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Chairman of the Elections and Boundaries Commission

Address at Trinidad and Tobago Transparency Institute

Annual General Meeting

Ladies and gentlemen, Trinidad and Tobago has a very proud record of successful election management. And while democracy is not only about elections, credible elections are a necessary component.

The stakes in an election are high because of the political consequences for the parties contesting these elections. Over time, we have seen more creative strategies being used by political parties to gain any advantage, which strategies require significant financial resources. At present there is no real or proper regulatory system in place for accountability in the acquisition or expenditure of these financial resources.

Where do parties obtain these large amounts of money to finance their operations and electioneering? In the absence of state funding, parties are normally required to raise large amounts of money from individuals or corporate donors. Private donations however as we are all aware, open parties to the danger of undue influence from those financing those operations. Who pays the piper and all that. It is a common theme with respect to elections around the world of financiers of parties having access to the corridors of power, influencing legislation, appointments to positions and of course award of contracts. So the danger is real and present.

Locally, the judgement in **Real Time Systems Limited and Renraw Investments Limited** in the High Court of Justice delivered in May this year should concern all citizens. The extracts from the witness statements set out in the judgement are eye opening at the least. I would recommend that you all have a look at that judgement and in particular the findings of the learned judge at paragraphs 44 and 45 of his judgement. That case highlights better than anything I may say here as to the danger of unregulated campaign financing.

However, this is not to deny the need by political parties of financing to carry out their activities. Political parties have become essential for our system of governance and have valid financial requirements.

Transparency in regard to party funding helps to ensure that the electorate understands the influences under which politicians are likely to come when they are in government. It makes it much more difficult for parties to be influenced by external interests, reducing, the likelihood of undue influence and lessening the danger of patronage in public appointments and contracts.

Linked to the issue of transparency is that of limits on the external funding of parties and the prohibition of the use of state resources by the party in government. These concerns are directly linked to the issue of the credibility of elections as it distorts the playing field where one party (or two) crowd out all other voices in an election. Creating a level playing field in elections is widely recognised as a priority of the highest order for political finance regulation. This implies appropriate regulation and facilitation; thus, giving each party and candidate, an adequate opportunity to participate in a political forum and be able to put across their message

The purpose of party and campaign funding regulation should therefore be both to prevent the undue influence of financiers and encourage a level playing field among the political parties contesting an election..

The key for a society therefore is to strike a balance between the need for financing by parties and society's need for transparency, healthy competition and a level playing field. Any proposed financial regulation should be realistic. In that I mean, it should be implementable and not needlessly hinder competitive multi-party politics, or place unreasonable burdens on parties or candidates. Any regulation must take into account the realistic cost of funding campaign materials, services and advertising, while simultaneously addressing any areas of concern by the electorate in an open and transparent manner.

The most important element in regulating party and campaign funding relates to disclosure. The electorate needs to know how its political parties are financed and by whom and what commitments, if any, are being made, in accepting donations from wealthy supporters or companies. It is therefore imperative that there are strict rules

requiring political parties and donors to acknowledge publicly, and disclose donations at least above a certain monetary value.

In order for the authorities to effectively regulate spending, there should be a clear distinction and limits placed on the different types of expenditure with set rules applicable to them, as it relates to campaign expenses and general party expenses and third party spending and the candidates' own private finances. Such rules must be applied fairly, by providing an effective independent enforcement mechanism that is capable of ensuring compliance.

At present, the Elections and Boundaries Commission in Trinidad and Tobago (EBC) has the power only to assign symbols to political parties. There is no requirement that parties themselves must be registered. As an aside the EBC has on its records 154 symbols therefore suggesting possibly as much as 154 parties (some symbols would have been assigned to individuals) with more symbols being assigned every month.

It should also be noted that the term "*political party*" is nowhere defined in any law in Trinidad and Tobago. This is an important point when considering the regulation of political party and campaign financing.

With respect to the laws governing Political Campaign Financing in this country, the provisions relating to "Election Expenses" in the Representation of the People Act (ROP) are very limited in scope. This is because the ROP regulates spending by individuals not parties.

In Trinidad and Tobago election agents of political candidates are required by law to submit to the Chief Election Officer not later than forty-two (42) days after the result of an election is declared, what is termed a "true return" of election expenses which is submitted with supporting bills and receipts. In addition, the return must also be accompanied by a declaration made by the election agent before a Justice of the Peace. The Chief Election Officer in turn must within ten (10) days of receipt of the election agent's statement and declaration, publish an advertisement in at least one newspaper together with a "Summary of the Return of Election Expenses". The advertisement also makes provisions for the Return of Election Expenses to be inspected by the general public at the EBC's Central Electoral Office.

