International Standards and Good Practices Relating to the Regulation of Political Parties

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March 2016

This report is produced by an expert from the International Foundation of Electoral Systems (IFES), with support from the Australian Department of Foreign Affairs and Trade and Global Affairs Canada. Any opinions expressed in this document are those of the author and do not necessarily represent the views of IFES or the Australian or Canadian Governments.

Global Affairs Canada Affaires mondiales Canada

Introduction

The following pages present some ideas for the discussion of international standards and good practice on political party regulations. The paper is structured in a thematic manner to explore the most relevant topics. The following five sections of the paper analyze selected aspects of political party regulations from the perspective of international good practice, namely:

1) The Regulation of Political Parties,
2) The Registration of political parties,
3) Regulating Internal Party Democracy,
4) Gender Equality, and
5) Political Party Finance

This paper argues that striking the appropriate balance between state regulation of parties as public actors and respect for the fundamental rights of party members as private citizens, including their right to association, requires well-crafted and narrowly tailored legislation.

Observations and recommendations made in this paper are designed for a more general application, although specific national/local situations are the most important factor and should be taken into account adequately.

1. The Regulation of Political Parties

Political Parties have developed as the main vehicle for political participation and are recognized as vital to the functioning of modern democracy. Political parties are a key element and a crucial linking mechanism between the individual and the state by integrating groups and individuals into the pluralistic political process.

In general, the international framework for protecting the rights of political parties is based on the rights to freedom of association and freedom of expression, and the right to assemble peacefully. These principles were stipulated in the 1948 Universal Declaration of Human Rights[1] and have subsequently been transformed into binding legal obligations through a number of international and regional human rights instruments.

The International Covenant on Civil and Political Rights (ICCPR)[2] is the main legally binding instrument applicable to states in this regard. In addition, International Convention on the Elimination of Racial discrimination[3] and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW)[4] are integral to understanding the state's role in ensuring equality with regards to political parties. Further, the rights and protections articulated in these legally binding documents are reiterated in customary international law. In terms of political party financing relevant international standards are found principally in the United Nations (UN) Convention Against Corruption Article 7(3).

[1] See in particular Articles 19 and 20
[2] See in particular Articles 19, 22, and 26
[3] See in particular Article 5
[4] See in particular Articles 3, 4.1 and 7

From the perspective of international standards, there are no simple or universal answers to the problems of regulating the development and functioning of political parties. In general, appropriate legislation should: a) minimize legal control of party functions, b) clearly establish the limits of state authority, and c) contribute to political pluralism. As basic and fundamental rights, freedom of association and the freedom of expression should be enjoyed free from regulation. Any activities regarding association with and the formation of political parties that are not expressly forbidden by law should, therefore, be considered permissible.[5]

Moreover, legislation regarding political parties should follow some key principles:[6]

- The right of individuals to associate and form political parties should, to the greatest extent possible, be free from interference;
- Limitations imposed on the rights of political parties must be proportionate in nature and effective at achieving their specified purpose. Particularly in the case of political parties, given their fundamental role in the democratic process, proportionality should be carefully weighed and prohibitive measures narrowly applied;
- Legislation should aim to facilitate a pluralistic political environment;
- Legislation enacts necessary mechanisms and practices allowing the free exercise of the individual right to freely associate and form political parties with others; and
- The implementation of legislation relevant to political parties must be undertaken by bodies that enjoy guaranteed impartiality both in law and in practice. The scope and authority of regulatory agencies should be explicitly determined by law.

2. The Registration of political parties

Requirements for registration do not in themselves represent a violation of the right to free association. As political parties may obtain certain legal privileges (e.g., public funds) based on their legal status, it is reasonable to require political parties to register with a state authority.

In Europe, the conditions for establishing a political party typically include a minimum number of signatures or founding members, the payment of a deposit or fee, the publication of the information in the official gazette, and the requirement for specific documents (party statutes, charter, programme, logo, etc.). Yet, the most important distinction is based on the type of authority in charge of the registration and supervision of parties.[7]

When registration as a political party is required, substantive registration requirements and procedural steps for registration should also be reasonable. Two requirements in particular

[5] Guidelines on political party regulation by OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84th Plenary session (Venice, 15-16 October 2010), para 43.
[6] Ibid. paragraphs 12-23
[7] European Parliament Study on Criteria, conditions, and procedures for establishing a political party in the Member States of the European Union, 2012, p 7

could be considered here: *minimal membership requirements* and *territorial requirements*. However, as illustrated below, some pre-conditions for the registration of political parties such as certain territorial representation and a minimum membership could be problematic in light of the principle of free association.

