

Political Finance
And
Democracy
In
Nigeria
Prospects and Strategies for Reform

Edited by:

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FOREWORD

Axel Harneit-Sievers

Nigeria's transition towards democracy has only begun. The re-establishment of an elected government and parliamentary system after decades of military rule in 1999 formed merely a starting point in a transition process towards a democratic society – a transition process that can be expected to take many more years. Democratic transition in its full sense comprises a wide area of issues; a very important one among them is the creation of accountable institutions. The Obasanjo administration has undertaken steps towards improving accountability in government and administration, for example by introducing rules of “due process” for the awarding of federal contracts, and by creating special commissions to combat corruption and financial crime. All this has still a long way to go, but the direction taken is encouraging, and deserves further encouragement.

Political parties form another core group of institutions in any functioning democratic system. The parties that emerged in Nigeria since 1998-9, however, are characterized by undemocratic practices and a decided lack of transparency. At their best, political parties should nurture and organize the expression of political interest and opinion. They should condense social interests and give them an organized impact in national political life. Under current Nigerian conditions, however, most political parties are merely zero-issue alliances of influential individuals and small groups who are able to control and, often enough, manipulate party structures, candidacies, and even the electoral process itself. Most parties are instruments in the hands of “political entrepreneurs” who invest huge amounts of money and expect concurrent rewards on such investment. Besides fuelling corruption, this state of affairs is decidedly non-transparent and undemocratic. Furthermore, it impedes the emergence of a party system that focuses around issues and policies, rather than personalities only.

Money rules the world, of course, and not only in Nigeria. But there is no reason to simply take a cynical attitude and leave things as they are. If money figures so prominently in the current Nigerian party system, the issue of party and political campaign financing itself should and can become an issue of much

greater public interest and debate in this country. This book is an invitation to engage in such debate.

Dr. Axel Harneit-Sievers
Director, Nigeria Office
Heinrich Böll Foundation

The Heinrich Böll Foundation is a non-governmental agency affiliated to the “Alliance 90 / The Greens” political party that is represented in the Federal parliament of Germany and is a partner in Germany’s coalition federal government since 1998. At home and internationally, the Foundation conducts and supports civic educational programs. The Foundation operates over 20 offices world-wide. It established its Nigeria Office in Lagos in 2002. In Nigeria, the Foundation supports projects in the fields of democracy and good governance, women’s and human rights, and conflict management. More details can be found on the Heinrich Böll Foundation’s website <www.boellnigeria.org>.

PREFACE

NDUBISI OBIORAH

‘Political Finance’ –

“the use of money or the use of other material resources for political activities. It embodies the sources or means through which political activities are sponsored in a given country. The concept of political finance has two broad connotation viz money used for electioneering (campaign funds) and money used for political party expenses (party funds).”

- Pinto-Duschinsky [2001]

Nigeria’s political history since independence from Britain in 1960 has been a cycle of authoritarian military regimes with episodic interregna of civilian governments. Rentier politics in Nigeria has been characterized over the years by the dominance of ‘electoral machines’ controlled by political entrepreneurs comprising largely of wealthy former military officers and their civilian business cronies.¹ The major political parties in Nigerian politics today are little more than grand agglomerations of the respective electoral ‘machines’ of the leading political financiers. Many Nigerian politicians are ‘sponsored’ by local and regional power brokers cum political entrepreneurs who finance their campaigns for public office. The ‘sponsorship’ is effectively a business transaction in which the patron recovers the ‘investment’ in the form of public works and procurement contracts, prebendal appointments of cronies to public offices and other forms of prebendal activity by the ‘client’ politician on assuming public office. In some cases where the patron and client failed to define with sufficient precision, the dimensions of the return on investment or the client balks at delivering per the agreed terms, the fall out has led to mass violence and political destabilization.

During the 1998-99 transition following the sudden death of General Sani Abacha in June 1998, ‘political entrepreneurs’ comprising ex-military officers and their civilian business cronies effectively seized control of the Nigerian political scene. Although retired military officers have participated in Nigerian

politics since the Second Republic in the 1980s, the 15 years of military dictatorship from 1984-1999 decimated virtually every autonomous sector or institution in Nigeria from the trade unions to academia to the private sector. The military regimes led by Generals Ibrahim Babangida [1985-93], Sani Abacha [1993-98] and Abubakar [1998-99] regimes were widely perceived as the most corrupt and despotic in all of Nigeria's history.² Nigeria under these three generals was routinely described by scholars of African political economy as a prebendal or patrimonial state.³ Public office and government patronage became 'the only game in town'.⁴ Retiring military officers deployed the massive wealth generated from the proceeds of grand corruption to creating and financing the political networks that formed the nuclei of several of the political associations that sought registration as political parties. The 1998-99 electoral campaign which brought the incumbent government led by Olusegun Obasanjo to power in May 1999 was largely financed by former military officer-political entrepreneurs; deploying their massive financial resources, they were able to install ex-military officers and their civilian business cronies in control of the largest political parties and in high federal and state public offices.

Political movements representing the interests of the poor and the disadvantaged that could have served to moderate the influence of the dominant political parties have been systematically excluded from participation in the political arena by a combination of legal instruments and their relative paucity of resources as compared with the vast financial resources available to the dominant parties. A net result is the disempowerment of the generality of the Nigerian people. The dominance of unrepresentative 'machine' parties alienates the electorate and prevents the evolution of accountable governance in Nigeria.

Some of the factors that exacerbate the exclusion of alternative parties and enhance the disproportionate influence of political entrepreneurs thereby reinforcing the popular disempowerment include electoral regulations that impose onerous financial burdens on political movements seeking to participate in electoral politics in the absence of an effective system to regulate political finance. Nigeria's history of political instability, exacerbated by political mobilization on ethnic and sectarian lines, has led successive governments to impose legal and administrative guidelines for political party formation, registration and operation. These guidelines which ostensibly seek to avoid

the establishment of parties on sectarian, ethnic or geographical bases and to encourage the creation of political alliances bridging regional, ethnic and sectarian divides effectively impose onerous financial obligations on citizens wishing to form and register political parties.

The high costs associated with compliance with the guidelines effectively bars the vast majority of Nigerians from participating in politics. Political parties are formed and operated mostly by those Nigerians who possess or have access to the enormous funds required to comply with the guidelines. This in turn leads to the creation of political parties based mostly on alliances of convenience between wealthy ‘political entrepreneurs’ rather than political parties based on ‘ideology’ or political platforms. Parties and candidates finance their activities and campaigns from funds provided by party bosses and political entrepreneurs in absolute secrecy. The Nigerian public has no information as to which entrepreneur has provided funds to any political party or candidate. This type of politics contributes to a lack of accountable governance because political leaders are primarily beholden to the party financiers and their electoral machines rather than the electorate. The cumulative result is distortions in Nigeria’s democratic development.

The nascent political finance regulatory regime in Nigeria is ineffective and rarely enforced. The notorious ‘godfather’ scandals which have bedeviled governance since 1999 in the Anambra and Kwara states in southeastern and central Nigeria respectively, vividly illustrate the deleterious impact of unregulated political finance on democratic development in Nigeria and the emergence of new political parties and the possibility of even more political movements seeking registration as political parties reinforces the imperative of political finance reform.

The ‘godfather’ crises have generated a national groundswell of support for political finance reform but there is as yet no comprehensive or systematic dialogue among politicians, civil society and the general public as to options and prospects for reform or the nature of any concerted action to address the problem. There is an emerging national consensus on the imperative of political finance reform but a national debate on a prospective reform programme is as yet inchoate.

Towards addressing distortions in Nigeria's democratic development, the Centre for Law and Social Action [CLASA] initiated a research and advocacy project in October 2003 to stimulate a national dialogue on political finance reform in Nigeria with a view to developing a reform strategy. The project seeks to promote effective political finance reform in Nigeria utilizing popular mobilization to secure the strengthening and institutionalization of the political finance regulation framework in Nigeria. CLASA, a non-profit, non-partisan research and advocacy organization, brings together scholars and activists in law and the humanities for interdisciplinary research and advocacy on governance, development, democratisation, human and peoples' rights, law reform, social issues, economic policy and international affairs. CLASA informs and shapes policy dialogue and political action through research, analysis and advocacy.

With support from the Heinrich Boll Foundation, CLASA undertook a comparative study of political finance regulation in selected 'transitional' and 'advanced' democracies and drafted a policy agenda for reform. A workshop for key actors was convened in Lagos on December 11, 2003.

The present publication comprises the working documents for the key actors workshop and the policy agenda. CLASA would like to most gratefully acknowledge the efforts and support of all those who worked on or supported this project in their respective and various capacities. In particular, we would like to thank the Heinrich Boll Foundation especially Axel Harneit-Sievers and Monika Umunna at the HBF's Nigeria Country Office for their generous support and advice which enabled CLASA to undertake the project.

We gratefully acknowledge the assistance of the International Forum for Democratic Studies at the National Endowment for Democracy, Washington D.C. for their most collegial assistance, advice and support including permission to re-print Michael Pinto-Duschinsky's tour d'horizon on political finance research and practice, previously published in the 'Journal of Democracy' in October 2002. Thanks are particularly due to Larry Diamond, Marc Plattner and Tom Skladony for generously providing CLASA with access to the unpublished manuscripts of the NED-Sejong Institute's conference on political

finance in East Asia in 2001. Appreciation is due to Susan Palmer at the International Foundation for Electoral Systems.

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Ndubisi Obiorah

Executive Director, CLASA

Lagos, Nigeria

December 30, 2003

End Notes

¹ Robert Tignor, 'Political Corruption in Nigeria before Independence', *Journal of Modern African Studies*, Volume 31, Issue 2, Jun. 1993; Larry Diamond, 'Nigeria's Perennial Struggle against Corruption; Prospects for the Third Republic', *Corruption and Reform* 7:215-225, 1993 and 'Cleavage, Conflict and Anxiety in the Second Nigerian Republic', *Journal of Modern African Studies*, Vol. 20, Issue 4, Dec. 1982. The emergence of corruption as a national malaise in the early years of independence has become a recurring theme in Nigerian literature. See generally, Chinua Achebe, 'A Man of the People' [Oxford, Heinemann, 1966] and 'The Trouble with Nigeria' [Enugu, Fourth Dimension Press, 1983]; Wole Soyinka, 'The Interpreters', [Oxford, Heinemann, 1966], 'Trials of Brother Jero', [Methuen 1973]

² See generally, Wole Soyinka, 'The Open Sore of a Continent', [Oxford, Oxford University Press, 1995]; Karl Maier, 'This House has Fallen: Midnight in Nigeria', [New York, Public Affairs, 2000]; Mark Huband, 'The Skull Beneath the Skin: Africa After the Cold War' [Boulder, Westview, 2001]

³ Richard Joseph, 'Nigeria: Inside the Dismal Tunnel', *Current History* 95:193-200, 1996

⁴ Peter Lewis, 'From Prebendalism to Predation; the Political Economy of Decline in Nigeria', *Journal of Modern African Studies* 34:79-103, 1996

CHAPTER ONE

FINANCING POLITICS: A GLOBAL VIEW

Michael Pinto-Duschinsky

Democratic elections and democratic governance involve a mixture of high ideals and, all too often, dubious or even sordid practices. Election campaigns, political party organizations, pressure groups, and advertising all cost money. This must be found from somewhere. The financing of political life is a necessity—and a problem.

The frequency with which new laws concerning campaign and party finance are enacted is testimony to the failure of many existing systems of regulations and subsidies. Hardly a month goes by without a new scandal involving political money breaking out in some part of the globe. In Belgium in 1995, Willi Claes was obliged to resign as secretary-general of NATO amid a lurid affair which had begun four years earlier when a fellow leader of the Belgian Socialists, André Cools, was shot to death outside his home because of his involvement in a scheme in which French and Italian arms manufacturers made political contributions to the Belgian Socialists in return for military contracts. In Ukraine in the fall of 2000, online journalist Georgi Gongadze lost his life in part because he had been looking into allegations that business oligarchs were involved in corrupt dealings related to political financing.

Despite a stream of stories like these from around the world, and despite an increasing flow of academic studies, political financing and the abuses thereof remain shrouded in mystery. Many commonly heard notions surrounding them are unproven or wrong. This is partly because “political finance” takes so many forms and is difficult to define, and partly because there remain large

gaps in research (especially about political money in emerging democracies). I cannot hope to offer an exhaustive treatment here, but I will attempt to sketch a survey and summary of the current state of knowledge about the subject.

We may first want to ask: “What is ‘political finance’?” The narrowest definition is “money for electioneering.” Since political parties play a crucial part in election campaigns in many parts of the world, and since it is hard to draw a distinct line between the campaign costs of party organizations and their routine expenses, party funds may reasonably be considered “political finance,” too. Party funding includes not only campaign expenses but also the costs of maintaining permanent offices, carrying out policy research, and engaging in political education, voter registration, and the other regular functions of parties.

Beyond campaigns and parties, money is spent on direct political purposes in many other ways. A full account would require us to study a) political “foundations” and other organizations which, though legally distinct from parties, are allied to them and advance their interests; b) the costs of political lobbying; c) expenses associated with newspapers and media that are created and paid to promote a partisan line; and d) the costs of litigation in politically relevant cases. Clearly, the number of channels through which money may be poured into politics not only leads to problems of definition and research, but makes political financing difficult to control as a practical matter as well. As soon as one channel of political money is blocked, other channels will be used to take its place.

The Problem of Corruption

In addition to being a source of scandal and corruption, the ways in which political activity is financed may lead to severe inequalities. If the costs of campaigning are prohibitive, citizens without private wealth may be prevented from running for public office. Moreover, election campaigns arguably are unfair when rich candidates or parties with wealthy supporters are able to spend far more than their opponents. Thus regulations and subsidies aimed at

reforming the use of political money may have varying objectives. A system that aims to control corruption in the funding of parties and election campaigns is likely to be different from a system that seeks mainly to promote “fairness.”

Let us begin with the problem of corruption. It is beyond doubt that scandals involving political money have been a major stimulus of reform efforts in many countries. Yet as with the term “political financing” itself, the meaning of “corrupt” political financing is often unclear. Conventional definitions of political corruption (such as “the use of public office for unauthorized private gain”) often do not apply to corrupt political financing. First, the definition of political corruption as “the use of public office” does not apply to all forms of political fundraising. Challengers, for instance, are by definition outside of public office but may still accept money in exchange for promises to misuse public office should they win at the polls. A second difference between ordinary political corruption and corruption in the field of political financing is that, in the latter case, money is not necessarily used for private gain but rather for the gain of a political party or of a candidate.

References in common parlance to “corrupt” political financing usually refer to one of the following:

Political contributions that contravene existing laws on political financing. Illegal donations are often regarded as scandalous, even if there is no suggestion that the donors obtained any improper benefit in return for their contributions. Prominent examples include the Filesa case (1991 onwards), which contributed to the electoral defeat of Spain’s Prime Minister Felipe Gonzales; the “Kohlgate” scandal in Germany in 2000; and the One Israel Affair in Israel in the same year.

The use for campaign or party objectives of money that a political officeholder has received from a corrupt transaction. In such a case, all that differentiates corrupt political funding from other forms of political corruption is the use to which the bribe is put by the bribe-taker. In the 1990s, examples included the Costea Affair in Romania and the Goldenberg Affair in

Kenya. In both these cases, the profits of corruption involving hundreds of millions of dollars are reported to have ended partly in private pockets but also partly in campaign coffers.

