

## POLITICAL PARTY AND CAMPAIGN FINANCING IN JAMAICA<sup>1</sup>

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### I. INTRODUCTION

Jamaica is a Westminster-type Parliamentary democracy with a Jamaican Governor-General, the representative of the British monarch, as the ceremonial head of state. The country became an independent state within the British Commonwealth on August 6, 1962. It developed strong democratic values and institutions in the decades of constitutional decolonisation and, despite significant challenges, has become a “consolidated democracy” in the post-colonial period. As such, in the near 60 years of adult suffrage before and after independence, a governing party has relinquished power and the opposition party assumed office in peaceful transitions on five occasions in the course of thirteen constitutionally mandated contested, “free” and “fair” elections. Two parties, the Peoples National Party and the Jamaica Labour Party-have alternated in office by winning a majority of legislative seats in each of the first–past-the-post elections since the grant of adult suffrage in 1944. Other parties have emerged in the period of decolonisation and independence but none have attracted significant electoral support nor been able to win a single parliamentary seat.

The Representation of the People Act promulgated on November 20, 1944, but significantly amended since then, is the law, which governs national elections and related matters. In addition to this law, there is a Code of Political Conduct, which has been ratified by the leadership of Jamaica’s, major political parties. There is however no law in Jamaica which requires political parties to be registered nor to fulfil any criteria relating to structure, finance or operation. Political parties are, in effect, private entities discharging public functions. Not surprisingly therefore the main characteristic of the Representation of the People Act and the Code deals not with financing political parties and campaigns. Rather the focus is primarily on the establishment of fair procedures in the administration of elections and of norms of behaviour designed to eliminate violence and intimidation in the conduct of campaigns.

In keeping with these emphases, the Act has sections dealing with the Franchise and Registration of Electors, Electoral Procedure in relation to the Polling Day, the circumstances in which a poll may be voided, administrative provisions relating to electoral officials and the specification of election offences and their associated penalties. One part only of the law deals with financial provisions concerning election candidates and their agents. Similarly neglectful of the issue of financing political parties and campaigns, the Code of Political Conduct sets out provisions for non-violence and non-intimidation, safety of private and public property, avoidance of confrontation, unacceptable public utterances, freedom of access and the avoidance of defacing of buildings or installations.

By and large recent national elections in Jamaica have seen considerable improvement in observation of the main provisions of the Representation of the People Act and the Code of Political Conduct. Both foreign as well as domestic election observer terms

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<sup>1</sup> The opinions expressed in this document do not reflect the official position of the Organization of American States.

share this conclusion. There remains however a long way to go in strengthening democratic governance. Lack of enforcement of the law and the code relating to bribery, undue influence and intimidation is an area of particular concern. A highly adversarial political culture, complacency regarding electoral offences in the criminal justice system and an under-resourced electoral administration all contribute to this deficiency. Concerning the financing of political parties and campaigns, Jamaica's main characteristic is the near total absence of relevant law and regulations. This gap facilitates corruption, contributes to the erosion of Jamaica's democracy and helps to discredit the system in the eyes of wide sections of the electorate.

## **II. NATURE OF THE FINANCING**

### **A) EFFECTS OF THE FINANCING SYSTEM**

The system of financing parties and campaigns in Jamaica is almost entirely private. This contributes to a degree of inequity and unfairness of competition among parties and candidates running for office. Those with easier access to private sector sources or to illicit funds enjoy distinct, though not necessarily decisive electoral advantage. This type of financing facilitates undue influence by sections of the private sector, legal and illegal, undermines the integrity of the public procurement system and brings the political system into disrepute. In these circumstances, public confidence in the prospects of economic growth is damaged as doubts surround the basis of award of contracts and licences and consequently, the competence as well as efficiencies of major investors particularly in public infra-structure. There are no significant requirements for distribution of resources nor prohibitions and limits on financing.

### **B) THREATS TO THE FINANCING SYSTEM**

There has been a significant increase in the costs associated with political and electoral activities, due in the main to significant decline in volunteer political activism and substantial increase in media campaign costs. There is a concentration of major donors and recipients of significant donations are confined to the candidates and leadership of the two major parties, which have alternated in office over the past 50 years. There have neither been charges laid, arrests made nor convictions secured for contributions from illegal activities, asset laundering, corruption nor drug trafficking. However, there is credible information and widespread belief that proceeds from illicit drug money do find their way into party election contributions, more than likely through individual candidates rather than through the national party headquarters of the major parties. Cronyism is common. However, the misappropriation of public monies for electoral purposes is not so much a practise as is the manipulation of public sector projects (and advertisements) for political advantage.

### **C) QUANTIFICATION OF FINANCING**

It is very difficult but not impossible to determine the cost of an election. There is no public disclosure of amounts spent by political parties or affiliated party organisations.

