THE CARTER CENTER

SPECIAL REPORT #1: POLITICAL FINANCE IN GUATEMALA

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In recent years discussions about the quality of democracy in the Western Hemisphere

Responding to this concern, The Carter Center has sought to encourage an informed public debate on the issues involved in campaign and party finance and their reform. In a major contribution toward this objective, the Center convoked the conference *Financing Democracy in the Americas*, inviting experts and high-level participants from around the hemisphere to Atlanta March 17-19, 2003. In three days of freewheeling discussion, conference participants brought to the table their knowledge about party and campaign finance in the region, hashed out views on the issues involved, and generated a multitude of recommendations for the reform of political practices and legislation.

Among its follow-up activities to the conference, the Center has coupled a commitment to political finance reform with its election-monitoring efforts in the countries of the hemisphere. The Center's election observation mission in Guatemala, which commenced Oct. 21, 2003, has thus incorporated a component whose aim is to study political finance law and practice and promote discussion concerning possible reform of political finance and party legislation among a wide range of national actors. This report is the first of several special reports on campaign finance that The Carter Center will issue.

Introduction

On Nov. 9, Guatemalans went to the polls for the fifth time since the end of military rule in 1985 to elect a president and vice-president en public confidence ar

their political institutions had hit an all time low, with only 33 perc
voicing support for the democratic system in a recent poll by Latin
surveys, up to 80 percent of Guatemalans expressed a lack of conf
parties, which are widely viewed as mere electoral vehicles for the
candidates. On this first round, concern about the penetration of ill
campaigns of all parties, as well as about the misuse of state resou
the incumbent Guatemalan Republican Front (FRG) party in partic
widespread.

This is the Carter Center's first report on political finance issues in Guatemala, and it lays out the basics of the existing system of party and campaign finance and discusses recent proposals to reform the current system. It goes on to review civil society efforts to monitor various issues regarding campaign-spending activities of the parties during the 2003 campaign to date. The report closes with some of the observations made by these groups and others up to the close of the first round of the election on Nov. 9, and what they imply about the need to reform political finance in this important Central American nation.

I. The Guatemalan System of Political Finance

Though various systems of campaign and party finance are possible, the ten former presidents and prime ministers from the Western Hemisphere who participated in the Carter Center's March conference agreed on several basic points. For democracy to function well and maintain public support, substantial public funding for election campaigns is useful in that it reduces financial inequalities across parties and allows them to compete on a minimally equal footing. Disclosure of campaign donations is crucial so that voters are aware of the political links between candidates and their donors, and of the potential commitments they may imply, when choosing how to vote. Such disclosure furthermore contributes toward keeping dirty money out of campaign coffers.

Guatemala possesses one of the Western Hemisphere's most private and least regulated systems of political finance legislation and practice. Although in theory the system provides for a combination of public and private financing of party and campaign activities, the public component is of negligible importance making campaign finance almost wholly a private affair. Rules for the disclosure of parties' campaign contributions are non-existent. In a country characterized by an extremely unequal distribution of income and wealth, where large sums of money derived from drug trafficking and other prohibited activities circulate freely, this system maximizes the potential for those with money to determine the outcomes of election contests and shape policy to their own advantage.

Guatemalan law relating to campaign and party finance stems from a constitution and electoral law approved in 1985, supplemented by regulations in 1987, and contains the following salient features:

1. Absence of Limits on Campaign Spending

There is no cap on either total spending or on spending on media advertising during election processes. Political parties may purchase unlimited amounts of advertising time on television and radio as well as unlimited space in newspapers for ads. The absence of limits tends to encourage spending to the hilt, making campaigns potentially vulnerable to funding from illicit sources. The length of Guatemalan election campaigns aggravates this problem. The current campaign began on May 16, 2003, and will not conclude until a second round is held on Dec. 28, 2003, more than six months later.

2. Total Anonymity for Campaign Donations.

Contributions to political campaigns and parties in Guatemala are entirely unregulated. Not only may an individual or business interest donate as much as it pleases, but there are no bans on the receipt of foreign donations or contributions from anonymous sources. Neither the identity of any donors or the amount of any donation need be disclosed. This lack of control over donations maximizes the potential both for large financiers to dominate the political finance system and for money of illicit origin to penetrate parties and campaigns. In fact, speculation about the spread of drug money and financing from other illegal sources has been rife during the current campaign, potentially affecting all parties at both national and local levels.

