign finance scandals have taken place, including the Samper case where illicit funds were alleged to have been channeled from narcotraffickers to a presidential campaign. On the other hand, false allegations of wrongdoing in campaign finance are sometimes made as a political tactic. In the absence of strong judicial systems, people are "tried in the press," losing their reputations. The creation of false scandals may increase newspaper sales but also increases public skepticism about democracy. New access to information laws may provide journalists with hard information that will preclude speculation on political donations and expenditures. (See the background paper on South Africa for the Disclosure working group.)



## FINANCING DEMOCRACY IN THE AMERICAS

*Working Group Findings**Opening Remarks*

The session began with comments from a working journalist and an NGO leader who measures the impact of television on campaigns.

The journalist urged that we clarify where corruption has entered the democratic process. He lamented the absence of laws and regulations governing campaign and party finance as well as transparency more generally, particularly laws pertaining to conflict of interest. Without a legal framework, politicians engage the private sector in ways that do not reflect the public interest. We need to know who is financing campaigns if we are to understand the real objectives of those campaigns, and this need to know implies the need for disclosure of contributions. Voicing the declining confidence that citizens have with respect to democratic institutions, he did not see a positive future, especially where citizen tolerance for corruption is high and increasing.

The NGO leader explained her group's program for monitoring television coverage to measure the level of coverage candidates received beyond the direct publicity they present. Rather than demonstrating balance and equal treatment of candidates in news coverage and other informational programs, the data show a chaotic coverage pattern. Some candidates received more coverage than others, potentially bolstering name recognition, whereas others—particularly independent candidates—got no coverage at all. The quality of coverage also varied, often showing only one side of an issue, rendering debates incomplete.

**Jamaican Oliver Clarke, publisher of *The Gleaner* newspaper, listens to a comment from Nicaragua's Channel 2 television owner Marta Pasos de Sacasa.**

*Diagnosis of the Problem*

The use of media in politics is highly complex, especially during campaigns, and the working group explored the many aspects of that role. They noted that while politicians come and go, the media remains. Most agreed that the media are enormously powerful, but heavy political advertising does not guarantee election. Participants arrayed themselves along a continuum from those who felt the media were in essence a business and those who viewed media as an information agent with social responsibilities. In many countries the media have been privatized, and while some participants felt that contributed to freedom, others felt that media provide a public service operating under a government license and, therefore, should not be treated as strictly private. The introduction of cable and satellite television as well as the ability of media to broadcast across national boundaries complicates regulation.

Despite differing points of emphasis, participants were able to agree on the following:





## FINANCING DEMOCRACY IN THE AMERICAS

- ◆ Corruption is a societal problem, not merely a political one. Media is part of the problem and part of the solution.

- ◆ High media costs, particularly for television advertisements, are part of the corruption problem.

- ◆ Although campaign spending and coverage are important, the issue is not merely the amount of media time used but also the efficiency with which it is used.

- ◆ Successful campaigns are not always those that spend the most money.

- ◆ It is vital to increase transparency in media use during campaigns.

- ◆ The role of the private sector in connection to media use is especially important.

- ◆ Increasingly, the role of foreign media is important in some countries.

- ◆ Although television is the most important campaign media, radio and the Internet merit attention as well.

- ◆ Ultimately, regulation of media and campaign expenditures must be tailored to individual countries.

### **Recommendations**

The working group on the media reached consensus on measures that could improve political finance in the Western Hemisphere. These are:

#### **Recommendations to the international system (to the international community of democratic nation states and multilateral organizations)**

- ◆ Strengthen the role of the OAS Rapporteur for Freedom of Expression in promoting transparency of political campaigns.

- ◆ Support and study the impact of new technologies such as the Internet on political campaigns as well as the relation between international and national media coverage.

#### **Recommendations to governments, noting whether this is a recommendation to the executive branch or to the legislature**

- ◆ Legislatures should regulate fair and equal access by political parties to the media for political advertising.

- ◆ Legislatures should require disclosure of media spending by political parties and of rates charged by media for political advertising.

- ◆ Legislatures should adopt freedom of information laws that ensure transparency in the use of state resources for campaign purposes.

- ◆ Legislatures should ensure that libel laws not hamper effective campaign coverage by the media.

#### **Recommendations to civil society, including private sector organizations and nongovernmental organizations**

- ◆ Support and encourage the development of a code of ethics by political parties and citizen groups that, among other things, limits campaign expenditures and ensures transparency.

- ◆ Support and encourage the development of voluntary standards by the media regarding balanced campaign coverage and the separation of reporting from opinion.

- ◆ Support and encourage the capacity of NGOs and civic groups to monitor media coverage of campaigns.

- ◆ Alongside multilateral organizations, support and study the impact of new technologies such as the Internet on political campaigns as well as the relation between international and national media coverage.



Systems  
will differ  
but should  
promote  
common  
principles.

WORKING GROUP ON PUBLIC, PRIVATE,  
AND MIXED SYSTEMS OF  
CAMPAIGN AND PARTY FINANCE



## FINANCING DEMOCRACY IN THE AMERICAS

# PUBLIC, PRIVATE, AND MIXED SYSTEMS OF CAMPAIGN AND PARTY FINANCE

### *Discussion Guidelines*

#### *Points of Departure*

The group should bear in mind key messages from the plenary sessions and background papers such as:

- ◆ The values and principles at stake in campaign and party finance and the ways in which public vs. private finance expresses those principles
- ◆ The diversity of systems within the Western Hemisphere and the likelihood that no single system is appropriate for all countries
- ◆ The relative paucity of information about campaign finance, party finance, the cost of administering elections, and the consequent need for more research
- ◆ The increasing concern in most countries about the weakness of party systems

- ◆ The special difficulties faced by developing countries in funding democracy in a context of poverty and inequality
- ◆ The costs associated with internal democratization of political parties
- ◆ The evidence from Japan, where campaign costs have been extremely high despite the prohibition on purchase of television advertisements and a short campaign period

#### *Diagnostic Questions*

*Are campaign costs rising?*

Some studies suggest that in the United States and Britain campaign costs have not risen significantly in real dollars and may have declined as a percentage of GDP. The data on Latin America, Canada, and the Caribbean are less complete, but participants may have some experience to lend in

answering this question. Even if the relative costs are not increasing, is the rise in absolute costs adverse for democracy, especially in countries where there is a large and increasing gap between rich and poor?

*What is the nature of a campaign donation transaction? How does finance really work? Is there any evidence that public funding reduces corruption or reduces the amount of private funding sought by parties and candidates?*

Because campaign donations are sometimes illicit, the nature of such transactions is ill-understood. Recent studies have very frankly treated donations as a form of contract between the donor and the candidate/party receiving the money, arguing that the contract cannot be enforced by law but is enforced through tit-for-tat patterns of giving: Candidates who do not honor



**Former Uruguay President Luis Alberto Lacalle shares his campaign experience with members of the working group on comparative political finance systems.**



## FINANCING DEMOCRACY IN THE AMERICAS

their “debts” to donors are not given further finance. The weakness of parties and party systems makes such implicit quid pro quos viable, whereas donors cannot afford to make demands of strong parties in stable systems. Is the only solution to strengthen parties, or are there systems to reduce the appearance and reality of quid pro quos?

*Does television drive campaign costs?*

It is often asserted that the apparently rising cost of campaigns is explained by (1) the high cost of television advertisements and (2) television’s increasingly important role in campaigns in the largely urban populations of the Western Hemisphere. However, there is conflicting evidence from two countries where purchase of television advertisements has not been permitted, Chile and Japan. In Chile, campaign costs are reportedly low, whereas in Japan they are high, likely driven by patronage costs.

*Do electoral systems determine campaign costs and patterns of spending?*

The political science literature has increasingly focused on electoral systems as determinants of both campaign costs and patterns of funding (how it is given and to whom). Where more than one candidate from any given party may run for election, candidates cannot differentiate themselves by platform and, therefore, build highly personalistic campaigns that drive up expenses in order to construct clientelist networks.

*Will internal democratization of political parties drive up campaign costs?*

Democratization of political parties is often urged as a “second generation” goal for democratization in the hemisphere. Democratization of parties has included calls for inclusion of women and ethnic minorities, sometimes achieved via quotas. It has also meant that parties increasingly hold some form of primary election to select candidates. Do

these processes impose extra costs on parties? If so, does the need to obtain those extra funds cause parties to be more beholden to financiers and arguably, therefore, less democratic in other ways?

### *Exploring Alternatives*

*Would shortening campaigns reduce campaign spending?*

Anecdotal data suggests that campaign spending is less in parliamentary systems, and this has sometimes been attributed to their short campaign periods (three-five weeks). The argument is that only so much money can be spent effectively in any given day, so a shorter campaign necessarily cuts costs. Others argue that the hypothesis only holds true where the election date is not fixed and parties cannot then engage in anticipatory spending during the “precampaign.” However, critics contend that parliamentary systems engage in permanent campaigns precisely because the election date is uncertain and that if campaign costs in those systems are indeed lower, it must be due to another factor. Finally, there is a measurement problem in that most campaign spending laws only cover the official campaign period, so parties and candidates are not required to report on precampaign spending, meaning that reported expenditures understate actual campaign costs, especially where the campaign is short. Are there ways to measure, regulate, and reduce precampaign spending?

*What is the best way to reduce the financial inequalities between governing parties and politicians and those in opposition? Are there ways to limit the “incumbent advantage” of access to state resources and prevent abuse of state resources for partisan purposes?*

One possibility might be that opposition parties in the legislature receive special grants such as the scheme in the United Kingdom of “short money.”



## FINANCING DEMOCRACY IN THE AMERICAS



**Michael Pinto-Duschinsky, seen here at a coffee break with OAS political parties specialist and conference rapporteur Steve Griner, notes that to design better systems we need to know more about what drives up campaign costs.**

Public financing systems that do not allocate funds primarily based on past elections give new parties or minority parties more of a chance at competition than do allocation systems based on past electoral performance. On the other hand, such schemes can also encourage a proliferation of nonviable parties tempted by access to public funding.

*Is it possible to develop guiding principles for party and campaign finance that would be acceptable throughout the region?*

Although countries will continue to have diverse systems of campaign finance, the Western Hemisphere is composed of representative democracies that adhere to a variety of agreements for the collective defense of democracy. It may be possible to envision a set of principles to which the region could collectively adhere as countries individually reform and develop their campaign and party

finance rules. Transparency International has developed guiding principles for campaign and party finance in Europe that are now being discussed in civil society and will potentially have an impact on individual countries and even multilateral organizations.

*If political parties and candidates are prohibited from receiving foreign funding, is there any justification for civil society advocacy groups to receive such funding? Do international organizations have a legitimate role to play in policy-making relating to the financing of politics? If so, what is it?*

A few countries permit foreign funding, but the majority prohibit it. Critics of foreign sources of civil society organization funding argue that it can create an unhealthy dependence, that it encourages the proliferation of NGOs created to chase foreign funding to serve personalistic purposes, and that such NGOs (or their directors) often have political ambitions and eventually turn into political movements competing with political parties.

### *Working Group Findings*

#### **Opening Remarks**

The working group opened with two presentations on comparative systems, one drawing lessons primarily from Latin America and the other from Western Europe. The main thread running through both presentations was an effort to gauge the utility of public funding.



## FINANCING DEMOCRACY IN THE AMERICAS

The first presenter boldly stated that it is time to go beyond a discussion of laws and instead focus on realities. Political finance corruption comes in many forms and does not always involve personal enrichment, so the contours of the quid pro quo should be explored. We must set aside assumptions and test our theories in order to recommend better policy. For example, given the fiscal pressures it has produced in Mexico, we might want to learn how effective public finance really is in promoting equality, preventing corruption, and meeting other goals. Public funding is a heterogeneous instrument, and allocation rules are particularly divisive. If the funding is given to candidates instead of parties, it can contribute to party weakness and splintering. Other enduring questions concern whether campaign costs have indeed risen and to what extent television costs drive overall campaign costs. Are we on the right track?

Western Europe is by no means immune to the corruption that has plagued developing countries. The main incentive to engage in corruption comes from the decline in political party membership dues, which have fallen everywhere in Western Europe. Certain kinds of party systems drive up election costs, notably in France and Italy. Important corruption cases have emerged in France, Germany, Italy, and Great Britain. Two groups that have been instrumental in revealing this political finance corruption are judges and journalists. Public pressure has caused France to adopt campaign finance legislation and Britain to reform the laws it first put in place as early as 1883. Britain remains a privately funded system, while Belgium is a classic mixed system and Spain a predominantly publicly funded system. Public funding in Europe has succeeded in weaning parties from labor unions, but at the price of making them dependent on the state.

**Diagnosis of the Problem**

A wide-ranging conversation about campaign and party finance systems then commenced, with participants recognizing commonalities across countries in terms of the dimensions of the problem. Some countries, such as Barbados and, until recently, Peru, have had no political finance regulation. Peru relied on the private sector to furnish funds and saw increasing corruption and the decline of its parties. Barbados relied on tradition more than law, and there was neither transparency nor limits on contributions or spending. Nonetheless, elections were competitive, due in part to regular issuance of executive grants of assistance to parties for general activities and for constituency offices as well as some free broadcasting.

Participants noted the problems posed in measuring the cost of campaigns. How you measure may determine whether you conclude costs are rising. Cross-country comparisons based on expenditures as a percent of gross national product overlook the relative value of the dollar. Media costs are the product of negotiation and, therefore, vary by party. These problems make precise numbers problematic, but politically experienced participants made a qualitative conclusion that the barriers to entry in the electoral arena are high. Most participants concurred with the impression that publicity is the main campaign cost, notably television advertising. However, in Chile, where television advertising is not permitted, campaign costs are low but rising due to the nature of the electoral system. The costs of traditional campaigning, such as rallies, road caravans, giving away T-shirts, and direct forms of vote-buying are also important and can be hard to measure.

Regulation of costs poses dilemmas in terms of what to regulate and how to enforce regulations. The restrictions on electoral advertising in Brazil have worked quite well but require a very active role



## FINANCING DEMOCRACY IN THE AMERICAS

by the regulating agency. Limiting large private donations could help curb special interest politics, but we do not want to discourage citizen participation in the funding of campaigns. Although participants were willing to limit private donations, perhaps by capping private contributions as a proportion of total funds, they were wary of limiting the money candidates might choose to spend from their own fortunes, as no argument could be made that undue influence would result.

The group then explored the dilemma of weakened party systems. Politicians argued that unlike NGOs, political parties have popular legitimacy verified at the ballot box. This implies parties are subject to more obligations but also argues for public funding of parties, they said. Public funding can help protect electoral equity. Some participants felt funding was only important for opposition parties as a check on the power of the incumbent. Others said public funding was more important for regular party-building activities than during campaigns. To prevent abuse of public funds, such as investing them abroad for nonelectoral purposes, parties and candidates must report publicly on their use of public funds. Transparency is essential, because the secrecy surrounding party operations has fueled public cynicism about them.

In sum, the critical issues that need to be addressed by any political finance legislation include how to:

- ◆ Control rising electoral costs. Election campaigns are more costly than we would want them to be, mostly due to television spending and voter mobilization costs. Rising costs may lead to increased corruption.
- ◆ Find a balance between public and private funding.
- ◆ Establish who should be entitled to make private contributions.
- ◆ Establish how public funding should be distributed.
- ◆ Find ways to strengthen political parties and institutions.
- ◆ Strengthen the internal democratization of parties and their ability to provide enough information about their platform to the public.

### **Recommendations**

The systems group proved fruitful in generating recommendations for the Western Hemisphere.

### **Recommendations to the international system (to the international community of democratic nation states and multilateral organizations)**

- ◆ Encourage existing arrangements between political parties and international foundations and institutes for the training and education of party members.
- ◆ Encourage the involvement of multilateral organizations and international NGOs in the topic of political finance policy-making by raising the profile of political finance issues, advising on the adoption of political finance legislation, and convening meetings where these issues are discussed and agreed upon.



## FINANCING DEMOCRACY IN THE AMERICAS

### **Recommendations to governments, noting whether this is a recommendation to the executive branch or to the legislature**

About the cost of elections, governments and legislatures should:

- ◆ Establish and measure what the real costs of elections and party activities are.
- ◆ Encourage transparency rules as a way to tame large contributions.
- ◆ Adopt reasonable contribution limits, possibly including the money contributed by candidates to their own campaigns.
- ◆ Limit spending on those items that are easy to monitor, mainly media. This can be accomplished by banning paid political advertising or capping it.

With respect to the balance between public and private funding, it is desirable to:

- ◆ Create mixed funding systems with a substantial public funding component.
- ◆ Allocate public funding by a combination of proportional rules and flat subsidies to all parties. The adoption of reasonable access thresholds to discriminate serious from rent-seeking parties is also desirable.
- ◆ Provide parties with public funding for their permanent activities.
- ◆ In allocating public funding, give particular attention to imbalances between incumbent and opposition parties, perhaps by introducing public grants earmarked for the activities of the latter.
- ◆ Use the public funding system to create incentives for widespread political participation, perhaps by linking its distribution to the achievement of goals of gender and minority representation and to the enlargement of membership.

- ◆ Stress the importance of internal democratization within parties and its implications for political finance, particularly in light of the visible trend towards the adoption of primary presidential elections within Latin American parties. Perhaps we should not rule out the adoption of a system of public funding for presidential primaries.
- ◆ Give a set of broad guidelines for political parties to spend public resources, but preserve their autonomy to use those resources in the ways that best suit them.

### **Recommendations to civil society, including private sector organizations and nongovernmental organizations**

- ◆ Recognize that the role of international and local NGOs and civil society has been positive, particularly in the monitoring of elections and political finance practices and, more generally, in the strengthening of fair elections and democracy.



An absence of regulation permits secret donations to corrode the political process.

WORKING GROUP ON  
DISCLOSURE AND LIMITS



## FINANCING DEMOCRACY IN THE AMERICAS

# DISCLOSURE AND LIMITS

### *Discussion Guidelines*

#### **Points of Departure**

The group should bear in mind key messages from the plenary sessions and background papers, such as:

- ◆ Countries will adopt a variety of rules on disclosure for donors, parties/campaigns, and vendors and for public and/or private funds.
- ◆ Some countries will introduce ceilings on expenditures or donations, which can only be enforced when there is disclosure.
- ◆ Some countries will limit the source of donations; for example, not allowing foreigners or private companies to donate.
- ◆ No single formula will be right for all countries, and even if one could find categories (e.g. all countries with a certain type of electoral system ought to have a certain type of disclosure), it is doubtful that these could be implemented with any consistency.

#### **Diagnostic Questions**

*Should limits be placed on either contributions or expenditures?*

In Canada, the perception has been that equality and fairness are priority values that call for limits on expenditures rather than only donations. In the United States, limits on expenditures have been ruled out as curtailment of freedom of speech. How can we balance these principles? Are limits even practical if they are not easily enforced?

*Should the limits on donations be raised or lowered?*

High limits can give disproportionate influence to wealthy donors. Low limits may curtail the ability of candidates and parties to meet campaign costs. Is there a way to balance the goals of equitable participation of citizens and capacity of candidates to compete?