Unauthorized use of state resources for partisan political purposes. This is a commonly noted feature of ruling parties' campaigns in established and developing democracies alike. Invitations to White House coffee receptions and sleepovers in the Lincoln bedroom were among the more innocent ways in which U.S. president Bill Clinton used a public resource to raise funds for his 1996 reelection campaign. More important is the common practice of using public funds to pay staffers who carry out partisan activities. President Jacques Chirac of France is said to have used hundreds of patronage posts available to him as the mayor of Paris to save his party from the need to raise private funds for its headquarters. In parts of Africa and the former Soviet Union, the resources available to officeholders, national and local, are blatantly used for electioneering.

Acceptance of money in return for an unauthorized favor or the promise of a favor in the event of election to an office. A representative sampling from this category could fill an encyclopedia. In my research for the present essay I learned of significant cases from 28 countries ranging from Antigua and Barbuda to the United Kingdom and the United States, from Belgium and Brazil to Italy and India, and from Papua New Guinea to Cameroon. It should be stressed that all the examples are of allegations. It is not suggested that any particular persons cited in this essay as the subjects of such allegations were guilty, for this is a field in which false as well as accurate charges abound.

Some countries where there were serious allegations are noted in the box on the facing page. It is apparent that politicians in all parts of the world have been caught up in major scandals. Purity in political financing is not a topic on which the West is entitled to preach virtue to developing democracies. It is also worth noting that allegations frequently have concerned politicians at the highest level. Apart from those already mentioned, others have included Vice-President Spiro Agnew (United States), members of the Bird dynasty (Antigua

and Barbuda), President Desi Bourterse (Suriname), Prime Minister Benazir Bhutto (Pakistan), Vice-President Alfonso Guerra (Spain), Prime Minister Václav Klaus (Czech Republic), Economics Minister Otto Graf Lambsdorff (Germany), President Carlos Andres Pérez (Venezuela), Prime Minister Lyndon Pindling (Bahamas), President Carlos Salinas de Gortari (Mexico), and Prime Minister Noboru Takeshita (Japan).

Contributions from disreputable sources. Even though there may be no evidence of an exchange of favors or of promises of future favors, the presumption is that tainted sources are likely to have tainted motives. According to a scholarly estimate in 1960, perhaps 15 percent of the money for state and local campaigns in the United States was derived at that time from underworld sources anxious to protect their criminal enterprises. There are widespread rumors that crime bosses are involved in electioneering and campaign financing in Russia. Some of the most dramatic and most fully established examples of criminal sources concern the financing of politics in Central and South America and in the Caribbean by drug dealers. In 1994, the director and other senior officials of Ernesto Samper's successful campaign to become president of Colombia went to jail when the so-called narco-tapes, which suggested that drug money had financed Samper's run, became public.

Spending of money on banned purposes such as vote-buying. This costly set of campaigning methods has a long history. Vivid depictions may be found in the novels of nineteenth-century British prime minister Benjamin Disraeli. Today it seems to occur most frequently in relatively poor countries, although it is found residually in some large U.S. cities as well. Candidates are expected to treat ordinary voters to gifts of various kinds, often including food and especially free drinks (in colonial British North America, this was known as "swilling the planters with bumbo"). My own latter-day research has uncovered significant votebuying in countries ranging from Cambodia, Malaysia, and Taiwan in Asia, to Cameroon, Kenya, Uganda, and Zimbabwe in Africa, to Antigua and Barbuda, Costa Rica, Mexico, and Suriname in the Americas, and even in Samoa in the Pacific.

A SAMPLING OF CAMPAIGN FINANCE SCANDALS

Brazil: With impeachment hanging over his head, President Fernando Collor de Mello resigned in late December 1992 as charges circulated concerning kickbacks and illegal campaign contributions from companies doing business with the government. The Supreme Court later acquitted him. His campaign fundraiser, Paulo Farias, was sentenced to house arrest and was found shot to death in 1996.

Croatia: After the Croatian Democratic Union fell from power in 2001, it came out that the party had raised most of its funding through “racketeering” schemes in which government contractors would be paid only in return for substantial contributions to party coffers.²

Ecuador: A scandal erupted when it emerged that the Christian Democratic Party’s successful 1998 candidate for president, Jamil Mahuad, had accepted an undisclosed donation of US\$3.1 million from the owner of the Banco del Progreso. The Christian Democrats faced a fine of US\$6.2 million.

Germany: In the spring of 2002, Norbert Reuther, the former leader of Cologne’s ruling Social Democrats, was arrested for accepting illegal political donations. The payments were allegedly connected with contracts awarded to a waste management company for the construction and operation of a \$353 million garbage incinerator in the city.

India: The Bofors Affair of 1987 onwards and the Tehelka.com Affair of March 2001 both involved allegations of political donations for arms contracts. The former scandal involved politicians close to Prime Minister Rajiv Gandhi and a contract for Bofors, the Swedish arms manufacturer, for FH-778 guns.

Italy: The long-ruling Christian Democrats were engulfed and destroyed after the end of the Cold War by a torrent of allegations that triggered an investigation called “Operation Clean Hands.” By 1994, no fewer than seven high-ranking party officials had committed suicide while under investigation. In 2000, former Socialist premier Bettino Craxi, who had fled to avoid prosecution and then received a jail term in absentia, died in Tunisia.

Japan: The 1990s saw several alleged cases of “donations for contracts” including the conviction in 1998 of Osaka oil dealer Tzui Jun’ichi and a 2000 scandal involving the alleged relationship between former construction minister Nakao Eiichi and a building company.

Papua New Guinea: Reported instances of “grand corruption” include payments by foreign corporations of election expenses in return for licenses, as well as personal bribes to politicians. The payments frequently came from overseas logging companies.

South Korea: In 1996, former presidents Roh Tae Woo and Chun Doo Hwan were sentenced to long prison terms and fines totalling US\$600 million. Among their offenses was the collection of a slush fund, two-thirds of which went to their political party. The Hanbo Affair of 1997 involved allegations that the bankrupt conglomerate had received special treatment in return for massive political contributions to then-President Kim Young Sam’s 1992 campaign.

Spain: According to the scholar of political financing and Spanish cabinet minister Pilar del Castillo, sources close to the building trade acknowledged in 1991 that the payment into party coffers of commissions ranging from 2 to 4 percent was considered “a common method to obtain work contracts.”³

United Kingdom: The “Formula One Affair” of 1997 involved accusations that the newly elected Labour government of Prime Minister Tony Blair had changed its policy and begun allowing televised tobacco advertising during Grand Prix auto-racing events in order to forward the commercial interests of a donor who had contributed \$1.55 million. Whether the donation had affected the Labour government’s change of policy remained unclear, but the donation was returned.

“Treating” is common in Uganda, where it involves “the provision of . . . soap, sugar, salt and alcohol.”⁴ In Bangladesh, the “bribes start with tea, pan (betel-leaf) . . . cigarettes, lunch . . . a sheet of iron roofing . . . giving cash to poor voters, etc.”⁵ In the 1996 elections in Suriname, a former Dutch possession in the Caribbean, the New Front “was still handing out the traditional salt fish and rum.”⁶ In Bulgaria, a slogan of the party representing the Roma is “Eat their meatballs but vote with your heart!” Anatoliy Romaniuk reports that in a constituency near Lviv, Ukraine, one parliamentary candidate took “the politics of electoral pork” to a literal extreme by spending the equivalent of US\$100,000 handing out piglets to attract the votes of local farmers!

In Thailand, it is cash that changes hands. In this country, as one authority reports,

There are at least two rounds of vote buying. The first round is called “carpeting,” which means giving a small amount of money . . . to each voter as the candidate’s self-introduction. For the last round, voters can obtain a higher sum depending on the degree of competitiveness among candidates in the constituency. It usually takes place on the night before the election, which is known as “dog-barking night” because villagers are visited by so many vote buyers that their dogs bark the whole night.⁷

All the forms of corrupt political funding described above, from illegal contributions to vote-buying, have to do with parties and election campaigns in the immediate sense. There are, of course, other kinds of suspect ways in which money can play a role in politics. To give just one recent example, the scandal that helped to drive Peru’s President Alberto Fujimori from office in 2001 involved a videotape of members of Congress taking money being offered to them on behalf of President Fujimori in exchange for their votes.

Regulations and Subsidies

There is no shortage of regulations and subsidies concerning political money—many of them introduced as a response to scandals. The global prevalence of various kinds of public measures concerning political financing is summarized in Table 1. The statistics are based on the author’s research into countries in

every region of the world. For the purposes of this essay, the analysis has been limited to countries rated by Freedom House in 2001 as “Free” or “Partly Free.” Table 2 on pages 76–77 provides information on 104 countries indicating whether they have three important kinds of regulations and subsidies: Disclosure regulations, direct public subsidies, and the provision of free political broadcasts.

TABLE 1—REGULATIONS AND SUBSIDIES IN 104 COUNTRIES

REGULATIONS	PERCENTAGE
Disclosure rules (any)	62%
Ban on foreign donations (partial and/or complete)	49%
Campaign spending limits (any)	41%
Disclosure of individual donors (partial and/or complete)	32%
Contribution limits (any)	28%
Ban on paid election advertising on TV	22%
Ban on corporate donations (partial and/or complete)	16%
Ban on corporate donations (complete)	8%
SUBSIDIES	
Free political broadcasts	79%
Direct public subsidies	59%
Subsidies in kind (apart from political broadcasts)	49%
Tax relief for political donations	18%

Notes: Table 1 excludes laws restricting the purchase of votes and rules about the declaration of assets by candidates, even though these are both significant. Statistics are based on information from the 104 countries listed in Table 2 on pages 76–77, except for spending limits (N=103), tax relief (N=103), disclosure rules (N=114), and direct public funding (N=143). Table 2 includes only countries that Freedom House rated as “Free” or “Partly Free” in its report produced at the end of 2001, the most recent one available at the time of this writing. The total of these countries was 143. For the Freedom House chart, see Adrian Karatnycky, “The 2001 Freedom House Survey: Muslim Countries and the Democracy Gap,” *Journal of Democracy* 13 (January 2002): 108–9. The statistics refer to laws in force at various times in 2000–2002 and do not fully take account of changes during this time. Data on disclosure rules come from *Money and Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (Washington, D.C.: Office of Democracy and Governance, Technical Publication Series, 2002). Other sources are Michael Pinto-Duschinsky, *Handbook on Funding of Parties and Election Campaigns: Overview* (Stockholm: International IDEA, 2001, 145–65 [http://www.nimd.org/2001/11_25_conference_report_2_english.pdf]); Janis Ikstens, Daniel Smilov, and Marcin Walecki, *Campaign Finance in Central and Eastern Europe* (Washington, D.C.: International Foundation for Election Systems, 2002—a revised version of a report of 2001 available at http://www.ifes.org/reg_activities/pdf/ACEEEO-campaign-finance-01-31.pdf); Michael Pinto-Duschinsky, *Political Financing in the Commonwealth* (London: Commonwealth Secretariat, 2001); and information collected by the author. See also note 8.

For American readers, the most striking feature of Tables 1 and 2 is that the United States stands out among the economically advanced democracies by its lack of any provision of free political broadcasts for political parties or for candidates. Most countries do provide such free broadcasts, and those that do not generally are either very small or very poor. A second point is that countries with English-speaking backgrounds tend to have both political financing systems and electoral systems that differ from those in Continental Europe and in countries (such as most Latin American states) that have been influenced by Continental traditions. Accordingly, countries that belong to the Commonwealth—the club of former British territories—are characterized by having less public funding and less regulation of political financing. They also are more likely to use majoritarian electoral systems, while public funding is strongly associated with proportional electoral systems. Third, when it comes to political finance rules, countries that have emerged from the former Soviet bloc have rules which are close to those of Continental Western Europe.

TABLE 2—THREE TYPES OF CAMPAIGN FINANCE MEASURES

COUNTRY <i>(Italics denote countries that are not categorized by Freedom House as electoral democracies)</i>	ANY DIRECT PUBLIC FUNDING?	ANY DISCLOSURE LAWS? <i>(Asterisks denote that individual donations must be disclosed by parties)</i>	FREE TV TIME TO CANDIDATES AND/OR PARTIES? <i>(Asterisks denote ban on paid political advertising on TV)</i>
Albania	yes	no	yes
<i>Antigua & Barbuda</i>	no	no	no
Argentina	yes	yes*	yes
Armenia	yes	yes*	yes
Australia	yes	yes*	yes
Austria	yes	yes	yes
<i>Azerbaijan</i>	yes	yes	yes
Bahamas	no	no	yes
Bangladesh	no	yes	no
Barbados	no	yes	yes
Belgium	yes	yes	yes*
Belize	no	no	yes
Bolivia	yes	yes	yes
<i>Bosnia-Herzegovina</i>	yes	yes*	yes*
Botswana	no	yes	Yes
Brazil	yes	yes*	yes*
Bulgaria	yes	yes	yes
Canada	yes	yes	* yes
Chile	no	yes	yes

Political Finance and Democracy in Nigeria

Colombia	yes	yes	yes
Costa Rica	yes	yes*	yes
Croatia	yes	no	yes
Czech Republic	yes	yes*	yes*
Denmark	yes	yes*	yes
Dominica	no	no	no
Dominican Republic	yes	no	yes
Ecuador	yes	yes	no
El Salvador	yes	no	yes
Estonia	yes	yes*	yes
Fiji Islands	no	no	yes
Finland	yes	no	yes
France	yes	yes	yes*
The Gambia	no	yes	yes
Germany	yes	yes*	yes
Ghana	no	yes	yes
Greece	yes	yes*	yes
Grenada	no	no	no
Guatemala	yes	no	yes
Guyana	no	no	No
Honduras	yes	no	no
Hungary	yes	yes*	yes
India	no	yes	yes
Indonesia	yes	yes	no
Ireland	yes	yes*	yes*
Israel	yes	yes	yes*
Italy	yes	yes*	yes*
Jamaica	no	yes	no
Japan	yes	yes*	yes*
Kiribati	no	no	no
Korea, South	yes	yes	yes
Latvia	no	yes*	yes
<i>Lesotho</i>	yes	yes*	yes
Lithuania	yes	yes*	yes
Macedonia	yes	yes	yes
Malawi	yes	no	yes
<i>Malaysia</i>	<i>no</i>	<i>no</i>	<i>no*</i>
Malta	no	yes	yes
Mauritius	no	yes	yes
Mexico	yes	yes	yes
Moldova	no	yes*	yes
Mozambique	yes	no	yes
Namibia	yes	yes	yes
Netherlands	yes	yes*	yes*
New Zealand	no	yes*	yes
Nicaragua	yes	yes*	yes
Nigeria	no	yes	no
Norway	yes	yes	yes*
Panama	yes	no	yes