3. Limited Public Financing of Parties and Campaigns

All parties that garner more than four percent of the valid votes for president are entitled to receive two quetzales (Q2), about US$0.25, per vote. Due to successive devaluations of the national currency, what was a relatively generous government grant to the political parties in 1985 has now become a miniscule contribution. A party that captures a million votes in this year's contest will earn about $250,000 in return—not enough to mount even a minimal national campaign. In addition, parties are entitled to free postal service.

Within the Supreme Electoral Tribunal (TSE), an auditor's office (Auditoría) manages the disbursement of official financial grants to the parties. Public financing is disbursed only after the voting has concluded—not before—and successive disbursements are made only after the parties submit a detailed accounting of their campaign expenses, accompanied by the relevant documentation. Publicly granted monies may be used for any legitimate party or campaign purpose without limitation.

4. Very Limited Regulation of Media Time during Elections.

In theory, Guatemalan *public* radio and television are obligated to grant each legally constituted political party 30 minutes of air time weekly during election campaigns. In fact, the former public television Channel 5, once controlled by the military, was privatized pursuant to the 1996 peace accords while the range of the official radio station "TGW" is so limited that during the 2003 campaign not a single political contender has seen fit to request any of the air time to which the parties are legally entitled.

Private television, radio and print media are under no obligation to provide specific amounts of air time or space to political parties, be it on a paid or unpaid basis, during election campaigns. This situation obviously hinders any serious attempt to provide a minimum of equity in opportunities for parties and candidates to get their messages across to the voters. It is the all

The reform bill raised the value of public financing of the parties' campaigns from Q2 per vote to US$2 per vote, an eightfold increase at today's rate of exchange. It did not, however, condition disbursement of this money on anything other than normal accounting requirements. Disbursement was tied to achieving a five percent share of the presidential vote, an increase over the four percent now prevailing.

2. Limit total spending and individual donations

The reform proposed a cap on total campaign spending and in addition limited any individual campaign contribution to no more than 10 percent of the spending total for each party. Although the difficulties of enforcing such planks are obvious, their basic intent was clearly to regulate practice in these areas for the first time.

3. Provide obligatory time for parties in privately owned media

Before a campaign started, the TSE and the parties would reach agreement on how much free airtime and newspaper space the parties would receive, with stipulated minima of 30 minutes per party per week on TV and radio and a full page per day in the papers. How this time and space would be paid for was not clear.

4. Prevent private media from refusing to sell air time to particular parties or discriminating in the application of fees or the allocation of time slots. The bill also obliged all media to register their fees with the TSE's auditor if they wanted to transmit campaign propaganda.

5. Prohibit campaign contributions from anonymous sources and limited foreign-origin donations to those from academic sources destined for party training purposes.

6. Force the parties to maintain a register of their campaign donations and make it public. Combined with this plank was a requirement for each party to create an internal body to supervise its financial activities.

This cursory review reveals that despite weaknesses in conception and design, the stalled reforms would have significantly improved upon Guatemala's status quo of almost complete licence in campaign finance and spending. The bill would have restored public finance for campaigns to a meaningful level, limited private spending, and provided some free media access to all parties, thus contributing to more equitable access for all contenders to the voting public. The reform also provided an important measure of transparency in campaign contributions by requiring the disclosure of registered donations while prohibiting contributions from sources often used as conduits for illegal monies to enter the system.

III. Public Initiatives toward Transparency

With the legislative stalemate ongoing, problems with the campaign and party finance system have figured prominently in the 2003 election to date. Heavy use of high cost TV time alongside significant inattention to party programs has dramatized the need to bring costs under control and ensure more equal access to the media for the parties competing in the election. Reports of abuse of state resources to fund the campaign of the official party underscore the need to make the playing field more level, while speculation about drug money penetrating all the parties' campaigns has injected a note of urgency concerning the need for transparency about contributions.

On July 10, 2003, the parties participating in this year's contest signed an Ethical-Political Accord pledging not to use public resources in their respective campaigns, whether at the accounted for 40-45 percent of total campaign spending during the election so far. Adding in expenditure on billboards, the biggest first round spenders were the FRG and GANA, both of which had spent Q46m (around $5.8m) on all media by the end of October. They were followed by the Partido de Avanzada Nacional (PAN) and the Partido Unionista with about Q30m each, and farther down by the Unidad Nacional para la Esperanza (UNE) and the Christian Democratic Party (DCG) with Q19.5m and Q17m respectively. By contrast, six smaller parties spent an average of just Q136,000 each. Overall, these figures reveal a very marked inequality in access to financial resources for the parties' 2003 campaigns.

