DEVELOPING INTERNATIONAL NORMS OF POLITICAL FINANCE: PROSPECTS FOR INCREASED COMPLIANCE IN GHANA

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Ghana's legal and regulatory framework has done little to promote or compel transparency and accountability in the financing of political campaigns. Few have any idea how much money is spent on an election in Ghana, and no one, including the Electoral Commission, can say for sure where the money comes from. Legislative avenues have done little to improve adherence to existing disclosure requirements, but much can be learned from non-binding measures that are already operating in Ghana to bring the parties together to resolve thorny election issues. Efforts such as the Inter Party Advisory Committee ("IPAC") and the Electoral Code of Conduct ("the Code") have successfully generated compromise between the political parties in a number of areas related to election administration, political association, and violence prevention.

Extrapolating from the successes of IPAC and the Code, this paper argues that non-legislative means, despite being non-binding, have a great deal to offer in terms of their ability to shape and conform behavior. Similarly, non-binding international norms can effectively shape behavior in a way that makes their development into lasting principles possible. Further development of this body of international law will serve to amplify this effect, and will increase the chance that parties in Ghana will internalize norms of transparency and disclosure.

Finally, lessons learned from the field of expressive law provide a reason to be hopeful that greater compliance in Ghana is not an impossible goal. Expressive law suggests that the very existence of a law can garner some level of compliance purely out of respect for the institutions of government. The same theory suggests that even those initially recalcitrant political actors may later conform their behavior, and ultimately comply, though it was not originally in their interest.

The implication for Ghana, and for political finance more broadly, is that as norms develop and change, attitudes towards compliance will change as well.

"All the undertakings necessary to bring democracy to life, certainly a most noble ambition of human society, turn indispensably on the most base of commodities: money."

-- K.D. Ewing and Samuel Issacharoff[1]

INTRODUCTION

THE existing domestic legal and regulatory framework in Ghana has done little to promote or compel transparency and accountability in the financing of political campaigns. Few have any idea how much money is spent on an election in Ghana, and no one, including the Electoral Commission, can identify the sources of the funding with any degree of certainty. Legislative avenues have done little to improve adherence to existing disclosure requirements, but much can be learned from non-binding measures that are already operating in Ghana to bring the parties together to resolve thorny election issues. Efforts such as the Inter Party Advisory Committee ("IPAC") and the Electoral Code of Conduct ("the Code") have successfully generated compromise between the political parties in a number of areas related to election administration, political association, and violence prevention. These are small victories, won over election issues that could fairly be characterized as more fundamental, and first generational in nature rather than political finance issues. Nevertheless, their presence suggests that these non-legislative avenues might foster a dialogue that can ultimately shape behavior in even more contentious areas of election law such as the regulation of political finance.

Extrapolating from the successes of IPAC and the Code, this paper will argue that non-legislative means have a great deal to offer in terms of their ability to shape and conform behavior. They have much to offer despite being non-binding. International norms can be effective in a similarly non-binding way. Setting aside those norms that rise to the level of customary international law, most international norms require individual states to take further affirmative action in order for those norms to become enforceable. However, the presence of the norms can shape behavior in a way that makes their development into binding principles possible.

Because there is not much international law on the subject of political finance, the norms that can be teased from this body of international law are underdeveloped and vague. Further development of this body of international law will help to develop norms, which can positively shape the behavior and expectations of political actors at the sub-international level. This effort will increase the chance that parties in Ghana internalize norms of transparency and disclosure, thereby increasing the likelihood of compliance with those norms and reducing enforcement costs. Lessons learned from the field of expressive law also provide cause for

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[1] PARTY FUNDING AND CAMPAIGN FINANCING IN INTERNATIONAL PERSPECTIVE 1 (K.D. Ewing and Samuel Issacharoff, eds., 2006) [hereinafter PARTY FUNDING AND CAMPAIGN FINANCING].

hope that greater compliance in Ghana is not an impossible goal. Expressive law suggests that the very existence of a law can garner some level of compliance purely out of respect for the institutions of government. However, not all people will be motivated to comply by respect alone.

Helpfully, some of those people will later conform their behavior, and ultimately comply, even though it was not originally in their interest. This will happen when they perceive that compliance actually has benefits. The implication for Ghana, and for political finance more broadly, is that as norms are developed and change, attitudes towards compliance will change as well. The calculation will not only include the potential chilling effect on donors caused by disclosure. It will also include the benefits derived by being known as a party that does disclose, giving them a decisive rebuttal to political opponents alleging variation forms of corruption like *quid pro quo* arrangements. These non-binding measures have a great deal of promise for bringing those latecomers on board.[2]

This paper makes the case for why that process of norm development should begin in earnest, focusing on the benefits that such development can have in Ghana. It proceeds in the following manner: Part II establishes the definition and scope of what this paper does, and does not, cover. Part III discusses the predicate question of why it is important to regulate political finance generally. Part IV provides an overview of the legal framework in Ghana, the nature of the concomitant enforcement problems with that regime, and the non-binding efforts underway that provide insight into the impact that international norm development might have. It then briefly discusses the threadbare legal framework addressing political finance that exists at the regional and international level. Part V describes the ability, and the limitations, of non-binding resolutions to shape behavior, and makes an argument for why international norms can add value to that effort. Finally, Part VI concludes that Ghana is already seeing an impact in norm shaping from non-legal instruments, and that those efforts have unexplored potential to shape behavior with respect to political finance. Development of norms at the international level will complement and encourage those efforts.

I. DEFINITIONS AND SCOPE

This paper will not discuss *how* international norms develop. There are many competing views on that subject, and they are extensively addressed in a robust body of available scholarship. As an initial matter, it is important to note that a norm cannot develop if it cannot be justified.[3] Relatedly, norms might vary by community, forming around localized concerns. There may also be some set of common values, shared across

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[2] *See* discussion *infra* Part V.

[3] *See* Robert Cooter, *Expressive Law and Economics*, 27 J. LEGAL STUD. 585, 603 (1998).

the international community, which will allow norms to develop at the international level. With respect to political finance, no set of common values has yet emerged at the international level.[4] The absence of well-developed norms of political finance might suggest that when it comes to matters of political finance, the relevant value sets are too divergent, or political communities too parochial for an international consensus to be found.

While that may be true, it is irrelevant as far as this paper is concerned. This paper instead argues that (1) non-legislative measures can shape behavior in a way that is socially desirable; (2) international norms have a great deal in common with domestic non-legislative measures such as the IPAC and the Code in Ghana; (3) international norms addressing political finance are underdeveloped; and (4) the further development of international political finance norms *would* positively shape the behavior of state actors, such as Ghana, in a way that would increase accountability and transparency in the financing of elections for public office. As a consequence, and regardless of whether international norms *can exist* in the current geopolitical climate, efforts to develop these norms should be made by state actors, non-governmental organizations, and academics. As it becomes more clear what behavior is expected by political actors, the range of justifiable behavioral choices becomes smaller and smaller. Such clarity can develop through international legal instruments, and it can come through non-legal consensus building mechanisms like IPAC. But international legal instruments can certainly help on that front, and as norms develop and become internalized by the relevant actors, enforcement will become less costly.

II. WHY IS IT IMPORTANT TO REGULATE POLITICAL FINANCE?

As a predicate matter, it is important to establish the various goals that political finance regulations seek to promote, and what function those goals serve. Most prominently, political finance regulations seek to encourage transparency and a reduction in corruption through the promulgation of disclosure requirements.[5] Transparency carries out two functions. First, transparency "ensure[s] that public institutions respect the rights of citizens. . . . [because when] information is accessible to citizens, they are able to monitor public officials."[6] Second, "transparency enhances the autonomy of citizens in the making of decisions that ultimately affect their interest."[7] This interest in promoting transparency and disclosure stems from a general sense that "in democratic societies, par-

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[4] *See* discussion *infra* Part IV.C.

[5] *See* Emmanuel Debrah, *Measuring Governance Institutions Success in Ghana: The Case of the Electoral Commission, 1993-2008*, 70 J. AFR. STUD. 27 (2011); *see also* Wilbert Nam-Katoki et al., *Financing Political Parties in Ghana*, 12 J. APPLIED BUS. & ECON. 90, 95 (2011).

[6] Debrah, *supra* note 5, at 27.

[7] *Id.* at 28.

ties engage in huge expenditure to win elections, the consequence of which is political corruption."[8] Disclosure and transparency requirements, assuming they are followed and enforced, will bring to life Jeremy Bentham's maxim that "'the more strictly we are watched, the better we behave.'"[9]

A. Models for Regulating Political Finance

All will agree that elections and political activities cost money, and many would concede that the necessity of spending money on elections does not diminish the need to have a transparent political process. Nevertheless, no consensus yet exists on how best to prevent political finance from becoming problematically influential; some argue that public financing is required to prevent *quid pro quo* corruption, while others view limiting campaign contributions as restricting free speech in the political marketplace.[10] To be sure, a system of self-regulation would be the most efficient, insofar as it would require the expenditure of zero governmental resources in either the creation or enforcement of a regulatory scheme.[11] However, for this approach to be possible, the political actors must "accept to be bound by a core set of values which place a premium on transparency, the avoidance of improper influence or dependence, and fair electoral competition."[12]

Beyond self-regulation is the possibility of "non-regulatory intervention," which would "require information about donors and spending."[13] This disclosure requirement would seek to "prevent electoral corruption," but it would also serve to inform voters about the "interests that the candidate or party is likely to identify with or support," and it might moderate party and candidate conduct.[14] Of course, when the state requires disclosure, it must be able to compel disclosure, or it must rely on

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[8] Nam-Katoki et al., *supra* note 5, at 95.

