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Examination of the Law on Donations to Candidates under Section 91(9) of the Electoral Act, No. 6, 2010

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Recently there have been questions as to the legal framework for donations to electoral candidates. Under the Nigeria electoral legal framework on financing consisting of the *Constitution of the Federal Republic of Nigeria (CFRN) 1999* as amended, *Electoral Act (E.A.), Act No. 6, 2010* and the *Companies and Allied Matters Act (CAMA) Cap 20, LFN 2004*, provisions are made as to when, how, what and by whom donations may be made to parties and or electoral contestants consisting of aspirants, candidates and political parties.

The law makes provisions, particularly in *Sections 221 of the CFRN, 38(2) of CAMA* and *section 91(1) E. A. 2010* for regulation of donations in elections.

There however, appear to be some ambiguity as to the implications of the law particularly in relation to persons covered, period covered and activity covered.

Justification for Regulation of Political Donation

The key objective of the finance rules is to ensure a free and fair election. In practical terms, regulation of campaign financing discourages corruption and political capture by the wealthy and big corporations¹. The argument is that this group of political stakeholders take control of politicians and governance through financing of candidates². Allowing this to happen has too significant implications to democracy. Firstly, it invalidates the essence of elections as the voting process is undermined. Secondly, it encourages high cost of political campaigns which invariably disenfranchises majority of

¹ See Omobolaji Ololade Olarinmoye "Godfathers, political parties and electoral corruption in Nigeria" African Journal of Political Science and International Relations Vol. 2 (4), pp. 066-073, December 2008. Available online at: <<http://www.academicjournals.org/AJPSIR>> accessed 13th June 2018; Victor A. O Adetula "Godfathers, Money Politics, and

Electoral Violence in Nigeria: Focus on 2015 Elections" Available online at: <<http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-Paper-by-Victor-Adetula.pdf>> accessed 13th June 2018

² Julio Bacio Terracino and Yukihiko Hamada "Financing Democracy: Supporting Better Public Policies and Preventing Policy Capture" OECD publications 2014.

poor from elective positions³. This is why some jurisdictions, in order to make elections more inclusive and eliminate political capture, especially many of well advanced democracies, provide for public funding for political campaigns⁴. Against this background, this brief explores the scope, implications and effectiveness of *section 91(9)* of the E.A. 2010 on regulation of campaign donations.

Issues for Resolution

In an attempt to throw light on this ambiguity, the following issues are raised which when answered will hopefully clear the ambiguity.

The issues are:

- Does the law prohibit donations to political aspirants, candidates and political parties?
- What is the amount or value of donation prohibited under the law?
- Is there a distinction between political aspirants, candidates and political parties in terms of donations?
- Does breach of the prohibition attract any sanction against the culprit or beneficiary to the breach?

The Law on Donation to Aspirants, Candidates and Political Parties.

- **Does the law prohibit donations to political aspirants, candidates and political parties?**

The CFRN is the supreme law of the land and every law that contradicts its provision is to the extent of that contradiction void⁵.

Following this provision, the constitution is our first point of call. According to *Section 221 of the CFRN 1999* “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*”.

The second arm of the above provision deals with contribution to a political party or candidate. However, the prohibition only relates to “association” and not individuals⁶. This implies that, following the principle of “express mention” (express mention of one thing is the exclusion of the other), *individuals are not prohibited from contributing to political parties or candidates* only regulated.

In the above provision, the constitution uses the word “contribute” in reference to political party and candidate as against “donate” suggesting that when the money is meant for a political party or coming from a group it may be referred to as “contribution”. But when it is meant for an individual candidate it may be referred to as “donation”. This interpretation can be inferred from the words used in *section 221 of the CRN 1999* and *section 90(1) E.A. 2010*. In *Section 221*, the constitution uses “contribute” when referring to money going to a political party. This word is used in *sections 90(1); 93(1) 93(2) b; and 98(8)* in reference to contribution to political party.

³ *ibid*

⁴ See International IDEA, Political Finance Database, International IDEA. Available online at: <https://www.idea.int/data-tools/question-countries-view/548/20/reg> accessed 29th June 2018.

⁵ Section 1(3) CFRN 1999 as amended.