2.1 Minimum membership requirements

Comparative study of party legislation in European democracies suggests that over thirteen of those States impose a minimum membership requirement on political parties.[8] In particular, in order to obtain registration, political parties are required to prove that they have a certain number of founding members. The required minimum membership ranges from 30 in Turkey and 100 in Croatia to 5,000 in Moldova and 25,000 in Romania. Five countries (Austria, France, Germany, Italy and Spain) do not impose any minimum membership requirement on political parties. Some countries, while not setting a membership requirement as such, make registration of a political party conditional on producing a certain number of signatures of support (e.g. 5,000 in Finland and Norway and 10,000 in Ukraine).

In only two countries there is a statutory requirement that a political party establish regional branches in a certain number of regions (in more than one half of the regions in Ukraine and in all regions in Armenia). The legislation of two more countries requires political parties to have members domiciled in a certain number of regions (no fewer than one hundred and fifty members in more than one half of the regions in Moldova and no fewer than seven hundred members in at least eighteen regions in Romania). Although limitations based on minimum membership are legitimate, the state must ensure that they are not overly burdensome so as to restrict the political activities of small parties.[9]

2.2 Territorial Requirement

In a small number of democracies, political party laws require that a party be represented nationwide, covering majority of the country.[10] In terms of international good practice, a high threshold for registering an association as a party could reduce the representation of pluralistic views.

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[8] See Venice Commission Code of Good Practice in the Field of Political parties, Adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008), as well as European Parliament Study on Criteria, conditions, and procedures for establishing a political party in the Member States of the European Union, 2012

[9] Guidelines on political party regulation by OSCE/ODIHR and the Venice Commission, adopted by the Venice Commission at its 84th Plenary session (Venice, 15-16 October 2010), para 76

[10] Russia should be mentioned here, in particular, where a political party must have regional branches in more than half of the subjects of the Russian Federation, requiring at least 400 members or more. See CDL-AD(2012)003 Opinion on the Law on political parties of the Russian Federation, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), which stated in §24 that: "(…) A pluralist party system, fulfilling its essential role in a democratic polity, can only emerge if facilitated by a stable legislation which does not impose unjustifiable requirements for registration, nor intrusive controlling mechanisms."

Territorial requirements can be disadvantageous for the formation of parties representing minority communities and smaller, regionally-based or issue-driven political parties. In terms of the international good practice, it could be argued that: "Provisions regarding the limitation of political parties which represent a geographic area should generally be removed from relevant legislation. Requirements barring contestation for parties with only regional support potentially discriminate against parties that enjoy a strong public following but whose support is limited to a particular area of the country."[11] Although the promotion of national unity is an admirable goal, it should not prevent smaller parties from registering.

In general, for newly established democracies, general restrictions and requirements on political party registration should be limited or even removed with the passage of time. There are different means of protecting state institutions and national security other than a sweeping impediment to the establishment of regional parties.

2.3 Dissolution

As political parties are integral vehicles for political activity and expression, their dissolution should be allowed only in extreme cases as prescribed by law and necessary in a democratic society. According to international good practice, a political party should be banned or dissolved only as a last resort and in accordance with the procedures which provide all the necessary guarantees to a fair trial.[12]

Thus, political parties should never be dissolved for minor administrative or operational breaches of conduct. Nor should a political party be prohibited or dissolved because its ideas are unfavourable, unpopular or offensive. Sanctions – including in the most serious cases dissolution[13] – should be imposed only on political parties that use illegal methods, incite violence or put forward a policy aimed at the destruction of democracy or democratic rights and freedoms.

