

MEMORANDUM
FOR AMENDMENTS TO FISCAL GOVERNANCE PROVISIONS OF
THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA
1999 (AS AMENDED)

SUBMITTED BY



RC: 737676

CENTRE FOR SOCIAL JUSTICE (CSJ)

No 17, Flat 2, Yaounde Street, Wuse Zone 6,

P.O. Box 11418 Garki, Abuja

Tel - 08127235995; 08055070909

Website: www.csj-ng.org; Blog: csj-blog.org

Email: censoj@gmail.com

Constitutional Provision	Recommendation	Mischief in Existing Provisions and Justification for the Recommendations
<p>S.81 (1): The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.</p>	<p>S. 81 (1): The President shall cause to be prepared and laid before each House of the National Assembly before the end of August in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.</p>	<p>There is no time frame in the Constitution for the presentation of the estimates of revenues and expenditure. This has led to perennial late presentation of the estimates by the President to the National Assembly. This also leads to the late passage of budgets by the legislature, poor capital budget implementation and perennial failure of budgets to realize their stated objectives. The legislature needs a minimum of four months to conclude deliberations on the budget.</p> <p>The facts speak for themselves; the 2006 budget was presented to the National Assembly on December 6 2005 and signed into law on February 22 2006; 2007 budget was presented on October 11 2006 and signed into law on December 22 2006; 2008 budget was presented on November 8 2007 and signed into law on April 11 2008; 2009 budget was presented on December 2 2008 and signed into law on March 8 2009, while the 2010 budget was presented on November 23 2009 and signed in April 2010. The 2011 budget was presented on December 15 2010 and was signed into law after the end of the first quarter, while the 2012 budget was presented on December 13 2011 and signed into law in April 2012.</p>
<p>S.121 (1): The Governor shall cause to be prepared and laid before the House of Assembly at any time before the commencement of each financial year</p>	<p>S.121 (1): The Governor shall cause to be prepared and laid before the House of Assembly before the end of August of each financial year estimates of the</p>	<p>There is no time frame in the Constitution for the presentation of the estimates. This has led to late presentation of the estimates by Governors to the State Houses of Assembly.</p>

<p>estimates of the revenues and expenditure of the State for the next following financial year.</p>	<p>revenues and expenditure of the State for the next following financial year.</p>	<p>This also leads to the late passage of budgets by the legislature, poor capital budget implementation and perennial failure of budgets to realize their stated objectives. The legislature needs a minimum of four months to conclude deliberations on the budget.</p>
<p>S.81 (3): The amount standing to the credit of the -</p> <p>(a) Independent National Electoral Commission,</p> <p>(b) National Assembly, and</p> <p>(c) Judiciary,</p> <p>in the Consolidated Revenue Fund of the Federation shall be paid directly to the said bodies respectively; in the case of the Judiciary, such amount shall be paid to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the States under section 6 of this Constitution.</p> <p>S.121 (3): Any amount standing to the credit of the Judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the courts concerned.</p>	<p>A new subsection (4) in line with subsection (3) and renumber the existing subsection (4) as subsection (5):</p> <p>S. 81 (4): Any amount standing to the credit of the Auditor-General of the Federation in the Consolidated Revenue Fund of the Federation shall be paid directly to a fund established by the Auditor General.</p> <p>A new subsection (4) in line with subsection (3) and renumber the existing subsection (4) as subsection (5):</p> <p>S. 121 (4): Any amount standing to the credit of the Auditor-General of the State in the Consolidated Revenue Fund of the State shall be paid directly to a fund established by the Auditor General.</p>	<p>By section 85 (6), the Auditor-General in the exercise of his functions shall not be subject to the direction or control of any other authority. This is an affirmation of the independence of the Auditor-General. However, there can be no independence without the building blocks of financial autonomy. A situation (as is presently the case) where the Auditor-General goes cap in hand to the executive who he is to audit, for funds cannot be supportive of independent audit work. If financial autonomy is good for the Judiciary, Independent National Electoral Commission and the National Assembly, then, the Auditor-General's office surely needs that autonomy more. If Nigeria is serious about combating corruption, the Auditor General's office needs to be strengthened through financial autonomy. The funding for the office should come by way of statutory transfer.</p>

