

# LEGAL ISSUE BRIEF

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## Extent of Application of Campaign Finance Law to Aspirants, Candidates and Political Parties

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There has been a growing controversy within recent Nigerian National discourse regarding the extent of the application of campaign finance laws. In this regard, the burning question is who between a political aspirant and a candidate of an election is bound to comply with the provisions of the Electoral Act on campaign financing. And with the 2019 General Elections a matter of months away, this subject is particularly germane, with politicians, commentators and the general public asking questions regarding the difference between an ‘aspirant and a candidate.’ This brief attempts a juxtaposition of an aspirant and a candidate of an election vis-à-vis the relevant provisions of the Electoral Act with a view to ascertaining whom between the aspirant and the candidate the campaign finance law applies to.

### Campaign Financing Generally

Money is a necessary aspect of modern politics, but it also creates challenges for democracies around the world. In one way or

another, these problems relate to breaking a link between voters and those who are elected or seeking election.<sup>1</sup> And although the exact problems may vary between different jurisdictions, the challenges almost always bear a uniform coloration.

Transparency in political finance has been established by the United Nations Convention Against Corruption (UNCAC), which states that all countries should “*consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.*”<sup>2</sup> Hence, the attempts to regulate campaign finance reflect the commonly held belief that uncontrolled political fund-raising and spending can undermine the integrity of the democratic process and erode the confidence of the electorate in political Institutions.<sup>3</sup> In the United States from where Nigeria copied the

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<sup>1</sup> Magnus Ohman, “Controlling money in Politics: An Introduction” International Foundation for Electoral Systems (2013) Available online at:

[https://ifes.org/sites/default/files/a\\_brief\\_introduction\\_to\\_money\\_in\\_politics\\_final\\_magnus\\_ohman.pdf](https://ifes.org/sites/default/files/a_brief_introduction_to_money_in_politics_final_magnus_ohman.pdf) (Accessed 25/09/2018)

<sup>2</sup> UNCAC Article 7(3)

<sup>3</sup> *Ibid*

Presidential system of Government, campaign finance refers to all funds raised to promote candidates and political parties by individuals, charitable organizations and political action committees.<sup>4</sup> And because political campaigns have enormous expenditure ranging from cost of travel of candidates and staff to political consulting, political finance deals with “the costs of democracy.”<sup>5</sup> Conversely, this need to maintain political campaign weakens ties to a representative democracy due to the influence that large contributors have over politicians.<sup>6</sup>

The causes and effects of campaign finance rules are studied in political science, economics, and public policy, among other disciplines. Some countries rely heavily on private donors to finance political campaigns. In these countries, fundraising is often a significant activity for the campaign staff and the candidate, especially in larger and more prominent campaigns. For example, one survey in the United States found that 23% of candidates for statewide office surveyed say that they spent more than half of their scheduled time raising money, and over half of all candidates surveyed spent at least 1/4 of their time on fundraising.<sup>7</sup> One study finds that political donations give donors significantly greater access to policymakers.<sup>8</sup> The tactics used can include direct mail solicitation, attempts to encourage supporters to contribute via

the Internet, direct solicitation from the candidate, and events specifically for the purpose of fundraising, or other activities.

Most countries that rely on private donations to fund campaigns require extensive disclosure of contributions, frequently including information such as the name, employer and address of donors. This is intended to allow for policing of undue donor influence by other campaigns or by good Government groups, while preserving most benefits of private financing including the right to make donations and to spend money for political speech, saving government the expense of funding campaigns, and keeping government from funding partisan speech that some citizens may find odious. Supporters of private financing systems believe that, in addition to avoiding Government limitations on speech, private financing fosters civic involvement ensures that a diversity of views are heard, and prevents government from tilting the scales to favor those in power or with political influence. These kinds of donations can come from private individuals, as well as groups such as trade unions and for-profit corporations. However, critics of this system claim that it leads to votes being “bought” and produces large gaps between different parties in the money they have to campaign against<sup>9</sup>.

Other countries choose to use Government funding to run campaigns, and this is

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<sup>4</sup> Heard, Alexander, *The Costs of Democracy*, Chapel Hill NC: University of North Carolina Press, 1960.

<sup>5</sup> A term coined by G. Alexander in his famous analysis of campaign finance in the United States.

