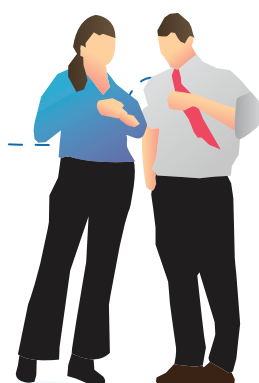


The **Principles** of **Political** **Finance Regulations**

Dr Stefan Melnik



Executive Summary

Political parties are central to the survival and success of democracy. They require sufficient financial resources in order to perform their duties adequately. This is particularly the case in countries with large and diverse electorates and where most political discourse takes place via channels of modern mass communication and social media. The ways in which parties are funded are determined by a variety of factors, one of which is what the political and electoral systems have been designed to foster.

It is important that there are clear and enforceable rules governing political finance-rules that help ensure that parties and their members are held accountable for their financial activities.

Clear rules and compliance are important factors that serve to promote political credibility and public trust in parties as political institutions. It is also important that the judicial authorities ensure that such rules are in fact enforced.

The principles that any system of finance must bear in mind are those pertaining to the 1) rule of law, 2) fairness, 3) transparency accountability and ownership. In short, the public must have the certitude that political parties are our parties, parties we are able to identify with and that they perform the duties expected of them. The way parties are financed must also be seen in the context of a) ensuring real choice independent of financial clout by powerful vested interests and b) the political rights and civil liberties enshrined in a liberal constitution. A mixed system of finance (finance from different sources), disclosure and regularly published audits in particular might well help to achieve a level of trust beneficial to the preservation of democracy and its ability to deliver the things citizens expect and aspire to.

About the Author

Dr Stefan Melnik, Public Affairs Consultant, Berlin. Stefan Melnik was educated at the University of Cambridge, UK, and University of Bochum, Germany. During the initial period of transition to democracy in central, south-eastern and eastern Europe he worked as a political consultant and, among other things, produced a short guide on electoral systems and electoral monitoring.

Introduction

There is no viable democracy without functioning political parties. The better they are in fulfilling their role, serving as a lynchpin between voters' hopes and aspirations and service delivery, the more stable and successful a democracy will be. This paper will explain the concept of political financing and its relationship with democracy before proposing a set of key principles that must be considered by those drafting the rules to regulate political financing.

I What is political financing?

When we discuss political finance there are a number of different kinds of expenses parties incur. The most significant are those that pertain to organisation, infrastructure and the campaigns they launch in order to win public support. These expenses are considerable. **'Political finance' is the umbrella term for party and campaign funding taken together.**

In a modern, sophisticated and dynamic media environment, professionalism is required. This costs money. Many typical activities are, of course, voluntary in nature and rely on the commitment and enthusiasm of party members. However, this does not mean that political parties can survive and be successful solely on the basis of what their members do. The opposite, however, also holds true. A party can have huge financial resources at its disposal, but without mobilisation of its members and their active engagement, success will still be difficult to achieve.



'Political finance'
is the umbrella term
for party and campaign
funding taken together.

1.1 Sources of direct funding

There are four main categories or sources of finance that can be directly tapped into, depending on relevant legislations in place that regulate political finance:

- (1) Membership fees and mandatory contributions by party members who are elected to office;
- (2) Donations by individuals, interest groups and companies;
- (3) Income from investments, commercial services provided, real estate; and owned by the party and from sponsors (e.g. in return for advertising space in public events); and
- (4) Public funding.

Foreign funding is often considered to be an illegitimate source of income for political parties because such funding, in the view of many observers, would be seen as interference in the sovereign affairs of a nation. Indeed, it is often explicitly outlawed.¹

The opposite, however, also holds true. A party can have huge financial resources at its disposal, but without mobilisation of its members and their active engagement, success will still be difficult to achieve.

¹ Council of Europe, European Commission for Democracy Through Law (Venice Commission), Opinion on the prohibition of financial contributions to political parties from foreign sources, adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006), p. 3, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2006\)014-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2006)014-e).

1.2 Sources of indirect funding

There are also important sources of indirect funding to be considered. One important instrument is the statutory provision of airtime for free advertisements during election campaigns.

The use of government department funds for self-promotion is another form of indirect subsidy. It is a relatively common phenomenon and exists whenever government agencies post information on good performance or services provided.

