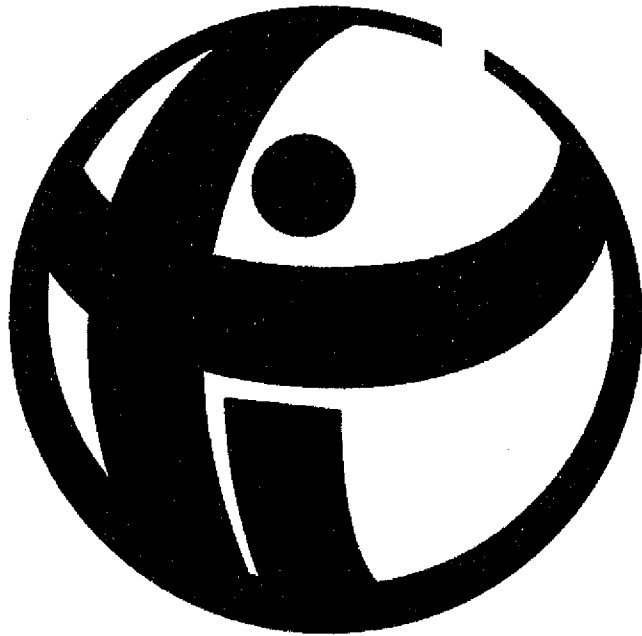


**SUBMISSION TO
THE PARLIAMENTARY SELECT COMMITTEE
ON ELECTORAL REFORMS**



Transparency International - Malaysia

Submitted to the Parliamentary Select Committee on Electoral Reforms

11 November 2011 at Parliament House



TRANSPARENCY INTERNATIONAL – MALAYSIA

(MALAYSIAN SOCIETY FOR TRANSPARENCY AND INTEGRITY (ROS: 1649))

TI-Malaysia promotes good governance, integrity and transparency in Malaysia through advocacy, education, information and research

11 November 2011

YB Datuk Seri Panglima Dr Maximus Johnity Ongkili
Chairman
Parliamentary Select Committee on Electoral Reforms
Parliamentary House
Parliament Building, Jalan Parlimen
50680, Kuala Lumpur

Yang Berhormat,

Transparency International – Malaysia's Submission on Reforms to the Election System and Political Financing in Malaysia

Transparency International – Malaysia (TI-M) is honoured to present to YB Datuk Seri and members of the Parliamentary Select Committee on Electoral Reforms our proposals on reforms to the election system and political financing in Malaysia.

TI-M had conducted extensive research (including interviews with past and present leaders), and published a book entitled *Reforming Political Financing in Malaysia (Reformasi Pembiayaan Politik di Malaysia)*. Additionally, TI-M had organised a nationwide campaign on collecting input and ideas through conferences, workshops and roundtable discussions. The inputs are included in this Submission.

We look forward to your positive response to the TI-M proposals for electoral reforms and political financing.

Your support and cooperation in reforming the election system and political financing in Malaysia is very much appreciated.

Yours sincerely,

Datuk Paul Low
President
Transparency International – Malaysia

CC

Josie M. Fernandez, Secretary-General, Transparency International – Malaysia

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1 Introduction

Financial resources are necessary for political parties and candidates to function effectively in modern democratic systems.

However, money in politics can pose serious corruption risks to the quality of government and democracy. Money can disrupt the democratic principle of fair competition in elections and undermine proper political representation. Problems arise when organisations with private agendas provide large secret funds to political parties/candidates and expect something in return, compromising the quality of government.

TI-M began by conducting research on the state of political financing in Malaysia from 2009-2010. The research comprised interviews with past and present politicians such as Tun Dr Mahathir Mohamed and YM Tengku Razaleigh Hamzah and surveys with various stakeholders such as the Election Commission (EC), Malaysian Anti-Corruption Commission (MACC), politicians, academicians, political analysts, companies, civil society, journalists, university students and the general public. TI-M also organised validation workshops, a roundtable discussion, and a national conference as well as state level consultations on reforms in political financing in Malaysia.

The research culminated in the book "Reforming Political Financing in Malaysia" and "Reformasi Pembiayaan Politik di Malaysia" which serves as a guide to reforming political financing in Malaysia.

We recognise that not all reforms can be implemented at once; therefore TI-M proposes the following recommendations.

