

## Transparency International Anti-Corruption Helpdesk Answer

# Overview of parliamentary discretionary spending

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The evidence from the literature surveyed strongly suggests that discretionary spending (known by various terms in differing contexts, such as pork-barrel spending and earmarked funds), whether it is wielded by legislative or executive branches, tends to be used for political rather than welfare-optimising causes. Discretionary funding schemes strengthen the chances of (re)election for those politicians who have access to such schemes while reducing the election chances of their opponents, thus skewing the overall political arena in a manner that does not strengthen democratic norms.

A key source of disagreement in the debate around legislative discretionary spending is the subject of the purposes and roles of legislatures. Many critics of legislative discretionary spending argue that it is unconstitutional to give legislative branches of government executive functions such as spending. Tsubara (2013: 8) posits the so-called “constitutionality test” to describe that the legality of constituency development funds (CDFs) is not necessarily always compatible with the version of separation of powers stipulated in constitutions.

Moreover, discretionary spending schemes looked at in this paper are often associated with high risks of corruption, and all countries discussed in this paper have seen corruption cases involving funds from discretionary spending schemes.

However, case evidence also suggests that banning practices, such as earmarking, did not do away with the practice of discretionary spending practices such as earmarks. Where legislative discretionary spending schemes have been subject to a ban or court order designating it as illegal or unconstitutional, legislators have simply found novel and more indirect ways of channelling money to their constituencies.

Moreover, there is no evidence to suggest that pork-barrel spending in countries where the legislative branch is not able to wield discretionary spending is less of a problem. In countries where the legislature has the ability to fund their constituencies, the spoils of pork-barrel spending may reach a larger proportion of the population – not least constituencies in areas controlled by the opposition.

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## Query

Provide an overview of practices whereby a part of the state budget can be distributed by the parliament to organisations, public or private, according to their own wishes (usually to their regional constituents)?

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## Introduction

In recent decades, many countries have seen roles of legislatures increasing in national budgeting processes (Park & Posner 2007: 2). While the role of the legislative and executive branches of government in budgeting are not equal across political systems, many countries' legislative branches have seen increased influence over the actual execution of the budget (Park & Posner 2007: 2). This is particularly, but not exclusively, the case in political systems that have traditionally given the legislature a very strong role in budgeting processes (Park & Posner 2007:3).

A concern, and the focus of large parts of the literature on discretionary spending, is the so-called pork-barrelling, which refers to “government projects or appropriations yielding rich patronage benefits” (Merriam-Webster, n.d.). In other words, as politicians “bring home the bacon”, they cement

## Main points

- In many cases legislative discretionary spending has been used to strengthen incumbents' chances of re-election, and lines between what is vote-buying and what is a public project can sometimes be blurry.
- Discretionary funds often have a high risk of corruption, such as embezzlement and favouritism, among others.
- Legislative discretionary spending has proven difficult to control and regulate, and bans have not always ended the practice.
- While there is no universally applicable solution to address governance risks in legislative discretionary funds, the space for corruption and vote-buying becomes smaller with more rigid transparency rules and implementation.

support from their constituents. While the term pork-barrelling has American roots, its practice appears to be all but universal. A number of

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different actors and institutions can be involved in pork-barrel spending, and pork-barrel funds may be controlled to different extents by both legislative and executive branches of government. Most of the literature around pork-barrel spending of discretionary funds do indeed concern cases in which incumbent or dominant parties or coalitions engage in the practice.

Bloom and Petrova (2013) studied the awards of 1,688 grants from the European Regional Development Funds in Bulgaria and Latvia. They argue that most regional projects went into areas that supported governing coalition parties in the previous elections, even though many of these localities were comparatively wealthy. A similar recent study from Hungary finds that MPs lobby to direct EU Structural Funds to their constituencies, though, as in many other countries, the structural funds are distributed by an executive agency (Papp 2019: 7). The chance of re-election raises with the amount of spending, in the sense that, the allocation of structural funds improves the chances of MPs from the governing party winning, while leading to poorer election outcomes for opposition politicians (Papp 2019: 13).

