

WHOSE TUNE DOES THE PIPER PLAY? AN APPRAISAL OF POLITICAL PARTY FINANCE REGULATION IN GHANA

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ABSTRACT

Researchers have long found a positive relationship between weak political party finance regulation and perceived and actual corruption and vice versa in democracies. Ahead of the 2024 general elections in Ghana, there has been renewed interest in the matter in political and civil society circles. This article will first examine the current state of political finance regulation in Ghana and engage in a comparative analysis with political finance regimes in other countries to ascertain the strength or otherwise of the Ghanaian regime. It will conclude by suggesting some models of political financing regulations and the establishment of an Elections Ombudsman to regulate and enforce campaign finance matters and other related matters.

Keywords: Campaign Finance, Political Party Finance, Elections, Electoral Management, Regulations

INTRODUCTION

It may be said with some degree of certainty that the days where “little or no attention [was] given to the subject [of political finance regulation] by scholars on Ghanaian politics”² are well and truly behind us. In the period ensuing the coming into force of the 1992 Constitution, academia,

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² Joseph Atsu Ayee, ‘Financing of Political Parties in Ghana: An Exploratory Study’ in Kwame A Ninsin and Francis K Draht (eds), *Political Parties and Democracy in Ghana’s Fourth Republic* (Woeli Publishing Services, 1993) ch 15, 246.

civil society and legal spaces alike have been replete with research and commentary on the question of political finance and its regulation and fittingly so as “finance is the oil that greases the engine of party politics.”³ Extant research has found the legal and regulatory regime of political financing to be inadequate.⁴ Nonetheless, despite the immense attention accorded to the question in the Fourth Republic, it pervades public discourse mainly because it has eluded significant reform in the period, a matter that the impending 2024 general election has stoked renewed interest in.⁵

Corruption, disenfranchisement and the proliferation into politics of gains of serious and organised crime and other illegal or illicit activities are the known⁶ correlates of our weak political financing regime, with the invariable result that the basic precept of democracy that “the various magistrates of the State should be [our] tenants or delegates, revocable at [our] pleasure”⁷ is blatantly overrun in favour of parochial private interests. This incursion into the right of suffrage is not only morally reprehensible but potentially unconstitutional. In *Ahumah Ocansey v Electoral Commission; Centre for Human Rights & Civil Liberties (CHURCIL) v Attorney-General & Electoral Commission (Consolidated)*,⁸ the Supreme Court per Date-Bah JSC held:

The general principle governing elections in Ghana is that they are held on the basis of universal adult suffrage. This principle is embodied in article 42, an entrenched provision, of the 1992 Constitution... Article 42, although it is not contained in Chapter 5 of the Constitution, which is on “Fundamental Human Rights and Freedoms”, is for me the first of the fundamental human rights of our Constitution. For without the general right to vote, the system of representative democratic government set out in the Constitution would fall away and be emptied

3 R S Hiline, ‘Philippine and Malaysian Fund-Raising and Expenditure Practices in the Southeast Asian Context’ in A Heidenheimer (ed), *Comparative Political Finance* (Lexington, D.C.: Heath, 1970) 143 cited *ibid*.

4 H Kwasi Prempeh & Stephen Kwaku Asare, ‘Ghana Political Parties Financing Policy (GPPFP)’ (2017, STAR-Ghana) ch 1.

5 John Dramani Mahama, ‘Political financing in Ghana’ *JoyOnline*, 23 March 2023 < <https://www.myjoyonline.com/full-text-mahamas-speech-on-political-financing-in-ghana-delivered-at-ups/> > accessed 18 July 2024.

6 Ghana Center for Democratic Development (CDD), ‘Understanding How Dirty Money Fuels Campaign Financing in Ghana: An Exploratory Study’ (2021) 26-27 < <https://cddgh.org/wp-content/uploads/2022/02/Final-Report-CDD-Campaign-Financing-FCDO-11th-June-2021.pdf> > accessed 18 July 2024. See also Joseph Oti Frimpong, ‘Oiling the Wheels of Multi-Party Politics in Africa: How Power Alternation Affects Party Financing in Ghana’ (2019) 55(5) JAAS, 10 < <https://doi.org/10.1177/0021909619891188> > accessed 18 July 2024.

7 John Stuart Mill, ‘On Liberty’, *Great Books of the Western World* (1952) vol 43, 268.

8 [2010] SCGLR 575. See also *Tehn-Addy v Electoral Commissioner* [1996-1997] SCGLR 589.

of content. Without a democratic representative system of government, constructed on the bedrock of universal adult suffrage, the likelihood would be that the rights enshrined in Chapter 5 would be ineffective.

Thus, given the fundamental nature of the need to guarantee the sanctity of elections, the justification for a more stringent political regulatory regime is uncontentious and the real task is thence to fashion out the means of same.⁹

Political party finance regulation may typically refer to the body of laws, regulations, institutions and norms that supply, mandate, monitor and enforce the acceptable flow of money in the organisation and operations of political parties. As its subclass, campaign finance regulation deals specifically with these inflows before, during and immediately after election seasons.¹⁰ The two would however be used interchangeably in this article. The range of political party finance regulation may be bifurcated. On one hand, there are regulations which govern the flow of money into political party coffers addressing questions like who may contribute, how much can be contributed, how are contributions to be received and how are contributions to be spent. On the other hand, regulations exist to ensure that the former group are complied with by requiring documentation and disclosures of contributions made and to empower certain institutions to monitor and enforce these regulations.

It is the latter form of regulations which is the focus of this article hence this work extricates other items in the range of political party finance regulations. It therefore falls within the emerging field of study known as electoral management. According to James, electoral management “refers to the organisations, networks, resources, micro anthropological working practices and instruments involved in implementing elections.”¹¹ Notwithstanding the above, the article shall highlight the use of contribution quotas and spending limits if only to acquaint the reader with the gaps in the regulation of political party and campaign finance. The vexed issue of public funding of political parties is however beyond the

⁹ Prempeh and Asare (n 4) 1.

¹⁰ *ibid* (n 4).