We believe the following recommendations are actionable items and could be enforced before the 13th General Election.

- i. Autonomy and Independent Functioning of the Election Commission**
- ii. State Funding for Political Parties to Finance Their Electoral and Non-electoral Activities**
- iii. Regulation of Reporting of Political Financing**
- iv. Full disclosure of Political Party and Candidate Financing**
- v. Regulating Political Donations**
- vi. Equal and Fair Coverage by and Access to Public Media**
- vii. Establishing a Neutral Caretaker Government After Elections are Called**

2 Why electoral and political financing reforms are important

The government has embarked on a transformation programme that covers six National Key Result Areas (NKRAs), including fighting corruption. One of the government's initiatives is to review current legislation related to political funding and to adopt new initiatives to improve transparency in political financing. Principles such as "transparency", "accountability" and "integrity" are included in the government's blueprints namely, the New Economic Model and 10th Malaysia Plan. The TI-M campaign on reforming political financing supports the government's transformation programme (GTP).

Political corruption and money politics cause detrimental effects to the nation. Money politics is often the starting point of the vicious cycle of corruption in a society. The damage caused by political corruption includes:

- Compromising the quality of leadership
- Creating unfair competition among parties by favouring candidates who have access to more resources. Citizens' rights to full participation in society is denied
- Threatening the principle of equality by allowing those who hold economic power to enjoy greater political influence
- Diverting public resources into private hands
- Causing leakages in the federal development fund impeding it from reaching the grassroots level, thus, increasing income inequality
- Reducing the state's governing capacity
- Undermining the pillars of development, the human rights of individuals and the legal frameworks intended to protect them

It is vital for the government to act quickly to put a stop to the damages that political corruption could bring to the nation.

3 TI-M's recommendations

Based on the research and consultations with stakeholders, TI-M proposes 22 reforms to improve transparency, integrity and accountability in political financing. The proposed recommendations focus on three key areas: Institutional Reforms (recommendations #1 - #6), Legislative Reforms (recommendations #7 - #19) and Media Reforms (recommendations #20 - #22).

No.	Recommendations
1	<i>Review the Federal Constitution and legislation governing the Election Commission to enhance its autonomy and independence.</i>
2	<i>Introduce appropriate mechanisms to enhance the independent functioning of the Election Commission.</i>
3	<i>Make it mandatory for election expenses of political parties and candidates to be independently audited by certified auditors before submission to the Election Commission.</i>
4	<i>Build the capacity of the Election Commission to verify the reporting of campaign financing.</i>
5	<i>Base the limits of candidates' and political parties' expenditures on the geographical area of the constituency and size of the electorate.</i>
6	<i>Introduce a mechanism for establishing a neutral caretaker government after elections are called.</i>
7	<i>Enact a new Political Parties Act, to regulate political parties.</i>
8	<i>Register political parties with the Election Commission instead of with the Registrar of Societies.</i>
9	<i>Regulate internal party elections under the Political Parties Act.</i>
10	<i>Make it mandatory for disclosure of all sources of financing and expenditure by political parties.</i>
11	<i>Amend the Election Offences Act 1954, which only regulates expenditure incurred between nomination day and polling day, to reflect all expenses incurred for general elections.</i>
12	<i>Prohibit covert funding such as slush funds.</i>
13	<i>Prevent organisations linked to political parties from being used as conduits for political funding.</i>
14	<i>Impose a limit on contributions by individuals to political parties.</i>
15	<i>Prohibit political parties from receiving foreign donations.</i>
16	<i>Impose an expenditure limit on the electoral activities of political parties.</i>
17	<i>Prohibit parties from directly or indirectly owning or being involved in business.</i>
18	<i>Include all shareholders in company decisions for political contributions.</i>
19	<i>Introduce state funding for political parties to finance their electoral and non-electoral activities.</i>
20	<i>Prohibit ownership of media by political parties.</i>
21	<i>Repeal the Printing Presses and Publications Act (PPPA) 1984.</i>
22	<i>Allow equal and free access to public media for all interest groups under the Political Parties Act.</i>

4 TI-M's priorities

TI-M and civil society groups involved in TI-M's nationwide campaign recognise that not all reforms can be implemented at once; therefore TI-M proposes the following recommendations to be implemented before the 13th General Election.

