



## THE LEGAL BASIS OF POLITICAL FINANCING IN NIGERIA

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### Abstract

The problem of unregulated use of money in politics did not begin today. There are antecedents in the history of modern Nigeria, beginning with the politics of nationalism in the 1950s, similar to rent-seeking behaviours of parties, politicians and voters. For example, the absence of strict legislation to regulate party finance made it possible for politicians and political parties to engage in illegal party financing and corruption in the Nigeria's First Republic. The electoral laws under which elections were conducted in the 1950s and 1960s were derived from the provision of the British Representation of the Peoples Act of 1948/9 and its regulations. The 1959 elections were conducted under the provision of the Nigeria (Electoral Provisions) Order-in-Council, LN 117 of 1958 enacted by the British Parliament. During this period, there was no clearly defined regulatory framework on party finance and political party funding was primarily carried out through private parties since candidates were responsible for election expenses. This paper examines the legal dimensions of party financing in Nigeria and asserts that there is a "direct correlation between funding and formation of political parties, and grand corruption in Nigeria". It identifies the key sources of funding for political parties: membership fees; donations and grants from organisations; proceeds from domestic and international investments and capital projects undertaken by parties; and state funding. These are all legitimate sources of funding; however, some can become a cause for concern if their provision is tied to a change in party policies to suit special interests. The paper provides an overview of documented cases on political corruption. It then outlines a legal framework to combat such corruption, based on countries that have made progress in this area. It also provides a series of recommendations for the effective management of both public and private financing. These include: The adoption of adequate constitutional and legal guarantees to safeguard the operations of political parties in Nigeria.

**Keywords:** Political Party, Political Party Funding, the Constitution and other Legal Frameworks, Political Corruption and Election.

### Introduction

Political Party Funding and Finance constitute an important aspect of the Electoral Process. The sources of funding and finance of Political Parties and the way and manner these funds are spent largely determine the quality and acceptability or

otherwise of almost every election. Accordingly, the 1999 Constitution and the Electoral Act 2002 have made provisions, though not exhaustive, in respect of how Political Parties could source and/or receive their funds. Limitations have also been placed on sourcing of funds from certain areas and on the extent to which Political Parties could make electoral expenses. The Chairman of the Independent National Electoral Commission (INEC), Attahiru Jega recently posited that the Commission is barred by law from funding registered political parties. Jega stated this yesterday in Abuja, shortly after declaring open a three-day Train the Trainers workshop which focused on the role and responsibilities of political party agents on Election Day which was organised by INEC, in collaboration with the Democratic Governance for Development Project (DGD) of the UNDP. Jega further stated that *“The issue of funding political parties is a constitutional matter. As I speak with you, the constitution of Nigeria does not permit INEC to fund political parties. But in many other countries, their laws allow for the funding of political parties”* ([Leadership Editorial](#), 2014: 8).

The clamour by political parties for the Independent National Electoral Commission (INEC) to take over the funding of their activities may have to wait until the constitution is amended. INEC chairman Professor Attahiru Jega said this much in a recent interaction with the media. He made it clear that the issue of funding political parties is a constitutional matter. Sections 225, 226 and 227 are clearly silent on that. He insisted that, until the National Assembly amends the Nigerian constitution to allow for funding of political parties, INEC would not be able to do anything about it. Those pressurising INEC to fund the parties may be drawing from experiences in other countries such as the United States of America from where Nigeria borrowed its brand of democracy. In those countries, there is discipline as individuals and groups form parties based on very strong ideological framework and they go all out to talk to people and organisations who share their beliefs and passion and who, in turn, contribute financially to support their operations. When they field candidates in elections, they sell them to the electorate based on those beliefs, and, if the electorate buys them, all well and good. Otherwise, they move on with persistence and hope for a better luck next time.

He further said that until the National Assembly amends the Nigerian constitution to allow for funding of political parties, INEC can't do anything about financing them, adding that the commission would continue to abide by the provisions of the constitution. According to him, *“... Until our laws are changed, there is nothing we can do about funding political parties. Maybe our legislators would look into that possibility. We would abide by whatever is in the law.”* ([Leadership Editorial](#), 2014: 8). The opposite is the case here where parties are seen as investments bereft of any ideological foundation. As such, there must be returns if they are to stay in business. This profit motive has consistently given rise to the godfather syndrome where an individual or group bankrolls the party and claims ownership. There was an instance during the Babangida administration when the government actually decreed and funded two parties — National Republican Convention (NRC) and the Social Democratic Party (SDP) — because it believed that was the way to do away with claims by an individual or group pretending to own a party. That experiment became a cesspool of corruption and ended as an unmitigated disaster. That may explain why the makers of the succeeding constitution that midwived the current democratic dispensation decided to keep the idea of government financing the parties silent.