*Do the merits of disclosure always outweigh arguments against?*

Merits of disclosure include increased transparency, ability of citizens to better hold candidates accountable and detect “capture” of elected officials by moneyed interests, and increased ability to detect the potential for corruption. Private sector arguments against disclosure have included the potential for retribution by winning candidates against companies who contributed to the losing opponent and potential for consumer backlash or boycott against companies who have contributed to perceived “dirty politicians.”

**Former Guatemalan Foreign Minister Eduardo Stein chairs the working group on disclosure and limits.**





## FINANCING DEMOCRACY IN THE AMERICAS

### Exploring Alternatives

*How can we motivate business to prefer disclosure and limits so that the systems become self-enforcing despite weak rule of law?*

Democracy is a public good that requires collective support. If public financing is not provided, private financing—principally business—becomes a necessary source of funding. Can we compose a tool kit of mid-level policy recommendations that could motivate business to donate but also con-

The South African case suggests access-to-information legislation may sometimes be able to be used to require disclosure by the donor or by the political party recipient even where no disclosure law exists. Access to information could also help the media to investigate scandals or help citizens' watchdog groups track and enforce compliance with limits. Do the potential benefits of increased transparency in reducing perceptions of undue influence of money in politics outweigh potential drawbacks such as breaches of privacy or confidentiality?

*Can voluntary codes of conduct adopted by private companies be effective in ensuring disclosure even where the law is weak or unenforced?*

One company in South Africa responded to the Institute for Democracy in South Africa's (IDASA) access-to-information request for disclosure of campaign donations by generating a new company code of conduct. Might more companies be interested in

practicing corporate leadership of this kind? Are such codes really effective or are they typically mere public relations tactics? How could a broad movement for voluntary campaign finance codes of conduct be begun? What would the essential elements of such a code include?

*In countries with existing disclosure laws, how can information about such donations be disseminated effectively and cheaply?*

The Center for Responsive Politics has developed a tracking tool to categorize disclosed donations by industry and compare them on the Open Secrets Web site to candidates' voting records on issues related



**Carter Center working groups are informal discussions where participants share their experience about what works and what doesn't.**

strain them from donating to cultivate favors? Such tools could potentially include a combination of rigorous tax collection and tax incentives for campaign contributions; having campaign contributions be made via buying bonds; and reducing the perceived risks of disclosure, such as consumer rejection of the company if it is known to contribute to an unpopular candidate or political retribution if one has donated to the “wrong” candidate.

*Can access-to-information legislation help promote disclosure by political parties and private companies?*



## FINANCING DEMOCRACY IN THE AMERICAS

to each industry. Another tool is the Money and Politics (MAP) project developed by International Foundation for Election Systems/USAID.

### *Working Group Findings*

#### **Opening Remarks**

The working group began with presentations on the role of the private sector in campaign finance in Latin America and on access-to-information laws as a means of obtaining disclosure where no disclosure law exists.

Contrary to common belief, the private sector is not highly motivated to donate to political parties or candidates. Business cannot hold politicians and parties accountable for such donations, and the transaction is not transparent and can sully the reputation of the donor. In addition, there may be reprisals from other parties, such as denial of government contracts, if they win the election. Business leaders also know that they can wait and influence politics after the election, probably more effectively and cheaply, through straightforward lobbying and consulting to government as well as corrupt practices such as bribing of ministers. Politicians thus have a shorter time horizon than business leaders when they ask for campaign contributions; for candidates, campaign contributions are an urgent matter, but business can afford to await the electoral outcome.

Latin American business leaders generally support disclosure and recognize it is important for democracy. They support the development of institutions to monitor contributions and expenditures and can provide the expertise to improve the administration of these institutions. Because of the private sector's longer time horizon and the low levels of trust between business and government leaders, business leaders are motivated to help assure that the rules of the game for practicing business are consistent from one administration to

the next. The private sector can help oversight institutions to become part of the permanent bureaucracy that is autonomous from changes in government.

In South Africa, new agencies to combat corruption proliferated in the wake of the transition to democracy, but there is no regulation of campaign and party finance. As in some Latin American countries, there is a political crisis in which trust between citizens and their political leaders has broken down. One remedy is to empower citizens to have access to information about public processes, including the role of the media and the relationship between money and politics.

In some circumstances, access-to-information laws can be used to obtain disclosure from political parties and corporations where no direct disclosure law exists. In South Africa, the private sector proved more responsive to civil society calls for disclosure than political parties. When a civil society organization requested disclosure of political contributions, none of the 13 political parties volunteered to disclose, but only three corporations failed to do so. The courts must define the extent to which political parties are public institutions and, therefore, subject to disclosure requests made under the access-to-information law. Legislation to require disclosure may emerge soon due to campaign finance scandals. Access-to-information legislation should complement, not replace, other enforcement mechanisms for obtaining disclosure. Citizens must understand access to information in order to use it effectively.

#### **Diagnosis of the Problem**

Participants engaged in a lively discussion of the problems related to disclosure and limits on campaign donations and expenditures. Disclosure is relatively advanced in the United States, but because it is not accompanied by limits on spending, the costs of campaigns are rising and this creates equity and participation problems. By contrast, disclosure is a



## FINANCING DEMOCRACY IN THE AMERICAS

cutting-edge issue in most Latin American and Caribbean countries, and they, therefore, have an opportunity to design more comprehensive political finance systems that effectively link disclosure and limits.

Participants began by emphasizing the factors that make donors prefer to give their contributions in secret. These included the winning candidate's potential to use government powers for reprisals against donors to losing candidates, particularly tax audits that are costly even when they do not turn up evidence of wrongdoing. Another factor is the weakness of national economies whose poverty and inequality generate popular protest against the perceived wealth and corruption of the political class. Where politicians have low prestige, citizens oppose trusting them with public funds for campaigns, and business becomes the key donor but prefers not to be openly associated with politicians.

The limitations on disclosure were evident. Incumbents have access to reserve funds and official publicity that are not declared as contributions. Auditors are often restricted to verifying the validity of the reports submitted rather than being authorized to actively pursue fraud. Minor donations may fall below the disclosure floor but be used to launder illicit contributions that collectively constitute a major source of funding.

In sum, the group coalesced around the following diagnosis:

- ◆ Two contextual factors—rising inequality and loss of faith in democratic institutions—provide incentives for moving toward development of disclosure rules.
- ◆ Important democratic principles underlie the discussion of disclosure systems, including:
  - The right to know and have access to information
  - The right to privacy
  - The right of speech
  - Political equality

- ◆ Disclosure is not practiced or only partially practiced in the countries of the Americas.
- ◆ The absence of disclosure feeds growing cynicism about politicians because the public suspects they are more responsive to wealthy donors and special interest groups than to the average citizen.
- ◆ Disclosure does involve dangers, such as possibilities for reprisal, but should nonetheless be required because democracy is worth the price.
- ◆ Financial controls are needed to assure fair competition and reduce the negative impact of money in politics.

### **Recommendations**

The working group grew concerned that hard trade-offs would have to be made in terms of policy, because much needs to be done and their recommendations cannot all be fulfilled to the same extent. Each country will need to design its own disclosure system. Nonetheless, they agreed on the following recommendations:

#### **Recommendations to the international system (to the international community of democratic nation states and multilateral organizations)**

- ◆ The region should strive to establish standards for campaign and party finance.
- ◆ Multilateral institutions should develop guidelines to express those standards.
- ◆ Regional governments should guarantee transparency in political finance and bring their legislation into compliance with those goals.

#### **Recommendations to governments, noting whether this is a recommendation to the executive branch or to the legislature.**

- ◆ Governments should improve transparency by requiring disclosure of donations and expenditures, specifically:



## FINANCING DEMOCRACY IN THE AMERICAS

- Candidates and parties should be required to publicly disclose donations and expenditures, pre-election and postelection, and accounts must be itemized.
- Media should be required to disclose standard advertising rates and report discounts as political donations.
- ◆ Auditors should be required to provide an opinion on the degree to which reports achieve compliance with the financial provisions in the country's legislation.
  - ◆ The state should invest in institutions, parties, and citizen capacity rather than long/negative campaigns and develop further the regulatory framework for equitable competition.
  - ◆ Governments should seek to reduce the demand for private funding by controlling the factors that escalate campaign costs. Measures could include:
    - Limits on spending
    - Shortened campaigns
    - Guaranteed access to media
    - Public financing
    - Making lobbying an open and regulated activity
- ◆ Governments should promote equity and competition via the following measures:
  - Balance the limits to expenditures with reduction of need for funds.
  - "Democratize" donations. Limit large individual donations and encourage small ones.
  - Provide some form of public financing.
  - Strengthen political parties in their representation and participation functions.

### **Recommendations to civil society, including private sector organizations and nongovernmental organizations**

- ◆ Companies should disclose political contributions in their annual reports.
- ◆ For adequate auditing, invest in training and develop auditors' capacity to trace illicit money.



Jamaican businessman Earl Jarrett expresses the private sector's views on campaign and party finance regulation. He is seen here with IDASA's Richard Calland who urges voluntary disclosure by businesses.



Laws  
must be  
simple  
and clear  
and  
enforced.

WORKING GROUP ON ENFORCEMENT



## FINANCING DEMOCRACY IN THE AMERICAS

## ENFORCEMENT

*Discussion Guidelines***Points of Departure**

The group should bear in mind key messages from the plenary sessions and background papers, such as:

- ◆ Rule of law is weak in most countries in the hemisphere, and this weakness can complicate enforcement of even the best-written legislation.
- ◆ Enforcement can be direct/proactive (based on auditing by officials) or indirect/passive (responding to complaints only).
- ◆ Enforcement can be formal (conducted by government) or informal (conducted by civil society).
- ◆ Key elements of successful enforcement include (1) channeling donations and expenditures through registered bank accounts, (2) requiring that each party, in order to register as a party, have a qualified treasurer who will be held accountable for violations of the law, (3) the existence of an oversight agency that conducts proactive checking of accounts, and (4) the existence of a sanctions regime.

**Diagnostic Questions**

*Does it matter which institution is authorized to carry out enforcement? (electoral bodies, the judiciary, ombudsmen)*

Some countries place their oversight within the judiciary, some in the electoral branch, etc. Some have the power of prosecution; others only refer cases. Some have leaders appointed independently; others do not. Some have penal sanctions; others only administrative sanctions, and they may be subject to appeal. What difference do all these institutional choices make? Are there powers of investigation that enforcement bodies must have in order to do their job?

*What role should civil society groups and election monitors play to help with enforcement?*

Civil society groups and election monitors, both domestic and international, have provided human resources to serve as watchdogs and collect



**Daniel Zovatto stresses the importance of independent enforcement institutions to CAF President Enrique Garcia (left) and former Ecuadorean President Osvaldo Hurtado (right).**

information. Though they lack enforcement power other than moral suasion and public embarrassment, these resources may still be important.

*Can alternative enforcement mechanisms be implemented even where judiciaries are weak?*

Mexico and Brazil have been developing enforcement mechanisms for campaign and party finance alongside judicial improvements. In the United States, although the judiciary is strong, the partisan nature of the Federal Elections Commission may weaken enforcement. Steps may be taken to strengthen enforcement even where judiciaries are not yet strong, but the question is how to accomplish it.



## FINANCING DEMOCRACY IN THE AMERICAS

Should enforcement bodies such as election administrations be given prosecutorial power or at least the power to directly investigate and impose fines for administrative infractions?

### **Exploring Alternatives**

*What forms of international cooperation will be required in order to assure adequate investigation and prosecution?*

Campaign finance is not purely a domestic issue because, legally or not, money can flow into campaign coffers from overseas. Money can also be stored in offshore bank accounts and hidden in numbered accounts. Illicit contributions from drug money, etc., can be laundered through third countries. So the international system will be needed to support domestic tackling of enforcement issues. People have appealed to the U.S. government for help in accumulating evidence and can use the Freedom of Information Act to marshal evidence, but international cooperation must go beyond bilateral efforts.

*Can the Inter-American Democratic Charter be used to encourage compliance with finance regulations?*

The charter states in Article 5, “The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.” How can this be operationalized?

*Should loans from the IDB, CAF, World Bank, IMF, and bilateral donors be conditioned on adequate enforcement of political financing regulations?*

Conditionality is a controversial issue, as it imposes burdens that the neediest states are the least able to meet. Still, conditionality has been suggested with respect to corruption, and nontransparent campaign finance that is poorly enforced surely permits corruption.

## *Working Group Findings*

### **Opening Remarks**

The working group began with presentations on enforcement in Mexico and Brazil.

The Mexican system offers an example of hyper-regulation, in which campaign and party finance is governed by dozens of laws administered by many different entities from federal down to local levels. It has a mixed finance system in which public funds must predominate, and those funds are substantial, creating a dilemma concerning how to practice oversight in their use. Mexico is working to create a culture of accountability: appointing auditors, institutionalizing political party accounting systems, and demanding disclosure and regular submission of reports. However, it also relies on citizen denunciations of violators. Denunciations require offering whistle-blowers anonymity. The Friends of Fox investigation has suffered from lack of access to bank accounts. Although vote-buying is illegal, citizens do not denounce it, suggesting that public education is needed to teach citizens the law and tell them how complaints will be processed.

In Brazil, by contrast, there is no direct public funding, so corporate and individual contributions comprise the most important sources of finance. Comprehensive provisions for disclosure are the hallmark of the system, with sanctions up to 10 times the amount spent in excess of limits. There are publicly financed access to the media and prohibitions on privately purchased television ads. Violation of campaign publicity rules may lead to judicial rulings that can include disqualifying the party. The highest number of cases brought before the courts pertain to lack of party compliance with the law rather than any disagreement with it, and judges can give relatively prompt rulings so that consequences of violations are felt during the campaign.



## FINANCING DEMOCRACY IN THE AMERICAS

**Diagnosis of the Problem**

Participants engaged in a wide-ranging discussion concerning enforcement and the problem of impunity. They reached consensus on the most pertinent deficits in enforcement systems, including:

- ◆ An absence of laws in some countries, and conversely, in others a set of laws that are overly complex and therefore difficult to enforce.
- ◆ Lack of autonomy and resources for enforcement agencies.
- ◆ Absence of monitoring organizations, including civil society watchdogs.
- ◆ Political parties' and candidates' low capacity for compliance with laws and regulations, including a lack of resources for proper accounting and few codes of conduct.
- ◆ Rules that focus on sanctions rather than incentive systems to encourage party and candidate compliance.
- ◆ Permissive societies in which there is little incentive for citizens to denounce wrongdoing.

**Recommendations**

A spirited discussion of alternative practices and policies ensued. Participants debated the value of prosecuting small violations, employing sting operations, and pursuing anonymous accusations, expressing concern for the effects such policies could have on development of a democratic civic culture. They questioned whether even firm and well-implemented enforcement policies could address the special problem posed in some countries by clandestine contributions, particularly where drug trafficking is present. Ultimately, however, they reached consensus on a set of recommendations for improving enforcement.

**Recommendations to the international system (to the international community of democratic nation states and multilateral organizations)**

- ◆ OAS member states should encourage ratification of the Inter-American Convention Against Corruption.



Former Costa Rica President Miguel Ángel Rodríguez shares his thoughts with chair Michele Schimpp and others in the enforcement working group.

- ◆ In order to advance in deepening democracy, all countries should agree to cooperate and share information necessary for the enforcement of political finance laws (subpoena of documents and access to bank accounts, etc.). That might be an amendment to existing documents (the excellent foundation provided by the Inter-American Democratic Charter, OAS Convention Against Corruption) or as an additional statement.

- ◆ The international community should support the efforts to include in the OECD Convention Against Bribery in International Business Transactions some additional text prohibiting foreign bribery of party officials.

- ◆ Election observation missions should examine rules and regulations related to political finance and compliance.



## FINANCING DEMOCRACY IN THE AMERICAS

◆ Multilateral lending institutions should include political finance as an element within their rule of law and anti-corruption programs.

◆ Bilateral and multilateral organizations should expand efforts to help election management bodies, political parties, campaign contributors, and election monitors comply with and enforce political finance laws.

### **Recommendations to governments, noting whether this is a recommendation to the executive branch or to the legislature**

Without rule of law, any efforts to enforce control on political finance will be only partially effective. Efforts to strengthen the rule of law are critical and need to be sustained. In the past, too little attention has been given to whether laws would be enforceable, and this inattention has contributed to the problem of impunity in financing politics.

### **To the drafters of legislation and regulations**

◆ Laws must be simple and clear and enforceable. Immediate and public disclosure is the cornerstone of political finance control.

◆ An effective enforcement system has to be based on incentives and sanctions. In order to be effective, sanctions have to fit the offense. A range of sanctions, from engaging in remedial action to fines to criminal prosecution and denying office, should be considered.

◆ Candidates, political parties, and contributors should be equally subject to enforcement.

### **To executives and legislators**

◆ The institutions responsible for enforcement, whether electoral management bodies or the judiciary, should be independent, nonpartisan, and equipped with sufficient human and financial resources and authority to enforce the countries' laws. This authority ranges from monitoring to investigating to prosecuting. The capacity of enforcement bodies should include a range of effective and adequate instruments such as subpoena powers, whistle-blower protection, and access to bank accounts.

### **To electoral bodies**

◆ Equally important is the effort of electoral bodies and civil society to monitor and acknowledge compliance.

### **Recommendations to civil society, including private sector organizations and nongovernmental organizations**

◆ Political parties and private sector organizations should develop codes of conduct, statements of ethics that commit themselves to the practice of transparency in donations and expenditures. Political parties and private sector organizations should devote adequate resources to building their capacities for complying with political finance rules in an accurate and timely fashion.

◆ For civil society and media, disclosure is an essential precondition for monitoring compliance with political finance rules. By their nature, civil society and media have a comparative advantage in independent monitoring of contributions and expenditures, generating information and public debate, educating the public, and offering public recognition for those who comply with the rules. These efforts help re-enforce and complement the work of those public institutions responsible for enforcement.



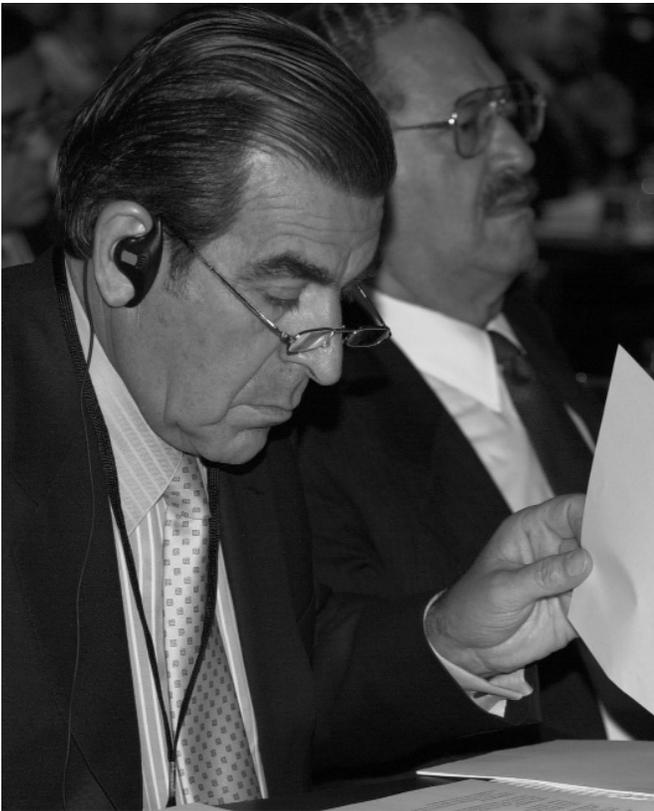
# Politics matters for improving the lives of all of our citizens.