In the context of election campaigns, these are usually perceived as being partisan constituting an illicit attempt to influence election outcomes. The main criticism behind this type of indirect funding being that it is an unfair advantage over parties that are not in power and that it is a misuse of government funds.

1.3 What political financing legislation should cover

It is important that political finance – and its different forms – are subject to legislation that provides clarity on:

- (1) The do's and don'ts of party and campaign finance.
- (2) The reasoning behind the regulations in place.
- (3) Effective sanctions in cases of proven transgression and malpractice.

In many democracies, political leaders and parties face huge challenges in terms of image and credibility. Indeed, there is a growing credibility gap between politicians and the general public, i.e. the gap between what politicians are seen to deliver versus the expectations of the electorate. Public perceptions on financial intransparency and corrupt financial practices furthermore add to this widening credibility gap and undermine the reputation of politicians and the political systems that they represent.


2 Democracy and political financing

No two democratic systems are the same. We find long-established democracies, newer democracies and countries in transition to democracy and differing levels of centralisation/ decentralisation throughout the world. Some democracies practise features of direct democracy, others do not. In some countries, power is concentrated in the hands of a president. In others, his/her function is ceremonial. We have majoritarian, proportional and preferential electoral systems and even mixed systems in place. Some countries traditionally have one party with an overall majority in power, others have coalition governments and there are many other differences that can be mentioned.

² This is the minimalist approach espoused by the famous liberal philosopher Karl Popper. For him the role of the electorate simply consists of providing a regular and nonviolent way of replacing leaders who have not met expectations. Majorities, however, are not always right and are dangerous when they exercise unlimited power. The more important question is, therefore, how to effectively limit the power of government using a constitutionally endorsed system of checks and balances (for further explanation see: Michael Allingham, Karl Popper: Political Philosophy, in: Internet Encyclopedia of Philosophy, section on "Minimalist Democracy", <http://www.iep.utm.edu/2013/12/>. This is the approach we see practised in the US and British electoral systems.

³ Based on a number of case studies it initiated on political finance, Transparency International concludes that "theory, case studies and empirics conclude that there is no single 'right' mix of policies that fits countries with diverse institutional, cultural and economic parameters. The combinations of regulations that any country should adopt will depend on contextual factors, such as political culture and enforcement capacity" <http://moneypoliticaltransparency.org/casestudies>.

Legislation on political finance should clarify:

1

The do's and don'ts
of party and campaign finance

2

The reasoning
behind the regulations in place

3

Effective sanctions
in cases of proven transgression
and malpractice

2.1 Differences between democracies

There is a common denominator, however. All democracies - understood as liberal democracies (i.e. democracies under the rule of law) and multi-party democracies - are characterised by competing parties that are protected by law and have real chances of being elected into power.

The function of elections may also differ. The differences between democratic systems are ideally the result of consensus based on a country's experience and reflect an attempt to meet a specific set of challenges. Some countries, for instance, might face problems because of ethnic diversity. Others might not. In some countries the party political spectrum may traditionally be wider compared with others.

The focus might thus be on stability, unity, producing a clear mandate, compromise, balancing interests, representing an accurate cross-section of society, or representing divergent local or regional interests and ensuring that they are all heard. It might also be to give minorities a powerful voice where they might otherwise be marginalised.

The aim of elections might thus differ accordingly. It might be one (or a combination) of the following:

- (a) To produce decisive majorities;
- (b) To produce working coalitions;
- (c) To elect a parliament that represents voters' overall preferences as accurately as possible and to ensure that no section of the population is left unrepresented;
- (d) To guarantee inclusion;
- (e) To ensure a peaceful transfer of power from one group to another at regular intervals.²

2.2 Objectives of democracies and the role political finance plays

What is fair and what is not fair will in part depend on the features of a particular democracy and the objectives of its electoral system.³

Both have a bearing on finance. If the objective is to achieve a peaceful transition of power and little more, the question of where financial resources come from will not play as important a role as in systems that try to ensure that a parliament's composition matches the preferences and interests of the electorate as a whole. The

United States is an example of the former while Germany is an example of the latter.

In the case of the US system it is important to ensure that all parties have access to funding.⁴ The sources of finance are not as important as long as all competitors are allowed to raise funds and engage in fundraising activities.