¹¹ Toby S James, ‘Comparative Electoral Management: Performance, Networks and Instruments’ (1st edn, Routledge 2020) 5.

scope of this work as it has been thoroughly dealt with elsewhere.¹²

The article will proceed as follows: Part 1 will lay out the existing legal framework which governs political party and campaign financing and identify the relevant institutions that monitor and enforce these regulations, the powers of these institutions and the legal basis for them. Part 2 will follow with a comparative analysis of political party and campaign financing in other jurisdictions, particularly the Federal Republic of Nigeria, the United Kingdom and the United States of America. Part 3 will make the case for the establishment of an independent elections ombudsman to consolidate the regulatory and prosecutorial powers of the institutions earlier identified as they relate to political party and campaign financing. It shall conclude by recommending further research into the establishment of an independent election's ombudsman in the short term and the progressive adoption of stringent political party and campaign finance regulations.

12 Rowland Atta-Kesson, 'Reforming Campaign Finance Laws in Ghana: A 'Political Party Bank Proposal' (2021) 1(2) UCCLJ <<https://doi.org/10.47963/ucclj.v1i2.417>> accessed 20 March 2023; CDD and Afrobarometer, 'Ghanaians Oppose State Support for Political Parties During Election Campaigns' (2024, Dispatch No. 808) <<https://www.afrobarometer.org/wp-content/uploads/2024/05/AD808-Ghanaians-oppose-state-support-for-political-parties-Afrobarometer-29may24.pdf>> accessed 18 July 2024; CDD, Ransford E V Gyampo, 'Public Funding of Political Parties in Ghana: an Outmoded Conception?' (2015) 38(2) U:AJAS <<https://doi.org/10.5070/F7382025972>> accessed 19 July 2024; Financing Political Parties in Ghana: Policy Guidelines (2005) <https://ndi.org/sites/default/files/1883_gbcddpolicyguidelines_5.pdf> accessed 18 July 2024; John Dramani Mahama (n 5).

PART ONE

POLITICAL PARTY FINANCE REGULATION IN GHANA: LAWS AND INSTITUTIONS

1.1 NO ADO ABOUT NOTHING: HISTORICAL CONTEXT AND EVOLUTION OF POLITICAL PARTY FINANCE REGULATION IN GHANA

The evolution of political party finance regulation in Ghana has been snail-paced and has, in some instances, regressed. In the period after independence, the flow of money into politics virtually went unchecked and government after government were embroiled in corruption scandals as a result of the legislative inertia.¹³

It was not until the dawn of the Third Republic that major legislation was introduced on the matter by the enactment of the Political Parties Decree, 1979 (SMCD 229) by the Akuffo-led Supreme Military Council (SMC-II). The Decree was enacted in anticipation of the return to multi-party politics via the promulgation of the 1979 Constitution of the Republic of Ghana within several weeks of the coming into force of the Decree.¹⁴ SMCD 229 thus fulfilled, in advance, the requirement of Article 42(6) of the 1979 Constitution that:

‘(6) Subject to the provisions of this Constitution, and in furtherance of the preceding provisions of this article, Parliament shall, by law, regulate the functioning of political parties.’

As far as political party financing was concerned, the relevant provisions of SMCD 229 were between sections 19-22 of the Decree with the penalties contained in section 30. SMCD 229 mandated the keeping and auditing of financial records,¹⁵ an annual contribution limit of ₵1,000.00 for every Ghanaian citizen¹⁶ and a total ban on contributions by companies and foreigners.¹⁷ It further provided for penalties for the violation of these provisions in section 30.

SMCD 229 was eventually repealed by section 34 of the Political Parties Law, 1992 (PNDCL 208). Like SMCD 229, PNDCL 208 was made in

¹³ Ayee (n 2) 246-248.

¹⁴ SMCD 229 was assented to on 26 March 1979, three months before the intended 1 July handover to civilian rule. However, events were overrun by the successful coup of the Armed Forces Revolutionary Council (AFRC) on 4 June. The AFRC would eventually promulgate the 1979 Constitution on 19 September with the only major change being the indemnity granted to AFRC officers under the transitional provisions.

¹⁵ SMCD 229 s 19.

¹⁶ *ibid* s 20.

¹⁷ *ibid* s 21 and 22.

furtherance of a return to democratic rule, this time under the incumbent 1992 Constitution of the Republic of Ghana. In a marked improvement over its predecessor, the 1992 Constitution itself contained some provisions on political party and campaign financing in Article 55. The relevant provisions are reproduced below.

55(11) 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.

(12) 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.

(14) 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.

(15) Only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana.

(17) Subject to the provisions of this Chapter, Parliament shall by law regulate the establishment and functioning of political parties.

Thus, like SMCD 229, PNDCL 208 satisfied the requirement for Parliamentary action in Article 55(17) of the 1992 Constitution. The statutes themselves were similar with the latter reenacting several useful provisions in the 1979 law. Consequently, asset declaration provisions,¹⁸ contribution limits¹⁹ and the prohibition of corporate bodies²⁰ and non-Ghanaians²¹ from making contributions were maintained in PNDCL 208. However, PNDCL 208 ushered in some changes on its own. For instance, section 20 of PNDCL 208 increased the threshold for maximum contributions of individuals to ₵200,000.00 from the ₵1000.00 in SMCD 229 and a later amendment vested the power to set the maximum threshold in the then Interim National Electoral Commission.²²

18 PNDCL 208, s 13.

19 PNDCL 208, s 20.

20 PNDCL 208, s 21.

21 PNDCL 208, s 22 echoing Article 55(15) of the 1992 Constitution

22 Political Parties (Amendment) Act, 1992 (PNDCL 283); Aye (n 2) 250

Moreover, there were points of complete divergence between the laws. Thus, while section 19 of SMCD 229 mandated certain disclosures, section 14 of PNDCL 208 imposed additional disclosure requirements specifically related to elections thus, marking for the first time in election regulation, a distinction between political party finance regulation and campaign finance regulation.

1.2 THE STATE OF POLITICAL PARTY AND ELECTION FINANCING IN MODERN GHANA: THE STATUTORY FRAMEWORK

The principal legal framework for campaign finance is the 1992 Constitution, thus, the provisions provided above are equally applicable to the current regime of political party and election finance. For ease of reference, the relevant provisions of Article 55 are reproduced below.

Article 55 – Organization of Political Parties

55(11) 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.

(12) 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.

(14) 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.

(15) Only a citizen of Ghana may make a contribution or donation to a political party registered in Ghana.

(17) Subject to the provisions of this Chapter, Parliament shall by law regulate the establishment and functioning of political parties.

