



A DISPROPORTIONATELY UNEQUAL PLAYING FIELD: CHALLENGES TO AND PROSPECTS FOR CAMPAIGN FINANCE LAW AND POLICY IN THE PHILIPPINES

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**POLITICAL FINANCING AND ITS IMPACT ON THE QUALITY OF
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**A DISPROPORTIONATELY UNEQUAL PLAYING FIELD: CHALLENGES
TO AND PROSPECTS FOR CAMPAIGN FINANCE LAW AND POLICY
IN THE PHILIPPINES**

Patricia Blardony Miranda

**EXAMINING THE LEVEL OF ACCOUNTABILITY AND TRANSPAREN-
CY WITH RESPECT TO POLITICAL PARTY FINANCING IN TIMOR-
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Celso da Fonseca and Joel Mark Baysa-Barredo



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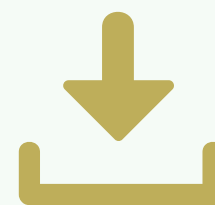
February 2021 - Perludem and Djokosoetono Research Center (DRC) of Universitas Indonesia launched their flagship journal, the Asia Pacific Journal of Elections and Democracy (APJED)

Covered by Perludem's The Asia-Pacific Regional Support for Elections and Political Transitions (RESPECT) program, supported by USAID.

APJED serves as a forum that records various research related to elections and democracy in the Asia-Pacific region.

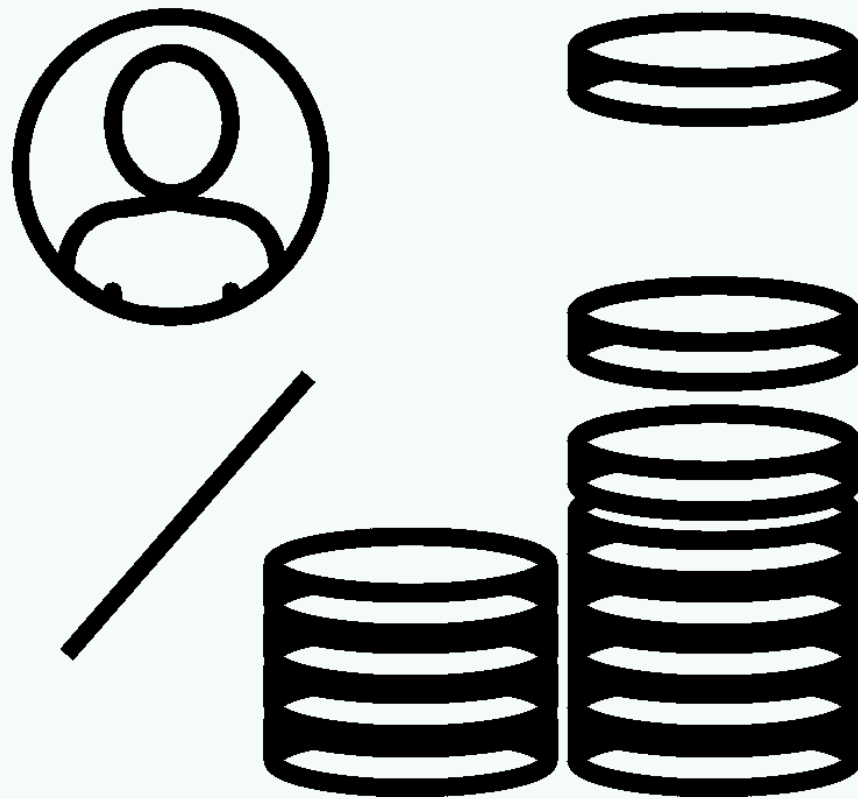
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<http://perludem.org/2021/02/17/the-asia-pacific-journal-of-election-and-democracy-volume-i-number-01/>



INTRODUCTION

The Omnibus Election Code of the Philippines, Batas Pambansa Blg. 881, enacted into law on 3 December 1985



- Overarching goal: free, orderly, honest, peaceful & credible elections
- Undergone some amendments but has remained largely unchanged save for amplification, modification, and repeals
- Some challenges:
 - Centrality of money in Philippine electoral campaigns
 - Marginalized and cash-strapped candidates and sectoral groups have to cope with discrimination + additional barriers, e.g., limited access to economic resources and rising campaign costs

“The lack of transparency in campaign finance is one of the roots of corruption. People who donate substantial amounts to the campaign kitty of a candidate or political party typically expect a return on investment.


This comes in the form of sweetheart deals if the candidate wins, or appointment of the donor or his relatives or friends to government positions.”

