Political Finance in Post-Conflict Societies

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CENTER FOR TRANSITIONAL and POST-CONFLICT GOVERNANCE

USAID FROM THE AMERICAN PEOPLE

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May 2006

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BIOGRAPHICAL INFORMATION

1. Ambassador (Ret.) Robert Barry

Robert Barry is currently a consultant on election issues. In 2004, he headed the Election Support Team organized by the Organization for Security and Cooperation in Europe (OSCE), which dealt with the first ever election of an Afghan head of state. He also headed the OSCE election observation mission to Kazakhstan, and served in the Carter Center election mission to Indonesia. In 2002-03, he headed or participated in long-term OSCE observation missions to Serbia, Armenia, Albania, and the Russian Federation. Ambassador Barry was the head of the OSCE Mission to Bosnia and Herzegovina from January 1998 to June 2001. In that capacity, he was also the chairman of the Bosnian Provisional Election Commission, which established provisional election regulations, helped draft an election law, and administered all aspects of five local and national elections.

Prior to his retirement from the U.S. Foreign Service, he was U.S. Ambassador to Indonesia from 1992-1995. From 1990 to 1992, Ambassador Barry set up and coordinated U.S. assistance programs for Central and Eastern Europe and the former Soviet Union designed to promote the transition to market economies and democracy. This program involved some $500 million annually. From 1987-1989, Mr. Barry was Deputy Director of the Voice of America, the global U.S. Government radio broadcasting service; from 1985-87, he was head of the U.S. Delegation to the Stockholm Conference on Disarmament in Europe; and from 1981-84, he was U.S. Ambassador to Bulgaria. Mr. Barry also served in a number of other positions during his Foreign Service career, which began in 1962; he was Deputy Assistant Secretary of State for European Affairs, Deputy Assistant Secretary for UN Affairs and Director of the Office of UN Political Affairs. He had overseas assignments in the Soviet Union (twice), Yugoslavia, and Germany. He also served as a political advisor at the U.S. Mission to the United Nations. Ambassador Barry is a summa cum laude graduate of Dartmouth College and received an M.A. in European History and the Certificate of the Program on East Central Europe from Columbia University.

2. Horacio Boneo

Horacio Boneo has been involved in electoral assistance and observation in more than 30 countries, including countries of Latin America and the Caribbean, Asia, and Africa. Between 1988 and 1999, he was deputy chief of mission for the UN Electoral Observation Missions in Nicaragua (the first time the United Nations observed an election in a member state), Haiti, and El Salvador; director of the Electoral Assistance Division of the United Nations; director of Programs at International IDEA; and Interregional Adviser in Democratic Governance at the UN Secretariat. Since 2000, Boneo has served as a consultant on issues of democratic governance and elections for the United Nations, the United Nations Development Programme (UNDP), the Swedish International Development Agency, the National Democratic Institute, the Organization for Security and Cooperation in Europe, and the International Foundation for Election Systems. He has written several books and articles on electoral matters, regional development, the role of the state, and public enterprises in Latin America. He has a Ph.D. in economics from the Maxwell School of Citizenship and Public Affairs at Syracuse University

3. Jeffrey Carlson

Jeffrey Carlson develops and implements international democracy and governance programs throughout the world for IFES. He currently manages IFES' Program on Political Finance and Public Ethics. Recently, Carlson has been involved in developing IFES' Money and Politics program and content, including onsite initiatives in Brazil, Cameroon, Georgia, Lithuania, Nigeria, and Paraguay as well as political finance assessments in Kosovo, Lebanon, and Nicaragua. He also is involved in the design and development of the Training in Detection and Enforcement program, IFES' political finance in post-conflict societies project, and the update of the Administration and Cost of Elections project.

Carlson has more than a decade of international development experience, including experience managing IFES' Tashkent office. He is an honorary member of the Association of Central and Eastern European Election Officials and holds membership in the International Institute for Municipal Clerks and the Global Affairs Committee of the Council on Governmental Ethics Laws. Carlson holds a bachelor's degree in international studies from the University of Washington.

4. Robert Dahl

Robert Dahl has extensive experience as a practitioner in political law and advisor to democratization programs. Between 1985 and 1991, he served as executive assistant to a member of the U.S. Federal Election Commission. In addition, he has practiced law in areas of election law, campaign finance and ethics regulation, and his clients included candidate campaigns, political action committees and political party committees. He has also worked as a consultant for democratic development programs in Eastern Europe and the former Soviet Union (offering his expertise in political finance regulation and complaint adjudication) and most recently served as legal policy advisor for IFES' program in Indonesia. Mr. Dahl was born in Muscatine, Iowa, and received his Juris Doctor from the University of Chicago.

5. Jeff Fischer

Jeff Fischer served as the Director for the Center for Transitional and Post-Conflict Governance at IFES. Previously, Mr. Fischer acted as IFES' Senior Advisor for Elections and Governance. From 1993 to 1999, Mr. Fischer served as the organization's first Executive Vice President and directed the daily operations of all IFES departments and programs.

Mr. Fischer has held three internationally appointed posts in post-conflict transitions. In 1996, he was appointed by the Organization for Security and Cooperation in Europe (OSCE) to serve as Director General of Elections for the first post-conflict elections in Bosnia and Herzegovina. In 1999, Mr. Fischer was appointed by the United Nations (UN) as Chief Electoral Officer for the Popular Consultation for East Timor. And, in 2000, Mr. Fischer received a joint appointment from the UN and OSCE to head the Joint Registration Taskforce in Kosovo and served as the OSCE's Director of Election Operations in Kosovo. In 2001 and 2002, Mr. Fischer continued to support the Kosovo political process by serving as a Senior Advisor to the OSCE Mission to Kosovo.

Mr. Fischer has also directed IFES' technical assistance projects in Haiti (1990-91) and Guyana (1991-92). He has also worked on election assistance, observation or conference projects in over 40 countries. In the United States, Mr. Fischer represented the MicroVote Corporation (1989-1992) and in this capacity consulted with local and state administrators on electronic voting. In 1985, Mr. Fischer was also appointed to a four-year term as Commissioner on the Kansas City Election Board

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6. Grant Kippen

Grant Kippen holds a B.A. from the University of Western Ontario and an MBA from the University of Ottawa. He is currently Chairman of the Independent Electoral Complaints Commission of Afghanistan and was with the International Mission for Iraqi Elections (IMIE) in Amman, Jordan, earlier this year. Between April 2003 and December 2004, he was Country Director in Afghanistan for the National Democratic Institute and during that time participated as an international advisor to the Afghanistan civil society meeting in Berlin (March 2004) and as a short-term observer to the 2003 Cambodian elections. Mr. Kippen has authored a number of papers, including "The challenges of e-democracy for political parties," published by Routledge Press as part of an edited collection entitled *Democracy Online: The Prospects for Political Renewal through the Internet*. Other publications include "The 2004 presidential election: On the road to democracy in Afghanistan" (a paper commissioned by the Centre for the Study of Democracy, Queen's University, Kingston, Canada as part of a series of papers for the Canadian Department of Foreign Affairs); and *The Use of New Information Technologies by a Political Party* (Simon Fraser University – University of British Columbia Centre for the Study of Government and Business, 2000).

7. Ambassador (Ret.) William B. Milam

William B. Milam is Senior Policy Scholar at the Woodrow Wilson Center in Washington, D.C. Prior to joining the Wilson Center, he was a career diplomat. He retired from the U.S. Foreign Service at the end of July 2001 but was recalled after September 11 and spent nine months helping to set up the multilateral mechanism for the reconstruction of Afghanistan. His last post before retirement was as Ambassador to the Islamic Republic of Pakistan, where he served from August 1998 to July 2001. During this period, relations between the U.S. and Pakistan were often strained because of differences over nuclear non-proliferation as well as a military coup d'état, yet constructive cooperation between the two countries continued on many issues at many levels, which set the stage for the close cooperation between the two in the post-9/11 period. Between 1995 and 1998, Ambassador Milam served as U.S. Chief of Mission in Liberia, where he was designated as Chief of Mission instead of Ambassador because the U.S. Government did not recognize the interim government in Liberia. During his tenure in Liberia, the seven-year civil war was temporarily halted, and free, transparent elections were held, though this did not prove a lasting solution to the civil strife that has afflicted that country.

Ambassador Milam also served in a number of other positions during his Foreign Service career. From November 1993 to September 1995, he was U.S. Special Negotiator for Environmental and Scientific Affairs at the Department of State. Between August 1990 and October 1993, he was U.S. Ambassador to Bangladesh. From September 1985 to August 1990, he was Deputy Assistant Secretary of State for International Finance and Development. He served as Deputy Chief of Mission of the U.S. Embassy in Yaounde, Cameroon, from September 1983 to August 1985. He was Director of the Office of Monetary Affairs in the Economic and Business Bureau of the State Department from July 1980 to August 1983. In his earlier career, he served as a Junior Officer in the U.S. Consulate in Martinique, French West Indies; an Economic Officer in the U.S. Embassy in Liberia; a Financial Economist seconded to the U.S. Treasury in the U.S. Embassy in London; and as a Financial Economist and a Energy Economist in the Bureau of Economic and Business Affairs. He received an A.B. from Stanford University and an M.A. in economics from the University of Michigan.

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9. Ana-María Tello Castro

Ana-María Tello Castro has had a distinguished career with the United Nations in the areas of peacekeeping operations, human rights and electoral assistance observation. Prior to working with the United Nations Verification Mission in Guatemala as Head of the Documentation, Analysis and Report Unit, she worked with the UNDP in Honduras, United Nations Verification Mission in Mozambique, the United Nations Verification Mission in El Salvador, and the United Nations Commission on Truth for El Salvador.

Born in Montevideo, Uruguay, she is a researcher and lecturer in history and social sciences. She has worked with the Center for Latin American Studies (CEL) of the University of the Republic, Montevideo, and is a 1986 graduate of the Artigas Teachers Institute, Montevideo.

10. Félix Ulloa

Dr. Félix Ulloa is NDI's senior resident director in Haiti and has managed the Institute's programs there since 2000. Prior to joining NDI, Dr. Ulloa served as magistrate of the Supreme Electoral Tribunal in his native El Salvador from 1994 to 1999. He has taught at several universities in El Salvador and has been invited to the Language School of Middlebury College in the United States. He also served as president of the Institute of Law of El Salvador and has participated in elections programs for the United Nations, OAS, IFES, International IDEA, the Center for Elections Assistance CAPEL, and NDI, providing oversight for electoral bodies, political parties and civic organizations.

Dr. Ulloa has published books, essays and articles in several countries, on topics such as democracy, elections and political parties. He earned a law degree from Universidad Complutense in Madrid and from Universidad de El Salvador. He has also completed other post-graduate studies at the Institut International d'Administration Publique in Paris and at the Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota in the United States.

11. Marcin Walecki

Dr. Walecki has overseen the growth of IFES' Program on Political Finance and Public Ethics since June 2003. Graduated in August 2003 from St Anthony's College, Oxford University, UK, with a D.Phil. in Political Science, Dr. Walecki has been involved in the management of international development activities since 1995. His areas of expertise include political finance and political party development, curriculum and material development, training, project management, logistics, and administrative systems design and implementation. Dr. Walecki has conducted activities funded by USAID and DFiD in Bosnia and Herzegovina, Georgia, Nigeria, Lebanon, Liberia, Lithuania, Poland and Ukraine. He has consulted for a number of international organizations including the Council of

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INTRODUCTION

Overview

By
Horacio Boneo &
Bob Dahl

This study of political finance in post-conflict society identifies lessons learned from international donor-funded efforts to support political processes in post-conflict environments in general and the funding of political parties and campaign finance in particular. The document consists of eight case studies that seek to improve our understanding not only of the political dynamics of post-conflict situations but also of how to rally international support for holding elections and supporting democratization under such circumstances. Thus, this study will draw upon these lessons to answer a fundamental question:

> For purposes of advancing democracy and peace building—and discouraging violence, intimidation or the influence of political funding from undesirable sources—what are the fundamental steps or minimum requirements for creating a viable political finance system in post-conflict societies?

For the purpose of this study, a "political finance system" encompasses limitations on, support for and accountability of funding for political parties, candidates and other electoral participants. States and societies severely disrupted by conflicts to the point that domestic institutions have collapsed experience distinctive problems with regard to political finance regulation. These problems include funding from undesirable sources, electoral violence and unequal opportunities for participation, which can reduce electoral competition and lead to prolonged periods of one-party domination or a return to conflict.

Rapid political and social change in post-conflict situations generally demands a clear set of rules and control over political funds, with special attention to preventing systemic fraud and corruption, initiating the development of healthy political parties, and introducing openness and transparency. These are substantial challenges for any political regime, but they can be monumental in a post-conflict environment.

During the last decade, international donors have engaged in programming in various aspects of creating political finance systems, including the actual planning, organizing and funding of elections and political parties. This paper specifically examines the experiences of Afghanistan, Bosnia and Herzegovina, El Salvador, Haiti, Iraq, Kosovo, Liberia and Mozambique. These and other countries, which have undergone armed conflict, illustrate the nature of the challenges to be faced in political finance programming in post-conflict societies, including:

- Establishing effective legal and procedural frameworks;
- Limiting political violence;
- Preventing funding from undesirable sources and abuse of state resources;
- Enacting enforcement mechanisms;
- Addressing transparency through financial reporting and public disclosure; and
- Balancing the competitive field by providing subsidies through trust funds and free broadcasting.

The post-conflict elections examined in this document should not be considered as a homogeneous group. Some of these countries just emerged from prolonged, violent, low-intensity internal conflict; from all-out civil war; or from direct military intervention on the part of the international community (although low-intensity conflict continued). In several cases, the post-conflict political process was based on peace agreements that included specific provisions for holding elections. In many cases, the first post-conflict elections took place very shortly after the cessation of widespread fighting. In others, successive elections were conducted in relatively non-violent environments.

Main Determinants of Post-Conflict Societies and Implications for Political Finance

By
Jeffrey Carlson &
Marcin Walecki

There are several important and unique determinants of post-conflict political processes that drive and shape the financing of political parties, candidates and other electoral participants. The most significant include: (1) the scope and nature of international involvement, (2) the timing of elections, (3) the relative lack of political and electoral infrastructure, and (4) the weak commitment to democratic principles and international standards. It should also be recognized that the issue of political finance poses challenges even to the most established democracies. Thus, it is imperative to distinguish between those problems that are unique to post-conflict environments, those that are exacerbated by post-conflict environments and those that are a challenging feature in every democracy.

Starting with those political finance problems that are unique to post-conflict environments, seven major characteristics can be identified:

1. Nearly all aspects of political finance in post-conflict societies are nontransparent and often irregular because they lack meaningful regulations and oversight.[1] Post-conflict societies lack state structures and institutions, which have been destroyed by the conflict. In some cases, this gap is filled directly by international community supervision or indirectly by surrogates such as the Governing Council in Iraq or the Liberian National Transition Government. There is also a lack of law and order that is unique to post-conflict societies, because this deficiency tends to mirror the features of the initial conflict.

2. Democratic concepts such as transparency, accountability and fairness are weakly rooted in post-conflict societies. There is a gap between the expectations of the international community and the actions of national political actors playing by their own "rules of the game." Often, local players are not committed to international democratic standards and thus remain skeptical of regulating the political finance system.

3. Given the environment of instability, post-conflict societies lack trust in the process and among the political actors, as well as among the population at large. In these societies, an election is viewed as a zero-sum game that creates the temptation to eliminate the opposition, as opposed to dominate or control them as often occurs in semi-authoritarian regimes. Losing, or even participating in, such a high stakes, zero-sum game can result in forced exile or even the loss of life.

4. Post-conflict societies lack political infrastructure, which leaves a gap to be immediately filled in the post-conflict period. This gap can be filled in a variety of ways, with groups ranging from weak, personality-based political parties (dominated by wealthy and powerful

[1] "Irregular funding emerges in the gap between a country's legal provisions and the reality of its corrupt political funding practices." Marcin Walecki, "Political Money and Corruption" (Washington, D.C.: IFES, 2004), p. 2.

elite and warlords) to clerical groups that have the capacity to rally large numbers of people to participate in (or boycott) the process.

5. While there is a consensus that political finance is an issue in post-conflict societies, ignoring the problems of corrupt political finance in the near term poses a danger of long-term systemic corruption and a failed democratization process. Political processes in post-conflict societies are fragile and emerging competitive political party structures require resources to be effective. Funding from illegal or irregular sources to these parties gives illegitimate, criminal and/or terrorist interests access to the overall political process. Once elected, these political parties are likely to be reluctant to control the sources of funding that put them in power. Further, when it comes to "founding elections," the right to vote in fair elections forms a basis for evaluating the process. Regardless of the differences in electoral systems, most "unfair" elections result from the political finance irregularities connected to systemic electoral fraud and unequal participation.

6. Establishing a political finance system is challenging in post-conflict situations where significant resources are often devoted to other aspects of a single electoral event. International actors are typically far more involved in immediate post-conflict situations than in most other transitional democracies. Such involvement can include intensive, large-scale support to the electoral process, the deployment of military and civilian police forces and, in extreme cases, even the imposition of a full-fledged international civilian administration. As a consequence, immediate post-conflict elections are often extremely expensive operations, and there is often little time or capacity to think through this event's impact on subsequent electoral events and the overall democratization effort. Such forethought is crucial for effectively regulating the role of money in the political process. Not surprisingly, the assumption that such elections can provide an "exit strategy" to phase out large-scale international humanitarian and development assistance has not been substantiated.

7. In countries with a more advanced and stable democratization process, where the date of an election is previously defined by law and custom, it is possible to plan backwards from the election date. In post-conflict elections, however, setting the campaign period and the date of the election itself is an important and highly politicized decision made as part of the peace-making process. If the timing of elections cannot be planned properly, attempts to control political finance are likely to fail as it is difficult to provide timelines for reporting, disclosure, or subsidy distribution, or to allow parties to conduct effective fundraising activities.

Eight major characteristics of issues and problems that exist in transition and fragile states but are exacerbated in post-conflict environments can also be identified:

1. There is a lack of dialogue among stakeholders: political elites, civil society organizations (CSOs), media and newly mandated state institutions. This situation is exacerbated by the zero-sum game discussed earlier, which makes it extremely difficult to reach consensus on issues such as allowing fair access to state resources and the establishment of an independent enforcement body.

2. Due in large part to the impoverished state of many post-conflict societies, there is little popular funding (small donations or membership dues) to support political parties and candidates. As a result, people's lack of involvement in the formal process tends to erode their support for parties over time. This situation is further exacerbated by insecurity about the future, lack of trust in political agendas and the perception that the campaign period is

the only time when voters can benefit from the politics. Expectations may be high for the first elections, but as soon as politicians fail to deliver in the difficult and challenging post-conflict environment, widespread cynicism begins to emerge.

3. Post-conflict elections often face the challenges of systemic vote buying, electoral fraud and corruption, which are exacerbated by extreme poverty (which itself is further complicated by issues related to refugees and/or internally displaced persons). Political finance detection and enforcement mechanisms are weak or non-existent in post-conflict societies. Without such mechanisms political finance, as well as other electoral, abuses are allowed to go unchecked permitting particularly egregious forms of these problems to arise.

4. Funding from illegal sources, as well as from diaspora groups and other foreign nationals, can hinder reconciliation between formerly warring factions and efforts to replace the bullets with ballots. Faced with intractable ethnic or religious divisions, or in the absence of adequate safeguards and restraints, elections in post-conflict societies can be highly divisive, aggravating rather than moderating political and ethnic cleavages that receive such funds.

5. Illegal flows of funding can be exacerbated by a lack of distinction between legal and illegal mechanisms through which the funds are provided. Illegal funding may come from criminal/terrorist groups, foreign nationals (through illegal or quasi-legal means) or pilfered state resources. If the international community or host country government (through their regulatory body) cannot clearly and consistently distinguish between candidates and (war) criminals, then how can and why should one expect political parties to employ sophisticated mechanisms to prevent money laundering.

6. Criminal and terror interests can use illegal funding channels to disrupt the electoral process or attempt state capture through it. Such groups can influence the system directly by establishing their own political parties or indirectly by capturing existing political groups. Further, criminal and terror groups might use political parties as a vehicle through which to undermine democratization efforts and obtain additional resources.

7. The audit of records that are the source of disclosure information is critical to ensuring that disclosure is meaningful. Experience has shown that even disclosure that raises no warnings on its face may not present an accurate picture. One of the best tools for identifying those situations is a systematic comparison of underlying financial records with disclosed information. While lack of political will, the anger of those potentially powerful political actors being audited, and lack of cooperation are all challenges facing Political Finance Regulators (PFRs) in all societies, they are exacerbated in post-conflict societies. Such societies also face three challenges that can severely limit the effectiveness of any audit program: (1) Lack of an economic system that encourages accountability; (2) lack of audit expertise in the local area; and (3) lack of basic business skills on the part of those who must make the financial disclosure which, in turn, result in poor or non-existent records of the transactions that have been or should have been disclosed.

8. Effective enforcement is essential to any meaningful system of political finance regulation but is particularly difficult to achieve in post-conflict societies. The lack of enforcement capacity in post-conflict countries often reflects deeper political and social conditions that undermine the rule of law. A lack of political will supporting strict enforcement is often grounded in a general atmosphere of fear and intimidation and an inadequate police and court system. Experience shows that it is better to place enforcement responsibility within

one agency with adequate powers and resources rather than to distribute the burden among several administrative or judicial bodies. Circumstances in post-conflict societies may require a special prosecutor and/or electoral court created for this purpose. Such an authority must have adequate financial and management independence. Some circumstances may warrant the formal, direct or indirect involvement of international actors.

Finally, there are a series of political finance features that challenge all societies. These include scandals related to the funding of political parties and election campaigns as well as the high cost of electioneering, which can add to a growing cynicism about the process. Legal frameworks that seek to address the issues raised by such scandals and to control the role of money in the political process continue to be imperfect. Such imperfections are coupled with a lack of compliance with existing regulations that is the result of under-funded enforcement agencies that often face political pressure. Disclosure and transparency also suffer due to this lack of compliance, creating an environment in which the PFR, CSOs, the media and the voters lack complete information, if they have any at all.

Lessons Learned about Political Finance in Post-Conflict Societies

By
Horacio Boneo &
Bob Dahl

The experiences of the last decade illustrate the nature of the challenges for political finance policy and programs in post-conflict societies. The first 10 lessons learned from the case studies are outlined below and provide a preliminary overview. Successive sections discuss each of these subjects and draw out more specific and detailed lessons learned.

1. Post-conflict societies are frequently plagued by former paramilitary groups that transform into politically oriented militias or organized crime gangs (including drug trafficking gangs). The direct effect on the general sense of insecurity, and the less direct but still pervasive effect on political activity, cannot be fixed by political finance policy and must be addressed by broad efforts at reforming and upgrading police and prosecution capacity.

    - The political finance system itself must avoid directly or indirectly legitimizing, subsidizing or being subsidized by militia or criminal groups that may hide behind a political façade.

    - Political parties, candidates and other electoral participants should be able to spend their resources on campaigning rather than on security; international funding for (or actual provision of) security assistance for candidates or party leaders and their offices could help relieve the financial burden and sense of insecurity that accompanies political activity in these societies.

2. The importance of addressing political finance policy through a legal and regulatory framework should be recognized early in the process by the international community and electoral participants. Such policy should be incorporated into the general legal framework for elections or into separate laws. The expertise of the international community in drafting political finance regulations should be offered and utilized.

3. Efforts should be made to provide information and education to all the agents of disclosure—newly established political finance regulators, political groups, candidates, CSOs, media and the general public—about the role of a political finance system and how such as system is essential for creating credible electoral and democratic processes. These efforts should address the following questions: What is political finance and political corruption? How can an effective political finance system reduce corruption and help promote a credible outcome in the electoral process? Why do CSOs and media need to know political finance account information to effectively monitor the process, and why do voters need to know this information to make more educated decisions at the polls? Over the long term, changing the public's tolerance for illegal forms of political funding, media control or unfair economic advantage (as with other forms of corruption) takes a commitment to civic education.

4. The legal framework for political finance policy must be clear. All stakeholders must understand the permissible and impermissible financial activities of electoral participants. The legal framework must encourage voluntary compliance and provide specific and appropriately severe penalties for violations of political finance laws. Regulations should be introduced gradually in two phases. The first and immediate generation of regulations should be introduced into the basic framework with an emphasis on preventing electoral fraud, prohibiting certain sources of funding and promoting transparency through disclosure. At this point, basic subsidies should be considered as an incentive to fulfill reporting requirements, meet auditing standards and, if need be, ensure that all major players participate in the process. Simple in-kind donations, such as free broadcasting, might be particularly effective. The second generation of regulations should address more complex questions, such as subsidies designed to support political party development and parliamentary groups, as well as more sophisticated reporting requirements, higher detection standards, more sophisticated enforcement mechanisms and sanctions. While contribution and/or expenditure limits might also be considered, they prove to be difficult to enforce during the transition period.

5. International democracy assistance should recognize that widely accepted standards for transparency in political finance policy may not fit the extreme circumstances of post-conflict societies. The constant threat of violence that overshadows politics in these countries intimidates potential contributors to less powerful political parties, undermines attempts to seek full disclosure of private sources of political finance support, and discourages the activities of civil society in promoting transparency. The political finance system has greater leverage for seeking transparency and accountability of expenditures when public subsidies are provided to electoral participants, although dishonest reporting and misuse of such funding remain a problem without effective audit and enforcement measures. Despite the challenges facing audit and enforcement, efforts to establish an audit system can be made by keeping expectations realistic while attempting to incorporate the audit function as a routine part of the system. This may mean a modest beginning with increasing expectations in the future. While in some instances providing assistance from the international community with audits may be desirable, these efforts should be done in conjunction with local staff to help build local skills.

6. The political finance system can be designed to include features that promote competition and lessen the appeal of undesirable sources of funding. These features include public funding subsidies or "in-kind" benefits (such as use of free media time, public facilities and transportation or training of financial personnel). The provision of funds, or other benefits, must be implemented in an equitable and timely manner and involves difficult issues of eligibility and fair apportioning of support.

7. Political finance systems that impose strict or elaborate controls on private financing of political activity will likely prove ineffective in post-conflict situations. Funding from undesirable sources (including the abuse of state resources or criminal activity) is usually prevalent in post-conflict situations. The nature of these problems is often deeply rooted in the political, social and economic culture of each country and must be addressed on a country-specific basis. Prohibitions against the use of particular sources must be reasonable and culturally acceptable. Limitations on the amount of contributions per donor (as well as financial reporting requirements) may be more effective if the regulations are supported by a thorough assessment that results in realistic monetary limits and/or reporting thresholds.

8. Elections in post-conflict societies almost always follow long periods of authoritarian or one-party rule, so that the incumbent or recently dominant electoral participant has had and may continue to have control over the structure and resources of the state, including state-run media. Furthermore, cumulative inequities in political resources, including inequalities with respect to political finance, threaten the viability of democratization and contribute to growing authoritarian tendencies.

9. There is a need to prevent the monopolization of all or most public resources, including access to the media, by diversifying control over state resources and media outlets and by encouraging private media to represent a diversity of opinion. While equal and fair access to these resources may be unachievable in post-conflict societies, the main objective should be to prevent gross inequalities. These issues should be addressed in the basic framework during the first generation of reforms (see lesson learned number four), and steps should be taken to ensure that these provisions are implemented. To encourage fair political competition, problems of access to media are more easily addressed than abuse of state resources. Some options for broadening media access include providing free time to electoral participants (perhaps coupled with a ban on additional paid political advertising), requiring that any paid time for political broadcasts be charged at equal rates for all electoral participants, and organizing debates or other public fora for electoral participants.

10. In addition to providing support to political finance regulators, which are often housed within the electoral management body, support should also be offered to CSOs (to conduct campaign finance monitoring) and to media (to cover political finance issues in a more complete and balanced manner). Such efforts will promote transparency in the electoral process and support the efforts of newly established enforcement bodies.

The perspective provided by these 10 main lessons learned will be reiterated and expanded throughout the remainder of this paper and will help to answer the fundamental question of how to create a viable political finance system for post-conflict elections.

1. Money, Violence and Intimidation

Post-conflict societies face unique challenges in demobilizing military factions (e.g., Afghanistan and Liberia) and discouraging paramilitary forces from transforming into rigidly nationalist political parties or, even worse, vehicles for organized crime (e.g., Bosnia and Herzegovina, and Kosovo). Crime can be a major problem in post-conflict societies even when military forces are successfully demobilized (e.g., El Salvador and Haiti). Environments of rampant crime and a general sense of lawlessness undermine democratic values and create opportunities for political threats and intimidation.

Demobilization and disarmament of armed groups is essential to discouraging violence and intimidation in post-conflict societies. Post-conflict societies are frequently plagued by former paramilitary groups transforming into politically oriented militias or organized crime gangs (including significant drug trafficking). The direct effect on the general sense of insecurity, and the less direct but still pervasive effect upon political activity, cannot be fixed by political finance policy and must be addressed by broad efforts at reforming and upgrading police and prosecution capacity.

Further lessons learned from these case studies that serve to prevent or diminish problems of money, violence and intimidation include the following:

1. The demobilization and disarmament of armed groups is a necessary precondition that distinguishes post-conflict societies in their ability to eliminate violence and intimidation. The success of the transitions in Mozambique and El Salvador shortly after can be largely attributed to the success of demobilization, which in both cases had been practically completed when elections took place. Although there are cases, such as Afghanistan, where elections took place successfully in spite of the existence of armed groups, failures in other cases should be a reminder of the importance of full demobilization and disarmament before elections. In still other cases, like Kosovo, although the main armed groups have been demobilized, the maintenance of large groups of armed bodyguards might introduce a potential risk for violence and intimidation.

2. The case of Mozambique suggests that the provision of adequate public funding for the political parties in a timely manner limits the risk of violent confrontation and partly eliminates the need of the former combatants to resort to the old ways of obtaining their funding through violent methods.

3. The development of an effective and independent judiciary is a necessary component for the eradication of violence, as it provides legitimate ways of handling it when it occurs. The experience of Bosnia and Herzegovina suggests that effective prosecution of relevant cases has a deterrent effect. However, there is a clear limit to the effectiveness of political financing measures in cases of extreme ethnic hatred.

4. Ties between political actors, paramilitary groups and war criminals in these kinds of post-conflict societies cannot be dealt with through controls on political financing. Even much stronger sanctions, such as the cutoff of badly needed international aid (as in the Serbia case), are insufficient to cause action against individuals or groups who are still regarded as heroes by some elements of the population.

5. An ever present danger is the replacement of politically oriented militias with drug syndicates, gambling lords and other types of criminals, which are much more difficult to control. The case of El Salvador also suggests that organized crime and associated scandals might be a major problem in post-conflict societies. There, the subsequent vast expansion of private security organizations, often owned and directed by former military officers, also causes concern. The funding of political parties with drug money is strongly present in several Latin American countries, as well as in Afghanistan, and its influence is a subject that deserves further investigation.

6. Agreement on a Code of Conduct by electoral participants and its reinforcement through the presence of a large number of long-term international observers, as was the case in Mozambique, seems to be an important factor in the conduct of a peaceful campaign.

7. Efforts to alleviate poverty and create jobs may be necessary to make membership in paramilitary groups related to political parties less attractive.

8. If the links between politics, money and violence are not severed, populations will be increasingly inclined to vote for any candidates who can control street gangs and thugs, regardless of their commitment to democracy.

2. Limits on Transparency

Transparency is a critical value for election integrity but is often another casualty in post-conflict societies in terms of political finance regulation and reporting requirements. The recent history of these societies, by definition, involves escalation of political competition into violence, making exposure of political support for opposition elements literally dangerous. The economic and political infrastructure of these countries lacks the fundamental experience, capacity and political commitment to transparency as a normal and essential practice.

International democracy assistance should recognize that widely accepted standards for transparency in political finance policy may not fit the extreme circumstances of post-conflict societies.

Further lessons learned from these case studies that serve to ameliorate the limits on transparency include the following:

1. The tensions and ever-present threat of violence make it difficult to attain international standards of transparency. Full disclosure of the source of private contributions can put donors at risk and limit their willingness to contribute to the funding of parties and campaigns. Civil society groups that could act as watchdogs face a similar risk, which might deter their participation. The case studies—particularly Liberia—suggest that the risk is significantly higher when the capacity to use violence or coercion is likewise imbalanced.

2. In cases where there are significant ethnic cleavages, the problem of disclosure of contributions might be minimized by the fact that allegiances are known in advance, and contributions might follow ethnic patterns. On the other hand, there are other problems related to transparency in those cases. The usually recommended transparency in the proceedings of electoral administration can put decision-makers at risk, if their decisions do not conform to the expectations of the groups they are supposed to represent, as the case of Bosnia and Herzegovina suggests. Detailed reporting might also result in intimidation against groups of identifiable voters or situations that lead to violence or contesting of results, as was the case in the Balkans.

3. Where there are clear possibilities of intimidation in the case of disclosure of private contributions, it might be preferable to resort to substantial public funding in order to avoid serious imbalances between the competing parties.

4. Similarly, although generally an electoral commission composed of representatives of the competing parties might be acceptable, in situations where violence and intimidation are present, it might be better to make an extra effort to ensure nonpartisanship, as was the case in Iraq.

5. The problems with transparency in the use of funding are not exclusively related to intimidation or violence. There might be cases—such as Mozambique—in which the lack of transparency seems to have been related to the misuse of funding by recipients.

6. In some cases, money can be an important element in the formation of the list of candidates and the order in which they are placed. Transparency is important in those cases, because it allows detection of potential antidemocratic transactions in the selection of candidates.

7. The case of Kosovo clearly shows the potential importance of the involvement of the media and civil society in the verification of financial statements submitted by political parties and candidates, which can provide effective control only over the long term.

3. Establishing a Legal and Regulatory Framework

The case studies illustrate a variety of approaches to establishing a legal and regulatory framework for political finance, including creation by international organizations (e.g., Afghanistan, Bosnia and Herzegovina, Haiti and Kosovo), close cooperation between international organizations and local institutions (e.g., Liberia in 2005), adoption through political negotiation or parliamentary processes for electoral laws (e.g., Mozambique), or a general lack of attention to the issue of private political finance regulation (e.g., El Salvador).

Further lessons learned from these case studies that can assist in encouraging the development of a legal and regulatory framework for political finance regulation include the following:

1. The case studies include situations where the international community invested significant efforts in the design and implementation of a comprehensive system of political finance regulations. One key success factor in legal and procedural reform was the use of the expertise of the international community in drafting political finance regulations. Some of these rules tried to provide incentives to parties advocating multiethnicity. However, it seems that financial incentives did not have the power to modify behavior in situations of deep-rooted conflict, as the margins of victory of ethnic parties suggest. In some cases, overly complex regulations have been unenforceable, while in other cases, the lack of regulations has allowed traditional patronage funding patterns to continue or new corrupt funding to influence the system. Thus, it is important to gradually introduce political finance regulations.

2. Different criteria were used for the distribution of cash subsidies. In some cases, a similar amount was given to all parties. However, the system resulted in disincentives to the formation of alliances. In others, a proportion of the subsidy was distributed equally and the remainder in proportion to the seats held in Parliament, which gave the advantage to existing large parties. In El Salvador, each party received an advance, which was later adjusted proportionally to the number of votes they obtained in the elections, a method that might be useful in other situations.

3. Cash subsidies are difficult to control and tend to produce unwanted secondary effects, like incentives to increase the number of smaller parties. Some of the case studies suggest that there might be advantages in the provision of in-kind incentives—the printing of posters, the provision of free media space, etc. An interesting innovation used in Bosnia and Herzegovina was to open political party service centers around the country for holding press conferences, meetings with voters, training sessions, etc.

4. The legal framework of political finance regulation should include requirements that political entities appoint a financial officer ("treasurer") that is personally responsible for keeping financial records, complying with financial reporting obligations and communicating with political finance regulatory authorities. The benefits of requiring financial officers for political entities depend heavily upon their receiving sufficient training and guidance in record-keeping and accounting practices.

5. The requirement of disclosure, included among the regulatory mechanisms used in Bosnia and Herzegovina, was based on the assumption that civil society organizations or the media would verify the information disclosed, acting as watchdogs. This expectation was not fulfilled in the cases covered in this report, suggesting that when disclosure is required as part of the regulatory framework, nongovernmental capacity is required to verify the statements presented by parties and candidates.

6. Assets and property of a political party or individual that formerly controlled a country's authoritarian regime should be seized and returned to public control in a post-conflict situation to the widest extent possible. Otherwise, the former ruling party will enjoy a grossly unfair competitive advantage in the post-conflict election. In Iraq, the initial administrative actions of the Coalition Provisional Authority included seizing control of Baathist institutions and assets and removal of Baathist officials from office.

4. Limits on Enforcement

Almost all democracies face serious challenges in seeking to enforce restrictions, limitations, financial reporting requirements or other forms of regulation on political finance. Further lessons learned from these case studies that serve to prevent or diminish these problems related to enforcement of political finance regulation include the following:

1. Enforcement problems are significantly worse in authoritarian and post-conflict situations due to the lack of independence of the election commission or other government body with responsibility for political finance regulation; lack of training and resources for such bodies (e.g., Kosovo); lack of financial, human and material resources; vague law-drafting or absence of continuity with respect to enforcement mechanisms; compressed time frames for administering elections (e.g., Afghanistan); and fear of upsetting political arrangements for participation by electoral participants (e.g., El Salvador).

2. Adequate enforcement is an essential component of the regulatory framework, and the potential for effective enforcement should be carefully evaluated in advance of establishing a political finance system. If existing regulations are not adequately enforced, confidence in the political finance policy may be undermined.

3. Problems in effective enforcement are often related to lack of resources and poor management. In these cases, the international community may have a role to play in the provision of technical assistance, training and materials. The missing resources might simply be due to an inadequate budgetary allocation, but in other cases it might be related to the scarcity of trained personnel or to the lack of collaboration of other government departments, as was the case in Afghanistan. In other cases, like in Bosnia and Herzegovina or Kosovo, the enforcement agencies have been missing adequately trained personnel. These cases have been addressed by providing international experts to support and build up newly established agencies, as was done by the OSCE in each case and is being done by IFES in Liberia.