The suggestion that the government should consider wasting taxpayers' money on politicians who will end up feathering their own nests when they get into office is decidedly objectionable. For one reason, it will not stop some power-hungry individuals from ganging up to hijack the process. Also, it will not restrain them from looting our collective patrimony for themselves and their generations yet unborn. Put differently, corruption related to political party financing poses a grave threat to democratic development worldwide. Covert party funding streams, influence peddling, and leveraging state resources for party purposes all compromise the single greatest asset of democracy: the faith and support of ordinary citizens in the political process. With multiparty systems less than two decades old, low levels of economic development, and traditional political constituencies based on tribal, ethnic, and regional interests rather than on ideology, many African political systems remain fragile and weak. Still, political parties form the cornerstone of a democratic society, aggregating and representing the interests of citizens to create public policy. Leaders of African political parties must find solutions, not only to the economic and social problems facing their nations, but to the negative influences of money, which affect key aspects of their organizational purpose. This paper seeks to add to the debate on the legal basis of political finance in Nigeria.

### Conceptualizing Political Financing

According to Governance and Social Development Resource Centre (2008) while political party financing is a challenge worldwide, it can be especially difficult in countries in Africa. The reasons for this include:

- low national and per capita income levels;
- poor party fund management in Africa, a symptom of more widespread problems with public financial management and accountability;
- □ weak enforcement of legislation and regulation governing party financing; and
- poor public perception of political parties, which inhibits both private fundraising and support for public funding.

According to Mathisen and Svåsand (2002) while funding of political parties is intrinsically understood to be crucial, it nevertheless is an ambiguous concept. With political funding we mean: the way that political parties and individual candidates running for political office raise funds for election campaigns *and*, in the case of political parties, for maintaining themselves as organisations. Political finance is a complex political phenomenon to understand. The topic itself is not very transparent. Even in countries that in general have great openness with regard to information from official and private sources, information about political finance is incomplete, across parties and across time, and it is hard to specify the impact of finance on political outcomes, for instance for election results. In spite of the problems in estimating the precise impact of political finance there is little doubt that the actors themselves, parties and candidates, believe it is important. The very fact that such information is not easily available proves that it is considered important. Moreover, in most countries there is an acknowledged need to have some kind of regulation of political finance. Total absence of regulation, it is feared, will lead parties and candidates to be controlled by important donors. We can distinguish between four sources of political finance that in general are considered legitimate, although all of these

forms may not be permitted in all countries:

- a) resources mobilised by the political parties themselves, such as membership fees, taxes on representatives, income from property, publications and subsidiaries controlled by the party,
- b) Contributions from individuals,
- c) Contributions from collective actors; such as by unions and other organisations and corporations etc, and
- d) Subsidies from the state or other tiers of government.

In addition, some countries differentiate between financial support from domestic sources and international sources. Political finance refers generally to monetary contributions and normally excludes other forms of contributions, although these may have important financial implications. Examples of this kind of party support are free radio and TV time during election campaigns, support for the press or for organisations affiliated with parties. Political parties are complex organisations consisting of multiple levels (local, regional and national) and multiple units (the central party organisation, ancillary organisations for youth, women etc, or the group of elected officials) at each level. With regard to public funding of parties it is necessary to specify what unit in the party it is that receives contributions. Public subsidies also vary from being targeted to specific activities, as in Germany, to not coming with any strings attached, as in Norway. The criteria that are used to allocate subsidies vary from a minimum share of the votes to a share of parliamentary seats. Finally, countries differ with respect to the obligation parties have to the state and the public in terms of financial accountability and transparency.

### **The Legal Framework for Funding of Political Parties in Nigeria**

The sources of funding political parties in Nigeria between the Second, Third and the Fourth Republics were:

1. Statutory allocation
2. Fees and subscription and
3. Lawful donations and public collection respectively.

The methods of party financing used in Africa are primarily individual donations (membership fees and fundraising); private sector donations (corporate contributions); public funding (cash subsidies, in-kind or indirect assistance); and foreign donations (foreign governments, diaspora communities). There are advantages and disadvantages to each. Key points made in the literature and by experts include: Individual donations: **Advantages**

- Membership fees are considered essential, as they encourage parties to reach out to and involve the grassroots, promoting democratic participation.

