

# Reforming Campaign Finance and Use of State Administrative Resources in Nigeria



**Mainstreaming Social Justice In Public Life**

# **Reforming Campaign Finance and Use of State Administrative Resources in Nigeria**

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## ABBREVIATIONS AND ACRONYMS

Act	Electoral Act 2010 (as amended)
CAMA	Companies and Allied Matters Act
Cap.	Chapter
CBN	Central Bank of Nigeria
CSJ	Centre for Social Justice
DFID	Department for International Development
EPMC	Election and Party Monitoring Committee
FHC	Federal High Court
IFES	International Foundation for Electoral Systems
INEC	Independent National Electoral Commission
N	Naira
NBS	National Bureau of Statistics
PFMG	Political Finance Monitoring Group
PPERA	Political Parties, Elections and Referendums Act
S.	Section
SAN	Senior Advocate of Nigeria
SARs	State Administrative Resources
USA	United States of America
USD	United States Dollar

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## EXECUTIVE SUMMARY

This Occasional Paper seeks to respond to the challenges arising from the legal and policy provisions on political finance and use of state administrative resources (SARs) and their practical implementation in elections. It will review the laws and policies and discuss the issues and challenges arising from them against the background of elections conducted since the return to civil rule in 1999, comparative experience from other countries and emergent fit and good practices. The laws reviewed include the Constitution of the Federal Republic of Nigeria 1999 (as amended) <sup>1</sup>, the Electoral Act 2010 (as amended), the Companies and Allied Matters Act and some of the Guidelines made by Independent National Electoral Commission (INEC) in the exercise of its powers under S. 153 of the Constitution and S.153 of the Electoral Act.

The crucibles upon which the review was done include the need to uphold the supremacy of the Constitution; enhance democracy and development; promote issue based politics; reduce the influence of money in politics; prevent the subversion of the legal system; enhance transparency and accountability and increase popular participation in the political finance system. It also seeks to affirm societal ethics and standards; enable voters to make a choice, fight corruption and prevent the abuse of SARs. The paper ends with recommendations of the way forward for the improvement of the system, including the amendment of laws and policies and new actions and strategies to ensure that the laws are respected.

This Occasional Paper is a product of desk research, interviews and the contributions of political party leaders at the High Level Forum on Campaign Finance and use of SARs held in September 2018. The following recommendations are drawn from the discourse in the Paper.

### **0.1 To the National Assembly**

**(i)** Section 221 of the Constitution has been so much abused but there is no penalty for violations. The legislature may consider an amendment to the Electoral Act to provide penalties for associations violating the section.

**(ii)** Amend and clarify S.225 (3) and (4) of the Constitution on the prohibition of holding assets and monies abroad by political parties or keeping any receipt from outside Nigeria to include a prohibition of foreigners from contributing to election expenses in Nigeria.

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<sup>1</sup> Unless the context otherwise refers, any reference in this Occasional Paper to the Constitution is reference to the Constitution of the Federal Republic of Nigeria 1999 (as amended).

**(iii)** The ceiling of expenditure for candidates across board should be upwardly reviewed. This is based on observed and necessary expenses needed to mount a viable campaign.

**(iv)** The ceilings should be based on empirical evidence including the number of voters to be reached, land area, cost of media, transport, venues and other reasonable expenses needed to mount a reasonable campaign. Essentially, INEC should work out reasonable campaign finance costs needed to run a good campaign as a basis for fixing the ceiling.

**(v)** The reviewed sums should not be contained in the body of the Electoral Act. Rather, the Act should be amended and the power to determine the ceiling across all the elections given to INEC. This power will be exercised from time to time based on changes in the economy after consultation with relevant stakeholders and the public. The stakeholders will include the political parties, campaign organisations, Bureau of Statistics, Ministry of Finance and Central Bank of Nigeria, security agencies and civil society working in the field of elections.

**(vi)** The reviewed ceilings should be universal and cover all expenses from the candidate and the political party from the expression of interest, nomination, campaigns and the election.

**(vii)** Third party expenditure for candidates should also be categorically guided by the expenditure ceiling on individual donations to candidates.

**(viii)** The Electoral Act should be amended to include the concept of permissible donor which categorically defines the persons permitted and barred from making contributions to candidates and political parties.

**(ix)** Penalties for spending in excess of the ceiling should be increased to not less than a fine of 50 per cent of the value of the excess expenditure and the terms of imprisonment should be increased to not less than 2 calendar years. The punishment should also include debarment from participation in politics for a period of not less than 2 years.

**(x)** The punishment for an Accountant who merely aids the violation of the law should be reduced to the imprisonment and fine terms recommended for the candidates.

**(xi)** Political parties and candidates should be under a legal obligation to open dedicated bank accounts for the receipt of all campaign income and payment for expenditure, so as to provide a paper and banking trail for audit and reporting purposes.

**(xii)** The establishment of a Political Finance Monitoring Group should be done by either an amendment of the Electoral Act or through a special and new legislation.

**(xiii)** INEC should be specifically strengthened through an enabling legislation with proactive powers to inter alia:

- Seize funds deployed in contravention of the law and guidelines;
- Demand and receive from candidates and parties the market value of state resources such as cars and aircrafts deployed to campaigns;
- Issue cease orders to such unlawful organisations such as the Transformation Ambassadors of Nigeria who violate the law with impunity;
- Issue cease orders to candidates and political parties who continue to violate the law and guidelines;
- In extreme cases of serial contraventions, to disqualify candidates and parties who violate laid down regulations;
- Generally to enforce campaign finance and SARs provisions of the law.

**(xiv)** Contributions to political parties and candidates should be made tax deductible up to the maximum allowed for individuals so that Nigerians can get tax credits and be encouraged to contribute to campaign financing to avoid the hijack of politics and governance by godfathers.

**(xv)** Restore state funding of political parties; but access to the fund and disbursements should be based on party performance at the polls, a minimum threshold of votes or elected offices which a party must satisfy, the revenue of the party including fees and dues of members, donations received, etc.

**(xvi)** Proper definition of campaign expenditure should include expenditure made before the notice of poll. It should include all expenditure by the candidate and political party targeted at enhancing the chances of the candidate to win the election.

**(xvii)** Print and electronic media houses should be under obligation to report the cost of all campaign advertisements to INEC, the National Broadcasting Corporation and print media regulatory body.

**(xviii)** It is imperative that the Electoral Offences Commission recommended by the Justice Uwais Electoral Reform Committee be set up to inter alia exercise jurisdiction over violations of campaign finance laws.



**(xix)** Banks and other financial institutions should be barred from lending money to political parties and candidates for the purpose of electioneering campaigns. This is to avoid political activities and electioneering being treated as an investment.

**(xx)** SARs should be allotted to political parties during electioneering campaigns and this should include public media houses allotting free airtime and space to all political parties to air their views. This will improve their reach to the electorate. Further, public facilities such as public halls and stadia could be made available, free of charge to political parties in rotation during the campaign period.

