Post-legislative scrutiny of election campaign finance legislation

Comparative study on legislation and practices in **Indonesia**, **Moldova**, and **Nigeria**

The Post-Legislative Scrutiny Series, 2

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1. Post-Legislative Scrutiny in the UK Parliament, Tom Caygill
2. Post-Legislative Scrutiny of election campaign f inance legislation: Comparative study on legislation and practices in Indonesia, Moldova, and Nigeria, S. Lipcean, F. Casal Bértoa, N. Goguadze
3. Sunset Clauses and Post-Legislative Scrutiny: Bridging the Gap between Potential and Reality, Sean Molloy, Maria Mousmouti and Franklin De Vrieze
4. Indicators for Post-Legislative Scrutiny

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Acronyms	
ACUM	NOW Electoral Platform DA and PAS (Moldova)
AIE	Alliance for European Integration (Moldova)
AMW	Average Monthly Wage
APC	All Progressives Congress (Nigeria)
CEC	Central Election Commission (Moldova)
CFR	Campaign Finance Regulation(s)
CoE	Council of Europe
EC	Electoral Code
Gerindra	Great Indonesia Movement Party (Indonesia)
Golkar	Golkar (Indonesia)
GRECO	Group of States against Corruption
INEC	Independent National Electoral Commission (Nigeria)
IO	International Organisations
LPP	Law on Political Parties
Nasdem	Nasdem Party (Indonesia)
PAN	National Mandate Party (Indonesia)
PAS	Action and Solidarity Party (Moldova)
PD	Democratic Party (Indonesia)
PDA	Dignity and Truth Platform Political Party (Moldova)
PDI-P	Indonesian Democratic Party of Struggle (Indonesia)
PDM	Democratic Party of Moldova
PDP	Peoples Democratic Party (Nigeria)
PFR	Political Financing Regime
PKB	National Awakening Party (Indonesia)
PKS	Prosperous Justice Party (Indonesia)
PLDM	Liberal Democratic Party of Moldova
PL	Liberal Party of Moldova
PLS	Post-Legislative Scrutiny
PPP	United Development Party (Indonesia)
PSRM	Party of Socialists of the Republic of Moldova
SMD	Single Member District(s)

Executive summary

The comparative study 'Post-legislative Scrutiny of Election Campaign Finance Legislation' examines how Post-Legislative Scrutiny (PLS) of election campaign finance regulations can help legislators to monitor and evaluate whether the laws they have passed are implemented as intended and have achieved the expected effects. Also, the study explains how PLS can be instrumental in identifying the reasons why the implementation of law may be undermined, and can show the issues that should be addressed in future legislative reforms to ensure fair and equal political competition.

The purpose of this comparative study is to assist parliamentarians, parliamentary staff, policymakers, parliamentary development practitioners, election officials, election bodies and civil society to identify shortcomings in the electoral Campaign Finance Regulations (CFR) of Moldova, Indonesia, and Nige-ria; as well as to showcase the importance of Post-Legislative Scrutiny when assessing the implemen-tation of CFR designed to ensure effective lawmaking and to hold executives and legislators accounta-ble.

The comparative study is part of a broader project of Westminster Foundation for Democracy (WFD) on electoral campaign analysis and electoral reform. The study builds upon previous WFD publications which highlight PLS as part of the legislative cycle and of the oversight role of parliament.

The present document looks at CFR enactment in Moldova, Indonesia, and Nigeria, three very different countries (in terms of institutional design, historical legacies, economic development, and so on) that have, however, undergone important attempts at legislative reform lately. The paper also describes the current practice of amending CFR, and through examples, explains how politically-driven legislative process can in some cases prevent evidence-based and quality lawmaking. The document reviews the countries' legislation in terms of public funding, private financing, electoral spending, transparency and control, with a particular focus on sanctions and oversight. An overview of the case studies, legis-lative shortcomings, and lessons to be learnt is included in the conclusions, together with a final reflec-tion on their importance in the field of campaign finance.

The purpose of this paper is to identify key issues and potential loopholes in CFR that could be picked up through PLS. However, considering the complex nature of CFR, the problems identified in the doc-ument and suggested for further scrutiny are not exhaustive. Application of PLS enables the parlia-ments in question to dig even deeper into the legislation, conduct careful and evidence-based analysis with participation of political and non-political actors, and thus contribute to further improvement of legis-lation. This makes the document relevant both for the three countries in question but also for other ju-risdictions with CFR legislation. The focus of the document is on comparing the three countries, rather than comparing potential legislative solutions to pending issues with CFR legislation.

The study starts by reviewing CFR enactment practices in all three countries. The case studies reveal that amending campaign finance law is a subject of highly controversial political discourse. The law-making is often quite political and hectic, and fails to comprehensively address gaps in legislation and its implementation; the law drafting process lacks objective and evidence-based analysis, indicating legislative achievements and failures. The absence of genuine engagement of relevant actors - both political and non-political - results in a lack of legitimacy and trust in the legislative process. Lawmaking is often taking place on an ad hoc basis, and the overall process lacks

methodological basis and a sys-tematised approach. To ensure a more comprehensive, evidence-based and participatory approach to electoral reforms, legislators need to apply the law scrutiny mechanism, that will both neutralise parti-san political motivations in the process and address the needs of a broader society.

The evaluation of public funding mechanisms indicates that none of the three countries provide direct state support for campaign financing, although Indonesia and Moldova provide such support for regular party activity. Therefore, policymakers should consider the introduction of electoral subsidies to en-hance competitiveness, fairness and electoral participation.

The analysis of regulations on income from private sources suggests that to minimise regulatory loop-holes, legislators should set reasonable limits (both for parties and donors) to private contributions, in-cluding membership fees, personal resources and donations, especially for those that are anonymous or from corporations.

The assessment of campaign spending regulations in these three countries suggests that to increase the competitiveness and fairness of the election process at the output side, realistic context-dependent (for example, electoral system) spending limits should be introduced, especially in relation to media ad-vertisements and third parties.

In order to enhance public trust and ensure fully-fledged transparency, reporting mechanisms should be always timely and itemised, and should include both income and expenses as well as ensure con-sistency between party and candidate reporting.

The analysis of campaign finance control shows that without a proper oversight system that goes be-yond formal control and a more realistic sanctions framework, both in terms of dissuasion and imple-mentation, any eventual improvements on other aspects of campaign finance regulations will be lost. Legislators should ensure that oversight authorities have enough independence, resources (both hu-man and financial) and powers (both investigative and involving sanctions). It is also essential that oversight authorities play an educative role, also indicating the direction of legislative reform.

In general, lawmakers and CPF regulators in all three countries should also ensure consistency be-tween party statutory financing, election financing and electoral laws.

Considering the findings of the three case studies, it is feasible to propose PLS as the most effective instrument to respond to the CFR shortcomings experienced by countries, particularly when dealing with politically sensitive regulations. The application of PLS would steer the legislative drafting process away from purely political agendas towards more substance-oriented discussions, and ensure stake-holder engagement and an evidence-based approach. Furthermore, it would ensure greater corre-spondence of the legislative drafting process to the needs and requirements of the society and thus contribute to a more stable and legitimate outcome of the process.

Introduction: Post-Legislative Scrutiny (PLS) and its benefits

Among several benefits of a well-designed campaign financing regime (CFR) promoting democratic ideals, two stand out: levelling the playing field and supporting electoral integrity. The role of PLS in this respect is to help in achieving these goals. In many democracies, a process of overseeing the implementation of legislation by parliaments is referred to as Post-Legislative Scrutiny (PLS). PLS is aimed at both monitoring the implementation of legislation, and evaluating whether laws have achieved their intended consequences.[1] PLS is often carried out by parliamentary committees and can include the assessment of a law's enactment and its effect on society.[2] Evaluation of the law enactment process entails: assessing the technical aspects of lawmaking (such as whether the law has been entered into force), reviewing the interpretation and application of a given piece of legislation by courts and relevant public bodies, and examining the ways practitioners and ordinary citizens apply its provisions. The assessment of the impact of the law encompasses a comprehensive analysis of a normative act attaining the intended goals and objectives.

Through the proper application of PLS, parliaments identify legislative gaps and shortcomings in the legislation as well as in its implementation,[3] and ensure targeted and evidence-based lawmaking. PLS also enables legislators to review the secondary and delegated legislation together with the primary act from which it derives, thus ensuring even more comprehensive scrutiny of legislation. The effectiveness of PLS increases considerably when structurally applied by the legislative institution with proper procedures and established timelines.

A benefit of PLS is that it ensures broad engagement in lawmaking of political parties, civil society organisations, academia, experts and citizens themselves. PLS gives a voice to political and non-non-political actors to express their needs, interests and concerns; it also enables them to bring their experience and expertise to the process. Thus, PLS contributes to the legitimacy of lawmaking in the public's eyes and provides parliaments with access to additional sources of information, ensuring a more comprehensive understanding of the matter. Having a structured PLS process assists parliament in strengthening its institutional and human capacities. It demands the active engagement of relevant parliamentary units and staff, the collection and analysis of information, flawless communication channels with state and non-state actors, and solid reporting skills.

While there is no single pattern of organising PLS in parliaments, Westminster Foundation for Democracy, through the Publication "Post-Legislative Scrutiny: Guide for Parliaments",[4] offers certain methodological steps, showing how parliaments may conduct PLS in an organised and structural manner. According to the guide, the process can be divided into four phases: pre-planning phase, planning phase, implementation phase and follow-up phase, and can include the following steps:[5]

Methodological steps in organising Post-Legislative Scrutiny in Parliament			
Pre-planning phase	**Planning phase**	**Implementation phase**	**Follow-up phase**
Consider establishing binding requirement for Post-Legislative Scrutiny prior to adoption ofthe legislation	Select legislation for Post-Legislative Scritiny and scope of legislation under review	Consult stakeholders and implementing agencies	Distributing the report and making it publicly accessible
Identify trigger points for Post-Legislative Scrutiny if there is no binding requirement	Establish objectives for Post-Legislative Scrutiny inquiry and hearings	Review the effects of delegated legislation	Conduct policy follow-up to the Post-Legislative Scrutiny inquiry
Engage human resources for Post-Legislative Scrutiny	Identify and review the role of implementing agencies	Making the consultation public	Evaluate the Post-Legislative Scrutiny inquiry results and process
Engage other financial resources for Post-Legislative Scrutiny	Identify relevant stakeholders	Analysis of Post-Legislative Scrutiny findings	
	Collect background information and data		
	Determine timeframe for Post-Legislative Scrutiny		

PLS is thus an oversight mechanism of parliament contributing to the quality of legislation. Its benefits include:

- effective and evidence-based lawmaking, which implies the application of a strategic approach and proper planning (including timing) of the legislative process;
- improved quality of legislation based on lessons learnt;
- an inclusive and transparent process contributing to legitimacy of legislation;
- in-depth assessment and comprehensive oversight of the law's implementation;
- enhanced accountability of the government; and
- institutional and human capacity development of national parliaments contributing to a higher standard of legislative drafting and oversight.

Considering the merits of PLS in improving the outcomes of the legislative process, in this paper we look at the policy area of Campaign Finance Regulations (CFR), which often turns out to be very conflictual. CFR refers to all money in the political process and specifically to the financing of ongoing political party activities and electoral campaigns[6] which ultimately is intended to influence the vote and the attaining of power. It is thus one of the cornerstones for free and fair elections and for democracy itself. It not only contributes to the integrity and confidence of elections, but also guarantees

an even playing field and with it, the equal participation and representation of all citizens.

Given the potential of CFR to limit the fundraising and spending behaviour of parties and candidates in elections and, therefore, to affect their electoral fate, the design of campaign financing rules becomes a key battleground during the enactment process. Hence, the propensity of electoral competitors to use CFR as a tool to win elections might result in very ambiguous and often inconsistent legislation. This, in turn, allows political parties to take advantage of the existing regulatory loopholes and circumvent CFR.

The highly contentious nature and political sensitivity of CFR is likely to make the PLS analysis challenging in some countries. Nevertheless, facilitating the application of PLS to the CFR may help to understand the problems and challenges faced by political parties and other relevant stakeholders in dealing with CFR.

The case studies of Moldova, Indonesia and Nigeria, have been structured as follows. In the first section, we scrutinise the political context and the background conditions in each country during the enactment and amendment of CFR. Next, we assess the state of campaign funding rules across the key dimensions of the regulatory regime. In the second section, we analyse the design of the public funding mechanism looking at the subsidy level, eligibility and allocation criteria. In the third section, we scrutinise the legal loopholes and challenges regarding the income from private sources, focusing on qualitative (who is entitled to contribute or banned from doing so) and quantitative restrictions (how much individuals and businesses are authorised to contribute). The fourth section is devoted to the analysis of campaign spending regulations. By applying an analytical framework such as the regulation of campaign donations, we look into campaign spending restrictions – what kinds of items political and societal actors are authorised to spend campaign funding on, and how much, during parliamentary elections. Also in the fourth section, we scrutinise the transparency obligations of parties and candidates during elections, while in the fifth section we inspect the control mechanism of CFR through the analysis of oversight and sanctioning regulations, as two sides of the same coin. The concluding section provides recommendations on the effective use of PLS.

Our analysis shows that the complexity of CFR and the collision between the regulatory preferences of different political parties might considerably undermine the achievement of CFR goals such as ensuring fair and equal conditions for political competition. Therefore, PLS might be employed as a tool to mitigate partisan tensions, and the tendency to a short-term vision in the design of campaign funding regulations, as well as foster evidence-based and informed debates for electoral reform.

1. Context and background

1.1. Enactment of campaign funding regulations in Moldova

For almost two decades after obtaining independence, Moldova had a very lax regime of campaign funding. It was characterised by the absence of donation limits and transparency, almost non-existent oversight and very few but rigid sanctions. The only clearly defined restriction was the presence of a campaign spending limit on election funds. Nevertheless, it was unenforceable due to the lack of an operational definition of campaign expenses and a weak control mechanism. Therefore, political parties and candidates had a free hand in collecting and spending their election war chest. It was not until the 2009 parliamentary elections that electoral contestants faced tighter (but still very permissive) donation limits and more demanding transparency obligations. Still, the control mechanism was toothless and hard to enforce. Despite many regulatory loopholes, in the aftermath of the 2009 parliamentary contests (April, July), Moldova embarked on a thorny path towards revising the party and campaign funding framework.

During the last two parliamentary cycles, CFR underwent three substantial amendments – in 2015, 2017, and 2019. While these amendments were similar in terms of regulatory scope, addressing the issue of party and campaign funding, they were different regarding the motivations of political parties and other stakeholders involved in this process. If the 2015 legislative package was a response to the country's commitment to fulfilling its Council of Europe (CoE) membership obligations (GRECO, 2011, 2013, 2015a, 2015b), the other two amendments primarily reflected the political preferences of the key political players who employed CFR as a tool to get an edge over their political opponents. In 2017, the CFR amendment reflected the preferences of the Democratic Party of Moldova (PDM) and the Party of Socialists of the Republic of Moldova (PSRM), who joined forces to replace proportional representation with a mixed electoral system, thus increasing the weight of financial resources, particularly in single member districts (SMD). In 2019, the regulatory reform reflected the preferences of the NOW Electoral Platform DA and PAS (ACUM) electoral block, and resulted in the reinstatement of proportional representation and the amendment of CFR aimed at undermining the financial advantage of the former incumbents. Accordingly, the 2017 amendment of CFR was part of a larger legislative package that replaced the closed list proportional representation with the mixed electoral system, according to which 51 MPs were to be elected in single member districts (SMD) , while other 50 MPs were to be elected in a single country wide electoral constituency (Monitorul Oficial Nr. 253-264, art. 422, 2017). The replacement of the electoral system has not, however, entailed corresponding changes to the CFR, a considerable drawback, given the significance of a crucial institutional change. While a few CFR were amended - such as the lowering of donation caps - the interplay of various regulations on donations, campaign spending, transparency and oversight did not contribute to the fairness and integrity of the electoral competition. On the contrary, they rather reinforced existing disparities between the most and the least resourceful parties and candidates, increased the impact of financial resources on electoral outcomes, as well as loosening the control over campaign funding. The reconfiguration of the political scene following the 2019 parliamentary elections, and the creation of a new governmental coalition formed by the members of ACUM (NOW) electoral block (the Action and Solidarity Party (PAS) and the Dignity and Truth Platform Party (PDA)) and the Party of Socialists of the Republic of Moldova (PSRM), prepared the grounds for another substantial amendment of party and campaign funding rules. Yet, unlike the

2017 changes, the 2019 amendments were more radical in several respects, although the most remarkable were those affecting donation limits.

Because of the differences in the motivations and rationales of the key political players regarding the amendment of CFR in each case, the nature and inclusiveness of the drafting process, as well as the power configuration behind it, were similarly different. The 2015 amendments of CFR, embedded into electoral legislation, were a result of a rather lengthy process triggered by the passage of a new Law on Political Parties (LPP) and the amendment of the Electoral Code (EC) (Monitorul Oficial, №. 42-44, art. 119, 2008; Monitorul Oficial, №. 108-109, art. 332, 2010). While these amendments eliminated several regulatory loopholes by strengthening the transparency requirements and controls, such as the publication of the donors' identity and campaign spending reports, and the introduction of additional sanctions for campaign funding breaches, other shortcomings were not addressed and were noticed by local media, NGOs and international stakeholders (GRECO, 2011; Lipcean, 2009; Lipcean et al., 2010; OSCE/ODIHR, 2011; Ziarul de Gardă, 2010).