### ***Disadvantages***

- Low personal income levels constrain the ability to pay membership fees; and
- The prominence of any one wealthy donor can produce a personality-based party. Private sector donations

### ***Advantages***

- ☐ They are essential to party development as public funding is relatively minimal in Africa and membership fees are insufficient.

### ***Disadvantages***

- ☐ The current absence of regulations for private donations, including no requirements for disclosure, has allowed for corrupt kickbacks and the disproportionate influence of special interests. This in turn can further erode public confidence in political parties. Public funding:

### ***Advantages***

- Regulated public funding to parties has been helpful in „levelling the playing field“;
- It can also reduce reliance on illegal methods of funding and influence of special interests from private sector donations; and
- Its provision can be made conditional on political party reforms and improvements in accountability and transparency.

### ***Disadvantages***

- The availability of such funding can reduce incentives to reach out to the grassroots;
- Reliance on government funding may result in a loss of party independence;
- There may be a diversion of resources from important social sectors, such as health care and education;
- The public in some cases are unsupportive of public funding, in connection with their poor perception of political parties and concerns about state corruption;
- Insufficiently regulated public funding, as in the case of private sector donations, has allowed for corruption; and
- The way in which such funds are distributed can reinforce the status quo and prevent the rise of new parties (i.e. by providing funding proportionate to a party's representation in Parliament).

Foreign funding:

### ***Advantages***

- Such donations can help to fill the funding gap; and
- They can keep diaspora communities involved in their home countries.

### ***Disadvantages***

- Some leaders are concerned about the possibility of national policies being influenced by external parties; and
- There may be greater difficulties with accountability with foreign sources of funding.

### **Provisions under the 1999 Constitution**

A number of Constitutional provisions and legislative enactments relate to political finance. The Constitution of Nigeria provides the basic framework for the implementation and enactment of other laws in the polity. The supremacy of the constitution is further emphasized in section 1 (3), which provides “if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void” (The Constitution, 1999:1). In other words, every other law in the country must be in line with the provisions of the constitution. It also follows that any inadequacy in the constitution will automatically taint the provisions of subsequent laws in the same subject matter. The 1999 Constitution in section 221 prohibits any association other than political parties from making political donations. The Constitution confers general powers on the Commission under Part 1 of the third schedule to the

Constitution particularly paragraph 15(c) thereof to monitor the Organisation and Operation of the Political Parties including their finances. Further down to paragraph 15(d), the Commission is also empowered to arrange for the annual examination and auditing of the Funds and Accounts of Political Parties and publish a REPORT on such examination and audit for public information. Finances of Political Parties are covered by Section 225 of the Constitution while Annual Report on finances is covered by Section 226. Section 225(1) mandates every Political Party to at such times and in such manner as the Commission may require, submit to the Commission and publish a Statement of its Assets and Liabilities.

Section 225(2) requires every Political Party to submit to the 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. Section 225(3) prohibits every Political Party from holding or possessing funds or other assets from outside Nigeria or retaining any such funds or assets remitted or sent from outside Nigeria. By Section 225(4) any such funds or assets remitted or sent to a Political Party must be paid over or transferred to the Commission within twenty-one (21) days of its receipt accompanied by such information as the Commission may require. It is also the duty of the Commission under Section 225(5) 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. Under Section 225(6) the Commission is empowered to delegate the powers conferred on it under subsection 4 to any member of staff or a qualified auditor who must not be a member of a Political Party.

The constitution in Section 225 provides as follows:

- (1) Every political party shall, at such times and in such manner as the Independent National Electoral Commission may require, submit to the Independent National Electoral Commission a statement of its assets and liabilities.
- (2) Every political party shall submit to the Independent National Electoral Commission a detailed annual statement and analysis of its sources of funds and other assets together with similar statements of its expenditure in such form as the Commission may require.
- (3) No political party shall – (a) hold or possess any funds or other assets outside Nigeria; or (b) be entitled to retain any funds or other assets outside Nigeria
- (4) Any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the Commission within twenty-one days of its receipt with such information as the Commission may require.
- (5) The Commission shall have power to give directions to political parties regarding the books or records of financial transactions which they shall keep and, to examine the all such books and rerecords.