In the case of Germany and many other European countries, it would be considered highly problematic for parties and their

campaigns to be financed solely through donations and little else, simply because some preferences and interests may be supported by wellendowed donors whereas others might not attract any major funding. In Germany, there is growing support for a dramatic increase in public finance for political parties with strict limits imposed on the size of private contributions.⁵

⁴ There is a considerable debate on political finance in the United States; however, it focuses on similar issues to those in other liberal democracies and is driven by the same principles and values. The debate is focused on legality, transparency and fairness. See, for instance, the Move to Amend website <http://movetoamend.org/>.

⁵ See the introduction and conclusions of Pippa Norris, Andrea Abel van Es, Lisa Fennis et al., opus. cit.

3

Important principles for political finance regulations

There are five main areas that legislators should consider when creating regulations for political financing:

- (1) Presence of the rule of law;
- (2) Fairness for all involved, namely voters and political parties;
- (3) Transparency, accountability and ownership by the electorate;
- (4) Checks and balances to prevent unlimited power; and
- (5) Exercise of political and civil liberties by the electorate.

3.1 The rule of law

A system of finance that has the best chances of being accepted by politicians and by the general public is a system that is seen to be just. This is achieved through rule of law. Adherence to rule of law prevents the arbitrary application of rules governing political finance. The most important relevant principles that a system of finance must adhere to - and related to principles of the rule of law - are as follows:

1. Equality before the law

The same rules apply to everyone, every politician and every party. In the case of public funding, this principle translates into funding based on an agreed formula that reflects the given electoral support each party musters in an objective manner. No party may receive preferential treatment for reasons unrelated to electoral performance.

2. The rules are known

All players know - or are able to find out - precisely what the rules are.

3. The rules are enforced

The rules are not only written on paper, but are enforced and there are mechanisms to ensure their enforcement.

4. The rules are enforced by independent bodies

Rules must be enforced by bodies that are independent of the government currently in power. The plural is used because apart from oversight by an independent judiciary other bodies may be involved in implementing rules and monitoring adherence to them. They may be independent auditors or auditing authorities, the parliament speaker, an all-party parliamentary committee or an independent electoral commission.

5. Effective provisions for recourse or appeal to a court of law

The existence of formal straightforward procedures are as important as an independent judiciary and other bodies in resolving disputes concerning finance. Easy access to

“
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mechanisms of redress for transgressions or disputes arising from administrative action or from conflicts between individuals must exist.

6. Rapid dispensation of justice

In this context this principle translates into a rapid system of dealing with complaints. Disputes concerning elections and their finance must be dealt with rapidly because election campaigns and elections produce results within a very short space of time and with considerable longer-term consequences. Financial irregularities and disputes will mar and taint election processes and hence call in question the overall legitimacy of the election results as well as those elected.

7. All laws are subject to judicial review

For example, by way of a constitutional court. This is a more basic principle applying to legislation on political finance. Do legal provisions meet standards set out by principles of the rule of law and the constitution?

8. Agencies of the government can only work within their legal mandate

With the lawful means specially granted and within the limits prescribed by the legislative body for a particular task. In other words, no agency of the government may act outside of the law. In the case of political finance, the application of this principle means that public officials may under no circumstances be involved in the financing of political parties or elections as fund-raisers or through allocation of department funding. It also means that public funding may only be from a budget line explicitly created towards this purpose with the express consent of an all-party budget committee.

9. Reliability and predictability of law

These are important with respect to the laws regulating the activities of parties, including their financial resources. Parties should not have to experience the burden of having to adjust to ever-changing financial regulations. That is not their purpose and it diverts energy away from their central task which is to campaign for certain political objectives and to generate policies in line with their supporters' interests and aspirations. Parties also have to strategise their activities and for this, they tend to plan the use of assets over a longer period of time. It goes without saying that retroactive rules would counteract these principles and produce chaos.

10. Protection of witnesses

Is an important part of due process and essential if financial rules are to be effectively enforced. Given the nature of electoral fraud in many countries, many offences will only come to light and receive public attention if "whistle blowing" is incentivised, primarily through guarantees of safety to the whistle blower.

11. Commensurate legal sanctions

Punishments that fit the crime are a must as a deterrent to financial crimes involving the illegal transfer to, or use of funds by political parties.

