



GHANA POLITICAL PARTIES FINANCING POLICY (GPPFP)

A DISCUSSION/POLICY DOCUMENT

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PREFACE

Political parties are essential institutions for the organization and functioning of modern democracy. They are the primary vehicles for aggregating and articulating social interests; they integrate individuals and groups in society into the political system; and they help educate and mobilize voters to participate in the democratic process. Political parties also play a vital role in the organization of government by recruiting, preparing, and fielding candidates for political office. In addition, they perform an important policy-making function by developing and offering policy alternatives and seeing to their adoption or implementation through the political process.

To perform these functions effectively, political parties must acquire and maintain party offices and other assets, employ personnel, conduct election campaigns, and communicate with their membership and the electorate at large. These activities naturally involve the raising and spending of money. Indeed, so vital is money to the organization and running of a political party that it has been called “the mother’s milk of politics.”¹ The indispensable role of money in politics is also why it poses a risk of distorting and corrupting electoral and political processes and outcomes in a democracy. In short, money in politics is a double-edged sword. The need to regulate the flow and use of money in politics is, therefore, not generally contested. The debate is over *how*, not *why*.

As Ghana’s Fourth Republic has settled into a stable democracy dominated by two main political parties, the role of money in the country’s electoral politics and its impact on the character and quality of Ghanaian democracy and governance have become matters of growing interest and recurring debate. This report has been commissioned by Financial Accountability and Transparency-Africa (FAT-Africa) under its “Facilitating Political Party Financing in Ghana” Project with STAR-Ghana. It is intended to serve primarily as a discussion paper on the basis of which FAT-Africa will hold a series of stakeholder consultations to stimulate discussion and build consensus around a set of principles and proposals to guide advocacy for policy and legislative reform in the financing of political parties and campaigns Ghana.

¹ The statement is attributed to Jesse Unruh, a Californian politician in the 1960s.

The report proceeds as follows: In chapter I, we present the existing legal regime governing political party financing in Ghana, noting gaps both in the laws and their implementation, and then highlight some of the dangers and challenges that arise from the current state of political party and campaign financing in Ghana. This is followed in chapter II by an overview of political finance regulation and practice in Africa. Chapter III is a policy-driven comparative survey of political party financing practices and systems in modern democracies, view to identifying policy options and best practices. Guided by the discussions in chapters I, II, and III, we conclude in chapter IV with a set of principles, issues, and recommendations to guide policy and legislative reform in the area.

CHAPTER I

LEGAL FRAMEWORK FOR POLITICAL PARTY AND CAMPAIGN FINANCING IN GHANA

A. Constitutional and Statutory Provisions

The provisions governing political party financing in Ghana are contained in Chapter 7 of the 1992 Constitution (article 55) and the Political Parties Act (Act 574). The following are the key features of the legal regime for political party financing in Ghana.

a. Private funding

- i. Only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana. Article 55 (15); Act 574, Section 23 and 24.
- ii. Penalties for violation.
 1. (1) Where any person contravenes section 23 or 24, in addition to any penalty that may be imposed under this Act, any amount whether in cash or in kind paid in contravention of the section shall be forfeited to the State and the amount shall be recovered from the political party as debt owed to the State. The political party or person in whose custody the amount is for the time being held shall pay it to the State.
 2. (2) A non-citizen found guilty of contravention of section 24 shall be deemed to be a prohibited immigrant and liable to deportation under the Aliens Act, 1963 (Act 160).
 3. (3) The provisions of sections 23 and 24 do not preclude a government of any country or a non-governmental organization from providing assistance in cash or in kind to the Commission for use by the Commission for the collective benefit of registered political parties.

b. Public funding

- i. The State shall provide fair opportunity to all political parties to present their programmes to the public by ensuring equal access to the state-owned media. Article 55 (11).
- ii. All presidential candidates shall be given the same amount of time and space on the state-owned media to present their programmes to the people. Article 55

(12).

c. Disclosure and Reporting Obligations

- i. Political parties shall be required by law (a) to declare to the public their revenues and assets and the sources of those revenues and assets; and (b) to publish to the public annually their audited accounts. Constitution of Ghana, Article 55 (14).
- ii. Declaration of assets, liabilities and expenditure in relation to elections. Act 574
 1. 14. (1) A political party shall, within twenty-one days before a general election, submit to the Commission a statement of its assets and liabilities in such form as the Commission may direct.
 2. (2) A political party shall, within six months after a general or by-election in which it has participated, submit to the Commission a detailed statement in such form as the Commission may direct of all expenditure incurred for that election.
 3. (3) A statement required to be submitted under this section shall be supported by a statutory declaration made by the general or national secretary of the political party and the national treasurer of that party.
 4. (4) Without prejudice to any other penalty provided in this Act or any other enactment, where a political party
 - a. (a) refuses or neglects to comply with this section; or
 - b. (b) submits a statement which is false in any material particular, the Commission may cancel the registration of the political party.
- iii. Returns and accounts of political parties.
 1. 21. (1) A political party shall, within six months from 31st December of each year, file with the Commission
 - a. (a) a return in the form specified by the commission indicating
 - i.* the state of its accounts
 - ii.* the sources of its funds
 - iii.* membership dues paid

- iv.* contributions or donations in kind
 - v.* the properties of the party and the time of acquisition
 - vi.* such other particulars as the Commission may reasonably require, and
 - b. audited accounts of the party for the year.
- 2. Any person may, on payment of a fee determined by the Commission, inspect or obtain copies of the returns and audited accounts of a political party filed with the Commission under this section.
- 3. Notwithstanding the provisions of this section, the Commission may at any time upon reasonable grounds order the accounts of a political party to be audited by an auditor appointed by the Commission whose fees and expenses shall be paid by the Commission and also request the political party to file with the Commission the audited accounts at a time to be specified by the Commission.

B. Gaps in the Existing Regime of Political Party Financing and their Implications

The following are the key gaps, including ambiguities, in the current legal regime for political party financing in Ghana:

- There is no provision under current law for direct (cash) public funding of political parties. However, under a longstanding arrangement that has yet to be enshrined in law, Members of Parliament receive a portion of the District Assemblies Common Fund allocated to districts within their constituencies. Also, in past elections, the Government, acting through the Electoral Commission, has allocated vehicles to qualified political parties for use in election campaigns.
- There is some ambiguity or uncertainty whether the constitutional restriction of party contributions or donations to a “citizen of Ghana” also restricts donations or contributions only to natural persons and, therefore, prohibits all corporate donations or whether donations by Ghanaian-registered companies are permitted. It is common knowledge that businesses and business owners, including foreign

business operators in Ghana, make donations to the campaigns of the main political parties, although political contributions do not enjoy tax-deductible treatment under the tax laws.

