



# GOOD CAMPAIGN FINANCE PRACTICES



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## About The Electoral Hub

The Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), is a multidisciplinary strategic think-tank which seeks to provide solutions to improve the credibility and integrity of the electoral process. The Electoral Hub complements the roles and activities of the different institutions, stakeholders and drivers of the electoral process and governance. The Electoral Hub's aim is to strengthen electoral governance and accountability in Nigeria through research, documentation, electoral education, policy and legal influencing and impact advocacy. We believe that the integrity of the electoral process is crucial in improving the electoral governance and sustaining democracy in Nigeria. We also believe in solutions rooted in the principles of justice and equity.

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... promoting electoral knowledge, accountability and integrity

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## Executive Summary

Upon researching good campaign finance practices, it becomes evidently clear it is a highly contested issue. For some, loose regulations and the free flow of political money are innately undemocratic as they skew the political process in favour of wealthy individuals and special interest groups; for others, the right to use one's wealth to endorse a candidate or political issue is an extension of free speech. Despite this contestation, campaign contributions play a role somewhere down the middle. Without some level of fundraising or revenue source for campaigns, political office would be solely dominated by wealthy individuals who can bankroll their personal bid for office.

Essentially, regulations around campaign finance revolve around the need to reduce the influence of money in politics. If campaign finance is not regulated, elections would be sold to the highest bidder; marginalised groups such as women, youth and persons with disabilities will be further excluded; and trust in the electoral and democratic process will be lost.

Based on a review of the vast literature, best practices on campaign finance involve achieving three main goals: equity, transparency, and compliance. Measures to improve equity are focused on lessening the impact of money in order to reduce the influence of wealthy parties and level the playing field. They include: instituting caps on contributions, instituting caps on expenditure, limiting coordinated party expenditure, and establishing public campaign funding.

Measures to improve transparency involve increasing the visibility of how money influences politics, in order to build voter confidence in the electoral process and trust in government institutions. They include: passing disclosure laws, establishing an online database, and publicly registering all lobbyists.

Crucial to the success of the above measures are measures aimed at improving compliance with campaign finance regulations. They include: establishing a specialised monitoring body, encouraging judicial intervention, encouraging

voluntary disclosure, passing transparent laws and regulations, and encouraging support from other stakeholders.

Against this context, the following are recommended to improve equity, transparency, and compliance with campaign finance regulation in Nigeria:

- The National Assembly should review the Electoral Act with a view to reducing both contribution limits and spending limits.
- The National Assembly and INEC should clarify the laws and regulations around campaign finance, particularly as they relate to political parties.
- The National Assembly should pass disclosure laws with strict requirements for candidates, political parties, and donors.
- Given the power of social media in campaigns, the National Assembly should pass laws to increase transparency in digital campaigning.
- INEC should be unbundled, and a specialised body established with the sole function of monitoring campaign finance.
- INEC should establish an online database containing information on the accounts and expenses of political parties and candidates.
- Political parties, candidates, and donors should adopt the practice of voluntary disclosure. This can be encouraged by the government through tax exemptions for those parties that comply with disclosure requirements.
- The courts should intervene by compelling disclosure from the relevant actors in cases where they fail to disclose.
- The police and other law enforcement agencies should make more efforts to prevent corrupt practices such as vote buying and abuse of state resource, in order to reduce the influence of money in the electoral process.
- In addition to the above, CSOs and the media can support by advocating for reforms and sensitising other stakeholders.

## Acronyms

CSOs	Civil Society Organisations
FEC	Federal Electoral Commission
INEC	Independent National Electoral Commission
IRIAD	Initiative for Research, Innovation and Advocacy in Development
PACs	Political Action Committees
PPERA	Political Parties, Elections and Referendum Act
PWDs	Persons with Disabilities
UK	United Kingdom
USA	United States of America

## Introduction<sup>1</sup>

Upon researching good campaign finance practices, it becomes evidently clear it is a highly contested issue. For some, loose regulations and the free flow of political money are innately undemocratic as they skew the political process in favour of wealthy individuals and special interest groups; for others, the right to use one's wealth to endorse a candidate or political issue is an extension of free speech. Despite this contestation, campaign contributions play a role somewhere down the middle. Without some level of fundraising or revenue source for campaigns, political office would be solely dominated by wealthy individuals who can bankroll their personal bid for office.

Moreover, by keeping fundraising and campaign finance opaque, it creates opportunities for illicit activities and potential forms of graft to maintain one's position in office. As a result, average citizens lose faith in the electoral process, choosing not to participate. Justice John Paul Stevens of the US Supreme Court wrote that “public confidence in the integrity of the electoral process has independent significance because it encourages citizen participation in the democratic process”.<sup>2</sup> When citizens become disaffected, democracy devolves into oligarchy or authoritarianism. As Claus Offe discusses in *Political Dissatisfaction in Contemporary Democracies*, disaffection with political systems presents opportunities for anti-liberal/anti-democratic entrepreneurs and populists, effectively killing democracies.<sup>3</sup>

With that said, what are the best practices for campaign finance? Speaking about the relationship between good campaign finance practices and democracy, Fred Wertheimer and Susan Manes state “democracy depends for its survival on having real elections with real choices if the people are truly to have the power to elect representatives that can be held accountable”.<sup>4</sup> While there is no definitive answer,

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<sup>1</sup> The Electoral Hub extend a special thanks to Robert Wilson, a postgraduate student at the American University in Washington, DC for his contribution to the preparation of this paper.

