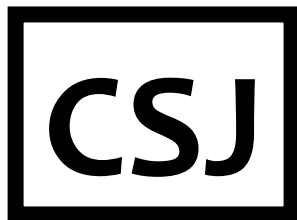


POLITICAL FINANCE MONITORING MANUAL



CENTRE FOR SOCIAL JUSTICE (CSJ)
(Mainstreaming Social Justice In Public Life)

POLITICAL FINANCE MONITORING MANUAL

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List of Acronyms

Act or Electoral Act	Electoral Act 2010 as Amended
CAMA	Companies and Allied Matters Act
EFCC	Economic and Financial Crimes Commission
INEC or Commission	Independent National Electoral Commission
NGO	Non Governmental Organisation
PDP	Peoples Democratic Party
PPMC	Political Parties Monitoring Committee
SAR	State and Administrative Resources

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PART ONE: The Concept Of Political Finance, State And Administrative Resources And The Need For Their Regulation

1. INTRODUCTORY ISSUES

1. 1 BACKGROUND

Nigeria's return to civil rule in 1999 and the attendant politics, elections and civil governance has brought to the fore the debate about the role of money and other resources in politics. The debate is all the more accentuated by developments which have thrown up godfathers seeking a pound of flesh from state resources after allegedly sponsoring godsons into political offices. The experiences of the perverse use of money in the politics of Anambra, Oyo and Plateau as stated in Box 1 are noteworthy.

Box 1: WHEN THE GODFATHER STRIKES

IN ANAMBRA

The Governor of Anambra State between May 2003 and March 2006, Dr. Chris Nwabueze Ngige rode on the back of a businessman, Chief Chris Uba into office. Uba committed his resources not only into financing Ngige's governorship campaigns but also into rigging him into office as the courts were later to declare. Before assuming office, Ngige reportedly entered into agreement with Uba on how the latter was to recoup his "investments". One, Ngige was to hand over a certain percentage of the state's monthly allocation from the Federation Account to Uba. This was to be done using the instrument of Irrevocable Standing Payment Order (ISPO). With the order, the agreed amount of money was to be deducted from source and paid to Uba even before the state government got its own share of the allocation. Second, about two thirds of the Commissioners, Special Advisers, Special Assistants and other political office holders to be appointed by Ngige were to be nominated by Uba. Uba was also to be given the free rein to pick the "juicy offices" the nominees were to occupy. On assumption of office, Ngige reneged on these agreements and hell was let loose. He was constantly harassed, threatened and once abducted from office. Uba repeatedly sponsored riots in Anambra State during which public property worth billions of naira were destroyed. Until the courts later declared that he was not the person rightfully elected as the Governor of Anambra State, neither Ngige nor Anambra State knew peace.

IN OYO STATE

The self acclaimed strongman of Ibadan politics, Chief Lamidi Adedibu (now deceased), never left anybody in doubt that he was the one who "installed" Senator Rasheed Ladoja, Governor of Oyo State from May 2003 to January 2006, in office. Compensation for his efforts was to come through regular financial gratification and the right to nominate those he wanted into important positions in the state. In addition, the Governor was to consult him on every important decision he was to take in the state. But things turned sour immediately Ladoja got into office. Adedibu complained of being neglected and not being consulted. He wondered why a certain percentage of the monthly security vote running into millions of naira which the Governor was at liberty to spend without accounting to anybody was not being given to him. When he could no longer stand what to him was a godson's ingratitude, he got 18 members of the 33 members of the state legislature who were loyal to him to remove Ladoja from office through impeachment and replaced him with his deputy, Christopher Alao-Akala. But the court later declared the impeachment illegal.

IN PLATEAU STATE

Plateau State Governor, Chief Joshua Dariye wanted to be a good boy to the powers that be in the country and a loyal party member to the Peoples Democratic Party (PDP) so that he could get another four year term in office as Governor from May 2003. So, he looted the state treasury of N1.6 billion Ecological Funds and diverted it to election campaign purposes. According to Dariye, following a directive from his party, he donated N66 million of the amount to President Olusegun Obasanjo's Campaign Organisation; N100 million to PDP South West; N100 million to PDP South; N10 million to ex-Deputy Senate President, Ibrahim Mantu. Dariye spilled the beans when the government's anti corruption outfit, the Economic and Financial Crimes Commission (EFCC) accused him of embezzlement. Earlier, Dariye had been arrested in London on suspicion of money laundering but had sneaked out of the United Kingdom before he could be arraigned. Before that incident, the Federal Government had suspended him from office for six months and declared a state of emergency in his state when sectarian and ethnic riots engulfed it.

In all countries of the world, money and other resources are required for political parties and candidates to reach out to the electorate and for the parties to run their day to day administrative and other programmes. Strong political parties are required to make democracy work and democracy can only flourish if parties have the means (money) of reaching out to the people to sell their policies and programmes. But the central challenge is the latitude, freedom or restriction to be given to individuals, associations, etc to contribute to the coffers of political parties and candidates. It is also about the role of the state in contributing and regulating the finances of political parties. It is about limits of expenditure by parties and candidates. Money is a means to an end; it is not a bad instrument per se, but the use to which it is expended determines its contribution to the development and political finance regime.

There is the need for the political finance regime to contribute to the fundamental rights of all peoples to be governed by a democratic institution produced from free, fair and credible elections as articulated in article 21 (3) of the Universal Declaration of Human Rights¹;

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or equivalent free voting procedures.

If the political finance regime is such that allows a few individuals who are wealthy to hijack the political process and install their cronies in office, such elections would not in the real sense be reflective of the will of the majority. The elections would be an "investment" by political entrepreneurs which they will attempt to recoup as soon as the candidates they financed come to power. The danger in this kind of scenario is that unlike an entrepreneur who invests in a market economy where market forces will determine the level of profit and returns he can make, the political entrepreneur is not limited by any such forces. His "profits" can be more than a thousand fold. And if resources are illegally diverted from developmental needs to service political debts, then the standard of living of the people will fall.

¹ See also article 25 of the International Covenant on Civil and Political Rights

The practice of state funding of political parties is also worthy of consideration. It is a practice prevalent in major democracies of the world². However, the quantum of resources made available by the state hardly meets the needs of the political parties. And the contestation for power is based on “outperforming” the opponents which means that state funding becomes a base before the parties go looking for extra funds. The criticism is that if the funding is such that can sustain the parties, it makes them lazy and less willing to strive to become a mass movement rooted in the people. There is the need for political parties to be rooted in the people and their society and this can be expressed through broad based financial and other support from the populace to the major political parties representing major political trends of thought. This will reduce the need for parties to go cap in hand to political investors who will eventually contribute to the economic degradation of the state.

A number of international and regional standards have made provisions relating to political finance. They include the following:

United Nations Convention Against Corruption³

Article 7 (3): Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties.

Covenant on Civil and Political Rights - General Comment No.25⁴

Paragraph 19: Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

African Union Charter on Preventing and Combating Corruption⁵

Article 10: Each State Party shall adopt legislative and other measures to: (a) Proscribe the use of funds acquired through illegal and corrupt practices to finance political parties.

Each State Party shall adopt legislative and other measures to: (b) incorporate the principle of transparency into funding of political parties.

² The following countries have some form of direct state funding vis; Albania, Argentina, Armenia, Australia, Austria, Belgium, Brazil, Canada, Denmark, France, United kingdom, United States of America, South Africa, South Korea, Germany, etc

³ General Assembly Resolution 58/4 of October 31 2003.

⁴ United Nations Commission on Human Rights (1996) interpreting article 25 - participation in public affairs and the right to vote, the right to participate in public affairs, voting rights and the right of equal access to public service; adopted at the 57th Session of the Human Rights Committee on 12 July 1996. CPR/C/21Rev.1/Add.7

⁵ Adopted on July 11 2003.

Venice Commission Guidelines on the Financing of Political Parties⁶

Paragraph 2: *[States should] Provide for the formation and free functioning of political parties, possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis.*

Paragraph 12: *The transparency of electoral expenses should be achieved through the publication of campaign accounts.*

Organisation of American States Inter-American Democratic Charter⁷

Article 5: *The strengthening of political parties and other political organizations is a priority for democracy.*

Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing.

Council of Europe

Paragraph 8(ii): *Political parties should receive financial contributions from the state budget in order to prevent dependence on private donors and to guarantee equality of chances between political parties⁸.*

Article 14: *States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns... The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication⁹.*

Southern African Development Forum

Art. 3 (i): *The electoral law should prohibit the Government to aid or to abet any party gaining unfair advantage.¹⁰*

This discourse will attempt to track the gamut of the concept of political finance, state and administrative resources and analyse the need for the regulation of political finance and the use of state and administrative resources. It will also examine the legal regime in Nigeria from the

⁶ Adopted March 9-10 2001.

⁷ Adopted September 11 2001.

⁸ Parliamentary Assembly of the Council of Europe, Recommendation 1516 (2001)

⁹ Recommendation (2003) 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns; adopted April 8 2003.

¹⁰ Norms and Standards for Elections in the SADC Region adopted March 25 2001.

Constitution of the Federal Republic of Nigeria 1999¹¹, the Electoral Act 2010 (as amended) and other regulations made by the Independent National Electoral Commission. It will end with checklists for monitoring the system of regulating political finance in Nigeria.

1.2 CONCEPT OF POLITICAL FINANCE

Political finance covers the entire life, processes and procedures of political parties and electioneering associated costs. It relates to monies spent for the formation, registration and running costs of political parties; monies for conventions, congresses, nomination of candidates, electioneering, etc. It includes the legal and illegal costs for the administrative expenses of parties, expenses for elections, litigating relevant political cases, etc¹². Apparently, expenses to subvert the electoral process are cognizable as prohibited political finance; allegations of bribery of federal legislators during the Third Term saga¹³, if it were true, will come under the broad umbrella of political finance. The following articulation of campaign expenditure (a sub-part of political finance) taken from the Political Parties Finance Handbook¹⁴ is instructive:

Campaign expenditure is defined as any expenditure incurred by a party for electoral purposes; that is solely for the purpose of enhancing the standing of or promoting electoral success for a party at a forthcoming or future election... Moreover goods or services for which payments are made prior to the campaign period, for use during the campaign period, shall be considered campaign expenditure and therefore must fall within the campaign expenditure limit. Campaign expenditure includes any expenditure incurred by a party in connection with the following items: Political party broadcasts, advertisement, distribution of unsolicited materials to the electorate, circulation of manifesto and other policy documents, market research and canvassing, media publicity, transportation and rallies and other events.

Political finance raises several questions which are country specific and answers to these posers will be found in the laws, policies, regulations and practice of countries. Although best practices are emerging, there is no size that fits all and no single model that will succeed in every political situation. Country specific political traditions and cultures must be taken into consideration before adopting particular solutions to political finance challenges. Political finance laws and regulations must compliment other aspects of the electoral system and should avoid making abstract provisions based on ideal models.

¹¹ Any reference in this discourse to the Constitution (except otherwise stated) is a reference to the Constitution of the Federal Republic of Nigeria, 1999 as amended.

¹² Michael Pinto-Duschinsky stated political finance to include 13 different issues vis; election campaign funds, political party funds, grants to elected officials, political organisation funds, pressure and interest group funds, political lobbying funds, litigation funds in politically relevant cases, partisan mass media funds, corrupt political funds, unofficial payments to elected officials, unofficial payments to civil servants, unofficial payments to the media and payments intended to improve the electoral process.

¹³ The attempt by former President Obasanjo through the legislature to amend the Constitution to extend the presidential constitutional tenure to three terms instead of the extant two terms.

¹⁴ Political Parties Finance Handbook, 2005, at page 28.

Practice is included as a source of standards because many jurisdictions including Nigeria have laws and policies that are dry letters on parchment, which are not enforceable or had not been enforced in the past. The regulation, monitoring and oversight of political finance raise several posers which include;

- What are the ideals the system is designed to promote - enhanced transparency, accountability, competition and level playing field?
- What are the definitions of election or party expenditure?
- What limits are placed on parties and political candidates?
- What are the disclosure rules and thresholds?
- What are the accounting standards, mechanisms and processes?
- Who supervises the accounts and the reporting mechanism?
- Which activities, omissions and conduct are outlawed by the political finance regime?
- Any sanctions and the adequacy of the sanctions?
- The probability of prosecution and sanctions.
- The relationship between violation of political finance rules and corruption in the polity.

Associated with political finance is the use and abuse of state and administrative resources by incumbent parties during electioneering. State and administrative resources are defined as resources put at the disposal of public institutions for the conduct of government or public affairs. There are six different kinds of state and administrative resources namely financial, media, legislative, regulatory, coercive and institutional¹⁵.

1.3 THE NEED FOR THE REGULATION OF POLITICAL FINANCE AND THE USE OF STATE AND ADMINISTRATIVE RESOURCES

It is imperative to examine at the outset what motivates individuals when they provide political funding to a candidate or a party. It is stated to be ideological or idealistic; social, aiming at social honours or access to men of power; financial, striving for material benefits¹⁶. To this may be added protection from prosecution and the full weight of the law, which motivates criminal

¹⁵ G. Jasper Cumme, 111, *Advancing the Frontiers Against Political Corruption: Building New Armies* at pages 1-2.

