

CONSTITUTION AMENDMENT DIRECTS DEVOLUTION OF POWERS ON PRISONS, RAILWAYS & ELECTRICITY TO THE STATES

TITLE: *Fifth Alteration (No.15) Act to alter the Constitution of the Federal Republic of Nigeria, 1999 to delete the item “prisons” in the Exclusive Legislative List and redesignate it as “Correctional Services” in the Concurrent Legislative List; and for related matters.*

Summary

This factsheet summarises Constitution Amendment Acts to include Prisons, Railways and National Grid on the Concurrent Legislative List. The effect of these amendments is that each State, along with the federal government, would be able to exercise legislative powers over the listed items.

Introduction

In March 2023, President Muhammadu Buhari signed three Constitution Amendment Acts seeking to move items from the Exclusive Legislative List to the Concurrent List in the Constitution. The Exclusive legislative list is contained in Part 1 of the Second Schedule of the 1999 Constitution and outlines items that only the National Assembly can legislate on. Meanwhile, the Concurrent legislative list in Part 2 of the same Schedule contains items that both the Federal and State governments can make laws on as prescribed.

Nigeria practices a federal system of government meaning that governmental powers are to be shared between the federal government and its component units, that is, the States. The 1999 Constitution is the basis for Nigeria's Federalism, however, the same Constitution in its Legislative lists, overly situates power on the Federal Government,

thereby contradicting the principle and intent of Federalism. This has created a situation where the States have become somewhat disempowered and dependent on the Federal government as a result of too many powers and responsibilities on the later.

There have been strong public demands for true Federalism and restructuring of Nigeria via amendment of the Constitution to devolve more power to the States. This is to ensure a subnational government that is closer and more responsive to citizens, and to also foster the economic growth of individual States so that they can be independent of the centre.

These amendments seek to contribute to these ideals by proposing that legislative powers be shared by the Federal and State governments on certain items that are currently under the sole jurisdiction of the Federal government.

Below is a summary of each amendment.

1. Deletion of “Prisons” in the Exclusive Legislative List and redesignation as “Correctional Services” in the Concurrent Legislative List

This amendment deletes **item 48, “Prisons”** from the Exclusive list by inserting a new **paragraph 10A** after the existing paragraph 10 titled **“Correctional Services”** in the Concurrent list. It empowers the National Assembly (NASS) and State Assemblies to make laws establishing correctional services and custodial facilities, as well as authorities to manage them. For the National Assembly, this can be in any part of the Federation while for the States, it must be within the State in question.

This is expected to help relieve the problems of inadequate federal funding and congestion of correctional centres and facilitate reform of Nigeria's reformatory institutions with the help of the States.

During the debate on this amendment in the National Assembly, it was pointed out that the correction centres have insufficient holding capacity for inmates thus leading to overcrowding. It was further noted that prisons congestion is an obstacle to Nigeria's implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as the Nelson Mandela Rules). Again, it is reported that most prison inmates are State offenders as against Federal offenders, with majority being awaiting trial inmates.

Correctional service is part of the criminal justice system and while Nigeria's slow justice system, which is the main cause of the large number of awaiting trial inmates, cannot be ignored as a contributing factor to overcrowded prisons, this amendment is expected to offer respite in terms of improving current standards, easing the pressure on the system and promoting humane treatment of prisoners.

Of course, this amendment raises several questions such as the capacity of States to build and manage their own prison facilities and adopt progressive correctional service laws focusing on reformation and rehabilitation of offenders. Nevertheless, the existence of this option presents an opportunity for reform and it should be noted that Federal power to legislate on prisons remains.

2. Movement of Railways from the Exclusive Legislative List to the Concurrent Legislative List

This amendment deletes **item 55 "Railways"** in the Exclusive list and inserts a new **paragraph 20A** in the Concurrent List titled "Railways." It empowers the National Assembly to make laws for the construction and maintenance of **inter-state railway** tracks and infrastructures; establishment of a national railway agency for the regulation of railway operations

throughout the Federation; and establishment and maintenance of a national railway carrier for inter-state transportation throughout the Federation.

The State House of Assembly on the other hand is empowered to legislate on the establishment, operation and maintenance of a State railway carrier **within the State** including the construction and maintenance of railway tracks and infrastructures within the State.