## **0.2 To INEC**

**(i)** INEC and the law enforcement agencies should start the meticulous enforcement of extant provisions of S.221 of the Constitution through reminders to associations and declaratory and injunctive reliefs in court.

**(ii)** As an interim measure and pending when a law establishes the Political Finance Monitoring Group, INEC should by regulations proceed to establish the Political Finance Monitoring Group so that all stakeholders will be on board with their competencies for the enforcement of political finance laws.

**(iii)** INEC should devise an external complaints mechanism that allows stakeholders file complaints of violations of campaign finance laws and regulations directly to it.

**(iv)** Costs of forms and expression of interest to contest should be regulated by INEC Guidelines - INEC using its powers under S.153 of the Electoral Act. These regulated sums should be tokens for the processing of the applications.

**(v)** INEC in consultation with the political parties and stakeholders should delimit the amount of money an individual or organisation can donate to a political party.

**(vi)** The Guidelines requiring candidate's reporting of their campaign expenditure should provide for cash, paper and banking trail which would facilitate reporting by candidates and monitoring by INEC to determine the accuracy of the candidate's reports. All campaign income should be domiciled in a specific account, of which its details will be given to INEC within 7 days of the emergence of the candidate. All campaign expenses in excess of a minimal threshold, as INEC may determine from time to time, should also be made from the same account by cheque and bank transfers.

## **0.3 To Political Parties**

**(i)** Take steps including capacity building for relevant staff to ensure full compliance with extant provisions of the law, guidelines and rules of INEC.

**(ii)** Reform campaign finance rules to ensure that all party members begin to subscribe and pay membership dues and levies and reorganize the party secretariats to ensure reach out to all members of the party with updates on the management of the finances of the party.

**(iii)** Reach out to the electorate to raise funds for support through innovative methods of fundraising.

**(iv)** Engage in in-depth studies and analysis of party's deployment of campaign finance and the use of SARs as a basis to engage INEC and the legislature.

**(v)** Sensitise members on campaign finance and SARs rules.

#### **0.4 To Civil Society Organisations**

**(ii)** Monitoring political finance is not a one off event, but a continuous exercise which links election expenditure and resources to governance. Continued monitoring and reporting on campaign finance is imperative.

**(iii)** Conduct in-depth studies and research on contributions of notable individuals and organisations to campaign funds of executive and legislative officials and their links to public procurement, privileges, patronage, legislation and corruption in governance.

**(iv)** Initiate dialogue, consultations and prepare drafts for the amendment of existing legislation.

**(v)** For the media, raising awareness, agenda setting, etc. is still needed because political finance is yet to occupy its place in the front burner of national discourse.

**(vi)** The church and the mosque and all religious organisations should enhance their teaching and education on moral re-armament as it relates to campaign finance.

## **1. INTRODUCTION**

This Occasional Paper seeks to respond to the challenges arising from the legal and policy provisions on political finance and use of state administrative resources (SARs) and their practical implementation in elections. It will review the laws and policies and discuss the issues and challenges arising from them against the background of elections conducted since the return to civil rule in 1999, comparative experience from other countries and emergent fit and good practices. The laws reviewed include the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2010 (as amended), the Companies and Allied Matters Act and some of the Guidelines made by the Independent National Electoral Commission (INEC) in the exercise of its powers under S. 153 of the Constitution and S.153 of the Electoral Act.

The crucibles upon which the review was done include the need to uphold the supremacy of the Constitution; enhance democracy and development; promote issue based politics; reduce the influence of money in politics; prevent the subversion of the legal system; enhance transparency and accountability and increase popular participation in the political finance system. It also seeks to affirm societal ethics and standards; enable voters to make a choice, fight corruption and prevent the abuse of SARs. The paper ends with recommendations of the way forward for the improvement of the system, including the amendment of laws and policies and new actions and strategies to ensure that the laws are respected.

This Occasional Paper is a product of desk research, interviews and the contributions of political party leaders at the High Level Forum on Campaign Finance and use off SARs held in September 2018. It is imperative at the outset to state that political finance is the big umbrella covering all expenditures of political parties whether election related or otherwise. Campaign expenditure on the other hand is solely focused on election related expenditure.

## **2. THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) AND MATTERS ARISING**

S. 153 of the Constitution establishes the 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 is empowered by S.153 of the Electoral Act 2010 (as amended) to make rules and regulations to carry out its duties<sup>2</sup>. INEC has made rules and regulations on several aspects of electioneering and campaigns. It has designed the Political Finance Handbook and Manual to guide the work of stakeholders<sup>3</sup>. INEC's Election and Party Monitoring Committee (EPMC) is the policy arm and the Election and Party Monitoring Department run the day to day activities on political finance. The Political Party Finance Manual has designed reporting forms and accounting standards for ensuring compliance with the provisions of the Constitution and Electoral Act on political finance.

The Constitution makes detailed provisions relating to political party finance as detailed below.

*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.*

This section identifies and bars three different kinds of conduct which no association other than a political party can do, as follows: (1) canvassing for votes for any candidate at any election (2) contributing to the funds of any political party and (3) contributing to the election expenses of any candidate at an election. If literally interpreted, it would mean that apart from individuals, no association of any type at all (religious, social, cultural, etc.) can donate to a political party or a candidate. There is nothing on the face of the provision of S.221 or any other section of the Constitution that suggests another canon of interpretation which is not literal or that the literal interpretation will lead to

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<sup>2</sup> S.153 of the Electoral Act (as amended) states: *"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"*.

<sup>3</sup> The Handbook presents an overview of party finance and accounts; summary of the regulations on political finance; financial reporting requirements; the relationship between INEC and political parties; a guide to the audit of political parties accounts and relevant constitutional and statutory provisions. The Manual on the other hand focuses on reporting and sample forms for general political finance and specific campaign finance forms.

absurdity, injustice or ambiguity. Essentially, the Courts in construing statutes have held that where the words used are clear, the Court shall give effect to their literal meaning<sup>4</sup>. This raises the question of the mischief in existing law, for which there was no remedy and which the legislature wants to suppress through the provision<sup>5</sup>. Evidently, the legislature sought to limit funding for political parties and candidates and canvassing of votes to only political parties and natural persons. Recalling S.1 (1) and (3) of the Constitution which is the supremacy of the Constitution clause<sup>6</sup>, expenditure of funds and canvassing for support in favour of then incumbent presidential candidate during the 2015 elections by Transformation Ambassadors violated the law. The same verdict would apply to any such group that seeks to carry on in the same way and manner in 2019 for or in support of any political party or candidate.

