

CONSTITUTION AMENDMENT CLARIFIES FINANCIAL INDEPENDENCE OF THE STATE LEGISLATURE AND JUDICIARY

TITLE: *Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) (No. 6) Act, 2023 – An Act to alter the Constitution of the Federal Republic of Nigeria, 1999 to provide for the financial independence of State Houses of Assembly and State Judiciary; and for related matters.*



The President recently signed 16 Constitution Alteration Acts, one of which alters Section 121(3) of the Constitution to ensure financial autonomy of State Houses of Assembly and Judiciary. It directs that these two arms be directly funded from the Consolidated Revenue Fund of the State and outlines the method for achieving this. It also provides constitutional backing to State Assembly Service Commissions by including them in Part II of the Third Schedule to the Constitution dealing with State bodies.

1. Amendment to Section 121 - Authorisation of expenditure from Consolidated Revenue Fund of a State

The amendment here makes further provisions aimed at strengthening the State Legislature and Judiciary by outlining a detailed implementation framework for

financial autonomy for the State Houses of Assembly and Judiciary which was absent in the Constitution.

In 2018, the President signed a Constitution amendment passed by the 8th National Assembly to provide for direct funding of the Judiciary and Houses of Assembly of States from the Consolidated Revenue Fund of the State to insulate them from external interference and enhance their independence. This constitutional provision was however not observed by many States.

The President sought to enforce the amendment by issuing Executive Order 10 in May 2020 to make it mandatory for all States to include the allocations of both the legislature and the judiciary in the first-line charge of their budgets as against the prevailing practice where the State Governors manage the funds for the other two arms. It further sought to empower the Accountant-General of the Federation to deduct funds for the State Assemblies and the Judiciary from source i.e. the Federation Account Allocations and pay it to the legislature and the judiciary of the defaulting States. This action however put the Federal Government in direct confrontation with State Governors because funds in the Federation Account is meant to be shared by the three tiers of government i.e., the Federal, State and Local Governments. The States sued the Federal government leading the Supreme Court, in 2022, to rule that the President overstepped his powers and that Executive Order 10 was unconstitutional, illegal, null and void. This Constitution Alteration Act addresses this issue.

The problem being addressed

The issue of management of funds for the legislature and judiciary at the State level has been a perennial problem. State Governors are known to administer the funds of the other two arms thereby compromising their independence. This problem appears to be worse for the Judiciary who is the least funded of the three arms and have had to contend for funding along with other arms and agencies of government for its capital projects e.g., purchase of vehicles, office equipment, construction of buildings, renovations, repairs, etc.

Budget performance across the 36 States of the Federation in the past few years shows an allocation of less than 1 per cent of the entire State Budget to some State Judiciaries. Furthermore, while the Judiciary has its own budget comprising recurrent and capital expenditure, it was found that the practice in many States is that certain components of recurrent expenditure like personnel costs are released monthly based on the budget and the availability of funds, while the capital component is warehoused in the executive and not released regularly.

By releasing the State Judiciary budget in piecemeal and at their discretion, many Governors held their judiciaries to ransom in violation of the Constitution. The same is seen with State Assemblies where it is common to see Governors executing capital projects like purchase of cars and construction of residential buildings for legislators. Sometimes, the release of funds arrive on a quarterly or bimonthly basis, thereby making effective planning by the two arms a challenge. This breach of the Constitution had led to strike actions by the Judiciary Staff Union of Nigeria (JUSUN), the most severe being a two-month strike in 2021 that paralysed the courts following a further violation by State Governors of an agreement with the Union to implement financial autonomy as contained in the 2018 constitution amendment.

Some believe that the Judiciary should not be involved in the execution and supervision of capital projects, a task seen to be better suited for the executive. This is evidenced by the budget for judiciary infrastructure often being captured in the budget of the Ministry of Works & Housing of States. However, the majority of public opinion is that the need for financial independence cannot be overemphasised, as the Judiciary (and Legislature) should be allowed to not only pay their staff, but also develop their own infrastructure at their own timing without control or interference from the executive.

The Provisions

This Constitution amendment comes in as a solution to the problem to ensure that the Legislature and Judiciary are fully in control of their budget and that all budget components i.e., recurrent and capital expenditure, are automatically payable or released as soon as the State budget is passed by the State Assembly and signed by the Governor.

The amendment explicitly states in **Section 121(3)** of the Constitution, that any amount standing to the credit of the House of Assembly in the Consolidated Revenue Fund of the State “**shall be paid directly into the account of the Assembly**”, and that of the Judiciary “**shall be paid directly to the heads of the courts concerned**” e.g., the State High Court, Customary Court of Appeal of the State, Sharia Court of Appeal of the State.

The amendment further establishes an eleven-member Disbursement Committee for each State chaired by the State Commissioner of Finance and comprising official representatives of the three government arms, which include the Accountant-General of the State; a representative of the State Budget Office or Ministry; Chief Registrar of the State High Court, and where applicable, Chief Registrars of the State Revenue Court,

Sharia Court of Appeal, Customary Court of Appeal and Secretary of the State Judicial Service Commission.

Representatives from the State Assembly will include the Clerk of the State House of Assembly, the officer in charge of finance in the State Assembly and Secretary of the State House of Assembly Service Commission (which has now become a constitutionally recognised body under this Act).

On implementation procedure, the Act provides for direct monthly instalment payments to the House of Assembly and the Judiciary for their capital and recurrent expenditure, which is to be based on the State's yearly budget. This would address the current practice of inconsistent and piecemeal release of funds.

To address cases where there may be a shortfall in revenue and remittances due to the States, which in turn will affect the State Budget, the Act provides that such funds should be disbursed on a pro-rated basis in the meantime i.e., in proportion to the shortfall in the revenue of the State. However, such shortfall shall be paid in arrears when there is an increase in subsequent income of the State.

The Act also places on the Commissioner for Finance and the Accountant-General of the State, a duty to not only disclose revenues received by the State, but to also release the portions due to the Judiciary and Legislature not later than one week after the funds have become due. An additional duty of disclosure is placed on the Accountant-General of the State to provide to the disbursement committee, details of inflow from the [Federal Accounts Allocation Committee](#) (FAAC) and internally generated revenue not later than seven days after the FAAC meets for the month. [Recall that FAAC is set up to ensure that allocations made to the States from the Federation Account are promptly and fully paid to each State].

In conclusion, it is expected that with this amendment, the current stalemate around the implementation of Section 121(3) of the Constitution on financial autonomy for the State legislature and judiciary which led to the issuance of Executive Order 10 will be finally laid to rest. It is also expected that this would have positive implications for more effective law making and fair delivery of justice to Nigerian citizens.

2. Amendment to Part II of the Third Schedule

This amendment guarantees recognition of the State House of Assembly Service Commission. The Constitution previously only recognised the State Civil Service Commission and Judicial Service Commission for the executive and judiciary respectively. These Commissions exist to supply their human resource needs and regulate the employment or working conditions of their bureaucracy. Although State Assembly Service Commissions currently exist with the backing of State laws, its constitutional recognition reinforces the equality of the three arms and is expected to complement and enhance the financial autonomy granted to the State legislatures.





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.

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