

**THE CARTER CENTER  
FINANCING DEMOCRACY IN GUATEMALA**

**Final Report<sup>i</sup>  
Political Finance Project  
Carter Center Observation Mission to Guatemala  
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**Introduction**

In recent years discussions about the quality of democracy in the Western Hemisphere have focused increasing concern on the financing of political parties and their campaigns. Unlimited spending on campaigns is believed (correctly or not) to have raised the cost of elections to the point where poor candidates stand little chance of competing and the prospect of creating a level playing field for parties and their candidates has become decidedly remote. Undisclosed contributions of licit or illicit origin by wealthy donors have meanwhile intensified the dependence of elected officials on their campaign funders, increasing the likelihood that politicians respond to donor interests and 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.<sup>ii</sup>

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, thus incorporated a component whose aim was to investigate political finance law and practice in that country and promote a process of discussion concerning possible reform of political finance and party legislation among a wide range of national actors. The mission was undertaken with the help of the International Foundation for Electoral Systems (IFES), which loaned expertise in the area of political finance, and with financial support from the United States Agency for International Development (USAID). The present report details the mission's findings and discusses proposals and prospects for the reform of national legislation in the political finance realm.

On Nov. 9, 2003, for the fifth time since the end of military rule in 1985, Guatemalans went to the polls to elect a president and vice-president along with 158 deputies to

Congress and 331 municipal authorities. The election came at a time when 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. Though a plethora of causes contributes to this result, the weaknesses of Guatemalan political parties and the lack of control over their spending and sources of financial support count among the causal factors.

Over the campaign's first round, the alleged misuse of state resources in the campaign of the incumbent Guatemalan Republican Front (FRG) party sparked widespread and public concern, while suspicions about the penetration of illicit money in the campaigns of all parties abounded. Once the election was over and a new government installed, a scandal erupted in February 2004 involving charges that the outgoing Portillo government had funneled money illegally to two other parties as well using the tax administration and the office of the comptroller general as conduits. The scandal highlighted the consequences of Guatemala's weak political finance regulation and underscored the need for change at precisely the moment the Guatemalan Congress began to consider a reform of electoral and party legislation including matters of political finance.

## **I. Political Representation in Guatemala**

Political finance rules in Guatemala, and the difficulties faced by attempts to reform them, can best be comprehended in light of the election and party system as a whole. Befitting one of Latin America's youngest democracies—elections have decided who will hold executive power for less than 20 years—this system is understandably fragile. With a few exceptions, the parties contending for the voters' favor in elections, though autocratically run, are weakly organized and institutionalized. The rules within which they compete furthermore help to minimize voter participation and truncate effective representation, producing governments with weak mandates that poorly reflect the nation's social diversity.

Guatemala's political parties by and large exist mainly at election time, and mostly serve as the personal vehicles of prominent or aspiring leaders, many of whom have jumped from one party to another several times during their careers.<sup>iii</sup> Judging by shifts in voter support across elections, they are also among the most "volatile" parties in Latin America.<sup>iv</sup> Since 1985, no incumbent party has been re-elected. Rules for party formation and survival facilitate this volatility—parties are easy to form and maintain their registration by electing a single deputy to Congress, not a difficult feat in the country's system of proportional representation. The multiplicity of parties, the lack of leaders' loyalty to them and the absence of much internal democracy, are in all probability among the reasons why 71 percent of Guatemalans expressed a lack confidence in political parties in a recent survey.

Registering to vote in Guatemala is excessively costly and time consuming. Casting one's ballot also requires an undue expenditure of time and energy, as voters must travel to far flung voting centers whose location is determined by a digit in their coded voting cards rather than voting close to their places of residence. Residents of rural areas must travel

to the municipal seat to vote.<sup>v</sup> Even if citizens have the gumption to overcome these hurdles, the system does not guarantee them equal formal representation. As commonly occurs when proportional representation is employed in small countries, election circumscriptions of limited size (many “departments” in Guatemala are quite small) fail to reproduce the diversity of opinion in the electorate, and do not afford all voters equal weight. For example, the number of voters needed to elect a Congressperson can vary across departments by nearly two to one.<sup>vi</sup>

The party and electoral system moreover rests in a society characterized by severe poverty, extreme inequality and gross social exclusion rooted in an ethnic divide between indigenous and non-indigenous Guatemalans.<sup>vii</sup> The sense of citizenship is weak and the possession of political resources extraordinarily unequal. The vulnerabilities thus created mean that clientelistic practices prevail at the local level, where many voters are trucked to the polls by the parties and the buying of votes at election time is not infrequent. Compounding this vulnerability is the legacy of 36 years of armed conflict, which ended only in 1996 and still exercises profound effects, facilitating the intimidation of voters in certain areas of the country.<sup>viii</sup>

The combined effect of all these barriers is that turnout in Guatemalan elections since 1985 has been among the lowest in the world. As the election rolls are not properly updated, it is likely that election turnout calculated as a percentage of those registered to vote is significantly understated. The fact remains that turnout as a proportion of the voting age population is still very low, leading experts to conclude that the basic problem is the difficulty or lack of incentive that citizens experience in taking the basic step of registering to vote.

The 2003 election process registered certain advances.<sup>ix</sup> First round turnout increased modestly to about 57 percent of those enrolled. Greater media coverage and better voter education efforts helped mitigate the impact of traditional electoral clientelism, as did the presence for the first time of a sizable contingent of national election observers. A coalition of civil society groups known as the Mirador Electoral undertook to monitor diverse aspects of the process, conducting a quick count, sampling the election roll for study, and tallying campaign media expenditures by the parties. The latter effort has produced the first quantitative insight into a key aspect of political finance in Guatemala, namely, the amount of money the parties and their financial backers spend on their campaigns.

## **II. The Guatemalan System of Political Finance**

Guatemala’s political finance system reflects the shortcomings of the election system as a whole. Just as rules for registration and voting hinder participation and truncate representation, thus serving to entrench underlying social inequalities, political finance rules allow money free reign, preventing the modicum of political equality needed in a modern democracy.

Various systems of campaign and party finance are possible. But the participants in the Carter Center's March conference agreed that any system should serve several basic objectives whose attainment requires regulation. One is to reduce financial inequalities across parties to allow them to compete on a minimally equal footing, for which purpose substantial public funding of election campaigns is indispensable. A second is to make voters aware of the political links between candidates and their donors, and of the potential commitments they may imply, when choosing how to vote; for this purpose, the disclosure of campaign donations is essential. A third is to keep dirty money out of campaign coffers, for which transparency in disclosing the details of campaign contributions is again crucial.

By contrast, Guatemala possesses one of the Western Hemisphere's least regulated systems of political finance legislation and practice. Although the system provides for a combination of public and private financing of party and campaign activities in theory, the public component is of negligible importance. Not only is political finance almost wholly a private affair, parties may spend without limitation on campaign advertising. Rules for the disclosure of parties' campaign contributions are moreover non-existent. In a country characterized by an extremely unequal distribution of income and wealth, this system maximizes the potential for those with money to determine the outcomes of election contests and shape policy to their own advantage, disregarding the will of the voters.