¹⁶ Vifred Pareto, *The Mind and Society* Vol. 4 (London: Jonathan Cape, 1935).

gangs and corrupt money to fund politics. Against this background, the first question is whether political finance can be regulated and if the answer is in the affirmative, why is it necessary to regulate political finance? To the first question, we state that comparative experience has shown that political finance can be regulated although the regulation cannot be absolute. To the second question, the answers are legion but a few are detailed below.

A. To Uphold the Supremacy of the Constitution: The Constitution is the fundamental law of the land and by S1. (3) it states;

The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution

The hijack of the government at any level by party financiers or godfathers will be in contravention of the spirit of the Constitution because it will imply that unelected persons will be governing from the background. Instead of due process and consultations in governance, the reality will be dictations from the godfather who is unelected and this will affect the fortunes of the state. The Anambra state case where a pact for the governor (godson) to repay an incredible sum of money to the godfather through an irrevocable letter of authority for deductions to be effected on the state's allocations at the Central Bank of Nigeria, for the godfather to nominate virtually all the commissioners and the governor not to take any major decision without the consent of the godfather is a clear case where the godfather had intended to take control of the state in a manner inconsistent with the Constitution. The godfather did not contest elections neither was he a legal or legitimate authority to act in the manner he wanted to act.

B. Enhancing Democracy and Development: Democracy and development are two sides of the same coin. Democracy provides the conducive environment for development to proceed unhindered while development facilitates and reinforces the wheel of democracy.

Unregulated political finance will encumber democracy and as such stultify a peoples' economic, social and political development because the rich who hijack the state apparatus will only respond to their selfish interests rather than the collective interests of society. Clearly, it will be an "investment" to be recouped a thousand fold since there are no forces to regulate the quantum of profit of the financiers. Resources that would have gone into education, health, housing, infrastructure and general economic development would be diverted to pay the political investors. The case of Anambra state under Governor Mbadinuju (1999-2003) where schools were closed for one academic session following the non payment of teachers' salaries is a case in point. Undue influence of money in politics will not lead to democratic development and consolidation to the extent that the will of the people will be subverted by a rich few who will capture the state for their own purposes¹⁷.

¹⁷ See the *Declaration on the Right to Development* adopted by United Nations General Assembly Resolution 41/128 of 4 December 1986.

C. To Curtail the Improper Influence of Money over Policy Outcomes: Policy outcomes in a state of unregulated political finance will largely be determined by the volume of resources available to the different policy positions. This will alienate the majority and cater for the interests of the financial elite.

D. To Promote Popular Participation in Political Financing: The regulation of the amount an individual or group can contribute to a party or a candidate is also borne out by the need for popular participation in political party and candidate financing. A candidate or party whose electioneering is supported by hundreds of thousands or millions of voters who contribute relatively small amounts has a wider support base than a party whose financing is organized by a few rich persons. In the long run, popular participation in political financing deepens democracy by broadening the ownership of party structures, machinery and decision making process. It also deepens candidate's support base such as happened in President Obama's campaign in 2008. In the run-up to the 2011 elections, the incumbent President Goodluck Jonathan also reached out to the electorate for funding support through opening specific dedicated accounts in banks and arranging with mobile telephone companies to receive donations through text messages from the public.

E. Promoting Issue Based Politics: The political agenda of any country is not a mathematical construct measurable with geometrical precision; it is a social phenomenon that reflects many influences and manifests in various forms. Mainstreaming issues of fundamental importance to society and pro-poor concerns in politics will help to eliminate "conspiracy and caucus politics". Issue based politics will work against the "add on technique" that simply designs the correct sharing formula of returns for the money elite and later remember issues of interest to the majority as a way of pretending to be concerned about popular issues. Thus, a transformatory approach to politics is advocated which will mainstream social policy needs and ends into the political process. The grounds for determining the party that gets into power will then include, apart from their flowery campaigns and ability to use resources to influence voters, their ability to address societal concerns and challenges.

F. To Curtail Money Laundering: If there were no restrictions on political finance, then the proceeds of criminal activities like drug and human trafficking, corrupt money, etc, will be easily recycled into the economy and political terrain. The danger is that it will rubbish the laws on money laundering and corruption while at the same time providing a safe haven for criminals who would have bought protection from the law from the proceeds of crime.

G. To Prevent the Subversion of the Legal System: Prohibited activities like bribery and treating would be done more brazenly if there were no regulations on campaign finance¹⁸. The need to set legal standards of decent conduct for civilized campaign and party finance

¹⁸ According to the former Italian Prime Minister Bettino Craxi – "*what needs to be said, and which in any case everybody knows, is that the greater part of political funding is irregular or illegal*"; Political Party Finance Handbook at page 27.

emphasizes political finance regulations. The Anambra state example where a political investor held a state hostage, hired thugs who committed arson and wanton destruction of state government property and yet did not face legal prosecution or even interrogation is an example of a direct subversion of the legal system, the rule of law and due process. To prevent the subversion of the legal system and to ensure social justice, those who feel called upon to present themselves as candidates for political office must scrupulously and meticulously observe the rules and regulations of the political finance system.

H. To Fight Corruption to a Standstill: Nigeria like other jurisdictions has enacted a number of laws on different aspects of corruption. At the regional and international levels, treaties have been negotiated to deal with the challenge of corruption¹⁹. From the Independent Corrupt Practices Commission and Other Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC), the Code of Conduct Bureau (CCB), etc, the war on corruption has become the mantra of the incumbent government. For the war to be holistic, political corruption and abuse of state resources must be brought directly within the purview of electoral malfeasance. Political corruption appears to be the fountain, the source and the unmoveable mover of other corruption and once it is allowed to flourish, there will be extreme difficulty in tackling other manifestations of corruption. In the words of former President Obasanjo²⁰:

With so much resources being deployed to capture elective offices, it is not difficult to see the correlation between politics and the potential for high level corruption. The greatest losers are the ordinary people, those voters whose faith and investment in the system are hijacked and subverted because money, not their will, is made the determining factor in elections.

A criminal gang when allowed to fund politics will virtually buy amnesty from prosecution by virtue of their donation to a winning political party.

I. Affirming Societal Ethics and Standards: Unregulated political financing can lead to wrong persons being recognised for state honours and as societal role models. In Nigeria, there are many individuals who have been honoured and eulogized by the state but who have no visible means of livelihood other than being on the corridors of power. These individuals have contributed in no small measure to the economic and political adversity of the state. The impact is that the youth who are impressionable are indirectly being asked to follow the lead of such dubious characters. Social ethics and standards therefore suffer from an unregulated and unenforced political finance regime. The 2006 cash for honours scandal in the United Kingdom where contributors were given life peerages as a reward for their contribution is a case in point. It sought to subvert societal ethics and values.

¹⁹ Corruption has been recognized as a fundamental source of underdevelopment in Africa and it facilitates criminal activities.

²⁰ President Obasanjo cited with approval at page 5 of the INEC *Political Party Finance Handbook*; INEC March 2005.

J. Gender on the Agenda: The dominant gender by the force of the patrimonial Nigerian society is male. The dominance manifests more in property relations and access to productive resources. Unregulated use of money in politics will further marginalize the female gender. Already female marginalization in politics is very pronounced and will be reinforced by the unregulated use of money in politics. The impact of this trend is that the state will not be using its optimal capacities which reside in the marginalized gender.

K. Ensuring Openness, Accountability and Transparency: Regulation of political finance particularly the disclosure regulations encourage openness and transparency with a view to informing the public and the authorities about the financial dealings of institutions that are aspiring to hold state power or are already in power²¹. It thus discourages those financial transactions that fall short of accepted legal and morals standards of society. Essentially, transparency is at the heart of politics. It helps prevent political parties and candidates from doing things that cannot stand the test of scrutiny from outside. Furthermore;

- Transparency provides the feedback for informed debate on political issues and policies. Indeed, it is a prerequisite for public debate, which can lead to better programmes and more efficient use of state resource when a political party comes to power. For example, if political finance information is not available, it is difficult to discuss it. It facilitates the identification of questionable funding, thus facilitating the adoption of best practices in political finance.
- Transparent political funding can be held accountable; the electorate will be able to hold political parties accountable if they have information on their sources of finance and ways of expending them. Political parties and candidates will also be more likely to follow the law if their acts and omissions are open to public scrutiny. Holding political parties and candidates accountable can provide a check on corruption.
- Adherence to transparency increases faith in political parties. Support can come from the public who can better understand what the parties and candidates are doing, and thus have more confidence in the political system.
- Transparency contributes to political stability as it prevents the buildup of a crisis in secret, bringing about smaller adjustments sooner²².

L. Enabling Voters to Make a Choice: The disclosure of the sources of a party's financing and its expenditure profile and priorities would enable the electorate to have an idea of how the party

²¹ Party financing is among the most important and yet for obvious reasons, the least transparent chapters of party history; Max Webber cited with approval at page 27 of the *Political Party Finance Handbook*, published by the Independent National Electoral Commission, March 2005.

²² Adapted from Mike Obadan, 2002 in *Proceedings of the Workshop on Implementing the 2002 Federal Budget*; Budget Office of the Federation.

would manage and spend public resources if it wins political power. Thus, the disclosure element motivated the decision of the United States Supreme Court judgement in **Buckley v Valeo**²³ where it was stated that;

Disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows the voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of the party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is more likely to be responsive and thus facilitate predictions of future performance in office.

M. To Prevent Abuse of State and Administrative Resources: Unregulated use of State and Administrative Resources (SAR) further tips the balance in favour of incumbents who are already advantaged in political contests. For financial resources, public funds through kickbacks and over-invoicing will be used to finance the campaign of the incumbents. Public funds derived from the budget can also be used to directly fund campaigns. The recent example in Abia state where the Governor appointed 457 advisers and aides on the eve of the 2011 elections is clearly a case of abuse. The 457 advisers will be paid from state resources but will work for the re-election and campaign of the governor thereby allowing him to use state resources to fund his campaigns. This will provide an uneven playing field to the disadvantage of other governorship candidates.

Other abuses of financial resources will include salary and pension increases in an election year by an incumbent administration to sway the electorate in its direction. For the other types of SARs the implications will be as follows²⁴.

(i). Media Resources

- Only candidates supported by the incumbent government have news coverage in state media.
- Opposition candidates are reported on in disparaging terms.
- Incumbent candidate's press conferences are given live coverage.
- News organ sympathetic to the opposition are heavily regulated.
- Government may deny registration to a radio station because of its outreach; especially where the state radio and television are widely listened to.

²³ **Buckley v Valeo**, 424 US 1 (1976).

²⁴ The foundation of this section and its skeleton (with some exceptions -the comments and the Nigerian examples) are taken from OSJIIF Campaign Monitoring Handbook and the Liberian paper of G. Jasper Cumme 111, *Advancing the Frontiers Against Political Corruption: Building New Armies*.

- Discounts for state parties.

The Code of Conduct for Political Parties 2013 at S.3 (13) elaborates on media resources as follows:

All political parties shall have equal/equitable access to public owned print and electronic media as guaranteed by law.

Also, the National Broadcasting Code of 1993 which seeks to delineate the minimum standards to be observed by all operators of radio and television stations as well as satellite and cable distribution services states²⁵:

In adherence to the principle of pluralism of ideas and opinions, equal opportunity and air time shall be provided to all political parties or views, with particular regard to amount of time and belt during electioneering campaign period.

(ii). Legislative Resources

- New laws may disparage the opposition
 - Citizenship laws
 - Residency laws
 - Property laws
 - Minimum Deposit Laws
 - State Funding Laws
 - Party, Candidates Offices in Constituencies
 - Registration Fees Laws

(iii). Regulatory Resources

- Discriminatory Campaign Permits²⁶
- Discriminatory March Permits
- Regulation of use of public facilities
- Merger and Coalition bans (Will they pool too much resources?)

²⁵ See S.5.4.6 of the Code.

²⁶ Although declared unconstitutional by the Court of Appeal, the Public Order Act which authorizes the Police to approve of public gatherings and give a permit upon an application to it has been used and abused to the detriment of the opposition in Nigeria.

- Partial dissemination of information
- Partial enforcement of regulations

(iv). Coercive Resources

- Intimidate opposition / opponents²⁷
- Frighten supporters
- Create or present the incumbent as the only option
- Intimidate and frighten monitors/observers
- Raise the stakes for participation
- Cause misrepresentation and disenchantment
- Lead to dissent and instability in the long run

(v). Institutional Resources will be used for the incumbent party.

- **Government Resources**
 - Employees
 - Vehicles
 - Offices
 - Contractors
 - Equipment
 - Stationery
 - Buildings
 - Symbols of authority and approbation

The Code of Conduct for Political Parties²⁸ deepens the understanding of institutional resources by providing that:

²⁷ Discriminatory law enforcement, investigations and prosecutions can be used against the opposition and would seem to be legal since it is no defence to a charge of an alleged crime for X to plead that he committed the crime because Y had committed a similar or more heinous crime and the state refused to prosecute him. This appeared to be prevalent in the investigations and prosecution of offences by the Economic and Financial Crimes Commission in the run up to the 2007 elections.

²⁸ Paragraph 9 of the 2011 Political Parties Code of Conduct.

All political parties shall separate party business from government business. As such, political parties shall not utilize public resources for any party activities and shall not permit any of its sponsored candidates holding public office to use public resources for the purpose of political campaigning in elections.