The statutory regime for the organisation of political parties has however been the subject of change. The Political Parties Act, 2000 (Act 574) is, at present, the law in place to satisfy Article 55(17) of the 1992 Constitution. Section 34(1) accordingly repeals PNDCL 208 and PNDCL 283. The provisions of Act 574 in connection with the relevant question are as follows:

13. Declaration of assets and expenditure by political parties

(1) A political party shall, within ninety days after the issue to it of a final certificate of registration under section 11 or a longer period allowed by the Commission, submit to the Commission a written declaration giving details of all its assets and expenditure including contributions or donations in cash or in kind made to the initial assets of the party by its founding members.

(2) A declaration submitted to the Commission under subsection (1) shall state the sources of the funds and the other assets of the political party.

(3) The declaration shall also contain any other particulars directed by the Commission in writing. (4) The declaration shall be supported by a statutory declaration made by the national treasurer and the national or general secretary of the political party.

(5) The Commission shall, within thirty days after receipt of the declaration required under subsection (1), publish the declaration in the *Gazette*.

(6) Without prejudice to any other penalty prescribed by this Act or any other enactment, where a political party,

(a) refuses or neglects to comply with this section, or

(b) submits a declaration which is false in a material particular,

the Commission may cancel the registration of that political party.

14. Declaration of assets, liabilities and expenditure in relation to elections

(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 the form directed by the Commission.

(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 the form directed by the Commission of all expenditure incurred for that election.

1. (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) Without prejudice to any other penalty provided in this Act or any other enactment, where a political party,

2. (a) refuses or neglects to comply with this section, or
- 3.
4. (b) submits a statement which is false in a material particular,

the Commission may cancel the registration of the political party.

21. Returns and accounts of political parties

(1) A political party shall, within six months from 31st December of each year, file with the Commission

- (a) a return in the form specified by the Commission indicating,
- (i) the state of its accounts,
 - (i) the sources of its funds,
 - (ii) membership dues paid,
 - (iii) contributions or donations in cash or kind,
 - (iv) the properties of the party and the time of acquisition,
 - (iv) any other particulars reasonably required by the Commission, and
- (a) the audited accounts of the party for the year.

(2) A 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) Despite this section, the Commission may at any time on 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 request the political party to file with the Commission the audited accounts at a time specified by the Commission.

23. Contribution by citizens

(1) Only a citizen may contribute in cash or in kind to the funds of a political party.

(2) A firm, partnership, or enterprise owned by a citizen or a company registered under the laws of the Republic at least seventy-five percent of whose capital is owned by a citizen is for the purposes of this Act a citizen.

24. No contribution by non-citizens

A non-citizen shall not directly or indirectly make a contribution or donation or loan whether in cash or in kind to the funds held by or for the benefit of a political party and a political party or person acting for or on behalf of a political party shall not demand or accept a contribution, donation or loan from a non-citizen.

25. Contraventions of sections 23 and 24

(1) Where a person contravenes a provision of section 23 or 24, in addition to any other penalty imposed under this Act, the amount whether in cash or in kind paid in contravention of the section shall be forfeited to the Republic and the amount shall be recovered from the political party as debt owed to the Republic.

(2) The political party or person in whose custody the amount is for the time being held shall pay it to the Republic.

(3) A non-citizen found guilty of contravention of a provision of section 24 shall be deemed to be a prohibited immigrant and be liable to deportation under the Immigration Act, 2000 (Act 573).

(4) Sections 23 and 24 do not preclude the government of any other country or a non-governmental organisation from providing assistance in cash or in kind to the Commission for use by the Commission for the collective benefit of registered political parties.

30. Penalty

(1) A person who contravenes a provision of this Act commits an offence.

(2) A person who in furnishing particulars or information required to be furnished by a political party or by that person under this Act makes a statement which that person knows is false or which that person does not believe is true or makes a false statement recklessly whether it is true or not commits an offence.

(3) An offence under this Act, unless otherwise specifically provided for, is punishable with a fine not exceeding ten million penalty units

or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(4) Where an offence under this Act is committed by a political party, every executive officer of that party shall be deemed to have committed that offence.

(5) Where an offence under this Act is committed by a body of persons, other than a political party, then

(a) in the case of a body corporate, every director and the secretary of the body corporate shall be deemed to have committed that offence; and

(b) in the case of a partnership, every partner shall be deemed to have committed that offence.

(6) A person shall not be convicted of an offence by virtue of subsection (4) or (5) if it is proved to the satisfaction of the Court that the act in respect of the charge was committed by another person and without the consent or connivance of, and that due diligence was exercised by that person to prevent the commission of that act having regard to the circumstances.

The current statutory regime admits of several flaws. Prempeh and Asare identify the following to be the gaps in the current regime:²³

1. 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.²⁴
2. 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

²³ *ibid* (n 4) 5, 6.

²⁴ Whether the lack of public funding is a shortfall of the regime is the subject of controversy. See *ibid* n (12).

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.²⁵

3. There is no limit to the amount of money a permissible donor can contribute to a political party.
4. 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.
5. 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.
6. 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.²⁶
7. 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.²⁷
8. 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.
9. The statutory disclosure and reporting regulations are expressly and exclusively addressed to political parties, not to presidential or parliamentary candidates or campaigns.

25 It is submitted that the express definition of citizens to include legal persons in section 23(2) of Act 574 resolves the ambiguity and precludes foreign companies from making contributions relying on the perceived ambiguity. The maxim *expressio unius est exclusio alterius* therefore applies. See *Ghana Industrial Holding Corporation v Vincenta Publication* [1971] 2 GLR 24 CA.

26 The Criminal Offences Act, 1960 (Act 29), s 256 and the Representation of the People Law, 1992 (PNDC 284) s 34 criminalise vote buying.

27 See also: Magnus Ohman, ‘Regional Studies of Political Finance: Regulatory Frameworks and Political Realities, Africa’ in Elin Falguera, Samuel Jones and Magnus Ohman (eds), *Funding of Political Parties and Election Campaigns: A Handbook on Political Finance* (International Institute for Democracy and Electoral Assistance, 2014); Alban S K Bagbin and Albert Ahenkan, ‘Political Party Financing and Reporting in Ghana: Practitioner Perspectives’ in K Mensah (ed) *Political Marketing and Management in Ghana* (Palgrave Macmillan, Cham., 2017) <https://doi.org/10.1007/978-3-319-57373-1_6> accessed 21 July 2024.