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. Exiguous Public Financing of Parties and Campaigns***

All parties garnering more than four percent of the valid votes for president are entitled to receive two *quetzales* (Q2) of the national currency, about US\$0.25, per vote as compensation. Although the Q2 amount was originally a relatively generous government grant to the political parties in 1985, due to successive devaluations of the national currency it has now become a minuscule contribution. A party that captures a million votes thus earns about \$250,000 in return—not enough to mount even a minimal national campaign. According to a recent estimate, this public grant covers no more than five percent of parties' total outlays during Guatemalan elections, one the lowest such ratios in the world.<sup>x</sup> As a result, public financing does little to mitigate electoral inequality.

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 after the voting has concluded—not before—successive disbursements over a period of four years are ostensibly made after the parties submit a detailed accounting of their campaign expenses. But no further requirements exist—e.g., public money is not used as a lever to induce transparency about donations or to induce changes in internal party rules and practices.

## ***2. Absence of Limits on Campaign Spending***

No caps exist either on 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 stuff the newspapers full of ads. In addition to annoying the voters, this license reproduces the underlying inequality in financial resources among the contenders, allowing the wealthier parties to gain the bulk of the access. The absence of limits in this area also makes campaigns potentially vulnerable to funding from illicit sources. The length of Guatemalan election campaigns aggravates this problem. The 2003 campaign began on May 16 and did not conclude until a second round was held on Dec. 28, i.e., more than six months later.

## ***3. Very Limited Regulation of Media Time during Elections***

*Private* television, radio and print media are under no obligation to provide specific amounts of airtime 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.

In theory, Guatemalan *public* radio and television are obligated to grant each legally constituted political party 30 minutes of airtime weekly during election campaigns. In fact, the range of the official radio station "TGW" is so limited that during the 2003 campaign not a single political contender saw fit to request any of the airtime to which it was legally entitled. The former public television Channel 5, once controlled by the military but dormant for years, was privatized in November 2003 (fulfilling a plank in the 1996 peace accords, the channel was granted to an association of indigenous organizations).

The TSE's only obligation 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.

## ***4. 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 donor 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 money of illicit origin to penetrate parties and

campaigns. In private, speculation about the spread of drug money and party financing from other illegal sources was rife during the 2003 campaign.

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

In addition to the above planks, Guatemala’s Electoral and Political Parties 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 expected 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 law and that the Tribunal lacks the power to investigate them *de officio* instead of waiting to respond to denunciations. The political parties meanwhile complain that the Tribunal lacks the will to act vigorously against abuses.

Table 1

#### **Total Electoral Spending and Relative Weight of Direct Subsidies in Central America (circa 2000)**

<i>Country</i>	<i>Election Cycle</i>	<i>(A) Total Electoral Expenditure (millions US\$)</i>	<i>(B) Direct Subsidies (millions US\$)</i>	<i>(C) Private sources (millions US\$) (A – B)</i>	<i>(D) Proportion covered by subsidy (B / A)</i>
<i>Costa Rica</i>	1998	20.1	11.5	8.6	58
<i>Nicaragua</i>	2000-2001	22-24	10.6	11.4-13.4	44-48
<i>Panamá</i>	1999	20	6.1 (4)	13.9	30
<i>Honduras</i>	1997	15.3	1.5	13.8	10
<i>Guatemala</i>	1995	11.5	0.6	10.9	5
<i>El Salvador</i>	1999-2000	n.a.	7.8	n.a.	n.a.

**Source:** Kevin Casas-Zamora, “Political Finance Regulation in Guatemala,” mimeo, 2003.

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 interests both legal and illegal, 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 aid in its attempted re-election, whether or not it chooses to use them.

### III. Parties and Political Finance in Guatemala: The 2003 Experience

Given these rules—or rather the lack of regulation and oversight—it is no surprise that the 2003 election campaign generated a highly unequal pattern of campaign spending and media access, charges of government favoritism toward the incumbent party, and, once the process had concluded, a significant finance scandal that highlighted the deficiencies of the regulatory system and apparatus.

#### 1. *The Parties in the Election*

The defections by leaders and splitting of parties that occurred prior to the 2003 campaign, as well as the results of the election proper, confirmed the reputation of the system for volatility and fragmentation. Twelve parties presented candidates for Congress and 10 won seats. This outcome reversed the tendency of the 1999 contest, which briefly concentrated representation in the hands of the Guatemalan Republican Front (FRG) and the Party of National Advance (PAN).<sup>xi</sup> The incumbent FRG party lost heavily on the first round, its candidate, former Gen. Efraín Rios Montt, garnering just 19 percent of the popular vote, while the previous governing party, the PAN, slipped to a mere eight percent of votes cast. A PAN offshoot called the Unionist Party (PU) catapulted former president Alvaro Arzú into the Guatemala City mayor’s office but won only three percent of the votes for president. Significantly, the second round was fought between two new forces—the Grand National Alliance (GAN) and the National Unity for Hope (UNE), whose fuzzy labels appropriately reflect their character as pastiche groupings lacking clear ideological or programmatic definition.

Table 2

#### 2003 Election Results

<i>Party</i>	<i>First Round</i>		<i>Second Round</i>	
	<i>% Presid. vote</i>	<i># Deputies elected</i>	<i>Party/Alliance</i>	<i>% Presid. vote</i>
Gran Alianza Nacional (GAN)	34.2	47	GAN (Oscar Berger)	54.1
Unidad Nacional de la Esperanza (UNE)	26.4	32	UNE (Alvaro Colom)	45.9
Frente Republicano Guatemalteco (FRG)	19.3	43		
Partido de Avanzada Nacional (PAN)	8.3	17		
Partido Unionista (PU)	3.0	7		
Alianza Nueva Nación (ANN)		6		
Unión Democrática (UD)		2		

Unidad Revolucionaria Nacionalista Guate- malteco (URNG)	2.6	2
Desarrollo Integral Auténtico (DIA)	2.2	1
Democracia Cristiana Guatemalteca (DCG)	1.6	1
Democracia Social Participativa (DSP)	1.4	
Unión Nacional (UN)	0.4	
Cambio Nacional (CN)	0.4	
TOTAL	100	158

Source: Supreme Electoral Tribunal of Guatemala

Neither of the second round contenders was a completely new party.<sup>xii</sup> The new ruling alliance, GANA, developed gradually out of acrimonious splits in the old PAN which date back to 1999 and which by 2002 spawned an informal leadership group called the “M17” loyal to former Guatemala City mayor Oscar Berger. In 2003, this nucleus combined with three really new groupings, the Patriot Party (PP), the Reform Movement (MR) and the Party of National Solidarity (PSN), to form the GANA coalition. Though formally more unified, the National Unity in Hope (UNE) is not much less of a collage than GANA. Formed in 2000 as a Congressional caucus by deputies who had deserted the leftist New Nation Alliance (ANN), the UNE attracted support from congeries of politicians left adrift by divisions within other parties ranging from the ANN and URNG to the PAN and the now defunct National Union of the Center (UCN). Holding such disparate elements together was the hope of boosting Alvaro Colom, head of the National Peace Fund in three previous governments (and the ANN’s candidate in 1999) into the presidency.