(a) Enhancing the Autonomy and Independent Functioning of the Election Commission

- I. EC as the body in charge of elections must be provided with adequate authority and independence under the law to carry out its constitutional functions.
- II. The following area should be of paramount importance for reforms:
 - Appointed EC members must be of high quality and credible, upholds integrity and accountability and with broad representation to foster democratic governance.
 - The EC must be accountable and reporting directly to the King only.
 - The EC should be given more autonomy in terms of making policies within its jurisdiction and submitting its own proposal to the Parliament rather than going through the Prime Minister and the Cabinet.
 - The EC should not allow the constituency delineation exercise be politicised. It should possess the ultimate power to have the final say on the exercise.
 - The EC should be working closely with the National Registration Department to update the Electoral Roll on regular basis. Automatic voter registration should be implemented.
 - The EC must be empowered to enforce all regulations to ensure that the election is held in a free and fair manner, especially in relation to corrupt practices to influence the outcome of the election, and the monitoring of political financing.

(b) State Funding for Political Parties to Finance Their Electoral and Non-electoral Activities

State funding is crucial for improving transparency, accountability and fairness in political financing, and to ensure that political parties and candidates have sufficient resources to run viable campaigns. Public money justifies requiring greater transparency and accountability by the parties and candidates, and enhances disclosure and monitoring of political corruption.

- i. State funding should be based on the following principles:
 - A reasonable balance between state and private funding

- Fair criteria for the distribution of state funding to parties
 - Strict rules concerning private donations
 - Limits on parties' election expenditure
 - Complete transparency of accounts and full public disclosure
 - Establishment of an independent audit authority to monitor the usage of the funding
 - Severe penalties for parties and candidates who violate the rules.
- ii. Funding should be proportionate to previous election results, such as the popular vote gained, parliamentary seats and state assembly seats.
 - iii. Funding must be paid to the political parties and not to individuals, but can be paid directly to incumbent independent candidates.

(c) Regulation of Reporting of Political Financing

- i. The Election Offences Act 1954 should be amended to require party election expenses to be independently audited by certified auditors before submission to the EC.
- ii. The Elections Act 1958 should be amended to empower the EC to carry out investigations and verify financial reports submitted by political parties and candidates.

(d) Full disclosure of Political Party and Candidate Financing

Political parties are required by the Societies Act 1966 to submit annual audited financial reports to the Registrar of Societies (ROS), but there is no public disclosure or access to the reports. Transparency in finances encourages voters to exercise their rights, and civil society is empowered to "follow the money" and provide a check on political corruption.

- i. Political parties should be required by law to make full public disclosure of the amounts and sources of their financing and expenditure. There must be public disclosure and access to political party accounts.

(e) Regulating Political Donations

Currently there is no legislation that regulates political donations.

- i. There must be limits on contributions by Malaysian individuals and organisations or companies to political parties. Ideally, companies should be prohibited from making

political donations. This is the best means to curb the capacity of those with private agenda to influence election outcomes.

- ii. A list of non-permitted donors should be prepared. These should include government-linked corporations, non-citizens and foreign organisations.

(f) Equal and Fair Coverage by and Access to Public Media

- i. Provide fair and equal coverage for all campaigning political parties during election campaign periods. Political parties and candidates should have access to all public (taxpayer supported) media, including TV, radio, national news agency and websites.

(g) Establishing a Neutral Caretaker Government After Elections are Called

- i. The Malaysian political system follows a long standing constitutional convention where the government of the day assumes the role of a caretaker government during the interim period between the dissolution of Parliament and the appointment of a newly elected government. The Malaysian Constitution is silent on this matter.
- ii. A clear separation between party and government is crucial during the interim period. Members of the incumbent government who continue to perform official functions during a campaign period would be having an unfair advantage by using public funds while on election business and securing free media coverage.
- iii. A caretaker government should therefore be established to carry out the day-to-day administration work of a government. It should not be allowed to allocate funds or announce development plans and other inducements.
- iv. The caretaker government, while maintaining social order, may continue to implement existing policies but may not initiate or announce new policies.

5 Matter of Urgency

Fighting corruption is high on the government's agenda, as it is an NKRA, and reforming political financing in Malaysia is crucial to curb political corruption, often described as "the mother of all corruption". TI-M proposed reforms on political financing are supported by a wide cross-section of Malaysians and is crucial for the future of Malaysia. TI-M calls for the implementation of the proposed reforms before the 13th General Election.

