



**RECOMMENDATIONS ON
POLITICAL FINANCING
FOR OGP ACTION PLANS**

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Updated in February 2020

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ISBN: 978-3-96076-103-7

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SUMMARY

Modern elections cannot be contested without money. Staff costs and campaigning expenses are necessary for the political competition on which democracy depends. Yet the financing of political parties often provokes distrust and cynicism – sometimes for good reason – about the motives of both the givers and receivers of political donations.

The integrity of political parties, elections and democracy itself are under scrutiny worldwide after a wave of contentiously financed public votes. In the UK, a court recently found that Vote Leave, a “Brexit” campaign group, broke laws on spending during the 2016 referendum on whether to leave the EUⁱ. In India, more than half of all donations to major parties in 2018 were made anonymously, raising questions about the influence of illicit, foreign and business interestsⁱⁱ. And it is now known that the Russian government actively targeted US voters ahead of the 2016 election using more than 3,500 paid online advertsⁱⁱⁱ.

Regulating political finance is a complex challenge, but the stakes could not be higher. To ensure that elections are free, fair and sufficiently funded, governments must enhance their frameworks for transparency, participation and accountability in political financing. This promotes political integrity and protects against undue influence. This briefing discusses:

- why addressing political financing is a priority for Open Government Partnership (OGP) members
- trends and good practice in regulation
- existing and model commitments in OGP national action plans.

A handful of governments have used the OGP to pledge and deliver reforms to their political finance frameworks by publishing political donations data online and improving their regulatory regimes. Yet there is much room for improvement in most countries. Transparency International recommends that governments:

- Apply comprehensive disclosure regulations to the finances of parties and candidates, and ensure that all information is published regularly and in a timely manner via a single online portal, during campaigns and in between elections
- Introduce limits on sources and the size of donations to political parties and candidates, and encourage a broad base of donors, to strike a healthy balance between public and private funding
- Open up the process for development of new regulation applicable to political financing
- Give oversight agencies the autonomy, powers and capacity to effectively enforce political finance regulations and receive and investigate public complaints, report on outcomes and sanction those who breach regulations.

WHY IS POLITICAL FINANCE REGULATION RELEVANT FOR FIGHTING CORRUPTION?

Political campaigning costs money and the ability to fundraise determines to a large extent how effectively a party can compete. Donations are a legitimate way for the public to participate in politics, but sometimes they come with strings attached. The need of parties and their representatives to bankroll political battles can lead big donors to wield undue influence over policy agendas. This risk is at its height when a few private donors contribute large sums of money, protected by opacity. Campaign financing is found to be the weakest stage of the electoral cycle in many countries^{iv}.

In the US, for example, influential Republican Party donors threatened to withhold future donations from lawmakers who did not support major tax cuts to corporation tax, according to both the *Washington Post*^v and *Politico*^{vi}. A Republican senator stated: “My donors are basically saying, ‘Get it done or don’t ever call me again’.”^{vii} In extreme cases, undue influence can result in policy or regulatory capture.

Disproportionally large donations may be given by corporate, illicit or foreign interests seeking specific outcomes or preferential treatment that subverts the wider public interest. For example, in 2018, a leaked email revealed that British tax inspectors refused to investigate a multinational telecoms company suspected of money laundering because it was the “biggest corporate donor to the [ruling] Conservative Party”^{viii}. This illustrates the link between political donations and a wider set of corruption risks. OECD research notes: “Policy on such matters as lobbying, organised crime, drug trafficking and public contracting abuses cannot realistically be considered without taking account of the role in many countries of political finance”^{ix}.

Finance – or a lack of it – can also reduce political competition by raising the costs of effective participation in elections to levels that are unattainable for candidates without wealthy donors, in effect translating economic inequalities into political inequalities. Research shows that poor people and marginalised groups – including women, ethnic minorities and indigenous peoples – find it harder to access finance and are disproportionately excluded from politics^x. In Brazil, for example, research has shown that at state level, male candidates receive on average more donations from every type of donor than their female counterparts^{xi}. This limits the representativeness of political institutions and their ability to keep elected officials in check.

OGP PARIS DECLARATION AND TRANSPARENCY IN POLITICAL PARTY FINANCE

On 7 December 2016, the Steering Committee of the Open Government Partnership endorsed the “Paris Declaration on Open Government”. The declaration is a set of collective actions for governments and civil society organisations (CSOs) to join forces and work together to push open government forward and advance reform at the global, national and subnational levels.

