

# **Expert Group Meeting**

## **Transparency in Political Finance**

### **21 May 2019, Prague, Czechia**

## **REPORT**

### **Introduction**

On 21 May 2019, the United Nations Office on Drugs and Crime (UNODC) organized an Expert Group Meeting on Transparency in Political Finance, in partnership with the International Foundation for Electoral Systems (IFES) and the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE) at Villa Grébovka in Prague, Czechia. Fourteen experts, specialised in political finance and anti-corruption, from UNODC, the United Nations Development Programme (UNDP), the Organisation for Economic Co-operation and Development (OECD), OSCE/ODHIR, IFES, International Institute for Democracy and Electoral Assistance (IDEA) and Transparency International, attended the meeting.

In his welcoming remarks, Mr. Magnus Ohman, Senior Political Finance Advisor, IFES, explained that the Foundation had started its activities in Europe around 30 years ago and began working on the topic of political finance around the turn of the century. Although IFES had always approached this issue from an electoral perspective, other organizations may look at it from an anti-corruption angle. Hence, the issue of political finance can be considered from different perspectives. While the issue has been discussed for many years, it is becoming increasingly important and has again come to the fore of the international agenda in recent years.

Mr. Samuel De Jaegere, Anti-Corruption Advisor, Corruption and Economic Crime Branch, UNODC, expressed appreciation to all the experts for taking part in the meeting and, in his remarks, referred to resolution 7/2 of the Conference of States Parties to the UN Convention against Corruption, in which the Conference drew attention to the issue of corruption involving vast quantities of assets. In the first Global Expert Group Meeting (EGM) on Corruption involving Vast Quantities of Assets in December 2018 in Lima, Peru, participants identified political finance as one of the drivers of such corruption, and the second Global EGM on Corruption involving Vast Quantities of Assets in June 2019 in Oslo, Norway, will dedicate a session to this topic. However, given the complexity of the issue, UNODC decided that it would be useful to organize a one-day EGM to focus on it in preparation of the Oslo EGM.

Mr. Marcin Walecki, Head, Democratization Department, OSCE/ODHIR, recalled that OSCE had developed tools to monitor political finance issues in their work on political party regulations as well as election monitoring practices. He welcomed this EGM, which brought together so many organizations working on this topic, emphasized its timeliness and suggested that more meetings among experts such as this one would need to take place, with

even wider participation. The Oslo EGM would be one upcoming meeting, where the issue could be further discussed.

Mr. Andrew McEntee, who has *inter alia* served as an election observer for nearly 20 years in more than 30 countries, noted the importance of considering the 2030 Agenda for Sustainable Development, including, in particular Goal 16. He stressed that combatting corruption, curtailing illicit financial flows, and ensuring transparent political finance would ensure that elected public officials were able to fully deliver public services for the people they served, while also contributing to the achievement of SDGs.

Mr. Julio Bacio Terracino, Deputy Head, Public Sector Integrity Division, Organisation for Economic Co-operation and Development (OECD), emphasized the increasing interest among their Member States in the issue of political finance, and referred to work carried out previously on this issue, while noting it is re-emerging as an important area of work.

Mr. Niall McCann, Lead Electoral Advisor, United Nations Development Programme (UNDP), shed light on UNDP's work on electoral assistance in 63 countries over the past decade. UNDP has generally focused on voter registration, electoral results management, EMB capacity development. Transparency in Political Finance is getting more attention, but other actors like IFES, International IDEA, OSCE/ODHIR, the Council of Europe, etc. have generally taken the lead on these issues.

Mr. Jon Vrushi, Researcher, Transparency International, informed the experts that Transparency International has identified political integrity and corruption as a global thematic priority and it will be investing time and resources in issues on political party finance, conflicts of interest, lobbying and revolving doors. He emphasised that Transparency International would include questions around political finance and other political integrity issues in the future iterations of the Global Corruption Barometer survey.

By way of introduction, Ms. Livia Krings, Crime Prevention and Criminal Justice Officer, UNODC, provided an overview of the United Nations Convention against Corruption, with a particular focus on Article 7, paragraphs 2 and 3, of the Convention. She also presented the Implementation Review Mechanism, established under the Convention, and some initial findings from the 21 executive summaries published until now, looking at the issue of political finance and criteria for political candidates standing for office. After her presentation, experts sought clarification on what mechanisms existed for other international organizations and civil society organizations to contribute to the reviews. UNODC experts *inter alia* emphasized that Governments were encouraged to foster participation of all stakeholders in the review processes and that usually civil society had taken part in these processes.