3. Regulating Internal Party Democracy

Political parties in Europe have faced three main evolutions in the last twenty years: a gradual decline of trust in political parties among citizens, a growing personalization of politics, and a shift in attitudes towards growing citizens' demands for more participation.[14]

As observed by the Venice Commission, "In contemporary democracies, two main principles are central to the internal functioning of political parties. The first one is the principle of party autonomy, under which political parties are granted associational autonomy in their

[11] Guidelines on political party regulation, para 80.
[12] Ibid, para 92
[13] Article 10 Paragraph (1) of Constitutional Court Law says, "The Constitutional Court is authorized to hold trials at the first and final stage and will produce final decisions on the following: (…) c. Dissolution of political parties.
[14] European Parliament Study on Criteria, conditions, and procedures for establishing a political party in the Member States of the European Union, 2012, p. 7

internal and external functioning. According to this principle, political parties should be free to establish their own organisation and the rules for selecting party leaders and candidates, since this is regarded as integral to the concept of associational autonomy. The second element is the principle of internal democracy, the argument being that because political parties are essential for political participation, they should respect democratic requirements within their internal organisation."[15]

These democratic requirements that are sometimes imposed on parties can be identified as a general "commitment to democracy." In fact, there are two possible subtypes here: rejection of anti-democratic ideologies; and adoption of internal democracy as a way of making party decisions and organizing internally.

In the first case, parties in democratic systems must reject the use of violence as a political tool and should not advocate or resort to violence, maintain their own militias or use hate speech as a political tool. Parties should not seek to disrupt meetings of rival parties, nor should they hinder the free-speech rights of those with opposing views.

Clearly, parties that advocate or incite violence, whether against the regime or against other party or citizens, may legitimately be banned. Yet, parties that peacefully advocate fundamental change in the constitutional structure of the state (for example, federalism rather than a unitary state) or in the economic system (socialism rather than capitalism) through the existing legal process are another matter.

With regard to the second aspect of democratic commitment, some European democracies have enacted legislation requiring that certain internal party functions be democratic in nature. The most commonly accepted regulations are limited to transparent party decision-making and seeking input from their membership when determining party constitutions and choosing candidates.

A variety of arguments have been advanced to support this emphasis on intraparty democracy.[16] Some of them are based on the following assumptions:

- Adopting intraparty democracy shows a commitment to system level democracy on the part of party leaders.
- Internal party democracy might lead to greater demographic diversity in party candidates and leaders, which will also lessen feelings of alienation and exclusion.
- Internal democracy might galvanize party leaders to be responsive, and thereby produce governments that are more in tune with popular sentiment.

Restrictions of membership should be carefully constructed so as not to be discriminatory in nature, and strike a careful balance between this principle of non-discrimination and the need for political associations to be based on collective beliefs. In particular, in the case of

[15] CDL-AD(2015)020 Report on the method of nomination of candidates within political parties, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015) §§5-6,

[16] For more details, see in particular Susan Scarrow, Political Parties and Democracy in Theoretical and Practical Perspectives, Implementing Intra-Party Democracy, NDI 2005

party mergers, splinters or the expression of new platforms, party members should be allowed the freedom to continue or cease their membership activity as they see fit.[17]

3.1 Internal ballots to make decisions about personnel (leaders, candidates) and policies

Research suggests that parties have introduced major changes in order to promote more democratic leadership selection. The main transformation has been the trend towards more inclusive bodies in charge of the selection of the party leader. There has been a trend implying the transfer of the power to choose the party leader. Power has shifted away from the party elite (in most cases, the parliamentary party group) to either conferences attended by party delegates or to party members.[18]

Although internal ballots are becoming increasingly popular with parties in many democracies, these practices are still largely unregulated. As argued in this paper, the state has a limited role to play in regulating the internal practices of private associations, including those of political parties. Public authorities should refrain from exercising excessive control over internal organisation of parties, such as membership, number and frequency of party congresses and meetings, operation of territorial branches and subdivisions. Parties must have the ability to determine party leadership and candidates, free from government interference.[19]

The case for intervention seems strongest in the areas in which parties or candidates might use intra-party ballots to circumvent legal requirements of equality and transparency.[20] Thus, as suggested by Scarrow,"There may be stronger grounds for state regulation in regards to ballots for selecting candidates for public elections than for those to decide party policies."[21] Furthermore, Scarrow argues that one of basic principles for intra-party ballots is that "contests should be conducted in a way that produces clear outcomes, accepted by all participants."[22]

Thus, it is in the public interest to make the outcomes of internal ballots acceptable to participants rather than litigating them in the streets or in the public courts. Good practices in this regard would include the following:

a. Party constitutions should contain clear rules about which party organ(s) has/have the authority to establish rules for party ballots and for overseeing their conduct.

b. Whenever possible, contest rules should be established in advance of the contest, not in an ad hoc way that reacts to specific circumstances or candidates.