<sup>6</sup> *Ansolabehere, Stephen; John de Figueiredo; James M. Snyder, Jr. (2003). "Why Is There So Little Money in U.S. politics?". Journal of Economic Perspectives. Massachusetts*

*Institute of Technology. 17 (1): 105–30. doi:10.1257/089533003321164976.*

<sup>7</sup> Kalla, Joshua L.; Broockman, David E. (2015-04-01). "Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment". *American Journal of Political Science. 60*: 545–558. doi:10.1111/ajps.12180. ISSN 1540-5907

<sup>8</sup> Note 5

<sup>9</sup> Note 4.

widespread in South America and Europe.<sup>10</sup> The mechanisms for this can be quite varied, ranging from direct subsidy of political parties to government matching funds for certain types of private donations (often small donations) to exemption from fees of government services (e.g., postage) and many other systems as well. Supporters of government financing generally believe that the system decreases corruption; in addition, many proponents believe that government financing promotes other values, such as civic participation or greater faith in the political process<sup>11</sup>.

Not all government subsidies take the form of money; some systems require campaign materials (often air time on television) to be provided at very low rates to the candidates. Critics sometimes complain of the expense of the government financing systems. Conservative and libertarian critics of the system argue that government should not subsidize political speech. Other critics argue that government financing, with its emphasis on equalizing money resources, merely exaggerates differences in non-monetary resources.

Although the political science literature indicates that most contributors support parties or candidates with whom they are already in agreement, there is wide public perception that donors expect government favors in return. This could be in the form of contracts, specific legislation enacted or defeated etc.<sup>12</sup> Some Antagonists of election financing described campaign finance

as political corruption and bribery. These views have led government to reform campaign financing with the hope of eliminating big money influence in politicking.

## Legal Framework

### *The Constitution of the Federal Republic of Nigeria 1999 (as amended)*

There is no express provision within the wordings of the Constitution stipulating the limit of expenditure of Political Parties and their candidates but there are sections that deal with the finances of political parties generally,<sup>13</sup> and of utmost interest is the limitations placed on political parties especially with respect to their funding activities. For instance, *Section 225 (2)* is unambiguous on the finances of political parties that “*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.*” Sub sections (3), (4), (5) and (6) of the same provision are even more forthcoming on the roles of INEC in checking the financial dealings and status of political parties. To this end, Subsection (3) states that “*no political party shall - (a) Hold or possess any funds or other assets outside Nigeria; or (b) Be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.*” Sub-section 4 states that: “*Any funds or other assets remitted or sent to a political party*

<sup>10</sup> Smilov, Daniel; Jurij Toplak (2007). *Political Finance and Corruption in Eastern Europe*. Ashgate Press. ISBN 978-0-7546-7046-9.

<sup>11</sup> Note 8

<sup>12</sup> Gill, David; Lipsmeyer, Christine (2005). *Soft Money and Hard Choices: Why Political Parties Might Legislate Against Soft Money Donations*. Public Choice. [SSRN 1422616](https://doi.org/10.1007/s11266-005-9016-6)

<sup>13</sup> Section 225-6 made provision on finances of the political parties.

*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.” Sub-section 5 on its part holds that “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 all such books and records.”*

Section 226 (1) permits INEC to mandatorily prepare and submit annually to the National Assembly a report of the accounts and balance sheet of every political party. In preparing its report, sub-section 2 of the same provision empowers INEC to: *“Carry out investigations as will enable it form an opinion as to whether proper books of account and proper records have been kept by any political party, and if the Commission is of the opinion that proper books and accounts have not been kept by a political party, the Commission shall so report.”*

It is also important to examine the provisions of section 228 of the 1999 Constitution, especially as it deals with public funding of political parties and punishment for those that contravene the sections. Section 228 states inter-alia that *“the National Assembly may by law provide- (a) for the punishment of any person involved in the management or control of any political party found after due inquiry to have contravened any of the provisions of sections 221, 225 (3) and 227; (b) for the disqualification of any person from holding public office on the ground that he knowingly aids or abets a political party in contravening section 225 (3) of this constitution; (c) for an annual grant to the Independent National Electoral Commission*

*for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions; and (d) for the conferment on the Commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the commission more effectively ensure that political parties observe the provisions of this part of the chapter.”*

These are constitutional instruments aimed at closely monitoring and supervising the activities of the income and expenditure of political parties.