In the lead up to the 2015 amendments, the Alliance for European Integration (AIE)[7] – the governmental coalition that ousted PCRM from power in 2009 – had engaged in revamping party and campaign funding rules. Two alternative pieces of legislation were drafted in parallel. The first represented the amendment of the existing LPP, Electoral Code (EC) and other secondary legislation such as the Criminal Code and the Code on Minor Offences, while the second one was a self-standing draft law focusing exclusively on party and campaign financing. Their parallel drafting is suggestive of the political competition within AIE, since the first piece of legislation reflected the preferences of the Liberal Democratic Party of Moldova (PLDM), while the second was the product of the PDM vision of a political financing regime (PFR).[8] Both draft bills were concomitantly submitted for a review to the OSCE/ODIHR and the Venice Commission and received an overall positive assessment (GRECO, 2013; Venice Commission and OSCE/ODIHR, 2013). Although the legislators ultimately opted in favour of the draft law amending LPP and EC, the PDM's preferences (as opposed to the PLDM's ones) for more permissive donation caps and a higher ceiling on the total revenue amassed from private sources found their way into the LPP and EC (Parliamentary minutes, 2014a, 2014b). Accordingly, the draft bill presented to parliament after the OSCE/ODIHR and Venice Commission review contained a few but critical provisions related to donation caps and total income from private sources that were different from those submitted for evaluation (Legal Committee for Appointments and Immunities, 2015).[9] These critical changes did not go unnoticed in the parliament. During the subsequent parliamentary hearings, the Liberal Party – a former coalition partner in the AIE government – emphasised the point that these amendments fundamentally distort the letter and spirit of the law by enabling wealthy donors to influence party decisions, and by preventing parties to free themselves from oligarchic interferences (parliamentary minutes, 2015a, 2015b).[10]

Unlike the 2015 amendments to CRF, the 2017 ones were much more limited in scope since they were secondary to the main goal of a radical institutional reform altering the nature of the electoral system. The subsidiary nature of CFR is confirmed by the fact that a few but relevant CFR included in the final version of the draft bill were missing from its initial version. Furthermore, unlike the 2015 amendments, there was no consensus among the relevant stakeholders. Except for PDM and PSRM who struck a bargain over the electoral system change, the reform was perceived by other stakeholders almost exclusively as a convenient tool used by the PDM to cling to power by deploying its financial might and administrative

resources. Yet the bargain with PSRM, whose support was essential to implement it, was also intended as a concession on the plurality system, thus accepting the adoption of a mixed electoral system – a second choice preference of the PDM (Legal Committee for Appointments and Immunities, 2017; Parliamentary minutes, 2017). Despite an aggressive public campaign and debates promoting the change of electoral system (Parlamentul Republicii Moldova, 2017), opposition parties, civil society and International Organisations (IO) warned about the risks entailed by this reform, including those related to campaign financing (Lipcean, 2017; Promo-Lex, 2017a, 2017c; Promo-Lex & CRJM, 2017; Tăbîrță, 2017).

More importantly, the promoters of the mixed system were aware of the implications regarding campaign funding, since back in 2014 the OSCE/ODIHR and the Venice Commission had already expressed their concern on a similar draft law submitted by Moldovan authorities (Venice Commission and OSCE/ODIHR, 2014). Accordingly, in the 2017 review of the draft amendments on the electoral system change, OSCE/ODIHR and the Venice Commission explicitly reiterated that in current political circumstances, the replacement of proportional representation with a mixed system might negatively affect the campaign environment by increasing the role of money in the electoral process and, by extension, the dependence of majoritarian candidates on local businesspeople and other particularistic interests (Venice Commission and OSCE/ODIHR, 2017).[11] Despite these warnings, the new CFR, as a part of electoral system reform, was adopted and served as a legal framework for campaign funding during the 2019 parliamentary contest.

The post-2017 CFR was short-lived, and its repealing was even faster than its enactment, following the 2019 parliamentary contest that brought about the reconfiguration of the political scene. The overhaul of CFR was the result of a bargain struck between the members of ACUM (NOW) electoral coalition (Action and Solidarity Party (PAS) and Dignity and Truth Platform Party (PDA)), that strongly campaigned on an anti-corruption platform, and PSRM. The rolling back to proportional representation entailed a far more thorough revision of CFR than in 2017, especially concerning the regulation of private income, campaign spending, and the distribution of public funding. Neither parliamentary debates nor the drafting process revealed an openly expressed opposition towards the new amendments, except the PDM's desire to maintain a full ban on donations from Moldovan citizens residing abroad (Parliamentary minutes, 2019a, 2019b). While the parliamentary voting shows that ACUM and PSRM provided the core votes necessary to pass the draft law, other parliamentary factions joined at a later stage and supported the amendments in the final reading (Comisia juridică, numiri şi imunităţi, 2019; Parliamentary minutes, 2019a, 2019b, 2019c). The paradox of the most recent amendents to CFR stems from the fact that PSRM, who voted in favour of the mixed electoral system with PDM, now turned against its former ally.

1.2. Enactment of campaign funding regulations in Indonesia

Since the end of Suharto's "New Order" in 1998 and the democratisation of the country one year later, Indonesia has experienced various legislative reforms aiming to improve the quality of electoral campaign funding. After initial legislation in 1999 (Law No. 2), important legislative reforms took place in 2002 (n.31), 2008 (n.2) and 2011 (n.2). The current Electoral Law (n.7) was passed in 2017. Other government regulations, which mostly referred to public funding of political parties, were enacted (usually after some corruption scandal), in 2001 (n.51), 2005 (n.29), 2009 (n.5 and n.212) and 2018 (n.1) (Perludem n.d.; Putra, 2021: 78-79).

Most of the reforms were directed towards strengthening the regulation of oversight, and the sanctioning framework of campaign financing, almost non-existent until the second half of the 2000s, as well as towards making political parties less "dependent on financial support from individuals or conglomerates with large private fortunes" (Reuter, 2015: 267). Interestingly enough, and contrary to what could be observed in more developed consolidated democracies (Casal Bértoa and Biezen, 2018), in Indonesia, stricter transparency and oversight regulations were not accompanied by an increase in the level of state financial support for political parties. In fact, the already negligible state subsidies were reduced in the mid-2000s by 90% (Mietzner, 2016, Perludem, n.d.).

Following high-profile corruption scandals (Devianti, 2014) and continuous recommendations from various state organisations (for example, the Corruption Eradication Commission), NGOs (for example, the Association for Elections and Democracy) and academic commentators (Mietzner, 2013), Indonesian legislators had no other choice but to finally increase public funding and to ban party TV electoral commercials (effective from 2019). These restrictions were introduced despite the opposition of some relevant parties like NasDem and Perindo (Indonesian Unity Party), founded by two media tycoons, Surya Paloh and Hary Tanoesoedbjo, respectively.

Still, the effectiveness of these legislative reforms in curbing Indonesian parties' dependency on private funding (Cochrane, 2013) is yet to be seen, especially if we take into consideration that, as examined more in detail later in this paper, donation caps and spending limits for political parties during elections are not yet thoroughly regulated. Last but not least, the formal character of oversight and the insufficiently deterrent sanctions represent critical obstacles in the way of CFR achieving its declared aims.

1.3. Enactment of campaign funding regulations in Nigeria

After the transition from military rule to democracy in 1999, Nigeria underwent several electoral reforms (2002, 2006, 2010, 2021 (draft law)). They all touched on election funding regulations by setting contribution and spending limits, requiring transparency, and imposing sanctions for finance-related breaches. Likewise, both the 1999 Constitution and the 2002 EC foresaw the provision of public funding for party statutory and campaign activities. However, this progressive measure was cancelled out in 2010 due to legal inconsistencies between constitutional and election law provisions, which transformed public funding into merely a resource extraction tool, without visible benefits for the party or party system development. In fact, legislative discrepancies and omissions across different regulatory dimensions represent critical shortcomings of the CFR. They constitute the reason why most financing restrictions and obligations were regarded as paper tigers heretofore. The fact that the CFR have not been amended once during the last decade speaks

about the lack of political will or consensus to embark on a campaign finance reform needed to patch, at least partially, regulatory loopholes (Nwangwu & Ononogbu, 2016; Yagboyaju & Simbine, 2020). The recent amendments of the Electoral Law (July 2021), passed by both chambers of the National Assembly, confirm this diagnosis since they do not address some of the most visible drawbacks.

The numerous accounts of how campaign engineering works in practice confirm the assumption that virtually no major political party in Nigeria is willing to sacrifice the opportunities offered by the numerous lacunae of the electoral legislation to get an edge over their political opponents. Furthermore, political parties not only exploited existing regulatory shortcomings, but they did not comply even with existing regulations on a large scale due to the lack of enforcement by the Independent National Electoral Commission (INEC), which is responsible for the oversight of campaign funding. The lack of effective oversight is also confirmed by INEC itself when it publicised the fact that the largest Nigerian parties, the All Progressives Congress (APC) and Peoples Democratic Party (PDP), along with most other election participants, failed to submit their campaign funding reports in due time (five months after elections) (THISDAYLIVE, 2019). Accordingly, in its review of the 2019 general elections, INEC highlighted the need to amend the electoral law "to strengthen mechanisms for campaign finance monitoring and compliance" and to "strengthen the collaboration with political parties and relevant stakeholders on the enforcement of regulations on party and campaign financing" (Independent National Electoral Commission, 2020, p. 115).

The lack of political and institutional consensus is epitomised by a failed attempt to amend the CFR before the 2019 general elections. Although in 2018 the National Assembly managed to reach a consensus over several amendments of the Electoral Law, including campaign finance, the amendment was vetoed by the president for the fourth time in the last two years (The Commonwealth, 2019, p.12). This indicates the presence of an institutional conflict between the legislature and the presidency over the new terms of the Electoral Law. The president's veto appears to be even more surprising, given the fact that after the 2015 elections both chambers of the Nigerian parliament were controlled, with a comfortable majority, by the president's party – APC. Here it is worth noting that the president's veto was not related so much to CFR, but to other aspects of the electoral process aiming to improve the quality and security of elections. **The ability of the legislature to come to terms over new CFR, despite the president's veto, should not be interpreted as the willingness of parliamentary parties to contribute to the fairness and integrity of the electoral process through improved CFR**. On the contrary, they were rather concerned with their narrow interests since the 2018 amendments foresaw the increasing of campaign spending limits and had nothing to do with the strengthening of transparency and control mechanisms. This is confirmed by the 2021 draft bill of the Election Law that sets higher donation and spending limits for congressional and senatorial candidates. However, reporting and disclosure mechanisms do not remove previous loopholes which leave sufficient room for circumventing transparency. Therefore, the push for higher spending and contribution limits on behalf of parliamentary parties is meant to create more favourable conditions for wealthier parties and their donors to throw larger amounts into the electoral process. While this amendment could contribute to the legalisation of large chunks of election funding that would have been otherwise spent covertly, the lack of political commitment towards transparency renders the prospect of such an outcome highly problematic.

2. Key dimensions of the regulatory regime

Our analysis of CFR is structured around the regulation of private income, campaign spending, transparency, oversight and enforcement. The regulation of campaign funding across these dimensions is justified considering the implications for the fairness, integrity and quality of the electoral process. Therefore, while the legal restrictions and obligations associated with each dimension are justified on different grounds, they can only produce a positive impact on the electoral process quality if tackled as a whole package. Accordingly, the regulation of private income through various bans and contribution limits aims to prevent not only the excessive distortion of the democratic process embodied in the fundamental principle "one person – one vote", but also to diminish the corruption risks associated with private contributions and the undue influence of vested interests on policy process. Likewise, by setting campaign spending limits, the legislators aim to level the playing field by preventing wealthier parties, candidates, and their sponsors to exploit resource advantages during the electoral process. Transparency, on the other hand, is a necessary tool designed to help citizens to make informed choices not only based on party electoral manifestos but also following the money trail. They must be aware of the potential allegiances of political parties and candidates towards their financial backers. Finally, oversight and enforcement are designed to ensure that all competitors play by the rules and that other types of regulations are not regarded as "paper tigers" by electoral competitors.

2.1. Key issue 1: Public funding

The provision of public funding to political parties is commonly justified on two grounds: diminishing corruption risks and levelling the playing field. In the first case, public funding aims to reduce party dependence on private contributions, and this is expected to alleviate the fundraising burden and weaken party-sponsor linkages. Likewise, it is expected to undercut the undue influence of special interests on the policymaking process. In the second case, public funding aims to mitigate the disproportionate impact of economic inequalities on the political process by upholding an important democratic pillar – one person, one vote. By providing public funding to parties, the state aims to incentivise the political participation of less resourceful individuals and groups, which otherwise would be severely disadvantaged and discouraged from participating. Despite these normative goals, the complexity of the public funding mechanism and its implementation might entail the opposite results. This section analyses the mechanism of direct (DPF) and indirect (IPF) public funding in three countries, highlighting their strengths, weaknesses, and challenges for PLS.

Table 1. Public funding regime in Moldova, Indonesia and Nigeria

#	Indicator	Moldova	Indonesia	Nigeria
1	Are there provisions for direct public funding to political parties?	Yes, regularly provided funding.	Yes, regularly provided funding.	No
2	If there are provisions for direct public funding to political parties, what are the eligibility criteria?	Participation in elec-tions. Share of votes in previ-ous elections.	Representation in the elected body.	N/A
3	If there are provisions for direct public funding to political parties, what is the allocation calculation?	Flat rate per valid vote: Moldovan lei (MDL) 7 (parliamentary elec-tions), MDL 5.6 (presidential elections), MDL 3.5 per valid vote (local elections).	Flat rate per valid vote: 1,000 Indonesian rupiah (IDR) (national election), 1,200 IDR (provincial or regional election), 1,500 IDR (district/ city election).	N/A
4	If there are provisions for direct public funding to political parties, are there provisions for how it should be used ("earmarking")?	Campaign spending. Ongoing party activities. Intra-party institution. Research and policy initiatives.	Ongoing party activities.	N/A
5	Are there provisions for free or subsidised access to media for political parties?	Yes	No	Yes
6	If there are provisions for political parties' free or subsidised access to media, what criteria determine access allocation?	Equal	None	Equal
7	Are there provisions for free or subsidised access to media for candidates?	Yes	Yes	Yes
8	Are there provisions for any other form of indirect public funding?	No data	No	No
9	Is the provision of direct public funding to political parties related to gender equality among candidates?	Yes	Yes	No
10	Are there provisions for other financial advantages to encourage gender equality in political parties?	Yes	No	No

Source: IDEA political finance database, national regulatory frameworks.

As Table 1 shows, there are considerable differences between countries. While Moldova and Indonesia have developed complex DPF mechanisms by linking its provision to various elections, Nigeria lacks such a mechanism. Nevertheless, a common feature of all three countries is the absence of DPF earmarked for electioneering purposes. Although all countries provide IPF to parties and/or candidates for elections (contingent on the electoral system type), the lack of direct state support negatively affects the equality of opportunities and electoral competition. This outcome is determined by a critical feature of the allocation mechanism – the timing of the DPF disbursement for statutory party funding. Since the allocation of DPF for regular party activities is always based on past electoral performance, the mechanism favours incumbents that are usually better funded. Therefore, such a design enhances the structural advantage of established parties, which attract more private funding and receive the dominant share of state subventions. Essentially, these developments fall within the well-known cartel party framework, when the established parties design the financing rules to their advantage (Katz & Mair, 1995, 2009). Nevertheless, there are substantial differences between countries to which we turn now.

In Moldova, the provision of DPF was foreseen by the 2007 LPP. However, political uncertainty and disagreements over the amount and distribution delayed its implementation by roughly a decade (2016). The political clashes over the funding level, eligibility, and allocation rules resulted in several amendments that substantially altered the DPF mechanism over time. Initially, the LPP set the subsidy level at 0.2% of the budgetary revenue, which amounted to about Moldovan lei (MDL) 40 million (USD 2.4 million) in 2016. In 2018, the limit was removed, and the DPF level was set in the budget law annually (Monitorul Oficial Nr. 321-332 art. 529, 2018). Following the 2019 parliamentary elections, another amendment reinstated the DPF limit at 0.1% of the budgetary revenue (Monitorul Oficial Nr. 260 art. 361, 2019).[12]

Unlike the funding level, the eligibility and allocation rules were more contested and debated, a process that had a positive impact and contributed to achieving a more inclusive DPF mechanism. In 2008, the LPP foresaw that only parties that surpassed the 6% threshold in parliamentary elections and those winning at least 50 seats at the district level in local elections were entitled to subsidies. In 2015, another LPP amendment abolished the access barriers, implying that all officially registered electoral contestants were entitled to state funds proportionally to the number of votes obtained.[13] From this perspective, Moldova is somewhat unique given the lack of legal barriers to accessing state funding (except registration requirements).

As with the eligibility threshold, the allocation formula underwent a similar process – it became more democratic and inclusive through the expansion of the criteria on which DPF was distributed among recipients. The 2019 amendment is particularly telling in this respect since it mirrors the political preferences, electoral strength, and party social composition of PAS and PDA. This is reflected by the weight placed on women and youth in the distribution of DPF (Table 2).

