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CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (ALTERATION) BILL, 2023 (LOCAL GOVERNMENT FINANCIAL AUTONOMY, REVENUE ALLOCATION FORMULA AND SAVINGS) (SB. 61)

Sponsor
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OBJECTIVES OF THE BILL

The primary objective of the Bill is to enhance service delivery and economic development at the Local Government level by abolishing the State Joint Local Government Account and empowering Local Governments to maintain a special account into which all allocations due to the Local Government shall be paid directly from the Federation Account and the State Government.

It also seeks to provide for savings before any disbursement from the Federation Account and to empower the Revenue Mobilisation Allocation and Fiscal Commission to directly table before the National Assembly, proposals for revenue allocation.

BACKGROUND/INTRODUCTION

As the closest level of governance to the people, Local Governments should enhance access to essential services and opportunities to improve lives and stimulate participation and accountability at local levels. As such, Section 7(1) of the 1999 Constitution guarantees the system of local government by democratically elected local government councils and accordingly obligates the Government of every State, subject to section 8 of the Constitution, to ensure their existence under a Law which provides for the establishment, structure, composition, finance, and functions of such councils.

The power to make decisions is nothing without the financial resources to make those decisions a reality. Unfortunately, the financial autonomy of local governments that would have enabled them to live up to the aspiration of the Constitution is contestable. Presently, the administration

of local governments in Nigeria has been subject to the whims of State Governors. Local governments lack unfettered control over their statutory allocation from the Federation Account because State Governments abuse the “State Joint Local Government Account.” State governments do not respect the authority and autonomy of local governments but rather consider them appendages of the states. Funding constraints have also hampered effective local audits to ensure transparency, accountability, and good local governance.

Since the return to democratic governance in 1999, the Legislature has made various efforts to strengthen the local government system in Nigeria. For example, the 7th, 8th and 9th National Assemblies passed constitutional amendments granting financial autonomy to Local Governments. Yet, none of the amendments has been able to muster the approval of State Assemblies. The resistance to constitutional amendments granting financial autonomy to Local Governments is evidence that specific vested interests perceive Local Governments as avenues for personal monetary gains and instruments of political control rather than fostering local governance and accountability.

The ineffectiveness of Local Government continues to contribute to poor human development outcomes, rural-urban migration, violent crimes, conflicts and unabated rise in poverty levels. These challenges impede effective service delivery, local economic development, poverty alleviation and the consolidation

of democracy. Hence, the Bill attempts to remove a significant financial impediment to effective and efficient service delivery and economic development at the grassroots level.

KEY PROVISIONS OF THE BILL

1. Review of the Revenue Allocation Formula (Section 162 (2))

Clause 1(2) of the Bill amends Section 162(2) of the Constitution to give the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC), the responsibility to directly table the report of a review of the revenue allocation formula before the National Assembly. While paragraph 32(b), Part I of the Third Schedule to the 1999 Constitution empowers RMAFC to review the revenue allocation formula and principles in operation occasionally, the responsibility to table RMAFC’s report before the National Assembly for approval is placed on the President. This requirement has often been criticized as impeding the review process.

Nigeria is a federation with the federal, state, and local governments making up its three tiers of government. Federation revenue is therefore owned by these three tiers and the revenue allocation formula is the proportion of resources accruing to the federation that goes to each. Under the current formula, the federal government gets 52.68 per

cent, the 36 states share 26.72 per cent while the 774 local government areas in the country share 20.60 per cent every month. There has been a clamour for a review of the formula to enable a more equitable sharing plan.

It is worth noting that the last review of the revenue allocation formula was in 1992. Since then, the economic realities and political structure of the country have changed with the increase in the number of states from 30 (as of 1992) to 36 and an increase in the number of local governments councils from 589 to 774.¹

The proposed amendment, therefore, aims to streamline the process to ensure a seamless review that would reflect socio-economic changes that have occurred since then.

2. Ten per cent Savings from the Federation Account before Distribution to the respective levels of Government

Clause 1(4) provides for ten per cent (10%) of the amount held in the Federation Account at any time to be deducted and saved in a separate account before the distribution of the

remainder to the respective levels of government. The saved amount shall be held on such terms and conditions as may be subsequently prescribed by an Act of the National Assembly.