[9] Debrah, *supra* note 5, at 27 (quoting C. HOOD ET AL., REGULATION INSIDE GOVERNMENT: WASTE WATCHERS, QUALITY POLICE, AND SLEAZE-BUSTERS 5 (1999)). *But see,* Michael D. Gilbert & Benjamin Aiken, *Disclosure and Corruption* (Virginia Public Law and Legal Theory Research Paper No. 2013-37; Virginia Law and Economics Research Paper No. 2013-10, 2000), http://ssrn.com/abstract=2334454 (discussing the way that increased disclosure might in fact *increase* corruption by providing useful information to corrupt actors).

[10] *See* Nam-Katoki, et al., *supra* note 5, at 95; Ray LaRaja and Brian Schaffner, *Want to Reform Campaign Finance and Reduce Corruption? Here's How*, WASH. POST (Oct. 26, 2015), https://www.washingtonpost.com/news/monkey-cage/wp/2015/10/26/want-to-reform-campaign-finance-and-reduce-corruption-heres-how/.

[11] PARTY FUNDING AND CAMPAIGN FINANCING, *supra* note 1, at 2 (describing this system of self-regulation as a "laissez faire" approach).

[12] *Id.*

[13] *Id.*

[14] *Id.* at 3.

voluntary disclosure that would only happen if norms of transparency and disclosure have been internalized. The latter point highlights the efficiencies that can be created by political actors internalizing norms of disclosure and transparency. When norms are internalized, at worst enforcement will be cheap, and at best it will be entirely unnecessary.

States may also choose to intervene in a more intrusive manner through regulations aimed at either the supply or the demand of political finance.[15] On the supply side, states can regulate the fundraising efforts of the parties or candidates.[16] Such an effort seeks to "ensure that parties and candidates are not seen to be dependent on inappropriate sources of funding and not dependent on appropriate sources of funding to an inappropriate extent."[17] Ghana's current regulatory regime views foreign persons, both natural and in the corporate form, as inappropriate sources of fundraising.[18] On the demand side, states may attempt to "reduce the need for unlimited sources of funding," by setting a limit on how much money can be spent by political actors.[19] Ghana has not attempted to restrict the demand side of the political finance calculation.[20]

Importantly, states might choose to set limits on how much money can be spent by interest groups such as labor unions, corporations, or civil society organizations.[21] Here too, enforcement issues will impose costs on a state, though, these costs can also be mitigated through political actor compliance. If a political actor views compliance as a norm-based obligation, and not a regulation-based obligation, enforcement costs will be low. Thus far, Ghana has not attempted to set limits on how much money the parties can spend, nor is it thought that either the Electoral Commission ("EC"), media groups, or civil society organizations, has an accurate picture of the amount of money spent in a given election cycle.[22]

B. Challenges of Political Finance Regulation

In addition to the enforcement costs imposed by the creation of a regulatory regime, there is also a "hydraulic effect" that must be anticipated.[23] Simply put, money, like water on the sidewalk, will find every

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[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *See* CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, ch. 7, art. 55 § 15; 2000 Political Parties Law [Act 574], Art. 23(1) (Ghana).

[19] PARTY FUNDING AND CAMPAIGN FINANCING, *supra* note 1, at 4.

[20] *See* discussion, *infra* Part IV.A.

[21] *Id.*

[22] Interview with Dr. Kwadwo Afari-Gyan, Commissioner, Electoral Commission, in Accra, Ghana (Jan. 13, 2014).

[23] *See generally* Samuel Issacharoff & Pam Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705 (1998-99) (arguing that political money will not simply disappear when it becomes the subject of regulation,

crack and crevice in a regulatory regime.[24] Political contributions will not simply be destroyed through regulation, but will likely move on to the less well-regulated area.[25] This highlights one of the difficulties with political finance regulation; it is a deceptive and moving target.[26] Furthermore, regulation that aims to reduce the supply of political contributions by imposing limits on the amount a person or entity can contribute, risks increasing the value of each fund-raised dollar.[27] The result of a system where demand far outstrips supply is, "an unceasing preoccupation with fundraising."[28] Such an outcome has been likened to "giving a starving man unlimited trips to the buffet table but only a thimble-sized spoon with which to eat: chances are great that the constricted means to satisfy his appetite will create a singular obsession with consumption."[29]

Another difficulty of political finance, one which is more applicable to developing countries, is that traditional means of international assistance like election monitoring can do very little to add an enforcement value, or even provide another naming and shaming voice.[30] Several complications can be identified that make the inclusion of political finance a tall task for any election observation mission.[31] First, "there is less international consensus on what is desirable behaviour and regulation than there is" for other areas of election activity, such as vote tabulation.[32] Second, in host states that have no domestic disclosure requirements, or in states with enforcement problems, observation by international missions will be quite difficult.[33]

Third, political finance tends to be a particularly sensitive issue in a way that is different from other delicate election issues.[34] Political finance may also get pushed aside in instances where other election issues are more obviously or urgently a problem.[35] Though important for the long-term maintenance and health of a democracy, political finance will usually be viewed with less urgency than election issues such as ballot access, preventing fraud in the counting or casting of votes, or preventing post-election violence.[36] Arguably, political actors have only so much

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but will instead find the cracks in the regulation, moving to less regulated areas of election activity).

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 1711.

[29] *Id.*

[30] MAGNUS OHMAN, INCLUDING POLITICAL FINANCE IN INTERNATIONAL ELECTION OBSERVATION MISSIONS 1–2 (2009).

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

bandwidth to allocate among the various election issues, and it seems that political finance, particularly on election observation missions, risks being squeezed out and receiving little attention.[37]

Fourth, political finance presents time frame issues because reporting requirements, if they exist, generally give the parties or candidates at least one or two months after Election Day to submit their financial reports.[38] This timing issue presents significant, and perhaps insurmountable costs for organizations funding observer missions.[39] Consequently, "short term international observer missions can have no role in the observation of political finance."[40] Finally, observer missions typically rely on collecting data from random polling or registration stations, but "campaign finance has few natural populations from which such samples can be made," and so it is "difficult to judge whether reports on vote buying signify isolated incidents or a widespread practice."[41] Political finance issues that are even further removed from the physical polling station would logically be even more difficult to observe through traditional election observation.[42]

Though the development of those norms, or their localized effects, may not be obvious for a generation, international norm development has something to contribute to all of these problems. International norm development can begin to shape a political consciousness and narrow the range of acceptable behavioral choices; first among the elite class of international level political actors, then down to the state level elite class, and eventually all the way down to ground level political actors. That last piece will be the most difficult, but also the most important. Enforcement problems with something as difficult to track as political finance require broad consensus. International norms can begin to develop that consensus, and for Ghana in particular, the steady progress of IPAC and the electoral Code suggest that a path forward already exists at the domestic level.[43]

III. WHAT REGULATION CURRENTLY EXISTS?

Before one can conclusively say that the existing regime is not working, it is important to understand what the existing regime looks like. The sections below will discuss the framework that exists at the domestic level, the regional level, and at the international level. Ghana will be the case study for the domestic level, with Africa as the regional level focus. Each of the measures discussed below could create a sense of ob-

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[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.* at 3.

[42] *Id.*

[43] *See* discussion of non-binding measures aimed at shaping the behavior of political parties, *infra* Part IV.A.iv.

ligation for transparency and disclosure by the political parties and candidates, though this system is currently hindered by compliance problems and a lack of information about money and politics in Ghana.

A. GHANA'S Legal Framework

Between 1981 and 1992, political parties were effectively nonexistent during the military rule of President Jerry Rawlings.[44] The adoption of the 1992 constitution brought about a flourish of political party activity.[45] Thirteen different groups registered as political parties between May and November of 1992.[46] That surge of open political affiliation notwithstanding, the era of Jerry Rawlings would continue with presidential election victories in 1992 and 1996.[47] Following the end of Rawlings' administration, the New Patriotic Party ("NPP") held the presidency from 2000-2008 under the leadership of John Kufour.[48] However, the National Democratic Congress ("NDC"), which evolved out of Rawlings' Provisional National Defense Council ("PNDC"), returned to power in 2009 with a victory by John Atta Mills.[49] NDC leader John Mahama won a contentious 2012 presidential election, and will be up for re-election in 2016.[50]

1. The Constitution and 2000 Political Parties Law

Since it became a constitutional democracy in 1992, Ghana has had laws directly addressing the funding of political parties.[51] As discussed below, these regulations focus only on the conduct of the parties, and fail to address entirely the conduct of political candidates. This has led to a system where candidate-controlled money can be raised and spent free from regulation of any kind. Naturally, the money has flowed to the unregulated space, and so the political finance system has become centered on candidate fundraising, and candidate spending. The parties may give some minimal level of support, but the candidate has, by reason of legislative drafting error, become the key player in Ghanaian political finance. This loophole, which allows candidates to fundraise and spend without regulatory constraint, has made the laws that do exist completely ineffective.

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[44] KWAME A. NINSIN, KONRAD ADENAUER FOUND., POLITICAL PARTIES AND POLITICAL PARTICIPATION IN GHANA 3 (2006).

[45] *Id.*

[46] *Id.* at 4.

[47] *Id.* at 13.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *See* CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, ch. 7, art. 55 § 1–3.