## ***2. Spending on the Media***

GANA candidate Oscar Berger won election as Guatemala’s president on Dec.28 with 54.1 percent of the popular vote. His victory capped an intense, six-month long process in which Guatemalan parties plastered the country with posters while their campaign ads saturated the airwaves. By the month of October, just before the first round vote, election-related news moreover comprised a full 23 percent of all radio news spots and 16 percent of those on television according to measurements done by DOSES.<sup>xiii</sup>

A novelty for Guatemala in the 2003 process was the effort made by a key civil society grouping, Citizen Action (Acción Ciudadana) to monitor campaign spending, focusing on media advertising expenses and misuse of the state budget.<sup>xiv</sup> Part of an alliance of nongovernmental organizations (NGOs) known as the “Mirador Electoral,” Citizen Action hired local media analysts to systematically monitor the press, radio and television in order to measure the amount of time and space the parties devoted to campaign



advertising. After consulting media organizations about their fees, the group published running tallies of campaign media expenses that for the first time provided a broad insight into how much was being spent and by whom in a Guatemalan election campaign.

By the end of the first round, the group calculated that total media spending had topped Q218m, about US\$27.5m, of which 80 percent had gone to television, 14 percent to radio and 6 percent to the print media. Although comparable data from past elections are lacking, this level of media spending was regarded as high. On the second round (Nov. 9-Dec. 28), the GANA coalition spent an additional Q13.0m while UNE paid out an extra Q11.6m. Adding on other minor expenditures, total campaign spending on the media as measured in the project amounted to Q244.4m, or about US\$30.5m.

Table 3

**First Round Media Spending**

	<i>TV</i>	<i>Radio</i>	<i>Print</i>	<i>Billboards</i>	<i>Total</i>
<i>FRG</i>	39.2	8.6	.6	2.0	50.4
<i>GANA</i>	29.9	9.5	2.8	5.6	47.9
<i>PAN</i>	23.1	5.4	.5	2.0	31.1
<i>PU</i>	23.2	3.9	.5	2.0	29.6
<i>UNE</i>	15.3	1.5	1.5	2.9	21.3
<i>DCG</i>	9.5	0.2	0.7	2.2	12.5
<i>DIA/PLP</i>	5.8	--	--	0.1	6.0
<i>ANN</i>	4.4	0.2	0.3	0.1	4.9
<i>UD</i>	3.6	0.3	--	0.1	4.0
<i>URNG</i>	2.6	---	0.1	---	2.7
<i>Others</i>	4.3	0.6	0.7	2.6	8.2
<i>Total</i>	161.0	30.1	7.7	19.7	218.6

Source: Acción Ciudadana

Two findings stand out in these figures. One is the very marked disparity in overall media spending between the five largest parties and the rest; this gap became notorious at the level of the two biggest spenders, the FRG and GANA, each of which outspent any of a series of small forces by a ratio of ten-to-one. The smaller parties not only lacked access to television but were much less present in the rest of the media as well. A second notable fact is the FRG's wide lead even over GANA in terms of advertising on television.<sup>xv</sup> All in all, the playing field in terms of media access by the contending parties was anything but level.

Conceived as real expenditures by the parties, the figures in the table are seriously misleading, as they are based on commercial rates without making allowance for the hefty discounts often granted to parties during election campaigns. This problem looms large in Guatemala owing to the monopoly ownership of the country's four open

television networks by Mexican businessman Angel González. Although it cannot be demonstrated decisively, anecdotal evidence collected by The Carter Center suggests that hidden donations of TV airtime were made to parties large and small, and may have gone far beyond “normal” levels of campaign discounting. If true, this implies that González heavily subsidized the election campaigns of numerous contenders, in all probability becoming the country’s largest single campaign donor. This generosity may have mitigated inequality in TV access, affording certain small parties a degree of exposure that they would not otherwise have enjoyed. However, the lack of transparency about the transactions involved threw a veil of secrecy over potential favoritism to one or another of the parties in the race.

Though it does not faithfully reflect actual party expenditure, the \$30.5m figure is nonetheless real, and includes the opportunity cost of much television time devoted to party advertisements. In proportion to population, the figure is staggering—the equivalent in a U.S. election would be \$750m. The unpublished figures for total campaign spending are undoubtedly much higher. Although most researchers suggest that media advertising is the largest single component of campaign expenditure, it is increasingly clear that activities such as the resuscitation of party structures at election time and the mobilization of voters to the polls are also very costly. As Guatemala is a country in which such activities figure prominently, it may be supposed that \$30.5m is considerably less than the overall amount spent by the parties and their financiers in 2003.

### ***3. Financing the Campaigns***

In addition to its media monitoring, Citizen Action attempted to promote transparency about political finance issues, directly soliciting very general information on financing practices from the parties in the 2003 campaign. This effort was met with a general lack of cooperation—few parties responded to the group’s questionnaire, and those that did so provided information of questionable validity. This lack of openness highlighted the sensitive nature of the issues involved and the ingrained secrecy surrounding them. Underscoring the problem, UNE presidential candidate Alvaro Colom delivered a sealed envelope with what he said were the names of 39 campaign donors to former Peruvian President Valentín Paniagua, head of the Organization for American States (OAS) election mission in Guatemala, on Oct. 29. However, Colom refused 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.

Given this closed attitude, little can be said with surety about the financing of the 2003 campaigns. With the exception of the FRG, all parties participating in the 2003 contest signed an “Ethical-Political Accord” in July pledging themselves to “transparent management of our campaign finances” and to “reject the use of resources stemming from drug trafficking, organized crime and corruption.”<sup>xvi</sup> In fact, such transparency was notable by its absence. Nevertheless, with one exception the financing of the contending parties did not become a major issue in the campaign, nor did the media exert significant

pressure on the parties to come clean about their financing sources or the commitments these implied.<sup>xvii</sup>

If specific financial flows cannot be documented, what can be concluded or deduced about the overall pattern of party campaign finance in 2003 amply illustrates the problems created by a political finance system that provides little public support to parties and lacks even minimal reporting of contributions. In sum, the pattern is one of high concentration of legitimate private finance on the winning contender, resort by the governing party to unorthodox methods for financing its campaign, and if current allegations are borne out, the illicit transfer of government funds to other participants.

### ***The FRG and the State Budget***

The exception to the general lack of media attention mentioned above was the substantial press coverage given to allegations of misuse of public resources in the campaign of the incumbent FRG party. Widely recognized to be Guatemala's best-organized party, the FRG appeared throughout the 2003 campaign to be a well-oiled machine operating with liberal use of traditional clientelistic presents to its supporters. As the Portillo government had in addition been rocked by accusations of large-scale corruption and links to organized crime, suspicions abounded that the FRG was receiving illicit money including banned contributions from the government itself.

A phenomenon of special concern in the 2003 campaign was 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, numerous allegations surfaced that large amounts of public money 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.

During the week of Nov. 3-7, Carter Center field observers received first-hand reports in several locations within 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.

Traditional presents to political clients were only one of myriad forms in which public monies were abused by the FRG government. Using the media monitoring described above, Citizen Action calculated 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, 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.<sup>xviii</sup>

Still another abuse of state resources involved 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.

### *GANA and the Economic Elite*

If the FRG was questioned in the print media as appropriating public money for use in its campaign, GANA was often portrayed as a vehicle created by the Guatemalan “oligarchy” to recover power and control of the state from the “riosmontistas.” Economic diversification in recent years makes usage of the term “oligarchy” to describe the economic elite inexact. Nevertheless, versions circulating privately suggested that the country’s wealthiest families had made a pre-election pact placing their financial bets squarely on GANA candidate Oscar Berger to the detriment of other contenders who would normally have been the recipients of significant contributions. Absent any transparency about these contributions, this story may long remain at the level of campaign lore. Whatever the case, the Berger campaign did not appear to lack for money.