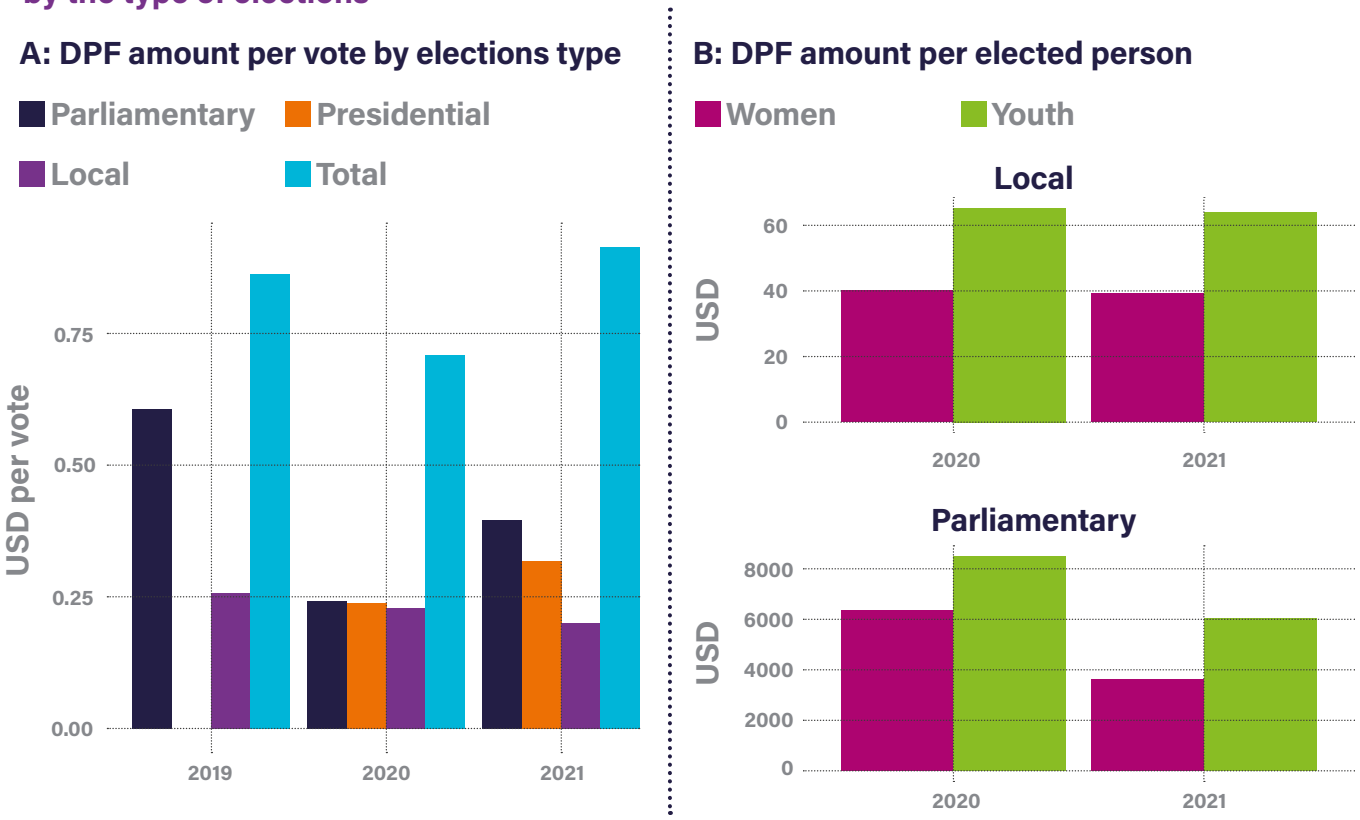
Table 2. Allocation criteria for the distribution of public funding - % from the total subsidy

Allocation criteria of DPF ↓ Year→	2007	2018	2019
Performance in parliamentary elections	50*	40	30
Performance in local elections	50	40	30
Performance in presidential elections			15
Inclusion of women on party list (at least 40%)		10	
Women effectively elected in SMD		5	
Women effectively elected in parliamentary elections			7.5
Women effectively elected in local elections			7.5
Youth effectively elected in parliamentary and local elections		5	
Youth effectively elected in parliamentary elections			5
Youth effectively elected in local elections			5

Note: * refers to the number of seats as distribution criterion; in other cases, number of votes.

The variation in allocation criteria for different elections, combined with additional funding provided for women and youth, makes the distribution of DPF a complex exercise. Nevertheless, this formula pro-vides for additional incentives to promote women and youth as parliamentary and local representatives. Figure 1 provides a summary of the DPF mechanism accounting for the distributional implications of the allocation formula in Table 2. The left-hand panel shows the baseline amount of DPF per vote by the type of elections, while the right-hand panel shows the additional funding received by political parties for every woman and young person effectively elected in local and parliamentary elections. As Panel B il-lustrates, for every woman and young person elected at the local level, political parties received about USD 40 and USD 60 in addition to the baseline funding, respectively.

Figure 1. The amount of DPF per vote, per number of effectively elected women and youth by the type of elections



Source: Own elaboration based on CEC data.

Unlike statutory party funding, for electoral campaigns the state provides IPF, which takes the form of interest-free loans, free public transport, and free media access. Media access is by far the most valu-able means of IPF. Registered electoral contestants benefit from free media access in three ways:

a. Presentation of the electoral manifesto: five minutes free airtime on public TV and ten minutes free airtime on radio in the first three days of the campaign.

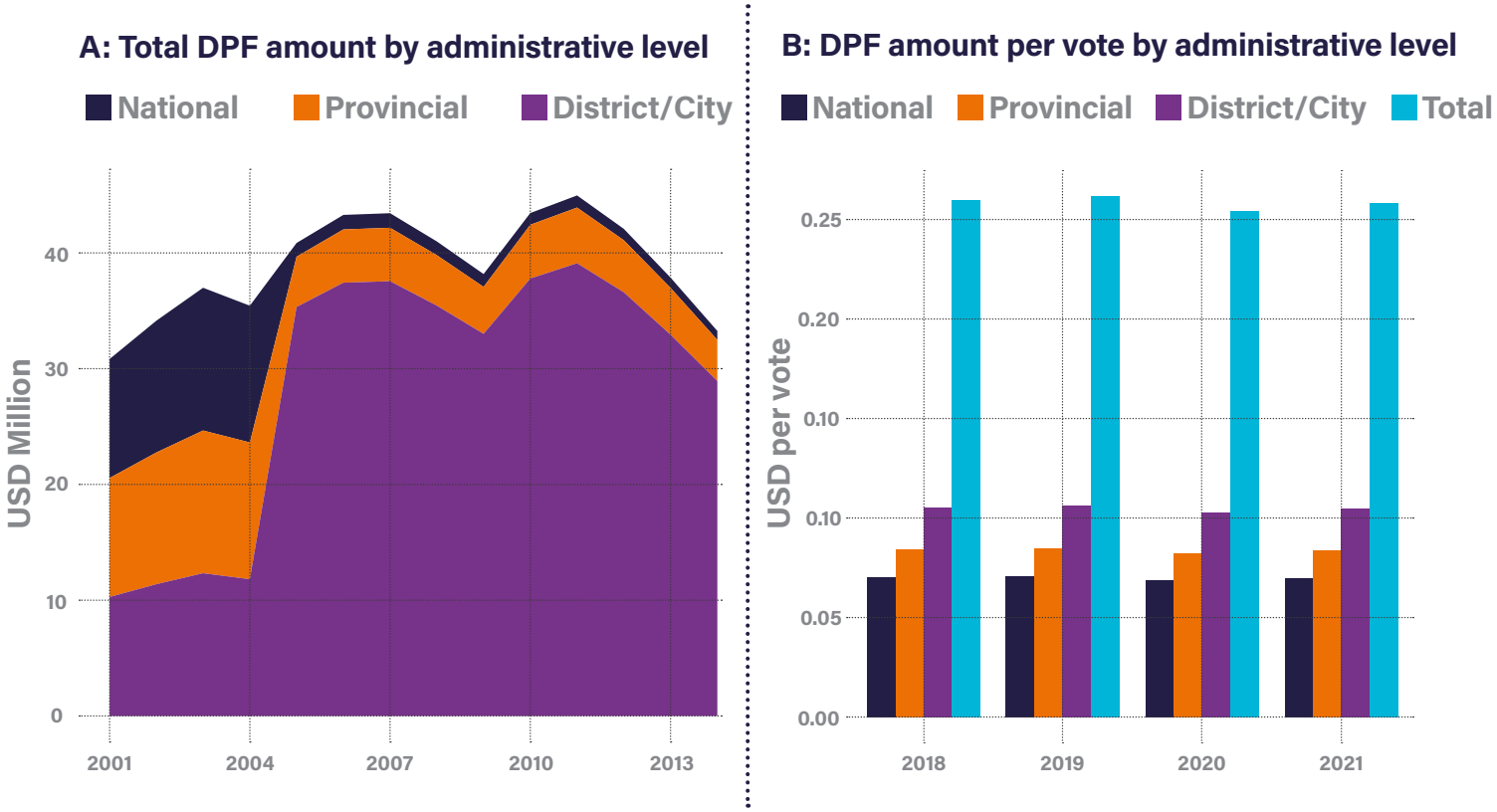
b. One minute of free airtime daily on public broadcasters for electoral advertisement spots during the campaign.

c. Electoral debates organised by public and private broadcasters.

While these detailed regulations allow new parties and competitors to gain visibility, they are likely to get "drowned" in the dense informational campaign environment heavily dominated by paid TV and radio advertisements.

Indonesia has experienced turbulent times with the state funding of political parties in the post-Soeharto era (Mietzner, 2007). However, unlike Moldova, the political clashes revolved around the level of state subsidies. At the outset of democratisation, political parties succeeded in determining the DPF level at Indonesian rupiah (IDR) 1,000 (USD 0.1) per valid vote (in 2001). The same amount was awarded for their performance in the provincial and district/city elections. In 2005, however, the calculation formula was changed from a vote-based to a seat-based coefficient set at IDR 21 million (USD 2.1 thousand) per parliamentary seat. This change resulted in a massive (89%) drop in DPF allocated to party head-quarters. While a 2009 amendment reintroduced the vote-based coefficient, the level of state funding

Figure 2. The evolution of the DPF level in Indonesia by administrative level



Source: Panel A – own elaboration based on data from Mietzner (2016) and annual exchange rates of USD to IDR; Panel B – own elaboration based on data from Hanafi & Nuryanti (2021) and annual exchange rates.

was based on previous allocations; hence the subsidy level remained essentially the same after this conversion – IDR 108 (USD 0.01) per valid vote (Mietzner, 2015). However, given the higher number of seats in provincial (approximately 2,000) and district/municipality (approximately 16,000) assemblies relative to the national assembly (550 seats in 2005), the subsidy provided to party branches at these administrative tiers substantially increased (Mietzner, 2016). The last amendment (2018) increased the funding level almost tenfold for the central party office, from IDR 108 to IDR 1,000 (USD 0.07) per vote. It also determined the DPF level for provincial and district/municipality elections at IDR 1,200 (USD 0.08) and IDR 1,500 (USD 0.1) per vote respectively. Figure 2 presents these changes over time graphically.

The left-hand panel shows total amount of DPF by administrative levels for 2001-14, while the right-hand panel displays the amount per vote by administrative tier after the 2018 amendment.

Due to the vote-based formula, the allocation of DPF is straightforward, and the main challenge faced by electoral competitors is the eligibility threshold for accessing state funding. Unlike Moldova, the barriers are higher since only parties represented in national, provincial and district/municipal assemblies qualify for DPF. For instance, the electoral threshold for the parliamentary elections increased from 2.5% to 3.5% and 4% in 2009, 2014 and 2019 respectively, thus making access to DPF more difficult. Hence, while the recent increase in DPF represents a positive development, it touches upon statutory

party funding, with little effect on levelling the electoral playing field since public funding for party regular activity is distributed only to parliamentary parties and only after elections. Thus, small and new political forces do not have access to state support.

In addition to statutory funding, during elections parliamentary candidates are entitled to subsidised access to media (Hamada & Agrawal, 2021). Nevertheless, while the 2017 EC requires the provision of "equal allocation of time and equal treatment for all election contestants to convey their campaign [message]" (State Gazette, №. 6109, 2017, sec. 288), it does not indicate how much time they should receive for free. The EC sets explicit daily limits only on campaign advertisements – a maximum of 10 slots of 30 seconds per contestant on TV and a maximum of 10 slots of 60 seconds per contestant on radio (Sec. 293). The additional regulation of campaign advertisements is left to KPU (Sec. 297).

Finally, unlike Moldova and Indonesia, Nigeria followed a different path regarding the architecture of the public funding mechanism. It shifted from a PFR with DPF for statutory and campaign activities to a PFR without direct subventions. The 1999 Nigerian Constitution empowered the National Assembly to provide a yearly subsidy to INEC "for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions" (Constitution of Nigeria, 1999, sec. 228 (c)). Likewise, the 2002 Election Law foresaw the subsidy distribution for electioneering and statutory activities based on a formula whereby 30% was distributed equally between all registered parties, while 70% was proportionally allocated to their parliamentary share (Sec. 80). Consequently, in the April 2003 elections, INEC allotted Nigerian naira (NGN) 600 million (approximately USD 4.54 million) for 30 registered parties. The subsidy was split in two: NGN 180 million (USD 1.36 million) was earmarked for election financing, and NGN 420 million (USD 3.18) was distributed to seven parliamentary parties for their statutory operations (Adetula, 2008, pp. xxx–xxxi). Overall, the state support amounted to USD 0.16 per valid vote in the 2003 elections, representing a substantial contribution to party coffers, especially considering the electoral market size.

The 2006 amendment of the Electoral Law replaced the previous allocation with a new formula based on a 10% to 90% ratio. Therefore only 10% of DPF was distributed equally among all registered parties, while 90% was allocated according to their parliamentary strength (Sec. 90(2)). The new regulations triggered a response from 20 opposition parties, which challenged the allocation formula in court by claiming that it contravenes the constitutional provision requiring the distribution of state funding "on a fair and equitable basis" (Sec. 228 (c)). As a result, the Abuja Federal High Court ruling favoured the plaintiff, and INEC was compelled to allocate subsidies equally among all registered parties (Ojo, 2008, p. 101). Hence, the revised allocation formula made the emergence of new parties extremely attractive for political entrepreneurs who exploited the public funding system without engaging in a meaningful electoral competition. Ultimately this behaviour contributed to a negative view of DPF in Nigerian politics and resulted in its abolition in 2010.

To understand the magnitude of the problem, it suffices to mention that following the 2007 general elections, only six parties entered the parliament, but more than 50 were entitled to DPF (NGN 6 million each party) in 2009 (Anokuru, 2019). Accordingly, in 2009 alone, the aggregate DPF disbursed to registered parties for their statutory operation was around NGN 300 million (USD 2 million). While this is not a large sum, given the overall cost of Nigerian politics, the regulatory framework inconsistencies allowed parties to abuse the DPF system and instil a pessimist view about the beneficial effect of public funding on electoral competition.

Despite the absence of DPF, electoral legislation foresees media access. However, unlike Moldova, neither Electoral Law nor the Broadcasting Code provide details on subsidised media access. Moreover, while both acts stipulate equal airtime allocation, they do not specify how much airtime parties and candidates should be awarded. As a result, media coverage heavily favours incumbents, an advantage solidified by the incumbents' dominance over the political advertisement market (EU Election Observation Mission, 2019, pp. 26–30).

Lessons for PLS

The examination of public funding regulations highlights the lack of state support for campaign financing. Although Moldova and Indonesia provide direct subsidies for statutory party activity, they do not provide DPF for elections. In Nigeria, the situation is even worse since parties and candidates receive neither statutory nor electoral subsidies. Despite the provision of IPF as free media access, the electoral contestants' access to media is explicitly regulated only in Moldova. Accordingly, in order to strengthen electoral competitiveness and fairness, lawmakers should consider the following measures:

a) To adopt/amend the CFR by introducing DPF for election campaigning to ease the fundraising burden of parties and candidates, minimise their dependence on private contributions, reduce corruption risks and enhance participation and trust in elections.

b) While the level of state support is context- and time-specific, it should cover a substantial part of the financial needs of election contestants. Likewise, it must be correlated with spending caps to decrease the competitors' demand for resources.

c) The law must explicitly specify the timeframe for the disbursement of campaign subventions to avoid arbitrary delay or manipulation. Subventions should be disbursed at the beginning of the election period to allow their full and timely utilisation by electoral contestants.

d) To create a level playing field, all electoral contestants that comply with campaign registration requirements should be eligible for election subsidies.

e) The allocation formula should incorporate and balance equality and proportionality criteria in the allocation of DPF. This mix would simultaneously boost the competitiveness of elections, encourage political participation, and account for the existing stock of public confidence in political actors. While the exact criteria and their combination constitute a rather political than a technical subject, a larger share of DPF evenly allotted to electoral competitors is expected to provide a more level playing field due to the relative advantage created for parties and candidates with limited access to private funding.

f) CFR should provide free access to public broadcasting and other electronic and print media, which is explicitly regulated by law with clearly defined terms of access such as the frequency and length of political advertisements or newspaper coverage (square centimetres).

g) The allocation of free airtime should be equally allotted among electoral contestants, regardless of their previous electoral performance.

2.2. Key issue 2: Regulation of election campaign income from private sources

For the analysis of CFR in terms of private income, legislators must consider two substantive issues and decide on related benchmarks. The first concerns the range of private income sources that are legally allowed to contribute to political parties, candidates and third parties. Hence, the broader or narrower this range the more permissive or restrictive a given CFR is deemed to be. The second pertains to quantitative restrictions on the amount a certain source is authorised to contribute to party or candidate coffers, which are represented by donation limits. Accordingly, the higher or lower the donation limits, the more permissive or restrictive a CFR is. While from a normative perspective, both types of restrictions are necessary for a democratic society to prevent the translation of economic inequalities into political participation, and to diminish incentives for corruption between parties or candidates and their financial backers, there is no common agreement over the "optimal mix" of regulatory tools that would contribute to the achievement of these normative goals (Biezen, 2003; Council of Europe, 2003; OECD, 2016; Ohman, 2014; Ohman & Zainulbhai, 2009; Speck & OECD, 2013; Transparency International, 2009a, 2009b).

Hence, if one applies this analytical framework to investigate the scope of state intervention to regulate the inflows of private money in Moldova, Indonesia, and Nigeria, one would notice substantial differences between Moldova and the other two countries. Based on the 2020 version of the IDEA political finance database,[14] and analysis of relevant national legislation, one may notice that Moldova is, by far, the country with the broadest regulatory scope. Out of 26 types of restrictions regarding bans and limits on income from private sources, it has 22 restrictions in force, which accounts for 85% of the regulatory scope. For Indonesia, 11 restrictions are in force, representing 42%, while for Nigeria there are eight restrictions, representing 31% of the regulatory scope. Moldova's position is easily distinguishable in Table 2, which illustrates the score of each country across all types of restrictions on income from private sources according to IDEA's classification.