To start, Article 55 deals with political parties, and it begins by (1) guaranteeing the right to form political parties; (2) granting all Ghanaians of voting age the freedom to join a political party; (3) and empowering political parties to fully participate in "shaping the political will of the people," by spreading information about their platform and by sponsoring candidates.[52] However, Article 55 does proscribe the involvement of political parties in elections at the district assembly, or local government, level.[53] Article 55 also lays out the mechanism for the indirect state support that Ghana does provide to political parties and presidential candidates through "equal access to the state-owned media" for them "to present their programmes to the public."[54]

After establishing the rights enjoyed by political parties, Article 55 turns to the obligations and restrictions placed on political parties.[55] Specifically, *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."[56] Sources of party fundraising are also restricted to Ghanaian citizens.[57]

In 2000, Ghana passed the Political Parties Law (Act 574), which further articulated the responsibilities of political parties with respect to political finance.[58] Act 574 requires *parties* to file with the constitutionally created Electoral Commission, 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 in cash or in kind; (v) the properties of the *party* and the time of acquisition; (vi) such other particulars as the Commission may reasonably require."[59] The *party* must also file with the Electoral Commission an audit of its accounts for the year.[60] All of these reporting requirements are due "within six months from 31st December."[61] Ostensibly these reports are available to the public, and Article 21(2) stipulates that "[a]ny 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."[62] However, these reports do not appear to have been readily ac-

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[52] *Id.*

[53] *Id.*

[54] *Id.* ch. 7, art. 55 § 11-12.

[55] *Id.* ch. 7, art. 55.

[56] *Id.* ch. 7, art. 55 § 14(a)-(b) (emphasis added).

[57] *Id.* ch. 7, art. 55 § 15. (restricting party fundraising efforts to donations, in cash or kind, from citizens of Ghana).

[58] 2000 Political Parties Law [Act 574] (Ghana).

[59] CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, ch. 7, art. 21 § (1)(a)(i–vi).

[60] *Id.*

[61] *Id.* ch. 7, art. 21

[62] *Id.* ch. 7, art. 21 § 2 (emphasis added).

cessed by media outlets, civil society groups, or academics in Ghana.[63] The author's own limited efforts to view these audit reports were unsuccessful.[64]

The Electoral Commission also has *ad hoc* authority to "at any time upon reasonable grounds order the accounts of a *political party* to be audited" at the Electoral Commission's expense.[65] Act 574 further empowers the Electoral Commission to request that a *political party* "furnish for inspection by the Commission records of the party or such other information as is reasonably required" to ensure compliance with the other provisions of Act 574.[66]

In addition to these reporting requirements, Act 574 places limitations on permissible sources of fundraising.[67] Much like Article 55 of the Constitution, Act 574 states that "[o]nly a citizen may contribute in cash or in kind to the funds of a *political party*."[68] Citizen is defined to include 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."[69] Contributions by foreign natural persons are also barred.[70] Interestingly, a violation can occur when a political party, or a "*person acting for or on behalf of a political party*" accepts a foreign contribution.[71] Someone working on behalf of the party might reasonably be construed to mean a candidate running under the party's banner, an interpretation that would create an uneasy tension between this provision and all other regulations of political finance, which have a singular focus on *parties* and not candidates.[72] If candidates are not "acting for or on behalf of a political party," then they can legally receive foreign contributions, meaning that they are entirely unregulated in their political finance efforts.[73]

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[63] KWESI ANING & FIIFI EDU-AFFUL, LEGAL AND POLICY FRAMEWORKS REGULATING THE BEHAVIOUR OF POLITICIANS AND POLITICAL PARTIES—GHANA 3 (2013).

[64] On January 14, 2014, the author interviewed the Commissioner of the Electoral Commission, Dr. Afari-Gyan, at the Electoral Commission headquarters in Accra, Ghana. Efforts to follow up on that meeting to view audit reports that are supposedly on file with the Electoral Commission were unsuccessful.

[65] CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, ch. 7, art. 21 § 3 (emphasis added).

[66] *Id.* ch. 7, art. 22 § 1.

[67] *Id.* ch. 7, art. 23.

[68] *Id.* art. 23 § 1 (emphasis added); *see also id.* ch. 7, art. 55 § 15.

[69] *Id.* art. 23 § 2.

[70] *Id.* art. 24.

[71] *Id.* (emphasis added).

[72] *See generally id.* ch. 7, art. 55; 2000 Political Parties Law [Act 574] (Ghana), art. 21–25.

[73] CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, art. 21–25.

Violations of articles 23 and 24 are punishable by forfeiture of the impermissible contribution to the state.[74] Immigration penalties also attach for the non-citizen donor.[75] In addition to the forfeiture of foreign contributions, parties that violate Act 574 may have their party registration cancelled.[76] Cancellation of registration means that:

> no person shall (a) summon a meeting of members or officers of the political party; (b) attend a meeting in the capacity of a member or officer of the political party; (c) publish a notice or advertisement relating to a meeting of the party; (d) invite persons to support the political party; (e) make a contribution or loan to funds held by or for the benefit of the political party or accept a contribution or loan; or (f) give a guarantee in respect of such funds.[77]

De-registration is a severe penalty and it risks pushing political actors outside of the reach of existing regulation. It also may have destabilizing consequences, if, for example, a party that is supported by many Ghanaians, such as the NDC or the NPP, was de-registered. In effect, this would disenfranchise the party members, or at least compel them to identify with another political party. To be sure, the de-registered party would seek to discredit the Electoral Commission by casting the enforcement action as a partisan attack.[78]

2. Enforcement Problems

Though Ghana appears to have a fairly robust regulatory regime, the Constitution and Act 574's focus on parties to the exclusion of candidates has created problems. Because the parties are required to report their expenditures and assets, but not the candidates, the parties do some "minimal accounting" of money given to candidates.[79] That accounting, however, hardly reveals the larger picture of money spent on politics.[80] Indeed, since the formation of the Electoral Commission in 1992, "out of the 14 registered political parties as at [sic] 2010, only one (the Democratic Freedom Party) had consistently submitted their audited accounts."[81]

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[74] *Id.* art. 25 § 1.

[75] *Id.* § 2.

[76] *Id.* art. 27 § 1.

[77] *Id.* art. § 2.

[78] ANING & EDU-AFFUL, *supra* note 63, at 10 (noting that "political actors tend to politicize any unlawful behaviour and crime to secure non-interference by state institutions").

[79] Interview with Kwadwo Afari-Gyan, *supra* note 22.

[80] *Id.*

[81] ANING & EDU-AFFUL, *supra* note 63, at 13.

The assumption of the Election Commission head, Dr. Kwadwo Afari-Gyan, is not that the parties are necessarily lying on their minimal disclosures, but rather that they have limited financial resources, and so the candidates are primarily responsible for their own fundraising.[82] This was corroborated through an interview with a Member of Parliament, Dr. Nana Ato Arthur.[83] Dr. Ato Arthur noted that party support is provided, if at all, only on Election Day in the form of polling monitors.[84] The lack of candidate support from the parties may also serve as a test of a candidate's viability; a product of the belief that "a candidate worth his salt should be able to raise money."[85] To the extent that the party has resources for campaigning, those are filtered through "the regional and constituency executives and campaign teams (of which the candidates are members) and not to the candidate themselves."[86] The lack of party support may also be a strategic choice. Because candidates do their own fundraising, they can exploit the loophole in the current political finance regulatory regime, which requires disclosure only from parties, but not from candidates.[87]

Unsurprisingly, criticism of Ghana's efforts at regulating political finance are not hard to find, nor are they few in number.[88] Most prominent among them is Dr. Afari-Gyan, who has been tasked with carrying out the Electoral Commission's mandate since Ghana became a constitutional democracy in 1992.[89] I met with Dr. Afari-Gyan in January 2014 to discuss the efficacy of Ghana's current political finance laws, as well as the prospects for policy fixes moving forward. Dr. Afari-Gyan describes the political finance framework as "very sketchy," and believes that the

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[82] Interview with Kwadwo Afari-Gyan, *supra* note 22; INT'L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE & CTR. FOR DEMOCRATIC DEV.—GHANA, GHANA: COUNTRY REPORT BASED ON RESEARCH AND DIALOGUE WITH POLITICAL PARTIES 10 (2006) [hereinafter IDEG & CDD—GHANA].

[83] Interview with Hon. Dr. Nana Ato Arthur, Member of Parliament, Republic of Ghana, in Accra, Ghana (Jan. 15, 2014).

[84] *Id.*

[85] Interview with Ransford Gyampo, Researcher, Governance Unit, Institute for Economic Affairs, in Accra, Ghana (Jan. 15, 2014).

[86] IDEG & CDD—GHANA, *supra* note 82.

[87] *See* 2000 Political Parties Law (Act 574) (Ghana); Interview with Kwadwo Afari-Gyan, *supra* note 22.

[88] *See, e.g.*, Interview with Kwadwo Afari-Gyan, *supra* note 22; *see also* Interview with Nana Attobrah Quaicoe, Head of Research, Danquah Inst., in Accra, Ghana (Jan. 10, 2014).

[89] For a discussion on the history and efficacy of the Electoral Commission since its inception *see* Debrah, *supra* note 5, at 25; *see also* Alexander K.D. Frempong, *Innovations in Electoral Politics in Ghana's Fourth Republic: An Analysis*, *in* DEMOCRATIC INNOVATION IN THE SOUTH: PARTICIPATION AND REPRESENTATION IN ASIA, AFRICA AND LATIN AMERICA 189 (Ciska Raventos ed., 2008).

system "doesn't work well in practice."[90] What is left is a system that relies on good faith compliance, but such compliance does not happen in practice.[91]

Further problems arise because of the lack of financial incentives to offer the political parties in exchange for their full disclosure.[92] The embattled Commissioner noted that, "in the absence of very substantive [public] support to the political parties, they feel reluctant to do any form of serious accounting."[93] Effectively, the parties' attitudes towards their political finance reporting obligations are something like, "[y]ou are not giving us any money, why do you want to look into our finances? What do you care about where we get the money from?"[94] Such an attitude clearly shows the extent to which Ghana's political actors do not have internalized norms of disclosure and transparency.