- There is no limit to the amount of money a permissible donor can contribute to a political party.
- Regular dues from rank-and-file membership are a negligible source of finance for political parties in Ghana. In general, political parties in Ghana are funded primarily from large, irregular donations by wealthy party members and supporters, including those holding key appointments in the public corporate sector. Overseas branches and Ghanaians living abroad have also been an important source of party funding, especially for the NPP when it is in opposition. In the 2016 election season, the NPP also launched, for the first time, a “Go Fund Me”-style “Adopt-a-Polling Station” fundraising platform, which enabled supporters of the party all over the world to contribute online to its 2016 election campaign.
- There is no limit to the amount of money a political party or candidate can spend in a given election or in a given election cycle.
- Other than the usual criminal prohibition against vote buying, which is routinely disregarded by all parties and candidates, there is no law prohibiting certain uses of party or campaign funds.
- There is no law expressly prohibiting the use of public funds or resources by government officials for party or campaign activities. In practice, abuse of incumbency is widespread during election campaign season.
- The statutory disclosure and reporting regulations do not require disclosure of the identity of donors or a disaggregation of donations or contributions into amount per donor.
- The statutory disclosure and reporting regulations are expressly and exclusively addressed to political parties, not to presidential or parliamentary candidates or campaigns.

Overall, the legal regime for political party financing in Ghana is extremely loose. The gaps in the law are compounded by gaps in implementation of the law. Not only do political parties routinely fail to comply with the provisions of the law, the authorities with the statutory mandate to check and punish violations of the law, namely the Electoral Commission and the Attorney-General, have consistently shown no interest or inclination to enforce compliance with the law. Thus, political party and campaign financing in Ghana is *de facto* unregulated.

There is no reliable data on the total amount raised or spent by Ghana's political parties either on party administration or on election campaigns in any of the country's recent elections. The fact that the bulk of party and campaign donations in Ghana come in the form of cash makes it impossible independently to collect or track information on the funds raised or their sources. There is also no systematic collection of data on party and campaign spending. There is, nonetheless, sufficient impressionistic or anecdotal evidence to suggest that the cost of political campaigning in Ghana has reached astronomical levels in recent years, especially as the competition between the NPP and NDC has intensified in the period since the 2000 elections, with one or the other party often winning the presidential (general) elections by a relatively small margin.

The current situation, where unlimited, undisclosed, and untraceable amounts of private money finance the country's political parties and campaigns, poses a danger to the character and health of Ghana's democracy and governance. Among the consequences of the unregulated private money in Ghanaian politics are the following:

- Parties and politics are liable to capture by a small number of moneybags and moneyed interests, including some of possibly foreign.
- Political parties and campaigns risk becoming conduits for criminal elements looking to launder illicit money.
- Party financiers often invest in parties and campaigns in the hope and expectation, and sometimes with an explicit understanding, that they would be offered opportunities to recoup their investment plus a hefty return through government procurement and contracting should the party or candidate be elected.
- Big donors may also demand or influence their own appointment or the appointment of their agents to key positions or portfolios in government in order

to promote their private interests and facilitate recovery of their campaign investments.

- Unregulated private money distorts and corrupts the entire electoral process, as it enables politicians to finance all manner of illicit and improper activities during an election, including vote buying, rigging, bribery of election and security service personnel, and financing political thuggery and violence.
- Big money in our politics plays to the advantage of the already powerful and connected in society and politics, thereby reinforcing inequality and social exclusion, including along gender lines.
- It undermines internal party democracy and turns parties into money/election machines, as only the voices and interests of a small band of financiers, not the broad majority of members, matter.
- It further entrenches the existing party duopoly – the dominance of our politics by two parties – and stymies the emergence of a viable third party, as the escalating cost of political campaigns raises the already high entry barrier facing third parties and third-party or independent candidates.
- The channeling of unlimited amounts of private money into party politics saps and diverts scarce private capital and investment into unproductive rent-seeking.
- Insofar as a significant amount of the private money going into political campaigns comes from the business sector, it raises the cost of doing business in the country and might scare away a certain kind of investors while attracting those that thrive on political corruption and cronyism.

These are among the costs associated with the existing state of political party and campaign financing in Ghana. They provide sufficient reason for urgent action to inject order, discipline, limits, transparency, and accountability in the regime of political party and campaign financing in Ghana.

It is important to emphasize that the case for stringent regulation and reform of political party and campaign financing in Ghana is not predicated on state funding of political parties. The state's interest in the regulation of party financing does not arise from being a financier of political parties; its interest arises from the fact that, unregulated, money in politics can undermine the health of

Ghana's democracy, endanger national security, and in diverse other ways retard the development of the country.

CHAPTER II

THE COMPARATIVE PICTURE: OVERVIEW OF POLITICAL PARTY FINANCING IN AFRICA²

All but four African countries have either signed or ratified the 2005 United Nations Convention against Corruption,³ article 7 (3) of which obligates each State Party to “consider taking appropriate legislative and administrative measures . . . to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.” Article 10 of the African Union Convention on Preventing and Combating Corruption similarly requires each State Party to adopt “legislative and other measures” to “(a) proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (b) incorporate the principle of transparency into funding of political parties.”

This chapter presents an overview of the range of political finance regulations and practices in operation in Africa.

Private funding

Private sources constitute the predominant funding source for most political parties in Africa. Although reliable data is lacking on the share of private financing that is attributed to **membership dues**, the common view is that this is a relatively insignificant funding source for political parties across Africa. Africa is not necessarily an outlier in this regard, as a combination of dwindling party membership and the growth of public funding has led to a progressive decline in membership dues as a source of party finance even in the older Western democracies. Rather than support their party financially, rank-and-file party members in Africa usually expect their party or party politicians to give them “handouts” in return for their support if politicians want their support. Given the generally high levels of poverty across of Africa, membership dues are likely to remain a negligible source of funding for African political parties for the foreseeable future.

² The discussion in chapter is based substantially on the chapter on Africa by Magnus Ohman in Elin Falguera, Samuel Jones, and Magnus Ohman, (2014) *Funding of Political Parties and Election Campaign: A Handbook of Political Finance*. International IDEA; and Ohman, Magnus (1999), *Public Funding of Political Parties in Africa*. Washington, D.C.: International Foundation for Electoral Systems.

³ The exceptions (as of December 2016) are Chad, Equatorial Guinea, Eritrea, and Somalia.

As only few African countries ban donations from corporate entities (less than 20%) and fewer still limit the amount that eligible donors are allowed to contribute to a political party (14%) or to a party's (3%) or candidate's (7%) election campaign, **large donations** from wealthy individuals, businesses and other private sources constitute the dominant source of political finance in Africa. Although governing parties tend to be the primary beneficiaries of this source of financing, where there is no single dominant party business donors often "hedge their bets" by making financial contribution to each of the main parties. In those countries where contribution limits exist, the limits are usually set quite high. In Kenya, for example, the annual contribution limit per individual donor is 5 per cent of the party's spending in the immediate past year,(13) while the limit in Uganda is almost 400 million shillings (I\$500,000). Nigeria's one million naira (I\$14,000) donation limit per candidate and Morocco's annual donation limit of around 100,000 dirham (I\$16,000) per political party are quite modest by regional standards. In practice, however, contribution limits are ineffective form of regulation of political finance, as contributions are seldom monitored and violations usually not detected or punished.