Evidence from Australia shows that community development grants (a programme for [supporting regional infrastructure](#)) were distributed unequally, with just 2 per cent of the Australian population receiving 20 per cent of the grants (Bagshaw & Baird 2018). In another recent Australian case, local councils received AU\$140m in grants from the AU\$252 Stronger Communities fund just nine months before the 2019 election in New South Wales (Davies 2020). In total, 95 per cent of the fund went to jurisdictions held by Australia's ruling coalition (Davies 2020b).

In Europe, Rodríguez-Pose et al. (2016) use a 35-year dataset to demonstrate how changing incumbent Greek governments have consistently allocated government resources and projects to either reward constituents or sway opponents. In the Nordic region, pork-barrel politics may not be quite as common, but it still happens. In Finland, for instance, what is often referred to as Bridge Drum policies have resulted in a number of allegedly strange infrastructure projects in the constituencies of MPs and ministers, including large bridges to islands with very few inhabitants (Pohjanpalo 2017). Similarly, in Denmark, groups of MPs, sometimes referred to as the traffic mafias, have successfully been able to build highways in their constituencies by blocking other, more prominent, infrastructure projects (Videbæk 2016).

In the UK, some worry that the post-Brexit era will lead to a comeback of pork-barrel spending, with the Minister of Finance (or Chancellor), Rishi Sunak's plans for a so-called Levelling Up fund for areas in northern England (Woodcock 2020).

This paper is focused on cases in which *legislators* (including those in opposition) can channel discretionary spending to their constituencies.

## Earmarks and constituency development funds

One example of discretionary pork-barrel spending by legislators is earmarks. Earmarks are spending requests assigned to a specific purpose or a specific set of beneficiaries. Earmarks assigned to legislative branches allow elected officials to direct funding to specific projects or areas of their choice (Lynch 2020; Hudak 2018). In the US, earmarks

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are assigned via “insertion”, that is when specific earmarks are inserted into bills (Lynch 2020; Hudak 2018). In Estonia, where a similar practice occurs, political parties get to distribute “roof money” to projects or organisations of their choice, just before the state budget vote (ERR 2020; ERR 2020b). There is a lack of comparative studies on earmarking practices in different parliamentary systems, and most public debate around the earmarking process has happened in the US. Thus, there is little guidance on how to ensure efficient and transparent spending with this type of discretionary funding.

Another type of legislative discretionary spending comes in the form of so-called constituency development funds (CDFs). Like earmarks, CDFs are funds from the central budget meant for distribution among a legislators’ constituencies (Commonwealth Parliamentary Association 2010; Tsubara 2013).

CDFs are typically found in low-income countries and have often been established to accommodate a demand for increased fiscal decentralisation (Tsubara 2013). Proponents argue that, in such contexts, CDFs strengthen the legislature and enable it to meet concrete and specific development needs in potentially neglected areas (van Zyl 2010). Critics, on the other hand, argue that CDFs have a negative impact on accountability and, in particular, transparent and accountable budgeting processes and public financial management (PFM) (van Zyl 2010).

CDFs, the International Budget Partnership (van Zyl 2010) points out, constitute a breach of the separation of powers. The legislature is supposed to negotiate and enact the budget not ensure its execution (van Zyl 2010). This, in turn, can

weaken the legislatures’ willingness and capacity to undertake critical oversight tasks. For instance, in theory, MPs can be so preoccupied with the workload related to CDF-funded projects that they end up neglecting their oversight tasks (van Zyl 2010). The ability of legislators to directly fund projects can also shift the focus from the role of legislators to represent their constituents’ interest in policymaking to simply ensuring a number of economic wins for their constituents/clients (van Zyl 2010).

At first glance, CDFs empower parliaments and MPs on account of the executive (Tsubara 2013, van Zyl 2010). However, CDFs and other types of discretionary funds can be distributed through schemes that vary in their level of discretion and include state agencies, civil society and other stakeholders to different extents (Commonwealth Parliamentary Association 2010: 15).

