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# POLITICAL PARTY FINANCE REGULATION

Constitutional reform after the Arab Spring



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## Political Party Finance Regulation: Constitutional reform after the Arab Spring

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## About this report

The Constitutional Transitions Clinic ‘back office’ is preparing a series of thematic, comparative research reports on issues in constitutional design that have arisen in the Middle East and North Africa. Zaid Al-Ali, Senior Adviser on Constitution Building at **International IDEA**, has acted as an adviser on these reports, and has overseen **International IDEA**’s participation in the report-drafting process. These reports will be jointly published by *Constitutional Transitions* and **International IDEA** in English and Arabic, and will be used as engagement tools in support of constitution-building activities in the region (e.g. in Libya, Tunisia and Yemen). The forthcoming reports are:

- *Constitutional Courts after the Arab Spring: Appointment Mechanisms and Relative Judicial Independence* (Spring 2014)
- *Semi-Presidentialism as Power-Sharing: Constitutional reform after the Arab Spring* (Spring 2014)
- *Political Party Finance Regulation: Constitutional reform after the Arab Spring* (Spring 2014)
- *Anti-Corruption: Constitutional Frameworks for the Middle East and North Africa* (Fall 2014)
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This report has been prepared by the **Center for Constitutional Transitions at NYU Law**, affiliated with New York University School of Law, but does not purport to present the school's institutional views, if any.

A note on translation: all English-language translations of documents referred to in this report are unofficial, unless otherwise noted.



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## Executive Summary

Political party finance law is the set of norms governing the income and expenses of political parties. While many countries have addressed political party finance constitutionally, such provisions are usually phrased in general terms, such as requirements of transparency, leaving the details to law and to the regulations promulgated by enforcement agencies. Legal reforms to political party finance systems are not a panacea; but when written and implemented well, the legal framework can help address significant challenges that face political party systems. This report applies comparative and academic research on political party finance law to the Middle East and North Africa (MENA) region, with a focus on Egypt, Libya and Tunisia as post-authoritarian states that are currently engaged in comprehensive reform of their political institutions and are utilizing examples from other newer and more established democracies.

Countries transitioning to democratic systems must grapple with questions of how to regulate political party finance, often with little domestic precedent and in contexts of distrust of political parties and other political institutions. Political parties, which are crucial actors in the successful operation and consolidation of democratic systems, need to spend money in order to disseminate their message and strengthen their organizations. At the same time, resources provided privately may exacerbate inequitable conditions of competition and facilitate the appearance – or actual occurrence – of improper influence. Furthermore, in corrupt environments, individual political parties that wish to change their financial conduct to increase their legitimacy are often faced with the need for collective action, because adopting such measures alone risks negative consequences at the ballot box. As the political parties who write political party finance law are also its principal subjects, external pressure by civil society and the media can be crucial in promoting reform. The key questions are what the ultimate goals of the system should be; which rules will best reflect those goals; and when and how to implement reforms.

Political party finance law may help to address challenges that have arisen for political party systems in the MENA region. All of these challenges have been at least partially addressed in other countries around the world by political party finance law. The challenge most directly addressed by political party finance law is the problem of parties receiving funds from foreign entities or governments. However, country-appropriate political party finance law can play a role in engaging with other challenges as well, including weak political parties, clientelism, political parties that centre on an individual rather than a cohesive ideology, political parties' provision of social services or ownership of business enterprises and media, and vote buying. Which particular party finance rules will be most effective depends on the challenges being faced in a specific national context.


Political party finance law can be divided into five basic design areas: the provision of public funds to parties and campaigns; limits on party income; limits on party spending; disclosure of party finances to the public; and enforcement of political party finance laws. These five key areas are intersected by cross-cutting themes, which must be considered throughout: whether party finance rules operate on an ongoing basis, on an electoral campaign basis, or both; whether party finance rules operate at the national, regional and local levels of party organization, or only at some of these; the role of actors who are not parties or candidates; the use of state resources by parties in power; and the importance of incentivizing compliance with party finance rules.

*Public funding.* Public funding may include direct financial support, as well as the indirect provision of resources, frequently through access to state-owned media or tax deductions. A significant majority of countries provide some form of public funding to political parties, and public funding has played an important role in some democratic transitions.

The goals of public funding can include more equitable competition – both through the funding itself and through the desired decrease in reliance on private funders – as well as more institutionalized and stable political parties that have a greater presence outside the electoral period. The provision of public funding can be used to incentivize compliance with other party finance laws, such as when public funding is conditioned on meeting certain financial disclosure requirements. On the other hand, public funding inherently implies some form of party reliance on public funds in place of private donations, which risks distancing parties from their constituencies and creating opportunities for manipulation of the system by the incumbent government. Additionally, exclusionary public funding thresholds may serve to entrench existing parties and raise barriers of entry for new competitors.

*Limits on income.* Most countries restrict private political donations at least to some extent, through either general bans or ceilings. Most countries that limit party income ban foreign and anonymous donations, as well as donations from state-owned enterprises or other public entities. Bans or limits on contributions from legal persons (corporations) are also common. Enforcing limits on party income is difficult because some donations can easily be concealed. Severe restrictions on party income can also result in collective violation of the rules, creating a culture of non-compliance. Experience with this kind of regulation shows that limits on party income are more successful when they are set at realistic levels and when they are introduced together with public funding to incentivize compliance, as has been the case in Poland and Mexico.

*Limits on spending.* Limits on party spending are adopted to level the political playing field, to lower the costly barriers to entering the political arena, to reduce overall



electoral spending, and to combat political corruption and vote buying. Restrictions on party spending can be monitored and enforced more effectively when they limit a specific, more visible category of spending, such as on the media. Limits on party spending are also better introduced together with limits on party income and limits on the campaign period to help control parties' total expenditure. Effective enforcement of limits on party spending also requires oversight of external actors, who may be spending on behalf of political parties or candidates.

*Disclosure.* The timely dissemination of information about parties' and candidates' receipts and expenditure of material resources can help to increase transparency and curb undue influence. In some cases, disclosure can also facilitate the enforcement of other party finance rules that level the political playing field, such as public funding, limits on income and limits on spending.

Political parties may be required to disclose information, such as their income, expenditure, assets and liabilities. Disclosure of donor names and information is frequently required. Disclosure systems are more effective when they impose requirements on candidates, as well as on subnational and affiliated party structures. These requirements should be feasible, assuming the realistic capacity of parties to comply. To foster transparency most effectively, the disclosed financial information should be accessible not only to the oversight body, but also to the public. Actors such as political competitors, the media and civil society can play a key role in tracking sources of funding and bringing abuses to public attention, and they can complement and monitor the state's efforts to raise the awareness of citizens and to educate them about political finance.

*Enforcement: investigation and prosecution.* It is important that public enforcement be perceived as impartial and effective. Effective enforcement agencies are typically politically and financially independent and have the operational and legal capacity necessary to detect and sanction violations. Enforcement responsibilities may be entrusted to electoral management bodies (EMBs), auditing or anti-corruption agencies, courts or ministries, or to multiple agencies. The choice will depend in part on which institutions already exist and on their established structure and roles.

Once an enforcement body is established, political finance violations can be detected through direct monitoring, external complaint and/or referral by other government agencies. Enforcement agencies should have access to a range of penalties that can hold all the relevant actors accountable, in order to best encourage compliance. Fines are the most common type of penalty and are relatively easy to calibrate according to the nature and severity of the violation (as well as to enforce), particularly if public funding is a component of the system. Other penalties often used include loss of public funding,

forfeiture of funds illegally obtained, imprisonment, party deregistration, the disqualification of a party's candidate, or the removal of an officeholder.

In addressing these challenges, relevant international experience points to the following key considerations:

- Effective enforcement by independent agencies with sufficient capacity is essential.
- Public funding can help strengthen political party systems.
- Specific disclosure requirements can help increase transparency and support enforcement.
- Limits on political party income and spending are difficult to enforce, but certain measures can incentivize compliance more effectively.

All actors should bear in mind that establishing an effective political finance system is a continuous and iterative process. Political party finance law poses ongoing challenges and undergoes constant revision, even in long-established democracies. Experiences with political party finance law in different contexts throughout the past century show that engaging in ongoing, realistic and responsive modifications to a comprehensive system plays an important role in balancing political participation, inclusion and financial transparency over time.



# 1 Introduction

## *1.1 Political parties in the Middle East and North Africa region*

Changes sweeping through the MENA region following the initial uprisings in Tunisia and Egypt in early 2011 have led to efforts at constitutional transition and substantial moves toward more inclusive formal governmental structures in many countries. The fall of authoritarian leaders in countries such as Egypt, Libya, Tunisia and Yemen, the adoption of (or attempts to introduce) reforms by existing regimes in countries such as Bahrain, Jordan, Kuwait and Morocco, and continued evolution in the nature of partisan political competition in countries such as Turkey and Lebanon have all served to highlight the role of political parties as primary channels for participation in the democratic process.

Historically, leaders throughout the Middle East and North Africa (MENA) region have adopted varying strategies to maintain themselves in power, given their need to reinforce their networks and reward their supporters, while discouraging and hindering efforts at organized opposition. Often, those leaders have adopted or reformed laws related to political parties as part of their strategy to perpetuate their rule – both to strengthen the grip of their ruling party and to encourage the instability and ephemerality of political parties that might present real challenges. In the more open and competitive environments emerging today in many MENA countries, these past restrictions have contributed to various party system characteristics that may hinder the future consolidation of democracy and the success of the new wave of transitions in anchoring a shift toward more open political competition.

As a consequence, political parties in most MENA countries are weak, unstable and personality-driven. Ruling regimes in the region have historically worked to divide and undermine real opposition either by co-opting key politicians and parties or by banning their activity altogether. Those participating have faced obstacles such as clientelistic practices perpetuated by the regime, unfavourable electoral rules, and outright vote buying and vote rigging. Moreover, in most countries the legislature has been effectively disempowered, with key legal provisions either introduced by executive fiat or passed by a pliant, majority-dominated legislature. These realities have meant that would-be opposition leaders have often had to choose between service as ‘window dressing’, gaining limited space to operate at the expense of regime co-optation, or the alternative of exile or total exclusion. In the authoritarian republics, the main or single party has typically been dominated by the president, with little room for the development of a party identity: the Assads in Syria, Saddam Hussein in Iraq, Mubarak in Egypt, Bourguiba and Ben Ali in Tunisia, Saleh in Yemen. In the monarchies, the tendency has been to discourage the emergence of any strong parties, giving the monarch a freer hand to shape the government and to head off unrest by changing the government.

Additionally, almost all regimes have adopted a pattern of on-and-off reforms, liberalizing when necessary to diffuse opposition, only to close off the political space again later, when the president or monarch feels more secure.


As a result of these practices, most political parties have not evolved to represent different social interests, as happened in many ‘first wave’ democracies (partial exceptions to this are the religious and ethnically based parties that have formed around distinctions that were difficult to repress outright). Today – particularly in the post-uprising countries, where political uncertainty is greatest – parties and individual politicians are working to identify their constituencies and to determine successful strategies both for outreach and for organizational consolidation. The more religiously oriented parties have a clear natural advantage – a characteristic that may be seen by some as positive in terms of stability and representativeness, particularly in the short run, but that constitutes a potential challenge for the creation of a sustainable, more open model in the long run, if other constituencies’ views are inadequately incorporated into the systemic framework.

The evolution of political party systems in the MENA region will be a long-term process and will inevitably be unpredictable in its developments and in the results it yields. If it follows historical precedent, both in the MENA region and elsewhere, it will involve constitutional amendment and replacement, the passage of electoral, party and other legislation, the creation of new public entities, and the emergence of advocacy groups and other civil society organizations. It will also be dependent on the resources available to the political competitors – which, in turn, may be especially strongly influenced by the framework adopted to govern political party finance.

## ***1.2 The importance of political parties in democracy***

Political parties play a vital role in democracy. They mobilize voters and recruit candidates for political office. They express popular will and aggregate social preferences, represent competing interests and ideologies, and serve as links between the people and the organs of government. Laws governing political parties, by directly affecting the way in which they are able to organize and compete effectively, therefore have a substantial impact both on the way democracy works in practice, and on the substantive policy outcomes that result.

Scholars and historians have emphasized the role of political parties in the context of the assumption of new regimes, often in contexts that also involve democratic consolidation and constitutional transition. Political parties have played a key role in stabilizing gradual transitions by facilitating agreements between different social groups. To give just two examples, Spain’s Moncloa Agreements between all key political parties helped to stabilize that country’s democratic transition in the late 1970s; while a



decade later, the wide-ranging coalition of Chilean opposition parties, the *Concertación*, facilitated Chile's return to democratic processes. The different approaches adopted by broad-based anti-colonial, revolutionary or opposition movements in confronting the difficulties of subsequently wielding domestic power – in countries as diverse as India, South Africa, Tunisia and Poland – have had profound consequences for the political futures of those regimes. Political parties also serve as a point of reference: the frequently used 'two-turnover test' (first enunciated by Samuel Huntington), which deems a democracy 'consolidated' if power has changed hands twice, is often assessed with reference to political parties.<sup>1</sup>

While it is difficult to envision a democracy without political parties, these important institutions are consistently the subject of public disaffection. This challenge may be even greater in transitional contexts, given the high expectations with which many societies enter the process. It is rare to find an opinion survey in any country – no matter how long the democratic system has been in place – in which positive views of political parties outweigh negative views. In part, this may be a result of the fact that political parties are in a hopeless position: they find themselves having to make promises when running campaigns, but then must inevitably make compromises when they become involved in the process of governance. There may be something healthy about the fact that people are unhappy with their political parties: perhaps it is, in part, a sign that they aspire to continue improving their democracy. This makes the realization of democratic improvements ever more important.

The idea of an institutionalized party system, often held up as an ideal, involves a political arena characterized by stable competition among parties, a strong interconnection between parties and society, legitimacy of parties in the eyes of political actors, and the independence of parties from the individual interests of their leaders. In this view, party systems with low levels of institutionalization fail to represent the people adequately, do not adequately address societal conflicts or respond to citizen preferences, tend to be unpredictable, espouse frequently fluctuating and short-term policies, have a low degree of politicians' accountability, and are susceptible to democratic breakdown. Levels of party system institutionalization mark some of the starkest differences between established democracies and new post-authoritarian democracies. When a party has never succeeded in returning to government following its term of office, and prominent politicians constantly jump between parties, it may be difficult for citizens to identify the *raison d'être* or the goals of any one party, and parties lose much of their representative capacity. Often, an institutionalized party system is seen as a long-term goal, but it is not always clear how to achieve it.<sup>2</sup>

Political parties display different faces, depending on the time and the audience. A typical citizen probably sees political parties most during election campaigns, when s/he is asked for her/his vote by the various parties and their candidates. Elections are the


period when political party activity is likely to be most visible, and when it consumes the most resources. The party provides an informational reference point, uses its resources to reach out to voters both in person and through the media, and often represents a certain ideology, bringing together candidates representing a certain point of view. In doing so, it benefits both candidates and voters by lowering the information costs involved in decision making and by using its larger resources to reach out to voters. As a result, a citizen may consider the image of the political parties, as well as their platforms, ideologies and proposals, when she goes to the polling booth.

Since political parties must place their members in elected office in order to play their democratic role, their prominence at election time is understandable. But if political parties are to be more than ephemeral campaign machines, and if they are to play a greater role and be more powerful actors in the democratic process, they must be able to count on adequate resources to carry out their activities outside electoral periods: for example, to support their elected officials with information and through demonstrations of public support, to train their membership, to spread their platform and ideology, and to develop public policy proposals.

This need for resources places political parties in a strange situation. They sit at a crossroads between public and private institutions. In many countries, they are legally private associations, yet they perform functions that are highly relevant to the public interest and crucial to the health of the political system. They must typically solicit funds from private individuals or companies in order to operate; yet the very act of receiving those funds, depending on the source, may discredit them in the eyes of the voters they are trying to reach. It may create an appearance of impropriety or improper influence, of unbalancing a process of governance in which all citizens are supposed to be politically equal. Additionally, parties that do exist in corrupt environments but that wish to change their conduct often have difficulty in doing so. This is a classic collective action problem: if no other party does likewise, then to remain aloof from the upward spiral of campaign spending, or to abstain from other ethically questionable practices, risks severe consequences at the polls. All parties may gain from increased legitimacy and competitiveness, but no party wishes to go it alone.

This problem of collective action creates the necessity for political party finance law, coupled with effective third-party enforcement. But it presents another difficulty: those who create political party finance law are, to a large extent, its subjects. External pressure – from civil society and the media, for example – is therefore extremely important to foster change. But the proposals and expectations that those external groups bring to the table must be realistic, and they must be willing to engage in dialogue and compromise. External groups should be ready for crises and critical junctures, where a scandal or some other event may serve as a catalyst to make parties





more willing to change. As an example, the United States political finance system was significantly modified in the mid-1970s, in the wake of the Watergate scandal.

All groups coming to the table must bear in mind that political party finance means making trade-offs between different values – and particularly between speech rights and equality in the political arena. Different political actors will have disparate views and interests regarding these elemental democratic decisions. Some will view the problem as one of corruption; others will see the issue as one of creating a stable party system; yet others will emphasize the need to facilitate individuals' right to participate in politics; and so on. Some will view the process through a prism of varying goals, such as competition, organization, mobilization and accountability. These views, and actors' positions in the system, will lead to legitimate disagreement about the scope and nature of political party finance law. However, failure to take action will not avoid the problem; it will simply further entrench the status quo.<sup>3</sup>

Political party finance law poses an ongoing challenge. It is not one that can be solved right away: political finance law undergoes continued revision even in long-established democracies. There has been continuing controversy in the United States regarding corporate contributions, certain types of matching funds and the role of free speech; in Canada, public funding for political parties was recently abolished less than two decades after its introduction; and debate continues in the UK over public funds for parties and the ability of unions to donate. Nor is it an issue on which the right answers are always immediately clear. However, worldwide experience of political party finance in the last century has provided enough information to develop a typology of political finance law, define important questions to consider and yield very general normative recommendations. It is those items that comprise much of this report.

### ***1.3 Defining political party finance law***

Political party finance law can be defined as the set of norms governing the income and expenses of political parties. It can sometimes be difficult to identify precisely the exact body of political party finance law in a particular country. When we discuss political party finance law in this report, however, we refer to any norms that directly impact on the income and expenses of political parties, even if they do not explicitly mention political party finance. We employ this broad functional definition in part to avoid inadvertently excluding any factors from consideration, and in part to emphasize the interdependence of the legal framework and the importance of considering the impact of even seemingly unrelated provisions of law when drafting and reforming provisions that explicitly govern political party finance.<sup>4</sup>

As a set of norms, political party finance law appears at various levels in a country's legal hierarchy. Many countries, as detailed below, have chosen to constitutionalize various

principles related to political parties, including broad provisions about political party finance; and a smaller set of countries have enacted even more detailed provisions that begin to operationalize those principles. However, most political party finance law will be found at the level of law and the level of subsidiary regulations, in the form of policies adopted by administrative agencies, and sometimes in the form of case law or judicial precedent. A final consideration is the increasing role of international legal instruments or standards suggested by international organizations; see Appendix 2 for a list of a few such provisions.<sup>5</sup>


In some countries, political party finance law centres around one or two laws and the regulations promulgated pursuant to those laws. As an example, in Mexico, the constitution and the Federal Code on Electoral Institutions and Procedures (COFIPE) are the core laws governing political party finance (in addition to other matters, such as provisions on the formation and internal operations of political parties, the electoral system, election-day operations and vote counting). Those laws are supplemented by regulations issued by the Federal Electoral Institute (IFE). Other laws, however, are important, including laws on the procedures of the Federal Electoral Tribunal (TEPJF), the law structuring the IFE itself, and the Criminal Code, among others. In many countries, accounting or auditing standards set out elsewhere will be incorporated into party finance law.

Typically, political party finance law will have provisions regarding both party income and expenses, though, as described later in this report, the nature of those provisions can vary substantially from country to country, and between different federal subdivisions of a federal state. Additionally, the regulation of income and expenses usually includes provisions for the disclosure of sources and expenditure of party finances, and for enforcement of the penalties set out for violations of the framework. These areas will form the core of the report: party income, with a separate section on public funding of political parties; party spending; disclosure; and enforcement.

Finally, while this report focuses on provisions relating to political parties, it is important to note that identical, or similar, rules may apply in some countries to other groups in certain contexts. For example, political parties and independent candidates may be governed by a similar framework during election campaigns. Third-party expenditure on political propaganda and the allocation of time by private TV and radio networks, particularly during elections, may also be governed by provisions included in the same set of norms and enforced by the same enforcement agencies.

#### ***1.4 Constitutionalization of party finance law***

As noted above, countries have made different choices as to where to place different aspects of party finance law within their respective legal hierarchies. The scope of



constitutional provisions ranges from countries that do not mention political parties in the document at all – either in a financial sense or otherwise – to countries that lay out detailed provisions for party finance. These more complex constitutional provisions have tended to be the result of recent reforms.

Whether a result of constitution writing or judicial review, constitutionalization ultimately limits the options available through the ordinary legislative process. Countries most commonly constitutionalize very general party finance provisions that require political parties to abide by values of transparency or disclosure; that require the provision of public funding to political parties or candidates; or that limit specific sources of funding, in particular from abroad. Additionally, those constitutions that explicitly provide for an independent electoral management body (EMB) sometimes include regulation of political or campaign finance within the ambit of the EMB's responsibilities. An EMB is defined by International IDEA as 'an organization or body which has the sole purpose of, and is legally responsible for, managing some or all of the elements that are *essential for* the conduct of elections and of direct democracy instruments'. For examples of constitutional provisions of various types, see Appendix 1.<sup>6</sup>

The extent and nature of these provisions tend to vary by region and constitutional family, reflecting in part the influence of constitutional migration or diffusion. In Latin America, Anglophone Africa and Lusophone Africa, for example, express provisions related to political party finance are common. Lusophone African countries have followed the more specific precedent set by Portugal (and subsequently by each other), by including express provisions regarding the allocation of broadcasting time to political parties. Similarities in the historical development and content of these countries' legal systems, as well as similarities in language and culture, may make these regional or familial examples particularly accessible, relevant and applicable.

In Western Europe, constitutional references to political party finance are rare. In part, this reflects the fact that the Western European constitutional tradition has been relatively continuous, and in many countries pre-dates the rise of political parties. This means that there is no history of constitutionalizing parties' roles, and no perceived need to do so. On the other hand, some of those countries' experiences of single-party rule or other party pathologies have led to a desire to constitutionalize certain aspects of political party operations. Both Germany and Spain, for example, require parties' internal structure and functioning to be democratic. For its part, the MENA region has displayed a lower level of constitutionalization of political party finance. One clear explanation is the non-existence of political parties in many states in the region, and their lower salience in many others.


A country's choice to expressly constitutionalize aspects of political finance may be intended to make those elements of the system more difficult to revise, or to enable legal challenges based on constitutional grounds to be more readily channelled through the process of constitutional adjudication. In that sense, it is worth noting that the two countries that have most extensively included political party finance in their constitutions, Mexico and Colombia, have enacted constitutional revisions almost every year since 2000. This type of extensive constitutionalization may not be appropriate in other contexts, especially where agreement on a constitutional text has already been the result of a lengthy negotiation process, and where revisiting the arrangement would be difficult. Moreover, given that political party finance is an iterative process requiring constant re-evaluation in terms of its priorities and effectiveness, the inclusion of detailed constitutional provisions may backfire if the system does not function as intended. The potential for increasing regulation or enforcement may be inadvertently limited by even well-intentioned drafters, and poorly functioning aspects of the system may be difficult to amend.

If a country's constitution is relatively difficult to amend, a possible alternative to entrenching detailed provisions on political party finance would be the passage of a law by supermajority. Many countries constitutionally provide for 'organic laws' or other laws requiring larger-than-usual majorities to govern areas regarded as in need of broader consensus. Those countries that provide for such laws often include political party and election law in this category (see the constitutions of, for example, Brazil, Ecuador, France, Portugal or Spain). Laws on the political party system may also be entrenched in other ways: for example, the Argentine constitution specifically prohibits their modification by presidential decrees of necessity, which have otherwise become common in the past two decades, although the effectiveness of this prohibition is disputed.<sup>7</sup>

Ultimately, the choice of where particular provisions on political party finance should appear in a country's legal framework will depend on country-specific factors. The remainder of the report will discuss political party finance law as a whole, largely leaving aside questions of where specific provisions fall in the legal hierarchy.

### ***1.5 The role of party finance law***

Party finance law plays an important role in promoting a functioning party system. In order to operate effectively, parties require organizational staff, offices, volunteers and money to spend on campaigns. The money that flows into the party system is the price of democracy. It is the role of party finance law to ensure that money in politics provides adequate means for political activity, promotes citizen involvement and public confidence in politics, and enables vigorous competition and equal opportunities. Adopting a balanced approach to party finance that effectively regulates



private contributions and provides public support to parties can help strengthen party system institutionalization. Regulating the flow of money into politics can help create a more stable party system that better represents the will of the people.<sup>8</sup>

As we emphasize throughout this report, a country's political finance system is the product of complex interactions between actors and institutions. It is particularly difficult to analyse the effectiveness of reforms in political finance, given the prescriptive nature of political party finance rules, which seek to influence future behaviour, and the difficulty of detecting the pervasiveness of proscribed or disfavoured conduct. However, if there is a belief that a country's citizens deserve the right to be able to participate in public affairs, and that public officials and power holders should be accountable to citizens, political finance reforms are clearly justifiable. They can respond to the principles of transparency and accountability of power holders, and to the desire to promote participation and equitable expression.

The components of the political finance system form an interactive whole. However, in transitional environments, some may be more effective than others. In particular, public funding for political parties has contributed to more open party systems and has facilitated participation, which is one reason for its popularity worldwide. Moreover, public funding does not inherently require the same enforcement capacity as do other measures: in its simplest form, it entails calculating and conveying funds to political parties. Transitional countries have widely varying levels of capacity to enforce complex political finance regimes, but that alone should not prevent the implementation of other measures: including public funding, basic disclosure and enforcement mechanisms – that may lay a foundation for ongoing development. The transitional period may provide an opportune moment to ensure that the idea of political party accountability becomes an ongoing or a greater part of a country's political life, even though more ambitious reforms of the system may lie further in the future.

### ***1.6 Addressing challenges for political party systems in the MENA region***

In Section 2 of this report, we detail some of the recurring challenges that have hampered democratic governance in the MENA region in recent times, such as weak party systems under authoritarian rule, clientelism and the engagement of parties in extra-political activities. Although these challenges have many different causes, party finance laws can play an important role in addressing them. For some issues – particularly the reliance on foreign money – political party finance law can play a crucial part in efforts to address the problem. Most challenges will be only partially addressed by changes to party finance laws, and must be coupled with reforms in many other areas of law, such as election law and political party law. Nevertheless, it is important to

remember that regulating political finance remains an indispensable part of democratic reform.

Crucially, no election reform project is likely to succeed if it is not accompanied by reforms in the area of political finance, and democratic achievements may be undermined by lack of attention to the role of money in politics. Iraq provides a vivid example of an attempt to introduce democratic elections that has been undermined by the near absence of party finance laws. Since the overthrow of Saddam Hussein's regime in 2003, the successive interim and elected governments have failed to pass laws to provide any effective regulation of party and campaign financing.<sup>9</sup>

### ***1.7 Organization of the report***

The remainder of this report will discuss ways in which political finance laws can be part of the effort to promote democracy in the MENA region. In Section 2, we start with an overview of various characteristics of political party systems in the region that political actors may wish to confront. The goals of domestic actors in seeking reform of political party finance law may centre on some of these characteristics. Section 3 draws on international experience to explore five key areas of political party finance law, explaining options that have been adopted in other national contexts and providing general conclusions on important considerations in addressing the law in each area. Specifically, the areas are public funding of political parties; restrictions on political party income; restrictions on political party expenses; disclosure of party income and expenses; and enforcement of party finance law, including monitoring and imposition of penalties. Section 4 summarizes the key policy considerations of this report.



## 2 Status Quo in the MENA Region: Challenges for Party Politics

Many of the challenges described in this section overlap with one another. Weak party systems are the result of many other issues facing political parties, including the proliferation of so-called ‘personalist’ parties that revolve around one individual rather than having a cohesive ideology. Similarly, pervasive reliance by political parties on foreign donations may lead to decreased faith in the party system, which may in turn reduce grassroots involvement and incentivize election strategies like vote buying that may be both illegal and in violation of the spirit of fair competition in the political system. Likewise, laws that seek to address some of these challenges can have consequences for other issues that are not their intended target. As such, the legal and policy design models discussed in Section 3 should be considered with a view to the ramifications for all these challenges as they manifest themselves in particular national contexts. This report is designed to identify the key areas that policymakers in the MENA region may need to consider, insofar as different countries in the region share certain commonalities in the challenges facing their political party systems. This section thus attempts to situate the report’s discussion of various legal design questions in a regional context.

Legal changes of any type cannot be implemented in a vacuum; legal provisions adopted in one place may be interpreted and implemented differently in another, due to varying histories, cultures and political practices. Moreover, the decision on which legal changes are the most important to implement will depend on the specific problems being faced in a particular national context. In an attempt to contextualize the commentary on policy considerations at the end of this report, in this section we provide an overview of some challenges commonly faced by political party systems in the MENA region. The challenges described below are not unique to MENA countries. In fact, the design questions and commentary that comprise the bulk of this report draw on the histories of other countries that have grappled with similar problems.

This section seeks to describe general issues that may be perceived as challenges to the development of competitive but stable political party systems that facilitate participation in the region. Each subsection includes a brief summary of the ways in which later sections address the challenge in the context of political party finance law. Section 3 then discusses particular areas of political party finance law. While this report does not aim to provide granular recommendations for every country in the region, Section 3 will review recent developments in post-Arab Spring countries, in order both to emphasize and to illustrate the highly contextual approach required to design a successful legal regime governing political party finance.

Table 1. Challenges in the MENA region that can be addressed by party finance law

Challenges <i>best</i> addressed by party finance law	Challenges <i>partially</i> addressed by party finance law
<ul style="list-style-type: none"> <li>▪ Reliance on foreign money</li> </ul>	<ul style="list-style-type: none"> <li>▪ Weak party systems</li> <li>▪ Clientelism</li> <li>▪ Extra-political activities of political parties:               <ul style="list-style-type: none"> <li>○ Social services</li> <li>○ Business enterprises</li> <li>○ Media</li> </ul> </li> <li>▪ Personalist politics</li> <li>▪ Vote buying</li> </ul>


## 2.1 Reliance on foreign money

Political parties in the MENA region are often accused of accepting money from foreign entities or governments. While some of these accusations may be accurate and others the product of political rivalry, even the perception that parties are accepting foreign funds is harmful to the legitimacy of a country's political party system. Political party finance is the most direct way to deal with this problem. Explicit bans on foreign funding are a common part of legal regimes governing political party finance, and can be made most effective through clear statutory definitions and regulatory language, coupled with rigorous enforcement.