4. Time and inadequate spans of control are two common cases of enforcement problems. In post-conflict situations, implementing authorities often have their hands full with other aspects of the operation—such as demobilization, reconstruction and violence. In some cases, there is simply not enough time to devote the needed attention to enforcement problems.

5. Enforcement is easier to implement when the regulatory framework imposes limits on the use of funds, rather than on its sources. In many cases, enforcement problems are related to the inadequacy of the regulatory framework: regulations might be vague or inadequate in terms of enforcement mechanisms, and the sanctions foreseen might not constitute an effective threat to potential violators.

6. Prohibiting political funding from impermissible sources, requiring audits of state-owned enterprises, and placing conflict-of-interest standards on officers and managers of such enterprises are all ultimately criminal matters whose enforcement will require extreme efforts to improve the capacity of police, prosecutors and courts.

7. In addition to efforts to broadly improve the law enforcement capacity of a country, incremental steps can be taken in the area of political finance regulation enforcement, primarily by devoting more attention and resources to the problem (including training personnel responsible for enforcement or setting up special prosecutor offices or courts).

8. Public subsidy mechanisms (or other benefits, such as broadcast time) provide greater leverage for enforcing political finance regulations, including accountability through an obligation to keep and report financial records (and the threat of withholding such subsidies or benefits).

9. Enforcement, more than any other aspect of the regulatory framework, requires the participation of political parties if it is to be acceptable and manageable. However, the participation might result in a weakening of the enforcement provisions—most parties share a common interest in having a relatively lax enforcement system.

10. Although the situation has not been covered by the case studies in this volume, it is important to note that strong enforcement mechanisms can be used to deprive the opposition parties of the right to participate effectively in the electoral process. Selective, partisan enforcement of political finance regulations might well be used to reduce electoral competition.

5. Controls on Funding Sources

These case studies illustrated that post-conflict situations are especially susceptible to political funding from clearly impermissible sources, such as drug money (e.g., Haiti), profits from organized crime elements that are the successors to paramilitary forces (e.g., Bosnia and Herzegovina, and Kosovo), and exploitation of natural resources (e.g., Liberia). Funding is also provided through misappropriation of assets and profits from state-owned enterprises by political figures that serve as officers or managers of such enterprises (e.g., Bosnia and Herzegovina, and Kosovo). Infusion into the political system of this type of funding reflects deep-rooted corruption of government at all levels and creates an atmosphere prone to violence or threats of violence and the resulting fear and intimidation among electoral participants, media and civil society.

Further lessons learned from these case studies that serve to prevent or diminish these problems of impermissible and illegal sources of political funding, including funding from state-owned enterprises, include the following:

1. Funding from and to undesirable sources seems to be a major and common problem in post-conflict elections. The funding sources of the fighting factions—usually

illegitimate—continue to operate during the electoral process. With the exception of El Salvador, which does not have restrictions on sources, the problem is present in different forms in all the other cases. None of them has been able to find effective solutions to the problem.

2. Controls on improper funding are also complicated by economic environments that lack basic financial transaction capacities other than cash and lack experience with fundamental business accounting practices (e.g., Afghanistan), or by economic environments where the dominant political power co-opts business elites and intimidates potential opposition supporters.

3. The political finance system can lessen the reliance on or dominance of undesirable sources of political funding by providing public funding or free broadcast media time to candidates, political parties and other electoral participants and by imposing limitations on campaign expenditures.

4. Strict audits and stiff penalties for offenses are a useful tool, although they require not only political will but also a police and a judiciary capable of adequate enforcement. The impact of financial penalties is probably minimal, and only tougher measures may work, like denying eligibility to run in future elections, as was done in the Balkan cases. However, it would be quite difficult to apply such sanctions in other contexts where the international community is less involved.

5. In countries with a large public sector, strict controls and clear rules on conflict of interest are needed to avoid the use of public enterprise funding for political purposes. The case studies suggest that it might be easier to keep this source of illegal funds under control.

6. Abuse of State Resources and Access to Media

The legal frameworks for virtually all political finance systems prohibit the use of state resources for political purposes and provide equal access to news media for electoral participants. These case studies demonstrate that problems of abuse of state resources and access to media—present to varying degrees in many democracies—are intensified in elections in post-conflict situations.

Further lessons learned from these case studies that serve to prevent or diminish these problems of abuse of state resources and access to media include:

1. In post-conflict situations, it is more difficult to discourage abuse of state resources and encourage fair access to media because:

   - Elections in post-conflict societies almost always follow long periods of authoritarian or one-party rule, so that the incumbent or recently dominant electoral participant has had and may continue to have control over the structure and resources of the state, including state-run media (e.g., Haiti and Liberia).

   - The political culture has come to accept the control of state resources and media by the incumbent or recently dominant electoral participant as normal and beyond challenge or simply views exploitation of all available means as ordinary or justified (e.g., Afghanistan, Bosnia and Herzegovina, and Kosovo).

- Abuse of state resources and access to the media, when flagrant, is the type of show of government power that intimidates political opponents, the media and civil society (e.g., Bosnia and Herzegovina). In other situations, the abuse of state resources and access to the media can be disguised, subtle or otherwise difficult to identify (e.g., El Salvador and Mozambique).

2. Enforcement efforts to investigate and prosecute those who abuse state resources or access to media are least likely in places where the abuses are most widespread, because such enforcement would depend upon the independence and political will of police, prosecutors and courts.

3. Problems related to the abuse of state resources and biased access to media are obviously easier to control in post-conflict situations where a provisional government is appointed or where the international community is in charge of election administration.

4. These issues should be directly and immediately confronted in post-conflict situations and made a priority as a political finance aspect of election administration (even at the risk of antagonizing the incumbent or recently dominant electoral participant), including educating the public that such practices are not normal or acceptable and engaging the media and civil society in monitoring these problems.

5. In extreme cases, where state media predominates, and it is difficult to break the incumbent party's control over it (as in Cambodia and Liberia), the international community should consider supporting the creation of independent TV or radio outlets to permit equal access to all electoral participants.

6. It is not easy to find solutions to the endemic problem of abuse of state resources. Some societies have placed strict limits—including a prohibition to inaugurate public works during the campaign period or, *in extremis*, the use of non-party caretaker governments during the last three months before the elections, as in Bangladesh. But it would not be easy to replicate such measures in post-conflict societies, except in those cases where, as part of the peace agreements, a provisional and neutral government is appointed or where the international community is in charge of the administration, as was the case in Bosnia and Herzegovina.

7. Some countries, such as Afghanistan, have a long tradition of using whatever resources are available to support a person or a party. In those cases, it is important to implement measures to change those values, and the international community should not have unrealistic expectations about how the system will operate under a different—and foreign—set of rules and procedures.

8. Controlling the abuse of state resources and ensuring a fair access to the media is particularly difficult in societies where one of the contenders has a significant degree of control over the state apparatus, as was the case in Liberia. However, even in cases where the administration is under the direct or close surveillance of the international community, as in Kosovo, the problem might be diminished, but it does not disappear.

9. Once again, controls on the demand side seem to be particularly effective. In Bosnia and Herzegovina, the ban on paid political advertising did more to level the playing field than any other measure. However, in the long run, the interest of media owners in paid advertising prevailed in Bosnia and Herzegovina, and it would be difficult to avoid a similar outcome in other societies.

10. The case studies include a number of useful approaches to ensure fair access to the media by competing parties, including equity programs on state TV, free time to participating parties and candidates, an obligation to charge normal commercial rates in paid advertising, the organization of debates among the contestants and similar measures that can be adopted in most cases.

11. Achieving balanced coverage of campaign activities in state-controlled media is particularly difficult. In some cases, civil society organizations have played a useful role in analyzing and commenting on content and providing information on media bias to the electoral authorities. In practically all cases, the international community has funded their activities.

12. The use of defamation codes and lawsuits to stifle criticism by the opposition is a particularly dangerous situation that should be carefully monitored.

7. Direct and Indirect International Funding and Support

Most of these case studies involved situations where either an incumbent officeholder or dominant party controlled the financial and media resources of the government, or two or more parties in conflict had access to significant resources. Under those conditions, the problem was essentially to impose some controls on abuse of state resources and private funding sources.

However, the use of international trust funds to subsidize the political activity of electoral participants was an important tool in two specific cases: Mozambique in 1994 and Liberia in 1997. In Mozambique, hostilities had existed for nearly 20 years between the government (FRELIMO) and opposition (RENAMO). The use of trust funds for campaign activity in the 1994 post-conflict election was an essential incentive to ensure the participation of RENAMO and (by means of a separate fund) other smaller parties qualified to compete in the election. Thus, Mozambique represents an example where trust funds facilitated electoral competition and reduced political tensions that might have encouraged a return to violence. In Liberia, by contrast, the provision of funds to electoral participants appears only to have exaggerated the overwhelming advantage of the Charles Taylor government.

Lessons learned from these case studies that might improve the potential for success in using direct international funding through trust funds include the following:

1. Providing direct funding to electoral participants can encourage participation in a post-conflict election by political elements opposed to or formerly engaged in hostilities against an incumbent government or dominant party.

2. Direct funding for electoral participants may help to "level the playing field" for electoral participants by improving the competitive capacity of opposition parties, particularly by providing a "floor" of basic financial support.

3. As noted above, consideration should be given to providing non-monetary benefits (such as free media time, tangible resources or use of office space or other facilities) to electoral participants as an alternative to direct monetary funding.

4. The use of international trust funds (or other mechanisms for monetary or non-monetary subsidies) for electoral participants presents several problems and risks that must be considered:

   - Direct funding inevitably raises difficult questions of eligibility standards and formulas for distribution of benefits to electoral participants;

   - Direct funding may be subject to abuse by an incumbent government or dominant party to augment their pre-existing financial advantage;

   - Direct funding or other subsidies may encourage electoral participants to join the competition simply to receive the benefits; and

   - Direct funding requires the existence of the basic reporting mechanisms, a certain level of financial discipline and public control mechanisms.

5. Use of trust funds or other forms of direct international funding to electoral participants should be leveraged to demand that recipients comply with all political finance regulations, including limitations on private sources of funding and requirements for financial reporting.

6. Indirect support provided by organizations such as IFES, NDI and IRI, as well as other organizations like the UK Westminster Foundation for Democracy and the German party foundations, is of fundamental importance for the countries where political parties cannot attract substantial funding. Such support, which may include training, seminars, technical assistance, equipment, travel grants and publication of party materials, must be inclusive and not be provided on a partisan basis in order to be viewed as an impartial effort to support the electoral and political process. Providing this support can send an important signal that money is not the most important factor influencing the political process. Indirect support also allows for joint initiatives (such as seminars and trainings) that bring various parties together for political dialogue and exchange of ideas.

Case Study Methodology

By
Jeffrey Carlson &
Marcin Walecki

The countries covered in the case studies (see Appendix 3) were selected based on a set of criteria. First, they have all emerged from a period of conflict and held elections with differing degrees of international intervention. Second, they represent different continents and population and country sizes. Third, they represent different levels of political development and types of elections. Fourth, the severity and type of conflict and violence also differs. After selecting the nine most appropriate cases out of 15 considered, IFES developed case study guidelines that were used by the case writers. Each writer, in consultation with IFES, identified the period and elections that were covered for the study. These guidelines identified a series of fundamental challenges to be addressed:

- Legal and procedural framework;
- Effective and fair enforcement;
- Funding from undesirable sources and to undesirable recipients;
- Money and violence;
- Lack of transparency and security;
- Abuse of state resources and fair access to media; and
- Using "trust funds" and free broadcasting to create a competitive environment.

Based on the case studies, IFES prepared a comprehensive lessons learned analysis, determined ideal standards for political finance systems in post-conflict societies, and identified possible interventions for the international community to consider.

IFES presented its preliminary findings at an international technical forum that incorporated leading experts and practitioners. Participants at this event discussed the outcomes of the research component and possible interventions. These comments were incorporated into the final document. This international technical forum was held at IFES in Washington, D.C., on September 28, 2005. It provided a platform to discuss all practical applications of the research and galvanized a serious discussion on this issue. The audience consisted of high-level policy-makers, technical experts, and senior public managers from USAID, United Nations Development Programme, World Bank, United States Federal Election Commission, United States Department of Justice, Elections Canada, New York City Campaign Finance Board, National Democratic Institute for International Affairs, International Republican Institute, Campaign Finance Institute, Casals and Associates, and the Embassy of the Russian Federation. Also represented were IFES consultants and case study writers.

CASE STUDIES

Afghanistan

By
Grant Kippen

1. Introduction

This paper examines political party financing in Afghanistan and explores its evolution from the promulgation of the political party law in September 2003. The paper also makes a number of recommendations on political party financing—nominated candidates specifically and the electoral process generally—which are meant to support this important component of democratic development.

The challenges of political party financing in a post-conflict country are similar, in many ways, to the challenges faced by medieval alchemists who tried to turn a common element, like iron or lead, into gold. Despite the best efforts and intentions of the international community and Afghans themselves, Afghanistan is proving to be a formidable testing ground, where many competing elements are now being forged in an attempt to build a new, modern democratic state.

In late 2001, representatives of various Afghan factions met in Bonn, Germany, to seek agreement for a plan and timetable to establish security and rebuild the country following international military action that toppled the Taliban regime. Over the 38 months since the Bonn Agreement came into force, great strides have been taken economically, socially, militarily and politically in the reconstruction of Afghanistan. While the journey has been difficult at times, including the unfortunate loss of life during the 2004 voter registration and election process, one cannot help but be encouraged and impressed by the determination and sense of accomplishment shown by the millions of Afghans who cast their vote in the presidential election on October 9, 2004.

It has often been said that democracy is not an end-state but rather an ever-evolving journey of self-improvement. From this perspective, the issue of financing the political process is an integral part of the development of a sustainable and legitimate democratic state and is one of many important elements that will need to be nurtured over time in Afghanistan.

2. Historical Overview

For much of the last quarter of the 20th century, Afghanistan's history has been framed in the context of war and civil conflict. Whether the story is about the degradation and failure of its economic, social and political institutions or the personal tragedies and untold suffering endured by its citizens, few countries in the world have been subjected to such profound struggle and hardship as Afghanistan.

A recently released report on transitional justice by the Afghan Independent Human Rights Commission (AIHRC) paints a sobering picture of the impact of 25 years of conflict on the Afghan people.

> More than a million people lost their lives and almost the same number became disabled in the course of the war, as a result of antipersonnel landmines, indiscriminate bombing and rocket attacks by the former Soviet Union and the regime backed by them, and attacks by

> armed militia groups, including the mujahideen and Taliban. Thousands of people were put in jail for their political beliefs and tortured. Thousands of children lost their family members and their fathers. Afghanistan's streets are now full of orphaned children who must beg to survive. Almost all of the country's major cities were destroyed. Agriculture was destroyed when the fields were burnt. More than seven million people were forced to leave their villages and towns and take refuge in Iran and Pakistan.[1]

Given the events of the past quarter century, it is not surprising that Freedom House (a nongovernmental, nonpartisan organization that measures political rights, civil liberties and the overall state of political freedom worldwide) has consistently ranked the country at or near the bottom of its seven point scale since 1972. In every year except 1973, Afghanistan's overall state of political freedom has been ranked as "NF" or not free. [2]

3. Political Parties

Until the introduction of the political party law in September 2003, political parties in Afghanistan had no formal legal standing, although a number of quasi-legal political parties did exist from the 1960s onwards. Following the Soviet invasion, pseudo-political party/military organizations became active and were associated, either formally or informally, with mujahideen forces and typically operated at a local or regional level.

More recently, and spurred on by the collapse of the Taliban government in the fall of 2001, a number of smaller, politically oriented organizations began to appear. Many of these groups were loosely associated with nongovernmental organizations (NGOs) that operated in the human rights arena. Most of these groups advocated the establishment of a democratic system of government and were looking to play a more active and involved role in the future development of their country. While a number of these groups were issue-based and not aligned politically, others did have ties to political forces from the former communist era.

Generally, the Afghan population has a negative perception of political parties. A series of focus groups conducted around the country in the fall of 2003 by the National Democratic Institute (NDI) found that:

> While participants were keenly aware that popular political participation is essential to a well functioning democracy, political parties were held in low esteem. Parties—particularly preexisting parties—were seen as self-serving and corrupt and as the primary contributors to the violence of the past. Participants expected that party leaders would be accountable to their constituents and not merely work for the benefit of a select few. Those who recognize a potentially positive role for the parties stressed that a successful political party must be national in scope and multi-ethnic. Political parties based on a single ethnicity were seen as divisive and potentially quite dangerous to the fragile peace that currently exists and to the efforts toward political and economic reform currently underway.[3]

To be able to contribute publicly and with legal standing to the development of democracy is a relatively new experience for political parties in Afghanistan. While this has created a very dynamic political environment, as evidenced by the registration of over 50 political parties by the government,

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[1] *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan*, Afghan Independent Human Rights Commission, 2005. <http://www.aihrc.org.af/rep_Eng_29_01_05.htm> (June 1, 2005).

[2] *Freedom in the World: Country Ratings: 1972–2003*, (Washington, D.C.: Freedom House, 2003). <http://www.freedomhouse.org> (June 1, 2005).

[3] *A Society in Transition: Focus Group Discussions in Afghanistan* (Washington, D.C.: National Democratic Institute for International Affairs, 2003), p. 8. <http://www.accessdemocracy.org/library/1677_af_focusgroups_120103.pdf> (June 1, 2005).

these parties face a number of substantial challenges, such as:

1. Overcoming existing perceptions that political parties are inherently corrupt institutions under the control of regional warlords. Educating the public about the role of political parties in a democracy will be key to legitimizing their future role in this process. (See Recommendation 8, proposing development of a civic education program regarding the role of political parties, in Section 9 below);

2. Having the freedom and protection necessary to operate unimpeded throughout the country. The ongoing efforts of the Disarmament, Demobilization and Reintegration (DDR) program and the establishment of the political rights verification process by the AIHRC and the United Nations Assistance Mission in Afghanistan (UNAMA) have been critical to achieving this outcome;

3. Developing the knowledge and skill sets necessary to broad-based national political parties that are able to represent citizens effectively. The technical assistance being provided in this area by a number of international NGOs will continue to be essential to the long-term success of political party development; and

4. Overcoming an inequitable political environment, particularly with respect to financing and access to resources. This is one area where the Afghan government needs to make greater effort and take more leadership, with the support and encouragement of the international community.

In this very formative time for political party development in Afghanistan, what are the various functions and activities that parties will be required to assume as they mature? Diamond and Gunther identify seven functions that political parties commonly perform in a democracy:

1. Recruit and nominate candidates for elective office;
2. Mobilize electoral support for these candidates and stimulate electoral participation;
3. Structure the choices among competing groups of candidates along different issue dimensions;
4. Represent different social groups, either symbolically or in advancing different specific interests;
5. Aggregate specific interests into broader electoral and governing coalitions;
6. Form and sustain governments; and
7. Integrate citizens more broadly into the nation-state and its political process.[4]

In reviewing this list, it becomes clear, particularly in the case of a nascent democratic system like Afghanistan's, that in order for political parties to take on one or all of these functions, the issue of access to resources (such as funding and media) becomes critical, both in the short-term transitional period as well as over the longer term. Unfortunately the discussion about political financing in Afghanistan, both in the context of political party development and the electoral campaign, has yet to take place in an open and consultative environment. (See Recommendation 5a, proposing a review process of electoral legislation by the independent electoral commission, in Section 9 below.)

[4] Larry Diamond and Richard Gunther (eds.), *Political Parties and Democracy* (Baltimore, MD: The Johns Hopkins University Press, 2001).

3. Legal and Procedural Framework

The Bonn Agreement established a very aggressive schedule (from December 2001 to June 2004) to conduct three major democratic events that were designed to lead the country from a transitional authority to a duly elected government. The first event, held in June 2002, was the Emergency Loya Jirga, a tribal grand council that oversaw ratification of the Transitional Administration. The second event consisted of a constitutional drafting and consultation process that concluded with a Constitutional Loya Jirga, where the new constitution was formally adopted. The Constitutional Loya Jirga, originally scheduled to take place in the fall of 2003, was delayed until December 2003.

The third and final event was the holding of national elections, originally scheduled for June 2004. However, due to a number of factors, the elections were first postponed and subsequently split into presidential and parliamentary elections. On October 9, 2004, Afghan citizens participated in the first direct elections for president in the country's history. In March 2005, the Joint Electoral Management Body (JEMB) announced the decision to hold parliamentary (Wolesi Jirga) and provincial council elections on September 18, 2005.

Following the Emergency Loya Jirga in June 2002, a number of attempts were made to implement a political party law in Afghanistan. During the summer of 2003, a renewed effort took place with input and support from the international community, and the law was finally passed in September, only months ahead of the Constitutional Loya Jirga and eight to nine months prior to the scheduled national elections in June 2004.

Immediately following the Constitutional Loya Jirga, work began on drafting an electoral law, a process that took some five to six months. Article 61 of the Electoral Law gave formal authority for the electoral process during the transitional period to the JEMB. Regulations supporting the electoral law were subsequently drafted and issued up to and through the presidential election campaign period.

The membership of the JEMB consisted of both Afghan and international representatives. Operational support was the responsibility of the Joint Electoral Management Body Secretariat (JEMBS), whose personnel reflected a similar composition. A number of international organizations provided support to the JEMB/JEMBS, including IFES, which provided technical support and training to the Afghan Commissioners of the JEMB.

4. Effective and Fair Enforcement

Electoral legislation gave formal authority for the oversight of political financing issues to two organizations: the Ministry of Justice's Office of Political Party Registration (OPPR) and the JEMB/JEMBS. The OPPR was responsible for the political party registration process as defined in the political party law, which included a financial disclosure requirement. Under the law, the OPPR only had the power to review party finances at the time of registration, with no authority to conduct regular audits of financial position. (See Recommendation 4, proposing that political parties be required to file an annual statement of revenues and expenditures to the independent electoral commission.)

The JEMB/JEMBS had authority for all election-related financing issues as defined within the electoral law. This meant that the JEMB/JEMBS did have responsibility for compliance and enforcement but faced limitations in fulfilling these functions due to compressed timelines, resource constraints and operational imperatives associated with conducting the presidential election. For example, of the 18 nominated candidates for the presidential campaign, only two submitted the

revenue and expense reports required under the regulation, and there has been no indication from the JEMB/JEMBS of procedural follow-up with the remaining candidates.

Campaign finance reporting by election participants (as compared to ongoing financial reporting by registered political parties) is often susceptible to weak enforcement in developing democracies: election participants resist revealing such information and lack the capacity for recordkeeping and reporting; losing parties or candidates feel even less obligation to comply with reporting obligations after the election; and election authorities lack the resources or power to effectively investigate and prosecute violations. These obstacles are even more daunting in post-conflict societies. (See Recommendation 5c, proposing that a position of "complaints commissioner" be established within the independent electoral commission, and Recommendation 6, proposing improvements in the capacity of the independent electoral commission to monitor and enforce political finance regulations and reporting requirements.)

Another factor affecting enforcement and compliance was that very little, if any, effort was made by the responsible authorities to engage with political parties and nominated candidates on political financing issues. As a result, political financing appeared unregulated, which contributed to a negative image of these authorities by parties and candidates, who viewed the entire process with considerable skepticism. (See Recommendation 5a, proposing a review process of electoral legislation by the independent electoral commission, in consultation with political parties, media and civil society; and Recommendation 8, proposing development of a civic education program designed and developed jointly by the independent electoral commission and the political parties.)

5. Funding from Undesirable Sources and to Undesirable Recipients

Both the political party and electoral laws set out funding limits. Article 15[5] of the political party law identifies five permissible sources of funding for political parties:

1. Membership contributions
2. Donations by legal persons of up to two million Afghani per year[6]
3. Income from a party's movable and immovable property
4. Subsidies by the government in connection with elections
5. Other contributions by members

The election law clearly stipulates that candidates and parties are not allowed to receive funding from foreign sources or from internal illegal sources.

But while these laws signal the government's commitment to adopt internationally accepted electoral practices, the reality is that the electoral authorities currently lack the ability to effectively monitor and enforce this aspect of the law. Thus, the current system relies upon voluntary compliance by political parties and nominated candidates, who have very little understanding of the political and electoral financing requirements or process. In the presidential election, this problem was exacerbated by the introduction of campaign financing regulations only 48 hours prior to the start of the campaign period, with no prior consultation or training. The candidates and their teams did not have time to study the regulations and put in place the necessary procedures to meet their reporting requirements. As a result, their significance was lost in the general noise generated by the overall election campaign. (See Recommendation 5c, proposing that a position of "complaints

[5] Political Parties Law of Afghanistan. <http://www.azadiradio.org/en/specials/elections/politicalpartylaw.pdf> (June 1, 2005).
[6] Approximately $46,750 USD as of May 21, 2005.

commissioner" be established within the independent electoral commission; and Recommendation 6, proposing improvements in the capacity of the independent electoral commission to monitor and enforce political finance regulations and reporting requirements.)

Political parties and nominated candidates were also somewhat limited in their ability to respond to financing issues by the lack of a modern financial infrastructure in the country. For example, when the political party law was decreed in September 2003, there were no private banks operating in Afghanistan where the parties could deposit their funds. Business in the country, whether by international organizations or Afghan businesspersons, was primarily conducted on a cash basis. Few, if any, public accountancy companies—where professional advice or an independent audit could be obtained—were operating at the time. Given this environment, it is not surprising that the political parties themselves had limited access to, or ability to develop, the financial management and reporting skills needed to properly comply with campaign finance requirements.

The government could have gone further to assuage concerns over funding from illegal sources, either international or domestic, by adopting a fully subsidized electoral financing regime for the presidential election. Government funding of the electoral campaigns of the nominated candidates would have diminished the potential influence of funds from illegal sources and encouraged a more "level playing field." The process would have been more transparent, thereby creating greater confidence and legitimacy. Fully subsidizing the candidates' electoral campaigns would have also facilitated limits on campaign financing, which is particularly meaningful in a country where the per capita gross domestic product is estimated at only around $800 USD.[7] (See Recommendation 1, proposing a political party funding mechanism to provide basic public subsidies and promote transparency; Recommendation 2, proposing in-kind or financial subsidies to candidates during the campaign period; and Recommendation 3, proposing that campaign spending limits be imposed.)

6. Money and Violence

The issue of money and violence is particularly significant in Afghanistan. All relevant pieces of legislation, such as the constitution and the political party and electoral laws and code of conduct, specifically prohibit any activities that incite violence and any sort of linkages with armed militias. Article 16(3)(e) of the Electoral Law states that "candidates shall not have non-official military forces or be part of them."

The nomination process for the 2003 presidential election tested the provision on linkages with the armed militias in a very public way. During the public-input stage of the review of candidate nominations, it was alleged that three of the candidates (two presidential—Mohaqeq and Dostum—and one vice-presidential—Khalili) did in fact have links with, or controlled, armed militias. While this could have been grounds for the automatic rejection of the candidates' nominations, all three were given the opportunity to publicly renounce any affiliation with militia forces and also support the removal of those commanders identified. The three candidates agreed to the conditions and were allowed to stand for election. Notably, none of the government departments and agencies that were formally petitioned by the JEMB for input on this issue had bothered to respond in an official capacity; it was only during the public-input stage of the process that the linkages between these three candidates and militia forces were made known publicly.

Indeed, one of the most significant challenges during this transitional period in Afghanistan has been to engage the broad spectrum of political actors in a totally new and unfamiliar process, which is being conducted under a different set of rules than has been the case over the past several decades.

[7] "Afghanistan" CIA Factbook <http://www.cia.gov/cia/publications/factbook/geos/af.html> (February 10, 2005).

While some readily adopt these new rules, others are less receptive, since they have already been very successful in using the threat of violence and intimidation to influence Afghans. One deterrent is to take these issues public, as evidenced by the establishment of the political rights verification process—a joint initiative of the AIHRC and the UNAMA. Successful completion of disarmament, demobilization and reintegration; new government authority through the Afghan National Army and National Police; and the elimination of poppy cultivation will make significant contributions to removing the potential influence of money and violence on the political and electoral process. (See Recommendation 7, proposing to establish a code of conduct for registered political parties, and Recommendation 9, proposing development of a country-wide civic education program on the role of public service, emphasizing the corrosive influence of violence, intimidation and corruption.)

7. Lack of Transparency and Security

The development of democracy requires that people first understand what the democratic process entails. Afghanistan lacked a democratic history and traditions. Furthering the people's understanding of the democratic process required sufficient transparency and visibility in implementing the electoral process. However, the compressed timelines established under the Bonn Agreement left, in practical terms, very little time to properly engage the major stakeholder communities in this educational and skills-building process. There was a constant trade-off between wanting to adhere to the tight timelines and the practical need to engage and educate the stakeholder communities about the process itself.

In a number of instances during the presidential election, a lack of transparency in the process resulted from the requirement to meet certain operational milestones. For example:

> The three main documents relating to complaints and offences, "The Regulation on Complaints and Irregularities during Election and Counting Processes," the "Regulation on Offences during Elections," and the "Procedure for Investigation and Disposal of Complaints relating to Electoral Offences and other Irregularities," were adopted between 25 September and 2 October 2004. This was very late in the electoral process, long after the campaign had begun. There was insufficient time for training and public information. As a result, election staff, candidates and their agents would have had a limited knowledge at best of the process to lodge and resolve complaints.[8]

Hopefully, Afghanistan will not again face the particular impediments to transparency evident in the 2004 and 2005 elections, which were subject to the compressed timetables of the Bonn Agreement and other immediate post-conflict pressures. Nevertheless, the task of developing greater appreciation and acceptance of a transparent political process will require a sustained effort by Afghan political leaders and civil society, with support from the international community. (See Recommendation 5a, proposing a review process of electoral legislation by the independent electoral commission, in consultation with political parties, media and civil society; Recommendation 8, proposing development of a civic education program regarding the role of political parties; and Recommendation 9, proposing development of a country-wide civic education program on the role of public service.)

[8] Final Report of the Impartial Panel of Election Experts Concerning Afghanistan Presidential Election 2004, (November 1, 2004).

8. Abuse of State Resources and Fair Access to Media

The electoral law strictly prohibited the use of government resources by nominated candidates. To support the ideal of government impartiality, Interior Minister Jalali also introduced a code of conduct for public servants. Despite these efforts, a number of the candidates in the 2003 presidential election did complain publicly that the incumbent, President Karzai, was using government resources for his campaign.

A number of efforts were made to level the playing field, including the production of posters and radio and TV spots for all the candidates. Prior to the election period, UNAMA hosted a roundtable for Afghan editors to provide them with some context on how to provide equitable campaign coverage. Access to government media, including radio and TV, was provided to presidential candidates. A media commission was also appointed with the responsibility to ensure fair and equitable access to the media by all the candidates. (See Recommendation 2, proposing in-kind or financial subsidies to candidates during the campaign period.)

9. Recommendations

The following section offers a number of recommendations with respect to financing the political process in Afghanistan.

1. **Establish a political party funding mechanism that provides basic public subsidies and promotes transparency.**

   First, political parties in Afghanistan do not presently play on a "level playing field." A political party funding mechanism should include a fund from which registered political parties would be eligible to receive a base level of financial support, intended to provide them with the means to develop the functionality of political parties, as described by Diamond and Gunther earlier in this paper. The funds would serve as a sufficient financial "floor" to permit more parties to be potentially viable and would be meant to augment, but not replace, the more traditional sources of funding, such as membership dues and donations by supporters. Continuing to allow private political fundraising (subject to regulation, limitation and reporting) would require continued training for political parties in building traditional revenue sources.

   Public subsidy systems always raise difficult issues about eligibility standards. Such standards should ensure that only serious and viable parties receive public funds and should discourage parties from organizing just for the purpose of gaining subsidies, but should not be so strict as to place minor or new parties at a disadvantage. Continued party registration could be conditioned upon some reasonable showing of popular support in elections, or alternatively, subsidies to registered parties could be conditioned on a certain standard of support. A separate qualification standard would be needed for new parties—perhaps signature petitions.

   While the political party and electoral law specifically prohibits political parties and candidates from receiving funding from foreign sources, there does not appear to be any regulation specifically prohibiting contributions from the international community to a funding mechanism that is managed by a legally recognized government agency.

   Second, the regulations regarding political finance reporting are ineffective. Under the political party law, disclosure of assets only occurs at the time of registration, which means

there is no ongoing monitoring of post-registration political party financial positions. The campaign financing regulation under the current electoral law is also ineffective as evidenced during the 2003 presidential election, when only 2 of the 18 candidates filed formal campaign finance reports.

A funding mechanism that includes public subsidies facilitates requirements for parties to report their revenues and expenditures on a regular basis, thereby introducing the concept of public disclosure and accountability. The leadership of the political parties would be legally responsible for the receipt, disbursement and reporting of these funds, and each party would be required to file, on a quarterly basis, a financial disclosure report accounting for the funds. By filing the quarterly report, the party would be eligible for subsequent financing, while failure to do so would terminate future funding.

Administration and management of this fund would be the responsibility of the independent electoral commission. The commission would also be responsible for the production of an annual public report, thus imposing a degree of accountability on the oversight agency as well as the political parties themselves. Once the Wolesi Jirga is constituted, this report could be formally presented in Parliament on a yearly basis.

2. **Provide in-kind or financial subsidies to candidates during the electoral campaign period.**

Consideration should be given to providing in-kind or financial subsidies to registered candidates during the election campaign period. The use of in-kind contributions was successful during the presidential election, when the production of campaign posters and radio spots was offered on an equitable basis to all the candidates. Financial subsidies could be used to produce additional campaign materials or to cover other related campaign expenses, such as travel and accommodation. The JEMB/JEMBS should initiate a discussion with registered political parties, nominated candidates and domestic election monitoring organizations on this issue to determine interest and viability, as well as to seek their input on what would be an appropriate level of subsidization.

In order to ensure that all candidates conform to the campaign finance regulations, a formal training program should be established to familiarize the candidates and/or their financial representatives with the campaign financing reporting requirements. The current campaign financing regulation should be amended to require nominated candidates to file one revenue and expense report between two and three weeks after the election day, which would then be reviewed by the JEMBS. (See also Recommendation 6, proposing training and provision of manuals so that political parties and candidates understand their responsibilities with respect to financial reporting during both the registration and electoral campaign periods.)

3. **Impose campaign spending limits.**

Currently, the only limits imposed on campaign financing pertain to personal and corporate donations. The law does not impose any limits on the total amount of money spent by candidates or political parties during the electoral period. This policy seems at odds with the prevailing economic conditions in the country, the lack of a level playing field in terms of access to resources, and the susceptibility of the process to local paramilitary commanders and drug lords.

The JEMB/JEMBS should initiate a consultation process—probably only feasible

following the September 18, 2005 elections—with registered political parties, past nominated candidates, elected representatives, domestic election monitoring organizations, civil society and other interested stakeholder groups to discuss the issue of campaign spending limits. Leading up to the consultation, the JEMB/JEMBS should examine (through a research study) the issue of campaign finance during the parliamentary and provincial council elections. One of the main objectives of the research study would be to provide some quantitative and qualitative data to the consultation process. Political parties would be more likely to accept the idea of limits on political spending if combined with some public subsidies. (See Recommendation 1, proposing a political party funding mechanism to provide basic public subsidies and promote transparency.)

4. **Require political parties to file an annual statement of revenues and expenditures to the independent electoral commission.**

   In addition to Recommendation 1, all registered political parties should be required to file an annual statement of revenues and expenditures as well as to report any material changes to their constitution, platform or leadership.

   Training in financial management, reporting and accountability should also be provided to political parties. This training would be compulsory to all senior party officials and would be required for formal party registration. Registered political parties would be required to complete the training course within a two-month period after the program is formally introduced.

5. **Review and reform the role of the independent electoral commission under the electoral laws.**

   - The independent electoral commission should initiate a formal review of the political party and electoral laws, and all associated regulations, in order to strengthen the legislation, with particular attention to political finance regulation and reporting. The review process should include the participation of registered political parties, media and civil society. The review process should also identify practical solutions to avoid the potential of political interference in the electoral process, in particular the registration of political parties and candidate nominations.
   - A regular and formalized consultation process between the independent election commission and registered political parties should be established, at least on a monthly basis.
   - The responsibility for the registration of political parties and the certification of candidates for election should be consolidated within the independent electoral commission (JEMB or its successor after the 2005 elections). This step would provide the political parties with a single point of contact with the organization responsible for their regulation and oversight and would remove the possibility of political interference with the registration process (which already occurred with the failure to register the National United Party for well over one year).
   - The roles and responsibilities of the independent electoral commission should be reviewed with the objective of streamlining existing legislation. Registered political parties and other stakeholder groups should have the opportunity to provide input into this review process.
   - The independent electoral commission should establish the position of complaints commissioner. This individual would be the principal point of contact for the political parties and nominated candidates on disputed issues. The terms of reference for the complaints commissioner would be broad and flexible to allow the investigation of

disputes arising from the registration process and other pre-election activities and campaign-related incidents. The complaints commissioner should be provided with adequate resources to undertake this important mandate.

6. **Ensure monitoring and enforcement capacity of the Independent Electoral Commission.**

   The JEMB/JEMBS (or its successor) should ensure that it has adequate resources to discharge its monitoring and enforcement responsibilities. Staff and officials should have the legislative authority, operational budget, staff resources and the requisite professional training to undertake all aspects of this oversight function, particularly the monitoring and enforcement of political finance regulation and reporting. Registered political parties and nominated candidates should be provided sufficient training and manuals so that they can be fully cognizant of their responsibilities with respect to financial reporting during both the registration and electoral campaign periods.

7. **Establish a code of conduct for registered political parties and nominated candidates.**

   A new code of conduct needs to be developed in consultation with registered political parties, nominated candidates and domestic election observation organizations. The JEMB/JEMBS should implement a nationwide public consultation process and public information campaign to educate political parties, nominated candidates and voters on the purpose of a code of conduct. Signing the code of conduct should be a prerequisite for political party registration and candidate nomination.