The principles mentioned above require written laws on political finance that pertain to the organisation and activities of political parties and/or the organising and holding of elections (campaign finance). The financial codes may be part of both. Adherence must be mandatory and the mechanisms and bodies that ensure adherence must have the force of law.

In the interests of peace and stability, it is also important that all stakeholders are involved in the formulation of the rules governing finance and that there is a broad consensus on their content. In practical terms, this is best achieved through a legislative process that involves all political parties represented in parliament and that attempts to achieve the widest possible level of agreement. Passing a legislation by simple majority on such an important issue as political finance will probably only give rise to endless disputes.

3.2 Fairness

When the accepted procedure is that the government is elected by the people, the people expect it to be just that. There is little tolerance for activities such as vote-rigging and bribery aimed at influencing election results. There is also little tolerance for attempts to silence or marginalise the opposition. Fair elections outcomes must be determined by open-ended competition in which candidates and parties have sufficient access to resources including financial resources.

Criticisms of election outcomes tend to focus on the process (registration of parties, candidates and voters, freedom of assembly, freedom of speech) and on access (access to the media, access to finance, access to polling booths). Some elements of this process, the party organisation, meeting places and publicity entail considerable expenses. Where there is a massive bias towards incumbents and opportunities for the rest are limited or restricted, results will not be easily accepted by the public.

In the case of political finance, the difference between adequate funding and a shoe-string budget often translates into competition between professionally-run

and amateurish organisations and campaigns. This does not automatically mean that the latter will fail but the odds are stacked against campaigns run by non-professionals.

Innovation can sometimes bridge this gap. We have examples of this: social media presence combined with tens of thousands of small donations (crowdfunding) to offset the influence of well-funded individuals or parties. Barack Obama's first presidential campaign - a campaign against the party establishment - is an example of this.⁶

General dissatisfaction with the performance of an incumbent government can also more than compensate for inadequate funding - as many examples in Europe and elsewhere in the recent past show. Hence, there are other factors that contribute to ensuring fair competition. This does not, however, mean that we can ignore the issue of how to ensure that political parties are properly financed.

A level playing field requires a set of clear rules which are consistently and equally applied. Adherence to principles of the rule of law and explicit laws on political finance are the most basic requirements. But how do we ensure that such principles are adhered to?

In the case of political finance, the difference between adequate funding and a shoe-string budget often translates into competition between professionally-run and amateurish organisations and campaigns.

3.2.1 Fairness and private funding

Large donations are generally viewed with suspicion as they may exert undue influence on politicians and political parties to implement policies in line with donor expectations. Indeed, it is not difficult to imagine that wealthy individuals or large corporations have ulterior motives when helping to fund parties and/or their campaigns. Although laws in place may forbid a nexus between funding and pressure to adopt policies that favour the donor, policing such provisions is for all intents and purposes impossible. On the other hand, an obvious link between funding and a desired change in legislation - if it becomes public - can be immensely damaging for both parties concerned.

Over-dependence on large private donations is also problematic as it requires extensive fund-raising. Fund-raising activities and campaigns bind human resources that can otherwise be used to improve party communication, canvassing, promoting personalities and policies as well as gaining electoral support.

3.2.2 Fairness and public funding

The nexus between large donations and their influence on the direction and policies of parties is the most powerful argument employed in favour of diversifying funding sources and, in particular, a measure of public funding. The precise equation - how much and from where - differs from country to country. The differences are the result of differing perceptions of what fairness is and what it should consist of. Limiting or banning corporate donations may in fact make it more difficult to run an effective election campaign where there is no established tradition of donating money for political causes. Too much public money, on the other hand, might reduce the influence party members exert by virtue of paying membership dues.⁷

Public funding, nevertheless, is seen as a solution to ensuring greater fairness in elections in countries worldwide.

Various methods can be employed in achieving fairness and a level playing field in political finance, for instance:

- (a) Parties that cross a certain threshold can receive public funds to sustain their activities.
- (b) Funds from private sources (membership fees, donations, income from commercial activities) can be matched by public funding.
- (c) Diversification of sources of income through the introduction of party membership fees where they do not exist, provision of services, income from sponsoring, crowdfunding and perhaps even certain privileges like access to free airtime during election campaigns (an indirect form of financing party activities).
- (d) In order to encourage small donations to counterweight large donors, a system of tax incentives may be another option worth pursuing.