Another common source of party funding in Africa is the private resources of the party leader, presidential candidate or the national party leadership. In many African countries, the burden of raising funds for the party rests on the shoulders of the top **leadership of the party**. In some countries, including Botswana, Lesotho, Nigeria, South Africa and Zimbabwe, parliamentarians and other officials elected to public office on the ticket of a party are required to make fixed regular payments or contributions (usually based on a percentage of their salaries) to the party. Opposition parties in Uganda reportedly obtain a significant amount of their financing from this source. To fund election campaigns, however, African political parties more commonly to look to the **candidates** themselves. Indeed a candidate's resourcefulness, as measured by his or her ability to raise or provide the funds necessary to run an effective campaign, is often a major consideration in his or her successful nomination as a candidate of the party. While this applies equally to presidential and non-presidential campaigns, major parties in Africa usually fund a significant portion of the presidential campaign from the party's collective resources. The situation is, however, quite different when it comes to non-presidential campaigns. Parliamentary candidates usually must fund their campaigns substantially from their own resources, including through personal loans. One report, based on the 2007 elections in Kenya, estimated that the nominating party contributed only 5 per cent of the campaign spending of parliamentary candidates.

Contribution bans

The vast majority of African countries bans the provision (77 per cent) or use (90 per cent) of state resources in favour of a particular political party or candidate. Foreign funding of political parties is also banned in a majority of African countries (60 per cent). Some African countries, including Lesotho, Namibia and Tanzania, allow foreign funding of political parties on condition that such donations are disclosed. Funding from anonymous sources is banned in fifty per cent of African countries.

Frequently, bans on certain donations to political parties are not extended to donations to candidates. For example, while foreign funding of political parties is banned in 60 per cent of the cases, foreign-sourced donations to candidates are banned only in thirty percent of African countries. This discrepancy is more likely the result of legislative oversight, as there is no rational basis to ban a donation to a political party yet permit such donations to be made to a candidate of the party. In any case, such discrepancies create a loophole that makes the donation ban to political parties difficult to enforce, as candidates normally run and manage their campaigns and its finances separate from the party's.

Direct public funding

A growing majority of African countries (69 per cent) currently make provision for political parties to receive direct funding from the state. Bucking the trend are Egypt and Nigeria, which have discontinued public funding within the last decade, and Botswana, which, like Ghana, has continued to resist calls to provide cash support to political parties. In practice, not all countries that make legal provision for direct public funding to political parties are able to deliver on the promise. Burundi, Guinea, Sudan and Togo are among the countries that have failed to provide funding for political parties in recent elections, despite laws mandating such funding. Morocco, South Africa, and Tanzania are reportedly the countries that provide the highest amounts of public funds, while, in per capita terms, Morocco, Namibia, and Seychelles are among the best, relatively speaking. Overall, however, the level of state funding for political parties in Africa is not enough to make much of an impact, while in others the required funding has often come too late in the campaign season to make a difference.

Where direct public funding is offered by law, eligibility is often based on the percentage of the aggregate vote received (above a specified threshold). However, in a growing minority of African countries, the receipt of public funding is linked to a political party's performance in offering opportunities for women to get into elective office. Thus, both Mali and Niger set aside 10 per cent of the available funds for parties that elect women officials, while parties in Burkina Faso stand to lose one-half of their state funding entitlement if they fail to nominate at least 30 per cent of candidates of either gender. Parties in Cape Verde that nominate less than one-quarter of candidates from either gender are ineligible for public funding, whereas in Kenya, parties that have more than two-thirds of their elected officials of the same gender lose their entitlement to public funding.

Indirect public funding

Africa lags behind other regions in the provision of noncash or indirect public funding to political parties. Whereas indirect public funding is available in 93 per cent of European countries and 68 per cent globally, it is available only in 55 per cent of the African cases. Access to free or subsidized media is the most common form of in-kind state funding or support provided to political parties in Africa. Other forms of indirect public funding include the provision of free space for placement of campaign materials (Gabon, Senegal) and premises for party meetings (Cape Verde).

Spending limits

Limits on campaign spending are not a common form of regulation in Africa. Spending limits on political parties exist in only 18 per cent of countries, with slightly more countries (25%) imposing such limits on candidates. In practice, the near absence of enforcement or voluntary compliance means that these spending limits have no real effect or impact. In Nigeria, for example, where federal legislation imposes limits on spending by candidates, there is no mechanism of enforcement, as candidates are not required to file any financial or disclosure reports.

Reporting and disclosure

With the exception of the Gambia, Malawi, Namibia, Swaziland, Zambia and Zimbabwe, all African countries require some reporting in connection with the financing of parties or campaigns. In most cases, however, the financial reporting requirement applies to either political parties or

candidates, but not both. Only 17 countries cover both. Others require political parties to submit consolidated financial reports incorporating the income and expenses of party candidates.

Regarding disclosure of donor's identities, most African countries have no rule requiring parties or candidate to make such disclosures. Others require full reporting of only those donations above a certain limit. For example, in Liberia, donations under \$10 are only to be reported in summary form. Lesotho requires donations above \$44,000 to be reported to the Election Commission within seven days of receipt.

Scrutiny and enforcement

In most African countries, both noncompliance with and non-enforcement of financial disclosure and reporting rules are widespread. Not only do political parties routinely fail or refuse to meet their statutory financial reporting obligations, such violations also routinely go unsanctioned. Moreover, where required reports are submitted, these usually do not get reviewed or scrutinized by the regulatory body. In several countries, too, legislation merely designates a particular agency as responsible for receiving financial reports but does not grant it an explicit mandate to review or do anything with such reports or to investigate alleged violations. As political finance expert Magnus Ohman has rightly observed, "This highlights the weakness of the regulatory enforcement and shows that the problems with political finance control in Africa lie not with the formal rules, but with how the rules are (or are not) implemented."⁴ Ohman cites "limited penetration of the banking system" as one of the structural constraints that undermine effective regulatory scrutiny and enforcement of party financial reporting obligations in Africa. The predominance of cash transactions, as opposed to bank transfers or cheques, means that there is "often no paper or electronic trail for the enforcing agency to follow."⁵

⁴ Ohman, *Funding Political Parties and Election Campaigns*, supra note 2, p. 60.

⁵ *Ibid.*

CHAPTER III

A SURVEY OF ISSUES AND BEST PRACTICES IN POLITICAL PARTY AND CAMPAIGN FINANCE: LESSONS FOR POLICY⁶

A. Sources of Funding and their Related Issues

4. Private Funding

Traditional sources of financing

Regular **membership dues** may be considered the most democratic and legitimate form of party financing for a number of reasons: They come from the broad membership of the party; they are donated on a voluntary, equal, regular, and transparent basis; and, notwithstanding one's personal motivations for joining a party, membership dues entail no reasonable *quid pro quo* expectation on the part of the paying member or the party. Membership dues are, therefore, the least problematic form of party financing.