PART TWO: The Legal Regime In Nigeria - The Constitution Of The Federal Republic Of Nigeria 1999 (As Amended), The Electoral Act 2010 (As Amended) And Other Laws And Regulations

2. THE LEGAL REGIME FOR POLITICAL FINANCE AND SAR

2.1 THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

S 153 of the Constitution establishes the Independent National Electoral Commission (INEC) with powers and duties as stated in Part 1 of the Third Schedule to the Constitution. Specifically, the Commission's powers on political finance are to: –

- (c) monitor the organization and operation of the political parties, including their finances;*
- (d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;*
- (f) monitor political campaigns and provide rules and regulations which shall govern the political parties;*
- (i) carry out such other functions as may be conferred upon it by an Act of the National Assembly.*

In the exercise of these wide constitutional powers, INEC under the Electoral Act of 2002 set up the Political Parties Monitoring Committee (PPMC) and designed a Political Party Finance Handbook and a Political Party Finance Manual. By the Transitional provisions of the 2006 and 2010 Electoral Acts and subsequent reviews of their provisions, the provisions of the Handbook and Manual are made applicable to the current regime with such modifications as are necessary to ensure harmony with the new Act. PPMC's duties include the following:

- Maintain liaison with all political parties;
- Develop a Code of Conduct for the political parties and monitoring and enforcing their compliance with laid down rules, regulations and guidelines as contained in the Code of Conduct for political parties;
- Advising appropriate arms of government on the provision and level of funding to the parties;
- Developing guidelines for expenditure and reporting on the use of such funds;
- Monitoring the organization, operations and finances of the political parties;
- Developing guidelines for the maintenance of financial records of the political parties;
- Arranging for the annual examination and audit of the accounts and funds of the political parties;
- Monitoring the conduct of party conventions and congresses as and when they are held.

The Political Party Finance Manual has designed reporting forms and accounting standards for ensuring compliance with the provisions of the Constitution on political financing.

The Constitution also makes some other interesting provisions relating to political finance.

S. 221. No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.

S. 38 (2) of the Companies and Allied Matters Act (CAMA)²⁹ prohibits corporate bodies from making contributions to political parties. The section specifically provides as follows:

A company shall not have or exercise power either directly or indirectly to make a donation or gift of any of its property or funds to a political party or political association, or for any political purpose; and if any company, in breach of this subsection makes any donation or gift of its property to a political party, or political association, or for any political purpose, the officers in default and any member who voted for the breach shall be jointly and severally liable to refund to the company the sum or value of the donation or gift and in addition, the company and every such officer or member shall be guilty of an offence and liable to a fine equal to the amount or value of the donation or gift.

Section 38 (1) of CAMA vests every company with the powers of a natural person of full capacity except if it is restrained by limitations imposed by the company's memorandum or any other enactment. On the basis of this subsection, even if a company is not prohibited by the Constitution or CAMA from making donations to political parties, it will still be subject to the limits of individual donations in the Electoral Act or regulations made by INEC.

During the 2003 elections, Corporate Nigeria contributed to the campaign funds of President Olusegun Obasanjo in contravention of the above sections. INEC failed, refused and neglected to call the People's Democratic Party and the President's campaign team to order. Arguments were raised that S.83 (1) of the 2002 Electoral Act supported the donation from Corporate Nigeria. However, this section contradicts section 221 of the Constitution. It is peremptory in constitutional jurisprudence that if any other law is inconsistent with the provisions of the Constitution, the Constitution prevails and such other law shall be void to the extent of its inconsistency with the Constitution³⁰.

S. 225. – (1) Every political party shall, at such times and in such manner as the Independent National Electoral Commission may require, submit to the Independent National Electoral Commission and publish a statement of its assets and liabilities.

(2) Every political party shall submit to the Independent National Electoral Commission a detailed annual statement and analysis of its sources of funds and other assets together with a similar statement of its expenditure in such form as the Commission may require.

The provisions of S.225 (2) and (5 - *infra*) appear wide enough for INEC to undertake the detailed monitoring of political financing in Nigeria. The operative words which give INEC such

²⁹ Cap C20, Laws of the Federation of Nigeria 2004.

³⁰ S.1 (3) of the Constitution and Hans Kelsen's *grundnorm* theory of the hierarchy of laws.

latitude of powers include “detailed”, “analysis”, “in such form as the Commission may require”. Even without the provisions of the Electoral Act 2010, INEC could ask for names and other details of donors to candidates and political parties.

Further, by S.225

(3) No political party shall-

(a) hold or possess any funds or other assets outside Nigeria; or

(b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.

(4) Any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the Commission within twenty-one days of its receipt with such information as the Commission may require.

The bar on the receipt of funding from outside Nigeria appears to be total. But it is a known fact that parties in Nigeria have chapters in other countries like the United Kingdom and the United States of America. Nigerians living in these countries constitute the membership of these chapters. Do we interpret the Constitution to mean that Nigerians in these countries are barred from contributing to party financing in Nigeria? If they cannot use the banking and electronic means to transfer money to the home chapter in Nigeria, are they also barred from donating to the parties when they come home to Nigeria? Is the bar only applicable to funding by non Nigerians or non Nigerian organizations? It needs to be noted that there is no legal prohibition on Nigerians resident outside Nigeria from being card carrying members of political parties in Nigeria. In other jurisdictions where provisions are made for people living outside the country to vote, they can as well vote. It therefore appears that the bar is for non Nigerians and their organizations³¹.

(5) The Commission shall have power to give directions to political parties regarding the books or records of financial transactions which they shall keep and, to examine all such books and records.

(6) The powers conferred on the Commission under subsection (4) of this section may be exercised by it through any member of its staff or any person who is an auditor by profession, and who is not a member of a political party.

226. – (1) The Independent National Electoral Commission, shall in every year prepare and submit to the National Assembly a report on the accounts and balance sheet of every political party.

³¹ A judicial interpretation of S.225 (3) and (4) would help to resolve this challenge.

(2) It shall be the duty of the Commission, in preparing its report under this section, to carry out such investigations as will enable it to form an opinion as to whether proper books of accounts and proper records have been kept by any political party, and if the Commission is of the opinion that proper books of accounts have not been kept by a political party, the Commission shall so report.

(3) Every member of the Commission or its duly authorized agent shall-

(a) have a right of access at all times to the books and accounts and vouchers of all political parties; and

(b) be entitled to require from the officers of the political party such information and explanation as he thinks necessary for the performance of his duties under this Constitution,

and if the member of the Commission or such agent fails or is unable to obtain all the information and explanation which to the best of his knowledge and belief are necessary for the purposes of the investigation, the Commission shall state that fact in its report.

However, it appears that after obtaining the report, the Constitution does not stipulate what the National Assembly should do with it. Since 1999, Nigerians are still waiting for the report of the considerations of the National Assembly following INEC's reports or any follow up action including new legislation and policy recommendations. In the alternative, it appears that INEC has failed to report to the National Assembly since 1999.

The Constitution focuses its attention on reporting by political parties and neglects expenditure of candidates. This may be in recognition of the fact that political finance expenses go beyond campaign and electioneering expenditure and the fact that parties also receive public funds. However, the bulk of electioneering resources are spent by candidates. Essentially, the presidential system, of government in Nigeria makes elections and campaign spending candidate-centric instead of being party-centric. This leaves a great vacuum because campaign expenses form the greater bulk of political financing and the bulk spenders are not under constitutional obligation to report their expenditure.

*S. 228. The National Assembly may by law provide-*³²

³² This is the provision of the 1999 Constitution before the amendment: The National Assembly may by law provide:- (a) for the punishment of any person involved in the management or control of any political party found after due inquiry to have contravened any of the provisions of section 221, 225 (3) and 227 of this Constitution; (b) for the disqualification of any person from holding public office on the ground that he knowingly aids or abets a political party in contravening section 225 (3) of this Constitution; (c) for an annual grant to the Independent National Electoral Commission for disbursement to political parties on a fair and equitable basis to assist them in the discharge of their functions; and (d) for the conferment on the Commission of other powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the provision of this Part of this Chapter.

(a) for guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party primaries, party congresses and party conventions.

(b) for the conferment on the Independent National Electoral Commission of powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that political parties observe the practices of internal democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions.

From the constitutional angle, the requirement for a candidate to file his assets declaration before being cleared to contest elections is missing. The Liberian electoral provisions requiring assets declaration to be filed with the Electoral Commission and made available to the public through a publication would have been ideal for Nigeria.

INEC has noted the following as barriers against the effective auditing of political party accounts³³;

- The non cooperative attitude of the political class and the political parties;
- The inability to locate the offices of the political parties at their given addresses;
- The inability to differentiate between funds and other assets remitted to the political parties from outside Nigeria (as prohibited by S.225 (4) of the Constitution) and lack of proper records of membership dues as well as contributions of party wings/branches located outside the country;
- The absence of proper book keeping and records of financial transactions;
- The problem of monitoring the source of funds spent by individual candidates who not only fund the parties but their elections.

There is also a mistaken notion from the political parties that INEC should not be demanding financial reports from them in the years that public funding is not made available to the parties. The constitutional requirements of disclosure and reports to INEC are not predicated on public funding of political parties. They stand on their own and therefore should attract voluntary compliance as a sign of the willingness of a party to play by the rules.

2.2 THE ELECTORAL ACT 2010 AS AMENDED

³³ Page 19 of the *Political Party Finance Handbook*.

The provisions of the Electoral Act 2010 (as amended) on political finance are reviewed hereunder. S. 88 of the Act is on possession or retention of funds from outside the country. It expatiates on the provisions of section 225 (3) of the Constitution.

A. Offences in Relation to the Finances of a Political Party

S.88 *Any Political Party that-*

(a) holds or possesses any fund outside Nigeria in contravention of section 91 (3)(a) of this Act commits an offence and shall forfeit the funds or assets purchased with such funds to the Commission and on conviction shall be liable to a fine of not less than N500,000.00;

(b) retains any fund or other asset remitted to it from outside Nigeria in contravention of section 91 (3) (b) of this act is guilty of an offence and shall forfeit the funds or assets to the Commission and on conviction shall be liable to a fine of not less than N500,000.00.

It is imperative to note that subsection (3) of section 91 of the Act has no (a) and (b) referred to in the section. This appears to be the product of improper proof reading in the finalization of the Act for assent.

B. Period to be Covered by Annual Statement

89. *(1) Every political party shall submit to the Commission a detailed annual statement of Assets and Liabilities and analysis of its sources of funds and other assets, together with statement of its expenditure in such a form as the Commission may from time to time require.*

(2) The Statement of Assets and Liabilities referred to in subsection (1) of this section shall be in respect of the period 1st January to 31st December in each year, and that in the year which this Act comes into operation, it shall be for the period beginning with the registration of such party and ending on the following 31st December.

(3) Every political party shall grant to any officer authorized in writing by the Commission, access to examine the records and audited accounts kept by the political party in accordance with the provisions of this Act and the political party shall give to the officer all such information as may be requested in relation to all contributions received by or on behalf of the party.

(4) The Commission shall publish the report on such examinations and audit in three National Newspapers.

Section 89 (1) adds little to section 225 (2) of the Constitution while (3) rephrases section 226 (3) of the Constitution.

C. Power to Limit Contribution to a Political Party

90. (1). *The Commission shall have power to place limitation on the amount of money or other assets, which an individual or group of persons can contribute to a political party.*

D. Limitation on Election Expenses

91. (1) *Election expenses shall not exceed the sum stipulated in subsection (2) – (7) of this section.*

(2) *The maximum election expenses to be incurred by a candidate at a Presidential election shall be one billion naira (N1,000,000,000).*

(3) *The maximum election expenses to be incurred by a candidate at a Governorship election shall be two hundred million naira (N200,000,000).*

(4) *The maximum amount of election expenses to be incurred in respect of Senatorial seat by a candidate at an election to the National Assembly shall be forty million naira (N40,000,000) while the seat for House of Representatives shall be twenty million naira (N20,000,000)*

(5) *In the case of State Assembly election, the maximum amount of election expenses to be incurred shall be ten million naira (N10,000,000).*

(6) *In the case of a chairmanship election to an Area Council, the maximum amount of election expenses to be incurred shall be ten million naira (N10,000,000).*

(7) *In the case of councillorship election to an Area Council, the maximum amount of election expenses to be incurred shall be one million naira (N1,000, 000).*

(8) *In determining the total expenditure incurred in relation to the candidature of any person at any election no account shall be taken of:-*

(a) any deposit made by the candidate on his/her nomination in compliance with the law ;

(b) any expenditure incurred before the notification of the date fixed for the election with respect to services rendered or material supplied before such notification.

(c) Political party expenses in respect of the candidate standing for a particular election.

(9) *No individual or other entity shall donate more than one million naira (N1, 000,000) to any candidate.*

The logic and empirical basis of the above limitations was not articulated in the law and INEC or the National Assembly has not come out with any justifications. Is it based on the number of voters to be addressed by the candidate or the land area to be covered or media and other expenses? The ceilings appear arbitrary. For instance, if a presidential candidate with 36 states to cover is to spend N1billion, why should the Act allow a gubernatorial candidate with one out of 36 states to spend one fifth of the presidential candidate's ceiling? If a senatorial zone is one third of a state, why did the Act not grant senatorial candidates one third of the governor's ceiling? What is the relationship between the area covered by a senatorial seat and that of a House of Representatives member?

