

PRESIDENT JOHN MAHAMA'S LAST MIDNIGHT APPOINTMENTS, CONTRACTS AND RECRUITMENTS: BY MARTIN A. B. K. AMIDU

Many interesting developments have taken place since the NPP routed the Government of my party, the NDC, in the just ended General and Presidential elections. The looter John Mahama Government promised a smooth transition as though he had an option in the matter. Economic Community of West African States (ECOWAS) Heads of State are invited to the inauguration of the new Government as though this was a favour being done the President-elect and the new Government. The Spin is in the blood of the looter Government which loots and spins the plundering of the public purse for the likes of Woyome, Waterville and others and inflates contract prices to the detriment of the public purse.

One would have thought that the massive defeat of the Looter Government never witnessed in the annals of Ghanaian history would make it circumspect of how it handles the last days of its dying pangs as a Looter Government so that the Independent Prosecutor may have mercy upon them. Unfortunately impunity and corrupt behavior once internalized is difficult to change overnight as subsequent events show.

Agreements reached at the transitional team do not appear to have been kept by the Looter Government which is in a hurry to finish what it could not do in the last eight years. New contracts are being signed left, right and center by the outgoing looter Government under the claim of legality and constitutionalism. We hear that 17 days to the handing over of power to the people's choice of a new Government, serious and fundamental decisions affecting the electorate who resoundingly rejected the outgoing looter Government at the polls are being taken by it without consultation with the incoming Government.

Then on Tuesday 20th December 2016 we woke up to the news that: "President John Dramani Mahama has confirmed Joseph Whittal as the new Commissioner for the Commission on Human Rights and Administrative Justice (CHRAJ)." In the same news item we are told that: "The President has also appointed Ms. Josephine Nkrumah as the substantive head of the National Commission for Civic Education (NCCE)." Ironically the news report adds: "The appointments come a few weeks after the President lost the presidential elections to the opposition NPP leader Nana Addo Dankwaa Akufo-Addo. The President-elect will be sworn-in January 7, 2017." The reporter therefore deliberately leads the intelligent reader to ask whether there is nothing wrong with such midnight appointments by a Government that has just been routed by an incoming Government at the polls with corruption being one of the main electoral issues at stake at those polls.

Not unexpectedly, the transition team of the incoming Government issues a statement stating that: "These appointments ...have been done contrary to an earlier agreement at the Transition Committee's meeting of December 19th, at which meeting it was agreed that such appointments would be done subject to consultation with the Presidential Transition Committee." The statement adds that: "We will, therefore, like to serve notice that the incoming administration reserves the right to review these and other high profile appointments, recruitments and contracts being embarked upon in these final days contrary to normal conventions associated with Presidential transitions and the consultation mechanism agreed."

In a 19th December 2016 Myjoyonline report two young Ministers of the looter John Mahama regime are reported to have “defended the decision by functionaries of the Mahama led administration to award contracts and give appointments days after being voted out of government.” Haruna Iddrisu is reported to have said that:

“As a country what we need to pride ourselves is that you are assured of a peaceful, smooth transition of power from one political leadership to another, recognition of the continuous exercise of the legitimate legal authority and mandate by the current administration and know that an Act of Parliament cannot amend the constitution. The constitution clearly defines a four year mandate for the president and acts that are done on or before the midnight of 6th January are lawful and legitimate,” he explained.

In the same Myjoyonline report it is reported that: “The most eminent of the contract (sic) is the €18 million waste management contract signed with SCL Waste Management Limited.” Incidentally this sole sourced contract was signed by Mahama Ayariga who claimed that: “the contract had been on his desk around November. But as an MP seeking re-election he was busy campaigning and could not therefore give it any attention.” With outright impunity he says that: “I have up to the 6th January 2017 to implement what I want to do....”

I have heard some arguments justifying the midnight appointments, contracts and recruitments on the basis that former President J. A. Kufuor exercised executive powers to the last day of 6th January 2009 as precedent for what the Looter Government is now engaged in doing. The NDC Government when it assumed office on 7th January 2009 decided not to challenge the midnight decisions of President Kufuor thus giving them legitimacy. It cannot pass for a precedent. Another difference which is being overlooked is that President Kufuor was exhausting his eight year mandate and his interpretation of the Constitution and the laws of Ghana cannot be binding on an incoming Government that has routed the incumbent Government soundly at the polls. I disagreed with what President Kufuor did but the then President-elect and his Vice-President-elect decided to let it pass without testing their constitutionality or legality. Their decision cannot bind the incoming Government so massively voted for by “We The People”.

The incoming Government has through its transition team given notice of its intention to contest the midnight decisions of the Looter Government and I think the overwhelming votes it received at the polls justifies its stand. I have also read on 20th December, 2016 that, unlike the Mills/Mahama Government, Philip Addison, a lawyer, has commenced an action to challenge some of the present midnight decisions of this looter Government.