Before the alterations of the Constitution in 2011, section 229 of the Constitution had stated that association means:

*“any body of persons corporate or unincorporate who agree to act together for any common purpose, and includes an association formed for any ethnic, social, cultural, occupational or religious purpose”.*

The amendment deleted the above definition, but the word “association” has not changed its meaning. The Black’s Law Dictionary defines association as follows<sup>7</sup>:

*“The act of a number of persons in uniting together for some special purpose or business. It is a term of vague meaning used to indicate a collection or organisation of persons who have joined together for a certain or common object. Also, the persons so joining; the state of being associated”.*

Thus, the literal meaning of S. 221 prohibits associations meddling in politics. Unfortunately, there are no sanctions either in the Constitution or in the Electoral Act for the violation of the provision.

S. 225 of the Constitution makes further provisions:

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<sup>4</sup> See *Mobil Oil (Nig) Ltd v Federal Inland Revenue Service* (1977) N.C.L.R. 1 at 16-17.

<sup>5</sup> The rule in *Heydon’s case* (1584) 3 Co. Rep 7a and *International Bank for West Africa Ltd v Imano (Nig) Ltd & Anor* (1988) 3 NWLR (Pt.85) 633 at 688.

<sup>6</sup> S.1 (1) and (3) of the Constitution states: (1) *“This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria”*: (3) *“If any other Law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other Law shall to the extent of its inconsistency be void”*.

<sup>7</sup> Black’s Law Dictionary (with pronunciations), Centennial Edition (1891-1991) at page 121

*(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.*

*(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.*

*(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.*

The provisions of S.225 (2) and (5) are wide enough for INEC to undertake the detailed monitoring of political financing in Nigeria. The operative words which give INEC such 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. Indeed, INEC could engage in extensive political finance monitoring on the basis of the above provisions.

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 organizations<sup>8</sup>. However, in jurisdictions like the United States of America, the law and regulations clearly prohibit foreigners from contributing to campaign finance funds<sup>9</sup>. This should be clearly stated in Nigerian law.

Further, the poser arises whether there is a monitoring mechanism in place between INEC and the political parties to verify if they do not receive funds from outside Nigeria. Are the political parties bound by law or any INEC regulation to declare all their bank accounts to INEC? Are they under obligation to submit their detailed bank accounts for INEC scrutiny? Is there any collaboration between the Central Bank of Nigeria, the Financial Intelligence Unit and INEC to follow up the enforcement of this provision? It appears that INEC can ask for bank statements under its wide powers in S.225 of the Constitution.

*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.*

*(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.*

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<sup>8</sup> A judicial interpretation of S.225 (3) and (4) would help to resolve this challenge.

<sup>9</sup> Green card holders are exempted from this prohibition in the United States of America. See <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute/>



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 consideration(s) of the National Assembly following INEC's reports or any follow up action including new legislation and policy recommendations. In the alternative, it would be unbelievable that INEC failed to submit reports 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 were receiving 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.

By S. 228: *The National Assembly may by law provide*<sup>10</sup>

- (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.*

### **3. COMPANIES AND ALLIED MATTERS ACT AND MATTERS ARISING**

S. 38 (1) and (2) of the Companies and Allied Matters Act (CAMA)<sup>11</sup> prohibits corporate bodies from making contributions to political parties. The section specifically provides as follows:

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<sup>10</sup> 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.*

<sup>11</sup> Cap C.20, Laws of the Federation of Nigeria 2004.



*(1) Except to the extent that the company's memorandum or any other enactment otherwise provides, every company shall, for the furtherance of its authorized business or objects, have all the powers of a natural person of full capacity.*

*(2) 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. However, no one was prosecuted. Arguments were raised that S.83 (1) of the 2002 Electoral Act supported the donation from Corporate Nigeria. However, the provision of the 2002 Electoral Act on this issue contradicts section 221 of the Constitution which bars associations from donating to political causes. 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 Constitution<sup>12</sup>. Again, in December 2014, companies were reported to have made donations to President Jonathan's re-election campaign team and no one was prosecuted or held responsible.

#### **4. THE ELECTORAL ACT 2010 AS AMENDED AND MATTERS ARISING**

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-*

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<sup>12</sup> S.1 (3) of the Constitution and Hans Kelsen's *grundnorm* theory of the hierarchy of laws.

*(a) holds or possesses any fund outside Nigeria in contravention of section 225 (3) (a) of the Constitution 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 225 (3) (b) of the Constitution 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.*

This provision provides penalties for the breach of the aforementioned constitutional provision.

## **B. Period 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 31<sup>st</sup> 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.*

However, no such limitation has been fixed since 2010 when the law was enacted. There have been similar provisions since the 2002 Electoral Act<sup>13</sup>. But the successive Election Management Bodies have failed, refused and neglected to discharge this duty. This is a very critical issue which the Commission has glossed over and this is very detrimental to

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<sup>13</sup> See S. 83 (1) of the 2002 Electoral Act

the objective of reducing the influence of money in our politics. There is a clear opportunity for INEC to intervene and exercise the power to place limitation before the 2019 elections. This power should be exercised in consultation with stakeholders including the political parties, Central Bank of Nigeria, civil society groups working on election matters with a special focus on campaign finance, etc.

#### **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 first issue with this limitation is in its placement in the body of the Act. The implication is that any alteration will require the amendment of the law by the National Assembly and assent by the President which is a long and cumbersome process. It is probable that these figures made sense at the time the law was enacted. Subsequent erosion of value through inflation and depreciation of the Naira meant that these figures

need to be reviewed<sup>14</sup>. Ideally, this should have been a power granted to INEC in consultation with stakeholders (political parties, Central Bank of Nigeria, National Bureau of Statistics, civil society, etc.) to review these limits from time to time.

The second issue is that the logic and empirical basis of the above limitations were not articulated in the Act 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 seat? The provision of S.84 (2) of the repealed 2002 Electoral Act provides a clue on what is to be done:

*Election expenses incurred by a Political Party for the management or the conduct of an election shall not exceed in the aggregate the sum determined by multiplying 20 Naira by the number of names appearing in the final voters' list for each Constituency where there is a candidate sponsored by the Political Party.*

This kind of provision provides an empirical foundation for expenditure by candidates and political parties and places a limitation which can be monitored and enforced. Again, the area and number of persons to be reached by the campaign and the expenditure should have a proportional relationship rather than the arbitrary fixing of limits in the extant law. Thus, this kind of provision should be used to place limits for candidate's and party's expenditure.

The third issue is 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 front-loading of expenditure by candidates since these 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. It is a notorious fact that delegates electing candidates demand and receive money and generally vote for the highest bidder. These monies are disbursed sometimes in foreign currencies such as the United States dollar. The exclusion of this huge expenditure arena creates a big loophole in the law.

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<sup>14</sup> Since 2010 when the Act was enacted, the Naira has lost over 140% of its value. The exchange rate was N150 =1USD in 2010 compared to today's N360 =1 USD.