The composition of GANA and the forces behind it reflected changes in the political behavior of Guatemala’s business elite that have been accumulating since at least the episode of the 1993 *autogolpe*. In this process, a younger generation of business leaders has assumed the helm in key companies while the peak business umbrella, the Coordinator CACIF, has evolved a public posture of greater social responsibility and concern for the strengthening of national institutions.<sup>xix</sup> After 1999, individual businessmen also took prominent roles in opposition to the corruption-ridden Portillo government and several founded new political parties, most of which ended up forming GANA. A desire common to many in the elite is to forge a hegemonic political party similar to El Salvador’s ruling ARENA, although consensus about precisely how to do this appears to be lacking.

Important business interests stand behind or at the apex of all four components of the GANA coalition. Banco de Café’s Eduardo González is a key leader in the M17. The Gutiérrez-Bosch group reputedly financed creation of the Partido Patriota, whose leader, retired Army Gen Otto Pérez Molina, has organized a small base. In more modest efforts to launch personal vehicles, leaders of the Chamber of Commerce and Anacafé floated

the Movimiento Reformador (MR) while businessman Ricardo Castillo Sinibaldi organized the Partido de Solidaridad Nacional (PSN).

It would thus appear that elite financing of political contenders in 2003 was more centralized in a single (albeit heterogeneous) entity than at any time since the advent of electoral democracy in 1985. This phenomenon undoubtedly sprang from business's strong dislike of and opposition to a regime, that of Alfonso Portillo and Efraín Ríos Montt, that had displaced it from government in 1999 and implemented policies damaging the interests of key groups. What this pattern of financing implies about the political commitments of Guatemala's new president can only be surmised. But it is noteworthy that his cabinet is filled with high-ranking entrepreneurial figures, some of whom have played key political roles since the 1993 crisis.

The new government's initial moves suggested a strong commitment to rid state institutions of figures alleged to be involved in, or covering up for, acts of corruption in the previous administration in addition to other misdeeds. In rapid fashion, President Berger removed the head of the national tax administration after a scandal was uncovered, and after a groundswell in the media, fired Guatemala's attorney general. In the meantime, outgoing president Portillo left the country in an apparent attempt to avoid prosecution on (among other) charges of having laundered embezzled money through a series of accounts in Panamá.

### ***Those Left Out: The Second Tier***

During the campaign, the concentration of private campaign finance had key implications for other parties. Citizen action's data show that three second-tier parties—the National Unity in Hope (UNE), the Party of National Advance (PAN) and the Unionist Party (PU)—enjoyed substantial quotas of media access. However, they experienced difficulties in competing with the bigger spenders GANA and FRG. This led them to complain and to charge that Guatemala's print media were both favoring the GANA candidate and manipulating opinion poll data in order to pump him up. In October, along with a series of smaller parties, the three second tier parties formed an alliance with smaller groups that was initially dubbed “the 10” (later “nine”), all of whose members pledged to support any contender from its ranks who made it into the second round.

At the same time, rumors circulated that the FRG government was funneling money to other parties that could potentially deprive GANA of first round votes thus easing the way for its candidate to get into the runoff. Suspicion arose with respect to the PAN because the nucleus of GANA had originally sprouted from the PAN trunk. In the case of UNE, the participation of political operatives drawn from the camp of President Portillo helped the rumors to circulate and gather steam.

Information recently revealed suggests that the rumors did not lack substance. On Feb. 19, 2004, the Guatemalan newspaper *Prensa Libre* published an exposé charging that the Portillo government had in fact funneled Q3.6m (about US \$450,000) to UNE and the PAN, using the Comptroller General of the Republic as a conduit. Officials of the parties

denied knowing of any wrongdoing and promised internal investigations, while Comptroller Oscar Dubón Palma denied involvement. A few days later, the paper followed up with additional revelations that the national tax administration (SAT) had likewise channeled Q1.8m to UNE as part and parcel of a larger corruption scheme. The official in charge of that body, Marco Tulio Abadío, was not available for comment, as he had apparently fled the country to avoid charges of having embezzled and laundered some Q40m.

The new Congress started immediately to look into the matter. UNE presidential candidate Alvaro Colom admitted at the end of February that his campaign had received what he thought was a legitimate contribution from Abadío. UNE at first denied receiving any money through the Comptroller's Office but later amended its version. Called to the Congress to explain this and other allegations, Comptroller Dubón fled Guatemala on March 3rd but was apprehended in Nicaragua. Guatemala's new national prosecutor, Juan Luis Florido, meanwhile issued migratory stop orders against both Alvaro Colom and PAN candidate Leonel López Rodas, along with arrest warrants for several people alleged to be involved in the transfer of the illicit funds. The ultimate outcome of these legal proceedings is unknown, and the flight of allegedly corrupt officials may reflect a lack of confidence in the judicial system rather than guilt. Nevertheless, these developments look suspicious and further undercut public confidence in Guatemala's political finance system.

#### **IV. Proposals for Reform**

The breaking scandal dramatized the problems engendered by a political finance system that grants virtually no public funding to parties—but forces them to spend substantial amounts of money to compete in elections—while failing to require parties and candidates to be frank about their financial sources and commitments.

It thus provided a pointed reminder of the need to strengthen the system. Changes in that system are part of a larger reform of the elections and political parties law that has appeared on the Guatemalan legislative agenda episodically since 1996 but has never come to fruition. In the wake of the 2003 election, Guatemala's Congress has chosen to take up this issue again. However, it is starting on the basis of much prior discussion and formulation whose results in regard to political finance issues merit brief summary.

The 1996 peace accord on “Constitutional Reform and the Electoral Regime” did not mandate specific changes in political finance rules or in the electoral system generally. Instead, it limited itself principally to setting up an Electoral Reform Commission (CRE by its initials in Spanish) to which the parties to the accord made a series of recommendations for changes in existing legislation.<sup>xx</sup> Three cogent suggestions stand out in regard to political finance. The signatories recommended that the Commission a) limit campaign spending on media publicity; b) take measures to assure a degree of equality of access and some free time in the media to all parties contesting an election;

and c) forge transparency in the area of campaign contributions, coupled with a reform of the criminal code to penalize the receipt of campaign monies from illicit sources.

Once established, the CRE, composed of representatives from the parties in Congress, accepted input from civil society and formulated its draft in close collaboration with the TSE, which presided over its deliberations.<sup>xxi</sup> The Commission framed its proposed financing changes within a larger set of reforms concerning the organization and functioning of the parties. Finished in 1998, the CRE draft is noteworthy in that it continued to limit public funding for the parties as such to the pre-existing grant of Q2 per vote.<sup>xxii</sup> But it went on to grant specific additional funds to underwrite party assemblies at various levels. It also went to great trouble to specify limits governing overall campaign spending, differentiating these by the kind of campaign (presidential, district deputy, municipal level, civic committees), and meticulously detailed the varieties of campaign expenses on which the parties would be expected to report.