This article associates itself with these findings, save as otherwise excluded above. It will however not dwell on the merits of the findings as this is not the focus of the article.

1.2.2 THE STATE OF POLITICAL PARTY AND ELECTION FINANCING IN MODERN GHANA: INSTITUTIONS

Having situated the subject of inquiry under electoral management above, it is necessary to identify the bodies responsible for such management. 'Electoral management bodies (EMBs) are the individual or collection of organisations or bodies that are tasked with 'managing some or all the elements that are essential for the conduct of elections.'²⁸ The essential elements were identified to include 'boundary delimitation, voter and candidate registration, campaign media and **finance monitoring**, voter education, to post-election dispute adjudication.'²⁹

The Ghana Center for Democratic Development (CDD) identifies several stakeholders in election management in Ghana including the Public Accounts Committee of Parliament, National Commission on Civic Education (NCCE), Commission on Human Rights and Administrative Justice (CHRAJ), Audit Service /Auditor-General, Economic and Organised Crime Office (EOCO), Financial Intelligence Center (FIC), Ghana Revenue Authority (GRA), Ghana Immigration Service (GIS), Ghana Police Service (GPS) and National Investigations Bureau (NIB).³⁰ According to the study:

"This category of state-side stakeholders has varying mandates ranging from regulating political parties and election management (Electoral Commission); enforcing laws and regulations related to aspects of campaign financing (Ghana Immigration Service deporting non-citizens who finance parties; EOCO, NIB, GPS - investigating and on the authority of the AG prosecuting SOC) and conducting public education (NCCE)."³¹

However, the principal EMB in Ghana is the Electoral Commission. The Electoral Commission is a creation of the 1992 Constitution and reinforced

28 Toby S James and others, 'Electoral management and the organisational determinants of electoral integrity: Introduction' (2019) 40(3) *International Political Science Review* < <https://doi.org/10.1177/0192512119828206>> accessed 22 July 2024

29 *ibid* (emphasis added).

30 Ghana Center for Democratic Development (CDD), 'Understanding How Dirty Money Fuels Campaign Financing in Ghana: An Exploratory Study' (2021) 41 < <https://cdldgh.org/wp-content/uploads/2022/02/Final-Report-CDD-Campaign-Financing-FC-DO-11th-June-2021.pdf>> accessed 18 July 2024.

31 *ibid*.

by the Electoral Commissions Act, 1993 (Act 451). Article 43 of the Constitution provides that:

43. The Electoral Commission³²

(1) There shall be an Electoral Commission which shall consist of,

- (a) a Chairman,
- (b) two Deputy Chairmen, and
- (c) four other members.

(2) The members of the Commission shall be appointed by the President under article 70 of this Constitution.

Article 45 of the 1992 Constitution provides the functions of the Commission to be as follows:³³

The Electoral Commission has the following functions:

- (a) to compile the register of voters and revise it at such periods as may be determined by law;
- (b) to demarcate the electoral boundaries for both national and local government elections;
- (c) to conduct and supervise all public elections and referenda;
- (d) to educate the people on the electoral process and its purpose;
- (e) to undertake programmes for the expansion of the registration of voters; and
- (f) to perform such other functions as may be prescribed by law.

The Committee of Experts, which provided the draft 1992 Constitution, defined the duty of the Commission to organise public elections as including “functions that are incidental to the electoral process.”³⁴ Consequently, the regulation of political party and campaign finance can be situated within the Commission’s function to conduct and supervise all public elections and referenda under Article 45(c) of the 1992 Constitution and Section 2(c) of Act 451 as same is incidental to the electoral process. Further, the various powers and functions vested in the Commission under Act 574 as outlined above are given effect by virtue of Article 45(f) of the Constitution and Section 2(h) of Act 451.

³² Act 451, ss 1 and 4 reinforce this provision.

³³ Act 451, s 2 reinforces this provision.

³⁴ Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana, (1991) paragraph 221.

Upon scrutiny of Act 451, it appears that the main tools at the disposal of the Commission in executing its regulatory mandate are the rejection of applications for registration of political parties where the relevant disclosures are not made and the cancellation of the registration of prior registered parties.³⁵ The Commission may further cause an audit of the records and accounts of a political party upon reasonable grounds and apply to the High Court to wind up and dissolve a political party whose registration has been cancelled where it is equitable and just to do so.³⁶

The Commission however has no prosecutorial powers on its own and must rely on the Office of the Attorney-General or some other body acting on the authority of that office to investigate and prosecute election crimes and enforce electoral laws.³⁷ The combined effect of section 42 of PNDCL 284 and section 30 of Act 574 essentially subject the enforcement powers of the Electoral Commission and all the other bodies identified in section 1.22 above in respect of criminal violations of campaign finance regulations to the pleasure of the Attorney-General or upon the authorisation of his office.

1.2.3 LIMITATIONS IN THE REGULATORY STRUCTURE IN GHANA

The current structure of regulatory bodies invites some scepticism as to their capacity and efficacy in implementing the regulations on political party and campaign finance. These concerns mainly relate to the independence and fairness of the process of implementation as well as questions of capacity. These would be addressed in turn.

Article 46 of the 1992 Constitution provides that:

46. Independence of the Commission³⁸

Except as provided in this Constitution or in any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission, is not subject to the direction or control of any person or authority.

Notwithstanding this constitutional requirement, the independence of the Electoral Commission has been the subject of controversy amongst political party officials and faithful, especially when their party of choice

³⁵ Act 574, ss 13 and 14.

³⁶ Act 574, ss 21 and 31.

³⁷ Report of the Constitutional Review Commission: From a Political to a Developmental Constitution, (2011), 365 para 174, 176(a).

³⁸ Emphasised in Act 451, s 3.

is in opposition.³⁹ There further exists some evidence that the Commission is not personnel independent.⁴⁰ This is largely attributed to the mode of appointment of the Commissioners.

As stated above, the appointment of the Commissioners of the Electoral Commission is to be done in accordance with Article 70 of the 1992 Constitution which provides thus:

70. Appointments by the President

(1) The President shall, acting in consultation with the Council of State, appoint

(a) the Commissioner for Human Rights and Administrative Justice and his Deputies;

(b) the Auditor-General;

(c) the District Assemblies Common Fund Administrator;

(d) the Chairmen and other members of,

(i) the Public Services Commission;

(ii) the Lands Commission;

(iii) the governing bodies of public corporations;

(iv) a National Council for Higher Education howsoever described; and

(e) the holders of such other offices as may be prescribed by this Constitution or by any other law not inconsistent with this Constitution.