The Commission was also empowered in subsection 6 of the above section to audit the account of political parties through its staff or professional auditors. The commission is further empowered by section 226 of the constitution to prepare and submit a report on the financial account of the political parties to the National Assembly and are authorized to have unlimited access to the records of the political parties. The National Assembly is empowered in section 228 of the 1999 constitution to make laws for the punishment of any individual or party who fails foul of the above provisions and the disbursement of annual grants to political parties. Section 81 provides that the National Assembly may make an annual grant to political parties and 30% of such grants should be shared among the political parties in proportion to number of seats won by each party in the National Assembly. Section 82 provides as follows:

No political party shall be eligible to receive a grant under section 93 unless it wins a minimum of 10 percent of the total votes cast in the local government election in at least two-thirds of the states of the federation. Section 93 which is referred to in the above provision has no such provisions. Section 83 empowers the Commission to place the limitation on the amount of money or other assets, which an individual or corporate body can contribute to a political party. Also it stipulates for a record of all contributions. Section 80(1) empowers the National Assembly to approve a grant for disbursement to Political Parties contesting elections under the Act. By Section 80(2) such grant approved by the National Assembly shall be made to the Commission which shall distribute same to the Political Parties as follows:

- (a) 30% of the grant to be shared equally among the registered Political Parties participating in respect of a general election for which the grant has been made; and
- (b) The outstanding 70% of the grant shall be shared proportionately among the Political Parties after the result of the elections having regard to the number of seats won by each party in the National Assembly.



It would appear that by the strict interpretation of this provision, a Political Party can only qualify for grant if such a party participates in a general election. It is a considered view that participation in this sense must be construed to mean sponsoring of one or more candidates at the election. It is not sufficient for the party to be merely registered or to have participated in the electoral campaign. Section 81(1) also empowers the National Assembly to make an Annual Grant to the Commission for distribution to registered Political Parties to assist them in their operations. The ratio for distribution are as follows:

- (a) 30% of the grant shall be shared equally among all the registered Political Parties; and
- (b) The remaining 70% of the grant to be shared proportionately among the registered Political Parties according to the number of seats won by each party in the National Assembly.

Section 82 places what appears to be a stringent limitation to the eligibility or qualification of a Political Party to receive grant by requiring such a party to win at least ten (10) percent of the total votes cast in the local government election in at least two thirds of the states of the Federation. However, the wrong cross reference to Section 93 in the Act which deals totally on a different subject matter appears to have engendered confusion as to the true meaning and interpretation of Section 82. If one takes the safest option of assuming that reference to Section 93 means reference to Section 81, it leaves those “later day” Political Parties who could not participate in the local government elections conducted prior to their registration at a great disadvantage. This exactly could have been the scenario in the last dispensation where those Political Parties registered after the local government elections in 1998 could have been excluded from any grant pending of course, the conduct of the last local government elections.

Again, by the strict interpretation of the provision of Section 82, it appears that Area Councils do not form part of the calculation when computing what constitutes 10% of two-thirds of the states of the Federation although the general opinion is that the Federal Capital Territory (FCT) should in certain circumstances as this, be treated as a state. Section 83(1) empowers the Commission to place limitation on the amount of money or other assets, which an individual or corporate body can contribute to a Political Party while Section 83 (2) makes it mandatory for every Political Party to maintain a record of all contributions and amounts contributed. From the tenor of the wordings of the provision of section 83(1) it seems that the Commission has discretion whether or not to place such limitation as envisaged by the Act and it appears that presently no such limitation exists.

Suffice it to submit that this is a very important provision which the Commission has not taken full advantage of. Until the limitation as envisaged by the Act is placed by the Commission, it would appear to be perfectly legal for an individual or corporate body to contribute any amount or asset to a Political Party. Again, it appears that the provision of Section 83(2) is made subject to Section 83(1). It follows therefore that the Commission may not rightly insist that parties comply with the provision of Section 83 (2) if it has not placed the limitation in accordance with Section 83(1). Section 84(1) explains election expenses to mean 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. Section 84(2) limits the expenses to be incurred by a Political Party for the management or conduct of an election not exceeding in the aggregate the sum determined by multiplying N20 (twenty) naira by the number of names appearing in the final voters’ list for each constituency where there is a candidate sponsored by the Political Party. It has been suggested that the limitation of election expenses to N20 (twenty) naira per voter is unrealistic having regard to inflationary trend.

