

# LEGAL FRAMEWORK OF POLITICAL PARTY FUNDING AND CAMPAIGN FINANCING IN NIGERIA

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## Abstract

*Political campaign finance refers to funds used to promote the interest of political parties and candidates. The Nigerian political campaign history from 1999 until date has revealed that such campaign funds oftentimes do not only exceed the limit set by the electoral legal framework and regulations but also their sources and how they are utilized are not fully disclosed. This is why political campaign financing appears to be an intractable issue. Against this background, this paper examines the legal framework governing campaign financing in Nigeria. In particular, the paper examines the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as altered), the Electoral Act 2010, and the Electoral Act (2010 (Amendment) Bill, 2018 vis-à-vis campaign financing. Using the doctrinal/analytical methodology, the paper argues for periodic review of existing legislation(s) on campaign financing and the setting up of a commission to oversee and enforce political campaign financing laws in Nigeria. The perception is that the proposed commission will deepen electoral integrity and consolidate democracy in Nigeria.*

**Keywords:** *Constitution; Electoral Act; Electoral Bill; Political Parties; Candidates;*

## INTRODUCTION

Campaign financing has been a major problem in Nigeria elections since the return to civilian rule in Nigeria in 1999. Significant and unrelated campaign financing often creates an uneven playing field in an election contest. Large sums of money give certain parties and/or candidates an undue advantage over others. Very often, candidates with the most money always win the election or

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party nominations process. Wide discrepancies in levels of funding between parties and candidates constrain opportunities for political competition and tend to disenfranchise challengers.<sup>1</sup> Most often, the uneven playing field results from the fact that the ruling party or the incumbent candidate control political apparatus and uses it to its advantage and the disadvantages of challengers<sup>2</sup>. The financial requirements of the campaign for political parties and candidates appear to be getting higher and higher since the 1999 General elections, resulting in the political exclusion of those who cannot afford the cost. Another concern has been that elected officials are becoming more accountable to those who finance their campaigns than to their constituents. Large corporate or single donor funding campaigns for parties and candidates dominate political decisions thereby encouraging and promoting corruption and hampering the realization of the dividends of democracy for the constituents.

It is because of the above problems that this paper seeks to examine the extant laws on campaign financing in Nigeria's electoral process. Particularly, the paper seeks to examine the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as altered), the Electoral Act 2010(as amended); and the Electoral Act No. 6 2010 (Amendment) Bill, 2018. This to ascertain if there are loopholes on the existing laws on campaign financing that needs a review. To do this, the paper adopts doctrinal and empirical research methodologies and divided into five sections. Section 1 is the introduction encompassing an overview of political campaign financing in Nigeria. Section 2 is the examination of the provisions of the 1999 Constitution and Electoral Act 2010 (as amended) concerning campaign financing and the limits by the laws. Section 3 is the inquiry into apparent or implied loopholes in the existing legislation on political campaign financing in Nigeria. Section 4 is on the attitude of the Judiciary and judicial application of campaign financing laws in

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<sup>1</sup>. Eme, O I & Ayadike, N, 'Political Financing in Africa: A Comparative Study of Kenya and Nigeria, Proposal for Reform' [2014](5)(27), *Mediterranean Journal of Social Sciences*, 22.

<sup>2</sup>. Kura, S Y B, 'Political Parties and Democracy in Nigeria: Candidate Selection, Campaign and Party Financing in People's Democratic Party' [2011](13)(6), *Journal of Sustainable Development in Africa*, 268-298.

Nigeria with a comparative lesson from the United States of America. Section 5 is the conclusion of the paper with recommendations for the way forward.

### **Theoretical Framework**

The literature on campaign financing laws, over the years, has focused mainly on whether they do matter in constraining political party and candidate spending or enhance electoral competition.<sup>3</sup> While this question remains relevant, various studies have proffered possible impacts of campaign financing laws on electoral outcomes<sup>4</sup>, inducing corruption<sup>5</sup> - which could be political and institutional<sup>6</sup>, and on the development and evolution of party systems<sup>7</sup>. In all, there seems to be a consensus among scholars that campaign financing laws should not be static but tailored to mitigate possible negative idiosyncrasies of the electioneering process in each democratic system<sup>8</sup>. This consensus presupposes the necessity for campaign financing reforms, especially for democratic systems that have not deepened.