⁶ *Tarzoor v. Ioraer & ors* (2016) Vol. 256 LRCN, at. p. 162, paras Z –EE.

CAMA, section 38 (2) also prohibits companies from donating to political parties or candidates. This is provided thus: “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 donations** or gift of its property to a political party or 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”.

A combined reading of **section 221 of the CFRN 1999, Section 91(9) E.A. 2010, and section 38 (2) CAMA**, suggest that the only donation or contribution allowed is one:

- made by an individual or entity other than a company,
- of not more than One Million Naira, to a candidate, or
- made by a political party other than an association or company,
- to a candidate or political party at election.

This is because going by the provision of **section 1(3) of the CFRN 1999**, the aspect of **section 91(9) of the Electoral Act 2010** that allows donation by an entity, is to the extent

of an “Association” being an “entity” void. Thus any other body that is not an association may be allowed to donate to the extent allowed by law. The Constitution and the E.A 2010 define an "association" as “*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 religious purpose*”⁷”.

- **What is the amount or value of donation prohibited under the law?**

In relation to amount or value, the allowable amount is one not more than One Million Naira (N1, 000, 000) given to a particular candidate by an individual or entity⁸. This provision does not contemplate donations of items or services of value. The implication is that donation of items worth more or less than One Million Naira (N1, 000, 000) donated to a candidate or aspirant, may not be a contravention of the law. This is a loophole capable of being exploited to render section 91(9) ineffective by politicians and godfathers. **Section 90(1)** however recognises the implication by including assets as items which worth limit INEC may regulate. This approach should be adopted.

- **Is there a distinction between aspirants, candidates and political parties in terms of donations?**

Other than “political party”, the law does not specifically define “aspirants” and “candidates”. The CFRN and the Act define political party to “include any association of persons whose activities includes canvassing

⁷ Section 156 of the E.A. 2010 and Section 229 of the CFRN 1999 as amended

⁸ Section 91(9) Electoral Act 2010.

for votes in support of a candidate for election under this Act and registered by the Commission⁹". With regards to "aspirants" and "candidates", from the way the words are used in the Electoral Act 2010, one can infer as to their meanings. This is clear in **Section 87(1) E.A., 2010** affirmed in *Owuru v. Adigwu*¹⁰. In this section, the Act provides thus: "A political party seeking to nominate candidates for elections under this Act shall hold primaries for all aspirants to all elective positions". Members of the party who undergo the process in accordance with party guidelines and constitution of nomination are aspirants. This is the position of the court in *Uwazuruike v. Nwachukwu*¹¹; *Daniel v. INEC*¹²; *Tarzoor v. Ioraer & ors*¹³ and reaffirmed in *P.D.P v. Ezeonwuka*¹⁴. Paragraph 4 of INEC guidelines¹⁵ has followed the interpretation given by the court in the above cases and defines aspirants as "any member of a political party seeking sponsorship and support to be a candidate for an elective office in an election".

Accordingly, aspirants are persons seeking to undergo an in-house¹⁶ selection process (primaries) in order to qualify to vie for political office on the platform of a political party. The necessity to vie for a position on the platform of a political party is a constitutional requirement for different offices¹⁷. Conversely, a candidate is any person who has been selected by a political party to represent it or vie for elective office

on the platform of the political party. INEC guidelines, Paragraph 8 gives the same definition of a candidate as political party member who has successfully undergone the in-house selection process of a political party in accordance with section 87 of the E.A 2010.

From the above, definitions, there are clear distinctions between aspirants, candidates and political parties. While political parties sponsors candidates for elections, aspirants go through the process within a political party to be selected for candidature. This distinction, in relation to breach of the law on financial contribution, creates a loophole that may allow the targeted mischief to continue. The mischief which amongst many include elimination of money politics and political capture still remains as money donated during primaries give undue advantage to aspirants and they could still use the money for the general elections as candidates.

- **Does breach of the prohibition attract any sanction against the culprit or beneficiary to the breach?**

The simple answer is yes. There is a sanction against breach. It is necessary to highlight this fact because sanction for electoral offences doesn't usually feature in the discussion. However, in this case it is clearly spelt out in **section 91(10) a to g E.A., 2010 thus**: "A candidate who knowingly acts in

⁹ Section 156 of the E.A. 2010 and Section 229 of the CFRN 1999 as amended

¹⁰ [2018] 1 NWLR, p. 30, paras. G-B.