In many cases, these suspicions are well substantiated, as with post-war Iraq, while in some places the extent of the problem is unclear and may be exaggerated. Whether the phenomenon is real or imagined, the perception that parties are receiving substantial support from foreign sources can erode the legitimacy of individual parties and of the party system as a whole. Inter-party suspicion of foreign contributions may impede the formation of important coalitions. Whether for cynical motivations or out of true belief, parties may accuse their competitors of accepting foreign funds, increasing the public's perception of foreign interference and decreasing confidence in the political process. The notion that the authorities are effectively enforcing limits or prohibitions on foreign funding may help to mitigate the impression.<sup>10</sup>

In other parts of the world, foreign donations from corporations and other non-state actors are a major problem. Large firms have been known to make donations to political parties that they expect to be successful, while anticipating preferential business treatment from regimes that they have supported. In some Latin American countries, political donations from organized crime, particularly drug-trafficking groups, have been used to influence political processes. While this may not be a glaring issue in some





MENA countries today, it is one that should be anticipated as a possible future concern.<sup>11</sup>

The most common source of foreign money cited in MENA countries today is foreign governments pursuing a political agenda. Political party finance law is, in many ways, the most direct route to resolving this problem. Outright bans on political donations by foreign actors are near-universal around the world. They are simple and straightforward, and generally have broad-based popular support. However, the bans are completely dependent on meaningful enforcement. Almost all countries in the MENA region prohibit foreign donations to political parties – including Iraq, which (as mentioned above) struggles with the problem; but it is clear that some of these bans are unsuccessful. New democracies in the MENA region that wish to tackle the legitimacy problems posed by the influence of foreign money would be wise to focus their attention on the creation of an independent and effective enforcement body and meaningful disclosure requirements.

## ***2.2 Government manipulation of party systems***

Historically, ruling regimes in the MENA region have adopted strategies and enacted policies designed to keep rival political parties weak and ineffective. They have raised the costs of organization for the opposition and taken advantage of state resources. Partially as a result, parties are often weak and fragmented, lacking basic resources, public support and ideological clarity. Political finance law can partially address these problems through a carefully designed system (including public funding, limits on the use of state resources, and disclosure requirements) that holds dominant parties accountable and enhances electoral competition.<sup>12</sup>

Political parties in the MENA region have been historically marginalized and repressed. In some countries, like pre-revolutionary Libya, parties were banned outright; in others, such as Egypt and Tunisia, party activity was largely confined to the activities of a dominant party ruled over by a single leader, even after the legalization of nominal opposition parties. Even where opposition parties have been tolerated, they are regularly harassed by the state or otherwise rendered incapable of amassing meaningful political power. In Jordan and Morocco, the ruling monarchs have adopted various strategies to reinforce the weakness of the party system and prevent any single party from effectively controlling parliament.<sup>13</sup>


While poor party leadership and organization bears some of the blame, the most fundamental cause of weak party systems in the region is that the real decision-makers controlling access to power have denied parties institutionalized access to resources, shutting off entry through the existing political process. This has been made possible by ruling elites' monopolistic control over politics and the state apparatus. Real state power

often does not rest with the institutions formally purported to possess it, but rather with a small number of elites and insiders. In Libya, constitutionally a 'state of the masses', political power resided exclusively with Muammar Gaddafi and a closed circle of regime insiders (e.g. his chiefs of security, sons and advisers). Similarly, in Algeria, generals, not the government, function as '*les décideurs*'. Under such regimes, there has been little space for political party systems to operate.<sup>14</sup>

Even in nations that have permitted a greater degree of pluralistic democratic governance in accordance with the formal rules, controlling regimes have systematically enacted policies designed to keep political parties weak and ineffective. These policies take many forms. In Kuwait, for example, despite a relatively long tradition of an elected parliament, party-based campaigning and organizing is banned, encouraging and perpetuating reliance on alternative organizational structures like tribes or religious institutions, as well as an array of non-democratic practices (such as buying votes). In many (if not most) countries of the region, ruling parties use state-owned broadcasting media as a tool for spreading propaganda that bolsters the regime and enhances the image of its leader, while opposition parties are given little or no access to public media.<sup>15</sup>

Constitutions have been altered to ensure that opposition parties are unable to gain control of governmental offices and institutions with true decision-making authority. In Syria, pre-transitional Tunisia and Algeria, for example, incumbent regimes enacted constitutional change to extend the tenure of presidents indefinitely. The constitutions of Egypt, Syria and Yemen were likewise amended to attempt to ensure that the president's son would succeed his father.<sup>16</sup>

Similarly, electoral systems have been reformed to ensure that opposition parties cannot gain control of government, and that they suffer from impeded access to lower offices, such as parliamentary chairmanships, regional governorships or local government positions. In Jordan, a series of electoral laws enacted in the 1990s and early 2000s provided disproportionate representation to rural areas dominated by traditional ties, underrepresenting urban areas, where groups that are more likely to support the opposition (such as Jordanians of Palestinian descent) tend to reside. The elimination of a multi-voting system in favour of a single non-transferable vote (SNTV) system (typically referred to as a 'one-person-one-vote system') also had the impact, in the particular context of a society with active tribal patronage networks, of reducing the votes available to parties running on ideological or non-clientelistic platforms. In Morocco, the regime has favoured proportional representation as one way of facilitating the party system's continued fragmentation. In Tunisia, the ruling party historically maintained policies that ensured the use of majoritarian electoral rules to select most members of parliament, which gave a strong advantage to the ruling party over smaller opposition parties.<sup>17</sup>



Through these formal and informal mechanisms, the makeup of regional parliaments has generally been tightly controlled by the ruling elites, which have strategically filled them with the representatives of various social groups. In countries like Egypt, Libya, Syria, Tunisia and Yemen, parliaments historically have represented society to some extent, but have functioned only as indicators of public opinion, allowing regimes to assess whether specific policies would incur resistance among groups upon which they rely for support. In Tunisia, reforms enacted by the Ben Ali regime, ostensibly to pluralize government, increased the state's control of the opposition. Because parliament was such a weak institution, encouraging greater representativeness was a safe way for the regime to test new policy initiatives and observe the impact on public opinion. The same was true of Egypt. Under the putatively pluralist system, the state was able to create a false sense of competition among the smaller parties. As a result, opposition parties spent much of their time fighting with each other, rather than mounting a serious challenge to the ruling party.<sup>18</sup>

Even where opposition parties have managed to capture control of legislatures, their policy proposals have been easily ignored by the state because of the same problem of discordance between formal and actual power structures. In the vast majority of nations in the MENA region, parliaments have lacked decisive legislative power and have not played a role in appointing those with actual decision-making authority, such as cabinet members. In Jordan, political parties (which were reinstated in the 1990s after a long period of prohibition) have no control over the formation of the cabinet, and have only limited policymaking influence: while the Jordanian parliament can pass legislation, the monarchy may veto it at will. It may also dissolve parliament entirely, which it has done several times in the past.<sup>19</sup>

In a context of emerging pluralism, party finance law can help combat attempts to re-implement or perpetuate government manipulation of party systems. In addition to the natural advantages of incumbency in setting and implementing an agenda, governing parties have opportunities to tap into state resources that are not available to the opposition. Party finance laws can help to ensure the survival of opposition parties by strengthening the basic organization of the parties and their connections to citizens via political mobilization. Providing free media time, public funding and tax incentives to political parties can help to strengthen the party system. Under a political finance regime such as this, a party could be rewarded for registering voters or conducting civic education. However, it is important to ensure that public funding is not a mask for the appropriation of public resources by those already in power. Additionally, limits on the use of state resources by parties in power may help, as may disclosure requirements that hold the dominant party accountable.<sup>20</sup>


### ***2.3 Weak political parties***

As a result of the legacy of repression discussed above, most nations in the MENA region lack robust political party systems, and political parties struggle to exercise their essential function as instruments for articulating the diverse political interests of society and shaping government policy. This poses a serious challenge to successful democratic governance. Political finance laws designed to promote or reward party permanence and coherence within a competitive environment may be part of the solution to this problem. Public funding in particular can help parties broaden their social base and shore up their organizations and mobilization efforts, as well as incentivize compliance with other party finance laws.<sup>21</sup>

Most parties in the region fail to communicate a coherent message or policy platform to the public – a process reinforced by their lack of access to power over the formulation or implementation of policy. Many parties are unable to publish newspapers or other informational materials, and those parties that manage to do so achieve minimal circulation. Their efforts are usually dwarfed by those of ruling parties, which have state-sponsored media at their fingertips. The inability of secular parties, in particular, to coalesce around articulable ideologies gives Islamist parties an important advantage, because their religious and social messages are deeply appealing to the Muslim majority. The lack of genuine ideological competition among parties leaves voters with a dearth of meaningful options.<sup>22</sup>

Given this reality, many parties in the region have failed to garner substantial public support and suffer from small membership bases and shaky institutional structures. Many contemporary Arab populations view political parties as corrupt, devoid of credibility and generally useless. Parties lack ties to the people and to other social institutions; many citizens do not identify with political parties and are not engaged politically.<sup>23</sup>

As all of this suggests, political parties largely have not performed their democratic functions. Parties cannot contend on issues in ways that reflect popular values, and cannot give effective voice to popular discontent and aspirations, which serves to perpetuate the disconnect between them and their constituencies. Therefore, they cannot effectively mobilize votes, money, leadership or public opinion. Further, parties are largely unable to shape policy in the MENA region even when they do win some representation in parliament, since they cannot organize efficiently. By providing a veneer of pluralism, the presence of opposition parties in parliament often has the perverse effect of legitimating states that are, in effect, authoritarian, without posing any actual challenge to the regimes.



Political finance laws may help strengthen and stabilize party systems in the MENA region. Promoting competition between parties has long-term benefits for fighting corruption and strengthening democracy. Where there are too many parties or too much party fragmentation, the main goal should be to foster a more coherent set of choices, and political competition is of particular significance. In order for parties to become institutionalized, they need to become the main pathways to electoral success. Political finance laws can attempt to level the playing field and increase competition between parties in a democratic system, and thereby facilitate the parties' ability to serve their proper role. Parties with insufficient resources are unable to build public participation; therefore providing public funds plays an important role in democracy building overall.<sup>24</sup>

Public funding can help parties to broaden their social base and shore up their organization and mobilization efforts. It can also be set up to encourage parties to engage in democracy-building activities, such as voter registration, grassroots organization building, civic education, youth group formation, platforms for women, etc. State subsidies allow smaller, newer parties – parties that would otherwise have more difficulty competing effectively – to hire staff, advertise and pay other necessary election-related costs. In this way, they can lead to stronger, more institutionalized parties and greater party competition. However, generous public funding may also weaken the incentive to build popular support. Free media access can also enhance competition between parties and can be made available to parties on terms that encourage cooperation and coalition building.<sup>25</sup>

Party finance laws can also increase political participation through carefully targeted tax incentives and by matching grants for small contributions, while protecting the identity of small individual donors. Contribution limits that are still fairly generous may be appropriate. In short, a carefully designed party finance system can get party building under way, enhance electoral competition, and signal to potential contributors that an opposition party or campaign deserves their support.<sup>26</sup>

## **2.4 Clientelism**

Clientelism describes asymmetric but mutually beneficial relationships of power, in which those in control provide selective access to resources and opportunities in exchange for political support; it encourages citizens to vote not on the basis of political issues or party ideology, but on patron–client expectations. Political finance law can partially address clientelism through tailored public funding, disclosure requirements, and contribution limits that incentivize political participation through parties and disincentivize acting in a personal capacity.


While the concept of clientelism accommodates an array of political exchanges, it generally describes ‘the distribution of selective benefits to individuals or clearly defined groups in exchange for political support’. Clientelism is thus a personal exchange, almost always characterized by a sense of obligation on the part of the client (voter) toward the patron (politician), and an unequal balance of power. In other words, the patron has privileged access to resources, which the client cannot access due principally to the complex state bureaucracies in many MENA countries, as, for example, in Jordan.<sup>27</sup>

The precise definition of clientelism is controversial, as is the question of whether it is a positive or a negative feature of the political landscape. Some view clientelism as a way for candidates and elected representatives to solve problems and address citizens’ everyday concerns. However, while it may benefit some citizens in the short term, it can be ultimately corrosive to the development of democracy, and can hinder the growth of ideological parties and the institutionalization of competitive party politics in the region.<sup>28</sup>

A culture of clientelism pervades electoral politics in virtually all MENA countries. In local and even national elections, voting is typically based not on political concerns or specific party initiatives, but instead on how much patronage a given candidate can extract from the state once elected. Clientelism in the MENA region is caused primarily by weak parties and legislatures, but it also reflects entrenched expectations of constituent service. While parliamentarians may not be able to pass laws, they can often wield their positions to obtain jobs and other resources for their constituents by using their access to the media as a means of influencing ministers and bureaucrats, for example by threatening to publicly criticize an official if he does not comply with the member of parliament’s request.<sup>29</sup>

Legislative elections in the region are thus best understood under the rubric of ‘competitive clientelism’. They afford elites and their supporters a chance to compete over access to state resources – access that will then benefit their clients. Candidates and voters alike recognize this reality, a fact best illustrated by the term that many in the region use to refer to parliamentarians: ‘service MPs’ (*naib khidma*).<sup>30</sup>

As the name suggests, the central function of a service MP is to help constituents gain access to public services and resources, amidst the sprawling bureaucracies of many MENA states. Because there is little transparency, and since rule of law is generally weak in the region, citizens place a premium on candidates who are perceived as effective mediators between them and the state. In many countries, there is a perception that nothing can get done without *wasta*, or connections; service MPs are a classic example of this. Without such mediators, a range of ordinary pursuits – from entering



university, to obtaining a government licence or accessing public housing – may be impossible.<sup>31</sup>

Examples of clientelism abound in the region: in Jordan, parliament largely functions as a venue for MPs to jockey for access to state resources, and Jordanians generally expect ‘privileged support’ from MPs with whom they share affective ties (e.g. MPs from the same family, neighbourhood, tribe or personal network). In Morocco, the state’s territorial administration has long been connected to strong clientelistic networks. Through these networks, the *makhzen* (the individuals and institutions that serve as implementers of the monarch’s policies) have achieved a degree of stability for the palace, by promoting loyalty to the monarch.<sup>32</sup>

While clientelism has been the subject of some positive interpretations (i.e. connecting political representatives to citizens and ensuring party responses to immediate citizen needs), it is generally viewed as harmful to party democracy. Viewing the vote as a way to purchase material benefits or privileges undermines the ostensible purpose of the electoral process in a representative democracy, which is to enable citizens to vote for candidates who will best serve the public interest, however defined. Because the main objective of service MPs is to obtain economic benefits for their constituents, they are diverted from their legislative and oversight functions. This can lead to an array of deleterious consequences. For example, in Kuwait the culture of clientelism results in MPs placing increasing pressure on their government to ramp up spending to unsustainable levels. Moreover, clientelism hinders the development of ideological parties and competitive party politics in the MENA region, encouraging voters to cast their ballots not on the basis of political issues or party platforms, but on patron–client expectations.<sup>33</sup>

Party finance law may aid in correcting the problem of clientelism by sustaining and enhancing open political contention and strong, responsible parties – by strengthening party organization, political mobilization and accountability. Public funding can be targeted in ways that strengthen weak parties and the party system, reducing the overall power of clientelistic relationships over time. Political parties should be used as channels for any funding available to political candidates or organizations, and as a way to link funding to democracy-strengthening activities. Furthermore, the political finance disclosure system should include requirements for candidates, parties and leadership organizations, in order to prevent these from becoming money-laundering operations for leaders with significant personal followings. Additionally, well-crafted, generous party contribution limits and a system that protects the anonymity of small individual contributions to parties and gives matching public funds can encourage political participation through mass-based parties. The political finance system can also disincentivize rent-seeking through strict (though not repressive) contribution limits and disclosure requirements for candidates and personal organizations. Stronger parties

offering substantive political and ideological platforms are necessary for voters to have choices that transcend narrow patronage concerns. Moreover, stronger parties will be more effective at taking the reins of government and converting legislatures into true decision-making bodies.<sup>34</sup>

## ***2.5 Personalist politics***


Personalist parties are based on the personal image, charisma or following of one figure (or a limited number of people). As a result, they lack strong organization and are often funded by a few individual streams of income. Party finance law can help to discourage the persistence or emergence of personalist parties by introducing public funds and encouraging competition between larger and more institutionalized parties that can more easily reach voters and have an ongoing presence independent of a single leader.

In many parts of the MENA region, parties tend to be small and centred on a single party leader or a handful of publicly known figures. Often, candidates have only loose ties to parties and receive little support from them (or else choose to run as independents with no party affiliation at all). Small parties of this nature have poor party organization and little party membership outside the circle of the leader and his supporters, and there may be little or no contestation for leadership or internal debate inside the party; these characteristics have been observed in parties in Morocco. Personalism is, in most cases, characteristic of the party systems of Egypt, Jordan, Kuwait, Morocco, Tunisia, Yemen and elsewhere in the region, and reflects the low level of institutionalization of party systems. It contributes to parties' inability to grow into stronger political movements and gain political power. Thus, small parties and independent politicians tend to support the ruling powers, or become marginal opposition figures.<sup>35</sup>

Small personalist parties and independent politicians have been associated with clientelism, and are prevalent in countries under authoritarian regimes and monarchies. Sometimes these parties have been secular parties with liberal or socialist ideologies. However, personalist parties are also sometimes associated with social structures that guarantee a candidate's support among his or her tribe, local community or professional grouping.<sup>36</sup>

Recently, as some countries have undergone revolution or reform, small parties and independents have struggled to compete against the popularity and grassroots organization of Islamist parties – a trend that displays the uneven development of party politics in the region. A country's electoral system can also play an important role in favouring a large number of small parties or independent candidates, each with local support in only one district, over large national parties. Establishing a fair and





competitive electoral system is vital for effective political competition. Personalist parties usually do not provide an opportunity for genuine competition.

Party finance measures have an important role to play in addressing the problem of personalist politics. Providing adequate public funding to political parties in proportion to the number of seats the party has in the legislature, and possibly establishing a minimum threshold for receiving funds, can incentivize the consolidation of small parties and independent candidates into larger political bodies, develop the party apparatus, and allow these parties to reach out to new voters through political campaigning, in order to become stronger political contenders at the national level. As parties seek to grow in terms of size and resources, political finance laws are also necessary to ensure that the flow of money into politics is not accompanied by corruption.

## ***2.6 Party involvement in social services***

Some parties in the MENA region provide social services to their constituents. In part, this works to fill gaps in the social services in the states where they operate. The fact that some parties have established social-service networks threatens to inhibit democratic competition in the short term, because less-established parties may find it difficult to compete. Party finance law can partially address this issue by creating legal barriers between the political and the social-services activities of parties.

A prime example of a party with an established social-services network is the Muslim Brotherhood movement in Egypt and its affiliated political party, the Freedom and Justice Party (FJP). The Muslim Brotherhood has been providing social services in Egypt since the 1930s. It is difficult to track its network of organizations, because they operate under various names. According to one estimate, they operate 22 hospitals throughout Egypt, have schools in every region and run a variety of social programmes supporting the poor. They offer their services to all Egyptians, regardless of political or religious affiliation. These programmes have helped the Muslim Brotherhood win a reputation for competence and honesty, and have thereby contributed to the FJP's electoral success.<sup>37</sup>

The precise nature of the relationship between the Muslim Brotherhood (a movement that focuses on religion and social services) and the FJP (a legally separate entity) is opaque. Though the Brotherhood has enthusiastically embraced politics, it does not see itself as a primarily political organization. It would be a mistake to view its administration of social-services programmes merely as a strategy to gain political power.<sup>38</sup>

In some ways, the provision of public services by parties can be viewed positively. In addition to the obvious benefit of providing necessary social services, it may also enhance relationships between parties and their electorates, and thereby increase public grassroots engagement with the democratic process. However, the fact that a handful of parties already have significant social networks in place has the potential to limit democratic competition. Less-established parties may have a difficult time competing with parties that have such networks, even if they espouse political ideologies that the electorate might otherwise find preferable.


Despite inhibiting competition in the short term, over the longer term competing with such parties may incentivize less-established parties to engage more fully with the grassroots electorate than they otherwise might. This has the potential to increase public engagement with democracy over time. The likelihood of this potential benefit nevertheless depends in part on the ability of less-established parties to survive and gain support in the short term.

By levelling the playing field, party finance reform can partially bolster democratic competition between parties with established social-service networks and those without. Limits on party spending and sources of party funding can theoretically curtail the flow of funds between party political activities and party social-services activities and prevent manipulation, such as the transfer of excess funds from a social-service activity to electioneering. These limitations may be rendered more effective by provisions in other aspects of election and party law, such as restrictions on the legal relationships between political parties and social-service networks and on campaigning or partisan support at properties owned by non-profit entities, which frequently receive tax benefits. Such measures are difficult to enforce in practice, because party social-service enterprises that have a relationship with political parties are generally not part of the same legal entity, and are often registered under different names. There may also be concerns about political practicability and a perception of unfairly targeting those political parties that have developed social services.

## ***2.7 Party-run business enterprises***

Some parties in the MENA region gain income and exert influence through party-run business enterprises. Party finance law can address this issue by limiting or forbidding party involvement in commercial enterprises, or by prohibiting business funds from being used for political purposes.

The most obvious examples of party-affiliated businesses are party-run media enterprises (discussed in further detail below). However, parties sometimes also run diverse commercial enterprises that have little to do with stated party ideologies or objectives. Party-run or affiliated commercial enterprises that are unrelated to party



ideologies and objectives present two potential problems. First, these enterprises may be susceptible to corruption (or at least the appearance of corruption), as some commercial activities may benefit from political decisions. Second, party income is another worrisome aspect of party-run businesses. Income from constituents' contributions is a proxy for democratic support for party political goals and ideologies, and income from public funding is frequently utilized to promote fairness and transparency in the democratic process. Income from party businesses, however, provides neither benefit. Instead it introduces into party finances money that is divorced from political goals, and generates additional imbalances in party competition. Essentially, party-run companies raise similar concerns as the corporate *quid pro quo* – except that the party and company have an even tighter and more obvious relationship than in the typical corporate donor scenario. Additionally, parties may use companies with close relationships to party leaders to channel contributions and thereby avoid other restrictions, such as caps on donations.

Party finance laws can partially address this issue. First, countries can choose to regulate or ban outright party-run or affiliated commercial enterprises. Many ban outright ownership, making exceptions for certain types of companies that are seen as more central to the party's role, such as news media, as well as for parties' non-profit think tanks or research centres. Also, limits on the sources of party income and party spending can help to stop funds flowing from party businesses to party political activities. As with social services, however, such laws are difficult to implement and enforce, because party-run or affiliated enterprises are often different legal entities registered under different names. A strong enforcement system with sufficient investigative resources is necessary to discover and prosecute violations.

## **2.8 Party ownership of media**

Media outlets owned by political parties or party leaders are prominent in some MENA countries and can present challenges to informed democratic participation by making it difficult for citizens to access objective information. Party finance law can prohibit the use of media funds for political purposes, and can help level the playing field by providing equitable access to media via government media outlets.

This challenge is consistent with the historical precedent of a lack of independent media under authoritarian regimes. In Iraq, for example, only state-owned media were permitted under Saddam Hussein's regime. Currently, media owned by or affiliated with political ethno-sectarian factions dominate the country's print and broadcast media and breed conflict and instability. Non-partisan media exist, but do not have access to the financial resources that political parties are able to provide, and therefore tend to have much more limited distribution. In Lebanon, politicians and influential families own most media outlets, and politicians frequently sit on the boards of media

companies; content often reflects the political viewpoint of the ownership's ethnic or religious group. In some countries, the challenge of government-controlled media persists: in Algeria, for instance, the government owns all domestic radio and TV stations and has substantial influence over print media. On the other hand, Morocco has seen substantial diversification in the past decade in its print media, which used to be primarily a party-owned area.<sup>39</sup>


Party finance law can partially address this challenge in two ways. First, limits on sources of party funding and party spending can stem the flow of money between party media outlets and party political organizations, which may be justifiable at least to the degree that party media efforts go beyond promoting the party's message and extend to less political for-profit enterprises. Such measures may be difficult to enforce, however, without robust auditing procedures. Second, indirect public funding can be provided to parties through the use of state media; a requirement that private media should broadcast party political messages; or the purchase of space in private media and its provision to political parties. This type of in-kind public support, if implemented inclusively, can level the playing field for parties that lack ownership of, or connections to, influential media outlets.

## 2.9 Vote buying

Vote buying consists of asking voters to vote for or against a candidate, or to abstain from voting, in exchange for money or other inducements. Party finance addresses this problem directly by prohibiting vote buying, and indirectly by determining a cap on overall party expenditure and by regulating third-party expenditure on behalf of parties and candidates.

Although banned by more than 94 per cent of countries worldwide, vote-buying allegations are a recurring theme, including in the MENA region. While some forms of clientelistic practices – such as dedicated infrastructure spending, patronage jobs, or other constituent services – may also be perceived as a form of vote buying, direct vote buying involves making payments to voters, sometimes on multiple occasions, in return for votes. In this case, the key figures 'selling' votes, in addition to individuals, may be charities, religious endowment committees, social clubs, family networks, places of worship in villages, and municipalities. Voters may be asked to commit either to vote for or against a particular candidate or party, or to abstain from voting. Large-scale vote buying may skew election results and distort social preferences. At any level, vote buying undermines the people's faith in the fairness of the electoral system and the legitimacy of the political process.<sup>40</sup>

Vote buying is characteristic of clientelistic political systems and is common in both authoritarian regimes and new democracies. Vote buying can increase where there is



robust competition within constituencies. As a phenomenon, it typically targets both poor and apathetic voters and also those with a party commitment.<sup>41</sup>

Although vote buying is already prohibited in most systems in the MENA region, it can be difficult to expose and punish. For example, it is one of the major problems in Lebanon's political system, particularly given persistent sustained poverty in many areas and low levels of access to health, social, educational and economic resources. In some areas, there have been cases of indirect vote buying, more akin to clientelism, through the provision of services such as building permits or driving licences. In Jordan, votes are often bought in two instalments: payments are made before the election in exchange for a commitment to vote for a particular candidate, and again after exiting the polling station.<sup>42</sup>

Because vote buying is a symptom of low institutionalization of party systems, as with all challenges for party systems it is important to approach the problem holistically, addressing the underlying weaknesses that reinforce citizens' belief that their choice of party will not impact on policy. However, some other methods of party finance regulation (such as spending limits) are also helpful, because imposing a cap on expenses and monitoring real expenditure on campaigns discourages parties from offering money to voters or providing in-kind goods or services. Clearly worded and specific legal provisions can help to prosecute violations. For instance, Tunisia's Decree 2011/3, article 40, states that expenditure on gifts and donations to the public may be included in parties' expenses accounting provided they do not exceed 5 per cent of total expenditure. Otherwise, they are considered a method and technique adopted to influence voters. Enforcement bodies must also have the resources and authority to investigate suspected offences and to impose meaningful sanctions for attempted violations.

### 3 Major Design Questions and Models

Political party finance law provides one way to address the challenges described above. In order to facilitate the consideration of different options, party finance law can usefully be broken down into five key areas: the provision of public funds; limits on party income; limits on party spending; public disclosure of party income, assets and expenditure; and enforcement. These areas do not stand alone; decisions in any one of the areas will affect the outcome of the others.


This section first discusses a set of cross-cutting themes to consider when designing a system of political party finance that covers all five areas. It then provides an overview of those five key areas, and discusses their status with reference to recent events in Egypt, Libya and Tunisia. The in-depth discussion focuses on those three countries in particular, because all have undergone significant change in their political systems that has focused on increased citizen participation in political processes, including through a more open and competitive political party system. All three have held a first round of electoral processes following their transitions, permitting some preliminary observations to be drawn, and they also continue to discuss further reforms, making a discussion of their experiences particularly relevant to other countries that are considering legal and policy reforms – both in the MENA region and elsewhere.

#### 3.1 Cross-cutting themes

Various cross-cutting themes have an impact on the design, implementation and effects of the frameworks that govern the five key areas, adding complexity to the design process. This report discusses five of these themes: ongoing vs. electoral campaign regulation, including the regulation of candidates; regulation of local and national levels of party organization; third parties acting on behalf of candidates or parties; use of state resources by parties in power; and compliance incentives.

##### 3.1.1 Ongoing vs. electoral campaign regulation

Countries may choose to adopt party finance laws that operate on an ongoing basis, on an electoral campaign basis, or on both. The former may regulate the costs of office administration, staff and communications with the public throughout the year. If income, spending, public disclosure laws and public funding are limited to costs associated with campaign activities, public accountability may suffer. First, campaign-related violations may be more difficult to uncover if funds for non-campaign purposes are unregulated. Ongoing funding is also preferred in the public funding context because it enables parties to conduct activities more effectively and to engage with citizens throughout the year, facilitating the maintenance of their links with society, their awareness as institutions of constituents' desires, and their development of policy.



Finally, the more the public is aware of ongoing party activities, the easier it will be for it to judge the sincerity of party candidates during electoral periods.<sup>43</sup>

A related danger is the election-period regulation of only candidates – or, conversely, of only parties. Often, this depends on the electoral system: countries that use single-member districts where individual candidates stand for election, such as Britain, France and India, have regulated candidates more (and parties less) than countries that employ only closed-list proportional representation, such as Spain, Italy and Turkey. In Turkey, where only parties are regulated, donations are often channelled through candidates in order to avoid regulation. On the other hand, in India, where traditionally only candidates have been regulated, central parties have had a freer hand to deploy large-scale resources. The legal framework for parties and candidates should ideally be complementary and work toward the same goal.<sup>44</sup>

### ***3.1.2 Regulation of local and national levels of party organization***

Many political parties have regional and local organizational structures. Regulation of only national party offices may be ineffective in practice, as funds donated at one level may be spent at another level; or funds may be collected and spent entirely at the local level. Finance law may impact the internal structures and operation of political parties by imposing requirements and legal liability on certain actors within the party, or by providing certain actors in the party (frequently, the central party organization) with better access to funding, relative to individual candidates or local party organizations. Conversely, the availability of greater resources for individual candidates only may undermine the strength of party organizations. Countries may choose to include local party offices in the public funding context as well, in order to promote stronger relationships between parties and constituents. This sometimes takes place by giving local authorities the option to provide public funding.<sup>45</sup>

### ***3.1.3 Third parties acting on behalf of candidates or parties***

People or organizations other than political parties or candidates, often referred to as ‘third parties’, might act on behalf of parties or candidates. In the financial context, such activities might include providing services or facilities for party members or supporters, purchasing or providing advertisements for the party, or facilitating mobilization efforts. In the most egregious contexts, parties themselves may facilitate the creation of non-governmental organizations (NGOs) specifically to channel private donations or conduct spending that would be illegal for the party to carry out itself. The line between the role of third parties and in-kind donations, or service donations, to parties needs to be clearly defined, but instead it is often blurred and difficult to enforce. There are also potential differences in the ideal treatment of organizations primarily created to circumvent the rules, as opposed to those that have an independent existence yet act in

support of the party. Whatever the details of the specific case, third parties present a thorny political party finance problem, because funds that otherwise might go to parties or candidates can be channelled through third parties to avoid regulation and detection. Regulating third parties can be awkward, because such regulation may coexist uneasily with the democratic freedom of expression, and may create additional challenges for enforcement bodies.<sup>46</sup>

### ***3.1.4 Use of state resources by parties in power***


Political parties in power may abuse state resources to further their chances of re-election; it is not difficult to find accusations of such abuse worldwide. Common laws aimed at preventing such behaviour include provisions banning the use or dispersal of administrative resources or funds to political parties, candidates or campaigns (with the exception of legal public funding); banning the provision of funds or other resources from entities with a relationship to the state, such as partially state-owned business concerns; and prohibiting or limiting financial contributions to parties by employees of state-owned entities or agencies. It is particularly difficult to enforce violations of such laws during electoral campaigns, because the abuses are often conducted by those in control of the government at the time.<sup>47</sup>

### ***3.1.5 Compliance incentives***

Effective enforcement in the party finance arena is extremely difficult and resource-dependent. Lawmakers should, whenever possible, structure party finance laws and their implementation so as to incentivize voluntary compliance. This approach allows the party finance regime to depend slightly less upon public enforcement mechanisms.