At the one side of the spectrum, some CDFs provide legislators with such a high level of discretion that spending is almost controlled solely by individual legislators, providing very few safeguards against corruption and misuse of state resources. At the other end of the spectrum, some CDFs have to adhere to strong regulations and standards, and require the involvement of state agencies and/or independent organisations in carrying out the project (Commonwealth Parliamentary Association 2010:15). An example of the former could be the Philippines (prior to the supreme court’s decisions to designate it unconstitutional), while India’s CDF is an example of one that involves more agencies, entities and regulations.

The more comprehensive the regulations for beneficiary and project selection, tendering,

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oversight and evaluation, the smaller the scope for corruption and special interest (Commonwealth Parliamentary Association 2010: 19). However, in reality, in the case of India, “there are hardly any authorities who have the courage or the gumption to defy the wishes of a member of parliament” when it comes to their control over discretionary funds (Chhokar 2020).

This paper draws on national debates in countries where legislative discretionary spending has been debated or studied and attempts to distil perspectives and lessons from them. While the contexts (including the overall control of corruption, the degree to which democracy is consolidated) are different, the debates over CDFs and earmark spending often revolve around some of the same key principles and issues. These always include the issue that legislators are not guaranteed to be impartial and may implement budgets in a way that improves their chances of re-election (van Zyl 2010), issues around the division of powers (van Zyl 2010) and the risks of both corruption and wasteful spending.

## Case studies

### United States

Political analysts in the US have traditionally been more preoccupied with legislative pork-barrelling than their counterparts in most of the rest of the world. In the US, earmarks work as specific provisions inserted into legislation, typically spending bills (Hudak 2018). In other words, it is a

provision in a more general bill allocating money for specific purposes.

In 2008, in a bid to increase transparency in the earmarking process, the US Congress established increased requirements for disclosing information regarding earmarks (Lynch 2020). These included information about the member of congress providing the earmark, the name and address of the recipient as well a statement saying that the member of congress does not have any financial interest in the project (Lynch 2020: 2). However, for some house Republicans, the increased requirements did not go far enough, and in 2011, a majority of the United States Congress decided to put a temporary moratorium (ban) on earmarks. This moratorium, however, did not end the US debate around congressional earmarks, and Democrats have announced plans to lift the ban and install tougher transparency requirements on earmarks (Derysh 2020).

Opponents of earmarks in the US argue that legislative earmarking is often at risk of corruption and wasteful spending. Earmarks, opponents argue, make it easier for special interests to obtain funding, such as building infrastructure projects that benefit a very narrow group, in some cases just a handful of people (Boccia & Barry 2018). The most frequently cited example of this was the alleged Bridge to Nowhere.<sup>1</sup>

Earmarks can also potentially lead to corruption, and there are indeed cases in which lobbyists and corporate entities have successfully bribed legislators to secure congressional earmarks (Boccia & Barry 2018). Critics also argue that, by their very nature, earmarks circumvent the norms

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<sup>1</sup> Crossing a popular cruise route called the Inside Passage, it would have linked the city of Ketchikan, on the

southwest coast of Revillagigedo Island, to the city's airport on Gravina Island, population 50 (Gold 2018).

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and regulations of public tendering and procurement. Earmarks do not follow a competitive bidding process, nor are they based on merit (Boccia & Barry 2018). This, in turn, can lead to inefficient and substandard economic outcomes (Boccia & Barry 2018).

Another very powerful argument against earmarks in the US comes from studies that show that the distribution of earmarks are not really based on the needs of electoral constituencies but around the influence of legislators (Clemens et al 2015). In the US Congress, members of the Appropriations Committee and other important committees have the most influence over earmarks and often receive the most earmarks (Clemens et al. 2015). A series of econometric studies from 2014 found that pork-barrel spending leads to increased campaign financing for incumbents and that US\$1 million in pork-barrel spending leads to an increase in an incumbent's vote share by 0.1 per cent (Klingensmith 2014 :78). Thus, earmarks tend to benefit those politicians that are already influential.