Candidates are required by law to make returns of expenditure to the electoral authorities but large numbers of candidates in each election fail to meet this requirement. In the absence of hard data, my own estimate is that contribution in cash exceeds financing in kind. The former, in the October 2002 elections, is estimated to have cost each of the major parties approximately J\$360 million (US\$6+million), much of which would have been spent on media access and mass mobilization.

#### **D) IMPORTANCE OF THE ISSUE IN THE COUNTRY**

In recent years, the issue of financing of parties and election campaigns has attracted a Senate resolution and debate as well as some media comment. The resolution attracted bi-partisan support for the establishment of a broad-based national commission on party and campaign finance. The PNP government re-selected in October 2002, has committed itself to the establishment of this commission in 2003. However in the context of a serious debt burden, continuing economic stagnation and growing social decay, the government does not appear to be treating the issue as a priority. Neither are the major political parties though indications are that there is significant but latent interest among the general public and in the media on campaign and party financing.

### **III. ACCESS TO THE MEDIA.**

#### **A) APPLICATION OF LAWS ON ACCESS TO THE MEDIA**

There are no laws, which specifically regulate access to the media during election campaigns. The government broadcasting system offers limited time on an equal basis to the major parties during election campaigns as well as to the Electoral Office of Jamaica. Access to the private media-print and electronic- has to be bought by parties and candidates. As such imbalances in political advertisement do occur, reflecting, in part, inequality in funding available to the electoral contestants. Hence, there is conflict between the principle of freedom of expression and equity in political competition. To compound matters there are no laws that limit or eliminate institutional propaganda by the government and state during electorate campaigns. The media is overwhelming under private ownership and, as such, media owners with their own political orientations could experience conflicts between their politics and their commercial interest in maximising political electioneering funds from whatever source. By and large commercial interests prevail over political orientation and the system of regulated programming or time slots works satisfactorily in both the public and private media.

#### **B) EFFECTIVENESS OF NON-LEGAL MECHANISMS FOR ACCESS**

The Code of Political Conduct includes a section on public utterances, viz:  
“Party official (including platform) speakers should not make statements which:

- 1) Are inflammatory or likely to incite others to confrontation or violence;
- 2) Constitute slander or libel;
- 3) Are malicious, in reference to opposing candidates, their family and party officials”

This element of the code, along with the document as a whole, is policed by the recently established office of the Political Ombudsman. By and large, media advertisements and political broadcasts have only infrequently violated this section of the code and in recent times on occasions when these violations have occurred, the parties have been persuaded to make the necessary modifications. Similarly, media operators and journalists have published apologies when breaches have occurred. Where this has not been done, the matter has on occasion been settled in court. Regarding access to the production of quality advertisement, this is entirely dependent on the party or the candidate's ability to pay.

### **C) QUNATIFICATION AND DESCRIPTION OF SPENDING ON THE MEDIA**

It is estimated that the Electoral Office of Jamaica, the arm of government administering elections, spent J\$350 million (or US\$6million) on the October 2002 elections. Each whole page newspaper advertisement cost on average J\$90,000 (or US\$1,550) and a 60-second prime time spot on television cost J\$25,000 (or US\$430). When that spot was placed during the major evening newscast that spot cost almost J\$37,000 (or US\$638). On one of the TV stations, a 5-minute presentation cost J\$75,000(US1,293) while a 10 minutes party broadcast or infomercial cost J\$93,000 (US\$1,603) {DUNN, 2002}. It is estimated that the two major parties (the PNP and the JLP) spent J\$20 million (US\$345,000) on print ads and J\$60 million (US\$1+million) on electronic ads.

### **D) CONTROL CAPACITY OF THE AUTHORITIES**

Since there is no legal or regulatory framework governing access to the media this issue does not arise.

## **IV. DISCLOSURE AND ACCOUNTABILITY.**

### **A) STATUS OF REGULATORY POLICIES AND OTHER INFORMATION MECHANISMS**

The near non-existent levels of disclosure in Jamaica is related to a number of factors, viz:

- 1) The historic dominance of the British tradition, which, until recently, had a largely non-regulatory, voluntaristic approach to political party and campaign financing.
- 2) The strength of the culture of secrecy in Jamaica reinforced by fear that in an adversarial and clientelistic politics disclosure of donor's identity would risk victimization and expose political cronyism.
- 3) The self-interest of the political elite in non-disclosure in a context where transparency would be likely to dry up or significantly reduce contributions.
- 4) Resistance by important segments of the mass public to contemplated public funding of parties as a complement or alternative to private sector funding.

Not surprisingly therefore current legislation is entirely inadequate in so far as it omits any requirements related to party or campaign financing.

The sole provision of relevance in the law is the stipulations that (a) each candidate make an electoral return (of election related expenditure and income) within 6 weeks of the Election Day, and (b) that there be a J\$3 million dollars approxUS\$52,000 limit on expenditure. There is however no system for auditing nor inspecting candidates' returns and hence this requirement of the law is ignored by many candidates and not enforced either by the electoral authorities or by the police. For this minimal requirement of disclosure to work, the electoral authorities would need to develop an inspectorate within the Electoral office and the party leadership would need to insist on candidates' obeying the law in respect of making returns.