<sup>2</sup> *Voter confidence*. Voter confidence | MIT Election Lab. (2021, April). Retrieved from <https://electionlab.mit.edu/research/voter-confidence>

<sup>3</sup> Offe, C. (2006). Political disaffection as an outcome of institutional practices? some post Tocquevillean speculations. *Political Disaffection in Contemporary Democracies*, 45–67. <https://doi.org/10.4324/9780203086186-12>

<sup>4</sup> Wertheimer, F., & Manes, S. W. (1994). Campaign Finance Reform: A Key to Restoring the Health of Our Democracy. *Columbia Law Review*, 94(4), 1126–1159. <https://doi.org/10.2307/1123280>

based on the arguments made by democracy advocates, good campaign finance practices are ‘good’ so long as they advance democratisation either through improved competitiveness or citizen participation.

When examining good campaign finance practices, many become enamoured with the influence of corruption. However, in his piece, *Corruption, Equality, and Campaign Finance Reform*, David Strauss argues that people who are concerned with corruption are not actually worried about corruption in the sense of *quid pro quo*s, but inequality and the nature of democratic politics.<sup>5</sup> Rather, the real focus “[is] inequality and certain potential problems of interest group politics that are endemic to representative government”.<sup>6</sup> To combat these effects, reformers of campaign finance aim to impartially limit the power and influence of these groups.<sup>7</sup>

In the Nigerian context, campaign finance is a big issue, as money plays a huge role in the electoral process. This has led to a few wealthy individuals (or godfathers) controlling the entire process. The result is that marginalised groups such as women, youth and persons with disabilities (PWDs) are being driven out of politics. Corrupt practices such as vote buying and abuse of state resources by incumbents also contribute to this inequality.<sup>8</sup> This is illustrated by the fact that only once has the incumbent President lost re-election since the start of the Fourth Republic – in 2015.

Against this context, The Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), has conducted this research to explore best practices on campaign finance and provide recommendations for the Nigerian situation. This paper is expected to aid law and policymakers in developing laws and policies on campaign finance, researchers in conducting research on campaign finance, and other electoral stakeholders in advocating for reforms on campaign finance.

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<sup>5</sup> Strauss, D. A. (1994). *Corruption, Equality, and Campaign Finance Reform*. *Columbia Law Review*, 94(4), 1369–1389. <https://doi.org/10.2307/1123287>

<sup>6</sup> Ibid, 1370.

<sup>7</sup> Ibid, 1378.

<sup>8</sup> Falguera, E., Jones, S. & Ohman, M. (eds) (2014). *Funding of Political and Election Campaigns: A Handbook on Political Finance*. <https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf>



## The Need to Regulate Campaign Finance

Essentially, regulations around campaign finance revolve around the need to reduce the influence of money in politics. The United States provides a good example of this. Since the 1960s, public officials in the United States have warned about the growing influence of money in campaign politics. Former US Solicitor General Archibald Cox wrote a piece entitled “Ethics, Campaign Finance, and Democracy” as an early example of advocating for limiting the influence of money in politics. At the baseline premise of these concerns lies the concept of money replacing the democratic quality of one-vote one-voice. Cox warns of the potential fallout of money and lobbyists replacing the will of constituents.

In Nigeria, Cox’s concerns are also relevant, as money distorts the candidate selection process within parties, and only individuals willing to invest large amounts of money can become candidates.<sup>9</sup> Even after the candidate selection process, money also largely influences who wins the elections. The large amounts of money invested by candidates and their sponsors result in elections being viewed as a ‘do-or-die’ affair, and public office being viewed as a means to gain wealth.

In such situations where it appears that money controls the electoral process, citizen confidence in democratic governance is diminished and the responsibility of elected officials pursuing solutions to political issues for the public good is no longer relevant.<sup>10</sup> Instead, citizens turn away from the system and elected officials begin to represent special interests rather than their constituents. For Cox, money in politics explains the growing sense of citizen distrust and disenchantment experienced in the United States throughout the 1960s.<sup>11</sup> In one of the earliest examples of advocating for campaign finance reform in the United States, Cox makes several recommendations, mainly focused on limiting (or capping) the overall amount one can donate.<sup>12</sup>

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<sup>9</sup> Okunade, B., Taiwo, O., Lafenwa, S. & Johnson, I. (2009). Campaign finance distorts Nigerian elections (Briefing Paper). *Improving Institutions for Pro-Poor Growth*. <https://assets.publishing.service.gov.uk/media/57a08b3a40f0b652dd000b96/iiG-briefingpaper-07-campaignfinanceNigeria.pdf>

<sup>10</sup> Cox, A. (1998). Ethics, Campaign Finance, and democracy. *Society*, 35(3), 54–59. <https://doi.org/10.1007/bf02686136>

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

Another important factor to consider is the implications of how power is distributed and the influence of varying groups throughout a democracy. According to Robert Yablon, a principal component of fair campaign finance regulations reflects a Keynesian approach to mitigate the effects a completely open market ignores, such as equity.<sup>13</sup> In essence, the rules of campaign contributions and financing should work towards lessening the stratifying effect of wealth within a country.