Table 3. Bans and limits on income from private sources in Moldova, Indonesia, and Nigeria

#	Indicator	Moldova	Indonesia	Nigeria
1	Is there a ban on donations to political parties from foreign interests?	Yes	Yes	Yes
2	Is there a ban on donations to candidates from foreign interests?	Yes	Yes	No
3	Is there a ban on corporate donations to political parties?	No	No	Yes
4	Is there a ban on corporate donations to candidates?	No	No	No
5	Is there a ban on donations to political parties from trade unions?	Yes	No	No
6	Is there a ban on donations to candidates from trade unions?	Yes	No	No
7	Is there a ban on anonymous donations to political parties?	Yes	Yes	Yes
8	Is there a ban on anonymous donations to candidates?	Yes	Yes	No
9	Is there a ban on donations to political parties from corporations with government contracts?	Yes	No	Yes
10	Is there a ban on donations to candidates from corporations with government contracts?	Yes	No	No
11	Is there a ban on donations from corporations with partial government ownership to political parties?	Yes	No	No
12	Is there a ban on donations from corporations with partial government ownership to candidates?	Yes	No	No
13	Is there a ban on donations from any other source?	Yes	Yes	No
14	Are there bans on state resources being used in favour or against a political party or candidate?	Yes	Yes	Yes
15	Is there a ban on state resources being given to or received by political parties or candidates (excluding regulated public funding)?	Yes	Yes	No
16	Is there a limit on the amount a donor can contribute to a political party over a time period (not election specific)?	Yes	Yes	No
17	Is there a limit on the amount a donor can contribute to a political party in relation to an election?	Yes	No	No
18	Is there a limit on the amount a donor can contribute to a candidate?	Yes	Yes	Yes

Table 3. Bans and limits on income from private sources in Moldova, Indonesia, and Nigeria

#	Indicator	Moldova	Indonesia	Nigeria
19	Is there a limit on the amount a candidate can contribute to their own election campaign?	Yes	No	No
20	Is there a limit on in-kind donations to political parties?	Yes	No	Yes
21	Is there a limit on in-kind donations to candidates?	Yes	No	No
22	Are there provisions regarding political parties engaging in commercial enterprises?	Yes	Yes	Yes
23	Are there restrictions regarding political parties taking loans in relation to election campaigns?	No	No	No
24	Are there restrictions regarding candidates taking loans in relation to election campaigns?	No	No	No
25	Are donors to political parties or candidates subsequently restricted from participating in public tender or public procurement processes?	Yes	No	No
26	Are there provisions requiring donations to go through the banking system?	Sometimes	Sometimes	No

Source: Own elaboration based on IDEA data and national regulatory framework.

Yet, for some of the questions in Table 2, the answers might be misleading in terms of their implications for the fundraising behaviour of political parties during elections. This is because the nature of CFR stems not only from the presence or absence of certain restrictions but also from their interaction and the implementation capacity of the EMB, particularly when regulations are different for regular and campaign financing and this is not explicitly prescribed by law. The interplay between annual and campaign limits on political contributions to parties and candidates helps to illustrate this point.

In Indonesia, for instance, the absence of donation limits for elections does not imply the possibility for the donors to contribute limitlessly to the war chests of candidates, since the annual limit on political contributions to parties would still apply. Although such limits are not explicitly stipulated in the EC, they are still foreseen by the LPP. Accordingly, if a political party provides financial support to its candidates from the party central budget, donations are implicitly capped on an annual basis. Of course, this renders the control of financial flows between the party and candidates' accounts much more difficult, but a broader restriction should still apply. Yet, even with such a restriction in place, the LPP still leaves two wide loopholes. First, the LPP prescribes annual limits only for non-party members and corporations. Second, it stipulates that the annual caps apply to contributions provided to a party, not parties. Accordingly, becoming a party member frees a potential donor from any contribution restrictions. Likewise, non-party members and legal entities could contribute to many parties, which increases their overall influence over the political process. According to many observers, this was precisely the channel exploited by

wealthy individuals and groups either to fully capture or increase their influence within political parties, which contributed to the oligarchisation of Indonesian politics (Aspinall & Berenschot, 2019; Mietzner, 2007, 2015, 2016; Reuter, 2015; Robison & Hadiz, 2004; Tomsa, 2008).

In Nigeria, on the contrary, the lack of donation caps on both annual and election-related contributions to political parties makes the limit on donations to candidates almost meaningless (Olorunmola, 2016). If the party decides to support a candidate financially, the EC does not foresee any quantitative restrictions on the amount a certain donor can pour into party coffers (Centre for Social Justice, 2015). These funds can then be transferred to the candidate's electoral account, thus easily circumventing the donation limit for the candidate's campaign account. While this regulatory loophole is obvious, it has "survived" for quite a long time in the electoral legislation and the extent to which it is exploited by electoral competitors is not known. Furthermore, besides the failure to prohibit donations from several risky donor types and despite existing restrictions on corporate donations, companies do not shy away from contributing to political parties not only covertly but also in the open, without incurring any penalties (Kura, 2011, Ekpo and Alobo, 2018).

Despite having adopted a more elaborate CFR, Moldova experienced a similar problem after the 2017 amendments of EC when the limits on campaign contributions for individuals and legal entities (50 times the average monthly wage (AMW) and 100 AMW respectively) were set at levels different to annual contributions (200 AMW and 400 AMW respectively). Their enforcement, however, was highly problematic, since political parties could transfer their own funds from the regular party account to both party and SMD candidates' election accounts, a situation that occurred during the 2019 parliamentary elections. Thus, campaign contribution limits could be similarly bypassed, as in Nigeria's case. Unlike Indonesia, though, the LPP in Moldova defined the aggregate limit on donations from individuals and companies more precisely, so their annual contribution was confined within 200 AMW and 400 AMW respectively, regardless of how many parties they would have contributed to. This inconsistency was ultimately removed by the August 2019 amendments of the EC and LPP, which set the same limit on both annual and campaign donations.

This example has shown that inconsistencies between party and campaign financing rules may create regulatory loopholes that would allow parties and candidates to avoid compliance even if some restrictions on income from private sources are in place. While these kinds of inconsistencies are relevant for the control of financial inflows to party and candidates' accounts, they are more subtle compared to the lack of, or very weak, restrictions on contributions from certain types of donors such as corporations with state ownership, governmental contractors, anonymous contributors, or in-kind contributions. As Table 1 illustrates, the CFR in Indonesia and Nigeria do not cover, at all, many potential channels whereby financial resources from unknown or illicit sources may flow into electoral politics; therefore the legislative effort should target this kind of loopholes in the first place.

If one switches the focus from bans to donation limits - that is, how much individuals and corporations are authorised to contribute to parties and candidates during elections - one will notice that the three countries illustrate contrasting developments between the last two parliamentary contests.

Accordingly, between the 2014 and the 2019 parliamentary elections, Indonesia increased the contribution limits for individuals and businesses by a factor of 2.5 and 3.3 times respectively, meaning that CFR on income from private sources became more permissive, allowing parties and candidates to collect the necessary funds from a much narrower pool of sponsors.

Moldova, on the contrary, between the 2014 and 2019 parliamentary contests decreased donation caps by a factor of 10, for both individuals and legal entities. Hence, if during the 2014 parliamentary contest the limit was set at 500 average monthly wages (AMW) for individuals and 1000 AMW for legal entities, then during the February 2019 elections, the cap was 50 and 100 AMW respectively.[15] Moreover, following the 2019 amendments of the EC and LPP, the limits were further decreased to 6 and 12 AMW for individual and legal entities. While the effects of this radical shift towards much lower donations are difficult to assess, they will mostly affect those parties and candidates who used to rely on large contributions.

Finally, in Nigeria's case, contribution limits for both types of donors were the same in 2015 and 2019. However, given the devaluation of Nigerian currency between the two contests, the real value of a maximum donation was almost twice as low in 2019 relative to 2015. Note, however, that the Nigerian regulatory framework did not foresee donation caps on contributions to political parties either on an annual or campaign-related basis, which renders this legal tool ineffective for the control of private resources channelled to the candidates' election accounts. The recent amendments of the EC (July 2021), passed by both chambers (but still waiting for the president's endorsement), represents a radical shift from the previous unrealistically low caps. According to the draft law, physical and legal entities can legally contribute to the candidates' war chests 50 times more than previously. These developments are summarised in Table 4 and Figure 3.

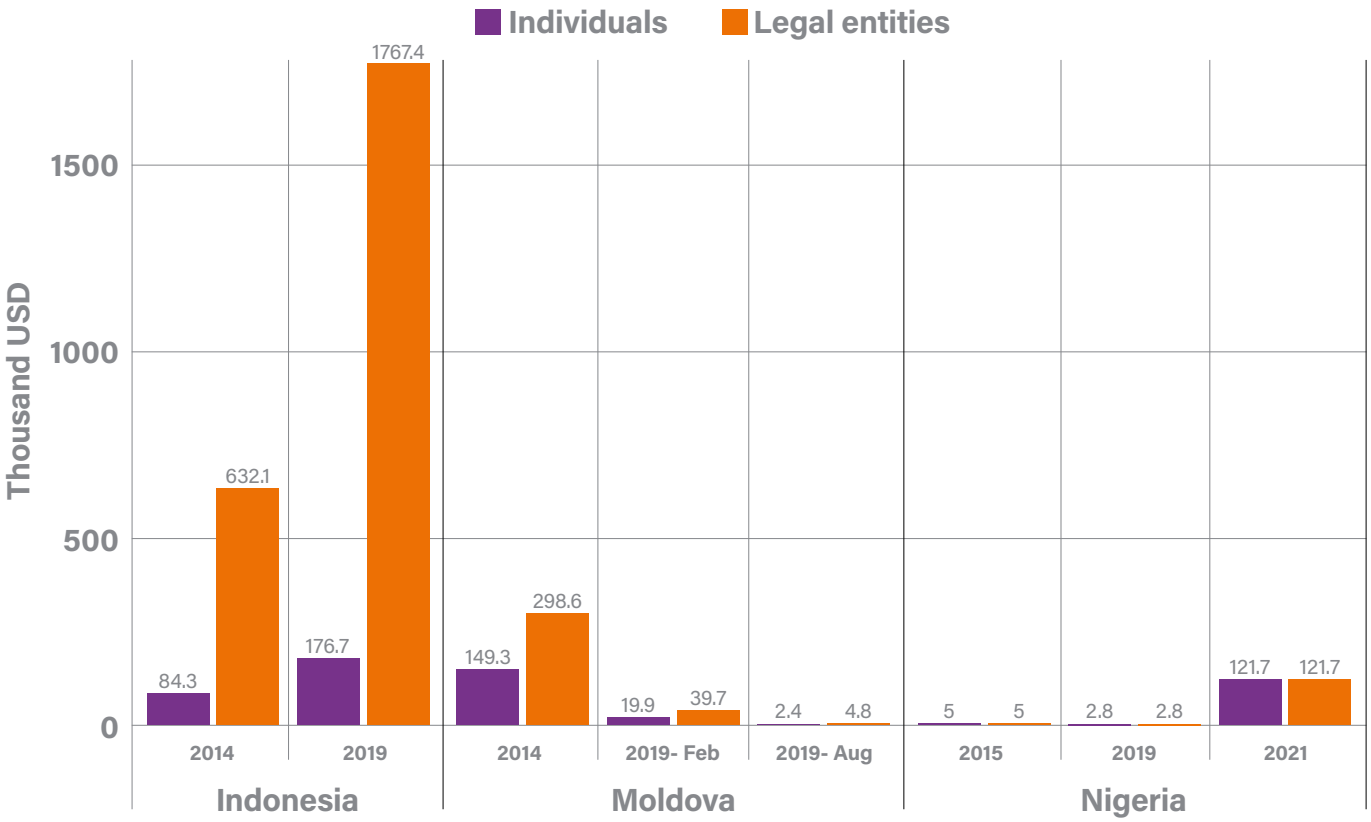
Table 4 shows the nominal value of donation limits in all three countries in local currency and USD dollars for the last two parliamentary elections, including the last amendments of EC for Moldova (August 2019), while Figure 3 graphically compares them by showing the nominal value of donation limits in USD.

Table 4. Donation caps for individuals and legal entities in Moldova, Indonesia, and Nigeria for the last two parliamentary elections / local currency

Country	Election year	Donation caps on physical entities / local currency	Donation caps on physical entities / USD	Donation caps on legal entities / local currency	Donation caps on legal entities / USD
Indonesia	2014	IDR 1,000,000,000	84,300	IDR 7,500,000,000	632,000
Indonesia	2019	IDR 2,500,000,000	176,700	IDR 25,000,000,000	1,767,000
Moldova	2014	MDL 2,086,000	149,300	MDL 4,172,000	298,600
Moldova	Feb-2019	MDL 348,750	19,900	MDL 697,500	39,700
Moldova	Aug-2019	MDL 41,850	2,400	MDL 83,700	4,800
Nigeria	2015	NGN 1,000,000	5,000	NGN 1,000,000	5,000
Nigeria	2019	NGN 1,000,000	2,800	NGN 1,000,000	2,800
Nigeria*	2021	NGN 50,000,000	121,700	NGN 50,000,000	121,700

Source: Own elaboration based on national regulations.
Note: * foreseen by the draft bill passed by parliament in July 2021.

Figure 3. Donation caps on individuals and legal entities in three countries for the last two parliamentary elections / thousand USD



Source: Own elaboration based on national regulations.
Note: The USD difference in donation caps in Nigeria between 2015 and 2019 is due to a currency depreciation and not to the lowering of caps as such.

As Figure 3 shows, the substantial increase in donation caps in Indonesia represents a move towards a CFR that makes the inflows of big money into the electoral process much easier than before. To a large extent, this demand is driven by the peculiarities of the electoral system (open list proportional representation) which implies a double competition – between political parties and between candidates of the same party. This, in turn, pushed the cost of electoral campaigns up significantly. Even leaving aside other regulatory loopholes, this shift reflects an increased demand for financial resources on be-half of the main political players.

In a similar vein, given the presence of many regulatory loopholes in the Nigerian CFR, there are few constraints on the influx of private campaign money into the electoral process, despite significantly tougher formal restrictions on campaign donations to candidates. Here, similarly, a combination of a multi-layered federal structure with a candidate-oriented electoral system appears to drive up the cost of elections, although most of it remains hidden and unaccounted for heretofore. While the recent draft amendments reflect the lawmakers' intention to incentivise open contributions by significantly increas-ing donation caps for both physical and legal entities, the success of this approach will also depend on other measures, especially the synchronisation between candidate and party contributions as well as between election and statutory party funding.

While Moldova has a more encompassing CFR relating to private income and recently switched to quite tight donation limits, the key

issue lies with the reliability and veracity of self-reported information on do-nations, which suggests that parties are not willing to share with the public the real identity of their fi-nancial backers. While the identity of party sponsors is disclosed or published and accessible on the EMB webpage, lavish donations made by numerous donors with a limited financial capacity remains a questionable financing practice.

Lessons for PLS

The analysis of regulations on income from private sources suggests that lawmakers, and CFR regula-tors more broadly, must pay attention to several aspects during the drafting process in order to mini-mise the number of regulatory loopholes:

a) To restrict campaign contributions fully or partially from a range of potential donors such as state-owned enterprises, public contractors, anonymous donors and other entities that have the re-sources and capacity to undermine the integrity and fairness of electoral competition.

b) To ensure consistency between party/party financing laws and electoral laws concerning the range of entities authorised to contribute to electoral accounts of parties and candidates, as well as dona-tion caps. The examples from all three countries have shown that the mismatch between party and election regulations is successfully exploited by electoral competitors and renders enforcement nearly impossible.

c) To set donation limits at a level that does not excessively distort political competition or allow only the preferences of the wealthiest sections of society to be translated into policy outcomes.

d) To set donation limits at a realistic level that matches income and political campaign expenditure needs in the country to prevent or (at least) minimise parties and candidates resorting to unofficial financing sources.

e) To explicitly limit membership fees in order to prevent exploitation of this channel to circumvent do-nation limits.

f) To explicitly limit campaign donations to both types of electoral competitors, that is, party lists and individual candidates, as well as to clarify the relationship between them contingent on the type of electoral system.

g) To explicitly formulate the legal requirement that a cumulative donation cap applies either on an an-nual or campaign basis, regardless of the number of parties one wishes to contribute to.

h) To clearly specify limits on the use of candidates' personal resources during election campaigns if such restrictions do not comply with the general limits on donations.

i) While the setting of contribution limits is a sensitive political issue, such limits must account for the economic and social background of the country in question. Preferably, they should be tied to cer-tain dynamic economic indicators (for example, the average wage) that would automatically adjust for inflation or other economic shocks. This will minimise the probability of political entrepreneurs tinkering with the rules in the short term and will create a more predictable and stable environment for party and candidate fundraising strategies.

2.3. Key issue 3: Regulation of election spending

The limitation of campaign expenses is usually underpinned by the normative argument of political equality – one person, one vote – which requires ensuring a level playing field between parties and candidates. Since election spending is considered one of the key factors affecting electoral perfor-mance, it generates a vicious circle in which the propensity of electoral competitors to outspend each other generates an upward demand for resources.

Accordingly, the role of spending limits is to increase the fairness of electoral competition, by preventing the competitors with the most resources from capitalising on their financial advantage, which otherwise would translate into unequal opportunities to compete for public office at individual and collective levels. Another argument in favour of spending limits is their implicit sanitising effect, not only on the integrity of elections but also on the integrity of the political process more broadly. Due to the excessive cost of election financing, largely driven by the inflows of big money, there is a visible citizens' deception with the institutional role of political parties given their failure to ensure a meritocratic selection of elected representatives or promote inclusive democratic participation. Hence, the role of spending limits is to help with rebuilding and promoting trust in the electoral process (Global Commission on Elections, De-mocracy & Security, 2012). Since they aim to reduce the demand for financing and the overall cost of politics, they are expected to diminish the incentives for parties and candidates to engage in illicit trans-actions to secure funding, thus mitigating the risks of becoming excessively beholden to particularistic interests. Hence, spending restrictions work in the same direction as donation bans and limits, with the only difference being that they target the demand side of the election process.

As in the case of private income, the control of campaign spending should consider the regulatory scope and its intensity. The scope of spending regulations refers to the range of spending restrictions (bans and limits), while the intensity refers to how much a party or candidate is authorised to spend during election and non-election periods when such limits are foreseen by law. Hence, a CFR allowing spending from a broad range of stakeholders and in larger amounts is more likely to negatively affect the fairness and integrity of the electoral process. Such an election spending regime is more likely to undermine the chances of all voices being heard within the campaign vortex.

Conversely, equality of opportunity and participation is more achievable if the CFR confines the flows of campaign money at the output side of the electoral process through bans and/or limits on campaign expenses. Again, while one should acknowledge the absence of a magic recipe to obtain the "most ef-fective" mix of spending regulations to ensure a level playing field, two general tools are aimed at achieving this goal: an aggregate spending limit on the election fund of parties and candidates, and a ban or limit on certain spending items such as vote buying or TV advertisements.

