

**UN Universal Periodic Review Process
and the
Preparation of Jamaica's Human Rights Report
Submission by
Citizens Action for Free & Fair Elections (CAFFE)**

Citizens Action for Free & Fair Elections (CAFFE) and the International Foundation for Electoral Systems (IFES) are pleased to contribute to the UN's Universal Review Process, on the invitation of Jamaicans for Justice.

Comments and recommendations offered in this submission do not speak to specific overt human rights abuses evidenced in election campaigns per se, but rather speak to the effect of political corruption on the overall quality of life of Jamaican citizens (Articles 19, 20, 22, 25, and 28, IDHR).

We know that political finance corruption exists in one degree to another, and that we will not seek to single-out isolated aspects of corruption, but rather seek redress by fostering a more transparent political finance foundation and process, characterized by public sector governance, transparency and financial disclosure.

Corruption affects the quality of life of each individual. Corruption denies the very basic of human entitlements, leaving less public resources for education, public health, development, and public infrastructure. Transparency is a way to prevent corruption and prevent the misuse of public resources.

If people are provided with educational opportunities and ready access to information, public opinion reveals a hard-headed common sense. Sustained political finance monitoring will contribute to building transparency demand on the part of citizens. If the people demand transparency, politicians and candidates will have to respond to that demand.

Jamaicans must be educated on campaign finance issues, informed, knowledgeable and inspired to insist on the observance of their rights from their public servants. The third pillar and major thrust of the CFM in Jamaica Program -- Civic Education and Advocacy -- is dedicated to building public awareness of campaign finance reform, and enlisting public support around the reform package to be tabled before Parliament.

Campaign Finance Monitoring in Jamaica Program Background Brief

Citizens Action for Free & Fair Elections (CAFFE) in association with the International Foundation for Electoral Systems (IFES) has launched a Campaign Finance Monitoring (CFM) initiative for Jamaica.

In recent years, CAFFE has become the primary player in the area of election activity, particularly concerning campaign transparency and integrity, and it is through the organisation's interest in political finance monitoring that this program evolved.

IFES is an international, non-profit organization based in Washington , DC , that supports the building of democratic societies.

The overall goal of the project is a more transparent and accountable system of political finance by improving monitoring capacities while helping to sensitize the Jamaican public on campaign financing issues. Legislative reforms to existing Campaign Financing laws (Representation of the People Act), increasing accountability among Jamaica's two main political parties, training persons in Campaign Finance monitoring techniques and working with investigative journalists to hone their skills and research capabilities, are among specific aims of the CFM in Jamaica Project.

Recent Regulatory Developments

An important development took place in 2006 when the Electoral Advisory Committee (EAC) was replaced by the Electoral Commission of Jamaica (ECJ) which was given the executive authority to administer the electoral system and ensure free and fair elections in Jamaica. The Commission is no longer merely an advisory body but has executive powers and is now empowered to give directions to the Director of Elections as to the performance of his functions.

It is now the statutory responsibility of the Commission to carry out a range of functions and exercise wide powers in implementing its objectives, which are to safeguard the democratic foundation of Jamaica by enabling eligible electors to elect, through free and fair elections, their representatives to govern Jamaica.

Campaign Financing Framework – Current Indicators

Election campaigns have become increasingly expensive with the use of electronic media, modern advertising technologies and methodologies of mass appeals. The 2007 elections saw vast sums expended by the political parties in conducting their campaigns.

There is a widely held view that political parties which have very limited resources from internal funding are being financed by special interest groups who may exert undue influence on the persons who owe their election win to their

financial support. The possibility that narco and other illicit funds may be deployed in seeking to gain leverage over politicians fuels this viewpoint.

Essentially unregulated, and in many cases illegal, financial flows determine political decision making in a way that is neither transparent nor accountable to the public. This challenge is further exacerbated by poverty, unemployment, narco-trafficking, and other organized criminal activity.

There is no system for inspecting or auditing candidates' returns and expenditure limits are largely not enforced or disregarded. Parties are not required to indicate funding sources or amounts spent.

One of the fundamental purposes of campaign finance regulation is to create a level playing field for candidates and political parties vying for public office. Limits on donations, income and expenditure disclosure policies and a regulated system for public campaign funding are among measures used by well-established, institutionalized democracies to prevent a candidate's economic resources from determining whether he or she wins office. But, in less established democracies where institutions are weaker and enforcement of the rule of law does not prevail, these measures are not realistic for achieving this goal.

There are signs that both major parties are concerned by the lack of transparency and accountability in current campaign finance requirements and that the regulation of political financing in Jamaica is on the legislative agenda. Reforms to ensure greater transparency and accountability in political parties and in the public sector an urgent requirement.