Although the primary objective of having campaign financing laws are to ensure the integrity of the electioneering process, scholarly positions are still diverging with regards to the choice of limiting campaign financing laws, establishing more laws, or reforming existing laws.<sup>9</sup> Scholars in favour of limiting campaign financing laws hinge the core of their arguments on the claim that strict disclosure requirements and donation limits impinge upon the rights to privacy and free expression<sup>10</sup>. This restricts participation in the

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<sup>3</sup>. Gross, D A, & Goidel, R K, 'The Impact of State Campaign Finance Laws' [2001] (1)(2), *State Politics & Policy Quarterly*, 180-195.

<sup>4</sup>. Swanson, D. L., & Mancini, P. (Eds.), *Politics, media, and modern democracy: An international study of innovations in electoral campaigning and their consequences* (Greenwood Publishing Group, 1996).

<sup>5</sup>. Mironov, M, & Zhuravskaya, E, 'Corruption in Procurement and Shadow Campaign Financing: Evidence from Russia', *ISNIE Annual Conference*, 2011.

<sup>6</sup>. Mwangi, O G, 'Political Corruption, Party Financing and Democracy in Kenya', [2008](46)(2), *The Journal of Modern African Studies*, 267-285.

<sup>7</sup>. Roper, S D, 'The influence of Romanian Campaign Finance Laws on Party System Development and Corruption', [2002](8)(2), *Party Politics*, 175-192.

<sup>8</sup>. Whittaker, B R, 'A Legislative Strategy Conditioned on Corruption: Regulating Campaign Financing after *McConnell v FEC*', [2004](79) *Ind LJ*, 1063.

<sup>9</sup>. Kang, M S, 'The end of Campaign Finance Law' [2012](98), *Va. L. Rev* 1.

<sup>10</sup>. Baker, C E, 'Realizing Self-Realization: Corporate Political Expenditures and Redish's The Value of Free Speech' [1981] (130), *U. Pa. L. Rev*, 646.

political process by limiting the campaign reach of political parties and individual candidates<sup>12</sup>, with more severe consequences for women candidates<sup>13</sup>. Another popular line of argument against campaign financing laws is that it is not an effective method of mitigating corruption and the influence of vested interests.<sup>14</sup>

On the other side of the divide, some proponents of campaign financing laws argue that states with stricter laws represent their citizens' interests more equally<sup>15</sup>. This finding buttresses the argument that states with stricter campaign finance laws are more likely to commit a larger fraction of annual budgets to welfare spending and cash assistance programs. Such states are also less susceptible to influences from wealthy constituents as strict campaign financing laws ensure fewer contributions from wealthy constituents. Other scholars have argued that there exists a net societal benefit when the trade-off between the possibility of a loss in freedom of speech and the positives of equal representation and participation is conditioned on stricter campaign financing laws<sup>16</sup>. Other arguments that lean towards stricter campaign financing laws include that they provide a level playing field for both the incumbent and the challenger<sup>17</sup>, promote electoral competition<sup>18</sup>, and reduces

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<sup>11</sup>. Smith, B A, 'The Academy, Campaign Finance, and Free Speech Under Fire' [2016](25), *JL & Policy*, 227.

<sup>12</sup>. La Raja, R J, 'Political Participation and Civic Courage: The Negative Effect of Transparency on Making Small Campaign Contributions' [2014](36)(4), *Political Behavior*, 753-776.

<sup>13</sup>. Ohman, M, & Lintari, C, 'Political Party Financing and Equal Participation of Women In Kenyan Electoral Politics: A Situation Overview' [2015], *International Institute for Democracy and Electoral Assistance*.

<sup>14</sup>. Gilbert, M. D., and Aiken, B F, 'Disclosure and Corruption' [2015](14)(2), *Election Law Journal*, 148-164.

<sup>15</sup>. Flavin, P, 'Campaign Finance Laws, Policy Outcomes, and Political Equality in the American States' [2015](68)(1), *Political Research Quarterly*, 77-88.

<sup>16</sup>. Milyo, J, 'The Political Economics of Campaign Finance' [1999](3)(4), *The Independent Review*, 537-547.

