

THE CARTER CENTER

SPECIAL REPORT #1: POLITICAL FINANCE IN GUATEMALA

Nov. 20, 2003

In recent years discussions about the quality of democracy in the Western Hemisphere have focused with increasing concern on the financing of political parties and their campaigns. Unlimited spending on campaigns is believed to have raised the cost of elections to the point where creating a level playing field for parties and their candidates has become an ever more distant dream. Undisclosed contributions of legal or illicit origin by wealthy donors have meanwhile intensified the degree to which elected citizens may feel beholden to their campaign donors, hindering effective representation for the ordinary citizen in the making of public policy. In tandem, these trends are contributing to public cynicism about parties and candidates and about the possibilities for meaningful citizen participation in politics.

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, 158 deputies to Congress, and 331 municipal authorities. The election came at a time when public confidence among Guatemalans in their political institutions had hit an all time low, with only 33 percent of respondents voicing support for the democratic system in a recent poll by Latinobarómetro. In other surveys, up to 80 percent of Guatemalans expressed a lack of confidence in political parties, which are widely viewed as mere electoral vehicles for their leaders and candidates. On this first round, concern about the penetration of illicit money in the campaigns of all parties, as well as about the misuse of state resources in the campaign of the incumbent Guatemalan Republican Front (FRG) party in particular, was furthermore 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 more troubling that a single businessman enjoys a monopoly over Guatemala's four open television networks, and in addition owns numerous radio stations.

The TSE's only obligation with respect to media under existing law is to ensure that the electronic media—TV and radio—do not charge the political parties and candidate at rates that differ from normal commercial rates. Carrying out this task again falls to the TSE's auditing department, but it is recognized that in practice the official election body does not have the capacity to force private media owners to disclose their fees, much less control them.

5. Ineffective Control over the Use of State Resources for Election Propaganda

In addition to the above planks, Guatemala's Electoral Law contains prohibitions on using state resources for partisan propaganda during campaigns, and on public officials using their influence or authority in favor of or against any candidate. The constitution also forbids officials from issuing propaganda about public works and other achievements during campaigns. These bans are obviously intended to deny the incumbent party any unfair advantage over its competitors. The General Inspectorate of the TSE is called upon to enforce observance of these prohibitions. As in other countries, however, these rules are honored mainly in the breach and little effective control is exercised. In part, the problem appears to lie in the legal framework—TSE officials complain that infractions are not adequately specified in the Electoral Law and that the Tribunal lacks the power to investigate them proactively instead of waiting to respond to denunciations. The political parties meanwhile complain that the Tribunal lacks the will to act vigorously against abuses.

In sum, the current system suffers from glaring deficiencies. In the absence of meaningful public financing for their campaigns, small parties are unable to compete effectively with large ones to gain the voters' attention, particularly given the lack of regulation of expenditure on media publicity. Campaigns of the larger parties are wide open to capture by legal and illegal groups with particular interests, whether they be overt or covert, without the public having any way of knowing who is financing the candidate for whom they are being asked to vote. And the incumbent party normally enjoys access to copious state resources to support its re-election campaign, whether or not it avails itself of them.

II. Previous Reform Efforts

Responding to concern about the weaknesses of the Guatemalan party system, the 1996 peace accords negotiated between the government and the guerrillas of the Guatemalan National Revolutionary Unity (URNG) incorporated a series of commitments to electoral and party reform. After the accords were signed, an Electoral Reform Commission composed of representatives of the parties and the TSE hammered out a set of recommendations for changes and sent them to Congress in 1998. After extended inter-party bargaining, consensus was apparently reached concerning the content of a reform package. Before Congress approved it, however, the reform bill was submitted in 2001 for review to the Constitutional Court, which raised objections to a number of planks. The political will to pass and implement the changes subsequently evaporated in an atmosphere charged with distrust of the governing FRG's support for the reforms.

Leaving political intents aside, elements in the reform bill pointed in positive directions in regard to several key themes of the political finance system. These elements are important given that the current process has generated expectations that a new effort at electoral and party reform will be launched once Congress reconvenes in early 2004, in which case the stalled reform bill may serve as initial grist for the legislative mill.

The 2001 reform bill proposed to:

1. Raise the state's contribution to campaigns

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 national, department or local level, and committed themselves to "transparent management of our political finances." However, the gap between solemn pledges affixed to paper and the real behavior both of the parties and of government has been substantial.

1. Party Spending on the Media

Civil society actors have engaged this year in efforts to monitor campaign spending, focusing on expenditures on media advertising and misuse of the state budget. The principal group active on the issue, Citizen Action (Acción Ciudadana), takes part in an alliance of NGOs known as the "Mirador Electoral." To promote transparency about campaign finance issues, Citizen Action has directly solicited very general information on financing and spending practices from the parties in the 2003 campaign, including data on media expenses. This effort has been met with a general lack of cooperation—of the five major contenders in the race, only the Gran Alianza Nacional (GANANAL) responded to Citizen Action's questionnaire, while the Frente Republicano Guatemalteco (FRG), the Unión Nacional de la Esperanza (UNE), the Partido de Avanzada Nacional (PAN), and the Partido Unionista did not. This lack of openness is indicative of the sensitive nature of the issues involved and the ingrained secrecy surrounding them in Guatemala.

Highlighting this lack of transparency, on Oct. 29, Alvaro Colom, presidential candidate of the Unidad Nacional de la Esperanza (UNE), delivered a sealed envelope with what he said were the names of 39 campaign donors to former Peruvian president Valentín Paniagua, head of the OAS election mission in Guatemala. Colom refused, however, to make the names public, alleging that a year earlier government tax and labor inspectors had begun investigations against three businessmen supporting his campaign after he revealed their identities. Fear of such tax harassment can deter donations, and the cost of such investigations damage the interest of donors, even if their donations are perfectly legal.

To get round some of the obstacles to financial reporting, Citizen Action has hired local media analysts to systematically monitor the press, radio and television to measure the amount of time and space the parties are devoting to campaign advertising. After consulting media organizations about their fees, Citizen Action has published running tallies of campaign media expenses that for the first time provide a broad insight into how much is being spent and by whom. Lacking data on the discounts offered by media owners to the candidates, how much of the total cost is borne by the parties and how much by the media themselves remains a question mark, but light has at least been shed on the total burden.

As measured to Oct. 31, all parties in the 2003 race had spent Q195m—almost US \$25m—on campaign media advertising, with 80 percent going to television, 14 percent to radio and 6 percent to print media. Although comparable data from past elections are lacking, this level of spending is regarded as high. The group estimates that media spending has

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 Ríos 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.