Financing Politics: A Global View

Papua New Guinea	yes	yes*	No
Paraguay	yes	no	yes
Peru	no	yes	yes
Philippines	no	yes*	yes
Poland	yes	yes*	yes
Portugal	yes	yes*	yes*
Romania	yes	yes*	yes
Russia	yes	yes*	yes
St. Kitts & Nevis	no	no	no
St. Lucia	no	no	yes
St. Vincent & Grenadines	no	no	no
Samoa	no	no	yes
Senegal	no	no	yes*
Seychelles	yes	no	yes*
<i>Singapore</i>	<i>no</i>	<i>yes*</i>	<i>yes*</i>
Slovakia	yes	yes*	yes*
South Africa	yes	no	yes
Spain	yes	yes	yes
Sri Lanka	yes	no	yes*
Sweden	yes	no	yes*
Switzerland	no	no	yes*
Taiwan (Republic of China)	yes	yes	no
<i>Tanzania</i>	<i>yes</i>	<i>yes*</i>	<i>no</i>
Thailand	yes	yes*	yes
<i>Tonga</i>	<i>no</i>	<i>yes</i>	<i>no</i>
Trinidad & Tobago	no	yes	no
Turkey	yes	no	yes*
Tuvalu	no	no	no
<i>Uganda</i>	<i>yes</i>	<i>no</i>	<i>yes</i>
Ukraine	no	yes*	yes
United Kingdom	yes	yes*	yes*
United States	yes	yes*	no
Uruguay	yes	no	yes
Vanuatu	no	no	yes
Venezuela	no	no	no
<i>Zambia</i>	<i>no</i>	<i>no</i>	<i>no</i>

Since public funding is one of the most frequently discussed measures, it merits special attention. The period since the late 1950s has seen the introduction of public subsidies to the extra-parliamentary organs of political parties and to individual candidates in a large number of countries. While there have been a few efforts (for example, in Italy and Venezuela in the 1990s) to limit or abolish existing subsidies, the overall trend clearly has been toward state subsidy. My own research into the 143 countries rated as “Free” or “Partly Free” by the latest Freedom House rankings (a wider sample of countries than those included

in Table 2) has established that 84 (or 59 percent) of them have laws providing for some direct public funding of parties or candidates.⁸ Other findings which emerge are that state aid (as well as other categories of regulations and subsidies) hardly exists in sovereign states with very small populations,⁹ and that in most countries state aid has been popular with the political class and highly unpopular with the electors. State aid is especially common in Western Europe and in the countries that emerged from the Soviet bloc. It is less common in Asia, the Caribbean, and the Pacific.¹⁰

The amount of state aid and the proportion of political financing derived from this source varies greatly. In certain African countries, cash-strapped governments have eliminated public funding despite provision for it in the law. Comprehensive information about the share of total spending on parties and elections that comes from state aid is available only for selected countries. Karl-Heinz Nassmacher estimates that the percentage of total expenditure derived from public subsidies in 13 relatively prosperous nations varies widely, running from a low of 2 to 3 percent in the United Kingdom and the United States, respectively, to a high of 68 percent in Austria. The figures for countries in between these extremes are: Italy 4 percent; Canada 6 percent; Australia 12 percent; the Netherlands 16 percent; Spain 43 percent; Japan 47 percent; Germany 54 percent; France 56 percent; Israel 56 percent; and Sweden 65 percent.¹¹ Across all 13 countries, public funding supplied on average just under a third of total expenditure on parties and campaigns. The situation is roughly similar in the formerly communist lands of Eastern and Central Europe that have direct public subsidies to parties or to candidates for public office, with Bulgaria, Lithuania, and Russia among the countries that make available only token amounts of state aid.¹²

Public subsidies for electoral politics appear to have produced neither the benefits promised by supporters nor the drawbacks feared by critics. On the one hand, public subsidies have clearly failed to cure the problem of corrupt political funding. Some of the most serious scandals have occurred in countries with generous public subsidies, such as France, Germany, and Spain. A party or candidate who obtains public monies, knowing full well that such monies are equally available to competitors, will not therefore stop looking for more

money with which to outspend and outmaneuver political opponents.

On the other hand, the fear of some critics that public funding would cause parties to decline by reducing their incentives to recruit new members and raise money from existing ones does not seem to have been justified.¹³

It is easy to misinterpret the modern phenomenon of public funding laws. Such laws are neither a necessary nor a sufficient condition of the flow of public resources into election campaigns and into party coffers. These laws are not sufficient because, as mentioned earlier, the amounts provided may be insignificant or nonexistent. These laws are not necessary because there are many other ways in which public funds traditionally have been and still are directed into politics.

First, in a number of countries, the president or the prime minister has had the use of secret slush funds which could be used for any purpose whatever. In the nineteenth century, British prime ministers had at their disposal a Secret Service fund that was used, by convention, to subsidize the political campaigns of their supporters. In Imperial Germany, Chancellor Otto von Bismarck's "Reptile Fund" had similar uses, the main difference between Britain and Germany being that Britain abolished its special Secret Service fund in the 1880s while German chancellors continued to deploy such funds until after the Second World War. In Zambia, and in France until this year, funds similar to these have played a crucial role in politics. The Zambian case is of particular interest since the country has no direct public funding of parties or candidates but uses discretionary presidential funds as an alternative means to finance the party in office.

Second, in countries such as India, public funds are allocated to members of the national legislature for the formal purpose of carrying out development projects in their constituencies. In practice, the money may all too easily be used as a campaign resource.

Third, holders of paid public offices are required by many political parties and

in a considerable number of countries to donate set shares of their salaries to the party. Contributions of such “party taxes” may be recorded in party accounts as membership fees or as donations; in essence, these contributions are a form of indirect public financing.

Fourth, the use of state resources for electioneering functions constitutes a form of indirect public subsidy. A typical practice in a number of African countries including Zimbabwe is the use of state-owned vehicles to ferry electors to governing-party rallies, and to the polls on election day. A time-honored method of seizing the spoils of political office is to employ party supporters on public payrolls. Nominally civil servants, these patronage employees are in fact expected to devote much of their time to political campaigning. A third and equally widespread opportunity for diverting public funds into party service comes from the resources that are being provided with increasing generosity to members of the legislature in most democracies. Parliamentarians commonly receive public money to employ research assistants and secretaries; often the legislators have free offices and travel privileges. It is hardly surprising that incumbent legislators use at least a portion of these allowances for campaign purposes.

A full consideration of public funding also requires an account of subsidies-in-kind. In some countries, the most important form of in kind subsidy is the provision of free radio and television air time to parties and their candidates.

The overall conclusions that emerge are, first, that the principle of providing direct financial payments from the public treasury to parties and to candidates has become normal. Second, the public funding thus provided varies greatly in extent between different countries and is sometimes insignificant. Third, since there are several other sources of public funding than that which is supplied in direct public subsidies, it is unclear whether the extent and proportion of de facto public funding have been increasing, holding steady, or decreasing. Fourth, the impact of public funding seems to be smaller than either proponents or critics expected.

Too Much Law, Too Little Enforcement

Laws are one thing; whether they are followed is quite a different matter. In country after country, those investigating political financing receive the warning that laws are a dead letter or are honored in the breach. The difficulty of ensuring that regulations are effective is illustrated by the most basic type of rules: those concerning disclosure. As shown in Table 1, 62 percent of the 114 countries for which information has been obtained for a major study by the United States Agency for International Development have regulations requiring the public disclosure of at least some of the financial accounts of parties or candidates. Yet scholars of political funding have almost exhausted the vocabulary of contempt in describing the ineffectiveness of these rules. According to an expert employed by the French National Assembly, “the published statistics of party finances contained in official accounts—in France as elsewhere—are works of fiction.” In Italy, honest disclosure “hardly ever happens.” In Japan, published accounts “are just the tip of the iceberg.” In South Korea, too, the parties’ reports on their expenses for routine operations and electoral campaigning “expose only the tip of the iceberg.” In Taiwan, “it is difficult to monitor the situation when many contributions may be in cash.” In Britain, regarding reported expenditures on campaigns by parliamentary candidates, “the abuse in some cases is on a quite breathtaking scale.” In the United States, the disclosure rules surrounding political contributions are “a joke.”¹⁴

Besides disclosure laws being ignored because of lack of political will to enforce them, such laws are frequently evaded because they apply only to a limited range of political payments. To be fully effective, financial disclosure requires a very broad application. This includes financial disclosure for 1) primary elections and other significant forms of internal party campaigns for candidate selection; 2) election campaigns by individual candidates for public office; 3) the routine (noncampaign) budgets of national and local party organizations; 4) personal political funds of individual politicians; 5) interest groups participating in political campaigns (often referred to by the technical name of “third parties”); and 6) referendum campaigns. It is possible to take the case

for widening the scope of regulation even further to cover partisan newspapers, political activities by religious organizations, and even the funding of politically relevant lawsuits. It is questionable whether it is practical to include all these activities within the scope of rules governing the disclosure of political payments.

The dilemma for the reformer is that, if only a few direct channels of political money are subject to the disclosure rules, those wishing to exert influence through secret funds will naturally use those channels that remain unregulated. There are additional problems arising from donations to parties being dressed as loans, voluntary services, business transactions, or in other forms of disguise. Karl-Heinz Nassmacher summarizes the broader difficulties experienced by reformers of political financing in Western nations:

Political practice of almost two decades . . . has re-emphasized the general paradox of constitutional reform measures. Implementation of reform legislation breeds the need for more (and more complex) reform legislation. . . . The elaborate restrictions designed to control the flow of money into the political process have encouraged the professional politicians to engage in a creative search for potential loopholes either in the application of the existing law or when drafting necessary amendments.¹⁵

Evidence for this is the series of unending “reforms of reforms” that have taken place in a number of countries including France, the United States, Italy, and Germany. The desirable scope of political finance regulations and subsidies is bound to remain a subject of debate. There is little doubt, however, that all too often laws express objectives (such as transparency of political donations) without considering in sufficient detail how to implement those objectives. There is, in short, too much law and too little enforcement.

Trends Real and Perceived

The search for legal remedies not only has been a response to scandals, it has also followed from a set of widely held but unproven assumptions about general trends in the funding of political life. Many commentators, for instance, regard it as self-evident that the costs of politics have been rising in most parts of the world and that the cause of this upward trend has been the development of

television and of other mass media as the main forms of modern electioneering. The presumed “arms race” in political spending has been seen as a main cause of corruption in political financing. Yet there appears to have been little systematic research to establish whether costs have actually been rising.¹⁶ Some preliminary cautionary reflections are in order.

First of all, there is the question of the cost of advertising in the mass media. Television and other media play crucial roles in modern political life in many parts of the world. Yet even in those countries, such as the United States, in which the ownership of television sets is most widespread, the importance of televised political advertising easily lends itself to overstatement. Admittedly, TV is vital in campaigns for the U.S. presidency and for other major elective offices. But there also are elections for hundreds of thousands of lesser posts in which television plays little or no part. The standard study of U.S. elections in the presidential election year of 1988 found that television accounted for less than a tenth of the total sum spent on all electoral campaigns for public office:

According to . . . the U.S. Census Bureau in 1987 there were 504,404 popularly elected offices in the United States. . . . But most of the candidates for these offices never buy any television advertising time nor even get near a television camera. Usually, only serious candidates for major offices—presidential, senatorial and gubernatorial—make substantial use of television advertisements. Probably only about one-half of the House candidates purchase television time, and its cost often represents just a small portion of their campaign spending.¹⁷

In other economically advanced countries, the proportion of political spending accounted for by TV is probably less than in the United States. This is partly because parties and candidates can get free advertising time, partly because some countries (such as the United Kingdom) ban paid political advertisements on TV, and partly because a large share of political spending goes to pay for the national and local offices and staffs of political parties.

Second, television does not yet rule the world. In many parts of Africa and Asia, television sets and even radios can be quite hard to find outside cities. In

countries such as Ghana, Kenya, and Bangladesh, rallies are still the best way for candidates to reach voters. Hence the purchase of vehicles and electronic public-address equipment is a major expense.

Third, it is not at all obvious that the cost of the new politics, with its emphasis on mass media, professional image-making, and opinion polling, is greater than the cost of the old politics. The old-fashioned electioneering revolves around vote-buying, gift-giving, and laborintensive techniques of reaching individual electors, all of which tend to be very expensive. Indeed, evidence from a number of countries indicates that the venerable techniques of the old politics actually cost more than the thoroughly modern methods of media-oriented electioneering.

While the evidence that is currently available is impressionistic, it does seem to point to the surprising conclusion that old-fashioned, face to face politicking costs more than the new mass-marketing, media-heavy approach.

This becomes apparent if account is taken of the differences in per capita incomes in different countries. Arnold J. Heidenheimer discovered that in 1960–61 the amount spent on each vote in the Philippines was (relative to the average industrial wage) 14 times greater than the comparable amount spent in the United States. In 1996, the per capita costs of the elections in Thailand, where vote buying was prevalent, were reportedly 4 to 5 times higher (relative to average incomes) than in the United States. Studies of Uganda and of Antigua and Barbuda, as well as my own informal interviews with legislators in Kenya, all indicate that traditional patronage politics imposes far greater financial burdens than television-based campaigning. The “mass distribution of imported hams, turkeys and other giveaways” in the 1999 elections in Antigua and Barbuda meant that the cost-per-vote amounted to at least US\$60 (the estimate offered by the ruling Antigua Labour Party) and may have been as high as US\$300 (the opposition’s preferred figure). Taking differences in income levels into account, these elections cost between 9 and 44 times more per capita than all the elections—state, local, and federal—that took place in the United States in 1996.¹⁸

If old-style patronage politics is more costly than the new media politics, one might expect the levels of spending to remain constant in countries where the old politics remains standard and to fall in countries where the new politics has developed. Yet, according to many studies of particular countries, costs have risen in recent decades, even when account is taken of inflation. How are these apparently contradictory findings to be reconciled?

There are several possible explanations, though it must be stressed that they are at this stage no more than suppositions. First, the franchise has been extended to women and to young people, and populations have grown. Thus electorates have been larger. Therefore it is necessary to calculate costs-per-electeur rather than total costs.

Second, there is a tendency for studies to focus rather narrowly on how much national election campaigns cost in economically advanced countries. But it is wrong to consider these national campaigns in isolation. Where there has been a movement from the traditional methods of door-to-door canvassing toward campaigning based on national advertising and modern mass-marketing techniques, one might expect a shift in expenditures from local to national party organizations. This probably has occurred in the United Kingdom. A study of trends in political spending must therefore take into account the total cost of campaigning at all levels and not just the national one.

Third, there is the technical but crucial matter of which measure of inflation should be used when looking at long-term trends in political spending. A common error is to use an index of retail prices or some other cost-of-living index. These indices ignore the fact that in most countries average incomes have increased faster than the cost of living. Since party organization and election campaigning are labor-intensive activities, the relevant inflationary index for political finance arguably is per capita income rather than the cost-of-living index.

When these adjustments are made, the case that political costs have generally been rising becomes less clear. According to a recent academic study of the

United States, “contrary to the claims of reformers and the media, campaign spending has not exploded in recent years . . . campaign spending has not grown faster than the nation’s income. Total campaign spending in presidential years hovers around one-hundredth of one percent of [GDP]. This relationship . . . has held relatively steady since 1912.”¹⁹

In summary, there is too little evidence to establish the common view that there has been a notable rise in the costs of campaigning and that this has been a major cause of corruption linked with political financing.