Ultimately, campaign finance must be regulated. Otherwise, elections would be sold to the highest bidder; marginalised groups such as women, youth and PWDs will be further excluded; and trust in the electoral and democratic process will be lost.

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<sup>13</sup> Overton, S. (2004). The Donor Class: Campaign Finance, Democracy, and Participation, 152 U. Pa. L. Rev.

## Best Practices on Campaign Finance

Based on a review of the vast literature, best practices on campaign finance involve achieving three main goals: equity, transparency, and compliance.

### Measures to Improve Equity

In the context of campaign finance, improving equity involves lessening the impact of money in order to reduce the influence of wealthy parties and level the playing field. The following measures can be implemented to improve equity:

1. **Instituting Caps on Contributions:** Bruce E Cain contends that best practices should focus on the institutional conditions that allow for the improper influence of wealth on the political system. In doing so, it maintains an individual's freedom of speech to endorse candidates through donations while limiting the influence of ancillary parties. For Cain, this revolves around a consensus of who has the fair right to influence electoral outcomes, whether it is constituents of said district or parties who perceive themselves as being affected by the electoral outcome. Based on these factors, limiting out-of-district expenditures and instituting caps on contributions are two potential solutions to the disproportionate influence of third parties and wealthy individuals.<sup>14</sup>

According to reform advocates in the United States, limiting independent expenditures, or what is often referred to as “soft money” is a central component of improving campaign finance systems. As previously mentioned, a major focus of good campaign finance practices is the effort to make contributions more egalitarian. In his article, “On Campaign Finance Reform: The Root of All Evil is Deeply Rooted”, Daniel Hays Lowenstein proposes several recommendations to reduce the stratification of campaign finance. Similar to both Cain and Cox, Lowenstein argues that aggregate limits on unrestricted contributions would reduce the pressure imposed by contributions.<sup>15</sup> Using an economic allegory, he posits that an artificial limit put on the demand for contributions while supply remains constant would reduce the ‘price’ of a contribution's influence.<sup>16</sup>

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<sup>14</sup> Cain, B. (1995) "Moralism and Realism in Campaign Finance Reform," University of Chicago Legal Forum: Iss. 1, Article 5

<sup>15</sup> Lowenstein, D. (1989) "On Campaign Finance Reform: The Root of All Evil is Deeply Rooted," Hofstra Law Review: Vol. 18: Iss. 2, Article 2.

<sup>16</sup> Lowenstein (1989), 356.

Additionally, Lowenstein suggests coupling this with a flat cap such as a \$100 limit on individual contributions.<sup>17</sup>

Of course, a country like Nigeria implementing similar caps would have to take into account its own overall economic considerations. Yet, the cap fixed in the Electoral Act 2010 is even higher than the \$100 cap suggested by Lowenstein, despite the fact that Nigeria's economy is much less developed than that of the USA. Section 91(9) of the 2010 Act states that no individual or other entity shall donate more than ₦1,000,000 to any candidate. Worse still, the Electoral Bill 2021 seeks to increase this amount drastically to ₦50,000,000 (section 88(8)). Although Nigeria has taken the right step by instituting a cap on contributions, there are fears that this cap has been set too high, with the result that marginalised groups will still be affected disproportionately.

- 2. Instituting Caps on Expenditure:** While caps on contributions restrict the amount that an individual or organisation can donate to a campaign, caps on expenditure restrict the amount that the candidates themselves can spend. Spending caps, both soft money, and coordinated spending have the added benefit of making electoral competitions more competitive and by extension, more democratic. Writing in reference to this effect, David Samuels states “with a level playing field, campaign spending caps would force both incumbents and challengers to compete more on programmatic appeals rather than costly personalistic or clientelistic ties”.<sup>18</sup> In his examination of spending caps in Brazil, Samuels discovered that spending caps emboldened challengers, levelling the playing field with the innate advantage typically enjoyed by incumbents.<sup>19</sup> Just as the ban on out-of-district expenditures may reinforce single-member electoral incentives, limits on contributions or expenditures can reinforce the one-person, one-vote principle.<sup>20</sup>

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<sup>17</sup> Lowenstein (1989), 357.

<sup>18</sup> Samuels, D. (2001). Incumbents and challengers on a level playing field: Assessing the impact of campaign finance in Brazil. *The Journal of Politics*, 63(2), 569–584.  
<https://doi.org/10.1111/0022-3816.00079>

<sup>19</sup> Ibid.

<sup>20</sup> Cain (1995), 143.

Unfortunately, section 88 of the Electoral Bill 2021 seeks to drastically increase spending caps:

- from ₦1 billion to ₦5 billion for the position of President;
- from ₦200 million to ₦1 billion for the position of Governor;
- from ₦40 million to ₦100 million for the position of Senator;
- from ₦20 million to ₦70 million for the position of member of the House of Representatives;
- from ₦10 million to ₦30 million for the position of member of a State House of Assembly or Chairman of an FCT Area Council; and
- from ₦1 million to ₦5 million for the position of Councillor in an FCT Area Council.