   The code of conduct should strongly condemn any use of violence or intimidation in the political process and should include commitments (1) not to use funds obtained from illegal sources for any political or electoral purpose and (2) to comply with all financial reporting obligations. This would help to address negative public images of political parties and the potential influence of drugs and criminal elements on the electoral process.

8. **Develop a civic education program that could be delivered by the registered political parties.**

   The purpose of a civic education program would be to educate party members and the general public on the role of political parties and other supporting institutions in the democratic process. The program would include a component emphasizing regulation and reporting of political finance as a means of ensuring fairness and transparency in the political process. Registered political parties would be required to deliver the program to their party membership and would be encouraged to use the course as a way of educating prospective members and the general public. The independent electoral commission and the registered political parties could jointly design and develop the program.

9. **Develop a government-wide program on civics and the role of public service within a democratic system of government.**

   Following on the Code of Conduct for Public Servants initiative of Interior Minister Jalali prior to the 2004 presidential election, this project would develop a country-wide civic education program for public servants and military officials. The program would focus on the roles and responsibilities of public servants and government officials within a democratic system of government and emphasize the corrosive influence of violence,

intimidation and corruption in the political process. The program would need the support of the cabinet and could be developed in partnership with the Ministry of Education and universities around the country.

10. Summary

Since the signing of the Bonn Agreement in December 2001, Afghanistan has embarked on an ambitious and challenging path towards building a modern democratic state. The journey to date has, by most accounts, been a generally positive one. However, this process is by no means complete, and much work remains, both on the part of the international community as well as on the part of Afghans themselves.

In the context of a developing democracy, the legacy of international involvement in Afghanistan should be about building sustainable institutions and processes in close collaboration with Afghan stakeholder communities—those who will be ultimately responsible for its long-term sustainability and legitimacy. The principle of sustainability is particularly important in developing and enforcing a system of political finance regulation, reporting and public disclosure.

To date, the effort has perhaps been too overtly focused on achieving certain short-term electoral milestones, as opposed to ensuring that the relevant stakeholder communities have developed the necessary capacity. With respect to political party development, the timelines imposed by the Bonn Agreement, however well intentioned, placed some unintended constraints on the development of the stakeholder community. For example, political parties were noticeably excluded during the drafting stages of both the political party and electoral laws. Nominated candidates and the parties may have adhered more fully to reporting requirements if they had been consulted during the drafting of the campaign finance regulation.

As of September 2005, the international community has contributed substantial sums of money to support the democratization process in Afghanistan—through the Emergency Loya Jirga, Constitutional Loya Jirga, voter registration process and the presidential election. The estimated cost of the voter registration and presidential elections was around $250 million USD. This amount does not take into account additional funding for the parliamentary, provincial and district councils. However, elections are but singular events in the overall democratic cycle and more attention and support (including financial support) should be directed to the major stakeholder groups on a sustained basis. These groups include political parties, the electoral commission, civil society (in particular, those involved with domestic election monitoring), and nongovernmental organizations involved with civic education. This is particularly true when seeking to develop a coherent and enforced political finance system in a post-conflict environment.

From a political finance perspective, a "level playing field" should be created for all the participants. Fair and reasonable political finance rules should be effectively enforced by election authorities. Distortions, either financial or security-based, can materially affect the outcome of the process itself, leaving doubts with respect to the transparency, legitimacy and credibility of the process. If the process is not well understood, it is open to potential abuse and a loss of public confidence. The legacy of the international community's involvement in Afghanistan should not be about the success of one political group or another but rather the entrenchment of a democratic process that will serve the collective interests of its citizens.

Bosnia and Herzegovina

By
Ambassador (Ret.) Robert Barry

1. Introduction

The bitter conflict in Bosnia and Herzegovina (BiH) and the ethnic cleansing that accompanied it remain fresh in public memory. The 1995 Dayton Agreement,[1] which ended the conflict, came about in part because of the exhaustion of all parties, but it by no means signaled that Bosnian Croats, Bosnian Serbs and Bosnian Muslims (Bosniaks) were resigned to living together in a multiethnic society. In fact, the structures agreed to in the Dayton constitution reflected the separatist ambitions of the nationalist leaders of the three "constituent peoples." Despite Dayton commitments to respect the territorial integrity of Bosnia and Herzegovina, most Bosnian Croats wanted to join Franjo Tudjman's "Greater" Croatia, while Bosnian Serbs longed to be part of Milosevic's "Greater" Serbia. Many Bosniaks wanted a separate existence in a Muslim state, enlarged at the expense of Bosnian Croats and Serbs in compensation for wartime suffering. The 60,000 NATO troops that entered the country in 1995 had the task of preventing renewed conflict, while the civilian agencies—the UN, the OSCE and the Office of the High Representative ("High Representative" or OHR) charged with coordinating civilian implementation of Dayton—faced the challenge of imposing multiethnic structures in the aftermath of four years of bitter inter-communal strife.

A key element of the Dayton agreement was the requirement that elections be held within a year, by September 1996. This was a precondition for the U.S. military, which believed, not for the last time, that early elections were the key ingredient of an exit strategy. It was thought that democratic elections would legitimize the institutions established by the Dayton constitution and pave the way for the reconciliation and return of hundreds of thousands of refugees and internally displaced persons.

The responsibility for all aspects of election administration was assigned to the OSCE, which moved quickly to establish a large field mission in Bosnia and Herzegovina. The Head of Mission was, *ex officio*, the chairperson of the Provisional Election Commission (PEC), which established the rules and regulations for elections and managed all aspects of the process. There was no tradition of free elections to build on, as the former Yugoslavia had been an authoritarian one-party state with strong central control designed to suppress nationalist tendencies.

Despite widespread skepticism that elections could be organized within nine months of establishing a field mission, the OSCE pressed ahead and held elections in September of 1996 for national office and for the two "entities," the Republika Srpska and the Federation of Bosnia and Herzegovina. The more complex municipal elections were postponed until September 1997, followed closely by new elections in the Republika Srpska after the dissolution of the RS National Assembly.

In retrospect, it is not surprising that the result of these elections was to strengthen the hand of the wartime nationalist leaders. The Croat Democratic Union (HDZ), the Serbian Democratic Party (SDS) and the Bosniak Party of Democratic Action (SDA) emerged triumphant from the 1996-1997 elections and continue to dominate the political scene today. The international community has

[1] The General Framework Agreement for Peace in Bosnia and Herzegovina (1995).

devoted most of its time since 1996 to trying to create a political environment more favorable to pluralism and multiethnicity. It is against this background that one should understand (1) how the OSCE administered elections and (2) the underlying principles of the election law that entered into force in 2000, and which remain (with amendments) the basis for elections today. Political finance was a secondary priority in the overall uphill effort to overcome the effects of four years of internecine warfare.

Since 1995, Bosnia and Herzegovina has moved up the ranks of the seven-point Freedom House index from 6 (not free) to 4 (partly free).[2]

In this study, I draw primarily on my own experience as the OSCE Head of Mission and chair of the Provisional Election Commission from January 1998 to June 2001. During that period, the OSCE administered three elections: national elections in September 1998, municipal elections in April 2000 and national elections in October 2000. The OSCE Mission was also deeply engaged in implementing election results, as it proved very difficult to set up multiethnic local governments consistent with election results. In addition, the Mission played a central role in the drafting and approval of the election law and the transition to national election administration.

I also draw on the rules and regulations of the PEC, the national election law and the commentary prepared at the time of its introduction into Parliament: the Law on Political Party Finance and the Law on Conflict of Interest. I reviewed the reports of the OSCE/ODIHR election observation missions, media reports and the commentary of national and international nongovernmental organizations (NGOs), such as the Association of Election Officials of Bosnia and Herzegovina and the International Crisis Group. Finally, I have interviewed former and current members of the OSCE Mission to Bosnia and Herzegovina and the National Election Commission.

2. Legal and Procedural Framework

The OSCE Mission to Bosnia and Herzegovina had the task of establishing rules and regulations for the conduct of elections that were at once consistent with both international standards and with the requirements of the Dayton agreement. These two goals were not always congruent, as the OSCE/ODIHR pointed out in the reports of its election observation missions. For example, parties and candidates were required to pledge support for Dayton implementation as a precondition for eligibility to be elected. Parties and candidates that failed to make or live up to these pledges were denied registration, removed from candidates lists or even removed from office after being elected. The most striking examples of this were the removal, by order of the High Representative, of Nikolai Poplasen, elected president of the Republika Srpska, and of Ante Jelavic, elected Croat member of the presidency of Bosnia and Herzegovina. The Damocles sword of ineligibility for office was frequently invoked to keep extreme nationalist parties and individuals in line, despite complaints that this violated their right to be elected. Appeals to the European Court of Human Rights were rejected on the grounds that obligations of the Dayton agreement took precedence over the more general provisions of international human rights law.

The PEC Rules and Regulations in effect in 1996 and 1997 did not deal with political finance. The OSCE did provide subsidies to certain political parties and independent candidates with the goal of promoting pluralism and multiethnicity and reducing the advantages enjoyed by the three major nationalist parties: the HDZ, SDA and SDS. The amounts and recipients of these subsidies, which were funded by voluntary contributions from OSCE member states, were not made public, apparently at the request of the parties concerned. It does appear, however, that there were no

[2] See http://www.freedomhouse.org/ratings/index.htm.

particular political "favorites" and that money was provided to parties which were otherwise at odds with the international community.

Cash subsidies were phased out in 1998, because it appeared that some small parties had been created simply to become eligible for grants. The political scene was becoming too fragmented, and some recipients (including independent candidates) evidently pocketed the grants without seriously campaigning for public office. Instead, a program of in-kind assistance was inaugurated. All parties could use political party service centers around the country to hold press conferences, meetings with voters, training sessions, etc. However, other services—such as printing of campaign posters or production of TV spots—were available only to parties or candidates that advocated multiethnicity in their programs, thus eliminating nationalist parties despite the claims of some to be multiethnic.

In preparation for the 1998 election, the PEC banned all paid political advertising with the goal of attacking the political finance problem from the demand side. At the same time, stringent requirements were laid down requiring electronic media to carry free spots during the campaign period and demanding balanced campaign coverage. While this move was highly unpopular with media owners and political actors with deep pockets, the provision survived in the election law and was in force through the national elections of 2002. However, prior to the 2004 municipal elections and at the initiative of the "Association of Electronic Media of BiH" (owners of TV and radio outlets), the election law was amended to eliminate this ban. This amendment did not appear to elicit any objections, either from the smaller parties or from the international community. Under the new law, public media could carry up to three minutes of paid advertising per party per week, and private media could carry up to five minutes. All media were required to continue to provide time for free spots as well.[3]

The first financial reporting requirement was introduced in the provisional rules and regulations prior to the 1998 general elections. All candidates were required to file a financial disclosure report before registering as a candidate and again upon leaving office. These reports were open to public scrutiny, but the OSCE made no effort to verify them due to lack of resources to deal with the thousands of reports. The press was encouraged to study the declarations and comment on them, but the response was disappointing, reflecting the highly charged atmosphere surrounding elections.

The Dayton agreement foresaw early passage of a permanent election law and the transition to nationally administered elections soon after 1996. But the elected National Assembly proved incapable of making the compromises necessary to draft such a key document, and it fell to the international community (the OSCE and OHR) to take the lead, with the participation of national and international experts. A draft law was finally introduced into the National Assembly in October 1999, but it was widely opposed—especially by nationalist parties. In the end, the threat that the High Representative would impose the law eventually led to its passage, but not in time for the 2000 elections. Therefore, the provisions of the draft election law were carried over into the PEC rules and regulations for the 2000 municipal and national elections.

These regulations included a number of reforms designed to promote cooperation and compromise among parties and to promote the reconciliation and return of refugees and internally displaced persons. A number of provisions related to political finance. The OSCE commentary prepared in 1999 to accompany the text of the draft election law explains:

[3] For the impact of the changes to the law allowing for paid media access, see the OSCE/ODIHR and Council of Europe joint Statement of Preliminary Findings and Conclusions of the International Election Observation Mission; 2004 Municipal Elections – Bosnia and Herzegovina, (October 2004).

> ...the fundamental goals of campaign finance legislation are to:
>
> - Control corruption
> - Promote fairness
> - Control the cost of campaigning
> - Encourage grassroots participation
> - Promote accountable and broadly representative political parties and elected officials
>
> These goals can be broken down into two components of campaign finance regulation. The first component comprises disclosure provisions that seek to reveal a campaign's sources of money and its equivalents, and how they were utilized during the campaign. ....
>
> The second component includes limitations on contributions and expenditures. Such prohibitions and limitations aim to advance wider election policy aims that are often related to combating corruption.[4]

There was considerable debate about these requirements. The debate was in part over the powers of the National Assembly to regulate elections at the entity or municipality level and in part over how comprehensive the rules should be. The resulting compromise concentrated on regulating national and entity elections and also set stricter reporting requirements for those elected, as opposed to those whose candidacies were unsuccessful.

The election regulations on campaign finance were eventually embodied in a separate law, the Law on Political Party Finance, which entered into force in July 2000 (while the election law itself only came into force, after amendments imposed by the High Representative, in April 2001). This law also permits funding "parliamentary groups" from the central, entity and municipal budgets, with 30 percent of available funds distributed equally among all parties represented and 70 percent distributed proportionally according to the number of seats held by each party. The sums to be distributed depend on the budgets of the relevant level—state, entity or city/municipality. The funds can be significant as evidenced by decisions of the High Representative to cut or eliminate funding from this source to the HDZ and SDS because of their failure to cooperate on various issues.[5] Because 70 percent of the funding provided is distributed in proportion to the number of seats held by a party, the law effectively favors the larger nationalist parties and thus counteracts other provisions of the election law aimed at leveling the playing field. Apparently, the smaller parties have not complained about this fact, and the provisions of the law are consistent with the guidelines for political finance set forth by the Council of Europe's Venice Commission in 2001. Finally, the Law on Political Party Finance also limits business activities by parties, limits the size of political contributions and forbids contributions by public companies.

The Law on Conflict of Interest, which finally entered into force only after the 2002 general elections, incorporates earlier PEC rules forbidding elected officials from holding "incompatible" positions, such as management posts in state corporations or private companies that rely on government contracts or investments. This latter provision, first introduced before the 2000 elections, reversed a long-standing custom under which ruling parties appointed elected officials to manage both public companies and companies that conducted substantial business with the government. In many cases, funds from these companies were diverted for use in political campaigns.

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[4] OSCE, Commentary prepared to accompany the 1999 draft Election Law (unpbublished).
[5] See High Representative Directives of May 31, June 7 and June 30, 2004.

3. Effective and Fair Enforcement

One of the reasons that political finance was a low priority for the OSCE in 1996-1999 was because of the difficulty of effective enforcement and the danger that establishing unenforceable regulations would undermine confidence in election administration. Even today, in 2005, a national member of the BiH Election Commission opined that provisions on political finance are applied less effectively than any other aspect of the election law, in part because of the political sensitivity involved and in part because of the difficulties in securing and retaining qualified auditors. The commission member said that it would be very difficult to find qualified personnel to carry out the sensitive task of auditing political party accounts for a salary of 500 euros (approximately $645 USD)[6] per month and that in mature democratic societies the media, not state institutions, normally investigate illegal activities by political parties.[7] While auditing and enforcement by government institutions is critical, so too is the work of the media, and this kind of investigative journalism is still new in Bosnia and Herzegovina.

Since 1995, Bosnia and Herzegovina has been noted for its culture of impunity and corruption. (In 2004, after substantial reform, Bosnia and Herzegovina was rated 82 out of the 146 countries evaluated by Transparency International.[8]) For the most part, courts and prosecutors were tools of the ruling parties, and there was no serious prospect of prosecuting those accused of electoral or financial violations. Therefore, the task of enforcing or implementing the election law fell to the PEC and its independent appellate body, the Election Appeals Subcommission. Both bodies were chaired by internationals until the election law went into effect in 2001. Today, following an intensive period of judicial reform and restructuring, the national and entity courts do a better job, but the main burden of enforcement still rests with the BiH Election Commission and the Election Appeals Commission.

While these bodies can and do hand out a variety of civil penalties (including public censure, fines and binding orders to cease certain practices), by far the most potent sanction is denial of the right to be elected. Under the authority of the High Representative, even a person or party already elected can be removed from office for a particularly egregious violation. For example, in 2004, the High Representative removed several dozen SDS members from elected positions and party posts because the SDS was not cooperating with the International War Crimes Tribunal (ICTY).

The first hurdle an individual or party faces on the road to election is registration. Beginning in 1998, the PEC refused to register anyone who failed to file a financial disclosure statement or who filed an incomplete statement. However, no penalties were prescribed for false or incomplete statements, and the Election Commission made no effort to verify statements. The theory was that the disclosure statements would be made public and that the media would investigate egregiously false statements, thus creating an incentive to comply. That was then—and remains today—a miscalculation, given the media environment.

The more stringent requirements in the 1999 draft election law and regulations in force for the elections of 2000 and beyond gave the Election Commission the right to audit party or candidate funds and required that an individual in each campaign organization be responsible for accounting

[6] Approximate value in U.S. dollars as of April 1, 2005.

[7] This statement was drawn from an interview with a member of the National Election Commission. It demonstrates the frustration facing the Commission in being able to undertake the requirements of the law with limited resources. The results of the first audit conducted by OHR, noted on page 7, highlight the importance of enforcement by official bodies. In fact, recent training efforts conducted by IFES, a USAID-funded organization, show that there is a need for strengthening the audit department.

[8] See 2004 Corruption Perception Index at <http://ww1.transparency.org/cpi/2004/cpi2004.en.html>.

and produce records on demand. In 2000, the OSCE forensic auditors (funded by voluntary contributions from the international community) reviewed the financial records of a number of parties, and as a result, several parties and candidates were censured and/or warned concerning violations. At present, however, the Election Commission lacks the resources (and the political will) to use this authority, and as a result, these provisions of law lack teeth. Because it was suspected that SDS funds were used to assist indicted war criminals Radovan Karadzic and Ratko Mladic, OHR decided to use its special audit capabilities in 2004 to go through SDS financial records. The audit report indicated that there were no controls in place to prevent party funds from passing to criminal organizations and war criminal networks. In addition, the audit pointed to "multiple and flagrant violations of electoral law."[9] Following the audit, the High Representative issued a decision on June 30 that suspended all payments to the SDS from state, entity and municipal budgets and re-allocated these funds to state institutions—one third to the Election Commission, one third to the War Crimes Chamber of the Court of Bosnia and Herzegovina, and one third to the State Information and Protection Agency (intelligence agency).

At about the same time, the High Representative ordered less draconian suspensions of payments to the HDZ, SDA and other parties because of their failure to cooperate in implementing other laws on education and governance of the city of Mostar.

4. Funding from Undesirable Sources to Undesirable Recipients

As in other post-conflict societies, there is a direct tie between those who financed the war and those who financed the ruling parties after the war. In Bosnia and Herzegovina, funding and weapons were delivered to Bosnian Croats and Bosnian Serbs by Tudjman and Milosevic respectively, while Bosniaks were supported by Muslim states such as Saudi Arabia. Smugglers played a major role in keeping goods flowing despite sieges and blockades, and multiethnic cooperation among smugglers developed into a closely woven network of organized crime. Many of the leading political figures of the three nationalist parties were identified at the same time with criminal enterprises and/or war crimes during the 1992-1995 conflict. After the war, they played a central role in party financing.

A second key source of undeclared funding for ruling parties was state-owned enterprises, the officers and managing boards of which were appointed by the ruling parties. Often key elected officials or candidates were simultaneously key officials of state-owned enterprises. For example, the prime minister of the Federation of BiH, Edhem Bickakcic, was simultaneously the chairman of the managing board of the state-owned electrical generating company (Elektroprivreda) serving Sarajevo and Bosniak areas of the Federation. It was widely reported that Bickakcic clandestinely channeled significant funds to the SDA from Elektroprivreda. Both the Bosnian Serb SDS and the Croat HDZ had similar arrangements with state-controlled companies or banks involved in money-laundering schemes.

The criminal aspects of this problem proved intractable. The UN International Police Training Force, the EU, SFOR and the OSCE, as well as the Office of the High Representative, mounted a number of investigations to deal with criminal enterprises and the funneling of funds from state enterprises. They often obtained detailed evidence by seizing records and computer hard drives in raids on illegal activities. However, getting the prosecutors and judges to act was extremely difficult. Only after 2001, thanks to judicial reform, did this situation begin to change for the better. Here, the key to success was the creation of the Court of Bosnia and Herzegovina, an institution not foreseen

[9] The effectiveness of this audit in finding information highlights the need for building a local capacity to undertake auditing as a key component of any serious political finance reform.

in the Dayton accords, and an impartial system of judicial appointments. The removal of corrupt judges and the establishment of special judicial panels helped reform the system.

To break the nexus between state-owned companies and political parties, the PEC passed a rule in February 2000 stating that an elected official could not be an officer or director of a company that did more than 25 percent of its business with the state or a company in which the state had more than 25 percent ownership. This rule, which had been an unenforced provision of domestic law before 2000, was later carried over in the election law passed in 2001 and the Law on Conflict of Interest passed in 2002. This prohibition has now been in effect since the 2000 municipal elections. The most effective enforcement measure was to require elected candidates to choose between keeping their positions in state-owned companies and taking up elected office. The Election Commission continues to enforce this provision. Most recently, some 300 elected municipal councilors chose not to take up their seats in 2004, as they would have had to give up their "incompatible" business ties. In addition, violators have been fined up to 10,000 km (approximately $6,670 USD)[10] and prohibited from running for office for four years. In the view of a member of the Election Commission, these provisions on conflict of interest are effective, and in this regard BiH is ahead of the other successor states to the former Yugoslavia.

Two cases are worth noting in this regard, both involving extraordinary interventions by the international community. The first involved Edhem Bickakcic, whose role as prime minister of the Federation of BiH and director of Elektroprivreda was discussed above. Bickakcic was long suspected of siphoning Elektroprivreda funds to the SDA. In 2000, as a result of the national elections, he was dismissed as prime minister and returned to his earlier position as CEO of Elektroprivreda. Despite ample evidence of his illegal financial manipulations as prime minister, no actions were taken to prosecute him. In February 2001, citing illegal diversions of public funds, High Representative Petritsch removed him from his position as CEO of Elektroprivreda and forbade his holding of any public position in the future.

The second case involved Ante Jelavic, Croat member of the BiH presidency, who attempted to set up a parallel "entity" as a reaction to a rule that limited the ability of Bosnian Croats to block actions of other constituent peoples (in force for the 2000 elections). Funding for this parallel structure came through Hercegovacka Banka (HB), a bank founded with the help of Croatian hard-line military. HB records were seized with the support of SFOR, and as a result of forensic audits, Jelavic and some of his associates were indicted in Bosnian courts and charged with illegal financial manipulations, including the diversion of Croatian assistance intended for war veterans (which was instead used to support the illegal parallel government structures). While there has been no verdict yet in the Jelavic case, former Federation defense minister Prce, an officer of HB, pleaded guilty and is serving a sentence.

5. Money and Violence

All three "nationalist" parties (SDS, SDA and HDZ) and some smaller parties maintain financial links with paramilitary organizations and war criminals. The most obvious case is the SDS, which has protected indicted war criminal Radovan Karadzic and failed to cooperate with the ICTY despite repeated sanctions by the international community. In addition, the HDZ long maintained ties with extremist circles in Croatia, and the radical wing of the SDA has been closely involved with organized crime as well as militant Islamists outside BiH.

[10] Approximate value in U.S. dollars as of April 1, 2005.

None of the political finance measures described above have had any real effect on these ties. For example, there is no evidence that ending the funding of SDS has led to cooperation in apprehending Radovan Karadzic. Strong measures have been taken to contain and eliminate these links. For example, NATO military forces—IFOR and later SFOR—periodically carried out raids to keep paramilitary forces off balance and gain intelligence about their financial ties. Sanctions against parties and elected officials have had some deterrent effect. Notable examples of this are the OHR and OSCE prohibitions on future candidacies of those who have been denied elected office for cause—such as Bickakcic, Jelavic and former RS President Poplasen. Judicial reform has permitted prosecution of some cases, such as the HB case referred to above. Perhaps the most significant element in this equation has been the departure of Tudjman and Milosevic and the gradual erosion of the power of extreme nationalist parties in Croatia and Serbia.

A separate but similar source of concern was the presence on Federation territory of a number of mujahideen fighters who had come to Bosnia and Herzegovina during the war to support Bosniak fighting units. Many came from jihadi groups in Afghanistan, Palestine, etc. and had ties with Islamist extremist groups such as al Qaeda. Federation President Alija Izetbegovic resisted pressure to comply with Dayton provisions requiring that foreign fighters be expelled, and funding from Saudi and other charities flowed to these groups. After the 2000 elections and Izetbegovic's retirement, elected Bosniak leaders were more active in pressing the mujahideen to leave the country, although in some cases SFOR had to react to security threats by detaining and removing individuals.

Overall, ties between political actors and paramilitary groups and war criminals in post-conflict societies cannot be dealt with through controls on political finance. This is true in other post-conflict societies as well, such as Serbia-Montenegro, Macedonia and Croatia. Even much stronger sanctions, such as the cutoff of badly needed international aid (as in the Serbia case), is insufficient to prompt action against individuals or groups who are still regarded as heroes by some elements of the population.

6. Lack of Transparency and Security

The tradeoffs between security and transparency were very evident during the period that the OSCE Mission to BiH was in charge of election administration. Although bound by international standards to encourage maximum transparency, the Mission was very aware of the risks involved. For example, national members of the Provisional Election Commission were under great pressure from the nationalist parties to represent their interests, but these pressures ran counter to our goal of democratizing the system. In order to mitigate this pressure and permit free discussion of reforms, PEC meetings were closed. Parties and candidates were invited to present their points of view in a separate forum, the Political Party Consultative Commission, attended by PEC members as well.

Another example of the tension between transparency and security involved the way in which the vote count was announced in early elections. As part of the strategy of encouraging return and multiethnicity, voters were encouraged to vote in person or by absentee ballot in the entity or municipality where they had lived before the war. This led to highly controversial outcomes—for example, the election of a Bosniak mayor in the then completely Serb municipality of Srebrenica (where thousands of Bosniaks were murdered by Bosnian Serbs in 1995). In order to avoid serious riots, SFOR advised the OSCE not to release preliminary results of the vote count as they became available. Such early incomplete announcements of the vote count would have shown that absentee voters determined the outcome of the election in some areas and handed the municipality or the seat in Parliament to someone of a rival ethnic group. The OSCE mission complied in the interests of security, releasing only the final election results, though this resulted in harsh criticism, including by the OSCE/ODIHR. For the same reason, the Mission refused to break down the vote to show how out-of-country and absentee votes affected the outcome. In part, this was due to concerns about

violence on election day, but a more serious problem was the issue of implementing the election results. Some parties and politicians refused to accept that the expelled voters should have any say in the governance of what was now "their" entity or municipality.

In time, these security concerns lessened and transparency became more and more the rule, but even today some of the same concerns apply.

7. Abuse of State Resources, Fair Access to Media and Free Broadcasting

In retrospect, most observers agree that Dayton negotiators got it wrong in insisting on early elections rather than reforming the institutions in which elected officials would serve. In particular, most consider that judicial and police reform, as well as media restructuring, should have come before elections.

The first post-conflict elections in 1996 played out on a completely uneven playing field, with widespread use of public resources and outside sources of funding. Leaders of the nationalist parties mobilized every resource under their command, including the media, to ensure their election. There was widespread intimidation of voters as well as fraud. As noted, there was no attempt to control political finance, and the only efforts at leveling the playing field were the subsidies provided to some political parties.

Over time, the body of regulations governing fair access to the media became more comprehensive and effective. The OSCE introduced increasingly strict rules governing media behavior during election campaigns and banning hate speech. On occasion, SFOR was called on to step in to shut down broadcasters who refused to comply with the rules. The OSCE and others monitored the electronic media carefully, and the link between licensing the electronic media and their compliance with regulation became more and more explicit. The effort to create a nationwide public television station (OBN) funded and controlled by the international community ultimately proved ineffective. However, the "free and fair elections radio network" (FERN), initially established with Swiss support, was a valuable tool in ensuring a more level playing field.

Although the ban on paid political advertising has ended, electronic media are still required to carry some free political spots, and the Election Commission and the Communications Regulatory Authority (CRA) may issue warnings, levy fines and ultimately revoke a broadcasting license in case of violations. The CRA has authority over broadcasting and functions both as an issuer of broadcast licenses and a watchdog for equitable access to media during election periods. Overall, this has resulted in a much improved media environment. In fact, during the 2004 elections, the major complaint about electronic media coverage was that it was so cautious as to be boring—a charge that could not have been made in 1996. The re-introduction of paid political advertising could adversely affect this balance in 2006.

8. Recommendations

1. Keeping down the cost of campaigning remains the most easily enforced way of leveling the playing field and reducing the incentive to circumvent political finance rules. It is probably impractical to reinstitute the ban on paid political advertising in the electronic media, but the Election Commission and the Communications Regulatory Authority can take a number of actions to prevent abuse of the system:

- Monitor and enforce the requirement that free political spots are given air time along with paid ads.
- Close a loophole with a regulation that electronic broadcasters publish their advertising rates, which would require no differentiation in rates charged political parties and candidates (the current law establishes a maximum rate but not a minimum).
- Require political parties and electronic media to account to the EC and the CRA for disbursements and receipts for paid political advertising during the campaign period (to prevent the kinds of "unpaid bills" that turned up in the audit of SDS and similar efforts to favor a party or candidate by not collecting bills).

2. Establish an audit capability in the Election Commission so that the various reporting requirements and limitations on sources and amounts of campaign contributions can be enforced. The EC will never have the resources to audit all parties and candidates, but selective audits can have an impact, as was seen in the OHR audit of SDS in 2004. Fines assessed for violations can be used to offset audit costs.

3. In parallel, the State Audit Institutions in the two entities can carry out frequent audits of government institutions and state-owned companies, which can detect whether funds are being illegally funneled to political parties or whether ruling parties are receiving services for which they are not paying.

4. Increase the penalties for the systematic violation of political finance rules. Fines and warnings and even removal of individual candidates do not effectively offset the advantages of cheating in many cases. The OHR, the OSCE and Election Commission should establish that a party or candidate that flagrantly and persistently violates campaign finance laws should not be allowed to compete in elections. In order to prevent the abuse of such a sanction by a future, partisan election commission, a carefully regulated appeal process would be required.

5. The requirement that all candidates file a financial disclosure report as a precondition for registration is unenforced and ineffective. Simply ensuring that the reports have been submitted is labor intensive. The reports should be required only of successful candidates and those completing their term in office. Otherwise, there should be penalties for false reports coupled with a selective audit requirement.

6. In contrast to other post-conflict societies, regulation of the electronic media has worked well in Bosnia and Herzegovina. However, more attention should be paid to print media, where concentration of ownership has increasingly been a problem.

9. Summary

The central problem in Bosnia and Herzegovina is that after a decade the nationalist parties have not lost their appeal. Even the prospect of eventual NATO or EU membership has not been enough to persuade the majority of voters to support parties and candidates that advocate strengthening the state of BiH at the expense of the entities. Through the use of extraordinary powers, military force and several billion dollars in reconstruction assistance, the international community has held Bosnia and Herzegovina together and made some progress in such areas as return of refugees and political reform, but despite efforts to use the electoral system to promote multiethnicity, the hold of nationalist parties on many voters has not been broken.

Political finance is not a central factor in this equation, and the international community was correct in assigning a secondary priority to this issue. In the first place, even in mature democracies like the United States, controlling political finance is notoriously difficult. In post-conflict Bosnia and Herzegovina, with its shadowy financing, corrupt judiciary and ties to foreign sources of funding, political finance was not a promising place to concentrate limited resources.

Of the methods used to deal with the financing issues, controls on the demand side were most effective and most easily enforced. The ban on paid political advertising did more to level the playing field than any other measure implemented or considered. But when the electronic media owners pushed to rescind the ban, even the smaller parties who benefited from it did not object.

The basic purpose of political finance is, or should be, to create a more level playing field and to prevent ruling parties from enjoying a monopoly of political power. That was the purpose of the subsidies provided by the OSCE when it ran elections, and it is the goal of training programs carried out by the OSCE and NGOs such as the National Democratic Institute (NDI) funded by USAID or the German political foundations today. (None of these provide funds to political parties.) Institution-building and training efforts conducted by other USAID-funded organizations such as IFES seek to promote full disclosure and enforcement of political accounts by local bodies, civil society actors and the media.

It would appear that political finance provided to parties under the Law on Political Party Finance might have the opposite effect, as most of the money provided goes to larger parties with the most seats in elected bodies. As it happens, the ruling parties usually also benefit from control over the electronic media, use of state resources and access to funds from state-owned companies and contributions from abroad. The amount of money distributed to political partisans in accordance with the law is difficult to estimate, coming as it does from a variety of budgets at the municipal, entity and state levels. It would also appear that funds obtained from other sources (both legal and illegal) are potentially considerably larger than those allocated from budgets. There have apparently been no complaints from parties in BiH over the way in which this funding is administered, but in other transitional societies such as Kazakhstan or Albania, the OSCE/ODIHR election observation reports have noted that the late release of funds hurts opposition parties.

The rule on conflict of interest proved to be a successful supply-side control on corruption. Violations are relatively easy to detect, and the penalty—denial of the right to be elected—caught the attention of politicians. While this rule alone did not stop the use of state resources to win re-election of incumbents, it certainly helped.

The various other supply-side controls—disclosure requirements, limitations on contributions and funds spent on campaigns, requirements that parties submit their financial records for audit, etc.—have generally proved ineffective. In part, this is because the electoral authority lacked the staff and expertise to enforce the law. But more broadly, it is very difficult to uncover even amateurish schemes to hide the evidence. For example, in societies with a tradition of keeping a false set of books for tax inspectors, it is an easy jump for parties to create a set of books for auditors from the election commission. More importantly, neither the media nor election administrators are eager to take the risk of an intrusive investigation where the threat of violent retaliation is very much alive.

Creating a level playing field for electronic media coverage of campaigns has been a relative success in Bosnia and Herzegovina, in part because violations are easy to detect and because the potential penalty—losing one's broadcast license—is severe. However, economic and political pressure on journalists to support incumbent politicians and parties remains a serious problem, particularly in the print media

As we near the 10th anniversary of Dayton, it is frequently suggested that the incentive of EU membership could do more to bring about political and economic reform in Bosnia and Herzegovina than the continued international quasi-protectorate established in 1996. It may well be true that giving Bosnia and Herzegovina candidate status in the EU and beginning accession talks would have a positive effect in many regards, but there is no evidence that it would help create a more level playing field for political competition or that it would deal with the political finance issue. Other needed reforms, such as the creation of a single military command structure, have not been made despite the fact that this is a precondition for joining NATO's Partnership for Peace.

El Salvador

By
Rafael López-Pintor

1. Introduction[1]

While El Salvador has experienced significant electoral reform in the past decade, reform of political finance has not kept pace with overall reform efforts. It is significant that since the signing of peace accords in 1992, El Salvador has managed to hold multiple free and fair elections. The country's economy has become stronger, and it appears to have overcome a legacy of serious internal conflict to create a relatively stable democratic political system. It has made some headway in electoral reform as evidenced by the successful creation of voter registration lists and the issuance of national identification cards.

Beyond these significant electoral accomplishments, however, the country still remains thwarted by a corrupt economic and political culture that lacks an appreciation for broad-based transparency or reform in political finance. Except for a system of public subsidies to political parties during electoral campaigns, the funding of parties and candidates generally has been unregulated and unreported in elections from 1994 to 2004. Where there have been attempts at enforcement of political finance regulations, these attempts have been fraught with partisanship and ineptitude. Information about financing is difficult to find, and reform measures have been stalled in the legislature. Consequently, as a case study in political finance regulation and disclosure in a post-conflict society, El Salvador is chiefly useful for studying state subsidies.

1.1 Brief historical review

The last 50 years of Salvadoran history have been marked by periods of military rule and popular uprisings. From 1932 to 1980, all but one president of El Salvador was an army officer. Important political reform efforts began in the 1970s led by José Napoleón Duarte, leader of the Christian Democrat Party (PDC), and Guillermo Ungo, leader of the Socialists. Duarte united opponents of military rule and created a broad-based reform movement. When Duarte was defeated in the 1972 presidential elections amid allegations of widespread fraud, subsequent protests and coup attempts erupted. Duarte was forced into exile, and chances for meaningful reform were dashed. A brief attempt at reform in 1979 during Colonel Majano's regime failed when it split the army and galvanized urban middle-class intellectuals and workers into organizing a guerrilla army. A series of juntas in 1980 failed to bring about reform and drove opposition forces to join together under the party name Federación Democrática Revolucionaria. During this time, the leading opposition party and guerrilla group that united leftist antigovernment forces was the Farabundo Martí National Liberation Front (FMLN).

[1] This paper was researched and written based on legal and official documents, academic studies, election monitors' reports, media analysis and personal interviews. The author has visited El Salvador on numerous occasions since 1983, with a prolonged stay between September 1993 and April 1994 as Director of Elections at the UN Mission ONUSAL and many annual visits since then. Special recognition should be paid to two colleagues and good friends who updated me on some unresolved issues in the electoral domain: Félix Ulloa, former magistrate of the Supreme Electoral Tribunal, scholar and practitioner in democracy building in Latin America; and Ana Maria Tello, former member of the Truth Commission and senior electoral officer of UN Observer Mission in El Salvador (ONUSAL). Ms. Tello was honored as a member of the team, headed by the UN Secretary General, engaged in the work resulting in the Nobel Peace Prize of 2001.