This further raises a fourth issue which is the issue of huge expression of interest and nomination fees charged by political parties for aspirants seeking elective offices. The exclusion is “*any deposit made by the candidate on his/her nomination in compliance with the law*”. The poser is; which law provides for political parties to charge huge expression of interest and nomination fees? The author of this discourse is yet to find the enabling law under which political parties charge these huge fees. This is exclusionary and starts the process of monetisation of politics from the very beginning. An erudite legal scholar has postulated on the legality of fees chargeable by political parties as follows<sup>15</sup>:

*“The conditions for contesting elections from local government to the House of Assembly, governorship, House of Representatives, Senate, presidential levels are all in the Constitution. There are decisions of the court to the effect that the Independent National Electoral Commission and State Electoral Commissions cannot collect fees from candidates who are contesting elections. So, if I am going to contest election, you cannot ask me to pay N27million as nomination fee because this is unknown to the Constitution. Therefore, the parties cannot decide their own rules. They cannot impose prohibitive rules that will restrict the participation in the contest of an election to money bags”.*

This discourse adopts the position in the above postulation and insists that what is required is for aspirants to challenge these huge fees in court for a definitive ruling on the subject matter. Although political parties see nominations as an opportunity to raise funds, this should not be allowed to become an impediment to the right to run for elected office. It is a commendable practice when parties reduce or even remove the cost of nomination and expression of interest to disadvantaged groups such as women and people living with disabilities. But this is just the beginning of the process as it will not facilitate the emergence of women as candidates and elected officials due to the large volume of funds required to get to that level.

The fifth issue is that 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. This is an arbitrary and unreasonable exclusion. Thus, the limitation should apply to both the candidate and political party expenditure.

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

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<sup>15</sup> Femi Falana (SAN) in the Punch Newspaper of June 19, 2018. He referred to the case of *National Conscience Party and 23Ors v INEC* - Suit No. FHC/ABJ/CS/25/2003.

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.

The sixth issue is the absence of restrictions on some donations/donors. The Act should have introduced the concept of “permissible donor” to bar government contractors, contributors by proxy or in the name of another<sup>16</sup>, persons who in the last five years have been convicted of offences involving fraud or dishonesty, defrauding the revenue and dealing with psychotropic substances from contributing to the coffers of political parties and candidates<sup>17</sup>. And a reaffirmation should have been made on the bar on corporate donations and this will include statutory corporations, incorporated charitable associations like churches, non-governmental organisations, etc.

The seventh issue is 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 N1million can be donated. The Act should have unequivocally avoided this controversy. However, it can be affirmed from the Political Party Finance Handbook and Manual that the ceiling applies to financial and other resources<sup>18</sup>. In some jurisdictions, donations are more clearly defined for example, in the United Kingdom<sup>19</sup>.

The eighth issue is the silence of the Act on third party expenditure. Thus, third parties seem to be at liberty to spend any amount of money on a candidate subject to the overall limitation of N1million. But if these third parties are associations, they have been barred by S. 221 from canvassing for support or spending money on behalf of candidates or political parties. Third party expenditure can create a leeway for a

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<sup>16</sup><https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute/-> from the United States of America jurisdiction.

<sup>17</sup> This is to ensure that money from drugs, fraud and other criminal enterprises is not allowed to influence the elections.

<sup>18</sup> The Manual and Handbook was prepared by INEC in the exercise of its powers under S.153 of the Electoral Act 2010 as amended.

<sup>19</sup> A donation is money, goods or services given to a party without charge or on non-commercial terms, with a value of over £500. Some examples of donations include: A gift of money or other property; sponsorship of an event or publication; subscription or affiliation payments; free or specially discounted use of an office. Donations to political parties in the United Kingdom are regulated by the Political Parties, Elections and Referendums Act 2000 (PPERA): See [http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0014/102263/to-donations-rp.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0014/102263/to-donations-rp.pdf).



candidate to continue spending on his campaign (after he has reached the ceiling) if he transfers the money to the third parties.

The ninth issue arising is that the Act is silent on the tax status of donations and contributions to candidates and political parties. Ideally, the donations should earn tax credits as a tax deductible expense. But this will be limited to donations not more than N1million allowed for individuals under the Act. This will encourage popular participation in campaign finance (funding political parties and candidates at elections) and reduce the influence of money bags in politics. Thus, the mischief of the overbearing influence of money bags and godfathers will be suppressed while the remedy of involving a large part of the population in party financing will be advanced<sup>20</sup>.

The tenth and final issue is that the sums of permissible expenditure are too low if the actual cost of elections is taken into consideration. The actual costs include the media in the print and electronic formats, payment for venues, hotels, staff, offices, administration, cost of rallies, etc. It should be upwardly reviewed, especially at the presidential and gubernatorial level based on the empirical considerations earlier discussed.

S. 91 of the Electoral Act continues:

*(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;*

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<sup>20</sup> Applying the mischief rule of statutory interpretation to rationalize the enactment of a new law or amendment of existing law(s).

(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.

(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.

A number of issues also arise from the foregoing provision. The first issue is the word “knowingly” used to qualify the commission of the offence. The Black’s Law Dictionary defines knowingly as follows<sup>21</sup>:

*With knowledge; consciously; intelligently; willfully; intentionally. An individual acts “knowingly” when he acts with awareness of the nature of his conduct. State V. Kroll, Mo.App., 682 S.W.2d 78, 81. Act is done “knowingly” or “purposely” if it is willed, is product of conscious design, intent or plan that it will be done, and is done with awareness of probable consequences. Horne V. State, Ind., 445 N.E. 2d 976, 978. A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result. Model Penal Code, § 2.02. The use of the word in an indictment is equivalent to an averment that the defendant knew what he was about to do, and, with such knowledge, proceeded to do the act charged.*

The point here is that the candidate may deny exceeding the ceiling with full knowledge and this may create a technicality for the prosecution to prove beyond reasonable doubt that the candidate knowingly spent above the ceiling.

The second issue is that the penalties indicated as fines are paltry considering the undue advantage expenditures above the ceiling will confer on a 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.

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<sup>21</sup> At page 872.



The third issue is 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. He merely keeps the books and as such should be an accessory to the crime and not a principal offender. He gets a very heavy punishment while the principal offender gets away with a slap on the wrist<sup>22</sup>.

The fourth and very 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? Is INEC as presently constituted and resourced in a position to monitor and effectively track campaign finance expenditure? It appears that a plethora of stakeholders need to be involved to effectively bring up the evidence whilst INEC needs more resources - human, financial, information, technology, etc. to be able to track campaign finance across the federation from 91 political parties and their candidates. Also, despite the attempts by the financial regulatory agencies and various laws against money laundering, Nigeria to a great extent still runs cash based economy. It is a notorious fact that many candidates, especially those with a deep pocket or incumbents who control public allocations spend above the ceilings provided for candidates in the Electoral Act<sup>23</sup>. Monies do not change hands officially, but behind closed doors and sometimes in the dead of the night where no one, including INEC officials or the security agencies is watching.