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[17] Guidelines on political party regulation, para 115

[18] European Parliament Study on Criteria, conditions, and procedures for establishing a political party in the Member States of the European Union, 2012, p. 48

[19] Guidelines on political party regulation, para 113

[20] See Susan Scarrow Intra-Party Ballots and Procedural Fairness: What Role for State Regulation or State Aid? Paper prepared for OSCE/ODIHR Party Experts conference. Warsaw, Poland. July 10-11, 2013.

[21] Susan Scarrow Intra-Party Ballots and Procedural Fairness: What Role for State Regulation or State Aid? Paper prepared for OSCE/ODIHR Party Experts conference. Warsaw, Poland. July 10-11, 2013.

[22] Ibid.

c. Ballots should be conducted so that all who are eligible to participate (as defined by party rules) are actually able to participate.

d. Ballots should be cast and counted in a way that guarantees the credibility of results.[23]

One way for a state to minimize litigation of disputed intra-party election results would be to provide procedural support for parties' intra-party ballots, possibly with strings attached to increase participation and transparency.

4. Gender Equality

The Fourth UN World Conference of Women held in Beijing in 1995, and its Platform for Action[24] called on political parties to:

a. Consider examining party structures and procedures to remove all barriers that directly or indirectly discriminate against the participation of women;

b. Consider developing initiatives that allow women to participate fully in all internal policy-making structures and appointive and electoral nominating processes; and

c. Consider incorporating gender issues in their political agenda, taking measures to ensure that women can participate in the leadership of political parties on an equal basis with men.

As observed by the UN Secretary-General "The participation of women in political parties is important because it provides a path to power and political decision-making. It leads to participation in parliaments and other elected bodies, as well as nominations to positions in the cabinet or other political offices and the judiciary."[25]

The introduction of temporary special measures has led to some of the most significant increases in women's political representation among European democracies. For example, Slovenia introduced a quota in 2005, which was followed by a rise from 12.2 per cent women MPs to 36.4 per cent. Albania's 2008 legislated quota saw a rise from 6.4 per cent in 2005 to 20.7 percent ten years later. Kyrgyzstan increased women's representation from 2 percent in 2000 to 23 per cent in 2014, following the adoption of a 30 percent quota for each gender on electoral lists in 2007. Moreover, 22 European countries address gender-based discriminations and use voluntary party quotas, including: Austria, Croatia, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Iceland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Romania, Slovakia, Spain, Sweden, Switzerland, and United Kingdom.[26]

[23] Ibid.
[24] The United Nations Fourth World Conference on Women Beijing Declaration, adopted in 1995, articles 181 – 194, <http://www.un.org/womenwatch/daw/beijing/platform/decision.htm>.
[25] Review and Appraisal of the Implementation of the Beijing Platform for Action, Report of the UN Secretary-General, 2000,<http://www.un.org/womenwatch/daw/csw/ecn6-2000-pc2.pdf>.
[26] For more details see Global Database of Quotas for Women at www.quotaproject.org

There are also a broad range of interventions included under the umbrella of temporary special measures, such as: party funding regulations, campaign support, targeted recruitment and promotion, and allocation of resources.

Lack of financial resources is one of the key barriers for women's political participation. Allocation of public funds to political parties should be contingent on compliance with requirements for gender equality and should not reinforce existing gender gaps. An allocation of public funds based on party support for women candidates and party leaders is not discriminatory and should be considered in light of the requirements for special measures to be adopted by states according to the UN Convention on the Elimination of all forms of Discrimination Against Women.[27]

In this respect, 15 countries currently have provisions linking the provision of direct public funding to gender equality: Bosnia and Herzegovina, Colombia, Croatia, Ethiopia, France, Haiti, Italy, Kenya, South Korea, Mali, Niger, Papua New Guinea, Portugal, Romania and Serbia.