For 12 years, the FMLN led a guerrilla war against government forces. This paramilitary group gained control of parts of El Salvador by blowing up bridges, destroying power lines and burning coffee plantations. The entire country was engulfed in the struggle, which resulted in 75,000 dead, 500,000 internally displaced and another 500,000 taking refuge in the United States. But Salvadorans found their way out of warfare in 1987 after the Central American presidents signed an Agreement for the Establishment of a Firm and Lasting Peace in the region. Following the path set by neighboring Nicaragua, leaders from the government and guerrilla forces engaged in prolonged peace negotiations concluding with the Chapultepec peace accords of January 1992. Peace came about because, among other factors, the oligarchs and the guerrillas alike realized that they would not be able to curb the military without the rule of law and competitive elections. The FMLN leaders swore allegiance to the constitution and laws of the country on September 1, 1992, and became an opposition party. The FMLN was officially recognized as a political party on December 14, 1992.[2]

1.2 International community involvement

The implementation of the 1992 peace accords and subsequent reform was largely funded by the international community. To lead the reform, a UN Mission to El Salvador (ONUSAL) with unprecedented powers was deployed to the country between July 1991 and April 1995. Reform-monitoring bodies like the Truth Commission and the National Commission for the Consolidation of Peace (COPAZ) were established to implement the peace accords. With regard to electoral reform, the international community focused on 1) legal reform; 2) changes in civil and voter registries; 3) empowering the electoral authority; and 4) domestic and international monitoring of the post-conflict elections. ONUSAL spent $7 million USD for its own operations for the 1994 elections and provided $20 million USD for other electoral assistance.

After the 1994 elections, international aid for electoral reform decreased. Large-scale international observer missions have not been deployed in the country since 1994, and aid agencies have been increasingly shifting assistance out of electoral reform and into other fields of assistance. By 2003, the USAID had concluded that "Because El Salvador has significantly improved electoral administration and voter access and has run free and fair elections during the 1990's, USAID does not intend to provide additional election support to this country after the 2003 elections."[3] Overall, national reconstruction, reconciliation and democracy building after the civil conflict in El Salvador have been recognized as success stories, including the holding of successful elections.

1.3 Political parties

Part of the Salvadoran post-conflict success story centers around the reintegration of guerrilla forces into civil society through the formation of political parties. The political party system of El Salvador resembles that of many other countries in Latin America, with a range of parties from far-left communist to far-right, pro-military conservative parties. At least six parties have obtained seats in the legislature since the early 1980s. A draft political party law has never been passed by the legislature, so there is no specific law governing political parties. That said, each party has its own internal rules of organization. The parties tend to be oligarchic, and the participation of members in decision- and policy-making is limited. The National Republican Alliance/Alianza Republicana Nacionalista (ARENA) and FMLN are the two largest political parties and are well-organized and

[2] E. Baloyra, "El Salvador: From Reactionary Despotism to Partidocracia" in K. Kumar (ed.), *Postconflict Elections, Democratization and International Assistance* (Boulder CO: Lynne Rienner, 1998), p. 28.

[3] United States General Accounting Office, "Foreign Assistance: U.S. Democracy Programs in Six Latin American Countries Have Yielded Modest Results" (Washington DC: GAO, 2003) p. 100. <http://www.gao.gov/new.items/d03358.pdf> (June 1, 2005).

disciplined. In general, ARENA represents the interests of business owners and the right, and FMLN represents the interests of the poor and the left. Less ideologically defined and weaker parties like the Christian Democratic Party/Partido Demócrata Cristiano (PDC), National Conciliation Party/Partido de Conciliación Nacional (PCN), National Action Party/Partido de Acción Nacional (PAN) and Central Democratic Unity/Centro Democrática Unido (CDU) are unable to maintain discipline in the National Assembly.[4]

1.4 Elections from 1994 to 2004

El Salvador has had a series of free and fair elections following the signing of peace accords in 1992. Presidential elections are scheduled every five years, and parliamentary and municipal elections are held every three years. Every 15 years, the three elections coincide, and this happened in 1994 when the first elections since the end of hostilities were held. Presidential elections have subsequently been held in 1999 and 2004. Parliamentary and municipal elections were held in 1997, 2000 and 2003.

The elections of 1994 were eventful. Armando Calderón Sol, ARENA's candidate, won the election for president. The results of the legislative and municipal elections of 1994 closely matched those of the presidential race. ARENA won a relative majority of seats in the legislature, while its candidates for mayoral posts triumphed in most towns and cities, including San Salvador. No party challenged the presidential results, but the FMLN challenged municipal election results in more than 40 localities. The opposition party also impugned the result of the legislative elections in the Unión province.

The political dominance of ARENA, the former ruling party, diminished following the 1994 elections, and the power of FMLN increased. In municipal councils, the FMLN continued to increase its share of mayors from 13 in 1994 to 48 in 1997, 84 in 2000 and 74 in 2003. FMLN mayors included those in seven of 14 department capitals and the capital city, San Salvador. By 2003, the PCN had mayors in 18 municipalities, up from 10 in 1994, and the PDC had mayors in 29 municipalities, up from 14 in 1994. During this time, the ruling party ARENA reduced its share of mayors from 262 in 1994 to 162 in 1997. The table below shows the decreasing influence of ARENA in the legislature.

Table: Electoral Results in Legislative Elections, 1994-2003
(Distribution of 84 seats by political party)

Political Party	1994	1997	2000	2003
ARENA	39	28	29	27
FMLN	21	27	31	31
PDC	18	7	5	5
PCN	4	11	14	16
Others	2	11	5	5

Source: Rafael López-Pintor, with data from the *Tribunal Supremo Electoral.*

A trend toward lower voter turnout from 1994 to 2003 has been reversed in the latest elections, in theory providing additional legitimacy to the political process. While voter turnout was only 55 percent in the 1994 elections, and dipped to 33 percent in 2000 and 41 percent in 2003 (non-presidential election years), it rose during the most recent 2004 presidential elections. While Francisco Guillermo Flores won an absolute majority with the direct support of less than one in five

[4] David Beetham, *The State of Democracy. Democracy Assessments in Eight Nations around the World* (The Hague: Kluwer Law International, 2002), p. 29.

registered voters in the 1999 presidential elections,[5] Elias Antonio ("Tony") Saca was elected president in 2004 with a voter turnout of 67.34 percent.[6]

Given El Salvador's history of multiple free and fair elections, it is not surprising that the country ranks well in political and civic freedom as measured by Freedom House. In 2005, Freedom House gave it a 2 (free) for political rights, a 3 (partly free) for civil liberties, and an overall rating of "free" (Freedom House uses a seven-point scale, with lower numbers indicating better conditions).[7] El Salvador also scored well in terms of progress made toward democracy when compared with 18 other countries that have held multiparty elections in the 1990s following civil conflict.[8]

2. Legal and Procedural Frameworks

Electoral reform has contributed to El Salvador's movement toward democracy following the end of hostilities. Significant reforms have included the creation of a new electoral authority, the Tribunal Supremo Electoral (TSE), the updating of voter lists and the issuance of national voting identity cards. Despite these changes, the country has yet to fully implement several additional reform proposals submitted between 1997 and 2002 by the Consortium of Civic Education NGOs of El Salvador/Consorcio de ONGs de Educación Cívica de El Salvador (COCIVICA) based in part on recommendations made since 1992 by three previous UN consulting missions. Significant recommendations that have not been fully implemented include regulation of political party finance, enactment of a law on political parties, and separation of the administrative and adjudicative powers of the TSE. These proposed reforms go to the heart of political finance. To date, there has been little regulation in the area of political finance with the exception of state subsidies to parties.

Overall, state subsidies are the cornerstone of political party finance regulation in El Salvador. State subsidies, also called "political debt," are available to qualifying political parties to be used exclusively for campaign expenses. Funds are allocated according to voter support and disbursed to parties in advance of the elections. Provisions governing this system are found in Articles 187–194 of the Salvadoran Electoral Code (as modified in 2000).[9]

According to the Code:

1. Political parties receive direct public funding related to the election period only (four months for presidential elections, two months for congressional elections and one month for municipal elections).

2. The amount of public funding is based on the number of votes obtained in the previous elections (presidential, vice presidential, congressional, Central American Parliament and municipal council). The amount paid for each vote is increased for each election period in accordance with the inflation rate as established by the Central Reserve Bank.

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[5] R. Gomez et al. (2002). "El Salvador" in Beetham D. et al. (eds). *The State of Democracy. DemocracyAssessments in Eight Nations around the World,* (The Hague: Kluwer Law International, 2002), p. 29.
[6] OAS "Electoral Observation Mission in El Salvador, Presidential Elections 2004" (Washington, D.C.: OAS, 2004). <http://www.upd.oas.org/lab/Documents/permanent_council/2004/cp_doc_3936_04_eng.pdf>.
[7] *Freedom in the World: Country Ratings: 1972–2003*, (Washington, D.C.: Freedom House, 2003). <http://www.freedomhouse.org> (June 1, 2005).
[8] R. López-Pintor, *Postconflict Elections and Democratization. An Experience Review* (Washington D.C.: USAID, 2005), p. 22.
[9] COCIVICA, *Monitoreo del Proceso de Reforma Electoral. Noviembre de 2002* (San Salvador: COCIVICA, 2002).

3. Political parties or coalitions that participate in a second round of a presidential election are entitled to receive, for each vote obtained in the first round, funding equal to 50 percent of the amount received for each vote in the first round.

4. Political parties are entitled to an advance of at least 3 percent and up to 75 percent of the votes obtained in the previous election. Political parties that did not participate in the previous election (including any new registered parties) are also entitled to an advance of up to 500,000 colones (approximately $57,143 USD). Parties do not have to pay taxes on these advances.

5. Political parties must reimburse any difference between the advance and the amount that would have been disbursed based on the number of valid votes obtained by the party in the subsequent election, within 90 days of the end of the electoral period. Thus, political parties that fail to perform as well as in the previous election, or new parties that fail to meet the threshold for representation, must reimburse the government for all or a portion of their advanced electoral funds.

6. Parties must submit receipts for all public financing expenses along with the election results certification to the TSE.

7. Political parties that form coalitions are subject to the same regulations as individual parties—funding is divided among the parties in the coalition in accordance with the coalition agreement signed by all parties. Each party individually maintains its rights and must comply with its obligations.

This system of state subsidization of elections is the only specific regulation on political finance under Salvadoran law. Salvadoran law does not impose any financial reporting requirements on political parties and does not place limits on private donations. In addition, there are no limitations on the sources of party funding. While Article 127-2 of the Salvadoran Constitution requires candidates for office to account for past use of government funds, this article is not being enforced, as described below.

To increase the level of political finance reform, I recommend that a "blue ribbon" panel of academics, civil society leaders and political party representatives gather to conduct a comprehensive assessment of political finance regulation in El Salvador and propose options for reform with a plan for getting this reform into law. The panel would need to address, among other things, the issues of limitations and restrictions on private funding of political parties.

3. Effective and Fair Enforcement

Just as regulation of political finance has been inadequate, enforcement has also fallen short in the elections since 1994. Enforcement measures have been insufficient, and the actions of the organizations charged with enforcement have been inadequate. There are three organizations that play a role in oversight of political finance in El Salvador: the Vigilance Committee/Junta de Vigilancia Electoral (JVE), a body composed of representatives of all political parties that is charged with ongoing oversight of the electoral processes; the Court of Accounts/Corte de Cuentas, the state accounting oversight office; and the TSE, El Salvador's central election authority. Of the three, the TSE plays the largest role and has ultimate authority over election disputes. Below, I will describe the make up of these groups and the role they play in regulating political finance.

COPAZ created the JVE to monitor electoral reform after the peace agreement. Under Articles 77 and 201 of the constitution, the JVE is authorized to supervise the preparation of voting lists and

monitor all electoral processes in El Salvador. The JVE is composed of representatives of all the political parties. It has authority to gain access to voting data and to supervise the conduct of elections. One of its main functions is to make recommendations to the TSE.[10] While the JVE has repeatedly recommended reform of election processes, the TSE has ignored the JVE's suggestions.

Another institution responsible for political finance is the Court of Accounts. Article 195 of the constitution gives the Court responsibility for auditing the finances of the state, its agencies and the municipalities, and the national budget. It is formally independent of the executive and legislature, and the Court's president and two magistrates are elected by the National Assembly. With regard to political finance, it is responsible for monitoring the disbursement of the state subsidies to political parties. It is supposed to be in charge of settling accounts with political parties, but this activity in practice is carried out by the Treasury. The Court has been accused of partisanship and lack of professionalism. Its ability to be a watchdog for state funding has been questioned, as Court officials are appointed by the very officials over whom they have oversight.[11] The Court of Accounts and the Salvadoran judiciary system overall have been criticized by international organizations for the "low capability of judges and justices and political influence on court decisions."[12] Therefore, because of its shortcomings, the Court of Accounts has not been an effective institution for monitoring the disbursement and use of state subsidies by political parties.

In general, the failure to enforce political finance laws and election law can be traced to the TSE. According to the Electoral Code, the TSE is the highest authority on electoral affairs in El Salvador. It is an independent state agency responsible for administering elections and adjudicating electoral disputes. The TSE is composed of five members elected by the National Assembly for a period of five years. Three of its members come from the political parties or coalitions that had the largest share of votes in the most recent presidential elections. The remaining two members are taken from proposals made by the Salvadoran Supreme Court of Justice.

The TSE has been faulted for ineffectiveness in several areas. First, it has been accused of partisanship by several respected nongovernmental organizations. Both the Independent Movement for Electoral Reform/Movimiento Independiente Pro-Reforma Electoral (MIRE) and COCIVICA have called for ending partisanship in the TSE. These groups have stated that because of its partisan composition, the TSE makes decisions that protect party interests.[13] In fact, the FMLN claims to have filed more than 50 complaints with the TSE related to the 2004 elections, none of which were upheld. They claim that this is because to have a complaint upheld, four out of the five TSE magistrates would have to vote in favor of the claim. Since ARENA effectively controls two of the five magistrates (one because of the outcome of the last election and one who was appointed by the Supreme Court, but is an ARENA supporter), the four votes can never be obtained. While the Legislative Assembly passed a law allowing the TSE to act with a simple majority, the act was vetoed by the outgoing president who is an ARENA party member.[14] Thus, ARENA effectively controls the TSE.

Furthermore, numerous groups have faulted the TSE for its failure to act on complaints related to illegal pre-season campaigning. Namely, ARENA has been accused of violating Article 81 of the

[10] Roberto Rubio-Fabiàn et al., "Democracy Assistance to Post-Conflict Guatemala: Finding a Balance between Details and Determinants," CRU Working Paper 29 (The Hague: Clingendael Institute, 2004).
[11] John M. Carey, "Political Institutions in El Salvador: Proposals for Reform to Improve Elections, Transparency, and Accountability," Draft Paper of December 11, 2003, at <http://ksghome.harvard.edu/~rhausma/elsvdr/political.pdf>, p. 32.
[12] Ibid., p. 29 (citing a USAID Report from 2003).
[13] Francisco Eliseo Ortiz Ruiz, "La Reforma Político-Electoral en El Salvador: Una Necesidad Impostergable para la Democratización" (COCIVICA, 2004). <http://www.cocivica.org.sv/refelec/refelectoral.pdf> (June 1, 2005).
[14] Kerry Smith, "El Salvador's Presidential Elections," Columbia Solidarity Campaign Bulletins, No. 13 (June-Aug. 2004), at <http://www.colombiasolidarity.org.uk/>.

constitution, which requires that presidential election campaigning not begin until four months before the date of the election, that parliamentary campaigning not begin until two months before the date of the election and that municipal campaigning not begin more than one month before the election. These violations indirectly relate to political finance since the purpose of the constitution's mandated short campaign periods is to prevent well funded political parties from beginning campaigns well in advance of parties with less funding. Most of the complaints surrounding the Article 81 violations that were filed during the run-up to the 2004 elections remained undecided as late as a week before the elections, or were ultimately dismissed.[15]

With regard to the program of state subsidization, the TSE has failed to enforce violations of the rules governing repayment of outstanding debt. The electoral code provides that any party that receives state subsidies must refund part of the money if it fails to meet certain conditions. If a party either does not meet a threshold of votes (3 percent) or receives fewer votes than in a past election, the party must reimburse the entire amount of the subsidy or the difference between the amount allocated and the amount to which it was entitled. In the 1999–2000 election periods, state subsides to political parties amounted to $7.8 million USD. At least 14 parties that did not reach the minimum threshold of votes were required to reimburse the state for subsidies they had received. By law, parties have two years to make the refund and are not required to pay any interest during that period. However, to date, none of these parties have reimbursed the treasury. Furthermore, no enforcement actions or penalties have been assessed for this failure to reimburse the money. Neither the Court of Accounts nor the TSE has taken any action against the violators. Thus, even where there is regulation of state subsidization, enforcement for abuse of the subsidies has been absent.

Additionally, the TSE has failed to enforce rules that require financial accounting from candidates for office. Specifically, Article 127-2 of the constitution requires candidates for office to present to the Court of Accounts proof they have settled all outstanding accounts from prior state subsidies. A subsequent decree, no. 669, gave elected officials 60 days after taking up their posts to produce the requisite proof. The TSE should have ruled that decree 669 was invalid as it violated the constitution. The TSE should have required the filing of the proof as a prerequisite to registering candidates for office. Instead, it approved candidates without requiring this proof. [16]

Clearly, political finance enforcement authorities must be reformed and strengthened. Both MIRE and COCIVICA have called for reform of the TSE to remedy its deficiencies. To achieve this, MIRE and COCIVICA have called for separation of the TSE's administrative functions in running elections from its enforcement functions. Electoral complaints should be processed through the judicial branch, thereby leaving only the administration of elections to the TSE. Currently, TSE is responsible for both functions, and this has created a conflict of interest. Given the political makeup of the TSE, and its alleged lack of professionalism, opposition parties do not believe that they have a chance of receiving fair redress for election complaints. The Court of Accounts must also be depoliticized and the skills of its personnel strengthened.

[15] Geoff Thale, "Concerns about Salvadoran Elections" Washington Office on Latin America, March 15, 2004. <http://www.wola.org/central_america/salvador/elections_memo_march04.htm> (June 1, 2005). Center for Information, Documentation and Research Support, "The Elections and Democracy in El Salvador" *Proceso Weekly News Bulletin*, No. 1038, February 26, 2003. <http://www.uca.edu.sv/publica/proceso/proci1038.html#Politics> (June 1, 2005).

[16] Centro de Intercambio y Solidaridad, "Election Observers—Final Report 2003, Legislative & Municipal Elections, El Salvador," International Observer Mission, May 1, 2003. <http://www.cis-elsalvador.org/election_observers_finalreport2003.htm> (June 1, 2005).

4. Funding from Undesirable Sources and to Undesirable Recipients

Since public subsidies to parties are only to be used for election-related expenses, political parties must rely on private funds for their ongoing administrative and institutional expenses. As there are no reporting requirements for private financing of parties, it is difficult to determine the sources and amounts of nongovernmental financing for Salvadoran political parties. The two largest parties in El Salvador are known to receive financing from different sources. ARENA is thought to receive substantial support from business interests. With its pro-business policies, it has been a favorite especially with the largest businesses in the country. FMLN is thought to receive some support from militants, some from foreign sources and a small amount from domestic businesses.[17]

Political party funding from foreign sources and illegal activity is thought to be common. Of the 6.6 million Salvadorans worldwide, approximately 2 million live in the United States.[18] These emigrants play a huge role in the Salvadoran economy. In 2002 alone, they sent home nearly $2 billion USD in family remittances, which is equal to 70 percent of the total exports and 14 percent of the total GDP of the country.[19] The dollar remittances of emigrants are the country's main source of foreign currency, surpassing even coffee, its chief export. Although emigrants cannot vote in elections, their financial contributions to political parties may be significant either through direct contributions or through remittances to resident Salvadorans who then contribute. There is also a common perception that ill-gotten gains are funding political parties. Business leaders in El Salvador believe that "illegal donations" to political parties are fairly common.[20] Since there are no legal limits on private donations, the term illegal in this context can be assumed to be financing from illegal activities. Again, there is no reliable quantitative data in this area and no limitations on foreign contributions or private financing.

Financing from sources other than the electorate calls into question whether the political party represents the interests of its constituents or is beholden to outside interests, so this area must be reformed. El Salvador should require at least basic disclosure of private funding of political parties, even if it begins with relatively high thresholds for reporting requirements.

5. Money and Violence

Since the signing of the Peace Accords, brutal state oppression has ended, and government agencies—such as the National Police, National Guard and Treasury Police—and paramilitary bodies have been disbanded. Legal reform has brought about the abolition of paramilitary forces; the disengagement of the military from internal public security and political life; and the establishment of a national civilian police.[21] Citizens are no longer liable to be imprisoned, intimidated, prosecuted, tortured or assassinated for their political views, for public statements, for belonging to a particular party or for participating in political protest.

While overall political violence has decreased, two disturbing trends with respect to money and violence have been noticeable beginning in the late 1990s and continuing to the present. First, gang violence has increased in El Salvador. Until recently, local Salvadoran gangs were loosely organized.

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[17] Carey, 2003, p. 17.
[18] Rubio-Fabiàn et al., p. xvii.
[19] Rubio-Fabiàn et al., p. xvii.
[20] Study of World Economic Forum, October 2003 cited in Marcin Walecki, "Chapter 2: Political Finance," *Global Corruption Report 2004*, (Berlin: Transparency International, 2004), p. 30.
[21] Gomez et al., 2002, p. 33.

However, as more Salvadoran gang members were deported from the United States under tougher immigration laws, Salvadoran society received a new form of more sophisticated and hardened criminals.[22] Second, the drug trade, which is linked to gangs and organized crime, is flourishing. It is clear that El Salvador is a major transit country for cocaine. Cocaine arrives from South America in El Salvador to be shipped on to the United States and Europe. Colombian-based drug groups control the transhipment of most of the cocaine.[23] Money from the drug trade is infiltrating the Salvadoran economy, and the dollar-based banking system in El Salvador has become an easy target for money laundering.

Money laundering converts the proceeds from the drug trade into financing for businesses that may eventually flow through their contributions to political parties. It is thought that money related to the drug trade plays an important role in the Salvadoran economy. In fact, El Salvador is considered a prominent country in Central America for money laundering. It has been labeled as a "Jurisdiction of Concern" in the 2005 report of the Bureau for International Narcotics and Law Enforcement Affairs.[24] The report goes on to say that "it is believed that money laundering proceeds may be controlled by narcotics-traffickers or organized crime." Thus, gang activity, organized crime, drug trafficking and money laundering are interrelated.

Whether or not drug money reaches Salvadoran politics is simply not documented, for obvious reasons. It is doubtful that disclosure rules alone would have been able to reveal these illegal proceeds. To ensure that illegal money and violence do not taint the further development of political parties in El Salvador, the judicial branch and law enforcement will need to take measures to root out this potential corruption. It is hard to believe that the executive and judicial branches of government cannot do a better job at breaking the links between drug trafficking, money laundering and violence, given that there were absolutely no arrests at all for money laundering in El Salvador in 2004.[25] The requisite political will must be present to stop illegal money flows.

6. Lack of Transparency and Security

While there has been a general trend in Latin America toward more transparency in public disclosure of political party finances, El Salvador has not joined in this trend. There are no laws mandating disclosure, nor is there an efficient system set up for monitoring and enforcing disclosure rules if they existed. In January 2003, the TSE proposed a draft law on political parties that would have clearly authorized the TSE and the JVE to audit party assets. However, the law never made it to the floor of the National Assembly. Therefore, until the political will for reform is forthcoming, it is unlikely that political finance will become more transparent in the near future in El Salvador.

Even with legislation, transparency may be difficult to attain. Concerns about security and fear of retaliation for supporting unpopular parties may lead donors to hide their identities. In recent interviews, political party donors have said that they would be reluctant to give funds to political parties if their names were made public. Some donors do not want their names disclosed, whether for security reasons, for fear of retaliation by the ruling party if they donated to the opposition, or for privacy reasons.[26] Similarly, there are still security risks for those running for office. Again, it is hard

[22] Ana Arana, "Central American Gangs Head North," *International Herald Tribune*, May 16, 2005.
[23] U.S. Drug Enforcement Agency, "El Salvador, Country Brief 2001," at <http://www.usdoj.gov/dea/pubs/intel/01007/01007.pdf> (June 1, 2005).
[24] "International Narcotics Control Strategy Report - 2005" released by the Bureau for International Narcotics and Law Enforcement Affairs, March 2005. Section on El Salvador at <http://www.state.gov/g/inl/rls/nrcrpt/2005/vol2/html/42393.htm> (June 1, 2005).
[25] Ibid.
[26] Carey, 2003, p. 18.

to determine the extent of these risks as cases of politically motivated violence are often difficult to separate from incidences of common crime.

7. Abuse of State Resources and Free Access to Media

7.1 Corruption and abuse of state resources

Corruption is often a grey area that is difficult to detect clearly. Corrupt practices within state apparatuses are far from eradicated in post-war El Salvador. The media constantly publicize scandals about the abuse of public funds. Officials and rich individuals accused of fraud are rarely prosecuted. Corruption pervades public life, and the agencies that are supposed to tackle it are often under-resourced or infected themselves. A 2004 poll by the University Institute of Public Opinion/Instituto Universitario de Opinión Publicá (IUDOP) found that fully 80 percent of respondents believe that there is a high level of corruption in El Salvador, and 59 percent of respondents believe that there is "a lot" of corruption between government functionaries and private enterprises.[27] Specifically, officials have been accused of abusing their positions by providing government jobs and perks to their supporters. A recent story in *La Prensa Gráfica* uncovered a copy of a written agreement by a coalition of political parties to distribute jobs to party faithful in the TSE and attorney general's office after the 2003 parliamentary elections.[28] It is significant that these two agencies have enforcement powers related to political finance and have been plagued by accusations of lack of professionalism and poor training.

The party in power is alleged to have offered various inducements to vote during the past few elections. During the 2003 parliamentary elections, election observers noted that people were offered money and building supplies in exchange for their votes.[29] During the 2004 presidential elections, observers stated that ARENA officials made promises or delivered food and water to entice voters.[30] In some instances, ARENA members provided transportation to the polls.

7.2 Role of the media

The 1992 peace accords ushered in an era of largely privately owned media. Although the media are privately owned, election campaigns feature televised interviews and debates among candidates from across the political spectrum. Both the broadcast and print media offer a variety of opinions and lively debates. The FMLN's formerly clandestine *Radio Venceremos* operates from El Salvador and competes with nearly 70 other stations. However, strong affinities and shared interests remain between the governing party and the big business interests that own the major media. Fear or threats of violent reprisals often deter journalistic investigations into organized crime, police corruption, narcotics trafficking and large-scale financial fraud.[31] However, press freedom has been continually improving. In fact, El Salvador ranked second only to the United States in the level of press freedom in the Americas as measured by Reporters Without Frontiers in their 2004 Worldwide Press Freedom

[27] Instituto Universitario de Opinión Pública, "La Percepción Sobre La Corrupción en Las Instituciónes de El Salvador," September 2004 at <http://www.uca.edu.sv/publica/iudop/principal.htm>.

[28] David Holiday, "CDU-PDC: Clientelist Practices Exposed" at http://davidholiday.com/weblog/2004/06/cdu-pdc-clientelist-practices-exposed.html. Refers to original article "CDU-PDC se reparten Procuranduría y TSE," *La Prensa Gráfica* (El Salvador), June 28, 2004. <http://archive.laprensa.com.sv/20040628/nacion/nacion5.asp> (June 1, 2005).

[29] Centro de Intercambio y Solidaridad, "Election Observers—Final Report 2003, Legislative & Municipal Elections, El Salvador," International Observer Mission, May 1, 2003. < http://www.cis-elsalvador.org/election_observers_finalreport2003.htm> (June 1, 2005).

[30] Centro de Intercambio y Solidaridad, "Election Observers—Final Report 2004, Presidential Elections, El Salvador," International Observer Mission, June 1, 2004.

[31] Gomez et al., 2002, p. 32.

Index.[32] In general and on a daily basis, pro-governmental media open their opinion spaces to the opposition and vice-versa; the more liberal media (such as TV channels 12 and 33) are open to the political left.[33]

Media time is crucial to effective parliamentary or presidential campaigns. Increasingly, television is the media of choice for getting out electoral messages. Given the relatively high cost of television versus other forms of media, having sufficient funding to purchase television time is a key concern for political parties. During the 2004 presidential elections, television commercials played an important role in influencing the outcome of the elections. ARENA, the party of the winner, was alleged to have paid for 10 times as many commercials as the opposition party, FMLN.[34] Furthermore, these same groups claim that the TSE purposely delayed disbursement of a portion of the funding to which the FMLN was rightfully entitled, thus depriving it of the financial means to respond to ARENA's attacks in the media.[35]

8. Using "Trust Funds" and Free Broadcasting to Create a Competitive Environment

Trust funds sponsored by international donors have been used widely in democracy assistance to El Salvador, but not to support public subsidies of political parties or electoral campaigns. Most funding has been earmarked for specific projects, such as completion of the voter registry and voter identification cards. Trust funds for political party financing should only be employed where commensurate disclosure and reporting requirements are enforced.

Similar legal safeguards need to be present to ensure that state-subsidized media time is fairly apportioned. With regard to financing of media time, the constitution states that all media outlets, including publishing houses, "shall not establish different rates or make any other type of discrimination depending on the political or religious content of the messages."[36] Further, the electoral code and bylaws establish that: 1) all media must offer their services to the different political contenders for campaign advertising at ordinary commercial rates; 2) all media must inform the Electoral Tribunal of their rates within 15 days after an election has been called; 3) state-owned media must provide space—free of charge and under equal conditions—to all political parties and coalitions; and 4) the publication of electoral opinion polls is prohibited from 15 days prior to the elections until the announcement of official results.[37]

9. Recommendations

Interest in political reform needs to be revived in El Salvador in order to begin any process of improvements in electoral competitiveness, fairness and transparency. This will likely require renewed interest from the international community, which accepted the basic technical success of early post-conflict elections as sufficient. The influence and resources of the international community will be needed to promote action on reform and to support El Salvador's civil society organizations and other proponents of reform.

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[32] Reporters Without Frontiers, Third Annual Worldwide Press Freedom Index for 2004, at http://www.rsf.org/article.php3?id_article=11715.
[33] S. Samayoa, *El Salvador: La Reforma Pactada* (San Salvador: UCA Editores, 2002), p. 625.
[34] El Salvador's Presidential Elections, Columbia Solidarity Campaign http://www.colombiasolidarity.org.uk/Solidarity%2013/salvadorelection.html
[35] Ibid.
[36] Article 6 of the Constitution.
[37] TSE, Código Articles 227, 229, and 230 (2003); Reglamento, Articles 5, 6, 7 and 19.

An agenda for improving conditions in the specific area of political finance regulation and financial disclosure would include:

1. Steps to establish public confidence in political parties and the electoral process**.** Political parties should be encouraged through training programs to see a long-term political benefit in regaining public confidence through transparency and better communications, and the public should be educated to demand more from political parties and party candidates and leaders.

2. Review of the current political finance framework and opportunities for improvement. A full assessment should be conducted of the current status of political finance regulation and disclosure, its consequences and options for improvement. The review should probably be conducted by a "blue ribbon" panel of academics, civil society leaders and political party representatives, supported by input from international experts. The panel should prescribe alternative regulatory mechanisms over the short and long term and should particularly include the politically sensitive subject of limitations and restrictions on private funding of political parties.

3. Enactment of fundamental mechanisms for political finance transparency. Even before the full-scale review suggested above is completed, and to assist that review, a simple set of requirements for basic disclosure of financial activity of political parties should be drafted, discussed and enacted by the National Assembly, specifically including reporting of all private funding of political parties and of administrative expenditures by parties outside of the electoral campaign period (perhaps through initial use of relatively high thresholds for the reporting requirements).

4. Centralization and strengthening of the enforcement authority over political finance regulation and financial reporting. An immediate need is to strengthen authority for political finance regulation and financial reporting, again even before the completion of the full-scale review suggested above, but perhaps as its first objective for recommendation. The TSE and the Court of Accounts must have sufficient clear auditing authority and capacity to provide effective enforcement of political finance rules.

10. Summary

Although basic levels of administrative competence and fairness have been achieved in successive elections in El Salvador, electoral reform needs to continue. Specifically, political finance reform will be a crucial aspect of electoral reform that needs to be addressed if democracy is to progress. While state subsidization has been the cornerstone of political finance regulation in El Salvador to date, it must be monitored to ensure that its purpose of leveling the playing field is attained. This can be accomplished only if regulation is enforced effectively and even-handedly. Also, political finance regulation must be extended beyond state subsidization of political parties to clear disclosure and reporting requirements. To do this, recent proposals for reform advanced by civil society organizations need to be studied and reform-minded parliamentarians need to push for their adoption. One lesson to be taken from El Salvador is that legislation without adequate monitoring and enforcement provides for a weak regulatory regime, and lack of regulation of political finance removes a mechanism for leveling the political playing field.

Haiti

By
Félix Ulloa

1. Introduction

Haiti has faced conflict many times during the past 200 years. This case study will focus on the period from 1990 to the present, during which Haiti held multiple presidential, parliamentary and municipal elections. Overall, efforts to regulate political finance have been few, and enforcement has been almost nonexistent. Draft legislation providing for comprehensive regulation of political finance has never made it out of Parliament even with strong support by the international community. Funding for political activity continues to be nontransparent, and accountability is almost nonexistent. In short, if there are any lessons to be learned from Haiti, they are lessons about what not to do, rather than what to do. An overall lack of regulation, a dearth of enforcement, opacity in funding of political activity, unreformed criminal and paramilitary elements, and unequal access to resources have created a chaotic atmosphere and an unequal playing field upon which to hold elections in 2005.

This case study will examine the ways in which Haiti consistently failed to address issues of political finance in each major election. It will provide recommendations for addressing such oversights in the future. This case study will draw on the author's experience since 2000 as Senior Resident Director in Haiti with the National Democratic Institute (NDI), interviews with key Haitian politicians and political party leaders, and secondary research.

1.1 Brief historical review

Haiti declared its independence from France in 1804 and has had a history of tumultuous leadership from 1804 until the present. Between 1843 and 1915, it had 22 heads of state. From 1915 to 1934, the United States occupied Haiti. From 1934 to 1957, the military controlled Haiti. In 1957, Dr. Francois Duvalier was elected president in a military-controlled election. In 1964, Duvalier declared himself "President-for-Life." His rule was marked by corruption and violence. In 1971, Duvalier died in office but not before naming his son, Jean-Claude Duvalier ("Baby Doc"), as his successor. In 1986, widespread protests led to the ouster of Baby Doc and his exile to France. In 1987, presidential elections were cancelled after a massacre of voters by the army, and a series of short-lived leaders ruled Haiti until elections were finally held in December 1990, when Jean-Bertrand Aristide, a priest, was elected president. In 1991, Aristide was ousted in a coup. In 1994, he was returned to Haiti by U.S. forces, and in the 1995 elections René Préval was elected to replace Aristide as president. In 1999, Préval began ruling by decree after disputes with deputies in Parliament. In November 2000, Aristide was elected for a second term as president. In February 2004, after several failed coup attempts during 2000-2004, Aristide was forced into exile, and an interim government took over.

Following the second ouster of Aristide, Boniface Alexandre, former chief justice of the Supreme Court, was sworn in as interim president. A new government was formed based on a Tripartite Accord among the former ruling party, Fanmi Lavalas (FL), the leader of the opposition Democratic Platform (DP) and an international community representative from the United Nations Development Programme (UNDP). The "April 4, 2004" Accord among main local players, civil society groups and the transitional government (minus the FL) created the basis for another transition.

After almost 10 years of sanctions and on-again-off-again intervention by U.S. troops and UN peacekeepers, Haiti has an uneven record in terms of free and fair elections and peaceful leadership changes. From 1994 to 2004, the international presence dropped from a 21,000-person multinational peacekeeping force down to a little more than 100 technical and police advisors from the UN and the OAS. In April 2004, the United Nations Security Council adopted Resolution 1542, which created the UN Stability Mission in Haiti (MINUSTAH). The Stability Mission is authorized at 6,700 troops and 1,622 civilian police and continues to operate in Haiti.[1]

Haiti has a long history of fragmented political parties. More than 100 candidates ran for president in the failed elections of 1987, and of the 21 registered political parties, none had developed a nationwide organization. Some parties have formed along ethnic lines (black versus mulatto), along ideological lines, in opposition to foreign occupation or in support of the narrow interests of particular candidates.

Top political parties include the former ruling party (FL), Struggling People's Organization (OPL), Open the Gate Party (PLB), Christian Movement for a New Haiti (MOCHRENHA), Democratic Consultation Group (ESPACE), and the Popular Solidarity Alliance (ESKANP). The Democratic Convergence is a coalition of most leading opposition parties formed to protest the results of May 2000 legislative and local elections.[2]

Political finance has been almost wholly unregulated in Haiti's elections. This may be in part due to the crushing social and security problems that have taken priority. First, Haiti is the poorest country in the Western Hemisphere. Five out of 10 Haitians eat once a day, and one out of five eats three times a day.[3] Second, literacy rates are at only 52.9 percent. Third, violence is rampant with paramilitary groups still controlling some rural areas and political violence a frequent occurrence.

For the past five years, Haiti has continued to rate very low on political rights and civil liberties based on the seven-point Freedom House index. Its overall status on the 2005 index is "Not Free," with a 7 of 7 for political rights, a 6 of 7 for civil rights and a general downward trend.

1.2 Elections from 1987 to 2004 and their aftermath

As mentioned earlier, the 1987 presidential elections were cancelled shortly after they were begun because of a massacre of voters by the army and paramilitary groups. Since 1987, parliamentary elections were held in 1991, 1995, 1997 and 2000. Presidential elections were held in 1990, 1995 and 2000. Haiti elects deputies to four-year terms and senators to six-year terms for its bicameral legislature. Presidents are elected for five-year terms. Consecutive presidential terms are forbidden.

In December 1990, Jean Bertrand Aristide won the presidential elections. He held onto power for only seven months and was ousted by a military coup in September 1991.[4] In 1995, Aristide supporters won parliamentary elections, and in December 1995, Préval was elected president. In the 1997 elections, two members of FL won senate seats, but a second round of voting to decide the remaining seats was postponed indefinitely. Disputes among party members created gridlock in the Haitian legislature, and in January 1999, then-President Préval dissolved both houses.