US proponents of earmarks tend to argue from a pragmatic logic. First, proponents argue, elected officials presumably understand their constituency's needs best and are therefore qualified at making spending decisions (New York Times 2020). Proponents also argue that legislative earmarks incentivise cooperation in the legislative branch as legislators have an added benefit from compromising in order to pass bills (in other words, "Nothing greases the gears of government quite like pork") (New York Times 2020).

Paralysed by hyper-partisanship, the United States Congress has often been described as a Graveyard of Bills, and the last couple of

Congresses have been among the least productive in the country's history (Fung 2020). By bringing back earmarks, proponents hope that individual legislators may get political benefits from cooperation and that some deadlocks can be broken (New York Times 2020).

Another argument for allowing legislative earmarks is that banning them has not actually led to more accountable spending. The moratorium on earmarks in the US just changed the way lawmakers secured projects for their constituents, by inserting provisions into bills that give direct funding to beneficiaries in more stealthy and indirect ways (Herb 2015). This practice has earned the nick-name zombie earmarking (Herb 2015) or non-earmark earmarks (New York Times 2020). Thus, while not necessarily denying the issues with earmarks, proponents argue that, rather than getting rid of earmarks completely, the solution is to introduce more measures to improve the transparency of the earmarking process (Hudak 2018).

## The Philippine Priority Development Assistance Fund

Another country which has seen a significant amount of controversy and debate over the legislature's discretionary pork-barrel spending is the Philippines. Corruption scandals involving the Philippine CDF have been numerous, but the most infamous involved a 2013 case in which a businesswoman embezzled billions of Philippine pesos by overcharging for fraudulent projects (Carvajal 2013). Following the public outcry in the wake of the scandal, the Philippines' Supreme Court prohibited the CDF, arguing that it was unconstitutional, violated the separation of powers and pointed to a critical lack of oversight (Makabenta 2019).

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However, Philippine legislators retained their discretionary funds by realigning the institutional setup around them to fit into the General Appropriations Act (Colmenares 2018: 4; Philippine Daily Inquirer 2017; Makabenta 2019). Therefore, although they now have to submit a list of projects according to the provisions of the act (Philippine Daily Inquirer 2017), each legislator continues to control vast sums for discretionary spending (Colmenares 2018: 4).

The Philippines' CDF, the Priority Development Assistance Fund, was a portion of the national budget which legislators could implement. In the Philippines, legislators were able to earmark spending without having to insert their decisions into appropriations bills, as in the US (Colmenares 2018: 2). Furthermore, Philippine legislators (still) have more discretionary funds at their disposal than legislators in most other countries, and the Priority Development Assistance Fund was relatively large compared to other CDFs (Colmenares 2018: 4).

Defenders of the Philippine CDF claim that the beneficiaries of CDF spending tend to come from areas that are overlooked in other forms of government spending. Moreover, there has allegedly been no real audit report which shows that any earmark provided by a member of Congress has been misappropriated or abused (Colmenares 2018: 3). Critics, on the other hand, claim that the Philippine CDF enabled graft and that funds were more often than not used to develop client-networks and influence the public vote (Colmenares 2018).

Colmenares (2018) claims that the Priority Development Assistance Fund has caused a more "transactional" form of politics, where voters, generally alienated with politics, support the politicians who can distribute the most tangible goods during elections (Colmenares 2018: 6). It has, in other words, come to constitute a form of vote buying (Colmenares 2018). This pork-barrelling, in turn, skews the political arena, providing an unfair advantage for those politicians that can hand out material benefits during their election campaigns (Colmenares 2018: 6).