Modern trends, however, point to a steady decline in the importance and relevance of membership dues as a funding source for political parties globally, including in older democracies. The increase in other sources of funding, notably public funding, has been cited as one of the reasons for the diminishing importance of membership dues.⁷ However, even in countries such as the U.K., where there is no public funding, receipts from membership dues have fallen dramatically as well.⁸ Membership fees are even less important in more recently established or recently emerging democracies, especially in those countries with a relatively low standard of living and a lack of a tradition of membership dues collection or of a democratic participatory culture.

In contrast to membership dues, private donations constitute a vital and growing income source for political parties in contemporary democracies. Private donations, however, create opportunities for improper influence and corruption. Relatively small amounts by individual voters are generally

⁶ The discussion in this chapter is based substantially on the following sources: Elin Falguera, Samuel Jones, and Magnus Ohman (eds.), *Funding of Political Parties and Election Campaign: A Handbook of Political Finance* (International IDEA 2014); Ingrid van Biezen, *Financing political parties and election campaigns—guidelines* (CoE, 2003);

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not problematic; it is the large private donations (especially secret ones) which give rise to problems of unequal access and corruption. Consequently, regulation of money in politics has typically meant regulation of “big money” or large private donations with a view to minimizing its potentially corrupting and distortionary impact on the political process and outcomes.

Contribution limits

One way to limit the political influence of money is through limits on contributions. There are two basic approaches which address this concern: restrictions or ceilings on the amount of donations; and disqualification of certain classes of donors or donations.

Limitations on the amount of private contributions may consist of a maximum threshold on the amount of money that may be accepted from a single source. Different ceilings may apply to different categories of donors. Restrictions may also consist of a limit on the total sum of acceptable private contributions. Different thresholds may also be prescribed depending on the intended destination or use of the funds, such as routine party operational costs, parliamentary or presidential election campaign.

If a contribution limit applies only to the amount of money an individual donor may contribute, but not to the aggregate amount of permissible private donations, then the law may contain a loophole, allowing wealthy contributors to divide up a large donation into several smaller bundles. If only the total sum but not the amount per donor is restricted, parties could still come to depend on only a few donors or a single private donor. Thus, a combination of both a maximum threshold on the amounts per donor and the total sum of donations per reporting period is considered the best approach.

Transparency of donations

Another regulation considered an effective precaution against the improper influence and favouritism that may arise from large donations is to require public disclosure of donations exceeding a certain value and the identity of the donor. Such disclosure is thought necessary to enable an informed public form an opinion or judgment about the integrity of the party in its relationship with a donor. The principle of transparency thus disapproves of both secret and anonymous donations. A secret donation is understood to be one which is not acknowledged in the official accounts of the party, while an anonymous donation does appear in the party accounts, but

the donor is not identified. In some of the less-consolidated democracies, the acceptance of secret donations up to a reasonable amount is may be defended as necessary to avoid political persecution of donors.

Defining acceptable sources of donations

Regulation of contributions to political parties can also be achieved through limits on the acceptable sources of contributions. Measures in this area generally aim to restrict, prohibit or otherwise strictly regulate donations from corporate entities/business enterprises; legal entities under the control of the state or other public authorities; individuals, public or private legal entities of foreign nationality; and anonymous sources.

Corporate donations

In practice, direct contributions to parties from business companies remain a significant source of financing for parties in many democracies. However, increasingly stringent party financing laws, with stricter controls on corporate donations, have caused such donations to submerge under the surface of legality. Some countries, such as Belgium, France, and Poland, have imposed an outright ban on donations from corporate entities.

Donations from public and semi-public entities

In many countries, public enterprises or companies with a certain percentage of shares controlled by the state and institutions of public administration are not permitted to make a contribution to political parties. The prohibition is aimed at avoiding a hidden form of public funding, which, if allowed, would most likely benefit incumbent parties against their opponents.

Anonymous donations

Anonymous donations are generally limited or prohibited. From the standpoint of equality of the democratic process and the transparency of political finance, the ideal policy would be to prohibit any type of anonymous donation. In actual practice, however, it is more common for a maximum ceiling to be set on both the amount of anonymous donations parties may receive from a single source and on the total amount of anonymous donations a party or candidate may receive in a given reporting period or for a particular election campaign.

Special rules for election campaigns

Given their special nature, election campaigns are frequently subject to a financing regime different from that of everyday party operations. Limits on campaign expenditure are a common device used to prevent excessive election spending, control inequalities between political parties, and restrict the scope of improper influence and corruption of the political process by moneyed interests. Expenditure limits are also a means to prevent candidates or parties from “buying the election”. Unrestricted spending gives unfair advantage to those with superior access to money and may make elected officials excessively dependent on contributors at the expense of being responsive to the public at large. In order to ensure equality of opportunities for the different political forces, electoral campaign expenses should have a fixed ceiling.

Expenditure limits

Expenditure limits can either restrict the total amount a party or candidate may spend, or they can limit the amount spent in particular ways and on particular activities. This could mean that some forms of expenditure would be banned altogether. These limits may consist of an absolute sum per candidate or party (such as in the UK) or a certain amount relative to a statutory yardstick such as the minimum wage (as in Portugal). In France and Spain the maximum sum is fixed depending on the population of the constituency.

Expenditure limits can apply to parties, to candidates or to both. If limits apply only to candidates, but not to parties, for example, the British experience indicates that the regulations may be largely rendered ineffectual, as parties can easily bypass the statutory spending limits imposed on their candidates. One solution to this is to establish limits for both parties and candidates. The American approach is to consider spending by parties on behalf of their candidates as campaign contributions and regulate the amounts of permissible donations by law.

To make them effective, restrictions on campaign expenditure normally clearly identify what counts as election expenditure and what does not, and also clearly distinguish between campaign and non-campaign spending. Restrictions also take into account the question of timing and establish a reasonable demarcation of when the campaign begins. Even though the campaign for one election may really begin almost immediately after the conclusion of the last election, campaign expenditure regulations should clearly identify a formal campaign period. If this period is too short, the effectiveness of spending limits is seriously undermined. Finally, regulations on election expenses should also set reasonable limits on spending. In Ukraine, for example, spending

limits have proved in practice to be a fiction, as they have been established at unrealistically low levels, which has encouraged parties to bypass legal regulations by creating large numbers of small front organizations.

5. Public financing

In order to prevent overreliance on private financial donors and guarantee some rough equality of chances among competing parties, most democracies now provide some state support to political parties and candidates. Public financing of political parties from the government budget is a relatively recent phenomenon. Costa Rica (1954) and Argentina (1955) pioneered the practice of giving budgetary support to political parties in the early 1950s, followed by Germany (1959) and a number of European democracies in the 1960s, with the Canada (1974), the United States (1976), and Mexico (1978) joining the list in the 1970s.

In more recently established democracies, such as in southern Europe or post-communist eastern Europe, state support for parties was often introduced on a relatively wide scale during or immediately after the transition to democracy. Switzerland is unique among the west European democracies in that, on the federal level, no public subsidies are available for party organisations or election campaigns. In Ireland and the United Kingdom (with the exception of Northern Ireland) only the parliamentary groups but not the central party receives direct financial support from the state. In the United Kingdom, the possibility of introducing some form of public funding to political parties was extensively discussed but was ultimately rejected (apart from setting aside a modest sum of £2 million per year for so-called policy development grants in order to allow parties to finance policy research).