Dr. Afari-Gyan's suggested solution to this entrenched problem is to create a publicly financed election fund, which could only be accessed if the party complied with certain reporting and transparency regulations.[95] This solution, direct public financing of elections, has been proposed by a number of stakeholders in Ghana,[96] but seems to face nearly insurmountable political obstacles. A 2005 report by the Center for Democratic Governance ("CDD-Ghana"), a prominent civil society organization in Ghana, notes that public financing would not necessarily reduce resource advantages and make elections more competitive.[97] The problem is that public financing cannot "do much in itself to prevent parties from acquiring additional funding through corrupt means – especially if they believe that such practices are necessary to ensure victory."[98] Consequently, the advantages held by the "more popular parties," who are able to generate more "additional funding" than their less-connected competitors, will not disappear simply because direct public funding is offered.[99]

Beyond the shortcomings of public financing, there may be reasons to prefer private financing, despite the difficulties of transparency and accountability that are associated with it. Private financing will neces-

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[90] Interview with Kwadwo Afari-Gyan, *supra* note 22.

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.*

[96] *See, e.g.*, E. Gyimah-Boadi, *State Funding of Political Parties in Ghana*, GHANA CTR, FOR DEMOCRATIC DEV., CRITICAL PERSPECTIVES No. 24, 8 (Oct. 2009) (considering the advantages and disadvantages of direct public financing, but concluding that "*Direct state funding of parties at this time in Ghana's evolution as a democracy would be analogous to putting furniture in an uncompleted building.*") (emphasis in original).

[97] GHANA CTR. FOR DEMOCRATIC DEV., FINANCING POLITICAL PARTIES IN GHANA: POLICY GUIDELINES 25 (2005).

[98] E. Gyimah-Boadi, *supra* note 96, at 8.

[99] *Id.*

sarily rely, at least in part, on membership dues.[100] Payment of membership dues "creates and helps to sustain accountability through the obligation of party leaders to their rank and file," promotes internal party democracy, and "gives members a tangible stake in the performance of their leaders."[101] Furthermore, a reliable source of public financing can create separation between the part leadership and the membership base, which could "undermine the sense of ownership of the party by its members," thereby "foster[ing] the development of a party oligarchy," which could "cause the party to become complacent and atrophied."[102]

There are good reasons to think that Ghana's failure to more fully regulate political finance is primarily the result of drafting loopholes, and exploitation of those loopholes by the political parties. However, the lacking institutional capacity of the Electoral Commission, as well as its inability to stand up to political parties, are frequently cited as contributing factors.[103] Some also believe that the Electoral Commission is overly political, and as a result, it is viewed skeptically by whichever party is in opposition.[104] Those skeptics suggest that shorter, fixed terms for the Electoral Commissioner might improve the perception of the Electoral Commission as a neutral arbiter.[105]

3. How much are the parties spending and where does it come from?

The Political Parties Law 2000 requires political parties to establish a branch in each of Ghana's ten regions, and to draw their membership from all ten regions.[106] Though these requirements are clearly aimed at preventing regional factionalism, they also have the effect of mandating a more costly party infrastructure.[107] Despite the lack of data on the actual sums spent on elections, the received wisdom is that election costs are escalating and that "[t]he power of money has become a decisive factor in Ghanaian elections."[108] Part of the reason that money plays a significant role is not only that the process of spreading a persuasive message across a country requires advertisement purchases, signage, and a campaign staff, but also because "[t]he electorate's demand for material incentives [e.g., campaign t-shirts] at every level of the party organization inflates the expenditure level of candidates competing in an election."[109]

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[100] *Id.*

[101] *Id.* at 10.

[102] *Id.*

[103] *See, e.g.*, Interview with Nana Attobrah Quaicoe, *supra* note 88; Interview with Dr. Kwame Frempong, Mount Crest University, in Accra, Ghana (Jan. 7, 2014).

[104] Interview with Nana Attobrah Quaicoe, *supra* note 88.

[105] *Id.*

[106] Political Parties Law, Act 574, § 9(c) (2000) (Ghana).

[107] *See* NINSIN, *supra* note 44, at 15.

[108] *Id.*

[109] *Id.*

Consequently, there is a concern that "candidates are increasingly relying on 'money bags' – wealthy political entrepreneurs to finance their campaigns."[110]

Initially, party financing was comprised of voluntary contributions made "by wealthy members of nationalist parties."[111] At times, the elected officials of the party contributed a portion of their government salary into the party coffer.[112] As party infrastructure became more developed, extensive, and of course, expensive, parties could no longer meet their fundraising needs through the contributions of a few wealthy donors alone.[113] Accordingly, "[m]embership dues and levies gradually entered the lexicon of party financing."[114] Party membership dues were charged, sometimes as a condition of membership, and payment was made in cash or kind.[115] For example, the National Liberation Movement/United Party ("UP") "largely depended on a five (5) pound per load of cocoa levied on their ardent members in the cocoa growing areas."[116] Eventually, however, donor fatigue and other conventional means of private fundraising proved insufficient for the needs of the parties, and "[t]he parties that came to power" in the 1950s "devised a solution to their financial encumbrances – the answer was to be found in political corruption."[117] Allegations of abuse of public resources for party benefit persist to the present day.[118]

Estimates of the current finances of the respective parties are mere guesses, and those estimates that do exist are vague, poorly attributed, and should be viewed with caution. However, given the shortfall of good data, they merit brief mention here. One 2006 estimate, published by the conservative German-based civil society organization, Konrad Adenauer Stiftung, estimates that the income for one of the "two major political parties . . . consists of: donations – 45%, contributions by [Minister's of Parliament] – 35%, party membership dues – 15%, and other sources –

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[110] *Id.*

[111] JOSEPH R.A. AYEE, FELIX K.G. ANEBO & EMMANUEL DEBRAH, FINANCING POLITICAL PARTIES IN GHANA 4 (2007).

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.* at 4-5.

[117] *Id.* at 5.

[118] *See, e.g.*, Zadok Kwame, *Corruption Killing Ghana – PPP*, DAILY GRAPHIC (Jan. 13, 2014), http://graphic.com.gh/news/politics/15605-corruption-killing-ghana-ppp.html; *see Corruption Deepens in Public Sector*, GHANAWEB (March 16, 2014), http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=303502 (discussing allegations of corruption in the awarding of public contracts).

5%."[119] However, those "percentages do not provide a clue to the actual income of this political party."[120]

Given the lack of empirical evidence addressing the costs of campaigns and the amounts raised and spent by candidates, some anecdotal evidence might help shed light on the cost of politics in Ghana. In January 2014, I interviewed Dr. Nana Ato Arthur, a Member of Parliament from the Central Region of Ghana representing the KEEA constituency. We discussed the mechanics of fundraising in Ghana, his thoughts on disclosure requirements, and the support—or lack thereof—that candidates enjoy from the political parties.

Dr. Ato Arthur began by noting that "[p]olitics is increasingly going to the highest bidder, and it therefore calls for a lot of finance, particularly during the campaign."[121] Dr. Ato Arthur gave two examples of items that drive his fundraising needs.[122] He serves 77,000 voters in his constituency and he tries to reach between 38,000 and 40,000 with campaign t-shirts.[123] At an estimated price of two United States dollars per t-shirt, Dr. Ato Arthur requires roughly $80,000 for t-shirts alone.[124] Ras Mubarak, who ran for a seat in parliament in 2012 but lost, also emphasized the importance of t-shirts in a campaign. [125] He noted that he sought to distribute around 20,000 t-shirts to his constituency.[126] The t-shirt acts as a vehicle for party support, and candidates running for parliament are given a certain number of t-shirts that depict the candidate standing alongside the party standard-bearer.[127] In Mr. Mubarak's case, this meant a t-shirt bearing his image alongside eventual President John Mahama.[128]

The concept of placing so much emphasis on campaign t-shirts may seem strange, but Dr. Ato Arthur emphasized that in Ghana a t-shirt may very well secure a vote.[129] It seems that for some voters, these political freebies are a prerequisite for their support. To drive the point home, Dr. Ato Arthur noted that, in the "rural areas, people wear the t-shirts even to church. So, if people will wear them to church it tells you how important the [campaign] t-shirt is."[130] In addition to t-shirts, Dr. Ato Arthur sought to place billboards in ten key areas in his constituency.[131] Each billboard

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[119] NINSIN, *supra* note 44, at 17.

[120] *Id.*

[121] Interview with Hon. Dr. Nana Ato Arthur, *supra* note 83.

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] Interview with Ras Mubarak, National Youth Coordinator, National Youth Authority, in Accra, Ghana (Jan. 9, 2014).

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] Interview with Hon. Dr. Nana Ato Arthur, *supra* note 83.

[131] *Id.*

costs "about 2,000 Ghana cedis,"[132] or roughly $1,000 U.S.[133] This is almost certainly not a comprehensive listing of even the advertising expenses required for a campaign in a developing democracy like Ghana.