(2) The President shall, **acting on the advice of the Council of State**, appoint the Chairman, Deputy Chairmen, and other members of the Electoral Commission.⁴¹

The Supreme Court took the opportunity to define what it means to be “acting on the advice of the Judicial Council” in relation to Article 144(2) of the 1992 Constitution in the case of *Ghana Bar Association & Ors v Attorney-*

³⁹ *ibid* (n 34) 367, para 178 (b).

⁴⁰ Akpeko Agbevade, ‘Ghana’s 2020 Electoral Politics: An Assessment of the Electoral Commission’ (2024) 10(1) *Cogent Social Sciences* 13-14 < <https://doi.org/10.1080/23311886.2024.2361533> > accessed 28 July 2024.

⁴¹ Emphasis added.

General & Judicial Council; Richard Sky v Attorney-General; Kwasi Danso-Acheampong v Attorney-General (consolidated).⁴² The majority of the court held per Dotse JSC:

When the two words and phrases e.g. acting on the advice are put together, a clearer meaning of the role of the Judicial Council giving an advisory opinion is apparent and this therefore in my opinion makes such an advice in the true meaning of the words not binding. Therefore, a simple, ordinary and common sense reading of these provisions indicates that the President must at all cost have this advice from the Judicial Council and if he does not have this advice, the appointments of the Justices will not be valid. But at all times, this remains an advice and the President, in my opinion is not bound to follow it.

For our purposes, it follows that whereas the President must seek the advice of the Council of State before appointing the Commissioners of the Electoral Commission, **he is not bound to follow same**. This accords the President an incredible degree of latitude in making these appointments and the potential for a conflict of interest is exacerbated by the fact that affiliation to political parties is no bar to appointment as a Commissioner, a matter many an opposition have been eager to point out.⁴³ The Constitutional Review Commission therefore recommended that the appointment of members of the Electoral Commission should be subject to prior parliamentary approval.⁴⁴

Another hotspot in the structure of EMBs in Ghana is the restriction of the enforcement powers of the Electoral Commission. As indicated earlier, the Electoral Commission may only enforce election rules by cancelling or refusing the registration of a political party or causing it to be audited. Consequently, the Commission is disabled from exacting a range of civil sanctions including fines, warnings and cautions amongst other measures in cases of minor infringements or where the circumstances of a matter so require. Coupled with its inability to prosecute offenders, the limited nature of the civil sanctions the Commission can enforce renders it a toothless bulldog.

The challenge is further compounded by the fact that the only body capable

42 Consolidated Writs: J1/21/2015; J2/22/2015; J1/26/2015 dated 20th July 2016.

43 Evans Annang, 'NDC will go into the 2024 elections with its own referee - Mahama' *Pulse Ghana* (20 June 2024) <[NDC will go into the 2024 elections with its own referee - Mahama | Pulse Ghana](#)> accessed 28 July 2024.

44 *ibid* (n 34) 338 para 61(a).

of prosecuting electoral offences, the Office of the Attorney-General is an entirely political office whose occupant is a minister of the President. Consequently, the potential for only political opponents to be pursued for electoral crimes is significant. Indeed, the most notable cases of prosecution for electoral offences have only been instituted against members of the opposition. Thus, in *The Republic v Adamu Daramani Sakande*,⁴⁵ the Mills-led National Democratic Congress administration pursued the accused, who was elected MP of the Bawku Central Constituency whilst being a dual citizen, on several counts including election fraud and perjury which resulted in his conviction and sentence. Similarly, following the 2020 general election, the present New Patriotic Party administration has commenced *The Republic v James Gyakyie Quayson*⁴⁶ who was elected as the MP for Assin North Constituency while not having renounced his Canadian citizenship. The seeming use of the Office of the Attorney-General to settle political scores is a cause for concern and has been the subject of commentary.⁴⁷

Consequently, the structure of EMBs in Ghana, specifically the mode of appointment, their competencies and the independence of these EMBs impede their ability to effectively implement the regulations of political party and campaign financing.

45 Case No. ACC 45/2009.

46 Case No. CR/O264/2022.

47 'Martin Kpebu explains 4 major differences between the case of Adamu Sakande and Gyakyie Quayson' *Myinfo* (12 July 2023) < [Martin Kpebu explains 4 major differences between the case of Adamu Sakande and Gyakyie Quayson – www.myinfo.com.gh](https://www.myinfo.com.gh) > accessed 28 July 2024.

PART TWO

A COMPARATIVE ANALYSIS OF THE STRUCTURE OF ELECTION MANAGEMENT BODIES IN SOME JURISDICTIONS

This article has earlier highlighted the challenges that the structure of EMBs presents to the efficient enforcement of campaign finance regulation in Ghana. This part will explore the structure and competencies of EMBs in three jurisdictions, namely the Federal Republic of Nigeria, the United Kingdom and the United States of America. The selection of these jurisdictions is influenced in part by their use of the common law system. Further, they represent the most pronounced of the liberal democratic systems with Nigeria and the United States being purely presidential and the United Kingdom being the quintessential parliamentary democracy. Consequently, desirable elements of the structures in the respective jurisdictions may be easily replicated within the hybrid, common law system which obtains within our jurisdiction.

2.1 FEDERAL REPUBLIC OF NIGERIA

The main statutes which govern elections and EMBs in Nigeria are the 1999 Constitution of the Federal Republic of Nigeria and the Electoral Act 2022. As far as campaign finance regulations are concerned, Nigeria prohibits anonymous campaign contributions, contributions from foreign sources and corporations and imposes limits on contributions to campaigns by individuals as well as expenditures by candidates and political parties based on the type of election to be contested.⁴⁸

The Independent National Electoral Commission (INEC) is the principal EMB in Nigeria. Section 153(1)(f) of the 1999 Constitution establishes INEC as one of several Federal Executive Bodies. The composition of INEC is provided in paragraph 14 of the Third Schedule of the 1999 Constitution as follows:

14. (1) The Independent National Electoral Commission shall comprise the following members -
 - (a) a Chairman, who shall be the Chief Electoral Commissioner; and
 - (b) twelve other members to be known as National Electoral Commissioners, who shall be persons of unquestionably

⁴⁸ The 1999 Constitution of the Federal Republic of Nigeria, s 225; Electoral Act 2022 (FNG), pt 5; Olakanye Oluwatobi, '#234Vote: What the Law says about Campaign Financing' (*Borg Legal and Policy Research*, 2022) <<https://www.borg-re/articles/234votes/234vote-what-the-law-says-about-campaign-financing>> accessed 28 July 2024.

integrity and not less than fifty years and forty years of age, respectively.

