

# RESEARCH ISSUE Brief

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## Calling Urgent Attention to Financing Loopholes in Nigeria’s Electoral Laws

Augustine Osigwe, PhD  
Chukwuemeka Onyimadu  
Emily Ikhide

### I. Key Findings

- Sections 221 - 229 of the 1999 constitution of the Federal Republic of Nigeria (as amended), and sections 87 - 93 of the Electoral Act (2010) as amended contains disclosure requirements on finances and expenditure limits for both political parties and individual candidates.
- Section 226(1) of the 1999 constitution (as amended) which requires INEC to report to the National Assembly when political parties fail to keep proper books and accounts failed to stipulate what NASS does to erring political party.
- Another important lacuna in the provisions of sections 92(3) and 93(4) of the 2010 Electoral Act as amended is the timing of financial reports. The timing of 6 months and 3 months (after the election), for reports on campaign expenditure and sources of income defeats the purpose of disclosure.
- Section 87 of the Electoral Act 2010 (as amended) is silent on the limits that political parties can set for their nomination forms.

- Section 228(c) of the 1999 Constitution (as amended) requires that, “The National Assembly may by law provide for an annual grant to the INEC for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions”. This section is ambiguous regarding what “fair” and “equitable” form of disbursement means.

### II. Background

1. Despite the legitimate need for financial resources for political entities, there exists accompanying risks. First, there is an associated risk of elected candidates being influenced by donors of large sums of campaign funds. These donors are mostly concerned with making elected candidates more responsive to their interests, over those of the wider public (issues on “god-fatherism” in the Nigerian political scene). Second, the risk of undue political influence and unlawful practices, induced by large financial contribution by donors with vested interest in the election outcome of an

individual or political party. Here, initial contributions of donors to the electioneering process are seen as an investments to be recouped mostly through corrupt practices.

2. The recognition of these risks justifies the inclusion of disclosure requirements on finances and expenditure limits for both political parties and individual candidates in

Sections 221 - 229 of the 1999 constitution of the Federal Republic of Nigeria (as amended), and sections 87 - 93 of the Electoral Act (2010) as amended. Specifically, section 91 of the 2010 Electoral act (as amended) stipulates the limits on election expenses and penalties for defaulters (Table 1).

**Table 1: Limits on Election Expenses by Type of Election.**

Elective Office	Limit on Election Expenditure	Penalty of Default
Presidency	N1,000,000,000	N1,000,000 or Imprisonment for a term of 12 months or both
Governorship	N200,000,000	N800,000 or imprisonment for a term of 9 months or both;
Senate	N40,000,000	N600,000 or imprisonment for a term of 6 months or both
House of Representatives	N20,000,000	N500,000 or imprisonment for a term of 5 months or both
State Assembly	N10,000,000	N300,000 or imprisonment for a term of 3 months or both;
Local Government Chairman	N10,000,000	N300,000 or imprisonment for a term of 3 months or both
Councilors	N1,000,000,	N100, 000 or imprisonment for a tern of one month or both.
Individual Donation	N1,000,000	N500, 000.00 or imprisonment for a term of 9 months or both
An accountant who falsifies, conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the breach of the provision of this section of this Act commits an offence and is liable on conviction for imprisonment for a term of 10 years.		

Source: 2010 Electoral Act (As Amended).

3. Despite the provisions on the limits on election expenses in section 91(1) of the Electoral Act 2010 as amended, and associated penalties for defaulters, evidence indicates that expenditure on campaign financing has continually increased over subsequent election periods (Table 2 and 3). This is worrisome as the provisions in the 2010 electoral act (as amended) is aimed at ensuring that the cost of campaigning remains

affordable and within a reasonable threshold so as to guarantee effective electoral participation. The increasing trend in campaign expenditure is a clear violation of the law, more likely to encourage corrupt practices, possibly increasing the role of money in influencing policymaking, and can decrease trust, accountability and transparency in the electioneering process