The foregoing creates the need for a stakeholder group - the Political Finance Monitoring Group which brings various competencies to the table, to be involved in campaign finance monitoring under the leadership of INEC. The key stakeholder groups include INEC, political parties, the Police, other security agencies including the Economic and Financial Crimes Commission, Independent Corrupt Practices and Other Related Offences Commission, the media, academia, National Broadcasting Commission, Nigeria Communications Commission, Code of Conduct Bureau, Central Bank of Nigeria, Financial Intelligence Unit, Inland Revenue Service and civil society organisations. Such a group would meet regularly and the stakeholders will provide an array of information to the group which can be used for follow up on remedial and enforcement action. Happily, INEC has by regulation demanded that all candidates should report on their campaign expenditure. It could also ask the candidates and

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<sup>22</sup> See S.7 of the Criminal Code Act, Cap. C.38, Laws of the Federation, 2004.

<sup>23</sup> See CSJ's reports: *Beyond the Ceiling, Non Transparent Spending and Still Above the Ceiling* for 2007, 2011 and 2015 presidential elections respectively. CSJ also prepared and reviewed the Campaign Finance Monitoring Manual in 2007, 2011 and 2015. *Spending to Win and Serial Violations* for 2012 and 2016 respectively in Edo State; *Spending to Rule and Impunity is the Norm* for 2012 and 2016 respectively in Ondo State;<sup>23</sup> *In Defiance of the Law* in 2013 – Anambra State and Ekiti State gubernatorial Campaign Finance Report in 2018.

political parties to open dedicated campaign finance bank accounts which will receive all income and through which all expenditure will be made.

All inflows and outflows from such dedicated accounts can be monitored by the CBN, the Financial Intelligence Unit and the relevant security agencies. The Federal Inland Revenue should be interested in the tax status of persons who make huge donations to campaigns and political parties; the Broadcasting Commission should be able to give an account of campaign money spent in the electronic media; the Communications Commission will bring information on expenditure that runs through the mobile networks. The political parties will be watching each other and make information available on expenditures that run afoul of the rules; civil society and media as watchdogs and pillars of integrity will provide further information to the group while security agencies will investigate reported breaches. Political parties have broad membership and are entrenched in communities and as such, will be best suited to provide information and evidence from the grassroots on the extant campaign finance practices of their members and other political parties. The group provides the opportunity to review developments, actions and inactions of various groups, candidates and political parties during the campaigns and election and call for preventive, remedial or proactive action to curtail the breaches.

A Political Finance Monitoring Group that engages its stakeholders will lead to alliance building, knowledge and information exchange, effective monitoring of campaign finance and evaluation of different available options of monitoring and enforcement, strengthen accountability and lead to innovations. The PFMG will seek to revive the full implementation of all campaign finance guidelines and regulations issued by INEC, extant standards and Code of Ethics for Political Parties and seek voluntary compliance by political parties and candidates. It will engage the public, increase demand for accountability and generate evidence for the review of campaign finance laws and policies after the elections.

Evidence available from recent and previous elections indicate the increasing use of money to influence voters arising from an impoverished electorate who are in dire straits. No one agency can do the monitoring and enforcement of campaign finance laws alone - INEC or any single agency or stakeholder group. Candidates and parties can be stopped from inducing the electorate, violators of the law need to be prosecuted and punished and in the long run, the laws will be reviewed to become more fit and proper for the Nigerian society.

The fourth issue is the need for an external complaints mechanism accepting reports from non-governmental organizations, the media and independent whistle blowers which would complement INEC's internal monitoring 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 anonymously<sup>24</sup>.*

The fifth issue is that the ordinary courts in Nigeria may not be best suited for the prosecution of persons who run afoul of the above ceilings. It is imperative that the Electoral Offences Commission recommended by the Justice Uwais Electoral Reform Committee be set up to inter alia exercise jurisdiction over violations of campaign finance laws.

### **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) 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.*

*(4) Any political party which contravenes subsection (3) of this section commits an offence and is 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.*

*(5) 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.*

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

*(7) 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*

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<sup>24</sup> 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.

*and forfeiture to the Commission, of the amount by which the expenses exceed the limit set by the Commission.*

*(8) 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 Handbook<sup>25</sup> 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 (7), 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.

Subsections 6 and 8 above will 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.

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<sup>25</sup> At page 28.

In this instance, any slight breach of the law can result in prosecution and heavy legal sanctions.

Also, subsection 6 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) A political party shall not accept or keep in its possession any anonymous monetary or other contributions, gifts, properties, etc. from any source whatsoever.*

*(2) A 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) A political party shall not 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) A 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 seems S.93 (2) (b) and (3) are in conflict with (1) and (2) (b). While S.93 (1) and (2) (a) are saying that every donation or gift should be properly documented with names and identity of donor, the other started setting a threshold for documentation. The earlier provisions are preferred. Also, 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. Again, 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.

There is 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 reporting 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.

### **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 Act<sup>26</sup>, 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*

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<sup>26</sup> 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”



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.

This is a point that needs further guidelines, forms and specific books of account to be designed by INEC.

*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.

*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 their 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 perjury - lying on oath<sup>27</sup>. However, the requirement of opening dedicated bank accounts and running all expense through it is missing from these guidelines. This would have provided an easy trail for campaign expenses. The only thing remaining to ensure that the candidates comply with these rules is the political will to enforce same.

Since this Guideline was enacted in 2013 - 5 years ago, there is no evidence that candidates have been providing reports or that INEC has made demands on candidates for compliance. Thus, a law or regulation needs to be enforced as the command of the sovereign backed by sanctions. Otherwise, it is worth no more than a mere moral adjuration.

### **I. Party Membership, Register, Fees and Fundraising**

The Electoral Act and INEC Guidelines are silent on party membership, register of members and fees payable by party members because these are matters within the domestic jurisdiction of political parties and where they are free to reach decisions without outside intervention. However, available evidence indicates that majority of the political parties in Nigeria have no centralized database of members which can be recalled at will. Thus, there may be confusion as to who is actually a member of a certain political party. This situation is made more confusing by party bigwigs decamping from one party to the other and they are usually stated to have decamped with thousands of their followers. Whether these new members, all get their names on the roll of the new party is not clear.

The Political Party Finance Handbook 2015<sup>28</sup> identifies five major sources of funding for political parties. These are membership fees, income generated by property owned by political party, profit from the income of enterprises owned by the political party, public funding i.e. grants from the state; and contributions from legal entities and natural persons. The culture of payment of fees and dues by the membership of political parties seems to have been relegated as the parties await big money men, godfathers or government patronage<sup>29</sup> for the financing of even routine administrative issues. Of course, electioneering is financed through the same godfathers and the resources of candidates. This state of affairs contributes in no small measure to the lack of internal democracy in parties as the individuals who make the heavy financial contributions also hijack the decision making process of the party. It is recommended that parties should enforce the payment of fees and dues which should be small amounts of money. But if

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<sup>27</sup> Lying on oath is a criminal offence created by S.117 of the Criminal Code.