Drawing Some Lessons

Several conclusions emerge from this review. First, there is a lesson for bodies such as the World Bank and the International Monetary Fund, which have been prominent in the campaign against corruption but which have been reluctant to enter the thicket of political financing. The links between political financing and political corruption are so common and so important that these organizations cannot reasonably expect to tackle corruption if they turn a blind eye to the issue of political funding.

Second, there is a lesson for reformers: It is dangerous to assume that the problems of political financing are amenable to simple legislative remedies. There should be more stress on the enforcement of a few key laws such as those on disclosure, and less on the creation of an everexpanding universe of dead-letter rules.

Third, though considerations of space prevent me from developing this point, the value of so-called “public-interest” lobbies and “civil society” organizations in the area of political finance reform frequently has been overestimated. With honorable exceptions, they have too often constituted small elites, more effective in blowing their own horns, in making unjustified claims about representing the citizenry, and in filling their coffers with grants than in acting as effective agents of change. They have tended to advocate simplistic international codes and remedies.

Fourth, there is an urgent need for investigation into the facts of political financing by scholars, journalists, and—last but not least—politicians themselves. This applies especially to developing democracies, in many of which the study of political financing is in its infancy. Such investigation is not merely a matter of academic curiosity (important though this is). Detailed and persistent scrutiny often provides a crucial foundation for efforts to contain the abuses that are always liable to occur wherever competitive elections are held and organized political parties exist.

NOTES

1. “Planters” meant farmers; “bumbo” was a rum punch. I am grateful to Phil Costopoulos for reminding me that George Washington was a leading practitioner of this kind of “treating.” His papers in the Library of Congress reveal receipts for rum to be used in campaigning in July 1758 in his first-ever political contest, for the Virginia House of Burgesses: 160 gallons to treat 391 voters.
2. The system of so-called CDU racketeering is described in “Constitution Watch: Croatia,” *East European Constitutional Review* 10 (Spring–Summer 2001): 12–13.
3. Pilar del Castillo, “Problems in Spanish Party Financing,” in Herbert E. Alexander and Rei Shiratori, eds., *Political Finance among the Democracies* (Boulder, Colo.: Westview, 1994), 100.
4. Flora Nkurukenda, “Administration of Local Elections,” in Report of the Inaugural Meeting of the General Assembly of the Association of African Election Authorities (Accra, Ghana: Association of African Election Authorities, 1998), 55–56.
5. Muhammed Y. Akhter, *Electoral Corruption in Bangladesh* (Aldershot, England: Ashgate, 2001), 22–23.
6. Douglas W. Payne, “The 1996 Suriname Elections: Post-Election Report,” Center for Strategic and International Studies, Washington, D.C., *Western Hemisphere Election Study Series* 14, Study 4, September 1996.
7. Limmanu Anosorn, “Thailand,” in Wolfgang Sachsenröder and Ulrike E. Frings, eds., *Political Party Systems and Democratic Development in South and*

South-East Asia, Volume 1: South-East Asia (Aldershot, England: Ashgate, 1998), 437.

8. Information has been collected about the existence of direct public funding in all 143 countries rated by Freedom House in 2001 as “Free” or “Partly Free.” In addition to those countries included in Table 2, other countries with direct public funding are Andorra*, Benin, Burkina Faso, Cape Verde*, Cyprus (G), Djibouti, Ethiopia, Gabon, Georgia, Liechtenstein, Luxembourg, Mali, Monaco*, Mongolia, Morocco, Niger, San Marino, Serbia, and Slovenia. Countries without public funding are Central African Republic, Comoros, Congo-Brazzaville*, Côte d’Ivoire, East Timor, Guinea-Bissau, Iceland, Jordan, Kuwait, Madagascar, Marshall Islands, Micronesia, Nauru, Nepal, Palau, Sao Tome & Príncipe*, Sierra Leone, Solomon Islands, Suriname*, and Togo. In this note, asterisks indicate information collected by Lotta Lann, International Institute for Democracy and Electoral Assistance (IDEA).
9. Among 143 “Free” and “Partly Free” countries, there is direct public funding in 26 percent of those with populations of fewer than 1 million persons and in 69 percent of those with populations exceeding 1 million.
10. Among 143 “Free” and “Partly Free” countries, the proportions of countries with direct public funding in different regions are: Western Europe, 87.5 percent; former communist countries, 86 percent; Americas, 76 percent; Africa, 50 percent; Asia, 47 percent; Oceania, 14 percent; Caribbean, 8 percent.
11. Karl-Heinz Nassmacher, “Die Kosten der Parteitätigkeit in westlichen Demokratien,” *Österreichische Zeitschrift für Politikwissenschaft* 31 (2002): 16.
12. On Bulgaria and Russia, see Janis Ikstens, Michael Pinto-Duschinsky, Daniel Smilov, and Marcin Walecki, “Political Finance in Central Eastern Europe: An Interim Report,” *Österreichische Zeitschrift für Politikwissenschaft* 31 (2002): 34.
13. Jon Pierre, Lars Svasand, and Anders Widfeldt, “State Subsidies to Political Parties: Confronting Rhetoric with Reality,” *West European Politics* 23 (2000): 1–24.
14. Michael Pinto-Duschinsky, *Handbook on Funding of Parties and Election Campaigns: Overview* (Stockholm: International Institute for Democracy and Electoral Assistance, 2001), 14–15.

15. Karl-Heinz Nassmacher, "Comparing Party and Campaign Finances in Western Democracies," in Arthur B. Gunlicks, ed., *Campaign and Party Finance in North America and Western Europe* (Boulder, Colo.: Westview, 1992), 260.
16. See Hiltrud Nassmacher and Karl-Heinz Nassmacher, "Major Impacts of Political Finance Regimes," in Karl-Heinz Nassmacher, ed., *Foundations for Democracy: Approaches to Comparative Political Finance—Essays in Honour of Herbert E. Alexander* (Baden-Baden and Washington, D.C.: Nomos, in cooperation with the International Foundation for Election Systems, 2001), 182 ff.
17. Herbert E. Alexander and Monica Bauer, *Financing the 1988 Elections* (Boulder, Colo.: Westview, 1991), 98.
18. Melissa Thomas and Joel Barkan, *Corruption and Political Finance in Africa* (Washington, D.C.: World Bank, 1998); and Douglas W. Payne, *The Failings of Governance in Antigua and Barbuda: The Elections of 1999* (Washington, D.C.: Center for Strategic and International Studies, 1999).
19. Publicity summary prepared by the Institute of Governmental Studies, University of California at Berkeley, 8 April 2002, for Stephen Ansolabehere, Alan Gerber, and James M. Snyder, Jr., "Corruption and the Growth of Campaign Spending," in Gerald Lubenow, ed., *A User's Guide to Campaign Finance Reform* (Lanham, Md.: Rowman & Littlefield, 2001), ch. 2.

CHAPTER TWO

POLITICAL FINANCE REGULATION IN NIGERIA: THE LEGAL FRAMEWORK

Udo Jude Ilo

INTRODUCTION

The term ‘political finance’ can be defined as the use of money or the use of other material resources for political activities. It embodies the sources or means through which political activities are sponsored in a given country. The concept of political finance has two broad connotation viz money used for electioneering (campaign funds) and money used for political party expenses (party funds).¹ There are some other forms of political finance but these two will form the basis of our discussion because they form the bedrock of every political activity

Nigeria is an emerging democracy and the sources and modes through which political activity is financed bear heavily on the success of the democratic process. There is a correlation between the manner through which campaign and party funds are raised and administered and the outcome of the election and even the overall performance of the candidate sponsored by this process when such a person emerges victorious. When funds are raised from questionable sources, there is a tendency that a candidate will owe allegiance to such forces that put him in power. Placing no limitations on the amount which an individual or a corporation can contribute to a political party allows money bags the opportunity to hijack not just the party structure but to also

corrupt the whole electioneering process with money, making it difficult for there to exist a level playing ground for candidates. It makes the process very expensive putting candidates in moral jeopardy of stealing public money to offset debts incurred during a very expensive electioneering process. It is a vicious cycle that perpetuates corruption and mal-governance.

In Nigeria today, sponsorship of a political party or candidate is effectively a business investment, which the investor must recoup the moment his candidate gets into the public office. The very peculiar nature of our socio-economic environment characterized by hunger and illiteracy make the general public and indeed government agencies susceptible to manipulation by corrupt politicians who take advantage of inadequate electoral laws which create a leeway to unlimited access to political finance sufficient to destroy the electoral process.

There is virtually no limit to the finances which are currently available to the major political parties, and indeed virtually all the political parties in Nigeria today. It does appear that financial strength is what determines who is successful in an election. This trend destroys the integrity of the electoral process which ought to be capable of making today's winners, tomorrow losers.²

The democratization process in Nigeria has constantly been encumbered with grave impediments. The will of the people it has been argued has not really been made manifest in the results especially during 'civilian-to-civilian' transition³ as incumbent governments are rarely defeated due to public funds made illegally available to the ruling party. This underlines the need to appraise the political finance regulatory system in Nigeria with a view to reform especially the enabling laws.

This paper will attempt to concisely analyse the extant legal framework regulating political finance in Nigeria, highlight inadequacies or deficiencies whilst juxtaposing the regime with the political realities of our environment and proffer suggestions on the way forward drawing liberally from the instructive practices of other emerging and 'advanced' democracies.

THE ENABLING LAWS

A number of constitutional provisions and legislative enactments relate to political finance. Because of the pride of place that the constitution has as the grundnorm, our analysis will start with the provisions of the constitution relating to political finance. The constitution provides the basic framework for the implementation and the enactment of other laws in the country. The supremacy of the constitution is further emphasised in section 1(3), which provides

If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void⁴

In other words, every other law in the country must be in line with the provisions of the constitution. It also follows that any inadequacy in the constitution will automatically taint the provisions of subsequent laws in the same subject matter.

The 1999 constitution in section 221 prohibits any association other than political parties from making political donations

The constitution in section 225 provides as follows

- (1) *Every political party shall, at such times and in such manner as the Independent National Electoral Commission may require, submit to the Independent National Electoral Commission a statement of its assets and liabilities.*
- (2) *Every political party shall submit to the Independent National Electoral Commission a detailed annual statement and analysis of its sources of funds and other assets together with similar statement of its expenditure in such form as the Commission may require*
- (3) *No political party shall-*
 - (a) *hold or possess any funds or other assets outside Nigeria; or*
 - (b) *be entitled to retain any funds or other assets outside Nigeria*

- (4) *Any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the Commission within twenty-one days of its receipt with such information as the Commission may require.*
- (5) *The Commission shall have power to give directions to political parties regarding the books or records of financial transactions which they shall keep and, to examine the all such books and records.*⁵

The commission was also empowered in subsection 6 of the above section to audit the account of political parties through its staff or professional auditors.

The Commission is further empowered by section 226 of the constitution to prepare and submit a report on the financial account of the political parties to the National Assembly and are also authorised to have unlimited access to the records of the political parties.

The National Assembly is empowered in section 228 of the 1999 constitution to make laws for the punishment of any individual or party who falls foul of the above provisions and the disbursement of annual grants to political parties.

The Electoral Act 2002

The provision of this law covers virtually every process of electoral activities in the country.

Section 76 provides for the oversight function of the Electoral Commission over the activities of the political parties and also provides for a fine of N500, 000 for non-conformity by any individual to lawful directives by the Commission in carrying out its supervisory functions⁶.

Section 77 makes provision for a fine of N500, 000 for the contravention of sections 225 (3) (a) and (b) of the 1999 Constitution relating to ownership of foreign asset by any political party and retention of any donation from outside the country⁷.

Section 78 provides for period of time, which the annual account of a political party should cover. It also empowered the Commission to audit the account of political parties periodically.⁸

Section 79 makes provision for a separate financial statement for election expenses as prescribed in section 100⁹ of the act not later than 90 days after the election. Surprisingly section 100 of the Electoral Act has no provision whatsoever that relates to party finances it rather talks about qualification of a person who can contest elections.¹⁰

Any political party that fails to submit the audited return of election expenses is guilty of an offence punishable on conviction with a fine of N100, 000.

Section 80 makes provision for the disbursement of grants to political parties that are contesting elections. It provides that 30% of the grant shall be distributed equally among the political parties before the election and the remaining 70% shall be shared among the political parties after the result of the election has been known, in proportion to the number of seats won by each party in the National Assembly¹¹.

Section 81 provides that the National Assembly may make an annual grant to political parties and 30% of such grants should be shared equally among the parties and the remaining 70% shall be shared among the political parties in proportion to number of seats won by each party in the National Assembly.¹²

Section 82 provides as follows

*No political party shall be eligible to receive a grant under section 93 unless it wins a minimum of 10 percent of the total votes cast in the local government election in at least two-thirds of the states of the federation.*¹³

Section 93 which is referred to in the above provision has no such provisions

Section 83 empowers the Commission to place the limitation on the amount of money or other assets, which an individual or corporate body can contribute to a political party. Also it stipulates for a record of all contributors¹⁴

The Companies and Allied Matters Act forbids corporate organizations from making political donations¹⁵

The above-mentioned provisions if properly applied will inject some semblance of sanity in our political environment but that does not mean that there are no rooms for improvement.

Section 226¹⁶ provides that the commission shall prepare and submit the annual report on the accounts and balance sheet of every political party to the National Assembly. The National Assembly is made up of partisan members who may not be free from bias in considering the reports. An independent body made up of non-partisan members should be in a better position to review such reports. The peculiar inclination of our politicians to place selfish and party interest above common good must not be overlooked

It is submitted that the penalty provided in sections 76, 77 and 78 of the 2002 Electoral Act are not stiff enough to deter parties from flouting the provisions of the law. Mere imposition of fine without more cannot adequately serve as an effective deterrent. The law should be tightened to disqualify such a party from taking part in the general elections. Our environment is one riddled by corruption and fraud. Nigerians are notorious for trivializing the provisions of the law; it then becomes necessary that in order to save our democracy very stiff penalties must be prescribed for serious offences. The penalties as applied presently have not been able to check the excesses of political parties and politicians.

The provisions of section 80 of the Electoral Act¹⁷ which stipulates that the grant given to political parties should be shared before and after elections and on the latter instance in proportion to the seats the political parties have in the National Assembly destroys the sole aim of the grant which is to help the political parties especially the small ones contest election. Sharing 70% of the grant after election to successful parties empowers the bigger parties the more and does not promote fair and level playing ground.

This argument also applies to the provisions of sections 81 and 82 of the Electoral Act¹⁸.

The reference made to wrong provisions in sections 79 and 82 portrays the carelessness and inefficiency of the draftsmen and the legislators who passed it into law.¹⁹ The Act in section 83 contradicts the provisions of section 308 of the Companies and Allied Matters Act, which prohibits corporate bodies from making political donations. This provision of the Act amplifies the very careless attitude of the draftsmen and creates confusion in the political environment. Allowing corporate bodies to make political donation will open up ways for the sale of the seat of government. It creates room for money politics as seen in the last election. Till date INEC has not placed any limitation on the amount of money an individual or corporation can donate to political parties allowing room for money bags to hijack the political parties and even the government as seen in the drama which is unfolding in Anambra State.