The CRE furthermore stipulated that *both* parties and candidates would have to keep registers of their campaign contributions—implicitly including those from private sources—and prohibited most donations from abroad. Finally, it provided a mechanism for limiting campaign propaganda in the mass media by regulating to ensure some degree of access and fair treatment for all contestants. Crucially, the draft proposed a set of rules for supervision of the law's observance. Among other things, these allowed the TSE to make *de officio* investigations into the origin of private campaign donations, or to respond to requests for it from internal organs of the parties.<sup>xxiii</sup>

Blocked at first, the CRE draft eventually underwent two report-outs in the Congress elected in late 1999. The Specific Commission on Electoral Affairs issued one of these in October 2000 and the other in July 2001. The first of the report-outs preserved the CRE's insistence on limiting total campaign spending and exhaustively listing requirements for the reporting of expenses. But it made major changes in other respects. While specific financing for internal assemblies disappeared, the level of *general* public financing for the parties was raised substantially, to Q10 per vote. In its comments on this first committee report, the TSE pointed out the incongruity between raising the level of public finance for the parties without imposing on them new rules and obligations.

The second Congressional report-out was equally significant in changing the thrust of the CRE's proposals. To prevent inflation and currency depreciation from eroding the value of public monies granted to parties, it reset the general financial grant at US\$2 per vote. However, it made three other changes that drew the TSE's fire, by: 1) eliminating the CRE's elaborate list of campaign expenses requiring reporting; 2) keeping the overall limit on campaign spending, but without specifying clearly to which of the several elections the limits would be applied; and 3) dropping the clauses concerning supervision of both public and private financing, leaving this issue to future regulations.<sup>xxiv</sup>

The Specific Electoral Affairs Committee of Congress reported out its second version of the election reform in July 2001, and the bill subsequently went through two readings in plenary session, with no further changes in the political finance procedures. Before being

put to third reading (in which the plenary would normally have debated the bill article by article), it passed to the Constitutional Court to undergo a check for incompatibilities with Guatemala's 1985 constitution. The Court objected to just four points, only one of which bore on issues of political finance (this is discussed below).

Impetus toward reform stalled in the wake of the Court's ruling, with civil society organizations launching vocal objections to a part of the proposed reforms. Of particular relevance to the issues discussed here, a broad grouping known as Foro Guatemala underscored the lack of adequate supervision over both public and private financing of parties.<sup>xxv</sup> Discussion of the reform also became politicized with fear expressed that the changes would serve to help the then ruling FRG party entrench its position in Guatemalan politics. The bill languished as the country geared up for elections in 2003, and would not be taken up again until the new president and legislature were inaugurated.

## **V. Reform Scenarios**

The 2003 election campaign and its problems, and the advent of a new political cycle, put election reform back on the public agenda. A Shared National Agenda formulated in concert by some 20 political parties called for reform of the Electoral and Political Parties Law to be considered in the short term, stressing the need for transparency in the financing of the parties.<sup>xxvi</sup> Both GANA and UNE made election reform a part of their platforms. A "governability pact" signed by GANA, UNE, and the PAN just before Oscar Berger took office reiterated these pledges and promised that the new Congressional leadership, dominated by the three forces, would take up the issue in short order. After establishing a special committee for the purpose, the Congress leadership took steps in February 2004 to revive consideration of the issue.

The decision to put election and party reform back on the legislative agenda posed difficult questions of political strategy in which the desire for quality in the reform would have to be balanced against the feasibility of attaining any reform at all. Under the 1985 constitution, reform of the Elections and Political Parties Law requires a two-thirds vote of the deputies in Congress. To date, this rigorous requirement has been the chief stumbling block to reform. Achieving this level of consensus promised to be all the more difficult in that the 2003 election has left Guatemala's Congress without a clearly effective majority.

The ruling GANA coalition occupies just 47 seats in the expanded 158-member body, while the second place finisher UNE at first had 32. The PAN included, the parties to the January "governability pact" initially deployed 96 votes—10 short of the needed constitutional minimum—before desertions began to diminish their ranks. By contrast, the vagaries of proportional representation left the better organized FRG as the principal opposition with 43 deputies, more than a quarter of the total, although this party too quickly suffered defections. Overall, with 10 parties represented and other deputies declaring themselves independent, fragmentation in the legislative lineup is serious, and for Guatemalan analysts recalls the Serrano presidency (1990-93) in which legislative



impasse created conditions for a constitutional crisis, known as the *autogolpe* or “selfcoup,” which transpired in May-June 1993.

Thinking among many Guatemalan actors about the feasibility of election reform is shaped further by assumptions concerning the country’s political-electoral cycle. With the presidential mandate of just four years, a tradition of non-constructive opposition and a fatal tendency for party benches to fragment between elections, only a narrow window of opportunity, not exceeding one year, may exist for achieving the needed consensus before narrow interest politics take over and preclude agreement. Given these realities, many in the party and legislative leaderships concluded that reform efforts would more likely bear fruit, and more expeditiously, if the new Congress simply dusted off the 2001 reform bill and submits it to a third and final reading.

This option encountered a serious limitation. If the article-by-article discussion generated substantial modifications, the Constitutional Court would again have to pass judgment on the legislation’s final version. After the Court’s controversial 2003 ruling in the favor of the candidacy of Gen. Rios Montt, a ruling widely viewed among political elites as unjustified and illegal, relations between the Court and the new executive and legislative branches are tense. In order to avoid a constitutional impasse that could torpedo the legislation entirely, the draft left pending in 2001 would have to be approved with only minor emendations, and more substantial corrections left for a later and uncertain date.

The alternative was to reopen full debate on the election reform in Congressional committee, calling for fresh consideration of the issues and new input from civil society. This option appeared to offer the opportunity to correct serious deficiencies in the current version of the reform. It was attractive to those wishing to change rules concerning the internal governance of political parties that were omitted in the draft approved in 2001; such changes include curbing the wide powers presently granted to party secretaries general (of interest to many party dissidents) and legislating quotas for women on the party election slates (of interest to key civil society groups). However, this option risked stretching the process out and bogging it down, letting the window of opportunity close. Not only would it offer time for organized interests, business and the media among them, to mobilize public sentiment against the reforms, but it could generate amendments unacceptable either to the Constitutional Court or to specific groups of lawmakers making the eventual two-thirds consensus more difficult to attain.

At the close of the Carter Center’s electoral mission in February 2004, which “route to reform” the forces dominant in Congress would take remained undecided. Their governability agreement signaled that they intended to take something of a middle course, returning not to the 2001 reform but to a previous version enjoying the imprimatur of the TSE. Nor did the executive branch appear to have a clearly unified position about how best to proceed or what priority to accord election reform in the context of severe budget restrictions and other pressing issues.

Finally, civil society had not begun to grapple with the issue in an organized fashion. On Feb. 5, 2004, The Carter Center convoked a discussion of political finance issues among

a group of civil society leaders drawn from the media, human and indigenous rights defenders, and research institutes linked to academia and the private sector. The groups represented expressed widely divergent views about the planks of the pending reform in this area in comparison with existing legislation. While several of those present considered the proposed reform on balance to be a basis on which to move forward, others deemed it a retrogression from the status quo.

### ***The 2001 Reform: A Comment***

An objective of the Carter Center's electoral mission to Guatemala has been to contribute to informed debate about issues of party and campaign finance at a time when that nation's Congressional leaders are in the process of taking decisions regarding these issues. In closing this report, the Center offers a perspective on the issues taking the pending reform bill as a point of departure. The Center's comments are not exhaustive and focus mainly on practical implications of the legislation as written in 2001. In February 2004, the Center convened two forums on political finance issues in Guatemala with leaders from civil society and from the Congress and political parties respectively. The discussion in these forums served to enrich the commentary that follows. The analysis also incorporates elements drawn from critiques of the election reform legislation previously published by important civil society organizations.<sup>xxvii</sup> Both sources underscored the crucial salience for civil society groups of utilizing political finance reform to help institutionalize the political parties and to strengthen the supervisory function of the Supreme Electoral Tribunal.