CONCLUDING STATEMENT



FINANCING DEMOCRACY IN THE AMERICAS

CONCLUDING STATEMENT BY THE  
COUNCIL OF PRESIDENTS AND PRIME MINISTERS OF  
THE AMERICAS



**Former Chile President Eduardo Frei consults preparatory papers. He is accompanied by former Honduras President Carlos Roberto Reina.**

*The Carter Center convened the conference Financing Democracy: Political Parties, Campaigns, and Elections in collaboration with the Organization of American States' Inter-American Forum on Political Parties. A group of government and political party leaders, prominent scholars, policy experts, private sector representatives, civil society leaders, media professionals, and international organizations from the Western Hemisphere met for two and one-half days in plenary sessions and working groups to discuss the dilemmas of political financing. They offered*

*their advice to the Carter Center's Council of Presidents and Prime Ministers of the Americas, a group of 35 leaders, 10 of whom participated in the conference and another one of whom sent a representative. Based on the group's findings, the council now offers the following conclusions and recommendations.*

I. INTRODUCTION

Politics matters for improving the lives of all of our citizens. Political parties are a vital component of our democratic politics, and they need money to function. Largely because of many improper practices in financing campaigns and corruption scandals, politics unfortunately has become a discredited activity to many people. Confidence in democratic institutions is falling. We need to reverse this perception. We need to invest in the capacity of our political parties to inform and inspire citizens, not spend millions on negative campaign ads. We need to encourage participation of all citizens, not just the richest or those looking for special favors. We need to find ways to restore confidence in democratic institutions by ensuring clean, fair, and competitive elections and governance.

The hemisphere is making progress, but not with the necessary pace and energy. Mandates from the Quebec Summit of the Americas led to the creation of an Inter-American Forum on Political Parties to address these issues, and through that forum the OAS has begun an effort to catalogue existing legislation and practice. Citizen watchdog groups are monitoring campaign expenditures in an attempt to hold their leaders accountable. We are ready to address the next stage of regularizing, moni-



## FINANCING DEMOCRACY IN THE AMERICAS



Former St. Lucia Prime Minister John Compton (left) and former Barbados Prime Minister Lloyd Erskine Sanford (right) share a light moment with Jamaican Minister of National Security Peter Phillips.

toring, and enforcing standards of political financing to reduce corruption, promote citizen participation, and enhance political legitimacy of our democratic institutions.

There is no single formula on political financing that will solve the problems permanently and for all countries. Indeed, the struggle to improve the democratic process is a continuous one, requiring the active involvement of all of civil society. Based on work done by the OAS Inter-American Forum on Political Parties, International IDEA, Transparency International, USAID, and others, we have identified a set of principles for political finance. **We urge our governments to endorse these principles and our citizens to watch carefully to ensure that they are implemented.**

We strongly encourage the development of a democratic political culture, moral commitment, and ethical standards that will provide an atmosphere conducive to the implementation of these measures.

## II. PRINCIPLES FOR POLITICAL FINANCING

Rules on financing of political parties and campaigns will differ for each national context, but they should all promote the following basic principles:

### PRINCIPLES

◆ **Fostering stronger representative and accountable political parties:** In their representation and participation functions, political parties need access to adequate resources to function effectively and ethically.

◆ **Ensuring effective electoral competition:** Parties and candidates must have a fair chance to campaign for their ideas; access to the media and adequate resources is crucial. Unfair incumbency advantages should be addressed, and the use of state resources that are not made available to all candidates in the electoral campaign should be prohibited.

◆ **Promoting political equality and citizen participation:** Citizens, rich or poor, must have equal opportunity to participate in the political process and to support candidates or parties of their choice. Financial contributions are a legitimate form of support. Inequalities related to gender, race, ethnicity, or marginalized populations should be compensated. The principle of one person, one vote must be preserved.

◆ **Preserving the integrity of the electoral process through transparency:** Voters need to be empowered to choose as autonomous and informed citizens, free from pressures, intimidation, or seduction through economic benefits and need to be informed about the resources and support for candidates and parties.



## FINANCING DEMOCRACY IN THE AMERICAS

◆ **Enhancing accountability and eliminating corruption:** Elected officeholders should represent their constituents as a whole and be free from financial dependence on a few. Donations should not be used to buy access to politicians or civil servants, for personal favors (contracts, tax breaks, etc.), or for policy favors.

controlling the factors that escalate campaign costs. Measures could include limiting spending; shortening campaigns; providing equitable access to the media, including free media time to the candidates during prime time; banning or capping paid political advertising; promoting public financing; eliminating inflammatory ads; and adopting and enforcing prohibitions against vote-buying.



At the close of the conference, members of the Council of Presidents and Prime Ministers of the Americas hold a press conference and release a concluding statement of recommendations.

◆ **Strengthening rule of law and enforcement capacity:** There must be assurances of timely justice and an end to impunity in abuses of political financing. The enforcement of political finance laws and regulations requires the existence of independent oversight authorities and an effective system of sanctions to end impunity.

We recognize that each country has a different starting point, but all countries should move at an appropriate pace to achieve the following objectives and tools, derived from the principles.

### OBJECTIVES AND TOOLS

◆ **Invest in the democratic character of parties rather than long or negative campaigns.** The pressures of fund raising should be reduced by

◆ **Improve transparency and reduce the influence of money by requiring disclosure of donations and expenditures.** Parties and candidates should be required to publicly disclose itemized donations above certain amounts and their sources, including in-kind contributions, before and after the elections so that future undue influence by the donor could be assessed.

Parties and candidates should make public audited reports of itemized expenditures on a regular basis, including in-kind expenses, with all funds flowing through identified bank accounts managed by specified individuals who can be held accountable. Media should be required to disclose standard advertising rates, report discounts as political donations, and maintain advertising rates that do not exceed the commercial rates used between campaigns. Campaign contributions from foreign sources should be prohibited, with the exception of citizens living abroad, if allowed by national law. Campaigns and candidates should refuse donations from organized crime or drug trafficking.

◆ **Promote equity, participation, and competition.** Mixed funding systems with a substantial public component are recommended. Public funds should be provided as a substitute for or a complement to private donations at all phases of the political and electoral process. Public funding for



## FINANCING DEMOCRACY IN THE AMERICAS

ongoing party activities and campaigns should be allocated by a mix of proportional rules and flat subsidies to all parties that meet reasonable thresholds. Large individual donations should be limited; small donations that the average citizen can afford should be encouraged, perhaps by offering tax credits; and voluntary media standards for balanced media coverage should be developed.

◆ **The institutions responsible for enforcement should provide both incentives and sanctions.** Oversight entities, whether electoral management

and include subpoena powers, whistle-blower protection, and access to bank accounts. Sanctions should include remedial actions, fines, criminal prosecution, and denial of office and/or future access to public funding.

### III. SUPPORTIVE MEASURES

In improving the financing of democracy, citizens' groups and international organizations have an important role to play in helping achieve these principles. We urge the following:

#### Roles for International Organizations

◆ The OAS Inter-American Forum on Political Parties, other international organizations, multilateral banks, and universities should sponsor research to help us better understand the contributing factors of campaign costs, the effectiveness of potential tools to control those costs, and the impact of new technology such as the Internet and direct television programming. For example, conflicting information exists with regard to whether and how fast campaign costs are rising relative to GDP

and what the sources may be: television and radio advertising costs in modernizing campaigns; taxation systems; patronage politics and vote-buying in more traditional campaigns; internally democratizing parties; length of the campaign; the nature of the electoral system.



Former Dominican Republic President Leonel Fernández listens to the plenary presentations with Peruvian civil society leader Percy Medina.

bodies or judicial organs, should be independent, nonpartisan, and equipped with sufficient human and financial resources and authority to enforce the country's laws. Without this, none of the other measures suggested here will be effective. Enforcement capacity should be developed for effective monitoring, investigating, and prosecuting



## FINANCING DEMOCRACY IN THE AMERICAS



Alonso Lujambio from Mexico's highly praised Federal Elections Institute (left) shares Mexico's experience on enforcement issues with polling expert Miguel Basáñez.

◆ Hemispheric governments should adopt the Principles on Political Financing at the next Summit of the Americas as a concrete measure to implement Article 5 of the Inter-American Democratic Charter.

◆ Nongovernmental organizations such as The Carter Center and Transparency International should work in collaboration with multilateral organizations such as International IDEA to develop a set of standards and benchmarks to assess progress on implementing these principles.

◆ The OAS and other organizations active in the region should provide assistance to member states to apply the principles adopted, in the form of best practices and model laws and with advice from the OAS Special Rapporteur for Freedom of Expression and other entities.

◆ International party foundations and other organizations should continue to provide training and education for party members and electoral workers, but only in a manner consistent with national laws.

◆ Governments should cooperate to help in tracing the international money trail of illicit political donations through offshore tax havens, money laundering, and organized crime and cooperate with each other to bring violators to justice. International assistance in training and capacity-building to trace illicit money is needed. Governments should codify these types of cooperation in international agreements. Governments should also amend money-laundering legislation to require disclosure of cash transactions over a specific amount.

◆ International agreements such as the OECD Convention Against Bribery and the Inter-American Convention

Against Corruption should include corollaries or additional protocols prohibiting the bribery of political parties and candidates and prohibiting foreign donations when they are illegal in domestic law.

◆ International election observer missions should incorporate political finance as an element to be monitored.

◆ Multilateral lending institutions should include political financing as an element within their rule of law and anti-corruption programs. Bilateral and multilateral organizations should expand efforts to help election management bodies, political parties, campaign contributors, and election monitors to comply with political finance laws.



## FINANCING DEMOCRACY IN THE AMERICAS

### Roles for Civil Society and Political Parties

◆ Businesses should voluntarily adopt codes of conduct to disclose donations where laws do not yet exist requiring them to do so or to disclose more fully where laws require only narrow disclosure.

◆ Political parties and candidates should voluntarily adopt codes of conduct to fully disclose donations and expenditures where laws do not yet exist requiring disclosure or to disclose more fully where laws require only narrow disclosure. Civil society organizations can encourage such codes.

◆ The media should voluntarily adopt a code of ethics and norms that guarantees equitable treatment to the parties and candidates in electoral campaigns.

◆ Civil society organizations and media should have independent and critical roles in monitoring campaign finance rules and publicizing violations, including monitoring expenditures and media coverage of campaigns, generating information, and encouraging public debate.

◆ Watchdog groups should explore the potential to use access-to-information laws to request information on donations and expenditures from political parties and corporations and to ensure transparency in the use of state resources.

◆ So that the media may support enforcement, expose corruption, and produce transparency, libel laws should be amended to follow the principles laid down in the *New York Times* vs. Sullivan case, insult laws should be repealed, and the assault or murder of journalists should be investigated immediately and prosecuted to the fullest extent of the law.

### Signed by:

Jimmy Carter  
Former president of  
the United States of America

John Compton  
Former prime minister of St. Lucia

Leonel Fernández  
Former president of the Dominican Republic

Eduardo Frei  
Former president of Chile

Oswaldo Hurtado  
Former president of Ecuador

Luis Alberto Lacalle  
Former president of Uruguay

Andres Pastrana Arango  
Former president of Colombia

Carlos Roberto Reina  
Former president of Honduras

Miguel Ángel Rodríguez  
Former president of Costa Rica

Lloyd Sandiford  
Former prime minister of Barbados

Cristiana Chamorro  
representing Violeta Chamorro  
Former president of Nicaragua



## FINANCING DEMOCRACY IN THE AMERICAS

# FOLLOW-UP AND DISSEMINATION ACTIVITIES

Carter Center staff have been actively disseminating the conference conclusions. We began immediately with a public session in Atlanta, reporting on the conference just hours after it concluded, as part of the *Conversations at The Carter Center* public education series. Former Uruguay President Luis Alberto Lacalle, former Dominican Republic President Leonel Fernández, and media foundation leader Cristiana Chamorro,



**IDEA representative Daniel Zovatto meets with Americas Program Director Jennifer McCoy.**

representing her mother, Violeta Barrios de Chamorro, who was president of Nicaragua, reflected on the conference findings at an open session. Drawing on their experiences in running newspapers, competing in election campaigns, and raising funds for their parties, these leaders focused on the realpolitik of campaign finance. They considered how the problems explored in the working groups were made manifest in their countries and how the principles set forth at the conclusion of the conference might be implemented.

In scholarly meetings of the Latin American Studies Association and the International Political Science Association, Americas Program staff members reviewed the conference findings and encouraged much-needed further research. We are working to draw on networks of informed scholars from across the globe who can help in the development of

standards and benchmarks for measuring the extent to which campaign and party finance rules are practiced and are democratic.

Our staff visited Washington to review the conference conclusions with key nongovernmental organizations and OAS ambassadors. We visited the OAS on March 26, 2003, to share our findings with the Consultative Group of the Inter-American Forum on Political Parties. On March 28, 2003, we joined other civil society groups affiliated with the OAS to provide input to the next Summit of the Americas. We then made available our conference findings directly to the Summit Implementation Review Group on April 2, 2003, urging that political finance be considered as an important element of governance at the extraordinary summit planned for fall 2003. In June, the Center carried the message to the OAS General Assembly meeting in Santiago, Chile.

The Council of Presidents and Prime Ministers of the Americas will help to disseminate their conference conclusions. Many of them write opinion pieces and offer interviews to media that provide opportunities for underscoring these messages. In addition, they visit with incumbents and other former leaders with whom they can share their thinking. With The Carter Center, the council members present at the conference agreed to host a meeting specifically to develop recommendations to strengthen implementation of the Inter-American Democratic Charter, and the conference conclusions on campaign and party finance will provide an important baseline for that meeting.

We hope this conference has made a solid contribution to regional efforts to implement the Democratic Charter, including initiatives to strengthen the democratic character of political parties and reform campaign and party finance so that it is transparent and sufficient for a healthy democracy.



## FINANCING DEMOCRACY IN THE AMERICAS

# AGENDA

Monday, March 17, 2003

### Welcome and Introduction

Presentation of the panel by Dr. Shelley McConnell  
Welcome by former U.S. President Jimmy Carter  
Welcome by OAS Secretary General César Gaviria  
Introduction to the conference theme by Dr. Jennifer McCoy

### First Plenary

Former Barbados Prime Minister Lloyd Erskine Sandiford moderating

- ◆ *Financing Democracy in the Context of Poverty*  
Elena Martinez, UNDP
- ◆ *Strengthening Political Parties*  
Elizabeth Spehar, OAS
- ◆ *Principles Underlying Campaign Finance: What Is at Stake?* Burt Neuborne, New York University
- ◆ *Campaign Finance Law and Practice in Latin America* Daniel Zovatto, IDEA



President and Mrs. Carter greet Georgia Governor Sonny Perdue at a cocktail party hosted by Atlanta, Georgia—Gateway to the Americas.

### Dinner

Keynote speakers hosted by King & Spalding law firm

- ◆ Congressman Christopher Shays, R-Conn.
- ◆ Minister José Miguel Insulza, Chile
- ◆ Vice President Carlos Mesa, Bolivia

Tuesday, March 18, 2003

### Second Plenary

Former Chile President Eduardo Frei moderating

- ◆ *Calling in Favors? Post-election Demands on Government by Campaign Donors*  
Larry Noble, Center for Responsive Politics, United States
- ◆ *Dilemmas Facing the Business Sector*  
Alexandra Wrage, Northrup Grumman International, United States
- ◆ *The Media: Balancing Roles as Business Entities and Public Interest Agents*  
Ricardo Claro, Megavision TV, Chile
- ◆ *Civil Society's Role in Measuring and Monitoring Campaign Spending*  
Christian Gruenberg, Poder Ciudadano, Argentina
- ◆ *What We Think We Know About Campaign Finance*  
Michael Pinto-Duschinsky, United Kingdom



## FINANCING DEMOCRACY IN THE AMERICAS

### Working Groups: Diagnosis

Participants will discuss the various problems related to their assigned topic, based on the working group guidelines and any other questions they feel are relevant. By the end of the session, the rapporteur will have a short assessment of the problem.

- ◆ Working Group #1—The Role of the Media
- ◆ Working Group #2—Public, Private, and Mixed Systems
- ◆ Working Group #3—Disclosure and Limits
- ◆ Working Group #4—Enforcement

### Luncheon

Panel presentation by Gene Ward, USAID, and Ellen Mickiewicz, Duke University, introducing publications on disclosure and the media in elections. Former Costa Rica President Miguel Ángel Rodríguez moderating.

### Working Groups: Exploring Alternatives

Participants reconvene to discuss policy options at the international, state, and civil society levels, submitting a written list of recommendations.

### Reception

Georgia Gov. Sonny Perdue will make brief remarks on behalf of Atlanta, Georgia—Gateway to the Americas. Presidential Museum open, featuring a special exhibit of portraits of every U.S. president. Gardens open and in spring bloom.

*Wednesday March 19, 2003*

### Third Plenary

Report-outs and discussion of the draft statement  
Former U.S. President Jimmy Carter presiding

### Council Luncheon

Council members finalize the concluding statement of the conference.

### Press Conference

Council members present the concluding statement and respond to questions.

### Public Outreach

*Conversations at The Carter Center*, an evening panel presentation by former Uruguay President Luis Alberto Lacalle, former Dominican Republic President Leonel Fernández, and Cristiana Chamorro, representing former Nicaragua President Violeta Chamorro. Hosted by Shelley McConnell.



Duke University's Ellen Mickiewicz speaks to luncheon guests about the changing role of the media in elections as she introduces the Spanish language edition of *Television and Elections*.



FINANCING DEMOCRACY IN THE AMERICAS

LIST OF PARTICIPANTS

COUNCIL MEMBERS

**Jimmy Carter**, 39th President of the United States of America, Chairman of The Carter Center, and Council Chair

**John Compton**, Former Prime Minister of St. Lucia, Legal Consultant

**Leonel Fernández**, Former President of the Dominican Republic, Global Foundation for Democracy and Development

**Eduardo Frei**, Former President of Chile

**Oswaldo Hurtado**, Former President of Ecuador, Corporación de Estudios para el Desarrollo

**Luis Alberto Lacalle**, Former President of Uruguay, Chairman, Partido Nacional

**Andres Pastrana Arango**, Former President of Colombia

**Carlos Roberto Reina**, Former President of Honduras, Bufete Reina

**Miguel Ángel Rodríguez Echeverría**, Former President of Costa Rica, J.B. and Maurice C. Shapiro Visiting Professor of International Affairs, George Washington University

**Lloyd Erskine Sandiford**, Former Prime Minister of Barbados, Distinguished Fellow in the Sir Arthur Lewis Institute of Social and Economic Studies at the University of the West Indies, Cave Hill Campus, Barbados

POLITICAL LEADERS

**José Miguel Insulza**, Chile, Minister of the Interior

**Carlos Mesa**, Bolivia, Vice President

**Peter Phillips**, Jamaica, Minister of National Security

**José Antônio Dias Toffoli**, Brazil, Legal Counsel to the Chief of Staff of the President of the Republic



**José Antonio Dias Toffoli**, legal counsel to the chief of staff of the president of the Republic of Brazil, networks with Americas Program Associate Director Shelley McConnell.