<p>S.84 (7): The recurrent expenditure of judicial offices in the Federation (in addition to salaries and allowances of the judicial officers mentioned in subsection (4) of this section) shall be a charge on the Consolidated Revenue Fund of the Federation.</p> <p>(8) The recurrent expenditure of the Independent National Electoral Commission, in addition to salaries and allowances of the Chairman and members, shall be a charge upon the Consolidated Revenue Fund of the Federation.</p> <p>S.124: A new subsection (6) is needed.</p>	<p>A new subsection (9) partially modeled after subsection (7) and (8) as follows:</p> <p>S. 84 (9): The recurrent expenditure of the office of the Auditor-General for the Federation shall be a charge on the Consolidated Revenue Fund of the Federation.</p> <p>Add a new subsection (6) to section 124 to provide for the Auditor-General at the State level:</p> <p>S.124 (6): The recurrent expenditure of the office of the Auditor-General for each State shall be a charge on the Consolidated Revenue Fund of the State.</p>	<p>Independence and the enabling environment to discharge the functions of the Auditor-General's office as anticipated by the Constitution would be facilitated by the recurrent expenditure being a charge on the Consolidated Revenue Fund of the Federation. Currently, it is only the salary and allowances of the Auditor-General that is a charge upon the Consolidated Revenue Fund.</p> <p>The same arguments at the Federal level also apply to State level Auditor-General.</p>
<p>S. 85 (3): Nothing in subsection (2) of this section shall be construed as authorizing the Auditor-General to audit the accounts of or appoint auditors for government statutory corporations, commissions, authorities, agencies, including all persons and bodies established by an Act of the National Assembly, but the Auditor-General shall-</p> <p>(a) provide such bodies with-</p>	<p>Delete section 85 (3) and section 125 (3).</p>	<p>The provisions which exclude the Auditor-General from auditing the books of parastatals, commissions and certain agencies is not in tandem with the demands of transparency and accountability. For the management of an agency facing audit to be the ones appointing the auditor, approving and paying his fees essentially weakens the independence and impartiality of the auditor. The danger of collusions and excessive familiarity between the managers and the auditor is ever present in such arrangements.</p>

<p>(i) a list of auditors qualified to be appointed by them as external auditors and from which the bodies shall appoint their external auditors, and</p> <p>(ii) a guidelines on the level of fees to be paid to external auditors; and</p> <p>(b) comment on their annual accounts and auditor's reports thereon.</p> <p>Section 125 (3) replicates section 85 (3).</p>		<p>The Auditors-General of the Federation and of the States should be allowed to audit all public agencies.</p>
<p>S.85 (5): The Auditor-General shall, within ninety days of receipt of Accountant-General's financial statement, submit his reports under this section to each House of the National Assembly and each House shall cause the report to be considered by a committee of the House responsible for public accounts.</p> <p>S.125 (5): The Auditor-General for a State shall, within ninety days of receipt of Accountant-General's financial statement and annual</p>	<p>Provide a time frame for the Accountant-General to submit the financial statements to the Auditor-General as a new subsection (6) to sections 85 and 125 and renumber the remaining subsections accordingly:</p> <p>S. 85 (6): Within the period of three months after the end of each financial year, the Accountant-General shall sign and present to the Auditor-General a financial statement showing fully the financial position of the Federal Government of Nigeria on the last day of such financial year.</p> <p>S.125 (6): Within the period of three months after the end of each financial year, the Accountant-General of a State shall sign and present to the Auditor-</p>	<p>It is imperative to provide a time frame for the Accountant-General to conclude his work since the Auditor-General's work will start only when the Accountant-General submits the financial statements. Otherwise, the current practice of late submission and consideration of audit reports will continue.</p>

<p>accounts of the State, submit his reports to the House of Assembly of the State and the House shall cause the report to be considered by a committee of the House responsible for public accounts.</p>	<p>General of the State a financial statement and annual accounts showing fully the financial position of the State Government on the last day of such financial year.</p>	
<p>S.162 (2): The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:</p> <p>Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources.</p>	<p>Amend the proviso to read:</p> <p>Provided that the continental shelf of a State shall be deemed to be part of the State and the principle of derivation shall be constantly reflected in any approved formula as being not less than fifty percent of the revenue accruing to the Federation Account directly from any resources.</p>	<p>There is no Nigeria without the component units and the continental shelf belonging to the Nigerian State in international law is situated within a State that is a federating unit in Nigeria. This was the position in the 1960 and 1963 Constitutions.</p> <p>The current 13% derivation is obviously too low and not in tandem with the practice immediately after independence. Derivation under S.134 of the 1960 Constitution and reproduced in S.140 of the 1963 Constitution was pegged at 50%.</p> <p>Secondly, restricting derivation only to natural resources is unfair because whether resources are natural or other resources, they are derived from a certain State or location. Therefore, derivation should not be limited to natural resources but to any resources from which there are accruals to the Federation Account.</p>
<p>S.162 (5): The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may</p>	<p>S.162 (5): The amount standing to the credit of local government councils in the Federation Account shall be directly allocated to the local government councils on such terms and in such manner as may be prescribed by the National Assembly.</p>	<p>The State Joint Local Government Account offers no visible advantages but only impedes development at the local government level. States have repeatedly mismanaged and stolen local government funds. It has therefore become necessary for direct funding and</p>

<p>be prescribed by the National Assembly.</p> <p>(6) Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.</p>	<p>Delete subsection (6).</p>	<p>allocation of local government funds instead of the joint account approach. However, it may be argued that local governments have no business receiving funding from the Federation Account since they are not federating units. It is submitted that once the decision is made for local governments to receive funding from the Federation Account (which is the position of this memorandum), then the meddlesomeness of the State is unnecessary.</p>
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