THE IMPLICATIONS OF EMERGING AUTONOMY OF STATES’ LEGISLATIVE AND JUDICIARY ARMS AND MANAGEMENT OF THE FEDERATION ACCOUNT

Lecture by:

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**OUTLINES**

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1. **PROTOCOL**

It gives me great pleasure to be here today, to be part of this critical and important gathering. I want to thank the organizers for the invitation and for putting together this program. I have had the opportunity of participating in many of similar presentations in last few months and I must say, it has been a wonderful experience and I have no doubt that solutions to the several economic challenges facing our nation could be found from these deliberations to ensure a future with sustainable economic growth and development. I shall be speaking on the topic - **The implications of emerging autonomy of States’ legislative and judiciary arms and management of the federation account**. I have been given 40 minutes for this presentation, I hope to do justice to it as much as possible.

**1.1 INTRODUCTION**

There is no doubt that the Legislative and Judicial are important arms of government in a democratic setting, and it is for this reason that section 120 of the Constitution has made provisions to ensure their independence for the purpose of ensuring checks and balances are observeds.

It is important to add that government is operated under a tripartite arrangement whereby provision is made for an organ to make laws, for another to execute the laws made, and for yet another organ to interpret the laws, which is known as **“horizontal”** separation of powers. On a vertical scale, governmental powers are distributed between the central, state, and local governments in the way and manner provided for by the Constitution. It is important to note that this concept of separation of powers is not absolute, as the Constitution recognises instances where the executive can take actions in areas meant for the judiciary (such as in the appointment of judges); the legislature also do oversee some responsibilities of the executive or even judicial activities(e.g. conrmation of the appointment of some Judicial officers, approval of the budget and other management of state funds); while the judiciary can review the activities of either of the other two arms of government. This is known as the complementary concept of checks and balances. The Constitution also ensured that there is some level of autonomy amongst the horizontal and vertical arms of government through its provisions.

Distinguished ladies and gentlemen, despite the separation of powers principle as described above, the funding for the judicial arm is in the hands of the other two powers, which have some “authority” and can potentially reduce the judicial budget if some disagreements between the branches arise. Secondly, if judges’ salaries and remunerations are inadequate, judges can be vulnerable to undue influences which would hamper decisions and judgements. A proper amount of budget allocations to the judicial and legislative arms have been found to improve the integrity and the competence of personnel and general management.

However, If, on the one hand, the dependence from executive or parliamentary driven funding mechanisms affects or impacts judicial independence, on the other hand, an “excessive financial independence of the judiciary or legislative arm could be used by principal players within those arms to shield themselves against legitimate reform efforts and reasonable expectation regarding performance of the executive.

**2.0 FUNDAMENTALS OF AUTONOMY**

The **“separation of powers”** implies that the three powers (executive, legislative and judicial) must be separated and be independent from each other. Each power must check and limit the other two powers, and all three powers should have the same weight (“check and balance” principle). In this model, judges should be independent of external and internal pressures. Nevertheless, the budget can be a source of pressure and can influence the judicial independence.

A review of the activities of Sub-national legislatures across the last decade shows that they have remained largely underdeveloped and until recently, they have not been accorded adequate attention in Nigeria. Given that institutional autonomy is at the heart of judicial-legislature-executive relations within the context of separation of powers, research conducted to analyse the relationship between the executive and the legislature from 1999 to 2011 further suggested that nearly none of state assemblies were independent of the Executive. The assemblies were unable to statutorily hold successive executive accountable. Although, the constitution vested the power of scrutiny and approval of the budget on the legislature; yet the legislature itself depended on the executive for financial survival. The assemblies were at the mercy of the executive through the state Commissioner of Finance, the Commissioner for Budget, and the Accountant-General of the State. Expectedly, the executive did withheld funds meant for the legislature when the executive felt uncomfortable with developments that-in its estimation-appeared to challenge the operation of the executive. In the ensuing process, the legislature was unable to prevent legislators’ personal financial interests from unduly influencing their official action in relation to the executive.