PARTICIPANTS

**María Teresa Almarza**, Venezuela, Public Affairs and Communications Director, The Coca-Cola Company

**Augusto Álvarez-Rodrich**, Perú, Director, *Perú 21* Newspaper

**Jaime Aparicio**, Bolivia, Ambassador to the United States of America, Bolivian Embassy

**Miguel Basañez**, México, President, Global Quality Research Corporation

**Michael Beaulieu**, United States of America, Special Adviser to the Secretary-General, OAS



## FINANCING DEMOCRACY IN THE AMERICAS

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Primero Justicia

**Hans-Joerg Brunner**, Germany, Consul General,  
German Consulate in Atlanta

**Liza Caceres**, Puerto Rico, Regional Manager of  
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**Edmund Cain**, United States of America, Director,  
Global Development Initiative, The Carter Center

**Rodrigo Calderón**, México, Vice President  
for Public Affairs and Communication,  
The Coca-Cola Company

**Richard Calland**, South Africa, Executive Director,  
Open Democracy Advice Center

**Jorge Canelas-Sáenz**, Bolivia, Director,  
Semana Pulso

**Rosalynn Carter**, United States of America,  
Former First Lady and Vice Chair of  
The Carter Center

**Kevin Casas**, Costa Rica, International  
Consultant, International Foundation for  
Electoral Systems

**Jorge del Castillo**, Peru, Secretary General,  
Partido Aprista Peruano

**Cristiana Chamorro**, Nicaragua, Consejo  
Directivo, Fundación Violeta Barrios de Chamorro

**Jorge Claissac**, Chile, Adviser, Ministry of Interior

**Oliver Clarke**, Jamaica, Chairman and Managing  
Director, The Gleaner Company Limited

**Ricardo Claro**, Chile, Chairman, Megavision

**Jack Correa**, Brazil, Director, Strategic Affairs,  
The Coca-Cola Company

**Chuck Costello**, United States of America,  
Former Director, The Democracy Program,  
The Carter Center

**Edmundo Cruz**, Peru, Co-editor,  
*La República* Newspaper

**Henry Day**, Peru, Director, Repsol YPF Comercial

**Hatuey de Camps Jiménez**, Dominican Republic,  
President, Partido Revolucionario Dominicano

**Humberto de la Calle Lombana**,  
Colombia, Consultant

**Carlos de Leon**, Guatemala, Fiscal General,  
Ministerio Público



Journalists such as Miguel Rivadeneira from Radio Quito (left) investigate and report on campaign finance abuses.

**Pedro Pablo Diaz**, Chile, Director, Universidad  
Jesuita Alberto Hurtado

**Stephen Donehoo**, United States of America,  
Managing Director, Kissinger McLarty Associates

**Jorge Fernández**, United States of America,  
Latin American Director, Delta Airlines



## FINANCING DEMOCRACY IN THE AMERICAS

**Rafael Fernández Quiros**, México, Communications Manager, The Coca-Cola Company

**Carol S. Fuller**, United States of America, Counselor for Political and Economic Affairs, U.S. Mission to the Organization of American States

**L. Enrique García**, Bolivia, President & CEO, Corporación Andina de Fomento

**César Gaviria**, Colombia, Secretary-General, Organization of American States

**Bruce Golding**, Jamaica, Senator, Jamaica Labour Party

**John Graham**, Canada, Chair, Canadian Foundation for the Americas

**Steven Griner**, United States of America, Senior Specialist, Organization of American States

**Christian Gruenberg**, Argentina, Director, International Relations, Poder Ciudadano

**John Hardman**, United States of America, Executive Director, The Carter Center

**Troy Hatch**, United States of America, Senior Operations Counsel, BellSouth International

**Linda Hemby**, El Salvador, Regional Coordinator, Probidad

**Matthew Hodes**, United States of America, Director, Conflict Resolution Program, The Carter Center

**Edmundo Jarquín**, Nicaragua, Division Chief, Inter-American Development Bank

**Earl Jarrett**, Jamaica, General Manager, Jamaica National Building Security

**Hernán Lanzara**, Peru, Global Communications Manager, The Coca-Cola Company

**Gerardo Le Chevallier**, El Salvador, Regional Director, Latin America and Caribbean Programs, National Democratic Institute

**Axel Leblois**, France, President, World Times, Inc.

**Christine Leblois**, France, Manager, World Times, Inc.

**Chuck Lewis**, United States of America, Executive Director, Center for Public Integrity

**Adam Lioz**, United States of America, Democracy Advocate, U.S. Public Interest Research Group

**Alonso Lujambio**, México, Consejero Electoral, Instituto Federal Electoral

**Ronald MacLean-Abaroa**, Bolivia, President, Poder Vecinal

**Elena Martinez**, Cuba, Regional Director, Latin America and Caribbean Bureau, United Nations Development Programme

**Shelley McConnell**, United States of America, Associate Director, Americas Program, The Carter Center

**Jennifer McCoy**, United States of America, Director, Americas Program, The Carter Center and Georgia State University Professor of Political Science

**Danny L. McDonald**, United States of America, Commissioner, Federal Elections Commission

**Thomas McLarty**, United States of America, President, Kissinger McLarty Associates

**Robin McLay**, Canada, Director, Governance, Human Rights and Social Policies Division, Canadian International Development Agency

**Percy Medina**, Peru, General Secretary, Transparencia



## FINANCING DEMOCRACY IN THE AMERICAS



**Elizabeth Spehar**, director of the OAS Unit for Promotion of Democracy, exchanges views with Bolivian Vice President **Carlos Mesa**.

**Ellen Mickiewicz**, United States of America, Director, DeWitt Wallace Center for Communications and Journalism, Terry Sanford Institute of Public Policy at Duke University

**Arnauld Miguet**, United Kingdom, Lecturer in European Politics, The London School of Economics

**Trevor Munroe**, Jamaica, Senator, People's National Party, and Professor of Government and Politics, University of the West Indies, Mona

**Burt Neuborne**, United States of America, John Norton Pomeroy Professor of Law, New York University

**Laura Neuman**, United States of America, Senior Program Associate, Americas Program, The Carter Center

**Larry Noble**, United States of America, Executive Director and General Counsel, The Center for Responsive Politics

**Andres M. Oppenheimer**, United States of America, Latin American Correspondent, *The Miami Herald*

**Beatriz Paredes**, Mexico, Diputada, Partido Revolucionario Institucional, Camara de Diputados

**Robert A. Pastor**, United States of America, Vice President of International Affairs, American University

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**Juan José Rodil Peralta**, Guatemala, Adviser to the Fiscal General, Ministerio Publico

**Marta Pasos de Sacasa**, Nicaragua, Vice President, Televisión de Nicaragua, S.A., Canal 2

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**Andrea Sanhueza Echeverría**, Chile, Executive Director, Corporación PARTICIPA

**Michele Schimpp**, United States of America, Senior Election Adviser, USAID



## FINANCING DEMOCRACY IN THE AMERICAS

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Congressman, U.S. House of Representatives

**Adele Simmons**, United States of America, Vice  
Chair, Chicago Metropolis 2020

**Frederick B. Slattery**, Canada, Former Senior  
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**Nelly del Carmen Yáñez**, Chile, Journalist,  
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**Andreas Zimmer**, Germany, Consul General,  
German Consulate in Atlanta

**Daniel Zovatto**, Argentina, Senior Executive,  
International Institute for Democracy and  
Electoral Assistance



Carter Center conferences  
draw news coverage.



There are  
no perfect  
systems  
but there  
is better  
policy.

BACKGROUND PAPERS



FINANCING DEMOCRACY IN THE AMERICAS

COMPELLING DISCLOSURE OF CAMPAIGN CONTRIBUTIONS THROUGH ACCESS-TO-INFORMATION LAWS:

The South African Experience and Relevance for the Americas

Laura Neuman<sup>1</sup> and Richard Calland<sup>2</sup>, March 2003

INTRODUCTION

In the past decade, South Africa has reinvented itself. From the darkness of apartheid injustice to the enlightenment of Nelson Mandela's democratic governance, South Africa's transition has set a shining example for its own continent and beyond. At its heart lies a remarkable constitution that enshrines a bill of rights and creates a framework for open, accountable government.

Also included in the new constitution was the mandate to establish a broad right to access to information, related to but separate from the right to freedom of expression. In 2000, the South African Parliament ratified the progressive Promotion of Access to Information Act (POATIA). This right to information law has been utilized creatively to "fill" other transparency gaps, including the absence of broad political financing and disclosure laws. For example, last year the Institute for Democracy in South Africa (IDASA), South Africa's largest and pre-eminent democracy organization, under the auspices of POATIA, requested financial records relating to donations from all political parties and the 13 largest private corporations.

South Africa's struggle to further transparency in the financing of democracy is not unique. Other countries, including those in the Western Hemisphere, are now similarly seeking to perfect their systems and to fill the gaps. As with South Africa, in the absence of effective disclosure laws, new access-to-information legislation may serve as the channel for increasing accountability and tempering the contaminating potential of shrouded political

financing in the Americas. This paper will examine the use of modern access-to-information laws and constitutionally provided access to information rights to compel political party and campaign financing disclosure in South Africa and the potential applicability in Latin America and the Caribbean.

BACKGROUND

The South African government attempted to build a new culture of accountability after the transition to democracy in 1994. Naturally for an authoritarian regime, the apartheid-era government was both secret and



Americas Program Senior Program Associate Laura Neuman co-authored a background paper on access to information as a tool for obtaining disclosure.

1 Laura Neuman is the senior program associate in the Carter Center's Americas Program. Formerly, she practiced law in Wisconsin for six years, representing persons under the poverty line, specializing in public benefits and disability law.

2 Richard Calland is the executive director of the Open Democracy Advice Centre, Cape Town, South Africa, and the program manager of the Political Information and Monitoring Service at the Institute for Democracy in South Africa. Formerly, he practiced law at the London Bar for seven years, specializing in public and human rights law.

The authors wish to thank Alex Little for his assistance with designing the disclosure diagrams.



## FINANCING DEMOCRACY IN THE AMERICAS

corrupt, endemically so, especially in the so-called “Bantustan” states that it established in eight different pockets of South Africa. Despite an inevitable hangover from this period of history, the South African government has made valiant attempts to develop the necessary institutional framework to control corruption.

Nevertheless, a great lacuna still exists, exposed by a number of scandals that illustrate the potentially contaminating effect of secret donations on democratic politics.

In 1999 South Africa entered into its largest-ever contract, in this case for arms, with five different foreign suppliers. The overall deal, costing around \$10 billion, attracted huge controversy and a great deal of scrutiny following a wide range of allegations of corruption, many of which were later verified by the joint investigating team’s report (published in November 2001). One of the allegations that went unproven to the grave of the former Minister of Defense Joe Modise was that a donation of \$10 million from British Aerospace, one of the successful main contractors, directed to a fund for veteran members of the liberation army of the ruling African National Congress (ANC) was, in fact, a direct donation to the party itself. In 2002, another political party contribution scandal broke when it emerged that a German fugitive from justice, Jurgen Harksen, who was fighting extradition to Germany from South Africa, had made several cash donations to the Democratic Alliance (DA), which, at that time, was part of a ruling alliance in the Western Cape. This year, additional evidence of purchasing influence in policy-making by secret private donations has surfaced in connection with a large development in the Western Cape province. In this case, the provincial minister for the environment, David Malatsi, accepted a large donation to the National Party days before granting permission for the development, in which the donor would

have a large commercial stake. Malatsi was suspended from the party pending an internal investigation and in February was arrested by the elite serious crime unit, The Scorpions.

As related in the above examples, unregulated and secret contributions can increase the risk of corruption and influence trafficking in public contracting, concessions, and government decision-making. Additionally, the electorate is denied necessary knowledge of the relationship between political parties and its donors, thus limiting its ability to evaluate these associations and their influence on politics.

Countries have adopted a wide range of responses to the potential threat of opacity and corruption generated by private donations. “In Latin America, as in many European political regimes, public financing was opted for in order to circumvent or diminish the influence of special interest groups and of de facto forces in the carrying out of partisan operations.”<sup>3</sup> In other countries, the focus has been on financing limitations and strict disclosure. Unfortunately, regardless of the system in place, there still remains a wide chasm between the goals of transparency and the realities of party and campaign financing.

Civil society groups have tried to breach this divide by comparing completed campaign financing disclosure forms with estimated expenditures, such as that spent on publicity and media, looking for potential discrepancies.<sup>4</sup> Others, such as the case of South Africa, have compared reported income to reported donations: in other words, comparing income to income. In all circumstances, however,

<sup>3</sup> *Comparative Study of the Legal and Practical Characteristics of the Funding of Political Parties and Electoral Campaigns in Latin America*, Daniel Zovatto, Handbook of the Funding of Political Parties and Electoral Campaigns, IDEA, 2000, p. 11.

<sup>4</sup> Christian Gruenberg, “Políticos Ricos y Riesgos Políticos: Indicadores del Gasto en el Financiamiento de las Campañas Electorales,” presented at Participa Debate, August 2002.



## FINANCING DEMOCRACY IN THE AMERICAS

modern access to information laws may serve as a useful tool to compel disclosure or enhance diffusion of information.

## DEBATE ON DISCLOSURE OF PRIVATE DONATIONS

Although the advantages of political party disclosures seem clear, there remains a debate over the appropriateness of compelling disclosure directly from the donor. Those who favor such disclosure argue that there is a diminishing power of the nation-state and that the main benefactors of this shifting power alignment are private corporations. More and more, government services are being privatized or licensed to outside corporations, and the money held by these conglomerates often outweighs the national economy. In 2000, for example, Glaxo Wellcome SmithKline Beecham was created through a merger with an estimated value of U.S. \$100 billion. The South African gross domestic product (GDP), the worth of the entire country, in contrast, is U.S. \$98 billion, and Peru's GDP is approximately U.S. \$54 billion, one-half that of a single corporation.

Furthermore, simply legislating political party disclosure does not assure full accounting of all donations. Political parties are increasingly subverting such disclosure requirements through:

- ◆ creative accounting
- ◆ exploiting loopholes
- ◆ encouraging donations directly to candidates
- ◆ accepting anonymous donations, or
- ◆ establishing “dummy” organizations and so-called charities.

All are mechanisms that can be used to channel money back to the party.<sup>5</sup>

To increase the effectiveness of funding limits and disclosure requirements, both sides, the demand and the supply, must be addressed. Disclosure via the private corporate donor will help close the otherwise burgeoning loopholes employed

by the political parties. Thus, in light of enforcement and monitoring needs, disclosure by private corporations, whether mandatory or voluntary, should be sought.

Corporation leaders, however, have argued that mandatory or compelled disclosure will serve to reduce private donations to political parties, thus further weakening the democratic party system. Concerns range from political retribution from the “winner,” if that is not the party that was supported, to backlash from the consumers and stockholders for championing “dirty” politicians. These legitimate arguments can be tempered, given the particular country context, by, for example, permitting a higher threshold for disclosure so as not to deter small or even middle-sized donors.

## LEGAL FRAMEWORK TO COMPEL DISCLOSURE

*Political Parties*

Many electoral laws are now calling for increased disclosure of party financing. In systems where reforms establish strict limits on private donations and legislated reporting requirements, diffusion of such information is less complex. The national electoral commission can publish and disseminate the mandatory reports, or where there coexists an access-to-information act, citizens can request the documents from the public body.

In Mexico, for example, recent electoral guidelines mandate a maximum percentage of private contributions to political parties, a party's annual submission of financial reports, and additional reporting in election years. These reports are proffered to the national electoral commission, Instituto Federal Electoral (IFE). Mexico, like Jamaica and

<sup>5</sup> “Comparative Study of the Legal and Practical Characteristics of the Funding of Political Parties and Electoral Campaigns in Latin America,” Daniel Zovatto, *Handbook of the Funding of Political Parties and Electoral Campaigns*, IDEA, 2000.



## FINANCING DEMOCRACY IN THE AMERICAS

Peru, has recently passed a robust access-to-information act, and, in this case, the law explicitly provides for requests of IFE-held documents.<sup>6</sup> Thus, in Mexico persons have the ability to more easily receive party financing information, allowing them to hold the party and its members accountable.

This, unfortunately, is not the norm. In South Africa, the *private* funding of political parties is entirely unregulated: There is no requirement to disclose, there are no limitations on donations, and no caps on campaign expenditure. Essentially, it is the survival of the fittest. Despite the justified euphoria of the founding election of 1994, elections in South Africa have since become more of a battle of wallets, not ideas. The inequities of this situation are compounded by the fact that there is *public* funding of political parties. Pursuant to Section 236 of the Constitution, a law was passed in 1998 providing for the public funding of those parties represented in either the national or provincial legislatures. The constitutional provision states that the funding must be on the basis of two principles: proportionality and equity, in pursuit of an overriding principle, that of multiparty democracy. After the Public Funding of Represented Political Parties Act of 1998 was passed, Parliament produced regulations determining the division of monies under the new scheme: 90 percent provided to political parties on the basis of proportionality and 10 percent on the basis of equity. In other words, the vast majority of the funds are spent in a way that simply reinforces the status quo in terms of multipartism.

The 1998 act is silent on the question of private funding. At the time of its passage, the then minister for constitutional affairs promised that a second law to regulate private funding would follow soon. Nothing came. And, despite further vague indications from government from time to time, there has until very recently been no move towards regulatory reform. Indeed, various commentators have concluded that

the status quo suits the larger parties very well: They can legally collect private donations in secret, without limit or other circumscription.

For those many countries with unregulated party financing systems and no requisite reporting, access-to-information laws can be even more critical for filling the gap and ensuring disclosure.

On the right to information, South Africa's constitutional assembly, an amalgam of its two houses of Parliament that wrote the country's final constitution in the two years that followed the first democratic election of April 1994, decided that openness must be a cornerstone of the new democratic dispensation. As Justice Kate O'Regan, a member of the South African constitutional court and a former legal academic, asserted, "The right to access to information should not be seen as an afterthought or optional extra in our constitutional dispensation. It is integral to our conception of democracy that our Constitution adopts—a conception that encourages participation, abhors secrecy, and seeks to ensure that public power will not be abused."<sup>7</sup>

Section 1 of the South African Constitution, its founding provisions, reflects this emphasis by stating that the founding values include "...a multi-party system of democratic government to ensure accountability, responsiveness and openness." Section 32 of the final constitution enshrined the right of access to information and required the legislature to pass legislation within three years that would give effect to the right. Accordingly, POATIA was passed, a law that has been described by one of the leading freedom-of-information experts,

6 Although many Latin American and Caribbean countries still lack specific access-to-information laws and regulations, the majority have a constitutionally based right to information that may be applicable in compelling political party funding disclosure.