The Problem With Political Finance in Nigeria

Money is very fundamental to the activities of any political party. Insufficient finances will cripple a political party and make them insignificant. On the other hand unlimited access to finance tend to give a party an unjust edge over other parties and turns the whole process into an auction where the highest bidder wins. Though it is not in all case that the richer political party wins but the truth is that it creates an unhealthy playing ground and has a tendency of corrupting the process and the government. The middle line is the political system where the political parties are equipped to reasonably contest and win election, and in which money is just one of the tools and not the only means for electoral victory.

The Nigerian environment is saddled with the two extreme positions. While some parties can barely pay for their secretariat, others have unlimited access to funds capable of enabling them corrupt the electoral process. Many reasons have been adduced to account for this situation, chiefly amongst which is that our electoral laws are not adequate to check the excesses of the politicians. Accepted that there is room for improvement in our electoral laws, it is only a part of the problem. The greatest problem with political finance in Nigeria is that the laws in force are not implemented. The Independent National Electoral Commission in the last elections never implemented the laws relating to

disclosure. Nobody was questioned for retaining foreign donations. The Independent National Electoral Commission did not, contrary to the provisions of the Electoral Act, place any cap on the amount of money any individual or corporation could donate to political parties. The toothless nature of the relevant agencies gave politicians the leeway to flout the rules concerning party and campaign finance. The resultant effect was that the political environment was saturated with money and government, political parties and politics in general is seen as the easiest way to make money. The economic hardship in the country and the opulent lifestyle of politician convinced the electors that electoral process was a time and means to acquire wealth. Thus manipulations and rigging of all sorts occurred. The will of the people is not reflected in the polls. Thus the government, which is not elected by the people, cannot work for the people.²⁰ Democracy in this environment cannot exist.

Another mode of seeing the implementation of our political finance laws is through litigation and prosecution. Two issues are involved: civil and criminal. Under the Electoral Act, once crime is involved, the law places a burden of proof beyond reasonable doubt. Under section 144 of the Electoral Act²¹, the Attorney General shall consider any recommendation made to him or to a tribunal by the Commission, with respect to whether or not to prosecute any person mentioned in a petition.

It is also trite that non-compliance with the Electoral Act is a ground for electoral petition. But the central issue is who has the locus in this type of case? Under section 133 (1) of the Electoral Act,²² an election petition can be presented by one or more of the following,

- (a) *a candidate to the election*
- (b) *a political party which participated in the election.*

The list is closed, hence, what becomes the fate of voter, as was the case in **Egolum v Obasanjo**²³. The restriction of locus standi has continued to impose limitation on justice. To date, no recommendation for prosecution has been given by any tribunal and ordinary Nigerians are estopped from questioning

the activities of individuals who flout the rules on the ground of locus standi. A liberal interpretation of locus standi will favour the search for even handed justice in Nigeria.

The evils of unchecked political finance haunt the government in that the government, which is a product of a flawed electoral process, cannot offer much to the people. The government will want to protect the status quo, which brought it into power, and this makes reforms almost impossible.

A LOOK AT OTHER DEMOCRACIES

Fashioning and implementing adequate political finance regulatory systems has been a source of concern and controversy the world over. One accepted notion is that the peculiarities of every environment must be considered. As such no political finance law could be said to be foolproof; what is canvassed is for a system that can guarantee reasonable transparency and competition amongst political parties.

The United States

In the United States, a cap is placed on the amount of money any individual can contribute to a political party and the parties must disclose the source of such donation. The maximum donation an individual can give to a political party or candidate is \$1000 an equivalent of about N140, 000 in Nigeria. For any donation, which is above \$200, the name, address and other information about the individual are furnished by the party to the relevant agency.

This practice in the U.S is in relation to federal election. The respective states in the U.S have various political finance laws, some of which are similar to the federal law. The information relating to donations are disclosed or filed with the relevant agency by political parties and Political Action Committees (PAC) who raise money for candidates. The efficiency of this system is further guaranteed by the strict enforcement of sanctions on defaulters. The practice of disclosure has a lot of advantages amongst which are

- (a) Disclosure facilitates the enforcement of campaign regulation and helps to check corruption

- (b) It increases accountability
- (c) A transparent system engenders trust
- (d) Disclosure enables a polity to better understand its regularities.²⁴

Rose Ackerman notes that a democratic political system must find a way to finance political parties without encouraging the sale of politicians to contributors²⁵. The practice of placing limitations on donations by individuals clearly achieves this. The Americans have taken a step further in their bid to establish a transparent political finance system with the recent bill sponsored by Senator Russell Feingold et al. In America, it is called, the Clean Money Campaign.

Clean Money Campaign Reform offers a new approach to financing elections by providing candidates an alternative to soliciting special interests or spending personal funds to run for public office. Under CMCR, candidates who voluntarily reject private money and limit their spending receive a fixed and equal amount of campaign funding from a publicly financed fund.

American voters are angry about the existing campaign finance system and want to see it completely overhauled. They believe that electoral campaigns have become too expensive, special interests have too much influence, candidates spend too much time chasing money, good people who lack money or connections don't have a fair chance to compete for office, and there are too many loopholes for big money to slip.

Instead of having to woo fat-cat contributors, potential Clean Money candidates would have to woo the public to collect a predetermined number of small donations to demonstrate real constituent support. And once they receive their Clean Money financing, they would not be raising or spending any private money whatsoever. As a result, grassroots candidates and electoral coalitions would finally be able to compete on an equal footing on the basis of program, ideas, party affiliation and leadership ability, not money. A number of states in America have adopted this practice.

The Philippines

Laws on financial contributions refer specifically to elections. They are silent on contributions to political parties not related directly to elections. The relevant law on elections is Republic Act 7166 passed in 1991. Parts of this law were amended in RA9006 passed in July 2000. COMELEC resolutions 3636 and 4170 promulgated just before the May 2001 provide implementing rules and regulations. These laws are so strict that if they were observed, candidates would have to self-finance campaigns. Contributions from the following are explicitly banned by the COMELEC:²⁶

1. Public or private financial institutions. (This includes contributions from all banks, though legitimate loans are allowed.)
2. Operators of public utilities or holders of licenses to exploit the nation's natural resources. (This would include all mining, logging, and deep-sea fishing companies, and operators of public utilities like electric companies and transport enterprises.)
3. Suppliers or contractors of goods and services to the government. (This would cover virtually all the big construction companies engaged in infrastructure, construction or contractual supplies to the government.)
4. Recipients of franchises, incentives, exemptions, allocations, concessions or similar privileges by the government. (This would cover virtually all the major franchises, concessionaires etc. as well as radio and television companies insofar as they need a franchise to use the airwaves, and all beneficiaries of tax exemptions and other forms of incentives.)
5. Beneficiaries of loans or other forms of accommodations by the government in excess of P100, 000.
6. Educational institutions, which have received public funds in excess of P100, 000.

7. Government officials and employees, and members of the Armed Forces of the Philippines. (This covers practically everybody working in government.)
8. Foreigners and foreign corporations. (This will also cover all Filipinos living overseas who have acquired foreign citizenship)

Candidates for president and vice president can spend P10 per registered voter. Their parties can spend a counterpart fund of P5 per voter. With 35 million voters, the presidential candidate and his party can spend P525 million (roughly US\$10 million at 2001 exchange rates). Other candidates are allowed to spend only P3 per voter. Thus senatorial candidates who run on a national level are allowed to spend P105 million. Independent candidates are allowed to spend more since candidates' parties are allowed to spend another P5 per voter per candidate.

There is no state financial support for candidates and parties. The closest that might be considered 'support' is the provision in the 'Fair Elections Act' (RA9006) passed in 2000 for the COMELEC²⁷ to buy media time and space for the use of candidates.

Every candidate and treasurer of the political party must submit within 30 days after election day a "full, true and itemized statement" of all contributions and campaign expenditures (RA7166). The statement must contain:

- Amount of contribution, date of receipt and the full name and address of the contributing person or organization;
- Amount of expenditure, the date full name and address of the person to whom the payment was made and the purpose of the expenditure; and
- Any unpaid obligation, its nature and amount and to whom said obligation is owed.
- Under the Fair Election Practices Law (RA9006) passed February 2001 which lifted the ban on political advertisements, contracts for the use of media for political advertisements have to be submitted to the COMELEC. (Adversario:2001)

In spite these provisions, the Electoral Agency has not been able to implement the laws. The cost of campaigning is rising every day and the process cannot be said to be transparent.

South Korea

The current regulation regime of political finance largely centers around the power and functions of the National Election Commission. The NEC regulation is mainly composed of two elements: (1) fiscal reports made by parties, support groups, and candidates, and (2) investigation into campaign activities and political money flow. First, the Political Finance Law requires all parties, support groups, and candidates to submit their annual fiscal reports to the National Election Commission by February 15 in each year. In addition to these regular reports, they are also required to make election campaign reports within 30 days after the election - presidential candidates report within 40 days after the election. Fiscal reports should include the listing of properties, listing of incomes and expenditures, receipts, and CPA's examination summary.

The first problem with the fiscal report is that reported materials are not available for thorough examination by the public, academics, and relevant NGOs. Access to reported materials is quite limited. Relevant materials are open to the public only for three months and photocopying of materials are restricted even during that period. Another problem with the current reporting system is that lists of contributors are not available to public investigation even though they are included in the reported materials. It constitutes a major barrier to enhancing transparency of political finance flow.

The other major aspect of regulation is *ex post facto* investigation. After reviewing reported materials, more than one thousand NEC officials along with IRS (Internal Revenue Service) officials conduct in-depth investigation into improper use of campaign money and illegal activities. Over a period of four months following the 2000 election, the NEC officials investigated the fiscal documents and campaign activities of 658 candidates. They even looked into account books of publishing companies and political marketing firms in several districts. The investigation has eventually led to referrals of 27 candidates and 69 campaign bursars for criminal prosecution.

Criminal investigation referred by the NEC has often led to severe punishment. For instance, seven members of National Assembly lost their seats as they were convicted for illegal campaigns and improper use of political money after the 1996 parliamentary election. Another thirteen members lost their seats after being convicted for illegal campaign practices after the 2000 election. This seems quite a severe sanction against politicians when compared to the situation in Japan and United States. For the 1997-2000 period, not a single member of the US Congress has lost his or her seat on charges of unlawful campaign and illegal campaign funding practices. In Japan, only three members of the National Diet have lost their seats for campaign fund-related charges during the period. If we look at fiscal report observation and *ex post facto* investigation, the Korean NEC seems quite powerful. It's independence is guaranteed by the constitution. Appointment of the nine members of the NEC council is equally shared by the President (three), National Assembly (three) and the Chief Justice (three). The NEC has adequate legal authority necessary for effective enforcement. It includes authority to investigate financial reports, and to make referrals for criminal prosecution.²⁸

In spite of the checks placed on political party, election in Korea is still very expensive and not entirely transparent. The Government has introduced subsidies for political parties and limitation on contributions made to parties and candidates. The dedication of relevant agencies in Korea in oversight function over party finances is highly commendable.

Lessons for Nigeria

Political finance law can never be perfect. Every democracy has its own raging debate on what should be the standard. If the will of the majority is reflected in the outcome of elections, then the system should be given a pass mark. There is always a problem with whatever manner of electoral law established by any country. The American system of disclosure is criticized as nugatory to the practice of secret ballot in that when the name of a contributor is published, it becomes public knowledge that he has supported a particular candidate and allows room for intimidation if the candidate who wins decides to even with individuals that supported other candidates financially.

Government provision of subsidy for political parties is also riddled with government bureaucracy. There may be cases of delayed release of funds and unfairness in disbursement of funds.

Placing caps on donations to political parties, noble as it may sound, is very hard to implement since politicians are very good at exploiting loopholes in the law. Be that as it may, there is general consensus that unregulated political finance can destroy the foundation of democracy.

One of the best means of ensuring transparency in political finance is the strict implementation of the relevant laws. There is the need to give effect to the law irrespective of how inadequate they may be. The number of members of parliament in Korea who lost their seats for contravening the campaign finance rules portrays a nation that respects the rule of law. No matter how good reforms are, they are worthless if not implemented.

Reform takes time to achieve impact. America's disclosure laws have been operational for 25 years; we should not expect to have ours as efficient as theirs in a flash. We must be willing to experiment with reform in order to build a reliable political finance regulatory system.

RECOMMENDATIONS

1. The composition of the INEC must be reviewed to ensure independence and efficiency. The practice in Korea whereby the Chief Justice, the President and the National Assembly each nominate three out of the nine members of the Electoral Commission is advocated. The financial independence of the body must also be guaranteed by the Constitution and strictly implemented. This will enable the body to have the teeth to bite especially in their oversight function with respect to political finance.

2. The provisions of section 83 (2)²⁹ should be amended to provide for the submission to INEC of the list of contributors and the amount they

contributed by political parties and candidates. It should also be enough ground to disqualify a party or a candidate from participating in future elections if such a person falsifies or refuses to furnish the records.

3. Section 133³⁰ should be amended to allow electors and indeed any other interested party to challenge the outcome of elections. Contravention of election finance rules should not just be sanctioned by fine alone but should be enough ground for the electoral tribunals to annul election returns.

4. Grants to political parties to help them with their electoral campaign should be shared equally between the parties before the elections. Withholding some part of the grant until after election defeats the aim of the grant. The provisions of section 81 of the Act should be amended in this respect.³¹ Section 82 of the Act should be amended to provide for equal share of the grants among operational political parties. This will enable the smaller parties to have enough resources to build up structures and will remove the undue advantage presently enjoyed by the bigger parties.

5. INEC should immediately place a limit on the amount of money any individual or corporation is allowed to donate to a party. The present practice in the U S, which places the limit of donation by an individual at \$1000, is instructive. Section 308³² which prohibit corporations from making any donation should be strictly implemented not just to protect the seat of government but also to save the shareholders money. It should also be made a ground for the winding up of a company.

6. Perhaps the greatest reform to our political finance laws is the strict implementation of the laws. There must be the political will by the appropriate authorities to give effect to the law.

7. The Clean Money Campaign as presently practiced by some states in America should be adopted and experimented.

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CHAPTER THREE

POLITICAL FINANCE IN NIGERIA: A POLICY AGENDA FOR REFORM

Uche J. Emelonye

INTRODUCTION

This paper seeks to explore the concept of political finance, through a global vista but with a reformatory emphasis on the Nigerian polity. It attempts to conduct a historical survey into political finance in a representative cross-section of world democracies, looking at political finance law, policy and practice as well as attempts at reform.

The comprehensive picture so obtained will then be juxtaposed with the Nigerian reality by so doing providing a conceptual framework within which the phenomenon of political finance may acquire some much overdue expediency. It is also hoped that suggestions for reform proffered will request a contribution to the impending review of political finance regulation in Nigeria.

More than any election in Nigeria's chequered political history, the 2003 national elections was determined by how much money candidates had. The electoral process has become so expensive that only the rich or those dependent on rich backers can run.

There is also the disturbing trend of questionable business people backing candidates with 'grey money'. This means that qualified candidates without money and without the endorsement of a 'god father' are priced out of the

race for public electoral office. And even when comparatively honest people do run, they have to spend so much money to match the financial exuberance of opponents that they inevitably become corrupt in their quest to recover expenses or return the favour of over-optimistic ‘godfathers’.

In Nigeria where compliance with and enforcement of administrative law is endemically lax, previous perfunctory attempts to prevent the ‘commercialisation’ of politics, have largely failed.

