

POLICY BRIEF

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LEGAL FRAMEWORK FOR ACTUALIZING PRESIDENTIAL DIRECTIVES ON IMPLEMENTATION OF THE ORONSAYE COMMITTEE REPORT

By

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Executive Summary

President Bola Ahmed Tinubu recently directed the full implementation of the recommendations of the Oronsaye Committee Report on rationalization and harmonisation of Federal Government establishments. To effect this directives the President set up a Committee giving it twelve weeks to conclude its assignment. This brief explores the legal framework for implementation of the recommendations of the Oronsaye Reports. The brief relies on legal principles, the Constitution of the Federal Republic of Nigeria 1999 and statutes establishing the relevant agencies affected on the Report and secondary sources like articles and newspaper reports. The brief finds that the Constitution

vests the President with executive powers that could be deployed in the implementation of some of the recommendations. Other portions of the recommendations however require legislative action. The brief recommends that the National Assembly should commence action to provide legislative cover for those aspects of the recommendations that require legislation.

Keywords: Constitutional Democracy, Cost of Governance, Legislation, Presidential Directive, Oronsaye Report

INTRODUCTION

The purpose of this policy brief is to examine the legal frameworks and options open to the

president for the implementation of the recommendations of the Oransaye report. Nigeria is a Constitutional Democracy and this requires that all government actions must be carried out by the law, specifically the Constitution. In this context, the law governs both the procedural requirement for fulfilment of a government duty and substantive provisions as to the expanse or extent of a government duties or responsibility. Government in Nigeria refers to the Federal, State and local government. Each of these governments have their scope of authority as defined by the Constitution and further laid out by Acts of the National Assembly or Laws. Being a federal system, the powers of each of these government are outlined within their various legislative competence. In other words, only on those items upon which a government has powers to make laws that it can also exercise its executive powers. These legislative competences and executive powers are what comes into play in the implementation of the recommendations of the Oransaye's Committee.

Given that this directive was issued by the executive, this policy brief explores the extent of this power, the role the legislature may play and options open for the fulfilment of the directive. To meet this purpose, the remaining part of this brief is structured as follows. The next part covers the legal framework for the exercise of government powers. This is followed by an examination of the legal framework for the implementation of presidential directive and its implications. Next is an outline of recommendations. The policy brief ends with a conclusion.

LEGAL FRAMEWORK

The exercise of government powers is as expressly provided in the Constitution. This includes legislative, Executive and Judicial powers. Judicial powers are as provided under section 4 of the Constitution. By this section, legislative competence is divided into Exclusive Legislative List (ELL), Current Legislative List (CLL) and Residual Legislative Lists (RLL). While the Exclusive and Concurrent legislative list are expressly stated, residual list comprises of all that are neither in the Exclusive nor Concurrent legislative list. In other words, the powers of the government in Nigeria include those items specifically listed under section 4 in any of the ELL, CLL and RLL.

It is over these items that the Executive may issue directive to implement them or the provisions of the Constitution. This power is captured in section 5 of the constitution. In relation to the President, this is provided thus:

“5(a) the executive powers of the Federation shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation; and

5(b) the executive powers of the Federation shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.”

From the above provisions it is clear that the President, either directly or through its

ministers and public officers have the powers but only in relation to matters which the national assembly has powers to make laws. In other words, outside these items over which the President has been given powers by the Constitution, it does not have power of maintenance and execution. This power to maintain also does not include the power to make laws or interpret them. Following the principle of separation of powers, the Constitution has distributed these roles to different arms of government. The Legislature makes the laws, the executive executes them and the judiciary interprets the laws.

It is against these constitutional scope and limit that we examine the president's directives. The government, through the Executive can set policy objectives and directive principles within the mandates of Chapter II of the Constitution. However, their translation into actionable policies require legislative input. At the national level, this is to be effected by the National Assembly. Where this constitutional powers is breached, any law made pursuant to such error or directive given in that regard will be null and void to the extent of its inconsistency with the Constitution.

However, with regards to execution and maintenance of extant laws and policies, this remains within the constitutional mandate of the executive. These include power to execute the Constitution and extant laws; maintain the constitution and extant laws and matters on which the National Assembly has powers to make laws. The exercise of these powers need not be carried out directly by the President. He has the power to delegate to ministers and other public officers at the

federal level. It is on this authority that the President issued the directive.

The President at the Federal Executive Council meeting of 26th of February directed an eight-man Committee to implement the recommendations of the Oronsaye panel on the restructuring and rationalization of Federal Agencies, parastatals, and commissions was taken. The Committee was to ensure that necessary legislative and administrative actions were taken within 12 weeks to implement the recommendations of the Oronsaye Committee. The question therefore is how this directive may be implemented.