7 K. O'Regan (2000) "Democracy and access to information in the South African Constitution: some reflections" in *The Constitutional Right of Access to Information Seminar Report No. 5*, 2001, 15 Johannesburg: Konrad Adenauer Stiftung.



## FINANCING DEMOCRACY IN THE AMERICAS

Tom Blanton of the National Security Archive in Washington, D.C., as “probably the strongest in the world.”<sup>8</sup>

Although South Africa lacks mandatory political party reporting, over the past year IDASA has led a new civil society call for openness in the private funding of political parties. In 2002, IDASA made formal requests under the provisions of POATIA to the 13 political parties represented in the national parliament, seeking records of all donations above R20,000 (approximately U.S. \$2,000) made to the party since 1994. In making these requests, IDASA is arguing that political parties, in terms of their functions in Parliament and in the performance of functions associated with the public funding that they receive, are public bodies as defined under the access-to-information law.<sup>9</sup> When fighting elections or in terms of its representation in the public institutions of national and provincial legislatures, the political party is performing a public function, an argument that is reinforced, as noted above, by the fact that public funds are now spent on enhancing the capacity of political parties to perform these functions. **The definition of “public body” in POATIA means that to succeed in this argument, it will be necessary to show that the political party is fulfilling a public function in terms of the constitution or any legislation.** South African elections are, of course, controlled by an electoral act that governs the rules of the election and the terms of entry into the electoral race. Public funding is provided to political parties so that they can contest elections and retain organized structures between elections. Whether either set of acts constitutes the performance of a public function “in terms of any legislation” is a point that would need to be resolved by the court.<sup>10</sup> But the argument, in essence, is that while some aspects of the activities of a political party are private, when it enters the realm of contesting elections and representing the

public through the national and provincial legislatures, it performs a public function that is inherently connected with the institutional fabric of a democratic state. (See Figure A.)

If the political parties are not “public bodies,” there is still a possibility to compel disclosure. **POATIA is distinctive in that it covers not only publicly held information but also private.** Section 32(1)(b) states that “*everyone has the right to access any information that is necessary to protect or exercise another right*” (emphasis added). This “horizontal” right – i.e. citizen to citizen or citizen to private body, as opposed to “vertically” from citizen to state – is given effect in the detailed provisions contained within Part 3 of the act. The reasons for this unprecedented approach are noteworthy.

The South African government of Nelson Mandela was acutely aware of the power of the private sector, both domestic and transnational. As the literature on state power and its structural changes in the last 20 years describes, many of the functions that used to be carried out by the state, under public ownership or control, are now carried out by the private sector. Privatization and public contracting are the most obvious examples of this, but it also influences individual rights. The human rights agenda has had to catch up with these profound structural adjustments in the organization and

8 Blanton T. (2002). “The World’s Right to Know”. *Foreign Policy*. July/August 53.

9 POATIA Section 1 defines public bodies broadly:

- “(a) Any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) any other functionary or institution when—
  - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation.

10 The court is likely to rely on the growing jurisprudence on administrative law and justice, where other jurisdictions have had to rule on what does and does not constitute a public body for the purposes of judicial review.



# FINANCING DEMOCRACY IN THE AMERICAS

**FIGURE A**

## Political Party Reporting and Disclosure



\*access to information

administration of public services; the question of who is accountable for what to whom has ensured a vigorous debate about how human rights are used to elicit greater accountability from the corporate sector. After all, it matters little to the average citizen whether the school, the garbage collection, the administration of welfare payments, or the railway service are owned by the private or public sector. What they are interested in is a good quality service that is responsive to the needs of the community at an affordable price. It was with these factors in mind that the makers of the South African Constitution created its unique horizontal right to information.

Therefore, even if political parties are deemed private bodies, under the South African access-to-information act they are still covered, provided that the requester can overcome the initial hurdle of being able to show that the information is necessary to protect or exercise another right. It will have to be shown, for example, that the individual's right to political equality (Section 19 of the South African

Constitution) is infringed by the lack of transparency in eliciting and spending private donations.

### Private Corporations

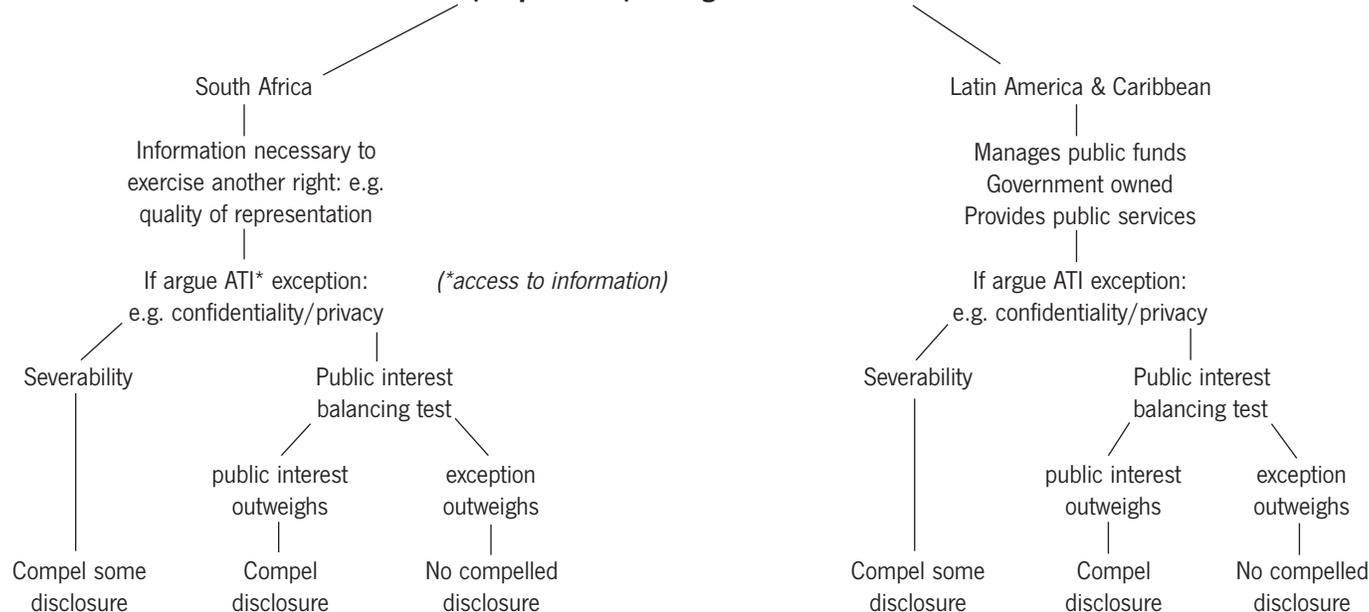
In addition to requesting political party disclosures, IDASA made requests under the access-to-information law to the 13 companies listed at the top of the Johannesburg Stock Exchange. As described above, in order for a private body to be covered, IDASA must demonstrate what other constitutional right it seeks to exercise or protect that necessitates the disclosure of the records. This will be a difficult hurdle to overcome. In its request, IDASA cites Section 19 of the constitution—the right to political equality—and is likely to argue that citizens should not be disadvantaged by the fact that they are unable to “purchase” secret influence over political parties, unlike wealthier donors.

To date, no single political party in South Africa has presented the information, whereas three of the 13 companies have provided an apparently full account of their donations. Seven companies claimed that they make no political



# FINANCING DEMOCRACY IN THE AMERICAS

**FIGURE B**  
**Disclosure by Private Donors**  
**(Corporations) via Right to Information**



donations; two have not responded to the request; and the 13th has claimed that they have no legal obligation to provide the records. This 13th company, SABMiller, the world’s fourth largest beverage corporation, offered three main reasons for denying the request of information. First, they claim that the request did not establish the right that IDASA seeks to exercise or protect (the primary threshold for private information requests). Second, they argue that compelled release of their political donation history infringes on the company’s right to privacy. Finally, they proclaim the company’s “right to associate with whomever it pleases and in whatsoever form it deems desirable.” SABMiller then went on to state that it had provided donations to a “spread of political parties” in the four elections since 1994 (two national and two local elections) but gave no further details as to the identity of the parties or the amounts involved.

IDASA has written to all the nondisclosers reminding them that the access-to-information act

provides for severability—i.e. that where an exemption bites only on one part of the record, then the rest of it must be disclosed. With this in mind, IDASA argues that, for example, even if the identity of the donor or recipient attracts the protection of the confidentiality exemption or right of association, the date, number, and amounts of the donations do not. (See Figure B)

In those countries in the Americas that have recently passed access to information laws, there are narrow circumstances in which certain private companies may fall under the purview of the act. The Peruvian Ley de Transparencia y Acceso a la Información Pública, passed in August 2002 and amended in February 2003, states that bodies which provide public services or exercise administrative functions, in virtue of concessions, delegation, or authorization by the state, must conform to the requisites of the act.<sup>11</sup> Similarly, in Mexico, the law provides that whatever bodies manage or apply federal resources are covered by the provisions of the



## FINANCING DEMOCRACY IN THE AMERICAS

act.<sup>12</sup> Under such a framework, one might argue that private companies that have received public contracts to provide, for example, electricity, water, or waste disposal, or where there has been complete privatization of an industry, are covered by the access-to-information law. In other words, one can request records of their donations to political parties.

The Jamaican Access to Information Act is more limited in its coverage of private actors. The Jamaica legislation defines “public authority” broadly as a company wholly owned by the government, or in which the government holds more than 50 percent of the shares, or “any body or organization which provides services of a public nature which are essential to the welfare of the Jamaican society.”<sup>13</sup> However, unlike the automatic coverage conferred in the Peruvian and Mexican laws, a minister must declare that the act applies to these bodies.

Access-to-information laws generally contain exception clauses that allow certain information to be withheld from release. In South Africa, for instance, all of the political parties and private companies that have responded claiming that they are not required to disclose the information have cited the exemption of confidentiality—that the confidentiality of the third party must be protected because the donation was made in the belief that it would not be disclosed. The court will need to rule on whether the donor’s confidentiality, on balance, outweighs the public interest of transparency and accountability and then whether through redaction some parts of the record remain appropriate for disclosure.

Thus, in both South Africa and the Americas, there is a plausible argument under a modern access-to-information regime to compel disclosure

of campaign and party contributions from private corporations. This, then, allows for an informed comparison of income claimed by the political parties to donations made by the private sector.

Additional positive effects of requests to compel disclosure have been to concentrate the issue in the minds of the executive. For example, at a conference in November 2002, the ruling South African ANC, along with the minority parties, all made public statements of commitment to the principle of political party and campaign financing reform. Moreover, the requests have elicited great media attention, thus further galvanizing the call for reform and attracting public interest and support. Finally, it has prompted some companies to voluntarily revise their approach to the subject. The huge South African mining company AngloGold, for instance, has, with the invited assistance of IDASA, prepared a code to govern their donations from now on, containing a set of criteria and a commitment to transparency. Such voluntary codes could include:

- ◆ criteria for distribution of funds, such as attaching greater weight to principles of equity and diversity in a party than to previous electoral performance, when determining donation allocations
- ◆ prerequisites for political party funding eligibility, ranging from party philosophy that advances human rights to capacity for assuring accountability and furthering meaningful debate
- ◆ detailed disclosure requirements; for example, that the company will automatically disclose contributions, and policy used to determine distribution.

## NEXT STEPS

In the quest for ensuring that private donations do not unduly and undesirably influence politics, more exacting legislation compelling complete disclosure from the demand side—the political parties and candidates—as well as the corporation supply side must be passed and enforced.

IDASA, in South Africa, will continue to litigate

11 Artículo 2, Entidades de la Administración Pública; Ley Numero 2744, Ley de Procedimiento Administrativo General, Artículo 1 (8).

12 Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental, Capítulo 1, XI.

13 The Access to Information Act, 2002, Part I 3(a); 5(3).



## FINANCING DEMOCRACY IN THE AMERICAS

their requests for party financing information via their exceptional access-to-information act and facilitate interested corporations in drafting voluntary codes for political party donations. Additionally, IDASA has submitted to Parliament a draft law that will provide for disclosure of donations above R20,000 (approximately U.S. \$2,400) as well as create a ceiling of R100,000 (U.S. \$12,000) for any single donation.

In the Americas, there is still an overriding need to pass campaign and political party finance laws that mandate reporting and disclosure as well as effective enforcement of these provisions. Moreover, although legislation is pending in a number of countries, only a handful have passed modern access-to-information laws. To enable citizens to assess their politicians and to ensure a more democratic flow and distribution of information, far-reaching ATI legislation must be enacted.

Finally, extant international tenets, such as the Organization of American States Convention Against Corruption, and national laws must be expanded to include not only elected officials but also political parties. In September 2002, the African Union drafted a political party financing provision to be included in their Convention on Preventing and Combating Corruption, which could serve as a model for the Americas.<sup>14</sup> Codes of conduct for representatives and parliamentarians should be expanded to political parties and their candidates, and the electoral office or ombuds must be tasked and equipped to monitor adherence to these ethical and legal provisions with civil society involvement.

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<sup>14</sup> Article 10 Funding of Political Parties

Each State Party shall adopt legislative and other measures to:

- (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and
- (b) Incorporate the principle of transparency into funding of political parties.

<sup>15</sup> Jacobs S., Power G., & Calland R. (2001). *Real Politics: The Wicked Issues*. British Council: London; IDASA: Cape Town.

## CONCLUSION

The South Africa case highlights new alternatives to achieving transparency in political financing. An increased focus on the supply side and disclosure via access-to-information rights will augment other efforts aimed at increased accountability and openness. In a regime where there coexists an access-to-information law or constitutional right to information and political party reporting laws, the national electoral commission can either automatically disclose such reports or respond to specific citizen requests. Where there is no regulation requiring political party disclosure, information may be induced by arguing that the party meets the definition of “public body,” as detailed in the relevant access to information law, or “private body” where such organisms are covered. Utilizing modern access-to-information laws, certain private corporate donors can, likewise, be mandated to disclose political party donations. The ATI laws would primarily apply to those corporations that provide “public services” or, as in South Africa, where the information is necessary to exercise some other right. Finally, new instruments such as voluntary codes for funding and disclosure, national laws, and international conventions can strengthen the existing vehicles for compelled disclosure.

The quest for what has been described as “real politics” requires that for trust in political parties and representative institutions to be rebuilt, a new openness in the provision and control of information must occur, including transparency in the relationship between money and politics.<sup>15</sup> As the South African case shows, an absence of regulation permits secret donations to corrode the political process and enhance a sense of mistrust in the citizenry. However, where the citizens have rights, such as the right to access information, simple requests for disclosure can be used to prompt reform and promote accountability in the use of both private and public power.



## FINANCING DEMOCRACY IN THE AMERICAS

ACCESS TO THE MEDIA<sup>1</sup>*Juan Rial*

## INTRODUCTION

Today, a major part of the political process takes place in the media. The media conditions the public going to the polls on election day as well as the rhythm and the issues of the campaign. It influences the knowledge of the candidates and their message. The media sets the agenda for political discussion both for the government as well as for the opposition in the arena where the legitimacy of the decision-making process is either won or lost.

The political agenda set out by politicians, institutions, nongovernmental organizations, and editorials published by the media gets feedback through public opinion polls, and the results of these polls become part of the public agenda when broadcast by the media.

However, the “media” is not composed of purely political institutions. The media is also part of:

- ◆ **cultural organizations** that inform, entertain, educate, manipulate, and form public opinion. Included are activities that result in immediate political issues as well as those that exert indirect political influence and those that ignore it altogether.
- ◆ the **private service sector** pursuing profit through their everyday activities independently from political icons.

- ◆ **political entities** and, as such, the media expresses or voices the interests of the different financial and social sectors aligned to these entities.

Although institutional representation by way of political parties and organizations foreseen by the

constitutions and parliaments is still the principal arena for legal decision-making, this concept is particular to the societies and economies of technologically developed states. Today, the political contests in democratic systems take place in the media, especially at election time when it is important to have a dominant influence.

Today, the successful politician must be a communicator—someone who has the capacity to seduce the camera and charm the microphone. He must have enough influence so that the “priming,” that imprinting the media places on public opinion creating a public discussion forum, favors him when deciding on the issues to be debated.

We are talking here about the politician rather than the party, which takes a back seat. In a time of personalized politics, the leader is above the collective mass. Misalignments between the institution and changes in society are notorious.

Today, the politician must reach the various sectors that have increasingly different interests and lifestyles. The media is great at leveling the playing field as well as creating barriers. Programs try to reach social groups of a specific age or gender. Programs also attempt to reach various social groups who, in turn, are influenced by several factors to create opinions and attitudes geared mainly to consumerism. This consumerism is also geared to political ideas and sympathies, and more specifically, to political leaders.

The politician not only has to negotiate space with the media, but also he must learn several methods of communication. Thus, some participate in popular shows; in some cases they even sing and dance. The politician finds himself in the position to play yet another character in the info-entertainment industry. He must accept and conform to changes

<sup>1</sup> Preliminary document presented at the Second Annual Meeting of the Inter-American Forum on Political Parties in December 2002 in Vancouver, Canada, as part of the Comparative Analysis on Political Party and Campaign Financing, conducted by the OAS Unit for the Promotion of Democracy and International IDEA in the 34 countries of the hemisphere.



## FINANCING DEMOCRACY IN THE AMERICAS

of political symbols. Old symbols that referred to group identification, such as a social group, have lost their meaning because today we talk about everyday issues. A political leader must “represent” the average citizen, that great majority who wants to express its opinion even though it does so “obliquely” through “someone like me.”

Symbolic and institutional representation have split apart, and the job of the politician and political parties nowadays is to try to come to an arrangement or pact with those who manage the latter. The media is the great protagonist, but to date, all arrangements between the two sectors have been less than satisfactory.

### MAIN ISSUES AND CURRENT STATUS

The relationship between the media and political parties presupposes a confrontation of basic principles, principally the preservation of freedom of expression against the need for equity in the political contest. Obviously, equity is not equivalent to equality. Equity presupposes equal opportunity, not just equality of all the actors, by considering the abilities and the differences of each. Likewise, there is the confrontation between the freedom of association and the social responsibility of the media with its great potential to influence public opinion.

Next, the problems between the interests of the media as a corporate entity and its relationship with its employees—the reporters—introduce confrontation at a different level: between freedom of expression and freedom of association.

The advent of electronic media changed the issue of access significantly, given that radio and television occupy a finite spectrum allocated by the state, which can reserve all existing bandwidth for its own use. This model, adopted by democratic countries just recently, presupposes built-in safeguards to prevent the situation of totalitarian governments where only the official version is broadcast.

Regulatory measures resulted in the creation of ad hoc organizations to manage and/or supervise the media and to ensure the state’s neutrality or attenuate the government’s dominance over the electronic media.

