

11. Campaign finance and expenditure

The legal framework should ensure that all political parties and candidates are equitably treated by legal provisions governing campaign finances and expenditures.

One of the main characteristics of a democracy is the holding of multi-party elections. The availability of credible alternative choices depends on the existence of robust political parties. In turn, political parties require a secure base for financing their election campaigns and their routine operations. Thus it is an acceptable practice for a legal framework to provide for the campaign financing of parties and candidates. Laws relating to the financing of parties and candidates are sometimes found not in the electoral legislation but in separate laws. Basically there are two forms of funding of parties and candidates: public funding and private funding, with contributions sometimes coming from foreign sources.

The legal framework may provide for electoral campaign financing on the basis of the following internationally-recognized standards:

- That there should be a transparent system of disclosure of the funding received by any party or candidate;

- That there should be no discrimination with regard to access to public funds for any party or candidate;
- That public funding should be made available to parties on an equitable basis; and
- That there should be a level playing field among the parties or candidates.

Public funding

Payment of direct financial subsidies to candidates or to political parties from public funds is gradually becoming the norm. The main forms of indirect public funding could be one or more of the following:

- Free broadcasting time;
- Various types of state payments and facilities made available to members of the legislature;
- Use of government facilities and public personnel;
- State grants to party foundations; and
- Tax relief, tax credits and matching grants.

The distribution of direct public funds for political parties or candidates may be based on several criteria. Some of the main criteria are:

- The grant may be a proportion of actual expenditure where the receipt of public money is conditional on the party or candidate also raising money from private sources.
- The grant to parties may be proportional to their votes in the previous general election.
- The grant may be proportional to the number of each party's seats in the legislature.

If the legal framework for elections provides for public funding, it should be provided on the basis of equity. This does not mean that all political parties and candidates are to receive an equal amount of campaign funds. Provisions for public funding should be clearly stated in the law and based on objective

criteria that are not open to subjective interpretation by government authorities. Additionally, the legal framework should ensure that state resources are not used or misused for campaign purposes by the party in power. The legal framework should specifically provide that all State resources used for campaign purposes, such as state media, buildings, property and other resources, are also made available to all electoral participants on an equitable basis.

Private funding contributions

The main forms of private funding are:

- Membership subscriptions;
- Donations to political parties or candidates by individuals;
- Funding by institutions such as large business corporations, trade unions etc; and
- Contributions in kind by supporters.

Where there are provisions in the legal framework for elections relating to private contributions to campaign expenses incurred on behalf of parties and candidates, these should be so designed as to ensure equality of freedom to raise private funds. Furthermore, these provisions may include limits on contributions in order to "level the campaign playing field" to a reasonable degree, taking into account geographic, demographic and material costs. However, the enforceability of such provisions must be kept in mind while framing or assessing such provisions.

Expenditure control

The legal framework may control the election expenditure of the parties and candidates in order to bring about some semblance of an equal chance of success. Certain financial limits may be prescribed for varying levels of elections: presidential, legislative and local. Parties and candidates are then periodically required to file statements and reports of election expenditure to the moni-

toring organization, which in most jurisdictions is the EMB. However, some jurisdictions do not restrict election expenditure (as is the case in the USA), regarding it as an unconstitutional curtailment of the fundamental right to freedom of speech and expression.

Reporting and disclosure requirements

Limitations on contributions or campaign expenditure are meaningless without transparent reporting and disclosure requirements. The legal framework should require periodic reporting at reasonable intervals of all contributions received and expenditure incurred by an electoral contestant. Penalties for failing to file reports or filing erroneous reports also should be clearly stated in the legal framework and should be proportional to the gravity of the offence. For example, candidates should not be disqualified from contesting elections or taking their seats, if elected, due to minor reporting irregularities.

The legal framework should specifically identify the agency responsible for receiving, compiling and holding campaign contribution and expenditure reports. The legal framework should clearly specify where and when such reports are available for public inspection. The law should also permit the public access to campaign contribution and expenditure reports so that the contents will be available to other interested parties, candidates and voters.

Monitoring and enforcing compliance

Often there are too many laws and too little enforcement. For political financing to be effective, the legal framework should provide mechanisms for monitoring and enforcing compliance with political finance laws.

Checklist

- Does the legal framework ensure that all political parties and candidates are treated equitably through provisions governing campaign contributions and expenditures?
- If the legal framework for elections allows public funding or the use of state resources for campaigns, does it regulate such use on the basis of equitable treatment for all political parties and candidates?
- Are limitations on funding of campaigns reasonable, clear and capable of objective application?
- Does the legal framework for elections require periodic reporting on campaign contributions and expenditure?
- Does the legal framework for elections provide for public access to reports on campaign contributions and expenditure?
- Does the legal framework for elections provide for adequate and effective enforcement of the political finance laws?
- Does the legal framework for elections provide for equality of freedom to raise private funds without unreasonable limitations?