### **Session 1: Transparency in Political Party Financing – Illicit sources of funding**

During the first session, experts discussed transparency in political party financing and ways to prevent illicit sources of funding from being used to subvert rule of law and enable corrupt practices. Ms. Zorana Markovic, Regional Anti-corruption Adviser, UNODC Regional Office for Southeast Asia and the Pacific, emphasized that UNCAC provided an overall framework for

preventing and combating corruption and reminded experts of the utility of FATF recommendations as global rules on anti-money laundering. She approached the topic of discussion from two angles: (1) the use of proceeds of crime to provide financial support to politicians, and (2) the abuse or embezzlement of state resources for political purposes. She also recalled that Article 9 of the UNCAC in its paragraph 2, provided for, for transparency in expenditure, as a mandatory provision, which could be an entry point in preventing so-called “slush funds” from being used for the illicit funding of political parties.

In his presentation, Mr. Marcin Walecki, Head, Democratization Department, OSCE/ODHIR, referred to the good practices compiled in the Guidelines on Political Party Regulation published by OSCE/ODHR and the Council of Europe’s European Commission for Democracy through Law (Venice Commission), which, in his view, was one of the most useful references for recommendations in this area. He spoke about the importance of controlling money flows and noted that, in many countries, politics and organized crime were intertwined, which was a long-standing problem. He noted that foreign donations were one of the current challenges faced by States in identifying funding sources. In addition to definitional challenges (citizens vs. residents, legal entities), States were faced with challenges relating to oversight and enforcement (capacity to investigate in other jurisdictions, imposition of sanctions). Disclosure was an important part of a fair democratic process, but its significance was reduced in the absence of effective audit and enforcement. There was a growing normative structure (in addition to UNCAC, the Council of Europe Recommendation 2003/4, national political finance regulations and other relevant laws etc) and soft law, which was a useful source of political commitments. There was a need for a comprehensive ecosystem for political finance, which included effective regulations (trusted professional regulators), internal party democracy (by-laws, statutes, ethical boards and committees), provisions for small donations and oversight by civil society and media (investigative journalism, campaign financing monitoring). In his view, the most important intervention over the last decade has been the monitoring mechanism established by GRECO (3<sup>rd</sup> round of evaluation).

During the discussion, it was noted that new challenges posed a threat not just to individual States, and thus required action at the regional and global levels. Other new challenges, which were, currently, more regional and global in nature, were due to criminals operating internationally and rapidly establishing webs of companies, often with the collusion of Politically Exposed Persons (PEPs). Such structures could be set up within one day, funds could be moved from companies to non-profit associations or organizations and then funnelled to politicians or political parties. Yet, international standards often only require annual reporting by political parties. Electoral Management Bodies (EMBs) are usually ill-equipped and under-funded and usually did not have access to the records of financial transactions of PEPs. Another challenge was the lack of coordination and cooperation across law enforcement agencies. Regulatory measures were not sufficient and the role of media and civil society in promoting integrity and transparency and the need for awareness-raising among voters should be acknowledged. On the matter of foreign influence, it was noted that it has always been part of certain political systems and that it was now considered one of the biggest threats to established democracies in some countries. Reference was made to the need to focus anti-corruption measures on non-profit organizations, such as foundations and

sports associations, often established by PEPS, which were sometimes used as vehicles for channelling “slush funds” towards funding political campaigns and buying voter loyalty. In this regard, it was noted that more research in this area was needed.

## **Session 2: Transparency in Political Party and Campaign Financing – Donations**

Mr. Julio Bacio Terracino, Deputy Head, Public Sector Integrity Division, OECD, considered two main risks from the OECD perspective: distortion of electoral processes and the capture of public policies. Generally, the focus has been on the influence of corporations and, more recently attention has grown for foreign donations. Over the years, political finance has not been the subject of significant discussion. Its relevance is better communicated through the link between donations and the issues people care about: climate change, equality, etc. He noted that, in 2014, the OECD had issued a report on political finance and foreign donations were not covered in that report, but now OECD’s Member States were expressing interest in the topic. When transparency in political finance is considered, the question arises how transparent donations should be. The right to privacy needs to be considered in this context. Questions arise as to whether all donations ought to be transparent, for what purpose, how this can be managed and how reporting should take place.