This law was solely designed with an emphasis on the administrative expenses of the individual candidates.

Specifically as regard expenses, Section 48 (1) of the Representation of the People Act (ROP) states, and I quote “No sum shall be paid and no expenses shall be incurred by a candidate...or by his election agent whether before, during or after an election on account of or in respect to the conduct or management of an election in excess of the amount of fifty thousand dollars in the case of a Parliamentary election or twenty-five thousand dollars in the case of a Municipal Council or the Tobago House of Assembly election”.

For the record, those sums have never been exceeded according to the statements submitted to the Chief Election Officer. This translates, in a Parliamentary election to \$50,000.00 multiplied by 41 electoral districts, that is \$2,050,000.00 if a party nominates candidates for all districts. Does anyone here believe that our major parties jointly spent \$4,100,000.00 in any of the last say 5 general elections?

From the EBC’s observations, we have regularly noticed that expenses incurred throughout an election campaign exceeds far more from what is actually disclosed by candidates in their submission of the return of election expenses to the Commission.

This shortcoming in the Act (that is its regulation of individuals as opposed to parties) has provided a window of opportunity for political parties to continuously go unchecked in their spending on elections.

If one looks at our Parliamentary Elections in 2015, moreso specifically at the research data collected from Media Insite Company. In the company’s report it highlighted the number of political advertisements that was published in the daily newspapers during the election campaign. The information showed that there were 878 full page advertisements by the two main political parties in all three daily newspapers, namely the Trinidad Guardian, Newsday and the Express.

Ladies and gentlemen, we all know that the cost of full page publications are considerably high, so if you can just let your imagination take over a bit, you will then be able to ascertain the type of expenditure we’re talking about that is only in one media channel, keeping in mind we have not taken into consideration television and

radio advertising; printing of jerseys, hosting of meetings, paying volunteers, paying for transport; as these will further exacerbate the overall cost spent by political parties during the election campaign.

Since 2009, the EBC has been actively pushing for enactment of appropriate legislative measures for electoral financing. We have facilitated several bi-lateral discussions with various organisations and the major political parties, with the intent of ascertaining their view on the enactment of legal provisions to govern electoral financing in Trinidad and Tobago. This included bringing a former Chief Election Officer of Elections Canada to facilitate discussions with political parties.

Arising out of these discussions, five (5) key components were identified by the EBC which are critical for regulatory success. They are:

1. Registration of Political Parties

This includes:

- i. Providing for a register of political parties;
- ii. Guidelines for the creation of a political party, its legal recognition and its registration;
- iii. Collection of information on political parties, including names and addresses of leader or president, secretary, treasurer etc. and address of the party (example of dispute by members of a party over its symbol which ended up in court);
- iv. Obtaining a constitution or charter of the party; and
- v. Guidelines for voluntary de-registration and provision for involuntary de-registration, that is, where the political party will be de-registered by the regulator.

This registration will then be linked to incentives for political parties such as:

- Financial benefits, for example, the ability to provide contributors to a party with a tax benefit for their contribution.
- Entitlement to free and or subsidised broadcasting time.

- Eligibility to receive public funds.

2. Reporting and Public Information

- Registered political parties to maintain financial records.
- These financial records to be audited.
- Declaration of donors.

3. Limits on Election Expenses and Contributions

- Define what is a contribution? A contribution need not only be in funds but in the provision of services or the use of property.
- Identify which political party official can receive contributions on behalf of the party.
- Identify sources of contributions.
- State who are impermissible donors such as foreign governments, public institutions, statutory bodies.
- State limits on contributions.

4. Public Funding

- This can be approached either directly in the form of reimbursement of election expenses or indirectly as pointed out earlier through monetary incentives such as tax credits to donors and non-monetary incentives to political entities through the allocation of free broadcasting time.
- Maybe candidates who receive a stipulated percentage of the popular vote to be entitled to reimbursement of a specified percentage of election expenses.

- The provision of Public Funding can reduce the dependency of political parties on large private donors and make funding more transparent and accountable. Public funding is most effective however when it is introduced in conjunction with other regulatory measures, such as spending caps and financial transparency of political parties. The provision of free time or space in media channels to parties or candidates can limit the flow of paid media advertising.