What makes a compliance incentive effective is context-specific. However, there are a few principles that apply broadly. First, it is important that the legal requirements should not be so burdensome as to disincentivize compliance. In the income context, this means that parties must be allowed to collect enough money to function and campaign; in the public disclosure context, it means that disclosure requirements must not be so robust as to make it nearly impossible to comply in a timely manner. Second, adopting or implementing restrictions gradually can make such restrictions less burdensome by giving parties time to adapt. Third, and a related point, the correct sequencing of how and when new laws are implemented is key. For example, if a law that bans corporate donations is introduced at the same time as a law that provides for public funding, parties may be more likely to comply with the ban, since the benefit of new public funds will mitigate the loss of corporate funds. Fourth, the existence of public funding (and increased party dependence on it) also gives public enforcement bodies more leverage if they can withhold that funding. Finally, providing rewards for compliance, such as public funding or access to state media outlets, can be effective.





Various mechanisms have been utilized with regard to private donations. For example, a mechanism for matching funds, as employed in countries such as Germany and the United States, may provide parties with the incentive to report donations. Likewise, many countries provide tax deductions or credits for donors, offering them an incentive to report the donation.

### ***3.2 Provision of public funds to parties and campaigns***

#### ***3.2.1 Why provide public funding?***

Public funding can be a positive step in addressing many of the challenges discussed in the previous section, particularly when combined with other complementary reforms. Public funding can potentially provide a mechanism to promote the participation of under-represented sectors and party system institutionalization. It can also help to increase the competitiveness of the party system. At the same time, there are some potential dangers, such as the risk of parties becoming dependent on the state, and the possibility of de-emphasizing relationships between parties and grassroots movements. Public funding may also be used by parties in power to suppress small minority parties or to discourage new parties from forming.

Public funding is noteworthy as a measure that both new and established democracies have implemented with some success in terms of the health of political parties and the overall political systems. Unlike other party finance legal measures discussed in this section, public funding systems are often relatively simple to put in place and administer. On the other hand, public funding of political parties may require more financial resources than other strategies, and often encounters objections from tax-paying electorates that are sceptical of political parties to begin with. While public finance is most successful when paired with strong enforcement, it is much less complex than most enforcement mechanisms.

Most importantly, there is empirical evidence that public funding of parties leads to stronger, more professional parties and greater party competition. As a result, many commentators advocate its use to help achieve these goals.<sup>48</sup>

#### ***3.2.2 Direct funding***

Direct subsidies (i.e. cash transfers to parties from the state) are usually intended to strengthen parties, increase party competition, minimize corruption and reduce the influence of wealthy political donors. Indirect funding (discussed later) has similar goals, but is generally limited in scope to material resources that governments already have. Direct funding allows states to provide funding for those expenses that it cannot or does not wish to provide to parties in kind. Whether public funding helps to achieve these goals is highly dependent on various factors, including both the amount of public

subsidies offered and the time at which subsidies are disbursed. There is no one model for how political party finance laws should handle these questions, as they are highly dependent on country-specific circumstances.

A variety of factors need to be taken into account when a country is considering direct public funding for political parties. The following are some of the major choices associated with direct public funding.


### ***3.2.2.1 Level of public funding***

To have the greatest impact on the system and achieve such goals as reducing party dependence on private funding, public funding must be set at a realistic level that accords with what parties have spent in previous campaigns or that reflects the expected impact of restrictions being imposed on other income sources. One factor that policymakers may consider, if public funding already exists, is the current percentage of party funds currently of private origin. See Appendix 3 for graphs depicting the private/public funding balance over time in various countries. There is considerable variation in the percentage of party budgets that comes from the government in systems where public funding is already established. According to official statistics, in the United Kingdom the government provides approximately 18 per cent of total party income, in Italy 4 per cent, in Mexico 80 per cent, and in Turkey 90 per cent, to give only a few examples. There is also variation in the private/public funding balance across parties in many systems.<sup>49</sup>

Countries must also consider the budgetary impact of implementing public funding initiatives. Various mechanisms have been identified for setting a level of overall public funding for the political party system. Some countries simply set a certain amount of money per vote per party (Canada, until 2014, for ongoing funding); some set a percentage of GDP (Costa Rica); some have a base level and provide for an annual increase (Colombia); some define the level based on a standardized national unit of account that is adjusted for inflation (Chile); and others define the level based on a formula that multiplies the number of voters by the minimum wage (Mexico). This is not an exhaustive list, and there are any number of ways to set the level that may be more appropriate and more easily calculable in a particular domestic context.<sup>50</sup>

### ***3.2.2.2 Affording public funding in developing countries***

Citizens may perceive public funding to be an unnecessary and undesirable expense, particularly given that political parties are widely viewed as corrupt or self-interested. Canada's Conservative Party was able to include the elimination of ongoing public funding in its electoral platform (and followed this through in 2011, despite strong objections from opposition parties). Antipathy may be particularly acute in states facing serious development or budgetary challenges. In Spain, for example, the ongoing



financial crisis and high unemployment – in a context of frequent political finance scandals – has been reflected in a decrease in the annual subsidy to political parties.<sup>51</sup>

While the absolute cost of public funding may seem high in isolation, it is often quite small in comparison to other government expenditure. For example, Tunisia spent approximately 0.04 per cent of its total budget on public funding in 2011 (9.5 million dinars out of a total budget of 21.22 billion dinars). South Africa is slated to spend 114.8 million rand on public funding for parties in 2013, out of a total budget of 1.5 trillion rand (public funding constituting approximately 0.07 per cent of the total national budget). The complaint that a country cannot afford public funding tends to reflect dissatisfaction with the concept of public funding or the state of the political party system, rather than any real need to choose between public funding for political parties and important government services.<sup>52</sup>

Public funding, especially as part of a broader political finance system, may reduce overall electoral expenditure. For example, there is evidence to suggest that the introduction of public funding played a significant role in halting the previously exponential growth in electoral spending in Japan. The provision of indirect funding via access to state resources usually imposes minimal costs on governments, but nonetheless constitutes significant support for political parties, which do not have to dip into their pockets to pay for these resources. And finally, public funding has broader goals of promoting equitable competition, enabling parties to disseminate their messages fairly, and reducing the dependency of political parties on wealthy donors. These goals provide an inherent benefit, as well as an instrumental benefit of more robust political competition and, consequently, policymaking that promotes the broader public interest over narrow private interests.<sup>53</sup>

### ***3.2.2.3 Equitable versus proportional***

One of the key debates regarding public funding is whether it should be distributed to parties in proportion to the number of seats won in parliament or the number of votes received (i.e. proportionally), or be divided between all parties equitably, provided the party meets a certain minimum threshold. Many countries have adopted a formula that is a combination of the two, but primarily proportional. For example, in South Africa 10 per cent of funding is awarded equitably at the provincial level, based on representation in the provincial legislature, while 90 per cent is divided proportionally, based on the percentage of seats won in provincial and national legislatures added together. In Mexico, 30 per cent of funding is awarded equitably to all parties with congressional representation, and 70 per cent is allocated proportionally, based on the previous election's outcome. While a particular country's approach to this issue, like many aspects of public funding, will inevitably be determined by country-specific criteria, including some proportionality calculation in the allocation of public funds may

help to maintain incentives for political parties to solicit donations and win over new voters.<sup>54</sup>

'Matching funds' offer another approach that has been deployed to encourage parties to solicit and report private funds, but at the same time to support them publicly. This form of funding is neither proportional nor equitable, but is rather based on a party's own capacity to raise funds. In Germany, each party receives a public subsidy of 38 per cent of the total amount that it has received privately, through membership fees and individual donations of under €3,300. As discussed later in this section, public funding may run the risk of alienating parties from their constituencies; 'matching funds' ensure continued responsiveness to donors, who presumably represent the interests of at least some voters.<sup>55</sup>

#### ***3.2.2.4 Ongoing versus election only***

Parties, ideally, support their elected officials and have a presence among citizens during non-electoral periods. Such a presence helps them to develop ongoing links with society and to formulate policies based on society's needs that are more characteristic of institutionalized party systems. For this reason, a large number of countries support political parties through ongoing funding – often disbursed every three months – in addition to funding parties during the electoral period. Ongoing funding also pursues the same rationale as election funding, in that it replaces potentially questionable sources of funding. Ongoing funding is a particularly important policy option for MENA countries to consider, given the prevalence of weak party systems and low party institutionalization throughout the region.

#### ***3.2.2.5 Before elections (advance) or after elections (reimbursement)***

While providing funds before an election can be of greater assistance in levelling the playing field, it may be easier to enforce the law through the mechanism of reimbursement. Some countries provide a tranche of money prior to an election, and a second tranche contingent upon the receipt and/or processing of reports for the electoral period. In general, post hoc disbursement is more easily tied to reporting requirements, and may thus help to maintain accountability for parties that receive public resources in the form of public funding. By contrast, pre-election disbursement is better for new or weak parties that may not be able to pay the full costs of a campaign up front. Tunisia, as discussed below, provided two tranches prior to the elections to its Constituent Assembly in 2011; the second tranche was conditional on the receipt of reports for the first tranche, and also on a certain vote threshold being reached (otherwise the money had to be returned to the state). For this reason, many parties did not request the second tranche until after the election.<sup>56</sup>



### 3.2.2.6 *Treatment of new or weak parties*

If funding is being divided proportionally, there is the question of how newly registered parties without elected officeholders should be treated. One solution for electoral funding is to provide the new party with the same amount of funding as is awarded to an existing party that qualifies for the smallest amount of funding (as is done in Colombia); or, in a system that provides both equitable and proportional funding, another solution would be to provide the new party with only the equitable component. In Mozambique's 1999 election, half of the public funds for legislative elections were allocated to parties already represented in parliament, and the other half was distributed in proportion to the number of seats contested. This strategy was designed in part to reduce the number of fraudulent parties formed simply to procure public funds, but it had the drawback of delaying disbursements until the candidacies had been certified – which took place after the campaign period had already started. Providing new parties with compensation for a specific set of expenses may also help strike a balance between deterring fraudulent claims for public funding and encouraging the participation of new political entrants.<sup>57</sup>

### 3.2.3 *Indirect funding*

*Indirect public funding* refers to resources in kind provided to political parties. Perhaps the most widespread form of indirect funding is free or subsidized access to the media, whether state or private. Other forms of indirect support include tax deductions for individual donors to political parties, as well as tax exemptions for the party organizations themselves, the provision of state-owned premises for campaign meetings, free postage, or space to post campaign materials. These subsidies may be as valuable in financial terms as direct assistance. Many of the same questions that accompany the provision and allocation of direct funding also apply to some forms of indirect funding, in particular the allocation of broadcast time.

#### 3.2.3.1 *Media*

In many cases, the most significant form of indirect funding will come in the form of access to broadcast media. The provision of access to state-owned media is common; some countries also provide for the state to purchase time in private media to offer to electoral competitors. Alternatively, access to state media is often accompanied by restrictions on campaigning through private media, as a way of keeping down election costs. The United Kingdom prohibits the purchase of private television broadcasts for campaign purposes, and Tunisia's decree laws regulating the elections to the Constituent Assembly similarly prohibit parties from advertising through any non-state media outlet. Providing parties with access to state media may also give governments a way of monitoring the content of political advertising, for example as a way of

forbidding personal-attack ads. Free media access, if allocated fairly, may particularly benefit small parties that might have difficulty in qualifying for direct funding or raising money from private donors. Finally, providing free media access to political parties may improve the enforcement of limits on the length of campaigns, while still enabling parties to convey their messages to the public.<sup>58</sup>


Like other forms of public funding, the provision of free media access may create controversy. In countries where higher-end production techniques have become standard, production costs may still pose a barrier. As with other aspects of public funding, the provision of broadcast media access may disadvantage excluded parties. In Australia, incumbent parties have special access to funds for creating print advertising, and in the United Kingdom major parties receive more time on public television.<sup>59</sup>

### ***3.2.4 Discouraging dominant parties***

Public funding has been a notable factor in successful transitions away from one-party or dominant-party regimes. The effects of public funding on party strength and competitiveness may help to prevent the re-emergence of a single or dominant party in the future. Given the history of one-party rule in various MENA countries, public funding also merits consideration as a mechanism to help embed more competitive political processes.

Scholars have argued that dominant parties persist because they are able both to raise costs for the opposition and to aggregate and utilize state resources. Egypt's newly amended electoral law seems to address these issues, at least in part, by prohibiting the use of state property by those in office, requiring MPs to provide regular disclosure of their finances, and forbidding the use by any person of public property or modes of transport, or public funds for campaigning purposes. Providing guaranteed funding to a larger group of political parties according to pre-existing criteria can help to mitigate these issues. Mexico and Japan provide excellent examples of this pattern. In both countries, dominant-party states were eroded by the ascendance of opposition parties that were aided in part by public funding, resulting in more competitive political systems.<sup>60</sup>

Mexico is a developing country that implemented a series of reforms, including public funding, concurrently with the gradual erosion and ultimate end of its one-party political system over approximately three decades. Mexican politics consolidated into a one-party regime in the 1930s, following a period of revolutionary upheaval. The Institutional Revolutionary Party (PRI) was in power in Mexico for over 70 years, but lost its majority in the House of Deputies in 1997, and then went on to lose a presidential election for the first time in 2000. No party has held a majority in either house of the Mexican Congress since 1997. Along with these changes in electoral



outcomes, there have been substantial shifts in the distribution of state-provided resources among parties. The PRI received 49.3 per cent of public funds in 1994, but only 30.3 per cent in 2000 – the first time an opposition coalition surpassed a government party in terms of funding.<sup>61</sup>

It is generally believed that major political party finance and electoral reforms promulgated via the Constitution and federal law in 1996 contributed to this rapid democratization of the Mexican political system. Public funding was an important component of a package of reforms. These have included substantial funding for ongoing party activities, as well as election campaigns, and have contributed to making the country's parties more competitive and institutionalized.<sup>62</sup>

Under the new Mexican system, subsidies for political parties are divided into regular ongoing party activity and campaign expenses. A small subset of the funds for ongoing activity is earmarked for specific activities, including 2 per cent for promoting women's political leadership, and 2 per cent for other 'public interest activities', such as political education and training, research and publications. Some 30 per cent of regular party activity funds are distributed equally to all parties, and 70 per cent are allocated in accordance with the percentage of votes that a party polled at the last election. Parties also receive an additional sum equalling 50 per cent of their regular party activities allowance to run campaigns during years in which there are simultaneous presidential and congressional elections (every six years), and an additional 30 per cent for midterm years with lower-house elections only at the federal level (every three years). The 1996 reforms and the subsequent 2008 additions also provide extensive state resources for party campaigning on television and radio, and assign responsibility for holding and broadcasting a presidential debate to the independent public electoral management body, the Federal Electoral Institute (IFE). It is worth noting that the principle of party access to public broadcasting – usually an issue reserved for federal legislation – has been incorporated into the Mexican Constitution, along with the other commitments to public funding for the political process and parties.<sup>63</sup>

For all its successes with public funding, Mexico still faces challenges. Like many countries, it has encountered popular objections to the cost of funding political parties. Flaws were rectified in the formula for distributing public funds among political parties, which had inadvertently tied overall increases in public funding to a rise in the number of parties in Congress. The need to fix these flaws, however, points to the potential dangers of embedding the detailed legal framework for political party finance at higher levels of law. Mexico has incorporated extensive detail regarding political party finance in its Constitution. While the Mexican Constitution has proven relatively easy to amend, this incorporation of detail at the constitutional level is probably not ideal in other settings. Ongoing problems relate to enforcement of the conditions accompanying political funding, which will be discussed further in this section.<sup>64</sup>

Japan, like Mexico, was ruled by a dominant party for several decades. The Liberal Democratic Party (LDP) lost control of the government in 2009 for only the second time since 1955. The opening up of Japanese politics is generally thought to have been facilitated by political finance and electoral reforms put in place in 1994, during the first (brief) interlude of control by a non-LDP coalition government. As with Mexico, Japan's reforms brought substantial changes to several areas of law, and included a major increase in public funding.

The Japanese reforms provided for public subsidies on the mixed basis of a party's electoral results and the number of its parliamentary seats, provided it wins a minimum of 2 per cent of the vote or has five members of parliament. In the years following the introduction of these subsidies, they constituted 40 per cent or more of the total annual funds of most parties. While there has been some commentary to the effect that the subsidies are too small, Japan nonetheless provides another good example of the possible positive effects of introducing or increasing public funding, along with other political finance and electoral reforms.<sup>65</sup>

### ***3.2.5 Public funding as an incentive***

Public funding may be a useful tool for promoting compliance with other parts of the party finance regime. Many countries require parties to comply with all relevant financial disclosure laws before they are permitted to receive public funding, or may withhold funding for non-compliance. As discussed above, the effectiveness of this conditionality may depend on the timing of the disbursement of public funds. If public funding has become important to political parties' competitiveness, its loss will be a real penalty. Under some regimes, parties may lose their funding if they violate party finance laws, or may gain additional funding if they meet voluntary standards designed to achieve broader social goals, such as diversity or gender parity in candidates.

Colombia has undertaken a series of campaign finance reforms in recent years, designed to combat significant problems with corruption and illegal money in the electoral process. The success of these reforms is seriously challenged by enforcement and resource limitations, but the laws themselves include interesting provisions that are worthy of consideration by transitioning MENA-region democracies. One of the most progressive reforms involves dividing 5 per cent of all public subsidies among parties, based on the number of youth each party has elected to office, and an additional 5 per cent based on the number of women elected. Moreover, a minimum of 15 per cent of the funding received by each party must be spent on activities of party think tanks or research centres, political and campaign training, and the inclusion of youth, women and ethnic minorities. This type of incentive may be another method to encourage diversity in politics in countries – including many in the MENA region – where quotas for women and minorities in the legislature have proved unpopular or ineffective.<sup>66</sup>





### 3.2.6 Hazards of public funding

A common complaint levelled at public financing of parties is that it divorces parties from their bases and makes them more reliant on the state. In post-authoritarian regimes, there may be particular concerns about maintaining party independence from the regime. In the context of the MENA region, however, where party competition has historically been suppressed, there may also be merit in partially standardizing the sources of party funding and facilitating opportunities for smaller or newer parties to compete with parties that gain funding through established businesses or influential individuals.<sup>67</sup>

Given the fact that public funding is typically distributed, at least in part, on the basis of parties' past performance, it also provides an inherent advantage to incumbent parties. The level of this advantage depends on the details of the system. Turkey's current public subsidy system, in combination with its electoral system and poor enforcement of party finance regulations, is thought to have this effect. The law offers aid, on a proportional basis, to parties that won seats in the previous election. However, Turkey has an electoral system that requires parties to achieve 10 per cent of the vote to even gain a seat in the legislature, and this already hinders small parties. While public subsidies are available to parties that gain 7 per cent of the vote without winning a seat, the threshold creates yet another barrier to entry for newer or smaller parties, which must compete against larger parties that also receive aid from the state. The system of state subsidies has served to entrench established parties still further and to make it even more difficult for new parties to enter the political arena. Turkey exemplifies the possible hazards of public funding even within a competitive party system.<sup>68</sup>

The Turkish example does not mean that there is no benefit to a cut-off requirement that may exclude small parties or independent candidates, so long as it is done in an equitable fashion. The electoral threshold for receipt of public funds in Colombia, and the introduction of public funding centred on parties rather than individuals, have complemented changes in the electoral and legislative procedural rules to successfully curb an excessive number of small parties and candidate lists. Latvia delayed introducing public funding until 2013, and the result was a high turnover of political parties.<sup>69</sup>

A more blatant attempt to block small parties from receiving public funds occurred in the Czech Republic in 2000, when the country's two largest parties implemented simultaneous reforms to the parliamentary electoral system and the financing system. The electoral reforms would likely have resulted in more seats for those two parties. The complementary finance reforms would have made public funding more dependent on seats won, rather than on votes, thereby skewing public funding further in favour of the two biggest parties. The reforms were struck down by the country's Constitutional

Court, but this episode provides a clear example of the way in which established parties attempt to use finance rules to narrow the field of political competition.<sup>70</sup>

### **3.2.7 Recent developments in the MENA region**

#### **3.2.7.1 Egypt**

As of 2011, Egypt provides no direct public funding to political parties. This is in contrast to low-level funding provided by the Mubarak regime that was, in some cases, seen as a method of making parties beholden to the state and incapable of acting as true voices of opposition. Parties do receive indirect funding via their tax-exempt status, under an extant Mubarak-era law. Neither the 1971 Constitution nor the now-suspended 2012 Constitution mentions direct or indirect public funding. However, the law specifically gives parties the right to use state-owned media, in accordance with regulations.<sup>71</sup>


Given the uneven level of development among Egypt's political parties, public funding could provide a particularly important service in increasing political party institutionalization and levelling the playing field between new and established, or rich and poor parties.

#### **3.2.7.2 Libya**

Like Egypt, Libya does not provide any direct public funding to political parties. The High National Election Commission (HNEC) is responsible for providing equal opportunities in the public media for all candidates and parties. For the 2012 elections, regulations were general and did not provide for specific allocations, and the HNEC adopted *de facto* practices after the campaign period had already started. Given Libya's recent history, where political parties were banned under Gaddafi, public funding could be an important first step towards institutionalizing political parties. More than half of the current members of the General National Congress are independents, reflecting the weakness of the country's political party system. Given the continued active presence of a large number of revolutionary militias in Libyan politics, public funding may also be a worthwhile policy tool to consider as a means of demilitarizing and transitioning these groups into the political party system.<sup>72</sup>

#### **3.2.7.3 Tunisia**

Perhaps because Tunisia's 2011 governing legal framework regarding party finance was adopted only for the Constituent Assembly elections, it does not provide for the ongoing funding of political parties. Decree Law 35 of 2011 established direct public funding for the elections and restricted the use of private funds for campaign purposes (article 52). Later decree laws provided for the use of private donations, and there were



complaints that the Ennahda Movement in particular was able to leverage significant advantages over its less well-funded competitors. The system of public funding was based on the number of voters in a given constituency, and was equal for each list in the constituency. The state provided 35 dinars for every 1,000 voters in constituencies with fewer than 200,000 voters, and 25 dinars for every 1,000 voters in constituencies with more than 200,000 voters. The total amount ultimately distributed is estimated at around 8.2 million dinars, out of the 9.5 million originally budgeted.<sup>73</sup>

Public funding was disbursed in two equal instalments, one prior to the start of the elections and the other during the last ten days of the election. Parties were entitled to keep the first instalment regardless of their performance, but any party winning less than 3 per cent of the vote was required to return the second instalment. There is some evidence that unsuccessful parties have not been diligent in returning these funds. The funds were deposited into the single bank account held by each party (required by law), subject to the fundamental principle of transparency. The Court of Accounts was responsible for disbursing these funds, and it had to produce a report within six months of the election, describing its supervision of electoral finance, including the use of public funds in the election; the Court in fact released its report in August 2012.<sup>74</sup>

The decree laws also provided for significant indirect funding through the use of state media and space for affixing campaign propaganda. The Independent High Commission for Elections (ISIE) was given broad authority to determine an equitable system for allocating state media to the parties, which are not permitted to purchase media time from private vendors. Local governments are also required to allocate equal amounts of campaign space for each candidate, presumably on government property. These extensive provisions for indirect funding were capped by a general ban on campaigning by public authorities and on the use of any other public resources. Decree Law 87 of 2011, governing the regulation of political parties, post-dates the decree laws governing the administration of the Constituent Assembly elections. It contains several provisions on political party finance; with respect to public funding, article 21 merely states that parties shall be entitled to public funding, and as written does not seem to amend or abrogate the more specific provisions discussed here.<sup>75</sup>

Tunisia's decree laws demonstrate a commitment to the basic principles animating most public funding schemes. Future improvements might include dropping unenforceable requirements that unsuccessful parties return public funds. Campaign-time funding could, in turn, be reduced by the provision of ongoing funding for political parties; this might enable them to compete for private funds on a more equitable basis year-round. Some systems also include post hoc public funding, where funds are provided to parties, at least in part based on the party's previous electoral success. That would ameliorate concerns about 'shadow lists' defrauding the government of funds intended for electoral use, which inspired the 3 per cent rule in the first place. Public funding could also be

made conditional on compliance with disclosure rules. The uneven funding for differently sized constituencies also appears to create a disruptive inequality between candidates for similar offices. Finally, it may be worth codifying the ISIE's approach to the allocation of media time and advertising space. Clear rules provide grounds for redress in the event of corruption, and also help secure transparency and voter faith in the system.

In Tunisia's June 2013 draft Constitution, article 64 defines laws related to the funding of political parties as organic laws, which may serve to ensure that political finance remains on the agenda and achieves broader consensus. Article 63 requires an absolute majority, rather than a simple majority, for the passage of organic laws, and extends the committee deliberation stage to a minimum of 15 days.

These heightened requirements for a political party finance law may have both positive and negative consequences. For public funding, regular and easy amendment could be helpful in adjusting the level of funding until an appropriate amount is determined. At the same time, ease of adjustment may open the law up to manipulation by a simple majority seeking to entrench its own position via manipulation of public funding requirements. While the latter is a real danger, it is also worth considering the fact that, like all countries, Tunisia will probably have to engage in a degree of trial and error before it arrives at a suitable level and method of public funding. Perhaps a third option would involve assigning certain questions – such as the amount of funding within a designated range – to an independent agency.

### ***3.2.8 Important policy considerations***

While public funding has been successful in strengthening parties and political competition in many democracies, countries implementing such a system should be conscious of several important choices. Major questions include whether to fund candidates or parties; when to provide public funding; how subsidies should be allocated (usually on the basis of electoral success); campaign versus party funding; and the amount of money provided via subsidy, given that small amounts may do nothing to address the problems that public funding is designed to resolve. New democracies should also be wary of the possibility that parties could become dependent on the state for funds, or detached from their constituencies. Finally, public funding mechanisms may be used to abuse smaller parties or opposition parties, and should be so designed as to prevent attempts at entrenchment by the party (or parties) in power.



## **3.2 Limits on party income**

### **3.3.1 Why regulate party income?**

Political parties need money to participate effectively in the democratic process, by disseminating their messages and building their organizations. On the other hand, individuals and companies that donate to parties or candidates may seek to influence the policies made by elected officials and the parties in power. Rules regulating how and from whom political parties may acquire funds can drastically alter the political landscape in both productive and counterproductive ways, and can have a corresponding impact on the pluralism and openness of the political process, as well as on citizens' opportunities to participate effectively in political life.

Most democracies restrict private political donations to at least some degree. Such bans are intended in part to prevent rent-seeking by large or controversial donors. These restrictions must be realistic and enforceable to be effective. In many cases, some of the same goals (for instance, reducing the influence of particular donors) may be attainable through other means, such as by providing public funding for parties.

### **3.3.2 Types of restrictions**

#### **3.3.2.1 Common party income restrictions**

Rules regulating party income generally fall under two categories: bans on specific sources of private contributions (e.g. bans on all foreign donations) and limits on particular sources or types of contribution (e.g. setting a maximum amount permissible for individual contributions).

Countries have diverse rules regarding limits on contributions by private individuals and corporations. These correspond to their particular political and social realities and to the goals of their political finance systems. According to a study of political finance laws compiled by International IDEA, a majority of countries with funding limits restrict or ban donations from foreign interests, anonymous sources, and state resources other than regulated public funding. Bans on specific types of business contributions are also common. Such bans often target donations from state-owned businesses or businesses that benefit from state contracts.<sup>76</sup>

An interesting example in this regard is the 'reserved' contribution model in Chile. Through this model, donations that do not exceed 10 per cent of the spending cap for the candidate or party concerned may be channelled to that candidate or party without the candidate's or the party's knowledge of the identity of the donor. Only the enforcement agency is aware of the donor's identity, and the donor lacks any documentation that would independently substantiate his donation. The idea behind

the model is to protect the donor against public reprisals. The model also encourages these semi-private contributions to be channelled formally rather than informally, and may therefore contribute to efforts to enforce overall limits on contributions and spending. One disadvantage of the model is that it decreases publicly available information about funding sources. Also, since reserved donors may ask for their donations to be made fully public, the model cannot prevent donors from making their donations known in an attempt to influence party policy. The model also does not protect donors against identification by the state, which in some contexts may be a more pressing concern.<sup>77</sup>

### ***3.3.2.2 Hazards of party income restrictions***

Severe funding limits may result in perverse outcomes. Because parties require money to operate, overly restrictive laws banning certain types of private contributions altogether, or setting income limits too low, may foster a political culture in which parties and donors flagrantly violate the law, as happened in India in the 1970s and 1980s. Once this type of attitude toward funding restrictions becomes pervasive, it can be very difficult to correct through reform. Setting realistic limits is itself a difficult task, because what is appropriate is highly dependent on context. That said, the cost of media advertising can be a barometer for gauging whether limits are reasonable in the campaign context, since advertising is typically the largest campaign item.<sup>78</sup>

Because funds come from such a diverse range of sources and can easily be hidden, funding restrictions present particularly difficult issues of enforcement and implementation. To be effective, extensive reporting and auditing procedures are required, which is challenging even for developed democracies. To be most effective, party income restrictions, and thus auditing procedures, should apply not only to the finances of national parties, but also to local party offices, other party groups (such as think tanks, women's groups or similar organizations) and ancillary enterprises.<sup>79</sup>

### ***3.3.2.3 Cash donations***

Cash contributions are especially hard to track. Laws requiring contributions to be routed via bank accounts can facilitate the enforcement of party funding limits, by providing a paper trail that auditors can verify with third parties (e.g. banks). This also provides a method for auditors to monitor donor compliance more easily, in part by ensuring that donors do not circumvent contribution limits by dividing a large donation into smaller ones. Of course, these benefits only accrue if parties comply with laws forbidding cash donations; violations of such laws are themselves very difficult to detect.