In his presentation, Mr. Yukihiro Hamada, Senior Programme Officer, International Institute for Democracy and Electoral Assistance (IDEA), gave an overview of the Institute’s work and findings on political finance, in particular its work on the political finance database. The research was based on large datasets, using publicly available sources (laws, reports, etc). The most common types of bans on donations from certain donors were foreign, anonymous and corporate donations. Foreign donations may cover donations by foreign corporations, by foreign governments or by the diaspora. In many countries, laws did not specify the various forms of foreign donations and simply lump them together. In some countries, corporations were prohibited from providing donations, while in other countries only corporations with government contracts were not allowed to donate. Many countries outlawed donations by state-owned companies and donations with foreign interests. 60% of countries worldwide required political parties and candidates to disclose financial records. He noted that some of the key measures to deal with private donations could include banning donations from foreign sources, capping donations and disclosure of private donations. In terms of disclosure principles, Mr Hamada referred to accessibility, downloadability, comparability, detail, user-friendliness, timeliness and searchability. He also discussed online reporting and disclosure, outlining the benefits (efficiency, data integrity, comprehensiveness, flexibility, accuracy, transparency etc) and the risks (sensitivity, security, impartiality, availability, inaccuracy, maintenance, costs etc) of online reporting and disclosure. Moreover, he referred to the challenges and emerging risks, such as third-party campaigning, social media spending and the use of cryptocurrencies and blockchains in facilitating, in particular transnational, donations, while also noting that existing political financing laws did not address this issue. In the current context, with the increased use of direct democracy (referenda, etc.), the issue of third-party campaigning has become even more important.

During the discussion, reference was made to the importance for political parties to provide account of their financial activities. Good practices include *inter alia* record-keeping, reporting, disclosure and oversight. An increasing number of jurisdictions were developing digital online databases to allow oversight over political party funding. Examples included the KNAB Latvia Database, the UK Electoral Commission and the Lithuanian MAP Database, which covered both public and private funding for political parties. While many regulations existed globally, enforcement remained one of the main challenges and did not have the requisite capacity to address this challenge on their own. Cooperation at the national level was critical and the EMBs were the appropriate bodies to collect data, process data and publish findings. At the same time, it was also noted that, when issues were detected, they should be transmitted to law enforcement and other relevant bodies able to investigate and prosecute wrong-doing.

Experts cautioned against overstating the impact of rules and regulations. Over the years, many countries had updated their laws to meet European Union standards to ensure membership accession. However, in practice, the enforcement of these standards remained a matter of concern.

EMBs and anti-corruption authorities (ACAs) may benefit from sharing experiences since they are confronted with similar issues, such as lack of political will, independence, and capacity to fulfil their mandates. EMBs did not appear to have agreed on any international norms or principles governing them. The Jakarta Principles for ACAs could provide inspiration for EMBs to strengthen their capacity to become effective enforcers. Closer cooperation is certainly also desirable at the national level between EMBs and ACAs. In many countries, different bodies were responsible for campaign finance and for political party finance, which needed to be taken into account.

Experts discussed issues such as whether legal entities should disclose beneficial ownership when donating to political parties, whether state-owned companies and legal entities under control of States ought to be prohibited from providing political finance and whether private donations should be taxed to raise funds for oversight and enforcement.

The timing of financial reporting was discussed as well. When reporting takes place a long time after elections (in some cases, even years), it loses relevance. In most countries, EMBs prefer not to enquire into political financing, as they perceive it as an additional burden (election administration is already a sufficient burden), also in terms of the expertise required. This is compounded by the fact that no proper follow-up investigations are conducted once their findings are published. In view of the general lack of accountability, experts agreed that recommendations could be developed in this area.

