Objected

PRESIDENT,
FEDERAL REPUBLIC OF NIGERIA

His Excellency,
Rt. Hon. Waziri Aminu Tambuwal, CFR
Speaker, House Representatives,
National Assembly Complex,
Three Arms Zone,
Abuja.

13th April 2015

Your Excellency,

RE: CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (FOURTH ALTERATION) ACT, 2015

May I draw Your Excellency's esteemed attention to the **Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act, 2015** that has been passed by the National Assembly and transmitted to me for assent.

2. I have accordingly examined the substance of the provisions and the procedure adopted by the National Assembly to pass the Act and wish to observe as follows:

(a) **Section 4 - Alteration of Section 9**

Section 4 of the Fourth Alteration Act, 2015 seeks to alter Section 9 of the 1999 Constitution by the insertion of a new subsection 3A, which dispenses with the assent of the President in the process of constitutional amendment. However, this alteration can only be valid if the proposal was supported by the votes of not less than four-fifths majority of all the members of each House of the National Assembly and approved by a resolution of the House of Assembly of not less than two-thirds of all the States as provided by Section 9(3) of the 1999 Constitution. **This is a fundamental requirement of the Constitution and in the absence of credible evidence that this requirement was met in the Votes and Proceedings of the National Assembly, it will be unconstitutional for me to assent to this Bill.**

In light of the above, I am of the respectful view that I should withhold assent until it can be shown that the National Assembly has complied with the threshold specified in Section 9(3) of the 1999 Constitution However, assuming without conceding that the necessary thresholds were met by the National Assembly, there are a number of provisions in the Act that altogether constitute flagrant violations of the doctrine of separation of powers enshrined in the 1999 Constitution and an unjustified whittling down of the executive powers of the federation vested in the President by virtue of Section 5 (1) of the 1999 Constitution.

3. The relevant alterations and their implications are discussed section by section below:

3.1 Section 12 - Insertion of Sections 45A - 45B

Section 45A of the Fourth Alteration Act, 2015 which guarantees the right to free basic education is too open ended and should have been restricted to government schools. This is because a right, unless qualified or restricted, must be observed by all. It follows therefore that the right to free basic education under this provision if taken to its logical conclusion, will invariably apply to private schools, which could not have been the intendment of the legislature. The same argument applies to Section 45B, which guarantees unqualified right to free primary and maternal care services. The implication of this is that private institutions will be obliged under the Constitution to offer free medical services since it is a right and this is not only impracticable, but also could not have been the intention of the law giver. There is therefore the need for these provisions to be redrafted to restrict the enjoyment of these rights and place the obligation to provide the conditions necessary for the enjoyment of the rights on the government.

3.2 Section 14 - Alteration of Section 58

The Power vested in the President to withhold his assent to Bills passed by the National Assembly is part of the checks and balances contained in the Constitution. Withholding of assent therefore constitutes a check on the exercise of legislative powers in a constitutional democracy especially as the Executive Branch has the responsibility of enforcing laws passed by the National Assembly. However, some of the Acts of the National Assembly emanate from Private Members' Bills, into which in many cases, the Executive may not have had sufficient input.

It is also instructive to note that in some cases, more than one Bill is transmitted to the President for assent and that the President requires the advice of relevant agencies of government before he can assent to the Bill.

Against this background, the 30 days allowed for assent of the President may not be adequate in some cases for the President to make a decision as to whether or not to assent. Consequently, **sub-section 5A of Section 58, which provides that a Bill will become law after the expiration of 30 days in the event that the President fails to signify the withholding of his assent may be inappropriate.** The provision appears not to have taken cognizance of the aforementioned variables, the vagaries inherent in the legislative process and the wisdom in requiring two-thirds majority to override the President's veto. In the light of the above, I am of the view that the failure to signify assent by the President within the prescribed period of 30 days should rather be treated as dissent, which would require two-thirds majority to override. It is therefore recommended that subsection 5A should have adopted the language of the new subsection 4 of section 59.The foregoing arguments also apply to Section 26 - Alteration of Section 100 in respect of the States in the Federation.

3.3 Section 21 - Alteration of Section 82

This alteration seeks to limit the period when expenditure can be authorized in default of appropriation from the 6 months provided in the Constitution to 3 months. I am of the view that this provision has the potential of occasioning financial hardships and unintended shutdown of government business particularly where for unforeseen reasons and other exigencies in the polity, the National Assembly is unable to pass the Appropriation Act timeously. Our recent experiences with the process of passing of the Appropriation Act do not justify the reduction of the six-month time limit in the Constitution. I am of the respectful view that the current position should have been maintained.

3.4 Section 23 - Insertion of Section 84A-84F - Appointment of Accountant-General of the Federation

The provision of section 84A that creates the new Office of Accountant General of the Federation distinct from Accountant General of the Federal Government has not addressed the funding requirements for the establishment of the office. It is necessary to clarify for instance, who staffs and funds the office of Accountant General of the Federation and from whose budget he will be paid since he serves the three tiers of Government.