**2.1 MANAGEMENT OF FEDERATION ACCOUNTS IN NIGERIA**

Let us briefly look at the Management of Federation Account as detailed into the 1999 Constitution of the Federal Republic of Nigeria (FRN). Section 162(1), of the 1999 constitution states that **“the Federation shall maintain a special account to be called “the Federation Account”** **otherwise known as Distributable Pool Account** into which shall be paid all revenues collected by the government of the federation, except the proceeds from the personal income tax of the personnel of the armed forces of the federation, the Nigeria police force, the ministry or department of government charged with responsibility for foreign affairs and the residents of the Federal Capital Territory, Abuja.

The above provision of the Constitution gave the legal backing for the establishment and management of the Federation Account. The primary function of this Account is to warehouse and distribute the revenues belonging to the three tiers of Government, using the National Revenue Allocation formula and indices provided by Revenue Mobilization Allocation and Fiscal Commission (RMAFC).

Federation Account also maintains records of **Irrevocable Standing Payment Orders (ISPO),** in respect of some States to service their loan obligations. Deductions are made at source from the statutory revenue and VAT allocations of such State Governments in favour of those banks involved. Also, the Debt Management Office (DMO) submits a schedule of Foreign Loan deductions, which are also being deducted at source.

**2.2 RELEVANT CONSTITUTIONAL PROVISIONS FOR REVENUE MOBILIZATION AND DISBURSEMENT**

The main reasons behind national revenue, mobilization and allocation in line with Section 16(1) of the 1999 Constitution as amended include: -

1. Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy for every citizen on the basis of social justice and equality of status and opportunity.
2. 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.
3. That the material resources of the nation are harnessed and distributed as best as possible to serve the common good.
4. 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 a few individuals or of a group.

**2.3 DIFFERENT ACCOUNTS THAT MAKES UP THE FEDERATION ACCOUNTS**

* Statutory Revenue Account
* PPT & Royalty Account
* Non-Oil Excess Revenue
* Oil Excess Revenue Account
* Goods & Valuable Consideration
* Forex Equalization Account
* Value Added Pool Account
* Excess Crude Account
* Domestic Crude Account
* Exchange Differential Account
* Escrow Accounts
	1. **Agencies and Types of Revenues Collected**

Revenue Collecting Agencies

* Petroleum profit tax
* Value added tax
* Company income tax
* Royalties
* Rent
* Gas Flare Penalties
* Miscellaneous oil revenue (Pipeline fees)
* Crude oil export
* Domestic crude
* Upstream gas sales
* Domestic gas and others
* Import duty
* Export duty
* Excise duty
* Fees
* Royalties
* Fees
* Miscellaneous Revenue

**2.5 Revenue Sharing Formula–Modification Order 2002**

**Horizontal Formula**.

Local Govt

State Governments

Equality

Population

Landmass and Terrain

Social Development Factor

40%

30%

10%

10%

Rainfall Distribution

Primary School enrollments

Number of Hospital Beds

4%

3%

3%

Internal Generation Effort

10%

 %

Federal Government 52.68

State Governments 26.50

Local Governments 20.72

 **Total 100%**

**VAT**

 **%**

Federal Government 15

State Governments 50

Local Governments 35

 **Total 100%**

**VERTICAL DISTRIBUTION**

**2.6 FGN Revenue Sharing Formula – Parameters**

**Special Funds (4.18)**

**Federal Budget**

**CRF - 48.50%**

**+ (IGR and VAT)**

Debt Service

Development of Natural Resources

Stabilization Fund

Ecological and Derivation

FCT, Abuja

MDAs

Statutory Transfers

NJC

NDDC

National Assembly

1.68%

0.5%

1%

1%

**52.68%**

**3.0 ANALYSIS OF EXECUTIVE ORDER NO. 10 OF 2020.**

**3.1 EXECUTIVE ORDER (DEFINITION)**

This is defined as Instruction, Rule or Order usually issued by the President to the Executive Arm of Government for the purpose of executing policies, projects and programmes promoting security, economy and social welfare of the citizens with ease.