**Table 2: Expression of Interest and Nomination Fees by Type of Election**

Party	2015				2011			
	Office in View	Expression of Interest	Nomination Fee	Total	Office in View	Expression of Interest	Nomination Fee	Total
APC	Presidency	N2.5m	N25m	N27.5m	Presidency**	N0.5m	N5m	N5.5m
	Governor	N0.5m	N5m	N5.5m	Governor**			
	Senate	N0.3m	N3m	N3.3m	Senate**			
	House of Rep	N0.2m	N2m	N2.2m	House of Rep**			
PDP	Presidency	N2m	N20m	N22m	Presidency	N1m	N10m	N11m
	Governor	N1m	N10m	N11m	Governorship	N0.5m	N5m	N5.5m
	Senate	N0.5m	N4m	N4.5m	Senate	N0.2m	N2m	N2.2m
	House of Rep	N0.4m	N2m	N2.4m	House of Rep	N0.1m	N1m	N1.1m

Source: Adapted from Olorunmola, A. (2017). Cost of Politics in Nigeria. Westminster Foundation for Democracy, Background Paper-2016/17. \*\* indicates that figures are for a different political party. the Congress for Progressive Change (CPC)

**Table 3: Trend in Campaign Cost of Major Political Parties**

2015		2011	
PDP	N8.74 billion	PDP	N5.01 billion
APC	N2.91 billion	CPC	N2.05 billion
Limits in Electoral Act	N1 billion	Limit	N1 billion
These are traceable expenses which were spent on media advertisements, campaign materials among others, to the exclusion of money spent in underhand dealings and the use of state-owned facilities including stadia for campaigns and other political activities.			

Source: Centre for Social Justice, 2017 Conference Report conference organised by the Westminster Foundation for Democracy.

**III. Cross Country Evidences**

Country	Experience
United States of America	<ul style="list-style-type: none"> <li>• Campaign finance law is enacted by Congress and enforced by the Federal Election Commission</li> <li>• The money for campaigns for federal office comes from four broad categories of sources: (1) small individual contributors (individuals who contribute \$200 or less), (2) large individual contributors (individuals who contribute more than \$200), (3) political action committees, and (4) self-financing (the candidate's own money)</li> <li>• FECA places limits on the amounts that individuals, political parties and political action committees (PACs) may contribute in federal elections and requires candidates, political parties and PACs to disclose contributions and expenditures. Federal candidate committees must identify, for example, all PACs and party committees that give them contributions, and they must provide the names, occupations, employers and addresses of all individuals who give them more than \$200 in an election cycle.</li> <li>• Reports are filed on FEC Form 5. Information reported includes the identity of any payee, candidate supported or opposed, and name, address, employer, and occupation for any donor who gave more than \$200 in the year for the purpose of making reported IEs.</li> <li>• Reports are filed quarterly, with extra pre-election (due 12 days before) and post-election (due 30 days after) reports. In addition, when an organization has spent \$10,000 not previously reported on IEs with respect to a given election, it must file a report within 48 hours of incurring the cost. After the 20th day before the election, additional spending of \$1000 triggers a 24-hour reporting requirement. Organizations that spend or expect to spend over \$50,000 on IEs must file electronically.</li> <li>• At the federal level, public funding is limited to subsidies for presidential campaigns. This includes (1) a "matching" program for the first \$250 of each individual contribution during the primary campaign, (2) financing the major parties' national nominating conventions, and (3) funding the major party nominees' general election campaigns.</li> <li>• The maximum penalty for contributions and expenditures made in violation of these statutes, but which are not knowing and wilful violations, is the greater of \$11,000 or 200% of the amount of the contribution or expenditure involved.</li> <li>• FECA also prohibits any person from making a contribution in another person's name. The maximum penalty for knowing and wilful violations of this prohibition is the greater of \$55,000 or 1,000% of the amount involved.</li> </ul>