## India's Member of Parliament Local Area Development Scheme (MPLADs)

India is another country where there has been some debate around discretionary parliamentary funds. Since 1993, India's MPLADS has provided every MP in the lower house of parliament with Rs5 crore (US\$682,000) every year for the development of their local area (Blair 2017: 99). These funds are subject to a number of controls and requirements that limit the authority of MPs over MPLADS. First, legislators recommend projects in their constituencies, but the actual money is transferred by the government (Roy 2020). MPLADS funds must also be spent on concrete infrastructure, including health, electricity, education or roads and not on commercial or religious initiatives (Blair 2017:100). Furthermore, the states may create additional guidelines, and some MPLADS must go to Dalit<sup>2</sup> and tribal communities.

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<sup>2</sup> *Vulnerable sections of Indian society from the prevalent caste system.*

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MPLADS projects are vetted and inspected by district authorities and an independent non-commercial entity (Blair 2017). All MPLADS projects are subject to India's right to information act (which has been weakened in recent years), which makes them visible to the public (Blair 2017). Currently, the MPLADS is suspended on a temporary basis to pool resources for the COVID-19 pandemic response (Roy 2020).

Defenders of MPLADS highlight the fact that the scheme is subject to numerous anti-corruption controls, including audits and various local grievance mechanisms, and highlight that the role of MPs in the scheme is to select projects to recommend (Unnithan 2020). The actual implementation is often done by district-level officers and oversight is carried out by various executive agencies. As in other countries, proponents of MPLADS also highlight that legislative discretionary spending in a way balances the pork-barrel spending of ruling parties and state governments and can be a way to meet development needs in otherwise ignored constituencies (Unnithan 2020). The government of India has argued that the scheme has generally had a positive impact on infrastructure, particularly in rural areas (Roy 2020).

Opponents of MPLADS argue that the scheme muddies the separation between the legislative and executive branches of government and argue that the scheme is unconstitutional (Roy 2020). There have also been accusations that the oversight mechanisms of the projects are not always as strong as they are on paper, creating situations where beneficiaries are supposed to oversee themselves or where good tendering practices have been ignored (Prakash 2013). As mentioned earlier most public officials do not have

the courage to defy the decisions of parliamentarians (Chhokar 2020)

In addition, the issues around pork-barrelling during elections remain. Looking at the 2014 general election in India, Blair (2017) finds that the fact that MPLADS funds can be saved makes MPs more likely to spend funds heavily just before elections. MPLADS allotments are generally saved in the years after elections, but, as time passes, spending increases and reaches its height just before elections (Blair 2017: 105). However, unlike studies in other countries, the evidence around the correlation between winning and spending money in the last year before elections is somewhat inconclusive (though that may have something to do with the "Modi wave" of 2014) (Blair 2017: 105).

## Kenya's constituency development fund

The establishment in 2003 of a constituency development fund in Kenya was initially welcomed as a possibility to promote development in constituencies that had traditionally been marginalised in the executive's spending decisions (Oyugi et al. n.d.). The Kenyan CDF gives MPs the right to spend 2.5 per cent of national revenue. CDF projects are identified by the Constituency Development Committee and overseen by a number of agencies, including committees located in the constituencies and the [National Constituency Development Fund](#) (Oyugi et al. n.d.). For many proponents of Kenya's CDF, it was the hope that the executive's monopoly on spending could be broken, which, in a way, could be a force for development financing and, indirectly, democratisation (Oyugi et al. n.d.).

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However, the Kenyan CDF, according to its critics, turned out to be relatively prone to abuse for members of the National Assembly and came with a number of governance issues, including muddled separation of powers between the executive and legislative branches of government that provided more opportunities for abuse within the legislature (Oyugi et al. n.d.). While, according to regulations, CDF projects are supposed to be community owned, in practice, they have mostly been implemented in a way that strengthens incumbents politically (Oyugi et al. n.d.). The constituency committees that provide some oversight have often been stacked by supporters, and, as a result, are not adequate control or grievance mechanisms (Oyugi et al. n.d.).