In his presentation, Mr. Yves-Marie Doublet, Deputy Director at the French National Assembly, focused on some common assumptions, regulatory loopholes and best practices. The assumption that public funding was more transparent than private donations is not very obvious. The prohibition of anonymous donations should not be conflated with the issue of cash donations, as donors of cash can be identified. In one country, donations from unidentified sources need to be returned. In Council of Europe Member States, more and

more countries prohibit donations by private corporate entities. Nevertheless, this is now circumvented through sponsorship deals and donations to foundations. In some countries, the volume of sponsoring is now higher than donations. For example, a car manufacturer sponsored 11 political rallies in one country. Moreover, this type of sponsoring can be deducted as an advertising cost and is thus tax deductible. Donations are supposed to be transparent yet splitting it among various donors is a recurrent way to circumvent this. Large donations for specific campaigns continue to be frequent. Sometimes these donations can be traced to sources abroad.

Foreign donations are still permitted in some countries in Europe. As long as foreign donations are legal, there is no reason to investigate them. If foreign donations are to be prohibited, then foreign expenditure ought to be prohibited as well (as was recommended by the British Electoral Commission). Another question that should be discussed further is whether the subsidiaries of foreign companies are foreign or national. In some cases, foreign donations are considered legal. European political parties may fund campaigns of political parties in national parliament campaigns. In some countries, the European regulation contradicts and supersedes national laws.

The issue of disguised donations also needs to be considered: loans are an important source of income in several countries, while neither the name of the lender, nor the location of the lender have to be disclosed. A good practice is the recent reform in France adopted concerning loans, where the duration of the loans, the identity of the lender and the transparency of the loans has been regulated and loans from physical persons can only extend to five years. Only physical persons located in France, and political parties and banks located in the European Union can make loans and copy of the loan document needs to be given to the monitoring body. Another example is Spain, where debt cancellation is now prohibited.

The use of political candidates' own funds for political campaigns is often a way to circumvent all regulations for donations. In-kind donations have to be regulated as well, but it is very difficult to assess the value of such donations. The cost of meeting venues for political rallies is often costly and can be provided at a significantly reduced cost, which is a type of in-kind contribution. In-kind donations have to be declared rapidly: for example, in Latvia they have to be declared very rapidly, in Norway online and in United Kingdom - as a donation.

During the discussion, experts noted that that the *Recommendation Rec (2003)4 of the Council of Europe's Committee of Ministers to Member States on common rules against corruption in the funding of political parties and electoral campaigns* is the most comprehensive soft law to date, with 49 States subscribing to it. It stipulates that States should provide that all donations to political parties are made public, in particular, donations exceeding a fixed ceiling. Given the various ways of circumventing existing rules, it may be useful to undertake more research and put together a catalogue of loopholes.

The discussion also focused on various forms of foreign funding: (1) foreign donors providing funds to political parties that fund campaigns, (2) non-contestant campaigners collecting funding from abroad, (3) foreign citizens spending on social media, and (4) foreign governments giving aid to a government that spends it on high-visibility development projects

just prior to the elections. Experts also agreed that under no circumstance state owned companies ought to contribute political finance to political parties or candidates. It's more complicated with partially owned companies. The litmus test is to see whether the State has a controlling influence over the company.

Experts also discussed funding by corporate entities. Several experts argued all corporate funding ought to be outlawed. At the same time, it may be difficult to achieve global agreement on this. As a minimum, full transparency ought to be required as regards corporate donations. One expert also argued political parties ought to know where the donations came from and ought to apply due diligence to donors to make sure the sources of funding were legitimate. Anti-money laundering principles may need to be applied to political finance. At least, the provenance of funds should always be clear. Therefore, bookkeeping of donations is essential.

### **Session 3: Transparency in Campaign Financing – Cost of elections**

During the third session, experts looked at the cost of elections and the risk this may represent, leading political candidates to engage in corrupt practices in order to raise vast quantities of assets for campaign financing.

Mr. Niall McCann, Lead Electoral Advisor, United Nations Development Programme (UNDP), noted a remarkable lack of information on the cost of elections. In 2005, UNDP and IFES issued a joint publication on the cost of elections registration. Governments tend to not publish the details. Even if they do, they talk about very different things. It is very difficult to obtain comparable data. Sometimes figures like 6\$ per voter or 12\$ per voter circulate, but they not necessarily very scientific, credible or up-to-date. Given the high costs of election administration, private entities have a lot of leverage. In many developing countries, voter registers are compiled just prior to the elections, rather than based on public registers. Foreign technology companies play an increasingly important role and they generally obtain very lucrative contracts. Elections are generally very costly to organize, and voter registration is vulnerable to corrupt practices. Election administration is therefore a high-risk sector for corruption involving vast quantities of assets. A single voter registration exercise may cost hundreds of millions of US dollars.