By employing this analytical framework, we explore spending regulations in Indonesia, Moldova, and Nigeria to assess the potential impact of these rules on electoral competition. Nevertheless, one should be aware that the enactment of a comprehensive CFR does not guarantee compliance without the support of strong and autonomous institutions responsible for implementation and ensuring compliance. Data from Table 4 illustrates the prevalence of sizeable loopholes in all countries, although Moldova is more advanced in terms of regulatory scope. The two common features that are shared by all three countries are the prohibition of vote buying and the presence of campaign spending limits for candi-dates. Yet, both types of regulation

markedly contrast with electoral practices on the ground. In Indo-nesia, vote buying represents a hallmark and a centrepiece of the electoral strategy employed by can-didates to attract votes in various types of elections (Aspinall et al., 2017; Aspinall & Berenschot, 2019; Muhtadi, 2019; The ASEAN Post, 2019; The Jakarta Post, 2019). A similar pattern is present in Nigeria, where vote buying began to expand after the introduction of competitive elections and became only more sophisticated over time in response to the changing electoral environment (Agbi and Saka-Olokungboye, 2019; Bratton, 2008; IFES, 2007; Lucky, 2014; Maclean and Egbejule, 2019; Olaniyan, 2020; Onuoha and Ojo, 2018).

In Indonesia and Nigeria, the flourishing of vote buying is usually explained by high poverty and ine-quality, which is propitious for the maintenance of clientelist exchanges between vote buyers and vote sellers in other institutional and political settings around the world (Brusco et al., 2004; Devadoss and Luckstead, 2016; Schaffer, 2007). While in Moldova vote buying is a less widespread practice, the last parliamentary and presidential contests witnessed an increasing number of instances in which electoral competitors were observed handing out gifts and various favours, a phenomenon that did not go unno-ticed by local and international election monitoring missions (OSCE/ODIHR, 2017, 2019, 2020; Promo-Lex, 2015, 2017b, 2019, 2020). Accordingly, vote buying appears to be a factor that drives up the cost of elections significantly. Furthermore, existing sanctions do not seem to contain it, even though it is not only administratively but also criminally punishable in all countries.

Table 5. Bans and limits on party and campaign spending in Moldova, Indonesia, and Nigeria

#	Indicator	Moldova	Indonesia	Nigeria
1	Is there a ban on vote buying?	Yes	Yes	Yes
2	Are there limits on the amount a political party can spend?	Yes	No	No
3	Are there limits on the amount a candidate can spend?	Yes	Yes	Yes
4	Are there limits on the amount that third parties can spend on election campaign activities?	Yes	No	No
5	Are there limits on traditional media advertising spending in relation to election campaigns?	No	Yes	No
6	Are there limits on online media advertising spending in relation to election campaigns?	No	No	No
7	Do any other restrictions on online media advertisement (beyond limits) exist?	No	No	No

Source: Own elaboration based on IDEA database on political financing.

The second feature of the spending regimes shared by all three countries is the presence of spending caps on candidates' election funds. Yet, Nigeria and Indonesia do not limit party and campaign expenses at all, which leaves a huge loophole in spending regulations. The mismatch between spending regulations applied to parties and candidates creates a legal possibility to circumvent candidates' expenses during elections if parties get involved on the candidates' behalf. While this involvement is less likely in Indonesia, due to the open list proportional representation system that pits the candidates of the same party against each other, the lack of a spending limit on party expenses still represents a sizeable loophole. Furthermore, in Indonesia, spending limits for candidates depend on the type of election and are set by the relevant electoral commissions in charge of those elections accounting for the number of registered voters, the land area, and the regional living costs.[16] Yet these restrictions do not apply to the parliamentary elections. Thus, the election budgets of political parties and candidates are restricted only by the depth of their campaign war chests, which creates an advantage for the most affluent candidates and undermines the level playing field.

Unlike Indonesia, this loophole may be exploited much more fruitfully in Nigeria, where the first-past-the-post (FPTP) electoral formula does not generate such a competitive environment during the campaign itself, since candidates from the same party do not have to compete in the same SMD once the nomination process is complete. Nevertheless, the FPTP system induces a tougher competition among the potential candidates for the party nomination or approval at the previous stage of electoral competition, thus increasing the aggregate cost of campaigning (Ayeni, 2019; Okeke & Nwali, 2020; Olorunmola, 2016, 2017; Onah & Nwali, 2018). Another opportunity to avoid compliance with spending limits is the lack of reporting obligations, namely for candidates. Hence, while candidates are subject to both contribution and spending caps, they are not compelled to report their campaign expenditure. On the contrary, only political parties are subject to reporting obligations, but they are not subject to either donation or spending caps (EU Election Observation Mission, 2019). Such inconsistencies in the CFR make any attempt to contain electoral expenses virtually impossible. Unfortunately, the 2021 draft amendments of the electoral law did not eliminate this loophole. While the spending limits for the House and Senate candidates were increased, the reporting obligations of candidates were not stipulated. Even assuming that all candidates would comply with spending limits, the total costs of campaigning would still be very high if accounting for all types of elections held at various administrative levels.

To understand why this is the case, Table 6 provides a simulation of total campaign spending for a single political party that would file candidates in all SMD in the Nigerian national parliamentary elections. Since the spending limit is candidate based, we multiplied it by the total number of seats in the lower and upper houses, thus obtaining the spending limit for a single political party. Next, we divided this amount by the turnout figures and the exchange rate to USD. The simulation results provide the cost per vote incurred by a single party if all its candidates fully abided by the spending caps in each SMD for the 2015 and 2019 parliamentary contests, and abided by the spending limits foreseen by the 2021 amendments.[17]

Table 6. The simulated electoral costs incurred by a single political party filing candidates in all single member districts and complying with spending limits for parliamentary elections in Nigeria

Year	Chamber type	Candi-dtes / seats	Spending cap per candidate	Total spending NGN	Total spending USD	Total votes	Spend-ing/ vote USD
2015	Senate	109	40,000,000	4,360,000,000	22,016,074	29,432,083	0.75
2015	House of Representatives	360	20,000,000	7,200,000,000	36,356,819	29,432,083	1.24
2015	Both Chambers			11,560,000,000	58,372,892		1.98
2019	Senate	109	40,000,000	4,360,000,000	12,181,935	27,723,595	0.44
2019	House of Representatives	360	20,000,000	7,200,000,000	20,116,957	27,291,672	0.74
2019	Both Chambers			11,560,000,000	32,298,892		1.17
2021*	Senate	109	100,000,000	10,900,000,000	26,585,366	27,723,595	0.96
2021*	House of Representatives	360	70,000,000	25,200,000,000	61,463,415	27,291,672	2.25
2021*	Both Chambers			36,100,000,000	88,048,780		3.21

Source: Own calculation based on Election Code, number of voters participating in elections and exchange rate to USD.
Note: * According to the 2021 draft amendments of the Electoral Law.

This example shows that for the national parliamentary elections alone a single compliant party would have spent almost USD 2 per vote in 2015, USD 1.2 (due to the devaluation of the Naira) in the 2019 elections, and USD 3.2 per vote under the new spending restrictions. While the increase in spending limits might stimulate candidates to spend in the open, the lack of reporting regulations makes this expectation unlikely to be realised. To better grasp the magnitude of campaign spending, it is useful to highlight that for the 2015 presidential elections the combined estimated costs incurred by the top two candidates amounted to NGN 11.66 billion,[18] while the EC limits campaign spending of presidential candidates to NGN 1 billion (Centre for Social Justice, 2015). Considering the number of parties competing for the national legislature, presidential and gubernatorial elections, elections to state assemblies and local governments, then the overlapping expenses of thousands of candidates competing for various elective offices appear to be quite prohibitive for ordinary citizens who ultimately bear the cost but who are barred from meaningful participation, given the high entry barriers and expensive campaigns.

Moldova followed a similar trend regarding the cost of parliamentary elections, although its party-centred electoral system makes political parties the key subject of campaign spending restrictions. The constantly increasing demand for

Table 7. Evolution of spending limits for parliamentary elections in Moldova

Year	Spending limit party MDL total	Spending limit USD per vote	Spending limit candidate MDL total	Spending limit USD per vote
2009	12,000,000	0.40	500,000*	0.017*
2010	21,664,445	0.64	2,166,444*	0.064*
2014	55,000,000	1.33	2,000,000*	0.048*
2019	86,871,855	1.76	1,845,000**	1.90**
2021	20,707,700	0.37	NA	NA

Source: CEC's decisions №. 2067 as of 6 February 2009; №. 3566 as of 5 October 2010; №. 2692 as of 7 October 2014; №. 1989 as of 21 December 2018, №. 4831 as of 12 May 2021.
Note: *applies to independent candidates; **applies to party-nominated and independent candidates competing in SMD.

financial resources is illustrated by the evolution of spending limits in Table 7. Yet it should be mentioned that until very recently the EC did not foresee campaign spending limits as such. This task was delegated to the Central Election Commission (CEC) which decided the size of party campaign funds for every parliamentary contest on an ad hoc basis. While for the 2019 parliamentary contest it was calculated as a coefficient representing 0.5% of AMW per registered voter, multiplied by the number of officially registered voters (Comisia Electorală Centrală, 2018a), for the early parliamentary elections held in July 2021 it represented the equivalent of 0.05% of the budgetary revenue (Comisia Electorală Centrală, 2021).

While not a single party ever reached the ceiling (as shown in officially declared expenses), this still illustrates the increasing appetite to spend more from one contest to the next. Hence, between the 2009 and 2019 parliamentary elections, there is a more than seven-fold nominal increase in party spending caps. Even if one accounts for the devaluation of the local currency, this increase is still more than four times higher in 2019 than in 2009. Since the 2019 elections were held under a mixed electoral system, total campaign costs increased at the expense of candidate spending in SMD. Thus, the limit of aggregate spending per vote for a single party (national constituency and SMD) in 2019 was around USD 3.66, approximately ten times more than for the 2021 snap parliamentary elections which discontinued this ascending trend. This suggests that the application of a mixed electoral system to the 2019 Moldovan elections enhanced the competitiveness of wealthy parties and candidates by allowing them to spend for a single voter twice – at national and SMD levels. As a result, the weight of campaign funding as a determinant of electoral performance got even heavier. Note, however, that the significant lowering of spending caps in 2019 (in effect for the 2021 parliamentary elections) was possible not only because of the return to proportional representation. It was a politically motivated decision pushed by the ACUM representatives to undercut the financial advantage of the former incumbents by changing the calculation formula for the upper ceiling on campaign expenses.

To a large extent, the push for more permissive spending limits in Moldova (similar to Indonesia and Nigeria) reflects a shift towards a capital-intensive style of campaigning, involving heavy use of various media outlets to promote party and candidate messages through commercial advertising. In Moldova, this is well reflected in the structure of campaign budgets. For instance, the share of paid-for media advertising in the 2014 and 2019 parliamentary contests accounted for 90% and 80% of all declared expenses, respectively. Furthermore, most of these expenses were consumed by TV advertising (Promo-Lex, 2014, 2015, 2019). Despite daily limits (two minutes for each electoral competitor on each broadcaster) on paid advertisements in broadcasting media (Comisia Electorală Centrală, 2014, 2018b), the inflated advertising prices on politically affiliated TV channels (which also enjoyed the largest audiences) considerably undermined the equal playing field, since only wealthy competitors could afford to pay such hefty prices (Gututui, 2019; Unimedia, 2010, 2014).

This illustrates that existing regulations in all three countries allow electoral competitors to exploit various loopholes to circumvent spending restrictions. Yet not all spending items depicted in Figure 3 are regulated, which leaves additional room for parties and candidates to spend on unaccounted items. Among the traditional channels, the lack of clearly defined restrictions on third party spending is one of the greatest concerns. Even in Moldova, where third party spending is prohibited altogether, the use of party-affiliated charitable foundations to clean up and promote the image of politicians represents a topic that drew the attention of media and public opinion (Anticoruptie.md, 2017a, 2017b; Cebotari, 2019; Europa Libera, 2017; Newsmaker.md, 2020; Protv.md, 2019).

Furthermore, the expansion of the internet and new media represents another unrestricted channel exploited by parties and candidates, especially given the challenges faced by the monitoring agencies to track online advertisement expenditures (Agrawal et al., 2021). In Indonesia, the massive increase in the use of social media platforms made them very attractive to parties and politicians (Australian National University, 2019; Potkin and Costa, 2019; Thornley, 2014; Ufen, 2010). The same holds for Nigeria's elections, where social media platforms are viewed both as mobilising tools for political participation and as a means to attack political opponents (Bello et al., 2019; Mustapha and Omar, 2020; Od and Ea, 2018; Olabamiji, 2014). Hence, if left unchecked, these campaign spending channels might further reinforce existing disparities in financing and undermine the level playing field.

Lessons for PLS

The assessment of campaign spending regulations in these three countries suggests that to increase the competitiveness and fairness of the election process at the output side, a few issues must be considered by lawmakers during the drafting process that are specific to electoral outlays:

a) To set restrictions on the electoral spending of third parties on behalf of political parties and candidates during election campaigns. This aspect is neglected in Indonesia and poorly enforced in Moldova and Nigeria.

b) To introduce spending limits for all types of electoral competitors, depending on the type of electoral system. Preferably, these limits should be calculated as amount per voter and tied to a dynamic indicator such as an wage-based coefficient that is flexible and simple to use regardless of the complexity of the electoral system.

c) To ensure consistency between party and candidate electoral outlays to prevent unaccounted spending of parties on candidates' behalf and vice versa.

d) To reduce demand for campaign resources, lawmakers should consider introducing daily or campaign-based restrictions on media advertising, such as TV advertisements and/or other expensive categories.

e) To increase compliance with electoral spending caps and to reduce demand for resources, lawmakers should consider the provision of free or subsidised and fair access to radio and television during election campaigns.

f) Spending limits should be realistic in order to allow electoral competitors to convey their message but also to prevent the wealthiest competitors from capitalising on their financial advantage and distorting electoral competition. Yet setting the optimal level of spending, however, is highly context dependent.

2.4. Key issue 4: Transparency of campaign funding

Transparency of CFR is justified by the prevalence of public interest over the privacy of donors in financing elections. Citizens need to make informed choices, based not only on the platforms of electoral contestants. They also need to know the identity of the financial backers of parties and candidates since this might affect the course of public policy once parties financed from these private pockets get elected.

Likewise, transparency works as a tool that simplifies the revision of incomes and expenditures, and thus helps not only with enforcing existing regulations but also in reducing the cost of campaign funding monitoring and oversight. It is also the most sensitive issue of the electoral process. Besides the unwillingness of parties and candidates to open their financial books to the general public, it might also discourage some potential donors to contribute if they are reluctant to disclose their identity. Here we look at two sides of transparency, namely the reporting and disclosure of campaign revenue (including the identity of donors), and campaign expenses.

Among the three countries, Moldova has the most advanced system of transparency in both aspects. Under current provisions of the EC, electoral competitors (party lists, independent candidates) are compelled to open a designated election account and present weekly to CEC quite detailed financial reports including information on campaign donations and expenses in a structured format. CEC then publishes these reports on its webpage. As far as donations are concerned, parties are obliged to indicate the donor's name, occupation, amount, source of income, and date of contribution. Such disclosure requirements were introduced during the April 2009 parliamentary elections, although they were not foreseen by the EC at the time. While the legal base for their introduction was provided by the LPP, the reporting and disclosure requirements were not clearly specified (Lipcean, 2009).

Paradoxically, however, campaign financing reports submitted by parties during the parliamentary contests held in 2009-10 contained many more details on the donors' identity, including the birth year, workplace, residence, and personal ID. This allowed investigative journalists and civil society to question the contribution capacity of many sponsors who generously contributed to campaign war chests and to raise the issue of bogus contributors used by parties to shield the real ones (Jurnal de Chişinău, 2010; Lipcean et al., 2010; Timpul, 2009). As a result, parties fought back by restricting access to donors' identity data on grounds related to personal data protection. Furthermore, they felt threatened by the CEC regulations designed to limit the cash donations (Monitorul Oficial Nr. 32-37, art. 249, 2016), which also triggered strong feedback. They challenged the CEC decision

in court, and it was ultimately ruled void by the Supreme Court (Monitorul Oficial Nr. 340-351, art. 1765, 2017). Ironically, while PDM was the party most affected by these regulations, the CEC decision to limit cash donations was challenged by a few fringe parties that did not receive donations at all (Rață, 2018). The cap on cash donations was nevertheless reintroduced in 2019 at the level of 3 AMW annually (Monitorul Oficial Nr. 260 art. 361, 2019).

Despite improved transparency requirements, the reliability of campaign reports and the issue of bogus donations have became more salient during recent years. Along with a substantial increase in the amounts collected by the most well-resourced parties, journalistic investigations uncovered plenty of instances in which donors were not aware of their contributions or found it difficult to justify the lavishness of their donations relative to their income (Rise Moldova, 2018). Likewise, the journalistic investigations linking the PSRM campaign funding to offshore money (Rise Moldova, 2016), or the leaked tape from the party meeting of a PDM local branch, revealing how party members are requested to sign donation sheets (JurnalTV, 2018a, 2018b), indicate a disconnection between what is officially reported and how the fundraising mechanism works on the ground.

The transparency of campaign spending raises similar challenges. Given the lack of a clear definition of what constituted campaign expenses, between 2009-15 parties and candidates had free rein in their reporting. Except for the prohibition of vote buying, and the prohibition on spending money outside electoral accounts and without the consent of the election contestants, the EC lacked more precise reporting provisions on electoral spending. It was only in 2015 that it provided for a mandatory list of spending categories to be indicated in party financial statements.[19]

While these amendments contributed to higher party accountability and increased their compliance, the alternative assessments of campaign expenses demonstrate the reluctance of parties and candidates to provide complete data on campaign outlays. Whenever possible parties tended to under-report on those spending items which were hard to trace, especially regarding event organisation, consultancy, personnel, or transportation costs (Promo-Lex, 2014, 2017b, 2019, 2020). Hence, while there is visible progress, transparency of campaign spending is subject to the same objections as donations – accuracy and reliability of self-reported data by electoral competitors.

As in Moldova, Indonesian legislation requires both political parties and candidates to report on their electoral campaign finances at three stages. First of all, they are required to present to the General Election Commission (GEC) a preliminary report on electoral campaign funding no later than 14 days before the first campaign meeting (art. 334 of the EC). During the campaign, they are also obliged to report on donations, and finally, just one day after the elections have taken place, they are obliged to provide a final report with both income and expenses. Reports do not have a standardised format, depending more on the personal preferences of each party or candidate's treasurer or accountant.