### **3.3.2.4 In-kind donations**

In-kind donations can also be problematic. Such donations include all gifts of goods, services, or transfers of rights other than cash (such as free use of a meeting space or a discount on goods). One common example is discounted or free broadcasting time for campaign advertisements by the broadcaster's preferred party. They are difficult to track, not least because no money changes hands, whether in cash or through financial institutions.

In-kind donations are implicitly authorized in countries where party income limits refer only to financial donations. One way to avoid this problem is to define donations broadly enough to include in-kind contributions. This strategy also enables countries to require parties to report in-kind contributions as part of their public disclosure schemes. When in-kind gifts take the form of state funding, they can raise issues of corruption and abuse of state resources by parties in power – unless, of course, such in-kind contributions are part of an equitable public funding scheme.<sup>80</sup>

### **3.3.2.5 Third-party spending**

Third-party spending on behalf of political parties also raises difficult enforcement and transparency issues. Limits on income tend to divert available political funding into other channels. Lawmakers should balance the likelihood of compliance and effective enforcement against the likelihood that funds may be redirected to third parties instead, decreasing transparency while having little impact on spending levels. Disclosure is often a more realistic goal than income limits in this regard.<sup>81</sup>

The perception that foreign NGOs may influence politics through political party assistance programmes is fairly common, both in the MENA region and elsewhere. NGOs can help domestic parties access knowledge about democratic political practices in other countries and can conduct dialogue with their counterparts in other regions of the world. However, as with all foreign involvement, the mere perception of interference with local democratic processes can undermine public faith in the process, and thus can be controversial. Restricting direct support from foreign NGOs for electioneering activities, while permitting support for more indirect capacity-building activities, can help protect against possible accusations of foreign interference, yet still allow the party system as a whole to reap the benefits of their expertise. As with other types of restricted contributions, parties receiving this type of assistance may evade restrictions on income from foreign sources by channelling it through legally independent third-party organizations. As with other limits on party income, effective regulation and enforcement must include party-affiliated organizations as well.<sup>82</sup>

### 3.3.3 Strategies to incentivize compliance


In part due to the difficulties of enforcing such laws, many democracies, including those in Western Europe, have chosen not to adopt comprehensive contribution limits. Instead they have opted to limit the financial influence of donors through other means (e.g. public funding or restrictions on advertising). Some of the enforcement challenges can be mitigated, however, by adopting such restrictions gradually over time, or in tandem with the introduction of public funding. Poland has successfully adopted the latter tactic, and Mexico has successfully used both.<sup>83</sup>

Poland's recent experience exemplifies how strict regulations on sources of party income can work together with the introduction of a public funding scheme. That is, parties are more inclined to adhere to new laws limiting specific sources of funding if they are simultaneously granted access to a new revenue stream from the government to fill the gap. As parties become more reliant on newly available public funds and less dependent on recently restricted private donations, there is often an added benefit of increased transparency, as disclosure of public funding is easier to monitor and enforce than disclosure of private funding.<sup>84</sup>

Since reforms in 2001, strict limits on the private financing of parties, along with a high level of public funding, have made party financing in Poland more transparent and have contributed to a decline in corruption. Individual donations and direct state subsidies are permitted, but donations from businesses, anonymous sources, foreign sources, state enterprises and donations in kind are all prohibited. Parties are also banned from conducting business and holding public fundraising events.<sup>85</sup>

Mexico, too, has introduced strict income source limits alongside other reforms that provide for public financing and that strengthen the oversight capabilities of its enforcement body. The Mexican example also illustrates that adopting party finance reforms is an iterative process that takes place over time. Party and campaign finance initially took a back seat to building confidence in the electoral system overall, and only became central to reforms after 1993. As income source limits were introduced in three phases, over a period of 15 years, Mexican parties had time to adapt to, and comply with, the new restrictions. In 1993, Mexico regulated private financing for the first time, with limits on private contributions, prohibitions on certain donations, and limited authority for electoral authorities to audit party funds. In 1996, the country banned all anonymous contributions and issued strict limitations on maximum individual contributions. Third parties were banned from purchasing media advertisements. In 2007–08, additional changes were introduced to the limits on certain sources of party income. By law, *total* private in-kind and cash contributions to a political party cannot exceed 10 per cent of the total spending cap in the previous presidential campaign (though in reality they are likely to be much higher), and each





individual contributor cannot exceed 0.5 per cent of the limit. Privately held companies may contribute, but foreign contributions are banned.<sup>86</sup>

In combination with increased enforcement capabilities (discussed below), these measures have been relatively effective, insofar as Mexico has been able to prosecute violations successfully. For example, following the 1996 reforms, the IFE discovered more 9 million US dollars in unreported contributions to President Vicente Fox's campaign in the 'Amigos de Fox' scandal. Most of the unreported donations came from ineligible entities, such as businesses, persons working abroad, and public bodies. As a result, the IFE fined the parties that supported President Vicente Fox's campaign approximately 45 million US dollars.<sup>87</sup>

Restrictions on sources of income can also effectively target funding from party-owned non-political enterprises, such as businesses and social-services organizations. In Japan, the provision of public funds has reduced the percentage of funds that opposition parties raise from these types of sources, relative to overall revenues and spending.<sup>88</sup>

### ***3.3.4 Recent developments in the MENA region***

#### ***3.3.4.1 Egypt***

Egypt has long had restrictions on party income. Parties and candidates are prohibited from receiving funds from foreign sources, including Egyptian citizens abroad. Parties may only use funds from membership subscriptions, legal donations from Egyptian citizens, and income from investments and assets of a non-commercial nature, excluding corporate donations. As of 2005, individual donations to a presidential candidate could not exceed 2 per cent of the total spending limit.<sup>89</sup>

A draft law proposed in March 2013 would have required an inter-ministerial committee to approve all funding for both domestic and foreign NGOs. The law's sweeping scope could have restricted or effectively proscribed the activities of foreign political party foundations.<sup>90</sup>

#### ***3.3.4.2 Libya***

In 2012, Libya's National Transitional Council passed a series of laws governing the election of the country's General National Congress. The new laws ban parties from receiving foreign funds or using foreign media for campaigns. They also prohibit parties from obtaining government support or using governmental materials.<sup>91</sup>

#### ***3.3.4.3 Tunisia***

The legal framework adopted for the Constituent Assembly elections prohibited candidates from accepting direct or indirect financial support from foreign sources. Any

candidate who violates this provision is subject to a year in prison and a fine of 1,000 Tunisian dinars, and is also disqualified as a candidate or elected official. Candidates are also prohibited from funding electoral campaigns using private funds, though (somewhat inconsistently) political parties are permitted to accept private donations, though foreign, corporate and anonymous contributions are prohibited. The law also bans the use of state resources for campaign purposes, other than the allocated direct and indirect public funding.<sup>92</sup>

At the same time as the law clamped down on donations from foreign and private sources, it provided for public funding of campaigns, including both direct subsidies and in-kind use of the national media. Ideally, in the long term, if Tunisia adopts a public funding structure similar to that in Poland, the introduction of public funding alongside new restrictions limiting the sources of party income will help incentivize parties to comply with the new limits, because the provision of public funds will help the parties bridge the gap.<sup>93</sup>


Presumably the better to monitor compliance with income and expenditure limits, the decree required that each party or list of candidates open a single bank account for its campaign. The bank account is subject to control by the Court of Accounts, which must make its reports on campaign finance available to the public.<sup>94</sup>

### ***3.3.5 Important policy considerations***

In sum, restrictions on the sources of party income are very common, but are also notoriously difficult to enforce, especially in cash-intensive economies with weak banking sectors. Some specific measures can be taken to facilitate compliance and enforcement. First, it is important that funding restrictions should be realistic. Severe limits may result in perverse outcomes. If limits are so restrictive that they do not allow parties to operate effectively, those parties may feel the need to violate the law. This could breed a culture of non-compliance, which would be hard to correct with subsequent reform. For this reason, it may be more effective to prioritize disclosure requirements prior to setting income limits.

Next, practical steps can be taken to make violations easier to uncover, and thus discourage their occurrence. Restricting cash donations or requiring all donations to be routed through a single bank account can make it easier for enforcement agencies to conduct thorough audits. To be effective, all restrictions aimed at controlling sources of income for national parties should also apply to local party offices and affiliated entities, so as to discourage the funnelling of otherwise illegal funds through such affiliates.

Finally, it is important to take a strategic approach on how best to adopt limits on the sources of party funds. As exemplified by Poland and Mexico, adopting source limits in tandem with the introduction (or increase) of public funds incentivizes compliance by



cushioning the blow of restrictions on previous income streams. The provision of public funds allows parties to continue their operations despite new restrictions on income. Introducing funding limits gradually over time also allows parties to adapt to the changes and makes it easier for them to comply.

### ***3.4 Limits on party and campaign spending***

#### ***3.4.1 Why regulate spending and what expenses should be regulated?***

Limits on the amounts that political candidates and parties may spend are adopted for a variety of reasons: combating political corruption and vote buying; preventing inequalities between political competitors based on their access to funds and providing a level playing field; lowering costly barriers to entering politics; and reducing excessive spending in the political system as a whole. Spending limitations are based on the assumption that effective political communication is a key factor in elections, and unrestricted spending may create unfair advantages by allowing the communications of parties with larger budgets to drown out the messages of smaller parties. However, this same justification may make spending limits, like limits on donations, controversial as a restriction on speech or expression.<sup>95</sup>

The starting point is the definition of expenditure subject to disclosure, particularly in the campaign context. This aspect will affect political parties in particular. While individual candidate expenditure is more easily classified as electoral, political parties are continuous entities with regular expenses. It is not always easy to distinguish political party expenses incurred during the campaign from routine expenses, but in some countries spending caps may apply only to campaigns. While there is no consensus on the definition of campaign expenditure, a relatively broad definition is ‘any expenditure incurred by or on behalf of a registered political party or candidate to promote the party or candidate at an election or in connection with future elections, including any expenditure that has the aim of damaging the prospects of another party or candidate’.<sup>96</sup>

Some countries have drawn up more specific categories of expenses. Mexican law, for example, lists three types of expenses, including generic advertising (such as handouts, banners and the rental of premises); campaign overhead costs (including items such as the salaries of temporary staff and transportation); and the production of broadcast advertisements and the costs of print advertising. This excludes expenditure on the ordinary operation of parties or on the support of their directive bodies and organizations, though again, in practice, expenses may fall into both categories. The United Kingdom Electoral Commission’s scheme, drafted to guide civil society monitors, divides election expenses into advertising and publicity; hidden advertising; and non-advertising expenditure, including operational and administrative costs, polling

market research and campaign design and management, rallies, events, and direct contact with voters, distribution of money and other direct benefits to voters.<sup>97</sup>

The effectiveness of spending limits is difficult to assess. It is especially important to consider the difficulties involved in enforcing spending limits and the implications that spending limits have for the freedom of expression of candidates, parties, civil society groups, and citizens. Levels of political spending vary among different types of polities and systems, and any claim that a country should necessarily impose a low ceiling on political spending must be treated with caution. That said, various international instruments have addressed the issue of spending limits. The United Nations Human Rights Committee has upheld the concept of limits on spending, stating that 'reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party'. Other instruments issued by multilateral organizations, such as the Council of Europe or the Organization of American States, as well as international non-governmental organizations such as Transparency International, address the issue of spending limits. See Appendix 2 for the text of various multilateral instruments and international non-governmental recommendations.<sup>98</sup>

On a cautionary note, spending limits may help incumbent parties to reinforce their own power. By setting the limit too low, an incumbent may deprive its opponents of the ability to reach potential voters, while the incumbent enjoys the advantage of being well known. Ruling parties may also abuse their positions through access to state-controlled television, public facilities and public funds, and may be in a position to enforce spending limits selectively, in order to hurt opponents. Less restrictive spending provisions may be more effective in helping new parties compete with incumbent candidates or parties.<sup>99</sup>

### **3.4.2 Types of spending limits**

Limitations on expenditure take two forms. First, a general spending cap may limit the party's overall spending on the electoral campaign. The general cap may be an absolute amount or it may be determined on the basis of minimum salary, a per-person multiplier, or some other criterion. Alternatively, it may take the form of particular prohibitions, such as confining parties' broadcast advertising to assigned slots. General spending ceilings tend to be harder to enforce, and few democracies have adopted them. Bans only on certain kinds of advertising spending are more common worldwide. Most countries in the MENA region already have some sort of ban on vote buying, and some have adopted general spending limits as well (see below).<sup>100</sup>



### **3.4.2.1 General problems**

Limits on political spending, like limits on income, are difficult to enforce even in established democracies. As the sections of this report dealing with enforcement mechanisms show, effective policing of political finance laws in general is a difficult task, and requires strong enforcement bodies. Setting the appropriate level of permitted spending can also be very difficult: too high and the limits are ineffective; too low and they create strong incentives for parties and candidates to try and circumvent the rules, and are more difficult to enforce. If all parties feel that the limit is too low, they may all tacitly agree to a ‘non-aggression pact’, whereby none of the parties will act against other parties that bend the rules. As a result, oversight bodies, the media, NGOs and the public do not receive vital information, and public confidence in the entire political finance system is damaged.<sup>101</sup>

One suggestion is to coordinate spending limits with limits on sources of funding, on the rationale that permitting parties and candidates to raise as much money as they can while attempting to restrict spending is more likely to result in non-compliance. For example, Canada and Brazil have regulated limits on both income and spending. Generally, about 37 per cent of countries have limits on parties’ income, while only 28 per cent restrict parties’ spending. Another important factor in compliance is the moral cost attached to excessive expenditure. If political actors and the public are indifferent to excess spending, moral cost does not provide enough incentive for parties and candidates to comply with the norms. Ideally, the negative consequences of penalties must outweigh the benefits of violation, so that parties do not find it more advantageous to pay the fine and keep violating the regulations.<sup>102</sup>

### **3.4.2.2 Advertising and media spending**

Limits on television advertising spending are usually imposed in conjunction with the provision of advertising slots for parties and candidates on state-controlled media. The success of this sort of measure depends on the availability of state-controlled media and an institutionalized party system, otherwise a country may face a flood of political advertising for relatively unknown candidates, which has little public effectiveness. This type of measure is prevalent in the post-communist states of Eastern Europe. For example, Romania, Slovakia and Ukraine allocate equal amounts of time on radio and television to parties. The same is true of many Latin American countries, where most political parties are granted free access to state-run or private media (or both) during an election campaign, with state media being more common. An example of a new comprehensive and relatively restrictive media-spending regime is found in Mexico, which in 2007 adopted a series of political finance reforms, including a new framework for media advertising. This system responded in part to accusations of media bias against certain parties. Following the amendments, the electoral commission provides

free space to all parties on both public and private media. However, purchasing or otherwise contracting for additional advertising via private media is expressly prohibited.<sup>103</sup>

Limits on television advertising and media spending, which are often prominent items in political campaigns, are more likely to be enforced successfully than are general spending limits, given their visibility. Bans or limits on specific categories of expenditure can affect the activities of civil society or other external monitors.<sup>104</sup>

### ***3.4.3 What legislation should address***

#### ***3.4.3.1 Political parties versus candidates***

The expenditure of candidates is more often regulated than that of political parties: 44 per cent of countries limit candidate spending, while 29 per cent impose spending limits on parties' annual or campaign expenditure. But there are strong indications that a healthy and competitive political atmosphere requires the regulation of both candidate and party expenditure. In the absence of limits on their expenses, parties may spend on candidates' behalf, undermining the efficacy of the candidate limits.<sup>105</sup>


#### ***3.4.3.2 Ongoing versus campaign expenses***

It is difficult to distinguish routine operational costs from campaign-related operational costs with any degree of certainty. One way is to note any change in certain types of expenditure between an election year and a non-election year. Increases in an election year may reasonably be classified as campaign spending, in the absence of evidence to the contrary. Because of these practical difficulties, and because of the different needs and organizational models used by political parties, limits on spending for the ongoing expenses of political parties are infrequent.<sup>106</sup>

In this regard, the only available information is from Israel. In a fast-paced campaign environment, restrictions on all party spending make it important for central party headquarters to control local party spending in order to ensure that the limit is not breached. It requires careful budgeting. One possibility is the submission of expenses online, so that the central party can monitor and oversee the expenses of its branches on a daily basis.<sup>107</sup>

#### ***3.4.3.3 Campaign period***

In many countries, the campaign period is defined as a specific number of days prior to the election, or as the period commencing from the moment elections are announced; other countries do not set a specific period for campaigning. Limiting the campaign period may be an effective way to control the amount of spending of parties and candidates. As well as a limited overall period for campaigning, specific forms of



campaigning can also be regulated separately. For example, in Israel restrictions relating to media coverage cover the 150 days before the election and prohibit all campaigning in cinemas and on television in the last month of the campaign. However, restricting the campaign period may encourage parties or candidates to pay for campaign activities before the official start date, for example by printing campaign literature or sending direct mail. In addition, where campaigns are very frequent, it may be impossible to distinguish between campaign and non-campaign periods. Therefore, one way of making campaign period limits more effective is to impose penalties on expenditure prior to the election periods.<sup>108</sup>

#### **3.4.3.4 Third-party expenditure**

Monitoring expenditure, rather than income, can uncover corruption or indicate potential corruption. Effective enforcement requires oversight not only of political parties and candidates, but also of external actors who may spend money on behalf of a party or a candidate. Third parties often include individuals, corporations, or interest or policy groups. If limits are imposed solely on political parties and candidates, political actors can easily shift their spending to avenues not supervised by the oversight bodies. For example, parties may create a purportedly independent organization, which is not legally tied to the party but whose real purpose is to channel funding on the party's behalf. In India, the law limits only candidate spending, not spending by parties or supporters. This rule makes the spending limit largely ineffective, and has the added result of driving campaign spending underground, out of sight of the monitoring bodies. By contrast, Canada has established detailed limits on election expenses that apply to third parties, as well as to political parties and candidates.<sup>109</sup>

Another important issue to clarify is the legal definition of third parties. Canadian legislation, which imposes limits on both candidates and parties, defines a third party as a person or group other than a candidate, registered political party or electoral district association of a registered political party. Some countries, such as Lebanon, require candidates to include spending incurred by third parties when reporting on expenditure. Article 58 of the 2008 Lebanese electoral law provides that 'the aggregate expenses incurred by the candidate and those paid in their favor *or* with their express or tacit consent by other persons, shall be considered electoral expenditure'. Article 61(3) states that the candidate should report, along with her/his own expenses, any other cash or in-kind expenditure by third parties. However, the imprecise wording of the law may make compliance difficult, as candidates have little guidance in determining what constitutes 'tacit consent'.<sup>110</sup>

However, it is not always easy for the law to distinguish between party income, in-kind contribution, and third-party expenditure. In Romania's 2000 election, tobacco companies purchased airtime on television to run ads for certain candidates. That could

arguably fall into any of those three categories. In practice, some countries (such as Romania) classify such spending as an element of party income; others (such as the United Kingdom) consider it third-party expenditure. Moreover, regulating third-party expenditure raises the same problems of potentially restricting legitimate political expression by individuals and organizations, and therefore it is difficult to draw a proper line. It is also questionable whether there is an effective way to monitor third-party expenditure. One suggested technique, which is easiest to implement where spending is effectively monitored by a public agency, is to attribute any difference between declared and monitored spending to third-party spending, classifying the difference as a donation and subjecting it to income limitations.<sup>111</sup>

### ***3.4.4 Recent developments in the MENA region***

#### ***3.4.4.1 Egypt***


Laws regulating spending limits have mostly remained unchanged in the course of Egypt's ongoing transition. Neither the 1971 constitution nor the now-suspended 2012 constitution mentions political party finance. Laws on presidential and legislative election campaigns provide a general cap on campaign expenditure.

Law No. 174 (2005) on Regulating the Presidential Elections sets the maximum campaign expenditure by each candidate at 10 million Egyptian pounds, and 2 million Egyptian pounds in case of a run-off. All expenses must be transacted through a single bank account and reports on expenditure must be submitted to the Presidential Election Commission (PEC) within 15 days following the election. The only change after the fall of President Mubarak was PEC Decision No. 9 (2012), assigning a specific committee to monitor and evaluate expenditure. The decision also envisages both a fine and imprisonment for any candidate who exceeds the expenditure limit. Moreover, the PEC banned electoral campaigning outside the legally approved period and reinforced article 20 of the Law Regulating the Presidential Elections, which stipulates that the campaign period begins three weeks prior to the election and ends two days before the election date. Egypt could add to the efficacy of this measure by imposing sanctions on parties or candidates who fail to observe the limits on the campaign period.<sup>112</sup>

The High Elections Commission is empowered to set spending limits for House of Representatives elections. HEC Decision No. 21 sets a maximum campaign expenditure of 500,000 Egyptian pounds for the first round and 250,000 Egyptian pounds for run-off elections, but monitoring and enforcement have been weak. There are no specific provisions for political party finance in Shura Council elections.<sup>113</sup>

The amount of spending in the 2012 presidential election was the subject of debate. Candidates frequently claimed that the spending limit was too low for a national campaign in a country of Egypt's size. The unrealistic cap may have encouraged





campaigns to spend additional, unreported funds. During Egypt's first-ever televised presidential debate, one candidate specifically claimed that spending limits should be raised to cover the rising cost of advertising. This issue highlights the need to regulate media access. Although the law generally requires fair and equitable access to the media during the electoral period, there are no provisions restricting spending on the media.<sup>114</sup> Moving forward, Egyptian policymakers may want to ensure that laws address both parties and candidates, as well as third-party spending. Specific limitations on radio and television spending could also be helpful, as advertising becomes increasingly important in Egyptian elections.

#### **3.4.4.2 Libya**

The Constitutional Declaration of 2011 and its 2012 amendments do not mention political party spending limits. The first attempt to regulate spending was made by the National Transitional Council in Law No. 29 (2012) on the Organization of Political Parties. Article 23 establishes the 'purpose clause' and states that money cannot be spent except on activities aimed at achieving party goals.

The more detailed provisions are to be found in Law No. 4 (2012) on the Election of the General National Congress, which vested the authority to define both the campaign period and the expenditure ceiling in the High National Election Commission (HNEC). The HNEC, in Decree No. 85 (2012), set the limits for individual candidates at between 25,000 and 150,000 Libyan dinars, and for parties at between 90,000 and 400,000 Libyan dinars, based on the number of registered voters and the geographic area of each constituency. Winning candidates were required to present a detailed report of their campaign income and expenditure to the HNEC within 15 days of the announcement of the final results.<sup>115</sup>

The law does not regulate third-party expenditure or limit media access, though Law No. 4 requires 'equality and equal opportunity for all candidates and political entities'. This was detailed in Regulation No. 64 (2012). In addition to the advertising time offered by state media, candidates were allowed to purchase space in private media outlets without any statutory limitation; future legislatures may wish to consider limitations on purchasing media time and advertising.<sup>116</sup>

#### **3.4.4.3 Tunisia**

Decree No. 35, dated 10 May 2011, imposed new regulations on spending limits for the Tunisian Constituent Assembly elections. The law provided both general spending limits and specific limitations, including on the use of media, and defined a three-week campaign period. Candidates are limited to national media only; Tunisia's electoral body, the Independent High Commission for Elections (ISIE) was tasked with

promulgating further regulations. Local authorities were also authorized to provide space for campaign posters, and candidates were banned from using other spaces.<sup>117</sup>


Decree No. 2472 (September 2011) set the expense ceiling in each constituency at three times the amount of the public funding provided for the electoral campaign. Public funding, in turn, was determined on the basis of the number of voters.<sup>118</sup>

Article 70 of Decree No. 35 designates the Central Commission of the ISIE as the body to verify winning candidates' compliance with the provisions on campaign funding, and gives it the authority to invalidate the election results if it detects non-compliance. This presented some difficulties following the campaign, as a controversy erupted over the initial annulment of victories by one party, Popular Petition. Additionally, the law assigns enforcement duties following the elections to the Court of Accounts.<sup>119</sup>

The failure to define clearly what constitutes campaign expenses made it difficult for candidates to comply with their obligations in the 2011 elections. The ISIE provided in guidelines that 'all expenses related to the consumption of equipment, products and services that were designed to attract voters and that were used during the electoral campaign shall be considered as electoral campaign expenses'. However, this did not resolve all ambiguity regarding in-kind contributions, particularly expenses that were not directly designed to attract voters, such as office space. Another problem was posed by the spending limit, which may have been unrealistically low. One potential solution to this is to consider the number of residents in each constituency, rather than only the number of registered voters, when determining the limits on spending for each constituency. Inflation should likewise be taken into account when determining or adjusting spending limits. Lawmakers should also consider imposing regulations on third-party spending.<sup>120</sup>

### ***3.4.5 Important policy considerations***

In considering whether or not to enact spending limits, lawmakers and advocates should be mindful of the difficulty of enforcement and the risk of setting limits too high or too low. If abused, a general spending limit may harm political competition more than it helps it. Therefore legislatures should be careful to propose spending limits that are based on a country's particular political context, and after consideration of the practical implications of enforcing those limits. Spending limits should be paired with restrictions on sources of income, and should apply to both parties and individual candidates. Defining the official campaign period and restricting spending outside this period is also helpful in reducing overall campaign spending. Laws should make clear the types of expenses included in spending limits: limits on certain kinds of spending (such as bans on vote buying) and specified limits on radio and television advertising may be more easily monitored and enforced. Particular attention should be given to third-party



expenditure, in order to prevent the creation of loopholes that can weaken the impact of limits on party and candidate spending. Finally, sanctions for breaching the spending limits should be substantial enough to serve as a real deterrent for parties.

### ***3.5 Disclosure of party finances to the public***

#### ***3.5.1 Why regulate disclosure of party finances?***

Disclosure refers to timely reporting of information about the income and expenditure of parties and candidates. While many forms of regulation are available to control the role of money in politics, disclosure is necessary for all such regulation to be effective, because other party finance rules are enforced primarily through the disclosure system. The United Nations Convention against Corruption requires signatory states to make good-faith efforts to improve transparency in political finance, and identifies disclosure as the chief instrument for achieving this goal.<sup>121</sup>

Careful regulation of disclosure of party finances can help to increase transparency and competitiveness in a political system. Providing public information about the sources of party and candidate resources can help voters better understand the policy preferences of parties and candidates, leading to greater transparency, accountability and more-informed voting choices. Giving voters information on who contributes to parties and campaigns – and who may thereby be influencing their policies – can help to curb undue influence. Likewise, the right reporting requirements ensure that more parties and candidates can effectively disseminate their messages by enabling enforcement of other party finance rules that increase competitiveness.<sup>122</sup>

The credibility and effectiveness of political finance disclosure systems will be increased by sufficient public resources, a free press, bureaucratic capacity, and a sound judicial and prosecutorial system.<sup>123</sup>

#### ***3.5.2 Elements of a political finance disclosure system***

Recommendations for increased transparency and credibility in the field of political finance and financial reporting have been adopted by regional and international bodies, including the Council of Europe and the Organization for Security and Co-operation in Europe. Many countries include in their constitutions provisions requiring transparency of political party income or expenses.<sup>124</sup>

Considering the legal framework as a whole, approximately 88 per cent of countries require political parties and/or candidates to engage in some form of financial disclosure. However, only about 53 per cent of countries require reporting from both parties and candidates, and this creates loopholes. In approximately 28 per cent of countries that have disclosure requirements, no institution is given the formal role of

examining the information disclosed or investigating potential political finance violations, rendering the requirements largely ineffective. Finally, in over 25 per cent of the countries requiring disclosure, there is no requirement for the disclosed information to be made public, which hinders transparency.<sup>125</sup>


The main variables of a political finance disclosure system are: who discloses, what needs to be disclosed, to whom, and when.<sup>126</sup>

### **3.5.2.1 Who discloses?**

Candidates and party organizations should both be required to file financial reports. If only parties or only candidates are regulated, the regulated actor may be able to channel funds through the unregulated actor, circumventing other political finance rules while successfully avoiding detection. In some countries, certain donors also have to report on their contributions, though this type of requirement is very difficult to enforce. Tax relief may incentivize this reporting, for example by making donations tax-exempt or by taxing them at a lower rate, which could lead to greater transparency.<sup>127</sup>

Entities that are related, directly or indirectly, to a political party should also be required to keep detailed accounts and records, and parties should be required to consolidate the reports of these affiliated actors. The dilemma for reformers is that, if only a few direct channels of political money are subject to disclosure rules, those wishing to exert influence through funding will naturally use alternative, unregulated channels. When disclosure requirements cover only parties and candidates, then parties, candidates and donors can successfully avoid disclosure requirements by channelling financial transactions through political third parties that raise and spend funds on their behalf – such as leadership campaigns, party youth groups and foundations, and leaders' personal organizations. Disclosure requirements, however, must be practicable. Choices as to the extent and detail of disclosure required, and access to and dissemination of data, will be important in regulating the activities of third-party groups, and will often be linked to the tax status of organizations.<sup>128</sup>

Each organization and candidate should have a single designated compliance officer, who receives training and is legally responsible for meeting disclosure requirements. For example, Colombia mandates that a campaign manager be employed for campaigns where the candidate spending limit is over a minimum amount, and requires auditing for presidential campaigns. Political parties in Colombia are legally required to include provisions for auditing of their finances within their bylaws. In general, compliance officers for each party and candidate should conduct transactions through a single account, thereby facilitating both internal and external monitoring. The party's compliance officer and subordinate staff should manage all receipts, expenditure, recording and reporting. Of course, an important consideration when adopting a disclosure policy is that parties and candidates need to have access to banking facilities,



financial literacy and accounting capacity. A requirement that all transactions be conducted through a single bank account might prove too burdensome for a local party office in a remote area of a country with an underdeveloped banking system and a largely cash-based economy.<sup>129</sup>

Disclosure requirements should also align with prevailing accounting requirements, and should consider the number and availability of certified public accountants. Party and campaign auditors should be independent, recruited from the private sector, and should not be otherwise involved in politics. In Germany, auditors are freely chosen by parties, but are supervised by a professional body. German law also makes accountancy work incompatible with other political positions and provides for criminal liability. In Colombia, political organizations that register candidates must have an internal auditing system approved by the oversight body as a condition for receiving public funding.<sup>130</sup>

A recurring problem around the world is that disclosure requirements often do not include regional and local party organizations. If the national party can receive contributions and spend money through unregulated local offices, the national-level disclosure requirements become ineffective. In Canada, major reforms have been introduced to require parties, electoral district associations, and nomination and leadership contestants to file quarterly reports with Elections Canada, an independent, non-partisan agency reporting directly to parliament. In Bulgaria, by contrast, a scattered set of laws do not always require public disclosure by political parties, coalitions, initiative committees or candidates, thus allowing political finance activity to remain hidden from the public. A related problem is that disclosure requirements may negatively affect the internal power structure and operations of a political party. For example, a vague ‘single campaign bank account’ requirement in Tunisia recently led to the centralization of the financial management of campaigns and generated practical campaign management difficulties at the local level (discussed in more detail below).<sup>131</sup>

### **3.5.2.2 What to disclose?**

A comprehensive system will require reporting of all income, expenditure, liabilities and assets. Consumers of this information should be able to determine who gave how much, when, to whom, and for what purpose.<sup>132</sup>

Disclosure of income covers all contributions, including in kind, as well as contributor identity information. States mandating the disclosure of donor names generally need to consider the privacy of donors and the risks posed to them by having identities publicized, and need to weigh that against the goal of transparency. In some cases, parties may try to avoid having to disclose donors’ identities by claiming that it could result in harassment or intimidation, when in reality they are more concerned that the disclosure would scare away publicity-shy donors; therefore parties’ claims of risks to


donors should be assessed independently. Nevertheless, in a context like contemporary Egypt, where funding sources are extremely controversial, maintaining some level of donor privacy could be considered. In political systems dominated by a single party or ruler, or which are transitioning from authoritarian rule, disclosure requirements may threaten to expose citizens, contributors and political activists to reprisals, and thus discourage political participation and contributions to opposition parties and candidates. In contrast, older or better-established political parties may make a point of disclosing their ample resources in order to drive the weaker opposition out of the political arena.<sup>133</sup>

Most countries have disclosure requirements that differentiate between individual and corporate donors, and set thresholds for amounts that must be disclosed. Disclosure systems should exclude contributions below some moderately low floor, in order to minimize the chilling effect that disclosure could have on political participation. The regulatory framework could also delay public disclosure of small individual contributions for a set period, to allow the tensions that can be generated by elections to dissipate. In Colombia and Poland, donor information must be annexed to the financial reports submitted by parties, but is not published with the reports.<sup>134</sup>

Expenditure includes all spending, and debts and liabilities incurred. Disclosure of liabilities includes all loans and advances, their dates of issue and dates of repayment, and lender identity information. Disclosure of assets includes information on bank accounts, credit lines, and capital investments like real estate and vehicles. In Bulgaria, parties that receive state funds must collect information on properties, income and expenses (whether domestic or foreign) of all party leaders. Since there may be no other way to link a specific asset to a particular political actor, disclosing assets is especially important in countries where record-keeping is weak, in order to facilitate effective spot checks and get a clear picture of the finances related to the ongoing operation of parties and campaign committees at any specific point in time. Additionally, parties and candidates in power should be required to disclose the use of state resources, including in kind, for campaigning and non-state-business purposes.<sup>135</sup>

Effective disclosure policies require accurate, timely and accessible reporting that is comprehensible to potential users. Annual political party reports in Germany include the income, expenditure, debts and assets of party organizations at all levels – local, state and federal. Colombia's regulatory framework is also comprehensive, requiring information on private financing, in-kind donations, loans, party assets, event fundraising and self-financing, although the rate of compliance with these rules is uncertain.<sup>136</sup>

At the same time, compliance with the disclosure requirements places a significant administrative burden on parties, and policymakers should consider precisely what



information is most necessary to make disclosure effective. Providing large quantities of information via disclosure can make it more difficult to highlight the most important information and can increase the burden on the public agency responsible for processing the report. The information required for disclosure should be selected bearing in mind the goals of promoting transparency, accountability and efficiency.<sup>137</sup>

Reformers should also consider the format of financial reports, in order both to assist those who are the subjects of the reports and to make it easier for those interested to access the information. The oversight body in Colombia, the National Electoral Council (CNE), recently engaged in efforts to improve the disclosure system. With assistance from Transparency for Colombia (Colombia's Transparency International affiliate), the CNE introduced an online mechanism allowing parties and candidates to submit financial information online by importing the information from Microsoft Excel. It generated automatic reports for the CNE, which were used for all legislative campaigns for the first time in 2010, and subsequently for the 2011 local elections. The new system resulted in increased reporting rates, and the electronic transmission of forms also facilitated the process of making the information available online to the public.<sup>138</sup>

### ***3.5.2.3 Disclose to whom and when?***

Most states provide for the independent monitoring of financial information disclosed by parties and candidates, usually conducted by a regulatory agency. Authority may be given to monitor accounts, conduct audits of financial reports submitted by parties or candidates, and engage in investigations. In addition, enforcement agencies should engage in outreach to parties and candidates to assist them in complying with disclosure requirements. Making political finance information public should be a cooperative process that does not unduly burden parties and candidates.