APPENDICES

Appendix I – Proposals for Direct State Funding and Equal Access to Public Media

1. Proposal on Direct State Funding (DSF)

- a. Currently, there are a total of 222 Parliamentary seats in the *Dewan Rakyat* and a total of 505 State Assembly seats in the various *Dewan Undangan Negeri*.
- b. DSF given on an annual basis to the political parties only, not to individuals.
- c. TI-M is proposing the implementation of two forms of DSF
- d. Electoral Competition Funding for Elected Representatives:
 - i. The proposed electoral competition funding would be given to all incumbent representatives.
 - ii. A formula should be worked out in deciding the state funding for Parliamentary and state seats based on the following factors; size of the constituencies, rural or urban area, number of votes etc
 - iii. The funding for Members of Parliament (MPs) shall be financed by the federal government while the funding for State Assembly Representatives (SARs) shall be financed by their respective state government.
 - iv. This funding must be given to the political parties participating in elections, which would distribute the funding according to their own prerogatives. The political parties are responsible and accountable for the public money.
 - v. For independent incumbent candidates, the funding would be given to the candidates.
- e. Monthly Allocation for Constituencies of Elected Representatives in addition to current benefits i.e. attending parliamentary sittings, travel, entertainment, hiring a driver and other expenses at fixed rates.
 - i. The proposed monthly allocation would be given to all elected representatives throughout their terms.
 - ii. A monthly allocation of RM10, 000 would be given to all MPs, while RM5, 000 would be given to all SARs. The total amount disbursed annually would be RM26,640,000 for MPs, and RM30,300,000 for SARs.
 - iii. The funding for MPs shall be financed by the federal government while the funding for SARs shall be financed by their respective state government.

- iv. This funding must be given to the political parties, which would distribute the funding according to their own prerogatives. The political parties are responsible and accountable for the public money.
- v. For Independent incumbent candidates, the funding would be given to the candidates.
- f. All the parties and elected representatives must submit an annual financial report of the handling of the distributed funds to the Election Commission for monitoring and supervision. Failure to do so will result in criminal liability.
- g. Mismanagement of DSF funds will be a criminal offence.
- h. A special committee/commission must be established to monitor the adequacy of the financing; with power to adjust the DSF, based on inflation and the financial needs of the political parties.

2. Proposal on Equal Access to Public Media

- a. Proportionate airtime, particularly in public media should be given to all political parties that contest for *Dewan Rakyat*. Public media includes state-owned radio and television stations (eg RTM, TV1 and TV2), and Bernama.
- b. The airtime should be allocated equally to coalitions eg *Barisan Nasional* and *Pakatan Rakyat*, and the coalitions will divide their allocations between their component parties.
- c. During the campaign period, each coalition would be allocated equal daily airtime on public radio and television channels.

Appendix II – State Funding in Various Countries

United States¹

1. Overview

- a. At the federal level, public funding is limited to presidential elections including the party primaries.
- b. Some public finance programmes are also available at state and local levels.
- c. The fund comes from a "\$ 3 tax check-off" where by individual tax payers can indicate on tax form their consent to divert USD 3 from the tax they pay to the presidential fund.

2. Qualifying and Distribution Rules (Federal):

- a. Subsidies for Presidential Nominating Conventions
 - i. Candidates from the two major parties are offered government fund of \$ 4 million (plus a cost-of-living adjustment) for their nominating conventions.
 - ii. Minor party candidates may be eligible for partial funding based on their parties' previous performance.
- b. General Election Funding
 - i. The Presidential nominee of each major party is eligible for a public grant of \$20 million (plus a cost-of-living adjustment) for campaigning in the general election.
 - ii. Minor party candidates may be eligible for partial funding based on their parties' previous performance if they won at least 5% of votes. New parties winning more than 5% of votes receive funding after election.
- c. Subsidies for Primary
 - i. Candidates who have privately raised \$ 5000 each in at least 20 states are eligible for a dollar-to-dollar match for each contribution to the campaign, up to a limit of USD 250 per contribution.