One argument often advanced against public funding is that taxpayers should not be forced to support financially parties they do not approve of politically. It is also argued that public funding would preserve the status quo by making it more difficult for new parties to enter the existing party system. In favour of public funding, it is argued that state support makes up for the escalating cost of contemporary democracy, facilitates equality of chances for political parties, and guarantees sufficient independence of parties from large private donors.

State support to parties can be provided in a variety of forms, which can be subsumed under two broader headings: direct and indirect support.

Direct funding

Direct funding may be channeled in three ways, underscoring the three key arenas of party activity in modern democracies: subsidies for the routine operational cost of parties; subsidies for campaigning activity; and subsidies to parliamentary party groups. The general tradition of direct public financing is that it is party- rather than candidate-oriented. However, in countries with a more candidate-centered electoral system, such as those that elect (some of the) candidates to parliament in single-member constituencies, state money for election expenses may sometimes be available for individual candidates.

Support for party organization and operation

Public support for the day-to-day operational or administrative cost of running a party is usually provided in the form of a non-earmarked annual sum. It is intended for the maintenance of the party organization, the payment of party employees and, more generally, for extra-parliamentary activities with no direct electoral purpose.

Campaign subventions

In addition to the subsidies for their routine operational activities, parties may be provided with direct state support to assist with election expenditure. Support for election campaigns usually consists of a one-off subsidy granted to every party participating in elections (providing it meets certain thresholds) and serves specifically to compensate for the cost of electoral campaigns.

Subsidies to parliamentary groups

Parties may also receive state subsidies to support the activities of their parliamentary groups. Indeed, in most European democracies parliamentary party group activity is supported by the state, and this type of aid is in fact one of the oldest types of state subsidy in existence. Often, parties are provided with a lump sum, giving each party an equal amount of money, in addition to a fixed sum for every parliamentary seat. In the United Kingdom, only the parliamentary work of opposition parties is financed through specific funds (so called “Short money” in the House of Commons, “Cranborne money” in the House of Lords). The purpose of this money is to assist opposition parties in carrying out their parliamentary duties, in particular that of holding the incumbent government to account. The money is used to provide research assistance for front bench

spokesmen, assistance to the opposition “whips” offices and office staff for the leader of the opposition.

Although they may be included in the law on party financing, provisions for the subventions to parliamentary groups are normally regulated by parliamentary standing orders. The means grants made under this heading are not officially considered as party financing and consequently are not usually included in the parties’ financial accounts. However, parliamentary activity cannot easily be separated from party political activity. Since parliamentary work constitutes one of the most visible and vital activities of political parties, it seems appropriate to consider parliamentary activity as party activity and state funding of parliamentary party groups as an element of party financing.

Allocation of state support

Broadly speaking, two basic principles are employed for the allocation of state support to political parties and candidates. Under the principle of “strict proportionality”, public subsidies are allocated in relation to the parties’ respective levels of popular support, usually measured in relation to the number of votes cast for the party or candidate in the national legislative elections and/or the number of seats obtained in parliament. The principle of “strict equality” entitles each party or candidate to an equal sum of money, or a lump sum, regardless of its electoral strength or parliamentary size.

Generally speaking, a system which provides lump sums is more favourable to smaller parties, which would receive comparatively larger amounts of money under such a system than in one exclusively focused on levels of electoral support. As a rule, therefore, the “equality principle” makes the system more advantageous to smaller parties than the principle of “strict proportionality”.

States often use a combination of proportionality and equality principles, and may use different systems to finance operational activities and election campaigns. This frequently results in highly complex and sophisticated regulations. In Hungary, for example, 25% of the state money for routine organizational activities is distributed equally among all parties that have obtained a seat in parliament, while the remaining 75% is distributed on the basis of the votes obtained in parliamentary elections.

Thresholds

Thresholds are a more or less arbitrary cut-off point above which popular support is considered sufficient to qualify a party for state subventions. Thresholds are typically established on the basis of a certain percentage of the vote (around 1% or 2%) or on a minimum number of parliamentary seats (often only one), or a combination of the two. In Austria, for example, annual subsidies are given to parties which hold at least five seats in parliament or have polled more than 1% of the vote. Sometimes, although it is not very common, a threshold is established at an absolute number of votes. Portugal, for example, has set the threshold for annual subsidies at 50 000 votes. In practice, this equals about 0.6% of the electorate. The establishment of thresholds to qualify for state support constitute another legislative tool to adjust public subsidies to a greater or lesser degree in favour of smaller parties. In general, the higher the threshold, the less beneficial the system will be for smaller parties.

Legal maximum to state subsidies

There are several options to ensure that the funding of parties strikes a healthy balance between private and public money. One way is to establish legal limits on the amounts of public subsidies to prevent them from skyrocketing. This can be achieved through a system of public funding whereby the amounts of state subventions are legally regulated. In Portugal, for example, all state subsidies are by law related to a fixed proportion of the national minimum wage.

In the absence of such legal limits on the amount of state support available to political parties, such as in systems where the amount of money is decided upon annually and taken out of the national budget, there are very few restraints on the escalation of the subsidies. Even though the actual amount of money may need the ultimate approval of parliament, systems of public funding where the subsidies are not established by law give governments a potentially larger leverage to adjust freely public subsidies to their needs. Statutory regulation of the amount of state support available to political parties may thus help to keep the amount of state money under control. It may also diminish the likelihood of parties becoming too dependent on the state and neglecting links with their grass-roots supporters.

Matching funds

One other way to achieve a more equitable balance between public and private funding and avoid unwarranted dependence on a few large contributors is through a system of matching funds, whereby state subsidies are provided (in total or in part) on the condition that an equivalent amount of money has been raised from private donations. The best known example is probably that of Germany, where parties receive €0.38 of public subsidy for every €1 contributed privately, and where the total of state subsidies to any given party may not exceed the sum of private contributions.

Indirect funding

In addition to direct subventions to support operational activities, electoral campaigns and parliamentary group work, parties may also receive various forms of in-kind subsidies and indirect funding, such as free radio and television broadcasting, a reduced postal rate, or various types of tax exemptions. Even though not direct, this type of in-kind support assists parties in carrying out their general activities and supports their core functions in a democratic state.

Free broadcasting and media access

One of the most widespread features of modern electioneering is the allocation of time to political parties to allow them, free of charge, to deliver their messages on television and radio. Given the overwhelming importance of television as a medium of political communications, this “free time” is a vital in-kind benefit to political parties.

The method and principles of allocation of free broadcasting time are usually similar to those of direct funding: parties are either given an equal amount of time or the time for party political broadcasts is allocated proportionally according to some objective criteria, such as party performance in the previous general election.