Since transitioning from one-party rule, Mexico has engaged in wide-ranging political finance reform to increase transparency, strengthen party autonomy, and successfully boost competition in the party system. Major reforms in 1996 increased the enforcement role of the oversight body (the IFE), including the authority to regulate the way in which parties must present their financial reports, to monitor whether parties are abiding by finance norms (not limited to only reviewing disclosure reports), to audit, and to initiate administrative procedures. Investigations of the financing of presidential campaigns forced the IFE to litigate against other state bodies over its ability to oversee political finance and to access information, which also caused it to become more assertive. The process of reform continues, with the recent creation of a technical unit within the IFE to review financial reports and investigate potential violations.<sup>139</sup>

On the other hand, countries with oversight bodies that lack resources, such as Poland and Bulgaria, have only the capacity to engage in passive auditing. This focuses mainly


on compliance with the formalities of reporting, and does not evaluate the substance of the reports. But even in countries with extensive informal, cash-based economies (like Bulgaria), strategies to improve transparency can be implemented through laws that call for more individual auditor responsibility and specialized training in looking beyond submitted reports. The successes of the oversight body in Romania, also a developing country, demonstrate that, despite limited experience, independent and specialized personnel with economics and accountancy backgrounds can identify and substantiate some violations and impose sanctions.<sup>140</sup>

Effective regulations will provide oversight agencies with enforcement powers, and these can include the power to sanction specifically for non-compliance with financial reporting regulations. Sanctions range from fines to imprisonment, and should be proportionate and deterrent. For example, in Germany the regulatory framework provides for a variety of sanctions, covering most possible violations committed by parties and physical persons, including donors, persons acting on behalf of beneficiaries, and auditors. The sanctions address practical issues, such as the splitting of donations to avoid reporting requirements. Any inaccuracy in the financial reports may trigger sanctions; however, the law allows parties to correct inaccuracies on their own initiative. To further facilitate enforcement and voluntary compliance, other political finance rules should incentivize disclosure. For example, public funding can be made conditional on periodic disclosure, or used as a reward for meeting disclosure requirements.<sup>141</sup>

Civil society actors are important to a well-functioning disclosure system. States with effective regulatory bodies are often supported by media and watchdog groups. This is especially true in the developing world, where watchdog groups and the media can expose abuses by monitoring party and campaign expenditure, tracking sources of funding, and bringing abuses to public attention. These organizations can also enhance state efforts to educate citizens about party financing, play a role in revealing corruption and abuses of state power, and – by providing accessible summaries of the raw data released by the regulatory bodies – reduce regulators' workloads. Financial information usually reaches them through freedom of information laws, public gazettes or the internet. As civil society and the press gain the ability to access and analyse financial disclosure data, citizens can play a greater role in holding political actors accountable. The Czech Republic provides an 'anti-model' in this regard: parties' financial reports to parliament are notionally public, but they exist only in hard copy in the library of the Chamber of Deputies, which renders public access to them restricted at best.<sup>142</sup>

To prevent parties from evading disclosure rules, most regulatory frameworks impose an annual reporting requirement, as well as requirements for reporting before and after campaigns. These reports should be published in a timely fashion. Additionally, parties are often required to maintain ongoing, up-to-date financial records in accordance with accounting conventions that allow regulators to conduct spot audits. Financial





information should be made available to voters before election day. Disclosure of donations on a real-time or weekly basis in the run-up to election day is becoming more popular. In Germany, by contrast, financial information is delayed significantly in reaching the public (sometimes for up to two years), revealing the problems that can surface when campaign-time disclosure is not specifically required to be provided separately from regular political party finance reporting. Furthermore, because political actors sometimes seek to circumvent requirements by conducting activities during a 'pre-electoral' period, reporting requirements outside election periods are essential. Candidates should be required to submit pre-campaign reports on assets and liabilities, reports on income and expenditure while the campaign is ongoing, and post-election reports on income and expenditure during the entire campaign period. Public awareness of candidates' and parties' financial situations may improve citizens' ability to make informed voting decisions.<sup>143</sup>

### ***3.5.3 Recent developments in the MENA region***

#### ***3.5.3.1 Egypt***

Much of Egypt's pre-revolutionary system of political finance laws is still in effect. Overall, the Egyptian disclosure system is underdeveloped. Parties are required to hold all their funds in a bank account and to maintain regular account books, though the law includes no reporting requirements beyond notifying the Central Audit Agency at the end of each year of donations received and the identity of donors. This notification requirement was stressed again in the 2011 Supreme Council of the Armed Forces Decree No. 12. A party's finances are subject to a periodic audit by the Central Audit Agency, which must report annually on the financial affairs of political parties. Nothing in the law indicates that these reports are to be published, although the law states a general principle that a party's 'means and sources of finance' must be made public.<sup>144</sup>

Campaign (as opposed to party) finance disclosure requirements in Egypt apply only to presidential elections. Presidential candidates must report individual donations above 1,000 Egyptian pounds received during the three-month election period within five days of receipt of the donation, and must submit their full campaign accounts, including sources and expenditure, to the Presidential Election Committee within 15 days of the announcement of the election results. The Central Audit Agency reviews campaign accounts and must submit a report to the Presidential Election Commission within 15 days of disclosure. These reporting requirements do not apply to independent candidates standing for seats in the People's Assembly or the Shura Council. Again, nothing in the campaign laws expressly requires any particular financial information or auditing reports to be made public.<sup>145</sup>

While political finance laws do specify the bodies responsible for receiving financial reports, as well as for examining and auditing the reports, the law could be improved by closing loopholes, making political finance information public, and implementing sanctions for disclosure violations. What the post-transition Egyptian disclosure system will look like remains to be seen.

### 3.5.3.2 *Libya*

Under the post-Gaddafi legal framework, political entities and candidates are required to disclose financial information only in relation to election campaigns to the newly established High National Election Commission (HNEC). HNEC regulations mandate that political entities and candidates open a campaign bank account to receive all financial contributions and pay all expenses during the campaign period. Accounts are then submitted to and audited by the HNEC. Political entities and candidates must also report the identity of donors and the amounts donated. The Libyan disclosure system leaves a large loophole, since much of the financial activity of parties occurs outside the designated campaign period. Libyan policymakers should also consider whether the bank account requirements might be too burdensome in the more remote areas, given the cash economy and the underdeveloped banking system in the country.<sup>146</sup>

Under Libya's new party finance system, the HNEC is responsible for collecting party finance information, interpreting and enforcing party finance laws, and auditing party finances. It must make all campaign finance information available to the public. Furthermore, it retains the right to publish auditing results on its website. A positive aspect of the law is that it clearly designates the HNEC as the oversight body that receives financial reports, and specifies that it is responsible for examining financial reports and investigating violations. In June 2012, the HNEC took an important step towards effective enforcement, issuing a decree announcing the establishment of subsidiary units in each of the 13 sub-districts to audit candidates' financial records and present final reports to the HNEC. This should facilitate future education on disclosure requirements, as well as outreach efforts to promote compliance.<sup>147</sup>

The Libyan campaign finance regulations require political entities and candidates to submit financial reports to the HNEC within 15 days of the announcement of the final election results. Thus voters cannot use the financial information disclosed to make up their minds on election day. Another limitation is that the HNEC does not monitor probable violations of campaign finance laws during the campaign period. Instead, it conducts only post-election assessments. Political entities and candidates who fail to meet disclosure requirements or who obstruct the financial review process are subject to criminal sanctions and could be stripped of their elected positions. The HNEC should evaluate whether the sanctions available for failure to meet disclosure requirements are proportionate and are being deployed in a manner that deters violations.<sup>148</sup>



### 3.5.3.3 Tunisia

The legal framework governing elections to the National Constituent Assembly in 2011 included several important disclosure provisions. Specifically, it required disclosure by both candidates and political parties, and parties were required to consolidate financial reports from different levels of the party organization. Future reform efforts should consider requiring disclosure from other affiliated organizations. A positive aspect of the legal framework is that it required each party to appoint a single financial officer, who was responsible for preparing financial reports. Furthermore, each party had to use a single bank account for all its financial transactions. Parties also had to appoint certified auditors. The legal framework also mandated specific accounting standards, further facilitating transparency, given the essential importance of auditor independence and a legitimate auditing process.<sup>149</sup>

Similarly, during the campaign period the law required each party and each candidate list to open a single bank account for all campaign revenues and expenditure. This was a good step towards addressing campaign finance transparency; however, the law did not specify whether the single account should be opened by each party's list of candidates at the constituency level, or by each party at the central level. In practice, this led to the centralization of the financial management of campaigns and generated practical campaign management difficulties. For example, during the campaign parties adopted different payment methods in each constituency; in some cases this made it impossible to enforce the requirement that payments of over 250 dinars must be made by cheque. This points to the need to adjust the law to make the opening of a single bank account a requirement for any candidate.<sup>150</sup>


Parties were required to keep records of the following at central headquarters for a period of ten years: subsidies, donations, gifts and bequests. The records must detail whether they were in money or in kind, the amounts, and the names of the donors. In terms of campaign finance disclosure, parties and lists must each provide the Court of Accounts with a summary of revenue and expenditure subject to commitments or sold off during the electoral campaign, a financial statement of the single campaign bank account, and a detailed list of campaign events, activities and meetings. The current disclosure system could be improved by defining more clearly what must be disclosed. For example, the Tunisian system has been criticized for not defining what constitutes an electoral expense, as discussed below. Tunisian lawmakers should also consider how the disclosure system should treat donor information in future, weighing privacy and transparency concerns. Currently, political parties are required to keep records of donors, but the campaign finance laws do not specifically address donor information, and the law does not discuss whether donor information will be made public or protected in some way.<sup>151</sup>

The current disclosure system also fails to address the format of disclosure. Standardizing an accessible disclosure format both for annual party reports and for campaign finance reports will help ensure (1) that political actors can comply with the law, and (2) that relevant stakeholders such as the media, watchdog groups and voters can actually make use of the information. Although the late enactment of Decree Law 91, detailing financial reporting procedures and describing the scope of the Court of Accounts' control, created some uncertainty for parties and independent lists, the oversight body was praised for implementing new requirements in a flexible manner, consulting regularly with candidates, and publishing a guide on the internet explaining reporting procedures.<sup>152</sup>

Tunisian law provides for the independent monitoring of the funding of political parties. Decree Law 87 of 2011 requires each party to appoint a fiscal agent, who is responsible for preparing a financial statement for the party. This financial statement is then subject to an annual, independent audit, and a report on the audit is submitted to a committee chaired by the president of the Administrative Tribunal. Following that committee's review, the report is sent to the prime minister. This process must take place within a month of the submission of the audit report. Each party must also submit an annual report to the Court of Accounts. While the law states that the committee shall approve or reject the financial report, the law is silent on what happens after that and on whether the committee goes beyond the report to investigate anything suspicious. Tunisian lawmakers may wish to consider laws that call for more individual auditor responsibility and specialized training in looking beyond the reports submitted.<sup>153</sup>

Campaign finance laws in Tunisia establish two bodies to control campaign funding. The Independent High Commission for Elections (ISIE) has extensive powers, but little time in which to carry out enforcement activities; meanwhile the Court of Accounts intervenes after an election, when there is more time to act, but it has fewer resources and little power to impose sanctions that might deter future misconduct. The ISIE is authorized to invalidate the results of winning candidates in the event of campaign finance violations. It can also ask the Court of Accounts to investigate further. The Court of Accounts' verification is done after the elections, by reviewing the documents submitted by parties and lists that have won seats or by field investigations. The fact that the law specifies the bodies that need to receive campaign finance reports, as well as who is in charge of actually reviewing the reports and investigating violations, increases the transparency of electoral campaign funding and the credibility of financial reporting.<sup>154</sup>

The Tunisian political finance system could benefit from more attention to the sanctions available, specifically for failure to comply with disclosure requirements. The law governing the annual financial reporting of political parties provides for sanctions



for failure to comply with disclosure requirements, including warnings, temporary suspension of political activity, and dissolution. Lawmakers should consider adding to this law proportionate financial sanctions for failure to comply with disclosure requirements. Campaign finance laws do give the Court of Accounts the power to impose financial sanctions of between 500 and 2,500 dinars for failure to comply with disclosure requirements; however, these fines may not be substantial enough to deter violations and hold political actors accountable.<sup>155</sup>

Importantly, the Tunisian disclosure system is specific in terms of what information must be made public. Each political party is required to publish an annual financial report, accompanied by the auditor's report, in a daily newspaper and on the party's website within a month of its financial statements being approved. Campaign finance laws require that the Court of Accounts publish a report on its campaign finance findings in the Official Gazette of the Republic of Tunisia and on its website, within six months of the election results being made known. However, it is not clear what happens to the annual reports that parties submit or the campaign finance reports that parties and lists submit to the Court. Requiring these reports also to be made public could further increase transparency.<sup>156</sup>

Finally, the Tunisian political finance system could benefit from revisions regarding the timing of disclosure. A positive feature of the current system is that it requires annual reporting of political party finances, the maintenance of up-to-date financial records in accordance with auditing standards, and reporting after the campaign. The current system does leave open a loophole for political actors to circumvent campaign finance requirements by engaging in transactions outside the very short (21-day) campaign period. The law should designate a pre-campaign period and make it a pre-campaign requirement to disclose all assets and liabilities, in order to close this loophole. Lastly, given these timing issues, it is difficult for financial information actually to guide Tunisian voter behaviour under the current system. Tunisian lawmakers should consider how to make more financial information available to voters before election day.<sup>157</sup>

### ***3.5.4 Important policy considerations***


Current systems in place in MENA countries are not rigorous in terms of who is required to disclose financial information. While political parties in Algeria and Morocco are required to report regularly on finances, this is not the case in Iraq or Libya, where parties report only in relation to election campaigns. In Egypt, parties are required to keep books that can be audited, but there are no reporting requirements beyond annually notifying the Central Audit Agency of donations and donors. In Algeria, Iraq, Jordan and Morocco, the law does not specify any reporting requirements for political parties in relation to election campaigns, and in Egypt a basic system is in place only for presidential campaigns. Candidates in Jordan and Iraq are not required to

report on their campaign finances, while in Algeria only elected candidates are required to do so.<sup>158</sup>

Future reform in this area should focus on designating internal party finance specialists with legal obligations, requiring internal independent auditors to conduct investigations, and establishing periodic disclosure and up-to-date records to enable spot audits. Laws should be revised to ensure that disclosure is required of both party organizations and candidates, encompasses local and regional levels, and covers all affiliated organizations. In countries that have engaged in more recent comprehensive reform, it is important that those now responsible for complying with disclosure requirements receive adequate training. For example, in Jordan, the new Political Party Law requires parties to hire legal accountants to review reports before they are submitted, and each party's secretary-general must now take responsibility for the accuracy of the financial reporting. Similarly, as discussed above, the 2011 political parties law in Tunisia stipulates that each party must appoint a single financial officer responsible for preparing financial reports. Furthermore, each party must use a single bank account for all its financial transactions, abide by accounting standards and appoint certified auditors. It will also be important to fine-tune the disclosure system over time.<sup>159</sup>

Disclosure systems in the MENA region should also set out more precise requirements. Without being overly burdensome, disclosure should provide detailed information, especially on larger donations. While the law requires political parties to reveal the identity of donors in Algeria, Libya and Jordan, no such law exists in Iraq or Morocco. In Egypt, despite a general statutory commitment to public disclosure of finance information, only the oversight bodies are specifically required to be notified of the identity of donors who contribute to political parties and to presidential campaigns. In Tunisia, political parties are required to keep records of donors, but the campaign financial disclosure laws do not expressly address the reporting of donor information. The Tunisian law also lacks clarity on what constitutes an electoral expense. The International Foundation for Electoral Systems suggests that a definition such as 'any expenditure, in cash or in kind, incurred by a candidate or its party, during the electoral campaign, aiming at getting the votes of voters' would encourage a more objective conception of expenses.<sup>160</sup>

Finally, the MENA region would benefit from reform of when disclosure happens and to whom the information is disclosed. Most countries in the MENA region designate an oversight body or the interior ministry to receive reports from political parties or candidates. However, laws in Algeria, Iraq and Jordan do not specify which institution is responsible for actually examining financial reports or for investigating violations; the law is clearer on this point in Egypt, Libya, Morocco and Tunisia, though to varying degrees.<sup>161</sup>



Oversight bodies should be independent, in terms both of being insulated from the elected branches of government, and of possessing adequate resources for their task. Failure to ensure political and operational independence will expose the oversight body to pressure from the ruling party and thwart its ability to enforce disclosure laws fairly. For example, recent reforms in Jordan created a new committee to oversee political parties. The ministry of interior retains a central oversight role, however, since the committee will mostly be run by ministry of interior personnel, and the committee's chair is the minister of the interior himself. A small improvement is that the committee will now include a representative from civil society; but this representative is nominated by the prime minister.<sup>162</sup>

Oversight bodies should have the capacity to enforce disclosure rules, including the ability to investigate violations of those rules to and impose proportionate and deterrent sanctions. Oversight personnel should receive training and have specialized experience. Moreover, in order to make information accessible to the public in a timely manner before and after campaigns, the law should require electronic online disclosure by parties and candidates, in standard formats, using databases onto which finance information can be uploaded directly. This is an efficient way of reaching large audiences in countries where a significant percentage of the population has internet access. While financial reports are required to be made public in Algeria (for presidential candidates), Libya, Morocco and Tunisia, there is no publishing requirement in Jordan, Iraq or Egypt.<sup>163</sup>

Lastly, in setting up an effective political finance disclosure system, it is important to guard against the use of disclosure requirements and investigations to harass certain parties through uneven enforcement. This is most likely to happen in situations where an enforcement agency is unduly influenced by an incumbent regime that submits itself to competitive electoral processes. Here, civil society and the media may be the most effective monitors of political finance transactions, since the political regulators may lack the independence required to effectively enforce political finance rules.<sup>164</sup>

### ***3.6 Enforcement bodies and mechanisms***

#### ***3.6.1 Why is enforcement important?***

Formal enforcement by a public body is a common and important aspect of political finance systems. One of the challenges of party finance regulation is that the benefits of violating the rules will often exceed the costs, particularly in the electoral context, where the winners may be able to enact reforms to the system that are to their advantage and that influence the process of adjudicating prior violations. Effective enforcement helps to increase the possibility of both the exposure and the punishment of violations. While a few countries have minimal to no legal enforcement requirements, relying on informal

agreements, they are the clear exceptions. The credible possibility of detecting violations and imposing sanctions, therefore, is important to achieving the purposes of a political finance regime.

The different aspects of political finance require varying degrees of enforcement. At the lower end, public financing alone, without restrictions on the use of funds, simply requires an agency to effect the transfer of funds. However, most countries have some type of restrictions on parties' income or expenses, or financial disclosure requirements, as detailed in previous sections.

Enforcement is closely tied to disclosure, and the two can be seen as part of a single process. First, and most directly, disclosure provides much of the information used for enforcement. However, public disclosure requirements can also facilitate the discovery of violations by third parties. In this report, *enforcement* refers primarily to public financial control, enforcement, prosecution, and/or sanctions to enforce political party finance laws; *disclosure* entails internal control and record-keeping, financial reporting and audit. A final relevant component, external monitoring (e.g. by civil society and the media), is largely outside the scope of this report.<sup>165</sup>

The effectiveness of enforcement is very difficult to evaluate. It is impossible to prove the absence of violations, and the number of undetected violations is unknown. Often, assessments of enforcement rely on interviews with political actors and on general public perceptions or experiences.<sup>166</sup>

### 3.6.2 Key characteristics of enforcement agencies

*Enforcement agencies* will here be used to refer to public agencies that investigate or prosecute potential violations of political party finance laws. This can include the review of parties' financial reports; independent monitoring of party income or spending; reception and investigation of complaints; and prosecution, or referral for prosecution, of violations of the legal framework.

Countries typically use pre-existing agencies, rather than create a new agency exclusively for political party finance purposes. As noted in Figure 1 below, the three most common options for a monitoring entity – the agency that receives and reviews parties' financial reports – are an independent electoral management body (EMB), an auditing agency or a court. Often, multiple agencies will be responsible for different aspects of enforcement, and these agencies will have other tasks related to political party finance as well. Other responsibilities may include providing assistance and training for political parties, candidates and other actors in complying with their reporting obligations; providing information to the public and civil society; and recommending reforms to the legal framework. Collaboration with civil society can assist in gaining backing for reforms.



Two of the most important characteristics of political finance enforcement agencies are independence and capacity. Without independence, a capable enforcement agency can be deployed against a ruling party's political enemies and subvert the purposes of the political finance system. Without capacity, even a well-meaning enforcement agency may be overwhelmed by the tasks assigned to it, preventing the realization of the system's goals and opening itself up to charges of politically motivated selective enforcement.<sup>167</sup>

### 3.6.2.1 Independence

Independence has multiple connotations in the context of political party finance. First, it signifies that the enforcement agency is carrying out its duties under the law with minimal bias toward any one party. Second, it signifies that the agency is willing to take on established actors more generally – that the agency is not too reluctant to act because of its fear of political retaliation, for example in the reduction of its budget allocation, or the removal of its board members.

**Table 2. Key aspects of enforcement agency independence and capacity**

Independence	Capacity
<ul style="list-style-type: none"> <li>▪ Political independence               <ul style="list-style-type: none"> <li>○ Decisions are non-biased – monitoring and enforcement is even-handed, respecting all political parties and electoral competitors</li> <li>○ Entity is willing to take on stakeholders and enforce the rules</li> <li>○ The public and political actors perceive the entity as independent</li> <li>○ Often, decision-makers at the agency are selected through an open and transparent process</li> </ul> </li> <li>▪ Financial independence               <ul style="list-style-type: none"> <li>○ Entity controls own internal spending allocations</li> <li>○ Opportunities for political retaliation in budget are limited, either <i>de facto</i> or <i>de jure</i></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Operational capacity               <ul style="list-style-type: none"> <li>○ Sufficient budget and technology to carry out obligations</li> <li>○ Staff has sufficient expertise in accounting and legal matters, or any other necessary areas</li> </ul> </li> <li>▪ Legal capacity               <ul style="list-style-type: none"> <li>○ Obligations and violations are specifically defined</li> <li>○ Sufficient range of penalties is available to deter violations of varying severity</li> <li>○ Power to require pertinent information from other public or private entities (tax authorities, banks, etc.)</li> <li>○ Flexibility to refine enforcement mechanisms through regulations</li> <li>○ Agency has legally defined or <i>de facto</i> political opportunity to present recommendations for further development</li> </ul> </li> </ul>


There are various ways to safeguard independence. One factor in independence is the profile of the personnel of the enforcement agency – and, in particular, the board or executive committee of the agency. Provisions as to who appoints members, whether or not they represent political parties, and whether or not technical or professional qualifications or experience are requirements for office may help to increase the level of independence. However, it is important to bear in mind that even nominally independent members of EMBs or enforcement agencies may *de facto* be selected by certain political parties, especially if they are chosen by a legislature. This has been the case in Mexico. Whether or not these persons subsequently act as faithful agents of their parties is a different question and may depend on other factors, such as public monitoring of the EMB's work, general and personal ethical sensibilities, grounds for removal, and individual incentives regarding obtaining the job and obtaining post-EMB employment.<sup>168</sup>

Policymakers may wish to consider factors such as the method of appointment; whether the members are partisan or nominally independent or technocratic; whether certain professional qualifications are required; and what tenure protections members receive. Members may be selected to represent all parties; they may be selected by, or from among, judges; or they may be non-partisan. The subsection on choice of agency below provides further details on how considerations of independence may play into choosing the appropriate agency for enforcement. Secure funding is also important, so that politicians cannot retaliate against the agency for unpopular decisions, or undermine the law by reducing the agency's funding.<sup>169</sup>

### 3.6.2.2 Capacity

Capacity is both operational and legal. Operational capacity means the provision of sufficient funding and adequate personnel who are trained for the task they are undertaking. Legal capacity can include, among other elements, an adequate legal framework for prosecuting violations; the ability to require other public and private entities to obtain additional information to aid in investigation; and the availability of adequate legal penalties and other remedies for violations of political finance laws.

*Operational capacity.* An enforcement agency must have enough funding to function properly. Failure to enforce the rules appropriately can lead to a decline in public confidence and undermine further efforts to enact systemic reform. The institution must also have enough properly trained staff to enable it to review all documentation equally and thoroughly, and treat all alleged violations according to the same standard. The availability of such staff in the domestic context, and the agency's financial ability to hire them, should be a consideration when determining the substantive law to adopt and the agency's flexibility in crafting procedures. For example, some countries require only the review of reports submitted by political parties, while others require all candidates to



submit individual reports for review. The content of the reports and the nature of campaigning and political party operations in each country will have an impact on the workload they generate for agency staff. The choice between these approaches will depend also on the electoral system, the nature of the country's political finance law, and realistic assessments of the agency's manpower and funding to review and analyse party and candidate reports in enough depth to deter violations.<sup>170</sup>

If the enforcement agency lacks the capacity to audit all reports, another option sometimes used is to audit a random sample more thoroughly, while conducting less stringent checks on the remaining reports. An important aspect of this strategy is to create a clear protocol for which reports receive priority: for example, to focus on reports that appear to be outliers; or to focus more attention on reports from previous violators. In Tunisia's 2011 Constituent Assembly elections, the electoral commission's initial decision to overturn one party's (Popular Petition) victories on the basis of alleged financial violations resulted in a political dispute and the party's threat to withdraw from participation in the Constituent Assembly. While the commission's decision to audit the party may have been based on solid grounds, the commission could not possibly have reviewed all candidate reports in the few days provided before the announcement of the election's preliminary results. That fact, and the lack of a pre-existing procedure that would justify prioritizing Popular Petition's reports, gave the party more convincing grounds to argue that it was being singled out for political motives and led to a more extended controversy. Most of the seats the party was stripped of were later restored, when the Administrative Court overturned the commission's rulings.<sup>171</sup>

*Legal capacity.* Public faith in the political finance system may be adversely impacted by a failure to enforce, whether or not the perception of the agency's independence is affected. An overambitious legal framework – conferring mandates on the agency that it cannot adequately fulfil – can open the agency up to accusations of selective or inadequate enforcement, as described above. A legal framework that inadequately empowers the enforcement agency can be equally problematic: if the agency lacks sufficient authority, it may be unable to acquire the information necessary to prosecute violations, or it may be subject to the whims of other, non-independent agencies. And if the legal framework is too broad, it may contain loopholes that give rise to opportunities for subverting the intent of the law.