Clause 1(5) further provides that the savings in clause 1(4) shall not be shared amongst the levels of government until after it has been saved for at least five years.

The proposal aims to smooth government spending by putting aside a prescribed percentage of money, whether it is fiscal surpluses that are more than the structural target or otherwise, to be used in periods of economic weakness or to benefit future generations. While not expressly stated, the proposal looks like an attempt to create a framework for a constitutionally backed sovereign wealth fund.² Although Nigeria has a Sovereign Wealth Fund law enacted by the National Assembly, its legality has been questioned as it is seen to contradict section 162 of the constitution that outlines how revenue is to be shared by the respective levels of government.

1 The RMAFC developed a report with a new revenue allocation formula that was presented to the former President, Muhammadu Buhari in 2022, which he did not forward to the National Assembly. The proposal in this private member bill seems to be based on some of the commission's recommendations. See: <https://www.premiumtimesng.com/news/headlines/522428-new-revenue-formula-buhari-receives-report-awaits-constitution-review-process.html?tztc=1>

2 A sovereign wealth fund is a state-owned investment fund comprised of money generated by the government, often derived from a country's surplus reserves. They provide a benefit for a country's economy and its citizens. See: https://www.investopedia.com/terms/s/sovereign_wealth_fund.asp. It is owned by the general government, which includes both central government and sub-national governments. See: <https://archive.ifswfreview.org/2019/what-sovereign-wealth-fund>

3. Abrogation of the State Joint Local Government Account (Section 162(5), (6), (7) & (8))

The proposed amendments in Clauses 1(6), (7), (8), (9) and (10) seek to entrench financial autonomy for Local government councils by abolishing the State Joint Local Government Account³ and providing for the distribution of allocation from the Federation Account directly to Local Government Councils, the States and the Federal Government.

Subclause (6) of the Bill provides those statutory allocations from the Federation account to the States and Local Government Councils will be as prescribed by an Act of the National Assembly (this changes the language of the current provision in section 162(5) of the constitution that says that the amount for the local governments will be allocated to the States for their benefit)

Subclause (7) of the Bill empowers Local Government Councils to maintain an Allocation Account into which all allocations due to them from the Federation Account and the internally generated revenue of the State Government shall be directly paid.

³ The State Joint Local Government Account (SLGJA) is a pool of all the financial allocations due to the various local government councils from the Federation Account. It is maintained by the states for distribution to the local councils.

4. Subclause 1(8) provides that States should determine and legislate the proportion of its internally generated revenue to pay to its Local Government Councils even though a percentage is not indicated. Note that section 4 of the Allocation of Revenue (Federation Account, Etc.) Act says that each State shall pay 10 per cent of its internally generated revenue to the Local Government Councils in the State on a quarterly basis and on terms prescribed in a law by their respective Houses of Assembly. This provision has been breached by several states and it is unclear if importing a similar provision into the constitution will ensure compliance.

Furthermore, Subclause (9) of the Bill empowers the State House of Assembly of each State to pass a law prescribing the portion of allocation from the Federation Account to pay primary school teachers and for other purposes it may determine.

Subclause (10) of the Bill also empowers the Federation Account Allocation Committee to deduct and remit primary school teachers' salaries to a body as may be prescribed by the law of a State House of Assembly. The provisions in subclauses (9) and (10) are intended to allay the fears of primary school teachers that if Local Governments are granted financial autonomy, it may affect the payments of their salaries.

OBSERVATIONS & RECOMMENDATIONS

- i. It is important to note that a similar amendment to the one proposed in Clause 1(2) of the Bill concerning the review of the revenue allocation formula was passed by the 9th National Assembly and approved by State Assemblies as part of the Constitution of the Federal Republic of Nigeria (Fifth Alteration) Bill No. 39, 2022. However, the President withheld his assent to the Bill because the alteration in the Bill empowering RMAFC to enforce compliance with the remittance of accruals into and disbursement of revenue from the Federation Account encroaches into the Federal Inland Revenue Service (FIRS) mandate.