### **B) AUDIT AND MONITORING OF FINANCIAL REPORTS**

As has been pointed out there is no financial reporting and hence no audit or monitoring.

### **C) TIME OF DISCLOSURE AND PUBLIC ACCESS**

The limited disclosure and provision for public access is entirely inadequate. There are as yet few public queries, complaints and demands regarding disclosure. With public education however this can change quite dramatically.

## **V. EFFECTIVE APPLICATION OR ENFORCEMENT OF POLITICAL FINANCING SYSTEMS**

The Representation of the People Act entitles political parties with a minimum parliamentary representation (in the current or previous legislature) or of electoral endorsement by way of petition to appoint one scrutineer per polling division. The duties of scrutineers relate to assisting and monitoring state electoral officers (designated enumerators) in the registration of voters and the verification of voters lists. The Representation of the People Act provides for the state through the Electoral Office of Jamaica to pay scrutineers. Each scrutineer is paid J\$65 (or US \$1.10) for each person registered in the division. Candidates are also entitled to have watchers in the constituency in which they are running in each polling station on Election Day. Each poll watcher is paid about US\$30 for the day. In addition, the state provides each party contesting the election with a specified exemption from duty for up to 60 motor vehicles imported for election campaign purposes. (There are currently 60 geographically determined constituencies electing representatives to the legislature).

These provisions are in practise implemented but constitute negligible public funding in the context of the overall costs of elections to the political parties and the candidates. We have already indicated that the minimum disclosure obligations imposed by law on candidates are unevenly implemented and enforced.

## **VI. OTHER REFERENCES FOR ANALYSIS**

### **A) ONGOING REFORMS OF INITIATIVES**

There are no on going reforms. On the author's initiative, the Senate debated and unanimously adopted a resolution on May 3, 2002 calling for the government to set up a broad based national commission to examine, hold public hearings and make recommendations on "appropriate legislation, including provisions for regulating and publicly funding political parties, to combat corruption arising from private financing of political parties and election campaigns". The government affirmed its intention in January 2003 to establish such a broad-based commission in the second quarter of 2003. This has not yet been done and author intends to re-raise the issue with the authorities. Both in the Senate debate and in the media discussion surrounding this issue, there emerged consensus on the need for some regime for the regulation of political parties and campaigns. Indications are that the debate when it does develop will center around questions related to the extent of regulation of parties, the degree of disclosure, of the sources of campaign contributions, the forms and basis of public funding, the institutional framework for the receiving/and auditing party accounts the extent, if any, of limits on campaign expenditure and the mechanism for the enforcement of sanctions.

### **B) ISSUES ON THE GOVERNMENT'S AGENDA**

This issue does not occupy, a priority place on the government's agenda in the context of high levels of violent crime, a murder rate that places Jamaica in the top five countries in the world, a debt service burden which takes half of the annual budget, youth unemployment rates in the region of 30%, a stagnant economy and unacceptable levels of poverty and inequity.

### **C) GENDER PERSPECTIVE**

The entirely private system of financing parties and campaigns has an adverse affect on gender equity in that women candidates are regarded as less able to raise campaign funding. There is some but not overwhelming concern with gender inequity in the media but there are no specific laws or proposals involving gender-specific quotas for election candidates. There is an NGO support mechanism for potential and actual women electoral candidates but it needs to be more substantially resourced to make its work more effective.

### **D) ROLE OF CIVIL SOCIETY/STATUS OF THE DEBATE AND EXISTING LEVEL OF KNOWLEDGE**

Given the latency and the incipient stage of interest in party financing issues, civil society activism and public education remains low. There are neither significant full length academic studies nor recent bibliography on political financing. However it must be emphasized that the press is very open to coverage of this issue. Moreover, despite other national preoccupations, the obvious linkage between critical questions of democratic governance, in particular the need to more effectively combat corruption, and national development on the one hand and party/campaign financing on the other makes the Jamaican public ripe for a high level of engagement with this issue. The key questions are:

- 1) Criteria for the registration (or de-registration) of political parties;
- 2) The extent of transparency relating to party financial accounts in general and campaign finance in particular?
- 3) The degree of disclosure of the identity of donors/contributors to parties and campaigns and the extent of prohibition of certain categories of donors?
- 4) The limits, if any, on private contributions to parties?
- 5) The limits on candidate/party expenditure on election campaigns?
- 6) The form and extent of public funding?
- 7) The extent of involvement of civil society in ensuring the effectiveness of enforcement of financing laws and regulations?

#### **E) LESSONS LEARNED**

The main lesson from the Jamaican experience is the extremely negative effects on governance and development of a non-existent system of party and campaign financing.