<sup>17</sup>. Samuels, D, 'Incumbents and Challengers on a Level Playing Field: Assessing the Impact of Campaign Finance in Brazil' [2001](63)(2), *Journal of Politics*, 569-584.

barriers to entry, encourages candidates to focus more on connecting with prospective voters, diversify citizen participation in the electoral process and provide an incentive for incumbents to represent interests of their constituents.<sup>19</sup>

In summary, the literature on campaign financing laws remains divided, principally, on the choice of lesser or stricter laws. What is not in doubt is that reforms of existing campaign financing laws have significant impacts on the electoral process. The nature and magnitude of these impacts would depend on the idiosyncrasies of the state's electoral process and the type of reform. There are studies to show that certain reforms may benefit the challenger over the incumbent<sup>20</sup>, reduce corruption<sup>21</sup> and the perception of corruption<sup>22</sup>, but are not important determinants of trust and confidence in governance.<sup>23</sup>

### **The Law and the Limits of Campaign Financing in Nigeria**

The connection between evil and money has been a principal bane of democracy world over. In recognition of this, many countries have written into their electoral frameworks, rules and procedures on campaign finance; to rescue democracy from moneybags, the influence of money, also, to prevent the undue use of money, and to preserve the people's sovereignty. In real terms, these rules which exist in virtually every jurisdiction, include laws and regulations which forbid the unauthorized use of state resources for political processes, contributions from dubious sources, violations of campaign funding

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<sup>18</sup>. Avis, E, Ferraz, C and Finan, F, and Varjão, C, *Money and Politics: The Effects of Campaign Spending Limits on Political Competition and Incumbency Advantage* (No. w23508, National Bureau of Economic Research, 2017)

<sup>19</sup>. Getachew, D, and Mehta, A, *Breaking Down Barriers: The Faces of Small Donor Public Financing* (Brennan Center for Justice, 2016)

<sup>20</sup>. François, A. and Visser, M, and Wilner, L, *Using Political Financing Reforms to Measure Campaign Spending Effects on Electoral Outcomes* (Center for Research in Economics and Statistics, 2016) 28.

<sup>21</sup>. Panagopoulos, C., *Public financing in American elections*, (Temple University Press, 2011).

<sup>22</sup>. Avkiran, N K and Kanol, D K, and Oliver, B, 'Knowledge of Campaign Finance Regulation Reduces Perceptions of Corruption' [2016](56)(4), *Accounting & Finance*, 961-984.

<sup>23</sup>. Milyo, J., 'Do State Campaign Finance Reforms Increase Trust and Confidence in State Government?' [2012], in *Annual Meeting of the Midwest Political Science Association in Chicago*.

limits as prescribed by enabling laws, the use of money to influence voters and election outcomes, and non-disclosure of campaign spending.

To address these issues, the Constitution of the Federal Republic of Nigeria (as altered)<sup>24</sup> provides rules and regulations on the operations of political parties. Particularly the 1999 Constitution confers powers on the Independent Electoral Commission (INEC) to monitor, inquire into and assess campaign finances, and a party's source of and management of funds.<sup>25</sup> The Constitution expressly provides sanctions concerning party finance and campaign finance and provides the National Assembly statutory powers in this regard.<sup>26</sup> However, the Constitution itself has no express provision on the limit of campaign finance. This failure by the Constitution to provide limits on the finance campaign of the parties and candidates is a lacuna that needs to be addressed through further amendment of the Constitution. The Constitution only provides a limitation on the political parties in respect of their funding activities.

Thus, the Constitution provides:

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 a similar statement of its expenditure in such form as the Commission may require.<sup>27</sup>

Unlike the Constitution, the extant Electoral Act<sup>28</sup> caps spending limits on campaigns of political parties and candidates. According to the Electoral Act, the maximum election expenses to be incurred by a candidate at the presidential and governorship election shall be one billion naira only and two hundred million naira only respectively. Besides, the Electoral Act<sup>29</sup> states that the maximum election expenses to be incurred by a candidate for a Senatorial

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<sup>24</sup>. CFRN, Ss 222-229.

<sup>25</sup>. *Ibid.* Ss, 225 and 226.

<sup>26</sup>. *Ibid.* S 228.

<sup>27</sup>. *Ibid.* s 225(2).

<sup>28</sup>. 2010 (as amended) ss 91(2) and 91(3).