#### ***The Electoral Act of 2010, (as amended)***

This law also caps spending limits as follows: Presidential election N1 billion, Governorship- N200 million, Senatorial N40 million, House of Representatives candidate N20 million, and House of Assembly N10 million. Section 92 (3) of this enabling law also requires every political party to submit, six months after every election, an audited revenue and expenditure report of the party, failing which penalties are stipulated.

#### ***Electoral Act No. 6 of 2010 (Amendment) Bill, 2018.***

This Bill seeks to amend the Electoral Act No. 6 of 2010 (as amended) to further regulate election expenses and donations by the candidate, individuals and body corporate into all the elected offices in the federation. The Bill specifically seeks to amend section 91 of the Act.

This legislative proposal came as a result of the economic situation of Nigeria where it is observed that the financing limits provided

under the extant Act are not realistic. Secondly, there is the need to continue to regulate election financing throughout the federation. The new limits as provided in the current legislative proposal jacked the figures in the following order:

- Under section 91 (2), from “1,000,000,000” to “5,000,000,000”;
- Under section 91(3), from “200,000,000” to “1,000,000,000”;
- 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”;
- Under section 91(9), from “1,000,000 to “10,000,000”;

## COMMENTS

### (a) *Aspirant or Candidate?*

In order to determine whom between an aspirant and a political candidate the campaign finance laws apply to, it is imperative to define (and identify) those two categories of persons. An aspirant in plain terms seems to refer to a person having the ambitions to achieve something, typically to follow a particular career. A political Aspirant more specifically is referred to as a contestant, applicant, competitor, etc. of a political position within a political party.<sup>14</sup>

<sup>14</sup> <https://en.oxforddictionaries.com/definition/aspirant> accessed on 18/09/18

The Electoral Act is not explicit with either a definition or a distinction between the two terms. Within the wording of Section 91 (2)-(4) and subsections (8), (9), (10) and (12), the word “candidate,” not “aspirant” is used. Consequently one may assume that provision of the Electoral Act on campaign financing applies only to the Candidates of an election. However, section 92 (1) provides that: *‘For the purposes of an election, “election expenses” means expenses incurred by a political party within the period from the date notice is given by the Commission to conduct an election up to and including, the polling day in respect of the particular election.’* This provision implies that in computing the period of time as regards the legality or otherwise of election expenses, it covers a period before the party primary election up to the general elections.

It is pertinent to note however, that while the laws have not been explicit with the definition of a Candidate or an aspirant, the political sphere has been replete with claims and counter-claims from commentators on the subject. Recently, supporters of President Muhammadu Buhari and former Vice President Atiku Abubakar spent nearly N60M on Presidential nomination forms for the two politicians thereby triggering renewed debates around campaign finance provisions.<sup>15</sup> The main opposition party the People’s Democratic Party (PDP) described the development as a violation of the

<sup>15</sup> See <https://www.premiumtimesng.com/news/headlines/283160-election-forms-buhari-atiku-violating-electoral-act-lawyers-say-others-differ> (Accessed 20/09/2018)



Electoral Act.<sup>16</sup> Citing Section 91 (9) of the Electoral Act that “no Individual or other entity shall donate more than One Million Naira to any candidate,” critics argue that the money spent on the two politicians violates the campaign finance provisions in the 2010 Electoral Act. This position was backed by Chief Mike Ozekhome (SAN) who stated that both presidential aspirants and their supporters who bought the forms for them are in breach of the electoral law, and by the provisions of S. 91 (11) of the Act, liable to punishments ranging from nine months imprisonment or a Five Hundred Thousand Naira fine or both.<sup>17</sup> Countering this, Festus Keyamo (SAN) opines that S. 91 (9) of the Electoral Act “limits (CASH) not material donations in respect of candidates to NIM,” and that President M. Buhari is only an aspirant at this point in time and only becomes a candidate when he submits his filled nomination forms to the party.<sup>18</sup>

Judicial pronouncements have also done little to eliminate the shroud of ambiguity that surrounds the subject of who a candidate or aspirant is. In the case of *Akingbulu v Ogunbanjo*,<sup>19</sup> Hon. Justice Dongban-Mensem (JCA) held that:

*"In my limited understanding of the electoral process it appears reasonable to expect that once a person has been **NOMINATED BY HIS PARTY, PRESENTED AND SCREENED BY INEC OFFICIALS** the only hurdle left in the process of*

*election is the casting of votes. The outcome of the votes (polls) caps the election processes. Thus, such a person is a candidate and his locus standi is incontestable. He has crossed the threshold of campaign to the pedestal of a nominated candidate. He has been armed with the authority to represent his party and its supporters at the battle.”*  
**(Emphasis ours)**

By this pronouncement, the learned JCA identifies a candidate only as someone who has been nominated by a party, presented and screened by the election body’s officials having crossed the threshold of campaign. This tallies (somewhat) with the line of thinking of Mr Keyamo (SAN) because at this point in time the incumbent Nigerian President has neither been nominated by his party, nor gone through a process of electioneering campaigns. Similarly, in the case of *Engr. Onwukaike Nwambam v Chief Innocent Utulor Ugochima and others*,<sup>20</sup> M.A. Owoade (JCA) delivering the lead Judgement in a dispute over exclusion of candidates for elections by a party, held that:

*“Indeed, to sustain an argument on unlawful exclusion, the claimant must first establish **VALID NOMINATION BY A RECOGNIZED POLITICAL PARTY AND PUBLICATION BY INEC OF HIS NAME AS THE***

<sup>16</sup> See <https://www.premiumtimesng.com/news/headlines/283160-election-forms-buhari-atiku-violating-electoral-act-lawyers-say-others-differ> (Accessed 20/09/2018)

<sup>17</sup> See <https://www.premiumtimesng.com/news/headlines/283160-election-forms-buhari-atiku-violating-electoral-act-lawyers-say-others-differ> (Accessed 20/09/2018)

<sup>18</sup> See <http://dailypost.ng/2018/09/07/n45m-nomination-form-keyamo-replies-critics-says-buhari-not-yet-apc-presidential-candidate/> Accessed 21/09/2018

<sup>19</sup> (unreported appeal No CA/L/EPT/LAS/NA/001/2007)

<sup>20</sup> (2010) LPELR-4643 (CA)

*CANDIDATE for the election. It is only after the claimant has established the investiture of legal right of a duly nominated and officially published candidate for an election that the burden of proving lawful exclusion can conceivably arise in relation to the returned candidate.” (Emphasis Ours)*

In the instant case, having failed to prove valid nomination, the appellants claim for unlawful exclusion failed. This in essence meant that his non-nomination by the party translates to not being a candidate and may as well have only been an aspirant. In another case of *P.P.A. v Saraki*,<sup>21</sup> Sankey JCA observed thus:

*“The 'candidate in an election' referred to' both in sections 144 (1) and 145 (1) (d) is a person who has competed with others in the process of selecting a person to occupy a public office. In the interpretation of this statute I have called in aid the golden rule of interpretation, which seeks to ascribe to the words in a statute their ordinary and literal meaning.*

By this learned JCA’s dictum, it is clear that an individual only becomes a candidate upon competing with others in the process of selecting someone to occupy an office.

***(b) INEC Guidelines for Political rallies and campaigns by political parties,***

***candidates, aspirants and their supporters (2014)***

Away from these judicial pronouncements, the combined effect of Sections 91 and 92 of the Electoral Act may imply that the provision of the Act on election expenses covers both the Aspirant and a Candidate for an election. Saving this assumption and eliminating this ambiguity, the Independent National Electoral Commission in its *“Guidelines for Political rallies and campaigns by political parties, candidates, aspirants and their supporters (2014),”* charts a definitive way forward with the definition of the two terms. And although a subsidiary legislation, it is the only law that explicitly defines the two terms. The Guidelines state that *“a person is a candidate at an election if he or she is a member of a political party; is sponsored by a political party; is nominated by a the political party through the process of party primaries (in line with Section 87 of the Electoral Act 2010 as amended) or adjudged to be a candidate by a competent Court or Tribunal; and has satisfied other requirements or qualification for elective office in the Constitution (FRN) 1999 (as amended).”*<sup>22</sup>

The same legislation defines an aspirant to be *“any member of a political party seeking sponsorship and support to be a candidate for an elective office in the election.”*<sup>23</sup> It goes further to state that aspirants seeking sponsorship as candidates can solicit for support from their political party members by holding private fund raising, reception, courtesy calls, visits, display of party

<sup>21</sup> (2007) 17 NWLR (Pt. 1064) 453 at pp. 519-521 paras G-D

<sup>22</sup> Section 8

<sup>23</sup> Section 4

emblem, slogan, posters, billboards through traditional or new social media platforms (such as the internet and related social networks) provided such aspirants do not solicit for votes or advance their aspirations for any specific elective office before the release of the Time-Table by the Commission in compliance with Section 99 of the Electoral Act 2010 (as amended).