5. Compliance and Enforcement Mechanisms

- Provisions giving a clear authority to enforce political finance laws in administrative, civil and criminal fora.
- This will include power to impose sanctions or initiate proceedings against offenders of the political finance laws which of course will necessitate access to a range of penalties and sanctions.

In the event that regulations are violated there needs to be in place a clear and proportionate system of sanctions that can be imposed in practice within a reasonable time frame. A range of sanctions should exist to reflect the seriousness of the particular violation, sanctions should be dissuasive in nature and issued in a timely manner to be of relevance.

One aspect of our suggested amendments of the ROP or in the drafting of a new act will be to form an entity or vest in some existing entity the powers of enforcement under this new Act. We may call this entity the Political Finance Regulator (PFR) (there is no magic in this name but for the purposes of this discussion we will use that terminology). This entity would be responsible for:

- Drafting and implementing regulations that further clarify and define the policy goals of the political finance laws;
- Administering policies for public subsidies to electoral participants and for political finance reporting requirements; and

- Enforcing legal-funding restrictions and reporting obligations through administrative or quasi-judicial processes.

These responsibilities are often assigned in most jurisdictions to the general election authority, for example as in the case of Trinidad and Tobago, the EBC.

Political campaign financing continues to be a major concern for the EBC and if left unregulated has the potential to undermine the conduct of credible elections in the future.

Unfortunately, given the Commission's mandate which it operates under, the Elections and Boundaries Commission is powerless to take the necessary actions, even if concerns are raised. We simply do not have the neither the legal nor institutional capacity to either review and audit statements or investigate any violations. Because at present there is nothing to violate.

The EBC continues to work closely with all stakeholders, and as recent as 2015 submitted a policy on Registration of Political Parties and Public and Campaign Financing to a Joint Select Committee in Parliament responsible for Election Campaign Financing for their consideration.

In May 2016 the EBC participated in a National Seminar on Campaign Finance Reform, hosted by the Foreign Affairs Ministry wherein the Prime Minister Dr. Keith Rowley promised campaign finance legislation by 2020. Additionally in July 2017 at a private meeting between the Prime Minister and the Leader of the Opposition both parties committed to the passage of campaign finance reform.

The Elections and Boundaries Commission (EBC) continues to advocate for regulatory supervision, whereby all political entities and independent candidates MUST be obligated to provide their financial information on source of funds derived from during the election campaign.

As can be seen we have had commitments from political parties to pass legislation to regulate campaign finance. However, as I speak to you today 8th November, 2018 we do not even have a draft bill which has been circulated for comment at least we have not seen such a bill. What do we do ladies and gentlemen? How do we convince our politicians that the time for talk is over and something must be done to overcome this danger to our democracy? And I say we because this is not an EBC

issue, this is an issue for all citizens. I would like to commend the Trinidad and Tobago Transparency Institute for raising this as an issue. I would also make mention of the media who from time to time have raised this issue in editorials. But we need to press our politicians further. We need to do more.

In this regard I would like to highlight the importance of NGOs generally in getting action on issues of good governance. NGOs such as the Trinidad and Tobago Transparency Institute can maintain pressure on the politicians to take action. They also have an important role in educating the electorate on the issue. Politicians will respond if electors make it clear that this is an important matter for them. If it is an issue which influences how they vote. And this is a crucial issue for our democracy. Section 53 of the Constitution states, “Parliament may make laws for the peace, order and good government of Trinidad and Tobago...” The unregulated and secret financing of political parties and election campaigns can and I daresay has impacted decisions taken by parliamentarians when they make laws for our peace and good government and therefore goes to the heart of our governance. This is of crucial importance at this juncture of our democracy.

The issue of political and campaign finance regulation is essentially a discussion of our basic political values as a society. If we subscribe to a liberal democratic order (and based on our constitution it would seem that we do) then there is value in providing to parties the opportunity to put their positions to the electorate and not have them crowded out of the debate because of excessive financing of one or two parties. It is also of paramount importance that our representatives in governing are not unduly influenced by, what is now popularly referred to as “special interests”. I cannot overstate how crucial this is and how urgently action is needed. We, the EBC, need the support of you and NGOs generally and the media in keeping this issue at the forefront of the national dialogue.

Ladies and gentlemen, this frankly is not an EBC issue. This is an issue for the society, for all members of society and for civil society groups as active and engaged members of the society. In any free society it is not the government nor commissions but the people individually as citizens who can bring about true change.

Failure to address this issue will further erode the system of governance.

I thank you for the opportunity to address this forum today.

Mr. Mark Ramkerrysingh

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