<sup>29</sup>. *Ibid.* S 91(4).

and House of Representatives election shall be forty million Naira only and twenty million Naira only respectively. The Electoral Act<sup>30</sup> provides the penalties for violating campaign finance laws, however, these penalties are too small and not strong enough to serve as a deterrent. This again is another defect and shortfall of the Electoral Act that equally requires an upward review. Given this lacuna, the penalties should be increased to a fine of less than 50 per cent of the excess expenditure, a prison term of not less than three calendar years and debarment from political offices for a period of not less than five years. Furthermore, there is the need for the Electoral Act to be amended to make media outfits under obligation to report the cost of all campaign advertisements to INEC. Companies must be banned by the Electoral Act from making donations to political campaign finance of candidates and parties while donations by ordinary citizens should be made tax-deductible so long as they are within the maximum legally allowed amount of donations by an individual.

The Electoral Act No. 6 of 2010 (Amendment) Bill, 2018 sought to further regulate election expenses and donations by the candidate, individuals and body corporate into all elected political offices in Nigeria. The Bill specifically seeks to amend section 91 of the Act because of the economic trends of the country. Given this, the legislative proposal aims to regulate election and campaign financing in Nigeria. To this end, the Bill sought amendment of the Act as follows:

Under Section 91(20), from ₦1,000,000,000 to ₦ 5,000,000,000;  
Under Section 91(3), from ₦ 200,000,000,000; to ₦ 1000, 000,000;  
Under Section 91(4), from ₦ 40,000,000 and ₦ 20, 000,000 to ₦ 100,000,000 and ₦ 70, 000,000;  
Under Section 91(5), from ₦ 10,000,000 to ₦ 30, 000,000;  
Under Section 91(6), from ₦ 10,000,000 to ₦ 30, 000,000;  
Under Section 91(7), from ₦ 1,000,000 to ₦ 5,000, 000; and  
Under Section 91(8), from ₦ 1,000,000 to ₦ 10,000,000.

Notwithstanding the above limits proved in the amendment Bill, the campaign finance of the political and candidates overshoot the limits in the 2019 election.

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<sup>30</sup>. *Ibid.* s 91(10).

Despite the legitimate need for financial resources for political entities, there exist 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 "godfatherism" in the Nigerian political scene). Second, the risk of undue political influence and unlawful practices, induced by large financial contributions by donors with a vested interest in the election outcome of an individual or political party. Here, initial contributions of donors to the electioneering process are seen as investments to be recouped mostly through corrupt practices.

The recognition of these risks justifies the inclusion of disclosure requirements on finances and expenditure limits for both political parties and individual candidates<sup>31</sup>. Specifically, section 91 of the 2010 Electoral Act (as amended)<sup>32</sup> stipulates the limits on election expenses and penalties for defaulters (Table 1).

Elective Office	Limit on Election Expenditure
Presidency	₦ 1,000,000,000
Governorship	₦ 200,000,000
Senate	₦ 40,000,000
House of Representatives	₦ 20,000,000
State Assembly	₦ 10,000,000
Local Government Chairman	₦ 10,000,000
Councillors	₦ 1,000,000
Individual Donation	₦ 1,000,000

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.

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

**Source:** 2010 Electoral Act (As Amended).

Notwithstanding the provisions on the limits on election expenses 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 (Tables 2 and 3). This is worrisome

<sup>31</sup>. *Ibid*, ss. 221-229; ss 87-93 of the Electoral Act 2010 (as amended).

<sup>32</sup>. Electoral Act 2010 (as amended), s 91.



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 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	₦2.5m	₦ 25m	₦ 27.5m	Presidency**	₦ 0.5m	₦ 5m	₦ 5.5m
	Governor	₦ 0.5m	₦ 5m	₦ 5.5m	Governor**			
	Senate	₦ 0.3m	₦ 3m	₦ 3.3m	Senate**			
	House of Rep	₦ 0.2m	₦ 2m	₦ 2.2m	House of Rep**			
PDP	Presidency	₦ 2m	₦ 20m	₦ 22m	Presidency	₦ 1m	₦ 10m	₦ 11m
	Governor	₦ 1m	₦ 10m	₦ 11m	Governorship	₦ 0.5m	₦ 5m	₦ 5.5m
	Senate	₦ 0.5m	₦ 4m	₦ 4.5m	Senate	₦ 0.2m	₦ 2m	₦ 2.2m
	House of Rep	₦ 0.4m	₦ 2m	₦ 2.4m	House of Rep	₦ 0.1m	₦ 1m	₦ 1.1m

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

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

2015		2011	
PDP	₦ 8.74 billion	PDP	₦ 5.01 billion
APC	₦ 2.91 billion	CPC	₦ 2.05 billion
Limits in Electoral Act	₦ 1 billion	Limit	₦ 1 billion

These are traceable expenses that 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 organized by the Westminster Foundation for Democracy.