**– The Philippine Star Editors, “Regulating Campaign Finance”
December 2012**

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CAMPAIGN FINANCE: PHILIPPINES

- **CAMPAIGN FINANCE** refers to all funds raised in order to promote candidates, political parties, or policies in elections, referendums, initiatives, party activities, and party orgs
- Need for regulation enshrined in the 1987 Constitution, Article II: "**SECTION 26.** The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law."
- Equal access to opportunities means a level playing field for all candidates, regardless of their financial capacity
- Imposition of expenditure limits based on the size of the candidates' or parties' constituency

A wooden gavel with a handle and a head, resting on a wooden block. The gavel is made of dark wood and has a series of rings on the handle.

Equal opportunity to proffer oneself for public office, without regard to the level of financial resources one may have at his disposal, is indeed of vital interest to the public. The State has the duty to enact and implement rules to safeguard this interest.

– Chavez v. COMELEC G.R. No. 162777 August 31, 2004

REGIONAL WORKSHOP ON THE PROMOTION ELECTION INTEGRITY THROUGH DEMOCRATIC AND ACCOUNTABLE PARTY FINANCE AND LEGAL RESILIENCE

September 21, 2020

Direct tech support from different country contexts (source of comparative knowledge) ≠ stronger local institutions; stronger networks around issues

More knowledge sharing initiatives needed to address lack of available regional resources on electoral law reform



KEY POINTS

Laws aim to level the political playing field by setting spending thresholds according to what less-moneyed candidates can presumably afford

Ellen Weintraub (Federal Election Commission, USA) – accountability and transparency underpin efforts on more robust campaign finance laws and policies that regulate expenditures

Damaso Magbual (ANFREL/NAMFREL, Philippines) – more than a fair, accountable and equitable formula, focus is needed on ensuring laws are implemented, compliance is monitored, and there is regular and streamlined reporting to appropriate regulatory bodies

CONCEPTUAL AND
METHODOLOGICAL APPROACH

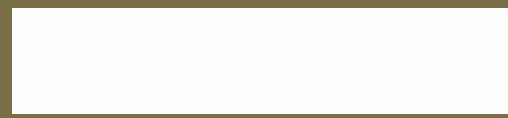
WHAT IS THE PROBLEM REPRESENTED TO BE?

Carol Bacchi's WPR approach was used to interrogate and analyze the Philippines' legal framework on campaign finance

Begins with the premise that proposed interventions reveal what the decision-makers find problematic

Invites us to explore the silences, gaps, assumptions, and effects





**How is equal access to opportunities
for public service defined
and represented in Philippine
campaign finance law and policy?**

Defining, representing, and problematizing equal access to opportunities for public service

REFERENCES: Pablo Querubin, 'Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines' (SSRN Scholarly Paper, Social Science Research Network 2012); Francis Tom Temprosa, 'A Human Rights Discourse on Campaign Finance in the Philippines' (SSRN Scholarly Paper, Social Science Research Network 2013); Bing Baltazar C Brillo, 'A Theoretical Review on Philippine Policy-Making: The Weak State-Elitist Framework and the Pluralist Perspective' (2011) 39 Philippine Quarterly of Culture and Society 54; Querubin (n 39). PCIJ, 'Covering Campaign Finance: The Philippine Experience', accessed 12 September 2021.

1. CAMPAIGN EXPENDITURE LIMITS 2. PROHIBITED CONTRIBUTION SOURCES

The explicit identification of equal access to opportunities for public service as a **positive indicator** for a democratic and fair electoral process spotlights the historically persistent problem of inequality and disadvantage

- A study has found more than half of elected Philippine members of Congress and governors have a relative who has been previously elected into office (Querubin, 2012)
- Some candidates in the 2016 elections spent up to as much as 60-71% of their net worth prior the elections (PCIJ, 2021)

IMPLICATIONS: chilling effect for new candidates; moral hazard and adverse selection (sources of inefficiency); financial capacity becomes *de facto* MOST IMPORTANT factor in electoral contests

CAMPAIGN EXPENDITURE LIMITS

Regulation of campaign finance by imposing a maximum limit on campaign expenditures is NOT a new measure, yet is unevenly implemented + needs to be updated to address the current context. See **Sections 100 - 101 of the OEC (BP 881)**:

- **"SECTION 100. Limitations upon expenses of candidates.** - No candidate shall spend for his election campaign an aggregate amount exceeding one peso and fifty centavos (PhP 1.50) for every voter currently registered in the constituency where he filed his candidacy: Provided, That the expenses herein referred to shall include those incurred or caused to be incurred by the candidate, whether in cash or in kind, including the use, rental or hire of land, water or aircraft, equipment, facilities, apparatus and paraphernalia used in the campaign: Provided, further, That where the land, water or aircraft, equipment, facilities, apparatus and paraphernalia used is owned by the candidate, his contributor or supporter, the Commission is hereby empowered to assess the amount commensurate with the expenses for the use thereof, based on the prevailing rates in the locality and shall be included in the total expenses incurred by the candidate.
- **"SECTION 101. Limitations upon expenses of political parties.** - A duly accredited political party may spend for the election of its candidates in the constituency or constituencies where it has official candidates an aggregate amount not exceeding the equivalent of one peso and fifty centavos (PhP 1.50) for every voter currently registered therein. Expenses incurred by branches, chapters, or committees of such political party shall be included in the computation of the total expenditures of the political party. Expenses incurred by other political parties shall be considered as expenses of their respective individual candidates and subject to limitation under Section 100 of this Code."