<sup>28</sup> This was prepared by INEC under its regulatory powers; there is also a Political Party Financial Reporting Manual.

<sup>29</sup> Government patronage works for political parties whose members occupy elected positions in the executive and legislature.



the small amount is collected from hundreds of thousands or millions of members, this will become substantial.

The experience of the African Democratic Congress seems to be a silver lining in the landscape of political party financing. The party stated that within a space of six months, it recorded the registration of 6.5 million Nigerians who paid a fee of N200 each bringing the total receipts to N1.3 billion. The process of payment was made easy through the use of electronic portals including mobile phones and other transfer mechanisms which did not waste the time of the members<sup>30</sup>.

Unlike western democracies where political parties go out to solicit for support and funding from the electorate, hardly do political parties in Nigeria appeal to the generality of Nigerians for funding support. Available information indicates that appeals could be made to specific rich persons. Thus, general appeals to hundreds of thousands or even millions do not often feature in their fund raising landscape<sup>31</sup>. But there was an exception to this trend in the 2015 presidential election, when General Muhammadu Buhari, the presidential candidate of the All Progressives Congress reached out to the electorate for financial support and provided specific dedicated accounts in banks and arranged with banks to receive donations through text messages. However, in abuse of its powers, the telecommunications industry regulator - Nigerian Communications Commission tried to stop the mobile phone fundraising campaign. The aspirant also sought contribution of farm produce from farmers that will eventually be sold to raise money for his campaign<sup>32</sup>.

Many of the existing political parties do not own properties from where they can derive an income while contributions from legal entities and natural persons are usually minimal for political parties whose members are not in elected positions. Thus, fundraising programmes like launchings, dinners, etc. are not popular among political parties that are not in power. However, this is a source of fundraising that should be explored by political parties.

Finally, it is imperative that banks and financial institutions are barred from lending money to political parties and candidates for the purpose of electioneering campaigns. This is to avoid political activities and electioneering being treated as an investment.

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<sup>30</sup> Contribution by Nkem Ukandu, a representative of the African democratic Congress at the High Level Forum on Campaign Finance and use of State Administrative Resources held at Barcelona Hotel, September 26, 2018.

<sup>31</sup> Information distilled from the contributions of political party representatives at the High Level Forum on Campaign Finance and use of State Administrative Resources- supra.

<sup>32</sup> In the run up to the 2011 presidential election, candidate Goodluck Jonathan reached out to Nigerians for donations and opened specific dedicated accounts in banks and arranged with mobile telephone companies to receive donations through text messages from the public.

## J. State Funding of Political Parties

The old S.228 of the Constitution before the amendments provided that:

*The National Assembly may by law provide:- (a)...; (b)...(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;*

This was not retained after the amendment. Thus, there is no legal foundation for state funding of political parties. However, state funding of political parties is a practice prevalent in major democracies of the world including Albania, Argentina, Armenia, Australia, Austria, Belgium, Brazil, Canada, Denmark, France, Germany, United Kingdom, United States of America, South Africa, South Korea, etc. But the quantum of resources made available by the state hardly meets the needs of political parties while the contestation for power is based on outperforming the opponent. Thus, state funding becomes the base before parties look for extra resources.

The case for state funding political parties is founded on the nature of their role, status and functions. S. 1 (1) and (2) of the German Political Parties Act states as follows<sup>33</sup>:

*“(1) Political parties are integral to the free democratic basic order and required under the Constitution. Through their free and continuous participation in the formation of the people’s political will, they perform a public function that is required of them and guaranteed by the Basic Law.*

*(2) Political parties shall participate in forming the people’s political will in all fields of public life, in particular by exerting an influence on the shaping of public opinion; encouraging and enhancing civic education; promoting citizens’ active participation in political life; educating citizens capable of assuming public responsibilities; participating in elections at the federal, Land and local levels by nominating candidates; influencing political developments in parliaments and governments; contributing the political aims they have developed to the public decision-making and policy formation process”*

Considering Nigeria’s 91 registered political parties, would it make sense to restore state funding on a fair and equitable basis to all political parties? There is the need to restore minimal state funding of political parties<sup>34</sup> but accessing the funds must be premised on some specific considerations and not the old “fair and equitable basis”. The

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<sup>33</sup> See the version published on 31 January 1994 (Federal Law Gazette I 1994, p. 149), last amended by the Ninth Act amending the Political Parties Act, of 22 December 2004 (Federal Law Gazette I 2004, p. 3673).

<sup>34</sup> See paragraph 8 (ii) of Recommendation 1516 (2001) of the Parliamentary Assembly of the Council of Europe which states that: “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 parties”.

performance of the party in the elections should be taken into consideration and there should be a minimum threshold of votes or elected offices which a party must satisfy before qualifying for state funding.

The German Political Parties Act in S. 18 allots funding to political parties as follows:

*“(1) Political parties shall receive funds as partial financing of the activities generally assigned to them under the Basic Law. The criteria for the allocation of public funds shall be the proportion of votes won by a political party in European, Bundestag and Landtag [State parliament] elections; the total amount of its membership dues and contributions from holders of elected public office, and the amount of donations received”.*

Also, the repealed Nigerian Electoral Act 2002 had provided as follows:

*80. (1) The National Assembly may approve a grant for disbursement to the political parties contesting elections after the coming into force of this Act.*

*(2) The grant approved in pursuance of subsection (1) of this section shall be made to the Commission which shall distribute the grant to the Political Parties in the following manner.*

*(a) 30% of the grant shall be shared equally among the registered political parties participating in respect of a general election for which the grant has been made; and*

*(b) the remaining 70% of the grant shall be shared among the Political Parties, after the result of the elections have been known, in proportion to the number of seats won by each party in the National Assembly.*

A combination and rejigging of the German and Nigerian 2002 Electoral Act model could be adopted and modified to suit our specific context.

## **K. Use of State 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.*

Considering the fact that many political parties have little or no funding base, especially political parties that do not control executive branches of government, it may not be out of place to recommend that public media houses allot minimal free airtime and space to all political parties during electioneering campaigns to air their views. This will improve their reach to the electorate. Further, public facilities such as halls and stadia could be made available, free of charge to political parties in rotation during the campaign period.

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.

Government vehicles, jets, helicopters, equipment and buildings should not be used for campaign purposes. They are public properties which if used by the incumbents gives him a head start way above the resources available to other contestants. Holding party caucus meetings in government house whether at the state or federal level is also an abuse of state resources. Seconding government staff paid at the public expense to campaign offices and for partisan purposes gives undue advantage to incumbents. It implies that such candidate is using public resources to finance his campaign - resources that are not available to the opposition. Using the insignia of office, including official letter headed papers bearing the coat of arms, etc. to beg and canvass for support from the public is an abuse of official powers and should not happen in any decent society. Again, twisting the arms of contractors and persons engaged in government commerce to forcefully contribute to campaign funds runs afoul of the law.