The pertinent question at this stage is ‘what is political finance? Michael Pinto-Duschinsky offers a definition of the broad subject as ‘the use of money or the use of other material resources for political purposes’¹

This definition, while capturing the essence of the concept does not acknowledge the multiplicity of ways in which money may be used to influence politics. It also shies away from explicating the ambits of the word ‘political’. What the present author advocates here is not a semantic description but rather a clarification as to construction of the term when it comes to foreign contributions. For example in Israel, the definition of ‘political’ is narrowed such that foreign payments for ‘technical assistance and training’ are permitted.² Such terms as technical assistance may be guises for more partisan contributions with political motives. Richard Bissell, a senior official of the Central Intelligence Agency (CIA) enumerates some of the ways in which the United States government tries to influence political outcomes including support for private organisations, business firms and covert propaganda.³

Therefore a definition of political finance should include the following aspects which Pinto Duschinsky subsequently identifies in his article:

- That political finance is a feature of non-democratic, as well as democratic regimes.
- The expenditure on elections and parties is only a part of a more far-reaching issue. Political funding can be for activities ranging from lobbying, propaganda, support of interest groups to blatant bribery.
- That the regulation of political finance is hindered by the plurality of avenues of obtaining and using money for political ends.

Until recently, research into political funding has concentrated on a limited number of advanced democracies, especially the USA; indeed “ far more books and articles have been and are being published on political finance in the United States than all other countries combined”⁴. American political scientist, James K. Pollock is credited with the first qualitative publication on the subject when he published a comparative volume in 1932.⁵ Since then the International Political Science Association (IPSA), research committee on political finance has remained the centre-point of international research on the subject.⁶

POLITICAL FINANCE: REVIEW OF GLOBAL BEST PRACTICES

Political finance has been responsible for shifts in political patterns through out the world. It has been responsible for ideological defections, embarrassing resignations, corruption, scandals and in the extreme, anarchy.

In Africa, it is a secretive affair, shrouded in mystery and silence, which orchestrates the political game from its crypts in the underground strata of socio-political consciousness. The politics of splits, defections, violence and subterfuge which it generates have taken over governance in many African countries, not the least in Nigeria. The paradox, however is that in Nigeria, money in politics has not been fully recognised as an issue worthy of public debate or legislative review, hence the unsurprising dearth of academic or popular literature on the subject.

US FEDERAL CAMPAIGN FINANCE LAW

There are separate systems for financing elections to federal offices (House of Representatives, Senate and Presidency) and elections to city, county and state positions. The Federal Electoral Commission (FEC) is the independent regulatory agency in charge of administering and enforcing the federal campaign finance law. This survey concentrates on the financing system for election to federal offices; with a focus on the following aspects of federal campaign finance law:

- public disclosure of funds raised and spent to influence federal elections;
- restriction and prohibition on contributions and expenditures made to influence federal elections; and
- the public financing of presidential campaigns.

The need for campaign finance reform was recognised as early as 1905 by President Theodore Roosevelt who called for a ban on corporate contributions to politics.⁷ Following a high profile campaign, the US Congress enacted a series of statutes between 1907 and the late 1960s that were cumulatively aimed at:

- limiting the disproportionate influence of corporate and labour union money and social interest groups on the outcome of federal elections.
- limiting spending in campaigns for federal office.
- making disclosure of campaign finances mandatory.

In 1971, Congress enacted the Federal Election Campaign Act, which effectively consolidated previous efforts at reform. The new statute established more stringent disclosure obligations for federal candidates, political parties and political action committees (PAC). These changes could not stop reports of widespread financial abuses in the 1972 presidential elections, prompting further amendments. 1974 saw the introduction of limits on contributions by individuals, political parties and PACs. The 1974 amendments also established the Federal Election Commission (FEC), an independent agency 'to enforce, facilitate disclosure and administer the public funding programme'. The FEC has six voting cross-party members appointed by the President with the consent of the US Senate.

The Congress made further amendments to the Federal Election Campaign Act in 1976 following the Supreme Court case *Buckley v Valeo* in which the court made a leap of logic to declare that spending money to influence elections was 'free speech' which was protected by the constitution and therefore beyond legislative control. In 1975, the FEC administered the first publicly funded presidential election in America. There were further amendments in 1979 aimed at streamlining the disclosure process and expand the role of political parties.

THE CAMPAIGN FINANCE LAW

The Federal Election Campaign act covers the following areas:

- Disclosure
- Contribution limits and prohibitions
- Independent expenditures
- Corporate and union activities
- Political party activity.

- **Disclosure**

The FEC ‘requires candidate committees, party committee and PACs to file periodic reports disclosing the money they raise and spend. Candidates must identify, for example, all PACs and party committees that give them contributions and they must identify individuals who give them more than \$200 in a year. Additionally, they must disclose expenditures exceeding \$200 per year to any individual or vendor.’⁸

- **Contribution limits and prohibition.**

There is currently no direct or indirect public financing for the US Senate or House of Representatives. However, the election law imposes limits on contribution by individuals or groups to candidates, party committees and PAC.

Contribution and expenditure by certain individuals and organisations are prohibited by federal electoral law. Such individuals or organisations herewith prohibited are:

- Corporations;
- labour organisations;
- federal government contractors; and
- foreign nationals.
- no one may make a contribution in cash of more than \$100.⁹

To avoid evasion of the above prohibitions, there are enforcement safeguards:

- **Independent expenditures.**

Under federal electoral law, an individual or group may make unlimited

(independent expenditure) in connection with federal elections. For this purpose, an independent expenditure is one ‘for a communication which expressly advocates the election or defeat of a clearly identified candidate and which is made independently from the candidates campaign.’ To be considered independent, the communication may not be with the co-operation or blessing of the candidate. There is however a requirement that persons making independent expenditures reports such expenditure and the source of the funds used¹⁰

- **Corporate and Union activity**

Although corporations and labour organisations may not make contributions directly in connection with federal elections; they may set up Political Action Committees [PAC], which are voluntary groups of officers and members. These are then allowed to raise voluntary contributions from individuals to support federal candidates so long as corporate money is not given to candidates in this way.¹¹

- **Political party activity**

Party committees may contribute funds directly to federal candidates, subject to certain limits and must register and file disclosure reports with the FEC once their federal election activities exceed a prescribed threshold.¹²

PUBLIC FUNDING OF PRESIDENTIAL CAMPAIGNS

Under the U.S. Internal Revenue Code, qualified presidential candidates receive funds from the Presidential Election Campaign fund, which is an account on the books of the US treasury, financed exclusively by a ‘voluntary tax checkoff’. The method involves individuals ticking a box in their tax returns, thereby directing \$3 of their tax to the fund. ‘Checking’ the box does not increase the tax the individual owes, neither does it reduce their refund. What it simply does is to direct that one dollar from the US Treasury be used in Presidential elections.¹³

The funds so gathered are distributed under 3 programmes:

Primary Matching Payments

Under this scheme, eligible presidential candidates may receive public funds to match the private contributions they raise. Only contributions from individuals are matchable and while an individual may give up to \$1,000 to a primary candidate, only the first \$250 is matchable. In order to qualify, candidate must ‘demonstrate broad-based support by raising more than \$5,000 in matchable contributions in each of 20 different states’. Candidates must agree not to spend more than \$50,000 of their own money in connection with the campaign. There is an audit of each candidate’s accounts by the commission after the campaign.¹⁴

General Election Grants

The Republican and Democratic candidates who win their parties’ nominations for president are each eligible to receive a grant to cover all expenses of their general election campaign, on the condition that they must agree not to raise private contributions and also that they limit their campaign expenditures to the amount of public funds they receive. The basic \$20 million has been increasingly adjusted to reflect inflation. In 1992, the grant was \$55.24 million. Minor party candidates may qualify for partial election funding following the election, based on their party’s electoral performance. There is also an audit requirement after the election by the Commission.¹⁵

Party Convention Grants

Each major political party may receive public funds to pay for its national Presidential nomination convention. From a base amount of \$4 million for each party, the amount rose to \$11.05 million in 1992. Smaller parties may get help with their convention, provided that their nominees received at least 5% of the vote in the previous election.¹⁶

DISCLOSURE REQUIREMENT

One of the most important aspects of US election law is the requirement for disclosure. The Federal Election Commission spends huge resources in ensuring that reports of all federal campaign activity are available to the public quickly

and completely. Reports filed by candidates, party committees and PACs are available for inspection and copying in the Commissions Public Records Office.¹⁷

In addition to campaign finance reports, the Public Records Office holds the following information:

- statistical summaries of reported campaign activities;
- FEC advisory opinion; and audit reports;
- Files on closed enforcement actions;
- Personal financial statement filed by presidential candidates;¹⁸

POLITICAL FINANCE REFORM: THE LATIN AMERICAN EXPERIENCE

Democracy in Latin America, according to Carlos Fuentes is defined as a system to deliver welfare for the majority, rather than a set of rules to form governments'. It is not surprising therefore in the light of this pragmatic and functional consciousness, that public opinion on political finance is put firmly in the shade. And without the pressure of high decibels public opinion, the prospects of effective political reform are limited.¹⁹

Since the early 1980's, democracy in Latin America has attracted considerable scholarly attention. This coincided with the democratization of many previously dictatorial regimes in the region. However, there was a misplaced attention on 'democratic transition' and 'consolidation'. Therefore, 'interest in the study of electoral campaigns, the organisation of political parties or the workings of congressional activity has been relatively scarce'²⁰

This is because in a political system where 'social movements and active citizens are favoured over political parties and electors', a debate on the financing of political parties and electoral campaigns becomes almost insignificant.²¹

Howbeit, Eduardo Posado-Carbo opines that ' a series of scandals related to the financing of electoral campaigns have sparked a movement for political

reform throughout the whole region.’ This concern with corruption and its effect on democratic legitimacy, as well as a pre-occupation with the concept of ‘fair electoral competition’ has triggered a fresh impetus in the debate on political finance.²²

The result of this is a new fledgling body of literature on the financing of politics in the region, thus providing a comprehensive picture of the prevalent legal frameworks in different parts of the region. It also provides an insight into funding challenges met by recent democratic processes and a research agenda (on election costs and sources of political money) that merits further development.²³

As in Africa and Nigeria in particular, the reform movement in Latin America is primarily conceived as a war on corruption. To compare it therefore to the Western model is to identify differences born out of social consciousness of the people and varying levels of political development.

In this vein, it should be noted that Colombia is one of the few countries in the region that has not experienced military dictatorship. This has had an impact on the nature of the democracy that has emerged in the country, especially a ‘historically contradicted and undervalued’ principle of political representation. This was aptly summed up by Laureano Vallenilla Lanz as *Cesarismo Democratico* (The democratic Caesar) This is constructed as expression of the will of the majority’ and ‘the manifestation of social equality under a leader’²⁴

The Colombian, Alberto Lleras Camargo favours a minimalist definition of democracy in which, ‘elections, parties, congress and political liberties kept the upper hand. This ‘idea that political liberties and therefore representative democracy were meaningless without deep socio economic changes’ was reiterated by many scholars in the region.²⁵

By the early 80’s democratic regimes only prevailed in four countries- Colombia, Costa Rica, Venezuela and Mexico. This situation informed John Pellers’s view that Latin America ‘was not hospitable to liberal democracy’.²⁶ According to Terry Lynn Karl, ‘gross economic disparities greatly contributed to Latin America’s past democratic failures and despite the current complacency

regarding democracy's third wave, they are likely to do so again'.²⁷

The familiar complaint is that 'democracy is fundamentally flawed unless it involves major socio-economic change'.²⁸ However, Eduardo Posada Carbo, did not advocate for a democracy without a social obligation to poverty and development concerns. According to him, what modern democracy has offered 'is an arrangement – a set of institutions and procedural rules- through which those problems could be tackled in complex societies'. The names for these central elements of representation which are neglected by alternative models of democracy are political parties and elections.²⁹

Parties and elections while in an advanced state of development in the West, did not grow naturally. 'It historically underwent a sort of rite of passage'. What is needed therefore in the Latin American situation has been identified by Seymour Martin Lipset as the 'creation of a supportive culture that fosters the acceptance of all the rules and procedures that have made them work towards an effective and stable democratic order'.³⁰

POLITICAL REFORM: A COLOMBIAN EXCURSION.

In a climate of opinion in which substantive notions of democracy prevail over procedural ones, "debating parties and their organisation may not be considered a priority in the face of other issues, such as unemployment, health and education. Posada-Carbo points out that, a public mood favourable to participatory democracy is usually accompanied by indifference or hostility to parties. The result is that political reforms are abandoned to politicians who are generally unwilling to carry out change or partisan reform movements with varying agendas that are detrimental to party structures".³¹

From its inception, the Colombian democratic regime has emerged from a coalition between Liberals and Conservatives. Although it survived the wave of dictatorship that swept the region in the 1970's, the Colombian 'representative democracy underwent a paradoxical process of legitimisation among intellectuals'. In 1988, when a reform movement was at full steam, President Virgilio Barco proposed 'that Colombians should move from representative democracy to participatory

democracy. This became the essential political philosophy that informed the adoption of the new constitution in 1991.³² While redefining the notion of Colombian democracy, the 1991 constitution introduced a set of new electoral rules with the aim of undermining an already fragile two-party system. It also introduced the financing of the electoral campaigns and ordinary activities of parties and movements by the state.³³

There was an initial period, following the implementation of the new rules when the system was perceived to have regained some relevance. Unsurprisingly the new constitution did not prove to be the elixir that was hoped. On the contrary, it seemed to aggravate the problems of the country. The party system 'continued a trend towards its fragmentation, while the representative institutions became further discredited.'³⁴

1994 saw the serious scandal of money from the drug cartels going into the funds of the Liberal presidential candidate. This plunged the country into a deep crisis which encouraged an open and far-reaching debate on the financing of politics and the need for the introduction of further reforms.³⁵

A report produced by an independent commission on political reform suggested inter alia that the state fully finances all presidential campaigns. But these proposals went unheeded and received no congressional backing. The result was that with the 1998 elections looming and in spite of the scandal and the ensuing debate, 'the legal regime on the financing of politics remained untouched'.³⁶

Since then there have been several attempts at reforming political finance in Colombia. The Pastrana government which took office in 1998 introduced a comprehensive project of political reform to the congress but a number of so called independent congressmen expressed their dissatisfaction with the proposals, arguing that the reform project did not tackle fundamental issues for the country like social justice and unemployment. This emphasis on structural socio-economic changes, diverted interest from the reform of the electoral systems and organisation of parties; leading to the collapse of the reform project.³⁷

The Pastreña government also attempted to raise public interest in political reform with a proposal for a referendum. But ‘in the face of mounting opposition from Congress which threatened to destabilize the regime, the president withdrew the proposal for a referendum. Subsequently, some members of Congress commenced an initiative for reform, which was voted down by the senate.’³⁸

As alternative models of democracy gained intellectual and currency, political parties and the very notion of the party were abandoned as central democratic actors, leaving a ‘formally stable and institutionalised party system whose gradual disintegration has gone hand in hand with the intellectual abandonment of representative democracy’.³⁹