As Levinson notes, “expenditure limits can serve to prevent the drowning out of voices of those who cannot or do not wish to spend large sums of money in political campaigns”.<sup>21</sup> Yet, by increasing these expenditure limits, the 2021 Bill risks further excluding women, youth and PWDs who, due to structural and socio-cultural barriers, typically cannot spend large sums of money in political campaigns.

3. **Limiting Coordinated Party Expenditure:** In addition to limiting the overall cap on independent expenditures, expanding the limits on coordinated party expenditures is an effective way of making electoral competition more competitive and democratic. As argued by Richard Briffault, political parties pose a major conflict to campaign finance systems as they pool resources for targeted races leaving many candidates with bloated pockets while others must rely on more grassroots fundraising.<sup>22</sup> While the target of campaign finance law is typically directed at the influence of money from third-party actors, political parties are often left out of this conversation. By including limitations on coordinated party finance, it brings political parties under the same control as special interest groups and wealthy individuals.<sup>23</sup> Similarly, both Cox and Lowenstein suggest extending limitations on coordinated spending for qualified

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<sup>21</sup> Levinson, J. (2016). Full Disclosure: The Next Frontier in Campaign Finance Law. *Denver Law Review*, 93(2), 466. <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1074&context=dlr>

<sup>22</sup> Briffault, R. (2000) The Political Parties and Campaign Finance Reform, 100 COLUM. L. REV. 620

<sup>23</sup> [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1018&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1018&context=faculty_scholarship)

political action committees (PACs) and other special interest groups such as Unions. Cox states, “limits upon PAC contributions will be effective only if the reform measure includes as a third component a prohibition against ‘bundling’”.<sup>24</sup>

4. **Establishing Public Campaign Funding:** However, improving campaign finance systems is not solely about imposing limitations, it is also about expanding equity from the bottom up. Thomas E Mann and Anthony Corrado argue that increasing opportunities for small-money donors is important for increasing citizen participation.<sup>25</sup> In addition to spending caps on large donations, they suggest public funding matches for small private donations and potential tax credits.<sup>26</sup>

The concept of some form of public campaign funding is a relatively recent idea. Nevertheless, it has gained considerable traction in the literature. In reference to public funding improving electoral systems, Bruce E Cain states, “[an] important step is to enable all citizens to become donors”.<sup>27</sup> Additionally, Lowenstein includes public financing allocated by the legislative party leadership for candidates as a part of his recommendations.<sup>28</sup> Lowenstein’s design would allow for each party within the legislature to be matched with similar spending power.<sup>29</sup> Besides levelling the playing field for all parties, this would improve party cohesiveness making candidates with less fundraising power more competitive than before.

According to Lowenstein, these qualities and recommendations provide three major contributions to campaign finance practices. Mainly, they impose limitations on who, when, and how much money is spent on political purposes, reducing the opportunities for actors who may have excessive influence due to

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<sup>24</sup> Cox (1998), 58.

<sup>25</sup> Mann, T., & Corrado, A. (2014). Party Polarization and Campaign Finance. Brookings.

<sup>26</sup> Ibid, 18.

<sup>27</sup> Cain, B. E. (2014). Is “Dependence Corruption” the Solution to America’s Campaign Finance Problems? California Law Review, 102(1), 37–47.

<http://www.jstor.org/stable/23784365>

<sup>28</sup> Lowenstein (1989), 306.

<sup>29</sup> Ibid.

their wealth.<sup>30</sup> Secondly, democracy is reinvigorated through improved electoral competition.<sup>31</sup> Finally, in his own words, “[they hold] forth, if not the promise, at least the potential for shifting our system in the direction of responsible party government by assuring that a significant portion of campaign debate will be cast in partisan terms”.<sup>32</sup> As he concludes, through these practices citizens are emboldened to hold both parties and candidates accountable.<sup>33</sup>

### Measures to Improve Transparency

Next to improved equity, transparency is a major focus of best campaign finance practices. By implementing campaign finance laws that improve transparency, it increases the visibility of how money influences politics. As noted by Robert Yablon, “disclosure laws make it easier for consumers, shareholders, and voters to monitor big spenders; they help candidates enforce pledges to counter outside expenditures, and they help the media and other watchdogs do their jobs”.<sup>34</sup> Much like equity, this builds voter confidence in the electoral process. Moreover, it builds trust in government institutions.

Groups such as the Transparency and Accountability Initiative are leading the shift towards more transparent and equitable campaign finance practices. In their guide on best practices, they lay forth three primary goals to improve transparency in both the public and private sector:

- a) Restoring and enhancing trust in public institutions through full and prompt disclosure of all contributions and expenditures in political campaigns and elections;
- b) More timely and comprehensive transparency of lobbying activity to reduce actual, potential, or perceived conflict of interest and undue influence; and
- c) Comprehensive transparency of all actors engaged in lobbying activity.<sup>35</sup>

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<sup>30</sup> Lowenstein (1989), 360.