Although the President's reason for withholding assent to the Fifth Alteration Bill was not related to the provision empowering RMAFC to directly table the report of a review of the revenue allocation formula before the National Assembly without recourse to the President, totally circumventing the President in the process as it is provided for in the Bill under consideration, is likely to be contentious. It may be helpful, therefore, to consider adopting the approach in the Constitution of the Federal Republic of Nigeria (Fifth Alteration) Bill No. 39, 2022. It provides for the report of the review of the revenue allocation formula to

be submitted first to the President, who shall table it before the National Assembly. However, if after 60 days, the President does not forward it to the National Assembly, the Commission shall submit it to the National Assembly for necessary legislative action.

- ii. Subclause (9) of the Bill empowering the State House of Assembly of each State to pass a law prescribing the portion of allocation from the Federation Account to pay primary school teachers and for other purposes it may determine is ambiguous. It also gives broad discretionary powers to State legislatures that may undermine the financial autonomy of LGs. There is a need to redraft the clause first to clarify where the portion referred to in subclause (10) will be drawn from – will it be drawn from allocations due to the Local Government alone or from the allocations due to the State and Local Government? Secondly, there should be clarity as to whether the payment of primary school teachers' salaries is exclusively the responsibility of local governments or one to be shared with the state or all levels of government. Lastly, the Bill should constrain State Houses of Assembly by limiting the scope of their powers, in this case, to prescribe the portion of allocation from the Federation Account to pay primary school teachers' salaries alone. Deleting the words “and for other purposes” is advisable.

Considering the preceding, this Bill will benefit tremendously from the Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) Bill, No. 1, 2022 on Local Government Financial Autonomy. In the Bill, the responsibility for payment of teaching and non-teaching staff of the Universal Basic Education Scheme was expressly shared between the Federal, States and Local Government Councils in such percentages as may be prescribed by an Act of the National Assembly but such that the amount to be deducted from the Local Government Councils shall be lower than those of the other tiers of government.

- iii. The proposed amendment regarding savings or creation of a reserve fund in clause 1 (4) and (5) does not stipulate what is to be done with the savings within the prescribed five-year period and leaves the details to be worked out by an Act of the National Assembly. It also does not clarify whether the savings is meant to be one-off i.e., monies saved for five years, then disbursed and no more or whether it should be done consecutively.

Efforts by the federal government to create reserve funds such as the Excess Crude Account and the Sovereign Wealth Fund (backed by the Nigeria Sovereign Investment Authority Act, 2011) to save and manage resources for Nigerians have been criticised for being unconstitutional and resisted by the States. Even though both

funds are owned by the three tiers of government, some have argued that they are a circumvention of due process as the Federation Account mentioned in section 162 of the constitution is the only constitutionally recognised mechanism for revenue distribution. As such, there have been calls for an amendment of this provision to allow monies to be saved from the Federation Account and this bill attempts to do that.

While it can help generate long-term economic benefits, several essential conditions must be fulfilled to produce the intended results. As such, adequate information must be reported to the relevant agencies, and accurate data must be included in national accounts and monetary, government finance, and external sector statistics. More so, clear accountability procedures among the different levels of the Fund's governance and to the public are important to prevent misuse of public resources and gain public support for the Fund and its objectives.

CONCLUSION

This bill primarily deals with local government financial autonomy but tackles three issues in section 162 of the Constitution.

First, it grants financial independence to local governments by abolishing the existing State Joint Local Government Account and empowering local governments to maintain a special account into which all allocations due to them shall be paid directly from the Federation Account and the state government. This is to address challenges of illegal deductions and diversion of local government monies by state governments, delays in remittance of funds and deliberate withholding of local government funds by the state. The ultimate objective is to empower the local governments to improve basic public services and promote development in rural areas.

Secondly, it provides for savings of ten percent of revenue accruing to the Federation Account before disbursement to the three tiers of government. The aim is to encourage savings of national resources for the benefit of Nigerians, for unpredictable situations and to help stabilize the economy in the event of revenue shortfalls.

Thirdly, it seeks to empower the Revenue Mobilisation Allocation and Fiscal Commission, instead of the President, to directly send proposals for revenue allocation to the National Assembly. This is to expedite the process and ensure that

the allocation formula is in conformity with changing realities in the country.

These are three politically contentious issues that have been tabled before previous Assemblies. It is advisable to put them in three separate different bills as is the current practice of the National Assembly on such matters. This is to avoid the rejection of one proposal affecting the adoption of another. More importantly, there needs to be negotiations around these proposals if they are to pass.



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.

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