The Federal Republic of Germany has a combination of all of the above, but other countries have different permutations of political finance with a similar overall objective in mind - fairness.

Methods to achieve fairness & a level playing field in political finance



⁶ Obama's unconventional social media and fundraising drive were instrumental in securing his campaign for the presidency of the United States. See, for instance, Jim Meyers, Obama Fundraising Sealed Election Win, 5 Nov 2008, <http://www.newsmax.com/InsideCover/obama-fundraising/2008/11/05/id/326433/>. His campaign for a second term of office was even more successful in generating funds: Paul Blumenthal, Obama Campaign Fundraising Best In History, 12 July 2012, http://www.huffingtonpost.com/2012/12/07/obama-fundraising-campaign_n_2257283.html.

⁷ Interesting insights into the very different approaches in the case of campaign finance: Nick Thompson, International campaign finance: How do countries compare? CNN, March 5, 2012, <http://edition.cnn.com/2012/01/24/world/global-campaign-finance/>.

3.3 Transparency, accountability and ownership

According to a survey of political finance regulations, one of the most common reforms in recent years has been to strengthen disclosure.⁸ Disclosure of sources of revenue is perhaps the most important measure that can be implemented in the interests of greater transparency and accountability.

Why transparency and accountability? Properly enforced, disclosure helps:

- (1) **Voters to assess more fully whether or not a party will represent their interests.** If there are large donations from enterprises or groups opposed to the policies they would like to see implemented, voters are unlikely to feel that the party represents their interests.
- (2) **Counter any attempts to hide financial support for preferred candidates and parties.** For this to work, however, disclosure rules must be properly enforced and cases of non-compliance brought to court by the legal authorities.
- (3) **Restrain politicians from enthusiastically endorsing the policies preferred by donors.**
- (4) **Create a “clean” image of politics, i.e. politics playing by the rules.**

In many countries, rules that promote transparency not only require that accounts are published at regular intervals but that other information is also made available. These include the publication of the names of big donors, individuals or corporations that should be made easily accessible to the general public.⁹

A unique problem in this case, is donations from external or foreign parties. Given the issue of sovereignty and the principle of non-intervention in the affairs of foreign countries, it is important that a distinction be made between legitimate and illegitimate activities. Legitimate activities include activities such as international political dialogue on issues of common concern or consultancy in the interests of transferring knowledge

whereas legitimate may refer to financial contributions to election campaigns or the strengthening of party infrastructure through paying salaries. It is interesting to note, however, that many countries do not have explicit rules on this subject.¹⁰

Furthermore, political parties are institutions that claim to represent the public, public interests and public opinion. They may not represent the same interests and opinions, but taken together they do. They are an important means by which the public influences political decision making and controls the exercise of power. As such it can be claimed that parties are not private but public in nature. Their public nature implies that the public has a right to know where the money comes from and how it

“*Voters to assess more fully whether or not a party will represent their interests. If there are large donations from enterprises or groups opposed to the policies they would like to see implemented...*”

is spent. This argument is all the more valid when parties receive public funds for their activities. The same applies to party members. It may be argued that party members are crucial stakeholders in their respective parties and as such have an even greater right to transparency than the general public.

Corrupt practices can flourish where transparency is missing and several questions may arise. Is the money at a party's disposal spent as stipulated by the law and in accordance with principles established in the party's statutes? Does the same apply to funding and sources of funding? Are generally accepted ethical standards - including that of fair play - adhered to? Are we sure that the money has not been spent on bribing officials or voters?

Without transparency there is no accountability. In the words of Transparency International;

“Transparency means that comprehensive, detailed and reliable information on the financing of political campaigns is available to the public in a timely, intelligible and accessible way (...).

There are three interconnected levels across which increased transparency can be promoted to reduce corruption risks related to political finance:

- (a) **Accountability within parties:** the requirement to use proper internal book keeping and accounting systems and keep party members properly informed.
- (b) **Accountability to the state:** the requirement of parties and candidates, donors and service providers to report on political finance transactions to state agencies.
- (c) **Accountability to the public:** the requirement to publicly disclose all information on campaign finances.