<sup>31</sup> Lowenstein (1989), 361.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Yablon, R. (2017). Campaign Finance Reform Without Law. *Iowa Law Review*, (185).

<sup>35</sup> Transparency and Accountability Initiative. (2011). Campaign finance: A guide to best practice in transparency, accountability and civic engagement across the public sector. [www.transparency-initiative.org](http://www.transparency-initiative.org). Retrieved from <https://www.transparency-initiative.org/wp-content/uploads/2017/03/4-campaign-finance1.pdf>

To accomplish these goals, they make a series of recommendations.

1. **Passing Disclosure Laws:** To address the first objective, the initiative recommends that governments require all parties engaged with a political contest (candidates, political parties, and related advocacy organisations) to file disclosure reports identifying amounts and receipts of their contributions.<sup>36</sup> Next, these reports should be accessible to the public and submitted in a timely manner.<sup>37</sup> US Supreme Court Justice Robert Kennedy emphasised the importance of disclosing money in politics in his *Citizen United* ruling, stating disclosure laws ensure “that voters are fully informed about the person or group who is speaking”, and that individuals are “able to evaluate the arguments to which they are being subjected”.<sup>38</sup> In other words, disclosure laws allow citizens to determine the perceived interests of candidates based on those entities endorsing the campaign through their contributions.
2. **Establishing an Online Database:** Regarding the second goal, the initiative suggests governments should invest in a central website containing a searchable database sourcing all campaign contributions and expenditures, including provincial and local level races.<sup>39</sup> The accessibility of the internet has had a profound effect on the democratisation of campaign funding. By allowing for average citizens to play a more active role in small campaign donations and improving transparency through online financial disclosures, citizens earn a greater stake in the electoral process. For example, in the United States following the 2000 election, smaller individual campaign donations become more prominent and impressively transparent compared to decades prior.<sup>40</sup> In effect, new online mechanisms allowed average citizens more access to influence campaigns, increasing their democratic stake beyond just a single vote, allowing

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<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Why our democracy needs disclosure. Campaign Legal Center. (n.d.).  
<https://campaignlegal.org/update/why-our-democracy-needs-disclosure>

<sup>39</sup> Transparency and Accountability Initiative. (2011).

<sup>40</sup> Nelson, C. J. (2011). Grant Park: The Democratization of Presidential Elections, 1968–2008. Brookings Institution Press. <http://www.jstor.org/stable/10.7864/j.ctt1281mg>



them the capacity to challenge a system previously dominated by the wealthy and special interests.<sup>41</sup>

- 3. Publicly Registering all Lobbyists:** Finally, to fulfil the initiative's last goal, all gifts or other forms of financial support should be publicly reported.<sup>42</sup> To aid in increasing the transparency of third-party actors, all lobbyists should be publicly registered in addition to the disclosure of their clients and own financial activities. These disclosures should also include corporations, labour unions, trade, and professional associations, and other non-profit organisations.<sup>43</sup>

### Measures to Improve Compliance

Measures to improve compliance with campaign finance regulations are highly important, as without compliance these regulations will be ineffective. In Nigeria, compliance is terribly low, as parties and candidates flagrantly exceed spending limits. This is made worse by the fact that Nigeria's economy is largely cash-based, which makes it even more difficult to track expenditure.<sup>44</sup> In order to improve compliance, the following measures can be implemented:

- 1. Establishing a Specialised Monitoring Body:** According to the Transparency and Accountability Initiative, in addition to passing disclosure laws, governments should mandate independent agencies with the legal authority, funding, and a well-managed staff to enforce these requirements.<sup>45</sup> In Nigeria, this authority is granted to the Independent National Electoral Commission (INEC). However, INEC is also saddled with many other enormous responsibilities, including conducting elections, registering voters, registering parties, and conducting civic and voter education. With these numerous responsibilities, monitoring of campaign finance has been largely ineffective. As far back as 2007, the Electoral Reform Committee under the leadership of Justice Uwais called for INEC to be unbundled, with separate specialised commissions focused on specific

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<sup>41</sup> Ibid.

<sup>42</sup> Transparency and Accountability Initiative. (2011).

<sup>43</sup> Ibid

<sup>44</sup> Falguera, E., Jones, S. & Ohman, M. (eds) (2014).

<sup>45</sup> Transparency and Accountability Initiative. (2011).

functions.<sup>46</sup> The USA is an example of a country that has a separate commission focused solely on monitoring campaign finance – the Federal Electoral Commission (FEC). In order to increase compliance, Nigeria would benefit from a specialised commission with the required funding and technical capacity to monitor campaign finance, as well as the authority to institute sanctions against those who do not comply.