2. Misuse of Public Resources

Despite the legal restrictions mentioned above, the practice in Guatemalan elections has been for the incumbent party to make ample use of state resources in various forms in order to influence the decision of the voters. The first round of the 2003 election has not been an exception to this rule. Despite the July 10, 2003 signing of an Ethical-Political Accord, in which all parties committed themselves not to use state resources in their campaigns as forbidden in Article 223(e) of the election law, widespread abuses in this regard have been reported and documented.

Of special concern this year have been the reorganization of former paramilitary groups known as the Civil Defense Patrols (PACS) in June 2002, and the Portillo government's subsequent decision to grant them a financial indemnity for their years of service to the state. During the first round campaign, numerous allegations surfaced that large amounts of public money, in the form of an indemnity, were effectively being used to buy votes for the FRG among this segment of the population; judgments in this regard became increasingly firm toward the end of the first round, when the government increased the number of potential beneficiaries of the ex-PAC indemnity to 500,000.

Whether or not to indemnify the ex-PACs is a sovereign decision of the Guatemalan government. However, such payments should be made by the responsible government officials without discriminating in any way or attaching political strings to the money. By contrast, during the week of Nov. 3-7, Carter Center field observers verified in several locations in the departments of El Quiché and Sololá that such payments were being made not by public officials but by functionaries of the FRG. The payments themselves were moreover conditioned on affiliation with that party, and in some cases on subsequent participation in FRG campaign activities. Center observers verified reports that other public goods ranging from roofing materials, farm implements and fertilizer to scholarships in public schools were similarly being offered to the population at large in exchange for FRG party affiliation.

These kinds of traditional presents to political clients are only one of myriad forms in which public monies may be abused at election time. Using the media monitoring described above, Citizen Action has measured spending on publicity by government agencies during the campaign as one way of tapping indirect government support for its candidate. During 2003, total government expenditure on media ads (TV, radio, and print) through the end of October reached Q123m, of which Q72m was spent by the Secretariat for Social Communication, the government's publicity arm. By contrast, during the entirety of 2002, a non-election year, the publicity expenses of the whole public sector amounted to no more than Q44.5m. This difference suggests that a sizable injection of money to publicize the government's works was made in an election year, when the constitution expressly forbids such publicity. Equally important, the media spending of the Secretariat dwarfed that of the Supreme Electoral Tribunal, whose duty is to educate and orient the voters. Whereas the Secretariat has had Q72m at its disposal, the TSE was allocated a mere Q6.4m to fulfill its important social responsibilities.

Still another abuse of state resources involves partisan exercise of officeholders' authority. Article 223(f) of the election law forbids Guatemalan public officials, elected and appointed, from using their influence in favor of or against any particular candidate. After incumbent president Alfonso Portillo delivered a public speech vigorously urging Guatemalans to vote for FRG candidate Efraín Rios Montt, the OAS observation mission lodged a formal complaint with the TSE, which the Tribunal decided had merit. The magistrates subsequently sent two denunciations to the Public Ministry (attorney general), which has opened a court proceeding against the outgoing president.

Conclusions

The vigorous monitoring efforts of Citizen Action, along with the reporting of first round observers, have dramatized the lack of restraint in Guatemala's system of political finance. Spending on the 2003 campaign has apparently been high, with no credible reporting of financial sources despite a bit of public obeisance to the ideal of transparency. There is furthermore ample first-round evidence that the governing party took traditional practices of clientelistic vote buying to an extreme, targeting a specific and sensitive social group with a hefty government indemnity. In both cases, lack of effective regulation tilted the playing field for the parties, placing smaller parties at a competitive disadvantage.

Lack of openness in regard to revealing campaign donations, traditional in Guatemala, has been another characteristic of the 2003 election. As in the cases mentioned by Alvaro Colom, the reasons for reticence in this respect are often cogent. At the same time, however, secrecy concerning the origins of campaign donations has coincided with the trading of charges among the parties and "revelations" in the media regarding illicit money supposedly flowing to a number of the major candidates. Though no one has directly measured the impact of these charges on voters' attitudes, it is difficult to imagine that they do not increase public cynicism toward the parties and toward politics.

Guatemala's political finance system needs to be changed in order to combat these problems and improve the quality of that nation's democracy. As part of its ongoing election monitoring, The Carter Center will continue to examine campaign finance practices in Guatemala to shed further light on this important political issue, and spark discussion of how the existing system of political finance in Guatemala might best be reformed.