Section 84(3) provides that election expenses of a Political Party shall be submitted to the Commission in a separate audited REPORT duly signed by the party’s auditors and counter-signed by the Chairman of the party as the case may be and shall be supported by a sworn affidavit by the signatories as to the correctness of its contents. The use of the expression “as the case may be” presupposes that the framers of the Act may have intended that another officer (probably the party secretary) could also countersign the audited REPORT in the absence of the chairman. However, since it is not explicit, it appears that it is only the Chairman of the party that is authorized to counter-sign the audited report/return. Section 84(4) requires the return to show clearly the amount of money expended by or on behalf of the party on election expenses, including the items of expenditure and commercial value of goods and services received for election purposes.

Section 84(5) makes it compulsory for the Political Party making the return to publish same in at least two National Newspapers. Section 84(6) prescribes a fine of N500,000.00 for a Political Party that incurs election expenses beyond the limit stipulated in the Act. Section 84(7) makes it mandatory for the Commission to make available for public inspection during regular business hours at the national and state offices, the audited returns of Political Parties and the publication shall include the name, address, occupation and amount contributed by each contributor to a party. It is also pertinent to point out that Section 78 of the Act mandates the Commission to arrange for the annual examination and auditing of Funds and Accounts of Political Parties and publish the report of such examination and audit in three National Newspapers.

The same section also prescribed the period to be covered by Annual Statement to be the period from 1st January to 31st December of each year. Finally, it is the considered view that the Act has made considerable provisions regarding Party Funding and Finance. There are, no doubt, areas that need to be fine tuned in order to bring them within the realm of present realities, like the ceiling on election expenses as provided for under Section 84(2). There is also the need to correct the wrong cross referencing that abound in the Act. Nevertheless, it must be pointed out that quite a number of the provisions have not been exhaustively and religiously followed. By the time they are fully followed and implemented there would be a remarkable improvement in the electoral process. It would be advisable therefore for all Political Parties to follow closely the provisions of the law as regards Political Party Finance and Funding.

### **The Electoral Act 2002**

The provision of this law covers virtually every process of electoral activities in the country. Section 76 provides for the oversight function of the Electoral Commission over the activities of the political parties and also provides for a fine of N500, 000 for non-conformity by any individual to lawful directions by the Commission in carrying out its supervisory functions. Section 77 makes provision for a fine of N500, 000 for the contravention of section 225 (3) (a) and (b) of the 1999 Constitution relating to ownership of foreign asset by any political party and any donation from outside the country. Section 78 provides for period of time, which the annual account of a political party should cover. It also empowered the Commission to audit the account of political parties periodically.

Section 79 makes provision for a separate finance statement for election expenses as prescribed in section 100 of the act not later than 90 days after the election. Surprisingly section 100 of the Electoral Act has no provision whatsoever that relates to party finances it rather talks about qualification of a person who can contest elections. Section 77(a) provides for offences in respect of any Political Party that contravenes. Section 225(3) (a) of the Constitution which deals with prohibition of holding or possessing any funds or other assets outside Nigeria by a Political Party. Section 77(a) provides for offences in respect of any political party that contravenes. Section 225(3) (b) of the Constitution which deals with prohibition of retaining any fund or other asset remitted or sent to a Political Party from outside Nigeria. While S.77(a) prescribes for forfeiture of the funds or asset to the Commission in addition to a fine of not more than N500,000.00 upon conviction in respect of contravention of Section 225(3)(a) of the Constitution, Section 77(b) prescribes forfeiture of the funds or assets to the Commission in addition to a fine of not more than N500,000.00 upon conviction in respect of contravention of Section 225(3)(b) of the Constitution.

Section 79(1) requires a Political Party to submit to the Commission on a prescribed form, not later than 90 days from the date of the election a statement relating to its election expenses which shall be in a separate audited account. It is pertinent to note that reference to Section 100 of the Act in the provision is erroneous. The correct section ought to be Section 84 which deals in extensor with election expenses of Political Parties. Section 79(2) prescribes a fine of N100,000.00 payable jointly and severally by leaders of a Political Party upon conviction for contravention of the provisions of subsection (1) above. It is also instructive to observe that it would have been more appropriate if the provisions of Section 79 had come immediately after Section 84 and probably what seemed like a repetition of Section 76(1) in Section 84(3) should have been avoided. Any political party that fails to submit the audited return of election expenses is guilty of an offense punishable on conviction with a fine of N100, 000.