2. **Encouraging Judicial Intervention:** Although monitoring bodies have the primary mandate to monitor campaign finance, it is clear that they cannot do this alone. Courts can also play an essential role in maintaining best practices, including ensuring campaigns and lobbyists disclose their funding. For example, since the 1970s, the US Supreme Court has been instrumental in guaranteeing transparency in campaign finance. According to the Brennan Center, the Court has repeatedly determined that campaign disclosures served the common interest by informing voters, combating corruption, and preventing the circumvention of the law.<sup>47</sup> Courts can therefore supplement the work of monitoring bodies by compelling parties and candidates to disclose expenditure where they fail to do so.
3. **Encouraging Voluntary Disclosure:** Best practices around the world revolve around political parties, candidates, and donors voluntarily disclosing donations and expenditure. The FEC would be unable to have such a comprehensive database without voluntary disclosure from the relevant actors. Although courts and monitoring bodies can compel parties to disclose information, unless there is some form of voluntary disclosure, it becomes highly difficult, if not impossible, to track all of their expenditure. If the relevant actors adopt the practice of voluntary disclosure, then it becomes easier to compel disclosure in those isolated cases where they fail to disclose. However, if the regular practice is non-disclosure, then it would be an incredibly arduous task to compel disclosure in every single case. Parties can be encouraged to comply with disclosure

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<sup>46</sup> Electoral Reform Committee. (2008). *Report of the Electoral Reform Committee* (Vol 1)

<sup>47</sup> Torres-Spelliscy, C. (2020, September 4). Supreme Court delivers a blow to secret campaign spending. Brennan Center for Justice. Retrieved from <https://www.brennancenter.org/our-work/analysis-opinion/supreme-court-delivers-blow-secret-campaign-spending>

requirements through rewards such as tax exemptions for those parties that comply.

4. **Passing Transparent Laws and Regulations:** In order to promote compliance, there is also need for transparent laws and regulations around campaign finance. Indeed, candidates and parties cannot voluntarily disclose if they do not even know what the requirements are. The UK, for instance, is criticised for its complicated laws around campaign finance.<sup>48</sup> The same is the case with Nigeria, as it has been noted that there is lack of knowledge about the electoral laws governing how parties should secure and spend their funds.<sup>49</sup> For instance, while the Electoral Act 2010 provides clear limits on donations and expenditure for individual candidates, the Act is less clear about the limits for parties. Section 92(7) of the Act states that “a political party that incurs expenses beyond the limit stipulated in this Act commits an offence”. However, the Act does not actually stipulate what the limit is.<sup>50</sup> Similarly, section 90(1) of the Electoral Act 2010 gives INEC the power to set limits on the amount that a person can donate to a political party. However, INEC is yet to release regulations to this effect.<sup>51</sup> In order to promote voluntary disclosure and compliance by relevant actors, there is need for more transparent rules and regulations on campaign finance.
5. **Encouraging Support From Other Stakeholders:** Other stakeholders also have roles to play in promoting compliance. Civil society organisations (CSOs) can advocate for reforms to the regulations on campaign finance, as well as voluntary disclosure from parties, candidates and donors. The media can also highlight laws on campaign finance and sensitise relevant actors on best practices on campaign finance. This multifaceted approach from different stakeholders should help to increase compliance.

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<sup>48</sup> This is discussed in more detail in the next section.

<sup>49</sup> Okunade, B., Taiwo, O., Lafenwa, S. & Johnson, I. (2009).

<sup>50</sup> International IDEA. (n.d.). *Political Finance Database: Nigeria*. <https://www.idea.int/data-tools/country-view/231/55>

<sup>51</sup> Open-Ended Intergovernmental Working Group on the Prevention of Corruption. (n.d). *Measures Related to Political Parties and Election Candidates*. [https://www.unodc.org/documents/corruption/WG-Prevention/Art\\_7\\_Measures\\_related\\_to\\_political\\_parties\\_and\\_election\\_candidates/Nigeria.pdf](https://www.unodc.org/documents/corruption/WG-Prevention/Art_7_Measures_related_to_political_parties_and_election_candidates/Nigeria.pdf)

## Case Studies

Using four case studies – the USA, the UK, India, and Ghana – we can further examine how measures to improve equity, transparency, and compliance with campaign finance regulation are implemented.

### UNITED STATES OF AMERICA

In the USA, there are several laws on campaign finance, the most comprehensive of which is the Federal Election Campaign Act 1971. This Act contains strict disclosure requirements, limits on contributions to campaigns, and spending limits. Through these provisions in the law, the USA has been able to promote both equity and transparency in campaign finance.

Moreover, the USA has a system of public campaign funding through what is known as political action committees (PACs). Essentially, PACs pool contributions from its members and donates them to campaigns. This system has also helped to improve equity in campaign finance.

On the FEC website, there is a comprehensive database showing clearly how much each electoral candidate has raised and spent on their campaign.<sup>52</sup> The database is quite visual and easy to use, so that any stakeholder can easily track the campaign finance of any candidate. This is one measure that has greatly improved transparency.

In terms of ensuring compliance, the USA is unlike Nigeria in the sense that it has a specialised body that is solely focused on monitoring campaign finance – the Federal Electoral Commission (FEC). Given this singular mandate, the FEC is highly effective as it is not distracted with the enormous task of conducting elections or other related activities. Moreover, the FEC has powers to impose sanctions, as it has exclusive civil jurisdiction over violations of campaign finance regulations.<sup>53</sup> When the FEC’s effectiveness is coupled with the enforcement of disclosure requirements

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<sup>52</sup> Available at <https://fec.org>

<sup>53</sup> International IDEA. (n.d.). *Political Finance Database: United States*. <https://www.idea.int/data-tools/country-view/295/55>

by the courts, it becomes clear why compliance with campaign finance laws is much higher in the USA than in Nigeria.

