

OVERVIEW OF DISCLOSURE AND TRANSPARENCY IN POLITICAL FUNDING IN LATIN AMERICA

Organization of American States Meeting,
Vancouver, Canada, December 5-6, 2002

By
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 economics¹. 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 Bank², 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."

Transparency of money in politics thus identifies one of the important components for policymakers to consider while contemplating sustainable national development. According to observations by some academicians and non-governmental organizations, the lack of openness in money and politics has contributed to the corruption of political finance and transparency remains a challenge to the promotion of good governance.

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 hurts the economy and the polity of a nation as well as distorts the behavior of politicians, hence development falters and citizen confidence in democracy wanes.

Though civil society has begun to play an increasingly important role in Latin American politics, 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.³

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:

1. Why is disclosure in Latin America important?
2. What does transparency in political fundraising in Latin America mean?

¹ United Nations Human Development Report 2002, *Foreword* by UNDP Administrator, Mark Malloch Brown.

² World Development Report, 1997

³ Zovatto, Daniel, "Internal Democratic Processes and Financing of Political Parties," in Democracies in Development, Inter-American Development Bank, 2002.

3. What does disclosure of money in politics look like in Latin America?
4. How does Latin America compare to the rest of the world?
5. What, if anything, can be done about it?

Why is Disclosure in Latin America Important?

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

- 1) **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. Recently, for example, a "pornography king" was found to have contributed a large sum of money to the Labor Party in the U.K. and more than just eyebrows were raised. In South Africa, to the consternation of many, it was recently learned that Libya's Ghaddafi had been channeling huge sums of money to the ANC and Nelson Mandela. In Latin America most remember the recent financial scandal between the president of Colombia and the druglords. The point is that ***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.
- 2) **All Political Finance Regulations Begin with Disclosure: No Disclosure Means No Enforcement is Possible:** The second big reason to pay attention to disclosure is that it is the cornerstone of all campaign and political party regulations. Without it there is no way to keep track of limits, bans, or ceilings. For example, 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.
- 3) **Transparency Builds Confidence in the Democratic Process:** Lastly, in addition to the above regulatory and accounting dimensions, there is also a loftier dimension attached to it in a democracy. 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. As it was once put by a US Supreme Court justice, "disclosure is the best disinfectant." In short it makes citizens feel confident and comfortable with their government and political leaders when it knows 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. Transparency International in Argentina has been very active in this area of concern.

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:

- 1) ***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;***
- 2) ***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.***

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.

Transparency & Disclosure Laws' Test:

1. **Who gave?** (The donor identity question.)
2. **How much?** (The itemized amount attached to the donor's name)
3. **When?** (The date of the donation.)
4. **To Whom?** (The name of the party or candidate receiving the money or "anything of value".)

5. **For What?** (The name of the vendor or person receiving the money identified by name and category of the expenditure.)

If political parties, candidates and donors could answer these five questions with the records they keep and would be willing to be transparent (in a timely manner and accessible by the public) about their political financing arrangements, there would be no need for disclosure laws. The reality in Latin America, as well as in all parts of the world, is that a considerable proportion of those involved in political life will try to keep their fundraising activities private and will not volunteer information, and or will 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 nations⁴, 37% of the countries surveyed had no disclosure laws. Another 13% have “hidden transparency” where finances are reported only to the government, and the public is not allowed to view the reports. Another 35% 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, 85% of countries surveyed have hidden, partial or no disclosure, with only the remaining 15% 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.

Disclosure⁴ Levels Compared

⁴ "Money & Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies." USAID draft publication, Washington, DC. October 2002. Though 118 countries is a large sample to demonstrate disclosure laws, it is not a scientifically drawn random sample of the 193 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.

	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.

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 Countries Compared to Each Other:

Within the Latin American region, however, an even more diverse picture of transparency emerges (see table below) with Brazil being the most "open" and almost half 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% of revenues spent on campaigns is covered by the disclosure laws of Argentina. Another 90% of campaign funds are raised by Argentinean candidates themselves through the establishment of their own private non-profit organizations and entirely escape having to report to the government or the public. The point is there is a distance between the existence of the law and the practice of the law.

LATIN AMERICAN PROFILES OF DISCLOSURE

MONEY IN POLITICS: LEVELS OF PUBLIC DISCLOSURE:	SELECTION OF LATIN AMERICAN AND CARRIBEAN COUNTRIES EXHIBITING LEVELS OF PUBLIC DISCLOSURE: (N=27)
High Public** Disclosure N=1 4%	Brazil
Medium Public Disclosure N=3 12%	Argentina, Bolivia, Colombia
Low Public Disclosure N=5 20%	Barbados, Costa Rica, Jamaica, Nicaragua, Peru, Trinidad and Tobago.
Hidden Public Disclosure N=3 12%	Ecuador, Mexico, Paraguay
No Public Disclosure N=15 52%	Antigua and Barbuda, Bahamas, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Honduras, Guyana, Panama, St K Nevis, St Lucia, St Vincent & the Grena Uruguay, and Venezuela.

What can be done about disclosure in Latin America?

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. For example, without Watergate or the Enron scandals, campaign finance in the US would likely look quite different.

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 US 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, non-governmental 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, December 5-6, 2002.

