



**JUDICIAL INDEPENDENCE AND
JUSTICE REFORM PROJECT:
UNDERSTANDING THE PRESIDENTIAL
EXECUTIVE ORDER NO.10 OF 2020**

Introduction

The Nigerian constitutional jurisprudence is no bed fellows with presidential Executive Orders as is prevalent in other democracies like the United States of America. In the history of the Nigerian nascent democracy, no civilian president has issued any of such orders. However, with the coming into power of the present administration since 2015, the nation has witnessed a little transformation in this regard as we now live with Executive Orders. The subject of this discourse is the tenth in the series of such orders. These presidential Executive Orders are derivatives of the presidential power enshrined in **Section 5** of the Constitution of the Federal Republic of Nigeria, 1999 (As amended – “1999 Constitution”). Executive Orders are defined as “rules of order issued by the president and having the full force of law.

While this discourse is not on the validity or otherwise of the recent Executive Order signed into law by President Muhammadu Buhari (GCFR), it is worthy of note to mention, that the definition of Executive Orders as rules issued by a president that have legal effect, raises issues about the nature of Executive Orders. It has been noted that Executive Orders have the force of law. This however, begs for question for the rule of law both from a constitutional and administrative law perspectives in the consideration of the principle of separation of power. It is a universal truism that in order to guarantee the liberty and freedom of the people, power is not to be concentrated in one person or organ. Hence, where the entire power of government is concentrated in one person or organ, room may have been inadvertently or intentionally created for abuse and tyranny. Modern constitutional democracies have therefore settled on separation of power as a fundamental cornerstone of the rule of law and the Nigerian Constitution is not an exception as it gives an elaborate expression to this fundamental idea by separating the legislative, executive and judicial powers. The Nigerian Constitution has also enshrined the requirement for moderation of power by institutionalizing checks and balances mechanism in its provisions.

The Presidential Executive Order 10 of 2020

On Friday, May 22, 2020 the President signed into law the Executive Order No.10 of 2020, for the implementation of the financial autonomy of the State level Legislature and Judiciary arms of the government. Accordingly, the President signed the Executive Order into law pursuant to the power vested in him as the President of the Federal Republic of Nigeria under **Section 5** of the 1999 Constitution which by extension applies to the execution and maintenance of the Constitution, laws made by the National Assembly (including but not limited to **Section 121(3)** also of the 1999 Constitution. **Section 121 (3)** specifically guarantees the financial autonomy of both the State Legislature and Judiciary. By this constitutionally guaranteed autonomy, State Legislature and Judiciary are meant to receive their monthly allocations directly from the Consolidated Revenue Fund and operate independent of the State Executive, while observing accountability in line with the tenets of democracy.

Before now, the independence of the two arms of government at the State level in reality as required by rule of law, had often been perceived to be a mirage since the funding of both arms of government is done by the Executive arm. There has always been the popular favoured argument that the State Executive uses this to arm-twist the other two arms of government in doing its bidding. However, with this regime reinforced by the Executive Order, the finances of the two arms of government at the State level will henceforth get directly to them. One of the key provisions of the Executive Order states as follows:

“The Accountant-General of the Federation shall by this Order and such any other Orders, Regulations or Guidelines as may be issued by the Attorney-General of the Federation and Minister of Justice, 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)”.

Consequently, and on the basis of the Executive Order, all States of the Federation shall include the allocations of their Legislative and Judicial arms of government in their Appropriation Laws.

Judicial Independence and Justice Reform Project

There has been an age long clamour for judicial independence and reform of the Nigerian justice system, therefore it cannot be over emphasized that the intent of this Executive Order to foster the financial autonomy and guarantee independence of the judicial arm of the Government of a State is applaudable.

The independence of the various arms of government is crucial to the doctrine of separation of powers, which is a key ingredient of any democracy. Thus, the Executive Order No. 10, in this regard, enforces the doctrine of separation of powers and the independence particularly of the judiciary arm of government from the financial control of the Executive arm of government. There has been a long time clamour for the financial autonomy of the judiciary, no less so than by the Chief Justice of Nigeria, amongst others, who had pressed home the need for State Governors to respect the independence of the Judiciary by ensuring the financial autonomy of the Court, stressing that anything such of that will be an abuse of the rule of law and undemocratic. This Executive Order has now answered the clarion call.

As it were in the old regime, there is no gainsaying that he who pays the piper, can reasonably be adjudged to dictate the tune. However, with the present state of affairs, while Judges always aim at delivering justice in matters before them, it is reasonably expected that Judges will now be further emboldened to deliver justice in the cases before them, without fear or favour, especially where said cases involve the State Government.