My kinsman is being appointed the Commissioner for the CHRAJ when after wasting the public purse up to the Supreme Court to contest whether or not the suspects in the Mabey and Johnson case could be investigated for corruption he chose to go to sleep after promising he was going to investigate using the trove of credible evidence I sent CHRAJ in the case as Attorney General. This same kinsman of mine white washed the Ford Expedition Saga even though he knew the CHRAJ had no jurisdiction over the President because the Attorney General could not prosecute him even if he were found culpable by CHRAJ. So even though he is my kinsman and culture requires me to keep quiet, I ask myself as an enlightened Ghanaian Putting Ghana First whether this appointment is compensation for past and future protection. This is a problem of conscience and not kinship or ethnicity – wrong is wrong no matter who is the beneficiary!

I had always thought that Governments were to act not only in accordance with the letter of the law or constitution but above all in accordance with its spirit if the rule of law is to prevail. Let's wait and see whether the sterile legal and constitutional arguments of Haruna Iddrisu and Mahama Ayariga and their kind would prevail or the spirit of the Constitution that animates the letter of the law will prevail in the Courts. President Barack Obama had a constitutional right to nominate a US Supreme Court Judge, and nominated Merrick Garland but the Republican senators in a move with little precedent in US history simply refused to consider Garland's nomination saying the winner of the November 8th presidential elections should make the pick. One Steven Michel filed a suit in a US federal court and lost and made an application to the Supreme Court of the US to force a senate committee vote on it. The US Chief Justice, John Roberts, denied the emergency application on Monday, 19th December 2016. The spirit prevailed over the letter of the Constitution.

I argued and lost what is now referred to as the 31st December Case in the Supreme Court of Ghana in December 1993 narrowly but I took away the wise words of the late Mr. Justice Francios, (who was one of the majority that ruled against my case), whose speech in the case appears to me to remain the locus classicus on the balance that should be struck between the letter and spirit of the 1992 Constitution. Mr. Justice Francios said in that case that:

“The letter and spirit of the Constitution

A constitutional document must be interpreted *sui generis* to allow the written word and the spirit that animates it, to exist in perfect [78][79] harmony. It is interpreted according to the principles suitable to its particular character and not necessarily according to the ordinary rules and presumptions of statutory interpretation: see Minister of Home Affairs v Fisher [1979] 3 All ER 21, PC. This allows for a broad and liberal interpretation to achieve enlightened objectives while it rejects hide-bound restrictions that stifle and subvert its true vision...”

He continued:

“My own contribution to the evaluation of a Constitution is that, a Constitution is the out-pouring of the soul of the nation and its precious life-blood is its spirit. Accordingly, in interpreting the Constitution, we fail in our duty if we ignore its spirit. Both the letter and the spirit of the Constitution are essential fulcra which provide the leverage in the task of interpretation. In support of this, we may profitably turn to the Constitution, 1992 itself which directs that we accord due recognition to the spirit that pervades its provisions....” [79].

On the people's choice as pointing to the spirit of the constitution, Mr. Justice Francois said:

“The People's choice

By its sovereign will, the people of this country have chosen a multi-party system of government to regulate their affairs. The fact that they chose a new direction and a new system of governance, is the clearest pointer to change. In charting a different course, the democratic path, the people of this country took a solemn step away from what was immediately prevailing. Viewed in this light, it is idle and illogical to hold that the old

order has yielded place to nothing new. Especially when the new order is diametrically opposed to the old which it supplanted....[80]"

What is going on in the transition to the new Government reinforces my conviction for my pre-election call upon the electorate to vote out the incumbent looter Mahama Government to stop the plundering of the public purse and get our looted monies back. When I look at how the Looter Government is preparing its final exit after its miserable and unprecedented defeat at the polls, I am left in no doubt that Ghana would have been bankrupted with another four years of this looter Government in power. Come to think of it, the last election (2012) was not won at the ballot but by the razor-thin votes of eleven Justice of the Supreme Court, indicating a doubtful people's mandate. So how come this Looter Government is so arrogant even after the people have spoken decisively on the only occasion one can call a representative ballot since December 2008? Impunity! But this impunity can be curbed by constitutional means to the regret of this outgoing Government after 7th January 2017.

It is important that as many enlightened middle class Ghanaians speak up to defend the majority of our citizens who are uneducated in the Whiteman's ways but funded our education through college and university. Ghanaians must be the beneficiary of our public purse and not just a few political elite and establishment figures. Fear is the enemy of change! I am not cowed, have not been cowed, cannot be cowed, and will not be cowed by subtle messages of threats of postponing my disappearance until the new Government comes into office. Ghana is worth dying for and so fellow citizens speak up and defend your 7th December 2016 votes by not allowing this looter Government to deliberately make it impossible for the Government you popularly vote for to govern smoothly upon assuming office on 7th January 2017. Do not sit on the fence at this last hour and allow looters who came into office by the razor-thin majority vote of Justices of the Supreme Court to intimidate fellow citizens Putting Ghana First.

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