Distinguished ladies and gentlemen, you will recall that in May 2020, His Excellency, President Muhammadu Buhari, signed into law an Executive Order No. 10 of 2020, also referred to as the Implementation of Financial Autonomy of State Legislature and State Judiciary Order 2020 granting financial autonomy to the legislature and the judiciary across the 36 states of the Federation. This order among other things further buttressed the financial autonomy of State’s Legislature and Judiciary as guaranteed by Section 121(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and mandated the inclusion of allocations of the legislative and judiciary arms in the first-line charge of State government expenditure.

What this meant in effect is that the legislative (State Houses of Assembly) and judicial arms of government across the 36 states in Nigeria would now receive their financial allocations from the consolidated revenue fund (account) without recourse to the Executive arm. In other words, the legislative and judicial arms of government in the 36 states of the federation will no longer have to wait on State governors for funds. According to the Attorney General of the Federation and Minister of Justice, Abubakar Malami (SAN), I quote “The President signed the Executive Order number 10 into law based on the power vested in him as the President of the Federal Republic of Nigeria under Section 5 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended), which extends to the execution and maintenance of the constitution, laws made by the National Assembly (including but not limited to Section 121(3) of the 1999 Constitution (as Amended), which guarantee financial autonomy of the state legislature and state judiciary.”

The preamble to the Executive Order made it clear that the implementation of financial autonomy of the State Legislature and State Judiciary will strengthen the institutions at the State tier of Government and make them more independent and accountable in line with the tenets of democracy as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

**Section 1(b) of the Executive order** gave the Accountant-General of the Federation powers to authorize the deduction from source in the course of Federation Accounts Allocation from the money allocated to any State of the Federation that fails to release allocation meant for the State Legislature and State Judiciary in line with the financial autonomy guaranteed by Section 121(3) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

In many people’s opinion, this is perhaps the most important aspect of the Order as it empowered the Accountant-General of the Federation to make deductions from the account of any State that fails to comply with the order.

**Section 2 (a) of the Order** directed every State Government of the Federation to set up a Committee from the commencement of this Executive Order comprising the Commissioner of Finance, Accountant-General of the State, representative of the State Budget Office, Chief Registrars of State High Court, Sharia Court of Appeal and Customary Court of Appeal, (where applicable), the Clerk to the State House of Assembly and the Secretary of the State Judicial Service Commission. This Committee was also empowered to, where applicable, determine and ascertain from the Revenue profile of the State, a workable budget for each Arm of the State Government based on the request and needs of the Accounting Officers.

 **Section 2(b).** This section is quite critical considering the impact of the pandemic and the dwindling revenue base of most states. This has not only resulted in a reduction in allocations from the Federation Accounts, but it has also created an economic stress on state governments who now must decide effective and efficient funds allocation in the face of competing demands.

**Furthermore, Section 3(a) of the Order** mandated each state of the federation to create State Judiciary Budget Committee. This Committee would serve as an administrative body to prepare, administer, and implement the budget of the State Judiciary with such modifications as may be required to meet the needs of the State Judiciary.

**Section 3(b) and (c)** stipulates that the “Committee shall consist of the State Chief Judge as the Chairman with the Grand Kadi Sharia Court of Appeal, the President, Customary Court of Appeal, where applicable and two members of the Judicial Service Council to be appointed by the Chief Judge, in consultation with other Members of the Committee, to serve as Members. The Chief Registrar of the State High Court is to serve as Secretary.

**Section 3(d)(i) and (ii)** stipulated that upon the receipt of the Budget Estimates of the Fiscal Year for the State Judiciary, the State Judiciary Budget Committee shall invite all the Accounting Officers of the various Courts/Judicial Bodies to defend their budget estimates and that the budget estimates for Courts and Judicial bodies shall be based on expenditure line items given to them by the State Judiciary Budget Committee which shall be defended before the State House of Assembly.

More importantly, **Article 5 (b) of the Order** directs all the 36 States to amend their Appropriation Laws to encompass financial autonomy of State Legislature and State Judiciary. This was a crucial requirement to provide the legal basis for the effective implementation of the order.