STATE FUNDING IN LATIN AMERICA

Latin American countries have shown a trend towards state funding for political activities and parties. Scandals of corruption have encouraged public debate and instigated new legislation. The fear that money from the illegal narcotics trade might infiltrate into politics has been a constant fear in the region. This has become more pronounced as consultants, opinion polls and the mass media have swelled the cost of election campaigns. It has not also been helped by the deepening of democracy with the number of elections in countries of the region on the increase.⁴⁰

In spite of the insight provided by scandals, the real cost of electioneering in Latin America is predominantly unknown. The 1994 presidential election in Colombia was estimated at costing ‘US\$32 million’ which represents a considerable leap in comparison to previous elections.⁴¹

Although an authoritative view on the subject would require systematic research, it appears that elections in Latin America are getting ‘impossibly’ expensive. It is not just the rising costs that worry observers and academics alike, but ‘the lack of knowledge of where the money is coming from’⁴²

*'Fear of the corrupting influence of big donors, from both legal and illegal sources, in an atmosphere of increasing campaign costs, have perhaps been the major driving force behind a new wave of regulations related to the financing of political parties and elections'*⁴³

The pace of these changes vary from country to country but essentially include 'norms about disclosure, electoral authorities, access to media, limits on expenditures and private donations, or public subsidies'⁴⁴

Public funding of parties is not entirely new in Latin America, having first been practised in Costa Rica and Argentina in the 1950's before most Western democracies. But until recently, very little attention has been paid to the effect of public funding on the political systems that have adopted them. According to Jonathan Mendilow, public party funding is capable of generating fundamental changes such as may lead to the restructuring of the entire party system. The case study in this case was Israel where it was adopted to bridge the gap between parties and voters but 'had the opposite effect'⁴⁵

Thus Ingrid van Biezen concluded that 'in a democratizing polity in which excessive state funding is introduced when political parties are still in the early stages of development, the close linkage with the state may have removed one of the incentives for parties to establish a more structural relation with civil society'⁴⁶

Also as seen in the experiences of Germany and Italy, state generosity in the financing of politics is not a deterrent to corruption. It has also had the unintended consequence of widening the divide between parties and electors. It should therefore be noted that a regime of political financing is neither the only nor the most important variable in explaining the nature and organisation of parties. However, in conjunction with other variables, political financing arrangements could weaken or strengthen party organisations and affect the way they operate.⁴⁷

Without pressure from public opinion, the rules governing political activities will be ignored by the politicians and when they do make half-hearted attempts

at reform, it is mostly to make it more beneficial for themselves. Professor J.W. Jenks' observation aptly describes them; 'no man better understands the motives that guide men in daily life than the politician; and no man uses this knowledge to accomplish his own purposes with greater skill than he'. Therefore 'any attempt to understand and reform the role of money in politics should always bear this in mind'⁴⁸

POLITICAL FINANCE IN INDIA.

After gaining independence from Britain in 1947, India adopted a written democratic and republican constitution in 1950. The primary features of the new constitution included;

'universal and equal citizenship, fundamental rights encompassing the usual democratic rights and freedoms, parliamentary democracy, universal adult franchise and free and fair elections administered by an independent election commission, and a *de facto* federal system consisting of (now) 28 states with state legislative assemblies in addition to a bicameral Union (Central) parliament, the lower house (Lok Sabha) of which is elected on the basis of a single-member district, simple plurality system, upper house (Rajya Sabha) representing the states fairly proportionately, and whose members, for each state's contingent, are elected by proportional representation by an electoral college of members of parliament and members of the state legislature of the state concerned'⁴⁹

Elections in India are given legitimacy by Article 324 of the constitution of India, under the 'superintendence, direction and control' of the Election Commission of India, which is an independent constitutional body. Over the past five decades, elections have been conducted in a manner that has been generally accepted by most Indians to be free and fair.⁵⁰

The conduct of elections in India is governed by the Representation of the People Act (RPA) of 1951. This legislation put a ceiling on election spending by candidates that is regularly revised in line with inflation.⁵¹

The candidates finance themselves by self-help or from donations. Until they were banned in 1969, private sector donations to political parties were acceptable, so long as company donations were declared in the company's accounts. But unlike the United States, 'there were no limits on contributions to political parties or candidates, either on the donor or the recipient, except for certain restrictions on companies (after 1985, not more than 5% of average net profit over the past three years)'⁵²

However, with rising inflation and increasingly competitive elections since 1967, the hitherto dominant Congress Party saw itself increasingly challenged in more and more states by regional and other parties, singly or in combination and began to need funds on an increasingly large scale to be able to win elections. The result was a growing reliance on the burgeoning 'black money economy itself a product of a highly controlled economy where politicians and bureaucrats wielded enormous discretionary powers over matters vital to business'⁵³

This situation was further worsened by the abolition of company donations in 1969 which robbed parties of the only legal source of election funds, without substituting it with state funding in any form. Therefore the grey economy filled the funding void so created and the ruling party used the vehicle of government discretion to extort contributions from businesses. This marriage of convenience further strengthened the nexus between politics and organised crime.

From around the 1980's the ruling party became increasingly dependent on 'kickbacks' from foreign firms on import deals and defence acquisitions. Because of the huge figures involved, a very small percentage translated into a lot of money and top leaders of the ruling party were happy with the 'rationalised' funds which involved huge sums with just a few transactions.

The large scale 'illegalisation' of election finance made the reintroduction of company donations to political parties of little significance. Hardly any company donated money through the reopened avenue because it meant declaration of company accounts and hence identification with a particular party; when the illegal means offered discretion and anonymity.⁵⁴

In January 1996, in response to public interest litigation by a non-governmental organisation, the Indian Supreme Court ordered all political parties to file income tax returns by 20 February 1996. In the same vein, in April of that year, the Supreme Court upheld the validity of Explanation 1 of Section 77 (1) of the RPA. This provided that expenditure by the political party or supporters on behalf of the party are not to be counted for the purpose of determining spending ceilings for candidates, provided the candidate did not authorise them.⁵⁵

These two rulings had the effect of forcing the political parties to, at least perfunctorily, go through the exercise of filing tax returns and auditing accounts be it with fudged figures. But with the glare of public interest and the attention of a vigilant press, this imposes a certain level of transparency on the parties that was hitherto absent.

Shortly after the 1996 elections, the RPA was amended on the 31st of July 1996, following the recommendations of the Goswami Committee Report of 1990. While the new law did not tackle the contentious issue of public funding, it made the following alterations:

- It reduced the campaign period from 21 to 14 days
- It increased the number of nominators from 1 to 10.
- It increased candidates' deposits from Rs 1,000 to Rs. 10,000.
- S126 of the RPA 1951 was amended to outlaw public meetings, from 48 hours before the end of voting
- To facilitate stricter monitoring of the Model Code of Conduct to which all parties are signatories, the commission appointed two general and one expenditure observer in each Lok Sabha constituency.⁵⁶

Election expenditure limits were revised upward in Dec 1997 on the recommendation of the Commission, to Rs. 1,500,000 (about US\$32,000) per candidate for the Lok Sabha constituency.

Another noteworthy development was the establishment of funding trusts by some large businesses. Pioneered by the Tata Group, companies would 'set

up election pool from which contributions would be made to qualifying political parties, according to certain criteria'. While practicing transparency, this novel method would reduce the 'extortionate demands' on the companies and since the formula for allocation was based on vote share in the last election is it seen as equitable as well as non-partisan.⁵⁷

During the 1998 elections, there was for the first time a generous allocation of free time on state owned television (Doordarshan) and radio (All India Radio) to 7 national and 34 state parties. The Electoral Commission modified the formula for reporting expenditures by candidates, 'making them furnish details of expenditures incurred by their party and supporters in addition to that incurred by themselves, the latter continuing to remain legal without limit'.⁵⁸

For the historic 1999 elections, free media time was further enhanced by the issuing of time vouchers to parties, leading to 'the most televised election in India's democratic history'.⁵⁹

POLITICAL FINANCE REFORM IN INDIA

Efforts at reforming the Indian political finance structure could be traced to the debate on 'black money' in the 1960s with the reports of the Santhanam Committee on Prevention of Corruption (1964) and the Wanchoo Direct Taxes Enquiry Committee (1971) identifying the connection between 'black money' and political fund raising.⁶⁰

During the 1970s, under the Janata Party government, a private group called Citizens for Democracy set up a committee on electoral reform which recommended public provision of the infrastructure of election expenses so as to provide only certain facilities to candidates, to supplement the expenditure undertaken by candidates and parties within the limits of the law. Nothing came of this proposal.⁶¹

In 1990, the National Front government set up the Goswami Committee on Electoral Reforms whose report did not advocate for state funding except

limited to support in kind ‘ for vehicle fuel, hire charges for microphones, issue of voters identity slips and additional copies of the electoral rolls’. It also advocated a ban on company donations to political parties. The report therefore left a funding void in the finance of political parties when it recommended a ban on company donations to them without adequate state funding to compensate. Suffice it to say that the strong opposition the report faced meant that when the bill was introduced to parliament in 1994, it was doomed to failure.⁶²

Indian industry became concerned with issue of party finance in 1993 and the Confederation of Indian Industries (CII) ad hoc task force recommended that corporate contributions be made tax deductible and that board decisions should be subject to shareholders approval. They also recommended ‘an election tax on industry’.⁶³

After the 1998 elections, the Indrajit Gupta Committee on State Funding of Elections, in its report recommended the following:

- Partial public funding in kind
- Rent-free accommodation, free telephone for national parties and recognised state parties.
- Creation of an election fund of Rs.6000 million annually, with 50-50 contributions by central and state governments.
- Private channels should make available free air-time to recognised parties during elections, with regulations on fair and balance broadcasting.
- Supply to recognised parties of petrol and diesel, printing paper, postage stamps, loudspeakers, counting day refreshments.
- Parties failing to maintain and submit audited accounts and income tax returns should not qualify for state funding.⁶⁴

More recently, the Law Commission of India in its 170th Report on Reform of Electoral Laws and the Central Vigilance Commissioner have also recommended the deletion of Explanation 1 to Section 77 (1) of the RPA. The National Commission to review the Working of the Constitution, in its final report in 2002, also recommend the deletion of Explanation 1, in addition to establishing realistic ceilings on expenditure by candidates.⁶⁵

E. Sridharan sums up the reform of political finance in India in the following words:

‘...recent proposals on election finance reform are centred around the inter-related issues of Explanation 1 of Section 77 (1) of the RPA, the loophole exempting party and supporter spending from the expenditure ceiling, company donations to parties, the transparency and disclosure of party finances, and the possibility of state funding.’⁶⁶

However, it should be noted that in addition to recommendations of government committees and business, scandals, more than anything else has provided impetus for the clamour for political finance reform.⁶⁷

The Hawala scandal of 1996 implicated a large number of politicians alleged to have received money from abroad through illegal channels by passing the Foreign Exchange Regulation Act. The Tehelka scandal which broke in 2001 severely embarrassed the ruling BJP whose president was shown on TV accepting bribe. These scandals have led to more transparency by parties and fuelled the moves towards state funding.⁶⁸

The most recent effort towards election finance reform has been the draft bill known as Elections And Other Related Laws (Amendment) Bill. It incorporates some earlier reform recommendations such as making donations tax deductible for companies and individuals.⁶⁹

The quest for electoral finance reform in India has been fuelled by ‘scandals, the vigilant media, an independent judiciary and electoral commission’. as well as ‘frequent elections, rapid turn over of parties in power, hung parliaments, and a less unequal distribution of power between parties compared to the pre-1998 period’. Howbeit, the Indian political finance system is yet to see fundamental reform, either towards transparency and accountability of party finances, or towards state funding of elections beyond free campaigning time.⁷⁰

POLITICAL FINANCE IN THE PHILIPPINES

“Loyalty to parties won’t figure in this game at all...it’s a question of who has more money and the creativity to utilise that money”. (Consultant to Lakas-NUCD)⁷¹

The electoral system, and the actual practice of elections has been responsible for shaping political parties. ‘The intensely personalised character of the parties derive partly from the fact that individual candidates are elected in a ‘first past the post’ system. Consequently during elections, ‘it is not so much the political parties that are the real mobilising organisation but the candidates electoral machinery and network of relatives, friends, political associates and allies’⁷²

Voting in the Philippines requires writing down names of individual candidates. This has created problems, especially during the synchronised elections (Presidential, Lower House of Congress, Provincial, Town and City) ‘when voters have to write down anywhere from 32 to 44 names on the ballot’. The long period required for counting votes also provided more problems for an already convoluted system. ‘Votes are counted by hand at the precinct level, then precinct returns at the municipal level, municipal returns at the provincial level and only then added up at the COMELEC in Manila, a process that can take over a month’.⁷³

The Commission on Elections (COMELEC) is the constitutionally mandated authority to conduct and supervise elections. It was created in 1941 as one of the amendments to the 1935 constitution. In nearly every election COMELEC is frequently accused of leaning on the side of the government/party in power, this is in spite of its supposed independence.⁷⁴

The experience of election most relevant to the current situation in the Philippines goes back to the American colonial era starting in 1900. Over the years that followed, participation in elections expanded, especially with the lifting of property requirements, and the lowering of the age limit, first to 21 in 1935 and then to 18 in the 1970s. This explosion in the electorate was helped

further by the replacement of reading and writing English or Spanish with mere literacy (interpreted as ability to write one's name and that of candidates); as well as the epochal change in 1937 which gave women right of suffrage. "The number of registered voters rose steadily from 123,294 in 1905 to 36 million by the year 2001".⁷⁵

Campaigning in this expanded electorate is one of the reasons for the increase in campaign expenses. This is accompanied by changes in the character of the elections themselves due to urbanization as well as extensive radio and TV usage.

POLITICAL PARTIES IN THE PHILIPPINES

During the period of Spanish colonial rule in the Philippines from the 16th to the 19th centuries, there was no need for political parties because elections 'were no more than discussions among officials, incumbents, and former officials'⁷⁶ The American colonial era, starting in 1900 did not expand the electorate in significant terms. But 'by expanding elections outside the circle of officials, the Americans brought other sections of the elite into the circle of governance and began the process of shaping the elite into an instrument of local rule.'⁷⁷

However, once the electorate broke elite boundaries as a result of the reforms mentioned above, the elite had to convince non-elites to vote for them. Joel Rocamora sums up the trend as follows:

'at first, patron-client ties and deeply embedded traditions of deference were sufficient. The organisational requirements of electoral campaigning remained simple. This allowed elites to concentrate on the task of building factional coalitions in ascending order of complexity as elections moved from municipal, to provincial, to the national level'.⁷⁸

The Japanese occupation from 1941 to 1945 weakened the Philippine elite by disrupting the colonial economy. Landlords moved out of the countryside

and their collaboration with the Japanese occupation army attenuated their hold on the peasantry. New elite factions emerged in the shape of guerrilla leaders. Although the American returnees facilitated the political exoneration of prewar elites, many guerrilla leaders were able to consolidate their positions through electoral politics.⁷⁹

The next stage in the development of political parties was established by the candidacy of guerrilla leader Ramon Magsaysay in the presidential elections of 1953. Where campaigning for national positions in the past had been mostly a matter of negotiations among provincial elites, Magsaysay went directly to the people during his campaign. With the help of the American CIA, Magsaysay formed the 'Magsaysay for President' Movement and travelled extensively throughout the country. In the process, he undercut patron-client ties already weakened during the Japanese occupation.⁸⁰

Magsaysay's approach led to the construction of municipal political machines devoted primarily to the political support of its leaders and the maintenance of its members through the distribution of immediate, concrete and individual rewards to them.