Additional voluntary measures that have proved successful include:

- Target or voluntary party quotas for gender-balanced selection of candidates;
- Separate women's organizations to achieve greater solidarity of women members and build networks, mentoring and training projects for future candidates;
- Internal party quotas for positions of responsibility within party, and party delegations to ensure women members have equal opportunities with men to gain political experience, name recognition and electoral success;
- Future leadership programmes with equal access for men and women, including measures to develop leadership potential among minority women; and
- Raising awareness about women's political participation among the general population.

5. Political Party Finance

Public funding systems have been designed and adopted in many states as a potential means for preventing corruption, supporting political pluralism, and removing undue reliance on private donors. Generally, legislation should create a balance between public and private contributions as sources of funding for political parties. Subsidies should be set at a meaningful level to provide support, but should not be the only source of income or create over-dependency on state support. Finally, legislation might put in place review mechanisms to periodically determine the impact of public financing and, as needed, altering the amount of funding allocated.

5.1 Transparent and accountable party finances - Disclosure

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Disclosure is a necessary condition for any system of public control of political finance, and a variety of disclosure requirements are adopted.[28] Political parties are required to submit routine or periodic financial reports to public officials, and in most systems electoral committees and candidates are required to file special reports during or immediately after election campaigns. In general, disclosure may help achieve the following ends:

1. Financial disclosure contributes to the overall transparency of the electoral process, offering voters an opportunity to learn more about political contenders in order to make an informed decision at the polls.
2. Requirements to disclose sources of funding are likely to encourage parties/candidates to raise and also spend their financial resources in ways that are acceptable to a majority of voters and do not provoke political scandals.
3. Disclosure emerges as an obstacle to corruption, which is likely to be greater when parties' financial transactions are hidden from the public eye.
4. Public disclosure can serve as a barrier to excessive campaign spending in particular countries/cultures where money in politics is viewed with suspicion.[29]

An ideal political finance system should require comprehensive disclosure of all financial transactions, including loans or advances. The law should require the party or candidate to disclose details of each contribution, expenditure or loan/advance, such as their amount; the identity, address and employer/business of each contributor or recipient; and the date and amount of each transaction.

The public and the media should be able to scrutinise records online. With the technology available today, information can be sent to the regulatory body in "real time" and then posted on its website. In jurisdictions such as the United States, Canada, the UK, and Lithuania, computer software is provided to parties and/or candidates to ease the process of submitting financial reports. These reports should be formatted in such a way that further statistical and/or audit study is simplified.

However, to achieve these objectives, financial reports covering routine and campaign funding should fulfil the following criteria:

1. Reports should provide for the full accounting of assets and liabilities by the reporting entity ('Baseline' financial statement – required just once, or on a cyclical basis);
2. Reporting forms should be based on requirements set forth by the independent body after consultations with parties and candidates and should be supported by manuals/guides and training;
3. Reports should be based on a calendar timeline, such as an annual, biannual, or quarterly reporting schedule;

[28] See also Money in Politics Handbook: A Guide to increasing transparency in Emerging Democracies, USAID (Washington: Office of Democracy and Governance 2003)
[29] Marcin Walecki, Challenging the Norms and Standards of Election Administration (IFES, 2007), pp. 80-81

4. Reports should be introduced before the beginning of the reporting period;
5. Reports should be publicly accessible (e.g., Internet, newspapers);
6. Reports should be detailed and comprehensive (but not absurdly detailed) and should reflect conventional accounting standards;
7. Reports should include, in addition to contributions and expenditures, information about donations-in-kind, loans and credits received, and debts;
8. Reports should be standardized for routine and campaign;
9. Reports should be understandable to the public at large; and
10. Reports should be available for future reference.

While disclosure is an important element in all political finance regulatory systems, there are some limits to the reporting that can be required from political parties. The challenge is to create a political finance system that does not pose a barrier to full citizen participation and the development of multi-party democracy. Regulations should not place an undue burden on parties, candidates and oversight bodies.