United Kingdom	<ul style="list-style-type: none"> <li>• Political parties in the UK may be funded through membership fees, party donations or through state funding, the latter of which is reserved for administrative costs.</li> <li>• Donations worth over £7,500 to national parties must be declared, as must be donations worth £1,500 or more to local associations. Donations to members' associations - groups whose members are primarily or entirely members of a single political party - also need to be declared above £7,500.</li> <li>• The Political Party, Election Referendum Act (PPERA) 2000, stipulates annual preparation of accounts for political parties, with details of day to day source of income and expenditures, assets and liabilities. These books are to be kept for at least 6 years from the end of the financial year in which they were prepared.</li> <li>• For parties with large expenditures (£250,000) Statements of accounts must be audited with 6 months of the financial year ending. Statements of accounts must be submitted within three months of the end of a party's financial year or, where the party's accounts are required to be audited, within six months and seven days of the end of the financial year. These accounts are made available to the public.</li> <li>• All donations must be disclosed and the term "donations" are clearly defined to mean; (a) any gift to the party of money or other property; (b) any sponsorship provided in relation to the party (as defined by section 51); (c) any subscription or other fee paid for affiliation to, or membership of, the party; (d) any money spent (otherwise than by or on behalf of the party) in paying any expenses incurred directly or indirectly by the party; (e) any money lent to the party otherwise than on commercial terms; (f) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the party (including the services of any person).</li> <li>• Upon receipt of a donation it will be incumbent upon the party to take all reasonable steps to identify the donor and determine whether the donor constitutes a permissible source.</li> <li>• The treasurer of a registered party shall, in the case of each year, prepare a report in respect of each of the following periods— (a) January to March; (b) April to June; (c) July to September; (d) October to December. The treasurer of a registered party shall, in the case of any general election period, prepare a report in respect of each of the following periods— (a) the period of seven days beginning with the first day of the general election period; (b) each succeeding period of seven days falling within the general election period; and (c) any final period of less than seven days falling within that period. The weekly report for any reporting period shall record each donation of more than £5,000 received during the election period.</li> </ul>
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	<ul style="list-style-type: none"> <li>• The Committee on Standards on Public Life (2011) made five main recommendations: (a) Contribution limit of GBP10,000 per donor, party and year; (b) this limit should not apply to affiliated trade union affiliation fees if such fees are raised by an "opt in"; (c) existing limits for campaign spending should be cut by about 15 per cent; (d) in addition to the present "policy development grant" eligible parties should be granted public funding at the rate of GBP3.00 per vote in Westminster elections and GBP 1.50 per vote in devolved and European elections; (e) income tax relief should be available for donations up to GBP 1,000 and membership fees to political parties.</li> <li>• The only course of action available for most defaulters of the provisions of PPERA, is referral for criminal investigation and / or prosecution. These offences generally relate to deliberate intent to mislead or get around the law. The Commission has discretion to impose the sanction on an organisation where the offence was committed by an individual.</li> </ul>
Germany	<ul style="list-style-type: none"> <li>• German regulation of party finance is centred on transparency. <b>Transparency</b> has two aspects: annual reporting on all party funds (income, expenditure, debts and assets) and disclosure of donors' identity. Anyone (individual, business, organization) who gave more than an annual total of €10,000 to any party unit has to be included in the party's annual report. Donors of amounts in excess of €50,000 have to be disclosed more in a timely manner.</li> <li>• The sum of contributions made by natural persons up to the amount of 3,300 euros per person and the sum of those contributions by natural persons which exceed the amount of 3,300 euros shall be shown separately in the statement of accounts.</li> <li>• Political parties shall receive funds as partial financing of the activities generally assigned to them under the Basic Law. The criteria for the allocation of public funds shall be the proportion of votes won by a political party in European, Bundestag and Landtag (State parliament) elections; the total amount of its membership dues and contributions from holders of elected public office, and the amount of donations received. The maximum total amount of public funds which annually may be allocated among the political parties shall be 133 million euros (absolute upper limit). Single donations in excess of 50,000 euros shall be reported immediately to the President of the German Bundestag. The latter shall in a timely manner publish the donation, together with the donor's name, as a Bundestag printed paper. Also, Donations of up to 1,000 euros may be made in cash.</li> <li>• At the end of the calendar year (accounting year), the party's Executive Committee shall, truthfully and to the best of its knowledge and belief, publicly account for the origin and use of funds and the party's assets in a statement of accounts. Income, expenditure, assets and liabilities are also clearly defined in the Act. In addition to the absolute figures, the</li> </ul>