**Comparative Analysis with Other Jurisdictions on Campaign Finance Law**

Country	Experience
United Kingdom	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>

(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).

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.

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.

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.

	<p>The only course of action available for most defaulters of the provisions of PPERA is a referral for criminal investigation and/or prosecution. These offences generally relate to a deliberate intent to mislead or get around the law. The Commission has the discretion to impose the sanction on an organization where the offence was committed by an individual.</p>
Germany	<p>German regulation of party finance is centred on transparency. Transparency 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 promptly.</p> <p>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.</p> <p>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 that 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 promptly 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.</p>

	<p>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 percentage of total income and total expenditure shall be indicated. For better comparison, the respective figures for the preceding year shall be given as well.</p> <p>Whosoever, with the intent of concealing the origin or the use of the party's funds or assets or evading the obligation to render a public account, shall be liable to imprisonment of up to three years or 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 a fine.</p>
Kenya	<p>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.</p> <p>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.</p> <p>A political party shall keep proper books and records of account of</p>

	<p>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.</p> <p>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.</p> <p>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 administrative expenses of the Fund.</p> <p>No person or organization shall, in any one year, contribute to a political party an amount, whether in cash or kind exceeding five per cent of the total expenditure of the political party. Defaulter commit an offence and</p>
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**Source:** Authors Compilation

### **Judicial Application of Campaign Finance Laws in Nigeria with Comparative Lesson from United States of America**

Money is crucial for political parties to implement activities during elections and between elections. In addition to other factors, candidates require adequate funds for effective campaigning, which contributes to possible electoral victory. However, whether in established or new democracies, unregulated use of money, private or public, for politics, and unenforceability of the regulations by the courts, is capable of revising the ethics, practices and spirit of democracy. When the regulations on political party funding and campaign

finances are not strictly enforced by the courts, it gives room for parties and candidates to violate the regulations with impunity. It is for this reason that enforcement of laws on political party funding and limitation on campaign financing is necessary. However, in Nigeria, cases of enforcement of regulations on party funds and campaign finances are rare. The very few cases in courts in Nigeria bordering on abuse of party funding and campaign financing regulations are still ongoing and no conviction has yet been recorded. Some few of the cases so far bordering on violation of party funding and campaign financing regulations are:

First, *Col Mohammed Sambo Dasuki (Rtd) & Ors v Federal Republic of Nigeria & Ors*<sup>33</sup> the appellant was charged at the Federal High Court of the Federal Capital Territory on information alleging the use of the public fund for campaigning for Peoples Democratic Party and dishonest misappropriation of monies belonging to the Federal Government of Nigeria converting same for use by the People's Democratic Party electioneering campaigns in 2015 general elections. Upon arraignment, the trial Court, on 18<sup>th</sup> December 2015, granted the appellant bail on the term. Since then, the trial has been going on to this time.

Second, *Olisa Metu v Federal Republic of Nigeria*<sup>34</sup> the appellant was charged at the Federal High Court of the Federal Capital Territory Abuja for spending four hundred million Naira (N400, 000,000) to finance the campaign of the People's Democratic Party in the 2015 general elections. Up to this moment, the case is still ongoing from one appellate Court to another.

In the United States, the 10<sup>th</sup> amendment to the U.S. Constitution preserves for the states all powers not explicitly delegated to the federal government. This amendment provides the basis for states controlling the administration of elections, including regulation of campaign finance. Congress plays a role in election administration, and the Federal Election Commission (FEC) provides regulations concerning federal candidates, but campaign finance regulation for

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<sup>33</sup>. SC 617/2016.

<sup>34</sup>. [2017] 11 NWLR (Part 1575) 157.

state or local candidates is done at the state level. Though states must foot the bill and institute provisions for elections and any campaign finance regulations, the federal government retains judicial review over these in the form of U.S. Supreme Court rulings. Binding on all 50 states, these decisions oftentimes force states to amend or completely change their election protocols. Each state is also subject to decisions from both local and federal courts.