Access to information is crucial for effective enforcement. Following reforms to the Mexican political finance system, the investigatory unit of its electoral management body, known as UFRPP, can compel the provision of tax and banking records, both on its own behalf and on behalf of state electoral commissions. For the 2009 campaign, the agency requested information on the bank accounts of 240 candidates and it sought information from the tax agency on 175 occasions. Previously, the Mexican EMB was at times required to conduct litigation against other government agencies to gain access

to information. This new power eliminates many of the potential problems involved in cooperating with public and private entities that might have been reluctant to provide – or, in the absence of a court order, be legally prohibited from providing – certain types of information. The UFRPP can also compel private parties, such as service providers, to provide information. In reviewing parties' 2010 reports, it confirmed 1,340 transactions in this manner.<sup>172</sup>


Legal loopholes create major enforcement difficulties. Particularly during election campaigns, parties may try to exploit any potential exception to the rules. Moreover, if definitions are not clear, violations may be difficult to substantiate, even if known. As a straightforward example, foreign donations are prohibited in most countries. Yet if the definition of 'foreign' is not clear, violation becomes difficult, if not impossible, to prove, or requires the exercise of inadvisable discretion by the enforcement authority, which increases perceptions of biased enforcement. It should be clear, to take one case, whether donations from the national subsidiary of a foreign corporation are considered to be foreign donations, and to whom precisely foreign donations are prohibited (preventing political party units disguised as organizations like think tanks or party foundations to serve as 'offshore islands' of the main party). Loopholes in the law regarding third-party expenditure may enable lawmakers to channel resources from otherwise prohibited sources, or resources above the limit, through non-profits.<sup>173</sup>

### **3.6.3 Choice of agency**

Taking into account these independence and capacity concerns, countries have made a variety of choices regarding which agencies should handle enforcement. Multiple agencies may handle different aspects of the process. For example, prosecution must often be carried out by public prosecutors. Many countries also divide responsibility for campaign and ongoing reporting between different agencies. An electoral commission may be responsible for the former, and a government ministry or independent financial agency for the latter. Countries frequently also have differing regulations for certain types of campaigns (presidential campaigns or referendums).

#### **3.6.3.1 Electoral management bodies**

Often, as Figure 1 suggests, the EMB best meets the criteria described above. Independent EMBs are the agencies most frequently used for enforcement worldwide. Mexico and Colombia, two of the most extensive reformers in this area in Latin America, both provide for a subunit of the EMB to carry out monitoring. However, political party finance is not a core responsibility of the EMB, whose primary focus is on the voting process itself, including activities such as registering candidates, conducting polling and counting votes. If the EMB in a given country has struggled to carry out



those core operations, another institution with similar independence but greater financial or technical resources may be a better option.<sup>174</sup>

### ***3.6.3.2 Financial or anti-corruption agencies***

These may include a financial agency or an official such as a state accountant or comptroller, an anti-corruption agency, or an accounting court. Latvia provides an example of the implementation of this model. In 2002, it transferred responsibility for reviewing parties' financial declarations from the ministry of justice and the tax agency to the national anti-corruption agency (KNAB). While the tax agency had previously been accused of only superficially reviewing the declarations, the anti-corruption agency was relatively autonomous and proactive. The model has faced difficulties – the government finally dismissed the agency's director in 2008, after an attempt to do so the previous year had been aborted after it met with street protests. The government's action was seen as a result of the agency's relative success in attacking ties between oligarchs, politicians and political parties. KNAB has successfully uncovered violations and has taken considerable steps to enforce the election finance rules.<sup>175</sup>

### ***3.6.3.3 Judicial bodies***

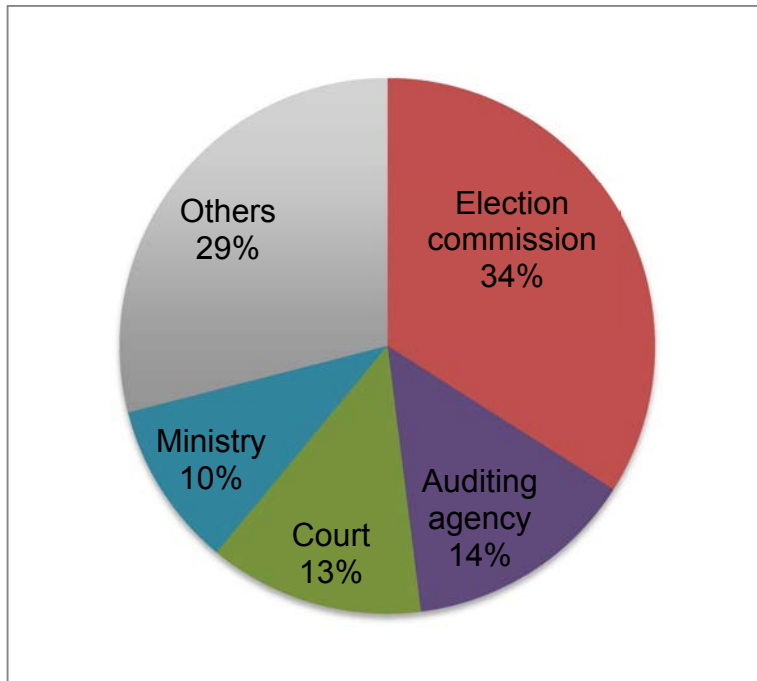
A third model uses the judiciary, most frequently a constitutional court. This may have the advantage of independence, but it also has the significant disadvantage that the constitutional court is not expert in financial matters and is unlikely to prioritize the issue. Turkey is an example of the use – and the pitfalls – of this model. The Turkish Constitutional Court is responsible for reviewing parties' annual reports. However, the Court relies on a small staff of six auditors who previously worked for the Court of Accounts, and this unit has no separate budget. It takes little initiative in investigating anomalies, other than those discovered from the reports, both because the staff's expertise lies in auditing and because of a lack of human resources. Additionally, while fines and administrative penalties have been imposed, criminal penalties have not been, and there is no clear framework to follow up with the public prosecution agency.<sup>176</sup>

### ***3.6.3.4 Ministries or parliament***

Many countries provide for review and investigation by the political branches – either an executive agency (such as the finance or interior ministry) or a subcommittee of parliament. Enforcement by the political branches likely poses the most problems for independence. This model may not be appropriate if there are concerns about the potential politicization of electoral management. The parliamentary model has its problems as well. First, parliaments are typically not accounting agencies, and may lack the requisite capacity. Second, they are made up of the same political parties that will be subject to party finance sanctions – including winning candidates who may have

benefited from violations – thus aggravating the inherent problem of self-regulation and potentially making the imposition of sanctions less likely.

**Figure 1. Agency receiving reports<sup>177</sup>**




### **3.6.4 Control**

Violations can be discovered in three ways: monitoring by the enforcement agency; external complaint; and referral by other government agencies. A country's banking and financial regulatory regime will also play an important part in the detection of violations.<sup>178</sup>

#### **3.6.4.1 Monitoring by the enforcement agency**

Frequently, though not always, the same agency that receives the reports from political parties is responsible for investigating and imposing sanctions. The nature of monitoring, and the timing of monitoring, will depend on the legal framework. Monitoring can mean both examining expenses in real time (particularly during campaigns) and reviewing expense reports after the fact. Many countries struggle to do both, and most emphasize the review of reports over real-time expense monitoring.<sup>179</sup>



The Electoral Commission of India attempts a particularly assertive form of monitoring. It may co-opt members of the civil service during electoral periods, which enables it to expand its workforce substantially. In an effort to reduce violations of campaign finance rules, it has begun to pre-screen large purchases by candidates, send representatives to attend campaign events and estimate costs, and establish roadblocks to intercept materials that are intended for illegal distribution to voters as inducements. Estimates of expenses are then publicly posted alongside candidates' declarations of their spending. This type of real-time monitoring responds to India's legal framework, which emphasizes spending caps and provides few penalties for violations, other than loss of office. As a result, the Commission has chosen to try to make party finance law effective through political accountability.<sup>180</sup>

The Indian model is unique, and full evaluations of its effectiveness are not yet available. It is much more common to have *ex post* monitoring: for ongoing party funding, through the submission of reports and their review on an annual basis; and for campaign funding, through the submission of reports on the campaign after an electoral process. Most electoral agencies lack the manpower necessary for the type of operation that the Indian Electoral Commission attempts. The monitoring undertaken by the Mexican EMB based on required party reports, for example, is primarily *ex post*. However, the Indian model illustrates that, in cases where the enforcement agency has independence and sufficient capacity, it can take measures to address violations even where the legal framework is less than ideal.

#### **3.6.4.2 External complaint**

Often, legal provisions will allow rival candidates, NGOs or citizens to submit complaints regarding the financial conduct of political parties. Rival parties or candidates may have a strong interest in exposing and denouncing alleged violations. NGOs and the media, as discussed above, can also play an important role, and permitting them to formally file complaints regarding suspected violations may conserve resources and help to pinpoint violations that the EMB cannot locate through its monitoring processes. It is, however, important for the enforcement agency to have its own monitoring capacity, so that it does not rely wholly on external complaints. This is the case both because the agency should have its own independent capacity, and because in some circumstances rival parties may implicitly collude to avoid reporting each other's violations.<sup>181</sup>

#### **3.6.4.3 Referral from other agencies**

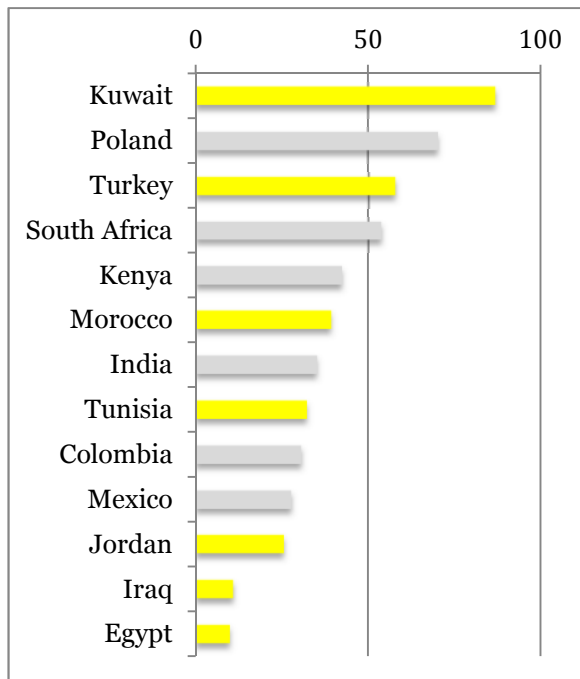
Depending on the rules regulating political parties, other agencies may have information that leads them to suspect violations of rules related to political party funding. For example, the tax agency may note irregularities in a party's or a candidate's tax

submissions and refer the information to the enforcement agency for follow-up. The enforcement agency may maintain agreements with those agencies to receive information on an ongoing basis. For example, the Mexican EMB's enforcement unit, the UFRPP, receives information from the tax agency, the national banking supervisory agency, the anti-corruption unit within the ministry of finance, and the unit of the prosecutor's office for electoral crimes.<sup>182</sup>

#### 3.6.4.4 The role of banking and financial institutions


Frequently, the legal framework requires political parties to open and operate a single registered bank account, which makes it easier to monitor their expenses, corroborate their reports, and conduct financial transactions, such as transfers of public funding. The single bank account requirement is generally recommended. However, it is important to be aware of the potential consequences in cash-based economies, where access to banking services is limited, both in terms of inhibiting legitimate transactions and in detecting violations.<sup>183</sup>

**Figure 2. Percentage of individuals aged 15 or above with an individual bank account, selected countries (MENA in yellow)**



Source: The World Bank: Global FINDEX Database: World Bank Policy Research Paper 6025.





Limited access to banking may present something of a problem on the participation side. Parties and candidates who are running in constituencies outside major cities may lack access to banks. Moreover, if banks generally do not serve lower or middle socio-economic strata, and if small business owners, proprietors or other service providers only accept cash, this may both inhibit legitimate attempts by parties to engage in campaigning and organization building, and encourage disregard for banking requirements. Similar problems may be present on the donation side if donations must be made by cheque or through bank transfer. Many banks require account holders to maintain a minimum balance and provide documentation (e.g. of residence) for their accounts, which can be difficult in countries where informal businesses and economic structures predominate.<sup>184</sup>

Cash-based economies present further problems in detection and prosecution. Many aspects of political party financial enforcement – in particular, detecting prohibited income and expenditure – parallel the work of financial enforcement agencies in other areas, such as money laundering or the fight against corruption, in their efforts to identify prohibited transactions. In all of these areas, high levels of cash transactions present significant enforcement difficulties, since cash is harder to track than transactions routed through financial institutions. If cash is frequently used for legitimate transactions, such as property purchases and payment of bills, including to government agencies, and if informal businesses – common in many countries – conduct their operations largely in cash, then identifying suspicious transactions in a sea of large cash movements can become very difficult.<sup>185</sup>

Individuals in MENA countries have reported widely varying levels of access to bank accounts: banking services are much more commonly available in the Gulf, and less so in the Levant and North Africa. MENA countries also exhibit the largest gender gap in banking of any region in the world. This means that banking requirements may potentially pose greater difficulties for women participants.<sup>186</sup>

Most of the difficulties resulting from low levels of access to financial institutions will not be directly resolved by political party finance law. Rather, when considering what types of restrictions can be realistically enforced, those crafting the law should be aware of the limitations of the country's financial system and of institutions' ability to detect illicit transactions, and also remain mindful of the impact of access on political participation itself.

### ***3.6.5 Imposition of sanctions and appeal against them***

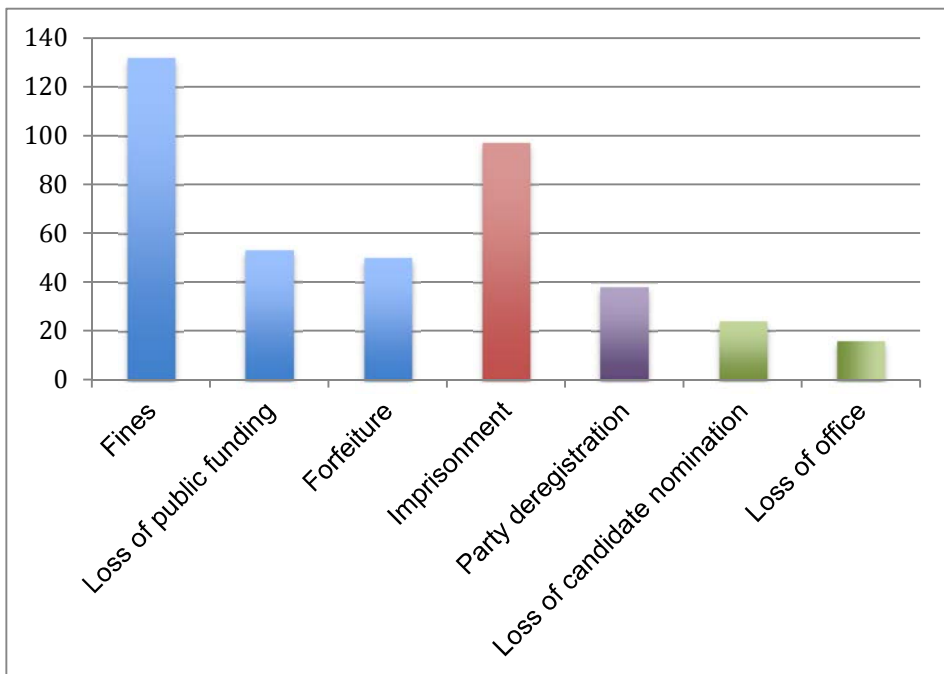
#### ***3.6.5.1 Types of penalties***

Penalties should be applicable to a variety of actors, including political parties, candidates, campaign managers, auditors, individual and corporate donors,

office holders, and anyone else participating in the political process. Providing the enforcement agency with a variety of options, and tailoring penalties to the nature and severity of the violation, aids enforcement by encouraging the imposition of minor penalties for minor violations. Different penalties may also be imposed upon different actors, such as organizations, candidates or donors. If the only penalties available to the enforcement agency are harsh – for example, imprisonment, loss of a candidate’s elected office, or deregistration of a political party – the agency, even if independent, may find it inappropriate to impose such penalties for minor infractions of the political finance system, and may also be discouraged by the political difficulties of doing so.<sup>187</sup>


**Figure 3. Common penalties for violations of party finance laws (# of states)**

*Blue = financial penalties; red = criminal penalties; purple = organizational penalties; green = electoral penalties*



Source: Authors’ elaboration from International IDEA Political Finance Database.

The lightest punishment is typically a *public reprimand*. Other common penalties include fines, adjusted for the nature and severity of the violation and increased in the case of repeated infractions; reductions in public financing; cancellation of a party’s registration; and loss of a candidate’s elected office. Criminal penalties may also be imposed in serious cases. Penalties may be imposed for violating the laws governing



party income or expenses, in terms of source, subject of expense, or level; for providing false declarations in the reporting process; or for both.

*Financial penalties.* Financial penalties are perhaps the most flexible and effective. They are the easiest to match to the scope of a financial crime. Parties can be required to forfeit any illegally received money, and to pay fines in a specified range (for example, the same amount as the amount received, or double that for a repeat violation). Mitigating or aggravating factors can be reflected in the amount of the fine. In contexts where public funding is provided to parties, fines may be enforced relatively easily, by withholding funding. And fines may easily be levied after elections have taken place; this is important, as the investigatory process may require more time than the campaign period permits.<sup>188</sup>

However, fines against political parties may not have the desired effect. In situations of high party turnover, they may have little real impact, even if levied against the parties that violated the law – depending on whether the financial liability attaches to new political parties founded by the same politicians. Moreover, parties may be willing to risk even a substantial fine, if they perceive the rewards to be great enough. In Mexico, there is a perception that this is the case.<sup>189</sup>

*Criminal or individual penalties.* Criminal penalties, including imprisonment, are also common. While potentially a powerful deterrent, criminal penalties also have several disadvantages. First and most obviously, they apply only to individuals. Second, they may require thresholds of proof of the individual's knowledge and behaviour that – as with financial crimes in general – are difficult to prove. While the party's receipt or expenditure of illegal funds may be relatively simple to demonstrate in a particular instance, a party leader's personal involvement may be difficult to establish. Third, they typically require the involvement of another branch of government, particularly the prosecutorial authority, which may not specialize in electoral crimes or which may have independence or capacity problems of its own. Finally, given their weight and the resources required for a criminal prosecution, they are probably not appropriate for relatively low-level violations. Reliance on criminal penalties alone would be a blunt and potentially ineffective technique, but criminal penalties can form one part of a comprehensive penalty scheme.<sup>190</sup>

*Organizational penalties.* These include suspension or dissolution of the party, or a prohibition on the party fielding candidates in a particular constituency. They typically apply to parties that have engaged in repeated or egregious substantive violations, or have failed to submit the required financial reports. Potential damage to (or the loss of) a party 'brand' and organization raises the cost of any offence, and there may be other repercussions, too, such as the loss of funding. However, it is often possible to avoid any such consequences by simply reorganizing under a new party name. In other contexts,

organizational penalties have proved relatively ineffective: both Turkey and Spain have attempted to ban political parties on the grounds of the substantive content of their political programmes, the nature of statements made by their leaders, or their association with violent groups. Yet in both countries, the political parties concerned have re-emerged unscathed under different names – the Justice and Development Party (AKP) and the Peace and Democracy Party (BDP) in Turkey, and Amaiur in Spain being the latest iterations of, respectively, Islam-affiliated, Kurdish and Basque left-nationalist parties.

Moreover, the implementation of an organizational penalty prompts the question of the purpose of the penalty. While it may deter some violations, the dissolution or suspension of a politically relevant party may also have negative effects on the participatory nature of the democratic process. Dissolution may be more practical as a measure to terminate the legal status of parties that are effectively non-functioning and that fail to comply with disclosure measures. This has been an issue in India, where political parties have allegedly been used as vehicles for money laundering.<sup>191</sup>

*Electoral penalties.* The use of electoral penalties is intuitive, particularly in the case of electoral violations. However, these are difficult to implement effectively. The review of finance reports and alleged violations often occurs after the electoral period has ended. Often, by the time a decision is rendered, the elected official has been in office for some time, and his or her removal is politically difficult or may lead to legal battles. Moreover, there is the question of whether most finance violations – though they affect the political system as a whole – have in fact changed the outcome of the election in question, especially if the winner's rivals also committed violations.<sup>192</sup>

However, in theory, electoral penalties may be easier to apply in cases where the election is to a legislature or local assembly, and in particular if the constituencies are larger. If the application of the sanction would modify a party's seat count, but not overturn the outcome of a high-stakes, one-person election, such as to the presidency, the inclusion in the legal framework of electoral penalties such as the loss of seats, and their actual use, may be more palatable to political stakeholders.

In a comprehensive system such as Colombia's, all these penalties are available in certain contexts. The table below provides an overview of a set of provisions recently adopted by Colombia in its attempts to reform its political system and address its vulnerability to illegal spending by drug traffickers, guerrillas and paramilitary groups.

**Table 3. Comprehensive penalties: the example of Colombia's Law 1475/2011**

Financial penalties	<p>Loss of public funding or media time can be imposed for serious failure to exercise due care in implementing legal provisions on party finance, including disclosure and mechanisms for party responsibility; for failure to comply with those provisions; for violating income or spending limits; or various other offences. If, when votes received by candidates for Congress later convicted of ties to illegal armed groups are subtracted, a party falls below the threshold for funding, the party must return any excess public funding it has received.<sup>193</sup></p> <p>The electoral commission imposes these penalties, against which an appeal may be lodged with the Council of State, the country's top administrative court.<sup>194</sup></p>
Criminal penalties	<p>Law 1475/2011 imposes no specific criminal penalties, but recognizes and relies on the existence of complementary criminal laws. In particular, the law penalizes parties' nomination of candidates who are convicted of having ties to illegal armed groups or drug traffickers, of crimes against democracy, or of crimes against humanity. While these crimes are not necessarily financial in nature, they frequently involve the use of money from illegal sources for political purposes.<sup>195</sup></p> <p>This works in tandem with the 'empty seat provision' of Colombia's Constitution, which prohibits the replacement of any member of Congress or of a regional or local council who is removed because of conviction of one those crimes. Instead, the party simply loses the seat. This mechanism seeks to promote party accountability for its candidates in a traditionally highly decentralized system.<sup>196</sup></p>
Organizational penalties	<p>For assorted violations, the party's legal personality may be suspended or cancelled; it may be prohibited from fielding candidates in a certain constituency; or the party organization may be dissolved. The party will lose its legal personality if it falls below the required vote threshold when votes received by candidates tied to illegal armed groups are subtracted. As with financial penalties, these are imposed by the electoral commission.<sup>197</sup></p>

Electoral penalties	Violation of spending limits leads to a loss of political office; the electoral commission presents the charges to the relevant authority defined by law, which determines if the office holder should be removed. Office holders may also lose office automatically if convicted of certain criminal offences, as described above. <sup>198</sup>
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Israel, another country that has had notable political finance scandals in the past, also has a wide range of penalties available to the State Comptroller, who can issue fines and withhold public financing, with discretion as to the amount. The Comptroller can also refer criminal cases – such as making false declarations or making or receiving illegal contributions – to the Attorney General for prosecution. Notable financial enforcement has included the approximately 2.8 million US dollars fine levied after the 1999 election on One Israel, a coalition centred around the Labour party, for violations that included receiving funding from abroad.<sup>199</sup>

### 3.6.5.2 Prosecution and adjudication

A final issue to address is who imposes sanctions, and whether and to whom those sanctions may be appealed. The varied approaches to this issue reflect in part the nature of different legal systems. Some countries have specialized judicial bodies that deal specifically with electoral matters, while others refer appeals to a constitutional court, administrative court or ordinary court. In particular, many Commonwealth countries and countries with a British legal heritage adjudicate electoral disputes, including financial disputes, through their ordinary court system. In civil law countries, such as those in Francophone Africa or Latin America, adjudication of civil penalties such as fines may rest with an administrative law tribunal. Countries with an EMB responsible for political party finance often provide for the EMB to impose penalties in the first instance, with a right of appeal to the judiciary – whether a court of general jurisdiction or an administrative tribunal. Authority to impose sanctions may vary depending on the type of penalty concerned; criminal penalties will often go through a different process.<sup>200</sup>

In examining appellate models, similar considerations of independence and capacity come into play. The right of appeal, in addition to complying with any relevant constitutional requirements for fairness and due process, can help to legitimize a model and increase perceptions of fairness. Moreover, the EMB may not match the expertise of the judicial branch in some relevant constitutional issues. However, it is important that political actors should perceive the judicial appellate body as having the same independence (ability to impose sanctions on all parties even-handedly) as is required of the first-instance enforcement agency. Otherwise, a judiciary subject to greater political constraints may effectively pre-empt or curtail the work of the enforcement agency.<sup>201</sup>



### 3.6.6 Effectiveness of implementation

Determining the effectiveness of the enforcement system as a whole is a difficult exercise that generally cannot be performed with a high degree of accuracy. The answer will depend on what ‘effectiveness’ means: in a broader sense, the question is whether political practices have changed, and how. In a narrower sense – compliance with the existing rules – many violations simply will not be detected. Much of the effectiveness of enforcement may be as a deterrent to violations, and therefore unobservable. While the enforcement entity’s visible behaviour can be evaluated, there is a lot going on beneath the surface, which makes the true nature and extent of illicit conduct impossible to calculate with a high level of certainty. These difficulties mean that constructing formal, objective indicators of effectiveness can be a challenge. Subjective evaluations, such as public opinion surveys, are informative, especially as they speak to the broader goals of political legitimacy. However, they are blunt and may not reflect actual improvements in practices or enforcement. They may also be guided more by perceptions of the political system, and ongoing discontent with the state of politics generally, than by political finance practices specifically.

Mexico is a case where democratization and disputes regarding the use of money in politics, as well as the role of the media, have led to an ongoing cycle of reform and a very detailed body of law regarding political finance. The evolution of Mexican electoral law has resulted in a grant of broad authority to its EMB to levy administrative penalties, including censure, fines, reductions in public financing, and cancellation of registration for recurring serious violations. The Mexican EMB (the IFE) has imposed substantial fines, far surpassing other Latin American EMBs. Notably, in recent years fines have included approximately 45 million US dollars imposed on the presidential campaign of Vicente Fox for illegal fundraising, and approximately 100 million US dollars levied on the Institutional Revolutionary Party for illegally receiving funding from the state oil company’s labour union. The IFE imposed over 35 million pesos in fines after reviewing reports for 2009, the last election year for which processes are complete, not including fines for other financial violations. Slightly under half of this amount was revoked by the Electoral Court.<sup>202</sup>

Following another round of reforms in 2007–08 that targeted the use of the media in particular, the IFE’s enforcement unit (UFRPP) was given greater autonomy and additional legal powers. Fines have been levied on third parties, such as media outlets, which are bound by new provisions of political finance law. TV Azteca, for example, has been fined multiple times for various infractions, including refusal to broadcast political party advertising and messages from the EMB, as required by law, while other TV networks have complied more readily with the requirements.<sup>203</sup>

The size and frequency of penalties, and the substantial permanent staff responsible for enforcement, have not shielded the Mexican enforcement agency from continued criticism. Controversy surrounded the 2006 presidential elections, which were decided by a very small margin. Additionally, widespread discontent surrounding the role of the media in that election led in large part to the 2007–08 reforms. In 2012, controversy re-emerged over the campaign of the winning presidential candidate in particular (from the PRI), though other parties were also impugned. While the monitoring entity dismissed charges related to illegal finance and solicitation of votes with supermarket discount cards, many Mexicans remained sceptical.<sup>204</sup>

However, the continuing public debate and the need for the monitoring entity to conduct an investigation and issue a founded ruling highlight the changes in the Mexican political finance system. External observers have remarked positively on the changes and on the quality of the enforcement, particularly compared to other countries in the region. Moreover, with regard to the greater limitations on media access, election observers have noted efforts by candidates to adapt to the reforms, as well as to alter their campaign techniques to focus more on personal contact, suggesting that the reforms are functioning successfully to change the way politics is conducted.<sup>205</sup>

The Israeli system is also seen as effective. It is thought that most Israeli parties choose to comply with the rules, rather than risk being caught by the State Comptroller and fined, at least at the national level. On the other hand, though foreign funding has been prohibited in general elections, most funding for individual candidates in party primaries comes from abroad, particularly the United States. While enforcement may be technically effective, then, it may simply have moved the proscribed activity to other arenas.<sup>206</sup>

Some countries have chosen to employ methods that focus on electoral accountability for violations; this is the case in Japan, for example, where the legal framework concentrates on disclosure rather than sanctions, and the only non-political sanction available is prosecution on criminal charges.


Any decision on what enforcement mechanisms to adopt will depend in part on the particular country's broader vision of politics, as well as on the perceived priorities in the area of political finance, and on whether or not accountability to the public and the electorate is seen as sufficient in that context.<sup>207</sup>

### ***3.6.7 Recent developments in the MENA region***

#### ***3.6.7.1 Egypt***

Egypt has maintained continuity with its pre-transition legal framework, meaning that the rules – including enforcement rules – are designed to favour the ruling National





Democratic Party, and not to foster open participation or competition. Political finance provisions are found in the separate laws governing elections to the presidency and to both of the legislative houses, as well as in the political party law.

Moreover, the actual administration of elections remains divided between the Presidential Election Committee (PEC), which consist of senior judges, and the High Elections Committee (HEC), which oversees parliamentary elections and consists of a different set of judges. While both bodies have some legal independence, their transparency is limited; and as they are agencies formed primarily for elections, they have little continuous organizational structure. Amendments to the enforcement structure in the post-revolutionary context have been minimal.<sup>208</sup>

Parliamentary campaign rules do not require disclosure of expenditure; no agency has the clear authority to prosecute violations, despite the existence of explicit spending limits for candidates. Hence, whether or not candidates have breached the limits is unclear. On the other hand, the pre-existing rules for the presidential campaign, along with regulations issued by the PEC, mandated ongoing disclosure of donations, as well as overall reporting; reports are reviewed by the Central Audit Agency. It is difficult to know – because the reports need not be publicly disclosed – what presidential candidates reported spending in the 2012 election, and whether those figures were accurate. PEC Decision No. 10 technically required equal state media time for candidates, but the terms of implementation were vague.<sup>209</sup>

Egypt's now-suspended 2012 Constitution provided for the establishment of an independent electoral commission to promulgate regulations regarding electoral funding and expenditure. The commission is to be composed of members of the judicial branch, who will serve full time for six-year periods. Jurisdiction for appeals about the commission's decisions will lie with the administrative courts. In considering a law defining the electoral commission's powers and duties, Egyptian lawmakers may wish to consider providing the commission with the power to review parties' regular financial reports and to investigate or sanction violations, as well as to obtain the information necessary to conduct a thorough investigation. Additionally, the role of the Central Audit Agency should be more clearly defined. Finally, specific transparency requirements with regard to the commission's operations and decisions may be beneficial in providing the public with information to drive feedback on further necessary reforms to the system.