In respect of the exclusion of any expenditure made before the notification of the date fixed for election, it appears that the Act is encouraging frontloading of expenditure by candidates since

those expenses will not be taken into cognizance in determining the total expenses. The implication of this development is that in practical terms, there is no real expenditure limit as candidates can always rely on the loophole in the law to exceed the limits.

Political party expenses are also excluded. The implication is that parties have the leeway to expend enormous resources to support their candidates outside of the candidate's expenditure ceilings. It may be difficult to draw a reasonable line between candidate's expenditures and those *stricto sensu* made by a political party.

Pray, what is the definition of political party expenses in respect of a candidate standing for election? S.92 (1) defines election expenses as expenses incurred by a political party within the period from the date notice is given by the Commission to conduct an election up to and including the polling day in respect of the particular election. Further, section 92 (2) offering an insight simply stated that election expenses incurred by a political party for the management or conduct of an election shall be determined by INEC in consultation with political parties. Thus, the definition is still awaiting a clarification meeting between INEC and the parties.

There is the unresolved question of the capacity of INEC to monitor and enforce these expenditure ceilings. INEC's current structure,³⁴ funding and previous experience appear not to support its ability to monitor and enforce the new ceilings. The alternative is for INEC to strengthen its structure for monitoring and enforcement whilst at the same time establishing collaboration with civil society on the matter or to have an independent body set up specifically to monitor political finance and the use of state and administrative resources.

It is heart-warming to note that INEC has taken up the gauntlet and has decided to track campaign finance in the lead up to the 2015 general elections. The Commission has embarked on capacity building for its staff to conduct campaign finance monitoring. It is also developing Political Party Finance Tracking Forms as well as revised the Political Party Finance Manual and Handbook 2011.

(9) No individual or other entity shall donate more than (N1,000,000) to any candidate.

The Act should have introduced the concept of "permissible donor" to bar persons who in the last five years have been convicted of offences involving fraud or dishonesty or defrauding the revenue from contributing to the coffers of political parties and candidates. And a reaffirmation should have been made on the bar on corporate donations.

There is also the issue of in kind donations or other resources apart from money. If the limitation is financial, the implication is that services or other resources worth more than N1m can be

³⁴ INEC's mandate has been widened by the 2006 Electoral Act to include three new areas to wit; conduct voter and civil education, promote knowledge of sound democratic election processes and conduct any referendum required to be conducted pursuant to the provisions of the 1999 Constitution or any other law or Act of the National Assembly.

donated. The Act should have unequivocally avoided this controversy. It can be affirmed however that the ceiling applies to financial and other resources.

(10) A candidate who knowingly acts in contravention of this section commits an offence and on conviction is liable-

(a) in case of presidential election to a maximum fine of N1,000,000.00 or imprisonment of 12 months or both

(b) in the case of a governorship election to a fine of N800,000.00 or imprisonment for 9 months or both;

(c) in case of Senatorial seat in the National Assembly election to a fine of N600,000.00 or imprisonment for 6 months or both;

(d) in the case of House of Representative seat in the National Assembly election to a fine of N500,000.00 or imprisonment for 5 months or both;

(e) in the case of a State House of Assembly election to a fine of N300,000.00 or 3 months imprisonment or both;

(f) in the case of Chairmanship election to a fine of N300,000.00 or 3 months imprisonment or both; and

(g) in the case of Councillorship election to a fine of N100,000.00 or 1 month imprisonment or both.

The penalties indicated as fines are paltry considering the undue advantage expenditures above the ceiling will confer on the candidate. So a candidate can deliberately make up his mind to violate the provisions and set aside the money to pay the fine. It is on record that no one has been prosecuted or even convicted of the offence of exceeding the limitations despite available information that candidates are exceeding the ceiling.

The other major issue is the question of operationalising these provisions; how would implementation proceed? Who will bring up evidence to show that a candidate has exceeded the ceiling? An external complaints mechanism accepting reports from non governmental organizations, the media and independent whistle blowers should complement INEC's internal mechanism. Essentially:

Any person should be allowed to file a complaint if she or he believes a violation of the Electoral Act has occurred or is about to occur. The complaint process can require a formal, written document satisfying specific criteria for a proper complaint, or can have a more liberal character, with the enforcement agency taking action based on press articles or informal

allegations. Some political finance systems also give the enforcement agency the discretion to act on information it receives anonymously³⁵.

- (11) Any individual who knowingly acts in contravention of subsection (9) shall on conviction be liable to a maximum fine of N500,000.00 or 9 months imprisonment or both.*
- (12) Any Accountant who falsifies or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the breach of the provision of this section of this Act commits an offence and on conviction is liable to 10 years imprisonment.*

From subsection 12, any Accountant who facilitates the breaking of the law and its concealment bears the greatest brunt of the law - 10 years imprisonment. Although the Accountant owes the nation a professional duty, the penalty seems out of proportion to that of other actors in the system.

E. Election Expenses of Political Parties

92. *(1) For the purposes of an election, "election expenses" means expenses incurred by a political party within the period from the date notice is given by the Commission to conduct an election up to and including, the polling day in respect of the particular election.*

(2) Election expenses incurred by a political party for the management or the conduct of an election shall be determined by the Commission in consultation with the political parties.

(3) (a) Election expenses of a political party shall be submitted to the Commission in a separate audited return within six months after an election and such return shall be signed by the political party's auditors and counter-signed by the Chairman of the party and be supported by a sworn affidavit by the signatories as to the correctness of its contents.

(b) Any political party which commits a breach of this section is guilty of an offence and shall be liable on conviction to a maximum fine of N1,000,000 and in the case of failure to submit an accurate audited return within the stipulated period, the court may impose a maximum penalty of N200,000 per day on any party for the period after the return was due until it is submitted to the Commission.

(4) The return referred to in subsection (3) of this section shall show the amount of money expended by or on behalf of the party on election expenses, the items of expenditure and commercial value of goods and services received for election purposes.

(5) The political party shall cause the return submitted to the Commission pursuant to subsection (4) of this section to be published in at least two National Newspapers.

³⁵ See the recommendation for external complaints at page 70 of the Review Paper on the Draft Electoral Bill 2004 Regulations Referring to Political Finance and Party Registration; IFES, May 2005.

(6) Any political party that incurs election expenses beyond the limit stipulated in this Act is guilty of an offence and shall be liable on conviction to a maximum fine of N1,000,000 and forfeiture to the Commission, of the amount by which the expenses exceed the limit set by the Commission.

(7) The Commission shall make available for public inspection during regular business hours at its Headquarters and state offices the audit returns of the political parties required by subsection (3) of this section which shall include the names, addresses, occupation, and amount contributed by each contributor to a party.

Unfortunately, election expenses are not defined in the interpretative sections of the Act and the above does not delineate the contours of election expenditure - what is included and what is excluded? The above definition is nebulous. If the party chairman is sick during an election period and if he is entitled as a condition of service to free medical services, the above definition would qualify it as election expenses. The following articulation of campaign financing taken from the Political Parties Finance Handbook³⁶ is instructive:

Campaign expenditure is defined as any expenditure incurred by a party for electoral purposes; that is solely for the purpose of enhancing the standing of or promoting electoral success for a party at a forthcoming or future election... Moreover goods or services for which payments are made prior to the campaign period, for use during the campaign period, shall be considered campaign expenditure and therefore must fall within the campaign expenditure limit,

Campaign expenditure includes any expenditure incurred by a party in connection with the following items: Political party broadcasts, advertisement, distribution of unsolicited materials to the electorate, circulation of manifesto and other policy documents, market research and canvassing, media publicity, transportation and rallies and other events.

In subsection (6), the penalty raises the question of “what is the ceiling for political parties? Or are political parties bound by the candidate’s ceiling? Will the ceilings be determined by the outcome of a consultation between the political parties and INEC as anticipated in subsection (2)? As at date, no consultations have been held to fix the ceilings. The questions are legion.

Subsection 7 above will further enhance transparency and accountability of the political parties to the electorate and provide information for civil society and the media, researchers and academics to further extend the frontiers of knowledge on political finance. But the converse is that it may scare away contributors to opposition political parties who may be afraid of being persecuted by the incumbent government in the event they return to power. State and administrative resources which focus the searchlight on the activities of the businesses of individuals sponsoring opposition parties will definitely find a reason for the state to legally move against such financiers. In this instance, any slight breach of the law can result in prosecution and heavy legal sanctions.

³⁶ Supra at page 28.

Also, subsection 7 may favour the incumbent administration since Nigeria runs a rent economy where over 90% of successful money men and women could track their wealth to either abuse of office or sheer governmental patronage. Any serious minded businessman whose name is missing from the published list of financiers of the ruling party may not get contracts or be patronized. However, the foregoing possibilities do not make a strong case against disclosures. Rather, it makes a case for equality before the law and equal protection of the law which can be guaranteed by strong democratic institutions, the courts and professional prosecution and law enforcement agencies.

F. Disclosures by Political Parties

S. 93 of the Act is on disclosures by political parties

(1) No political party shall accept or keep in its possession any anonymous monetary or other contributions, gifts, properties, etc from any source whatsoever.

(2) Every political party shall keep an account and asset book into which shall be recorded:-

(a) all monetary and other forms of contribution received by the party; and

(b) the name and address of any person or entity that contributes any money or other thing which exceeds N1,000,000.00

(3) No political party shall accept any monetary or other contribution exceeding (N100,000) unless it can identify the source of the money or other contribution to the Commission.

(4) Every political party sponsoring the election of a candidate shall, within three months after the announcement of the results of the election, file a report of the contributions made by individuals and entities to the Commission.

It appears that the Act failed to put a ceiling on how much an individual or entity can donate to a political party. This is dangerous for democracy and the growth of popular and issue based politics. Also for the effectiveness of law enforcement, transparency and accountability, it is imperative that all the returns on sources of money and expenditure of the political parties be filed not only with INEC but also with the tax authorities, the Economic and Financial Crimes Commission and the Independent Corrupt Practices and Other Related Offences Commission.

G. Absence of Disclosure Requirements for Candidates in the Act

In the maze of all the foregoing provisions in the Act and in the Constitution, there is no single provision requiring candidates who have explicit statutory expenditure ceilings to disclose or report their expenditure to INEC or any authority or agency. This is a very big lacuna, a deliberate one introduced by the legislature in all electoral laws since 1999. The self interest of the politicians in the executive and the legislature ensured that provisions for ceilings are

inchoate because they cannot be monitored and no one is under obligation to report on them. Without a report from candidates, it is impossible to determine compliance with the ceilings. In the candidate-centric presidential system operating in Nigeria, there is absolutely no reason why the candidates have no reporting obligations despite provisions for sanctions for exceeding the ceiling in the Act. Essentially, the lacuna makes the provisions for ceilings non-operational.

H. INEC's Disclosure Requirements

However, INEC has taken steps to provide reporting obligations for candidates. Relying on S.153 of the Act³⁷, INEC has made provisions in the Guidelines and Regulations for Political Parties 2013. The Guidelines state as follows.

Candidates, Campaign Office, Fundraising by Candidates and Disclosure

S. 11. All candidates shall:

(a) *Submit detailed address of their campaign offices to the Commission within 7 days from the date of publication of the notice of election.*

(b) *Notify the Commission of all events or meetings for the purpose of raising funds towards their campaign at least 7 days before such events or meeting.*

Disclosure

12. *All candidates shall disclose to the Commission records of all contributions and other sources of funds for their campaign, as well as records of expenditure in a prescribed format issued by the Commission.*

Books of Accounts

13. *Every candidate shall:*

(a) *Maintain a record of all contributions as well as any other source(s) of funds. The records shall include the names, addresses, occupation of the donor(s) and amount donated.*

(b) *Maintain proper books of account and records of all expenses incurred during campaign.*

Anonymous Contribution(s)

14. *No candidate shall accept or keep in his/her possession any money anonymously donated or other contributions, gifts or property from any source whatsoever.*

³⁷ Section 153 of the Act states that: “*The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for its administration thereof*”

Audited Return

15. (1) *All candidates shall:*

(a) Submit detailed audited returns of their campaign expenses to the Commission within six (6) months after an election.

(b) Such returns shall indicate details of donations, other sources of funding, expenditure on goods, services and sundry expenses incurred for the purpose of election.

(2). The audited return on campaign expenses shall be signed by the candidate and supported by an affidavit sworn by the candidate as to the correctness of its content.

16. The Commission shall examine the records and audited account, of candidates on their campaign expenses through any officer or body authorized by the Commission in writing.

The foregoing Guidelines provide a clear procedure for candidates to document and report on all contributions and expenses regarding the campaigns to the Commission. Candidates are under obligation to notify INEC of their fundraising activities at least 7 days before the event; keep proper books of account detailing receipts and expenditure; decline anonymous contributions; audit the campaign expenses and submit the audited accounts to INEC accompanied by a verifying affidavit vouching its correctness on oath. Thus, any statements in the audited accounts which are incorrect introduce the legal dimension of lying on oath. The only thing remaining to ensure that the candidates comply with these rules is the political will to enforce same. The trend of events after the 2015 elections will show whether INEC will be ready and willing to enforce the Guidelines.

I. State and Administrative Resources

On the use of state and administrative resources particularly relating to the media, the Act has made provisions in section 100 of the Act.

S.100 (1): A candidate and his party shall campaign for the elections in accordance with such rules and regulations as may be determined by the Commission.

(2) State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election.

(3) Media time shall be allotted equally among the political parties or candidates at similar hours of the day.