By these two definitions, the distinction between an aspirant and a candidate is clear, as are the pre-election conducts required of them by the Electoral body.

***(c) The Constitution of the Federal Republic of Nigeria 1999 (as amended)***

There are gaps in the Constitution of the Federal Republic of Nigeria, especially in the implementation of these provisions. Looking at the provision of section 228, it is clear that the Constitution bestowed on the National Assembly the powers to make laws to provide for the type of punishment that should be imposed on politicians and political parties that contravene the aforementioned provisions, but it has been difficult for INEC to enforce this law.

Similarly, section 228 (c) is unambiguous on the provision of public funding to political parties on equitable basis, to assist them in the discharge of their functions. Also, the National Assembly has enacted relevant laws to give effect to this provision but the extent of implementation is difficult to ascertain. In the same vein, section 226 (1) requires INEC to report to the National Assembly when

political parties fail to keep proper books and accounts. The fundamental question is, what is the National Assembly expected to do when a political party contravene this provision? Does the Commission or National Assembly have the powers to punish erring political parties? The INEC has not been performing this constitutional function as checks would indicate, and the National Assembly has equally not been proactive in putting the Commission on its toes to comply with these provisions<sup>24</sup>.

The provision of public funds (sometimes referred to as subsidies) to political parties as provided for in section 228(c) of the 1999 Constitution is very important in this analysis. This is because it is 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<sup>25</sup>. The introduction of public subsidies to political parties and individual candidates commenced in the late 1950s and has been sustained by many countries, despite few efforts by countries such as Italy and Venezuela to abolish or limit existing subsidies.<sup>26</sup>

***Conclusion, and Suggestions for Reform***

When laws are enacted, it is the constitutional responsibility of legislators to call the government and its relevant agencies to account for any failure to implement campaign finance laws. For example, laws requiring the submission and publication of financial statements by parties and candidates

<sup>24</sup> Ukase, P.I., "Political Parties and Election/Campaign Financing in Nigeria: Interrogating the 2015 General Elections" accessed at <http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-Paper-by-Patrick-Ukase.pdf> on 18/-9/18

<sup>25</sup> Note 11

<sup>26</sup> Duschinsky, M.P. (2006), "Party Political Funding" in Staphenurst, R. Johnston, N and Pelizo, R (eds), *The Role of Parliament in Curbing Corruption* (Washington D.C: The World Bank).



are simply ignored with impunity. It is felt that legislators' ability to ask enforcement agencies critical and probing questions, especially on the extent of compliance of political parties with the law may exert the necessary pressure on the government to ensure that relevant agencies are keeping up to speed with their responsibilities. In addition, INEC must see its role beyond that of organizing elections after every four years. Its roles also include enforcing regulatory laws on political party and campaign financing.

By way of reform, the following recommendations are made:

- Amend Section 92 of the Electoral Act to clearly include Candidates Aspirants in the computation of election expenses.
- Amend Section 91 of the Electoral Act to include Aspirants in the limitations of election expenses.
- The political/campaign finance laws are complex, ambiguous and technical. As such, there should be more explicit definition of terms such as "election campaign," "party finance," "political finance," "expenditure."
- The National Assembly should ensure that the campaign finance laws are properly enforced by exerting considerable amount of pressure on the government to make financial provisions to allow the enforcement of the law by relevant authorities.
- The National Assembly should look towards strengthening existing legislations where some gaps exist. For instance, the National Assembly should ensure that candidates that have exceeded their spending limits during campaign are prosecuted and upon conviction, are disqualified from contesting in future elections.
- The National Assembly must strengthen their oversight duties by ensuring that INEC and enforcement agencies carry out their constitutional functions and responsibilities.