According to art. 335 of the EC, audits of reports should be made public no later than 10 days from the report's receipt by the GEC, although the law says nothing about where or for how long. This clearly poses important problems. First of all, both reports and audits, which tend to be very general (for instance, not itemised), are published on the website of the GEC, but not always, and neither on time nor in the most accessible manner.

Secondly, time (just 10 days) and resources – both human and financial – constrain the Electoral Supervisory Body (ESB) from conducting any type of investigation beyond the formal one. The auditing itself is extremely formal; the ESB mostly limit themselves to seeing whether the "declared" donations or expenses are legal, under the limit and within the timeframe allowed. In this regard, Indonesia Corruption Watch continuously shows that most major parties under-report their campaign funds (2009). If we add to this the fact that the information in the reports is extremely aggregated, and that "because much campaign income and spending is done via informal campaign teams, who are not required to provide campaign income and expenditure reports as part of the financial reporting process" (Ufen, 2014: 105), we can then understand the limitations faced not just by the oversight authorities, but also by the courts and citizens themselves.

Finally, campaign finance in Nigeria is, by far, the least transparent of all the three countries compared here. Also, the law itself is full of dispositions which are both unclear and contradictory (Eme and Anyadike, 2014). For example, while parties are obliged to present annual financial reports of both income and expenditure, it is for the Independent National Electoral Commission (INEC) to decide the form in which they will do it. Electoral expenses returns, including both quantification and itemisation of expenditures are to be submitted separately within six months of the election (but it is not clear if the returns should also include income). While such reports need to be audited, parties seem to be free to choose the firm in charge of undertaking the audit. Interestingly, the INEC does not include any reporting obligations for candidates, but just for political parties "sponsoring a candidate". These are required to report any individual or corporate donations they might have received within three months of the official announcement of the electoral results (art. 93.4 EC). This loophole, however, was later partially corrected by the INEC Guidelines and Regulations for Political Parties, first published in 2013. However, while section 12 of the Guidelines requires "all candidates" to disclose a record of both income and expenditure in the format prescribed by the Commission, it remains more a recommendation than a legal obligation.

In terms of publicity, the Nigerian legislation is unclear. Thus, while INEC reports and audits are published in three national newspapers, this does not seem to be the case with parties' annual financial statements. Moreover, according to art. 92.6 of the EC, it is up to parties to decide if their electoral spending reports are published in two national newspapers or not. This might not only allow for reports to be ignored, given that it will be sufficient to get them published in any national newspapers (even if their circulation is small), but this will also make it difficult for historical investigations to be undertaken. Moreover, in practice reports are not published yearly, or published only with several years delay.

Finally, the EC also obliges INEC to make available for "public inspection" the audited reports of electoral expenses submitted above. Art. 92.8 of the EC even requires the INEC to make available the names, addresses, occupations of donors, and the amount contributed to a party. However, this seems to be in contradiction to art. 92.3, as audited returns there seem to refer exclusively to electoral expenses, not income. The main problem, however, is that any individual or journalist for example interested in political party finance is required to physically go to INEC's headquarters or state offices "during regular business hours", instead of having all the necessary information available online. If to this we add the existence of media co-optation by the political parties (Ohman, 2014) and lack of social interest, then we can understand the reason behind the lack of appropriate financial scrutiny of electoral campaigns in Nigeria.

Lessons for PLS

The analysis of transparency regulations reveals that for a fully-fledged transparency regime to work, lawmakers must consider, at least, the following aspects:

a) The reporting mechanism for CFR must cover both income sources and campaign expenses.

b) The reporting mechanism must stipulate obligations and ensure consistency between party and candidate reporting to prevent the circumvention of transparency requirements, as was best illustrated by the case of Nigeria.

c) Reporting mechanisms for campaign financing must align with party reporting for the non-electoral period and should ensure consistency between the reporting of income and expenditure. This is expected to create and embed a good reporting practice, thus contributing to increased transparency and the professionalisation of political parties.

d) The reporting of campaign donations must be disaggregated so that individual contributions can be identified based on the donor's identity and amount.

e) Similarly, the reporting of campaign expenses should be performed in a reasonably disaggregated format to allow oversight bodies to trace the destination of campaign spending.

f) The itemised structure of campaign expenses should be based on functional categories such as expenses on electoral meetings and events, advertising expenses (for example, TV, radio, other electronic media, written press, billboards), promotional materials (for example, party manifesto, posters, flags, T-shirts), transport of persons and goods, opinion polls and consultancy services, and maintenance (for example, office renting, or personnel remuneration).

g) The disclosure of campaign funding declarations, including the donors' sheets, must be performed in a timely manner in order to allow voters to make informed choices also based on the electoral competitors' financial credentials.

2.5. Key issue 5: Campaign finance control: oversight and sanctions

The control of campaign financing is the most troublesome area of the regulatory regime, since political actors must limit their own fundraising and spending by enabling an external body to oversee their behaviour and by envisaging sanctions for funding related breaches. Furthermore, for the control to be effective, other conditions should be met.

First, the oversight body must be independent of political control and must possess sufficient powers and resources (legal, financial, administrative and human) to carry out its duties. Second, the regulatory regime should be backed up by a system of proportional, dissuasive and credible sanctions corresponding to the severity of violations. More importantly, both conditions should be met at the same time. An independent body without powers or resources would be limited to formal checks on CFR. Conversely, a body with extensive powers but politically subordinated might be easily transformed into a tool for the harassment of political opponents. Likewise, the lack of deterrent sanctions would do little to discourage parties from getting engaged in illicit funding even if there is a strong oversight mechanism. Moreover, even if institutions and sanctions exist, "even the best formal regulations come to nothing if they are not enforced" (Ohman, 2014). By employing this analytical framework, we look at the institutional and regulatory design of control and enforcement. None of these conditions are fully met in any of the three countries analysed here.

2.5.1. Oversight

In Moldova, while the CEC is formally independent, the procedure by which its members are nominated by political parties and the president makes it a fully partisan body.[20] The politicisation of the CEC became more obvious following the 2010 amendments of the EC which increased the share of CEC members appointed by parliamentary parties (Official Gazette No 108-109, art: №. 332, 29.06.2010). The CEC decisions are adopted by the majority of its members, that is, five out of nine votes. While the collective nature of the CEC decision-making process provides more safeguards against being deployed as a harassment tool targeting political opponents, it also creates more favourable conditions for decision-making deadlocks. It also does not completely rule out the possibility of adopting partisan decisions against or in favour of some political actors, given the simple majority rule used to adopt such decisions. There are sufficient instances that raise doubts over the impartiality of the CEC campaign funding decisions, either due to the application of disproportionate sanctions against some electoral contestants or the failure to apply the same punishment against other electoral participants committing similar breaches (Lipcean, 2017).[21]

Although political autonomy remains an issue, the weakness of oversight stems from the lack of an extensive legal mandate to supervise party and campaign funding. Before 2015, the CEC had extremely limited powers in this respect. This situation has slightly changed following the 2015 amendments of the EC that expanded the range of powers that can be used to oversee campaign funding (Official Gazette No 93, Art.134, 14.04.2015). The CEC was given the right to (among other powers) request additional information from other state bodies, to record financial violations, to draw up protocols for misreporting or non-reporting in due time, and to apply directly harsher sanctions for campaign violations (Article 22/2). While on paper this looks encouraging, in reality, the progress is much more limited since the new powers mostly concern the formal checks on campaign financing. According to electoral legislation, the CEC has neither powers nor resources to conduct substantive checks on the origins of financial resources or the destination of campaign expenses. In cases of alleged financial breaches, it is dependent on the expertise and resources of other state bodies such as the General Police Inspectorate (Ministry of Interior) and Tax Inspectorate (Ministry of Finance). Yet none of these are politically independent, which undermines the CEC's capacity to adopt unbiased decisions in due time.

Crucially, the mix between the resource shortages, dependence on other institutions and the limited powers considerably affects the CEC operating style, which is retroactive. It means that CEC reacts to and examines only the mutual complaints lodged by parties themselves and does not act ex officio. Heretofore, it embraced a cautious approach by abstaining from undertaking proactive supervision of campaign finances and justified this strategy by the lack of encompassing powers, which is partially true. However, another and perhaps a more pertinent reason is its willingness to minimise any allegations of partisanship in decision-making. Yet it is precisely this approach which renders the oversight mechanism toothless and ineffective in constraining parties to play by the rules.

In Indonesia, in addition to a state court that might review, judge, decide, and settle any lawsuit against election criminal violations (art. 482 EC), the main two oversight authorities in the field of electoral campaign finance are: the Election Supervisory Body (ESB) and the General Electoral Commission (GEC), with five and seven members each. The members of both are appointed by parliament out of a list of 10 and 14 candidates proposed by a committee of experts to the President. While

this is designed to guarantee the oversight authorities' independence, in practice this is not always the case. Thus, recently one of the ESB members was caught by the Anti-Corruption Agency (the so-called Corruption Eradication Commission) receiving money from a party to which he was secretly connected (Perludem, n.d.). This clearly shows the limited capacity of the GEC and how, sometimes, other institutions might "take over [its] enforcement and sanctioning tasks" (Ufen, 2014: 107).

While the ESB is in charge of examining, reviewing and deciding on any offences related to electoral campaign funding (Art. 95c of the EC), the GEC is competent for implementing the ESB's decisions, applying sanctions as well as appointing public accountants to undertake the audits on electoral campaign funding (Mobrand et al., 2019: 23). The GEC is also responsible for receiving candidates' election campaign funding reports and making them public. Notwithstanding what has just been said, neither the ESB nor the GEC undertake any substantive investigations, limiting themselves to purely formal control (Ufen, 2014: 115). The fact that the EC is at times not clear about who is doing what makes any detailed supervision very difficult (Perludem, n.d.).

The above-cited legal framework, and the limited resources (especially in terms of personnel) that Indonesian oversight authorities have, clearly point to the mainly formal control exercised over political parties' funding. Still, this does not mean that, as it happened in 2004 when the ESB's assistance committee[22] discovered fictitious donations made to presidential candidates for the value of IDR 14.5 billion - approximately £739,000 (Putra, 2021: 72), oversight cannot be effective from time to time.

In Nigerian context, the INEC, constituted by a chairman and twelve commissioners all appointed by the President of Nigeria, is not only the main electoral management body, but also the main oversight authority in terms of campaign finance as stated in art. 15 of the Third Schedule of the 1999 Nigerian Constitution after its revision in 2010. According to Nigeria's Supreme Norm, the INEC has the power to monitor party finances and arrange for the annual examination and auditing of the funds and accounts of political parties, as well as publish a report on these examinations and audits for public information.

The EC, however, falls short and simply includes a monitoring right, although not an obligation, for the INEC. Thus, art. 85 of the EC allows the INEC to request all information regarding contributions received by or on behalf of the party as well as the ability to publish those reports (see above). In practice, and given the contradiction between the Nigerian Constitution and the EC, the INEC fails to fulfil its constitutional obligation to the point that, on many occasions, parties fail to even report financially at all. A simple look at the website of the INEC, where information on party funding oversight (that is, reports, audits, and so on) is conspicuous by its absence, seems to suggest that the lack of both material and personnel resources is to be blamed for this situation. On top of this, there is a lack of political will, especially from the ruling party, which is able to appoint its members via the President, who also controls its budget.

Still, it is important to note here that the new 2021 Electoral Law has introduced a new obligation, which is that the INEC has to publish the parties' annual reports within 30 days of receiving the auditing results.

The fact that the National Assembly, to whom the INEC is legally required to report when a "party fails to properly keep and report financial accounts", "does not have sufficient legal authority to reprimand the INEC when failing to do so" (Chuck et al., 2019: 15), has condemned any attempts of financial monitoring to failure. The fact that parties are not being provided with

public funds has also been a reason why they have refused to fulfil their legal obligations.

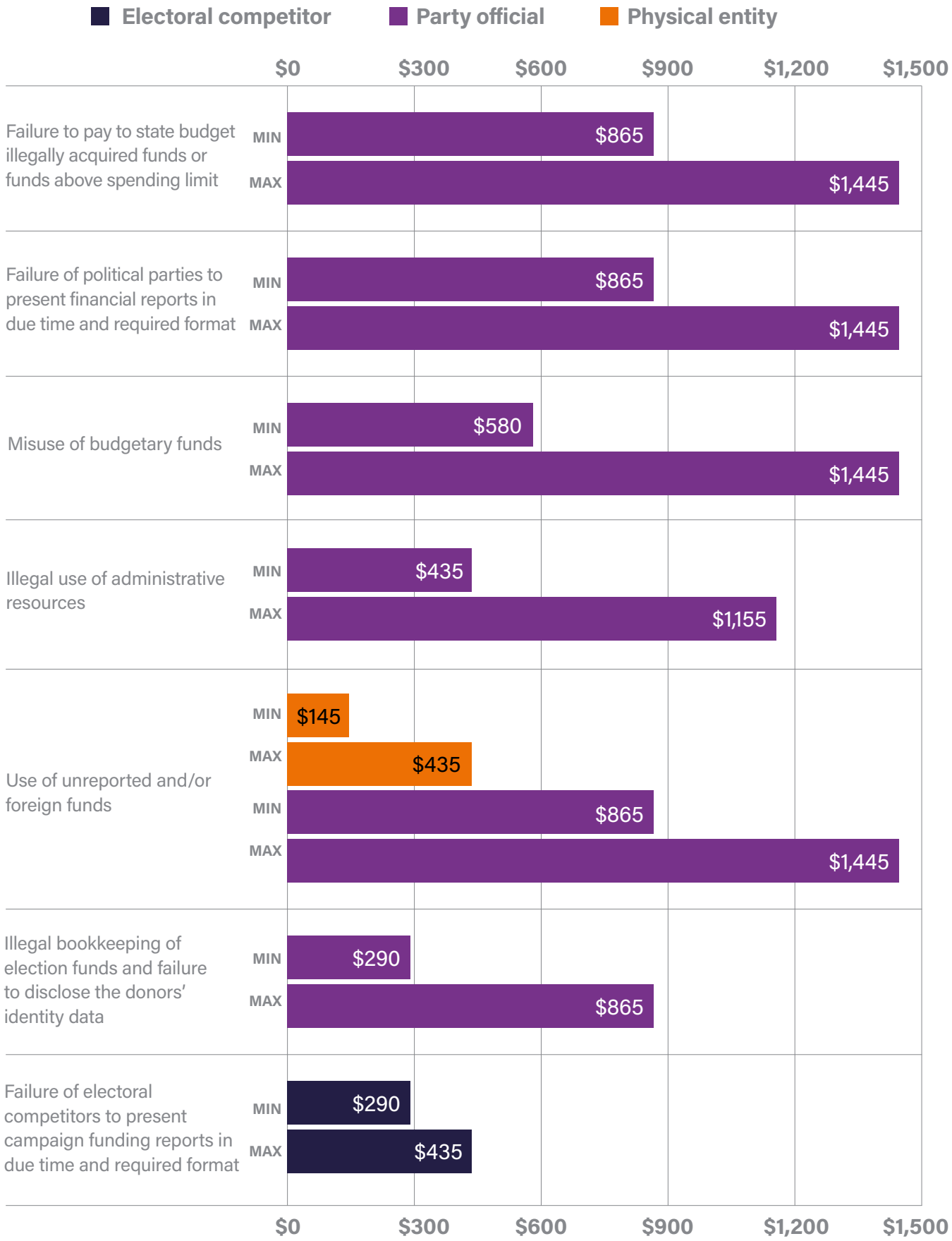
All the three cases analysed here show that important improvements are needed in terms of oversight. However, one should also not forget that having well designed regulations per se is a necessary but not a sufficient condition. A proper and timely implementation is also required for credible and efficent oversight.

2.5.2. Sanctions

Another reason for the ineffective control of campaign funding is the lack of proportional and comprehensive sanctions. In Moldova, from independence until 2008, the range of sanctions for campaign funding breaches was limited to exclusion from the race, and the seizure of illicit funds if electoral competitors were found to have used foreign or undeclared resources. It was, however, never applied until the 2014 parliamentary contest.[23] The introduction in 2008 of warnings as an explicit penalty for various misdemeanours reduced the risk for parties of being punished, since it provided the CEC with the possibility of avoiding taking hard decisions (Official Gazette, №. 83, art 283, 7 May 2008). As a consequence, it was overused, which is why the GRECO assessment of the regulatory framework pointed out "that no sanctions (apart from warnings) have been imposed on parties or election candidates" (GRECO, 2011, p. 23). While the range of violations for which parties could be excluded from the electoral race (such as overspending) was extended (Official Gazette No 108-109, art: №. 332, 20 June 2010), enforceability was extremely problematic, either because at that moment there was no definition of campaign expenses (as during the 2010 parliamentary contest), or due to very high spending caps set by the CEC for the 2014 and 2019 parliamentary elections.

In 2015, the sanctioning regime underwent a substantial revision through the amendment of the Electoral, Contravention, and Criminal Codes (Official Gazette №. 93, Art.134, 14 April 2015). Yet despite this expansion, the gamut of sanctions remains inconsistent and still disproportionate relative to the severity of financing violations. For instance, the withdrawal of the total state subsidy as punishment is not linked to clearly specified financing breaches. Instead, CEC can withdraw it after two repeated warnings during the same election campaign. Likewise, the EC does not specify under which conditions the withdrawal of public funding is used as the base or complementary sanction, which creates room for abuse. Conversely, the use of unreported and/or foreign funds, or the exceeding of spending caps, can trigger an immediate cancellation of the candidate's registration and their exclusion from the electoral race, which also generates room for its discretionary application. An obvious flaw of the current system stems from the overlapping of sanctions applied for the same infringement foreseen by the Contravention and Criminal Codes. Figures 2 and 3 present the situation for both codes by linking the type of infringement to the nature (monetary versus non-monetary) and severity (level of fines, jail terms, bans from holding public office) of punishments.