The result of this new trend was the fact that political parties had to be organised on the basis of the segmentation of the vote into what can be called the 'controlled vote' under the control of local party leaders and 'market vote' which had to be campaigned for.

The need for huge financial involvement in campaigns strengthened the relationship between national leadership of parties and local leaders. This led to some sort of political symbiosis, with the local parties leaders reliant on the national leadership for vast amount of money that could only be raised from the Manila, while the national leaders depended on the locals to deliver their controlled vote. According to Rocamora, this only strengthened the individual party leaders and not the party organisation which remained minimal.⁸¹ He noted that:

'In 1969, 'the Marcos administration sought to broaden the flow of resources and executive contacts beneath the congressmen and into the municipalities, minimising its dependence upon political brokers in the legislative branch who have historically proved to be such a disappointment to the incumbent President seeking reelection'.⁸²

These changes culminated in the declaration of martial law by Marcos in 1972, a move which cut out the Congress altogether. In the post-Marcos era, campaign costs escalated as the pre-martial law two party system was replaced by 'a free-wheeling multi-party system'. New parties were built to support presidents or simply to challenge ruling parties during elections.⁸³

POLITICAL FINANCE REFORM IN THE PHILIPPINES

In the Philippines, it is not the parties that are the main source of funds. '...what is financed are not so much political parties, but individual candidates. Political parties as a rule, do not undertake sustained party-building activities for which they require regular funds. For they have no meaningful organisational presence outside elections'.⁸⁴

The ruling party has an unfair advantage in raising funds. They can tap government resources - financial, human and institutional. The party in power despite the many prohibitions uses the government machinery and resources to help their anointed candidates. There are two categories of sources of funds for election: legitimate and grey money. The former comes from businesses while the later comes from operators of illegal economic activities like gambling, smuggling, prostitution and drugs. A few months before the election, businessmen will make small contributions to a number of candidates for the same position. Then they calibrate further contribution based on the their assessment of the candidates chances.⁸⁵

The relevant law on elections in the Philippines is Republic Act 7166 passed in 1991. It was further amended by Republic Act 9006 passed in July 2000.

The implementation rules for these Acts are provided by COMELEC (Commission on Elections) Resolution 3636 and 4170 enacted in May 2001. The law bans contributions from the following:

- Public or private institutions
- Operators of public utilities
- Suppliers or contractors of goods to the government
- Recipients of franchise, incentives, exemptions, allocations and concessions
- Beneficiaries of loans and other forms of accommodation over 100,000 *pesos*
- Public funded education institutions
- Government officials and employees
- Foreigners and foreign corporations.⁸⁶

Strict compliance to these laws would mean candidates would have to self-finance campaigns. There is no state financial support for parties or candidates. The closest to state funding is the provision in the Fair Elections Act (Republic Act 9006/2000) for COMELEC to buy media time and space for use by candidates.

The law also requires that every candidate and treasurer of the political party must submit within 30 days following the election, ‘a full, true and itemised statement’ of contributions and campaign expenditure. Because of such unrealistic restrictions, the candidates and parties violate these rules with impunity, so much so that COMELEC ceased to exercise any genuine will to enforce them. For example, the election code prohibits putting up posters in certain places, but posters are affixed everywhere and when Bernardo Pardo, the chairman of COMELEC was questioned about it, he said ‘I don’t see the posters because the windows of my car are tinted’.⁸⁷

Laws are only effective if there is a mechanism to monitor and enforce them. COMELEC ability to function as an enforcement authority is hampered by its inability to validate or dig into business affiliations of contributors, as well as some wholly inappropriate financial penalties for, what should be serious breaches of rules.

Shortly after the 1992 elections, the COMELEC started a programme of reforms to the electoral code. It, among other things, proposed ‘procedural improvements, the introduction of modern systems of voting and counting and the enactment into law of the provisions of the constitution to democratise public offices, to attain universal suffrage, to level the playing field and broaden participation in government.’ None of the above proposals have been passed due to the habit of Congress in blocking effective measures and instead approving self-serving ones.⁸⁸

The reform of campaign finance cannot be separated from the reform of political party systems. The paradox of the situation is aptly captured by Racomora thus: ‘no political institution has been criticised as severely and as often as Philippines political parties. Yet no other political institution has survived almost a full century of change relatively intact and remained as powerful and influential as Philippines political parties’. The pertinent question is whether they will continue to survive in their present form.⁸⁹

As unpopular as the political parties are, they continue to be the major political instruments for social mobility. ‘Filipinos have one of the highest rates of participation of any democracy. Politics comprises a vital element of hope in their future’.⁹⁰ One of the requirements of the current economic situation in the Philippines is a political party structure that is capable of pooling together public interests and translating them into social and fiscal policies. ‘Because Philippine political parties are loosely structured and faction-based, they have been unable to fulfill this function in the past. Whether or not the parties which exist today can successfully make a transition to more programme oriented and more tightly structured parties remain to be seen’.⁹¹

There is an ongoing effort to amend the constitution and shift from a Presidential to a Parliamentary system of government. Such unification of ‘the executive and legislative branches through a ruling party will force political parties to take on a stronger role, and develop capability in policy making. If a shift to a parliamentary system is accompanied by an electoral system based on proportional representation, changes in electoral behaviour will bring about even bigger changes in political parties.’⁹²

POLITICAL FINANCE IN SOUTH KOREA

The current regulation regime of political finance largely centers around the powers and functions of the National Election Commission. The NEC regulation is mainly composed of two elements: (1) fiscal reports made by parties, support groups, and candidates, and (2) investigations into campaign activities and political money flow.

The Political Finance Law requires all parties, support groups, and candidates to submit their annual fiscal reports to the National Election Commission by February 15 in each year. In addition to these regular reports, they are also required to make election campaign reports within 30 days after the election. (Presidential candidates report within 40 days after the election.) Fiscal reports should include the listing of properties, listing of incomes and expenditures, receipts, and a Certified Practicing Accountants' examination summary.

A major problem with the fiscal report is that reported materials are not available for thorough examination by the public, academics, and relevant NGOs. Access to reported materials is quite limited. Relevant materials are open to the public only for three months and photocopying of materials are restricted even during that period. Another problem with the current report procedure is that lists of contributors are not available to public investigation even though they are included in the reported materials. This constitutes a major barrier to enhancing transparency of political finance.⁹³

The other major aspect of regulation is *ex post facto* investigation. After reviewing reported materials, more than one thousand NEC officials along with IRS (Internal Revenue Service) officials conduct in-depth investigation into improper use of campaign money and illegal activities. Over a period of four months following the 2000 election, the NEC officials investigated fiscal documents and campaign activities of 658 candidates. They even looked into account books of publishing companies and political marketing firms in several districts. The investigation has eventually led to referrals of 27 candidates and 69 campaign bursars for criminal prosecution.⁹⁴

Criminal investigation referred by the NEC has often led to severe punishment. For instance, seven members of National Assembly lost their seats as they were convicted for illegal campaign practices and improper use of political money after the 1996 parliamentary election. Another thirteen members lost their seats after being convicted for illegal campaign practices after the 2000 election.⁹⁵ This seems a severe sanction against politicians when compared to the situations in Japan and United States. For the 1997-2000 period, not a single member of US Congress has lost his or her seat for charges of unlawful campaign and illegal campaign funding. In Japan, only three members of the National Diet have lost their seats for campaign fund-related charges during the period.⁹⁶ If we look at fiscal report observation and *ex post facto* investigation, the Korean NEC seems quite powerful. First of all, it has solid ground of independence by the Constitution. Appointment of the nine members of NEC councils is equally shared by the President (three), National Assembly (three) and Chief Justice (three). Second, the NEC has some authorities that are necessary for effective enforcement. It includes authorities to investigate financial reports, and to make referrals for criminal prosecution.⁹⁷

In spite of the checks placed on political party, election in Korea is still very expensive and not entirely transparent. The Government has introduced subsidies for political parties and limitation on contributions made to parties and candidates. The dedication of relevant agencies in Korea in oversight function over party finances is highly commendable.

PARTY REFORMS IN NIGERIA: CRITICAL AREAS FOR REFORM

The party system in Nigeria has not evolved within the legislature as in some western countries where the party system formulation can be traced to a parliamentary origin. The Nigerian political system emerged from a pre-occupation with freedom from the colonial rulers and has since independence, been shaped by traumatic military interventions and political instability. As wish their counterparts in Asia, Nigerian political parties have what Joseph LaPalombara et al describe as ‘extra-parliamentary origins’⁹⁸ i.e. ‘the creatures of a systematic political crisis, while in other circumstances their emergence itself creates a crisis for the system’.

The early political parties were founded as instruments of achieving independence but later converted themselves into governing machineries. Subsequently, political parties became a product of the half-hearted attempts by dictatorial regimes at political transition. This meant that they were hastily and arbitrarily put together without any clear-cut ideological identity. Because of this absence of any deep-rooted philosophy, there has been a high turnover of parties in the Nigeria polity, with an average shelf life of 4 years.⁹⁹

The multi-ethnic, multi-tribal and multi-religious make up of the country means that Nigerian political parties are influenced more by ethnic, tribal, regional, sub-regional and religious diversities 'that polarise into specific groups for promoting the aggregated interests of each of them'. Religious fundamentalism has become a huge delineating factor for political parties, especially in the predominantly Moslem northern Nigeria.

Reforming Nigeria political parties to operate within their constitutions is an arduous task. But policy makers should borrow a leaf from other democracies that are undergoing change. India, Colombia, Philippines even America. Though the details of a Nigerian transitional agenda would be unique to meet the peculiar needs of Nigerian political and social consciousness, the general thrust of the changes recommended follows the pattern in other countries. The following pointers are aimed at arming policy makers with a legal framework upon which future changes may be predicated. It is not an exhaustive comprehensive proposal for sanitising Nigerian politics. Neither does it claim to have all the answers to the spate of corruption and criminalisation of Nigeria politics. It is however a bold attempt at proffering suggestions, based on the best practices from around the world, for the revamping of political parties and their operations in Nigeria.

It is now common knowledge that there are no absolute truths or ideal solutions in electoral matters. Therefore political finance reform in Nigeria should not be considered in isolation, but rather as an integral part of a more holistic political/electoral reform. Transparency and disclosure are crucial to the fight against political corruption. In this regard, transparency must be 'conceived as a democratic value in itself, a tool designed to avoid any wrongful influences of

money in politics that might lead to corruption'. Politician should not be singled out for criticism when the moral fibre of the entire populace is endemically corrupt.

To be effective, transparent rules should be general in nature and enforced with respect to everyone and not just candidates and political parties but donors' as well. The following are proposed:

A) Regulating political contributions:

- Political contributions from individuals and corporate bodies (internal and external) should be regulated by a comprehensive legislation consolidating all existing law in the area.
- The proposed legislation should impose compulsory auditing requirement on accounts of all political parties registered with the electoral commission. The audited accounts should be made available to the public. The electoral commission should be given enforcement powers with practical and effective penalties (including de-recognition) for breaches.
- Donors and recipients of political donations should be publicly accountable.
- Political contributions by individuals and corporate bodies should be allowed subject to a definite ceiling and such contributions should be deductible for income tax purposes.

B) Controlling electoral expenditure:

- Like their Indian counterparts, Nigerian political parties, enjoy the dubious advantage of limitless expenditure by supporters of candidates that do not count towards their expenditure for the purpose of compliance to spending ceilings. To combat this, no association (except a political party) or individual may incur any election expenditure without the authorisation of the candidate concerned, and if so authorised should be taken into account in the election returns of the candidate. Stiff penalties including fines and imprisonment should be imposed for violations.

- The ceiling for electoral expenses should be reviewed to adjust inflation and the increasing cost of elections.
- A suitable law should be enacted providing penalties against desecrating private and public properties through fly-posting, displaying banners and buntings

C) State funding of elections:

Public funding for elections has been shown to reduce the influence of ‘grey money’ in politics. In India, where it was partially introduced, it reduced the dependence of candidates and parties on ill-gotten wealth. The American model of public funding for presidential elections provides a veritable formula for reform in Nigeria.

- Government should extend support to political parties in cash or in the form of making available electoral facilities without charge, e.g. providing free postage.
- The government should also provide an equitable distribution of free air time in government owned media and make regulations that would prevent private stations from being overtly partisan.
- An electoral fund should be set up by the government by taxing individuals and companies and this money should be allocated to political parties on the basis of their performance in previous elections.

D) Monitoring assets of elected candidates:

- Every elected person should, before assuming office, be required to file an affidavit about his properties, savings and investments and those of his immediate family.
- This provision should be made an ongoing affair, requiring such filing to be made every year of the person’s stay in office. Failure to fulfil the filing obligation or filing a false affidavit should be made grounds for disqualification.

- At the end of the elected term, the politician should file an audited final account. These proposals would keep the public informed of the politician lifestyle and financial worth before, during and at the end of their term in office. Although a requirement will not make the accumulation of illegal wealth impossible, it will make it more difficult.

E) Strengthening of anti-defection measures:

Defection has been used as a smoke screen for bribery and leads to corrupt practices. There is therefore a need for anti-defection laws which should stipulate that any person wanting to change party affiliation after being elected on that party's ticket, should first resign his elected office and seek a fresh mandate on the new party's ticket.

Such a person should also be debarred from ministerial or other government appointment during the term of their original office or the next election, whichever is shorter.

F) Party systems and governance:

- Political parties play the vital role of providing the necessary leadership for governance. They should therefore have a continuous programme of grooming their members for potential assignments in government. This would make for easier transition of governments.
- For good governance, it is suggested that the practice of creating a number of political offices like special advisers which are equivalent to and duplicate the duties of ministers should be stopped. The party in power should be able to create such offices only if they are needed for a special purpose and not be used as a means for political backslapping.

G) Restoring moral standards in public life:

There is a feeling of resignation and helpless surrender to corruption and criminal practices in Nigeria and a tendency to consider them as inevitable and therefore acceptable. In addition to suggestions made elsewhere it has become imperative to draw up a comprehensive code of conduct for both ministers and legislators,

as well as principal functionaries of all political parties. This code should incorporate the canonical principles identified by the Nolan Committee¹⁰⁰ in the UK, viz:

- integrity,
- selflessness,
- objectivity
- accountability,
- openness,
- honesty and
- leadership.¹⁰¹

Any suggestions for reform and indeed all reforms are useless if there are no machinery for implementing and enforcing the provisions. While internal reform of political parties must come from the parties themselves, it is only unfortunate that, like the proverbial new year resolution, they are quickly forgotten as soon as the catalyst for their review (election failure, loss of grounds in vote catchment) fade from memory.

Apart from the initiative for self reform from political parties, the responsibility for effecting reforms lies with the government which needs to

- Enact legislation,
- Establish relevant institutions to implement changes;
- And provide the necessary financial and logistic infrastructure to facilitate the proposed reforms

For the effective application of the reform proposals, there needs to be a coming together of all concerned parties in politics including the media, intellectuals, the general public and civil society to agree upon a machinery for enforcement. Without this collaboration, the objectives of clean and fair elections not influenced by money, muscle, ministerial and media power would only be an ‘idealistic political utopia’.

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