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Legality of Pecuniary Donations by Government Ministries, Departments and Agencies

By

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Abstract

The paper examines the role of government agencies and the indirect exercise of executive power; in addition to examining the question of good governance and the legality of same. The core concept of legality of monetary donations as advanced in this paper deals with that of accountability of government officials in the public office and the impact of pecuniary donations on good governance. To what extent does the giving and receiving of monetary gifts defeat the constitutional obligation of the executive and various MDA's. The paper argues consequently that any form of pecuniary donation that derails constitutional responsibilities should not be encouraged.

1. Introduction

Pecuniary is often associated with being actually or related to money.¹ 'Donation' is often associated with synonyms such as gifts and charity.² The term pecuniary donations may be referred to as gifts of money. The pervasiveness of the act of pecuniary donation as envisaged in this paper is an investigation of the legality or otherwise of the popular practice of officials in government ministries, departments and agencies (hereinafter 'MDA') to make monetary donations in public functions where they are present in official or non-official capacities. Pecuniary donation sometimes is engaged to elicit reactions from citizens towards the performance of a particular action and in some cases beclouds the sense of reasoning of citizens to query the source of such gifts and their validity.

2. Government Agencies: Indirect Exercise of Executive Power

By the provisions of section 5 of the 1999 Constitution of Nigeria³ (hereinafter '1999 CFRN'), executive authority is vested in the President of the federation or the Governor of a state as the case may be. Such power may be exercised either directly or indirectly.⁴ Thus without more, direct exercise of executive power is clearly when the President or the Governor assumes the process of carrying out an executive duty personally without delegation. The focus of concern for present purposes, however, is an analysis of what amounts to an indirect exercise of executive power. Section 5 (1) (a) and 5 (2) (a) provide that the President or the Governor may exercise power indirectly 'through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation' or 'through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State' as the case may be. In furtherance of this same position, section 5 (1) (b) and 5 (2) (b) envisage that direct or indirect exercise of executive power 'extend to the execution and maintenance of this Constitution', execution of all laws made by the National Assembly or House of Assembly and in all situations where the National Assembly or the House of Assembly is empowered to enact laws. The implication of the above-stated provisions of the 1999 CFRN is that executive power is

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¹ <http://www.oxforddictionaries.com/definition/english/pecuniary> (accessed 16 April 2016);
<http://www.businessdictionary.com/definition/pecuniary-benefit.html> (accessed 16 April 2016);

² <http://www.oxforddictionaries.com/definition/english/donation> (accessed 16 April 2016);
<http://www.investorguide.com/definition/donation.html> (accessed 16 April 2016).

³ The Constitution of the Federal Republic of Nigeria, Cap. 24 Laws of the Federation of Nigeria, 2000.

⁴ Section 5 (1) (a) and 5 (2) (a) of the 1999 CFRN.

indirectly exercised at the central and federating units' level through the establishment of MDAs. As Prakash¹ aptly describes it, '[o]ther officials who execute the law [on behalf of the President or Governor] are "executive" officers by virtue of their law execution role and because they are the chief executive's means of executing the law.' Thus, in the same way that the chief executive as the President or Governor may not adopt the direct exercise of executive power as other than a tool 'employed in superintending and seeing that the laws are faithfully executed',² officials of MDAs as inferior executives are also bound by the same rule.

Pecuniary Donations, Executive Authority and Good Governance

1. The term 'executive authority' may arguably not be general but still has some degree of wide application. In the same vein, describing the words 'executive' and 'authority' Executive, in this context, arguably may refer to the branch of government in charge of implementing the law and policies of the people.³ Authority, described as the 'power to act' or 'of an official body that controls an area or specific activity'.⁴ Executive authority may then be described as the branch or arm of government with the specific power to implement the laws and policies of the government. The term 'good governance': good and governance. Good, a very general and jurisprudential word. Arguably the most general and ambiguous word as well as its converse counterpart 'bad'. Good for this purpose of this paper may be described in this context as that which is acceptable as proper or conforming to that which is acceptable as proper in line with pre-stated standards and contexts. The term 'governance', has been described as 'establishment of policies, and continuous monitoring of their proper implementation, by the members of the governing body of the organisation'.⁵ For the purpose of this work, governance may be referred to the process of ruling, leadership and followership and the incidents that are essential for such dynamics. Good governance may then mean the ideal or acceptable standard of leadership and followership.⁶ The topic above, after having explained the terms simply means the relationship, more in the light of impact or non-impact of monetary advancements or financial aid on the government leadership's conformity with legitimate and proper standards. It is understood that monetary advancements are not alien concept in the African continent especially through external funding and loans for the implementation of government policies and external funding for the initiation, sustenance of the activities of civil society organisations.⁷ Ideally, it is expected that since these external funds are pecuniary donations and gifts as the name implies, they should come unwrapped by any terms and conditions or expectations from the beneficiary (in this case, the government or the civil society organisations). These funds usually emanate from foreign governments, international financial institutions, and private commercial banks. Consequently, it is the theory of this paper that pecuniary donations are synonymous with vulture funds. Vulture funds is advanced as funds that are advanced with other motives of derailing good governance, avoiding accountability and also ensuring that constitutional governance is derailed.⁸ Free and fair elections underscore the essence of democratic governments as well as the place of political parties in effective representation in a democratic government. and they play very vital role in representative government by nominating candidates for office. Trust in the political system is

