



NIGERIAN ASSOCIATION OF LAW TEACHERS (NALT)

2016 CONFERENCE PROCEEDINGS



**ANNUAL
CONFERENCE**

Theme:
LAW and ECONOMY

HOST INSTITUTION:
NASARAWA STATE UNIVERSITY, KEFFI

DATE:
22nd - 27th May, 2016



Theme: Law and Economy
**PROCEEDINGS OF THE 29th ANNUAL CONFERENCE OF NIGERIAN
 ASSOCIATION OF LAW TEACHERS**
TABLE OF CONTENT

Part 1:

Opening Ceremony

	Page
• Corporate group structures and their role in illicit financial flows What should the response of corporate law be? <i>Professor Taiye Mwangi</i>	1 2-3
• Law and Economy: Perspectives From the Bench. Hon. Justice Benedict B. Kanyip, PhD Presiding Judge, National Industrial Court Lagos Division	6-22
• Paper By Honourable Justice Dahiru Mustapha, GCON, former Chief Justice of Nigeria	23-28
• Chairman's Speech	29-30
• NALT President's Speech	30-33
• Vice President's Speech	34-36

Part 2:

Cost-Benefit Analysis for Legislative Action

• Rethinking the Role of Cost-Benefit Analysis in Legislative Action Economic Development by Dr. Eze C. Igwauke, <i>Dr. I. Okorunwa & Mrs. Dabagwa Oghomwura</i>	37 38-40
• Cost/Benefit Analysis (CBA) for Legislative Agenda in Nigeria by Festus Emiri, Arthur Chukwu & Kingsley Omenegula	41-50

Part 3:

Role of Legal and Judicial Reform in Development

• The Role of Legal and Judicial Reform in the Development of Nigeria by Hon. Frideri Okechukwu & Sere Rami A. Omonye	61-68
• The Impact of Law Reform on Economic Development in Nigeria by A.I. Bappah, PhD, BL, A.A. Akame, PhD, BL, I.F. Akande, PhD, BL, Dahiru A. Idria, LL.M, BL & Hassan Bala, LL.M, BL	69-79
• Towards Adopting A Hybrid of Adversarial and Inquisitorial System of Dispute Resolution for Sustainable Economic Development in Nigeria by Danjuma Gwamana Singaba, Habiba Musa & Fadila Salami	80-88
• The Judiciary and the Nigerian Economy in the Face of Recession: A Theoretical and Constitutional Discourse by Dr. Ahmed Rabiu, & Muhammad Bello	89-103
• The Role of the Judiciary in the Reform of Commercial and Financial Laws in Nigeria by R. O. Ezenwa, J. Momodu, & A. A. Tijani	104-117

- Law, Economy and Sustainable Development: X-Raying the Nexus by Assoc. Prof. I. J. Essien, Habiba Musa, Aliyu Hussaini, H. S. Saleh & M. Y. Zakari, E. O. Okebukola

494-503

Part 11: Impact of Anticorruption Initiatives

- Is Corruption *Mala Prohibita* or *Mala In Se*? by Dr. Elijah Oluwatoyin Okebukola, Dr. Abdulkarim Abubakar Kana., Prof. Isaac Essien
- The Law, Anticorruption Initiatives and National Development: A Critique by Cordelia A. Agbebaku & Roxeline O. Ehiemua
- Effectiveness of Domestic Anticorruption Initiatives in the Nigerian Banking and Finance Industry by Dr. O. Aigbovo, Dr. J. O. Odion & Dr. N. E. Ojukwu-Ogba
- Towards Redefining the Legal Frameworks for Combating Corruption in Nigeria: Integrating the Theories of Crime Causation and Penological Concept of Punishment by Emily I. Alemika Abdulkarim Kana, Chinwe K. Okoli, Augustine M. Ayeni, Marian O. Ujah, Kabo Sarinus, Vicki Lawal, & Ardward H. S.
- Modes of Corporate Liability for Money Laundering and Financing of Terrorism by Dr. Kunle Aina, Dr. B. R. Akinbola, Dr. A. J. Osuntogun, Dr. M. A. Araromi, Dr. P. K. Oniemola, Dr. M. Adigun & Miss D. Adeyemo

504

505-512

513-522

523-539

540-557

558-574

Part 12: Control, Transparency and Accountability

- Towards Transparency and Accountability in Public Spending: the Role of the Legislature by Ifeolu J. Koni (Ph.D)
- Control, Transparency & Accountability in Public Spending in Nigeria: Judicial Enforcement of the FOI Act thus far – A Beacon of Hope? by Uzuazo Etemire
- Governance of State Internally Generated Revenue in Nigeria: Kwara and Lagos States as Examples by Oyesola O. Animashaun & O. Y. Abdul-Hamid
- Confidential Spending and Governmental Accountability by Prof. Joseph E. O. Abugu & Dr. Sope Williams-Elegbe
- Legal Structures for the Prevention of Misspending and Embezzlement of Security Votes by Ezeilo, Nwoke & Anya
- Legality of Pecuniary Donations by Government Ministries, Departments and Agencies by Dr. Amoloye A. & Onuora-Oguno AC (LLD)

575

576-582

583-597

598-609

610-621

622-643

644-648

Part 13: Commercial and Monetary Law

- Adaptation of Nigerian Law for Global Commerce: The Common Law and Uniform Law Perspectives in the Law of Sale of Goods of Nigeria by Dr. I. E. Anigbogu, Dr. E. N. Mgbemena, Dr. N. A. Nwafor, & Barr. D. C. Onyemata
- The Challenges of Virtual Money and the Global Financial Market by Dr. Muawiya Dahiru Mahmud, Dr. Abubakar Tsoho Getso & Dr. Junaidu Bello Marshall
- Alternative Public Infrastructure Financing in Nigeria: The Sukuk Option by Suleiman Ismaila Nchi
- Legal and Regulatory Challenges of Virtual Currencies in Nigeria: An Appraisal by Dr. Abubakar Tsoho Getso, Dr. Junaidu Bello Marshall & Barr. Safiyya Ummu Muhammed

649

650-656

657-665

666-672

673-687

Legality of Pecuniary Donations by Government Ministries, Departments and Agencies

By

Dr. Amoloye A. & Onuora-Oguno AC (LLD)*

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

* Faculty of Law, University of Ilorin

¹ <http://www.oxforddictionaries.com/definition/english/pecuniary>

² <http://www.businessdictionary.com/definition/pecuniary-benefit.html> (accessed 16 April 2016).