3. Restrictions and Disclosure Rules (Federal):

- a. The candidates who accept government funding will have to abide various limits in national- and state-level spending, fund raising and use of personal funds.
- b. Candidates need to present finance reports which contain detailed campaign finance information, including itemized accounts of contributions and expenditures in excess of \$200 and debts and obligations owed to or by them.
- c. The Public Records Office also makes available computer indexes, statistical studies summarizing data taken from reports and lists of individuals whose contributions enabled Presidential candidates to qualify for matching funds.
- d. Political Action Committees (specific election outfit to raise fund and campaign for candidates) also need to submit their report.
- e. There are also limits to what one may contribute at national, state or district levels.²

¹ <http://www.fec.gov/pages/brochures/pubfund.shtml>

² http://www.fec.gov/ans/answers_general.shtml

Australia

1. Overview

- a. Available at the Commonwealth (Federal) level (administered by the Australian Election Commission (AEC)³ but major parties still depend on private sources for half of their funding.⁴
- b. Also available at state/territory level for Queensland, Victoria and the Australian Capital Territory.⁵
- c. At least 95% of the payment will be made within four weeks after elections.

2. Qualifying and distribution rules (Commonwealth):

- a. A candidate (Lower House) or a group of candidates (Senate) must poll at least 4% of the formal first preference votes to qualify for funding. This applies to both registered parties and independent candidates.
- b. Technically, this means up to a maximum of 25 candidates or groups of candidates per constituency are entitled to funding but Australia nevertheless has a two-party system due to its Alternative Vote electoral system.
- c. Every formal first preference vote received by the qualifying candidate is multiplied by the current funding rate. The rate is adjusted for inflation for every six months, and stands at \$2.31191 per eligible vote.

3. Restriction and Disclosure (Commonwealth):

- a. The funding is based on entitlement, not reimbursement basis.
- b. Annual financial reports are required for political parties.
- c. Election financial reports are required for all contestants in all elections.
- d. The reports are published on the AEC website for public scrutiny.

³ http://www.aec.gov.au/Parties_and_Representatives/public_funding/files/election-funding-guide-072010.pdf

⁴ The source was the 2006 Annual Locater Returns of the Australian Electoral Commission. See <http://www.political-donations.org.au/issues/public-funding-of-elections/>

⁵ <http://www.political-donations.org.au/issues/public-funding-of-elections/>

Germany⁶

1. Overview

- a. Direct public funding is available for the Federal Diet (National), Landtag (State) and European Parliament (Continental) elections through subsidy and also matching fund for membership fees and private donation.
- b. Funds are distributed four times a year.
- c. Indirect public funding is available through tax exemption for donors, whereby private individuals may deduct 50 percent of their donations below €3,000 (twice that for joint returns) from taxable income, or claim a tax credit of €825 (€1650 for joint returns).

2. Qualifying and distribution rules:

- a. All parties are entitled for public funding if they have obtained
 - i. 0.5% of the vote in the latest national or European election; or
 - ii. 1% in the latest state election
- b. The parties are granted
 - i. annually, €0.85 for each obtained vote (in party list) for the first four million votes and €0.70 for each after that.
 - ii. matching funds of €0.38 for each Euro received from membership fees and individual donations not exceeding €3,300.
- c. Funding are capped in two ways:
 - i. The overall limit for all annually disbursed funds is 133 million Euros;
 - ii. A party may not receive more public annual funds than it has earned or otherwise generated during the year.

3. Restrictions and Disclosure

- a. There is no restriction on private funding. Only donors whose donations exceed €10,000 per year need to be named in the parties' annual financial statements. However, private donations in excess of €50,000 must be disclosed immediately.
- b. Donations are prohibited from (a) charitable organizations, (b) trade unions, (c) professional associations, (d) industrial or commercial associations, (e) government bodies and aliens outside the European Union if donations exceed €1,000 and (e) anonymous donors if donations exceed €500.
- c. All political parties must publicly account for their assets, revenues and expenses, irrespective of whether they are entitled to receive direct state funding. The financial reports must be duly audited by an independent party and submitted with the audit opinion to the President of the German Bundestag, who publishes it as a Bundestag printed paper.
- d. Intentional violations that aim at concealing the receipt or use of funds is punishable by imprisonment up to 3 years or a fine.