	<p>percentage of total income and of total expenditure shall be indicated. For better comparison, the respective figures for the preceding year shall be given as well.</p> <ul style="list-style-type: none"> <li>• Whosoever, with the intent of concealing the origin or the use of the party’s funds or assets or evading the obligation to render public account, shall be liable to imprisonment of up to three years or to a fine. Whosoever, as an auditor or an auditor’s assistant, gives a false report on the result of the audit of a statement of accounts, fails to disclose relevant facts in the audit report or issues an audit certificate containing false information shall be liable to imprisonment of up to three years or to a fine.</li> </ul>
Kenya	<ul style="list-style-type: none"> <li>• According to Kenya’s Political Parties Act, Chapter 7B 2012, a political party shall maintain at its head office and at each of its county office in the prescribed form, an accurate and authentic record of particulars of any contribution, donation or pledge of a contribution or donation, whether in cash or in kind, made by the founding members of the political party.</li> <li>• Also, within 90 days of the end of its financial year, political parties are required to make available the sources of the funds of the political party and names, addresses and such other contact details as the Registrar may require of any persons who have contributed thereto; (ii) membership dues paid; (iii) donations in cash or in kind; (iv) indirect contributions to the party and all receipts and disbursements, including income and expenditure transactions of the political party; (v) all the financial transactions and records of assets and liabilities of the political party.</li> <li>• A political party shall keep proper books and records of account of the income, expenditure, assets and liabilities of the political party. A political party shall, within three months after the end of each financial year submit to the Auditor-General the accounts of the political party in respect of that year.</li> <li>• Political party, who fails to disclose, or gives false information in relation to the funds or resources obtained by the political party, commits an offence and shall on conviction be liable to a fine equal to the amount or the value of the resources not disclosed or in relation to which false information was given, or to imprisonment for a term not exceeding two years or to both</li> <li>• Funding to political parties is from public funds (which should not be less than 0.3% of national government’s revenue) and donations from lawful sources. The funds are distributed in a way that (a) 95% of the Fund is proportionate by reference to the total number of votes secured by each political party in the preceding general election; and (b) five per cent for the administration expenses of the Fund.</li> </ul>

	<ul style="list-style-type: none"><li>• No person or organisation shall, in any one year, contribute to a political party an amount, whether in cash or in kind exceeding five per cent of the total expenditure of the political party. Defaulter commit an offence and</li></ul>
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#### IV. Lacunas in Current Legislation That Encourage High Campaign Expenditures

4. Different sections in the 1999 constitution (as amended) and the electoral act deal clearly with issues involving disclosure of sources of funds and expenditures for political parties. These provisions are expected to serve as a check on and a deterrent to excessively campaign expenditures. However, specific gaps exist in these provisions which have given political parties and individual candidates a leverage to disobey the law.
5. Section 226(1) of the 1999 constitution (as amended), requires INEC to report to the National Assembly when political parties fail to keep proper books and accounts. It states,  
*“The Independent National Electoral commission, shall in every year prepare and submit to the National Assembly a report on the accounts and balance sheet of every political party”*.

The fundamental question is, what is the National Assembly expected to do when a political party contravenes this provision? Does the Commission or National Assembly have the powers to punish erring political party?

**Comment: when a political party fails to keep such proper books and accounts, the law only requires INEC to report to the National Assembly, and that ends it. The law does not stipulate what the National Assembly does to erring political party. It is also clear that all members of the National Assembly emerged from political parties. Thus this section of the law is likely to make them judges over their own case.**

6. Also section 89 (1-4) of the 2010 Electoral Act as amended provides for the year to year monitoring of political expenses and sources of income of political parties via their annual books. However, during an election year, section 92(3) mandates political parties to submit a separate audit of their expenses within six (6) months after the election. In the same vein, section 93(4) mandates political parties sponsoring the election of any candidate to file a report of contributions made by individuals and entities to INEC within three (3) months after the announcement of the election result.



**Comment:** The emphasis on disclosure and monitoring in sections 92(3) and 93(4) focuses mainly on political parties. The provisions of sections 92(3) and 93(4) of the 2010 electoral act (as amended) should as well apply to individual candidates. Full disclosure should not be limited to only political parties.