Annex 1
**MONEY And POLITICS:
 CARROTS & STICKS STRATEGIES
 MAJOR REFORM APPROACHES
 TO LIMIT MONEY IN POLITICS**

"STICKS" (RESTRAINTS)

<u>Type of Restraint</u>	<u>How Implemented</u>	<u>Expected Outcome</u>	<u>Unintended Consequences</u>
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	Fin Reporting	Ease reporting burden	Reporting deception
4. Spending Limits:	Spending caps	Restrict spending to Campaigns less expenses	Disguised spending and Spending still skyrocketing
5. Spending Limits In-	Control of "freebies" Loans, borrowed equity	Full accounting of contributions	Largely Ignored
6. Timing Limits:	Shorter campaigns	Less \$ required	Underground Campaigns And 'off-season' campaigns
7. Public Exposure:	Fin. Reporting made Accessible by public 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	Non-disclosure and ignoring The law
"Carrots" (Incentives)			
9. Public Financing	% of seats won	Decrease corruption and costs of elections	Little effect on private Fundraising & reliance by donor
10. Tax Incentives:	Taxpayer deductions	Attract small donors	Little Interest by Public
11. Free Media:	Gov't provides TV, radio	Equal Air Time	Incumbent advantage
12. Tax Credit:	Donor Incentives	Encourage more donors	Not too attractive

Annex 2

Basic Disclosure Rules in Selected Latin America Countries

COLUMN NUMBER	ANY DISCLOSURE RULES	BY PARTY		BY CANDIDATE		BY DONOR	THRESHOLD FOR DISCLOSURE OF DONATIONS (by parties, candidates, or by donors, in US Dollars)	DISCLOSURE INDEX
		<u>Income and/or Expenditure Accounts</u>	<u>List of donors</u>	<u>Presidential</u>	<u>Parliamentary</u>			
	1	2	3	4	5	6	7	8
Antigua and Barbuda	no	no	no	n.a.	no	no	n.a.	1
Argentina	YES	YES	YES	no	no	no	none	3
Bahamas	no	no	no	n.a.	no	no	n.a.	1
Barbados	YES	no	no	n.a.	YES	no	n.a.	2
Belize	no	no	no	n.a.	no	no	n.a.	1
Bolivia	YES	YES	no	no	no	YES	none	3
Brazil	YES	YES	YES	YES	YES	YES	581	4
Chile	YES	YES	no	no	no	no	n.a.	2
Colombia	YES	YES	YES	no	no	YES	none	3
Costa Rica	YES	Subm	YES	no	no	no	none	2
Dominica	no	no	no	n.a.	no	no	n.a.	1
Dominican Republic	no	Subm	no	no	no	no	n.a.	1
Ecuador	YES	YES	Subm.	no	no	no	n.a.	2
El Salvador	no	no	no	no	no	no	n.a.	1
Grenada	no	no	no	n.a.	no	no	n.a.	1
Guatemala	no	Subm	no	no	no	no	n.a.	1
Guyana	no	Subm	no	n.a.	no	no	n.a.	1
Honduras	no	Subm	no	no	no	no	n.a.	1
Jamaica	YES	no	no	n.a.	YES	no	n.a.	2
Mexico	YES	YES	Subm.	no	no	no	n.a.	2
Nicaragua	YES	Subm	YES	no	no	no	n.a.	2
Panama	no	Subm.	no	no	no	no	n.a.	1
Paraguay	no	Subm	Subm	no	no	no	n.a.	1
Peru	YES	YES	no	no	no	no	n.a.	2
St Kitts and Nevis	no	no	no	n.a.	no	no	n.a.	1
St Lucia	no	no	no	n.a.	no	no	n.a.	1
St Vincent & the Grenadines	no	no	no	n.a.	no	no	n.a.	1
Trinidad and Tobago	YES	no	no	n.a.	YES	no	n.a.	2
Uruguay	no	no	no	no	no	no	n.a.	1
Venezuela	no	Subm	no	no	no	no	n.a.	1

NOTES: The information has been prepared by Michael Pinto-Duschinsky, a member of the board of directors of the International Foundation for Election Systems, with the assistance of Violaine Autheman and Jeffrey Carlson. Daniel Zovatto of IDEA also contributed to the data collection phase of this matrix. The Matrix records laws and regulations in force in some countries as of 1 January 2000 and for others on 1 September 2001. Laws are not always clear and the assignment of categories is in some cases a matter of judgement. While care has been taken in the preparation of the Matrix, there is always the possibility of error. Corrections and comments on interpretations of categories will be gratefully received at [info@ifes.org].

Col. 1. Measures the present or absence of campaign or party finance law(s) on disclosure.

Col. 2. 'YES' means that income AND/OR expenditure accounts must be submitted to a public authority and made available for public scrutiny. 'Submit' means that income AND/OR expenditure accounts must be submitted to a public authority but need not be made available for public scrutiny

Col. 3. YES' means party must disclose identities of donors. Where donations need be disclosed only if they exceed a certain threshold, this is recorded in Column 7..

Col. 4. 'YES' means the income AND/OR expenditure accounts of the candidate must be disclosed as distinct from those of the candidate's party. 'N.a.' (not applicable) means that there is no election for the position of chief executive in the country concerned. **Panama:** except for independent candidates.

Col. 5. 'YES' means the income AND/OR expenditure accounts of the candidate must be disclosed as distinct from those of the candidate's party. **Brazil:** senators only; **Colombia, Panama:** except for independent candidates.

Col. 6. 'YES' means donors themselves must disclose their donations. Where donations need be disclosed only if they exceed a certain threshold, this is recorded in Column 7. **Bolivia, Colombia:** by corporations.

Col. 7. 'None' means that there is no threshold for disclosure and that all relevant donations must be disclosed or submitted. **Bolivia:** all donations from private companies must be disclosed;

Col. 8. This column is a Disclosure Index which indicates how many types of disclosure laws are on the books in a country. The three types of laws are: disclosure by political parties of income and/or expenditure accounts; disclosure by candidates for presidential or legislative office; and disclosure of the identity of specific donors. Coding is as follows: 4=countries with three types of disclosure laws; 3=countries with two types of disclosure laws; 2=countries with one type of disclosure law.; 1=countries with no disclosure laws.