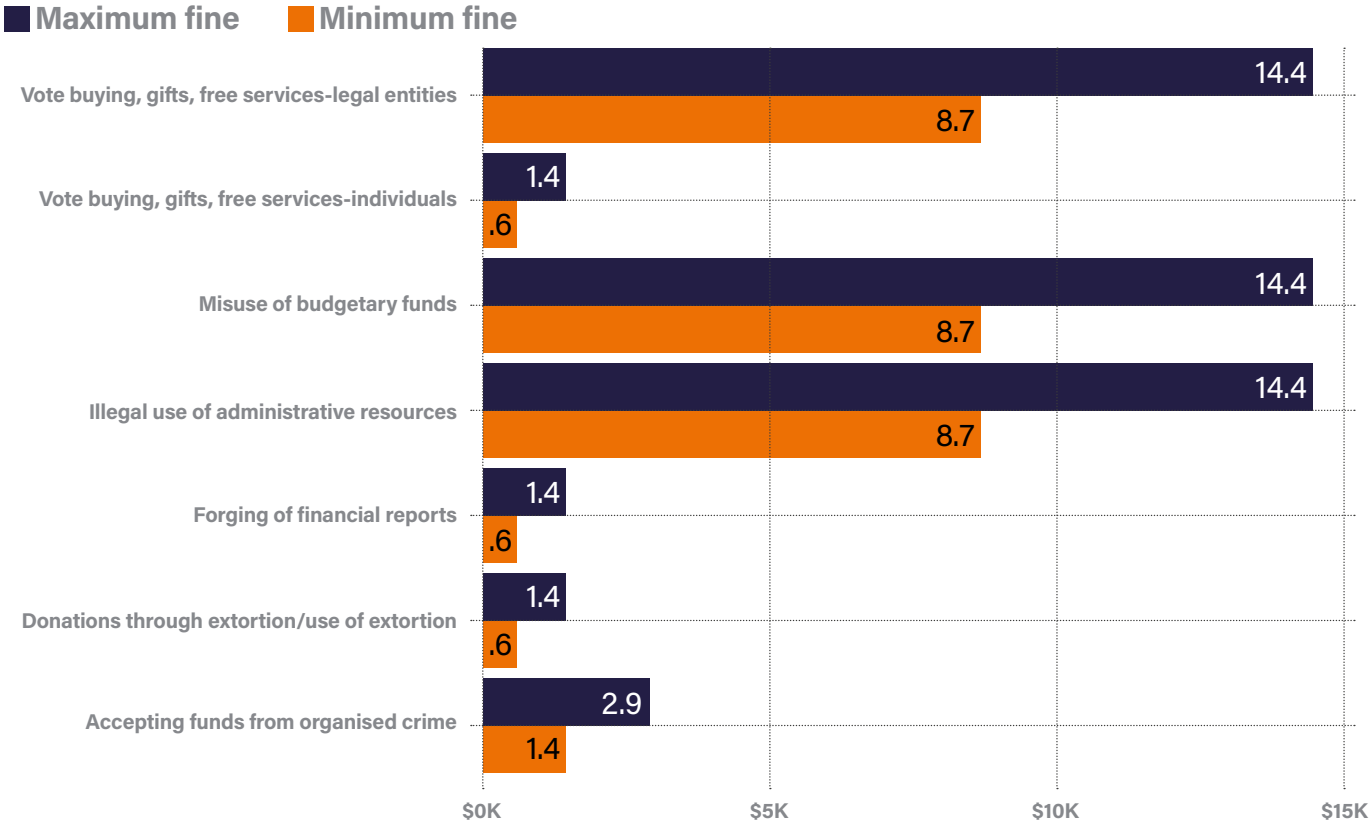
Figure 4. Monetary sanctions in Moldova for campaign funding breaches foreseen by the Contravention Code



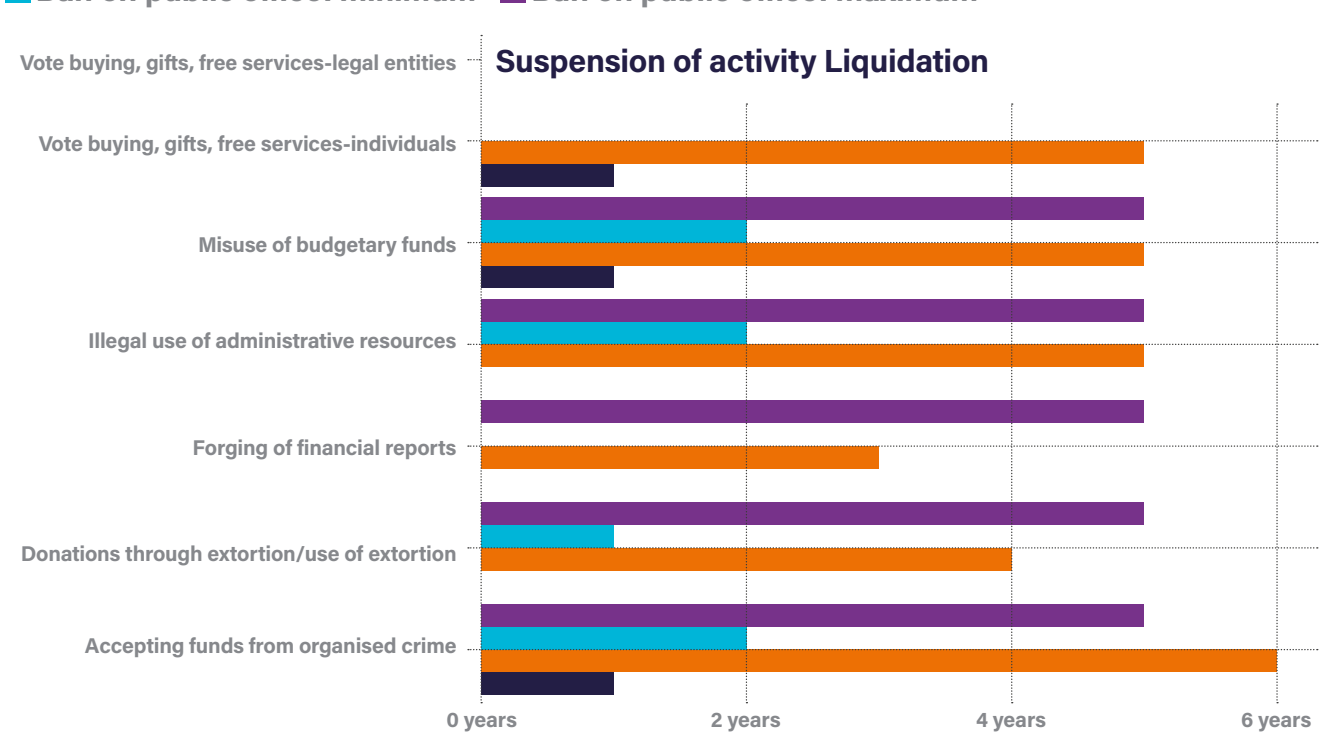
Source: Contravention Code Art. 48,1 48.2 Note: average exchange rate in 2020, USD 1 = MDL 17.3.

Figure 5. Criminal sanctions in Moldova for illicit party funding

A: Criminal monetary sanctions for campaign funding violations



B: Criminal non-monetary sanctions for campaign funding violations



Source: Own elaboration based on Criminal Code, Art. 181,1 181.2Note: average exchange rate in 2020, USD 1 = MDL 17.3.

Even leaving aside the level of fines, it is not clear when the provisions of the Contravention or Criminal Codes should apply, or whether monetary or non-monetary sanctions should prevail and under which circumstances. As the Figures show, for certain infringements, there are up to three alternative punishments. Moreover, the wording of some provisions renders the enforceability of many criminal sanctions nearly impossible. For instance, the unlawful use of administrative resources or the misuse of public funding is punishable only provided that "extensive damage has been caused" (Official Gazette, №. 72-74/195, 2009, sec. 1812(2)). Likewise, the funding of a party or electoral competitor by organised crime is sanctionable only if the party or competitor was "knowingly accepting" such funding (Official Gazette, №. 72-74/195, 2009, sec. 1812(5)). Additionally, in most cases, neither the party nor the electoral competitor bear responsibility in their capacities as collective entities. On the contrary, collective accountability is replaced by individual responsibility, since in most cases physical entities or party officials, in their capacity as individuals, are the main target of administrative and criminal sanctions.

To sum up, the mix between weak oversight and an unbalanced system of sanctions renders the control of party funding ineffective. While at a first glance, the current sanctioning regime covers a wide range of campaign funding violations, the match between the gravity of the offence with the severity of punishment as foreseen by the Electoral, Contravention and Criminal Codes, makes enforcement a very difficult exercise. The experience of the last four electoral contests – two presidential, one local and two parliamentary – for which the current system of sanctions was in force, has proved that enforcement remains a vulnerable dimension of the election process.

In Indonesia, campaign finance violations went from not being substantially sanctioned until 2008 to facing up to five different types of sanctions for candidates and auditors but, strangely enough, not for political parties. First of all, candidates' vote buying attempts (either in the sense of voting for a certain candidate, making the ballot invalid or not voting) can be punished with the loss of either the nomination as a candidate or, even, elected office (art. 285 of the EC). The former (candidature cancellation) is also a sanction for candidates who do not submit their reports on preliminary campaign funding to the GEC on time.

Candidates who receive illegal donations (in other words, those from public companies or from foreign and anonymous sources, or illegal activities) are obliged to report and forfeit them to the GEC within fourteen days of receiving them. Finally, as stated in art. 496 of the EC, a fine of up to IDR 12 million and one year in jail can be imposed on candidates for intentionally including false information in their electoral campaign financial reports. All in all, however, and given the limited investigative capacity of Indonesia's oversight bodies, the only sanctions that have been imposed so far have been either for not reporting or for vote buying. But even in the latter case, sanctions have been rather scarce due to the difficulties in providing evidence.

According to the Nigerian 2021 (Draft) Electoral Law, three different types of sanctions for financial irregularities can be distinguished: financial (that is, forfeiture), administrative (that is, fines) and criminal (that is, imprisonment). The first is applied to (banned) foreign donations, electoral overspending by a political party, and illegal donations made to political parties. These three violations are also punishable by a fine of at least 5,000,000, 1,000,000 and 10,000,000 NGN, respectively. In the case of individuals who illegally donate to a political party or candidate, then the fine will be five times the amount donated in excess of the limit. While this increase (from 500,000 NGN in the 2010 Electoral Code

for foreign donations) and the introduction of indexation in the case of individuals should be welcomed, the fact that some form of indexation to account for inflation is not extended to all sanctions is clearly a weakness of the new law.

Fines and imprisonment are used to sanction electoral overspending by a candidate. If the offender is a candidate, then they will have to pay a fine of 1% of the spending limit permitted and/or suffer up to 12 months in prison. If the offender is an individual other than a candidate, then the maximum fine will be 500,000 NGN and/or imprisonment for nine months. Similarly, vote buying attempts (or coercion to vote) can be punished with 100,000 NGN or one year's imprisonment (or both).

Those parties that fail to submit their electoral expenses returns are also sanctioned by fines (up to 1,000,000 NGN). If a party delays the submission of the requested audits, then a maximum penalty of 200,000 NGN per day might be imposed. A fine of 3,000,000 NGN and prison sentences for up to three years (a clear reduction from the 10 years' imprisonment contemplated in the 2010 EC) can be imposed on accountants for forgery or for helping parties to violate campaign finance rules (for example, receiving illegal donations or overspending).

The 2021 law clearly improves on the 2010 EC when it introduces a new sanction (a fine of 1,000,000 NGN and/or six months' imprisonment) for those parties failing to submit their annual reports. Similarly, it increases the amount (from half to 1 million NGN) of the fine imposed on those parties that obstruct the INEC in their monitoring obligations.

However, and similarly to what has been reported in the other two countries, no sanctions (at least at the federal level) have been applied, whether for a lack of reporting or any other campaign finance violations. INEC's scarce resources, but also the lack of political will, are the main reasons. To that we could even add the lack of public interest in some cases. Thus, while vote buying is rejected, an important number of Nigerian citizens do not see anything despicable in voters selling their electoral support (Ohman, 2014).

In practical terms, implementation has failed to the point that the sanctions framework provided in the Electoral Act is "a toothless bull-dog" due to the lack of punishment when the law is breached (Ekpo and Alobo, 2018: 791). It is yet to be seen if the new regulations introduced in July 2021 will steer things forward.

Lessons for PLS

The analysis of campaign finance control shows that without a proper oversight system that goes beyond formal control and a more realistic sanctions framework, both in terms of dissuasion and implementation, any eventual improvements to other aspects of campaign finance regulations will be lost. For these reasons, legislators may consider the following recommendations:

a) Clearly define the scope of legal powers held by the oversight body regarding party and campaign financing monitoring and supervision.

b) Empower the oversight body with investigative and punitive powers to reduce its dependence on other state institutions, thus mitigating the risks of institutional conflicts over shared competences and reducing the coordination costs.

c) Provide the necessary expertise, human and financial resources to ensure the supervisory body capacity to carry out its legal mandate.

d) Explicitly stipulate legal guarantees that would ensure the independence of the oversight body from the executive or other political interference.

e) Devise an appointment procedure that would minimise political influence over the nomination process for members of the oversight body.

f) Clearly stipulate the conditions under which members of the supervisory body can be dismissed from office to ensure their de facto independence and reduce the possibilities for arbitrary interpretations of the regulatory provisions.

g) Centralise the oversight authority into a single body to avoid overlapping of institutional powers, minimise inter-institutional conflicts and avoid excessive control over the finances of electoral contestants and/or political parties.

h) Clearly define the range and applicability of campaign funding violations, and sanctions associated with them, to avoid misinterpretation and prevent the discretionary application of penalties against electoral contestants.

i) Create a database, maintained by the oversight authority, on the number and types of sanctions applied, to evaluate the effectiveness of sanctioning mechanisms and strengthen transparency.

j) Encourage the effective imposition of sanctions to discourage parties, candidates and donors from making cost–benefit calculations on possible infractions.

k) Oversight authorities should also communicate the degree to which current policies are effective and point out the necessary direction of future reforms.

Given the high cost of the sanctioning mechanism, lawmakers and/or regulators, along with oversight bodies, should consider the procedural intricacies and the feasibility of enforcement. The lawmakers should strike a balance between the capacity and resources of the oversight body to investigate finance-related breaches and the disciplinary potential of sanctions. Therefore, the sanctioning mechanism should be flexible, comprehensive and proportionate in matching the graveness of violations with the harshness of penalties.

3. Analysis

Campaign finance regulations represent a major part of electoral legislation. Adequate regulation ensures a level playing field for political parties, enhances transparency in campaign spending and allows equal participation in the process. Trust in the elections and their legitimacy within a society requires any changes in the campaign finance regulations to be subject to broad consultations, ensuring that the final product reflects the interests of all electoral stakeholders. Genuine engagement of relevant actors in lawmaking - both political and non-political - increases legitimacy and trust in the legislative process.

To have the desired effect on electoral integrity, campaign finance regulations should not only be aligned with international standards but should also be developed according to the country-specific context, societal needs and existing challenges. Therefore, parliaments, as legislative institutions with oversight powers, are responsible for regularly monitoring the implementation of electoral legislation, exploring the interaction between the law and secondary legislation, identifying the loopholes and, when necessary, adjusting the legislation accordingly.

The case studies illustrate that regardless of the very diverse geographic and political contexts of Moldova, Indonesia and Nigeria, campaign finance law is a subject of highly controversial political discourse. Legislative changes related to the electoral process are usually taking place in a very tense and challenging political environment. Political actors engaged in lawmaking are often prioritising their partisan interests over the broader needs of the society. Lawmaking is rarely founded on a comprehensive analysis of weaknesses and gaps in the legislation and/or shortcomings in its implementation. Therefore, often the legislative process lacks an evidence-based approach and quality analyses of the real needs of that country.

3.1. Moldova

Three main amendments have been introduced to campaign finance regulations in Moldova in 2015, 2017 and 2019. All three sets of amendments went through a substantially different legislative process in terms of the goals and aims of changes, and the level of engagement of political parties and other stakeholders in discussions and decision-making.

The legislative changes that were introduced in 2015 represented a long-awaited reform as the Moldovan parliament had not amended the law for over five years. The amendments mostly corresponded to the recommendations of international organisations (GRECO, 2011, 2013, 2015a, 2015b; Venice Commission) and were aimed at enhancing compliance with international best practice. The legislative changes were introduced as a result of a long and substantial dialogue between political actors, as well as other relevant stakeholders, such as media and civil society representatives. This engagement of stakeholders granted further legitimacy to the process. Although legislative changes brought about significant improvements and were recognised as "an important step to the right direction" (Venice Commission, Opinion No. 901/2017), many shortcomings and gaps remained unaddressed in the legislation.

The 2017 amendments to campaign finance regulations were part of complex legislative changes in the electoral system that fundamentally changed the political landscape in the country. The legislative package was initiated and supported only by two major political parties and unlike the 2015 changes, they had been rejected by all other political parties represented in the parliament. The amendments were also criticised by local and international organisations. Overall, the changes were recognised by the majority of local actors as politically motivated and were disapproved of by the international community. The amendments were found to fall short of reflecting the needs of the political spectrum and the public at large.

Subsequent legislative changes in 2019 took place under the leadership of the new political forces in the parliament. The amendments abolished changes to the campaign finance regulations introduced in 2017 and proposed changes that were supported by most of the parliamentary political parties.

Despite the diverse backgrounds of the three instances of legislative amendments mentioned above, the analysis of the cases points to some common characteristics of the lawmaking process in Moldova:

- The frequency of legislative amendments to the campaign finance legislation points to the supremacy of political agendas rather than at a general interest in enhancing the electoral environment.

- A lack of a comprehensive and evidence-based diagnostic. Parliament has failed to carry out a full and comprehensive review of the existing framework and the respective practice in all three cases that would enable it to identify and address challenges and shortcomings in the legislation as well as in the implementation process. As effective lawmaking largely depends on a comprehensive analysis of existing regulations and practice, any changes implemented without such consideration falls short of ensuring quality lawmaking.

- The absence of a comprehensive analysis and the lack of clear strategy led to a patchy and deficient legislative process.

- Although the political parties and other relevant stakeholders were formally engaged in the process and were able to present their opinions, quality engagement was not ensured. The suggestions made by the stakeholders were in most cases not taken into consideration. The absence of genuine engagement of relevant actors resulted in the lack of legitimacy of the legislative process.

3.2. Indonesia

In the case of Indonesia, two main legislative changes took place in party finance regulations in 2017 and 2018. As in many other countries, there is no established rule or practice concerning how frequently the legislation should be reviewed. Consequently, just like in the case of Moldova, the revision of election-related legislation was triggered by the interests of dominant political actors rather than by a comprehensive analysis of societal needs.