The Commissioners are appointed by the President upon the advice of the Council of State⁴⁹ and subject to the confirmation of the Senate.⁵⁰ To accommodate the Federal Structure of Nigeria, the President is further empowered to appoint a Resident Electoral Commissioner for each state of the Federation.⁵¹ The functions of INEC are provided in the Constitution as follows:⁵²

15. The Commission shall have power to -

- (a) organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;
- (b) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;
- (c) **monitor the organisation and operation of the political parties, including their finances;**
- (d) **arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;**
- (e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;
- (f) monitor political campaigns and provide rules and regulations which shall govern the political parties;
- (g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the Oath of Office prescribed by law;
- (h) delegate any of its powers to any Resident Electoral Commissioner; and
- (i) carry out such other functions as may be conferred upon it by an Act of the National Assembly.⁵³

In pursuance of these functions and specifically in its monitoring of party finances, INEC is vested with a range of powers. Amongst these are the

⁴⁹ The 1999 Constitution of the Federal Republic of Nigeria, para 6(a)(iv), sch 3.

⁵⁰ *ibid.*, s 154(1).

⁵¹ *ibid.*, para 15, sch 3.

⁵² *ibid.*

⁵³ Emphasis added.

refusal of registration of political parties for failure to make adequate disclosures, deregistration of parties and investigation into the finances of political parties.⁵⁴ However, in *Action Congress & Anor. v Independent National Electoral Commission*,⁵⁵ the Supreme Court of Nigeria held that these powers did not extend to disqualifying candidates without a court order.

A distinguishing feature of INEC's powers from that of their Ghanaian counterparts is that the former is vested with prosecutorial powers of electoral offences.⁵⁶ Section 145 provides:

145 - Trial of offences.

(1) An offence committed under this Act shall be triable in a Magistrate Court or a High Court of a State in which the offence is committed, or the Federal Capital Territory, Abuja.

(2) A prosecution under this Act shall be undertaken by legal officers of the Commission or any legal practitioner appointed by it.

It had been argued that the prosecutorial power of INEC was limited to prosecutions recommended by an Election Tribunal but in the case of *Ibrahim Mohammed Umar v Federal Republic of Nigeria & Ors*,⁵⁷ the Nigerian Court of Appeal per Uwa JCA held that:

An Election Petition Tribunal may recommend (for the purpose of prosecution) to the Independent National Electoral Commission (INEC) for the prosecution of offenders under the Act but, INEC could initiate such proceedings especially where the election in question was not challenged. Section 149 provides thus: 149. "The commission shall consider any recommendation made to it by a Tribunal with respect to the prosecution by it of any person for an offence disclosed in any election petition." The above provision makes it mandatory for the commission to consider any recommendation made to it by an election tribunal for the prosecution of

⁵⁴ *ibid* (n 47), s 226; Electoral Act 2022 (FNG), pt 5.

⁵⁵ (2007) LLJR (SC).

⁵⁶ A complete list of electoral offences is provided by INEC at < inecnigeria.org/wp-content/uploads/2019/02/ELECTORAL-OFFENCES-AND-PENALTIES-latest-FEBRUARY-2019.pdf > accessed 28 July 2024. NB. These relate to offences under the previous Electoral Act 2010.

⁵⁷ (2021) LPELR-53936 (CA).

offenders under the Act, this is only when and where a recommendation is made, by the clear wordings of Section 149 of the Act. This does not mean that the commission cannot initiate proceedings where a recommendation is not made, for instance where the election is not contested as in the present case. The above Section did not limit the investigation and prosecution to only cases where a recommendation has been made by an election petition tribunal. The appropriate agency or body may investigate and prosecute in appropriate cases without a recommendation from an election Tribunal.

Additionally, the Act provides for finances that are contributed or expended in contravention of it to be forfeited to the Commission upon conviction for that offence. This indubitably motivates INEC to prosecute offenders.⁵⁸

2.5 THE UNITED KINGDOM

The main laws which regulate elections and EMBs in the United Kingdom are the Representation of the People Act, 1983 (RPA), Political Parties, Elections and Public Referendums Act, 2000 (PPERA) (as amended by the Political Parties and Elections Act, 2009). While the United Kingdom does not impose contribution limits on the amount an individual or corporate body may donate to a political party, it requires that donations must come from a “permissible source” which is invariably restricted to electorates of the UK and UK corporations. Further, there exist stringent reporting requirements involving the identity of the donor once the contribution exceeds certain thresholds and other disclosures.⁵⁹ The law further regulates the accrual of loans by political parties as well as imposes restrictions on campaign expenditure.⁶⁰ The United Kingdom goes further to regulate independent election expenditure thus in *Bowman v the United Kingdom*,⁶¹ a majority of the European Court of Human Rights (ECtHR) found that the £5 limit imposed on publications promoting a candidate by section 75 of the RPA violated the right to freedom of expression of the applicant as enshrined in Article 10 of the European Convention on Human Rights (ECHR) spurring an increment to £500 under PERA.

58 Abiodun Sanusi, ‘INEC, EFCC appoint 18 lawyers to prosecute electoral offenders’ *Punch* (16 April 2023) <[INEC, EFCC appoint 18 lawyers to prosecute electoral offenders \(punchng.com\)](https://www.punchng.com/inec-efcc-appoint-18-lawyers-to-prosecute-electoral-offenders/)> accessed 31 July 2024.

59 PERA, pt 4.

60 *ibid.*, pt 5.

61 [1998] ECHR 4.