In May 2000, congressional elections were held and were declared to be "free and fair" by many international observers.[5] FL faired well in the elections, which were almost immediately condemned by

[1] U.S. Department of State, Bureau of Western Hemisphere Affairs, "Background Note: Haiti" (February 2005).
[2] U.S. Department of State, "Background Note: Haiti."
[3] Costa Rica CID/Gallup poll, August 2004.
[4] Félix Ulloa, *Haiti: 200 Years of Elections and Constitutions* (Port au Prince: PFA Editors, 2004).
[5] Melinda Miles (Haiti Reborn/Quixote Center), "Elections and 2004," Let Haiti Live Action Kit (August 2003).

the opposition. Opposition leaders were arrested, and runoff elections were declared "incomplete and inappropriate" by the U.S. State Department. In November 2000, elections for the presidency and eight senate seats were held. Aristide was again elected president. In February 2004, Aristide was forced into exile and an interim government took over. The 2005 elections were scheduled to fill every elected seat in the country.

Overall, elections in Haiti have a mixed record of movement toward and retreat from democracy. In each election since 1987, the party in power has tried to hold onto its position either through election process "irregularities," tampering with election results or staging a coup d'état. While the international community played a huge role in promoting and funding elections, political finance regulation has never been adequately developed.

2. Legal and Procedural Framework

Political finance is regulated in Haiti under the constitution and the electoral law. Articles 191-199 of the Haitian Constitution envision the formation of an independent electoral commission known as the Permanent Electoral Council. Under the constitution, this Permanent Electoral Council is responsible for drafting the electoral law, and ruling on disputes arising from electoral law violations and elections in general. The nine-member Permanent Electoral Council is supposed to be composed of candidates proposed by each of the Departmental Assemblies (local legislative bodies); however, these legislative bodies have yet to be organized in accordance with the constitution. To date, a Permanent Electoral Council has not been formed as mandated under the constitution. However, a Provisional Electoral Council (CEP) has been formed before each election, with the purpose of organizing elections. While a Permanent Electoral Council has the mandate to draft the electoral law and rule on elections disputes, the CEP has taken over these roles in practice.

Articles 281 and 282 of the constitution provide for state subsidies to political parties that meet certain thresholds of popular support. From 1987 to 2004, political finance legislation has been almost non-existent. Since 1987, there have been four electoral laws: the laws of 1987, 1990, 1995 and 1999. Article 121-1 of the 1987 Electoral Law implemented Article 281 of the constitution by providing that any political party that wanted to avail itself of the funding envisioned in Article 281 was required to submit all of the receipts of its expenditures to the CEP. The 1990 Electoral Law that replaced the 1987 law contained no public funding provision, and there was no public funding for the 1990 elections. Neither the 1986 Law on Political Party Functioning nor any of the subsequent electoral laws directly addressed the issue of political finance. A lack of governing legislation has meant that there was no guidance or regulation of political finance to any significant extent in elections from 1990 to the present.

The electoral law should be amended to remedy the lack of a legal framework for regulating political finance that has effected past elections. Last year, representatives of the international community proposed far-reaching amendments to the electoral law, which were intended to provide for transparency and accountability in public financing of elections. Notable among the proposed provisions were requirements that political party applicants for public funds provide a bank guarantee for any advances of funds, provide an estimated budget describing how the public funds would be spent, and submit a report of actual expenditures within 15 days after the elections. The proposals also called for the creation of a government department in charge of monitoring the finances of political parties applying for subsidies and for penalties to be levied against the legal representatives of parties for failure to comply with financial reporting requirements.

<http://www.quixote.org/hr/campaigns/lhl/elections-and-2004.php> (June 1, 2005).

Despite calls to the Prime Minister from the MINUSTAH Chief of Mission, the U.S. Ambassador and the Canadian Ambassador, the new electoral law approved in February 2005 contained none of the provisions advocated by the international community. Thus, the first concerted effort to regulate public and private money was blocked by political and partisan interests. The MINUSTAH elections division continues to lobby for inclusion of the proposed changes into the electoral law. Over the long term, draft provisions on political finance advocated by the international community should be included in future versions of the electoral law.

In the short term, however, political finance regulation might be carried out by applying Chapter X of the 2005 Electoral Law and existing legislation dealing with political parties, money laundering and taxation. Chapter X of the latest electoral law regulates private and public funds. Political parties that wish to receive public funds are required to fulfill a set of conditions, including providing a list of 40,000 supporters from among registered voters. Independent candidates who obtain signatures from 2 percent of the eligible voters for the office they are seeking will also be eligible for public funding. There is no provision for public funds for parties competing at the local level. In addition, under the law, private contributions will be limited to approximately $28,600 USD from either individuals or corporations. Further, each political party will be required to disclose funds to the CEP in excess of about $1,400 USD in advance of the elections. The actual mechanics of this disclosure mechanism remain unclear. It is also unclear whether these disclosed contributions will be made public or not.

Provisions in the Law on Political Parties, the Law on Money Laundering, the Decree of September 28, 1987 on the Administrative Structures of the Revenue Service, and the Penal Code might also be used to regulate political finance in the absence of specific legislation. The Law on Political Party Functioning from July 1986 is currently being reformed and could contain provisions covering political finance.

3. Effective and Fair Enforcement

Given that Haiti has had little political finance legislation in general, it is not surprising that it still has not created an effective and fair political finance enforcement system. There have been almost no effective oversight, dispute resolution, or enforcement mechanisms related to political finance issues in the elections from 1987 to the present. The only institutions that have existed from 1987 to the present and could claim some jurisdiction over issues of political finance were the Ministries of Justice and Interior, the CEP and possibly the General Tax Office. In all, there was effectively no enforcement of restrictions on political finance during the time in question.

Since a Permanent Electoral Council has never been formed and National Assemblies have not been created to nominate members to such a Permanent Council, the CEP became the *de facto* institution for political finance enforcement. However, the CEP has generally been seen as partisan. The ruling party, at any given time, tends to allow opposition representation on the CEP, but finds a way to maintain control of CEP decisions. The Ministry of Justice could have been a source for regulating political finance disputes in the past, but no cases involving political finance violations have every been brought to this body. Therefore, in past elections, Haiti has lacked an adequate legal and institutional framework to regulate political finance. This has meant that the entire area of political finance has been essentially unregulated.

Adequate political finance enforcement mechanisms and supporting institutions must be put in place to remedy past oversights. Although, the first draft of the 2005 Electoral Law envisioned a *Unité pour le financement des Partis Politiques* (Unit for Political Party Finance) to monitor and regulate the financing of the political parties, this provision did not appear in the final draft. In the long term, a political party finance unit needs to be created to enforce political finance regulation. Pending the creation of an institution with specific authority for political finance regulation, Haiti could try to use the Ministries of Justice and Interior, the CEP, the Central Unit for Financial Information (UCREF—which is part of the

National Council for the Struggle Against Money Laundering), and the General Tax Office as enforcement agencies.

4. Funding from Undesirable Sources and to Undesirable Recipients

Haitian political parties and candidates rely on undesirable sources of funding since members of the general populace do not have the means to provide significant contributions. Major political parties are believed to rely on funds from the Haitian business community, foreign sources and drug cartels, as opposed to soliciting funds from the general populace. Since essentially no public disclosure of funding has been required, it is difficult to determine exact sources and amounts of funding.

Given the major economic difficulties that the Haitian private sector experienced during the last election cycles, it is likely that business was less able to contribute to political parties, thus making drug money more attractive as a source of funding. Although not officially documented, the influence of drug cartels in the financing of political groups from 1987 to the present appears to have been significant. Numerous high-level public servants or elected representatives from the FL are now in jail or on the watch list of national, foreign or international law enforcement agencies for drug-related activity. While most of the named officials are from FL, it would be inaccurate to conclude that only FL is linked with drug trafficking.

Even if drug cartels have not directly financed political parties, funding from the business community may come indirectly from the sale of drugs. Well known members of the Haitian private sector who donate to political parties are known to be involved in the drug trade.

The disproportionately large amounts of money that can be made in the drug trade (as opposed to other legal employment in Haiti) ensure that funding from these sources will be difficult to eradicate. Moving one kilogram of cocaine through Haiti to the United States nets the transporter approximately $3,000 USD. Some estimates are that more than 25 tons of cocaine pass through Haiti to the United States each year. If these estimates are correct, $75 million USD in transit fees are collected in Haiti each year. This amount is larger than the entire budget of the Haitian Ministry of Justice, which is in charge of cracking down on the drug trade.

Money from the drug trade is thought to flow to political parties directly and indirectly. The real magnitude of the problem cannot even be properly measured, as a great secrecy necessarily surrounds such financial flows. Financing of parties that have been corrupted by illegal funding sources was thought to have been commonplace during the past few election cycles.

Money from abroad is thought to be another significant source of funding for political parties in Haiti. This funding is thought to come primarily from Haitians living outside the country. Again, because of a lack of reporting requirements, it is very difficult to determine how much money is being sent in from abroad to support local politics. Significant foreign sources of funding could co-opt the agendas of local Haitian parties.

The first step in addressing the issue of funding from undesirable sources is to require regular reporting of revenues and expenditures by political parties. At a minimum, any party that receives public funding should be required to report on its finances to the state. Next, Haiti needs a mechanism for combating funding from undesirable sources. The Ministry of Justice needs to have adequate funding to carry out its mandate of prosecuting drug traffickers. The CEP needs to have enabling legislation to prosecute parties who are funded by drug money. Training and education programs must be provided so that those who are charged with enforcing political finance regulations know what to look for in political finance reports.

5. Money and Violence

Terror and violence have marred recent Haitian elections. Money is used to create or encourage terror in some regions of the country through funding of gangs. The major and smaller political parties in Haiti have links with gangs and paramilitary groups. Gangs and paramilitary groups loyal to particular parties have been sent to cause violence at political rallies and public gatherings. Gang members have been hired as "aides" to government organizations or nongovernmental opposition organizations. For example, an anti-FL group called the "Cannibal Army," which has been linked to violence at political rallies, is thought to be financed by opposition parties.

Former soldiers and militants loyal to FL are heavily armed. Some leaders of FL recognize that it is difficult to convince known militants to renounce violence since they have no guarantees in the short term that they will assume the public positions from which they were expelled. The situation is similar for the other side as some former soldiers are not yet integrated into civil society and need to find a way to live. Paramilitary groups and gangs finance themselves through drugs, racketeering and kidnapping.

The relationship between money and violence clearly affects the Haitian political system. While MINUSTAH forces combined with Haitian authorities have shown relatively effective coordination and determination to control violence in Port au Prince and some major cities, paramilitary groups still control some rural areas. At the same time, the extreme poverty of the population feeds support for the violent groups. With unemployment at more than 70 percent in Haiti, many willing volunteers are ready to join gangs and paramilitary groups.

Future elections will continue to be affected by the link between political parties and paramilitary groups. One of the biggest challenges will be to create an environment where all the parties have access to every borough during the campaign. Voter intimidation from such groups will need to be halted if the elections are to have good turnout levels.

It is unlikely that the changes recommended in political finance legislation and enforcement alone will be able to combat the issues of money and violence. Efforts to alleviate poverty and create jobs may make membership in paramilitary groups less attractive. International support to root out corruption in the judiciary and law enforcement and to adequately train Haitian police could improve the situation. However, if the links between politics, money and violence are not severed, the population will be increasingly inclined to vote for any candidates who can control street gangs and thugs, regardless of their commitment to democracy.

6. Lack of Transparency and Security

There has been and continues to be a culture of opacity regarding political party finances in Haiti. Politicians are reluctant to reveal specifics about their campaign and party finances. Furthermore, for the elections from 1987 to the present, there simply has not been any legislation requiring significant disclosure of any kind. There were no restrictions on campaign donations or campaign spending. There were no regular reporting requirements from political parties or individual candidates. Thus, official records cannot be used even as the basis to make some approximation as to the financial inflows and outflows of parties.

Unofficial information is the only source that can be used to try to gain an understanding of the financing of parties. During a recent survey of parties and elected officials, specific information about how much money they spent on election campaigns at either the national or at departmental levels could not be obtained. Some of the respondents, however, provided broad calculations on the cost of getting elected.

The more realistic data ranged from $3 million to $5 million USD for presidential races, $60,000 to $200,000 USD for a senate seat, $30,000 to $50,000 USD for a seat in the House of Representatives, $3,000 to $20,000 USD for mayor, and $1,000 to $5,000 USD for a municipal council seat or seat in the *Delegué de Ville*.[6]

While not revealing the specific sources of the funds for past or future elections, respondents formally noted that they collect their funds from the members. However, given the country's level of poverty and unemployment, this explanation is difficult to believe. On the condition of anonymity, one respondent went so far as to say that he did not want to provide accurate information because he will be starting his campaign in the private sector, among the diaspora, and with friends living abroad.[7] In sum, detailed and accurate information on the cost of past elections, not to mention data on political accounts, is unavailable from official sources at the CEP. The CEP simply does not have access to such information.

In the last few elections, security and transparency have not been an issue because there have been no real reporting requirements. If disclosure requirements are included in future electoral laws, there may be significant security issues. It is conceivable that provisions on disclosure of assets could compromise the security of candidates with significant assets.

7. Abuse of State Resources and Fair Access to Media

Haiti has a history of ruling parties abusing state resources. FL officers now openly admit to misusing state resources to quell political opponents and to profit personally. One significant example of abuse was FL's awarding of jobs in the state communications enterprise TELECO to thousands of party members all over the country. Many of these new employees did not work for TELECO, but were available to participate in party activism.

During the past 14 years, ruling parties used government offices and cars for political activity. Laws have been selectively used to persecute political opponents, and the judiciary system has been co-opted by ruling parties. Hundreds of FL officers have filed complaints claiming that it is impossible for them to return to their hometowns because they will be imprisoned without any legal charges.

Restrictions are needed on the use of state resources for political activity. Public funding could be used for political parties which are viable but lack needed resources, as long as adequate accounting for expenditures is also required.

Media access has not been equal for all the players during past elections. This is partly due to financial inequalities. Those who have had the funds for campaigning through the media used them. Although the electoral law from 1999 had a provision for equal time for all parties and candidates on the state media, no party took advantage of this provision.

The limited reach of the state-run media does not encourage candidates to use these outlets for their campaigns. The more effective private media consists mainly of radio outlets. Given that about half of the population is illiterate, radio reaches more of the electorate than print media. There is also one private TV channel. The current electoral law does not provide any free media time.

To level the playing field, the electoral law could be amended to reinstate the provisions from the 1999 Electoral Law that allowed for equal media time. Private media outlets could be required to provide equal

[6] National Democratic Institute (NDI), Non-Scientific Political Party Finance Survey (unpublished)
[7] *Ibid.*

time for political parties. Education on the use of the media in campaigning might need to be undertaken so that parties actually make use of opportunities created by new legislation.

8. Using "Trust Funds" and Free Broadcasting to Create a Competitive Environment

While an international "trust fund" for the funding of political parties does not exist, the law calls for public funding of political parties. There is a possibility that these funds could come from the international donors for allocation through the CEP.

Creating a trust fund might provide a more level playing field for under-funded parties. However, without addressing the larger societal issues of poverty and political violence, funding of political parties may do little to create democracy in Haiti. Also, if a trust fund is created, there would have to be the political will to create regulations and enforcement mechanisms to ensure that donor resources were not abused. Given that electoral laws in effect from 1987 to the present contained little to no regulation of political finance, there is the danger that a trust fund might be set up that was essentially unregulated. This could lead to disbursement of trust fund money to the political party in control of the government, which thus has the most power. Such a distribution of funds would actually exacerbate existing inequalities.

9. Recommendations

Significant political finance reform in Haiti would require comprehensive legislation, effective enforcement mechanisms, public subsidies for parties, accurate and transparent reporting, and well trained political finance experts. The following recommendations address these issues:

1. The electoral law should be amended to restore all the provisions taken from the 2004 draft that related to financing campaigns of political parties. Haiti's Electoral Law should include provisions requiring political parties to file regular reports on receipts of funds and expenditures as well as on sources of funding and recipients of expenditures. Recipients of public funding should be required to make full disclosure of how public resources were spent.

2. The Provisional Electoral Council should be required by law to support the organization and proper staffing of a *Unité pour le financement des partis politiques* (Unit for Political Party Finance) to regulate political finance. The international community should continue to encourage the Government of Haiti to create this institution.

3. An independent body should be created (with representatives from political parties, CEP, Ministry of Justice and civil society) to control the funding of political parties and groups. At this time, the CEP does not have the resources or staff to effectively monitor different sources of financing. The Government could also ask the UCREF to monitor all the assets of political party principals in order to guard against the influence of drug money in Haitian politics.

4. Legislation providing for penalties for abuse of state resources should be enacted.

5. Enabling legislation and adequate funding should be provided to allow for more equal access to the media by all political parties.

6. Civic education and political party education must continue to raise the knowledge level of political party members and state officials. The importance of political finance regulation should be stressed in such training.

7. The UN Security Council Resolution 1542 should be reviewed and modified to provide adequate support to create conditions for stability, peace and development in Haiti.

10. Summary

Haiti has faced 200 years of political instability and a failure to transfer power peacefully from one regime to another. Elections since 1987 have continued this chaotic trend. Political finance has been completely unregulated during the election cycles since 1990. While political finance cannot be reformed through legislation alone, legislation needs to be the starting point for regulating political money flows in Haiti. Without adequate legislation, there will be no impetus for parties to disclose funding and no means for the government and international organizations to track progress in eradicating undesirable funding sources and distorting contributions. Once legislation is put in place, education and enforcement must be provided to create skilled party members who are able to comply with the law and adept government personnel who are able to enforce the law. Next, subsidies to parties to level the playing field must be done in a clear and transparent manner. Access to media must be provided to viable parties. Only a comprehensive and long-term program of political finance reform can be expected to have some effect in turning the tide on more than 200 years of political instability.

Iraq

By
Jeff Fischer

1. Introduction

On April 9, 2003, the regime of Saddam Hussein was toppled by a coalition of military forces spearheaded by the United States and the United Kingdom. A total of 36 countries participated in military and non-military roles. With the overthrow of the regime came an end to the hegemony of the Baathist Party over government and politics in Iraq.

The sudden vanquishing of the Baathists created an environment that allowed exiled groups to return and new political movements to emerge. In particular, the emergence of Islamist parties, formerly underground, was a phenomenon directly resulting from the regime change. As Graham Fuller writes, "The ruthless character of the Baath Party dictatorship absolutely dominated decades of Iraqi politics, canceling out the 'normal' working of Iraqi politics, especially among Islamist groups, and forcing their activities, if any, underground."[1]

From its political aerie of single-party rule, the Baathists employed state resources for political and personal uses. However, three of the first administrative actions of the Coalition Provisional Authority (CPA)—Order Number 2 (Dissolution of Entities), Order Number 4 (Management of Property and Assets of the Iraqi Baath Party) and Order Number 5 (Establishment of a De-Baathification Council)—concerned the Baathist institutions, assets and officials. The CPA was the civilian transition administration bridging the fall of the regime and the establishment of an interim government.

Order Number 2 (May 23, 2003) sets forth a list of "Dissolved Entities" and describes the process by which the assets and financial obligations of these entities were assumed by the CPA. Dissolved entities included Iraqi security and intelligence agencies, paramilitaries and other organs of the regime. However, it should be noted that although Baathist organizations (such as the Baath Party Militia) are on the dissolution list, the Baath Party itself is not cited. Order Number 4 (May 25, 2003) gave the CPA control of the property and assets of the Iraqi Baath Party. As it states in Section 3 (1):

> All property and assets of the Iraqi Baath Party wherever existing and in whatever form, including property and assets that have been transferred or acquired by successor parties or institutions, are subject to seizure by the CPA on behalf, and for the benefit of the people of Iraq.

The order also provides for the establishment of a Confiscation Appeal Tribunal as an appeal body (Section 4). Orders Number 2 and 4 also cover institutions and assets while Order Number 5 (May 25, 2003) is intended for the human quotient. This order establishes the Iraqi De-Baathification Council under CPA authority. The composition and size of the Council was left to the discretion of the CPA Administrator, Ambassador Paul Bremer. The Council reported directly to the Administrator. The role of the Council was to investigate and advise on the property, whereabouts,

[1] Graham E. Fuller, "Islamist Politics in Iraq after Saddam Hussein," Special Report 108 (Washington, D.C.: United States Institute for Peace, August 2003), p. 2.

criminal activities and other relevant information concerning former Baathist Party elites. It was also tasked to advise the Administrator on assessing culpability for the crimes of the Hussein regime.

Under CPA administration, the Iraqi political process can be divided into two periods: 1) the November 15 agreement period and 2) the Transitional Administrative Law (TAL) period. The November 15 agreement was negotiated between the CPA and the Interim Governing Council (IGC), a body of 25 Iraqis appointed by the CPA to serve national governance functions. The selection process for the transitional government that was set forth in the agreement called for the first government to be selected in a governorate-level caucus process, whereby in successive "town hall"–type meetings a transitional government would be ultimately selected. In the first of several interventions, the Grand Ayatollah Ali Sistani raised objections to the caucus selection process and called for elections to be held for the next government. This complaint triggered others and, after months of debate, the November 15 agreement was set aside.

During the debate on the caucus process, the United Nations began a cautious re-emergence into the political activities of Iraq. In the early spring of 2004, the UN fielded a dual-mandated mission to broker the establishment of an interim government and a transitional process, and to examine the prospects for elections. The governance issues were addressed under the leadership of Lakhdar Brahimi, former Algerian Foreign Minister and a well-regarded UN troubleshooter. Carina Perelli, the head of the UN's Electoral Assistance Division, led the electoral assessment. In the end, the transitional political process was enshrined in the provisions of the TAL. Among other articles, the TAL set forth a timetable and cycle for elections to be held over the course of the calendar year 2005. The electoral dimension of the political transition would be accomplished with the following three events:

1. January 30 elections for a Transitional National Assembly (TNA) (and government), governorate councils, and the Transitional Kurdish National Assembly;
2. October 15 referendum on a constitution; and
3. General Elections on the government structure adopted in the constitution by December 31, 2005.

2. Legal and Procedural Framework

The transitional electoral process is governed by three levels of documents: 1) Transitional Administrative Law; 2) CPA Orders 92, 96 and 97; and 3) Independent Electoral Commission of Iraq (IECI) Regulation 17. As stated above, the TAL provides constitutional-level direction on parameters of the electoral process such as the levels of elections and the election calendar. The TAL was adopted by the Interim Governing Council on March 8, 2004. Specifically, Chapter 4, Article 30 (D) states that elections for the TNA shall take place no later than January 31, 2005. Chapter 8, Article 57 (B) stipulates that elections for the governorate councils and the Kurdistan National Assembly shall be held at the same time as the TNA elections.

The legal framework is given its statutory dimension through the use of the CPA Orders. Order Number 92 (May 31, 2004) established the IECI as the election authority responsible for the conduct of elections during the transitional period. Order Number 96 (June 7, 2004) established the system of representation for the TNA and defined the basic criteria for candidate eligibility. CPA Order Number 97 (June 7, 2004) established the criteria by which political entities (parties, coalitions and independent candidates) can be certified. In this order, Section 4 is the first iteration of the prohibition on political entities accepting any direct or indirect funding from armed forces or militia. This prohibition is reiterated in regulation. This section also empowers the IECI to levy financial penalties against political entities for breaches of the electoral rules. Furthermore, this section states that "Political entities must strive, to the extent possible, to achieve full transparency in all financial

dealing. In this regard the Commission may issue regulations with respect to financial disclosure." Although the IECI would ostensibly have been the political finance regulator, no such rule was issued and no disclosure requirements were enacted.

The regulatory dimension of the electoral framework was constituted by the passage of 17 regulations by the IECI. The regulations covered voter registration, certification of political entities, election observers, out-of-country balloting, polling, counting and seat allocations. There are five regulations that contain language pertinent to political finance and political entity accountability. These are Regulations 3, 9, 11, 12, and 15.

The relevant language in Regulation 3 (Certification of Political Entities) can be found in Section 3, point 3.2, describing the filing deposits required for certification: 1) for individuals seeking to become independent candidates, the deposit is 2.5 millions Iraqi dinars ($1,759.32 USD); and 2) for groups seeking to form political organizations, the deposit is 7.5 million Iraqi dinars ($5,277.97 USD). Although the IECI had not yet defined election offenses and penalties, in this regulation the Commission established financial penalties as an enforcement mechanism. Sections 3.3 and 3.4 state that if financial penalties are levied against political entities, these penalties will be deducted from the filing deposit. If financial penalties are incurred, the entity will receive its deposit back in full as long as it had received a minimum of 50 percent of the votes that would be required to win a seat.

Regulation 3 further requires a declaration and prohibition in point 3.7. In a declaration, the individual candidate or organizational leader must state in writing that "the individual or group is not directly or indirectly financed by any armed force, militia or residual element." This provision complemented Order Number 96 and was an early insight into the connection between money and violence that is described below.

Regulation 9 (Electoral Campaign) provides one prohibition in Section 3.3: "Each certified political entity or coalition shall be solely responsible for all support arrangements and costs for their electoral campaign; the IECI shall not be responsible for any such costs. Furthermore, no political entity or coalition may utilize any IECI resources for their campaign."

Regulation 11 (Media) delegates the enforcement of media rules to the Iraqi National Communications and Media Commission (NCMC). The NCMC promulgates a Code for Media during the elections, regulating specific activities during the campaign period. The code requires fairness in reporting, permitted paid political advertisement and (in Articles 5 and 6) sets forth special obligations to educate the public. These obligations include broadcasting programs with voter education value, free air time for political contestants and free air time for the broadcast of debates. Article 6 specifically obligates media organizations to broadcast any information requested by the IECI. The code also provides instruction on the media silence period, equitable access and the prohibition of messages that incite violence.

Regulation 12 (Electoral Offenses) devotes Section (4) to the offense of bribery. This section prohibits any offers from being made to IECI officers or staff. It also prohibits the general public from accepting any gift, promise or advantage that influences a person's voter registration or their support of a political party.

Regulation 15 (Adjudication of Complaints) provides the IECI with the authority to levy fines against political entities.

In addition to these documents, another component of the legal framework is the process of adjudicating disputes and complaints. The final Daily Complaints Report from the IECI on February 13, 2005 indicated that a total of 253 complaints had been received concerning the out-of-country

voting program and 224 complaints related to polling inside the country. The complaints included only one accusation of a political finance nature: a charge of bribery against three political party agents to vote for a particular candidate.

3. Political Campaign and the Elections

Within the May 2004 TAL and CPA Order legal framework , the catalytic event that can be seen as a benchmark for the beginning of the electoral process was the June appointment of the members of the electoral commission (national and international) and its Chief Electoral Officer (CEO). The decision was taken to conduct the nomination process publicly; that is, any Iraqi eligible to serve as a commissioner could apply for the post. In total, over 1,900 candidates submitted applications for eight positions (including CEO). Of those applying, 111 were women. The design strategy for the selection and administration of the IECI was heavily dependent upon its independence from political factions, the CPA and the UN. This perceived and actual independence was a key factor in Iraqi legitimization of the electoral process.

The IECI was supported by the international community through an International Assistance Team (IAT) managed under UN leadership. The IAT coordinated the efforts of its own staff, employed through the Electoral Assistance Division, as well as consultants provided by IFES—through funding by the United States Agency for International Development (USAID), the European Commission and the Department for International Development of the UK (DFiD). The scope of the international assistance efforts did not include the establishment of a trust fund to aid political parties. However, under funding from USAID, the political party institutes—the National Democratic Institute (NDI) and the International Republican Institute (IRI)—provided indirect support to political entities through training programs and educational efforts.

With the IECI in place, preparations began for the January elections. On the national level, the political campaign involved 111 political entities and over 7,000 candidates contesting 275 seats in the TNA. In addition, there were elections for 18 governorate councils, each with 41 seats (with the exception of Baghdad, which had 51 seats). The elections for the 111 seats in the Kurdistan National Assembly took place in the governorates of Sulaimaniya, Arbil and Dohuk. In all three elections, the system of proportional representation (PR) was employed. In a PR system, the seats obtained by a political entity roughly coincide with the percentage of votes it received. There were no districts. The election was conducted using a single ballot on either the national or governorate levels. A single ballot was also used in the Kurdistan election.

The candidate selection system employed was a "closed list" system. In a closed list system, the voter selects a party on the ballot, not a candidate. The candidate lists are drawn up by political parties, ranking the importance of their candidates by their ballot position. In this election, the rules contained a gender quotient and required that one in every three candidates on the list be a woman.

Violence was a concern in the campaign and had a direct impact on the way in which candidates and parties campaigned. As one news account stated, "Officials admit that worries about violence may limit candidates' ability to campaign. As a result, the IECI and Iraq's media commission are allowing parties to run television advertisement, in part because some candidates may shun public appearances."[2]

[2] Awadh al-Taee and John Reed, "Candidates keep below the parapet as fear of violence mutes campaign," *The Financial Times*., December 21, 2004.

The TNA election was also conducted outside of Iraq in 13 countries and 36 cities. These countries were selected because of estimated numbers of Iraqi diaspora resident there. The out-of-country voting program was administered by the International Organization for Migration. There were 280,000 people in the diaspora registered to vote, and 93 percent of them cast ballots. This figure represented around 3.26 percent of the total ballots cast. In Iraq, the turnout was pegged at 58 percent with about 8 million voters casting ballots.

As early as September 2003, NDI identified over 200 established and emerging political movements and groupings. These aspiring political parties could be divided into three categories:

1. Well established political organizations such as the Iraqi National Congress, Supreme Council for the Islamic Revolution in Iraq, Dawa Party, Patriotic Union of Kurdistan, Kurdistan Democratic Party, Iraqi Communist Party, Iraqi National Accord and the Free Officers Movement.
2. New, relatively wealthy organizations (Assembly for Democracy and New Iraqi Organization).
3. New, resource-poor organizations.[3]

Some of the well-established organizations received training from the Department of Defense and financial support from the Department of State under 1998 legislation called the "Iraq Liberation Act." Seven groups were authorized to receive support under this act. They included the Iraqi National Congress, the Iraqi National Accord, Patriotic Union of Kurdistan (PUK), Kurdistan Democratic Party (KDP), the Supreme Council for the Islamic Revolution in Iraq (SCIRI), the Islamic Movement of Iraqi Kurdistan, and the Constitutional Monarchists.

In addition to U.S. support in the late 1990s, news reports state that: "Over the past year, Iran has provided tens of millions of dollars and other material support to a range of Iraqi parties, including the Supreme Council for Islamic Revolution in Iraq, the Islamic Dawa Party, and rebel cleric Moqtada Sadr's Mahdi Army."[4] As the International Crisis Group reports, "Most importantly, Tehran has tried to influence Iraq's political process by giving support to, in particular, the SCIRI."[5] In fact, cash has been intercepted at the Iran-Iraq border. As one news account states, "U.S. troops guarding the Iraqi border recently confiscated nearly $200,000 reportedly being smuggled from Iran. But in the absence of campaign-finance laws and given the long, porous border with Iran, tracking money from any foreign country remains difficult."[6] In another incident, Waset Governor Mohammad Ridha said that nearly $19,000 USD in Iranian tomans were sent to a resident in the province "to try to entice sectarian extremism and ruin the elections process."[7]

This Iranian influence prompted the U.S. government to consider a program of direct subsidies to Iraqi political parties. There were reported to be discussions about establishing a $40 million USD fund for this purpose; however, the plan was not undertaken.[8]

Some of these well-established political organizations formed alliances and were the major winners in the elections. Of the 111 political entities, the electoral process was dominated by three coalitions that garnered 87.7 percent of the total vote. There three coalitions were the United Iraq Alliance (officially certified as the Unified Iraqi Coalition), the Kurdistan Alliance list and the Iraqi List.

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[3] Marcin Walecki, "Iraq Political Party Assessment," (Washington, D.C.: IFES, November 2003).
[4] Robin Wright and Justin Blum, "U.S. Targets Iran's Influence in Iraq," *Washington Post*, September 25, 2004, p. A17.
[5] International Crisis Group, "Iran in Iraq: How Much Influence," Middle East Report No. 38, March 21, 2005.
[6] Edmund Sanders, "Iran Plays a Role in Iraq Vote," *Los Angeles Times*, January 9, 2005.
[7] United Press International, "Iraqi official accuses Iran," *Washington Times*, January 15, 2005.
[8] Wright and Blum, "U.S. Targets Iran's Influence in Iraq," p. A17.

The United Iraqi Alliance was a coalition of predominantly Shiite parties that was encouraged and facilitated by the Grand Ayatollah Ali Sistani. It included the two largest Shiite parties formerly in exile in Iran—the Supreme Council for Islamic Revolution in Iraq and the Islamic Dawa Party. There were 14 additional parties in the coalition, including two Turkmen parties. The Kurdistan Alliance was led by the two establish Kurdish parties—the PUK and KDP. There were nine additional parties in the coalition including the Communist Party of Kurdistan and the Assyrian Patriotic Party. The third coalition was the Iraqi list, led by Prime Minister Ayad Allawi's Iraqi National Accord. There were five additional parties in the coalition.

The clerical community played a substantial role by indirectly subsidizing the dissemination of voter-education and motivation messages to their constituents. For example, Ayatollah Sistani's *fatwa* provided broad and deep motivation to Shiite voters to participate, with much the same result as a get-out-to-vote effort would have on a campaign. It reads,

> In the Name of the Almighty
>
> All citizens, male and female, who are eligible to vote must make sure that their names are properly registered on the electoral register. Whoever has not registered his name or had done so incorrectly must refer to the electoral committee in their area and provide the required documents for registration and/or amendment. Our legitimate and reliable representatives should form local committees in their area to assist citizens in realizing this important matter so that everyone will be able to participate in the election which we hope will go ahead on the set date and it (the elections) will be free and fair one [sic] with the participation of all Iraqis. Success is from Allah.[9]

Motivational messaging was taken even further by clerics. As one news account reports, Shiite cleric Maher Hamra of Baghdad claimed the distribution of 10,000 leaflets with the message that participation in the elections was a "religious and national duty." He also claimed that his office had hung over 150 banners with the same message. He had orchestrated the message to be uttered in 50 mosques in the Kadhimiya neighborhood of Baghdad, built around Baghdad's most prominent Shiite shrine.[10] One report from Najaf indicated that a local cleric had printed his own voter registration forms for distribution among his constituencies.[11] Or, as Sheikh Homam Hamoodi, a candidate on the United Iraqi Alliance slate stated, "Our list is blessed by the Grand Ayatollah Sistani…It doesn't need any money."[12]

The campaign was largely boycotted by the Sunni Arab community with low voter turnout seen in Sunni-dominated governorates. The Association of Muslim Scholars (AMS), a leading Sunni organization, remains a vocal critic of the electoral process. As AMS spokesman Muhammad al-Kubaysi said, "The elections are not a solution to the Iraqi problem, because the problem is not an internal dispute to be resolved through accords and elections. It lies in the presence of a foreign power that occupies this country and refuses even the mere scheduling of the withdrawal of its forces from Iraq."[13]

Public perceptions about political parties were monitored through surveys conducted by IRI. An examination of polling results (from a survey conducted between May 2004 and February 2005) reveals the following attitudes and shifts in opinion. In the May 2004 poll, when asked to what degree they trusted political parties, nearly half of the respondents—49.84 percent—stated that they

[9] This text is available at www.sistani.org.
[10] Anthony Shadid, "Iraqi's Shiite Clergy Push to Get Out the Vote," *Washington Post*, December 7, 2005.
[11] Interview with Jarrett Blanc, IFES Chief of Party-Iraq, July 2004.
[12] Sanders, "Iran Plays a Role in Iraq Vote."
[13] Lawrence Smallman, "AMS Critical of Iraq Elections," Aljazeera.net, January 30, 2005.

did not trust them at all, with only 6.3 percent indicating that they trust them completely. When asked if there was a political party or movement that they currently supported, 78.02 percent stated that they did not and 18.33 percent stated that they did. In February 2005, when respondents were asked if there was a party that they currently supported or that shared their view, 20.8 percent of the respondents responded "yes" and 72.9 percent responded "no."

The table below shows the results of the election for the TNA.

Table I
Election Results and Seat Allocations

Political Entity	Percentage of Vote	Number of Seats
United Iraqi Alliance	48.2	140
Democratic Patriotic Alliance of Kurdistan	25.7	75
Iraqi List	13.8	40
Iraqis (Iraqiyun) List	1.8	5
Iraqi Turkmen Front	1.1	3
National Independent Cadres and Election People's Union	0.8	3
People's Union	0.8	2
Islamic Kurdish Society	0.7	2
Islamic Labor Movement in Iraq	0.5	2
National Democratic Alliance	0.5	1
National Rafidain List	0.43	1
Reconciliation and Liberation Entity	0.4	1[14]

4. Money and Violence

Electoral violence can be classified into four categories:

1. Violence directed by the opposition against the state;
2. Violence directed by the state against the opposition;
3. Violence that political rivals direct against each other; and
4. Violence by insurgents directed against the electoral process.

In the last case, the "electoral process" can include institutions, individuals, symbols, facilities and information. The principal form of electoral violence in Iraq is from insurgents and broadly directed against the transitional political process. Although some Sunni and former regime fighters are motivated by the prospect of regaining political power, most of the violence is inflicted by those seeking to halt the electoral process and democratic development. While funding mechanisms for the insurgency are nontransparent and mostly unknown, the assets at the disposal of the insurgents make compelling the case that it is well financed.