The Jamaican framework

In Jamaica, the enforcement of existing laws, particularly those that affect politicians, is mixed. Limits on contributions and expenditures are difficult to enforce where money in the political sphere is often cash-based and typically unregulated. And while the electoral authorities appear to have been effective in addressing certain aspects of illegal campaigning, there is no system in place for inspecting or auditing candidates' returns.

Expenditure limits are largely unenforced and lacking juridical definition and political parties are not required to indicate funding sources or amounts spent. Further, there are no significant requirements for distribution of resources, nor prohibitions and limits on financing. There is a provision that establishes spending limits for candidates and requires the filing of campaign expense statements at the end of an election; however, both major parties have acknowledged that candidates will often spend at least twice the statutory limit, and that they rarely file campaign expense statements.

Further, there are few legislative requirements to disclose campaign contributions and expenditures, and where legislation does exist, it pertains to the candidate

and not to the party, making it easy to obviate restrictions and disclosure requirements. Given Jamaica's legal framework and common practices related to campaign finance reporting and auditing, campaign finance monitoring in Jamaica should focus primarily on expenditure, starting with three basic mechanisms:

- **Media advertisement expenditure.** Cross checking data with spending limits and advertising market prices is one aspect of campaign spending monitoring that can be tangibly analysed and media houses can be invited to disclose tariffs and volume discounts that will be applied to campaign ads.

- **Transparency Pacts for political parties.** There are signs that both major parties are concerned by the lack of transparency and accountability in current campaign finance requirements. Transparency Pacts that inform CAFFE and other monitoring agencies of their campaign expenditures and/or income, demonstrates accountability to the public and provides a means to compare a candidate's returns against finance information provided by the Party.

- **Monitoring rule of compliance.** The release of a candidate's and party income sources and expenditure for achieving greater transparency and accountability. The content of the returns may reveal information about legal loopholes and should be analysed and published as part of the monitoring strategy, with electoral agencies publishing as much financial information as possible.

Currently, while the content of candidate's returns is analysed and published in the newspaper following elections, there are no sanctions or mechanisms for admonishing fraudulent returns. This lack of disclosure practice in Jamaica makes it difficult to estimate campaign expenditures with any real precision. What is clear is that there have been considerable increases in spending on electoral activities, due in part to public cynicism and declines in volunteer political activism, and chiefly to a substantial increase in media campaign costs.

Conclusions & Recommendations

Increasing the effectiveness of political finance controls must stress realistic and practical approaches. Given that most transactions in Jamaica can be conducted in cash, and therefore could be difficult to trace, highly complex measures should be avoided.

Emphasis should be placed on the enforcement of key provisions, such as reporting and disclosure.

An improved legal framework should make an important contribution to the political finance system by:

- a) Promoting greater openness in political finance;
- b) Prohibiting contributions from undesirable sources, such as foreign funding and anonymous donations;
- c) Providing substantial subsidies-in-kind and transparent public funding from the major parties, and
- d) Prohibiting all forms of vote-buying, direct and indirect, and associated methods of electoral bribery.

All sides recognize the status quo is not sustainable. Legal recognition and registration of political parties, greater transparency through disclosure, state funding of political parties, and income and contribution limits are among key reform issues being discussed.

Clear laws and regulations with appropriate sanctions, combined with the necessary tools and training to address abuses, can play a significant role in supporting the efforts of institutions mandated with enforcing political finance legislation.

As political actors in a representative democracy are elected to serve the interests of the voters, the public has a right to know from whom these groups get their money and what they do with it. Thus, whether they are funded from the state budget, from private donors, or from a combination of these sources, political parties and candidates should be considered public entities subject to public scrutiny.

With the system of financing parties and candidates almost entirely private, political actors do not face the level of informed public scrutiny that similar actors face in other democracies. Private sector funding, both legal and illegal, and criminal funding can thus have undue influence over the political process while undermining the integrity of the public procurement system. Financial reports of political parties and candidates are necessary to audit and monitor such political financial flows. While nominal reporting requirements exist for candidates, these are often ignored or bypassed. Further, the Jamaican electoral laws do not have any provisions concerning ongoing or campaign-specific political party financing. Without full disclosure by all political parties

and candidates, there is no means by which to hold political actors accountable to the law.

Jamaica has the capacity and institutions to design, enact, and implement the reforms necessary to ensure greater transparency and accountability in the political process. The EAC has proven its ability to craft consensus-oriented solutions for difficult issues in the electoral sphere. Such a solution may rest in a carefully designed system comprised of registered and regulated political parties, full disclosure, state financing of political parties, and contribution and/or spending limits. The EAC and other key actors can benefit greatly from the shared experience and best practices from other Westminster-style democracies, as well as from how both established and transitional democracies have addressed these challenges.