These internal and external dimensions of accountability are essential to ensure that electoral processes and elected officials are not compromised by uncontrolled and unaccountable campaign funding.”¹¹

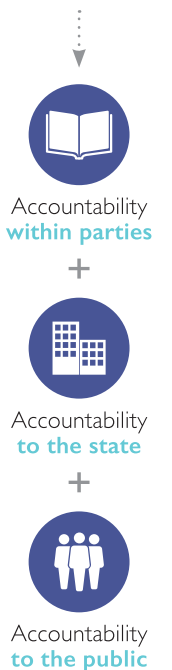
3.3.1 Achieving transparency

There are many ways in which transparency can be achieved: strict rules on how public money is disbursed and for what specific purposes (e.g. for party organisation or for election campaigns); rules on limits on spending, detailed stipulation for accounting and auditing, the publishing of annual reports and accounts, the review of both by an official or independent body as well as the imposition of sanctions ranging from heavy fines to imprisonment for offences committed.

A transparent and accountable system will strengthen public confidence in democratic institutions and promote a sense of ownership. It will be more likely that the political system and the parties within that system are seen as institutions that belong to the voters. This sense of ownership is perhaps the most important thing that must be emphasised in promoting and consolidating democracy.

Ultimately, the system of financing parties and elections has to contribute to strengthening public confidence in the political system.

Three interconnected levels which increased transparency to political finance:



This sense of ownership can be further enhanced by setting low ceilings on election expenditure by political parties. The public will rarely approve of excessive spending on election campaigns. Additionally, ensuring that the ratio of small donations is increased relative to large donations; applying strict conditions for the disbursement of public funds to political parties and securing the explicit approval of shareholders or members for political donations by corporations and unions may also increase the public's sense of ownership.¹²

Transparency and accountability can be given an added weight by including a relevant provision in the constitution. In Germany for example, the principles of transparency and accountability are derived from article 21.1 of the country's so-called Basic Law: “Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.”

“*A transparent and accountable system will strengthen public confidence in democratic institutions and promote a sense of ownership.*”

⁸ See: Pippa Norris, Andrea Abel van Es, Lisa Fennis et al., op. cit., p.6.

⁹ In Germany names of those donating over €10,000 must be disclosed in a party's annual financial statement. Donations of over €50,000 must be declared immediately. There is no upper limit in the amount that may be donated, but for certain organisations, lobbies in particular but also political foundations, donations to political parties are strictly prohibited. Donations from government agencies are also strictly forbidden as are donations by non-citizens of the European Union if the sum exceeds €1,000. Anonymous donations in excess of €500 are also prohibited. See parts 4 and 5 of the Political Parties Act for the legal provisions pertaining to political finance that currently apply. An English translation is available under: <http://www.bundestag.de/blob/189734/2f4532b00e4071444a62f360416cac77/politicalparties-data.pdf>.

¹⁰ “The research conducted... shows that 28 member States of the Council of Europe prohibit or substantially limit foreign donations to political parties and 16 do not impose any such restrictions” (Council of Europe, opus cit. European Commission for Democracy Through Law [Venice Commission], Opinion on the prohibition of financial contributions to political parties from foreign sources.

¹¹ Transparency International, Accountability and Transparency in Political Finance: Why, How and What For? Working paper no. 1, 2008, p. 2 (https://issuu.com/transparencyinternational/docs/2008_1_politicalfinance_en?e=2496456/3244438).

¹² See the discussion paper by the Hansard Society, Paying for Politics – the principles of funding political Parties, London: 2006, p. 3, <http://www.hansardsociety.org.uk/wp-content/uploads/2012/10/Paying-for-Politics-2006.pdf>. Together with the first principle of party funding, transparency, these are the further five principles delineated in the document. I would class them as principles of “ownership”.

3.4 Checks and balances to prevent the exercise of unlimited power

The purpose of a liberal democracy is not to impose the will of the majority on a minority without limitations. The political system must at the same time, adhere to the principles of the rule of law, protect the rights of all citizens, including minorities, and provide for a system of checks and balances limiting the exercise of power so that these principles are upheld. With regard to political finance, this principle means that

the winner abides by the same rules as the losers and that the rulings of independent bodies, be they auditors, responsible parliamentary officials, electoral commissions, special tribunals or normal courts of law are respected.