5.2 Enforcement of party funding regime

As Keith Ewing rightly suggests, "In addition to strategies based on transparency, controlling costs and regulating the source and size of contributions, there is also a need to address the question of enforcement."[30] There are a number of different ways of enforcing political party provisions, which the State itself must determine. However, good practice is that "[w]hichever body is tasked with regulation should be nonpartisan in nature and meet requirements of independence and impartiality."[31]

Furthermore, it is challenging for any oversight body to detect illegal sources of political party without sufficient powers of investigation. Thus, an ideal enforcement mechanism requires a comprehensive system consisting of all the components found in a system of justice, namely: investigation, prosecution, adjudication, and sanctions. According to a leading scholar, Khayyam Paltiel, "Enforcement demands a strong authority endowed with sufficient legal powers to supervise, verify, investigate and if necessary institute legal proceedings. Anything less is a formula for failure."[32]

Enforcement can be undertaken by a variety of bodies, including a competent supervisory body or state financial body. Legislation and practice must ensure the designated body's independence from political pressure and commitment to impartiality. Legislation should clearly delineate powers and activities, specify the types and scope of violations requiring sanction, and provide clear guidance on the process for appeal against regulatory decisions.

[30] Keith Ewing "Corruption in party financing: the case for global standards", in TI Global Corruption Report 2001, p. 195

[31] Guidelines, par. 219 ; See also Human Rights Committee General Comment 25, par 20

[32] Khayyam Z. Paltiel, Party, Candidate and Election Finance, study no. 22, Royal Commission on Corporate Concentration (Ottawa, Ont.: Queen's Printer, 1976), pp. 108-109

The effectiveness of any system will also depend on the cooperation of the various stakeholders, and relies on the monitoring mechanisms provided by parties' financial agents, auditors, banking institutions, government bodies, anti-corruption watch-dog organizations, and the media. An effective enforcement regime is one that enjoys legitimacy in the eyes of the parties, the candidates, the media and, especially, the electorate.

In democracies where a strong and independent regulator is feasible, the following recommendations could enhance enforcement:

1. Obligations, offences and penalties must be clearly identified in law. Regulations should outline clearly who is to be held accountable for which infringement.
2. Lawmakers must anticipate that parties and candidates will seek ways to get around limits and disclosure requirements. Therefore, violations and the corresponding penalties should be clearly outlined in the law. However, penalties such as fines or imprisonment are not the only, or even the best, response to some infractions. Other avenues, particularly administrative sanctions, can be more effective.
3. The system should encourage political parties and candidates to monitor their own financial activities, prevent financial misconduct, and comply with the requirements of professional bookkeeping and reporting.
4. Sufficient resources – in the form of training, consultations, and professional personnel offered to the regulated community – are necessary to enable timely and effective reviews and audits.
5. Enforcement requires that an enforcement agency has the capacity to monitor for compliance, review and audit financial reports, investigate alleged infractions, negotiate and, where necessary, apply the appropriate penalties.
6. Public trust and participation are fundamental to any effective enforcement regime. External complaints should be encouraged and treated seriously.

5.3 Party Financial Audits

Financial audits of political parties look at internal controls to ensure compliance with the legal and regulatory requirements, and internal controls for financial reporting and safeguarding assets. Audit is a precondition for any serious enforcement system. Auditing alone may be ineffective if the oversight body may do so solely based on information submitted to it; to strengthen the auditing process, several countries have provided their oversight bodies with the power to assess the accuracy of financial reports and their compliance with the rules.

One method of attempting to assure the accuracy and integrity of financial accounts submitted by parties and/or candidates is to require that they be examined and certified by professional auditors. There can be several possible levels for audit reviews:

1. Field audits and simple visits to campaign offices (to establish that a campaign is being conducted and that records are being properly maintained, among other

observations that may be made). In some countries, agencies have random audit authority, although in practice they rarely have the resources necessary to conduct them;

2. Statement review (looking for violations that appear on the face of statements filed by a campaign); and
3. Review of back-up documentation (are copies of cheques from donors available and do they match the reported contributions in the filed statements).