

# **The Challenge of Transparency. The Financing of Guatemala's Political Parties is Facing a Complex Reform Process**

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## **Executive Summary**

In a modern democracy, political parties exert great influence on the operations of governmental institutions, which is why their finances are a matter of some delicacy. In Guatemala, the debate on the subject has only just begun. The sources of the parties' funds are anything but clear, and cases of money reaching a political party illegitimately are being uncovered every day.

The Electoral and Party Act of 2004 was intended to launch a turnaround towards greater transparency and legitimacy. According to the Act, the Supreme Electoral Tribunal, the Tribunal Supremo Electoral (TSE), should have been controlling all sources of party funds since 2005. And there is much to be done: That political groups are being subverted by the drug mafia is an open secret in the Central American country. And that the influence of organised crime is a growing problem seems to be documented by the case of a member of parliament who came to the congress building in a flashy luxury car despite his low salary, and was expelled by his party shortly afterwards.

Indeed, congress itself does much to feed the citizens' suspicions. A short while ago, for instance, it passed an amendment of the law against organised crime in which punishments were mitigated and certain punishable offences dropped altogether. When the initiators of the bill later stated that this had been a 'mistake', the critical press responded with corresponding cynicism.

Until recently, government party funding was limited to two Quezal (c. 18 Euro cents) per vote over a period of four years, which left the parties no option but to look for private donors. However, as Guatemala is an extremely poor country, their choice was limited to a small group of financially powerful donors, which paved the way for the creation of dependencies.

In Mexico, for example, parties are financed entirely by the state. After the end of Franco's dictatorship, Spain opted for the same formula to contain the structural dominance of traditionally powerful forces. In Guatemala, the plan is now to increase governmental campaign funding eightfold, beginning with the elections of 2007.

By passing this Act, the often criticised parties of Guatemala took a respectable step to get away from the apron strings of financially powerful donors. Still, there is a long way to go, and the challenges are enormous. Since its establishment in 1983, the TSE has acquired the character of a guarantor of free and clean elections. Now, it is confronted by the task of increasing the quality of the electoral and party system of the country by a considerable margin.

Containing hardly any concrete instructions, the Act leaves the TSE to oversee the transformation process of the political parties – a task that is both divisive and legally complex, as we can see from the yards and yards of shelves filled with scientific literature on the situation in the Federal Republic of Germany. However, the divisiveness of its mission also results from the need to investigate the influence exerted on many parties by small but powerful circles which do not always operate within the limits of the law, a question that has been taboo until now.

The TSE has already been criticised for raising the minimum number of members that a political party must have; after all, many have problems jumping that hurdle. Very likely, the TSE will be criticised even more once it assumes control over the private sources of party funds.

There are a number of concrete problems that must be solved by the TSE, such as defining the political area to be controlled, providing the administrative and technical basis for controlling the political parties, regulating private funding, specifying the fund sources that will be subject to control, assessing the chances of actually monitoring guideline conformance, deciding about whether or not to publish the results of audits, and defining sanctions.

There are some stumbling blocks, too: Thus, the exact extent to which the Tribunal is competent to monitor political parties as well as citizens' election committees would have to be defined. As party funding is always synonymous with political funding, at least in part, the Tribunal would have to say exactly how it intends to deal with the income of party representatives and functionaries. And because political parties cannot be assessed by the fiscal authorities of Guatemala where, having no tax ID number, they are nonentities as far as the Inland Revenue is concerned, the option of registering political parties for tax purposes as NGOs or under some other heading would have to be considered. Another question that calls for an answer is about what financing concepts should be included in the monitoring process. Yet another concern is the imposition of ceilings on campaign spending. It would also have to be seen whether the judges of the TSE, who are all jurists, not experts in financial matters and certainly not in matters relating to party funding, are at all equipped to hack their way through the financial jungle. A last question relates to the consequences of the TSE's financial reviews: Should the results be published? If yes, where and when? And what sanctions should the Tribunal be entitled to impose?

Because the interests involved are so complex, all we can hope for is some partial successes until the elections of 2007 come along. The TSE might be well advised to admit to the limitations of its own capabilities in the near future. At the same time, it should build up sound internal structures, formulate clear-cut rules, and endeavour to render its interpretation of applicable standards transparent. This is the only way in which the Tribunal can avoid being caught between the lines in the impending electoral battle about the president's office.

All this, however, cannot be done without money. Since even the Tribunal itself is hardly likely to remain unaffected by the ruling culture of intransparency, it would be advisable to review the TSE's structures in the near future.

Guatemala will have to tread a long and stony path towards a modern, truly democratic party-funding system. The Federal Republic of Germany took well above five decades to complete the journey. On the other hand, the conditions prevailing in Germany at the time were not nearly as complex as those that characterise reality in the Central American country today.