Furthermore, a financially autonomous judiciary is very likely to result in a significant increase in the booster of public confidence in the judicial system of a State. In this regard, it is fathomable that there will be an increase in resorting (or submission) to the Courts for resolution of disputes. This will also lead to an increase in the sense of security in the respective States, where there is a general confidence in the ability of the Court to adjudicate fairly on matters before it. Another corollary effect of this increase in public confidence will also lead to increase in both local and foreign investments, as the believe of investors in the justice system of the States will be further strengthened. The quality of the dispute resolution mechanism of the State Court is always a key consideration of investors in setting up or investing in businesses in any locality. An investor will generally be more inclined towards setting up or investing in a business where the judicial system is financially independent and not seen to be capable of

being swayed or influenced by monetary concerns, than one where the funding of the judicial system is subject to the control as well as whims and caprices of another.

Another likely benefit of the financial autonomy afforded by the Executive Order No. 10 is the infrastructural development of the Court system, and the ability of the judiciary to fund and embark on necessary projects, without the indignity of having to go cap in hand, or with an aluminum bowl and a walking stick, to the Executive arm of the Government of a State, seeking funding for the most mundane activity. Such projects could include the provision of better, more or larger physical infrastructure for the Courts, as necessary, or the need for the embracement of technology in the administration of justice and the judicial system, as brought to the fore by the ongoing Covid-19 pandemic, which has exposed our near-total and crippling reliance on the physical acts of filing and participating in Court proceedings. It is expected that the judiciary of the various States will use the opportunity to upgrade their facilities and to adopt and promote the use of technology in this regard, to ensure a smooth and largely uninterrupted access to the Courts and administration of justice system in the respective States, to prevent a repeat of the current impasse, occasioned by the Covid-19 pandemic.

A further point in mind is that a State Judiciary that is financially autonomous, will be better suited to cater for the continuous legal education of its judges and other judicial officers essential for the administration of justice, which in the context of this section, will also include magistrates. Continuous legal education of these officers is necessary to ensure that they are kept abreast of the evolving global developments in law and those other sectors which are likely to have corollary effects on law, from various jurisprudence and jurisdictions. This will aid broader perspectives and insights, as well as higher quality, positive and just judgments, and ultimately, a progressive and better-functioning society.

While the above remains the expected commendable benefits that will come with the signing into law of Executive Order No. 10, it is to be noted that there is a deeper malaise in the administration of justice and justice delivery in Nigeria that has generated a crisis of confidence that is currently shaking the judiciary and the legal profession in Nigeria in an unprecedented manner.

There is a widespread perception that corruption exist in the judiciary in an

alarming magnitude and this perception is supported by anecdotal evidence. These corrupt practices sponsored by some unscrupulous litigants and complicit lawyers come in different shades. There is also a gross failure of the system in the area of self-regulation in the judiciary and the legal profession as a whole. Lack of transparency in the use of basic ethos of governance in the processes and procedures of the relevant judicial institutions is at the heart of the challenges currently bedeviling the judiciary.

Therefore, there is an urgent need for self-introspection and evaluation with the ultimate aim of creating a robust systemic reform of the Nigerian judiciary and the legal profession. As aptly identified by the Justice Reform Project (JRP) group, led by Nigeria's finest and respected Senior Advocates, some critical aspects of Nigeria's justice delivery system call for immediate review and reform. These include, the composition, constitution, functions and internal controls of the National Judicial Council; the process for the appointment, continuing education and promotion of judicial officers; the process for the discipline and regulation of judicial officers; terms and conditions of service of judicial officers; judicial ethics, values and the relationship of the Bench with the Bar; as well as the process for the appointment of lawyers to the Body of Benchers.

Other critical issues are, the composition, constitution and internal controls of the Legal Practitioners Privileges Committee; the process and criteria for the conferment of the rank of Senior Advocate of Nigeria; the roles and responsibilities of Senior Advocates of Nigeria as leaders of the Bar; the regulation and discipline of Legal Practitioners; ethics, values and standards of legal practice and the composition, constitution and internal controls of the National Executive Committee of the Nigerian Bar Association.

Conclusion

In closing, with the content and communicated intent of this Executive Order No. 10, the nation is definitely on the right track in its journey towards the attainment of an actual independence of the judiciary, within the context of the golden democratic principles of the Rule of Law. However, it goes beyond just financial autonomy. The need is urgent for all stakeholders within the justice system to join hands and contribute positively in the efforts towards repositioning this arm of government for a better egalitarian society, for the betterment of the all.

For further information on the foregoing (none of which should be construed to be an actual legal advice), please contact:

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