³ <http://www.oxforddictionaries.com/definition/donation> (accessed 16 April 2016).

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

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

indirectly exercised at the central and federating units' level through the establishment of MDAs. As Prakash⁵ 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',⁶ officials of MDAs as inferior executives are also bound by the same rule.

3. Pecuniary Donations, Executive Authority and Good Governance

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.⁷ Authority, described as the 'power to act' or 'of an official body that controls an area or specific activity'.⁸ 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 governing body of the organisation'.⁹ 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.¹⁰ 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.¹¹ 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.¹² 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

⁵ Prakash, S., (2003). 'The Essential Meaning of Executive Power' *University of Illinois Law Review*. P. 704.

⁶ Ibid, p.818.

⁷ <http://www.dictionarycentral.com/definition/executive.html> (accessed 16 April 2016).

⁸ <http://www.dictionarycentral.com/definition/authority.html> (accessed 16 April 2016).

⁹ <http://www.businessdictionary.com/definition/governance.html> (accessed 16 April 2016).

¹⁰ Olayiwola, Abdur-Rahman Olalekan. "Leadership, corruption and governance in Nigeria." *European Journal of Business and Social Sciences* 2.9 (2013): 1-19.

¹¹ 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.

¹² For more details on the concept of Vulture Funds see generally, Kupelian, Romina, and María SOL RIVAS. "Vulture Funds." Available at <http://www.justicialfiscal.org/wp-content/uploads/2014/07/Working-Paper-n%C2%BA-49.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 politicians¹⁷. 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 citizens.¹⁸ 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.¹⁹ 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),²⁰ 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 (PACT), launched by the World

¹⁷ The recent Dasuki Gate Scandal in Nigeria is an indication of the negative impact of monetary donations advanced by MDA's, and agents of the executive towards individuals and societies.

¹⁸ Mr. Bruno Wilhelm Speck and Paloma Banaola (2013) OECD "Restoring Trust in Government Addressing Risks of Influence in Public Decision Making" OECD, Paris, 14-15 November 2013, p. 2.

¹⁹ Ibid.

²⁰ 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 see also *ibid* p 10.

Economic Forum and Transparency International in 2005. It thus follows that political donations does call for serious concern in with respect to election process that does not undermine democratic values on which society in built and indeed good governance. This brings me to the next issue on political donations and good governance.

Political donations and Governance

There is an understanding that large donations for campaigns buy political access and favorable consideration in policy development and legislation.¹⁷ Little wonder why some legal systems have put serious checks on such donations as for very obvious reasons. The United States court in *Buckley v. Valeo*, made a distinction between limits on independent spending by corporations and unions on political campaigns, which it has in various forms found unconstitutional, and limits on direct 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 doling out political contributions in order to get favourable treatment from legislators and regulators may run afoul of the law.¹⁹ In the United States for Example, eight companies that donated to former House Majority Leader Tom DeLay's PAC found themselves indicted in 2004 because such company donations violated Texas law. Elsewhere, there are reports of prosecutors attempting to tie campaign contributions to legislative quid pro quos, and arguing that a contribution was actually a disguised bribe. For some, a company's reluctance to disclose political contributions and the policy governing them is a warning flag that the place of pecuniary donations in politics calls for check and painstaking attention as evidenced in the attitudes of some international organizations as well as municipal legal systems. There is a general understanding that if not properly checked, such pecuniary donations undermines democratic values and indeed an avenue for corruption which in itself in a hindrance to good governance.²¹ However, the movement of these pecuniary donations into Africa has proven to be heavy with baggage. Besides increasing the amount of money available to be spent on developmental projects and the improvement of various sectors of the society, it has increased the opportunities for neo-colonialism and embezzlement by those who should be in regulation of it.²² The availability of more funds has tested the government's credibility and integrity and incidentally led to the rise in worse states both for the citizens and the rate of corruption that subdues them.

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

Section 15 (5) and 16 (1) (a) (b) (c) and (2)

Perhaps 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 discretionary interpretations? In addition, to what should such donations in terms school blocks, road constructions, donation of transformers be celebrated? As already advanced, good

¹⁷ Warren Smith 11 September 2014, "Political donations corrupt democracy in ways we might not realize" <http://www.theguardian.com> accessed 14 April, 2016.

¹⁸ (No. 75-436) Argued November 10, 1975 Decided January 30, 1976 No. 75-36, 171 U.S. App. D.C. 172, 519 F.2d 821. See also *SHAUN MCCUTCHON V FEDERAL ELECTION COMMISSION*.

¹⁹ Millman, Gregory J political donations grow as governance issue

²⁰ ibid

²¹ See generally on the question of constitutionality of good governance and corruption, Oyewo, Oyelowo. "Constitutions, good governance and corruption: Challenges and prospects for Nigeria." VII World Congress of the International Association for Constitutional Law, Athens, 2007.

²² D. M. Ju. "Why foreign aid is hurting Africa" <http://www.wsj.com/articles/SB123758895999200083> (accessed 17 April 2016).

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