(4) At any public electronic media, equal airtime shall be allotted to all political parties and candidates during prime time at similar hours each day, subject to the payment of appropriate fees.

- (5) *At any public print media, equal coverage and conspicuity shall be allowed to all political parties.*
- (6) *Any public media that contravenes subsections 3 and 4 of this section shall be guilty of an offence and on conviction is liable to a maximum fine of N500,000 in the first instance and to a maximum fine of N1,000,000 for subsequent conviction.*

The foregoing section in subsection (2) mentions “state apparatus” which includes the media. State apparatus is wide enough to include all state and public resources put at the disposal of incumbents for public purposes including finances, government personnel, the security and regulatory agencies, etc.

J. Bribery, Corruption and Vote Buying

The Act has made provisions for bribery and corruption, vote buying and treating in relation to elections. By S.124:

Any person who does any of the following:

- (a) *directly or indirectly by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers any money or valuable consideration;*
- (b) *directly or indirectly, by himself or by any other person on his behalf, corruptly makes any gift, loan, offer, promise, procurement or agreement to or for any person, in order to induce such person to procure or to endeavour to procure the return of any person as a member of a Legislative House or to an elective office or the vote of any voter at any election,*
- (d) *upon or in consequence of any gift, loan, offer, promise, procurement or agreement corruptly procures, or engages or promises or endeavours to procure, the return of a person as a member of a Legislative House or to an elective office or the vote of any voter at any election,*
- (e) *advances or pays or causes to be paid any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election,*
- (f) *after any election directly, or indirectly, by himself, or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting or having induced any candidate to refrain from canvassing for votes for himself at any such election,*

commits an offence and on conviction shall be liable to a maximum fine of N500,000 or 12 months imprisonment or both.

- (2) A voter commits an offence of bribery where before or during an election directly or indirectly himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself, or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election.*
- (3) Nothing in this section shall extend or apply to money paid or agreed to be paid for or on account of any lawful expenses bona fide incurred at or concerning any election,*
- (4) Any person who commits the offence of bribery is liable on conviction to a maximum fine of N500,000 or imprisonment for 12 months or both.*
- (5) Any person who conspires, aids or abets any other person to commit any of the offences under this part of this Act shall be guilty of the same offence and punishment thereto.*
- (6) For the purposes of this Act, a candidate shall be deemed to have committed an offence if it was committed with his knowledge and consent or the knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election.*

The Code of Conduct for Political Parties 2013 makes provisions outlawing political parties and their agents from engaging in corrupt practices including buying votes or offering any bribe, gift, reward, gratification, or any other monetary or material consideration of allurements to voters and electoral officials. It also prohibits offering any form of inducement to a person to stand or not to stand as a candidate or to withdraw his or her candidature.

PART THREE: Practical Steps For Monitoring Political Finance And SAR

3. THE BASICS IN MONITORING AND REPORTING

3.1 OBJECTIVES OF MONITORING CAMPAIGN FINANCE AND THE USE OF STATE AND ADMINISTRATIVE RESOURCES

- **To determine compliance with laws and regulations by candidates and political parties**

Laws and regulations are made in the expectation that persons and institutions whose conduct the law intends to regulate will respect the law. Monitoring and reporting on campaign finance and the use of state and administrative resources will facilitate a determination of whether the candidates and parties are complying with the laws.

- **Evaluate how realistic existing campaign finance laws are**

Sometimes, laws are made that appear good on paper but are not realistic within a given society. The monitoring process and its results will reveal popular perceptions and attitude towards the law in terms of whether it is realistic and feasible to expect compliance with its provisions by persons and institutions whose conduct it is supposed to regulate. Popular respect for laws is sometimes tied to the effectiveness of the monitoring, enforcement and sanction mechanism. If laws are made without effective enforcement and sanction mechanisms, they would be no more than moral adjurations. Monitoring and reporting will help reveal whether the law is realistic in this regard.

- **To elevate transparency and accountability in campaign finance transactions**

Monitoring and reporting will illuminate the dark spots of campaign finance and the use of SAR. Transparency and accountability in campaign financing will translate to enhanced accountability in governance since the specific interest groups and individuals funding the contending parties and generally the use of money and other resources will be known to the public who would make a choice among the candidates. Adequate disclosure and regulation of campaign finance are necessary prerequisites for controlling political corruption. Transparency and accountability will prevent the secret build up of illegal transactions, which will not meet the standards for public approval. Monitoring and reporting will increase public confidence in the political finance system.

- **To provide information and data for evidence based advocacy for the reform of campaign finance laws and regulations**

Monitoring and reporting will provide evidence of the provisions of the law that attracted compliance and those that the candidates and parties breached; the reasons for compliance and non compliance, etc. It will identify the gaps, challenges and problems associated with the implementation of the law. The whole essence of monitoring is to collect evidence, not hearsay or anecdotal evidence. If circumstantial evidence must be used, it must be compelling and pointing in the direction of a single reasonable conclusion. The report of the monitoring will provide supporting data and evidence for the reform of laws and associated policy and implementation frameworks.

- **To determine the legality and appropriateness of the use of State and Administrative resources for elections**

State and administrative resources are not to be used to the advantage or disadvantage of any political party or candidate at an election. Monitoring and reporting will provide the framework to determine whether there has been compliance with the laws in this regard.

3.2 BASIS FOR MONITORING

The Constitution of the Federal Republic of Nigeria 1999, the Electoral Act 2010 and other related laws envisage a political and electioneering process where the influence of money and the use of SAR are minimized. INEC, the Police, EFCC and other government agencies cannot monitor the entire process as they may not have the required number of personnel and other support resources to cover the entire country. It has therefore become imperative that citizens and the civil society in the discharge of their civic duties and obligations become involved in the monitoring of the campaign finance and SAR process. The results of such monitoring will be used for a number of purposes and will be submitted to the authorities who legally have the obligation to activate the enforcement mechanisms.

The obligation to perform this civic duty is supported by the provisions of S. 24 of the 1999 Constitution as follows:

It shall be the duty of every citizen to-

(a) abide by this Constitution, respect its ideals...

.....

(d) make positive and useful contribution to the advancement, progress and well-being of the community where he resides;

(e) render assistance to appropriate and lawful agencies in the maintenance of law and order

Article 13 of the African Charter on Human and Peoples' Rights

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

Article 21 of the Universal Declaration of Human Rights

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or equivalent free voting procedures.

If laws and regulations on campaign finance and the use of SAR are breached, the right to participate in government either directly or through freely chosen representatives will be

rendered futile while the basis of authority of government will no longer be the will of the people. Civil society therefore needs to intervene to ensure that this does not happen.

Citizen and civil society monitoring of campaign finance and SAR has been undertaken in a number of countries. Nigeria is member of the comity of nations. In today's globalised world, the replication of best practices that facilitate and enhance democracy and development have become the norm.

3.3 FOCUS OF MONITORING

The focus of the Campaign Finance and SAR monitoring project is on the general elections. However, the issues discussed in this Manual can be used for monitoring virtually other types of election in Nigeria such as supplementary, by-election, run-off election, etc. The focus in terms of subject matter is campaign finance and the use of SAR. In the course of monitoring campaign finance and SAR, one may come across other issues such as political violence or electoral misconduct; such information may only be relevant to the project if it is related to the cost of elections. The project is not about monitoring elections but the cost of elections.

3.4 QUALITIES OF A MONITOR AND EXPECTED CONDUCT

The cardinal principle for monitors is to maintain independence from partisan politics, be impartial and conduct oneself with utmost decorum and integrity. The monitor must possess probity, maturity and discipline. He should not be involved in dishonest acts and conduct like bribery and corruption or use any information garnered in the course of monitoring for private gain. A monitor must be an adult of 18 years and above, be eligible to vote, literate in English since he needs to read and fill checklists and provide reports. A monitor must be abreast of Nigerian laws and regulations on the subject of political finance and the use of SAR. A monitor must show some deep care and passion about the need to positively change the political system and ensure Nigeria's political and economic development. Essentially, he must show commitment to a politics of ideas and issue driven politics rather than a politics driven by money.

The following conduct is also expected from a monitor:

- ❖ To wear or display his identity while on duty.
- ❖ To observe and monitor proceedings on campaign finance at political events but shall not participate or interfere in any way whatsoever with the political proceedings.
- ❖ A monitor shall not attempt to direct, control, instruct or countermand decisions of the campaign or party officials or INEC officials on duty.
- ❖ A monitor may ask questions from candidates, campaign offices and political parties for the purpose of garnering information.

- ❖ A monitor shall not grant press interview or express any views at campaign and political events.
- ❖ A monitor shall not wear any apparel which bears prohibited symbols or reflects affiliation with a candidate or political party or in any way canvass for a candidate or political party.
- ❖ A monitor shall not participate in any function or activity in favour of any candidate or political party.
- ❖ A monitor shall refrain from accepting any gift or favour from any political party, candidate or person involved in the electoral process.
- ❖ Monitors are to report factually and should not incite the public to disorder, illegal acts or violence.
- ❖ A monitor shall not carry or display any offensive weapon in the course of duty.
- ❖ A monitor shall take reasonable steps to be factual and substantiate information to be provided on campaign finance. Where this cannot be done, the monitor shall state the inability to verify the truth of the information.

3.5 MONITORING APPROACH

It is imperative to note that the exercise is about monitoring, it is not an investigation. An investigation is to follow up, step by step, by patient enquiry or observation; to trace or track, to search into; to examine and inquire into with care and accuracy; examination, the taking of evidence, etc. Investigatory powers are usually authority conferred on government agencies to inspect and compel disclosure of facts germane to the inspection.

On the other hand, monitoring involves checking and observation for information and significance and to raise warning signals when political finance and SAR laws and regulations are not complied with. Monitoring here involves a process of formal and informal engagement of parties and candidates that would lead to voluntary disclosure of information or the gathering of evidence from which analysis and deductions can be made on a balance of probabilities. In this case, monitoring powers do not confer any authority on the monitor to compel parties or candidates to disclose facts. Monitoring and the resultant report should in the traditional media approach seek to provide answers to: Who? What? When? Where? Why? and How?

The first method is to approach the campaign office and party officers for information. This needs winning the confidence of the parties that the information will be used objectively. Send an official letter to the party, head of campaign office or the candidate introducing your work, the organization you represent and what you do. Emphasise the fact that your work is non-partisan.

Refusal to provide information by a party or a candidate may be a pointer to the lack of transparency. Information can also be sourced from special committees and subcommittees set up by the parties and campaign outfits of candidates. Such subcommittees working in concert with a main committee will include mobilization, contact, publicity, etc committees. Usually, their costs are approved by the central committee, money disbursed to the subcommittees who after expenditure retire the funds.

The local media is an important source of information. Liaising with the media facilitates access to information which would otherwise not be in the public domain. However, caution must be exercised to cross check information received from the media since the media may fail to disclose the source of their information. This is imperative since credible campaign finance reporting is based on empirical evidence which can be produced when a party or candidate challenges the report.

It may be difficult to get the exact cost of expenses for some campaign expenditure considering that the candidate or party will not willingly disclose the details of his electoral expenditure to civil society organization. The disclosure will only be made when returns are filed to the electoral authorities. By the time of filing returns to the authorities, the elections would have been over and the evidence to compare the disclosure with the actual facts would no longer be available. Generally, the practice is to use the estimated cost of observed outputs and expenditure items to arrive at the estimated campaign expenditure. Each expenditure head should be estimated in accordance with standard industry practices to arrive at the estimated costs.

However, different expenditure items have specific monitoring issues associated with them which will be discussed in the later parts of this section. What has been discussed so far under this heading are general issues relating to the monitoring approach.

If a significant discrepancy emerged between observed and declared expenditure or income, then a case can be made that the party or candidate is not accurately disclosing expenditure.

Monitors should take steps to verify and substantiate every statement or information she provides in connection with campaign finance and SAR. If a monitor is late to an event, he should seek to find out what happened before he arrived. If violations are observed, seek clarification from the party, candidate or the campaign office. If any information cannot be verified, the monitor should state so in her report. This is especially important with regard to information provided by opposition parties.

Monitors are advised to take samples of promotional materials at campaign events and to take pictures of issues that could become a subject of dispute - where this is possible.

If a monitor on a monitoring assignment senses danger or there is evidence pointing in the direction that any harm may befall her person, she should seek the protection of security agents and where this protection is not forthcoming, it is imperative that the monitor withdraws and

immediately call the national office to raise an alert of the situation. The monitor should indicate the situation in her report.

A monitor is advised to proceed on monitoring activities with the following:

- ❖ A watch so that he can record the exact time that any event took place;
- ❖ The accreditation badge for identification;
- ❖ Copies of checklists and reporting formats so that they can be easily completed and returned;
- ❖ A notepad to record detailed information that may not fit into the space provided by the checklist;
- ❖ A mobile phone fully charged and with sufficient credit to make calls in the case of an emergency;
- ❖ Some other items like water, snacks and others for personal convenience.

3.6 REPORTING

A monitor should report accurately, completely and honestly. She is required to lay all the facts on the table. He is not to embellish facts but to report them as they are. Where the facts available do not point to a conclusive cost of an expenditure head, the monitor is expected to report on the probable minimum cost, the average cost and the maximum cost. These different costs must be based on empirical evidence. The monitor should not engage in exaggerations and fantastic story-telling to embellish his report. If the monitor is unsure of particular figures and numbers, she should verify and cross check. The checklists and forms should be completed as soon the activity is over so that details are not forgotten due to memory lapses. Personal opinion and comments can be made on separate attached sheets of paper.