Not all campaign costs arise through advertising needs, however. Upon entering a village to campaign, gifts must be presented to the Chief at his palace.[134] Dr. Ato Arthur explains that this is necessary because "you do not just enter a community and start talking to them. You need to first announce your presence."[135] And you do that by giving the Chief "a bottle of schnapps" and also a small amount of money, "even 50 Ghana [cedis] or 100 Ghana [cedis] in an envelope."[136] In total, Dr. Ato Arthur estimates that his campaign requires between $150,000 and $200,000 U.S.[137]

Perhaps the *how much* question is not nearly as important as the *where does it come from* question. Dr. Ato Arthur noted that his fundraising sources might be a bit unusual.[138] He studied abroad in both China and Germany, and as a result, his fundraising network was a bit more global than most.[139] Still, his experience illustrates the power of what he described as the Ghanaian "diaspora."[140] Even more interesting than the source of these funds was the motivation that Dr. Ato Arthur ascribed to their contributions in cash or in kind. Though some contributors almost certainly give as a form of expression, or because they hope the candidate will win for ideological or other political reasons, Dr. Ato Arthur is also well aware that many contribute for business reasons. He noted that "[t]here are some friends who will give because they think it likely that the candidate will become a minister, and then can reward them with a job from that position."[141] For those looking for a political favor, or a business connection, Dr. Ato Arthur felt that requiring disclosure and greater transparency would deter them from contributing.[142] Those who wish to contribute anonymously may wish to do so because "most likely the same person is also contributing to the campaign of the opposition, so he or she doesn't want to identify that they have given you that amount of money."[143]

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[132] Ghana cedi is the currency of Ghana. At the time of the interview 1 Ghana cedi was equivalent to $0.43 U.S. Throughout the interview Dr. Ato Arthur estimated the value of 1 Ghana cedi to be $0.50 U.S. for the sake of convenience. Interview with Hon. Dr. Nana Ato Arthur, *supra* note 83.

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] *Id.*

The system of anonymity works well for these opportunist-contributors because, while the Electoral Commission and the general public have no idea about their contribution targets and levels, the candidate knows. [144] Though parties and candidates are not disclosing the sources of their funds to the Electoral Commission, both candidates and parties are incentivized to keep internal donor records, so that they are better able to target future solicitations.[145]

Moreover, in certain cases it is beneficial for the contributor to feel confident that his contribution has been accurately recorded. This would be the case in a *quid pro quo* arrangement. Dr. Ato Arthur acknowledged the benefit of non-disclosure for these sorts of *quid pro quo* arrangements: "I know, and my team knows [the name of the contributor], so that if the party comes to power you could mention [the contributor] for a position. ... [t]hey [might] want to be connected to foreign contractors for instance."[146] Dr. Ato Arthur used the example of a Ghanaian pharmacist who wants contacts in the United States or the United Kingdom. The pharmacist might make a contribution to Candidate X with the understanding that Candidate X will be able to make introductions to American pharmaceutical representatives, and that relationship will be financially beneficial to the Ghanaian pharmacist.[147] Disclosure laws would, in these types of cases, deter contributions and place an increased fundraising burden on the candidates.

4. Non-binding Measures Aimed at Shaping the Behavior of Political Parties

Ghana's legislative efforts have failed to shed light on its political finance situation. However, there are non-legislative bodies also addressing election issues in Ghana, and these bodies have had success fostering agreement between the parties and compliance with basic election norms. Lessons from their successes might be used in developing a solution for the country's contentious political finance issues.

a. The Inter Party Advisory Committee

Founded in March 1994, the Inter Party Advisory Committee ("IPAC") sought to do two things: first, "'diffuse opposition-government conflict and tension, and *second, get the political parties to establish compromises on the rules of electoral competition.*'"[148] IPAC brought together party representatives, and "donors (acting as observers), to join the Electoral Commission in regular meetings to fashion consensus on

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[144] Interview with Ras Mubarak, *supra* note 25.

[145] *Id.*

[146] Interview with Hon. Dr. Nana Ato Arthur, *supra* note 83.

[147] *Id.*

[148] Debrah, *supra* note 5, at 37.

the rules of electoral conduct."[149] Despite the divergent interests of the stakeholders involved, IPAC was able to forge consensus on a number of election administration issues including the use of transparent ballot boxes and privacy screens.[150] Allegations and concerns of voter fraud were also channeled through IPAC, and a pilot program was developed to test photo IDs in ten constituencies.[151] The remaining districts continued to use the standard thumb-printed ID cards.[152] Similarly, charges that the NDC could steal the 1992 elections by manipulating the metal, non-transparent, ballot boxes were handled by IPAC, and transparent ballot boxes were introduced.[153] IPAC has also been a conduit for convincing the government to offer some limited indirect financial support to the fledgling parties for their 1992 campaigns, including the use of state owned vehicles, and air time on the state owned television network.[154] Though these anecdotes may seem trivial, they mark important moments of agreement during fraught and tense elections in the early years of Ghana's democracy.

b. The Institute for Economic Affairs, Ghana Political Parties Programme

The Institute for Economic Affairs, Ghana Political Parties Programme ("IEA-GPPP") is a program that brings together the four main political parties that have representation in parliament.[155] Once every month the political stakeholders' leadership meets at IEA to discuss issues of national importance in a non-partisan manner.[156] Through this initiative several successes have been "chalked."[157] First, is the Presidential Transitional Act.[158] The transfer of power between presidential administrations had always been a "rancorous" affair, shrouded in "tension and acrimony" because there was no blue print for how it should be carried out.[159] The Presidential Transitional Act, which was born out of IEA-GPPP's forum, provides this clarity.[160]

Beginning in about 2005, political finance entered the IEA-GPPP docket for discussion.[161] Parties were concerned that, while they are re-

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[149] *Id.*

[150] *Id.* at 38.

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] Interview with Dr. Ransford Gyampo, Researcher, Governance Unit, Institute for Economic Affairs, in Accra, Ghana (Jan. 15, 2014).

[156] *Id.*

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] *Id.*

lied on to "churn out" strong leaders, the weakness of the political parties in Ghana does not allow them to create effective leaders.[162] The IEA-GPPP consensus was that the parties would be strengthened with public financing.[163] However, the prevailing view of political actors outside of the IEA-GPPP, was that public financing was equivalent to "giving your opponent a dangerous weapon to come and fight you [with]."[164]

Accordingly, the party in opposition has historically supported public funding, while the party in power has either opposed the idea outright, or at least stalled the advancement of any legislative effort towards that end.[165] Despite the self-serving nature of party support for public funding, which depends on their level of access to state resources, the stakeholders present at the IEA-GPP meeting were able to unanimously agree that there should be public funding.[166] This decision came at a time when both parties had experienced a turn in power. Currently, there is a Draft Public Funding of Political Parties Bill (2008) awaiting "cabinet deliberations," after which it will be passed on to Parliament for their consideration.[167] The draft bill was first proposed during the administration of the NPP standard-bearer, John Kufour, and it has sat through the administrations of John Atta Mills (NDC).[168] In 2012, it began its residency with the administration of John Mahama (NDC).[169] This delay is likely due to politicians getting "cold feet" about the prospect of regulating their own political finance interests.[170] Still, IEA maintains hope that, with continued pressure from civil society groups, this bill will become law during President Mahama's tenure.[171]

c. The Political Parties' Code of Conduct (2000-2012)

A similar mechanism to IPAC for forging agreement on electoral issues is the Electoral Code of Conduct. The first Code was drafted in 2000 by the Electoral Commission in the hopes of shaping the parties' behavior during the 2000 election.[172] However, the first Code had no enforcement body and regulated only conduct *during* the election.[173] The 2004 Code expanded its application and began covering conduct that

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[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*
[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] ANING & EDU-AFFUL, *supra* note 63, at 19.
[173] Ransford Edward Van Gyampo, *The 2008 Political Parties' Code of Conduct in Ghana: A Toothless Bulldog?*, 2 AFR. J. POL. SCI. & INT. REL. 38, 42–43 (2008).

took place *before*, *during*, and *after* the election.[174] The 2004 Code also included provisions for an enforcement body.[175] Since that time, the IEA and IPAC have facilitated the updating and drafting of the Code for every election.[176]

Indeed, every iteration of the Code has sought to address weaknesses discovered in the former version, and the parties have generally been willing to agree to follow increasingly restrictive Codes of Conduct.[177] It seems that the process of developing these Codes, election after election, has created something of a glide path or an institutional inertia that makes it more difficult to act in a way that violates the Code in 2012 than it would have been to violate the Code in its initial stages.[178] However, the Code is, at its core, a document meant to "ensure violence free elections, so mostly it talks about factors that will prevent violence."[179] Consequently, the Code mirrors international law in that it addresses more basic issues of elections, such as violence prevention and ballot access.[180]

The Inter-Party Monitoring Committee, along with a National Enforcement Body ("NEB"), is tasked with enforcing the Code.[181] However, the only tools at their disposal are "monitor[ing], reprimand[ing], sanction[ing], and alert[ing] state institutions" of any Code violations.[182] "[N]aming and shaming" have not proven to be sufficient deterrents in practice.[183] Perhaps because of limited enforcement options, there is also evidence that the "political parties do not abide by the codes of conduct."[184] For example, provisions of the Code addressing abuse of state resources by the incumbent party have been routinely violated, as have Code provisions that instruct parties to refrain from using incendiary campaign rhetoric.[185]

The real strength of the Code stems from the fact that "[t]he document came from the parties themselves" and was not written and then

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[174] *Id.* at 43.

[175] *See id.* at 42–43 (discussing the progression of the Code).

[176] ANING & EDU-AFFUL, *supra* note 63, at 20.

[177] *See* Van Gyampo, *supra* note 173.

[178] *Id.*

[179] *Id.*

[180] *Compare* INST. OF ECON. AFFAIRS, GHANA POLITICAL PARTIES PROGRAMME, POLITICAL PARTIES CODE OF CONDUCT 2012 (2012), *with* Timothy K. Kuhner, *The Democracy to Which We Are Entitled: Human Rights and the Problem of Money in Politics*, 26 HARV. HUM. RTS. J. 39, 41 (2013) (discussing international law's neglect of political finance matters, which Kuhner frames as more subtle forms of corruption).