It is also important to state who will exercise oversight powers over the Office. Furthermore, the National Economic Council, which is mainly an advisory body, is now charged with the responsibility of recommending those to be appointed to the Office of Accountant General of the Federation.

3.5 Section 36 - Substitution for Section 150; Section 39 - Substitution for Section 174; Section 40 - Insertion of new Section 174-174H; Section 43 - Substitution for Section 195; Section 43 - Substitution for Section 195; Section 44 - Insertion of new Sections 211A -211H.

These alterations encapsulate wide-ranging provisions that seek to separate the Office of Attorney General of the Federation from the Minister of Justice and the Attorney General from the Commissioner for Justice in the respective States of the Federation. They also provide for the independence of the Office of Attorney General by guaranteeing tenure and funding. However, as desirable as the separation is, there are some provisions that violate the doctrine of separation of powers and also negate the age-long independence and absolute discretion that the office has enjoyed for centuries since its creation in the middle ages. The potential challenging provisions are discussed below:

(a) The first noticeable setback is that the Fourth Alteration Act, 2015 is silent on who is the Chief Law Officer of the Federation/State. This is a serious lacuna, which may create implementation challenges. It will be recalled that the Attorney General of the Federation (AGF) and Minister of Justice and the Attorneys General and Commissioners for Justice in the respective States of the federation are under sections 150 and 195 of the 1999 Constitution, the Chief Law Officers respectively.

Apparently, it is the fact that the AGF is the Chief Law Officer that the power to guide the MDAs on legal issues by way of legal advice and represent the Government on other legal matters including civil litigations, contract, treaty obligations, legal drafting, etc., is derived. With this amendment, which limits the power of the AGF to criminal prosecution and is silent on whom is the Chief Law Officer, appears to erode the constitutional and legal basis for the current structure and functions of the Ministry of Justice and the Law Officers employed therein, in the absence of a Statute that provides for the exercise of these powers and functions.

Consequently, if it is the intendment of the National Assembly to make the Minister of Justice the Chief Law officer, it should be expressly stated. This will enable these functions to continue to be traditionally performed by the Ministry under the supervision of the Minister of Justice while the Office of the AGF, which is to be independent and separated from the Ministry concentrate on prosecutions. However, it will be odd if the AGF is not in a position to provide independent advice to Government on its policies and programmes and generally guide governmental action in order to ensure due process and rule of law.

(b) By the dictates of the doctrine of separation of powers, the appointment of the AGF ought to be the prerogative of the President to the exclusion of the NJC. The present alteration seeks to involve the NJC, a judicial arm of government in the appointment process, as it is required to recommend deserving persons to the President for appointment subject to confirmation by the Senate. The NJC has been given the role of recommending the appointment of judicial officers and their discipline; there is therefore no justification for whittling down of the President's power of appointment in the manner proposed by the alteration. I am therefore of the respectful view that the requirement of confirmation of the appointment of the AGF by the Senate constitutes sufficient safeguard against the appointment of undeserving or undesirable persons to the office.

(c) Having excised the Office of the AGF from that of the Minister of Justice, there is no justification for providing special qualifications for the Office of the Minister of Justice. This is because the Minister of Justice will now be akin to any other Minister exercising ministerial powers over policy issues in the Ministry. Ideally, the Minister of Justice ought not to be specifically mentioned in the Constitution as the alteration seeks to do.

(d) The National Assembly has by this alteration unwittingly whittled down the discretionary powers of the Attorney General by providing under subsection 4 of Section 174 C that ***"the question whether the Attorney General of the Federation has exercised his powers in accordance with subsection (3) of this Section shall be subject to the determination of the Court."***

The provision runs contrary to the long line of English cases and decided authorities of the Supreme Court of Nigeria, which clearly state that the AGF's discretion is unfettered and he is not answerable to any other authority or person when performing his functions. By subjecting the powers of the AGF to question by way of a legal challenge before our courts will lead to a floodgate of litigation that will ultimately undermine the efficiency and effectiveness of the Office.

(e) It is not within the contemplation of the alteration that the AGF will be a judicial officer or indeed act in that capacity. Consequently, it seems to me incongruous for an appointee of the President to discharge executive functions to be made to take his Oath of Office before the Chief Justice of Nigeria, instead of the President. It is therefore submitted that it is most appropriate for the Oath of Office to be administered by the President or as specified in the Oaths Act. It should be noted that the arguments in respect of the AGF apply with equal force to the AG's of the respective States in the Federation.

4. In view of the foregoing and the absence of credible evidence that the **Act** satisfied the strict requirements of section 9 (3) of the 1999 Constitution, it will be unconstitutional for me to assent to the **Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act, 2015**. I therefore withhold my assent and accordingly remit it to the House of Representatives of the Federal Republic of Nigeria.

5. Please accept, Right Honourable Speaker, the assurances of my highest regards and esteem.

Yours Sincerely,

GOODLUCK EBELE JONATHAN