Monitors should note the need to submit their reports on time in accordance with the above schedule. The reports will be collated, published and disseminated as a national report. The report would not go out in batches.

However, if a serious violation of the campaign finance and SAR laws occur after the reporting date but before the next date, the monitor is expected to urgently dispatch the information to the secretariat.

4. ISSUES FOR MONITORING

4.1 PROHIBITED FUNDING

S. 221 of the 1999 Constitution: *No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.*

If there are allegations of a candidate receiving funding from a source that is not a political party, monitor and confirm the source of funding. Monitoring could involve seeking out eye witnesses to the transaction. Clues for monitoring would include:

- Is there evidence of payment by cheque or bank transfer, any cheque numbers?
- Did it involve an announcement of a decision at a private or public meeting?
- Is the funding in cash or in-kind contributions?
- Any third party or conduits involved in the transaction?
- Information from the media, opposition parties and sacked staff

Document the result.

S. 38 (2) of the Companies and Allied Matters Act prohibits corporate organizations from making contributions to political parties.

If there are allegations that corporate organizations are funding a political party, monitor and confirm the particulars of the company. Monitoring could involve seeking out eye witnesses to the transaction. Clues for monitoring would include:

- Is there evidence of payment by cheque or bank transfer?
- Did it involve an announcement of a decision at a private or public meeting?
- Is the funding in cash or in-kind contributions?
- Are there witnesses to the transaction?
- Have the companies or company been receiving government contracts and patronage?
- If they have recently received contracts, were the contracts properly executed?
- Any evidence that the contracts were over priced?
- Any recent waiver of due taxation, import duties or legal obligations and tariffs of the company by the state?
- Have company cars been used for political rallies?
- Has a company printed posters, offered accommodation or any other thing of value to candidates and parties?

Document the result.

S.225 of the 1999 Constitution

(3) No political party shall -

(a) hold or possess any funds or other assets outside Nigeria; or

(b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.

(4) Any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the Commission within twenty-one days of its receipt with such information as the Commission may require.

If there are allegations that a political party holds or possesses funds or any assets outside Nigeria or is in possession of funds or assets remitted from outside Nigeria, investigate and confirm the particulars of the funds or assets.

- Is there evidence of payments by cheque or bank transfer?
- Did it involve an announcement of a decision at a private or public meeting?
- Is the funding in cash or in-kind contributions?
- Are there witnesses to the transaction?
- What is the location and specific details of the assets?
- Are the assets registered in any land registry whether in Nigeria or abroad?

Document the result.

4.2 LIMITATION OF CANDIDATES ELECTION EXPENSES AND DONATIONS TO CANDIDATES

Generally, campaign expenditure is defined as expenditure incurred by or on behalf of a registered political party or candidate to promote the party or candidate at an election or in connection with future elections, including expenditure that has the aim of damaging the prospects of another party or candidate.

The 2010 Electoral Act limits the election expenditure of candidates in section 91 as follows:

91. (1) Election expenses shall not exceed the sum stipulated in subsection (2) – (7) of this section.

(2) The maximum election expenses to be incurred by a candidate at a Presidential election shall be one billion naira (N1,000,000,000).

(3) The maximum election expenses to be incurred by a candidate at a Governorship election shall be two hundred million naira (N200,000,000).

(4) The maximum amount of election expenses to be incurred in respect of Senatorial seat by a candidate at an election to the National Assembly shall be forty million naira (N40,000,000) while the seat for House of Representatives shall be twenty million naira (N20,000,000)

(5) In the case of State Assembly election, the maximum amount of election expenses to be incurred shall be ten million naira (N10,000,000).

(6) In the case of a chairmanship election to an Area Council, the maximum amount of election expenses to be incurred shall be ten million naira (N10,000,000).

(7) In the case of councillorship election to an Area Council, the maximum amount of election expenses to be incurred shall be one million naira (N1,000,000).

(8) In determining the total expenditure incurred in relation to the candidature of any person at any election no account shall be taken of:-

(a) any deposit made by the candidate on his/her nomination in compliance with the law ;

(b) any expenditure incurred before the notification of the date fixed for the election with respect to services rendered or material supplied before such notification.

(c) Political party expenses in respect of the candidate standing for a particular election.

(9) No individual or other entity shall donate more than one million naira (N1,000,000) to any candidate.

The limitation is only to the expenditure of candidates and excludes the expenditure of political parties on their candidates.

The issues to be monitoring include:

- Advertising and publicity: This includes print and electronic media - newspapers, magazines, journals, posters, brochures, letters to the electorate, radio, television, billboards, etc.
- Hidden advertising.

- Operational and administrative costs: Hire of offices, personnel costs, fuelling of cars and general transport costs.
- Polling, market research, campaign design and management.
- Rallies, events and direct contact with voters: Hire of venues, public address system.
- Distribution of money and materials to voters including vote buying: Food items, clothes, branded souvenirs.
- Sudden charitable disposition of candidates: Donations to communities and individuals.

4.3. TIME FOR COMPUTATION OF ELECTION EXPENSES

The Electoral Act 2010 limits the computation period by defining election expenses to mean:

92. (1) *For the purposes of an election, “election expenses” means expenses incurred by a political party within the period from the date notice is given by the Commission to conduct an election up to and including, the polling day in respect of the particular election.*

This definition refers to election expenses of political parties who have reporting obligations. It is silent on time for computation of candidates’ expenses. In consideration of the fact that there is no other definition for candidates in terms of time for the computation of election expenses, it is safe to fall back on this subsection. More appropriately, the computation should start from the time an aspirant is selected as the candidate of a party.

4.4 ADVERTISING AND PUBLICITY

Candidates and political parties in modern elections deploy media and advertising resources to canvass for public support. In 1999, 2003, 2007 and 2011 elections, the media played a strategic role in popularizing the candidature of candidates and political parties. As noted above, advertising and publicity should include print and electronic media - newspapers, magazines, journals, posters, brochures, letters to the electorate, radio, television, billboards, etc.

Costs to be taken into consideration in this context include:

- Design, production/printing of the advertisement and publicity materials;
- Billboards and posters;
- Radio and television;

- Newspapers and other print media;
- T shirts, stickers, clothing and other promotional materials.

Cost of design and production of advertisement and publicity can be obtained from media and public relations firms. Formal letters to these firms posing as a potential customer will reveal the rates. And quotations need to be obtained from three or more agencies. Alternatively, media monitoring agencies can be approached to give expert opinion of the cost of design and production.

Billboards need to be physically counted and if possible, pictures taken of them in their location. The picture can be taken using a photographic or video camera or even using a cellular phone. The picture will need to be labeled and identified with its specific location. The cost of bill board production and hosting is available from advertising and public relations agencies.

Posters need to be physically counted. But there is a problem associated with posters since it can be torn off or damaged and replaced. So it needs constant monitoring and surveillance to be able to arrive at a reasonable estimate of the amount spent on it. The cost of printing can come from quotations and estimates from reputable printers. Posters also cost money for pasting. The number of posters and the cost of pasting can come from street boys who are usually engaged to paste them.

Monitoring radio and television generally requires the service of a media monitoring agency or active collaboration with radio and television houses if they are willing to give out information on the political and campaign advertisements and the frequency of the advertisements. The cost of a single advertisement and the available discounts can be obtained from radio and television houses or media monitoring and public relations firms. Information on radio and television adverts can be sourced from the log book of the commercial section of the media house in terms of their frequency and timing. The costs and discounts are also available from the commercial section.

To effectively monitor radio and television by an NGO will require dedicating a number of individuals to do 24 hours of monitoring. This may be difficult. Alternatively, peak hours may be selected to monitor campaign broadcasts. Considering the multiplicity of radio and television houses, monitoring peak hours will still require a number of NGO personnel working for considerable hours in the day. Getting the tapes of all the radio or television broadcasts may be necessary to ensure access to documentary evidence in the event of disputation by a candidate or a political party that the results of the monitoring are fictitious.

Newspapers and other print media can be monitored by obtaining copies of all available papers and journals or the major and most widely read papers in the locality or nationwide. Copies of the newspapers and journals monitored should be kept as evidence in the event of disputations.

Advertisement rates and discounts are available from newspapers and journals and that can be used to compute the cost of the advertisements.

The major problematic issue in both print, electronic media and billboards monitoring is the issue of discounts. The approach should be to get quotations on available discounts from print and electronic media and from outdoor advertising agencies and firms. Three or more quotations should be compared to arrive at the average. A broad survey of media time buyers, advertising agencies and media outlets would also reveal the appropriate discount rates. In reporting, include the average, maximum and minimum discount rates for each media category.

T shirts, stickers, clothing and other promotional materials can be monitored by requesting for information on their costs from the candidates campaign office. Information can be got from printers and producers of these promotional items, attending rallies and campaigns to estimate the number of persons dressed with the promotional items.

In all of the foregoing issues, the NGO can make formal requests for information from the campaign office of the candidate and compare the replies with information gathered independently. Requests for information can also be made to the media firms handling the publicity and advertisement for a candidate or political party. The information from this source should also be verified by independently gathered information.

4.5 HIDDEN ADVERTISING

Publications in the media may appear to be objective but are directly or indirectly promoting one candidate or party over the others or attempting to discredit a candidate or party. This may particularly be the case if the media is state owned and this would amount to an abuse of media resources which is part of state and administrative resources. Hidden advertising most times shows the level of a party or candidate's control over the media house. Sometimes, it is paid for by candidates and parties and as such clearly represents a portion of campaign expenditure. However, if no money is expended by the candidate or party, it is still a form of expenditure, but this time, by a third party since they offer candidates and parties some form of advertising they would otherwise have had to pay for.

Hidden advertising can be qualitatively or quantitatively biased. Qualitative refers to positive or negative media coverage of a candidate while quantitative refers to more extensive coverage of one candidate or party over others while the entire transactions is portrayed as neutral.

The identifying criterion for hidden advertising is that it is placed in a news report that has a semblance of objectivity or purports to be objective. In this case, opinion articles and pages and editorials do not in any way purport to be objective and such negative or positive portrayals of candidates and parties in such pieces would not qualify as hidden advertising. Seeking the opinion and advice of professional journalists may assist in the proper definition of the grounds that would constitute qualitative bias. In identifying qualitative bias, experts have canvassed the following seven criteria:

- ❖ **Relevance:** Does the news item refer to topics that deserve attention?
- ❖ **Accuracy:** Do the facts presented correspond to reality?
- ❖ **Transparency:** Is the presentation of controversial or problematic material credited to an identified source?
- ❖ **Balance:** Are different political opinions presented equally within a specific report or item?
- ❖ **Diversity:** Do the media present as wide a range of information as possible?
- ❖ **Timeliness:** Is information released when it is relevant?
- ❖ **Comprehensibility:** Is the item easy to understand?

For relevance, the placement of a visual image of a candidate or party symbol without direct bearing on the topic of a publication or the sole appearance of a candidate on a programme without obvious grounds would constitute a breach. Presenting the opinion and views of a party and candidate without attempting to present the views of others on a subject where all parties or candidates should naturally express views or have in the past canvassed different views or selectively featuring a series of opinion in order to support a particular party or candidate would amount to lack of balance. Asking a candidate a leading question that would grant him free campaign air time may also breach this balance. Although journalists are not always bound to disclose the source of their information where such disclosure would endanger or harm the source, a controversial or problematic material presented as news without divulging the source of information may amount to qualitative bias.

Quantitative bias may be measured by the number of appearances and references to parties and candidates in each media outlet monitored. The fact of more coverage does not automatically translate to quantitative bias since more active campaigners and charismatic personalities who present novel ideas or ideas whose time has come may receive more publicity than others. Incumbent candidates may also be more visible as government figures since the media has a duty to report on the activities of government to the people. In many instances, during the campaign period, candidates mix up official government functions with campaigns. The candidate who is a government official may have gone on an official assignment that will involve a one hour presentation and thereafter, he may use five minutes to canvass for support for his party or candidature.

The media provisions of the Code of Conduct for Political Parties, the National Broadcasting Code and section 100 of the Electoral Act come in handy to help in clarifying and ascertaining broadcasts and publications that qualify as hidden advertising.

The same procedures and steps for monitoring ordinary political publicity and advertising should be used to monitor hidden advertising. The materials evidencing the quantitative and qualitative bias should be kept as a back up evidence. Estimating the cost of hidden advertising employs the same methods as political advertising.

The result of the monitoring for quantitative bias should be tabulated for parties and candidates with explanations on the reasons for classifying items as instances of hidden advertising.

4.6 OPERATIONAL AND ADMINISTRATIVE COSTS

This category will include rent for campaign offices; utilities including electricity and water; communications including telephone, fax, internet, courier and postage; office supplies and reprographic expenses including reams of paper, writing materials, computer and its accessories, equipment and furniture, etc.

Parties run administrative and operational costs even if there are no elections. As such, it may be difficult to separate the general and routine administrative costs from strictly election related expenditure. However, in the case of candidates who set up offices solely for the purpose of electioneering campaigns, it is easier to assess the expenditure since all expenses are geared to the election effort. For the purpose of detailing the expenses of political parties, increases in spending in an election period is generally deemed as campaign expenditure unless there is evidence to the contrary.