⁶ <http://www.loc.gov/law/help/campaign-finance/germany.php>
Transparency International Malaysia

South Korea⁷

1. Overview

- a. Recipients: Political parties
- b. Granting body: Election Commission
- c. Types of Subsidies:
 - i. General Subsidies (paid out 4 times a year)
 - ii. Election Subsidies (for presidential, parliamentary and regional elections)
 - iii. Female Candidate Nomination Subsidies

2. Qualifying and Distribution Rules

- a. General and Election Subsidies
 - i. 50% equally distributed to two major political parties
 - ii. 5% allocated for each party with 5-19 seats in National Assembly (NA, with 298 seats in total)
 - iii. 2% allocated for each party which polled at least 2% of votes or won at least a seat in the last NA elections, provided also having won 0.5% of votes in the last party-based regional elections
 - iv. 0.5% given to each political party that has polled 2% of the last party-based local elections
 - v. The remaining sum is distributed amongst parliamentary parties, with 50% based on seat share and 50% based on vote share.
- b. Female Candidate Nomination Subsidies
 - i. Parties with 30% female nomination will share amongst themselves all the subsidies, based on seat share (50%) and vote share (50%) in the last National Assembly elections.
 - ii. If no parties nominate at least 30% female, the subsidies will be shared equally by parties with 15-30% and 5-15% female nomination, each category based on seat share (50%) and vote share (50%) in the last National Assembly elections.

3. Restrictions and Disclosure

- a. National subsidies are for the operation of political parties, and must not be used for causes other than (a) personnel cost, (b) administrative furnishings and consumable, (c) setting up and maintenance of offices, (d) public utility charges, (e) policy development expenses, (f) training of party members, (g) organizational activity expenses, (h) advertising costs, and (i) election related costs
- b. Recipients of general subsidies must allocate 30%, 10% and 10% for policy research centre, regional branches, and political development of women respectively.

⁷ <http://www.nec.go.kr/engvote/fund/details.jsp>

- c. All political parties must publicly account for their assets and for the sources and uses of their funds, irrespective of whether they are entitled to receive direct state funding.
- d. The statement of assets and liabilities must be duly audited by an independent party and submitted with the audit opinion to the National Election Commission, which would make the report accessible for public inspection.

United Kingdom⁸

1. Overview

- a. UK does not have extensive public finance to all parties except for policy development grants and in the Scottish Parliament.
- b. Opposition parties in both chambers of the Westminster Parliament are entitled to special allocation to help them with their cost.
- c. Indirect funding "in kind": including free delivery of election communications by the Royal Mail, free use of public building during campaigns, and free party political broadcasts are provided to all eligible parties.

2. Qualifying and Distribution Rules (National):

- a. Short Money (House of Commons)⁹
 - i. Available to all parliamentary opposition parties which have won at least 2 seats or 150,000 votes in the last general elections.
 - ii. From 1 April 2008, eligible parties receive "general funding" of £14,015 for every seat won at the last election plus £27.99 for every 200 votes gained by the party.
 - iii. Eligible parties also divide the total allocation of "Travel Expenses" (£153,956 since 1 April 2008) amongst themselves based on the same rule for "general funding"
 - iv. Leader of the Opposition's Office also receives funding (£652,936 for 2008) In addition, the Leader of the Opposition, the Opposition Chief Whip and the Assistant Opposition Whip receive a salary from public funds, on top of their parliamentary salary.
- b. Cranborne Money (House of Lords)¹⁰
 - i. Available to the opposition and cross-bench peers.
 - ii. Leader of the Opposition and Opposition Chief Whip also receive a salary for their duties.
- c. Policy Development Grants:
 - i. An annual grant of £2 million is allocated amongst parties with two parliamentarians who have taken oaths.
 - ii. The funds are allocated according to different classes of parties grouped by size.

3. Restrictions and Disclosure Rules

- a. All political parties must publicly account for their assets and for the sources and uses of their funds, irrespective of whether they are entitled to receive direct state funding.
- b. The statement of assets and liabilities must be duly audited by an independent party and submitted with the audit opinion to the Electoral Commission, who would make parties'

⁸ http://www.electoralcommission.org.uk/party-finance/public_funding

⁹ <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-01663.pdf>

¹⁰ <http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-01663.pdf>

statements of accounts available for public inspection as soon as practicable following their receipt.

- c. Anyone who conceals or attempts to conceal the sources or uses of a party's funds or assets or circumvents or attempts to circumvent the statutory reporting and accounting requirements will be subject to imprisonment, fine and forfeiture of any donations not reported.