Ireland, New Zealand and the UK provide free broadcasting time for all parties that have nominated a minimum number of candidates. In the UK, free airtime must be provided not only by the publicly-owned network (the BBC) but also by commercial broadcasters. The allocation formula takes into account share of seats and votes, number of candidates or ‘any other indication of public support’ (e.g., public opinion polls and number of party members), aiming to provide a fair opportunity for each party. In the Czech Republic, political parties contesting elections are allotted a total of 14 hours of television time, divided equally between the parties. Beyond that,

parties cannot buy any additional time for political advertising. In Lithuania all candidates for the office of president have equal opportunity to use the state mass media free of charge for the purpose of campaigning. The actual duration and time of radio and television programmes used for each candidate's campaign are decided by the Electoral Committee in coordination with the radio and television administrations. In Poland, in addition to the free time allotted for the broadcasting of election programmes, each campaign may broadcast paid election programmes on public and private radio and television up to a certain limit, with the rates charged not to exceed 50 per cent of those charged for commercials.

B. Disclosure, Reporting, Monitoring and Enforcement

One of the goals of party and campaign finance regulation is to foster and engender public trust in political parties and the electoral process. Injecting transparency into party and campaign financing is crucial in this regard. To this end, party financing legislation typically include reporting, disclosure, and enforcement provisions which enhance the accountability of political parties. Important elements of the legal framework should include rules which oblige parties to publish their financial accounts and which subject them to independent scrutiny. In case of evasions of obligations, breaches of the law or attempts to fraud, clear and enforceable sanctions should be imposed. To this effect, party financing legislation should include stipulations regulating at least four distinct aspects relating to the transparency of political finance:

- Disclosure: rules which oblige political parties to open up their financial accounts and reveal information on their levels of income, including, in appropriate cases, the identity of donors, and expenditure.
- Reporting: regulations stipulating that party accounts be made public and reported to the appropriate institution.
- Monitoring: provisions for an independent body to inspect and scrutinize party accounts.
- Enforcement: a legal system of sanctions to ensure that regulations on party financing are not evaded and to impose penalties when the law is breached.

Disclosure of sources of income and of expenditure.

Disclosure and reporting of information on party finances is crucial to the transparency of political funding, and it provides the cornerstone for public monitoring. Two elements need to be taken into

account in disclosure requirements: First, there is the public's and third parties' desire to obtain information about the financial backers of a party (transparency); and second, a donor's wish to protect the privacy of his or her political preferences (privacy). Legislation in most countries has balanced these two interests, albeit weighted generally in favour of transparency. Thus, a distinction is often drawn between small donations, which can be made without identifying the donor, and larger donations, which require disclosure of the donors' identity.

Disclosure rules

Disclosure rules vary greatly in what is required to be revealed, by whom and to whom. Effective disclosure regulatory often follow the following guidelines:

- Disclosure provisions should distinguish between income and expenditure.
- Donations exceeding a certain minimum threshold should be disclosed.
- Donations should be itemised into standardised categories.
- Disclosure provisions should distinguish between the financing of political parties and the financing of candidates.
- Disclosure provisions should distinguish between routine party finances and electoral finances.
- Disclosure rules should include both national (central) and local party finances.
- Disclosure should be a responsibility of the donors as well as the parties and candidates receiving donations.
- Party reports should be disclosed to an official auditing body and to members of the public.

Transparency vs. privacy

In most circumstances, disclosure of party income and expenditure should be seen to be in the public interest. The main argument in favour of disclosure is that it enhances transparency and may prevent improper financing. The type and sources of financial support may inform voters of the party's type of policies, activities and political style and thus may reasonably be expected to influence electoral choices. Voters must therefore be entitled to know who the financial supporters

are of the different political parties and candidates they vote for. In addition, disclosure of political donations makes it easier to detect (and thus potentially to avoid) political corruption.

An important argument against disclosure is that it constitutes an unjustified infringement on both individual privacy and the autonomy of political parties as private associations. From this point of view, private donations to political parties can be seen as a way of expressing political support or a form of political participation similar to the act of voting. The argument here is that, like the absence of secret voting, free choice and participation in politics is likely to be inhibited if donors are forced to declare themselves openly, since the disclosure of political donations would effectively compel private donors to declare their political allegiances.

There are three particular circumstances where potential donors may have a legitimate reason to avoid making their political gifts known to the authorities or to the public. First, public officials (such as judges, civil servants, members of the armed forces, and so on) are expected to maintain a stance of political neutrality, even though they are entitled to vote and to contribute to political parties. Disclosure requirements may inhibit them from making donations. Second, businessmen/women may feel that they will be discriminated against when it comes to awarding government contracts if they are known to have supported a particular political party or candidate. Third, and probably most clearly contrasting with the principles of a democratic system, disclosure rules may inhibit contributions to opposition parties and candidates in countries where there is a dominant ruling party, especially where the opposition is barely tolerated. In these circumstances, citizens will hardly have the courage to support opposition candidates openly, and disclosure will thus strongly favour the incumbent party or regime. Disclosure regulations should aim at striking a compromise between transparency and privacy which is acceptable as well as practical. A suitable solution is to consider small donations as a form of political participation or an occasional expression of political support which are unlikely to constitute an improper source of influence, and to exempt these from being fully disclosed. Disclosure should start at a threshold above which an individual contribution may be considered “interested money” and may be expected to have some potential towards influencing political decisions.

Disclosure of donations

The objectives of disclosure are to promote accountability and to reduce the potential for corruption. In order to increase openness, it is advisable that the sources of party income be

specified by the law. This would oblige parties to distinguish between various sources of income, such as state subventions, membership fees, private donations, contributions of public office holders, bank loans, services, and so on. With regard to private donations, a distinction should be made between contributions from individuals, from corporate entities and anonymous donations, all of which should be recorded separately. Reporting private donations simply as an aggregate entry obviously obscures transparency. In order further to enhance transparency and comparability across parties, party reports should adopt a standard format.

Financial reporting

With a view to transparency, the legal requirements of disclosure should be linked to the obligation to report. Reporting requirements are intended to enhance the accountability of political parties, and to fight political corruption or influence buying and selling. For this to be achieved, at least four criteria need to be fulfilled:

- Reports should be timely.
- Reports should be public.
- Reports should be detailed and comprehensive.
- Reports should be understandable to the public at large.

Accessibility

The stipulation in Italian law that financial reports must be published in a national newspaper adds a further and more concrete dimension to the accessibility of party accounts: in whatever form they are published, it should not be too complicated for the public to get hold of them. Effective publicity therefore requires that reports be readily available to the public and the media. An example to the contrary can be found in the Czech Republic, where parties are merely obliged to make their reports available to the parliamentary office. This inevitably implies that the reports are less easily accessible to ordinary citizens.

Independent monitoring and audit

Independent monitoring should include supervision over the accounts of political parties regarding their regular sources of income and expenditure, their routine operational costs as well as their

election expenses. The authority and autonomy of the institutions entrusted with controlling party financing clearly has an impact on the effectiveness of control. In addition, a greater degree of independence of the auditing institution may enhance public confidence in the procedures and contribute to a greater legitimacy of parties and political finance.