The significance to the electoral process is that insurgencies of this kind are political in essence and employ violence and conflict as tactics to fulfill political objectives. Although the Iraqi insurgency is

[14] "Elections in Iraq," Electionworld.org. Version: 02/22/2005.

evolving and multidimensional in composition, the insurgency remains political in nature. As a recent RAND Corporation report states, "At the foundation of counterinsurgency is the salience of the political dimension—in doctrine, planning, implementation, and, most importantly, operational coordination."[15]

Quantifying the insurgency is elusive. As late as July 2004, an estimate in the range of 5,000 fighters was reported by Coalition sources. Vice Admiral Lowell Jacoby stated in Congressional testimony on March 17, 2005 that the number of insurgents was between 15,000 and 20,000, mostly Iraqis with some foreign fighters.[16] However, Major General Mohammad Abdullah Al Shahwani, the Iraqi intelligence chief, in a statement to a pan-Arab newspaper, estimated that the insurgency involved about 200,000 people, among them 20,000 to 30,000 fighters, with the balance of them acting as supporters.[17]

The insurgency is not monolithic. There are six groups that are participating in the violent insurgency: 1) Sunni nationalists, 2) former regime loyalists (FRLs), 3) Sunni/Shiite Iraqi Islamists, 4) outside Islamic extremists, 5) foreign volunteers and 6) criminals. The UN has estimated that there are as many 43 different insurgent groups operating in Iraq, all falling within one of the above categories.[18]

The insurgency not only represents the nexus of money and violence in the political process, but it also has a secondary nexus of foreign financing, violence and politics (as the example of Iranian involvement cited above demonstrates).

5. Recommendations

In a modest sense, a precedent was set with the introduction of a political finance regulation in the January 30 elections. This precedent took the form of a qualified obligation—as described in CPA Order 97—for political parties to be transparent in their financial dealings. It also involved prohibitions and sanctions, with the IECI empowered to levy fines for breaches of the election regulations. However, there was no effective enforcement of either the transparency obligation or a requirement for political parties to disclose any expenditure or receipts. The electoral process was also conducted without a viable banking system in Iraq that would have allowed official monitoring of financial transactions by legitimate bodies.

The January 30 elections have shown that direct and indirect political financing comes from three sources: 1) secular, 2) clerical and 3) criminal. Secular sources of funds are conventional contributions that are made directly to political entities by individuals, groups or businesses. Clerical sources are indirect in nature; however, they use clerical channels and resources to provide election education and motivation for their followers. Finally, criminal funding is that which is intended to aid insurgents in striking at the electoral process in order to halt the political transition.

Of those three sources, the secular funding will be the source that can be most responsive to legislation and enforcement. The role of Islam and governance in Iraq will dictate the level of involvement that the clerical community, Shiite and Sunni, will have on political issues. Criminal funding for insurgents is also subject to legislation, but by its very nature will remain elusive to

[15] Bruce Hoffman, "Insurgency and Counterinsurgency in Iraq," Occasional Paper OP-127-IPC/CMEPP (Santa Monica, CA: RAND Corporation, June 2004), p. 2.
[16] Bill Gertz, "Syria, Iran aiding Iraqi insurgents," *Washington Times*, March 18, 2005.
[17] Associated Press, "Intelligence Chief Says 20,000 to 30,000 Terrorists Operating in Iraq," *Billings Gazette*, January 5, 2005.
[18] Stephen Zunes, "Iraq: Two Years Later," Foreign Policy in Focus Discussion Paper, March 23, 2005, p. 4. <http://www.fpif.org/fpiftxt/1198> (June 1, 2005).

regulation measures. However, some measure of enforcement and monitoring of all three sources will be required.

The TNA will be charged with drafting legislation concerning political finance. There should be three elements in any such legislative package: 1) prohibitions, 2) obligations and 3) subsidies. The prohibitions in the law should cover vote buying, bribery and other forms of unethical exchanges of value intended to illicitly influence political decision-making. Obligations should concern disclosure requirements for political entities to reveal their source of funding and expenditures. This legislation should include not only the assets and liabilities of political parties but also that of individual candidates—either contesting as independents or as part of the political party organization. It would also be beneficial for the TNA to consider the benefits of providing direct and indirect subsidies to eligible political parties. The direct subsidies can include a formula for direct cash reimbursement of allowable expenses. The indirect subsidies can be used for free media time.

However, the issue of enforcement will require special efforts in transitional Iraqi politics. Effective enforcement is a matter that spans the three general sources of political financing. If secular funds were the predominant sources of political financing, then a conventional Political Finance Regulator (PFR) model could be drafted into the TNA legislative package. However, indirect clerical subsidies and criminal/terrorist funding place the enforcement requirements beyond that of a conventional PFR.

Security Council Resolution 1373 established the United Nations Counter-Terrorism Committee (CTC) and requires member states to criminalize the financing of terror activities and freeze the assets of terror organizations. The CTC is developing a model for PFR-type organizations that can be used to monitor and enforce provisions on terror funding. These Financial Intelligence Units are a model that should be explored when establishing a PFR capacity in Iraq.

However, the potentially corrosive effects that political finance practices will have on Iraqi governance and society are significant. In circumstances where a government is fragile and its security services still developing, a culture of crime and corruption can finds its roots. In Iraq, the significance of the problem goes beyond illicit campaign-spending issues alone and extends to transnational and insurgency issues that have substantial bearing on Iraq's stability and viability as a nation.

Therefore, any partnership to address the problem should not only include the government partners described above, but also civil society, political entities and the courts. The civil society partners can provide information and advocacy channels that address broader issues of corruption, violence and transnational influences in Iraq. Political entities must endorse and comply with reporting provisions in order for the impact of the regulations to be felt. Finally, the courts must develop sentencing guidelines for offenders that send sufficiently strong messages that can serve as behavioral deterrents.

6. Summary

The sources and level of funding for the January 30 election remain an official unknown. Although the CPA Order establishing political entities contains a provision that encourages transparency in political finance, the qualifying phrase, "to the extent possible," essentially makes any such provision voluntary in nature.

The legal framework for the January 30 elections was founded on CPA-negotiated documents and is transitional in nature. Such a construction means that the international community—through the CPA and the UN—and in partnership with the Interim Government Council and the Iraqi Interim Government, had substantial input and guidance in the creation of a legal framework. However, the

cycle of elections for 2005 will require legislation to be drafted by the TNA. Therefore the urgency of political finance regulation must be stressed to the legislators.

The fall of the Hussein regime opened up national and local political opportunities for many groups that had been exiled or opposed for nearly three decades. In fact, the major winners in the January 30 elections were the groups that had functioned in exile or were the principal political forces in a projected Kurdistan since the first Gulf War.

Political finance in transitional Iraq introduces some new issues for consideration. The first issue is the character of the funding source—secular, clerical or criminal. By viewing the political finance spectrum on a broad backdrop, actors that may not be considered as relevant in the conventional political landscape become integral to an understanding of the situation. In this case, the contributions from clerical, criminal or transnational sources factor into any analysis of political finance. The dilemma facing policy-makers is that secular sources of funding are the only sources that are responsive to regulation. Religious sensitivities will not permit any form of supervision or accounting of indirect contributions made by clerical communities. Furthermore, the criminal and transnational elements will remain underground and fuse violence and transnational sources of political financing.

It is imperative that the TNA adopt a package of political finance reforms so that the corrosive affects of illicit funding, and its corollary violence, can be eliminated from the Iraqi political process.

Kosovo

By
Marcin Walecki

1. Introduction

In the years since the end of the 1999 conflict between ethnic Albanians and Serbs, Kosovo has significantly transformed its approach toward the regulation of political finance. It has managed to hold national parliamentary elections in 2001 and 2004 and local elections in 2000 and 2002, and it has reformed its political finance rules to take into account the lessons learned from each election. Although this case study will highlight several areas where the political finance regime may be improved, the effectiveness of the controls in place in Kosovo has increased markedly since the conflict ended. In a relatively brief period of time, Kosovo has developed one of the more sophisticated political finance systems in the region.

1.1 Brief historical review

The violent conflict between Serbs and Albanians in Kosovo that ended in 1999 continues to affect Kosovo politics. Although open conflict has been quelled, fundamental questions remain as to the political status of the territory. To date, Kosovo remains under the administration of the United Nations Interim Administrative Mission in Kosovo (UNMIK). UNMIK created provisional institutions of self-government whose officials were elected by Kosovars in four election cycles spanning a period of less than four years. To implement its mandate, UNMIK brought together four "pillars" under its leadership.[1] The head of UNMIK is the Special Representative of the Secretary-General (SRSG) for Kosovo. He is the most senior international civilian official in Kosovo, and he presides over the work of the pillars and facilitates the political process designed to determine Kosovo's future status.

According to Fred Cocozzelli, prior to the conflict in the 1990s and international intervention, Kosovo politics was dominated by a single political party, the Democratic League of Kosovo (LDK). Several political parties emerged from the remnants of the Kosovo Liberation Army (KLA). A number of former KLA leaders founded the Democratic Party of Kosovo (PDK); other KLA leaders went on to found the Alliance for the Future of Kosovo (AAK).[2]

Kosovo currently has a multiparty system dominated by three ethnic Albanian parties. The LDK, formerly led by Ibrahim Rugova, is the leading political party in Kosovo. The other dominant Albanian parties are the PDK, led by Hashim Thaci, and the AAK, led by Ramush Haradinaj. There are also several minority parties and coalitions. The largest Serbian party is the Serb Coalition "Povratak" (Return) led by Dragiša Krstović. Typically failing to represent the interests of their constituents in many areas, the Albanian political parties are more correctly characterized as vehicles for patronage and advancement of their leaders and the extended families and

[1] At the end of the emergency stage (in June 2000), Pillar I (humanitarian assistance), led by the Office of the United Nations High Commissioner for Refugees, was phased out. In May 2001, a new Pillar I was established. Currently, the pillars are: Pillar I: Police and Justice, under the direct leadership of the United Nations; Pillar II: Civil Administration, under the direct leadership of the United Nations; Pillar III: Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe; and Pillar IV: Reconstruction and Economic Development, led by the European Union.

[2] Fred Cocozzelli, "Political Parties in Kosovo," *Global Security and Cooperation Quarterly* No. 11 (Winter 2004), p. 1.

subgroups within their ethnic groups.[3] The political party system in Kosovo is a reflection of the ongoing uncertainty regarding the final status of Kosovo. This uncertainty creates an environment where short-term gains are valued over longer term democratic institution building. Political parties are still in the nascent stages of development, some of which have only recently emerged from the vestiges of paramilitary groups.

1.2 Elections

Since the withdrawal of Yugoslav forces in 1999, a series of municipal and general elections have been held to establish local leadership. These elections are conducted based on a proportional representation system with closed party lists.

In November 2001, elections were held for posts in the newly constituted Kosovo Central Assembly. The Central Assembly convened in March 2002 and elected Ibrahim Rugova as President of Kosovo and approved Bajram Rexhepi as Prime Minister. In October 2002, municipal elections were held in Kosovo's 30 municipalities. The municipal elections attracted participation by all ethnic communities, although Serb involvement varied significantly by municipality, with a near-boycott in north Mitrovica.

According to the OSCE, the October 2004 parliamentary elections "were considered free, fair and democratic and were held in a peaceful atmosphere."[4] Although 33 political entities participated in these elections, Serbs boycotted them. While there has been significant progress in transitioning from single party dominance to a multiparty system, political reform has yet to create an environment where both Albanians and Serbs fully participate.

2. Legal and Procedural Framework

The first post-conflict attempts to regulate political party financing in Kosovo were made in 1999 and 2000. They resulted in passage of UNMIK Regulation No. 2000, "On the Registration and Operation of Political Parties in Kosovo in March of 2000."[5] According to the regulation, political parties could be funded through donations of cash, in-kind contributions, membership fees, subsidies, gifts, grants and any income generated from activities undertaken by the political party with its property and resources. Registered political parties were required to submit annual financial reports to the Political Party Registration Office (PPRO). The PPRO was supposed to study the reports and make them available for public review. In practice, it was difficult for third parties to get information about the reports.

Further political finance reform occurred in 2001 with the passage of the Electoral Rule of October 2001 on "Campaign Financial Disclosure and Spending Limits."[6] The electoral rule required political entities to disclose all campaign income and expenditures and the value of owned assets. Section 4 of the rule established the OSCE Political Finance Audit Office and gave it authority to inspect the financial records of any political entity. The electoral rule was an important step forward, introducing comprehensive campaign finance regulations that established the bases for future disclosure and review mechanisms.

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[3] Fred Cocozzelli, "Political Parties in Kosovo," p. 7.
[4] *Details*, Volume 8 (published by the OSCE Mission in Kosovo), December 2004, p. 3.
[5] Regulation No. 2000/16, 21 March 2000.
[6] Electoral Rule 10/2001.

One key success factor in legal and procedural reform was the use of the expertise of the international community in drafting political finance regulations. These regulations ensured greater transparency in tracking political money flows than had been experienced in Kosovo prior to the conflict. The regulatory regime was reformed with each successive election to take into account the lessons learned from previous elections and to approach European standards for political finance control. This increasing sophistication in regulation was one of the key contributing factors to the "free and fair" elections of 2004. The international community needs to continue to provide its expertise until nascent local institutions are strong enough to take over political finance regulatory functions.

Donations from abroad were not sufficiently controlled in the last few elections, and this issue will need to be addressed in the future. Funds raised from Albanians abroad are funneled to political entities, and these funds go unreported. The first steps required to tighten control will include legislative restrictions on funding, more detailed disclosure of financing sources, sophisticated auditing/tracking of money flows from abroad and adequate sanctions for violations of contribution limits.

For legislative reform to succeed, the international community must continue to provide political finance training and consultations. In early 2004, the OSCE and IFES began offering training and consultations to political parties, emphasizing the importance of financial transparency, timely reporting and improvement of internal discipline, including accurate bookkeeping mechanisms. After the 2004 elections, the OSCE found marked improvements in the preparation of financial disclosure reports, demonstrating the efficacy of such training.

3. Effective and Fair Enforcement

The international community was quite effective in building a legal framework, but enforcing the rules of this framework remains a challenge. The OSCE is the sole body responsible for regulating political finance in Kosovo. In May 2001, an independent appellate body, the Election Complaints and Appeals Commission (ECAC), was first established to ensure compliance with electoral regulations and to adjudicate all appeals and complaints related to electoral activities. The ECAC is composed of an International Chief Commissioner and three to five Deputy Commissioners from Kosovo. The ECAC is considered by many to be a neutral, competent body.

Legislation allows for complaints to be filed regarding violations of campaign finance rules and inaccuracies in disclosure. In practice, formal requirements concerning complaints and evidence, as well as limited public access to the Internet and political finance reports, undermine the ability of individuals, the media and political entities to exercise their rights. The ECAC adjudicated 298 complaints throughout the 2002 Kosovo municipal elections. During 2002, the ECAC also adjudicated approximately 45 post-election complaints alleging violations of campaign finance disclosure rules.[7]

Current enforcement mechanisms lack teeth. For one thing, they do not tie the receipt of public funding to compliance with reporting requirements. In 2003, more than 1.85 million euros ($2.4 million USD)[8] were disbursed from the Kosovo government's Consolidated Budget to the largest political parties, while international auditors found that the same parties grossly underreported contributions and expenditures. The international community should have coordinated the activities of the Ministry of Finance, which is responsible for providing funding to political parties,

[7] For more details, see http://kosovoelections.org/ENG/ECAC/judgements.htm.
[8] Approximate value in U.S. dollars as of April 1, 2005.

with the work of the OSCE auditors working for the PPRO. Going forward, there needs to be greater coordination and tracking of budget funds to political parties so that the flows of funds are transparent and the ECAC has the necessary evidence to sanction noncompliant political entities. Previously, some large political parties reported that they lacked funds to pay administrative fines imposed by the ECAC, yet they received substantial public funds. As will be discussed later, political finance regulatory bodies must exercise much tighter control of the actual distribution of such funds and monitoring of their uses.

In Kosovo, political entities tend to comply with the *pro forma* requirements of rules but violate the substantive requirements at the heart of the rules. While 24 of 26 political entities submitted campaign expenditure reports by the deadline, a subsequent OSCE audit revealed that most political entities substantially underreported their campaign expenditures in their reports.[9] The OSCE auditors noted that the largest political parties were the worst abusers. Although filing reports represented considerable progress in political finance compliance, large-scale underreporting of income and expenditures is a problem that remains to be addressed. According to the OSCE International Auditor, PDK submitted only a fraction of the necessary receipts and financial documents for the 2004 financial year.

Thus, political finance laws must be strengthened to provide for swift and meaningful sanctions for failure to fully comply with disclosure requirements. The ECAC needs to have the ability to freeze political entity bank accounts and seize income that has not been properly accounted. In 2002, the OSCE auditors recommended sanctioning in proportion to the seriousness of violations of Electoral Rule 10/2001, a recommendation that should be supported.

Often, parties that have been sanctioned for political finance and election law violations claim that they are unable to pay fines while, at the same time, they continue to receive state subsidies. This subsidization system must be revised to allow the government to withhold funds from parties that have outstanding fines, deduct fines from the total amount of subsidies, and disqualify altogether parties that refuse to pay fines from the subsidies they receive. The subsidies to each party should be disclosed, and funds should not be disbursed to parties that violate disclosure and reporting requirements. Also, there needs to be better coordination between officials who administer and review financial statements and the Ministry of Finance.

Recently established monitoring institutions need additional training and financing to adequately perform their functions. Officials charged with review of registration and financial reporting documents need to be trained to do a more thorough and in-depth review of political finance reports. After the 2004 elections, the Political Party Registration Office announced that no political entity exceeded campaign spending limits. It is hard to believe the announcement, since there was a general lack of proper campaign finance monitoring upon which to base the statement, and all major political parties significantly violated expenditure limits in the previous campaign. As 2001 was the first year that Kosovo's political entities were audited by professional international auditors, several rounds of elections likely will be required before both parties and monitors become adept at conducting meaningful audits.

Control of political finance can be improved if an independent body is put in charge of monitoring political finance. Appointment of the Ministry of Finance and Economy to monitor political finance issues, as proposed by a recent draft law from the Kosovo Assembly, would contradict recommendations by the Council of Europe to create an independent body. This draft law could also undermine UNMIK Regulation 2004/11, "On the Registration and Operation of

[9] OSCE, "Report on Political Entity Financial Disclosure, 2001 Kosovo Assembly Election," February 2002.

Political Parties in Kosovo," which is currently in force in Kosovo. Therefore, an independent body should be authorized to monitor political finance. The Central Election Commission and the Office of the Auditor-General are two bodies that could take on the monitoring role based on the provisions of the constitutional framework.

4. Funding from Undesirable Sources and to Undesirable Recipients

Attempting to stop the flow of funds from paramilitary groups, warlords, organized crime and outside interests is a daunting task for several reasons. First, this funding is not generally disclosed, making it difficult for auditors to find on an income statement. While such funds may show up as expenditures, it can be assumed that much of the funding is in the form of cash, which may never show up on the books of either the political party or its donors. Second, because major political parties have sprung out of paramilitary organizations, commingling of funds and sharing of resources among the paramilitary and political organizations is thought to be common. Finally, independent media and the judiciary have legitimate fears for their security if they pursue investigations into these sources of funds.

Paramilitary funding of parties is a primary concern. Funding from groups formerly affiliated with the now-disbanded Kosovo Liberation Army (KLA) support Albanian parties that represent their interests. Much of this funding is gathered from Albanians. Serb parties are also funded from former military groups. Cracking down on funding from paramilitary groups will require a concerted effort from political finance enforcement entities, police and the international community. Sharing disclosure statements with law enforcement may be one way to better coordinate efforts to track these funds.

Financing from organized crime is also prominent. Organized crime is a regional problem with vast profits that flow across borders and into the coffers of political parties. Both Albanians and Serbs believe that organized crime has strong connections with politics.[10] Political finance monitoring and enforcement bodies rightly have security fears, as organized crime groups routinely use threats and intimidation to corrupt authorities and receive special privileges. The widespread influence of organized crime in Kosovo has created an atmosphere where some fear that a lack of experience in governance could lead to a failed state and criminal haven, "Colombia in Europe … an El Dorado for organized crime."[11]

Political finance regulation alone is unlikely to be able to sufficiently address the issue of organized crime. This matter is better left to domestic and international law enforcement agencies. Election monitoring organizations can, however, aid the efforts of such authorities by sharing information about financial flows. Frequent auditing of political entities suspected of receiving funds from criminal organizations may be a deterrent.

State-owned enterprises have been complicit in providing off-the-book funding and in-kind donations to political parties. Both the Kosovo Power Company and the Kosovo Post and Telecommunications have been known to provide free electricity and communications to political parties that act favorably toward their interests. The value of these services is thought to be significant.

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[10] UNDP, *The Early Warning Report, Kosovo*, Report #7 (May-August 2004). <http://www.kosovo.undp.org/publications/ews7/ewr_7engl.pdf> (June 1, 2005).

[11] Crisis Group interview with Blerim Reka, Priština September 2004. After Crisis Group Europe Report N. p. 161.

Remedies for the problem of excessive in-kind donations can include stronger conflict of interest rules requiring that candidates resign from all positions in state-owned companies and disclose financial ties with corporations in which they hold significant stock; careful auditing of both political entities and state organizations; matching up expenditures by parties with receipts by the companies; and greater rigor in public disclosure of in-kind donations. Fines need to be strengthened for companies that engage in illegal in-kind donations, and parties should be fined and/or removed from ballots for engaging in such activity.

5. Money and Violence

Some major political parties in Kosovo allegedly maintain ties with paramilitary groups. These newly minted political parties contain personnel that until recently had been members of the KLA or other paramilitary groups. Some parties also allegedly maintain ties with war criminals. Law enforcement authorities need to take strong measures to break the links between criminal and military elements and political parties. Curtailing public funding for organizations that support war criminals or other criminal elements should be seriously considered. There also should be a mechanism for denial of public funding to political entities that have proven ties to criminal elements. Political finance reform alone is unlikely to be able to sufficiently address these ties.

Funds from a political party, whether private or public, should be used neither for the sustenance of criminals and their support structures, nor to spread any form of electoral violence. Political parties finance private security forces, which can create an atmosphere of intimidation. Candidates travel with these forces to campaign in cities, creating an atmosphere that is not conducive for opposition parties to voice their opinions. Sometimes private security forces numbering in the hundreds accompany candidates to campaign rallies. These security forces are often well armed and many political bodyguards carry weapons authorization cards.[12]

Any attempt to address the issue of large private security forces must balance candidates' legitimate fear of harm with the need to lessen the potential for political intimidation. The state could make it illegal for political parties to maintain more than a fixed number of security personnel. Parties could be encouraged to retain private security personnel from duly licensed agencies and required to register the names of all security personnel. The goal of such regulation would be to allow parties to maintain security forces that would be used for defensive rather than offensive purposes.

6. Lack of Transparency and Security

The Electoral Rule of October 2001 on "Campaign Financial Disclosure and Spending Limits" required political entities to disclose all campaign income and expenditures and owned assets. As mentioned earlier, political entities were very compliant in filing disclosure reports, but the information contained in those reports was not always accurate. Many entities underreported income and expenditures and failed to provide supporting receipts. This lack of transparency makes it hard for third parties to verify cash flows to political parties.

Transparency issues do not seem to be closely linked to security concerns. Generally, candidates have been willing to file financial disclosure forms mandated by law. These forms—called Candidate Personal Income and Asset Statements (CPIAS)—were first introduced by the Central

[12] Small Arms Survey (SAS), "Kosovo and the Gun: A Baseline Assessment of Small Arms and Light Weapons in Kosovo" (UNDP & SAS, June 2003).

Election Commission (CEC) for the 2002 municipal elections.[13] In 2002, the OSCE made copies of the CPIAS available for public scrutiny. Access was granted through the OSCE headquarters in Priština and in each municipality. For the 2004 Kosovo Assembly Elections, all candidates were required to submit a completed Candidate Financial Disclosure Form (CFDF).[14] Completed CPIAS and CFDF forms are available for public access on the OSCE website.[15] It is remarkable that even individual candidates of great means disclosed large portions of their assets as required by law. However, it is not clear whether other people were discouraged from becoming candidates because of security concerns arising from public release of such forms.

While civil society and mass media[16] still lack the ability to adequately monitor money and politics, partly because of certain constraints on access to documentation and partly because challenging certain local figures remains dangerous,[17] they are making progress in this regard. In fact, during the 2001 and 2004 elections, the OSCE relied on NGO monitoring of public meetings and rallies and used the results from such monitoring for its own desk audit of financial reports. The media and civil society increasingly have had an ability to scrutinize the finances of candidates and political entities. As civil society and the media become stronger, they are more willing to challenge powerful figures. The fact that the media noted that then Kosovo President Ibrahim Rugova failed to list his house in Priština on the 2004 reporting forms shows new daring.

There remain some problems with disclosure. NGOs have consistently complained that the current reporting forms are too complicated for the mass media or civil society organizations to verify their accuracy. Also, the time between the filing of reports and their release to the public is too long to have a significant impact on elections. Reports are released about five months after the elections. Disclosure forms should be simplified and shorter deadlines should be legislated for the release of the reports to the public.

7. Abuse of State Resources and Fair Access to Media

Any future legislation in Kosovo should explicitly prohibit cases of "the abuse of administrative resources"[18] for electoral purposes. The continued presence of international bodies in Kosovo can limit, but certainly not eliminate, political corruption and abuse of state resources. Furthermore, undocumented and informal in-kind donations are rampant at the local level. According to the Council for the Defense of Human Rights and Freedoms (a Kosovo-based NGO responsible for monitoring of elections), official vehicles and governmental employees were widely used during all previous election campaigns. Municipalities all over Kosovo have been linked to this type of abuse of power by elected representatives.[19]

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[13] Electoral Rule 8/2002 on the Registration of Candidates.

[14] The form disclosed (a) current personal income and sources of income, including all employment income, profit from property, contributions, accounts receivable and other income realized both inside and outside of Kosovo for the 12-month period prior to the date of submission; (b) assets, including cash, bank accounts, business documentation, shares, securities, bonds, real property and personal property whose value exceeds 2,000 euros as of the effective date of the disclosure form; and (c) liabilities, including all debts, promissory notes, loans and guarantees of such liabilities both inside and outside of Kosovo as of the date of the disclosure form.

[15] See http://kosovoelections.org/eng/fdf/index.htm.

[16] The print media is far from well established as daily newspaper circulation among Kosovo's 2 million Albanians is under 30,000.

[17] The attempted assassination in September 2004 of investigative journalist Fatmire Terdevci—who uncovered many scandals, including one involving the Ministry of Finance and Economy—was a powerful disincentive to other journalists exposing corruption and criminality. See International Crisis Group, "Kosovo: Toward Final Status," Europe Report No. 161 (January 24, 2005), p. 9.

[18] The term refers to the use of the resources of the state by incumbent politicians and parties to pursue the objective of being elected, including financial or in-kind support to political parties or campaigns.

[19] A typical case involved the land registry department. Since the municipal administration is the one to decide on registration and sales of property, the officials are the first to know about such opportunities. It has, therefore, not been uncommon for an employee of the department to buy a piece of land at a reasonable price only to sell it at an exorbitant price.

Currently, public financing is carried out in a nontransparent manner, with little control and oversight and in a way that creates an unequal playing field. As was mentioned earlier, the Kosovo Consolidated Budget (KCB) provides funding to political parties that is disbursed by the Ministry of Finance. This budget line item, called the Democratization Support Fund (DSF), is made up of international community funds and domestic funds that are distributed to political parties. This funding has several major problems, as outlined below.

First, no enabling legislation currently regulates the allocation and distribution of funds, and no oversight measures are in place to monitor the use of the funds by parties. In the absence of any legislation regulating the allocation of the funds, the Kosovo Assembly decided to support only those political parties that were represented in the Parliament, putting the smaller political parties of ethnic minorities at a distinct disadvantage. Because KCB funds for political parties are directed only to parties with representatives in the Kosovo-wide Assembly and not municipal assemblies, political parties representing geographically concentrated ethnic communities do not receive any public funding.

It is not clear how the decision about the allocation of this funding was made, and it seems likely that the Kosovo Assembly decided to allocate this funding without direct consultations with the OSCE and the SRSG.[20] Furthermore, since the fund was a subsidy, the Ministry of Finance received no report on how the fund was allocated or spent. With a lack of oversight and legislative control, there is little to stop political parties from nontransparent, uncontrolled spending including pocketing the money for the personal use of party leaders. Therefore, enabling legislation needs to be enacted to provide guidance for the distribution of such funds in a manner that does not discriminate against minority parties. Also, regulations that provide clear mechanisms for oversight need to be enacted. Finally, restrictions on the use of such subsidies must be clearly enumerated.

The sums of money in question are significant and could have a major impact on the electoral process. The size of the fund seems to be out of proportion with European standards for support and with the state funding needs of most Kosovo parties. The 2003 DSF amounted to 1,853,000 euros ($2,402,790 USD)[21] which is 2.5 times the total expenditures claimed by all 68 political entities. The Assembly recently suggested a new formula for public funding that would provide up to 0.5 percent of the Consolidated Budget or 3,500,000 euros ($4,538,450 USD)[22] to the DSF. The amount of funding provided by the DSF needs to be lowered, not raised, to take into account the actual costs of political activity in Kosovo. Any remaining funds could be used to finance the work of parliamentary factions and MPs. Such a step would enhance the work of the Assembly and improve legislative work done by political parties and their representatives.

Public funding needs to be tied to disclosure compliance. Political entities that do not file political finance disclosure reports should be excluded from receiving public funds. The international community has allowed its own body charged with auditing and sanctioning non-compliance to be separate from the body distributing the funds. In an ideal system, the regulator would have a say in the distribution of state subsidies.

[20] The SRSG had the authority to freeze such funding according to provisions of UNMIK Regulation 2002/23 on the Approval of the Kosovo Consolidated Budget for 2003, and the OSCE has requested SRSG to freeze funding transfers until appropriate enabling legislation is drafted in line with European standards.

[21] Approximate value in U.S. dollars as of April 1, 2005.

[22] Approximate value in U.S. dollars as of April 1, 2005.

One of the options to resolve the current situation would be to direct the subsidies towards the work of parliamentary factions and MPs. Such a step would enhance the work of the Assembly and improve legislative work done by political parties and their MPs. Then, in the second stage of reform, the amount and scope of the subsidies could be increased. This can be followed by the stage of "adjustment," which generally involves the institutionalization of the subsidy system and takes account of inflation.

8. Using "Trust Funds" and Free Broadcasting to Create a Competitive Environment

As was mentioned earlier in this case study, subsidization through the DSF was not an effective method for leveling the political playing field. It is not the mechanism itself that was at fault, but rather the way in which it was administered. Trust funds could be administered to provide needed funding to minority parties as a means of leveling the playing field. The rules for allocation and distribution of any such funds should be clear and transparent.

Current legislation allows for funding of political parties by foreign sources. This reality allows for a certain diversification of sources of funding. Most foreign funding is from regional sources. However, nontransparent funding from Albania and Serbia is currently at a level that it is possible to effect political discussions. Foreign contributions need to be disclosed by political parties. Future regulation of foreign contributions should be more restrictive. Donations should be limited quantitatively and qualitatively.

9. Recommendations

Real reform will require the coordination of an accountable and democratically minded state. The following recommendations are based on earlier sections of this case study:

1. Develop strong and sustainable local institutions to regulate political finance. Ensure that an independent body is in charge of monitoring political party funding consistent with the recommendations of the Council of Europe. The Central Election Commission or the Office of the Auditor-General could take on this role.

2. Approach incomplete disclosure by political entities in the first instance in a cooperative manner. Treat it as an issue requiring further education rather than immediate sanctions. Offer training and consultation to political parties so that they can increase compliance and provide detailed disclosure. Ensure that the bodies that will be auditing such reports are fully trained for the task. Have the OSCE conduct at least one field audit of the largest political party, since local agencies may not have the ability to conduct a thorough audit at present. Only a dedicated team of international auditors could conduct such an exercise and prepare strong recommendations.

3. Create a mechanism for regulating the allocation and distribution of state funds to political parties. Make sure that there are limits on the types of expenditures that can be made with such funds and that adequate monitoring and reporting of expenditures is required. The amount of funding to parties should be related to the economic conditions in Kosovo, and fund allocation should be done in a matter that is fair and moves toward the creation of a level playing field.

4. Ensure that future political finance regulations place more restrictions on foreign donations. The regulations should limit foreign donations quantitatively and qualitatively.

5. Simplify the current political finance reporting forms so they can be easily understood by civil society organizations and the media. Require timely disclosure of such reports to civil society organizations and the media.

6. Provide sanctions for violation of political finance rules that are proportionate to the severity of the violation. Tie compliance with political finance reporting and disclosure requirements to eligibility for state funding. Ensure that all political entities receiving state subsidies do not have any unpaid fines for political finance violations. Investigate and prosecute vote-buying.

10. Summary

Progress in political finance reform cannot be accomplished simply by introducing new political finance regulations. Rigorous monitoring of parties and enforcement of political finance rules are required to achieve some hope of reform. While Kosovo has a very sophisticated legal framework for regulating political finance, it continues to face problems related to underreporting of money flows, unregulated inflows of funds from foreign sources, nontransparent state funding of political parties and insufficiently trained party personnel. Actions taken by the international community to date have failed to establish strong national ownership of the political finance system. The challenge for future progress in political finance reform will be to transition ownership of political institutions to local authorities. Without such a transition, the gains of the past six years in political finance reform could be lost.

Liberia

By
Ambassador (Ret.) William B. Milam

1. Introduction

The Liberian election of July 1997 was supposed to be the political solution to the bitter, savage and bloody civil war that tore the country apart for more than seven years. However, in reality, it was just another interim solution, setting up (what turned out to be) another interim government and another long respite between periods of war—a pattern that had characterized the Liberian situation from the start.

There are several prominent reasons why the 1997 election failed as a political solution. It came too soon after the fighting had stopped, while the experience of violence and intimidation was still fresh in the electorate's mind. It also came too quickly for the international community to construct a level "playing field." The civil society parties did not have time to gear up effective campaigns to compete with warlord Charles Taylor (who controlled most of the country's territory and resources) on a more-or-less equal basis. Because of the time constraints, and security concerns, the poll was conducted as a single-constituency election in which the parties were awarded seats in the bicameral legislature proportionally on the basis of the percentage of national votes they received. Attempts to find a real power-sharing formula were rejected by the leading regional member of the international community, Nigeria, as well as the Liberian participants themselves. And, finally, the election failed as a solution because the elements of Liberian civil society that still remained in the country were incapable of working together in a common cause—in this case, the defeat of their primary nemesis.

These deficiencies led to Taylor's overwhelming, if paradoxical, victory. But they also laid the groundwork for the rejection of the results by a wide spectrum of society—including the civil society political parties[1] that, for the most part, were very weakly supported; the one civil society party that received significant voter support; and the various small parties of warlord rivals to Taylor. The lack of a level playing field was the primary reason why these groups rejected the results, but Taylor's egregious actions against political opponents after he took office and his string of broken pledges exacerbated the situation.

1.1 Brief historical review

For the first 100 years of its existence, Liberia was dominated by a non-indigenous oligarchy, made up mostly of freed slaves from the United States and elsewhere. Elections were "sometime things" for the oligarchy, and few indigenous Liberians were included. In the 1940s, the Americo-Liberian President, William V.S. Tubman, began the slow process of bringing indigenous Liberians into the political and economic mainstream. Upon Tubman's death in 1971, his successor, William Tolbert, continued that policy. But it was too little and too late. The winds of political change in Africa, and the economic shocks the 1970s visited upon primary commodity producers like Liberia, led to a military coup that overturned the Tolbert government in 1980.

[1] "Civil society political parties" refer to those political parties that were not connected to any of the warring factions.

The coup-makers were indigenous non-commissioned army officers, all from one tribe, the Krahn, led by Samuel Doe. The new government quickly became a source of Krahn enrichment, excluding most other ethnic groups from the trough. The prodigious corruption and predation of the Doe government alienated many, and with the United States adding to the pressure, it was forced to hold an election in 1985. However, it was flagrantly rigged and set the stage for the civil war that followed five years later.

In December 1989, the war began with an invasion led by Charles Taylor, who had roots in, and drew early financial and political support from, the Americo-Liberian community—now largely outside of Liberia. Because the Doe government had treated non-Krahn ethnic groups (who were already alienated by the corruption and the continuing floundering economy) with such a heavy hand, Taylor attracted multiethnic support despite his own ethnicity and the savage methods his fighters used during the war. Taylor was prevented from taking the capital Monrovia (which probably would have secured his victory) by the intervention by the Nigerian-led West African peacekeeping force, ECOMOG in August 1990. From that point, there was essentially a stalemate, both militarily and politically. An interim government, backed by ECOMOG, held the capital (called "Greater Monrovia"). Taylor held all the rest.

Taylor used the stalemate to construct a commercial empire in the rest of Liberia. Some scholars estimate that he extracted over 75 million dollars per year between 1990 and the 1997 election from foreign sales of rubber, gold, diamonds and timber from the territory he controlled. For example, by 1991, Taylor's "Greater Liberia" had become France's third largest source of tropical hardwood.

The recognition that enormous commercial gains awaited those who controlled Liberian territory led to a proliferation of rebel groups beginning in 1991. By 1995, there were three other rebel groups that controlled areas they had taken from Taylor's forces, and that land gave them a significant income from the export of diamonds or rubber. Continual skirmishing over territory, with occasional lapses into full-fledged warfare, characterized the years from 1991 to 1996. This proliferation of warring factions added vast complications to the international community's search for a viable peace process and made prospects for a conclusive election hopeless.

1.2 The election of 1997 and its aftermath

In 1995, Nigeria, which had provided the bulk of ECOMOG troops and regional financial support, changed political direction. Seeking a way to end its financially and politically costly intervention, it decided that instead of blocking Taylor from political power, the military and political stalemate could only be broken by allowing him (in fact, helping him) to come to power. Such a solution would require sanction by the international community via an internationally supervised and approved election. Nigeria's desire to extract itself from Liberia was matched by that of other members of the international community, including the Western governments involved, which usually view elections as a necessary and sufficient element of an exit strategy.