¹¹ (2013) 3 NWLR (Pt. 1342) 503.

¹² [2015] 9NWLR, pt. 1463, page 113 at 155-157.

¹³ (2016) Vol. 256 LRCN, at. 171 EE.

¹⁴ [2018] 3 NWLR, p. 198. Para. 8

¹⁵ INEC "Guidelines for political rallies and campaigns by Political Parties, Candidates, aspirants and their supporters" INEC 2014. Available online at: <http://www.inecnigeria.org/wp-content/uploads/2015/01/Guidelines-for-political-rallies-.pdf> (accessed 2nd October 2018).

¹⁶ *Tarzoor v. Ioraer & ors* (2016) Vol. 256 LRCN, at. 155, para. 2.

¹⁷ See Sections 65(1), 106, 131 and 177 of the CFRN 1999 as amended.

contravention of this section commits an offence and on conviction is liable in the case of “-(a) Presidential election- One Million Naira (N1, 000, 000) or 12months imprisonment or both, (b) Governorship election- Eight Hundred Thousand Naira (N800, 000) or 9months imprisonment or both, (C) Senatorial election – Six Hundred Thousand Naira (N600, 000) or 6months imprisonment or both, (d) House of Representatives – Five Hundred Thousand Naira (N500, 000) or 5months imprisonment or both, (e) State House of Assembly – Three Hundred Thousand Naira (N300, 000) or 3months imprisonment or both, (f) Chairmanship – Three Hundred Thousand Naira (N300, 000) or 3months imprisonment or both and (g) Councillorship- Hundred Thousand Naira (N100, 000) or 1 month imprisonment or both.

These sanctions appear not to deter political parties and candidates. Also the sanction seems not to apply to the individuals or person giving the money. This still gives room for political godfathers to take control of candidates and unduly influence elections. Accordingly, the sanction should be one which will deter the donors and also affect the office being contested for and not one that may be easily pardoned or ignored after the election.

Conclusion

A careful look at the provisions of the law and case law on the same issues has cleared any ambiguity. For purposes of reiteration, the issues are highlighted below, succinct answers provided and recommendations given for resolving observed gaps.

- ***Does the law prohibit donations to political aspirants, candidates and political parties?***

The law prohibits contributions/donations by associations and companies registered under CAMA. In relation to individuals and entity other than association or companies registered under the CAMA, the law only limits donations to a candidate by one person or entity to a candidate to One Million Naira (N1, 000, 000). In other words, a person or entity (other than a company) can donate not more than one million to one candidate.

The section should be amended to include aspirants. This will ensure that opportunities for corruption and political capture are reduced.

- ***What is the amount or value of donation prohibited under the law?***

Section 91(9) prohibits donation by an individual or entity to a candidate of any amount above One Million Naira (N1, 000, 000). It is immaterial that the entity is owned, formed, or consists of more than one person. Thus whether given as an entity or individuals, the amount should not exceed One Million Naira (N1, 000, 000). Thus an amount less than or equal to One Million Naira (N1, 000, 000) is allowed under the law.

However, to ensure the effectiveness of this provision, the section should be amended to include the prohibition of any item, asset and services worth more than One Million Naira (N1, 000, 000) in the open market.

- ***Is there a distinction between political aspirants, candidates and***

political parties in terms of donations?

Yes there is a distinction between aspirants, candidates and political parties. The limitation is against donation to a candidate and not aspirant or political party.

The section should be amended to include aspirants. This will help reduce political capture and money politics from the start.

- *Does breach of the prohibition under section 91(9) E.A., 2010 attract any sanction against the culprit or beneficiary to breach?*

Yes, a breach attracts sanctions of prison term and fine or both of different amounts and duration depending on the elective office affected. The sanctions seem not to be effective.

Accordingly, the section should be amended to include disqualification of the party and aspirant or candidate from the election. This will be more effective and also reduce any possibility of claiming immunity. Also donors who breach this provisions, whether entities (and the individuals making up the entity) or individuals should face sanctions.