The principal EMB in the United Kingdom is the Electoral Commission. The Commission is established by section 1 of PPERA which provides that it shall have 9 or 10 commissioners who shall be appointed by the Monarch upon an Address from the House of Commons.⁶² Crucially, four (4) of the Commissioners are nominated by the leaders of dominant parties in the House of Commons.⁶³

Section 146 of PPERA (as expanded in Schedule 19B) avails several tools to the Electoral Commission in its enforcement of the regulations on campaign finance. The enforcement policy⁶⁴ of the Commission divides these powers into supervisory powers, investigatory powers and other powers and provides details about the circumstances under which these powers would be exercised. As the enforcement remit of the Commission is narrower than its remit, it collaborates with other agencies such as the police to address breaches which do not fall under its remit.

Section 147 (as expanded in Schedule 19C) allows for the Commission to impose civil sanctions for a majority of offences in the Act. These sanctions include a fixed monetary penalty of £200 or a discretionary requirement which may include a variable monetary penalty of up to £20,000. Other means of enforcement include the issuance of stop notices, compliance notices, restoration notices, enforcement undertakings and forfeiture of illegally acquired donations.

2.6 THE UNITED STATES OF AMERICA

The main law that governs federal elections in the United States is the Federal Election Campaign Act (FECA) of 1971,⁶⁵ as amended. FECA requires the registration of federal political committees. These include candidate committees, party committees and political action committees (PACs) which are all required to make financial disclosures at regular intervals. FECA prohibits corporations and unions from making direct contributions to the elections of candidates and imposes limits on the contributions individuals can make. Previously there were limits on how committees could expend their funds, however, in *Buckley v Valeo*,⁶⁶ the Supreme Court of the United States (SCOTUS) held that the overall limitations on expenditures by candidates and committees violated their rights to free speech under the First Amendment to the Constitution of the

62 The Speaker's Committee on the Electoral Commission, *Appointment and re-appointment of Electoral Commissioners* (HC 2022-23, 353) < [Appointment and re-appointment of Electoral Commissioners - The Speaker's Committee on the Electoral Commission \(parliament.uk\)](#)> accessed 31 July 2024; *ibid* (n 56), s 3.

63 *ibid* s 4.

64 The Electoral Commission, 'Enforcement Policy' <[Enforcement Policy | Electoral Commission](#)> accessed 24 July 2024.

65 52 USC § 30101 *et seq*.

66 424 US 1 (1976).

United States and struck the limitations down. The Bicameral Campaign Reform Act (BCRA), 2002 amended FECA by closing loopholes which allowed parties to use so-called “soft money” which are contributions meant for the general administration of parties and are not subject to FECA regulation as well as the use of issue ads by corporations and unions to skirt the ban on their use of their funds for advocating for the election or rejection of candidates. However, in *Citizens United v FEC*,⁶⁷ SCOTUS found the latter restriction to be a violation of the First Amendment.

Due to the decentralised nature of the organisation of elections in the United States, electoral boards of each state are the EMBs with each state granting these boards varying degrees of power in the conduct of their monitoring functions. Consequently, the Federal Election Commission (FEC) was set up by section 30106 of FECA to disclose campaign finance information, enforce the law on campaign finance and oversee the public funding of presidential elections.⁶⁸ Section 30106 of FECA provides that the President of the United States shall appoint the six members of the FEC with “[n]o more than 3 members of the Commission appointed under this paragraph may be affiliated with the same political party.”⁶⁹ Traditionally, this has meant that the Commission has been composed of 3 members each from the Democratic and Republican parties respectively. The Commission makes decisions by a simple majority of its members.

In furtherance of its objectives, sections 30107-30109 vests several powers in the FEC. These powers may be broadly classified as supervisory, advisory and investigatory. When the Commission is satisfied that a person has or is about to violate campaign finance laws, it may engage such a person informally either by conference, persuasion or conciliation in order to correct or prevent the violation. It may in addition to or in default of this apply civil money penalty. Failing the above, the FEC may initiate actions seeking an injunction, declaratory relief, a civil penalty or some other appropriate order. It may also defend or appeal civil actions.

2.7 OBSERVATIONS

It is evident from the above discussion that the relevant regulatory frameworks across the jurisdictions considered the matters of independence and competence of the relevant regulatory authorities which have been

⁶⁷ 558 US 310 (2010).

⁶⁸ ‘Mission and history’ (*Federal Election Committee*) <<https://www.fec.gov/about/mission-and-history/>> accessed 11 July 2024.

⁶⁹ 52 USC § 30106 (a)(1).

highlighted herein as limitations of our current regime. The approaches taken by these jurisdictions to address these concerns shall be compared subsequently.

As far as independence is concerned, two central questions arise namely the appointments and impartiality of commissioners. With regards to appointments, the Federal Republic of Nigeria, like Ghana, empowers the President to appoint commissioners of the Electoral Commission however in the Nigerian case, these appointments are subject to the confirmation of the Senate of Nigeria. Similarly, the President of the United States appoints the members of the FEC "by and with the advice and consent of the Senate". The United Kingdom vests this power in the Monarch upon receipt of an Address from the House of Commons after they have endorsed the recommendations of the Speaker's Committee for the appointments of the commissioners. It is noted that in all of the above cases, the nominations for the appointment of Commissioners are made by the legislature or with their final confirmation. In this respect, the framework of all the relevant jurisdictions goes further than Ghana in ensuring the personnel independence of their respective regulatory bodies.

Concerning the question of impartiality, the United States allows, if mandates, persons with political affiliations to become members of the FEC. However, both parties having an equal number of members on the Commission mitigates the potential for it to be exploited by any party while engendering bipartisan buy into the efficient running of the Commission. In contrast, both Nigeria and the United Kingdom require the Commissioners appointed to be non-partisan however the latter enables a minority of the Commissioners to be nominated by a leader of a qualified party in the House of Commons which allows the political parties to have confidence that the Commission will be run fairly. In this respect also, the lack of an explicit requirement for non-partisanship or in the alternative, a counterbalancing mechanism like in the case of the United States exposes a weakness in Ghana's regulatory regime.

Regarding the competence of the bodies, all the relevant jurisdictions allowed a range of powers including civil sanctions such as monetary penalties. Both the United Kingdom and the United States promote conciliatory approaches to resolving violations with the issuance of enforcement undertakings and conciliation agreements respectively. Further, in both jurisdictions, the relevant bodies are able to block anticipated violations of the law. A unique feature of the American system is the advisory role of the FEC which allows interested persons to enquire whether a transaction may be in violation of campaign finance laws and indemnifies such persons when they rely on the advice given in good faith.