The renewed and reinvigorated peace process, established under the second Abuja conference in mid-1996, brought about limited disarmament and even more limited demobilization by February 1997. As a result, the election of July 1997 was held in an environment that was as secure and stable as could be expected in devastated, war-torn Liberia. A mostly illiterate electorate—still fearful of the warring factions that had not turned in most of their working weapons, largely displaced and still traumatized from six years of almost continual violence—was asked to elect a leader who would restore political stability, reconstruct the economy and begin the healing. A reconstituted but woefully inexperienced and underfunded election commission was tasked to bring off an election (starting almost from scratch) in six months.

The result, predictable even then, was that Charles Taylor won 75 percent of the vote. What was less predictable was that the election was judged as generally free and fair by a large contingent of international observers.[2] Taylor won so handily because his vast preponderance of resources, monopoly of the media and long-standing organization tilted the playing field steeply in his direction. This was the basis for his opponents' later rejection of the result.

The financial resources at Taylor's disposal were immense compared to those his civil society opponents could raise. (The civil society candidate—who came in a distant second with about 10 percent of the vote—cashed in her UN pension to finance her campaign.) He controlled the only media outlets available to most of the voters outside Monrovia. In addition, Taylor's deep pockets provided a wide variety of gifts and benefits to impoverished voters (including T-shirts and bags of rice).

Probably most importantly, Taylor used his preponderant resources and media monopoly to intimidate the voters subtly—they were already intimidated anyway—with his implied threats to start the war again if he didn't win. It seems clear that the Liberians voted for peace and security, wanting mainly to return to their homes and resume their former lives. Taylor's campaign theme warned of the resumption of war if he wasn't elected. He also hinted at a wider distribution of the resources he controlled, attracting those who worried less about the country's future than about their own and who thought it would be more lucrative to be in the tent of the certain winner than outside it trying to get in after the election.

Given a different victor, the political baggage of the 1997 election (won because of a very tilted playing field) might have been overcome. But Taylor did not carry out his pledge to be an inclusive president, nor his promise to rebuild Liberia. In 2001, the war broke out again in full force—the same competing interests under new management. In 2003, Taylor fled the country into exile in Nigeria, and the search for stability started all over again. A UN peacekeeping force of almost 15,000 has brought a level of security to the country unknown since Tubman's time, and a well-intentioned interim government includes leaders of the remaining factions (it excludes Taylor but includes representatives from his party) in yet another attempt to foster an environment of political power sharing.

Thus, Liberia's search for political stability continues in a post-conflict environment. Another election was scheduled for October 2005. Below, I will describe the challenges facing Liberia, its interim government, and the international community in addressing political finance issues for future elections. I will also offer suggestions designed to help those in charge create the conditions for a more even playing field in the area of campaign finance, so that future elections will have less of a chance of being automatically rejected by the losers. Such elections may have a better chance of establishing a stable, enduring governing system, which will enable large groups of the international community to exit permanently. I will draw on several sources: 1) my own experience as U.S. Chief of Mission[3] in Liberia between November 1995 and August 1998, during which time the last election took place; 2) my familiarity with many of the details of the election, which was financed primarily by the United States and was, frankly, only possible because of the excellent technical support the United States provided to the Election Commission through IFES; 3) my knowledge of academic

[2] Full acceptance of election results in most African countries is probably some time away. As Richard Jeffries noted in 1998, "a very limited acceptance of election results, however justified or unjustified, is bound to obtain in economically underdeveloped [sic] African societies where, partly for structural and partly for cultural reasons, politics continues to be very much a zero-sum-game characterized by high levels of distrust."

[3] "U.S. Chief of Mission" is the title given by the U.S. Government to the heads of embassies in countries whose sitting governments the U.S. does not recognize. It is the equivalent of Ambassador.

and journalistic analyses of the election; and 4) my review of the law, regulations and rules that were supposed to govern how the election and campaigns were conducted.

2. Legal and Procedural Framework

The Special Electoral Law of 1997 gave the Independent Elections Commission (IECOM) the mandate and authority to conduct and administer the election and to create the rules and procedures for doing so. The law also gave IECOM the power and responsibility to formulate and enforce the guidelines that controlled the electoral process. IECOM replaced a previous election commission, which had been a repository for sycophants of the warring factions.

Drawing partly on previous election laws (which governed the 1985 and earlier elections) and mainly on the experts provided by the international community, the major donors, and the UN, the IECOM stitched together (in a very short time) an election law and code of conduct that conformed to international standards. The Election Law and Code of Conduct, which included a general set of restrictions and exhortations on political party activity in an attempt to level the playing field, were agreed to by all parties.[4]

The most specific, and perhaps most enforceable, of these restrictions was a limit of $3.5 million USD per political party, coalition or alliance on all types of campaign spending: media, travel, gifts, etc.[5] Taylor was repeatedly accused of violating this restriction, and it is clear that he did so. Beyond the lavish spending described above (rice and T-shirts), his use of at least one helicopter for nationwide campaigning, an inundation of other gifts (including paying to airlift the national football team for a match elsewhere), and the imputed cost of the nationwide political advertisements on the radio stations he controlled substantially exceeded the spending limit.

However, probably more important to Taylor's lopsided victory, were the circumstances forced upon all the parties by the exceedingly short time frame between when the conditions for an election were declared to have been met—i.e., the completion of the limited disarmament and demobilization—and the election itself. As a result, the registration period, for example, was very brief (although it was extended a week) and very chaotic (unsurprising in a country in which most of the population had been displaced). There were numerous charges that Taylor (and other warlords) used the chaos that ensued to register a number of ineligible voters under the prescribed age of 18. That Taylor understood the advantages the short timeframe gave him is clear from his efforts to prevent postponement, and his implied threats to create problems if there were any delays beyond the one that moved the election from May (which would have been technically impossible) to July.

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[4] In going back and rereading the academic literature, I am amazed at how many analysts, in articles on the 1997 election, gave Taylor the benefit of the doubt when speculating about how he would govern Liberia in the years after the election. They failed to predict, for example, that as soon as he had gotten rid of ECOMOG, he would go after his number one enemy, Roosevelt Johnson, and kill several hundred of Johnson's Krahn followers in a little known massacre in Monrovia in September 1998.

[5] In addition to the $3.5 million USD limit on contributions, the election law limits contributions to citizens, political parties, coalitions or alliances of Liberian nationality, and requires the party to report the source of all contributions. No corporate, business organization, religious institution or labor union may contribute funds or expenses to a party, coalition or alliance. Only Liberian citizens residing abroad may make contributions from outside Liberia, and these are limited to $1,000 a piece. All parties, coalitions and alliances are required to furnish the IECOM with the names of the banks in which they have accounts. The law makes bribery a crime and sets out as a penalty voiding the election of a candidate or party. It spells out the conditions which must be met for parties to combine into alliances or coalitions. The Code of Conduct (1) prohibits intimidation and coercion in very general terms; (2) bans weapons from being carried, especially at political party rallies, meetings, marches or demonstrations; (3) rules out holding rallies, meetings and marches in the same vicinity at the same time, and requires 72-hour notice for all such meetings; (4) exhorts parties to refrain from interfering in the rallies or marches of other parties, and to avoid using offensive or inflammatory language "calculated to cause offence or incite to violence" against other parties in speeches or the media; (5) exhorts parties to ensure other parties' freedom of access to voters and to media outlets; and (6) insists that parties work to reinforce the secret ballot and not, "whatever the temptation," attempt to gain votes by undue influence, forcible occupation of the polls, bribery or other "allurement" of elections officials.

Because Taylor had been forced to administer "Greater Liberia" (after a fashion) to ensure he captured all possible revenue from the exploitation of its natural resources, he had an organization already in place that was easily converted to electoral activities. This organization gave him an enormous head start over his rivals—especially his civil society rivals—both during the very brief registration period and the hectic and very brief campaign. The fact that Taylor had been in charge of great swaths of Liberian territory for seven years was an incomparable advantage in getting eligible (and, evidently, not-so-eligible) voters to register in the territories he controlled. Academic analysts have pointed out that registration was estimated to be 50 percent or more of the eligible population in the counties that he had administered, as opposed to less than 30 percent of the eligible population in the urban counties in which civil society candidates ran strongest.

Coupled with the advantages Taylor had due to his organizational head start and control of territory was the slow pace with which an under-manned and under-equipped ECOMOG deployed in the countryside to provide security for the other political parties to organize and campaign. This, of course, allowed Taylor to organize registration drives and to ensure voters understood the likely consequences of voting for someone else without observation or interference by other parties, ECOMOG or IECOM.

Taylor was also aided by the unwillingness of neighboring countries to allow Liberian refugees on their territory to register and vote. This may have precluded up to 250,000 eligible voters from participating (assuming 50 percent of the estimated 500,000 Liberian refugees in Côte D'Ivoire, Guinea and Sierra Leone would have voted). This number, which is highly speculative, is equivalent to 40 percent of the number of Liberians that actually voted in the election. The refugees would have been less vulnerable to Taylor's subtle intimidation, and perhaps less inclined to support someone they viewed as responsible for their flight across national borders. But how they would have divided their votes is highly uncertain. Nonetheless, while the election law and rules would have permitted their voting, the neighboring countries wanted no part of it. This prevented about 40 percent of the possible voters from exercising their franchise.

Much of what tipped the playing field in Taylor's favor was inevitable due to the timetable forced on IECOM, the parties and the voters by the politics of the peace process. In looking ahead, there are several possible ways in which the next election should be different from the 1997 one: (1) there is no political need to rush the next election, and good reason not to; (2) from that reality, one can infer that all parties will have sufficient time to organize their campaigns and raise money; (3) no party is likely to have a preponderance of resources through control of Liberian territory as Taylor's National Patriotic Party had; (4) related to the preceding point, no party is likely to have a complete monopoly on media reach to the far parts of Liberia; (5) there are sufficient peacekeepers and, since they are already deployed throughout the country, there should be sufficient time for them to ensure nationwide security for all parties and voters as well as to permit early and frequent observation of party activity in the countryside; and (6) there will be, presumably, far fewer refugees in neighboring countries whose absence from the voting lists would provide a legitimate reason to claim that the election did not represent a fair sample of the population.

3. Effective and Fair Enforcement

Some conclusions jump out. Restrictions on the level of campaign financing will be more feasible, though still probably not fully enforceable. Given this fact, and the presumed difficulty that civil society parties may still have in raising adequate financing, there would seem to be a legitimate case for selective subsidies to parties that need them. While financial disclosure forms and other methods are sometimes useful to get at the supply of funding to parties, their utility in Liberia seems limited. Limits on the demand for funds would probably be more effective. There is a good argument for the

election commission and the international community to set strict limits on the amount of time each party can have to campaign via radio and television as well as in newspapers. There are also convincing arguments for restricting gifts to voters (such as rice, clothes and other enticements). The election commission and the international community should also consider whether to set thresholds of voter support that parties must have met in the 1997 election in order to register as parties and participate in the election.

It is hard enough to have limits and controls on campaign financing in developed countries; in Liberia, enforcing limits and controls would be hugely expensive or highly likely to fail. Nonetheless, this is not an argument for omitting such limits and controls in the rules and procedures; they should be there to notify people of the kind of behavior that can lead to punishment. But to expect them to be observed or enforceable would be naïve. Parties that have good financial backing will be unable to resist the temptation to take advantage of their poorer rivals, and it will be difficult, if not impossible, for the election commission or the international community to discover this and stop it.

Design and enforcement of limits and control on campaign finance in developing countries creates a fundamental dilemma that has no easy solution. On the one hand, these countries need to develop campaign finance laws and regulations to create a structure that will support free and fair elections. On the other hand, campaign finance laws that are not enforced, or enforced arbitrarily, can undermine respect for the rule of law. There is no easy solution to this dilemma.

Given that it is almost certain there will be cheating in Liberia's fragile political climate, one way to equalize access to resources among parties is for the international community, through donor organizations, to provide subsidies to those parties that deserve them. There must be strict limits on this practice as generous subsidies could be the cause of a proliferation of parties. There would have to be strict and independent auditing of parties requesting such subsidies and conditions as to their use. In addition, it would be very helpful if such subsidies could be structured so as to provide incentives to civil society parties to coalesce around a single candidate, especially if there is a well-heeled warlord with charisma in the running.

It is certain that there will be weaknesses in any system designed to regulate and control the supply of funds to political parties, and that Liberian politicians will find their way around even the best thought-out restrictions and limitations. Trying to compensate for these weaknesses and prevent all violations would be a very expensive proposition for the international community. It makes more sense for the election commission and the international community to emphasize the importance of limitations and restrictions on funding sources and levels but to concentrate its scarce resources on limiting the demand side of the ledger. In other words, it should place limits on the parties' campaign operations, so they will not perceive a significant campaign advantage in exceeding the funding limits. For example, one effective limitation would be on the amount of time (per day, week or month) that a party may campaign on radio and TV. Additionally, there would be a limit on the amount of campaign advertising parties could buy in newspapers. There should also be restrictions on gifts handed out to voters.

The key to achieving a level playing field is enforcement. And effective enforcement depends on the systematic use of sanctions against violators. The 1997 rules had sanctions, but the international community—primarily ECOMOG—did not use them due to the high risk that the offender (usually Taylor) would retaliate by withdrawing from the process and restarting the war; the Nigerians could not risk this. The ultimate sanction is to be removed from the ballot or not allowed to take office. This authority should not be given to an election commission alone. Ideally, the authority should be shared between the election commission and the governing international body—in this case, the UN. This would give an election commission the ability to withstand the almost certain pressure that

political forces would exert if threatened with removal from the ballot. It would also prevent financial considerations from influencing the independent election commission.

The election commission and the international community should create a hierarchy of violations so that the sanction of removal from the ballot would be employed only in cases in which the violation has the potential to influence the outcome of the election. There are a variety of other penalties that can be employed for lesser offenses. These include one or more of the following: fines, public censure, binding orders to stop certain practices, and deregistration of a party.

4. Funding from Undesirable Sources and to Undesirable Recipients

The 1997 election does not provide much guidance on effective political finance regulation. In that election, the undesirable recipients of funding were also the sources of their own funds. And, since the various faction leaders were legitimate contestants in the election, it was primarily the use of these funds that was objectionable.

In future elections, undesirable sources would be primarily warlords, former warlords, criminal elements or outside vested interests who are either directing funding to proxy political parties in order to buy influence after the election or to supposedly independent entities (such as the election commission or the police) in order to influence the election outcome. An example occurred during the 1997 election campaign, when the Government of Taiwan, very pro-Taylor because he favored recognizing it, provided a $1 million USD grant to IECOM, which was always desperately short of funds that were not controlled by donors. I think funding from such sources, particularly from Charles Taylor to his proxy party, are very likely in the 2005 elections (unless his Nigerian hosts are very alert to his likely attempts to interfere in the election).

There are foreign elements interested in exploiting Liberia's natural resources—the same elements that helped Charles Taylor strip parts of Liberia of its hardwood forests and its diamonds—or who see some commercial advantage in rebuilding Liberia. It is quite possible that these elements will attempt to make a comeback in Liberia, either in alliance with Taylor, his proxy or some other warlord. The international community, as well as Liberian civil society, will have to be alert to this possibility. In that sense, parties formed by former fighting factions would be undesirable recipients of funding from such undesirable sources, as would criminal elements, neighboring governments or outside organizations.

Preventing this scenario is no easy matter. Ultimately, the way to prevent it is to train the police and the judiciary to a level of expertise and probity that they can effectively prevent criminal enterprises from operating or punish them when apprehended. This is not likely in present-day Liberia. In the short run, it seems that the international overseer, the UN, must have the power to investigate allegations of such criminal activity and to work with the Liberian police and judiciary to bring its perpetrators down. The international overseer must also have the authority to publicize transgressions as they are uncovered in order that civil society can put political pressure on the police and judiciary to inhibit their receptivity to financial inducements from the criminals.

5. Money and Violence

The links between money and violence were clear before and during the 1997 election. The warring factions, especially Taylor's, had the money, and they got it through violence. There was a clear monetary incentive to continue the violence, because trusting their fortunes to an electoral process was very risky. Only Taylor had the power and the resources to risk an election, and of course he

used those resources, and the threat of that power, to make sure he didn't lose. In fact, once he had secured Nigerian support and knew that ECOMOG would not block his path to electoral power, the election was a surer path than war.

For the next election, the question is whether parties formed of the factions that drove Taylor out in 2003 will try to use the threat of violence, as Taylor did, to intimidate the electorate into voting their way. Even 15,000 peacekeepers cannot monitor the movements and behavior of party workers throughout Liberia. The best defense against the use of intimidation is trained election workers, in sufficient numbers, who can monitor party activity throughout the country. In addition, civil society party workers must be trained to be alert to efforts to intimidate voters or tilt the playing field in any way. Blatant attempts at general intimidation should be punished by removal from the ballot or by being blocked from taking office.

The factions that drove Taylor out and now share power in an interim government funded themselves through violence during the war, though they probably had some assistance from neighboring states. They may find it difficult—even if they wish to civilianize—to develop new sources of funding for political campaigns. They will be tempted to continue to find money from the sources with which they are familiar or even from resources they may still control through implied violence. The limits on their political campaign funds suggested earlier in this case study would place a constraint on them, but one they could easily ignore. This is another case in which placing serious constraints on the demand for funding through strict limits on media time and space, gifts, etc., will be much more effective and less costly.

The measures that I discussed earlier in this case study—supply-side restrictions on amounts/sources of funding and demand-side limits on media time, gifts, etc.—will not be fully effective in preventing some flow of funding from elements that rely on violence, especially to parties that have evolved from groups that got where they are by violence. The UN overseer, peacekeepers and the international community will have to be alert to this possibility and work with the election commission and civil society to discover and stop it.

The danger in Liberia, I believe, is that violence will continue to be perceived by the former fighters as the way to control resources and gain revenue, that it will still be seen as the path to power. That danger, presumably, is not immediate; with the presence of a large UN peacekeeping operation, Liberia will be secure through the next election. The question is whether that will remain the case when the UN peacekeepers leave.

6. Lack of Transparency and Security

In the 1997 election, security was a major and constant consideration, and concerns about it almost always trumped transparency. Security also became an element in determining the tilt in the playing field and is cited occasionally as an explanation of Taylor's victory. In particular, it is claimed that ECOMOG's slow deployment in the countryside caused the parties of civil society to delay sending their field workers out, and thus inhibited their ability to compete with Taylor's party. However, it is unlikely that ECOMOG's delay, or the delay of those party workers, made much difference in the result. Taylor won the election so convincingly because of his disproportionate resources, his organizational head start, his media monopoly and his subtle intimidation—all the factors that tilted the playing field steeply in his favor.

One example is the agreements between the major international observer organizations and the UN to do a "quick count" on election day to project the direction of the election, but to guard their results very closely so as not to set off problems from those who might wish to disrupt the process

rather than lose the election. The results were shared among the major international observer organizations, IECOM and ECOMOG, but were not made public.

Security should be less of a factor in the next election because of the presence of the large UN peacekeeping force. In remote locations, where ECOMOG is not present, intimidation of voters is possible, but it is doubtful that this will change the outcome. There remains a difficult tradeoff with transparency, more difficult now that security is less of a concern. Transparency (particularly as to the sources and amounts of funds) and the parties' adherence to the rules, regulations and guidelines set out by the election commission are important to the maintenance of a level playing field.

Transparency will also be important in the process of setting those rules, regulations and guidelines. However, security cannot be overlooked, especially in countries such as Liberia in which violence is endemic after so many years of conflict. To the participants, given the zero-sum-game African political culture, the stakes are perceived as very high because they involve access to resources. In Liberia's recent history, it is clear that violence has been a frequently used method of gaining such access.

7. Abuse of State Resources and Fair Access to Media

In the background section above, I noted that one of the powerful factors that tilted the playing field in Taylor's favor in the 1997 election was his monopoly of the only available media in the countryside outside Monrovia. He controlled the only two short wave radio stations in the country—KISS Radio and Radio Liberia International. Though the United States and other donors desperately tried to get a competing short wave station up and running so that other parties could reach the rural voters with their programs and pledges, it came into operation only a few days before the election.

On paper, IECOM, with much help from the international community, constructed an election process with clear provisions meant to ensure a level playing field. The Nigerians, and to a lesser extent, the other regional actors in ECOMOG, did not share a commitment to these provisions. This created divisions in the international community that induced paralysis when it came to rebalancing the playing field, and the result was an election that was seriously flawed. However, if the newly elected leader had been inclusive of his former military and civilian foes, and if he had carried out his pledges to reach out and rebuild the country both economically and emotionally, those flaws might have diminished in importance over time. Instead, Charles Taylor came to power determined to consolidate his power and get rid of his remaining enemies, which he tried to do brutally. It was a formula that guaranteed that the war would flare up again as soon as his enemies collected enough weapons and men to take him on.

8. Using "Trust Funds" and Free Broadcasting to Create a Competitive Environment

It seems clear to me, from the above description of Taylor's firm monopoly on the media during the 1997 election, that some sort of free broadcasting for the opposition parties would have been a good idea. In fact, that was the idea behind our attempt to start up a short wave radio station for the other parties to use. However, we ran out of time. Perhaps the other solution to Taylor's media monopoly would have been for the international community to compel his stations to give equal time to the other candidates. That would have required firm Nigerian support, and the threat of ECOMOG force, to which Nigeria would have never agreed. It would have also required a serious threat to take Taylor off the ballot if he did not comply. The Nigerians would not have agreed to that either.

I noted above that, in 1997, Taylor's disproportionately large resources allowed him to outspend his rivals many times over—and to violate the spending limits. In that election, perhaps donor funds should have been used to support the campaigns of some of the other parties. (In my view, this should have been limited to the civil society parties, excluding not only Taylor's party but also the other parties created from the warring factions and led by their warlords.) This would not only have helped to level the playing field but also it could have been used as an inducement for these parties to stick together and run one candidate against Taylor and his fellow faction leaders.

However, it should be understood that neither free broadcasting nor funding civil society parties would have changed the election. Taylor would still have won. What such actions—and there are many more mentioned above—would have done is to remove the legitimate reasons for Taylor's civilian and military opponents to reject the election. Of course, his opponents would have rejected it anyway given Taylor's oppressive policies after he won.

9. Recommendations

There is not much in the way of success to put in a summary of the 1997 Liberian election; it was, in most ways, a failure. Primarily, it failed to restore the stability needed to begin the recovery from a long devastating conflict. Its flaws, which led to its rejection by most elements of Liberian civil society as well as by Taylor's factional enemies, helped to perpetuate the conflict for another six years. This failure created the political conditions that required another costly international intervention to again stop the appalling human suffering that the country's leaders had brought upon its people and to try to restore peace and stability.

Yet those in the international community who provided the technical assistance to IECOM can look back with some pride; they were instrumental in pulling off, in an almost impossibly short period, an election that was technically almost miraculous—rules, regulations, ballots, boxes, poll workers, vote counting, transport—all those important ingredients were successes (though, through many crises, they often looked to be in peril), and this technical brilliance produced, at least, a vote judged by hundreds of foreign observers to be free and fair.

I have limited the recommendations that I drew from the above sections to the issues of political finance. These recommendations are general in nature, reflecting the need to make them applicable not only to the next election but to those that will follow.

1. There should be a formalized, official set of rules and procedures that are designed to ensure that no party or candidate will have a disproportionate amount of financial resources to spend on an election campaign. Limitations and constraints on the supply side (i.e., prohibitions on spending above a certain limit and constraints on who can supply such funds) should be formally inscribed in the election rules and approved by all the competing parties; financial disclosure procedures should be an integral part of the bargain for their warning value, and for the practice. More emphasis and enforcement should be devoted, however, to the demand side (i.e., how, where and on what the money can be spent).

2. The limitations on the demand side should constrain precisely and firmly political party campaign operations. There should be limits on campaigning hours per week (or day) per party on TV and radio on each station or channel. There should be limits on the amount of space permitted each day for political advertising in newspapers or magazines. There should be limits on amounts parties or candidates may spend on gifts and giveaways (e.g., bags of rice or T-shirts).

3. Provisions stating that parties may apply for subsidies from international donors should be considered. If enacted, these subsidies should be strictly limited so as not to be additional to the amounts set out as overall spending limits. Financial disclosure of subsidies should be mandatory, the applying parties must submit to outside audits, and parties receiving subsidies have to meet a formal set of conditions as to behavior, makeup, how leadership is chosen, etc. These subsidies should be structured so as to provide an incentive for smaller civil society parties to coalesce with larger civil society parties around a common candidate.

4. Enforcement is the key to success, and it should be certain, systematic, swift, incorruptible and transparent. There should be a hierarchy of violations linked to a hierarchy of sanctions. The ultimate sanction should be removal from the ballot or prevention from assuming office. The lesser sanctions could include fines, public censure or binding orders to stop a practice, and these could be used individually or in combination.

However, the serious flaws in the 1997 election would not necessarily have been avoided by stronger rules and regulations alone. Strict enforcement of the rules and regulations would, of course, have made them meaningful. But the severely tilted playing field that was the basis of the ultimate rejection of the election resulted primarily from a time frame that was far too short. The fundamental problem was an incoherent international community that allowed the political decisions on the timing (as well as the type of election) to be driven by the lead regional member whose political priorities were to find a way to exit, and who did not consider other post-conflict goals—such as building democratic institutions, instituting the rule of law, restoring state services and bringing back refugees—to be political objectives in Liberia. In addition, they apparently did not understand that these things go hand-in-hand with sustainable political stability. This is the basic lesson to be drawn in the run-up to another election.

10. Summary

In retrospect, it is clear that the 1997 election was a costly detour to a stable Liberia and that it has taken the international community a number of additional years (at a cost of hundreds of millions of additional dollars) to return Liberia to its people and a secure and stable existence. An election held with less haste and with a more level playing field would, at least, have had some chance of avoiding the long delay and the additional years of misery Liberians suffered.

The long list of serious flaws in the 1997 Liberian election flow from one fundamental miscalculation—the time frame was far too ambitious and naïve. It was a rush to judgment because of the Nigerian desire to be done with its long, expensive intervention, and the western donors' fatigue and unwillingness to provide more than passive financial support to the West Africans who bore the military and political responsibility. The miscalculation also involves a misreading of Charles Taylor, who many thought might just emerge from a victorious election a changed man, ready to lead his country back to peace and prosperity.

With proper time to prepare and proper donor policies, most of Taylor's advantages might have been offset. The donor radio station—had it had six months to a year to operate—could have given the other parties a media outlet in the rural areas. Donor funding could have helped to right the enormous financial imbalance between Taylor and the other candidates. It might even have pulled some of the civil society parties together into a common ticket. Much more time was needed to correct those imbalances. What donor policy could not have done was to offset the subtle intimidation of the Taylor campaign. His threat of restarting the war if not elected could only have been attenuated by time. How much time is unclear; the election was held at least a year too early, and maybe more.

Political finance seemed a major flaw at the time of the 1997 election campaign. In retrospect, the disproportionate resources controlled and used in the election by Taylor probably did not account for his smashing victory. For example, Taylor won 55 percent of the vote in the most urban county in which the civil society candidates ran most strongly, the only county in which he did not control the media and where the election was most closely monitored. That he could win convincingly in what he thought of as enemy territory indicates that there was more at work than just money, big gifts, media monopoly or his promises for the future. Looking back now, most analysts think that the Liberian voters believed that only Taylor could (and would) restore peace to their lives.

Mozambique

By
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1. Introduction

Mozambique's independence movement began in the late 1950s and later became the anti-Portuguese Front for the Liberation of Mozambique (FRELIMO) in 1962. In 1964, FRELIMO began an armed insurrection against Portuguese colonial occupation. A 1974 military coup in Portugal and FRELIMO's military campaigns created the conditions for the independence of Mozambique in 1975. Subsequently, and as a result of Mozambique's support for the liberation movements in Rhodesia (today Zimbabwe), a dissident Mozambican National Resistance (RENAMO) was created by Rhodesia in 1977. The period from 1977 to 1982 was characterized by a bloody civil war between RENAMO and the FRELIMO government.

Mozambique joined the International Monetary Fund and the World Bank in 1984, thereby initiating a shift towards a market economy. In 1989, the FRELIMO Party Congress formally rejected Marxism, and the following year the government adopted a new constitution ending FRELIMO's one-party monopoly and allowing multiparty elections. In late 1990, peace negotiations between FRELIMO and RENAMO began. The General Peace Agreement was signed in Rome on October 4, 1992:

> The accords established the principles and methods for achieving peace. They included a cease-fire, demobilization of both armies, and formation of a new unified army before national elections to be held one year later. Also provided for was UN verification and monitoring of the political, military, electoral, and humanitarian portions of the accords.
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> …Elections were incorporated in the accords as an integral part of the peace process. The one-year timetable, though, proved unrealistic. Elections were ultimately held two years later.[1]

The General Peace Agreement established the mechanisms for the development of the electoral law, the formation of political parties and the implementation of multiparty elections.

The United Nations Operation to Mozambique (UNOMOZ) was established by Security Council Resolution 797 of December 16, 1992, to help implement the General Peace Agreement. The mandate of UNOMOZ included providing technical assistance and monitoring the entire electoral process, which required verifying that the conditions necessary for a legitimate electoral process were in place prior to holding the elections.

[1] USAID, "From Bullets to Ballots: Mozambique's Vote for Democratic Governance," Electoral Assistance to Post-Conflict Societies, Center for Development Information and Evaluation (Washington, D.C.: USAID, 1997), pp. 3-4. <http://pdf.dec.org/pdf_docs/PNABY248.pdf> (June 1, 2005).

As noted above, elections were postponed from the agreement's original schedule:

> Several practical issues caused the delay, including the amount of time required to draft and adopt an electoral law politically acceptable to both RENAMO and FRELIMO. Time was needed as well to create an election structure that could not only balance the two factions' competing political interests but also effectively implement national elections in a war-torn country with no history of competitive elections. Political will was also an issue. Throughout the process, both sides created deliberate delays and roadblocks. The UN Secretary General had to intervene personally to effect an agreement on the electoral law. Demobilization did not take place until unhappy troops mutinied, forcing the process to proceed.[2]

In such a hostile post-conflict political environment, the use of "trust funds" to finance the election campaigns of participants proved an essential mechanism to ensure the participation of RENAMO and smaller parties. Thus, as a case study in political finance regulation and disclosure in post-conflict societies, Mozambique is particularly notable in illustrating the use of such "trust funds" to reduce political tensions and facilitate electoral competition. This study focuses primarily on the 1994 elections that followed the end of the civil war in Mozambique, but also includes a discussion of 1999 elections in a later section.

2. Legal and Administrative Framework

The electoral law was passed by the National Assembly of Mozambique on December 9, 1993, and came into force on January 12, 1994. The law established an independent Mozambican body, the National Elections Commission (CNE), to carry out the presidential and legislative elections.

The CNE had 21 members. Originally, it was intended to have seven representatives each from RENAMO, FRELIMO and a group of smaller parties. Later, as a result of negotiations on the electoral law, the CNE was composed of 10 representatives from FRELIMO, seven from RENAMO and three from unarmed opposition parties, as well as one president selected by the commission. On February 2, 1994, the members of the CNE unanimously chose Brazão Mazula as president. Mazula, a scholar with no affiliation to any political party, ultimately proved to be an effective consensus-builder, and the CNE seemed to develop a shared sense of commitment to conducting the elections fairly. The CNE officially began its activities on February 15.

In accordance with the provisions of the electoral law, a Technical Secretariat for Elections Administration (STAE) was created to give technical support and assistance to the CNE. This Secretariat started its work in February, although a specific legal framework for its operation was not established until April 1994. The lack of trust between the political parties required political balance in this administrative body; each STAE office included heads appointed by both FRELIMO and RENAMO.

The electoral law also provided for the creation of an Electoral Court, composed of two national judges and three international judges, the latter appointed by the UN Secretary General.

The President of Mozambique, Joaquim Chissano, announced general elections for October 27 and 28, 1994. Both the UN Secretariat and the UN Development Programme (UNDP) played important roles in assisting in the preparations for elections. The UNOMOZ Electoral Division monitored the whole process. The UNDP provided technical assistance to the CNE and STAE in carrying out the provisions of the electoral law.

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[2] *Ibid.*, p. 4.

3. Political Parties

Presidential candidates representing 12 political parties ran in the 1994 election; 14 parties and coalitions competed in the 1994 legislative elections for the National Assembly of the Republic. The electoral law provided for elections to the National Assembly to be conducted through a proportional representation system with a threshold of 5 percent of the national vote in order for a party or coalition to receive a seat. Only FRELIMO, RENAMO and the União Democrática (UD) met the threshold for representation.[3]

Based on the country's history of violence between two competing political elements, the story of political party development and support in preparation for Mozambique's 1994 elections mainly revolves around the use of political finance trust funds. Use of these funds brought the principal non-incumbent political element (RENAMO) into the process and in general provided resources for a more competitive electoral campaign for all participating parties. However, as observers have noted, the relatively generous funding mechanism was at odds with the electoral system's incentive for coalition-building in legislative elections in order to meet the 5 percent threshold for representation in the National Assembly:

> Mozambique lacked viable opposition parties. At the signing of the peace accords, RENAMO was an armed guerrilla movement, and the unarmed opposition parties were based on individuals without party structures or members. Donors provided resources so they could organize and compete. Without the RENAMO Trust Fund, RENAMO could not have competed in the elections. RENAMO was transformed from a politico-military group to a political party capable of undertaking a national electoral campaign and then serving in the assembly. The transformation was key to the success of the peace process.
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> The unarmed opposition parties, however, tended to play a spoiler role. Their trust fund, which provided equal amounts to all parties regardless of size or credibility, discouraged the coalition-building required to reach the 5 percent threshold.[4]

Moreover, the trust funds only provided funding to political parties for electoral campaign activity and did not provide ongoing assistance to parties for administrative expenses or institutional development.

4. Funding from Undesirable Sources

The use of trust funds for distributing public financing to political parties in 1994 did not preclude private financing for electoral campaign activities. Political parties were permitted to engage in fundraising activities for contributions from their party members, from individuals and from nongovernmental organizations. Parties were prohibited from receiving funding from foreign governments, government institutions or public enterprises.

Little information is available regarding the extent or sources of private funding in Mozambique's 1994 electoral campaigns. Reasonable rules were in place to require parties to account for all their

[3] On November 19, the Chairman of the CNE formally announced the election results. President Chissano, received 2,633,740 votes (53.3 percent) of those cast in the presidential election, and the leader of RENAMO, Afonso Macacho Marceta Dhlakama, received 1,666,965 votes (33.7 percent). In the legislative election, FRELIMO received the largest share of the votes with 2,115,793 (44.3 percent), followed by RENAMO with 1,803,506 votes (37.8 percent) and the União Democrática (UD) with 245,793 votes (5.2 percent).

[4] USAID, "From Bullets to Ballots," pp. 19-20.

sources of income and expenditures, but reporting and public disclosure appear to have been wholly ineffective. More attention was focused on financial accountability for the public funding disbursed through the trust funds, with limited success.

RENAMO and the smaller political parties had little capacity for raising private donations, since party membership was small and their members generally poor. FRELIMO was more successful in raising donations from its larger party organization, though these funds may have been used more for administrative purposes than for the electoral campaign. And, as noted below in Section 6, FRELIMO enjoyed the significant advantages of incumbency in both use of state resources and in fundraising from private businesses that were highly government regulated (and in discouraging contributions from such businesses to other parties). Based on reports from the 1999 elections, discussed below, it is unlikely that private funding played a significant role in the 1994 campaigns of any other parties.

5. Use of the "Trust Fund" to Create a Competitive Environment

Trust funds providing public financing for electoral campaigns are generally intended to:

1. Produce a more "level playing field" among electoral participants by reducing the advantages of larger or incumbent parties and giving parties with fewer resources an adequate floor of funding;

2. Diminish party reliance on private funding from potentially corrupting special interests or on abuse of state resources; and

3. Facilitate transparency in political financing by including financial accountability as a condition of receiving public funds.

Thus, trust funds are seen as an important mechanism for creating a more competitive and honest electoral environment.

In the case of Mozambique's 1994 elections, the significance of the trust fund mechanism went beyond serving these traditional values for public funding. The trust funds became a key means of maintaining the participation of hostile political rivals in the election:

> The international community used donor resources as leverage to ensure continued RENAMO and FRELIMO participation. In May 1993, 14 donors contributed $18 million to establish the UN Trust Fund for the Implementation of the Peace Process in Mozambique (called the RENAMO Trust Fund). The purpose was to help RENAMO transform into a political party and to balance FRELIMO's access to public resources for elections. RENAMO had to believe it could compete in the elections; otherwise, donors feared, it would return to using force.
>
> A similar fund, the Trust Fund for Assistance to Registered Parties in Mozambique, was created in July 1994 for the 18 unarmed opposition parties that had not participated in the civil war. This $3 million fund was used to strengthen the organization of the other parties so they could compete in the elections more effectively.[5]

[5] *Ibid.*, p. 5.

On October 26, 1994, one day before the two-day elections were to begin, RENAMO claimed fraud in election preparations and announced it was withdrawing. The CNE unanimously rejected the claims of fraud. The international community strongly encouraged RENAMO to rejoin the political process. Early on the second day of voting, October 28, RENAMO agreed to return to the elections, after receiving a written guarantee from the international-donor-supported Commission for Supervision and Control that it would closely monitor the elections and that an additional $1 million would be added to the RENAMO Trust Fund.[6]

The CNE established rules and procedures for the distribution, use and financial accountability of the trust fund public financing. The CNE determined that the funds could not be used to purchase real property or vehicles or to hire workers on behalf of the party. The CNE decided that the funds were to be paid through installments. A "good faith" down payment was made to each participating political party, evenly distributed among all recipient parties. The second installment was paid only after recipients disclosed their accounts to show how they had used the money they had already received. Only about half of the small parties competing in Mozambique's 1994 general elections submitted the required accounts and received the subsequent installments.

Nevertheless, the UN was widely criticized by the international community and local news media following Mozambique's 1994 general elections for distributing public campaign funds without appropriate control mechanisms. The media accused political parties of using public funds to buy cars and houses, although apparently no official complaints were forwarded to the CNE or the Electoral Court regarding misuse of public funds. Also, some small political parties were viewed as having been formed solely in order to receive the largely internationally sponsored funding.