¹ Prakash, S., (2003). 'The Essential Meaning of Executive Power' *University of Illinois Law Review*, P. 704.
² Ibid, p.818.

³ <http://www.dictionarycentral.com/definition/executive.html> (accessed 16 April 2016).

⁴ <http://www.dictionarycentral.com/definition/authority.html> (accessed 16 April 2016).

⁵ <http://www.dictionarycentral.com/definition/governance.html> (accessed 16 April 2016).

⁶ <http://www.businessdictionary.com/definition/governance.html> (accessed 16 April 2016).

⁷ Olayiwola, Abdur-Rahman Olalekan. "Leadership, corruption and governance in Nigeria." *European Journal of Business and Social Sciences* 2.9 (2013): 1-19.

⁸ Mumo Nzau (2010) 'Africa's Industrialization Debate: A Critical Analysis' *The Journal of Language, Technology & Entrepreneurship in Africa*, Vol. 2, No.1, pp 146-164.

⁹ For more details on the concept of Vulture Funds see generally, Kupelian, Romina, and Maria SOL RIVAS. "Vulture Funds." Available at <http://www.justiciafiscal.org/wp-content/uploads/2014/07/Working-Paper-Vulture-Funds.pdf> (accessed May 13, 2016) ;Towse, Ruth. "Alan Peacock and Cultural Economics*." *The economic journal* 115.504 (2005): F262-F276.

premised on the extent to which officeholders and political parties are responsive to the citizenry between elections. It rarely needs mention that the media, interest groups and non-profit organizations all find ways of ensuring accountability of politicians¹³. Politics however cannot be completely severed from some pecuniary considerations as they are always present in politics. Election campaigns, political parties, interest groups, non-profit organizations all depend heavily on money, or more broadly speaking on material resources. The organizing of collective action and reaching out to voters, journalists or politicians depends on funding for staff and rent to run offices or for communication services to reach out to citizen's.¹⁴ This practice as visible from the Nigerian experience is majorly manifested during election and campaign trails. Questioning the legality of pecuniary donations thus becomes apt as politicians as well as huge private sectors have struggled to for avenues of financing political competition that influenced the democratic process leaving us to ascertain to the extent it puts at risk the values that lie at core of democratic governance. The next section of the paper examines the impact of pecuniary donations on good governance which is a constitutional obligation of the executive.

Examining the impact of pecuniary donations on good governance

Having delimited pecuniary donations to come in the shade of monetary donations, it is apt to examine the legality or otherwise monetary donations. Money could mean a channel of political participation. Donating money is one form to participate in the political process, complementary to giving time, expressing an opinion or other form of collective action. When members pay membership fees to political parties, activists make donations to election campaigns and interest groups fund lobbying activities they participate in the political process, providing the means necessary to run elections campaigns and political parties. By giving their time, providing financial support or engaging in public debate citizens connect to political organizations and campaigns.¹⁵ However, the need for a proper check in this process has been indicated by a plethora of international organizations. Some organizations have launched initiatives to set international standards on political financing. Transparency International promoted the idea of international standards in its Global Corruption Barometer (2001), where Keith Ewing argued strongly in favor of transparency requirements, spending limits and regulations for private funding. In 2003 the Carter Center also discussed the topic of political financing at a Council of Presidents and Prime Ministers of the Americas who issued a statement on principles and measures that should guide countries in how to finance parties and election campaigns. From 2001 to 2003, the Council of Europe addressed political financing several times, issuing guidelines and recommendations to member states. The Council of Europe documents show a strong concern with the corruption influence of political donations. and also mention the need to limit the amount of public subsidies. The Carter Center showed concern with increased costs of political financing. In addition, several efforts to build a transnational legal framework to fight corruption such as the OECD Convention on Combating Bribery of Foreign officials (OECD, 1997),¹⁶ the United Nations Convention Against Corruption (UN 2003) and the African Union Convention Preventing and Combating Corruption (AU 2003) have included provisions on how to regulate party and campaign financing.