A 2018 evaluation of Kenya's CDF found that projects funded by the CDF were running very high risks of corruption. Collusion between contractors and legislators often resulted in a lack of open competition and projects being overpriced. It was recently found that, in up to 25 cases, the contractor was beneficially owned (often through proxy) by the legislator or another public officer (Ethics and Anti-Corruption Commission 2018:36).

## Best practices for addressing corruption risks in legislative discretionary spending

To date, there has been very little guidance on how to address corruption risks in the discretionary spending of legislative branches of government. The challenge in distilling lessons that are applicable across all settings is that countries that

have successfully reduced pork-barrel spending have varying contexts and political systems (Christensen & Selway 2017). Nevertheless, as mentioned, mechanisms of legislative discretionary funding can be subject to both limited or comprehensive regulations that determine how exposed they are to corruption risks (Commonwealth Parliamentary Association 2010).

In late 2020, in light of the potential lifting of the ban on congressional earmarks, a US Congressional Research Service Report pointed out a number of possible reforms to the earmarking process. One possibility is to strengthen requirements for the members of Congress to post public information about the earmarks they have requested (Lynch 2020: 9). Such information could include an official justification for the earmark and why it constituted a responsible use of taxpayer funds. Publicly available data that contains all earmark requests made by house members could also be implemented (Lynch 2020: 9).

Another possibility in the US, which has been done in India (Roy 2020; Blair 2017) is to restrict earmarks to certain types of projects, activities or entities, or prohibit certain earmarks (Lynch 2020: 9). For instance, it is possible to ban earmarks for corporations or projects named after the member of Congress (for instance, the John Doe Hospital for the blind) (Lynch 2020: 9). Furthermore, a potential avenue for earmark reform is to require all earmarks to have been given the green light from another institution, for instance, by a relevant agency in the executive branch (Lynch 2020: 10). Finally, Lynch (2020) points out that it could be relevant to create a certification system for ensuring that legislators have no financial interest in their spending requests (Lynch 2020:10)

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The Commonwealth Parliamentary Association (2010) has authored a Handbook on Constituency Development Funds. The handbook recommends making financial information available, documenting spending and giving access to auditors throughout the entire project cycle. The administration structure of a CDF project must also be clear and communicated to the public to ensure accountability. Additionally, funds related to a CDF must be channelled via the dedicated account of a public executive agency that can only be accessed by authorised personnel. Moreover, projects related to CDFs should always be subject to oversight and monitoring by independent entities while results, evaluations and/or investigations should be released to the public.

One hypothesis is that strong parties can act as a check on individual MPs' pork-barrelling. Political parties that accommodate broader political agendas may find the pork-barrel spending of individual legislators to contradict more universalist or national goals and often have the ability to discipline individual lawmakers. Using data from Bavarian municipalities, Koethenbuerger (2012) tests this hypothesis and finds that independent candidates and party-affiliated candidates are not radically different in municipal politics.

In a comparative study of Thai and Japanese reforms, Christensen and Selway (2017) ask how Thailand has been more effective than Japan in curbing pork-barrel spending, despite the two countries having undertaken similar electoral reforms and despite both countries having adopted mixed election systems. What they find is that Thai MPs operate in a much more party-oriented system, which resulted in more nationally oriented spending. In Japan, meanwhile, the role of individual MPs is more important, often resulting in

increased pork-barrel spending (Christensen, Selway 2017).

However, the reasons for why Thailand's electoral reforms resulted in a more nationally/universally oriented form of party politics could be found in very circumstantial processes related to the Thai financial crisis, the rise of new parties and high levels of civic participation. In other words, the reason why Thailand has been more successful in curbing pork-barrel spending than Japan cannot be explained by specific types of reforms (that can be replicated in other countries) but by a sequence of events that are unique to Thai politics. Moreover, Christensen and Selway argue, Thailand's relative success in curbing pork-barrel spending has sometimes come at the expense of democratisation as the political ruptures that led to less pork-barrel politics also set in motion forces that disrupted Thailand's democracy (Christensen & Selway 2017).

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