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

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

There are at least three reasons to address political finance in the OGP.

Firstly, the OECD's *Financing Democracy* report states that two outcomes of weakly regulated political finance – undue influence and policy capture – erode public trust in both government and political parties^{xii}. Worldwide, public trust is already in substantial decline and winning it back is a priority concern for the OGP^{xiii}.

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

Thirdly, the OGP helps governments to deliver political finance reforms. The provision of formal timelines and accountability mechanisms helps governments to overcome some of the challenges of implementing commitments in their national contexts. Meanwhile, technical support, the opportunity for peer learning and the participation of civil society help governments to design policies based on a broad evidence base, best practices and new technologies.

TRENDS AND EXAMPLES OF GOOD PRACTICES IN POLITICAL PARTY FINANCE

Transparency

Donating to political parties is not bad per se; however, it can lead to nefarious consequences. For this reason, making political financing transparent is key to allowing donations while maintaining the integrity of the political system. Many states have legislation that mandates the public disclosure of political finance data. However, the scope and rigour of these transparency provisions varies. Despite the notable advances made in establishing rules and regulations in this area, compliance and enforcement continue to be a significant challenge. A comprehensive approach helps to close some of the loopholes that can be used to maintain financial secrecy in politics. Good practice includes:

- Applying disclosure regulations to the income (including non-financial income such as pro-bono services and in-kind donations), spending, assets and loans of political parties and candidates – on an ongoing basis and not only during election periods^{xv}.
- Publishing sufficient information about donations, including the date, donor name, recipient name and amount of each donation on a timely basis (such as in quarterly returns), via a single, online portal in open data format (machine readable and interoperable).
- Ensuring that political campaigns run by third parties are also subject to regulations that reveal the identities of their donors.

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

Participation

Citizens participate in politics by donating money to parties and candidates^{xviii} – alongside other types of individual and collective action – while civil society organisations participate, often in innovative ways, in the oversight of party financing. Governments must protect and increase the numbers of the former, and leverage the latter. Good practice includes:

- Capping contributions at a maximum level to ensure that wealthy individuals or entities, such as banks and technology companies, are not disproportionately influential over party policy positions. This also helps to prevent marginalisation of donations made by ordinary citizens.
- Preventing donations from anonymous, illicit and foreign sources.
- Consulting and engaging stakeholders in the development of the regulatory framework.
- Consulting and working with stakeholders who use transparency data for investigations – before, during and after publication – to ensure they have the informational resources for effective scrutiny.

The Peruvian investigative journalism website *Ojo Publico* (Public Eye) tracked the infiltration of organised crime interests into politics through campaign finance. During 2017, its journalists used reports from the national police, the Public Prosecutor's Office, the judiciary, Congress and the financial intelligence unit to build a dataset of 856 individuals who have been investigated for “organised crime, corruption, environmental crimes, money laundering and illicit drug trafficking”. *Ojo Publico* then analysed this data against publicly available campaign contributions made to 65 political parties over a decade. The analysis revealed that 54 per cent of the individuals had made political donations, which suggests that illicit interests may have deeply penetrated Peruvian politics^{xix}. *Ojo Publico* works with national radio stations, politicians and artists to ensure its findings are widely disseminated to voters^{xx}.

Accountability

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

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

In Norway, the Political Parties Act Committee is an independent body whose senior members are appointed by the King for a six-year term. The committee has powers to enforce compliance and impose sanctions, and can act both on its own initiative and following complaints from members of the public. During Norway's most recent elections in 2017, the committee issued 14 formal warnings over the late reporting of donations and confiscated donated funds from a party that repeatedly violated electoral law. It also issued penalties to another party that had failed to declare multiple donations received during the electoral period, according to independent observation by the Organisation for Security and Cooperation in Europe^{xxi}.

EXISTING COMMITMENTS

Twelve OGP members have made 16 pledges to reform their political finance systems^{xxii}. Ten of these pledges – made by Croatia, El Salvador, Georgia, Lithuania, Mongolia, Panama and Serbia – have been reviewed by the OGP’s Independent Reporting Mechanism (IRM). In El Salvador, new legislation was passed to make political donation data public, and in 2018 – for the first time and after several legal challenges – this data was published for the period 2006-2017^{xxiii}. Georgia used its OGP national action plan to improve existing finance regulations and ensure that political donations were published online in a single, searchable database. Serbia pledged and delivered an amendment to existing law to make an oversight authority subject to audit.