The implication of this provision is that States can invest in railway infrastructure and intra-state railway services. Until now, the Constitution gave the Federal Government the sole right to operate, fund, expand, and regulate the railway sector. Railway operations and management was therefore vested in the Nigerian Railway Corporation which is being governed by an obsolete 1955 Act. For instance, Section 29 of the Act makes the construction and operation of railway for the carriage of passengers and goods without the consent of the Corporation unlawful. This law does not contemplate progressive reforms in the railway sector, which this amendment will now facilitate.

Apart from easing the public transportation burden on the Federal Government, it is expected that subsequent legislations by States on this subject will facilitate the development of new and modern rail systems, provide railway as a safer and cheaper alternative of transporting passengers, goods and services, and help reduce the already over-stretched road infrastructure.

It is also expected to open the rail sector to private sector participation (PSP). This is important because stakeholders have noted that private investor funding is crucial for the sector due to the huge capital investment needed to achieve a modern and efficient rail system.

While the Federal Government retains its powers to make laws on inter-state railways, it is expected that it will take this opportunity to amend obsolete legislation on this subject to

make way for operators in the market. Experts have often recommended that for Nigeria's railway service to improve, the government needs to consider licensing of railway operations and focusing itself on policymaking and regulation. If this happens, operators who have the financial and technical capacity can run the rail lines, while still providing an opportunity for the government to regulate operations and raise revenue.

3. Amendment to Allow States Generate, Transmit and Distribute Electricity in Areas Covered by the National Grid

This provision amends **paragraph 14 (b), Part II of the Second Schedule** dealing with Electric Power by deleting the wordings in this section that restricts State Assemblies to make laws on generation, transmission and distribution of electricity in areas **not covered** by a national grid system within their State. By so doing, it expands their legislative powers to make laws on the generation, transmission and distribution of electricity to include areas within their State **"covered"** by the national grid.

Giving the States free reign on electricity generation, transmission and distribution without restrictions would go a long way in demonopolising the system and improving the power sector, as less pressure would be put on the National Grid. It would also potentially attract investors to the sector and hopefully put an end to the incessant challenges that occur in the generation, transmission and distribution of electricity in Nigeria. Other expected benefits include market competition which would benefit consumers in terms of options and pricing, investments in energy mixes and alternative sources of energy, improved private sector participation, and increased revenue for States.

It should be noted that the Federal Government's powers to legislate on generation and transmission of electricity in any part of the country and manage the national grid system remains, and that each State would have to make or amend its state electricity law to operationalise this amendment. The Federal Government also

retains its own regulatory powers which it exercises through the Nigerian Electricity Regulatory Commission (NERC) established under the **Electric Power Sector Reform Act 2005 (EPSRA)**.

While analysts have hailed this constitution amendment as being progressive, concerns have been expressed over possible regulatory uncertainties, multiple licensing requirements, monitoring standards, and conflicting interests that would arise from the co-existence of federal and state electricity markets. Experts have also recommended the repeal of the EPSRA and enactment of a new law that recognises the newly expanded legislative powers of the States – one that adopts a collaborative approach.

In relation to this, it is noteworthy that there is an **Electricity Bill** passed by the Senate in 2022 seeking to create a comprehensive legal and institutional framework to guide the Nigerian Electricity Supply Industry (NESI), provide an omnibus institutional framework, and address policy gaps among others. The bill recognises the pre-existing rights of States to legislate on electric power within their States including prospects of collaboration between the Federal and State Governments and the private sector on electricity projects. As the bill is currently pending in the National Assembly, it is expected that it would be revised to bring it in conformity with this constitution amendment (that is, if the 9th Assembly decides to conclude legislative work on it before their departure). Furthermore, it offers an opportunity to address the regulation concerns raised, including making clear provisions to prevent the potential effect of the **"covering the field"** doctrine where federal laws on a subject will supersede state laws on the same subject where there is a conflict. Should this be the case, the intended effect of the constitution amendment to further empower the States on electricity could be hampered.

See PLAC Legist Article: ***Senate's Electricity Bill 2022 Ambitiously Aims to Transform Nigeria's Power Sector***. Available on: <https://bit.ly/40Oz49r>



About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens’ participation in Nigeria. PLAC works to enhance citizens’ engagement with state institutions, and to promote transparency and accountability in policy and decision-making process.

The main focus of PLAC’s intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

Policy and Legal Advocacy Centre (PLAC)
Plot 451 Gambo Jimeta Crescent,
Guzape District,
Abuja, Nigeria.

Website: www.placng.org *Email: info@placng.org *Phone: 08091899999

EU-SDGN II Implementing Partners