At the level of general principle, the stalled 2001 reform of the Law on Elections and Political Parties has positive implications for changing Guatemala's political finance system. Raising the level of public funding would lessen the parties' dependence on private financiers. Forcing the disclosure of campaign contributions potentially provides a degree of transparency regarding politicians' hidden commitments to their backers. And limiting overall campaign spending on media advertising appears to offer a way to level the playing field among contenders in this crucial respect. In general, then, the reform appears to move in positive directions.

At the same time, glaring gaps are evident between the principles and the formulas proposed for their implementation. Lack of clarity and specificity about how certain planks will be applied poses difficult questions about the bill's overall impact if approved, and even whether certain clauses could be implemented at all. In addition, the reform bill fails to fill certain lacunae or grasp hold of opportunities to use legislation creatively to achieve other objectives than those immediately posed. In sum, the existing draft would need to be seriously amended in order to maximize its benefits and adequately serve the purposes to which political finance law ideally aspires.

The 2001 reform bill proposed to:

#### ***1. Raise the state's contribution to campaigns***

The reform bill *raises the value of public financing of the parties' activities and campaigns* from Q2 per vote to US\$2 per vote, an eightfold increase at today's rate of exchange.<sup>xxviii</sup> In contrast to the current state of affairs, this change raises public funding to a meaningful level, and lessens the dependence of the parties on private financing sources. How much this dependence would be reduced depends, however, on implementation of a subsequent plank limiting overall campaign expenditure, and for reasons expounded below cannot be estimated clearly.

Beyond this, the bill does nothing to achieve other objectives sought by the public financing of parties. The amendments do little to reduce inequality in access to resources among the parties, insofar as they distribute the public funding in the current way, i.e. strictly according to votes gained. Disbursement is tied to achieving a 5 percent share of the presidential vote, an increase over the 4 percent now prevailing, or alternatively the election of one deputy to the Congress. But it is not conditioned on anything else besides normal accounting requirements. For example, the reform does not tie disbursements of public money to fulfillment of requirements to divulge campaign finance sources. As the Centro de Investigaciones Económicas Nacionales (CIEN) observes, the amendment does nothing to motivate compliance with other planks of the reform or changes in the direction of greater internal democracy or institutionalization of the parties themselves, such as would be effected, for example, if disbursement of public funds were tied to the holding of party primaries and assemblies.<sup>xxix</sup>

## ***2. Limit total spending***

The reform proposes a cap on total campaign spending for the first time. Although this sounds like a good idea in principle, the practical difficulties with monitoring and controlling the entirety of campaign expenditure suggest caution. In Guatemala's case, imprecision in the language used and the degree of discretion ultimately granted to the parties and the TSE to determine the specifics, make the details of this plank troublesome.

Interpreted literally, the pertinent clause appears to set the *total amount of campaign spending* --across all of Guatemala—at \$1 for each voter registered as of the Dec. 31 prior to the election. This sum is relatively small (less than \$5m in 2003) and it seems improbable that the wording reflects the legislators' intent. Had the reforms been in effect during the 2003 campaign, total spending would have been limited to a sum that is less than the total public funding the reform theoretically makes available. A possible explanation of this incongruity is that the legislators meant to establish this sum as a limit per party, but if so this needs to be clearly stated. Another, as the TSE earlier observed, that the drafters simply failed to specify clearly to which elections—presidential and national deputy, district deputy, municipal—the spending limit was intended to apply.

In any case, a subsequent and little noticed clause gives the head poll watchers (*fiscales*) of the political parties latitude *to negotiate a different amount per registered voter* with the TSE up to two weeks before the beginning of the campaign. This plank not only confers enormous discretion, but also opens the implementation of the ceiling to political

bargaining that could produce virtually any result, thus negating the basic intent of the ceiling. If such a ceiling is truly meant to cover all campaign expenses, the law (or its regulations) would furthermore have to specify which expenses ought to be reported in detail, as was done in discarded versions of this legislation. If Citizen Action's measurements of media spending are accurate, and recent research emphasizing the less visible dimensions of campaign spending is correct, the indicated sum of US\$1 per vote is likely to be considered by the parties to be unacceptably small, leading to strong pressure on the Tribunal to raise the ceiling.

The proposed reform would mitigate this problem, though only modestly, by shortening the overall length of the campaign by at least one month. The TSE would convoke a general election on May 2<sup>nd</sup> with the first round balloting occurring the first Sunday in September and a runoff 45-60 days thereafter. Other parts of the election reform could help to further reduce the general level of campaign expenditure; for example, locating voting tables closer to the voters' places of residence would lessen party outlays on election-day transport.

Above and beyond these considerations, interested Guatemalans must assess whether the quest to limit overall campaign spending is realizable in the circumstances of their country and what it would cost to accomplish. It may be preferable to legislate a limit on campaign media spending, as that can more easily be monitored. It is noteworthy that the Accord on Constitutional Reforms and the Electoral Regime limited its suggestion in this regard to controlling expenditures on the media.

### ***3. Limit media advertising during campaigns***

In fact, the 2001 reforms address the issue of limiting campaign spending on media advertisements. At the beginning of a campaign, *the TSE and the parties would reach agreement on the "maximum amounts" of media time and space for campaign propaganda to be contracted on an equal basis for all participating parties and coalitions.* The only specific in this regard is that the maximum for print media would not be less than one complete page or equivalent in each daily edition during the campaign.

In establishing the notion of a limit, this clause embodies a positive principle, and one that in contrast to a gross spending ceiling is relatively easily enforced. Problems are nonetheless evident. Notably, the upper limit is again an "elastic band," and the TSE is given discretion to set limits by itself in the event that the political parties do not reach any agreement. Such discretion notwithstanding, read carefully, this article implies a curious restriction on media advertising that may go well beyond what was intended and even the limits of the desirable.

Interpreted literally, the relevant article has extraordinary egalitarian implications. It does not specify any maximums for media access. But whatever the ceilings chosen, it clearly requires that time and space beneath them be allocated *equally to all contenders.* In addition, it must be kept in view that this plank of the reform does not propose allocating any media time/space free of charge; all access is "contracted for." In combination, the

logical implication of these principles is that the real maximum limit would effectively be determined by the amount of money that the least-well-funded parties have available to pay for campaign media access. In effect, the media spending of the largest parties would be restricted to the level of what the smallest could afford, a formula that in practice would almost certainly prove to be unworkable. As small parties will have little money for the purpose, overall campaign advertising could end up being less than is adequate.

#### ***4. Provide a modicum of free media access***

The reform bill contains several planks bearing on free media access whose real import is for various reasons negligible. On one hand, the reform reiterates existing requirements for state radio and television networks to provide participating parties a minimum of 30 minutes total time weekly for political advertising during campaigns, with the additional proviso that unused time does not accumulate. Given the privatisation of state television channels and the limited range of public radio, these inducements are recognized to be of scant practical relevance.