The 2017 amendments to election legislation introduced a ban on commercial political media advertisements and mandated political parties to exclusively rely on state-funded media advertisements. The amendments came following a long-standing demand from local civil society organisations and were intended to prevent the privileged access of some political parties to preferential and unlimited resources for buying media airtime. As the changes aimed at more equal distribution of media coverage during the election campaign, they were supported by political parties as well. Involvement and support of local civil society and political actors in the legislative changes granted a high level of legitimacy to the process; however, different shortcomings in legislation remained unaddressed.

With 2018 changes to the governmental regulations, the executives, based on the recommendations of the Corruption Eradication Commission, decided to increase state subsidies for political parties. The decision was largely supported by most parties in the political spectrum. The decision was also welcomed by civil society organisations as they believed that better state assistance would mitigate the dominance of wealthy political parties in Indonesia and would create a more equal playing field for political actors. It should be noted that when considering the amendments, the NGOs insisted that increased public subsidies should come together with

increased transparency and accountability over party expenditures; they also called for better regulations of sanctioning and enforcement.[24] However, those issues failed to gain the support of the parliament and the executive officials.

Despite the fact that legislative changes in Indonesia have occurred in a different political context to Moldova, the cases point to some commonalities in lawmaking in these two countries. In Indonesia, as in Moldova:

- A full and comprehensive analysis of election and campaign finance regulations has never been carried out by the parliament.
- The legislative amendments were fragmented and usually took place without a strong evidential base or analysis of shortcomings.
- The amendments focused on isolated issues and failed to ensure a comprehensive revision of the legislation.
- Even though the interaction between the NGOs and governmental representatives was active and executives often cited various findings of NGOs to back their decisions, this reliance on civil society seemed to be mainly guided by the authorities' self-interests, rather than by their will to improve the legislation.[25]

3.3.Nigeria

Unlike Moldova and Indonesia, where changes have been more frequent, campaign finance regulations in Nigeria that are an integral part of the Electoral Act 2010 have not been changed for over 10 years. However, the issue of inadequate campaign finance legislation has long been identified as one of the most problematic for ensuring an equal and competitive electoral environment. It is obvious from the reports of local and international organisations that campaign finance regulations fail to address challenges linked with illicit flows of money in election campaigns (IFES, 2018).[26] Moreover, civil society actors have highlighted the loopholes in the legislation that enable political parties to bypass the law and gain privileged access to financial resources.[27]

The weak internal capacity of the election administration to monitor and enforce the campaign finance regulations is yet another challenge. The reasons undermining the capacity of the electoral administration to carry out its mandate in an effective manner, and to prevent the flows of illicit funds during elections, should have been examined by the legislator, but this task has not been performed so far.

It should be noted that the legislative branch of Nigeria has also recognised campaign finance legislation as requiring better regulation. Over recent years, the National Assembly has made four attempts to introduce changes to the electoral legislation. The last attempt took place in 2018 when the legislative body passed amendments to the Electoral Act 2010. The amendments, among other issues, redefined the provision related to placing a cap on election expenses. The amendments failed to become law as the President refused to sign them on the ground that they were passed too close to the elections and would have caused uncertainty.

Because of a lack of transparency in the lawmaking process in Nigeria, it is difficult to

see how the law enactment was conducted in the National Assembly. The legislative institution has not published any document that could have enabled this study to track the process. However, the analysis of the case has identified the following characteristics of the lawmaking process in Nigeria:

- Lack of political will to conduct comprehensive reviews of election and campaign finance regulations.
- Politically driven amendments focused on isolated issues.
- Fragmented lawmaking without a strong evidence-based analysis of shortcomings.
- Limited participation of non-state actors in the lawmaking process.

4. Lessons learned

Although common sense suggests that parliaments should periodically review the legislation to identify shortcomings, opportunities for improvement, and lessons learnt, the assessment of the case studies seems to indicate that comprehensive legislative scrutiny of CFR is not commonly practised in Moldova, Nigeria and Indonesia. Even in cases where the deficiencies of campaign finance legislation are widely recognised, the process of legislative change is often hectic and fails to comprehensively address gaps in legislation and its implementation.

Loopholes in the regulatory framework relating to private income sources and campaign spending by political parties and candidates, the lack of a fully-fledged transparency in relation campaign funding, the absence of a strong oversight system and inconsistent application of sanctions **makes CFR ineffective in providing a level playing field and ensuring electoral integrity**. The peculiarity of CFR lies in the fact that the norms of the law are so much intertwined that the effectiveness or ineffectiveness of regulations has be assessed in correlation with other norms.

In other words, while evaluating the presence of certain regulations (for example, whether a country applies a sanctions system for legislative breaches), one should consider its effectiveness in interaction with other norms and the institutional context (such as the existence of a strong oversight institution capable of imposing the sanctions). Therefore, legislative changes in CFR must be preceded by a comprehensive analysis of the existing laws, particularly how they work in practice, as well as factors hindering their effective implementation. Such processes enable parliaments to identify the necessary changes in legislation.

Based on the analysis of the case studies reviewed in the framework of this policy paper, some general findings can be presented:

- Legislative processes in the national parliaments were driven by political considerations rather than based on a substantive, comprehensive and evidence-based analysis of the legislation and relevant practice, with little regard to improving the quality of legislation.

- Although parliaments were equipped with general powers to oversee the implementation of legislation, the absence of clear procedures, including timelines for the revision of legislation, hindered consistent and effective application of legal scrutiny.

- Broader consultation mechanisms in parliament that allow for the inclusion of the views of key stakeholders - from political parties, to media, to civil society organisations - are absent in most cases.

- In the absence of legal scrutiny, no oversight was provided over the process of implementation or the application of law in practice by administrative bodies, courts and citizens.

- The absence of a comprehensive approach to legal drafting enabled the ruling parties or majorities to "cherry pick" in line with their own political interests.

- Legislation adopted without the comprehensive revision of the existing legal framework and practice proved to be unstable and called for multiple interventions.

- In some cases, a lack of consensus among major political actors and civil society led to a lack of legitimacy of the adopted legislation.

- The absence of well-structured practices of legislative scrutiny resulted in the unavailability of accurate records on the legislative process. Major considerations during deliberations and so on are not systematised, easily traceable or available to interested stakeholders. A lack of standardised practice prevents the accumulation of institutional memory on important legislative developments and the system becomes heavily reliant on human capacity.

- There is a lack of institutional and human capacity to conduct law scrutiny effectively. PLS requires dedicated and capable staff and an adequate institutional set-up, responsible for planning, obtaining relevant information, providing organisational support, drafting reports and recommendations, and the absence of such a support system also hinders effective oversight.

Considering the fact that CFR is a controversial policy area in Moldova, Indonesia and Nigeria and changes in the law usually tend to accommodate interests of dominant political parties, there is always a risk of lawmaking becoming politicised, which leaves the main legislative challenges unaddressed. To ensure a more comprehensive, evidence-based and participatory approach to electoral reforms, legislators need to apply the law scrutiny mechanism, that will both neutralise parti-san political motivations in the process and address the needs of a broader society. PLS could be proposed as the most suitable parliamentary oversight mechanism to ensure this result.

5. Conclusions

Considering the findings of the three case studies, it is feasible to propose PLS as the most effective instrument to respond to the CFR shortcomings experienced by countries, particularly when dealing with politically sensitive regulations. PLS helps parliaments to see whether legislation is working out in practice, as it was intended.[28] Through the structural application of PLS, parliaments identify gaps and shortcomings in the legislation as well as in its implementation and ensure targeted and evidence-based lawmaking. PLS also enables legislators to review the secondary and delegated acts.

Through the process, parliaments ensure broad engagement of state and non-state actors, including political parties, civil society organisations, academia, experts and citizens in lawmaking, thus contributing to the legitimacy of the lawmaking. PLS provides parliaments with access to additional sources of information, ensuring a more comprehensive understanding of the matter.

Application of PLS in Moldova, Indonesia and Nigeria would steer the legislative drafting process away from a purely political agenda towards more substance-oriented discussions, ensuring stakeholder engagement and an evidence-based approach. Furthermore, it would ensure greater correspondence of the legislative drafting process to the needs and requirements of the society and thus contribute to a more stable and legitimate outcome of the process.

Applying the PLS methodology to campaign finance legislation would contribute to a professional and efficient implementation of legislative drafting and oversight, providing for a more level playing field supporting electoral integrity. When applying PLS, the following steps may be considered:

- Establishing PLS as an explicit tool under the rules of procedure of parliament or equivalent legislation, or where such legislation exists, introducing a consistent practice of its application. This should include a reasonable timeframe for implementation of PLS (3-6 months). Having regulations on PLS in the legislation contributes to clarity and predictability in the process. It guarantees transparency, defines relevant parliamentary bodies responsible to undertake PLS, establishes when PLS is best to be carried out and enables parliament to allocate necessary human, financial and administrative resources.

- Setting clear timeframes for potential revision of legislation (3 to 5 years).[29] This would lighten the element of political expediency and contribute to greater stability and predictability of legislation.

- Identification of (1) legislation to be reviewed; (2) scope of review - formal enactment process of legislation or implementation of the law; (3) the need to review secondary legislation, as well as the relevant practice of administrative bodies and court. Namely, when reviewing campaign finance regulations, the PLS shall not be limited to analysing the election law or law on political parties or other related legislation. It shall closely consider the interaction with other legal frameworks (criminal code, anti-corruption legislation, and so on), as well as the practice of election administration, the state audit office or other relevant institution responsible for monitoring party financing and sanctioning in cases of its violation.

- Identification and consultation with relevant stakeholders, including implementing agencies, state and non-state actors such as political actors, civil society, media and independent experts. PLS would enable parliament to gain access to all relevant information needed for a comprehensive assessment of legislation and practice, and gain a better outlook on existing gaps and challenges as well as contributing

to higher quality legislation adjusted to actual needs. In addition, this broad engagement contributes to greater legitimacy of the process, especially relevant when it comes to politically sensitive regulations.

- Securing access to relevant data and information, including from state and non-state sources. The quality of legislative scrutiny greatly depends on the availability and accessibility of accurate data. Besides, a well-organised legal drafting process should include the development of indicators and identification of verification sources to monitor the impact of legislation, which should feed into the process of collection of relevant disaggregated data.

- Investment in the development of institutional and human capacity. PLS requires dedicated and capable staff and an adequate institutional set-up, responsible for planning, obtaining relevant information, providing organisational support, drafting reports and recommendations.

- Ensuring transparency of the process and its outcomes - it is an inherent institutional interest of the parliament to ensure public engagement in its activities which should be achieved through a well-organised process of regularly informing the public through media about the PLS process and its findings.

- Development of a report with findings and recommendations which should build an institutional memory and guide further the legislative process.

To guarantee more systematic scrutiny of campaign financing legislation, there is value in considering a revision of legislation as a binding requirement prior to its adoption. Such binding requirements can be established based on the commitments made by executives during the law passage process.[30] As the implementation of CFR is a complex process and requires engagement of several administrative bodies, such as those responsible for the audit service, election administration or the Ministry of Justice, those institutions could be mandated to review the legislation after it has been brought into force for a certain time and report to the parliament about the findings. As CFR represents a highly sensitive policy area accompanied by political bargains among the stakeholders, such review commitments may serve as a compromise for "getting the bill through parliament".[31]

Another way for parliaments to ensure regular scrutiny of the law is to build a "review clause" in the legislation itself. Under a review clause, that has a force of law, the parliaments define when and which provisions shall be revised. In both cases, binding requirements about the revision of legislation enables parliaments to make the law reviewing process more precise and predictable.

Though making the binding requirements may not be always possible or applicable to all circumstances,[32] parliaments still pose a mandate to conduct post-legislative scrutiny without having a mandatory review clause in the legislation, or without having executives' commitment on a law implementation assessment. Hence, it is important to determine the factors that could trigger revision of the legislation. Considering that there is no exhaustive list of trigger points, the parliaments may also launch PLS on the bases of initiatives of members of parliament and/or on the ground of findings of committee inquiries.

At the same time, the reports and recommendations of relevant civil society organisations and media outlets can also have an impact on the process. Considering that the CFR is a subject of high interest to media, NGO society and other stakeholders in Moldova, Indonesia and Nigeria, and valuable documents providing in-depth analysis on CFR are issued by them, these might also serve as a bases for the parliaments, for starting PLS.

Taking into consideration the aforementioned factors, the application of PLS in reviewing campaign finance legislation has the potential to ensure a more comprehensive, evidence-based and participatory approach to electoral reforms, rather than pursuing isolated initiatives deriving from the partisan interests of the main political actors. PLS does not only highlight shortcomings and areas for improvements but also provides details of interdependence stemming from the legislation.

By applying PLS, parliaments safeguard the equal electoral environment for political actors, and provide them with equal access to financial resources. PLS helps to promote the transparency of campaign spending, as well as enabling consistency and effective enforcement of regulations, thus contributing to the integrity of the electoral process.

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7 The Alliance of European Integration was formed by Liberal Democratic Party of Moldova (PLDM), Democratic Party of Moldova (PDM) and Liberal Party (PL) and was a governmental coalition after the July 2009 elections until February 2013.

8 The first draft bill was initiated in November 2011 by the creation of a working group which included representatives of all relevant stakeholders: political parties, CEC, the Court of Auditors, the Centre for Combating Economic Crime and Corruption, the Ministry of Finance, NGOs, and representatives of international bodies. Hence the bill was an outcome of an encompassing and inclusive process, although the Ministry of Justice was the governmental body that placed it on the parliamentary agenda in 2013. The second draft bill was authored by Vladimir Plahotniuc, the then Deputy Chair of the PDM and its shadow leader. It was registered in the parliament in June 2012.

9 The critical amendments concerned the donation caps that were substantially increased relative to those proposed in the first draft law submitted for review. Hence, the initial donation set at 20 and 40 AMW for physical and legal entities were replaced by 200 and 400 AMW following an amendment proposed by a PDM representative (a former PCRM MP who defected in 2013). Likewise, the initially proposed ceiling on total income collected from private sources of 0.25% (previously 0.1%) from the budgetary revenue as the limit for total private funding was replaced by 0.3% at the initiative of the same MP.

10 The draft law, including subsequent amendments, was nevertheless adopted with 57 votes (out of 101), although the consensus over the draft amendments at the adoption stage was narrower than at the initiation stage, a shrinkage explained by a double reconfiguration of the governmental coalition throughout the drafting process.

11 The opinion called, instead, for improving the existing framework and enhance the oversight of CFR campaign funding – a long-standing issue unaddressed properly by the Moldovan authorities (GRECO, 2015b; OSCE/ODIHR, 2015, 2017).

12 In 2020, the total state funding earmarked for parties was set at MDL 38.2 million (USD 2.3 million); however, it was scaled down to MDL 31.2 million (USD 1.9 million) due to the economic crisis triggered by COVID-19.

13 In 2015, the CEC introduced in its regulation of party financing a provision linking public funding to the party's capacity to gather annual membership fees from at least 50% of its members (Monitorul Oficial Nr. 32-37, art. 249, 2016). However, in September 2017 the provision was cancelled as being illegal after being challenged in court.

14 Political Finance Database | International IDEA

15 Since the AMW is used as a benchmark to estimate the donation caps, the actual lowering of donation caps was by a factor of 6, not 10, which is still a considerable drop relative to previous limits.

16 For instance, the spending limit for the 2018 gubernatorial elections in West Java was IDR 473 billion (IFES, 2018), which translates to approximately USD 1 per registered voter.

17 As reference point for calculation, we used the total cast ballots instead of total valid votes to account for all electors who participated in the polls. The cost per vote difference between the 2015 and 2019 elections is explained by the devaluation of Nigerian currency.

18 Note that this amount is almost equivalent with the maximum spending of a political party from the figure 2.

19 In 2012, however, CEC drafted a standardised form containing an itemised structure of campaign expenses that had to be included in party financial reports. Currently, electoral competitors are obliged to report on a weekly basis to CEC about their income and expenditures using standardised forms drafted by CEC. These reports include the donors' names, donation value and type (in-kind, monetary) and an itemised structure of campaign expenses disaggregated by spending category (for example, TV, radio, billboards, advertising, transportation, opinion polls, rent, personnel costs, salaries, consultancy services, or promotional materials).

20 Eight CEC members are nominated by the parliamentary parties proportionally to their parliamentary strength and one member is nominated by the president. They are confirmed by a parliamentary majority vote.

21 One of the most prominent examples of when the CEC requested the exclusion of an electoral competitor from the race concerns the Patria Party, led by Renato Usatii in the 2014 parliamentary elections. The party was excluded on grounds related to the use of foreign funds several days before the date of the elections. The battle over the party exclusion lasted until 2020 when the European Court of Human Rights ruled in favour of the Patria Party, noting that its disqualification was based on unsubstantiated allegations, insufficient procedural guarantees against arbitrariness, and the lack of reasoning in the domestic courts' decisions (European Court of Human Rights, 2020).

22 So-called Election Oversight Committee.

23 In relation to the exclusion of Patria Party from the electoral race in 2014 the OSCE monitoring report stated that "the expedited process of deregistering PP as an electoral contestant raised questions concerning its timing and circumstances" (OSCE/ODIHR, 2015, p. 10). In less diplomatic language, this exclusion was regarded by some local observers as a disproportionate and arbitrary sanction since the CEC decision was based on the request and evidence provided by the General Police Inspectorate without considering the counterevidence provided by the defendant party.

24 Interviews with Heroik M Pratama, Perludem, NGO, Indonesia and Khoirunnisa Nur Agustyati, Perludem, NGO, Indonesia (January 2021).

25 Interviews with Heroik M Pratama, Perludem, NGO, Indonesia and Khoirunnisa Nur Agustyati, Perludem, NGO, Indonesia (January 2021).

26 Interview with Jide Ojo, Executive Director at OJA Development Consult, Nigeria (February 2021).

27 Ibid.

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29 It is worthy to mention that in a number of countries election legislation mandates Election Management Bodies to use post-election reviews to assess the adequacy of the legal and management structures for elections, and of their performance in delivering credible elections. Further, a post-election review analyses what worked well, what did not and why. More information is available at https://aceproject.org/ace-en/topics/em/emi/emi10a/copy_of_default

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