In her presentation, Ms. Lolita Cigane, Former TI Latvia Director and Former Member of Parliament in Latvia, cautioned against vilifying all political financing indiscriminately. In most cases, political finance is used for the right purposes - there is a cost to elections, and justifiably so. Political finance facilitates communication between political parties and people. It allows political candidates to convey their programmes and connect with voters. At the same time, political funding should come from legitimate sources and there should be no last minute pop-up projects to buy voters. There should be transparency in terms of political campaigns - the entity that produced it, the source of funding, how many copies were produced (for print materials), etc. Television advertising for political purpose is the most expensive and with the most significant impact. A good policy could be to establish fixed prices for such advertising prior to the elections, applicable to every candidate. Bans (both official and consensus-based) on such TV advertising are more and more frequent, because

they create a disequilibrium among candidates. It has been observed that, where spending limits were imposed, political parties may create paid-for news. One recommended way of limiting expenditure on TV advertisement is to limit the number of minutes candidates can appear on TV, as is the case in some countries.

At the same time, in some countries, the use of TV has become less important given the consumption of news on social media, YouTube, etc, although the use of social networks can be difficult to monitor and control. In essence, it is important to create a level playing field for all political parties and candidates.

During the discussion, on the matter of lowering the cost of election, the experts noted that social media may actually reduce such costs and thus and possibly contribute to a level playing field for candidates by allowing them to communicate with voters directly. Low cost elections campaigns need to be promoted and social media is one means in that regard. Legal restrictions on spending are another means. Reasonable caps may be justified. Reference was made to the UN Human Rights Committee, which formulated a very clear position on this in its General Comment 25: *“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”*.

In 2009, one researcher did a comprehensive study of more than 30 jurisdictions looking at the cost of democracy. However, in the last ten years, no comparative study has been done and it was noted that, in some countries, it may not be an issue. At the same time, even if the amounts appeared extremely high, they were still minimal compared to other expenditures. It was also noted that some countries have really expensive elections, relative to the level of development in the country. Currently, there is no international database on the cost of elections.

In many countries, civil society is now closely monitoring the cost of elections and this needs to be encouraged. More transparency on election administration costs would also be useful. The cost of voter registration is sometimes carried by political parties, which may also hamper transparency. Other important budget posts in election campaigns are public meetings held in Presidential elections (for example, in France, this represents about 48% of the cost of these elections). Finally, it was noted that excessive costs associated with political campaigns disadvantaged smaller parties, women, persons with disabilities and minorities, hence specific monitoring was necessary in this regard.

#### **Session 4: Oversight over Political Financing to Enhance Transparency**

During the fourth session, experts discussed oversight over political financing to enhance transparency, in particular reporting, public oversight and the role of civil society and the media.

Ms. Lise Stensrud, Policy Director on Anti-Corruption, NORAD, moderated the session. She emphasized the important role investigative journalists continued to play in investigations of

corruption involving vast quantities of assets. Many political scandals only come to light due to the good investigative work by journalists. Civil society also had a critical role to play and should be considered as full partners and stakeholders. Public oversight bodies had a role to play, in particular, election management bodies. From a development perspective, there are always questions of capacity development for all of these actors. Providing financial support to elections in environments where corruption is endemic could actually have adverse effects on democratisation efforts.

In his presentation, Mr. Magnus Ohman, Senior Political Finance Advisor, IFES, first looked at reporting requirements. Most countries in the world require political parties and candidates to report. There exist, however, huge variations regarding detailed provisions. Indeed, in countries where candidates may not be literate or where political parties may not have access to a computer, the requirements need to be different. A large majority of countries also demand reports to be made public. In practice, the publications vary significantly from one country to another. Older democracies generally do not provide the best practice. Sometimes transparency may be more beneficial than lots of restrictions, as restrictions tend to be circumvented. Mr. Magnus Ohman noted that the role of civil society comprised: (1) the investigation of actors, (2) the monitoring of public oversight bodies, (3) the reviewing financial reports, and (4) the explaining how political finance mattered for average citizens.