In addition, a clause in the reform draft refers to an unspecified amount of time and space that would “by law” be granted by all media organs to the TSE, two-thirds of which would subsequently be distributed among the participating parties on a free and equal basis while the TSE would use the other third for voter education and informational activities. In its 2001 ruling, the Constitutional Court objected that this clause made reference to a piece of ordinary law, thus breaching a constitutional principle that all legislation relating to elections had to be incorporated directly in the Law on Elections and Political Parties.<sup>xxx</sup> The Court does not appear in this case to have pronounced *in principle* against requiring media to grant some access free. But in view of its decision, the current bill will not do this unless it is substantially modified, which would force an additional review by the magistrates.

#### ***5. Prevent private media from favoring one party over others***

Private media cannot refuse to sell airtime to particular parties or discriminate in the application of fees or the allocation of time slots so as to favor one party over others. In order to monitor this during a campaign, all media would have to make frequent transmissions of data to the TSE concerning the quantity and programming of all time slots utilized by the parties. The bill also obliges the media to register their fees with the TSE’s auditor if they want to transmit campaign propaganda. False reporting of fees gives the Telecommunications Superintendent warrant to suspend the offending medium’s operation for the remainder of the campaign. These provisions are necessary and appropriate requisites for regulating media access during campaigns.

#### ***6. Channel campaign donations to candidates through parties or civic committees***

The party or committee would then have to maintain a register of all campaign donations *and make it public*. A separate plank in the reform requires each party to create an internal body to supervise its financial activities.

Requiring campaign contributions to be channeled through a party or civic committee *appears* to make that organization responsible for the dealings of all its candidates, i.e., any donation to one of these should theoretically appear in the organization's general register of donations. Ideally, one would like to see have the candidates explicitly required to report and to do so in an itemized fashion with sufficient detail to close any possible loophole. In addition, specifics are lacking about the types of information the register must include. For example, it is not clearly stated that the register has to include the name of the contributor (as opposed to a commercial name) or the exact amount, much less details like the date and the use made of the funds. Likewise, the reform fails to detail when and in what form the information needs to be reported to the TSE and/or the public. Though these matters can doubtless be left to later regulations, their crucial importance in giving political finance disclosure teeth argues for including them in the text of the law itself.

Finally, in contrast to earlier versions of this legislation (the CRE draft), the 2001 bill does not grant the TSE the prerogative of conducting *de officio* investigations into the origins or uses of the private monies provided to the parties. This omission is more serious and would not likely be remediable in the regulations phase.

***7. Limit any individual contribution (of persons or companies) to 10 percent of the campaign-spending total.***

The reform would additionally prohibit campaign contributions from anonymous sources and limit foreign-origin donations to those from academic sources destined for party training purposes. Limits on individual contributions are laudable but can be difficult to enforce. The proposed amendment could easily be evaded by dividing a larger-than-10 percent contribution among several of the donor's close collaborators. A procedure somewhat more difficult to get around is used in Brazil, where personal donations are limited to 10 percent of the donor's income in the previous year as reported to the tax authorities. An additional inconvenience is that Guatemala's reform limits each donation to 10 percent of a total that is not fixed until after the campaign has begun, by which time the parties need to have money in their coffers to pay expenses.

***8. Provide sanctions for failing to comply with any of the foregoing***

The reform grants the TSE the power to control and supervise the public and private funds that political organizations receive for campaigns as well as for their permanent activities. It further stipulates that non-compliance with the new political finance regulations will carry administrative and criminal sanctions as provided by law, including the possible cancellation of a party's registration.

These changes are minimum requirements for the new legislation to have practical effect, but do not preclude the additional step of amending the official penal code in order to typify electoral crimes as suggested in the Peace Accords. It is also crucial to assure that

the institutions burdened with implementation of the law have sufficient authority, capacity and independence to do so.

## **Conclusion**

The Carter Center has attempted in this report to explicate in some detail the principal problems created by Guatemala's current system of political finance regulation. It has focused particular attention on three weaknesses: insufficient public financing for parties and civic committees, the absence of limits on campaign advertising in the media, and the failure to require any reporting of party or campaign contributions.

However, the experience of the 2003 campaign speaks more loudly than any merely conceptual discussion. That experience illustrates one of many vicious circles that can arise when the absence of limits on campaign spending is combined with a lack of public funding and an absence of transparency in the financing of the parties. In short, the system gave the best-heeled contender license to spend whatever it liked, forcing other parties to try to follow suit in order to compete. That pressure left the latter open to the temptation to accept, wink at, or in the most benign interpretation, be deceived by contributions from illicit sources. In this case, one illegal source was apparently government itself, controlled by a party maneuvering to secure its re-election that was already utilizing state funds in its own campaign in violation of existing norms.

Reform of this system is urgently needed before Guatemala's next general election. The goals of such a reform should above all be to create conditions for greater equality in electoral competition, and minimize ways for illegal flows of funds to permeate the campaigns of the parties. Changes oriented by these objectives would make voters' choices more meaningful both by facilitating a more informed consideration of the alternatives presented and by exposing the hidden commitments of candidates to unseen financial backers. While no reform will completely eliminate problems such as those Guatemala encountered in 2003, it could significantly reduce the chances for them to recur.

On March 31, 2004, as this report was receiving its final edit, Guatemala's Congress debated the 2001 draft reform in third reading, apparently making minor modifications to the text.<sup>xxxix</sup> Despite initial opposition from the GANA alliance, a broad coalition formed among UNE, PAN, the FRG, minor parties and independents, which finally gained the adherence of the Partido Patriota and eventually GANA itself to bring the bill to the floor. A final vote approving the legislation was taken on April 21. Despite significant pressure to veto the bill, president Oscar Berger has reportedly pledged to sign it.

With only minor changes, then, a version of the reform just reviewed is about to become law, over the strong objections of the Supreme Electoral Tribunal and various Guatemalan NGOs. At the same time, the coalition passing the reform has agreed, at GANA's insistence, to consider a quick reform of this reform within 90 days. For this to occur, the parties backing the initial reform will have continue to agree among themselves, something that cannot be taken for granted. But if a subsequent debate

occurs, it could offer a signal opportunity to correct the problems in the 2001 draft that still require emendation.<sup>1</sup>

In the event, and with all due respect, The Carter Center offers the following recommendations for action. The recommendations are mainly generic in nature, i.e., rather than suggesting what to do; they indicate areas where attention could usefully be focused. The suggestions are aimed at helping to craft a version of the law that is both internally consistent and viable in terms of implementation.

1. In light of the sharp budgetary constraints facing Guatemala, reassess whether is cost-effective to try to impose ceilings on overall campaign expenditures.
2. If the decision is to proceed with such ceilings, specify clearly the limits that apply to each party and each election.
3. Eliminate any discretion in the setting of these limits.
4. Consider a further shortening of the election campaign.
5. Reassess the idea of imposing a maximum limit on media spending that is equal for all parties.
6. Stipulate clearly that candidates as well as parties are obligated to maintain registers of their campaign donations.
7. Specify the types of information concerning donations that must be reported and the time frames for such reporting.
8. Rethink the 10 percent limit on individual donations with a view to increasing ease of implementation.
9. Strengthen the oversight powers of the TSE, in particular by granting it the official authority to investigate abuses of campaign finance rules.