[181] ANING & EDU-AFFUL, *supra* note 63, at 20.

[182] *Id.*

[183] *Id.*

[184] *Id.*

[185] *Id.*

forced upon them.[186] Consequently, the parties have to an extent, *internalized* the normative values expressed in the Code. This behavior tracks with Robert Cooter's assertion, discussed more in depth in Part V, that participants in a cooperative activity get additional value from demonstration of their good character.[187] It might be then, that these non-legal avenues of resolution can help norms become internalized by making the process less confrontational and more cooperative, thereby increasing the value gained by displaying "good character."[188] This is a positive development, but it also puts a lot of pressure on the degree to which the political actors have ownership over the process that leads to any instrument, legislative or otherwise.

B. Regional Framework

Although Ghana is a member of several regional organizations, whose constituting documents advocate for measures to ensure good governance through free and fair elections, direct references to political finance issues are hard to find.[189] The passages covering matters of political finance lack specificity, and leave room for each state to develop its own interpretation of the rights and responsibilities enshrined in these agreements.[190] The extent to which these regional instruments can help shape norms will be hampered if states develop conflicting interpretations of their responsibilities under them.

The African Union Convention on Preventing and Combating Corruption (AUCPCC), which was ratified by Ghana in 2003, offers some more specific language.[191] It states that "[e]ach State Party *shall 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."[192] However, use of ill-defined terms like "corrupt practices" likely means that this document provides little practical guidance on regional obligations.[193]

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[186] Interview with Dr. Ransford Gyampo, *supra* note 155.

[187] Cooter, *supra* note 3, at 590.

[188] *Id.*

[189] *See, e.g.*, African Union Convention on Preventing and Combating Corruption [hereinafter AUCPCC], art. 10(a)-(b), Funding of Political Parties; African Union Declaration on the Principles Governing Democratic Elections in Africa [hereinafter DPGDEA], ch. III Responsibilities of the Member States, § g.

[190] *Id.*

[191] AUCPCC, art. 10(a)-(b).

[192] *Id.*

[193] For example, a state might plausibly read references to "corruption" to prohibit *quid pro quo* corruption only, while other states might argue that this passage requires public financing, and bars contributions from corporations and

The African Union Declaration on the Principles Governing Democratic Elections in Africa (DPGDEA) provides guidance that member states should "ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to [sic] enable them to organize their work, including participation in the electoral process."[194] This language, as with the rest of the DPGDEA, principally focuses on election administration and preventing electoral violence. Although efforts to prevent these first generation election issues are laudable and important, the fact that there has been an absence of efforts to regulate the more subtle problems of democratic governance, such as those associated with political finance, is problematic. Spending time and energy drafting regional agreements addressing best practices for political finance can help to start the process that is necessary for broader norm development in this field. The absence of specific efforts to forge regional agreements on political finance issues suggests that the African Union countries have more work to do before political finance norms are developed, and later internalized.

C. International Law Framework

Ghana's efforts to regulate political finance pre-date many of the international instruments discussed below, and so a causal link between something like the United Nations Convention Against Corruption ("UNCAC") and the efforts taken in Ghana cannot be drawn. Furthermore, because Ghana is a dualist state,[195] it must take affirmative domestic action to breathe life into any international agreement beyond becoming a mere signatory. It is nonetheless instructive to understand what international agreements Ghana is a party to insofar as those agreements indicate, in a general sense, whether political actors in Ghana feel positively or negatively about certain norms. The absence of well-developed political finance norms is important in the case of Ghana, because, to the extent that international norms can guide domestic behavior, the country has little to follow.

Furthermore, international law provides a nice analog to domestic non-legislative domestic measures that might be able to increase compliance and build confidence between the parties. This is so because international laws, which do not rise to the level of customary international

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interest groups. A broad range of plausible arguments can be made within this vague framework because no common value set has been defined.

[194] DPGDEA, ch. III Responsibilities of the Member States, § g.

[195] A dualist system is one where "international law applies on the municipal plane only where it is incorporated into that system by a municipal act." Ashley S. Deeks, *Consent to the Use of Force and International Law Supremacy*, 54 HARV. INT'L L.J. 1, 8 n.18 (2013). This contrasts with monist states, which "incorporate international law into their domestic legal order automatically, without requiring additional domestic action." *Id.*

law, are not self-executing in a dualist state.[196] This means that once a state signs on to a treaty, such as the UNCAC, the state's domestic legislative organs must take further steps to apply those international obligations and to make them real. This is especially so in dualist countries, such as Ghana.

International law has much to say about the political rights of states and individuals, and it also addresses "bribery, influence trading, and other essentially criminal forms of corruption."[197] However, it "does not address the financing of political parties or electoral campaigns, corporate electioneering, interest groups, or lobbyists."[198] Most of the international instruments deal with corruption on a more general level. If they address election issues, they consider only more fundamental election issues such as ballot access, freedom of political expression, and the prevention of post-election violence.[199] This might reflect a simple prioritization of issues, and a decision to focus on those deemed to be the most immediately threatening to democratic forms of government. It may also derive from the fact that some of the actors who are involved in creating these international instruments, either at the drafting stage or at the domestic ratification stage, need political financing for their own public careers. Refusal to regulate self-interest is a central theme of this issue.

The Universal Declaration of Human Rights ("UDHR") supports the concept of freedom of opinion and expression, and the right "to take part in the government of his country, directly or through freely chosen representatives."[200] Given its breadth, this language might inform a conversation about political finance, but, of course, it says nothing about how or even if such activity should be regulated.

Similarly, the International Convention on Civil and Political Rights ("ICCPR") makes clear that "[a]ll peoples have the right of self-determination," and as a result, people "freely determine their political

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[196] "Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation." RESTATEMENT (THIRD) OF THE FOREIGN REL. LAW OF THE U.S., § 102 (AM. LAW INST. 1988). States are obligated to follow this body of law, regardless of whether they have signed a treaty codifying the specific legal principle. *See* BARRY E. CARTER & ALLEN S. WEINER, INTERNATIONAL LAW 116 (6th ed. 2011) (describing the "independent force" of customary international law). International law that falls short of customary international law requires state action to make it enforceable domestically, at least in dualist countries. *See* discussion of dualism *supra*, note 195.

[197] Timothy K. Kuhner, *The Democracy to Which We Are Entitled: Human Rights and the Problem of Money in Politics*, 26 HARV. HUM. RTS. J. 39, 41 (2013).

[198] *Id.*

[199] *See id.*

[200] G.A. Res. 217 A, Universal Declaration of Human Rights, art. 19, 21 (Dec. 10, 1948).

status."[201] The ICCPR also discusses the right to freedom of expression,[202] which could be read as including political contributions as a form of political speech. Even so, Article 19 does allow for free expression rights to "be subject to certain restrictions," though only when such restrictions are "provided by law and are necessary: (a) for respect of the rights or reputations of others."[203] Like with the UDHR, a discussion of political finance regulation might be guided, in part, by looking to the ICCPR. Of course, the significant legal and policy questions that arise cannot be answered by looking to the ICCPR alone.

The UNCAC lays out the most specific language with respect to political finance. Article 7 of that Convention has two important provisions: (1) "Each State Party *shall also consider* adopting appropriate legislative and administrative measures ... to prescribe criteria concerning candidature for and [sic] election to public office,"[204] and (2) "Each State Party *shall also 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*.[205] Importantly, neither of these provisions is mandatory. Both instruct states parties to "consider taking," but do nothing to require that parties in fact take or adopt measures regulating political finance. Indeed, the firmest language used comes in provision 4 of Article 7, which asks each State Party to "*endeavor to adopt*, maintain and strengthen systems that promote transparency and prevent conflicts of interest."[206]

There was a moment at the drafting stage when the international community, led by Austria and the Netherlands, considered explicit regulation of political finance.[207] Unfortunately, that moment passed without support for the inclusion of such language.[208] Instead, states opted for the softer tone struck by the existing Article 7.[209] The Austria/Netherlands effort, draft article 10(1), required each state party to "adopt, maintain

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[201] G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 1 ¶1 (Dec. 16, 1966).

[202] *Id.* art. 19 ¶2.

[203] *Id.* art. 19 ¶3.

[204] G.A. Res. 58/4, United Nations Convention Against Corruption, art. 7 ¶2 (Oct. 31, 2003) (emphasis added).

[205] *Id.* art. 7 ¶3 (emphasis added).

[206] *Id.* art. 7 ¶4 (emphasis added).

[207] Kuhner, *supra* note 197, at 50-51.

[208] *Id.*

[209] *See* R. Rajesh Babu, *The United Nations Convention Against Corruption: A Critical Overview*, SOC. SCI. RES. NETWORK 1, 15 (2006), http://ssrn.com/abstract=891898 or http://dx.doi.org/10.2139/ssrn.891898; For a fuller discussion of the travaux preparatoires of the UNCAC's provisions on political finance *see* Kuhner, *supra* note 197.

and strengthen measures and regulations concerning the funding of political parties."[210] Draft article 10(1) commanded that:

> "Such measures and regulations shall serve: (a) To prevent conflicts of interest and the exercise of improper influence; (b) To preserve the integrity of democratic political structures and processes; (c) To proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and (d) To incorporate the concept of transparency into funding of political parties by requiring declaration of donations exceeding a specified limit."[211]

Draft article 10(2) also required the signatory states to "regulate the simultaneous holding of elective office and responsibilities in the private sector so as to prevent conflicts of interest."[212] Importantly, both of draft article 10's provisions were mandatory, using the word *shall* without the softening word *consider* used by Article 7. Ultimately, "[o]nly the delegations from Benin, Burkina Faso, Cameroon, and Senegal continued to advocate for a meaningful provision on political finance."[213] Such a contingent was not enough to overcome stiff opposition to the mandatory nature of the principles codified in draft article 10.[214] Consequently, Article 7's language is what remains for international instruments that specifically address political finance.[215]

The conclusion that must be drawn from these various instruments is that norms of political finance are not developed with any meaningful specificity at the international level. That said, non-binding international instruments are similar to domestic non-binding measures in that both can build consensus among political actors, thereby shaping norms and behavior. Because domestic non-binding measures are having success in Ghana, further development of international norms has the potential to help that process along by approaching it at a different level, and applying some top-down pressure, which may complement the ground-up domestic approach. The next section discusses in more detail how non-binding measures can shape behavior and build consensus by focusing on theories of expressive law.