## UNITED KINGDOM

In the UK, the main campaign finance law is the Political Parties, Elections and Referendum Act (PPERA) 2000. This Act sets disclosure requirements, imposes limits on campaign expenditure by both candidates and parties, and prohibits the receipt of funds above £500 from foreign or anonymous donors. Nevertheless, there are no limits on the amounts that an individual or organisation can donate if they are a permissible source and the donation is declared. This lack of donation limits fails to effectively promote equity around campaign finance.

Furthermore, the UK has also been criticised for its complicated laws on campaign finance. Under PERA, there are different regimes for candidate spending and party spending. There have been calls to make the law simpler, with both regimes integrated into a single framework.<sup>54</sup> This would make it easier for parties and candidates, especially those who might not have the backing of a large compliance team, to comply with the rules.<sup>55</sup>

Against the calls for reform, the Elections Bill 2021 seeks to amend PERA by increasing transparency around third-party campaigning.<sup>56</sup> In the context of digitalisation, the 2021 Bill also includes a new requirement for digital campaigning material to display a digital imprint, with the name and address of the promoter of the material or any person on behalf of whom the material is being published (and who is not the promoter).<sup>57</sup> If passed, this Bill is set to increase transparency around campaign finance.

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<sup>54</sup> Tolhurst, A. (2020, June 8). Explained: Why Britain's 'struggling' campaign finance laws are being reviewed amid anger at the Electoral Commission. *PoliticsHome*. <https://www.politicshome.com/news/article/uks-out-of-date-electoral-law-to-get-shakeup-with-review-of-campaign-expenditure-and-regulation-amid-anger-at-electoral-commission>

<sup>55</sup> Evans, L. (2021, July 7). It's the money, stupid – let's fix the way we regulate election finance. *The Times*. <https://www.thetimes.co.uk/article/its-the-money-stupid-lets-fix-the-way-we-regulate-election-finance-nfcpkhxb>

<sup>56</sup> UK Parliament. (n.d.). *Elections Bill Explanatory Notes*. <https://publications.parliament.uk/pa/bills/cbill/58-02/0138/en/210138en.pdf>

<sup>57</sup> Ibid

The Electoral Commission is the body responsible for monitoring campaign finance in the UK. Like INEC, the Electoral Commission has other functions apart from monitoring campaign finance, including registering parties and providing guidance

on election administration and voter registration. Moreover, the Commission does not have the power to institute sanctions against those who breach campaign finance laws – only the police can deal with such cases. This inability to institute sanctions greatly weakens the power of the Electoral Commission to ensure compliance, and the Commission itself has called for the law to be reformed to give it the power to enforce candidate spending rules and sanction breaches.<sup>58</sup>

## INDIA

In India, the Representation of the People Act 1951 and the Foreign Contribution (Regulation) Act 2010 ban foreign donations to parties and candidates.<sup>59</sup> The Finance Bill 2017 also bans anonymous donations above 2,000 rupees to parties, but not to candidates.<sup>60</sup> However, there is a loophole through the use of ‘electoral bonds’. These bonds allow individuals or companies to deposit as many funds in a political party’s bank account at the State Bank of India.<sup>61</sup> Donors can purchase as many bonds as they like while remaining anonymous. This greatly undermines transparency around campaign finance.

Furthermore, there are spending limits for candidates but not for parties. Although these limits are aimed at providing equity, they would be even more effective if they were applicable to political parties as well.

Additionally, there are no donation limits, which serves as a further barrier to equity. This has resulted in membership fees constituting an insignificant part of parties’

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<sup>58</sup> The Electoral Commission. (n.d.). *Campaign Spending: Candidates*. <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/financial-reporting/campaign-spending-candidates>

<sup>59</sup> Section 29B, Representation of the People Act 1951; Section 3, Foreign Contribution (Regulation) Act 2010

<sup>60</sup> Section 11(1)(iii)(d), Finance Bill 2017

<sup>61</sup> Retuers. (2019, May 1). *Factbox: India's elections – Rules on campaign financing and spending*. <https://www.reuters.com/article/us-india-election-spending-factbox/factbox-indias-elections-rules-on-campaign-financing-and-spending-idUSKCN1S7398>

incomes, as donations from large corporations and wealthy individuals form the bulk. In turn, this leads to donors controlling the politicians, and the politicians becoming even more accountable to their sponsors than to their constituents.<sup>62</sup>

The body responsible for monitoring campaign finance is the Electoral Commission of India (ECI). Like INEC, the ECI has other responsibilities including conducting elections and handling election-related matters. These numerous responsibilities have contributed to the Commission's lack of effectiveness in monitoring campaign finance. Indeed, it has been noted that "lack of effective oversight by the ECI has allowed candidates to flout the limit without much fear of being caught".<sup>63</sup> This is illustrated by the fact that no candidate has been disqualified for exceeding spending limits in over ten years.<sup>64</sup>

In order to promote compliance, a new system was set up in 2017 to provide tax exemptions to political parties that file their returns as directed.<sup>65</sup> This system is aimed at encouraging compliance by parties, thereby making it easier for the ECI to track campaign finance.