### **3.6.7.2 Libya**


Libya's Law 29/2012 provides for the financial supervision unit of the election commission (HNEC) to receive annual reports of party income, expenses and assets. The unit has the power to audit all the party's documents in the investigatory process,

and to refer a party to the courts for dissolution if it finds that any of the requirements in Law 29/2012 have been breached. This request must be adjudicated within 30 days, but the court has discretion to fine the party if it rectifies its violations within a set time period. In the context of the 2012 election, HNEC was legally responsible for making sure that individuals and parties running for the interim legislature, the General National Congress, complied with various limits on income and spending, as well as with the disclosure requirements. It had the right, theoretically, to declare a party or candidate ineligible due to violations. HNEC adopted regulations providing state media time to candidates and parties, pursuant to the electoral law, and adopted regulations on spending limits two days prior to the beginning of the campaign.<sup>210</sup>

International assessments of HNEC's professionalism were positive. However, HNEC had little capacity to conduct financial investigations, either before or after the elections, as it was also responsible for election-day operations and for tabulating votes, registering almost 3 million voters, training up to 38,000 polling staff, candidate accreditation, voter education, filling various gaps in the legal framework created by the Transitional National Council, and investigating non-financial violations. In carrying out these duties, the HNEC did, however, face questions of fluctuating membership that eventually led to modification of the law on its composition. While the elections were generally peaceful, with only minor incidents, security concerns remained paramount. Most legal complaints were not about finance: prior to the election, most related to candidates' eligibility; and following the election, most related to the polling process itself or to illegal campaigning or advertising on election day.<sup>211</sup>

Libya now faces the challenge of drafting new electoral laws and modifying the HNEC's responsibilities in preparation for its constituent assembly elections. Given the relatively short timeline and HNEC's evolving capacity, asking HNEC to carry out ambitious financial enforcement plans is likely to be unsuccessful. Moreover, Libya is rebuilding all its institutions, including the judiciary and financial enforcement bodies, and has few other enforcement options that do not face similar problems. Finally, most political parties are relatively small and might face difficulties in complying with detailed disclosure regimes.

In this context, the HNEC has logically focused on coordinating the electoral process and attempting to establish its independence. In the short term, policymakers may wish to continue focusing on aspects of political finance that will help open the playing field to various points of view, while not imposing overly burdensome administrative demands on parties. These could include some level of public funding, continued state media access, and very basic disclosure requirements. If an independent electoral commission is desired in the long term, a priority may be to embed the independence of the HNEC or its successor in the constitution and to establish permanent procedures for HNEC's selection and operations. The HNEC should not be overloaded, so that it



can establish and entrench its competence in key areas of electoral administration. Additionally, the need for a clearer and more permissive process for adjudication of complaints has been noted; this will be particularly important in the financial context, where investigations may require significant time.

### **3.6.7.3 Tunisia**

Tunisia's post-revolution legal framework for the Constituent Assembly elections assigned primary responsibility for investigating and prosecuting violations of campaign finance rules to two bodies: the electoral commission (ISIE) and the Court of Accounts. The ISIE reviewed reports immediately following their submission during and after the campaign period, and had the power to annul parties' victories in the case of violations. This was difficult, however, because it could only do so prior to the declaration of the preliminary results. As noted above, the ISIE exercised this power in various constituencies in the case of victories by the Popular Petition party, but its decisions were largely overturned by the Supreme Administrative Court. The Court of Accounts was then entrusted with conducting a review of reports. Moreover, the submission of the majority of reports to the Court was delayed, possibly as a result of the large number of very small, unsuccessful lists competing in the elections. Though a majority of parties did submit their reports, parties that accounted for 48 seats in the Constituent Assembly did not. The Court of Accounts was not consulted in the process of reviewing the Popular Petition case.<sup>212</sup>

The Popular Petition case illustrates one of the key problems with electoral penalties: they are appealing at first glance, but typically there is not time to investigate and render a legal decision regarding alleged campaign finance violations prior to the announcement of the results. Moreover, depriving a party of representation for violations that may or may not have substantially affected results in this context, when other parties are also accused of violations, may be seen as a politically motivated decision. Tunisia's electoral law applied only to the Constituent Assembly election; however, if electoral penalties are to be maintained in future electoral laws, Tunisian lawmakers should consider permitting their application after the election results have been announced, and coupling them more effectively with other penalties.

The 2012 passage of a law defining the selection of the membership of the ISIE and the inclusion of the body in the June 2013 draft Tunisian Constitution imply a general recognition of the importance of the ISIE's work as an independent electoral body, but do not fully define its role in finance (article 123). There are clear potential benefits to drawing on the expertise and resources of the Court of Accounts in enforcement; but better defining the roles, responsibilities and powers of each agency in the process might help both to reduce loopholes caused by having different laws for elections and for

ongoing party operations, and to facilitate effective investigation and prosecution of violations.<sup>213</sup>


The Court of Accounts, in accordance with the electoral law, issued a report regarding parties' financial reports for the 2011 elections. Its recommendations for reform included, among other items, the adoption of a legal framework with enough lead time for preparation; reconciliation of the party law with the electoral law, particularly regarding whether private donations are permitted; better definitions of the terms 'campaign expenses' and 'foreign funding'; adoption of accounting standards specific to political parties and requiring parties to hire internal accounting personnel; and stronger financial penalties. It also recommended considering allowing the penalty of removal from office following review by the Court of Accounts, rather than just by the ISIE.<sup>214</sup>

In the case of ongoing political party reports, established by Decree Law 87 of 2011, the Court of Accounts is responsible for review. The status of these ongoing reports is unclear and there is no publication requirement. Moreover, the prime minister is given responsibility for enforcement, which poses the problem of a clear conflict of interests, and the penalties for ongoing violations consist primarily of organizational penalties and of criminal penalties that require the prime minister's initiation. The party law, when reformed, should prioritize the removal of any enforcement authority from the prime minister's office, and the creation of a broader and more tailored set of penalties, as well as the publication of reports. Lawmakers should pay attention to the relationship between the political party law and the electoral law, in order to ensure that their provisions work in tandem and form a coherent whole.<sup>215</sup>

### ***3.6.8 Important policy considerations***

Enforcement must be perceived as impartial and effective. For this reason, independence and capacity are crucial. It may be ideal to take advantage of pre-existing institutions that are seen as impartial and that have roles that are relevant to political party finance – for example, an independent electoral commission or a court of accounts – in assigning responsibility for monitoring and for the imposition of sanctions. If countries are establishing or expanding the responsibilities of independent electoral commissions, it is advisable to take into account the need for adequate expertise and funding for their responsibilities in the area of political finance.

Enforcement should focus first on effectiveness and later on extent, in parallel with the remainder of the legal framework for political party finance. Once effective enforcement is achieved in some areas, new goals can be set. Areas in which extensive government monitoring is not currently practical can be made the subject of disclosure requirements, permitting the reporting of violations by external parties, and agency monitoring can be expanded later to those fields. The enforcement agency must have access to a diverse



range of penalties that will be appropriate, enforceable and effective, covering all relevant actors and violations and encouraging compliance with the law.

Other aspects of the law should be configured so as to facilitate enforcement. For example, requiring a political party to use a single bank account is a common means of easily tracking a party's funds. Providing tax incentives for donations to political parties may encourage donors to record those donations publicly. Providing public funds in a matching scheme may also encourage parties to report the existence of donations that they may previously have concealed. Additionally, empirical elements such as the nature of the country's financial system will be important in determining the practical measures available for enforcement. The lack of electronic banking records, for example, would increase the time and expense of tracking banking information for political parties. If access to financial institutions is limited and cash transactions are prevalent, this will also raise enforcement costs in important ways that should be taken into account.

The goals of the system, and the means of effective enforcement, will change over time. It is optimal to review the enforcement system every few years and, at the administrative level, to provide flexibility for enforcement agencies to adjust their methods of enforcement and provide for greater effectiveness without the need for legal reform. Some countries officially provide the primary enforcement agency with the power or responsibility to propose legal reforms, thereby automatically placing the issue on the agenda on a regular basis.

## 4 Important Policy Considerations

- Effective enforcement of political finance laws is essential. Enforcement bodies need to be perceived as independent and impartial. An effective enforcement system will include adequate expertise and funding.
- Other party finance laws should be designed to incentivize compliance.
- Public funding is highly recommended. A public funding system should include both direct and indirect subsidies, as well as ongoing funding. The distribution of funds should be perceived as equitable.
- Public funding systems should be designed in a way that avoids parties becoming beholden to the state or too detached from their constituencies, and prevents abuse by stronger parties.
- Disclosure requirements that are not too burdensome but that provide enough information for thorough investigation, especially for larger donations, are highly recommended. Requirements should cover parties and candidates, local and regional levels, and affiliated organizations.
- Disclosure systems should designate internal party compliance officers who are legally responsible and should require internal independent auditors, periodic disclosure and up-to-date records to enable spot audits.
- Information disclosed should reach the public in a timely and accessible manner.
- Limits on party income should not be introduced, unless they are realistic and enforceable. Adopting limit provisions gradually, over time and in tandem with the introduction or increase of public funds, can encourage compliance.
- Countries should avoid imposing general spending limits, which are very difficult to enforce and may easily aim too high or too low. Instead, spending limits should focus on particular types of spending that can be feasibly monitored, such as advertising.
- Enforcement agencies should have implementation autonomy and a defined role in proposing systemic reforms.



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## **Appendix 1: Selected Constitutional Provisions on Political Party Finance**

### **Examples of relatively general provisions**

#### **Disclosure only**

##### **Croatia**

###### *Article 6*

... Political parties shall publicly disclose the sources of their finances and assets ... The status and financing of political parties shall be regulated by law.

##### **Germany**

###### *Article 21*

(1) Political parties ... must publicly account for their assets and for the sources and use of their funds.

##### **Poland**

###### *Article 11*

(2) The financing of political parties shall be open to public inspection.

##### **Tunisia (draft, May 2013)**

###### *Article 20*

... The statutes and activities of parties, labour unions and associations commit to the provisions of the Constitution, to financial transparency ...

#### **Public funding**

##### **Argentina**

###### *Article 38*

... The State contributes to the financial support of [political party] activities and the training of their leaders.

Political parties must publish the origin and destination of their funds and assets.

##### **Korea (Republic of)**

###### *Article 8*

(3) Political parties shall enjoy the protection of the State and may be provided with operational funds by the State under the conditions as prescribed by Act.

##### **South Africa**

###### *Section 236*

To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis.

## Broadcasting/media access

### Romania

#### *Article 31*

(5) Public radio and television services ... must guarantee any important social and political group the exercise of the right to broadcast time.

#### *Article 73*

(3) Organic laws shall regulate:

b) the organization, functioning, and financing of political parties.

## Enforcement

### Thailand

#### *Article 236*

The Election Commission shall have the following powers and duties:

(3) to prescribe measures and control the financial contributions to the political parties, subsidies given by the State, the expenditures of the political parties and electoral candidates, including to openly audit the financial accounts of political parties as well as to monitor the disbursement and receipt of money for the purpose of voting at an election.

### Colombia

#### *Article 109*

The State shall participate in the political and electoral financing of political parties and movements with legal personality, in conformity with the law.


Electoral campaigns of candidates backed by parties and movements with legal personality or by citizen groups will be financed partially with state resources.

The law will determine the percentage of votes necessary to have a right to this financing.

Additionally, the amount of costs that parties, movements, and citizen groups can incur in election campaigns, as well as the maximum amount of private contributions, may be limited, in accordance with the law.

A percentage of this financing will be provided to parties and movements with current legal personality and to citizen groups that nominate candidates before the elections or primaries in accordance with the conditions and guarantees determined by law and with the authorization of the National Electoral Council.

Campaigns to elect a President of the Republic will have access to a maximum of physical advertising spaces and spots on radio and television paid for by the State ...



Parties, movements, citizen groups and candidates must report publicly on the amount, origin and destination of their income.

*Article 110*

Persons discharging public functions are prohibited from making any contribution to parties, movements or candidates, or inducing others to do so, save for the exceptions established by law. Failure to comply with any of these provisions will be cause for removal from the position or nullification of office.

*Article 111*

Political parties and movements with legal personality have the right to use the media occupying the electromagnetic spectrum, at all times, according to the law. The law will also establish the cases and manner in which parties, political movements and duly registered candidates will have access to the media indicated.

*Article 265*

... [The National Electoral Council] will have the following special attributions ...:

7. Distribute the financial support established by law for financing electoral campaigns and ensuring the right of citizens' political participation ...
10. Regulate the participation of political parties and movements in state media.

**Kenya**

*Section 88*

(4) The [Independent Electoral and Boundaries] Commission is responsible for ...

- (i) the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;

*Section 91*

(2) A political party shall not—

- (d) engage in bribery or other forms of corruption; or
- (e) except as provided under this Chapter or by an Act of Parliament, accept or use public resources to promote its interests or its candidates in elections.

*Section 92*

Parliament shall enact legislation to provide for—

- (a) the reasonable and equitable allocation of airtime, by State-owned and other mentioned categories of broadcasting media, to political parties either generally or during election campaigns;
- (b) the regulation of freedom to broadcast in order to ensure fair election campaigning;
- ...
- (f) the establishment and management of a political parties fund;
- (g) the accounts and audit of political parties;

(h) restrictions on the use of public resources to promote the interests of political parties;

*Article 229*

(4) Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on—

(f) the accounts of political parties funded from public funds;

**Morocco**

*Article 7*

An Institutional Act shall determine in the framework of the principles set out in this Article the rules concerning in particular the formation and the activities of political parties, the criteria for the granting of financial support by the State, and the modalities of control of their finances.

*Article 10*

[The Constitution] grants the opposition the following rights:

... time to present its views in the official media, in proportion to their respective strength;

the benefit of public funding, in conformity with the statutory provisions;

*Article 11*

The statute shall define the rules granting equitable access to the public media and the full exercise of the freedoms and fundamental rights related to election campaigns and voting procedures. The authorities in charge of the organization of the elections shall supervise their application.

*Article 147*

The Court of Accounts shall control and ensure compliance with the declarations on the fortunes of public officials, audit the accounts of the political parties and check the regularity of the spending in electoral campaigns.

**Philippines**


*Article IX*

*Part C*

*Section 2*

The Commission on Elections shall exercise the following powers and functions:

... (5) ... Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.



(7) Recommend to the Congress effective measures to minimize election spending, including limitations of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

#### *Section 4*

The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, and equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.

### **Turkey**

#### *Article 68*

... The state shall provide the political parties with adequate financial means in an equitable manner. The financial assistance to be extended to political parties, as well as procedures related to collection of membership dues and donations are regulated by law.

#### *Article 69*

... Political parties shall not engage in commercial activities.

The income and expenditure of political parties shall be consistent with their objectives. The application of this rule is regulated by law. The auditing of the income, expenditure and acquisitions of political parties by the Constitutional Court as well as the establishment of the conformity to law of their revenue and expenses, methods of auditing and sanctions to be applied in the event of unconformity shall also be regulated by law. The Constitutional Court shall be assisted in performing its task of auditing by the Court of Accounts. The judgments rendered by the Constitutional Court as a result of the auditing shall be final ...

Political parties which accept financial assistance from foreign states, international institutions and persons and corporate bodies shall be dissolved permanently.

The foundation and activities of political parties, their supervision and dissolution, or their deprivation of State aid wholly or in part as well as the election expenditures and procedures of the political parties and candidates, are regulated by law in accordance with the above-mentioned principles.

**Venezuela***Article 67*

... The financing of associations with political goals with public funds shall not be permitted.

The law shall regulate matters concerning financing and private contributions to organizations with political goals, and the oversight mechanisms to ensure exactness in their origin and management. It will also regulate political and electoral campaigns, their duration, and spending limits, aiming at their democratization.

*Article 293*

The functions of the Electoral Power are:

3. To issue binding guidelines in political and electoral finance and advertising and apply penalties for noncompliance.
9. To oversee, regulate and investigate the sources of financing of organizations with political goals.



## Appendix 2: Selected Provisions of Multilateral Instruments and International Non-Governmental Recommendations

European Commission for Democracy through Law (Venice Commission), Draft Convention on Election Standards, Electoral Rights, and Freedoms:

### *Article 16*

(4) To create equal conditions for all candidates and political parties (coalitions), the Parties shall establish a reasonable maximum size of the election fund of a candidate or political party (coalition), which they may spend on the conduct of their own election campaigns.

**UN Human Rights Committee General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25 of the International Covenant on Civil and Political Rights):**

19. In conformity with paragraph (b), elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind. Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party. The results of genuine elections should be respected and implemented.

### **Inter-American Democratic Charter:**

Article 5: The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.

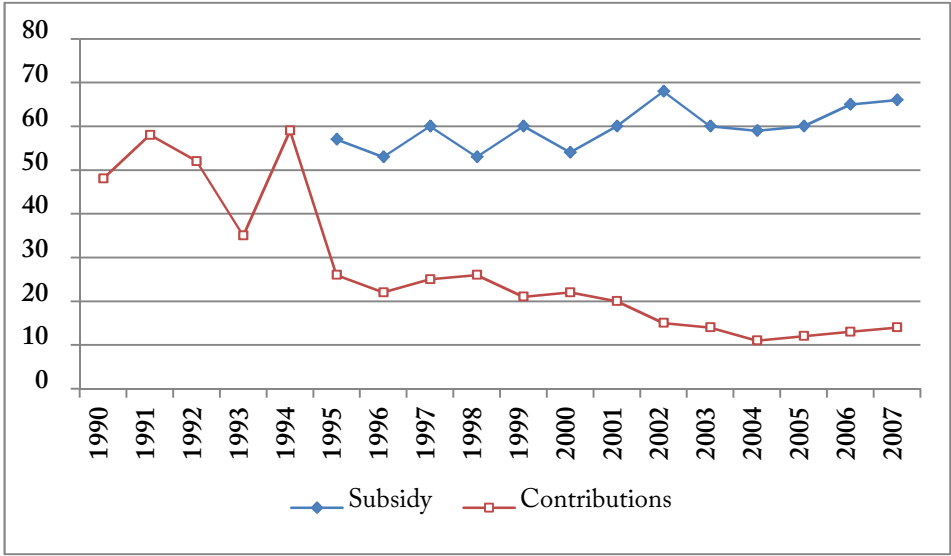
**Council of Europe, Rec (2003) 4 of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, 2003:**

Article 9: States should consider adopting measures to prevent excessive funding needs of political parties, such as establishing limits on expenditure on electoral campaigns.

# Appendix 3: Private versus Public Funding over Time in Various Countries

## Japan

Percentage of subsidy and contributions to total revenues (LDP)

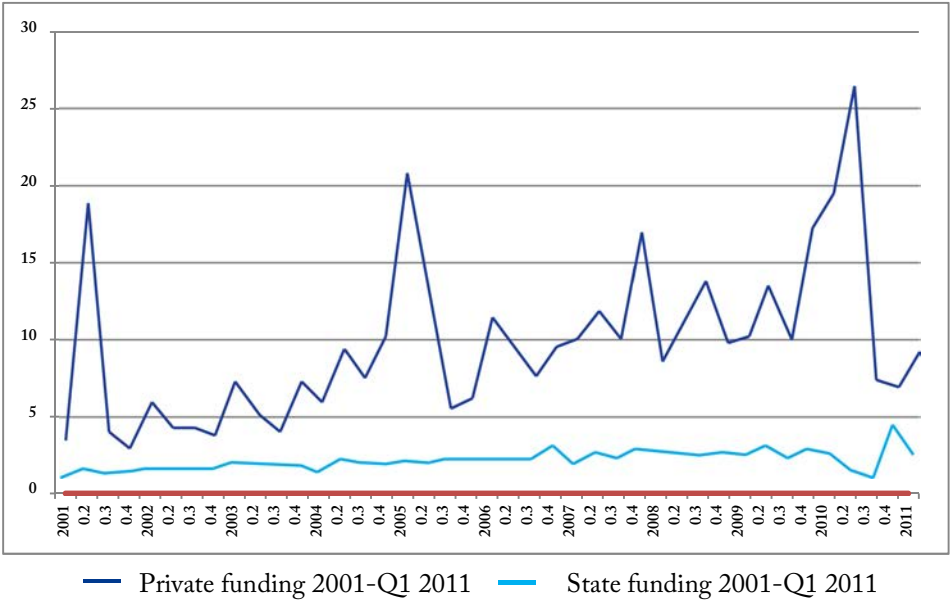


Source: Matthew Carlson, Party Politics (vol. 18 no. 3), pp. 391–408 copyright © 2010 by Matthew Carlson. Reprinted by permission of SAGE



United Kingdom

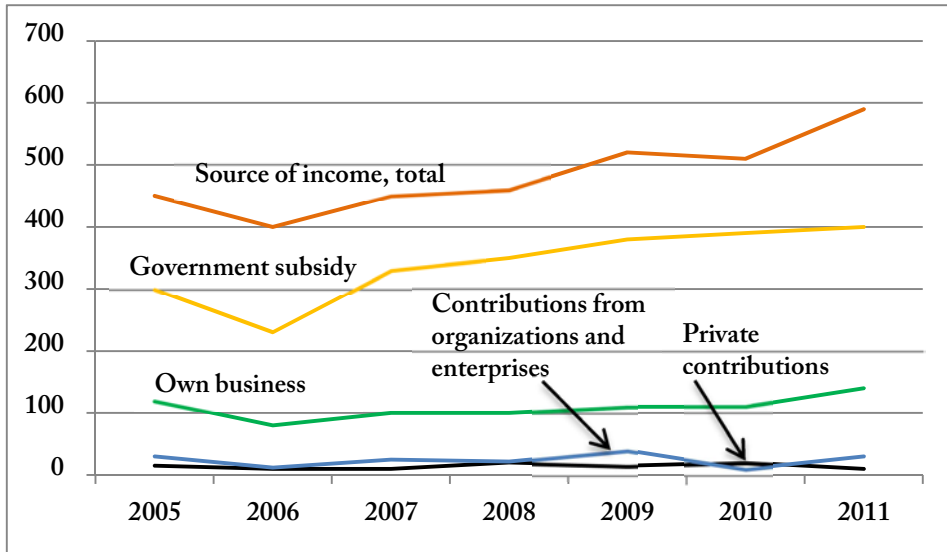
Party funding per quarter 2001–11 in millions of pounds, state and private sources.



Source: Carolan, 'Political parties need state funding'.

## Norway

Funding of political parties, by source of income. 2005-2011. NOK million



Source: Statistics Norway, 'Political parties' financing, 2011' <[www.ssb.no](http://www.ssb.no)>

## Endnotes

<sup>1</sup> Moncloa Agreements (1977) (Spain), available in Arabic at

<http://www.transicion.org/300TransitionsForum/PactosMoncloaArabic.pdf>

<sup>2</sup> Mainwaring and Torcal, 'Party system institutionalization and party system theory after the third wave of democratization', pp. 204–07; Sanchez, 'Party non-systems: A conceptual innovation', pp. 500–03.

<sup>3</sup> Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, pp. 3–8.

<sup>4</sup> For a general discussion, see Janda, 'How nations govern political parties'.

<sup>5</sup> This is not meant to be an exhaustive list. For similar overviews in the context of electoral law, see International IDEA, *International Electoral Standards*, p. 12; International IDEA, *Electoral Management Design*, p. 43.

<sup>6</sup> International IDEA, *Electoral Management Design*, p. 5. An EMB can be a part of the government or have institutional autonomy; independence is more common. A country may have multiple EMBs that share or split tasks. See *ibid.*, pp. 5–10 for more detail on the definition of an EMB.

<sup>7</sup> Constitution of Argentina, art. 99; Kim, 'Case for constrained unilateralism', pp. 20–1.

<sup>8</sup> Nassmacher, 'Introduction: Political parties, funding and democracy', pp. 1–4.

<sup>9</sup> International IDEA, 'Political finance database – Political Finance Data from Iraq'.

<sup>10</sup> Fischer, 'Iraq', p. 75.

<sup>11</sup> Williams, 'Aspects of party finance and political corruption', p. 7; Global Commission on Elections, Democracy and Security, *Deepening Democracy*, pp. 32, 33, 37.

<sup>12</sup> Lust-Okar, 'The decline of Jordanian political parties', p. 546.

<sup>13</sup> Kausch, 'Political parties in young Arab democracies', p. 1.

<sup>14</sup> Zaki, 'The status of political parties in the Arab world', pp. 84–5; Albrecht and Schlumberger, 'Waiting for Godot', p. 380.

<sup>15</sup> Salameh and Al-Sharah, 'Kuwait's democratic experiment', pp. 72–4; Zaki, 'The status of political parties in the Arab world', p. 85.

<sup>16</sup> Zaki, 'The status of political parties in the Arab world', p. 85.

<sup>17</sup> ICG, *Popular Protest in North Africa and the Middle East*, pp. 6–7; ICG, 'The challenge of political reform', pp. 16–19; Zaki, 'The status of political parties in the Arab world', pp. 85–6; Angrist, 'Parties, parliament and political dissent in Tunisia', p. 95.

<sup>18</sup> Albrecht and Schlumberger, 'Waiting for Godot', p. 381; Angrist, 'Parties, parliament and political dissent in Tunisia', p. 100; ICG, *Reforming Egypt: In search of a strategy*, pp. 14–15.

<sup>19</sup> Lust-Okar, 'The decline of Jordanian political parties', pp. 554–56.

- <sup>20</sup> Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, pp. 5–23.
- <sup>21</sup> Albrecht and Schlumberger, 'Waiting for Godot', p. 381.
- <sup>22</sup> Angrist, 'Parties, parliament and political dissent in Tunisia', p. 94; Zaki, 'The status of political parties in the Arab world', pp. 85–88.
- <sup>23</sup> Angrist, 'Parties, parliament and political dissent in Tunisia', p. 94; Kausch, 'Political parties in young Arab democracies', pp. 1–5; Zaki, 'The status of political parties in the Arab world', p. 80.
- <sup>24</sup> Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, pp. 3–5, 25–26.
- <sup>25</sup> *ibid.*, 14, 27; Booth and Robbins, 'Assessing the impact of campaign finance on party system institutionalization', p. 634.
- <sup>26</sup> Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, p. 23.
- <sup>27</sup> Hopkin, 'Conceptualizing political clientelism', p. 2; Lust and Hourani, 'Jordan votes: Election or selection', p. 120.
- <sup>28</sup> Roniger, 'Review: Political clientelism, democracy, and market economy', p. 355; Zaki, 'The status of political parties in the Arab world', pp. 88–89.
- <sup>29</sup> Lust and Hourani, 'Jordan votes: Election or selection', p. 120; Lust, 'Democratization by elections?', p. 124.
- <sup>30</sup> Lust, 'Democratization by elections?', pp. 122–24.
- <sup>31</sup> Lust and Hourani, 'Jordan votes: Election or selection', p. 120; Lust, 'Democratization by elections?', pp. 124–25.
- <sup>32</sup> Lust and Hourani, 'Jordan votes: Election or selection', p. 120; Denoeux and Payne, 'Democracy and governance assessment of Morocco', pp. 3, 8.
- <sup>33</sup> Hopkin, 'Conceptualizing political clientelism', p. 12–13; Kinninmont, *Kuwait's Parliament: An experiment in semi-democracy*, p. 9; Zaki, 'The status of political parties in the Arab world', p. 88.
- <sup>34</sup> Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, pp. 24–27.
- <sup>35</sup> Shehata, 'Inside an Egyptian parliamentary campaign', pp. 100–02; Lust, 'Democratization by elections?', pp. 127–33; Zerhouni, 'The Moroccan parliament', pp. 230–33; Ottaway and Hamzawy, 'Fighting on two fronts', pp. 41–45.
- <sup>36</sup> Zerhouni, 'The Moroccan parliament', pp. 228–30; Lust, 'Democratization by elections?', p. 127.
- <sup>37</sup> Munson, 'Islamic mobilization', pp. 488, 501–02; Farag, 'Between piety and politics'.
- <sup>38</sup> Brown, 'When victory becomes an option', p. 17.
- <sup>39</sup> Al-Marashi et al., 'Toward an understanding of media policy and media systems in Iraq', p. 17; Freedom House, 'Freedom of the Press 2013: Lebanon'; Freedom House, 'Freedom of the press 2013: Algeria'; OSF, *Mapping Digital Media: Morocco*, pp. 23–28.

<sup>40</sup> Öhman, *Political Finance Regulations Around the World*, p. 33; Lebanese Transparency Association Report, 'Lebanese Transparency Association Report: Lebanese parliamentary elections June 2009', p. 30. There are many instances of apparent vote buying cited in the news media. For example, in Egypt (Jensen, 'Egypt election'), Tunisia (Ajmi, 'Locals say UPL buying votes in Tunis suburbs'), Jordan (Nicky, 'A look inside Jordan's elaborate, and mostly legitimate, vote buying industry') and Kuwait (*Economist*, 'Vote-buying in Kuwait').

<sup>41</sup> Keefer and Vlaicu, 'Democracy, credibility, and clientelism', pp. 9–16; Corstange, 'Vote buying under competition and a monopsony', pp. 9, 21–24.

<sup>42</sup> Lebanese Transparency Association Report, 'Lebanese Transparency Association Report: Lebanese parliamentary elections June 2009', p. 30; Susser, 'Jordan: Preserving domestic order in a setting of regional turmoil', p. 5.

<sup>43</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 66; Austin and Tjernström, *Funding of Political Parties and Election Campaigns*, pp. 8, 109; Zovatto, 'The legal and practical characteristics of the funding of political parties and election campaigns in Latin America', p. 109.

<sup>44</sup> GRECO, *Third Evaluation Round: Evaluation report on Turkey*, para. 65; Weintraub and Brown, 'Following the money', pp. 244–46.

<sup>45</sup> Austin and Tjernström, *Funding of Political Parties and Election Campaigns*, p. 21.

<sup>46</sup> Zainulbhai, 'Practical solutions for political finance enforcement and oversight', p. 96; Austin and Tjernström, *Funding of Political Parties and Election Campaigns*, p. 44.

<sup>47</sup> Öhman, *Abuse of State Resources*, pp. 8–13.

<sup>48</sup> Casas-Zamora, *Paying for Democracy*, p. 227; Fisher and Eisenstadt, 'Introduction: Comparative party finance', pp. 4–5.

<sup>49</sup> Carolan, 'Political parties need state funding'; Walecki et al., *Public Funding Solutions for Political Parties in Muslim-Majority Societies*, p. 36; GRECO, *Third Evaluation Round: Evaluation report on Turkey*, para. 27 (number refers to those parties in Turkey entitled to public funding).