### **Electoral Act 2006**

Under the 2006 Electoral Act which was used in the conduct of the 2007 elections while the recommendations of the Uwais Panel was being debated, the National Assembly was empowered to approve a grant to be disbursed to political parties. The 2006 law also stipulates how the grant should be divided, 10 percent going to be shared equally among the

registered political parties and the remaining 90 percent disbursed in proportion to the number of National Assembly seats won by each party. The law also gives INEC the power to place a limit on the amount of money or other assets an individual or group can contribute to a political party. For a presidential candidate the sum is N500 million, governor N100 million, senator N20 million and a representative N10 million. A state assembly candidate, or chairman N5 million and a local councillorship, N500,000. It is an open question whether this aspect of the electoral law has ever been paid attention to not to talk of being enforced. Some of the then 50 parties have not in any way justified the money they receive from government. It has been discovered that some of the parties only exist on the pages of newspapers and magazines.

They only function when elections are coming or when funding is released by government. They collect the funds, share and go home to rest till another round of funding is available. A few of the parties are even run by close-knit family members. So what does a party exist for if it is only to share government funds? As the nation moved towards 2011 elections, it became imperative to revisit the issue of political financing in Nigeria. The Uwais Panel report recommended the continued funding of parties by government through INEC, but suggests a ceiling for individual donations for each category of office. These figures run from a limit of N20 million for individual donations for a presidential candidate to N15 million for a governor, N10 million for a senator, N3 million for a local government chairmanship candidate. It makes eminent sense for party members to fund their own organization. The Uwais panel recommends that only parties that score 2.5 percent of the votes in the 2011 elections should be eligible to receive funds from public grants, but this like many other issues were expunged in the 2010 Electoral Act.

### **Electoral Act 2010**

The 2011 General Elections are over with local and international acclamation to the electoral commission. The elections were not flawless; however, Nigerians and foreign witnesses are unanimous that the just concluded polls were held in substantial compliance with the nation's electoral laws. It is too early to pre-empt the political parties on the veracity of the election expenses they will submit to INEC in the next 6 months. But then, is six months not too long? I should think three months after the polls is okay, more so as candidates, who spend the bulk of the campaign money, are not yet under obligation to submit election expenses report. This post election period, two major things must happen. The first is for the Independent National Electoral Commission (INEC) to rise up to its constitutional duty to enforce political finance provisions as contained in the statutes viz. the 1999 Constitution (as amended), the Electoral Act 2010 (as amended) as well as the Political Party Finance Manual and Handbook.

The second matter of urgent national importance is the amendment of these laws to make them more enforceable. The current legal framework requested three reports from the political parties. The first, according to section 89 of the Electoral Act 2010, is the annual statement of assets and liabilities, analysis of their sources of funds and other assets as well as their statements of expenditure. INEC is mandated to publish the report in three national newspapers. The other report which is of greater interest to campaign finance experts is stated in section 92 of the current electoral act. Sub-section 3 of the clause says "Election expenses of a political party shall be submitted to the Commission in a separate audited return within 6 months after an election and such return shall be signed by the party's auditors and counter signed by the chairman of the party and be supported by a sworn affidavit by the signatories as to the correctness of its contents".

Sub-section 5 states that the return shall show the amount of money expended by or on behalf of the party on election expenses, the items of expenditure and the commercial value of goods and services received for election purpose. Sub section 6 mandated the political parties to publish this report in at least two national newspapers. The third report is requested of political parties in section 93 (4) and it states that "A political party sponsoring the election of a candidate shall within 3 months after the announcement of the results of the election, file a report of the contributions made by individuals and entities to the Commission". Hitherto, these provisions have been violated with impunity. If the truth will be told, the last general election in Nigeria was the most expensive in the annals of our electoral democracy. Given the resources deployed by some of the wealthy candidates during the elections, there is no gainsaying the fact that the contestants showed scant regards for the provision of section 91 subsections 2 – 5 of the Electoral Act 2010 which placed a cap on the amount of money they are to spend on their campaigns.



## Other Legal Frameworks

The Companies and Allied Matters Act forbids corporate organizations from making political donations. The above-mentioned provisions if properly applied will inject some semblance of sanity in our political environment but that does not mean that there are no rooms for improvement. Section 226 provides that the Commission shall prepare and submit the annual report on the accounts and balance sheet of every political party to the National Assembly. The National Assembly is made up of partisan members who may not be free from bias in considering the reports. An independent body made up of non-partisan members should be in a better position to review such reports. The peculiar inclination of our politicians to place selfish and party interest above common good must not be overlooked. It is submitted that the penalty provided in section 76, 77 and 78 of the 2002 Electoral Act are not stiff enough to deter parties from flouting the provisions of the law. Mere imposition of fine without more cannot adequately serve as an effective deterrent.