PROHIBITED CONTRIBUTION SOURCES

Government also needs to enact other regulatory measures to prevent conflicts of interest between future public officials and industry stakeholders prohibited by law from making contributions. See **Section 95 of the OEC (BP 881)**:

Prohibited contributions. - No contribution for purposes of partisan political activity shall be made directly or indirectly:

- Public or private financial institutions:
 - **Exception:** loans to a candidate or political party by public or private financial institutions legally in the business of lending money (*note:* as long as loan is in accordance with law and the ordinary course of business)
- Natural and juridical persons operating a public utility or in possession of or exploiting country's natural resources
 - **Example:** mining industry; (note: a challenge is when donations through front groups like chambers of commerce)
- Natural and juridical persons who hold contracts or sub-contracts to supply the government with goods or services or to perform construction or other works;
- Natural and juridical persons who have been granted franchises, incentives, exemptions, allocations or similar privileges or concessions by the government, including GOCCs;
- Natural and juridical persons who, within one year prior to the date of the election, have been granted government loans or other accommodations in excess of P100,000
- Educational institutions which have received grants of public funds amounting to no less than P100,000.00;
- Officials or employees in the Civil Service, or members of the Armed Forces of the Philippines; and
- Foreigners and foreign corporations

IMPACTS OF REVISED CORPORATION CODE (2019)?

The Revised Corporation Code (RCC) resurfaces issues whether political contributions by corporations are allowed under the law

BEFORE

- **Section 36(9) of Batas Pambansa Blg. 68**, or the old Corporation Code, contained an absolute prohibition on corporations, both foreign and domestic, donating to any political party or candidate, or for the purpose of any partisan political activity
- **Section 95 of the OEC** prohibits certain types of juridical entities from making direct or indirect contributions

NOW

- **Section 35(i) of the RCC**, signed into law on Feb. 20, 2019, no longer contains the word “domestic” and now provides that **“a corporation has the power and capacity to make reasonable donations...** Provided, that no foreign corporation shall give donations in aid of any political party or candidate or for purposes of partisan political activity.”





Photo Credit: Kevin Javellana/HealthJustice Philippines

CSC-DOH Joint Memorandum Circular No. 2010-01 – protection of bureaucracy against tobacco industry interference

COVERAGE: All government officials & employees: regardless of status; both national & local ; GOCCs with original charters; State colleges & universities

PROHIBITIONS (NOT EXHAUSTIVE):
No unnecessary actions or preferential treatments; No gifts, donations & sponsorships from the TI; no financial interest in TI

BLANKET EXCLUSION: TOBACCO INDUSTRY

**WORLD HEALTH ORGANIZATION FRAMEWORK
CONVENTION ON TOBACCO CONTROL ARTICLE 5.3:**

In setting and implementing their public health policies with respect to tobacco control, Parties shall act to **protect these policies from commercial and other vested interests of the tobacco industry** in accordance with national law.



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

How do we envision and implement strategies that can be used to question, disrupt, and address challenges to electoral integrity, political participation, and representation?

FUTURE RESEARCH RECOMMENDATIONS

- Not just consultation but participation of marginalized groups in campaign finance legal reform
- Build evidence base to include critical issues on gender equality and social inclusion
 - EXAMPLE: Philippine Commission on Women has resources and proposals to create a women's campaign fund for aspiring candidates from marginalized sectors
- Examine bills regulating/countering political monopolies and anti-competitive behavior (e.g., dynasties); strategize how to close loopholes created by the absence of proper auditing mechanisms and poor enforcement of penalties for violations
- Implement WHO FCTC properly; CSC DOH-JMC on tobacco industry interference (i.e, sponsorships & donations)



CONCLUSION

- Are challenges to electoral integrity, accountability, and transparency in campaign financing always due to ineffective implementation and enforcement?
 - WPR approach usefully informs us that issues that are left out can be just as important or more important than what makes it to the political agenda
- Leveling the political playing field by setting spending limits; banning funding from certain sources
 - IN LAW & PRACTICE: failure to account for realistic limits; lack of transparency; weak sanctions for non-compliance; continued existence of dynasties enable elite domination
 - IMPLICATION: failure to address the gaps and silences promotes opaqueness, exclusion, power asymmetries; transdisciplinary approaches needed



REACH OUT



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