Civil society and media had a particularly important role to play in restrictive political spaces. He also noted that social media was part both of the problem and of the solution in this area. In terms of minimum global publication standards, he recommended that all reports be published on the oversight institutions' website (in the form of scanned copies, or entered into electronic format, as required), while taking into account the need to exclude certain data for data protection reasons.

The experts noted that minimum global standards should be considered, such as annual reporting by political parties, post-election reporting, which would include information on the finances of the candidates (or separate reports for each candidate). Reporting to oversight bodies should be done at least on an annual basis within a reasonable timeframe (which can vary in each country).

## **Conclusion**

At the end of the meeting, the experts discussed a roadmap on moving forward, including proposed principles on transparency in political finance to combat corruption involving vast quantities of assets more effectively. The experts recommended that the following **principles on transparency on political finance** be submitted to the Expert Group Meeting in Oslo, Norway, in June 2019:

## **1. POLITICAL FINANCE**

### **1.1. Accounts**

**BOOKKEEPING:** Political parties and political candidates ought to keep records of all their revenues and expenditures, including loans and in-kind donations; All off-the-books accounts ought to be prohibited; Political parties and political candidates ought to establish separate bank accounts for political campaigning;

**REPORTING:** Political parties and political candidates ought to report in a comprehensive, standardized and detailed form, on a regular basis, at least on an annual basis and at least post-election within a reasonable timeframe, all revenues and expenditures to an appropriate regulatory authority;

**DISCLOSURE:** All donations to political parties and political candidates, above a certain threshold established by law, ought to be reported publicly, disclosing at least the amount and the identity of the donors; The same holds for all expenditures; The data ought to be accessible, downloadable, detailed, comparable, user-friendly, timely and searchable;

### **1.2. Sources**

**STATE-CONTROLLED ENTITIES:** State controlled entities ought to be prohibited from contributing financial or in-kind contributions to political parties, political candidates and election campaigns;

**FOREIGN DONATIONS:** Donations by foreign entities to political parties and candidates out to be prohibited;

**DONATIONS BY LEGAL ENTITIES:** All donations by legal entities to political parties and political candidates ought to be regulated, either by prohibiting them or capping them and requiring the disclosure of their beneficial ownership;

**LOANS:** All loans granted under favourable conditions, written-off or unpaid, for political parties and political candidates need to be considered as donations and all loans ought to be reported;

**THIRD-PARTY CAMPAIGNING:** Everyone involved in campaigning in favour or against specific political parties or candidates ought to report on their political campaign related revenues and expenditures to an appropriate regulatory authority, if their spending is above a certain limit defined by law;

### **1.3. Expenditures**

**SPENDING:** Spending caps and recording ought to be considered by governments in order to avoid escalating political campaigns costs, which, in turn may lead political contestants to engage in corruption involving vast quantities of assets;

ELECTION ADMINISTRATION COSTS: Election administration costs ought to be made public;

## **2. OVERSIGHT**

SUPERVISION BODY: Any authority mandated to oversee and enforce political finance regulations should be granted the powers, independence, and resources required to fulfil its role, including providing guidance to candidates, disclosing financial reports received from political parties and candidates, and issue public reports on the authority's activities and findings;

CIVIL SOCIETY AND MEDIA: Civil society and media oversight over political financing ought to be encouraged, including monitoring the sources and costs of political campaigns;

ENFORCEMENT: Public prosecutors of corruption cases involving vast quantities of assets ought to have the necessary independence and resources to investigate and prosecute such cases;

## **3. SANCTIONS**

SANCTIONS: The sanctions for political parties and candidates that do not comply with established rules and regulations on political finance ought to be effective, proportionate and dissuasive, and established by law;

CRITERIA FOR STANDING OFFICE: Political contestants convicted for offences established in the UN Convention against Corruption ought to be prohibited from running for office;

## **4. SCOPE**

INTRA-PARTY ELECTIONS: All candidates running for public office ought to keep records of all their revenues and expenditures on intra-party elections;

REFERENDA: All rules and regulations applicable to political campaign financing ought to be equally applicable to national referenda.