The law should be tightened to disqualify such a party from taking part in the general elections. Our environment is one riddled by corruption and fraud. Nigerians are notorious for trivializing the provisions of the law; it then becomes necessary that in order to save our democracy very stiff penalties must be prescribed for serious offenses. The penalties as applied presently have not been able to check the excesses of political parties and politicians. The provision of section 80 of the Electoral Act which stipulates that the grant given to political parties should be shared before and after elections and on the latter instance in proportion to the seats the political parties have in the National Assembly destroys the sole aim of the grant which is to help the political parties especially the small ones contest election. Sharing 70% of the grant after election to successful parties empowers the bigger parties the more and does not promote fair and level playing ground. This argument also applies to the provisions of sections 81 and 82 of the Electoral Act.

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

To monitor expenses of candidates the Draft Bill (Political Finance Bill 2004) presented by INEC to National Assembly required every candidate to file a return under oath of his/her election expenses within 2 months after the result of the election, after which the commission is required to publish some within 10 days of receipt. Again for reasons which we are not privy to, the law makers refused to publish such statements (which fortunately is a Constitutional requirement under section 225 and 226 of the 1999 Constitution). In general, it is considered that a combination of both private and public funding is beneficial. It is recommended that private funding also be regulated, with requirements for disclosure and potentially a cap on the amount. Some of the literature suggests the use of a general private fund to reduce the influence of special interests; private donations would be pooled together and distributed to all eligible parties. However, there may be little incentive for private donors to contribute to such a fund. Regarding public funding, some form of equitable allocation is desirable, as opposed to a purely proportional system that rewards parties for their current strength and representation in Parliament.

In addition, in-kind assistance (e.g. free public radio and television time) and indirect assistance (e.g. tax benefits for individual donations) should be considered, in order to reduce the risk of corruption with cash subsidies. Indirect assistance in the form of tax benefits can also be beneficial in encouraging grassroots involvement. Another way to encourage parties to reach out to the grassroots is the use of matching funds, whereby the state agrees to match all private donations. The literature also recommends that more attention be paid to monitoring and enforcing existing and new regulations through special enforcement/ auditing agencies, the media and various civil society groups.

Government may fund political parties in an indirect way. Indirect public funding includes:

1. free broad casting time
2. State payment in the legislature

3. Use of government facilities and personnel
4. State grants to party foundations
5. Tax relief, tax credits and matching grants (Pinto-Duschinsky, 2002 and Ujo, 2000:25).

Membership subscription is another source of political party funding. The size of such funds depends on the membership strength of the party. As observed by Ujo (2000:126) while quoting Pinto-Duschinsky (1998). In most countries, membership levels have been falling. Income subscription is rarely a major constituent of our party income. A recent comparative study of political financing in European countries concluded that membership subscription play ‘only a limited role’ in present day party finances. Other sources of funding political parties include:

1. Institutions
2. Business Corporations
3. Trade Unions
4. Fund Raising Activities
5. In-kind Contributions
6. profit from party-owned business activities
7. foreign contribution
8. Interest groups (Ujo, 2000:126).

The fundamental objectives of regulating political financing as cited by Cross (2004:1430) includes:

1. Probity and transparency in order to preserve voters confidence that system is free from corruption and quid pro quo arrangements
2. equity to ensure a balanced playing field among parties and candidates, with none vastly outspending the others
3. Accessibility to electoral competition for all citizens regardless of their financial status.

Irrespective of the good intentions of the government, the above objectives are unattainable as a result of ‘corrupt’ political financing. According to Pinto-Duschinsky (2001 and 2004), ‘corrupt’ political financing usually refers to one of the following:

1. Political contributions that contravene existing laws on political financing
2. The use for campaign or party objectives of money that a political office holder has received from a corrupt transaction.
3. Unauthorized use of state resources for partisan political purposes.
4. Acceptance of money in return for an authorized favour or the promise of a favour in the event of election to an office.
5. Contributions from disreputable sources and
6. Spending of money on banned purposes such as vote-buying (Pinto-Duschinsky, 2004:6-16).

A discussion of political party finance has to grapple with the origins of the money and accounting for their usage. That is what is the source of the funds and how are they used. Universally, corruption, bribery, vote buying and election related financial malpractices have necessitated calls for electoral reforms to address the anomalies. Generally there are three different sources of money that parties accrue their finances from. These are first, internal finances such as members’ dues and membership fees, second private donations, and third state/public funding. The latter are the subsidies provided by the state to parties, candidates for campaigns in the form of direct payments, campaign reimbursements, and in other cases free media time. However public funding has its inherent dangers, which include over dependence on the state for funding which may hinder the independence of political parties; capitalization that primarily leads to concerns on the possibility of exchange of large donations for political favours. Commercialization that is, the increased use of political consultants that leads to political parties’ decreased consultation as well as less reliance on members.