Another important lacuna in the provisions of sections 92(3) and 93(4) of the 2010 electoral act as amended is the timing of such reports. The timing of 6 months and 3 months, for the availability of reports on campaign expenditure and sources of income defeats the purpose of disclosure. Thus, sections 92(3) and 93(4) are no longer in tune with modern democratic practices. It does not allow the electorates to know, before an election, the sponsors of a particular party candidate; an information which is very vital to them. The sponsorship disclosure of a candidate or political party can be done in real time, i.e., it should be displayed on the INEC and the party's website as soon as it is received.

7. Section 87 of the Electoral Act 2010 (as amended) is silent on the limits that political parties can set for their nomination forms. As at 2015 elections, Presidential nomination forms stood at N27million for PDP and N25million for APC, far higher than those of 2011.

**Comment:** section 87 of the 2010 electoral act as amended is silent on the maximum amount political parties can charge on expression of interests and nomination forms (Table 2). This trend is detrimental to our democracy and encourages high campaign expenditures. Charges for expression of interest and nomination forms should be low enough to encourage the best candidates to partake in the electioneering process. Political parties across the globe are not profit oriented but rather a platform for candidates to contest elections.

8. Subsidies are important to political parties because they are not only aimed at assisting political parties in carrying out their activities, but also an attempt at preventing them from getting funding from questionable and suspicious sources. Section 228(c) of the 1999 constitution (as amended) requires that, "*The National Assembly may by law provide for an annual grant to the INEC for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions*". This section is ambiguous on what "fair" and "equitable" form of disbursement indicates.

**Comment:** We consider this subsection to be ambiguous on the ground that "fair" and "equitable" distribution is not well defined. These terms can be viewed from different perspectives given the idiosyncrasies of existing political parties; capacity of political parties, age of political party, party structure, capacity to win elections, national coverage of a party, and otherwise.

9. Section 92(2) of the 2010 electoral act as amended, states that INEC and all the political parties will agree on the limit to campaign expenditures. This method does not seem practicable because of the different sizes and national coverage of the political parties. INEC should place a limit on expenditure based on the type of election as provided for in section 91(1-7) and this should be made public.

**Comment: the 2010 electoral act as amended clearly stipulates the limits on election expenses for individual candidates. However, it does not place a definite limit on party election expenditures. The law should clearly indicate the maximum a political party should spend and there should be a standard framework for political party expenditure with regard to the different types of elections they engage in. Just as in the case of individual candidacy in section 91(1-7) of the same 2010 electoral act as amended.**

10. As already stated, the provisions in section 93(4) regarding disclosure can be done in real time. Nevertheless, the objective of disclosure can only be achieved if there is an incentive to actually disclose. The penalties as stipulated in sections 91(10)(a-g), 91(11), 92(7) of the 2010 electoral act as amended for both individuals and political parties is grossly inadequate, given campaign expenditures in previous elections.

**Comments: Sections 91(10)(a-g), 91(11), 92(7) of the 2010 electoral act as amended provide penalties aimed at ensuring that political parties and individual candidates conform to campaign expenditure limits. However, evidence that emerged from past campaign expenditures reveals that these penalties seem grossly inadequate. For example, parties disclosing N5billion as campaign expenditures will not be worried about a N1,000,000 penalty as stipulated. The penalties show that the marginal benefits of parties spending beyond campaign expenditure limits, exceeds their marginal cost of not spending beyond the stipulated limit. Thus, there are no incentives for political parties and individual candidates not to incur campaign expenditures beyond the limits. Penalties should be tied to the amount of campaign expenditures beyond the stipulated limits (the more the campaign expenditures exceed the limits, the more the penalties should increase). Penalties should be commensurate to the offence of spending beyond the stipulated limits.**

*The views expressed in this Research Issue Brief are those of the author(s) and do not necessarily represent the views of the Institute and its Management.*

**National Institute for Legislative and Democratic Studies**

**National Assembly**

**Contact**

National Institute for Legislative and Democratic Studies (National Assembly)

14/18 Danube Street, Off IBB Way, Maitama

Abuja, Nigeria.

Email: [info@nils.gov.ng](mailto:info@nils.gov.ng)

Website: <http://nils.gov.ng/>

Tweeter: [@nilsnigeria](https://twitter.com/nilsnigeria)