Winning a majority does not mean wielding absolute power. It would also set a dangerous precedent if the winner proceeds to fashion a system of political finance that favours an

incumbent and discriminates against others. In this regard, establishing an independent permanent body regulating political finance may ensure that the interests of opposition or minority parties are safeguarded besides avoiding controversy. The body will help build a stable system in which elections are independently managed and monitored, this inadvertently results in increase public acceptance and certainty.

3.5 Exercise of political rights and civil liberties

The whole purpose of democracy, whether procedural or liberal, is to ensure that the citizens elect their governments through peaceful, free and fair elections. But are elections really free and fair if parties and candidates do not have access to sufficient funds or if funding is highly skewed in favour of one or two of the contesting parties?

Democracies require the existence and acceptance of political rights as well as certain civil liberties and the converse can be said

as the rights can only be universally accepted as a human right through a democracy.

These rights have to be secured and protected. They include: "a wide range of civil liberties, including freedoms of expression, assembly, association, education, and religion. They have an established and generally fair legal system that ensures the rule of law (including an independent judiciary), allows free economic activity, and tends to strive for equality of opportunity for everyone,

including women and minority groups." and "a wide range of political rights, including free and fair elections. Candidates who are elected actually rule, political parties are competitive, the opposition plays an important role and enjoys real power; and the interests of minority groups are well represented in politics and government."¹³

Without such protection, democracy would wither away or mutate into some form of authoritarian rule.

3.5.1 Proper competition and real choice is not possible without substantial financial resources

Securing and protecting political rights and civil liberties is not only a matter of law. It is also a matter of ensuring that these rights mean something substantive.

Access to the media, for instance, is often dependent on access to financial resources. Freedom of expression is only meaningful if messages can be conveyed, which costs money. The right to participate in elections in most cases requires endorsement and registration of voters and candidates - this can only happen if there is sufficient human

and financial resources available. Usually, it is the parties who see to it that candidates are registered and they often play an important role in encouraging voters to register. Places of assembly must often be hired. These examples show how important financial access and resources are in ensuring that civil liberties and political rights have real practical meaning.

To summarise: If a party has no funds, it will not be as effective in engaging public support. Although parties may sometimes

succeed with enough volunteers and resource persons, more often than not such parties cannot muster the numbers needed to outperform better funded parties. Without sufficient financial means, parties are often invisible to the voter. This limits the choices available to voters besides limiting opportunities for political candidates whereas choice and opportunities are what civil liberties and political rights are meant to ensure.

4. Political financing - asking the right questions

When developing or evaluating a system of political finance, the following questions help us ascertain whether the values and principles outlined above are being upheld.¹⁴

- a) Does the system of political finance support the proper functioning of political parties as central institutions of democracy?
- b) Does it foster professionalism in the work of political parties?
- c) Do parties have reliable and consistent sources of income?
- d) As far as the general public and voters are concerned, does the system of political finance enhance trust in democracy and democratic procedures?
- e) Does the system help to foster overall political objectives such as national unity or fair representation of voters?
- f) Does the system help to produce election outcomes - that reflect values and objectives that are of central importance for the country concerned, e.g. clear majorities or stable coalitions?
- g) Is there a broad public agreement and inter-party consensus on the laws regulating political finance?
- h) Does the system of finance treat parties fairly and in accordance with objective criteria (criteria that accurately reflect the relative strength of respective parties, e.g. number of votes received during elections)?
- i) Are the rules relating to political finance codified in law, clear and easy to understand?
- j) Are these rules monitored and enforced by independent bodies?
- k) Does the punishment fit the crime when parties or their officials break the law?
- l) What are the instruments used to ensure transparency and accountability?
- m) Who is responsible for auditing and what are the rules pertaining to the publishing and examining of accounts?
- n) Do citizens and voters support the rules in place governing political finance?
- o) Do citizens approve of the level of financial resources available to political parties and political campaigns?
- p) Do citizens wish to rebalance the different sources of revenue (e.g. to cut the amount of influence "big players" can exert on policy making)?
- q) Should there be a cap or an upper limit to private donations by individuals, companies or organised interest groups?
- r) What is the general attitude concerning the fair provision of public funding for political parties?
- s) Are the names of donors published?

¹³ Freedom House, New York, Freedom in the World 2015, Methodology, <https://freedomhouse.org/report/freedom-world-2015/methodology>.