More so, the private sector has also included the topic of political donations in its recommendations in the Partnering against Corruption Initiative (PACI), launched by the World

¹³ The recent Dasuki Gate Scandal in Nigeria is an indication of the negative impact of monetary donations as advanced by MDA's, and agents of the executive towards individuals and societies.

¹⁴ Mr. Bruno Wilhelm Speck and Paloma BaenaOlabe (2013) OECD "Restoring Trust in Government: Addressing Risks of Influence in Public Decision Making" OECD, Paris, 14-15 November 2013; p. 2.

¹⁵ Ibid.

¹⁶ While the original text of the OECD Convention does not make explicit reference to political donations, the Commentaries adopted in 1997 and the Recommendations adopted in 2009 extended the Convention to political donations to parties and elected officeholders.

Journal of Democracy International in 2003. It thus follows that political donations do not fit within criteria in such respect to election process that does not undermine the rule of law and good governance. This brings me to the

Political donations and governance

It is in understanding this huge dilemma for companies that political access and favourable conditions in policy development and legislation.¹⁷ Little wonder why some legal systems have imposed checks on such donations or for very obvious reasons. The United States court in 1976 made a distinction between limits on independent spending by corporations and not contributions to campaigns by individuals, which it has largely upheld to prevent corruption or the appearance of it in politics.¹⁸ Some authors have noted that companies and huge corporations do donate to former House Majority Leader Tom DeLay's PAC found themselves using the a contribution was actually a disguised bribe for some, a company's reluctance to donate political contributions and the policy governing them is a warning flag that the company needs of some international organisations as well as municipal legal systems. There is a growing understanding that if not properly checked, such pecuniary donations undermines the rule of law and indeed an avenue for corruption which in itself is a hindrance to good governance. Besides increasing the amount of money available to be spent on government for neo-colonialism and endorsement by those who should be in regulation of it.¹⁹ Actually led to the rise in worse states both for the citizens and the rule of corruption that

4. An analysis of legality of current practice and way forward

Since 17 (5) and 18 (1) (a) (b) (c) and (2)

It is the practice of pecuniary donations may be grounded on some provisions of the CFRN. The question that thus begs for answer is whether constitutional obligations are worthy of pecuniary interpretations? In addition, to what should such donations in terms school blocks, and constructions, donation of transformers be celebrated? As already advanced, good

¹⁷ Karim Shah (1 September 2014, "Political donations corrupt democracy in ways we might not realize" <http://www.theguardian.com> accessed 14 April 2015).

¹⁸ *Shelton v. Federal Election Commission*, 429 U.S. 647 (1977) Decided January 30 1978 No. 75-36, 171 U.S. App. D.C. 172, 517 F.2d 921. See also *Shelton v. Federal Election Commission*.

¹⁹ *William O'Connell*, "Political donations grow as governance issue" <http://www.bbc.com/news/usa-2014-04-17> accessed 17 April 2015).

²⁰ See generally on the question of constitutionality of good governance and corruption, Oyejide, Oyejide, "Constitution, good governance and corruption: Challenges and prospects for Nigeria" *10th World Congress of the International Association for Constitutional Law*, Athens, 2007.

²¹ D. Moyo, "Why foreign aid is hurting Africa" <http://www.bbc.com/news/usa-2014-04-17> accessed 17 April 2015).

governance is a constitutional guarantee.²³ The CFRN requires that for all intents and purposes the executive must act in line with the Provisions of Section 16 of the CFRN. It provides that:

(1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution,
(a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
(b) control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
(c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;
(d) without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.

(2) The State shall direct its policy towards ensuring:
(a) the promotion of a planned and balanced economic development;
(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
(c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
(d) that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

An analysis of the above brings to the fore that the provision of social amenities which regrettably is carried out in Nigeria as pecuniary donations violate the legality of the CFRN and the import of good governance that it should uphold and protect.

5. Conclusion

It has been argued in this paper that pecuniary donations while in itself may not be illegal but its impact on the constitutional responsibilities of the executive is negative. The challenge of pecuniary donation is also not applicable in Nigeria but also to other parts of the African continent and the world. The paper further concludes that the battle to end corruption also calls for the end to giving and receiving of pecuniary gifts which are in most circumstances synonymous with monetary donations. The greatest impact is on governance, the rule of law and accountability which are constitutional rights that the executive are mandated to uphold.

²³ Akomolade, I. T., and A. O. Bosedé. "Good Governance, Rule of Law and Constitutionalism in Nigeria." *European Journal of Business and Social Sciences* 1.6 (2012): 69-85.