In addition, attention should be given to strengthening the campaign finance unit of the TSE. Currently, the auditor's office at the TSE manages the accounting of party finances. However, now that election law will require the TSE to increase the funding for political parties and parties will be required to report their funding and expenditures to the TSE, the Tribunal needs to augment its capacity to fulfill its responsibilities. The auditing unit should implement two key changes, by hiring a local expert with a high level of expertise in election law and campaign finance, and by developing a web-based database of political funding in accord with the legal framework. The database will not only standardize the reporting, but will allow interested parties to analyze financial expenditures as a means of encouraging accountability and raising awareness.

Choices about what additional changes to make are ultimately the prerogative of Guatemala's legislative deputies, responding or not to the opinions of civil society and the citizenry at large. More than one combination of law and regulations can achieve the desired principles, and national leaders are best positioned to evaluate local contexts and the viability of policy measures operating there. Increasingly, however, the array of policy options and their records of success in Latin America is known. The Carter Center hopes that its examination of the Guatemalan political finance system in comparison with others in the region, as well as its exploration of the real impact of political finance laws

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<sup>1</sup> The European Union underscored the importance of financial reporting in its final report.



on campaign practice, will assist the people of Guatemala in evaluating their options and making a sovereign determination of which system will best serve their national development goals.

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<sup>i</sup> David R. Dye, The Carter Center's political analyst for the campaign finance element of its election monitoring project, drafted this report. Shelley McConnell, senior associate director of the Americas Program at The Carter Center and project leader for political finance, edited the report for publication by The Carter Center.

<sup>ii</sup> The Carter Center, *Financing Democracy in the Americas: Political Parties, Campaigns and Elections*, August 2003.

<sup>iii</sup> Some exceptions to these rules should be noted. The FRG, though caudillo-dominated, has a sizable permanent organization, as had the DCG traditionally though not at present. Parties that have seen efforts in recent years to transcend the stage of being trampolines for their leaders are the PAN under its current leadership, the Partido Unionista in its formative stage, and the relatively new Partido Patriota. The governing alliance GANA, which enjoys the support of much of the old PAN base, announced in February 2004 that it would seek recognition as a party in its own right.

<sup>iv</sup> Daniel R. Olascoaga, *Democracia en Guatemala: Modelo para armar* (Guatemala: FLACSO, 2003), ch. 1

<sup>v</sup> Horacio Boneo and Edelberto Torres-Rivas, *Por qué no votan los guatemaltecos?: Estudio de participación y abstención electoral* (Guatemala: IDEA-TSE-PNUD, 2001), pp.105-09, 131-39

<sup>vi</sup> Manuel Estuardo Lara Castillo, *La representación proporcional en el Congreso de la República: Propuesta para un sistema electoral más equitativo* (Guatemala: Universidad Rafael Landívar, 2003), p.35 and passim.

<sup>vii</sup> For statistics, see Programa de Naciones Unidas para el Desarrollo, *El Desarrollo Humano en Guatemala 2003*.

<sup>viii</sup> The Carter Center, *Final Report on the Monitoring of Human Rights during the 2003 Guatemalan Election*, forthcoming, reports instances of such intimidation in El Quiché and Totonicapán departments, among others observed.

<sup>ix</sup> *Ibid.*, p.20.

<sup>x</sup> Kevin Casas, "The Guatemalan Political Finance System," unpublished draft.

<sup>xi</sup> The PAN and FRG, which together had won 261 of 331 municipal seats in 1999, took only 155 in 2003, with GANA winning another 76 and the UNE 37.

<sup>xii</sup> Background on the development of these and other Guatemalan parties is found in ASIÉS, *Guatemala: Monografía de los Partidos Políticos: 2000-2002*, May 2003.

<sup>xiii</sup> Asociación Desarrollo, Organización, Servicios y Estudios Socio-culturales (DOSES), *Mirador Electoral: La cobertura mediática de las elecciones: Informe Final*, January 2004, pp.11-12.

<sup>xiv</sup> Acción Ciudadana-Observatorio Ciudadano, *Informe sobre el Monitoreo de Acceso a la Información sobre el Gasto de Campana Electoral (Elecciones Generales, 2003, Documento Final)*.

<sup>xv</sup> While this pattern held for the whole campaign period, it appears to have changed markedly toward the end. In a separate measurement of TV ads done by the European Union, both Oscar Berger and Alvaro Colom far outstripped Rios Montt and the FRG in the last month of the first round campaign.

<sup>xvi</sup> "Acuerdo Etico-Político para el Desarrollo del Proceso Electoral 2003," in the *Agenda Nacional Compartida*, October 2003, annex 1.

<sup>xvii</sup> Asociación Desarrollo, Organización, Servicios y Estudios Socio-culturales (DOSES), *Mirador Electoral: La cobertura mediática de las elecciones: Informe Final*, January 2004, p.6.

<sup>xviii</sup> 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 had Q72m at its disposal, the TSE was allocated a mere Q6.4m to fulfill its important social responsibilities.

<sup>xix</sup> J. Fernando Valdez, *El ocaso de un liderazgo: Las élites empresariales tras un nuevo protagonismo* (Guatemala: FLACSO, 2003).

<sup>xx</sup> Cf. *Acuerdo sobre Reformas Constitucionales y Régimen Electoral*, at [www.minugua.guate.net](http://www.minugua.guate.net).

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<sup>xxi</sup> For a civil society comment, see *Consenso Ciudadano por la Reforma Política, Propuestas de Reformas a la Ley Electoral y de Partidos Políticos*, August 2000.

<sup>xxii</sup> Details of the CRE proposal cited here are taken from a comparison of election reform proposals done by Minugua, the United Nations mission to Guatemala. *Proyecto Pro-Ley/Comisión de Asuntos Electorales, Proyecto de Reformas a la Ley Electoral y Partidos Políticos y Los Cambios que ha Sufrido en el Proceso de Creación de la Ley*, n.d.

<sup>xxiii</sup> A part of the CRE draft that the TSE subsequently objected to was a plank obliging the Tribunal to assume control over the whole national transport system on election day in order to prevent parties from trucking voters to the polls. The plank was later dropped.

<sup>xxiv</sup> These comments can be found in *Tribunal Supremo Electoral, Segunda Comparación de Propuestas de Reforma Electoral*, August 2001, at [www.tse.org.gt](http://www.tse.org.gt). See also Horacio Boneo, “Una Contribución al Análisis de las Reformas a la Ley Electoral y de Partidos Políticos,” mimeo, November 2001.

<sup>xxv</sup> Cf. *Posición de Foro Guatemala con Relación al Proyecto de Ley que Reforma la ley Electoral y de Partidos Políticos*, 2001, pp.7-8.

<sup>xxvi</sup> *Agenda Nacional Compartida*, p.30.

<sup>xxvii</sup> Details of the 2001reform proposal are taken from the Minugua document cited above. TCC found valuable comments on the draft in *CIEN-Cámara Empresarial, Proyecto Difícil: Comentario a las Reformas de la Ley Electoral y de Partidos Políticos*, August 2003; and in *Foro Guatemala, Posición de Foro Guatemala...*, op.cit.

<sup>xxviii</sup> Italics are used in this report for emphasis, and do not represent exact translations of the original text.

<sup>xxix</sup> *CIEN-Cámara Empresarial*, op.cit., pp.7,11.

<sup>xxx</sup> See ruling in the *Diario de Centro América* (official gazette), March 19, 2001.

<sup>xxxi</sup> Cf. *Prensa Libre*, “Deuda política sube de Q2 a Q16 por voto,” April 1, 2004.