In the United States, the Supreme Court decision on limits to campaign finance of political parties and candidates in elections is on the case of *Buckley v Valeo*.<sup>35</sup> After Congress amended the Federal Election Campaign Act (FECA) of 1971 in 1974 to (1) limits and require disclosure of contributions, (2) limit expenditures, and (3) mandate participation in a publicly financed presidential election programme, both Republicans and Democrats filed suit claiming these provisions violated both First Amendment free speech protections and Fifth Amendment Due Process guarantees. The court agreed in part, striking down limits on expenditures, making financing optional, upholding the FECA disclosure requirements, and allowing limits on contributions. The contribution limits were upheld because they act as a deterrent to quid pro quo corruption, where contributors to campaigns are given preferential treatment because of their financial assistance. After this case, many states implemented contribution limits in line with the federal limits outlined in the FECA. The experience from the United States Supreme Court in the above case is worth to be followed as precedent by the Nigerian courts since the reasoning of the U S Supreme Court, in that case, is to stop corruption.

### **Lacuna in Current Legislation that Encourage High Campaign Expenditures**

Different sections in the 1999 constitution (as amended) and the electoral act deal clearly with issues involving the 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,

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<sup>35</sup>. [1976] 424 U S 1.



specific gaps exist in these provisions which have given political parties and individual candidates leverage to disobey the law.

- 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 case.

We recommend that Section 226(1) of the 1999 constitution should be amended by the National Assembly to make provisions for the sanction of infractions on the Constitution and Electoral Act on campaign financing.

- 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 the 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; 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.

We recommend that the Electoral Act 2010 (as amended) should be reviewed and an independent body established to examine the books and accounts of political parties with the power to sanction individuals and parties that violated the provision.

- Section 87 of the Electoral Act 2010 (as amended) is silent on the limits that political parties can set for their nomination forms. As of 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 the 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.

We recommend that there is a need to amend Section 87 of the Electoral Act to create a provision for the specific maximum amount of money a political party can charge for its expression of interest and nomination forms.

- 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, the capacity to win elections, national coverage of a party, and otherwise.

We recommend that the National Assembly should enact a law making express, clear and unambiguous provision, to provide a guiding framework, on the specific amount of grant to the INEC for disbursement to political parties.

- 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 stipulates the limits on election expenses for individual candidates. However, it does not place a definite limit on party election expenditures. The law should indicate the maximum a political party should spend and there should be a standard framework for political party expenditure concerning 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. We recommend that Section 92(2) of the Electoral Act should be amended to remove the power given to INEC and political parties to agree on the limit to campaign expenditures.

- As already stated, the provisions in section 93(4) regarding disclosure can be done in real-time. Nevertheless, the objective of the disclosure can only be achieved if there is an incentive to 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 ₦1, 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.

We recommend that political parties and candidates should be compelled to disclose the source of their finance in real-time. In instances where this is not feasible, an affidavit obtained from the High Court of Justice stating source and amount of campaign finance should suffice. However, failure to disclose campaign finance should attract stiff penalties and disqualification.

## **CONCLUSION**

This paper examined the provisions of the 1999 Constitution and the Electoral Act 2010 (as amended) in respect of regulations on political party funds and limits on campaign financing of parties and candidates. In the course of the study, it was discovered that 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) contain disclosure requirements on finances and expenditure limits for both political parties and individual candidates. In addition, the study revealed that Section 226(1) of the 1999 constitution (as amended) requires INEC to report to the National Assembly the level of compliance by parties and candidates with these regulations, and findings of political parties.

In the course of examining the provisions of the 2010 Electoral Act (as amended), it was discovered that Sections 92(3) and 93(4) provides for the timing of financial reports. In these Sections, it was found that the timing of 6 months and 3 months (after the election), for reports on campaign expenditure and sources of income of parties and candidates are not being complied with by the parties and candidates. It is based on this that this paper makes suggestions for a review of the Constitution and Electoral Act. This will include Section 87 of the Electoral Act 2010 (as amended) which is silent on the limits that political parties can set for their nomination forms.

The implication is that the campaign finance laws in Nigeria are not effective and complied with. Therefore there is a need to review the laws to make non-compliance a strict liability offence whereby parties and candidates in violation of the laws can be sanctioned. Secondly, it would be appropriate to establish a Commission which functions will include overseeing the implementation of the electoral regulations. The justification for this is the need to check the excesses of parties and candidates by an independent body with powers to prosecute. Also, the judiciary in Nigeria should enforce the regulations in line with what obtains in the outside jurisdiction such as the United States of America.