However, INEC is the only regulatory body with a prosecutorial mandate thus enabling it to pursue both civil and criminal modes of enforcing campaign finance laws.

Consequently, this Part has shown that Ghana lags behind comparable legal systems as far as the competencies and the independence of its principal regulatory body on campaign finance, the Electoral Commission is concerned.

PART THREE

THE CASE FOR AN INDEPENDENT ELECTIONS OMBUDSMAN

This article has previously juxtaposed the regulatory power of the Electoral Commission of Ghana with specific respect to campaign finance with similar bodies in other common law jurisdictions and highlighted the shortfalls with the Electoral Commission in this respect. This section shall make a case for the establishment of an independent elections ombudsman to monitor and enforce the laws on campaign finance.

3.1 ON THE NEED FOR AN INDEPENDENT ELECTIONS OMBUDSMAN

It has been earlier noted that the composition of the Electoral Commission as well as the reliance on the Office of the Attorney-General for the enforcement of electoral laws open the enforcement process to political manipulation or the perception thereof. This potential for political manipulation is neutralised with the establishment of an Independent Elections Ombudsman whose membership is determined by the legislature or with its approval.

Relatedly, an Independent Elections Ombudsman presents an opportunity for bipartisan cooperation and enforcement of campaign finance laws. Whereas the presence of known partisan figures on an EMB is undesirable since its core mandate is to facilitate free and fair elections, an Independent Elections Ombudsman will allow for the various interests of the relevant parties to be represented and allow them to serve as checks on one another. Indeed, the dividends of bipartisan cooperation in regulating elections are known in Ghana through the work of the Inter Party Advisory Committee (IPAC) since its formation in 1994. An Independent Elections Ombudsman will cement these benefits while safeguarding our elections.

Further, the establishment of an Independent Elections Ombudsman will be consistent with best practices on the introduction of electoral reform. Whereas it is generally accepted that the regime for campaign finance regulation is in need of an overhaul, the International Institute for Democracy and Electoral Assistance (IDEA) advises policymakers thus:

Do not attempt to move directly from no regulations to a highly controlled system. Focus instead on the most important rules and ensure that they are implemented. Control of political finance must not lead to limitations

on political competition.⁷⁰

Thus, whereas introducing new provisions imposing limits on the collection and expenditure of contributions may have to be introduced progressively to avoid causing instability, the establishment of an Independent Elections Ombudsman to efficiently enforce the existing law does not carry the potential for instability while providing immediate solutions to a number of the violations of campaign laws.

Finally, an enhanced sanctions regime which anticipates, mitigates and enforces the laws on campaign financing with a range of sanctions has better prospects of coaxing compliance from political parties and candidates. It is argued that the current sanctions regime has a chilling effect on the enforcement mandate of the Electoral Commission as the cancellation of the registration of a major political party will indubitably lead to chaos notwithstanding that the sanction has been applied justly. It is submitted that the establishment of a body with a range of appropriate sanctions will enable such a body to act freely and shore up a culture of compliance amongst the relevant stakeholders.

3.2 WHY NOT THE ELECTORAL COMMISSION?

It is conceded that a number of the benefits associated with an Independent Elections Ombudsman may be realised through the existing Electoral Commission. Indeed, it has been noted earlier that other jurisdictions such as the Federal Republic of Nigeria and the United Kingdom have EMBs with enforcement mandates. It is argued here that the orientation and institutional capacity of the Electoral Commission renders this approach untenable in our jurisdiction.

It has been suggested that the ineffective enforcement of election finance laws is attributable to inertia by the Electoral Commission. Thus, the Constitutional Review Commission found in paragraph 181 of its report that “one critical aspect of the problem has been the administrative under-enforcement of the laws. The blatant disregard for the laws is not a question of the lack of power by the EC to enforce the laws. Rather it is the inaction of the EC and other relevant authorities that seems to perpetuate the breaches of the laws.”⁷¹

A likely explanation for this inertia is the orientation of the Electoral Commission in terms of its core mandate. Indeed, the enforcement power of the Electoral Commission is not explicitly stated in law and can only be

⁷⁰ *ibid* (n 24) 65.

⁷¹ *ibid* (n 35) 369.

inferred as being incidental to its mandate to conduct and supervise public elections. Hence, the Ghana Center for Democratic Development notes:

According to participants, the regime of financial accountability for political parties lies exclusively in the realm of the Electoral Commission, which often relegates this responsibility in favour of its primary responsibility to facilitate free and fair elections in the country.⁷²

Consequently, taking into account the dire role financial accountability of political parties and candidates plays in safeguarding our democracy, it is imperative that an independent body with the specific mandate of enforcing campaign finance laws is established.

The enforcement mandate of the Electoral Commission has been relatedly impugned on the basis that it lacks the institutional capacity to carry out this mandate.⁷³ Prempeh and Asare observe that:

[I]t 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...At the minimum, the EC must have a dedicated unit and professional staff to enforcement of the political finance laws and regulations.

Consequently, an independent elections ombudsman set up in the like of the FEC to specifically enforce campaign finance laws without ancillary mandates will allow for the recruitment of staff whose expertise is geared specifically towards that mandate such as auditors, lawyers amongst others.⁷⁴

CONCLUSION AND RECOMMENDATIONS

This article has traced the evolution of campaign finance regulation in Ghana, discussed the current regulatory regime and suggested that it

⁷² *ibid* (n 6) 37.

⁷³ Benjamin Seel, 'Developing International Norms of Political Finance: Prospects for Increased Compliance in Ghana' (2016) 23 *Va J Soc Pol'y & L* 351, 366; *ibid* (n 4) 37.

⁷⁴ The FEC has an audit division specifically dedicated to auditing financial reports submitted by relevant parties. < [fcc.gov/resources/cms-content/documents/audit_process.pdf](#)> accessed 30 July 2024.

is inadequate when contrasted with the regulatory regimes of other commonwealth jurisdictions. The remedy the article advocates is the establishment of an independent elections ombudsman to enforce the existing and prospective campaign finance regulations with more efficiency. However, more research is needed to determine the viability of such a proposal, to examine the constitutional and statutory implications of such an action, to suggest the optimal structure of such a body to avoid duplicity of roles and finally to project its ability to achieve the stated objectives, especially in light of similar bodies set up for specific functions such as the Office of the Special Prosecutor. Consequently, it is recommended that civil society and academia take further steps to answer these questions.