IV. NORM SHAPING THROUGH NON-BINDING RESOLUTIONS

In considering the way that political actors conform their behavior to established or even burgeoning norms, economists have come to understand law as "an obligation backed by a sanction," a view that under-

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[210] Babu, *supra* note 209, at 16 n.70.
[211] Kuhner, *supra* note 197, at 51.
[212] *Id.*
[213] *Id.* at 53.
[214] *Id.*
[215] *Id.*

stands the threat of legal sanction as an external constraint that limits the range of possible behavior choices in the same way that price imposes external constraints that limit the range of choices for an actor in a market setting.[216] Another option, held by legal economist Robert Cooter, is to view the legal "obligation as an internal value," which will become a social norm "[w]hen many people in a community internalize" that sense of obligation.[217]

This latter view, known as the theory of expressive law, classically holds "that eliciting *voluntary obedience* from most citizens makes law effective, and the effects may be greater than applying state sanctions to a few recalcitrant wrongdoers."[218] Cooter posits two scenarios of voluntary compliance. In scenario one, a law will be enacted and some number of people will comply with it, but not a majority.[219] In scenario two, a law will be enacted and a majority of people will adhere to it as soon as they become aware of it.[220] For scenario two, Cooter offers "pooper scooper" laws that require owners to clean up after their pets in public spaces as a paradigmatic example.[221] Typically, people will clean up after their animals in public places as soon as they are aware that the law requires them to do so. There will undoubtedly be a small number of people who know about the law, but still refuse to clean up after their animals. In that scenario, Cooter suggests that rude comments and disgusted looks from passers-by will ultimately bring compliance up to nearly 100 percent without any need for coercive state sanctions.[222]

However, for laws to have some level of voluntary compliance, they must not get too far out in front of the existing median preferences of the citizenry. To do so would breed disrespect and have deleterious consequences.[223] To return to the situation in Ghana, it does not seem to be the case that political finance regulations, disclosure in particular, far outstrip the tolerances and preferences of either the citizens at large or the political parties. Drafts of proposed legislation,[224] and proposals consist-

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[216] Cooter, *supra* note 3, at 585.

[217] *Id.*

[218] *Id.* at 595 (emphasis added) (noting that "[i]n reality, a combination of expression and coercion accounts for the effectiveness of many laws"). Because of the difficult problems of enforcement in Ghana, this paper is more interested in the aspects of Expressive Law theory that deals with achieving voluntary compliance.

[219] *Id.*

[220] *Id.*

[221] *Id.*

[222] *Id.*

[223] *Id.* at 596-97.

[224] *See e.g.*, Proposed Draft Public Funding of Political Parties Bill, cl. 6, § 8 (2008) (tying allocation of money from the public fund to the fulfillment of the financial reporting obligations described in the Political Parties Act of 2000).

ently advocated for by the Electoral Commissioner,[225] as well as my own anecdotal impressions, all suggest that the lack of disclosure is a function of the political interests served by non-disclosure and not some broader normative objection to the concept of disclosure in the political sphere. Cooter notes that sometimes further complication will arise when the government suffers from an information shortage about the preferences and tastes of the citizenry.[226]

This theory has obvious appeal for thinking about a situation of a relatively new democracy that suffers from poor enforcement and adherence, like Ghana.[227] Ghana seems to be in scenario one, described above. That is, a few political actors comply with political finance laws voluntarily, but many more do not obey them. The goal is, of course, to move from this low level of compliance to scenario two, where many people are complying. Theories of expressive law suggest that there is an attainable goal in terms of behavior conformation. The goal does not need to be 100 percent compliance, but rather needs only to be the point at which non-compliance becomes too costly. Some number of actors will voluntarily comply with a law simply because it has been passed.[228] Presumably, this will be higher in a relatively stable, albeit young, democracy like Ghana where the rule of law is respected to a certain degree, the enforcement difficulties discussed throughout this paper notwithstanding.

Thus, with political finance and election law, as with many other areas of law, there will be a tipping point where the actors conform their behavior to the prevailing social preferences, even though such behavior

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[225] *See* Interview with Dr. Kwadwo Afari-Gyan, *supra* note 22 (advocating for a public fund that includes disclosure requirements and noting that such a proposal has existed since the inception of Ghana's constitutional democracy in 1992).

[226] Cooter, *supra* note 3, at 596.

[227] Ghana is an even more appealing target for the application of expressive law theories when one considers the successes that Ghana has had avoiding large-scale disruptions to their democracy since 1992. Afua Hirsch, *Ghana makes peace a priority in election campaign*, THE GUARDIAN (Dec. 2, 2012), http://www.theguardian.com/world/2012/dec/02/ghana-peace-election-campaign. For example, following the 2012 presidential election, the NPP challenged the victory of NDC candidate John Mahama. Ghana's Supreme Court ultimately settled the matter, finding that Mahama was the lawful winner. David Gurien, *Ghana Court Dismisses Vote Challenges, Says President 'Validly Elected'*, CNN (Sept. 4, 2013) http://www.cnn.com/2013/08/29/world/africa/ghana-election-challenge/. Though the NPP alleged that the election had been stolen, the moments of significant tension soon passed without widespread post-decision violence. *Id.* This significant demonstration of adherence to the rule of law, writ large, carries with it a promise of further adherence to law and order. This might be particularly true in those instances where an expressive value can be attached, which would mark adhering parties as legitimate, and would mark non-complying parties as illegitimate.

[228] Cooter, *supra* note 3, at 595.

might intuitively seem to cut against their interests. The result of reaching that tipping point, when considering a norm that involves confrontation, will be either a high level of conformity to the norm, or a low level of conformity. It is unlikely that a middle ground of norm conformity would emerge.[229] Non-legal mechanisms can help to foster that voluntary compliance, and the tipping point phenomenon discussed by Cooter lightens the load that needs to be shouldered by these non-binding measures; non-binding measures only need to get the movement started and the inertia provided by law's expressive value will continue the trend. As norms become more developed and more internalized, an increasing number of political actors will perceive benefits to falling in line with this burgeoning class of people.

In order for a norm to affect the behavior of a political actor, it must become "internalized" by that actor.[230] "A rational person internalizes a norm when commitment conveys an advantage relative to the original preferences and the changed preferences."[231] Though 100 percent agreement is not required for a norm to be present, norm development does require some majority of the stakeholders to be in agreement.[232] The establishment of a norm, and its corresponding manifestation in behavioral change, can create efficiencies. In one example, Cooter describes a scenario where commercial sellers willingly disclose the truth about the contents of their products.[233] In doing so, the customers have valuable information at a low cost.[234] Consequently, the entire system is more efficient, because consumers can make choices that they will be happy with, and public resources will not need to be expended on monitoring or enforcement of food safety standards. It is not hard to see the relevance for the political finance context. Consumers and voters are situated similarly, and both groups benefit from increased information about the options in front of them, be it varying breakfast cereals at the supermarket or a slate of candidates on a ballot.

The current system of political finance in Ghana exists at a low level of conformity to the norm of disclosure and transparency. In order for an increase in compliance with those norms to occur, some number of political actors, either parties or candidates, will need to willingly assume the costs of internalization of that norm. That is, they will need to willingly bear the costs of soliciting donations from political funders who might be skeptical of giving to a party or candidate who will subsequently make their contribution known. Some political actors might be willing to bear that cost if they can increase their value by disclosing amidst a field of candidates or parties who refuse to disclose. The idea would be that

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[229] *Id.* at 592.
[230] *Id.* at 586.
[231] *Id.*
[232] *Id.* at 587.
[233] *Id.*
[234] *Id.*

voters would reward the open politician with their vote, perhaps even overcoming any associated loss in fundraising ability that results from the candidate's intent to disclose the sources of his funding. If there is value in appearing transparent, the gains would be most substantial early on, and so the early political actors, those who risk a lot by venturing out on their own, would be rewarded for their actions.

Cooter's theory suggests that if the candidates disclosing early realize a competitive advantage, others will follow. That competitive advantage will emerge if voters begin to value parties that disclose and comply with political finance laws. The consensus building and norm development mechanisms discussed throughout this paper will be helpful with that change in expectations and attitudes. At some point in this progression, a tipping point will be reached where enough parties or candidates willingly disclose their sources of funding and their expenditures that the remaining parties will similarly disclose their sources of funding and expenditures, or risk operating in a socially illegitimate manner.

It is unclear whether it is proper to focus on parties or candidates for this. What does seem intuitively clear is that it may be more difficult to move parties in the direction of disclosure as an initial matter, because there are fewer of them, and they ostensibly have more power than any individual candidate. Furthermore, since they are associational bodies, they do not necessarily speak with one voice, but rather through a collective process of some kind. Consequently, they may not shift from the position of non-disclosure to a position of disclosure as quickly, at first.