Moreover, in 1994, the government and election authorities took six months to organize the trust funds and determine criteria for allocating funds, and then another three months to actually begin disbursing the money. RENAMO and the smaller parties complained that the funds came too late in the electoral campaign process.

6. Free Media, Fair Access to Media and Abuse of State Resources

The immediate post-conflict environment for Mozambique's 1994 general elections involved moving from one-party rule to multiparty democracy, with a predominant challenger to the former ruling party. One-party regimes have enormous inherent advantages of incumbency upon entering any new political competition. Some advantages of incumbency are relatively benign and unavoidable, if nevertheless significant. Unless wholly discredited by recent events, former ruling parties usually have a presumption of competitive strength, strong and broad-based party organizations, easier access to privately raised campaign funds, and an infrastructure of government and personnel that can be utilized to support the electoral campaign in a manner that skirts the edges of illegality.

In Mozambique's 1994 presidential and legislative elections, FRELIMO reportedly used all its advantages of incumbency up to and perhaps beyond the limits of legality. The most egregious alleged conduct involved travel of the president and other government officials throughout the country ostensibly for official business that clearly served a political purpose; use of government vehicles, facilities and other resources for campaign activities; and biased reporting by government-controlled media outlets.

[6] The brief RENAMO boycott of the election on the first day apparently did not discourage voter turnout (perhaps because of poor communications to RENAMO's base of support in rural areas). Ultimately, 87 percent of all registered voters cast ballots, with 60-70 percent voting on the first day. *Ibid.*, p. 9.

The principal means for overcoming FRELIMO's incumbency advantages in the 1994 general elections was, of course, the use of trust funds to provide public financing for RENAMO and smaller parties in an effort to "level the playing field." Another key provision of the electoral law was to provide free advertising time on public radio and television on an equal basis for all participating political parties.

One ironic outcome of providing free media time to all participating political parties is that the media placements tend to reflect and exaggerate the relative resources of the parties. Parties that are well-organized and well-funded are more capable of using their free air time effectively, including by hiring media consultants and producing higher quality programs and spots. Indeed, it appears that many small parties simply did not use the radio and television time made available to them because they did not have sufficient resources to prepare material for broadcast.

Moreover, this free media access is limited to public radio and television stations, which do not have extensive coverage outside cities in Mozambique. Also, print media do not effectively reach out to rural voters either, since those voters are largely illiterate.

As one observer summarized:

> The electoral law guaranteed equal access to the state media, with free radio and television time for candidates. But RENAMO and the unarmed parties lacked the experience to take full advantage of these opportunities. As the sitting president, Chissano used the media skillfully, turning official events into prime-time campaign coverage. The state-run press was noticeably pro-FRELIMO and criticized the resistance for alleged violations of the peace accords. For its part, RENAMO established its own magazine and radio station, which it used to criticize the FRELIMO government. Despite frequent press reports of accusations by the political parties of electoral malfeasance, no official complaints were made to either the Elections Commission or UNOMOZ on the media campaign.
>
> Members of FRELIMO, as the party in power, had access to government resources, both human and material. Candidates used those resources extensively for their campaigns. According to a U.S. State Department report, they also used government powers to coerce campaign contributions from local businessmen. The need to create a more level playing field was one of the major reasons for creation of the trust funds for RENAMO and other registered parties.[7]

7. Effective and Fair Enforcement

Reports regarding Mozambique's 1994 general elections generally give the CNE credit for effective and even-handed administration of the election process (although the independence of the CNE and of its supporting STAE bureaucracy since 1994 may not be as praiseworthy). But there is little attention given to the operation of a formal complaint-adjudication system. The Electoral Court does not seem to have played any significant role, at least with respect to political finance issues. Some complaints were apparently directed to UNOMOZ for informal processing. Enforcement of political finance regulation and accountability requirements seems to have focused on public financing of electoral campaigns. As previously discussed, CNE was widely criticized by the international community and local media for allowing misuse of such funds through the absence of adequate financial controls and accountability.

[7] *Ibid.*, p. 8.

8. Lack of Transparency and Accountability

Not surprisingly, in a poor country with a history of violent conflict, it would be difficult to obtain a commitment to transparency and accountability in Mozambique's political finance system. The heavy reliance on trust funds created an opportunity to impose and enforce requirements for financial accountability for such funds. As discussed above, enforcement of these requirements in the 1994 elections had limited success; half of the small parties were denied continued public funding for failure to properly account for their first installment of funds, which should serve as an incentive for accountability. Media reports widely alleged misuse of public funds by political parties for ineligible (and essentially private) expenditures, which suggests a lack of transparency in their financial recordkeeping and reporting.

The financial requirements and controls regarding distribution and use of public funds were improved for the 1999 elections, as discussed below. To the extent that private funding resources are important in promoting competitive and fair electoral campaigns in Mozambique (private funding is probably increasingly significant for FRELIMO and, to some extent, RENAMO), a continuing challenge will be to tighten and enforce limitations on and disclosure of non-public campaign funding sources and to enforce requirements for parties to annually report their receipts and expenditures outside the electoral campaign period.

Moreover, obtaining political finance information reported by political parties to the CNE requires following a formal and advance approval process. The CNE does not publicize political finance reports of political parties but merely announces whether the reports have been accepted or rejected.

9. Money and Violence

Mozambique's 1994 presidential and legislative elections were generally viewed as free from serious violence and an important step forward in the peace process.

As described above, the use of political finance trust funds to provide financial support to RENAMO and smaller parties succeeded in encouraging participation and creating a more competitive electoral environment. Thus, it appears that neither money nor the lack of money in the political process encouraged violence in this post-conflict society. Two other factors also deserve mention.

First, the participating political parties agreed to avoid violence in the electoral process:

> Most of the parties signed a code of conduct that laid out the rules for a fair and nonviolent election campaign. UNOMOZ arranged several signings of the same code of conduct at the provincial and district level. The multiple signings ensured that the concept of fair play reached beyond the capital.[8]

Second, the UN observation of the electoral process began in June 1994. The Mission deployed more than 100 long-term observers throughout the country. According to reports of the UN Secretary General, the observers were charged with monitoring voter registration, civic education campaigns, the press, and the activities of political parties and their leaders before and during the electoral campaign. They were also responsible for receiving complaints from individuals or political parties and forwarding them to the CNE.

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[8] *Ibid.*

The electoral campaign was generally peaceful. UNOMOZ received less than 30 complaints, and none of the incidents were serious enough to interrupt the process. The Special Representative of the UN Secretary General declared that, based on reports from international observers, the elections could be considered free and fair.

10. The 1999 Elections

Despite criticisms of the UN-administered trust funds employed in the 1994 elections, an international donor effort that included funding of election campaign activities of political parties was organized for the 1999 elections.[9] On September 30, 1999, the United States entered into an agreement with the Republic of Mozambique through a USAID grant that involved a half-million dollars for "a nonpartisan, transparent, and accountable public campaign finance facility in order to provide campaign support to Mozambique's political parties" and another half-million dollars for "defraying other unanticipated government electoral costs."[10] The Netherlands, Switzerland and Sweden entered into similar agreements to provide public campaign support for Mozambique's 1999 elections. In its agreement with the United States, the government of Mozambique was also obligated to make a significant commitment from its own budget funds to the campaign financing fund. Ultimately, up to $2.4 million USD was made available for public support for political parties (although not all of these funds were distributed).

10.1 Legal and regulatory framework

Mozambique held legislative and presidential elections on December 3-5, 1999. Chapter III of the Election Law passed by Mozambique's Parliament one year earlier established the legal framework for funding the political campaign by:

1. Obligating the government of Mozambique to include a budget item for financing the electoral campaign;

2. Empowering the CNE to determine criteria for distributing public funds to political parties for use in the electoral campaign;

3. Requiring that the criteria for distributing public funds to political parties be based on the principle of proportionality, according to the number of candidates on the list of a party or coalition and the number of seats to be filled;

4. Holding political parties responsible for accounting for public funds received and requiring parties to reimburse the CNE for funds that were received but not spent or misspent; and

5. Providing for the CNE to audit expenditures by political parties and to inform the Office of the Attorney General if parties failed to comply with procedures for using and accounting for these funds.

Under this framework, political parties, candidates and electors were permitted to contribute to electoral campaigns, and political parties were allowed to carry out fundraising activities. Nongovernmental organizations and international organizations were permitted to contribute to

[9] A thorough discussion and evaluation of international support for public campaign financing in Mozambique's 1999 elections is provided in Deborah Schein, "Supporting Electoral Choice: Political Party Electoral Campaign Finance Program" (USAID/Mozambique, July 2000), which is summarized in part and relied on extensively herein.

[10] USAID Grant Agreement No. 656-0247. 30 September 1999.

campaign funds. Foreign governments, governmental organizations and institutions or public enterprises were prohibited from direct funding of political parties or candidates, but such entities were allowed to contribute to the government account used to finance the campaigns of participating political parties.

To avoid abuse in receiving and spending public funds, as had been alleged in the 1994 elections, tighter regulations and financial controls were introduced for the 1999 elections:

1. Establishing strict criteria for eligible expenditures;

2. Requiring political parties and coalitions to identify a specific person within their organization who would be responsible for opening the bank account and controlling and reporting expenditures;

3. Requiring submission of purchase receipts;

4. Dividing distribution of funds into three installments, so that subsequent allocations of funds could be reduced or denied if a proper accounting was not made for previously distributed installments;

5. Imposing legal penalties for violations of the law or CNE regulations regarding campaign financing; and

6. Conducting an independent audit and expenditure review (by Deloitte & Touche).

Four days before the official start of the electoral campaign, the CNE/STAE conducted a seminar for political parties participating in the elections to provide a detailed explanation of the procedures for disbursement of public funds and for financial accounting of used funds. Deloitte & Touche prepared a manual for the seminar describing the procedures, including forms for complying with accounting and reporting obligations.

10.2 Distribution of public funds

As noted above, the CNE had the authority to determine the formula for distribution of public funds for the electoral campaigns for presidential and legislative elections. The CNE decided that the total public funds for electoral campaign purposes would be divided into three parts for distribution:

1. One-third allocated equally between the presidential candidates;

2. One-third allocated to the three political parties then represented in the Assembly of the Republic; and

3. One-third allocated to all parties and coalitions fielding legislative candidates, in proportion to the number of seats each party or coalition was contesting.

This formula had the benefit of simplicity in administering and explaining. And by allocating more funds to parliamentary parties than to extra-parliamentary parties, this approach was less likely to encourage new parties to form in order to seek funds rather than to seriously contest the elections (as had been alleged in 1994). However, the CNE established the formula after parties and coalitions had been registered and candidacies approved and thus did not affect political behavior in these elections.

The most serious complaint about distribution of public funds in the 1999 elections involved the timeframe for implementation. Under the electoral law, funds could not be disbursed until the number of candidates fielded by each party or coalition was verified, which did not have to be completed until nine days *after* the official start of the electoral campaign. The delay in distributing funds before the start of the campaign obviously had more adverse effects on RENAMO-Electoral Union (UE) and the smaller parties than on FRELIMO.

10.3 Use of private funding

Although use of government resources in the campaign was prohibited, FRELIMO continued to have the traditional advantages of incumbency, including a strong party organization and the ability to more easily raise funds from private sources. FRELIMO reportedly spent $4 million USD for its electoral campaign, of which only 17.5 percent was from public financing. The RENAMO/UE coalition had much less success with private fundraising, as its supporters were predominantly rural, and it did not have access to donations or credit from the business community. Indeed, RENAMO/UE did not start its campaign until two weeks into the official campaign period because of a lack of private funds and the delay in distribution of public campaign funds. Outside financing was also virtually non-existent for small political parties.

10.4 Result

The public financing program in Mozambique's 1999 general elections eventually distributed $1,890,943 USD to political parties and coalitions, of which $1,801,014 USD was determined to have been used for eligible campaign expenditures. Two parties were not provided their entire entitlement because they failed to justify their initial allocation; all others received their entire entitlement of funds. Four parties, including FRELIMO and RENAMO/UE, accounted for 100 percent of their allocation. Eight parties failed to fully account for $89,929 (collectively) in funds received.

An evaluation report prepared for USAID/Mozambique in 2000 regarding political funding in Mozambique's 1999 elections observed:

> Even though the compressed [electoral] deadlines created an additional burden, and some evidence of limited misuse of funds existed, by and large the [political party training] seminar, criteria for legitimate and illegitimate expenses, and other procedures established considerably diminished the misuse of funds … This is reflected by the fact that, compared with 1994, the primary criticism leveled by the local media was linked to the tardy disbursements of campaign finances and not their misuse.[11]

11. Recommendations

The trust fund mechanism has afforded the international community leverage in demanding increasing accountability for use of public funds by political parties since 1994 (at the risk of their losing access to these funds). The continued dependence of Mozambique's political stability on the trust fund mechanism gives the international community further leverage that should now be maximized to promote expanded electoral reform in Mozambique, including to:

1. Demand compliance by political parties with all existing political finance regulations, including limitations on sources of private funding and, particularly, requirements for complete reporting and disclosure of all political party financial activity, both during the

[11] Schein, "Supporting Electoral Choice," p. 10.

electoral campaign period and in annual accounting of political party organizational fundraising and expenditures.

2. Improve and expand the legal framework for regulation, financial reporting and public disclosure under Mozambique's political finance system.

   - Undertake a comprehensive review by the national assembly of the electoral law and regulations related to political finance regulation and reporting, and draw upon public hearings and inputs.

   - Develop an enhanced enforcement system of appropriate and graduated penalties for non-compliance with political finance regulations and reporting obligations (going beyond the sanction of denial of public funding), and give CNE sufficient authority and resources to implement a new and broader enforcement regime.

   - Clarify legal responsibilities and increase training for financial officers in political parties that are responsible for their party's political finance recordkeeping and reporting.

3. Support development of nongovernmental organizations that can focus on issues of political finance regulation, fairness and transparency.

4. Strengthen the investigatory and adjudicative mechanisms that can discourage both abuse of state resources and misuse of the advantages of incumbency by FRELIMO, particularly in raising private political contributions through intimidation or special treatment of the business community and other special interests.

12. Summary

Mozambique provides a unique case study for political finance regulation and disclosure. Its political finance system heavily relies on trust funds (largely supported by international donors) to provide public funding for the electoral campaigns of political parties participating in general elections.

Introduction of this public funding mechanism undoubtedly succeeded in reducing political tensions and encouraging the participation of RENAMO and other parties in the 1994 presidential and legislative elections. Thus, as a means of facilitating a peaceful transition to democratic elections in a post-conflict society, the example of Mozambique supports the value of trust funds for public funding of electoral campaigns in such an environment.

The case of Mozambique provides a less compelling argument that public funding mechanisms alone can truly "level the playing field," even when employed over a series of election cycles. The use of these trust funds certainly permitted an adequate level of political competition in the 1994 elections to allow general acceptance of their legitimacy. According to observers of the 1999 and 2004 general elections in Mozambique, and from the election results themselves, the continuing use of public funding of the electoral campaigns of political parties has managed to maintain an adequate status quo of reasonable competition. But this system does not appear to have significantly shifted the political power balance in Mozambique, nor altered the strong advantages of incumbency enjoyed by FREELIMO.

This result does not necessarily argue for the termination of international support for such trust funds in Mozambique. RENAMO and smaller parties clearly have an interest in continuing this

system to fund their electoral campaigns. It is clearly in FRELIMO's interest to keep its political competitors participating in the electoral process to prevent a return to political instability and violence.

Thus, the trust fund mechanism has been successful in Mozambique and continues to be needed. This affords the international community sufficient influence to challenge the FRELIMO-dominated government to enact further reforms in the political finance area and advance the goal of truly free, competitive and transparent elections in Mozambique.

CONCLUSION

Contemplating Political Finance Reform in Post-Conflict Environments

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The post-conflict societies examined in these case studies faced significant and unique challenges presented by recent legacies of violence and, in most cases, authoritarian or one-party rule. This examination of political finance in such societies demonstrates the extreme difficulties of developing and implementing complex political finance systems. The cases show that in addition to challenges that are either unique to or exacerbated by post-conflict environments, typical problems confronted by even advanced democracies in regulating political finance—particularly in enforcement—are more clearly exposed and compounded in the special circumstances of post-conflict situations.

As noted in the introduction, the case studies should serve to improve our understanding not only of post-conflict situations, but also of how to rally international support for democratic transition under such circumstances. The introduction also posed this fundamental question:

> For purposes of advancing democracy and peace building—and discouraging violence, intimidation or the influence of political funding from undesirable sources—what are the fundamental steps or minimum requirements for creating a viable political finance system in post-conflict societies?

Not surprisingly, these case studies do not offer many success stories if we apply expectations or standards that are used in established democracies. The lessons learned present reasons for caution, but should not discourage the international community from ignoring this challenge. Yet it is precisely the challenging atmosphere of these post-conflict situations that may give the international community more opportunity than previously recognized to introduce political finance systems as both a necessary and attainable attribute of peace building and democratization.

A review of these cases indicates that the fundamental steps necessary for creating a viable political finance system in post-conflict societies (see Appendix 1) include the following:

1. Gathering and assessing information about direct and indirect financial flows among and between political and business elites, international investors, international aid programs, neighboring regimes, diaspora groups and organized crime/terrorist networks. Information should also be gathered on assets—those held inside/outside of the country, held by a political party or held by individuals that formerly controlled that country's regime. Such information should be collected during the conflict so that the international community is well prepared for the post-conflict situation. Whatever information there is, it will most likely be the tip of the iceberg. Yet it should be acknowledged that while the international community will be working with imperfect information, the collection of such information will enhance the ability to better understand the underlying features of the conflict, relations among/between stakeholders (including their financial interests), and challenges being faced in democratizing a post-conflict society. This information should be

analyzed and made available prior to the negotiation of a peace agreement and basic framework.

2. Recognizing that the establishment of a political finance system should be a priority and defining the role of such a system in the planning and implementation of post-conflict elections early in the post-conflict planning. Early in the process, the international community should reach a consensus about the scope of its mission, resource commitment and timeframe for the operation as each of these issues will have a direct impact on the establishment of a political finance system,[1] including components such as disclosure and monitoring options, direct and indirect subsidies, and enforcement mechanisms.

   Recognizing that every context is unique, serious consideration should be given to including three fundamental provisions in any peace agreement. These include the following:

   - **a fundamental commitment to transparency and accountability**: Sample language could state that "the parties agree that transparent and accountable funding of political process should be secured."

   - **the identity of the actors responsible for drafting political finance regulations**: Such actors could include a transitional authority, election management body, PFR, international actors, etc. Sample language could state that "the parties agree that regulations for securing the transparent and accountable funding of the political process should be drafted by [name of body]."

   - **the identity of the political finance regulator**: The PFR should have sufficient independence, impartiality and operational integrity. Such a PFR could be a stand-alone entity or exist as a department within an existing independent election management body. Sample language could state that "the parties agree that an impartial, independent body with operational integrity should be established to regulate the funding of the political process."

   While language supporting transparency and accountability should be considered fundamental to any agreement, more specific language pertaining to political finance regulations and the political finance regulator would depend on the nature of the agreement being negotiated. However, if these latter two issues are not addressed in the peace agreement, they should be addressed when establishing a political finance system.

3. Educating all political groups, the media, civil society and the general public about the elements of the political finance system and about standards and principles applying to democratic political processes.

4. Seizing assets, when deemed appropriate and when possible, of a political party or individuals that formerly controlled a country's illegitimate regime and systematically

[1] The Nicaraguan experience illustrates what can happen if these issues are not addressed during the initial phases as documented in "Nicaragua's Measured Move to Democracy" by Rafael López-Pintor: "The largest foreign donations were a USAID grant for the Opposition National Union (UNO)($1.8 million USD) and the Institute for Electoral Promotion and Training ($1.5 million USD). In addition to some bureaucratic problems in Washington, the Nicaraguan central bank delayed delivery of this grant…most of the money became available only when the campaign was virtually over. " In Krishna Kumar (ed.), *Postconflict Elections, Democratization, and International Assistance* (Boulder, CO: Lynne Rienner, 1998).

abused state resources. These resources should then be returned to public control to the widest extent possible. There should be wide participation of all major political players in controlling these assets and, where there is international supervision, the international community should have veto power as to how those resources are utilized for public purposes.

5. Engaging political entities, the media, civil society and the general public in an open dialogue about the nature and necessity of a political finance system during the development of the basic framework for elections and political process. Efforts should be made to establish a consensus concerning basic political finance standards within the environment of the post-conflict society.

6. Introducing a political finance system that is clear, realistic, transparent and fair, which requires:

   - drafting key regulations and procedures that take into account international experience.

   - initiating the development of a nonpartisan, independent institution responsible for enforcement of political finance regulations and providing that institution with sufficient authority, training and resources to perform detection and enforcement responsibilities.

7. Providing limited direct and/or in-kind subsidies[2] to political parties can be not only a galvanizing factor for their development but also a critical incentive to ensure that they comply with reporting requirements and meet auditing standards. Subsidies may also be considered to ensure participation by major players in the process. As for in-kind subsidies, the international community can establish support to provide needed resources. Political party resource centers have shown success. Other considerations could be given to contributing to the establishment of print and broadcast stations, through grants and other means, to provide all political groups with valuable media coverage.

8. Monitoring of the political finance system by the media, civil society and the international community, which can include:

   - providing grants to local CSOs for this purpose to further ensure the democratic quality of elections.

   - providing training to investigative journalists as well as the opportunity cover the issues in a complete and balanced manner

   - incorporating campaign finance monitoring into the overall long- and short-term international election observation efforts.

   Further, efforts should be made to guarantee the security of civil society actors and journalists performing these roles.

[2] Due to the limited number of cases where subsidies were provided to political parties, this study could not answer fundamental questions about the amounts and selection criteria for public subsidies. Certain cases studies—for example, Bosnia and Herzegovina, Kosovo, and Mozambique—describe this issue in detail.

9. Documenting and enforcing violations of the law within the constraints of the post-conflict environment is critical to provide incentives for compliance and to evaluate and modify the political finance system. Enforcement of violations should focus on dialogue and conflict resolution and should take into account the limited resources of the enforcement body. Cost-effective innovations from established democracies that rely on limited resources—such as alternative dispute resolution and administrative fine programs—should be considered. The international community should first assist the political finance regulator to conduct audits and identify and document possible cases of abuse. This effort should be linked with the monitoring of the political finance system. Real-time enforcement should occur before the election campaign for only those cases that can undermine the credibility of the process. Then, recognizing that not all cases can be enforced, investigations leading to sanctions should be undertaken for the most serious cases based on a clear prioritization system.

10. Evaluating the effectiveness of the political finance system during the first election cycle is crucial for later modification of the system and planning the second generation of regulations—subsidies designed to support political party development and parliamentary groups, more sophisticated reporting requirements, higher detection standards, enhanced enforcement mechanisms and sanctions, and possibly expenditure and/or contribution limits. This effort should rely on the documentation of possible abuses (whether investigated and sanctioned or not) collected by the international community and the political finance regulator, as well as on an analysis of monitoring reports and news articles.

11. Supporting the transfer of ownership of the political finance system to local authorities. All the actions taken by the international community should aim at establishing a strong national ownership of any political finance system. The challenge for post-conflict societies with international supervision will be this transfer of ownership to local authorities. Without such a transition, even the best systems created by the international agencies could be lost.

Reaching the goals identified in these fundamental steps and determining the ideal requirements for a viable political finance system in post-conflict elections (see Appendix 2) raises several caveats.

One of the key lessons learned is that there are no general rules for the design of political finance systems in post-conflict situations—a specific approach will depend on the level of international involvement, political sophistication of the local partners, timing of elections, etc. Furthermore, widely accepted international standards and best practices will also have to be redefined to reflect the political reality of post-conflict situation. The international community should not assume that political actors in post-conflict situations will immediately accept our rules of the game and will fund their activities in transparent and accountable manner.

The lessons learned suggest a range of choices and ideas that should be adapted to each specific situation. These case studies demonstrate the absolute need for careful analysis, planning and design of all interventions related to political finance policy.

The cases presented here suggest that such analysis should be conducted concurrently with peace negotiations, in those cases where they take place. In successful cases, like El Salvador and Mozambique, detailed arrangements took place at that stage. However, such negotiations may only involve the armed factions, and it is difficult to ensure the participation in the peace negotiations of civilian parties that might be necessary in the long road to democratization.

The cases also show that it is generally impossible to achieve an optimum result in which all participants benefit from financial arrangements for the first post-conflict election. The political system can be improved over time if all relevant electoral participants are included in the revisions to electoral frameworks and political finance policies. However, international standards of fairness can only be achieved over time as the political finance system evolves.

Proper timing is crucial, particularly when conflict has devastated a country[3] and destroyed the physical infrastructure, and where the political, social and economic conditions are underdeveloped and unstable. The pressure to hold quick elections is understandable, both from the perspective of the electorate and the international community. However, some post-conflict elections have failed specifically because they were held prematurely before conditions were "ripe" for real political competition rather than as a scene-setter for renewed violence or prolonged, violent political paralysis.

Thus, timing is critical to success. Given the usually large expenditures sustained by the international community in post-conflict societies, there is pressure to view elections as an exit strategy and to try to conduct them as quickly as possible. The setting up of a political finance system usually requires more time than other aspects of electoral administration and can be a casualty of a compressed schedule. Political finance issues are either ignored or badly handled under such circumstances.

Despite these caveats, the cases described above provide encouragement that a political finance system can advance democracy and peace-building efforts in post-conflict societies. They also suggest that a good system—if it promotes political participation, supports competition and encourages respect for the rule of law—can discourage electoral violence and intimidation. The fundamental steps outlined above are achievable if there is sufficient political will within the international community and the post-conflict society itself.

Throughout this report and the included case studies, it is evident that enforcement issues are the most difficult. Enforcement of political finance rules is difficult even in societies with a rule-of-law tradition, and the situation is certainly worse in post-conflict societies. Establishing rules that cannot be enforced does not make sense, no matter how appealing they might look on paper. And if they cannot be enforced, they run the risk of discrediting the political finance system and the entire election process.

As is true in all political finance systems in every country, the effectiveness of this core structure will depend on the capacity and "teeth" given to enforcement mechanisms. This challenge will be even more daunting in post-conflict societies and will likely require an investment in strengthening police, prosecutor and court operations, as well as financial auditing capacity. This can best be achieved through an intensive focus on short-term, election-specific mechanisms for enforcement of all electoral rules, including those involving political finance regulation and financial accountability.

Ultimately, before it can operate at all, a political finance system needs sufficient integration and heft to break past the obvious obstacles of post-conflict societies and achieve a "critical mass" of legitimacy and effectiveness. The obvious (if perhaps too convenient) solution is for international donors that generally administer such elections to include the political finance element as a key administrative and funding priority.

[3] The level of devastation varied from case to case and depended on the characteristics of the previous conflict. In some cases, like Liberia, the whole country was devastated. In others, like Nicaragua or El Salvador, the conflict was localized in specific areas, and large parts of the country did not experience extensive destruction.

Preferably, a political finance system relying on international funding can eventually be weaned off the public subsidy measures and also be less reliant on special enforcement mechanisms. Once the atmosphere of violence and intimidation that accompanies the transition from conflict dissipates, fair competition in the political process can be achieved through regulations, reporting of private funding and conventional means of enforcement. However, the extraordinary circumstances of post-conflict situations will require extraordinary solutions in order to advance democracy and peace-building efforts and discourage political violence and intimidation.

As noted at the beginning of this study, elections and routine operations of political parties in post-conflict societies usually involve extensive involvement of the international community, and the whole process is expensive to administer. Further, the most basic elements of implementation and logistics are overwhelming.

Trying to include political finance regulation within the legal framework for a post-conflict political process may seem like a luxury, but it is not. Rather, post-conflict elections are precisely where disparities in resources and lack of transparency in funding are most damaging to political competition among electoral participants. Post-conflict elections set the tone for democratic development, and bad habits are hard to break. Political finance regulation and transparency should be an accepted part of the new democratic system in post-conflict societies, and post-conflict elections often present an opportunity for introducing these important values.

Examining one critical and often overlooked aspect of post-conflict reconciliation and democratization, this study of political finance in post-conflict societies should be viewed as a first step designed to provide guidance to the international community and in-country actors seeking to end violent conflict in a meaningful and lasting way. This study raises as many questions as it seeks to answer, and these should be addressed in future work. As noted earlier, with the exception of Iraq, relatively little research and information gathering is conducted prior to the cessation of conflict. This poses two problems. First, it leaves little time for understanding the financial flows necessary to establish an effective political finance system. Second, it does not allow for effective comparative analysis from which to identify key trends. The correlation between the level and types of violence and the success of different possible interventions was also outside the scope of this study. Such analysis would help the international community to better hone its response.

Finally, issues critical to the success of interventions that seek to provide incentives for compliance (such as the provision of subsidies to political parties and parliamentary groups) need to be examined in greater detail. They should not be created as *ad hoc* arrangements designed to be implemented solely under international supervision. Rather, institutional choices—such as the creation of a political finance regulator and introduction of public subsidies—will require careful planning and implementation if they are going to be transferred to national ownership in a sustainable manner.

However, immediate steps are required to address the priority of establishing an effective political finance system in countries ranging from Afghanistan and Iraq to Liberia and Haiti. By bringing together a group of 11 post-conflict and political finance experts from around the world, this study provides insight into the steps and intervention options that can and should be seriously considered. While the variety of situations explored in each of the eight case studies highlights that each post-conflict society faces different challenges that must be addressed in a unique way, interventions that have demonstrated success in other societies can be tailored and applied to post-conflict environments.

APPENDICES

Appendix I

Guidelines for Introducing Political Finance Regulation in Post-Conflict Societies

By
Jeffrey Carlson &
Marcin Walecki

Below, for each of the 11 fundamental steps identified in the conclusion, the authors offer guidelines for introducing political finance systems into post-conflict societies as well as a set of possible interventions. At the same time, they offer some broad indications as to the advisable timing for each step.

No.	Step	Possible Interventions	Timing
1.	**Gather and assess information**	▪ Reach agreement among different actors in the international community about the collection of information ▪ Have a core team of political finance experts review and analyze information	Conflict and immediate post-conflict stages
2.	**Recognize that political finance is a priority and define the role of such a system**	▪ Include fundamental provisions in the peace agreement ▪ Disseminate analysis (resulting from the first step) as it relates to political finance ▪ Encourage relevant actors in the international community to discuss political finance among themselves ▪ Have the international community appoint an international organization responsible for developing a political finance system	Immediate post-conflict stage

3.	**Educate all political groups, the media, civil society and the general public**	▪ Conduct a forum sharing lessons learned from other countries (post-conflict, transition, established democracies) ▪ Conduct meetings with local stakeholders to both educate and collect further information ▪ Share sample materials and papers on these topics	Immediate post-conflict and pre-electoral campaign stages
4.	**Seize assets of parties or individuals that formerly controlled a country's illegitimate regime and abused state resources**	▪ Evaluate the risk of former regime maintaining unfair competitive advantage ▪ Prepare a list of all assets to be seized and take prompt administrative actions to seize assets ▪ Establish a joint commission (international and national) to oversee the process of returning the assets to public control	Immediate post-conflict stage
5.	**Engage political entities, the media, civil society and the general public**	▪ Create a working group of key stakeholders to work as a consultative body on drafting key regulations on disclosure, subsidies, funding prohibitions, etc. ▪ Share sample laws, model regulations and best practices	Pre-electoral campaign stage
6.	**Introduce a political finance system and initiate the development of political finance regulator**	▪ Provide technical legal experts in drafting the actual regulations ▪ Provide technical experts to help build an enforcement agency from the ground up ▪ Provide resources required to develop the agency and allow it to function as effectively and independently as possible	Pre-electoral campaign and electoral campaign stage
7.	**Provide limited direct and/or in-kind subsidies to political parties**	▪ Provide resources in accordance with regulations and procedures (established in step 5)	Electoral campaign stage

8.	**Support the media, civil society and the international community to monitor the political finance system**	▪ Establish a coalition of local CSOs and identify a coalition leader ▪ Provide training and sample materials on monitoring in other countries ▪ Develop case-specific monitoring plan ▪ Secure funding for NGOs ▪ Provide training for journalists ▪ Establish long- and short-term criteria for international observers	Pre-electoral campaign, electoral campaign, post-election stages
9.	**Document and enforce violations of the law within the constraints of the post-conflict environment**	▪ Provide technical experts in detection and enforcement to establish and implement a plan for identifying, prioritizing and documenting violations ▪ Establish a documentation office ▪ Reserve an option of real-time enforcement interventions in cases of the most serious violations	Electoral campaign and post-electoral campaign stages
10.	**Evaluate the political finance system**	▪ Reconvene core team of political finance experts to review and analyze information from the elections ▪ Create a working group of key stakeholders (see step 4) to work as a consultative body on revising key regulations ▪ Provide technical experts in disclosure, detection and enforcement to revise, develop and implement new procedures	Post-election stage

11.	**Implement "exit strategy" and support transfer of ownership of political finance system to local authorities (e.g., subsidies, supervision)**	▪ Develop and implement a plan together with local authorities to transfer control of the political finance system ▪ Provide bridge funding for local authorities that is required to take over this mandate ▪ Provide technical assistance to local political finance regulators to implement disclosure, detection, and enforcement projects[1]	Post-election stage and pre-election stage (second elections)

[1] Such projects can include IFES' Money and Politics (MAP) project dealing with political finance disclosure and its Training in Detection and Enforcement (TIDE) project, which enhances supervision.

Appendix 2

Ideal Requirements for Political Finance Regulation in Post-Conflict Societies

By
Bob Dahl

The ideal requirements for political finance regulation in post-conflict societies listed below should be viewed as goals for the international community to achieve given the challenging constraints in which they are operating. There are three key requirements in the areas of legal framework, resources for political actors and institutions.

1. A legal framework for political finance regulation—contained in the electoral law, the political parties law or a separate political finance law—should include:

   - Provisions that are clear, simple and unambiguous and supplemented by implementing regulations issued by the election management body or special body for political finance regulation;

   - Prohibitions on raising private funds or use of resources for electoral activity from clearly undesirable sources (such as funding from criminal or paramilitary organizations) and on any use of state funds, facilities, personnel, materiel or other state resources for political purposes;

   - Realistic limitations on monetary and non-monetary contributions from private sources for political activity, probably with a relatively high limit on the size of donations; and

   - Realistic requirements for financial reporting of electoral activity, including disclosure of private sources of funding for political activity (also with relatively high thresholds for public reporting). Exceptions to the generally universal value of transparency must be drawn, however, in those extraordinary circumstances where security considerations preclude revealing the identities of donors to opposition political parties.

2. Sufficient funding and other resources for electoral participants to effectively compete in elections and to remain committed to and confident in the fairness of the electoral process, including:

   - Some form of (1) monetary support (perhaps through international trust funds) to provide electoral participants with effective competitive capacity and/or (2) non-monetary support (free media time, material, or use of office space or other facilities, transportation, etc.) distributed to electoral participants through eligibility standards that are fair to emerging political forces but do not encourage participation merely to receive such benefits.

The case studies suggest that the greatest improvements in effectiveness and fairness of political finance systems occurred when public subsidy funding and other provision of benefits (such as free broadcast time or other valuable campaigning assets) were employed. These cases were not unqualified successes. There were problems of inadequate accountability for and misuse of public funds. Public funding in these circumstances does not necessarily preclude use of private sources of political funding or guarantee transparency in the reporting of all sources of funding, even when the law prohibits private funding or requires financial reporting. Implementation of public funding (or other benefits) raises difficult issues of eligibility standards and formulas for distribution of benefits to electoral participants in a fair manner and may encourage electoral participants to join the competition just to receive the benefits.

But in the special circumstances of post-conflict elections, including the compressed time frames and the general stress under which such elections are held, a political finance system employing public subsidies creates a core structure to provide a "floor" of sufficient resources for all electoral participants to effectively compete remain committed to and confident in the fairness of the electoral process; and second, to establish a legal framework that gives sufficient incentives to operate within the legal political finance system and sufficient disincentives to violate the political finance rules or funding political activity outside a regulated and transparent system (through the threat of losing benefits as well as prosecution of violations).

3. Effective institutions and processes for enforcement of political finance regulation, including:

   - As noted above, a nonpartisan, independent institution responsible for enforcement of political finance regulations with sufficient authority, training and resources to perform enforcement responsibilities;

   - Special prosecutors and/or special courts for processing political finance cases (and likely all violations of election law) if the primary police and court system is inadequate; and

   - Penalties and sanctions that are graduated and appropriate to the seriousness of the violation of political finance restrictions, reporting requirements or other regulations.

Appendix 3

Political Finance in Post-Conflict Societies Case Studies

Countries by Political Freedoms in 2004						
Country	End of Conflict	Status	Political Rights	Nature of Elections	GNI Per Capita	Population
Afghanistan	2003	Not Free	6	1,2	$523	28,700,000
Bosnia and Herzegovina	1995	Partly Free	4	1,2,3	$1,240	3,900,000
El Salvador	1991	Free	2	1,2,4	$2,040	6,600,000
Haiti	1994	Not Free	6	1,2	$480	7,500,000
Iraq*	2003	Not Free	7	2	$1,090	25,900,000
Kosovo	1999	Partly Free	5	1,2,3	na	2,000,000
Liberia	1996	Not Free	6	1	$140	3,300,000
Mozambique	1992	Partly Free	3	1,2,3	$210	17,500,000

Political Rights and Civil Liberties Ratings: The total number of points awarded to the political rights and civil liberties checklists determines the political rights and civil liberties ratings. Each point total corresponds to a rating of 1 through 7, with 1 representing the highest and 7 the lowest level of freedom. For more information on the methodology, see http://www.freedomhouse.org/research/freeworld/2004/methodology.htm.

Source: Freedom in the World 2004, Freedom House (http://www.freedomhouse.org/research/index.htm)
*Information collected for Iraq comes from *Freedom in the World 2005*.
Nature of Elections: 1-Presidential, 2-Parliamentary, 3-Local, 4-Referendum

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