Croatia aimed to make several reforms to its political finance system in its second national action plan. However, the IRM recorded limited progress, partly due to political instability caused by three changes in government. The country has made a new pledge in its latest action plan to make all campaign finance data digitally available in one place.

Lithuania pledged to improve access to information on voting and elections, including the provision of donations to candidates, and Panama pledged to make transparent the use of public funding allocated by the state to political parties. Mongolia pledged to amend its law on political parties to improve the transparency of funding. However, all three countries must continue to progress in their implementation, according to the IRM.

Five further countries – Australia, Canada, the Kyrgyz Republic, the Netherlands and Romania – have made political finance commitments which have not been independently reviewed. Canada has pledged an overhaul of its electoral oversight framework, which will include prohibiting parties from accepting donations from foreign sources.

In its first national action plan, Australia pledged to hold a broad inquiry into its 2016 election and to examine options for regulating foreign donations, the disclosure of donations and the potential of new technologies to help manage elections. In its second action plan, the government pledged to improve the timeliness of the disclosure of donations to election campaigns.

The Netherlands has pledged to introduce mandatory financial disclosure rules for local and decentralised political parties. The Kyrgyz Republic has pledged to publish “complete information on candidates and political parties’ campaign financing”. Romania has pledged to publish the disparate data it collects on political donations in a single, open format.

WHAT ELEMENTS SHOULD A COMMITMENT ON POLITICAL PARTY FINANCING INCLUDE?

Although successful political finance initiatives must identify and address a wider set of risks around political integrity, reforms also have some essential components.

Transparency International recommends that governments make the following four commitments:

Apply comprehensive disclosure regulations to the finances of parties and candidates and ensure that all information is regularly published via a single online portal

To establish an effective transparency regime, regulations must apply to all modes and methods of financing, including income (both financial and in-kind donations), expenditure, assets and loans relating to both campaign finance and general party finance. A comprehensive framework ensures there are no loopholes that can be exploited by anonymous or illicit donors.

However, transparency alone is not enough to promote integrity. The information disclosed must be of practical use to stakeholders (such as oversight agencies, journalists, academics and members of civil society). There are three aspects to ensuring data is useful:

- i) Data-users must be consulted to ensure the supply of information meets demand.
- ii) Sufficient information must be published about the context of the financial transaction (such as the date, donor name and address, recipient name and address, amount of each donation), so the data can be understood.
- iii) Information must be published in a timely fashion (regularly and in pre-election periods), via a single portal in open data format (machine readable and interoperable), so that the data can be easily accessed and used.

Introduce limits on sources and amounts of donations to political parties and candidates, and encourage a broad base of donors, to strike a healthy balance between public and private funding

To create a level playing field for political participation, governments must control both who is eligible to make donations to political parties and candidates, and how much they can donate within a specified period. One robust option is to only accept donations made by natural persons with citizenship rights, who donate an amount under a previously determined, transparent threshold. However, there is no one-size-fits-all approach. While the case for banning illicit donations is clear, approaches toward donor anonymity (usually protected below a specified threshold) and the limits imposed on corporate activities may be determined by local factors, such as the general regulatory approach and democratic traditions of a state.

Open up the process for development of new regulation applicable to political financing

Political finance regulation is, in essence, an act of self-regulation by elected public officials. The people who will propose, discuss and approve regulation on political financing are those who will need to abide by these regulations in the future (in the case of re-election) or will impose them on their political parties and institutions. Arguably there is a conflict of interest that must be mitigated in this circumstance, by making the reform process of political financing transparent and open to consultation from experts, the private sector and civil society. Proposals for reforms must be open to consultative processes in a timely and accessible manner, and the transparency of the consultation process must be ensured by publishing the inputs and decisions around suggestions and changes made to the policy proposals.

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

An independent oversight agency must be free from political pressure. To achieve this, governments can make the agency directly accountable to parliament, create a competitive and meritocratic system of public appointments, and empower it to receive, investigate and report on complaints received from members of the public.

To enforce compliance effectively, the agency needs the resources to operate at speed and scale. Determining whether a party broke the rules is far more useful before an election than after it. The agency also needs the appropriate legal powers to conduct swift investigations, including powers to compel the release of documents and financial information from other bodies. The oversight framework should allow the agency to work with law-enforcement officials and public prosecutors, and to recommend or impose sanctions on those guilty of wrongdoing.

Transparent reporting of the number and nature of complaints received, and of the investigations undertaken and their outcomes, helps to demonstrate impartiality and promotes public confidence.

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