The media’s social and political responsibility is a constant topic of discussion. The media has become an essential ingredient of the political process to the point that words such as “mediacracy” and “videopolitics” have been coined to indicate its importance. Within this context, there has been an increasing need for regulation and self-regulation. The media has become a two-faced Janus: on the one side, asking for higher political expenditure given that the Media has become a supplier and producer of political propaganda, while on the other, denouncing abuse and corruption, among them the excessive expenditures in political campaigns.



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## FINANCING DEMOCRACY IN THE AMERICAS

### MODELS OF RELATIONSHIPS BETWEEN THE MEDIA AND POLITICAL PARTIES

The main issue is the use of the media during election campaigns, especially in advertising of the party and of candidates. The market model has been dominant until recently. In this model, access relates exclusively to the parties' and candidates' ability to pay. Where there are no regulations, access is not equal, especially if we take into account the interests of the media in both economic and sociopolitical forces. This situation results in access discrimination and the use of time slots to favor some political currents to the detriment of others. Even though this situation does not always guarantee the election of media darlings, there are significant disadvantages for minor contenders and for those who do not share the same political ideas.

As a result, a new model that imposes regulations on access to the media has taken shape. It may have varying characteristics, but it usually includes the implementation of "election slots," which are advertising slots available to political parties and candidates. In some cases, election slots are also available between elections to allow the party to put forth its point of view on everyday political issues.

This model can be implemented in several ways. In some cases, the slots are granted exclusively in state-run media, while private operators follow the market model. In other cases, the regulations are applicable to the private media as well. However, there are several ways in which these slots are granted. They may be exclusive, which means that any political advertising can only be broadcast during regulated slots, or they may be mixed or blended, where some slots are regulated and others are available at market price.

Moreover, there is a significant problem to be solved, and that is production of the time slots. Obviously, those who have access to money or facilities can produce better ads than those who don't. Therefore, recent regulations take into account the need to provide free assistance for production of slot materials.

Rules regarding access vary. Small parties and minority candidates always demand equitable access, the same for every political party. Dominant parties and majority candidates maintain the importance of taking the electoral currents into account. Essentially, they start on an equal basis and then, the times slots are granted according to the results of the previous election, either by the number of votes or positions gained.

As far as indirect information, often the most relevant, it relies on codes of ethics and agreements between media license holders, journalists, electoral authorities, candidates, and parties. Advertising in times of indirect information and its characteristics (positive, negative, neutral) is one of the keys that little by little has been adopted in practice. In some countries, the debates of the main candidates are also regulated, with the result that in some cases they become obligatory. Regulations also cover pre-election polls seeking to guarantee the technical quality of the data as well as the information provided to those who pay for the studies.

### SCOPE OF INTERVENTION BY ELECTORAL AUTHORITIES

Usually, electoral organizations are in charge of controlling the enforcement of rules and regulations such as setting limits for advertising space and expenditures. In Latin America, these organizations lack the means to deal with the issue of handling political advertising and social communications. Usually, these organizations are headed by lawyers, which hinders the understanding of the topic.



## FINANCING DEMOCRACY IN THE AMERICAS

In some cases the matter is resolved by creating ad hoc organizations, either within the electoral organization or establishing specialized organizations. There is a good example in South Africa where a temporary body, the independent media Council, was created to regulate the media during the campaign. This body was to monitor all advertising according to the law and refer all controversies to the Elections Commission. In Latin America, organizations with well-defined management structures, such as the Mexican Instituto Federal de Elecciones, are better positioned to deal with the issue.

## CONCLUSIONS

There are two ways to maintain equity and freedom in this area. On the one hand, self-regulation for each player in the process—owners or license holders, journalists, publicity agents, pollsters, analysts and commentators, consultants, and politicians—so that they all commit to a clean campaign. Let's take an example; although it is preferable to stay away from negative campaigning, it is a fact that it is part of the arsenal in the political contest. In this case, the right to respond must be ensured. It will depend on the degree of political culture and the degree in which negative advertising is accepted or not and whether it intrudes into areas that have no direct connection to politics, such as the private life of the candidates.

On the other hand, it is possible to reach a consensus and legislate controls or dictate measures to ensure equity within a framework of political freedom. Among such, there are rules to empower electoral organizations to control the tone of the campaign by imposing punitive sanctions to those who go outside the accepted limits as well as implementing rules to favor free access to the electronic media.

There are still no clear studies that indicate that free access to the media or time limits for such access or the ban of paid advertising have any marked influence or change the results of an election. But it appears to be clear that taking these measures has helped, not only the relationship between the parties and the media, but it has also helped to improve the tarnished image of the political parties.

Limiting the cost of politics is a necessity. To this end, there has to be a limit to the amount of funds going to the parties, as well as disbursements and expenses. Since the money spent on the media is a substantial part of all campaigns, it is recommended to implement rules to limit such expenditures. The best way is to set free and exclusive time slots to avoid extra expenditures in this area. At the same time, the possibility of undue influences to repay favors owed by broadcasting the party line is reduced. Likewise, it is important to monitor the use of indirect advertising in the media.



## FINANCING DEMOCRACY IN THE AMERICAS

# THE LEGAL SYSTEM REGARDING THE USE OF THE MEDIA IN POLITICAL CAMPAIGNS IN LATIN AMERICA

For comparison purposes, we have included a review of the situation in some Latin American countries.

**Brazil.** Paid advertising on radio and television is banned. In return, the government provides free spaces for the various political parties. Scheduling is free during the campaign period between 19:30 and 22:00 hours. There are two ways to have access, one on the national channel and the state channels to a 20-minute maximum. The second consists of 30-second spots to a maximum of 10 or five one-minute spots within the same time frame. The total space allowed to each party is in proportion to the number of seats in Parliament. The same scheme applies to presidential candidates. Presidential candidates on their first campaign, without the backing of any seats in Congress, are granted at least one minute. The party platform may be disclosed, as well as events and comments on the work done in Congress to achieve party goals. Negative campaigning is not allowed. When the rules were introduced for the 1988 elections, cable TV had not been introduced and so is not included in the regulations and was exempt from showing any advertising. The electoral organizations had felt that they could not receive paid advertising and then felt they should follow the regulations. Currently, the same issue is at hand regarding satellite TV, which has not been possible to integrate into the system. As far as TV ratings at election time are concerned, they fall when there is a long period of use. Regarding middle- and upper-class voters who have videocassettes, DVDs or satellite TV, the lack of attention to political advertising is noticeable. The quality of the advertising has to be taken into

account as well. In the case of independent candidates or small groups lacking the necessary resources, their appeals are least attractive by comparison to the high quality of Brazilian TV advertising, especially its technical aspects. The larger parties and their candidates rely on the advertising industry to produce better quality ads for their assigned slots. There are no regulations regarding polls or their use.

**Chile.** Since 1965, there has been legislation regarding the free use of television that has been observed since 1988. The slots are granted in proportion to the number of registered voters in the previous election, regardless of the fact that there may be those who are participating in the political process for the first time, either as candidates for a particular party or as independents. There are a total of 40 minutes available per week for all the parties before a general election, 20 minutes for presidential candidates and 20 for candidates for Congress. For other elections, the total is 20 minutes. Party programs are limited to between five and 20 minutes. Time slots are assigned by the Consejo Nacional de Television (appointed by the Senate and proposed by the president) with a plurality of representation. Paid advertising is not allowed on television although it is on the radio.

**Colombia.** The Consejo Nacional Electoral together with the Comisión Nacional de Television (a public corporation) provide time slots on public radio and television (until the mid 90s the only television available was in the public networks) for political parties. Sixty percent of the time is allotted according to the number of seats that each party has in Parliament. The law does not specify the allocation of the remaining 40 percent, but recent



## FINANCING DEMOCRACY IN THE AMERICAS

practice shows that it is distributed equally among all candidates. Overall, this time is used three months before elections. Paid advertising is allowed in all the media.

**Guatemala.** The Tribunal Supremo Electoral allots 30 minutes per week to each party or coalition of parties in both television and radio, without restrictions on the purchase of time slots.

**Mexico.** The Dirección de Prerrogativas y Partidos Políticos and the Comisión de Radiodifusión del Instituto Federal Electoral (IFE) are the two institutions charged with the organization of radio and TV programming for political parties. The executive director of prerogatives of the Comisión de Radiodifusión and a representative from each of the political parties with decision-making powers agree on the content of the programs to be broadcast. The parties must provide the scripts for approval. These can be for the diffusion of ideological principles, action programs, and election platforms. Access by the parties to radio and television is assured. Each party is granted 15 minutes per month, and twice a month they can participate in a joint program organized by the Dirección Ejecutiva de Prerrogativas y Partidos. It is possible to have regional programs for half the time allotted to each party, and this amount is added to the available national allowance. The IFE must ensure that license holders assign these slots in peak time. During presidential elections, the total amount allotted is about 250 hours of radio and 200 hours of television. For parliamentary elections, the available time is half of the above. Furthermore, during election campaigns, the IFE acquires up to 10,000

30-second radio spots and 400 20-second TV spots, available on a monthly basis, to be distributed among all parties. Seventy percent is distributed according to parliamentary seats and the remainder on an equal basis among all parties. Parties without representation receive up to 4 percent of the total available time. Furthermore, the parties are allowed to purchase slots in the media. The IFE Comité de Radiodifusión monitors compliance by sampling. IFE also has to ensure that there are no negative campaigns and that candidates maintain the party line and avoid campaigning on behalf of others (to avoid the image of the candidate or party for hire).

**Nicaragua.** The rules allow each party 30 minutes per day on public TV and 45 minutes per day on public radio station. Distribution is egalitarian.

**Paraguay.** This country offers negative controls by setting limits. There are no free slots, but limits are set to prevent a particular party from having an overwhelming presence through advertising and publicity. The period established for political campaigns is 60 days for national elections and 30 days for campaigns within the party or coalition. The limits consist of no more than five minutes in each radio or television station per day, and no more than one-half of a newspaper page or equivalent centimeters of written column space.

**Peru.** State radio and television allocate 30-minute daily slots between 1900 and 2100 hours for the sum of all parties during the last month before elections.



## FINANCING DEMOCRACY IN THE AMERICAS

THE NATURE OF PUBLIC, PRIVATE,  
AND MIXED FINANCING<sup>1</sup>*Humberto de la Calle*

## INTRODUCTION

This document compares the various schemes for public/private financing in the region. The island states of the Caribbean have not been included, as they will be part of a later study. This work does not pretend to be an all-inclusive academic exercise but rather a short and practical instrument for political operators to engage in discussion from a common starting point.

Although there have been advances in the development of representative democracies, party and campaign financing continues to be a complex and difficult issue, which seriously affects the solvency of political systems. A study of this reality, legislation, and institutional conduct shows serious deficiencies. The effectiveness of the proposed solutions is constantly tested throughout the hemisphere.

## BASIC CONCEPTS—

## DESCRIPTION OF THE PROBLEMS

Currently there is no way to imagine the exercise of politics without money. The relationship between money and politics is a mutual necessity that could be neutral and free from monetary considerations if it were not because in several instances, it has

caused serious problems. Among them we can cite the following:

a. **Higher costs:** Almost unanimously, analysts feel that the cost of doing politics has increased considerably. This has contributed to the fragmentation of the political parties, excessive emphasis on the personality of the leaders, weakening of ideological patterns, and the increase of electronic media.<sup>2,3</sup>

b. **Donor concentration:** A few tycoons provide a very high percentage of the income of both parties and candidates. This affects the transparency of the decision-making process.

c. **Recipient concentration:** This may put the equality of the democratic debate at risk.

d. **Dirty money and illegal contributions:** Allegations of illegal financing respect no borders. In some cases, the money comes from illegal activities, money laundering, and drug trafficking. A portion of the informal or unreported funds is the result of the illegal use of resources and public services through a network of favored clients.

Some of the behaviors that could be described as clientelism include the following: diversion of labor (employees who instead of doing their prescribed job are involved in party activities), creation of nonexistent positions, vote buying, exchange of money for favors, and influence peddling.

e. **Institutional weakness:** Controls fail on many occasions. In some cases, the capacity of the state to enforce the law is insufficient, resulting in an environment of impunity.

*Current situation and models*

The most common responses to these problems go from increasing the contributions of public

1 Preliminary document presented at the Second Annual Meeting of the Inter-American Forum on Political Parties in December 2002 in Vancouver, Canada, as part of the Comparative Analysis on Political Party and Campaign Financing, conducted by the OAS Unit for the Promotion of Democracy and International IDEA in the 34 countries of the hemisphere.

2 There will be a separate paper on the media during the seminar.

3 Versus Pinto-Duschinsky, Michael, *Comparative Analysis on the Financing of Electoral Campaigns and Political Parties*. San Jose, October 2002. Unpublished. Also, Sorauf, J. Frank, *Inside Campaign Finance*. Yale University Press, 1992.



## FINANCING DEMOCRACY IN THE AMERICAS

funds (in varying proportions) to private financing, as well as setting controls such as top limits, accountability, and campaign finance disclosure.

A quick glance at the current state of affairs regarding the formal characteristics of the financing schemes shows the following:

a. Regarding financing, the predominant system throughout the region (except Venezuela) is a mixed system; that is, political parties receive both public and private funds to finance their campaigns and/or to cover the organization's overhead.

b. Most countries provide direct grants (cash or bonds) or indirect grants (services, tax benefits, training, etc.) within the public financing schemes.

c. There are four ways of distributing public funds in the region: equitable (in equal parts), proportional to the electoral strength; a mixed system which distributes one portion of the funds equitably to all parties and the other according to the electoral strength; and another mixed system which distributes proportionately to the number of voters, and the other portion according to parliamentary representation. However, the prevailing system is one that distributes the funds based on the electoral strength followed by the hybrid system that combines the electoral strength and equitable distribution.

d. Most countries provide some sort of legal threshold to gain access to public financing, specifically that eligibility for the above-mentioned grants is subject to obtaining a minimum percentage of the votes cast and that the party is represented in Parliament.

e. As far as the disbursement of public funds is concerned, there is no homogeneous pattern because in some countries it takes place after elections (reimbursement), while in others it is given at the stage prior to elections and in yet a third group of countries, disbursement is done in two stages, one before and one after the elections.

f. Most of the countries have banned certain types of private financing, mainly donations from foreign governments, individuals, and organizations; nonindividual contributions; and anonymous donations.

g. Some countries set upper limits on private contributions.

h. Most countries grant political parties free access to state-controlled or private media or to both. The predominant custom is to grant free access to the media during the political campaign.

i. In most countries there is some sort of mechanism for regulating and auditing of political parties, and in the majority of cases, this task has been assigned to the elections organizations.

j. Finally, most countries provide punitive measures for those who do not observe the rules regarding party financing and electoral campaigns. On the one hand, there are pecuniary penalties and on the other (to a lesser extent), the decertification of the party or reduction or suspension of public funds for parties that have breached the law.<sup>4</sup>

### *Underlying values and objectives*

There is a basic trilogy: **Equity**, in order to prevent the total amount of resources from generating unfair advantages in favor of some of the candidates. **Promoting participation**,<sup>5</sup> so that lack of funds is not an insurmountable obstacle to political activism or to the diffusion of the political message. And **transparency**, to increase public trust and ensure **political legitimacy**.

Starting from the premise that parties play a determining role in the democratic systems that are often seen as private associations engaged in functions

<sup>4</sup> Here and elsewhere, we have taken into account an unpublished document *Dinero y Política en América Latina: una visión comparada*. Daniel Zovatto. San Jose. October 2002.

<sup>5</sup> There is no proof that the use of public funds has increased voter participation.



## FINANCING DEMOCRACY IN THE AMERICAS

of public or general interest, it was decided that partial public financing was the alternative best suited to diminish the incidence of private interests in the political process.

In developing these values, political financing regimes seek one or several of the following objectives:

- a. Promote political equality.
- b. Fight corruption.
- c. Reduce campaign costs.  
Establish shorter campaigns.
- d. Preserve the integrity of the political system.
- e. Strengthen the parties.
- f. Provide the public with better and more balanced information about the political platforms of the parties and of the candidates.
- g. Promote a better use of the funds used in politics by investing in more productive activities rather than using it as fast food for the insatiable political machinery.
- h. Strengthen legislation and organizations, especially enforcement agencies.
- i. Fight impunity.

From the perspective of the “must be,” the quintessential values that have garnered a high degree of consensus could be distilled into the *ten commandments of public finance* in the following terms:

1. There shall be transparency regarding the income and expenses of political campaigns. Party accounts shall be public.
2. State assistance shall be used to create greater equity in the political contest.
3. The influence of privileged groups on the elected governments shall be avoided. The winner shall not assume power as if it were booty.
4. There shall not be foreign contributions.
5. There shall not be anonymous contributions.
6. There shall not be contributions originating from sources involved in criminal or dubious activities.

7. Regulations shall attempt to prevent, as much as possible, any risk to the freedom of political expression.

8. Regulations shall seek a way for political campaigns to require less rather than more funding.

9. There shall be bodies dedicated to enforcing these principles.

10. Violators shall be punished.

### *Tendencies and options; Advantages and disadvantages*

#### **Public, private, or mixed financing?**

Only a few defend exclusively private financing nowadays. In the region, with the exception of Venezuela, no state has opted for an exclusively private financing scheme. All others have mixed financing with a varying proportion of private financing. Although almost no one defends only public financing, two countries deserve special mention.

In Mexico, as a result of major changes in the political system, public financing has been increased to about 90 percent of the total. Some<sup>6</sup> think of this as a timely effort to seek greater equity.

Colombia is currently discussing constitutional reform to ban private financing. The current environment appears to be receptive to this type of solution.

Chile and Peru receive only indirect public financing, and it is quite restricted.

There is the need for examining the proposal to adopt a method of full and exclusive public financing to see if it increases the problems instead of solving them.

Those who seek illegal financing are not going to stop merely because the conduct is prohibited.

<sup>6</sup> Molinar Horcasitas, Juan. *Las elecciones federales de 1997 en México: Evaluación del Sistema de Partidos y la reforma electoral en materia de regulación financiera*. Internet [www.trife.gob.mx](http://www.trife.gob.mx)



## FINANCING DEMOCRACY IN THE AMERICAS

In such cases it is possible that public financing is just going to increase the funds spent rather than replace them. The prohibition may increase the amount of money that is not reported officially. Likewise, there are some who feel that this type of solution leads to bureaucratize the parties and disconnect them from society. It is also important to take into account any tax consequences of any decision of this nature. Generally, public financing should be based on a system that allows the amount to vary according to economic and financial variables, such as is the case in Costa Rica.

A mixed regime (with a good balance between public and private monies) with the application of controls is surely the better road.

**Criteria for the distribution of public goods**

At one end of the spectrum, there are those who believe that a truly democratic distribution should be based in just one criterion: proportionality according to elections results. At the other, there are those who argue that if one of the essential values in this institutional architecture is equity, the only criterion should be equality. The majority tends to favor a combination: a basic egalitarian level, or first floor, together with a distribution of funds proportionate to the votes or seats gained. Another subspecies refers to matching funds, granting public funds based on private donations received.