However, one might also expect that the same difficulty in moving parties will present itself on the back-end. Once the party's behavior has changed in a single direction, it will be harder for the parties, as compared to a candidate, to backslide into the older behavior. In this scenario, that would mean that a party that behaves in a transparent manner by willingly disclosing its finances, would be less likely to revert to a policy of not disclosing that political finance information, because of the institutional frictions that inhere in associational decision-making.

Conversely, we might expect that candidates, with their relatively more flexible decision-making structure—depending, of course on how much autonomy they are given by the party—will have an easier time moving towards a position of full-disclosure. The low level of party support in Ghana might actually help on this point. Because the sources of candidate funds are not necessarily sources controlled by the parties, candidate independence should give them more freedom to respond to trends in voter expectation. Likewise, they might also be more likely subject to behavioral volatility, allowing them to "backslide" into a position of non-disclosure. However, this depends on an assumption about candidate autonomy, party support of the candidate, and also about the costs associated with disclosure for candidates as opposed to a party.

Because the candidates have a large fundraising responsibility, they may be more attuned to the burdens of disclosure. Anecdotal evidence

suggests that stakeholders in matters of political finance in Ghana are concerned about the chilling effect of disclosure requirements on potential donors. That is, some number of donors who would give money will not contribute money if their donation will be disclosed to the Electoral Commission, and therefore made publicly available.[235]

Important to consider in all of this is that voluntary disclosure of political finance would relieve significant resource pressure on the election monitoring body in Ghana, the Electoral Commission. Ghana's Electoral Commission is independent as a constitutional matter, and although it has demonstrated its independence in practice on a number of occasions,[236] in terms of resources, the Electoral Commission's budget is set by the Parliament.[237] If the desired outcome is a transparent and accountable political system, brought about by monitoring of political finance by an independent electoral commission, then this current system misaligns the incentives for success. Parliament is a political body, which currently eschews political finance disclosure, and so they are not likely to allocate sufficient funds for the Electoral Commission to properly monitor or audit under their current authority.[238] Nor are they likely to expand the legal authority of the Electoral Commission to require fuller disclosure from the parties and the candidates.[239] This problem is not unique to Ghana. Indeed, this is a problem inherent in a scheme *regulating political actors*, which must be set up and funded *by political actors*.[240]

Currently, the data that the Electoral Commission does have on the finances of the parties is housed at their headquarters in Central Accra. Anyone requesting to view the audits must present the Electoral Commission with a justification in order to avoid meritless inquiries.[241] This seems to cut against Act 574, Article 21(1)(b), which allows any person

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[235] *See, e.g.*, GHANA CTR. FOR DEMOCRATIC DEV., FINANCING POLITICAL PARTIES IN GHANA: POLICY GUIDELINES 25 (2005) ("Some concern has been expressed about the potential chilling effect that disclosure might have on the willingness of Ghanaians to contribute to political parties."); Interview with Ras Mubarak, *supra* note 25; Interview with Hon. Dr. Nana Ato Arthur, *supra* note 83.

[236] For a history of the Electoral Commission and a description of several instances where the Electoral Commission had to oppose the desires of the ruling party or the President, *see* Debrah, *supra* note 5, at 27-28.

[237] CONSTITUTION OF THE REPUBLIC OF GHANA 1992 , Ch. 7, Art. 46 ("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 *shall not be subject to the direction or control* of any person or authority.") (emphasis added).

[238] ANING & EDU-AFFUL, *supra* note 63, at 13 (noting that the Electoral Commission lacks both the will and the funds to properly enforce the political finance laws).

[239] *Id.*

[240] PARTY FUNDING AND CAMPAIGN FINANCING, *supra* note 1, at 8.

[241] Interview with Dr. Kwadwo Afari-Gyan, *supra* note 22.

"on payment of a fee determined by the Commission," to "inspect or obtain copies of the returns and audits of a political party."[242] However, that additional requirement does not appear to be so high, and my student research inquiry would apparently have been sufficient. However, as noted above, my own effort to view these audits was unsuccessful. More than illustrating an unwillingness of the Electoral Commission to let inquiring researchers view them, this anecdote is meant to highlight the burdens of viewing the audits even for someone who is in Accra. It is even harder to imagine someone—a voter, journalist, or opposing party operative, etc.—travelling from a different region in Ghana to view these audits. Consequently, the informational value to voters of the required audits is lower, but so are the burdens placed on contributors. Their information will be available, almost exclusively, to the Electoral Commission and few others.

However, this is a problem that may get more complicated in years to come. As technology develops, the open sourcing of government data becomes increasingly possible. Though a Right to Information Bill, approved by the Cabinet in 2010, has not yet been passed in parliament, a number of open government initiatives are in the works in Ghana, and many view new technology, especially mobile technology, as a means for disseminating government information.[243]

A. "Localizing" the Norm

How meaningful the impact of international norms, as expressed through international law, will be on the behavior of political actors in Ghana will depend "on the degree and extent to which [Ghana's political actors] 'own' that document."[244] If a sense of ownership is not felt, from the state leaders, down through to the candidates, then implementation will become difficult.

Still, this does not remove the need for civil society watchdog groups to continue to call attention to deviations from it.[245] Naming and shaming is a key enforcement technique for non-legal and non-binding documents, but public accountability means little if political actors have not bought in to the process, and internalized the norms that the process seeks to develop.[246]

That Ghana's top political actors agree to sign on to an international agreement would be valuable, independent of any legislation that comes from it. The signatory process would engage the political elite in Ghana, provide them with a sense of ownership over the underlying issue, and

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[242] 2000 Political Parties Law [Act 574], Art. 21 § 2 (Ghana).

[243] GHANA OPEN GOV'T P'SHIP INITIATIVE, THE GHANA ACTION PLAN (2012), http://www.ghanaopengov.org/wiki/ghana-action-plan#simple-table-of-contents-3.

[244] Interview with Ransford Gyampo, *supra* note 85.

[245] *Id.*

[246] *Id.*

would start the process of localizing the norm. Ghana's current enforcement problems with its existing domestic framework for regulating political finance do not stem from existing international obligations for two reasons. First, Ghana is in compliance with existing international norms of political finance.[247] The second, and related reason is that existing international norms of political finance are almost entirely non-existent, and to the extent that they do exist, they are vague and operate with more of a suggestive than affirmative tone.[248] Looking at these documents, one would not be convinced that the international community desires to have transparency and disclosure ingrained as values in political finance systems at this time. Hopefully that desire is fast changing.

Ghana's enforcement problem arises out of the externalization of norms of transparency and disclosure by Ghana's political actors. A more developed sense, at the international level, of what political finance norms should look like would remove some ambiguity and focus expectations in a way that could shift behavior for political parties in Ghana, making them more likely to internalize, and voluntarily comply with, norms of political finance (e.g., transparency and disclosure).

B. Why Develop International Norms?

A fair counterargument to this paper's call to develop international norms might be that programs like the Ghana Political Parties Program's Code of Conduct and the IPAC are sufficient on their own. An extension of that critique would fairly raise the question: why do we need international norms at all? One answer might be that international norms can help to create consensus on how political finance should be regulated, and even if they don't help, they certainly can't hurt. They may be redundant with respect to existing domestic measures, but they surely won't be detrimental. Furthermore, to the extent that political finance is not incorporated into observer missions, there are no standards to look to. Observer missions might be well situated to help disseminate broad norms of political finance, if they are developed at the international level. However, absent the development of an international standard, any norms that are disseminated by election monitors will likely be variable and inconsistent. It would surely be better for the international community to come to consensus about what values a system should promote before they send agents out into the field to observe and advocate for adherence to those standards. Ideally, the development of international norms will help to shape the behavior of the political actors at the domestic level, thereby reducing enforcement costs, increasing compliance rates, and raising the level of transparency in Ghana's political process.

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[247] *Compare* discussion *supra* Part IV.A., *with* Part IV.C.

[248] *See* discussion *supra* Part IV.C.

CONCLUSION

At the domestic level the political actors who write the election laws are the same actors who will be subject to them. The incentives for strong regulation are not properly aligned, so it should not be surprising that weak laws have been written. But this is a problem of policymaking, not of enforcement. Indeed, the Electoral Commission is institutionally independent in important respects, which suggests that independence is not the source of the enforcement problem. Rather, it is the Electoral Commission's lack of capacity that drives their lack of enforcement success. Capacity seems to stem from lacking political will and resource constraints, causes that are themselves the product of misaligned political incentives. In light of this, a logical place to turn for a solution is towards efforts to shape behavior through non-legislative means. This is happening in Ghana through groups that are building confidence between the parties. They have been and are able to find consensus, and in some cases, bind themselves in a way that limits their own competitive advantages. Conceding those sorts of party advantages, in favor of systemic health for Ghana's democracy, indicates that at least some political actors have internalized norms of political stability and that they think their party will benefit by being a part of compromises and consensus building.

Developing the international law that governs political finance will help to further establish the range of behavior that is considered legitimate at the international level. That additional information will be useful to informal compliance processes, such as the IPAC and the IEA-GPPP. As the parties continue to bind themselves through these non-legislative processes, they will have a better understanding of where their current behavior stands relative to what the international community views as acceptable. Moreover, to the extent that international law can affect what *voters* perceive as legitimate actions by political actors, voluntary movement towards disclosure may become a way for a party or candidate to stand apart and become more attractive to voters.

To the extent that IPAC and the Election Code of Conduct have had success at cutting through party acrimony and forging agreement and compliance, other non-binding instruments might also be able to generate behavior-shaping effects. This concept can be applied to the international sphere, where there is a concerning lack of instruments and discussion about more subtle election issues like political finance. The further development of international norms, and the development of a consensus on what those norms should look like with respect to political finance, would create meaningful guidance for the non-legislative bodies already having an impact in Ghana.