Information on rent for campaign offices can be sourced from the candidate's or party's office. If information is not forthcoming from this source, then reasonable estimates can be obtained from estate management agencies of the going rate for the kind of property in question at the location. Three quotations can be used to arrive at the average cost.

Information about utilities may be a little more difficult to obtain. However, approaching the utility company to source for information may be an option for water and electricity. The campaign office itself is also another possible source of information. Interviews with the candidate or other politicians who have run campaign offices may also give clues. However, in interviewing politicians, it should just be stated that it is a general information gathering exercise rather than pinpointing that the information is needed for a particular candidate or party. Partisanship may play a role and the interviewee may supply wrong information. If no information is coming from the above sources, data collected by institutions like political research institutions, previous information and data submitted to the Independent National Electoral Commission by candidates and parties may provide information on pattern and estimates of utility expenditure. Previously submitted information may include party documents like annual reports or election reports and accounts.

If it is possible, a visit to the campaign office by the monitor may provide information about the kind of equipment and furniture available in the office. It may also provide information about the

number of utility points like electricity and water points. Information should also be sourced from the party or the campaign office itself. The prices and estimates coming from the party can be compared to information from independent sources. Information on writing materials, paper and reprographic expenses will need to come from the campaign office. This also applies to staffing and their salaries. But if this is not forthcoming, other sources like previous information submitted to INEC, interviews with experienced politicians and campaign managers may provide a clue.

Special attention should be paid to incumbents who may deploy public servants paid at the public expense to run their campaigns. In essence, one will not find such public servants in their campaign payroll but their services are deployed in the campaign effort. In such instances, their services and salaries should be computed as part of the campaign expenditure.

4.7 CAMPAIGN DESIGN, MANAGEMENT, RESEARCH AND POLLING

Electioneering campaigns are getting sophisticated with a number of actors becoming involved in the design and management of campaigns. Public relations consultants are now involved in designing campaigns, not just specific messages and political advertisements, but the overall design and thrust of key campaign issues. The PR consultants may also be asked to manage the entire campaign, reach out to possible donors and collect funds to support the campaign effort. Such PR managers are usually well paid. Consultants are also employed to run opinion polls and measure and gauge public opinion about particular parties and candidates. In all of the foregoing, one activity or service may be outsourced to more than one firm. Thus, there is the need to ascertain the number of firms involved in rendering these services.

Possible sources of information include the party or the campaign office of the candidates, the PR firm involved. If information is not forthcoming from any of the sources or the available information seems unreliable, then comparative figures can be obtained from other reputable PR firms who have run similar services or who have the capacity to run the services. Information can be obtained through interviews, obtaining reasonable estimates of services from different reputable firms and averaging the estimates to determine the minimum market value.

Nigerian politicians and their parties have also embraced the use of new media. Many of them have websites and hire consultants to manage their social media accounts such as Facebook, Twitter, E-mail, Badoo, Google+, Blogs, etc. These new media consultants also use these platforms to raise campaign funds for their clients. Monitors are to find out the cost of setting up such new media as well as hire consultant(s) for probably six months to one year. It is not impossible also that this forms part of the terms of reference or scope of work for the PR Consultants discussed above. However, it is the task of the monitors to find out if the PR Consultant is same or different from the new media consultant.

In some instances, telephone companies are paid to send text messages to all subscribers on their network. An example is Senator Obanikoro's 2007 gubernatorial campaign through text

message in Lagos State. Candidates and parties may also establish call centres from where individuals and groups would be reached on their phones and specifically requested through recorded calls to vote for a candidate.

Information about the use and cost of telephone text messages can come from the party, the campaign office or the telephone company. It may also be assessed by multiplying the cost of a single text message by the declared number of subscribers of the telephone company. The declared number of subscribers can be obtained from the Nigeria Telecommunications Commission or publications of the telephone company. For call centres, information should be sourced from the party, the campaign office and telephone companies. If information is not forthcoming from any of the above sources, experienced campaign managers and information technology experts may provide reasonable estimates based on the length of time, the call centre was in operation. Three or more of such estimates may be needed to arrive at a reasonable estimation of the cost of the call centres.

Candidates may also be publicly endorsed by popular musicians, actors, comedians or other popular public figures. Also a popular song can be converted into a signature tune for a candidate or party. The Peoples Democratic Party “de koko” advertisement in 2007 is an example. In this instance, some compensation ought to be paid to the holder or owner of the copyright. It is imperative to find out if there was a financial consideration and the value of such consideration. The information can come from the party, the artiste himself or his manager. Comparable information can come from reputable artiste management companies when information is not forthcoming from either of the above sources or the information available seems unreliable. Three or more comparable estimates from these reputable companies may assist in forming an opinion of the going rate in the industry.

4.8 RALLIES, EVENTS AND CONTACTS WITH VOTERS

Political parties and candidates organize rallies and other events where they have the opportunity to talk to voters about their programmes and manifesto. It is the traditional kind of campaign. There is also the strategy of door to door campaigning, distribution of leaflets containing party or candidate programmes, etc. Other similar events include meetings, concerts, competitions, shows, fundraising events, corporate dinners, etc. The likely cost heads will include:

- ❖ Rent of halls, stadium or other space or premises;
- ❖ Personnel to organize the events or event management companies;
- ❖ Equipment like public address systems, fans and other facilities used at the events;
- ❖ Transportation for staff, groups or others participating in the event;

- ❖ Hiring individuals or groups to entertain at the venue - masters of ceremony, comedians, musicians or other entertainers;
- ❖ Food and snacks such as rice, meat-pies, doughnuts, alcoholic and non alcoholic beverages, etc;
- ❖ The “rent a crowd” approach where people are paid to participate in an event, etc.

The basic reporting approach is to provide detailed factual information of the event including the date, time, venue, estimated number of participants, the security situation, any special dressing of the participants, equipment used, performances by artistes, whether money or anything of value was shared by participants or any section of them at the beginning, during or at the end of the event. A standard questionnaire should be used for gathering general information on events.

It is imperative to ask the organizers for the cost of the event and if they refuse to provide it or the information provided appears to be of doubtful value, estimate the cost of the event from the basic information gathered above using information available from various sources. Information can be sourced as follows:

- ❖ Rent of halls, stadium or other space or premises from the owners and managers of the premises before or after the event;
- ❖ Personnel to organize the events or event management companies;
- ❖ Equipment like public address systems, generators, fans and other facilities used at the events: from equipment leasing businesses;
- ❖ Transportation for staff, groups or others participating in the event: number of cars and buses and the vehicle leasing companies or drivers operating at motor parks under the National Union of Road Transport Workers, Road Transport Employers Association, etc;
- ❖ Hiring individuals or groups to entertain at the venue - masters of ceremony, comedians, musicians or other entertainers: artiste manager(s) or arts management companies;
- ❖ Food and snacks such as rice, meat-pies, doughnuts, alcoholic and non alcoholic beverages, etc: fast food companies, caterers;
- ❖ The “rent a crowd” approach where people are paid to participate in an event: participants who have been rented or watch out for person gathering in groups to share money at the end of the event; scuffles, people shouting on the top of their voices or having misunderstanding at the end of the event.

For fundraising events like corporate dinners, the monitoring team should try to secure an invitation. Where this is not possible, it should liaise with the media who attend this event and have a first hand eye witness account of what happened. The information to be gathered will include the date, time, venue of the event, major personalities that attended, major donors and the exact amount donated by each donor; whether the donation was in cash or kind, or by cheque, etc. This information will help in arriving at whether any individual or group has exceeded the permissible limits under the Electoral Act or whether prohibited entities have contributed to the campaign funds of parties and candidates. On the expenditure side, the cost of the venue, food and drinks, invitation cards, media announcements (if any) and other logistics will have to be computed to arrive at the expenditure used in making the income. The expenditure should be deducted from the income to arrive at the real income from the fundraising. This should be compared with information from the campaign office.

Fundraising concerts and shows should also be monitored. The monitors should attend the concert since it will be open to the public. Monitoring points should include the venue and equipment, media publicity for the event, artiste fees, campaign materials distributed, etc. The usual monitoring approaches described above should be employed.

The monitoring team should get information about events and rallies from the parties, INEC and the police. It should ensure representation where possible in all events. But if this proves to be too difficult, representative samples of events should be monitored. Monitors should proceed to the field with questionnaires and templates. Comparable prices of likely event infrastructure could be obtained from different vendors before the campaigns to create some form of price intelligence database to compare the information coming from campaign offices. For instance, the cost of the various categories of public address systems, generators, buses, etc can be ascertained from their providers. In producing a report, the minimum cost estimates should be used. The following approach has been recommended in monitoring:

- ❖ Monitor all components of an event that can be described completely and accurately;
- ❖ Request information on the costs of these individual components from the relevant party or candidate;
- ❖ Request the same information from three different agencies that organize such activities;
- ❖ Apply the costs provided by the parties or candidates to all the events monitored;
- ❖ Apply the lowest, average and highest estimates of minimum cost obtained from agencies to all events monitored;
- ❖ Present the minimum estimate of total costs as the project estimate of spending on events monitored, and provide the other estimates together with assumptions on which each was based. This way, the media and other stakeholders can judge for themselves whether the higher estimates are more likely to be accurate.

4.9 DOOR TO DOOR CAMPAIGNS

For door to door campaigns, there will be personnel and transportation costs for staff undertaking the exercise. Campaign materials for distribution will cost money to be produced. Alternatively letters to be sent to individuals and groups will need to be posted. The party or candidate should be approached for information - campaign managers and agencies should have the information. Confirm the area covered by the campaigns and the number of staff engaged; whether the campaign is outsourced to an independent firm or undertaken by volunteers. Also confirm whether materials are distributed to households visited and the nature of the materials distributed. Any follow up activities?

Sample testing to confirm the veracity of the information supplied by the candidate may be necessary. Interviews with the staff carrying out the door to door campaign will be imperative to find out exactly how many homes they have visited, their remuneration, volume of materials distributed and follow up activities. Sample of materials distributed can be obtained from the campaign office, the staff engaged in the door to door campaign or voters who have been reached by the campaigners. The cost of campaigns will be estimated by adding up the cost of materials and staff by their minimum estimated wages and minimum cost of campaign materials.

4.10 DISTRIBUTION OF MONEY AND MATERIALS TO VOTERS

Nigerian politics has recorded many instances where money had been distributed by candidates to voters to enlist their support at the polls. Stories of sliced bread distributed with notes of naira in between the slices, cash allocations to wards and constituencies, distribution of wrappers with candidates and party's insignia on them, distribution of rice, salt, sugar, flour and other common food items branded as stomach infrastructure had been the norm in previous elections. T-shirts, buttons and pins have also been distributed in the past. In the poverty ridden environment of Nigeria, these materials although of little financial value may sway poor voters to vote in favour of candidates and parties. Whether it is the distribution of money or materials, they fall under the categorization of vote buying which is outlawed by S.124 of the Electoral Act. The section is wide and outlaws the giving or receipt of money, valuable consideration, gift, loan, offer, promise, etc to sway a voter to vote in a particular direction or to induce a person to procure or to endeavour to procure the return of any person to an elective office.

There is the ongoing moral argument as to whether persons who are poor should accept money or other gifts from candidates. The first school of thought posits that money and other gifts should be rejected outright since it seeks to negatively influence the voter in a particular direction. The second school of thought posits that the resources being distributed by candidates are public funds which they have managed to steal and as such, the money belongs

to all. Therefore, the voter should collect the money and yet vote according to his conscience because this may be his only opportunity to get something out of the public till.

Vote buying is rampant in poor communities whether rural or urban. Information from previous elections may be used to determine communities where this is rampant and as such be the focus of the monitoring exercise. Interviews with respondents in the communities should be undertaken using a standard questionnaire and pointedly asking the respondents whether they were offered money or other material inducements and if the answer is in the affirmative, how much or what benefits were offered. The questions should yield answers on who offered the money - whether it was a candidate or his agents, etc.

If it is established that a candidate or political party has been engaged in distribution of money or other benefits, calculate the average value of benefits offered each voter and multiply this figure by the total number of voters in the community where vote buying is believed to have taken place. The figure of the total number of voters in the community can be obtained from INEC. Monitors should also seek to get information on monies shared to party chieftains to “deliver” constituencies or to ensure that a particular party or candidate wins in a constituency.

4.11 SUDDEN CHARITABLE DISPOSITION OF CANDIDATES

There are instances where a candidate offers donations to communities or prominent individuals in the community such as the traditional ruler. This donation may take the form of construction of a utility like borehole and water reticulation, electricity transformer or repair of dilapidated school infrastructure. It may also be in form of services like free medical services. This should be calculated to form part of the campaign expenses. Information can be sourced from the campaign office or alternatively the community, if funds are made available to them to undertake the construction. The contractor undertaking the construction could also be approached for information. In the case of gifts to individuals, eye witness accounts should be relied upon or information from the campaign office.

5. STATE AND ADMINISTRATIVE RESOURCES

State and administrative resources include legislative, regulatory, coercive and institutional resources. Abuse of SAR for electioneering campaigns is illegal, unethical and against best practices in SAR management.

5.1 INSTITUTIONAL RESOURCES

Institutional resources generally refer to government resources like employees, vehicles, offices, contractors, equipment, stationery, building, symbols of authority, etc. The Code of Conduct for Political Parties 2013 in S.3 (17) states that:

All parties shall discourage their members in government from using their power of incumbency to the disadvantage of other parties or their candidates during elections.