There have been reported cases where public procurement is used as an avenue to fraudulently provide money for partisan purposes and to fund elections. Contracts are

inflated and the figures above the necessary are paid to either the political party or source who will eventually hand it over for electioneering<sup>35</sup>.

There are regulatory and coercive resources which should be used impartially during electioneering. Unwarranted refusal of permits for rallies, processions and public meetings will amount to an abuse of powers. This appears to have been on the mind of the legislature when in S.12 of the Electoral (Amendment) Act of 2015, it provided as follows:

*Section 94 of the Principal Act is amended by inserting after subsection (3), new subsections (4) and (5)*

*(4) Notwithstanding any provision of the Police Act, the Public Order Act and any regulation made thereafter or any other law to the contrary, the role of the Nigeria Police Force in political rallies, processions and meetings shall be limited to the provision of adequate security as provided in subsection (1) of this section.*

*(5) For the avoidance of doubt, no registered political party in Nigeria, its aspirants or candidate shall be prevented from holding rallies, processions or meetings at any time for their constitutional political purposes, and the Police shall, in a consultative manner, resolve any conflict of time or venue between and amongst parties where such arises.*

Rallies, processions and meetings are part of the expression of the fundamental rights to freedom of movement and association. As such, they can only be derogated from within the recognized constitutional restriction and derogation from fundamental rights enshrined in section 45 (1) of the Constitution; - under a law that is reasonably justifiable in a democratic society in the interest of defence, safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of others. Thus, in the case of *Inspector General of Police v All Nigeria Peoples Party*<sup>36</sup>, the Court of Appeal reaffirming the decision of the High Court held:

*"In the instant case, I have no difficulty in answering the question raised by the plaintiffs. I answer the first question in the negative, that is to say that no police permit or any authority is required for holding a rally or procession in any part of the Federal Republic of Nigeria. I answer the second question in the affirmative meaning that the provisions of the Public Order Act, Cap. 382, Laws of the Federation of Nigeria, 1990, which prohibit the holding of rallies or processions without police permit are unconstitutional having*

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<sup>35</sup> See Money and Politics in Nigeria, (IFES and DFID, edited by Victor Adetula), 2008 at page XXX: "During the Second Republic, the role and activities of "contractors" in government and political parties and other cases of political "patronage" became very rampant. The reports of the various special tribunals that tried politicians and office holders revealed gross abuse of public office and impropriety in dealing with political parties".

<sup>36</sup> (2007)18 NWLR (Pt.1066) 457 Court of Appeal

*regard to section 40 of the 1999 Constitution and Article 11 of the African Charter on Human and People's Rights (Ratification and Enforcement) Acts, Cap. 10, Laws of the Federation of Nigeria, 1990”.*

The recent denial of an aspirant from an opposition political party of the use of the Abuja Eagle Square already paid for and to be used for his public declaration of intent to contest is a case in point. Arbitrary airport closures have happened in the past on the eve of an opposition party's convention in a far flung town.

Law enforcement and investigative powers can be misused as happened in the recent case of the gubernatorial candidate of the opposition party in Osun State where the candidate was declared wanted and apparently charged to court on the eve of the election. Charging a candidate with a criminal offence on the eve of elections tars him with the mark of criminality and presents him as unworthy of the confidence and vote of citizens and this will be coming at a time he needs all the focus on the elections logistics and to protect the votes in his favour.

Media resources can be abused through the following: only candidates supported by the incumbent government have news coverage in the news media while others suffer a blackout; opposition candidates are reported in savage and disparaging terms; live coverage of incumbent's campaigns with or without payment and heavy discounts where they have to pay. These discounts may not be available to the opposition, 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,*
- (c) 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,*



*(d) 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,*

*(e) 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.

Recent events of vote buying arising from the 2018 Ekiti and Osun gubernatorial elections show the need for strict enforcement of the above and other prohibitions of vote buying, bribery and corruption. However, Nigeria is now the reputed poverty capital of the world with the largest number of poor persons among the nations. The socio economic and political situation indicates that many workers have been unpaid for several months in over 26 of the 36 states of the Federation; pensioners have not been paid for upwards of six months while the unemployment and underemployment rate is at an all-time high<sup>37</sup>. The economy is hardly growing and the little growth is less than the population growth<sup>38</sup>. The implication of the foregoing is that vote buying will not stop as long as people are very poor and hungry and in search of the next meal. Thus, there is the need for political leaders to start a paradigm shift in the generation and management of public resources towards growing the economy, creating jobs and sustainable livelihoods. The economic foundations of vote buying must be tackled.

It seems the emphasis and attention on vote buying is restricted to the Election Day event. However, bigger sums of money are used in pre-election events like primaries for the selection of candidates through the delegates system. And this determines who emerges in the first place as a candidate to be on the ballot. Again, different goods and services including food items, clothing and physical cash are exchanged during campaigns and before the Election Day. Thus, any attempt at stopping or reducing vote buying, inducement and corruption in the electoral system should be holistic and target the various phases of the events leading up to the Election Day. Also, voters who sell their votes are usually the very poor; prosecuting and jailing them may not be the best approach. Rather, the godfathers and the very rich that bring out the millions for this purpose should be the main target of INEC and the security agencies.

The Campaign Finance Monitoring Group would offer a good opportunity for information on vote buying, inducement and corruption related to the elections to be reviewed, discussed, investigated, prosecuted and eventually nipped.

## **5. CONCLUSIONS**

The challenges militating against a fit and proper campaign finance regime in Nigeria stem from gaps in the law and the poor implementation of existing law. Extant laws, polices and guidelines on campaign finance have been more obeyed in the breach and the violations come with a lot of impunity. Also, there are gaps in the existing laws and

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<sup>37</sup> The unemployment and underemployment rate stands at 18.8% and 21.5% respectively. These figures are from the last Employment Report released by the National Bureau of Statistics in the Third Quarter of 2017.

<sup>38</sup> The economy grew by 1.9 and 1.5% respectively in the first and second quarter of 2018 while the population is growing by 3% per annum.



policies and these gaps need to be filled. There are also capacity challenges in INEC, political parties and other stakeholders. High level collaboration among the pillars of integrity for the enforcement of existing laws has not started whilst no one has been prosecuted and punished for violation of the law. The approach to campaign finance reforms lacks empirical foundations needed to ensure sustainability of the reform agenda in the long run.

## **6. RECOMMENDATIONS**

### **6.1 To the National Assembly**

**(i)** Section 221 of the Constitution has been so much abused but there is no penalty for violations. The legislature may consider an amendment to the Electoral Act to provide penalties for associations violating the section.