These problems inevitably lead to alienation of parties from their members and vice versa. But in spite of these shortfalls state financing has largely been supported on grounds that, since parties and electoral competition are essential for democracy, it is only fair that the state provides them some support. In addition, with the ever-increasing costs of elections, there may not be enough private financing for all parties. Therefore public funds are the only way to ensure equality. Skeptics

have however faulted public funding on grounds that, funding may lead to state interference in the internal affairs of the parties or lead to ossification of the party system. In other words, the party system will not change and encourage new competition because parties that might have otherwise faded away continue to exist as a result of state funding. In addition parties will become less dependent on members dues, thus becoming coteries of the state, rather than articulating the interest of the people. As Von Beyme argues “public funding is a proof that parties have lost their social critical function and are ossifying in the arms of the state.” In order to address these anomalies legislation should be designed legislation should be designed in a way that ensures that fundraising does not become the main preoccupation of parties.

Likewise, funding should be designed to grant parties a degree of autonomy from private interest. To this end, legislation on contribution limits for instance can be enacted to ensure that one individual or group does not have a disproportional influence on parties, elections or the policy decisions of representatives. By limiting the number of big donors to each party it limits the possibility of one party having a large advantage over others. It can also be argued that contribution limits can enhance the autonomy of parties and lessen the commercialization of politics since parties would no longer rely on large contributors, which in turn would make them less susceptible to influence to contributors of large donations. This argument is however oblivious of the fact that these limits might actually increase the time spent on fundraising since the number of donors required to maintain current income levels would increase since instead of a few large donors many small donors would be needed.

### **Recommendations**

Existing Nigerian Laws do not regulate the campaign expenditures of the individual candidates who are contesting elections. However, the laws require the Commission to exercise control over political campaign expenditures. The Constitutional and other legal provisions envisage every political party to maintain proper accounts of its funds. Section 225 (2) of the Constitution specifically requires the political parties to disclose their sources of funds and their manner of expenditures. The political parties and their candidates draw campaign funds from diverse sources which may be beyond the capacity of the Commission to fully monitor. Also the Commission lacks any enabling authority to enforce strict obedience to the laws. As a first step, it therefore becomes imperative for the Commission to device ways and means of implementing the reporting, disclosure of all monies and assets received by the political parties in aid of their campaign effort.

In order to address the above challenges the paper shares the views of the National Conference of 2014 that recommends as follows:

- (i) The provisions of Section 225 of the Constitution and Sections 90 to 93 of the Electoral Act on donations to political parties as well as election expenses should be reviewed;
- (ii) The Political Parties Regulation and Electoral Offences Commission (PPREOC) should be vested with the powers to review the ceiling of campaign and election-related expenses from time to time;
- (iii) PPREOC should take necessary steps to implement the provisions, in order to ensure that the parties comply with the stipulations of the law and that campaign financing is properly monitored; and
- (iv) with respect to foreign funding, existing provisions should be retained and be closely monitored by PPREOC.

### **Conclusion**

Nigeria has often been cited by political finance experts as an example of a country with strong laws on political finance regulations. The country’s statutes, viz: the 1999 Constitution of Nigeria, as amended; the Electoral Act 2010, as amended; the constitutions of the political parties, the Political Finance Manual and Handbook, the Companies and Allied Matters Act and the Code of Conduct for political parties all contain provisions that aim at regulating political finance in Nigeria. Be that as it may, there are inherent problems with the laws, hence the need for further reform of the legislations. Good enough, Nigeria’s National Assembly is in the process of altering the 1999 Constitution. Aside the weaknesses in the law, there is the challenge of law enforcement by the regulator.

Some of the proposals are targeted at legislative reform; policy reform and institutional reform respectively. The clamour by political parties for the Independent National Electoral Commission (INEC) to take over the funding of their activities may have to wait until the constitution is amended. INEC chairman Professor Attahiru Jega said this much in a recent interaction with the media. He made it clear that the issue of funding political parties is a constitutional matter. Sections 225, 226 and 227 are clearly silent on that. He insisted that, until the National Assembly amends the Nigerian constitution to allow for funding of political parties, INEC would not be able to do anything about it.

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