A. Use of Government Vehicles, Equipment and Buildings

At campaigns and rallies, monitors should confirm whether government officials who are involved in campaigns came with their official vehicles. Also, presidential jets and helicopters can convey high ranking state officials to political rallies. Pictures should be taken of the cars and aircrafts, at least recording the vehicle registration numbers. Monitors should note the colour and brand of the vehicle. The use of other government equipment for partisan campaign purposes should also be documented. Equipment like generators, chairs, tables, public address systems, etc should be photographed and documented. Further, official buildings used as party offices or campaign offices will amount to using public property for partisan campaign purposes. In such a situation, documentation should include photographs of the building, staff of the campaign who work there. If possible, there should be a valuation of the cost of the public building used. Such costing in terms of rents can be sourced from reputable estate agents and valuers. The campaign office should also be contacted to clarify the situation.

B. Seconding Government Staff to Campaign Offices

The list of campaign staff should also be scrutinized to see if public servants are on the roll. Even if public servants are not on the staff roll, evidence of their involvement or secondment to the campaign is also against the campaign rules. The names and if possible photographs of the seconded staff while on campaign duties should be recorded. This information on the new partisan assignment should be juxtaposed with the staff's normal schedule of duties.

It is imperative to confirm whether appointed officials like special advisers and assistants who are paid at the public expense are working full time on the campaign trail. The information could be obtained by comparing the normal schedule of duties of such appointed official during non election times with his current schedule during the campaign period. If over 50% of the officers time is dedicated to the campaigns, then that will be an abuse of public resources. However, it may be difficult to get such information since one needs to be an insider to get such privileged information. But contacts from the civil service and direct requests for information may be used to collect the information. Once clues are provided, it is imperative that monitors follow up through surveillance that should not be made known to the person(s) being monitored.

5.2 CONTRACTORS CONTRIBUTION TO ELECTION EXPENSES

The list of contributors to an incumbent candidate should be scrutinized to see the contributions of government contractors to the campaign funds. Usually, large donations should arouse suspicion. Budget and campaign finance monitors should be interested in tracking the government contract to verify if it was not over-invoiced and the donation thereby coming from public funds. Even if a definite nexus is not established between the contracts awarded to a

contractor and the donation made to a candidate, it is still worthy of note to indicate the relationship between the contractor and the incumbent administration.

5.3 USING THE INSIGNIA OF OFFICE TO CANVASS FOR SUPPORT

Canvassing for support using the official insignia of office like letter headed papers with coat of arms bearing the position of a public official will also be an abuse of administrative resources. Government stationery and papers should only be strictly used for government business and not for campaign purposes. Sample copies of letters should be photocopied as evidence of the transaction. Clarifications could also be sought from the particular official involved or his campaign office.

5.4 REGULATORY AND COERCIVE RESOURCES

Regulatory and coercive resources can be deployed by incumbent administrations to the disadvantage of the opposition. This can be undertaken in a number of ways including discriminatory campaign and procession permits, regulation of use of public places, discriminatory enforcement of laws and regulations, causing misrepresentation, disenchantment and loss of reputation to the opposition, partial dissemination of information, etc.

A. Discriminatory Campaign, Procession Permits

The Nigerian Police claim a right under the outdated and colonial Public Order Act to give permits for public rallies, meetings and processions. During the 2007 and 2011 elections, this was abused as opposition parties were sometimes unnecessarily refused permits for rallies. Unwarranted refusal of permits for rallies, processions and public meetings amounts to an abuse of coercive and regulatory resources. Other instances will include:

- ❖ The closure of a city airport on the days that an opposition party has fixed its convention knowing full well that party stalwarts will be discouraged from attending the convention by road;
- ❖ Refusal of permit to use a venue;
- ❖ Late hour cancellation of an already given permit due to “security reasons”;
- ❖ Cancellation of a booking to use a venue for a rally, for instance, a stadium or a public hall.

The letters duly applying for police permits and the reply from the police refusing the request should be documented as evidence of the discriminatory permit process. The information should be sourced from the parties and the police. If the information is disclosed in the media, there should be verification with the police and the parties. In forming an opinion on the refusal of a

permit, the central question should be the reasonableness of the excuse advanced by the police in refusing the permit.

The decision to close an airport is not taken overnight unless there is a major emergency or disaster at the airport. Thus, the official reason for the closure should be reviewed in the light of known facts and circumstances. Where the reasons appear flimsy and not based on empirical evidence, then a situation of abuse of regulatory resources may arise. Aviation experts may be contacted for technical opinion on the subject matter.

Documentation in respect of other cases should be collected and verified from those who applied and the authorities that refused the permit or cancelled the permit at short notice.

B. Clearance to Contest Elections

In some instances, laws and regulations vest power in some institutions to verify candidates' credentials and clear them to contest elections. In other cases, institutions acting outside their statutory or constitutional powers assume such powers. Leading opposition members are usually targeted and even against the clear provisions of the law, hurdles are set on their path. They may fail verification and clearance tests.

The circumstances, law and facts about the powers and duties of the institution should be documented and analysed. The verification process should also be documented and where the facts point in the direction of victimization of the opposition, this should be documented. Where the institution assumes powers not backed by the constitution or statutes, then there is a presumption of arbitrariness in the actions of the institution.

C. Abuse of Security Forces and Law Enforcement

The task of maintaining state security, prevent corruption and abuse of office can be used to the disadvantage of the opposition. Unveiling charges of corruption that may not scale the prosecution hurdle in the courts is an instance. In a country like Nigeria where there is a popular agreement that corruption has contributed in no small measure to the political and economic backwardness of the nation, a charge or allegation of corruption even if unsupported by credible evidence can be a hurdle on the path of the opposition. At least, it paints the victim in bad light and tars him with social deviancy which will take time to erase in popular minds. Discriminatory enforcement of laws can also lead to unfavourable circumstances for the opposition.

Also, opposition candidates can be arrested and or charged to court on framed up charges during electioneering campaigns. The first objective would be to present the candidate negatively to the public while at the same time taking his time away from campaigns to saving himself from conviction and imprisonment

The criteria for identifying frivolous charges would include:

- ❖ The timing of the law enforcement action;
- ❖ The supporting facts disclosed and whether the facts can legally sustain a charge and conviction in law (legal opinion may be sought from experts);
- ❖ Whether the law enforcement authorities are in disobedience of a court order;
- ❖ Whether the candidate has been prosecuted and discharged for the same offence in the past;
- ❖ Whether the agencies had the opportunity of prosecuting the opposition figures but deliberately failed, refused and neglected to do so but rather chose to mar their reputation through a public allegation of corruption or any other crime.

The facts should be documented as they are and legal opinion used to draw inferences from them. Care should be taken in presenting the opinion so as not prejudice the case of the parties if the case is still pending in court and not to run foul of the provisions for contempt of court.

5.5 MEDIA RESOURCES

Media resources relate to the print and electronic media and the resources for information dissemination and mass mobilization. S. 100 (2) of the Electoral Act states that *state apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at an election*. Media resource abuse comes in various forms and includes the following:

- ❖ Only candidates supported by the incumbent government have news coverage in the state media;
- ❖ Opposition candidates are reported in disparaging terms;
- ❖ Incumbent candidates activities are given live coverage as a news item;
- ❖ News organs sympathetic to the opposition are heavily regulated;
- ❖ Discounts available only to state parties.

The provisions of the Code of Conduct for Political Parties and National Broadcasting Code call for equal and fair access to the use of state owned media and adherence to the principles of pluralism of ideas and opinion, equal opportunity and air time to be provided to all political parties, candidates and views, with particular regard to amount of time and belt during electioneering campaign period. Sections 100 of the Electoral Act provides for equality of

access to state owned media, equal allotment among political parties and candidates at similar hours of the day, etc.

Like the traditional media monitoring, the NGO needs to dedicate monitors to observe the proceedings in the electronic media viz, radio and television stations. It need not be for the whole day of 24 hours which will be quite tasking and demanding. The monitoring can be restricted to the peak hours of the day as a test samples. Alternatively, where resources are available, the monitoring should be firmed out to a media monitoring agency.

Getting the tapes of the broadcasts to show the pattern adopted by a media house may be necessary. This will provide a documentary backup for the position taken by monitors in their report.

It may also be important to look into the quarterly or end of year accounts of state owned media houses to verify whether political campaigns undertaken by the incumbent and covered by the media house were paid for or were simply covered in the course of duty. If the accounts are detailed and broken down, they can provide the clue in that direction. If the campaigns were not paid, that would be evidence of abuse of media resources. Governments most times are indebted to state owned media houses and such debts may eventually be written off. Information verifying that this happened will also be evidence of abuse of media resources.

Serving questionnaires and conducting interviews with opposition campaigns can also be used to elicit information on the use and abuse of state owned media. In cases where advertisements paid for by the opposition are returned with the fees, this presents a clear case of intolerance and abuse of media resources. All the documentation involved should be gathered and used in reporting. Where no official documentation denying air time comes from the state owned media but there is a refusal to air programmes duly paid for, the supporting facts should also be documented.

Newspapers and other print media can be monitored by obtaining copies of all available state owned papers and journals or the major and most widely read papers in the locality or nationwide. Copies of the newspapers and journals monitored should be kept as evidence in the event of disputations. Undue coverage of incumbents and a bare mention of the opposition may be evidence of bias. However, it needs to be noted that editors and the media generally have discretion to determine what is newsworthy and to be given prominent attention in coverage. It should also be noted that where opposition parties fail to make news by raising campaign issues that will appeal to the public, the government owned media is not bound to give them prominence.

GENERAL OBSERVATION FORM

1. NAME (OPTIONAL)
2. STATUS OF COMPLAINANT
3. ADDRESS

- | | | | |
|----|-----------|-----|-------|
| 4. | TELEPHONE | FAX | EMAIL |
|----|-----------|-----|-------|
5. CANDIDATE SUBJECT OF THE COMPLAINT
 6. OFFICE CANDIDATE IS SEEKING
 7. POLITICAL PARTY SUBJECT OF THE COMPLAINT
 8. DATE(S) AND TIME INCIDENT OCCURRED
 9. LOCATION INCIDENT OCCURRED (STREET, VILLAGE, TOWN, ETC.)
 10. LEGAL PROVISIONS VIOLATED (OPTIONAL)
 11. DETAILS OF COMPLAINT (ATTACH EXTRA SHEET OF PAPER IF THE SPACE HERE IS INSUFFICIENT)
 12. WITNESSES TO THE INCIDENT (NAMES, CONTACTS AND TELEPHONE IF AVAILABLE)
 13. ANY MATERIAL EVIDENCE (ATTACH SAMPLES, SPECIMEN, ETC)
 14. REMEDIES SOUGHT

DATE

SIGNATURE

EVENTS REPORTING QUESTIONNAIRE

The basic reporting approach is to provide detailed factual information of the event

1. NAME OF MONITOR AND LOCAL GOVERNMENT

2. TYPE OF EVENT, PARTY AND CANDIDATES INVOLVED

3. DATE AND TIME
4. VENUE, WARD, LOCAL GOVERNMENT
5. ESTIMATED NUMBER OF PARTICIPANTS
6. MAJOR DIGNITARIES THAT ATTENDED THE EVENT
7. EQUIPMENT USED
8. PERFORMANCES BY ARTISTES
9. SECURITY SITUATION
10. OFFICIAL VEHICLES, HIRED CARS
11. OFFICIAL EQUIPMENT USED AT EVENT
12. PUBLIC SERVANTS ON PARTISAN DUTIES
13. BANNERS
14. HAND BILLS, BILL BOARDS MOUNTED AT THE VENUE AND LIVE BROADCAST
15. ANY SPECIAL DRESSING BY PARTICIPANTS OR A SECTION OF THEM
16. SHARING OF MONEY OR ANYTHING OF VALUE
17. FOOD, DRINKS, ETC
18. ACCOMMODATION FOR PARTICIPANTS

19. LIVE BROADCAST ON RADIO AND TELEVISION

20. ATTACHMENTS - PICTURES OR OTHER REAL EVIDENCE

21. ANY OTHER FACTS WORTH REPORTING

PRICE DATA BASE FOR EVENTS MONITORING
(Get estimates from at least three reputable service providers)

PUBLIC ADDRESS SYSTEM

GENERATORS

FOOD

DRINKS (ALCOHOLIC AND NON ALCOHOLIC)

MOBILE COOLING VEHICLES AND OTHER COOLING APPARATUS

BUSES AND CARS AND DISTANCES

VIDEO COVERGAE

PHOTOGRAPHY

VENUE/ HALLS

PERSONNEL FOR SERVICES

PRIVATE SECURITY

CHAIRS, CANOPIES

PLATFORMS

DECORATIONS

OTHERS

OATH OF ALLEGIANCE FOR POLITICAL FINANCE MONITORS

I..... do solemnly swear/affirm that I will discharge the duties of monitoring and reporting on the campaign finance expenditure of candidates and parties and the use of state and administrative resources in an honest, dispassionate and non partisan manner;

that I will to the best of my ability discharge my responsibilities in a way and manner that promotes the political finance provisions of the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act 2010 as amended and other laws, regulations and codes on political finance in Nigeria; that I shall not take advantage of any information that comes to me for any personal gain or extort money or to blackmail a candidate or party.

So help me God.

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General observation form should be renamed incident reporting form

Status