The presidential order also included checks and balances on the part of the Executive against abuse. For instance, **Section 3(d) (iii)** stated that, I quote, “upon the appropriation of Funds, the State Judiciary Budget Committee shall on a monthly basis or as the case may be, request the Budget Office of the State to release the statutory allocation for the quarter or monthly and the Authority to Incur Expenditure (AIE) shall be raised by the Office of the Accountant-General of the State for the release of the Fund to all the Heads of Courts/Judicial Bodies in line with the Appropriation Law.” This you will now bare a close resemblance to the procedure through which Statutory allocations at the federal level are released.

Additionally, **Section 7(a)** of the Order provides that the implementation of the provisions of this Order shall be carried out by the Presidential Implementation Committee in accordance with its recommendations. **Section 7 (b) also gives** the Accountant-General of the Federation powers to take ‘appropriate steps’ to ensure compliance with the provisions of this Order and implementation of the recommendations of the Committee, as may from time to time be made. Lastly, the ORDER may be cited as the Implementation of Financial Autonomy of State Legislature and State Judiciary Order, 2020.

There is no gainsaying to the fact where absolute power is conferred on one body, it is bound to be misused. The Presidential Order on Financial Autonomy of State Legislature and State Judiciary is therefore aimed at devolving the financial control hitherto exercised by States Governor over their legislative and Judicial arm of government.

**3.2 Proposals by The Governors’ Forum (NGF)**

As part of ensuring a successful take-off of the financial autonomy to the judicial and legislative arm of government, the Nigeria Governors Forum (NGF), presented a proposal, that sought the creation of a State Account Allocation Committee (SAAC) fashioned after the Federation Accounts Allocation Committee (FAAC) with the duty of overseeing the distribution of funds to the three arms of government at the state level.

They also proposed the enactment of funds management laws for state judiciary and legislature. The law when passed by state houses of assembly, would grant each arm “the power to manage its capital and recurrent expenditure in accordance with the provisions of Sections 6(5)(a) – (i), 81(3), 121(3) & Item 21(e) of the Third Schedule of the Constitution of the Federal Republic of Nigeria (As Amended) and other relevant laws”.

According to the NGF, States Government would ensure “passage and assent” to the funds management law as well as put in place implementation structures within a time frame not exceeding 45 days from the date of signing the Executive Order No. 10.

**3.3 IMPLEMENTATION STATUS**

According to the Secretary, Implementation Committee on Autonomy of State Legislature and Judiciary, Senator Ita Enang only 12 states have passed the appropriate law for autonomy for state legislature and judiciary as of 20th October 2021. The Terms of reference of the implementation Committee included:

* The assessment and review of the level of compliance by all the 36 states of the Federation with section 121(3) of the 1999 constitution (as amended)
* To monitor, ensure and cause the implementation of financial autonomy across the judiciary and legislature of the 36 states of the federation in accordance with the provisions of the 1999 constitution (as amended) and other applicable laws, instruments and conventions however providing for financial autonomy for the legislature and judiciary at the tier of government
* To consult and relate with the appropriate federal and state MDAs including but not limited to the Governors Forum, (NGF) Accountant-General of the Federation and those of states, the National Economic Council, and other institutions of state to ensure and where necessary enforce the implementation of the constitutional provision.
* To come up with appropriate modality or enforcement to be adopted by all the states of the Federation for implementation and/or compliance with section 121(3) of the 1991 constitution (as amended)
* To do such other things that are deemed necessary or incidental to the fulfilment of the aim of the committee to attain the full purpose of this assignment.

**3.4 MAJOR IMPLEMENTATION ISSUES**

Some of the major issues being experienced in the implementation of Executive Order 10, includes:

1. Lack of necessary state legal framework for such expenditure and spending
2. Implementation of the Procurement Act and Financial Due Process within the Legislature and the Judiciary
3. Compliance with Anticorruption Acts and procedures, and
4. Issues relating to other funds disbursements and management processes according to different Financial Acts e.g. Fiscal Responsibilities Act, and guidelines.