Given Jamaica's past successes in advancements in the electoral process, reforms in the area of political finance, while significant, appear to be achievable. Such reforms can play a critical role in reversing growing cynicism among the population and engender new found trust in the political process that is befitting of an established democracy.

INITIAL RECOMMENDATIONS

IFES has identified three key overarching recommendations designed to support the development of a consensus-based political finance reform package, the implementation of such a package, and the necessary public awareness and dialogue required to ensure success.

Encourage efforts to develop a consensus-based political finance reform package

There has been a great deal of political rhetoric in favor of reform and many ideas have been put forward. There appears to be a fairly strong understanding of the options and their immediate impact on the political landscape of Jamaica. However, there is a lack of comparative experience from other jurisdictions about the possible long-term impacts and benefits of some to the options being considered. At the same time, the EAC launched an initiative to develop a consensus-based reform package with a conference in July 2006. The international community should assist decision-makers to (1) view political finance as an incremental process as it has been in other countries, (2) promote enforceable regulations, and (3) better understand the long-term impact and benefits of their policy decisions. Recognizing that a new law is unlikely to be adopted prior to the elections, efforts should be made to encourage political parties and candidates to develop a transparency agreement based on the principles of a consensus-based reform package. IFES participated in the July conference and will work closely with the EAC following the event to provide them and other stakeholders with the information and advice they require to achieve these goals. In particular, IFES has agreed to support efforts of the EAC to develop a new draft law by providing expert review and comments. IFES will also work with the Fredrich-Ebert-Stiftung in order to ensure that there is no duplication of effort.

Support implementation of reforms (should they be passed)

Should reforms be agreed upon, the international community should work closely with the political finance regulator(s) and the regulated community (i.e. political parties and candidates) in order to ensure that (1) the regulated community understands and has the capacity to comply with their responsibilities under the law, and (2) the political finance regulator(s) have the tools they need to enforce the law. The best possible system of laws can be implemented, but will be useless without the capacity to prosecute party members and candidates for political finance violations. IFES will seek to assist the political finance regulator(s) to (1) draft appropriate regulatory guidelines, handbooks, and forms, (2) train members of the regulated community, (3) provide best-practices in the areas of collecting and auditing information, and (4) make the information widely-available (where appropriate).

Build popular support for political finance reform

Amid the growth of public cynicism created by the perception of ever increasing political corruption, there has been a great deal of political rhetoric in favor of reform and many ideas to address the issues and problems facing Jamaica have been put forward. However, no meaningful legislative action has taken place to address these issues. The international community should support efforts by the EAC, civil society groups, and the media to engage the public directly in the following ways:

- ✓ The international community should support the EAC in its efforts to conduct a constructive and informed dialogue with all sectors of society. IFES will seek to support the EAC to conduct a public opinion survey designed to assess public awareness and attitudes towards political finance related issues and solutions. The results will provide the EAC, political parties, civil society, and media with greater clarity about the public's understanding and interest in the various the options being discussed.
- ✓ The international community should support respected civil society organizations such as CAFFE to undertake a public awareness campaign designed to engage the public in the debate both prior to and following the introduction of new legislation. Illustrative activities could include (1) fliers, posters, and public service announcements, (2) high-profile public dialogue groups with significant media coverage, (3) campaign finance monitoring. Each of these efforts should be designed to achieve significant media coverage. Such activities should also be closely coordinated with the efforts by the EAC (see Recommendation 6.2). To this end, IFES will seek to provide advice and guidance to CAFFE and strongly encourage the international community to support applications by Civil Society Organizations (CSOs) to undertake such efforts.
- ✓ The international community should support efforts and interest by the media in investigative, accurate, and credible reporting on political corruption. It will be especially important for the journalists to understand how existing and new legislation (should it be passed) can be effectively utilized to identify sources of information.

Additional Perspectives:

Political Campaign Financing Legislation should include the following:

- Instating a maximum limit on expenditure by both candidates and parties;
- Instating a maximum amount for contribution from any single source;
- Requiring compulsory disclosure to the ECJ of all contributions over a fixed moderate figure;
- Requiring public disclosure of all contributions by persons having contracts with Government institutions or who receive contracts with Government institutions within a specified time after the elections;
- Requiring public disclosure of all contributions from foreign sources;
- Allowing public financing for political parties up to a fixed percentage of their approved budget;
- Prescribing minimum standards for internal rules of political parties and their registration so as to qualify for public financing;
- Mandating the submission of detailed audited accounts by parties and candidates and audit by the ECJ, and;
- Prescribing stern penalties for returns or falsified account and other breaches of the statutory provisions.

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