¹⁴ The questions are not a comprehensive set of questions. However, they do refer to the most important points made in this presentation.

5. Selected documents for follow-up reading

Ingrid van Biezen of the University of Birmingham (UK) published a booklet titled Financing political parties and election campaigns - guidelines. Strasbourg: Council of Europe, 2003, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Financing_Political_Parties_en.pdf.

Council of Europe, Venice Commission, Guidelines and report on the financing of political parties adopted by the Commission at its 46th Plenary Meeting, Venice, 9-10 March 2001. Published on the Organization for Security and Co-operation in Europe's website, 29 September 2004, <http://www.osce.org/odihr/37843>.

The International Institute for Democracy and Electoral Assistance (IDEA) maintains a political finance database on its website under <http://www.idea.int/political-finance/sources.cfm>.

Pippa Norris, Andrea Abel van Es, Lisa Fennis et al., *Checkbook Elections - Political Finance in Comparative Perspective*, Sydney: The Electoral Integrity Project (in cooperation with Global Integrity and the Sunlight Foundation), 2015, p.7 (http://moneypoliticstransparency.org/static/img/MPT_WEB_FINAL_spreads.pdf).

Transparency International has published a whole range of items on political finance. For an overview see its Politics and Government site: <https://www.transparency.org/search?topic=74> and enter “political finance,” “party finance” or “electionfinance” as search terms.

Notes

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Selection of IDEAS' Publications (2014-2016)

How Can Malaysia's Budget Documents Be Improved? By Sri Murniati, Policy IDEAS No 27 (April, 2016)

Capitalism in Asia by Dr Razeen Sally, Policy IDEAS No 26 (March, 2016)

Economic Liberalism in Asia by Dr Razeen Sally, Policy IDEAS No 25 (March, 2016)

School Autonomy: Case Studies of Private School Chains in Malaysia by Nina Adlan Disney, Policy IDEAS No 24 (February 2016)

A Case Study of a Chinese Independent School by Grace Lee Hooi Yean and Gareth Leeves, Policy IDEAS No 23 (February 2016)

Autism : Life after early intervention by Carolyn Hong, Policy IDEAS No 22 (October, 2015)

Living with Autism in Malaysia by Joanna Menon Lim, Policy IDEAS No 21 (July, 2015)

Malaysia's Public-Private Partnerships in the Trans-Pacific Partnership Agreement: Alternatives to complete carve-out by Dr David Seth Jones, Policy IDEAS No 20 (June, 2015)

How can Malaysia's Asset Declaration System be improved to help combat corruption? By Shaza Onn, Brief IDEAS No. 1 (May, 2015)

The New Face of KWAN: Proposals to improve Malaysia's Natural Resource Fund by Sri Murniati, Policy IDEAS No. 19 (March, 2015)

ICT in Classroom Learning: Exploring the Discrepancies Between Ideal Conditions and Current Malaysian Policy by Jenny Gryzelius, Policy IDEAS No. 18 (February, 2015)

Setting up special needs centres: A focus on early intervention centres for the underprivileged by Tamanna Patel, Policy IDEAS No. 17 (December, 2014)

Public procurement in FTAs: The challenges for Malaysia by David Seth Jones, Policy IDEAS No. 16 (December, 2014)

School choice and school vouchers programmes: Why do they succeed and why do they fail? Lessons for Malaysia by Jenny Gryzelius, Policy IDEAS No. 15 (November, 2014)

Morality and the Rule of Law: Inspirations from Raja Aziz Addruse by Tunku Zain Al-'Abidin ibni Tuanku Muhriz, Policy IDEAS Special Edition (October, 2014)

Dropping out of school in Malaysia: What we know and what needs to be done by Tamanna Patel, Policy IDEAS No. 14 (August, 2014)

Generating best value for taxpayers' money: How to improve transparency and accountability in Malaysia's public contracting system by Sri Murniati, Policy IDEAS No. 13 (July, 2014)

Malaysian education: what do the poor really want? A look at education needs and aspirations of the bottom 40 percent of households in Malaysia by Tamanna Patel, Policy IDEAS No. 12 (April, 2014)

The Malaysian Trust School Model: It's good but is it sustainable? by Dr Arran Hamilton, Policy IDEAS No. 11 (February, 2014)