In any case, all evaluations of the options must take into account that financing is not an isolated component. It influences and is influenced by the party system and by the political system as a whole, that is to say, both the formal as well as the real elements of the process.

**Limits to personal donations and campaign expenses?**

It could be said that the majority agree on an affirmative response to the above question, although in the United States there is the perception that such prohibitions may violate freedom of expression.<sup>7</sup> There is no general trend. Some countries have set limits, either by source or by amount of resources. Colombia only limits the total amount per campaign. El Salvador, Guatemala, Panama, Peru, and Uruguay have no limits.

**Accountability**

This is one of the key elements. The general tendency is that the parties have to be accountable,<sup>8</sup> just as the candidates are accountable in Brazil, Colombia, Paraguay, and Venezuela. In other countries, the donors must also be identified. In Argentina, Bolivia, Colombia, Chile, Ecuador, Mexico, Nicaragua, and Peru, the accounts are subject to public disclosure.

**Barriers to access financing?**

Naturally, countries such as Peru and Chile, which have only a weak public (indirect) financing system, lack legal barriers. There are none in El Salvador, Honduras, and Paraguay either. Venezuela is out since they have no public funding. The rest have some requirements or barriers, normally calculated on a percentage of the votes.

7 For Herbert Alexander, "Finding a way to protect the integrity of the electoral process and respecting freedom of expression at the same time, is the fundamental problem to be faced by those who seek to reform the financing of electoral campaigns." (USIA. Temas de Democracia, Publicaciones Electrónicas de USIS, Vol.1, No. 13, September de 1996. Page 1)

8 There will be a separate study on this topic during the seminar.



## FINANCING DEMOCRACY IN THE AMERICAS

**Enforcement bodies**

With the exception of Uruguay, all Latin American countries have enforcement bodies (Electoral Councils, etc.). In some cases, there are specialized judges. In others there is a combination of these and other government organizations such as the office of the auditor general.

**Who receives the funds?**

Depending on the distribution of parties, some countries allow the parties, as well as the candidates and support organizations, to receive funds. This makes the task of auditing more difficult.

**DEGREE OF CONSENSUS:  
A DYNAMIC MATRIX**

Is there consensus among the parties regarding the need for legal mechanisms to guarantee transparency regarding the source, management, and application of financial resources? One obstacle is the double-talk used. Generally, the party leadership, subject by definition to a closer scrutiny by the citizens and the media, appears more willing to accept various mechanisms. Grass-roots politicians, however, are more reticent to the various advances when they are not openly breaking the rules. Looking at another aspect of the issue, a chart of variables could be designed to show the dynamics of each party with respect to its characteristics and the expected response in each case. A preliminary scheme could be formulated like this:

- a. The greater the crisis (that is, greater vulnerability of the parties), the greater the desire to increase public financing.
- b. The greater the split of the parties, the greater the emphasis for financing to go to the candidates.
- c. The larger the party, the greater the interest in adopting distribution mechanisms according to the number of votes. The smaller the party, the more they defend neutral mechanisms.

- d. The newer the party with fewer votes, the greater the interest in an early distribution.
- e. The greater the clientelism, the lower degree of acceptance of control mechanisms.
- f. The greater the weight of public opinion in the votes cast for a particular party, the lower the resistance to independent control mechanisms.
- g. The more closed and protected the economy, the greater the tendency for economic groups to have a decisive influence in the financing of elections.<sup>9</sup>
- h. The greater the entrenchment of the traditions of the party, the greater the resistance to prohibitions and donations by artificial persons.

The previous statements must be subject to a greater empirical scrutiny. It is suggested to research these issues.

**A good financing system: the best deal**

The credibility of the political process and the representative democratic system are going through a crisis of trust. This is especially true in Latin America.<sup>10</sup> There is no better deal for anyone, especially for them, than to improve the degree of legitimacy and trust in the institutions. Putting in place an equitable and transparent financing system is a good way to begin the road to reach this goal.

<sup>9</sup> See works by Fernando Carrillo (Internet)

<sup>10</sup> Democracies in Development, Payne, Zovatto, Carrillo, Allamand, IDB, 2002, especially Chapter 2, "Gauging Public Support for Democracy."



## FINANCING DEMOCRACY IN THE AMERICAS

DISCLOSURE REQUIREMENTS IN POLITICAL PARTY AND CAMPAIGN FINANCING<sup>1</sup>*Gene Ward, Ph.D., Democracy Fellow, USAID*

## INTRODUCTION

Development experts as well as democracy practitioners are now realizing that politics is as important to successful development as economics.<sup>2</sup> The question of how to promote the growth of good governance has now reached parity with the traditional question of how to best promote sustainable economic development. According to the World Bank<sup>3</sup>, good governance leads to higher investment and growth, and “political accountability” is one of the variables identified in the governance equation. Political accountability is defined in part by “transparency in party financing” as well as “asset disclosure.”

Many researchers in the field of money and politics claim that too much money is either hidden, goes unreported, or is from illicit sources, and Latin America is no exception nor is it alone in facing this challenge. Secret money and corruption hurt the economy and the polity of a nation as well as distort the behavior of politicians, hence development falters and citizen confidence in democracy wanes. Many of the countries in the region still do not openly reveal the sources and origins of their political party and campaign funds. This is particularly true for private funding sources where there are many uncertainties about the amounts and identities of these funds generally across the 34-member OAS countries.<sup>4</sup>

This paper briefly discusses the anatomy and status of disclosure and transparency in Latin America and considers some of the benefits of open political finances. It poses the following questions:

- ◆ Why is disclosure in Latin America important?

- ◆ What does transparency in political fund raising in Latin America mean?
- ◆ What does disclosure of money in politics look like in Latin America?
- ◆ How does Latin America compare to the rest of the world?
- ◆ What, if anything, can be done about it?



**Gene Ward presents USAID’s forthcoming report on disclosure at the conference luncheon.**

1 Preliminary document presented at the Second Annual Meeting of the Inter-American Forum on Political Parties in December 2002 in Vancouver, Canada, as part of the Comparative Analysis on Political Party and Campaign Financing, conducted by the OAS Unit for the Promotion of Democracy and International IDEA in the 34 countries of the hemisphere.

2 United Nations Human Development Report 2002, *Foreword* by UNDP Administrator Mark Malloch Brown.

3 World Development Report, 1997.

4 Zovatto, Daniel, “Internal Democratic Processes and Financing of Political Parties,” in *Democracies in Development*, Inter-American Development Bank, 2002.



## FINANCING DEMOCRACY IN THE AMERICAS

### WHY IS DISCLOSURE IN LATIN AMERICA IMPORTANT?

There are three main reasons why countries in Latin America can benefit by increasing emphasis on transparency:

◆ **Increased legitimacy and confidence by the electorate:** Illicit or illegal money can too easily find its way into the governance equation and cast aspersions on all. Without disclosure, money can come from anywhere in the world and in any amounts. Since money often determines who wins a political contest, transparency in its origins and use are key.

◆ **All political finance regulations begin with disclosure:** No disclosure means no enforcement is possible: Without disclosure reporting requirements for contributions, there would be no way to enforce campaign contribution limits. Without disclosure about spending, there could be no way of enforcing spending limits. Without disclosure of a donor's identity and citizenship, there is no way to enforce bans on foreign contributions. Countries that have weak enforcement of political finance therefore will also likely have weak or non-existent disclosure.

◆ **Transparency builds confidence in the democratic process:** In a democracy, the underlying principle behind disclosure is that the more transparent and open a nation with its public and political finances, the more trusted the government and the more confident and legitimate its citizens consider it. It makes citizens feel confident and comfortable with their government and political leaders when they know what they are doing with public and political finances.

### WHAT DOES TRANSPARENCY IN LATIN AMERICA MEAN?

Disclosure is only one of the many ways that nations have tried to control the flow of money into politics. (See Annex 1 for an overview of spending

limits, bans, prohibitions, etc.) Disclosure, however, means different things to different people. From the perspective of NGOs and civil society organizations, disclosure is being able to see where political money originates and flows and how it may influence legislative behavior.

From the point of view of a candidate or a political party, disclosure means giving up some privacy but gaining credibility through accountability. And from the point of view of the media, disclosure is revealing a scandal involving political finances and a public figure. All of these perspectives share the common goal of requiring more openness regarding political finances.

The need for more disclosure laws on the books, however, does not assume that there is dishonest money in a political system. It could mean that parties simply need to be more open about their honest money and allow some transparency. In a democracy, disclosure reports are to politics what financial statements are to businesses. Both are “accounting systems;” one for the accuracy of profits, the other for the level of “accountability” of elected leaders to the public and to their members.

### TRANSPARENCY DEFINED

For political financial disclosure laws to be credible as well as enforceable, they should contain two major structural components:

◆ A disclosure law should first contain in clear language a provision that money and “anything of value” (including in-kind resources such as loans or equipment, etc.) should be accurately and promptly reported to the government or a designated agency/commission.

◆ Secondly, a disclosure law should contain a provision that the government will facilitate making these financial reports available to the public for review and analysis as soon as practicable.



## FINANCING DEMOCRACY IN THE AMERICAS

A country's legislation containing the above two components, however, could still fail to be truly a disclosure law that promotes transparency and openness in political finance if it does not pass the "transparency test" listed below in the form of the following five questions.

- ◆ Who gave? (The donor identity question)
- ◆ How much? (The itemized amount attached to the donor's name)
- ◆ When? (The date of the donation)
- ◆ To Whom? (The name of the party or candidate receiving the money or "anything of value")
- ◆ For What? (The name of the vendor or person receiving the money identified by name and category of the expenditure)

A considerable proportion of those involved in political life in this hemisphere, and indeed the world, try to keep their fund-raising activities private or simply ignore laws about disclosure; alternatively, they may seek legal ways to circumvent the rules via loopholes.

This is not to say that disclosure is immediately applicable for all countries. Threats of intimidation and harassment often accompany disclosure of political finances in countries such as Ukraine and Egypt. Still, as democracy matures these incidences decrease, and transparency is able take root. Getting transparency codified and into law is a critical eventual step.

### WHAT DOES DISCLOSURE LOOK LIKE IN THE WORLD?

Based upon a USAID survey of 118 nations<sup>5</sup>, 23 percent of the countries surveyed had no disclosure

<sup>5</sup> "Money & Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies." USAID draft publication, Washington, D.C., October 2002. Though 118 countries is a large sample to demonstrate disclosure laws, it is not a scientifically drawn random sample of the 191 official nations in the world, hence any generalizations drawn must be tentative. The number of Latin American countries in the 118-nation survey was 30. See Annex 2 for details.

laws. Another 17 percent have no public disclosure where finances are reported only to the government, and the public is not allowed to view the reports. Another 25 percent of the countries surveyed provided reports that were so brief that they were of little value, particularly for informing the public about the political finance of their leaders.

When added together, 87 percent of countries surveyed have partial, or no disclosure, with only the remaining 13 percent of the countries examined by USAID actually reporting openly and fully to their governments and people.

### WHAT DOES DISCLOSURE LOOK LIKE IN LATIN AMERICA?

How open is political finance in Latin America compared to the rest of the world? Overall, it appears that requiring disclosure of donors and vendors in an itemized fashion is in short supply in Latin America.

#### Disclosure Levels Compared

	World	Latin America
Presidential Candidates Must Disclose	29%	6%
Parliamentarians Must Disclose	29%	14%
Donor Identity Must be Disclosed	31%	16%
Parties Must Disclose	49%	40%

According to the above table, presidential candidates are considerably less likely to have to report their finances in Latin America than the worldwide average. Legislative candidates in Latin America are also less likely to have to report the origins and amounts of their monies. On the other hand, political party financial reporting is about on par with the rest of the nations surveyed, though slightly less in Latin America.



## FINANCING DEMOCRACY IN THE AMERICAS

Overall, in terms of transparency and openness required by extant laws, Latin America as a region has less transparency and openness than Europe and former members of the Soviet Union but considerably more disclosure than Asia and Africa, which has the least amount of disclosure. If accountability of only private funds is considered, it is possible that Latin America would score even lower on disclosure in comparison to the rest of the world.

### LATIN AMERICAN AND CARIBBEAN COUNTRIES COMPARED TO EACH OTHER

Within Latin America and the Caribbean, a diverse picture of transparency emerges (see table below), with Brazil being the most “open” and one-third of the region being totally “closed” with no transparency laws. However, it should be noticed that most of these closed nations are in the Caribbean with populations of under 1 million.

It should also be noted that the table below only represents the disclosure laws that are on the books, not whether or not laws are enforced or whether loopholes exist in these laws. For example, the table below rates Argentina rather high on its level of disclosure and transparency. According to Transparency International of Argentina, however, only political party funds, which comprise about 10 percent of revenues spent on campaigns, are covered by the disclosure laws of Argentina. Another 90 percent of campaign funds are raised by Argentinean candidates themselves through the establishment of their own private nonprofit organizations and entirely escape having to report to the government or the public. The point is that there is a distance between the existence of the law and the practice of the law. What can be done about disclosure in Latin America?

LEVELS OF PUBLIC DISCLOSURE	COUNTRIES EXHIBITING LEVELS OF PUBLIC DISCLOSURE (N=30)
High Public Disclosure N=1 (3%)	Brazil
Medium Public Disclosure N=2 (6%)	Argentina, Colombia
Low Public Disclosure N=10 (33%)	Barbados, Bolivia, Chile, Costa Rica, Ecuador, Jamaica, Mexico, Nicaragua, Peru, Trinidad and Tobago
No Public Disclosure N=7 (25%)	Dominican Republic, Guatemala, Guyana, Honduras, Panama, Paraguay and Venezuela
No Disclosure N= 10 (33%)	Antigua and Barbuda, Bahamas, Belize, Dominica, El Salvador, Grenada, St. Kitts and Nevis, St. Lucia, St. Vincent & the Grenadines and Uruguay



## FINANCING DEMOCRACY IN THE AMERICAS

Generally speaking, disclosure and transparency tend not to be planned. Scandals revealed by the media are probably the biggest driver of reforms and calls for more transparency.

However, some countries choose to set their legal framework for disclosure from the outset. For example, most all of the former Soviet Union countries have financial reporting to the government with copies being shown to the public. On the other hand, some countries chose gradualism and a slow approach to disclosure by implementing "personal asset disclosure" as a way of opening the door for later, more comprehensive reporting by candidates and parties.

Whichever route a country chooses, it usually follows along the lines of what is politically realistic at the time. If a party or leaders feel not yet ready to make public their funding sources, they may well be vulnerable to public embarrassment if disclosure were implemented. Every country works through this at a difference pace. In the United States, for example, it took almost 40 years between disclosure laws being enacted and disclosure laws being enforced.

For this reason, there is a disclosure continuum along which countries fall, from being totally wide open with public participation to no disclosure of political funds and public engagement. Every country must work from the vantage point of its present location. What's clear, however, is that there are more benefits of transparency than secrecy for Latin American democracies.

USAID's commitment to work in the area of political finance began with the publication of a handbook on money in politics and is now moving to providing technical assistance to political parties, nongovernmental organizations, election commissions, and the media related to disclosure in support of Latin American countries initiating reforms. For example, any Latin American country interested in placing its political party and campaign finance reports on the Internet is invited to see the MAP (Money and Politics) "Transparency through the Internet Program" presentation by IFES (International Foundation for Election Systems) and sponsored by USAID at the Vancouver OAS conference, Dec. 5-6, 2002.



FINANCING DEMOCRACY IN THE AMERICAS

ANNEX 1

MONEY AND POLITICS: CARROTS & STICKS STRATEGIES  
MAJOR REFORM APPROACHES TO LIMIT MONEY IN POLITICS

STICKS (restraints)			
Type of Restraint	How Implemented	Unintended Expected Outcome	Consequences
1. Contribution Limits:	Dollar caps	Restrict funding	Disguised income
2. Contribution Bans:	Corporations & unions	Stop illegal contributions	“Soft money”/Dirty money/ Laundered money
3. Contribution Thresholds:	Financial reporting	Ease reporting burden	Reporting deception
4. Spending Limits:	Spending caps	Restrict spending to make campaigns less expensive	Disguised spending and Spending still skyrocketing
5. Spending Limits In-kind:	Control of “freebies,” Loans, borrowed equip.	Full accounting of costs	Largely ignored
6. Timing Limits:	Shorter campaigns	Less \$ required	Underground campaigns and “off-season” campaigns
7. Public Exposure:	Financial reporting made accessible by public in timely fashion	Honest reporting and Public accountability	Dishonest reporting or disregard for laws, plus information so old is useless
8. Enforcement:	Audit of reports, Investigations conducted	Compliance with laws, Accountability of politicians	Nondisclosure and ignoring of the law
CARROTS (incentives)			
9. Public Financing:	% of seats won	Decrease corruption and costs of elections	Little effect on private fundraising & reliance on big donor
10. Tax Incentives:	Taxpayer deductions	Attract small donors	Little interest by public
11. Free Media:	Gov't provides TV, radio	Equal airtime	Incumbent advantage
12. Tax Credit:	Donor incentives	Encourage more donors	Not too attractive



## FINANCING DEMOCRACY IN THE AMERICAS

ANNEX 2  
BASIC DISCLOSURE RULES IN SELECTED COUNTRIES

COLUMN NUMBER	ANY DISCLOSURE RULES	BY PARTY Income and/or Expenditure Accounts	List of Donors	BY CANDIDATE	
	1	2	3	Presidential	Parliamentary
Antigua and Barbuda	no	no	no	n.a.	no
Argentina	YES	YES	YES	no	no
Bahamas	no	no	no	n.a.	no
Barbados	YES	no	no	n.a.	YES
Belize	no	no	no	n.a.	no
Bolivia	YES	YES	no	no	no
Brazil	YES	YES	YES	YES	YES
Chile	YES	YES	no	no	no
Colombia	YES	YES	YES	no	no
Costa Rica	YES	Subm	YES	no	no
Dominica	no	no	no	n.a.	no
Dominican Republic	no	Subm	no	no	no
Ecuador	YES	YES	Subm.	no	no
El Salvador	no	no	no	no	no
Grenada	no	no	no	n.a.	no
Guatemala	no	Subm	no	no	no
Guyana	no	Subm	no	n.a.	no
Honduras	no	Subm	no	no	no
Jamaica	YES	no	no	n.a.	YES
Mexico	YES	YES	Subm.	no	no
Nicaragua	YES	Subm	YES	no	no
Panama	no	Subm.	no	no	no
Paraguay	no	Subm	Subm	no	no
Peru	YES	YES	no	no	no
St. Kitts and Nevis	no	no	no	n.a.	no
St. Lucia	no	no	no	n.a.	no
St. Vincent & the Grenadines	no	no	no	n.a.	no
Trinidad and Tobago	YES	no	no	n.a.	YES
Uruguay	no	no	no	no	no
Venezuela	no	Subm	no	no	no





## FINANCING DEMOCRACY IN THE AMERICAS

ENFORCEMENT MECHANISMS  
FOR POLITICAL PARTY FINANCING<sup>1</sup>

Miriam Lapp, Senior Policy and Research Officer, Elections Canada

Enforcement is a key component of any political finance regime. In addition to being based on sound policy and administrative practice, to be effective, enforcement must also rely on checks and balances that encourage respect for the law. Political culture is part of the foundation upon which the system is built. An effective enforcement regime is one that enjoys legitimacy in the eyes of the parties, the candidates and, especially, the electorate.