<sup>50</sup> Canada, Law C-13 (2011), s. 181, amending the Canada Elections Act, subsection 435.01(2); Constitución Política (Costa Rica), art. 96(1); Constitución Política (Colombia), art. 109; Law 19.884 (Chile), arts. 13 bis, 14, 15; COFIPE (Mexico), art. 78.

<sup>51</sup> See Law C-13 (2011), s. 181, amending the Canada Elections Act, subsection 435.01(2); Organic Law 5/2012 (Spain), arts. 12 and 14.

<sup>52</sup> Amara, 'Tunisia approves 2012 budget of 22.9 bln dinars'; Williams, 'Party funding to go up to R1114.8m'; Associated Press, 'Report: South Africa losing battle over growing corruption'.

<sup>53</sup> Austin and Tjernström, *Funding of Political Parties and Election Campaigns*, p. 64.

<sup>54</sup> Public Funding of Represented Political Parties Act 103 of 1997 (South Africa); Regulation under Section 10(1) of the Public Funding of Represented Political Parties Act (South Africa); Constitution of Mexico, art. 41.

<sup>55</sup> Casas and Zovatto, 'Para llegar a tiempo', p. 35.

<sup>56</sup> Carter Center, *National Constituent Assembly Elections in Tunisia*, pp. 37–38; European Union EOM, *Tunisie. Rapport final*, p. 16.

<sup>57</sup> Dahl and Tello Castro, 'Mozambique', p. 111; Constitución Política (Colombia), art. 109; Law 1475/2011 (Colombia), art. 17.

<sup>58</sup> Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, pp. 16–17.

<sup>59</sup> Young, 'Democracy, communication and money'; Sawyer, 'Election 2004: How democratic are Australia's elections?'; Ofcom, *The Ofcom Broadcasting Code 2008*, Section 6: 'Elections and referendums'.

<sup>60</sup> Law 38/1972, arts. 11, 21 (Egypt); Greene, 'Party finance and single-party dominance in Mexico and beyond', p. 21.

<sup>61</sup> Córdova Vianello, 'El financiamiento a los partidos políticos en México', p. 356.

<sup>62</sup> *ibid.*, 356–57; Casas and Zovatto, 'Para llegar a tiempo', p. 26.

<sup>63</sup> Constitution of Mexico, art. 41; COFIPE (Mexico), art. 78; Aparicio, '¿Cómo se financian los partidos políticos en México?', pp. 2–3.

<sup>64</sup> Mondragon Quintana, *El (verdadero) financiamiento público de los partidos en México*, pp. 59, 64.

<sup>65</sup> Christensen, 'The new Japanese election system', pp. 56–57; Carlson, 'Financing democracy in Japan', p. 398.

<sup>66</sup> Law 1475/2011 (Colombia), arts. 17, 18.

<sup>67</sup> Austin and Tjernström, *Funding of Political Parties and Election Campaigns*, p. 8.

<sup>68</sup> Genckaya, 'Public funding of political parties', pp. 45–49.

<sup>69</sup> Casas and Zovatto, 'Para llegar a tiempo', p. 26; *Baltic Course*, 'Amendments to the Law on Financing of Political Organizations Promulgated in Latvia'; Ikstens, 'Latvia', p. 59.

<sup>70</sup> Linek and Outly, 'Czech Republic: Is it possible to buy political stability?', pp. 86–87.

<sup>71</sup> Law 40/1977 (Egypt), arts. 9bis, 13. For more discussion of this and other topics related to Egypt's history of public funding, see Al-Mashat, 'Political finance systems in Egypt'.

<sup>72</sup> Law 4/2012 (Libya), art. 19; Regulation 64/2012 (Libya); EU Election Assessment Team, 'Libya: Final Report', p. 21; Salah, 'Lawlessness in Libya'; Wehrey, 'Libya's militia menace'; Al-Jazeera English, 'Libya crisis deepens as rebels expand demands'.

<sup>73</sup> Kelleher, 'Aridha Chaabia'; Schneider, 'Tunisie: d'où vient l'argent d'Ennahda?'; Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, pp. 10–11; Decree 87/2011 (Tunisia) art 1.

<sup>74</sup> Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, p. 3; Tunis Afrique Presse, 'Tunisia: Audit Office calls for gradual proportional system for funding electoral campaigns'; Law 35/2011 (Tunisia), arts. 37, 52; Law 91/2011 (Tunisia), art. 15.

<sup>75</sup> Law 35/2011 (Tunisia), arts. 39, 44, 45, 46, 50; Law 87/2011 (Tunisia), art. 21.

<sup>76</sup> Öhman, *Political Finance Regulations Around the World*, p. 10; Casas-Zamora, Kevin, 'Political finance and state funding systems', p. 5.

<sup>77</sup> Urcullo Cossio and Moya Díaz, *Control del financiamiento y gasto electoral en Chile*, pp. 110–11; see also Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, pp. 12–13, for a discussion of this mechanism (which he refers to as a 'blind trust').

<sup>78</sup> Casas-Zamora, 'Political finance and state funding systems', p. 5.

<sup>79</sup> Van Biezen, *Financing Political Parties and Election Campaigns*, pp. 59–60.

<sup>80</sup> Doublet, 'Fighting corruption, political funding, thematic review of GRECO's third evaluation round', pp. 12–14.

<sup>81</sup> Pinto-Duschinsky, 'International comparisons', p. 35.

<sup>82</sup> Pinto-Duschinsky, 'Foreign political aid', pp. 34–42, 57–58.

<sup>83</sup> Casas-Zamora, 'Political finance and state funding systems', pp. 6, 10.

<sup>84</sup> See, for example, OSCE, *Republic of Poland Parliamentary Elections 9 October 2011*, p.13.

<sup>85</sup> Sawicki, 'Financing of political parties and election campaigns', pp. 3, 11.

<sup>86</sup> Córdova Vianello, 'El financiamiento a los partidos políticos en México', pp. 351–68; COFIPE (Mexico), arts. 77, 78.

<sup>87</sup> Córdova Vianello, 'El financiamiento a los partidos políticos en México', p. 358.

<sup>88</sup> Carlson, 'Financing democracy in Japan', p. 399.

<sup>89</sup> Law 40/1977 (Egypt), art. 11; Law 174/2005 (Egypt), art. 26, 27.

<sup>90</sup> Solovieva, 'Egypt's NGOs face new strictures under ruling party'; CIHRS, 'The Muslim Brotherhood lays the foundations for a new police state'.

<sup>91</sup> IFES, 'Elections in Libya'; Law 4/2012 (Libya), art. 21.

<sup>92</sup> Law 35/2011 (Tunisia), arts. 39, 52, 77; Law 87/2011 (Tunisia), arts. 17, 19.

<sup>93</sup> Law 35/2011 (Tunisia), arts. 44–46, 53.

<sup>94</sup> Law 35/2011 (Tunisia), art. 52.

<sup>95</sup> Öhman and Zainulbhai, *Political Finance Regulation*, pp. 45–47.

<sup>96</sup> OSI, *Monitoring Election Campaign Finance*, p. 56.

<sup>97</sup> COFIPE (Mexico), art. 229(2); OSI, *Monitoring Election Campaign Finance*, p. 57.

<sup>98</sup> United Nations Human Rights Committee, General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) (1996) [quoted in text]; see Öhman and Zainulbhai, *Political Finance Regulation*, p. 50 for a summary table of recommendations for spending limits by international organizations.

<sup>99</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 53; Casas-Zamora, *Paying for Democracy*, pp. 22–23; OSI, *Monitoring Election Campaign Finance*, p. 144.

<sup>100</sup> Öhman, *Political Finance Regulations Around the World*, p. 36; Casas-Zamora, *Paying for Democracy*, pp. 20–23; International IDEA, ‘Political finance database’.

<sup>101</sup> Öhman and Zainulbhai, *Political Finance Regulation*, pp. 47–48.

<sup>102</sup> International IDEA, ‘Political finance database’; De Sousa, ‘Challenges to political financing regulation’, pp. 22, 31.

<sup>103</sup> Austin and Tjernström, *Funding of Political Parties and Election Campaigns*, p. 215–18; COFIPE (Mexico), art. 49.

<sup>104</sup> OSI, *Monitoring Election Campaign Finance*, p. 35.

<sup>105</sup> Öhman, *Political Finance Regulations Around the World*, p. 36.

<sup>106</sup> OSI, *Monitoring Election Campaign Finance*, p. 73.

<sup>107</sup> Pinto-Duschinsky, ‘International comparisons’, p. 27.

<sup>108</sup> ACE Electoral Knowledge Network, ‘A specified campaign period?’; OSI, *Monitoring Election Campaign Finance*, p. 30.

<sup>109</sup> OSI, *Monitoring Election Campaign Finance*, p. 20; Weintraub and Brown, ‘Following the money’, pp. 245–46; Davidson, *Political Financing in Canada*, p. 8; Öhman and Zainulbhai, *Political Finance Regulation*, pp. 46–47.

<sup>110</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 47; Law 25/2008 (Lebanon).

<sup>111</sup> OSI, *Monitoring Election Campaign Finance*, pp. 20, 56.

<sup>112</sup> Law 174/2005 (Egypt), art. 24; Carter Center, *Presidential Election in Egypt*, pp. 36, 41.

<sup>113</sup> Carter Center, *Final Report of the Carter Center Mission to Witness the 2011–2012 Parliamentary Elections in Egypt*, pp. 37–38, n. 102; Revkin, ‘Lavish campaign spending by Egypt’s presidential candidates prompts official inquiry’; Law 38/1972 (Egypt), art. 11.

<sup>114</sup> Carter Center, *Presidential Election in Egypt*, p. 41; Revkin, ‘Lavish campaign spending by Egypt’s presidential candidates prompts official inquiry’.

<sup>115</sup> Law 4/2012 (Libya), arts. 18, 22 and 25; Project on Middle Eastern Democracy, ‘POMED backgrounder: Previewing Libya’s elections’, p. 8; Carter Center, ‘Carter Center congratulates Libyans for holding historic elections’, p. 12.

<sup>116</sup> Law 4/2012 (Libya), art. 19; European Union Election Assessment Team, ‘Libya: Final Report: General National Congress Election’, p. 21.

<sup>117</sup> Law 35/2011 (Tunisia), arts. 44 and 51; Carter Center, *National Constituent Assembly Elections in Tunisia, October 23, 2011: Final Report*, pp. 4–5. See generally IFES, ‘Elections in Libya’.

<sup>118</sup> Law 2472/2011 (Tunisia), art. 6; Carter Center, *National Constituent Assembly Elections in Tunisia, October 23, 2011: Final Report*, p. 37; IFES, ‘Elections in Tunisia’, p. 2.



<sup>119</sup> Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, p. 4; Carter Center, *National Constituent Assembly Elections in Tunisia, October 23, 2011: Final Report*, pp. 52–53.

<sup>120</sup> Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, pp. 8–9, 15.

<sup>121</sup> OSCE, *Guidelines on Political Party Regulation*, para. 201; Nassmacher, ‘Regulation of party finance’, p. 450.

<sup>122</sup> Öhman and Zainulbhai, *Political Finance Regulation: The global experience*, pp. 35–37.

<sup>123</sup> Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, p. 10.

<sup>124</sup> Commonwealth of Independent States, ‘Convention on the standards of democratic elections, electoral rights and freedoms in the member states of the Commonwealth of Independent States (2002)’, arts. 10 and 12; Council of Europe Parliamentary Assembly, ‘Recommendation 1516: Financing of Political Parties’, para. 8(C); Council of Europe Committee of Ministers, ‘Recommendation Rec (2003) 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns’, arts. 11–13; Venice Commission, ‘Code of good practice in electoral matters’, paras. 107–11; Venice Commission, ‘Code of good practice in the field of political parties’, para. 39; OSCE, *Guidelines on Political Party Regulation*, paras. 198–206.

<sup>125</sup> Öhman, *Political Finance Regulations Around the World*, pp. 10–11.

<sup>126</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 41.

<sup>127</sup> *ibid.*, p. 30.

<sup>128</sup> Council of Europe Committee of Ministers, ‘Recommendation Rec (2003) 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns’, art. 11; Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, p. 9.

<sup>129</sup> Öhman and Zainulbhai, *Political Finance Regulation*, pp. 29–30; Restrepo, ‘Financiamiento de los partidos, movimientos políticos y campañas electorales en Colombia’, p. 198; Law 1475/2011 (Colombia), art. 4.

<sup>130</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 29; GRECO, *Third Evaluation Round: Evaluation report on Germany, transparency of party funding*, para. 111; Restrepo, ‘Financiamiento de los partidos, movimientos políticos y campañas electorales en Colombia’, p. 202.

<sup>131</sup> Davidson, *Political Financing in Canada*, p. 9; GRECO, *Third Evaluation Round: Evaluation report on Bulgaria, transparency of party funding*, para. 107.

<sup>132</sup> Öhman and Zainulbhai, *Political Finance Regulation*, pp. 30–31.

<sup>133</sup> OSCE, *Guidelines on Political Party Regulation*, para. 202; Öhman and Zainulbhai, *Political Finance Regulation*, p. 39; Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, p. 10.

<sup>134</sup> Nassmacher, 'Regulation of party finance', 451; Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, p. 23; Pfeiffer, et al., *The Crinis Project: Money in politics – everyone's concern*, p. 53; Sawicki, 'Financing of political parties and election campaigns: Poland country report', p. 13.

<sup>135</sup> Rashkova and Spirova, *Party Regulation in Post-communist Bulgaria*, p. 10; Öhman and Zainulbhai, *Political Finance Regulation*, pp. 30–31; see Öhman, *Abuse of State Resources*, *passim*.

<sup>136</sup> Nassmacher, 'Regulation of party finance', p. 451; Pfeiffer, et al., *The Crinis Project: Money in politics – everyone's concern*, p. 53.

<sup>137</sup> Nassmacher, 'Regulation of party finance', p. 451; Öhman and Zainulbhai, *Political Finance Regulation*, p. 40; Johnston, *Political Parties and Democracy in Theoretical and Practical Perspectives*, p. 10.

<sup>138</sup> Law 1475/2011 (Colombia), art. 19 (requirement that reports be submitted in officially approved format); the system is called *Cuentas Claras*, and can be found at: <http://www.cncuentasclaras.com/>; see [http://www.transparency.ch/de/aktuelles\\_schweiz/meldungen/2011\\_10\\_17\\_NL\\_Colombia.php](http://www.transparency.ch/de/aktuelles_schweiz/meldungen/2011_10_17_NL_Colombia.php) for more details.

<sup>139</sup> Córdova Vianello, 'El financiamiento a los partidos políticos en México', pp. 355–58, 366.

<sup>140</sup> Sawicki, 'Financing of political parties and election campaigns: Poland country report', p. 13; GRECO, *Third Evaluation Round: Evaluation report on Bulgaria, transparency of party funding*, paras. 95, 112; GRECO, *Third Evaluation Round: Evaluation report on Romania, transparency of party funding*, para. 122.

<sup>141</sup> Nassmacher, 'Regulation of party finance', p. 453; Council of Europe Committee of Ministers, 'Recommendation Rec (2003) 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns', art. 16; GRECO, *Third Evaluation Round: Evaluation report on Germany, transparency of party funding*, paras. 85–92 (description of sanctions), 121 (self-correction).

<sup>142</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 33; GRECO, *Third Evaluation Round: Evaluation report on the Czech Republic, transparency of party funding*, para. 39.

<sup>143</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 34; GRECO, *Third Evaluation Round: Evaluation report on Germany, transparency of party funding*, paras. 103–04; OSCE, *Guidelines on Political Party Regulation*, para. 205.

<sup>144</sup> Law 40/1977 (Egypt), arts. 4(7), 11–12.

<sup>145</sup> Law 174/2005 (Egypt), arts. 26, 28–29.

<sup>146</sup> Libya High National Election Commission Decision No. 59 (2012); European Union Election Assessment Team, 'Libya: Final Report: General National Congress Election', p. 17.

<sup>147</sup> Libya High National Election Commission Decision No. 59 (2012); Carter Center, 'Carter Center congratulates Libyans for holding historic elections', pp. 11–12.

<sup>148</sup> Libya High National Election Commission Decision No. 59 (2012); European Union Election Assessment Team, 'Libya: Final Report: General National Congress Election', p. 17.

<sup>149</sup> Law 35/2011 (Tunisia), art. 52; Law 91/2011 (Tunisia), art. 6; Law 87/2011 (Tunisia), arts. 22, 23, 26.

<sup>150</sup> Law 35/2011 (Tunisia), art. 52; Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, pp. 8, 14.

<sup>151</sup> Law 87/2011 (Tunisia), arts. 24–25; Law 91/2011 (Tunisia), arts. 8, 10; Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, p. 8.

<sup>152</sup> *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, p. 6.

<sup>153</sup> Law 87/2011 (Tunisia), arts. 26–27.

<sup>154</sup> Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, pp. 11–12; Law 35/2011 (Tunisia), art. 70; Law 91/2011 (Tunisia), art. 2.

<sup>155</sup> Law 87/2011 (Tunisia), art. 28; Law 91/2011 (Tunisia), art. 16.

<sup>156</sup> Law 87/2011 (Tunisia), art. 26; Law 35/2011 (Tunisia), art. 52; Law 91/2011 (Tunisia), art. 15; Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, p. 14.

<sup>157</sup> Law 87/2011 (Tunisia), arts. 23, 26–27; Law 91/2011 (Tunisia), arts. 8, 10; Law 35/2011 (Tunisia), art. 51; Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, p. 15.

<sup>158</sup> Law 97-09/1997 (Algeria), art. 34 (political party accounts); Law 97-07/1997 (Algeria), art. 191 (candidates financial disclosure); Law 36-04/2006 (Morocco), arts. 34–36; Libya High National Election Commission Decision No. 59 (2012); Law 40/1977 (Egypt), art. 12; Law 174/2005 (Egypt), arts. 24–29.

<sup>159</sup> Political Party Law 2012 (Jordan), art. 29; Law 87/2011 (Tunisia), arts. 22, 23, 26.

<sup>160</sup> Law 97-09/1997 (Algeria), art. 29; Libya High National Election Commission Decision No. 59 (2012); Political Party Law 2012 (Jordan), art. 25(b); Law 40/1977 (Egypt), art. 4(7), 11; Law 174/2005 (Egypt), art. 28; Law 87/2011 (Tunisia), arts. 24–25; Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, p. 8–9, 14–15.

<sup>161</sup> Law 97-09/1997 (Algeria), art. 29; Law 97-07/1997 (Algeria), art. 191; Law 40/1977 (Egypt), arts. 11–12; Law 174/2005 (Egypt), arts. 28–29; Political Party Law 2012 (Jordan), art. 9; Libya High National Election Commission Decision No. 59 (2012), arts. 12, 18; Law 36-04/2006 (Morocco), art. 37; Law 9-97/2011 (Morocco),

art. 292; Law 35/2011 (Tunisia), art. 70; Law 87/2011 (Tunisia), arts. 26–27; Law 91/2011 (Tunisia), arts. 2, 8, 14.

<sup>162</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 38; Political Party Law 2012 (Jordan), art. 9.

<sup>163</sup> Law 97-07/1997 (Algeria), art. 191; Libya High National Election Commission Decision No. 59 (2012), art. 18; Law 36-04/2006 (Morocco), art. 37; Law 35/2011 (Tunisia), art. 52; Law 87/2011 (Tunisia), art. 26; Law 91/2011 (Tunisia), art. 15; Political Party Law 2012 (Jordan), art. 29; Law 40/1977 (Egypt), art. 11.

<sup>164</sup> Öhman and Zainulbhai, *Political Finance Regulation*, pp. 32 (fn 9), 39–40.

<sup>165</sup> This definition draws on the elements of enforcement outlined in IFES, *Enforcing Political Finance Laws Training Handbook*, p. 8.

<sup>166</sup> OSI, *Monitoring Election Campaign Finance*, pp. 96–97, 117–21.

<sup>167</sup> Weintraub and Brown, ‘Following the money’, p. 261.

<sup>168</sup> IFES, *Enforcing Political Finance Laws Training Handbook*, pp. 35–37.

<sup>169</sup> Öhman and Zainulbhai, *Political Finance Regulation*, p. 87; IFES, *Enforcing Political Finance Laws Training Handbook*, 35–37; Transparency International, ‘Political finance regulations: Bridging the enforcement gap’, 5; Nassmacher, ‘Monitoring, control and enforcement of political finance regulation’, p. 145.

<sup>170</sup> See Casas and Zovatto, ‘Para llegar a tiempo’, p. 27, for specific examples of under-enforcement for lack of resources.

<sup>171</sup> IFES, *Enforcing Political Finance Laws*, 47–48; Nassmacher, ‘Monitoring, control and enforcement of political finance regulation’, p. 150; European Union EOM, *Tunisie. Rapport final*, pp. 16, 34–37; Carter Center, *National Constituent Assembly Elections in Tunisia October 23, 2011: Final Report*, pp. 38, 53, 55.

<sup>172</sup> Cristalinas, ‘Fiscalización del IFE a partidos políticos nacionales’, pp. 292–95; Córdova Vianello, ‘El financiamiento a los partidos políticos en México’, pp. 358, 366–68.

<sup>173</sup> IFES, *Enforcing Political Finance Law Training Handbook*, p. 19; Zainulbhai, ‘Practical solutions for political finance enforcement and oversight’, p. 98; Blechinger and Nassmacher, ‘Political finance in non-western democracies (Japan and Israel)’, p. 175; Hofnung, ‘The public purse and the private campaign: Political finance in Israel’, p. 144.

<sup>174</sup> International IDEA, *Electoral Management Design*, para. 9; Bryan and Baer, ‘Money in politics: A study of party financing practices in 22 countries’, p. 22; Restrepo, ‘Financiamiento de los partidos, movimientos políticos y campañas electorales en Colombia’, p. 199.

<sup>175</sup> Law on the Corruption Prevention and Combating Bureau (2012) (Latvia), art. 9; Kuris, ‘Surmounting state capture: Latvia’s anti-corruption agency spurs reforms, 2002–2011’, pp. 13–15; Ikstens, ‘Latvia: Disclosure yet abuse, volatility yet stability’, p. 62.

<sup>176</sup> GRECO, *Third Evaluation Round: Evaluation report on Turkey, transparency of party funding*, paras. 52, 68, 73, 75.

<sup>177</sup> Based on data in Öhman, *Political Finance Regulations Around the World*, p. 42, Table 19. Zainulbhai, 'Practical solutions for political finance enforcement and oversight', p. 88, gives different information based on Austin and Tjernström, *Funding of Political Parties and Election Campaigns*, pp. 185–87, which suggests an even higher percentage of countries giving this role to the EMB. The online International IDEA database also gives slightly different figures. The difference may lie in how the use of multiple agencies is treated, or how the responsible agency itself is categorized.

<sup>178</sup> IFES, *Enforcing Political Finance Law Training Handbook*, pp. 8–9; Zainulbhai, 'Practical solutions for political finance enforcement and oversight', p. 90.

<sup>179</sup> Öhman, *Political Finance Regulations Around the World*, p. 42.

<sup>180</sup> Weintraub and Brown, 'Following the money', pp. 246–48; but see Nassmacher, 'Monitoring, control and enforcement of political finance regulation', p. 148, regarding the Electoral Commission of India's lack of sufficient staffing.

<sup>181</sup> IFES, *Enforcing Political Finance Law Training Handbook*, pp. 21, 78–86; Nassmacher, 'Monitoring, control and enforcement of political finance regulation', p. 150.

<sup>182</sup> Cristalinás, 'Fiscalización del IFE a partidos políticos nacionales', pp. 292–93.

<sup>183</sup> Nassmacher, 'Monitoring, control and enforcement of political finance regulation', pp. 148–49.

<sup>184</sup> Beck et al., 'Banking services for everyone? Barriers to bank access and use around the world', pp. 413–14.

<sup>185</sup> Moshi, 'Implications of cash-dominated transactions for money laundering', pp. 3–4.

<sup>186</sup> See World Bank FINDEX Database, available at <http://datatopics.worldbank.org/financialinclusion/for> general discussion (gender-specific data at <http://datatopics.worldbank.org/financialinclusion/topic/gender>).

<sup>187</sup> Nassmacher, 'Monitoring, control and enforcement of political finance regulation', p. 153; IFES, *Enforcing Political Finance Law Training Handbook*, pp. 20–21, 41; Weintraub and Brown, 'Following the money: Campaign finance disclosure in India and the United States', p. 262; Zainulbhai, 'Practical solutions for political finance enforcement and oversight', p. 95.

<sup>188</sup> IFES, *Enforcing Political Finance Law Training Handbook*, pp. 41–44.

<sup>189</sup> Centro de Investigaciones Jurídicas de la Universidad Autónoma de Chiapas (CIJ Chiapas), *Diagnóstico del Proceso de Fiscalización Electoral en México*, pp. 196–98.

<sup>190</sup> IFES, *Enforcing Political Finance Law Training Handbook*, pp. 44–46.

<sup>191</sup> Dhawan, 'Many parties are being floated to launder money, warns EC'.

<sup>192</sup> Transparency International, 'Political finance regulations: Bridging the enforcement gap', p. 4; Nassmacher, 'Monitoring, control and enforcement of political finance regulation', p. 153.

<sup>193</sup> Law 1475/2011 (Colombia), art. 12, para. 1, no. 1; art. 12, para. 2.

<sup>194</sup> Law 1475/2011 (Colombia), art. 13, para. 1, no. 7.

<sup>195</sup> Law 1475/2011 (Colombia), art. 10, no. 5.

<sup>196</sup> Constitution of Colombia, art. 134, para. 3.

<sup>197</sup> Law 1475/2011 (Colombia), art. 12, para. 1, nos. 2–5; art. 12, para. 2.

<sup>198</sup> Law 1475/2011 (Colombia), art. 26.

<sup>199</sup> Hofnung ‘Party finance regulation: Israel in comparative analysis’, p. 13; Jewish Telegraphic Agency, ‘Jewish financier in Britain linked to Barak finance scandal’.

<sup>200</sup> Nassmacher, ‘Monitoring, control and enforcement of political finance regulation’, p. 144–45, 150–54.

<sup>201</sup> *ibid.*, p. 154.

<sup>202</sup> Córdova Vianello, ‘El financiamiento a los partidos políticos en México’, pp. 354–58; IFES, *Aplicación de la Reforma Electoral*, p. 90. The list of fines imposed in 2009 is available at

[http://www.ife.org.mx/docs/IFE-v2/UF/UF-SancionesPorAnio/SancionesPorAnio-docs/Sanciones\\_PPN\\_IC\\_2009.pdf](http://www.ife.org.mx/docs/IFE-v2/UF/UF-SancionesPorAnio/SancionesPorAnio-docs/Sanciones_PPN_IC_2009.pdf)

<sup>203</sup> OAS, ‘Informe final de la misión internacional’, p. 45; Urrutia, ‘TV Azteca, la empresa que más sanciones ha recibido del IFE’; Córdova Vianello, ‘El financiamiento a los partidos políticos en México’, pp. 360–67.

<sup>204</sup> CIJ Chiapas, *Diagnóstico del Proceso de Fiscalización Electoral en México*, pp. 25–33; Córdova Vianello, ‘El financiamiento a los partidos políticos en México’, p. 360. Between 200 and 300 people are employed by the finance unit, the majority of them accountants, accompanied by a legal team. IFES, *Aplicación de la Reforma Electoral*, p. 93. For a general description of the discontent with the UFRPP, see CIJ Chiapas, *Diagnóstico del Proceso de Fiscalización Electoral en México*, pp. 25–26. The monitoring entity published a simplified account of its findings for the public, available as UFRPP, ‘Resumen de las resoluciones por las que se desahogan casos de la Unidad de Fiscalización’.

<sup>205</sup> Casas and Zovatto, ‘Para llegar a tiempo’, p. 28; OAS, ‘Informe final de la misión internacional’, pp. 35–38.

<sup>206</sup> Nassmacher, ‘Monitoring, control and enforcement of political finance regulation’, pp. 152–53; Hofnung, ‘Party finance regulation: Israel in comparative analysis’, pp. 15–16; Levinson, ‘More than half of contributions to Israeli politicians come from foreign donors’; Witte, ‘Israeli leaders find generous donors in US’.

<sup>207</sup> Blechinger and Nassmacher, ‘Political finance in non-western democracies (Japan and Israel)’, p. 177.

<sup>208</sup> Carter Center, *Final Report of the Carter Center Mission to Witness the 2011–2012 Parliamentary Elections in Egypt*, p. 28; Carter Center, *Presidential Election in Egypt*, pp. 27–28; Carter Center, ‘Carter Center releases recommendations for Egypt’s upcoming House of Representatives elections’, p. 12.

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<sup>209</sup> Carter Center, *Presidential Election in Egypt*, pp. 40–41, 44.

<sup>210</sup> Law 29/2012 (Libya), arts. 22, 23, 25, 30–32; Law 4/2012 (Libya), art. 23; EU Election Assessment Team in Libya, *Final Report – General National Congress Election – 2012*, 21; Carter Center, “Carter Center Congratulates Libyans for Holding Historic Elections,” 12.

<sup>211</sup> EU Election Assessment Team in Libya, ‘Libya: Final Report: General National Congress Election’, pp. 12–13, 29–31; Carter Center, ‘Carter Center congratulates Libyans for holding historic elections’, p. 8.

<sup>212</sup> Cour des Comptes, *Rapport General*, pp. 12, 60; iWatch, *Handbook on Campaign Finance in Tunisia*, p. 16.

<sup>213</sup> Tunisie 14, ‘L’ANC adopte le projet de loi sur l’ISIE’.

<sup>214</sup> Cour des Comptes, *Rapport General*, pp. 53–60.

<sup>215</sup> Jouan, *Assessment of the Legal Framework and Practices Related to Campaign Finance During the National Constituent Assembly Elections*, pp. 13–15; OSCE/ODIHR, *Opinion on the Decree-Law of the Republic of Tunisia on the Regulation of Political Parties*, paras. 11, 24, 45, 58; OSCE/ODIHR, *Opinion on the draft law ‘On Establishing an Independent Election Management Body of the Republic of Tunisia’*, paras. 17, 30.



While many countries have addressed political party finance constitutionally, such provisions are usually phrased in general terms, such as requirements of transparency, leaving the details to law and to the regulations promulgated by enforcement agencies. Legal reforms to political party finance systems are not a panacea; but when written and implemented well, the legal framework can help address significant challenges that face political party systems. This report applies comparative and academic research on political party finance law to the Arab region, with a focus on Egypt, Libya and Tunisia as post-authoritarian states that are currently engaged in comprehensive reform of their political institutions and are utilizing examples from other newer and more established democracies.

The Center for Constitutional Transitions at NYU Law and the International Institute for Democracy and Electoral Assistance are publishing a series of research reports on issues in constitutional design that have arisen in the Arab region. The reports address constitutional court appointment mechanisms, semi-presidentialism as power-sharing, political party finance regulation, anti-corruption efforts, decentralization in unitary states, and ownership and management of oil and gas resources. These reports are designed for use in support of constitution building activities in the Arab region.