**(ii)** Amend and clarify S.225 (3) and (4) of the Constitution on the prohibition of holding assets and monies abroad by political parties or keeping any receipt from outside Nigeria to include a prohibition of foreigners from contributing to election expenses in Nigeria.

**(iii)** The ceiling of expenditure for candidates across board should be upwardly reviewed. This is based on observed and necessary expenses needed to mount a viable campaign.

**(iv)** The ceilings should be based on empirical evidence including the number of voters to be reached, land area, cost of media, transport, venues and others reasonable expenses needed to mount a reasonable campaign. Essentially, INEC should work out reasonable campaign finance costs needed to run a good campaign as a basis for fixing the ceiling.

**(v)** The reviewed sums should not be contained in the body of the Electoral Act. Rather, the Act should be amended and the power to determine the ceiling across all the elections given to INEC. This power will be exercised from time to time based on changes in the economy after consultation with relevant stakeholders and the public. The stakeholders will include the political parties, campaign organisations, Bureau of Statistics, Ministry of Finance and Central Bank of Nigeria, security agencies and civil society working in the field of elections.

**(vi)** The reviewed ceilings should be universal and cover all expenses from the candidate and the political party from the expression of interest, nomination, campaigns and the election.

**(vii)** Third party expenditure for candidates should also be categorically guided by the expenditure ceiling on individual donations to candidates.

**(viii)** The Electoral Act should be amended to include the concept of permissible donor which categorically defines the persons permitted and barred from making contributions to candidates and political parties.

**(ix)** Penalties for spending in excess of the ceiling should be increased to not less than a fine of 50 per cent of the value of the excess expenditure and the terms of imprisonment should be increased to not less than 2 calendar years. The punishment should also include debarment from participation in politics for a period of not less than 2 years.

**(x)** The punishment for an Accountant who merely aids the violation of the law should be reduced to the imprisonment and fine terms recommended for the candidates.

**(xi)** Political parties and candidates should be under a legal obligation to open dedicated bank accounts for the receipt of all campaign income and payment for expenditure, so as to provide a paper and banking trail for audit and reporting purposes.

**(xii)** The establishment of a Political Finance Monitoring Group should be done by either an amendment of the Electoral Act or through a special and new legislation.

**(xiii)** INEC should be specifically strengthened through an enabling legislation with proactive powers to inter alia:

- Seize funds deployed in contravention of the law and guidelines;
- Demand and receive from candidates and parties the market value of state resources such as cars and aircrafts deployed to campaigns;
- Issue cease orders to such unlawful organisations such as the Transformation Ambassadors of Nigeria who violate the law with impunity;
- Issue cease orders to candidates and political parties who continue to violate the law and guidelines;
- In extreme cases of serial contraventions, to disqualify candidates and parties who violate laid down regulations;
- Generally to enforce campaign finance and SARs provisions of the law.

**(xiv)** Contributions to political parties and candidates should be made tax deductible up to the maximum allowed for individuals so that Nigerians can get tax credits and be encouraged to contribute to campaign financing to avoid the hijack of politics and governance by godfathers.

**(xv)** Restore state funding of political parties; but access to the fund and disbursements should be based on party performance at the polls, a minimum threshold of votes or elected offices which a party must satisfy, the revenue of the party including fees and dues of members, donations received, etc.

**(xvi)** Proper definition of campaign expenditure should include expenditure made before the notice of poll. It should include all expenditure by the candidate and political party targeted at enhancing the chances of the candidate to win the election.

**(xvii)** Print and electronic media houses should be under obligation to report the cost of all campaign advertisements to INEC, the National Broadcasting Corporation and print media regulatory body.

**(xviii)** It is imperative that the Electoral Offences Commission recommended by the Justice Uwais Electoral Reform Committee be set up to inter alia exercise jurisdiction over violations of campaign finance laws.

**(xix)** Banks and other financial institutions should be barred from lending money to political parties and candidates for the purpose of electioneering campaigns. This is to avoid political activities and electioneering being treated as an investment.

**(xx)** SARs should be allotted to political parties during electioneering campaigns and this should include public media houses allotting free airtime and space to all political parties to air their views. This will improve their reach to the electorate. Further, public facilities such as public halls and stadia could be made available, free of charge to political parties in rotation during the campaign period.

## **6.2 To INEC**

**(i)** INEC and the law enforcement agencies should start the meticulous enforcement of extant provisions of S.221 of the Constitution through reminders to associations and declaratory and injunctive reliefs in court.

**(ii)** As an interim measure and pending when a law establishes the Political Finance Monitoring Group, INEC should by regulations proceed to establish the Political Finance Monitoring Group so that all stakeholders will be on board with their competencies for the enforcement of political finance laws.

**(iii)** INEC should devise an external complaints mechanism that allows stakeholders file complaints of violations of campaign finance laws and regulations directly to it.

**(iv)** Costs of forms and expression of interest to contest should be regulated by INEC

Guidelines - INEC using its powers under S.153 of the Electoral Act. These regulated sums should be tokens for the processing of the applications.

**(v)** INEC in consultation with the political parties and stakeholders should delimit the amount of money an individual or organisation can donate to a political party.

**(vi)** The Guidelines requiring candidate's reporting of their campaign expenditure should provide for cash, paper and banking trail which would facilitate reporting by candidates and monitoring by INEC to determine the accuracy of the candidate's reports. All campaign income should be domiciled in a specific account, of which its details will be given to INEC within 7 days of the emergence of the candidate. All campaign expenses in excess of a minimal threshold, as INEC may determine from time to time, should also be made from the same account by cheque and bank transfers.

### **6.3 To Political Parties**

**(i)** Take steps including capacity building for relevant staff to ensure full compliance with extant provisions of the law, guidelines and rules of INEC.

**(ii)** Reform campaign finance rules to ensure that all party members begin to subscribe and pay membership dues and levies and reorganize the party secretariats to ensure reach out to all members of the party with updates on the management of the finances of the party.

**(iii)** Reach out to the electorate to raise funds for support through innovative methods of fundraising.

**(iv)** Engage in in-depth studies and analysis of party's deployment of campaign finance and the use of SARs as a basis to engage INEC and the legislature.

**(v)** Sensitise members on campaign finance and SARs rules.

### **6.4 To Civil Society Organisations**

**(ii)** Monitoring political finance is not a one off event, but a continuous exercise which links election expenditure and resources to governance. Continued monitoring and reporting on campaign finance is imperative.

**(iii)** Conduct in-depth studies and research on contributions of notable individuals and organisations to campaign funds of executive and legislative officials and their links to public procurement, privileges, patronage, legislation and corruption in governance.

**(iv)** Initiate dialogue, consultations and prepare drafts for the amendment of existing legislation.

(v) For the media, raising awareness, agenda setting, etc. is still needed because political finance is yet to occupy its place in the front burner of national discourse.

(vi) The church and the mosque and all religious organisations should enhance their teaching and education on moral re-armament as it relates to campaign finance.