CONCEPTUAL FRAMEWORK,  
RELEVANCE, AND VALUES

Enforcement is essential to any regulatory system, including the regulation of political finance. The reason for this is quite simple: without enforcement, laws—no matter how well-intentioned—have little value. This fact has been recognized by lawmakers and scholars alike. To quote just one: "Enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings. Anything less is a formula for failure."<sup>2</sup> Without adequate enforcement, therefore, political finance regulations—whether they involve limits, bans, or simply disclosure requirements—have little meaning and are unlikely to be respected.

Enforcement comprises several elements. At a minimum, it necessitates that offenses and penalties be clearly identified in law. Enforcement cannot be left to chance or to purely informal arrangements. Lawmakers must anticipate that parties and candidates will seek ways to get around limits and disclosure requirements. Thus, penalties should be clearly provided in statute—and they should be appropriate to the particular offense.

Secondly, enforcement implies an authority endowed with the capacity to monitor for compliance, investigate alleged infractions and, where necessary, the power to apply the appropriate penalties. Rigorous audit procedures are necessary to enable effective monitoring. Sufficient resources—in the form of training and personnel—are also necessary to enable timely and effective investigations.

Finally, enforcement mechanisms must be neutral or independent of government. Without such independence, a political finance regime will lack legitimacy, both among the entities being regulated and among the general public. Public trust is a key to any effective enforcement regime.

## RELEVANCE OF THE CONCEPT

Enforcement is central to any study of political financing for at least three reasons. First, because a lack of enforcement brings the entire political finance regulatory regime into question, the integrity of the process is at stake. And just as enforcement is key to maintaining the legitimacy of political finance regulations, so the latter are integral to the democratic process. According to one observer, "Unenforced limits are worse than no limits because some day they will produce a scandal which will damage people's trust in democracy as a form of

1 Preliminary document presented at the Second Annual Meeting of the Inter-American Forum on Political Parties in December 2002 in Vancouver, Canada, as part of the Comparative Analysis on Political Party and Campaign Financing, conducted by the OAS Unit for the Promotion of Democracy and International IDEA in the 34 countries of the hemisphere.

2 Khayyam Zev Paltiel, *Party, Candidate and Election Finance: A Background Report*. Ottawa: Royal Commission on Corporate Concentration, 1976, available from Supply and Services Canada.



## FINANCING DEMOCRACY IN THE AMERICAS

government and in democratically elected leaders who do not live up to their own laws.”<sup>3</sup>

Secondly, when one examines the situation on the ground in most countries today, it quickly becomes clear that “There is ... too much law and too little enforcement.”<sup>4</sup> Any study with the aim of providing practical tools and solutions to policy-makers must therefore draw attention to the centrality and necessity of enforcement mechanisms.

Finally, the state of knowledge concerning the enforcement mechanisms that do exist is quite limited. Very little has been written about enforcement from a practical point of view. There is still no systematic study of enforcement mechanisms across states. This is particularly evident with respect to the OAS member states.

## COMPLEXITY

One reason for the relative lack of study on enforcement may be the complexity of the topic. One recent examination of the subject draws attention to the basis and content of the rules themselves—including the important issue of identifying which actors are subject to political financing regulations—as well as to the application of the rules, which includes promoting and monitoring compliance, conducting investigations, and applying sanctions.<sup>5</sup> Existing research points to considerable cross-national variation on each of these issues.

If scholars and practitioners are agreed that enforcement is essential in order for political finance laws to be meaningful, they differ greatly on the best means by which to put it into practice. If too little enforcement renders political finance rules meaningless, too much enforcement can paralyze the system by rendering it overly rigid. Excessive reporting requirements may also act as a deterrent to political participation by increasing the level of intrusion into candidates’ personal lives and by raising the costs of standing for elected office beyond the reach

of ordinary citizens. The challenge is to arrive at a level of enforcement that makes political finance regulation meaningful without becoming a barrier to full citizen participation.

## CURRENT APPROACHES AND ENFORCEMENT MODELS

1. *What penalties exist?*

With respect to penalties, it is important that they be linked to specific offenses. Penalties should vary in severity according to the seriousness of the offense (administrative or criminal) and according to the degree of willfulness exhibited by the violator.

According to one survey, the most common types of penalties are:

- ◆ imprisonment;
- ◆ loss of civil rights for those found guilty of offenses (this may include a loss of the right to vote for a certain period of time and the loss of the right to stand as a candidate for office);
- ◆ forfeiture of seat in the legislature;
- ◆ temporary loss of right to sit and vote in the legislature;
- ◆ forfeiture by a political party of part or all of its entitlement to public funding;
- ◆ forfeiture of contributions obtained in contravention to laws or regulations;
- ◆ fines (these can vary significantly in terms of their severity).<sup>6</sup>

In addition to these, some jurisdictions also provide for alternatives that are more remedial than punitive in nature. In Canada, for example, the

3 Karl-Heinz Nassmacher, “Monitoring, Control and Enforcement of Political Finance Regulation,” in *Handbook on Funding of Parties and Election Campaigns*, Stockholm: International IDEA (forthcoming).

4 Michael Pinto-Duschinsky, “Financing Politics: A Global View,” *Journal of Democracy*, 13.4 (October 2002), p. 80.

5 Nassmacher, “Monitoring...”

6 Michael Pinto-Duschinsky, “Breaches and penalties.” [www.aceproject.org/main/english/pc/pcf.html](http://www.aceproject.org/main/english/pc/pcf.html) (12/17/2001).



## FINANCING DEMOCRACY IN THE AMERICAS

commissioner of Canada Elections (the official responsible for enforcing the Canada Elections Act) has the authority to enter into compliance agreements with offenders or would-be offenders under the act. A compliance agreement is a voluntary agreement with the commissioner in which a contracting party agrees to comply with the requirements of the act and to fulfill the terms and conditions that were agreed upon to achieve compliance. Contracting parties avoid prosecution only if they comply fully with the terms of the compliance agreement; otherwise, the commissioner can prosecute the original offense. Compliance agreements must be made public.

## 2. *What implementing agencies exist?*

Annex A provides a partial list of enforcement agencies in place in OAS member states. This preliminary information shows that the tendency is for enforcement to be the responsibility of the electoral management body. Further research is necessary to complete the table for other member states.

## EVALUATION OF ENFORCEMENT MODELS

There are a variety of ways by which the enforcement process may be launched. The method requiring the least amount of resources on the part of the enforcement authority is to rely on complaints—by other parties, candidates, or political actors in the process or by a member of the public. Monitoring and investigative functions under this model would not be automatic but would instead be reactive. Another approach is to place responsibility for monitoring compliance with the enforcement authority itself. This can be done systematically or on a random-audit basis. Clearly, such approaches require considerably more resources for the enforcement authority than a complaints-based model. A comprehensive approach would rely on a combination of these models.

The choice of model will depend not only on the level of resources available to the enforcement

authority but also to a significant degree on the prevailing political culture. For example, a complaints-based model is unlikely to work well where there exists “...a culture of disregard for the law among the rival political parties and candidates.”<sup>7</sup> Where informal “nonaggression pacts” between political rivals exist, a complaints-based system cannot be relied upon to reveal cases of noncompliance.<sup>8</sup> Enforcement authorities in these circumstances must be given the mandate and resources to monitor systematically and not be required to rely on the regulated entities to ensure compliance.

Even where the political culture is not a factor, a purely complaints-based model may prove ineffective for another reason: “... when legal challenges are left to aggrieved individuals or parties (for instance, candidates who feel they have been unfairly defeated), the costs of initiating such an action may prove prohibitive.”<sup>9</sup> Thus, regulators cannot assume that a complaints-based regime will catch all violations—or even the most serious ones. The truth of the matter is that effective enforcement requires adequate resources, regardless of who is responsible for initiating the process.

Political financing, by its nature, is a complex matter, and the tendency is for legislators to render it ever more complex by adding more and more regulations to try to close off existing loopholes. As a result, “breaches of the rules ... may be subtle and hard to detect. Without a qualified and properly trained ‘detective force’ the authorities will frequently

7 Ibid.

8 For example, in late nineteenth-century Canada, political parties engaged in the use of “saw-offs”—friendly agreements to withdraw equal numbers of contested election petitions before appealing to the courts. This practice had the effect of diminishing the number of complaints, making it appear as if fraudulent practices were in decline when, in fact, they were not. See: *A History of the Vote in Canada* (Ottawa: Minister of Public Works and Government Services Canada, 1997), p. 44.

9 Pinto-Duschinsky, “Breaches and penalties.”



## FINANCING DEMOCRACY IN THE AMERICAS

take no action unless presented with a complaint. They will merely respond, but they will not initiate inquiries.”<sup>10</sup>

Political culture and level of resources are not the only factors to consider. The nature of the political finance regulations—whether they be located in a single law or in many—and of the enforcement authority itself are also important. According to Nassmacher, “the effective implementation of political finance legislation is made more difficult where different laws exist dealing with different aspects of the same subject. It is therefore appropriate to distinguish between countries that have:

- ◆ One law regulating money in politics and only one agency to implement it;
- ◆ Various laws and/or agencies for different aspects of political finance; and
- ◆ No enforcement agency to implement the political finance regime.

Evidence from established democracies indicates that only the first approach is likely to work well.”<sup>11</sup>

With respect to enforcement agencies, it is important to ensure that they are able to operate independently, free of government or partisan influence. This may be achieved through a variety of means, including:

- ◆ public expectations or a long tradition of independence;
- ◆ the status of a judge of the supreme court, auditor, or ombudsman;
- ◆ bipartisan or multiparty membership of the commission, where members have to include the minority or the opposition;
- ◆ no reappointment of commissioners (lifetime or one-term appointments only);
- ◆ absence of budgetary strings (on an agency which has become awkward for the government); and
- ◆ absence of political pressure or government or party intervention on staff appointments.<sup>12</sup>

Further research on this question is necessary, however, to determine the degree to which these various measures prove effective in ensuring the independence of enforcement agencies. As with the issue of monitoring compliance, it seems likely that a combination of measures will prove most effective in ensuring agency independence.

## TENDENCIES

Preliminary observations suggest that while enforcement was once treated as a secondary issue, it is increasingly recognized as being as important for an effective regulatory regime as limits or disclosure. This recognition is by no means universal: A recent study by the U.S. Agency for International Development showed that while many countries have well-developed legal frameworks with respect to disclosure, they still lack the political will to enforce them; as a result, disclosure laws in these countries must be said to be *de facto* only.<sup>13</sup>

Enforcement regimes tend to evolve over time, as they respond to changes in social context and political culture. For example, with respect to penalties, some countries are moving in the direction of providing alternatives that are less punitive and more remedial in nature. As noted above, this has been the case in Canada, where since 2000, compliance agreements are available as an alternative to prosecution. As an enforcement device, compliance agreements are less costly and time-consuming than other alternatives, and serve to “decriminalize” minor offenses that are not criminal in nature. They have the added benefit of being applicable

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<sup>10</sup> Ibid.

<sup>11</sup> Nassmacher, “Monitoring, Control...”

<sup>12</sup> Ibid.

<sup>13</sup> U.S. Agency for International Development ~ Office of Democracy and Governance, *Money and Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies*, Technical Publication Series (September 2002).



## FINANCING DEMOCRACY IN THE AMERICAS

outside the court system, thus freeing up limited resources.

It is generally recognized that effective enforcement should be based on a variety of mechanisms. It may be seen as an intricate web of checks and balances that encourages respect for the law. Clear statutory provisions with respect to what is required, who is responsible, and what penalties exist are one part of this web, but so too are less tangible elements, such as agency expertise and legitimacy, and most fundamentally, public trust in the regulatory system as a whole. Civil society is seen as having a very useful role to play in helping to ensure effective enforcement takes place, particularly with respect to the monitoring function.

## POLICY OPTIONS

While there appears to be a consensus around the general necessity of enforcement, with respect to its particular elements, no such consensus yet exists. Specifically, various policy options exist with respect to:

- ◆ assigning responsibility for the use and reporting of political funds (e.g., requirement of official agents to accept and spend political money on behalf of parties and candidates);

- ◆ identifying an agency responsible for implementing political finance regulations (single agency or multiple agencies; relationship to government; resources; legitimacy);

- ◆ monitoring procedures (systematic, random sample, or complaint-based? If complaint-based, does the system provide for timely public disclosure of relevant financial reports? Is there a requirement for financial reports to be audited?);

- ◆ procedures for encouraging voluntary compliance (training of campaign workers; assistance; provision of material support; subsidies for auditing services; public education);

- ◆ penalties (remedial or punitive? Administrative sanctions or criminal prosecution? Distinction between corrupt and illegal practices? Do sanctions vary according to severity of violation?).

In conclusion, it seems clear that no single solution or mechanism is adequate to ensure effective enforcement. Those political finance regimes that are recognized as being effective generally rely on a combination of factors—a web of checks and balances—to ensure that the system performs well. At the same time, it must be recognized that no system, no matter how well-designed or resourced, is cast in stone; periodic adjustments are necessary to ensure that the system responds to changes in the political finance environment, the law itself, and public expectations and values. Above all, an effective political finance regime is one that maintains the trust of the parties, the candidates, the activists, and most importantly, the electorate.



## FINANCING DEMOCRACY IN THE AMERICAS

## ANNEX A:

### ENFORCEMENT AGENCIES IN SELECTED OAS COUNTRIES

<b>Argentina</b>	Federal judges with electoral jurisdiction
<b>Bolivia</b>	Electoral management body
<b>Brazil</b>	Electoral management body
<b>Canada</b>	Electoral management body (specifically, the commissioner of Canada Elections, appointed by the chief electoral officer)
<b>Chile</b>	Electoral management body
<b>Colombia</b>	Electoral management body
<b>Costa Rica</b>	Electoral management body/General Comptroller's Office
<b>Dominican Rep.</b>	Electoral management body
<b>Ecuador</b>	Electoral management body
<b>El Salvador</b>	General Comptroller's Office
<b>Guatemala</b>	Electoral management body
<b>Honduras</b>	Electoral management body
<b>Mexico</b>	Electoral management body
<b>Nicaragua</b>	General Comptroller's Office, electoral management body and the Ministry of Treasury and Credit
<b>Panama</b>	Electoral management body
<b>Paraguay</b>	Electoral management body
<b>Peru</b>	Electoral management body
<b>United States</b>	Electoral management body
<b>Uruguay</b>	—
<b>Venezuela</b>	Electoral management body

Sources: Data for Latin American countries provided by Daniel Zovatto. Data for Canada: [www.elections.ca](http://www.elections.ca). Data for the United States: [www.fec.gov/index.html](http://www.fec.gov/index.html)



## FINANCING DEMOCRACY IN THE AMERICAS

# THE AMERICAS PROGRAM

The Carter Center established the Americas Program in 1986, when the Western Hemisphere was undergoing dramatic political changes, striving toward democracy and opening economies. The program, a pioneer in monitoring elections, made important contributions to these profound changes in the region.

Today, the program helps deepen inter-American relations through high-level policy conferences on hemispheric issues. The initial emphasis on promoting democracy through elections has evolved into second-generation projects to ensure new democracies are meaningful in everyday life. Striving to make governments more accountable, the program helps citizens and governments fight corruption, develop methods to make political financing more transparent, and involve civic groups in public dialogue with governments on crucial national issues and laws.

The Council of Presidents and Prime Ministers of the Americas is key to these efforts. Based at the Americas Program, the council includes more than 35 current and former leaders from the Western Hemisphere led by former U.S. President Jimmy Carter. The council uses its experience and voice to give visibility to pressing issues, search for cooperative solutions to problems, bring together divided countries, and promote policy reform and concrete action by multilateral organizations, governments, the private sector, and nongovernmental organizations.

### INTER-AMERICAN RELATIONS

Countries throughout the Western Hemisphere struggle with an interrelated set of issues from debt, drugs, and deforestation to weak democracies. Many of these issues have both domestic and international components and can only be resolved through cooperative approaches involving several countries. Building on the findings of action-oriented conferences, the Americas Program has helped create coalitions to support stronger regional protection of democracy and implementation of the hemispheric anti-corruption treaty.

### DEMOCRATIC ACCOUNTABILITY

The Americas Program helps foster democracy and builds accountability by promoting open, transparent interaction and communication between citizens and their government leaders, as well as by strengthening systems of accountability within and between government agencies. The program strengthens the citizen voice by promoting free and fair elections, broadening access to information so citizens can monitor government performance, fostering public discussion of proposed legislation, and encouraging routine publication of government documents—a crucial element of the people's "right to know" in a democracy.



## FINANCING DEMOCRACY IN THE AMERICAS

# THE CARTER CENTER AT A GLANCE

**Overview:** The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A nongovernmental organization, the Center has helped to improve life for people in more than 65 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers to increase crop production.

**Accomplishments:** The Center has observed 45 elections in 23 countries; helped farmers double or triple grain production in 15 African countries; mediated or worked to prevent civil and international conflicts worldwide; intervened to prevent unnecessary diseases in Latin America and Africa, including the near eradication of Guinea worm disease; and strived to diminish the stigma against mental illness.

**Budget:** \$33.9 million 2001-2002 operating budget.

**Donations:** The Center is a 501 (c)(3) charitable organization, financed by private donations from individuals, foundations, corporations, and international development assistance agencies. Contributions by U.S. citizens and companies are tax-deductible as allowed by law.

**Facilities:** The nondenominational Cecil B. Day Chapel and other facilities are available for weddings, corporate retreats and meetings, and other special events. For information, (404) 420-5112.

**Internships:** The Center's internship program has been rated one of America's best by the Princeton Review.

**Location:** In a 35-acre park, about 1.5 miles east of downtown Atlanta. The Jimmy Carter Library and Museum, which adjoins the Center, is owned and operated by the National Archives and Records Administration and is open to the public. (404) 331-3942.

**Staff:** 150 employees, based primarily in Atlanta.



MARTIN FRANK



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## FINANCING DEMOCRACY IN THE AMERICAS

### MISSION STATEMENT

The Carter Center, in partnership with Emory University, is guided by a fundamental commitment to human rights and the alleviation of human suffering; it seeks to prevent and resolve conflicts, enhance freedom and democracy, and improve health.

While the program agenda may change, The Carter Center is guided by five principles:

- The Center emphasizes action and results. Based on careful research and analysis, it is prepared to take timely action on important and pressing issues.
- The Center does not duplicate the effective efforts of others.
- The Center addresses difficult problems and recognizes the possibility of failure as an acceptable risk.
- The Center is nonpartisan and acts as a neutral in dispute resolution activities.
- The Center believes that people can improve their lives when provided with the necessary skills, knowledge, and access to resources.

The Carter Center collaborates with other organizations, public or private, in carrying out its mission.

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