## GHANA

In Ghana, by virtue of the Constitution and the Political Parties Act 2000, contributions from foreign or anonymous donors to political parties are banned,<sup>66</sup> however, they are allowed for candidates. Furthermore, there are no spending or donation limits for both parties and candidates. The result is that money plays a huge role in the electoral process in Ghana, with rich individuals, foreigners, and party executives as the major financiers of political parties in Ghana.<sup>67</sup> This serves as a barrier to equity.

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<sup>62</sup> Falguera, E., Jones, S. & Ohman, M. (eds) (2014).

<sup>63</sup> Retuers. (2019, May 1).

<sup>64</sup> Ibid

<sup>65</sup> The Indian Express. (2017, February 2). *Present system has failed, we are experimenting with a new system, says Arun Jaitley.* <https://indianexpress.com/article/business/budget/present-system-has-failed-we-are-experimenting-with-a-new-system-says-arun-jaitley-4503411/>

<sup>66</sup> Article 55.15, 1996 Constitution of Ghana; Article 21, Political Parties Act 2000

<sup>67</sup> Sakyi, E.K., Agomor, K.S. & Appiah, D. (2016). The nature and challenges of financing political parties in Ghana. *International Growth Centre.* <https://www.theigc.org/wp-content/uploads/2016/11/Sakyi-et-al-2016-policy-brief.pdf>

Transparency around campaign finance is also poor, as parties frequently refuse to submit financial reports, and these refusals go unsanctioned.<sup>68</sup> This not only reduces trust in the process, but also paves the way for corruptions. For instance, it is estimated that the ruling party has the ability to outspend all the opposition parties put together by a ratio of 15:1.<sup>69</sup> This enormous difference in spending power shows how lack of transparency facilitates abuse of state resources by incumbents.

The Electoral Commission of Ghana is responsible for monitoring campaign finance in Ghana. Like INEC, the Electoral Commission of Ghana has other responsibilities including conducting elections and handling election-related matters. Due to these many responsibilities, the Commission has been ineffective in monitoring campaign finance, with reports indicating that the Commission even turns a blind eye to obviously inaccurate returns from the parties.<sup>70</sup>

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<sup>68</sup> Falguera, E., Jones, S. & Ohman, M. (eds) (2014).

<sup>69</sup> Ibid

<sup>70</sup> Ayee, J.R.A., Anebo, F.K.G., & Debrah, E. (2007). Financing Political Parties in Ghana. *The Consortium for Development Partnerships*.  
[https://codesria.org/IMG/pdf/2007\\_NOVEMBER\\_REPORT\\_FINANCING\\_POLITICAL\\_PARTIES\\_IN\\_GHANA\\_J\\_AYEE.pdf](https://codesria.org/IMG/pdf/2007_NOVEMBER_REPORT_FINANCING_POLITICAL_PARTIES_IN_GHANA_J_AYEE.pdf)



## Conclusion and Recommendations

To conclude, despite the myriad of opinions regarding campaign finance, for those concerned with democratisation and expanding citizen participation, good campaign finance practices revolve around two qualities: equity and transparency. To improve equity, states must implement laws and regulations that lessen the impact of money, such as instituting caps on contributions, instituting caps on expenditure, limiting coordinated party expenditure, and establishing public campaign funding. Greater transparency can be achieved by requiring disclosures for political money which can be accessed by a public database, and publicly registering all lobbyists. Implementing these measures will increase public confidence and expand individuals' stake in the electoral process.

Crucial to the success of the above measures are measures aimed at improving compliance. Undoubtedly, tracking campaign finance is no small task, even for a highly specialised body like the US-FEC. Nevertheless, there are measures that can lead to more effective results, including establishing a specialised monitoring body, encouraging judicial intervention, encouraging voluntary disclosure, passing transparent laws and regulations, and encouraging support from other stakeholders.

Against this context, the following are recommended to improve equity, transparency, and compliance with campaign finance regulation in Nigeria:

- The National Assembly should review the Electoral Act with a view to reducing both contribution limits and spending limits.
- The National Assembly and INEC should clarify the laws and regulations around campaign finance, particularly as they relate to political parties.
- The National Assembly should pass disclosure laws with strict requirements for candidates, political parties, and donors.
- Given the power of social media in campaigns, the National Assembly should pass laws to increase transparency in digital campaigning.
- INEC should be unbundled, and a specialised body established with the sole function of monitoring campaign finance.
- INEC should establish an online database containing information on the accounts and expenses of political parties and candidates.

- Political parties, candidates, and donors should adopt the practice of voluntary disclosure. This can be encouraged by the government through tax exemptions for those parties that comply with disclosure requirements.
- The courts should intervene by compelling disclosure from the relevant actors in cases where they fail to disclose.
- The police and other law enforcement agencies should make more efforts to prevent corrupt practices such as vote buying and abuse of state resources, in order to reduce the influence of money in the electoral process.
- In addition to the above, CSOs and the media can support by advocating for reforms and sensitising other stakeholders.



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