Financial reports are likely to be effective only if they are subject to independent audit. The Federal Election Commission in the United States provides an outstanding negative example in this respect: with the exception of presidential campaigns, campaign reports are audited only if the Federal Election Commission receives a signed and notarised complaint and at least four commissioners vote to pursue the investigation. Because the commission is bi-partisan, meaning that it consists of three Democrats and three Republicans, the chance that four votes will be mustered to investigate any but the most flagrant violations by major party candidates is slim.

In other countries, financial reports and balances are often reviewed by official auditors. This has the advantage of relying on professionals who are trained in examining complex financial transactions and accounts, and who can thereby be expected to act as independent experts rather than partisans.

Investigative capacity

In order to be effective, the regulatory body must also have the autonomous capacity to seek out violations. The Federal Election Commission in the United States again provides a negative example in this respect, as it has no investigators of its own. A similar situation arises in Spain and Portugal, where the auditors have little capacity to investigate party accounts beyond the information that parties themselves are willing to report and thus have to rely almost exclusively on the information provided by the parties themselves. The most advanced model of the investigative capacity of an auditing body is probably that of the United Kingdom, where the Electoral Commission may do simply anything (except borrow money) which is calculated to facilitate, or is conducive to the carrying out of any of its functions.

Sanctions regime

Laws relating to the financing of political parties are often disregarded. One reason for this is, in certain cases, the existence of a culture of disregard for the rule of law among political parties and candidates. Occasionally, informal “non-aggression” pacts exist between political parties and

candidates, because none of them wishes to initiate a legal challenge against their political opponents for fear of retaliatory actions against themselves. As a result, politicians tend to turn a blind eye to the law. A second reason is that the institutional framework does not create sufficient incentives to comply with the law, or that its enforcement mechanisms lack ineffectiveness. Controlling commissions may not possess sufficient investigative authority; they may lack qualified personnel or material resources. In addition, the system of sanctions in case of violations of the law may be inadequate, and as a result political actors may prefer to pay relatively small penalties rather than abide by the rules.

While cultural attitudes may be difficult to change, public legislation on party financing should aim to create a framework of incentives for compliance with the law. This can in part be achieved by establishing an effective system of sanctions to be applied in case of violations of the existing regulations. Legislation should specify the different kinds of violations, identify who is to be held accountable and which penalties apply for which type of irregularities.

Penalties

Sanctions and adequate penalties for specific offences will have to be stipulated by the law. Penalties can vary between relatively light administrative sanctions, such as the forfeiture of contributions obtained in contravention to laws or regulations or the forfeiture of (part of) a party's or candidate's entitlement to public funding, to heavy penalties such as the loss of a parliamentary seat, disqualification from public officeholding, or criminal prosecutions leading to indictments and imprisonment. It is important that the law establishes sanctions in proportion to the gravity of the offence and does not penalise a minor violation such as exceeding donation or expenditure limits with a severe penalty such as the loss of civil or political rights. Conversely, serious breaches of the law should not be penalised too lightly.

Accountability

Sanctions can be directed both against the party and against the individual party official or party member personally involved in an illicit transaction. The level of accountability may vary per country and depend to some degree in part on its government structure and political institutions. In a candidate-oriented political system, such as where the electoral system is majoritarian, offences may be more easily related to individual candidates.

It is not always easy, or even possible, to determine who should be held accountable for violations of the party finance law. Unlawful actions may be undertaken on behalf of a candidate or party without their explicit authorization, for example. If the party hierarchy were to be held responsible for every unlawful action at the lower level, they would risk being penalised for actions over which in practice they had little or no control. On the other hand, if candidates or parties are largely liable, the temptation would be great to defer responsibility so that top level politicians would not suffer any consequences. The system of sanctions should therefore clearly outline who is to be held accountable for which type of infringement of the law.

CHAPTER IV

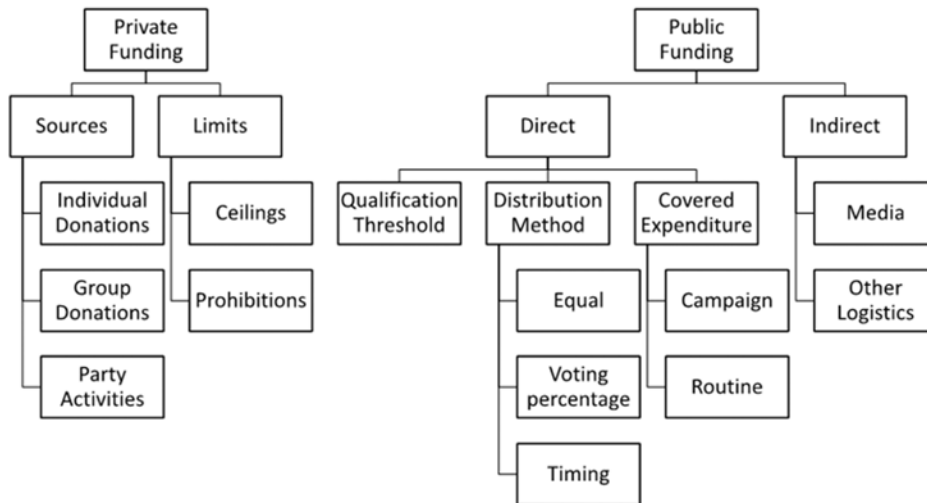
REFORMING THE REGIME OF PARTY AND CAMPAIGN FINANCING IN GHANA

A. Summary and Checklist of Key Reform Priorities

From the discussion in the preceding sections, we are of the view that legislation or reform of the rules on financing political parties must be based on the following 6 principles: (i) a reasonable balance between public and private funding; (ii) a fair criteria for the distribution of any state contribution to the parties; (iii) verifiable and strict rules concerning private donations; (iv) limits on parties campaign spending and other expenses; (v) complete transparency of and accessibility of accounts; the establishment of an independent audit authority; and (vi) meaningful sanctions for parties and candidates who violate the rules.

Figure 1 illustrates the broad issues that must be addressed in this area.

Figure 1: Political Party Funding Guideline



The following checklist is offered as a guide for identifying the key issues and how they might be resolved:

1. Funding

- a. Source of funding
 - i. Where, from whom are contributions coming?
 - ii. Identity of the donor.
 - iii. Who may lawfully contribute? Anybody? Citizens only (current law). Should that be only natural persons, or must companies too be allowed. If so, should that be limited to private companies? Or should companies in which the State has an interest be free to make campaign donations?
 - b. How much per donor?
 - i. No caps, no limits?
 - ii. Or should we seek to limit the amount of money each qualified donor can contribute to a particular candidate or party or candidate.
 - a. Should there be state funding?
 - iii. If so, by what mechanism, with what conditions and qualifications?
 - iv. Cash or in-kind (some in-kind, currently).
 - v. Distribution mechanism
2. Limits on Parties' and Candidates' Campaign Spending and Other Expenses:
- a. Should regulations specify limits on the amount that political parties and candidates can spend?
 - b. Expenditure limits can apply to parties, candidates or both.
 - c. Expenditure limits can also be placed on type of activities.
 - d. Regulations must define what constitutes an election expenditure and what does not.
 - e. The regulation will also define the campaign period.