**3.5 Implications**

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| --- | --- | --- |
| **S/N** | **Benefits** | **Challenges** |
| 1. | Maintain aggregate fiscal discipline in spending public funds i.e transparency and accountability. | Most States of the Federation largely depend on the Federation Account allocation instead of internally generated revenue**.** |
| 2. | Fiscal Independence of State Legislatures and Judiciaries | Major source of states IGR is PAYE rather than taxes collected by the State Government. |
| 3. | The States legislatures and judiciaries will have direct access to funding | States are still highly indebted to both internal and external creditors.  |
| 4. | Achieve resource allocation efficiency to strategic priorities | Some States cannot afford to offset some basic obligations e.g. salaries, pensions and gratuity, debt servicing, overhead cost and capital expenditure |
| 5. | Application of due process for check and balance | No clear cut laws of the Federation that ensure transparent of fiscal regime at the States level except to use the provisions of the Constitution to issue Executive Order by Mr. President. |
| 6. | Achieve maximum value for money in the delivery of services |  |

**4.0 RECOMMENDATIONS**

1. Creation of State laws to provide legal frameworks for the implementation of financial autonomy for the Legislative and Judiciary Arms of Government.
2. Heads of the Judiciary and legislators are advised to provide the necessary liaison with existing government agencies such as the Office of the Accountant-General (at both federal and State levels) and the Budget Offices to ensure effective take-off of implementation
3. The Judiciary and the Legislature should familiarise itself with the various provisions of the Public Procurement Act, Finance Acts, as well as other regulations guiding financial expenditures.
4. States should set up implementation committees that would coordinate with the Federal Ministry of Finance, Budget and National Planning and its agencies on the effective implementation of the order to avoid deductions as source.
5. The establishment of State Account Allocation Committee (SAAC). You will recall that The Federation Account Allocation Committee (FAAC), on its part, is established under section 6 (1) of the Allocation of Revenue (Federation Account, ETC.) Act, to ensure that allocations made to the States from the Federation Account are promptly and fully paid into the treasury (Consolidated Revenue Fund) of each State on the basis and terms prescribed, and to report annually to the National Assembly in respect of the function specified in the above paragraph. States government may want to use this as a template that specifies the roles and responsibilities as well as the reporting structures for SAAC.
6. Passage of Funds Management Laws and other relating legal frameworks that would ease the implementation while also ensuring that heads of the judiciary and legislature would not violate existing financial acts, this is essential to the success of the intentions of the federal government as it concerns autonomy for the judiciary and legislature.
7. Institutional reforms regarding a wider acceptance and implementation of the principles of the Fiscal Responsibility Act. Especially the sections on preparation of Annual Cash Plans, Budget Disbursement Schedules, and monitoring and evaluation of budget performances.
8. Capacity Development across all levels affected by this executive order as well continuous wider stakeholder consultations are also recommended.

**5.0 CONCLUSION**

Finally, let me reiterate that with public resources being extremely limited, and the prioritization of states allocation creating competition among the different public entities, it is expected that a full implementation of the executive order may be delayed. Since the challenge for governments is to ensure a good level of public service, or to improve performance of public expenditure thus driving efficiency, it is recommended that a business-like approach to public finance management, called New Public Management (NPM), should be implemented at the sub-national government.

Since the New Public Management wave started at the federal level, budgeting has played a major role as a powerful managerial tool to improve planning, policies’ development, services delivery, and accountability mechanisms. Budgeting is now used as a key management tool for achieving better organizational planning and performance, which are the main goals of NPM. To reach these goals, the budgeting process has been revised, progressively moving from a historical line-item budget, focused on the expenditures necessary to ensure public services (inputs), to a budget more focused on the results obtained from those expenditures (outputs and outcomes).

States Government should continue to implement policies that drive this new approach thereby ensuring value for money for allocations received from the Federation Accounts while also creating and maintaining effective sources of Internally generated revenue.

I wish to appreciate the efforts of the organisers of this conference once again.

Thank you all for your rapt attention.

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