- f. The success of such a regulation depends, of course, on the effectiveness of the audit regime in place,
- g. Uses of the Funds. What can parties and candidates not use donated funds for? Should we care if donated funds are used for personal household expenses? Vote buying?

3. Documentation, Disclosure, and Reporting.

- a. Disclosure provisions should clearly define income and expenditures
- b. The provisions should stipulate a threshold amount for which a donation must be disclosed
- c. Parties and candidates must itemize their donations into standardized categories
- d. Clear rules must exist as to whether a donation is for a candidate or a political party
- e. The finances must distinguish between routine and election finances
- f. Parties must prepare consolidated disclosures but provide a trail that can allow local and diaspora finances to be ascertained.
- g. Donors, exceeding a threshold, should also disclose
- h. Party reports should be disclosed to both the auditing body and the public.

4. Sanctions.

- a. Sanctions and adequate penalties should be specified. Depending on the offense, penalties may take the form of:
 - i. Fines
 - ii. Forfeiture of illegal funds
 - iii. Withholding of any government subsidies
 - iv. Ineligibility for any future state funding

- v. Disqualification from standing for future elections
- vi. Ineligibility for appointment as a public official
- vii. Imprisonment
- viii. De-registration of party

5. Enforcement.

a. Who to enforce?

- i. EC? CHRAJ/anticorruption body? Attorney-General? Auditor-General? Private cause of action? Or some combination of these?
- ii. It is obvious that the current regime of enforcement, with the EC and AG, has simply failed, by default or design.

B. Recommendations

This study has revealed substantial defects and weaknesses in Ghana's existing legislative and institutional framework for the regulation of political party and candidate financing. In fact, measured against its regional peers in Africa, Ghana's performs quite poorly in terms of the adequacy and comprehensiveness of its legal frameworks for regulating the financing of political parties and election campaign. Taken together with the perennial failure to enforce and sanction habitual noncompliance by parties, the defects and weaknesses in the current legal and regulatory regime mean, in effect, that the important business of money in contemporary Ghanaian politics and elections is *de facto* unregulated. Indeed one might argue that Ghana's current conduct in this area falls far short of its commitments under article 7(3) of the United Nations Convention Against Corruption, as it has yet to take "appropriate legislative and administrative measures" "to enhance transparency" in the funding of candidates for public elective office and political parties. Not only

that, but the command of article 55(14) of the 1992 Constitution, that “Political parties shall be required by law (a) to declare *to the public* their revenues and assets and the sources of those revenues and assets; and (b) to publish *to the public* annually their audited accounts,”⁹ is also arguably still unanswered. In short, there is an urgent need for legislative and regulatory action and reform to correct the omissions and inadequacies in this area.¹⁰

In making the case for reform, civil society must invoke the authority of Ghana’s legal commitments under both UNCAC and the 1992 Constitution and underscore the fact that lack of action to remedy the deficiencies in this area will severely undercut the fight against corruption. The following are some recommendations for reform.

Laws and regulations must cover both political parties and candidates. Currently, the legal and regulatory scheme, including its disclosure and reporting obligations, applies only to political parties; it does not cover individual candidates’ financing of their presidential or parliamentary campaigns. In failing to bring individual campaigns within its regulatory, reporting and enforcement orbit, current law misses the real action in this area. At the minimum, political parties must be required to submit consolidated final reports, incorporating accounts of the party’s individual presidential and parliamentary election campaigns.

The law must contain an explicit ban on contributions from, or use of the resources of, state-owned corporate entities to support political activity. While there may be an implicit understanding that assets and resources of state enterprises may not be used, directly or indirectly, to fund a political party or an election campaign, there is no explicit prohibition in existing law of

⁹ Emphasis added.

¹⁰ “Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.” Article 5(3), UNCAC.

such conduct or practice. Making express provision for this would be in line with international best practice in checking abuse of incumbency. Credible progress in reform of campaign and political party financing is hard to imagine unless there is concerted effort to rein in abuse of incumbency. If not, then reform becomes practically one-sided, imposing constraints and limits on opposition parties and candidates, while incumbents office holders remain free to use or commandeer state assets for electoral gain.

The law must prescribe contribution limits and require documentation and disclosure of contribution and donations above a defined threshold. The absence of a ceiling or limit on the amount of money an individual donor may contribute to a party or candidate opens the door to the risk of capture of a party or candidate by a few individual donors as well as possible flow of illicit money. Setting a contribution limit will bring Ghana's political finance laws in line with international best practice and with those of Nigeria. In the area of disclosure, however, a reasonable balance must be struck between transparency and privacy. While all donations and contributions must, like membership dues, be documented and acknowledged by the party or candidate, only contributions above a stated threshold amount should be disclosed for public reporting purposes.

Public funding should be used creatively to support parties while helping to achieve other important policy goals. While popular support for direct funding of political parties and candidates is likely to remain low, creative use of public funding should be considered as a way of achieving other important policy goals, including advancing gender diversity in elective office and helping to reduce the escalating cost of political campaigns. For example, in order to increase the representation of women in national political office, some direct (cash) funding could be made available to political parties that *elect* a certain minimum number of women parliamentary

candidates. The provision of free airtime to presidential candidates and parties during the election campaign season, which currently applies only to the state-owned media, could also be extended to the private commercial media as a way of bringing down the cost of election campaigns. In the case of the private commercial media, parties that received a certain aggregate number or percentage of votes in the previous elections could be allocated a fixed number of hours of free airtime per month on FM stations during the campaign season. Alternatively, rates for political advertising by qualified political parties could be capped below the normal rates for commercial advertising. The modalities for implementing these proposals could be worked out among the National Media Commission, the National Communication Authority, and the Inter-Party Advisory Committee (IPAC).

The current enforcement and sanctions regime must be completely overhauled. The current system of enforcing compliance with the reporting and disclosure obligations is completely ineffective. First, it is not clear that the Electoral Commission is the appropriate body to enforce compliance. The EC arguably lacks the institutional capacity to perform the tasks assigned it under the law. Perhaps a multi-agency approach to enforcement might work better. For instance, the EC upon receiving the financial reports of parties and candidates could rely on the Audit Service to review the accounts and conduct any necessary investigation arising from the review, with the EC enforcing the recommendations of the Audit Service. At the minimum, the EC must have a dedicated unit and professional staff to enforcement of the political finance laws and regulations. Legislation must also be brought in line with the letter and spirit of article 55 (14) of the Constitution, which requires that political parties be statutorily obligated to disclose and publish “to the public” their accounts, including the “sources” of their income. One recommended reform is to give citizens or party members a statutory right to compel political parties to comply with the

reporting and disclosure requirements of the law. The current sanctions regime must also be reviewed and strengthened. Additional new sanctions should include temporary de-registration of the political party, a temporary injunction against the party restraining it from exercising the powers and functions of a political party while it remains in default of the law, the imposition of escalating administrative fines, and temporary withholding of public benefits or subsidies to the offending party and its officers.