THE LEGAL FRAMEWORK FOR IMPLEMENTING THE DIRECTIVE

According to the Senior Special Assistant to the President on Print Media, Abdulaziz Abdulaziz there were a total of 15 Federal Agencies established by an Act of the National Assembly which were to be merged, 11 Federal Agencies to be subsumed into federal ministries as Departments; 4 Agencies to be relocated to different Federal Ministries and 2 Federal Agencies to be scrapped. These grouping suggested different legal frameworks and procedures for effecting the directive.

Merging Agencies

Federal Agencies are established by Acts of the National Assembly. This is pursuant to the powers of the National Assembly to make laws under section 4 of the Constitution. Merging will probably occur where there is duplication of functions or function overlap between agencies. Duplication in this instance occurs when more than one agency is

established to perform related or similar functions. To merge these agencies therefore requires either:

- a. An amendment of the extant laws to reflect the objectives of the two agencies and also a structure that will enable the new agency to carry out the two different set of functions performed by the two agencies, or
- b. A new enactment repealing the two agencies and establishing the new one with harmonized functions that enables the new agency to perform the functions originally performed by the defunct agencies.

This will require an analysis of the functions and institutional structures of the two agencies in order to identify any overlap or duplication. If any overlap or duplication is detected, they will be harmonized. The harmonized legal and institutional framework can now be enacted into law, using any of the approaches above. This however, can only be effected by the national assembly after which the President will be required to assent to the Bill and turn it into an Act of the National Assembly.

Subsuming Agencies

This suggests that the Agencies are performing quite similar functions and that the problem is more of fragmentation than duplication. Fragmentation occurs when more than one agencies are created to perfume functions that could ordinarily be performed by one agency. In such instance there is a natural affinity or progression between the functions performed by one agency that all that may be required s to extend is powers to

perform the new functions. To subsume agencies, there is the options of:

Amending the establishment law of the primary agency (the first to be established) to include the functions performed by the secondary agency. The new agency may then be required to create new departments, if necessary, to perform the new functions.

Direct the primary agency or the Agency with larger structure and facilities to establish more Departments and divisions to take on the job of the defunct agency. In this circumstance, there may be now need to amend the establishment Act of the agency chosen to stay.

However, either of this options will also require an Act repealing the defunct agency.

Relocation of Agencies to different Ministries

This requires allocating the supervision and executive oversight of an agency to a ministry. This generally may not require a legislative action depending on the legal framework of the affected agencies. Accordingly, there are two possible options:

- a. Where the establishment law of the relevant agency has categorically stated the supervisory ministry of the agency a law is required to effect such relocation. This new law will give the new ministry the statutory power and legality to supervise the agency. For instance, if the law establishing an agency defines the Minister to mean the Minister responsible for agriculture or states categorically that Minister means Minister of Agriculture, a new law will be required to relocate it the agency to a different ministry.

- b. Where the law of the relevant agency is not categorical about the supervisory ministry or only states that ministry or minister means any minister responsible for the subject matter of the agency or Minister responsible for the agency, there will be no need for an amendment of the establishment law.

This above options are possible because the President, under section 5 of the Constitution has the power to direct any minister to execute and maintain the constitution and extant law. Maintaining and executing extant law means executing and maintaining them as they are and not changing their content unilaterally. Where however, the maintenance and execution requires a change in the law, then that function can only be performed by the National Assembly.

Scrapping Agencies

This option is quite straightforward and requires very little legislative action. The intent is as note in the directive is to retain the function but to scrap the agency. Already there are supervisory agencies overseeing the functions of the affected agency. The directive requires that the functions of the agencies be transferred to departments in the ministry while the agency is scrapped.

To effect this directive only requires an Act of the National Assembly repealing the affected agency. However, where the agency or body, like the Niger Delta Power Holding Company is not established by an Act of the National Assembly, that means that there is no Act to repeal and therefore no need for a repealing Act.

RECOMMENDATIONS

The work committee should commence its activities by first identifying the status of each of the agencies or parastatals, confirming whether they are established by an Act of the National Assembly or policy directive. The Committee should also identify the Agencies with overlapping functions, agencies with duplicating functions and agencies with functions that are already being performed or may be performed by departments in relevant ministry. The result of this analysis should then be compared against the presidential directive.

When this identification and analysis is completed, the Committee can sort out the ones that will need legislative process and further advise the appropriate body to commence the drafting of Bills to present to the National Assembly and the ones that do not need legislative action should also be identified and advise the Government to issue proper executive or presidential directives pursuant to the executive power of the President.

From the above analysis, the following recommendations are made:

- a. Agencies established by government policy do not need a legal framework to be scrapped, merged, subsumed, or relocated. An Act will only be needed to add their functions to existing Act.
- b. Agencies that were established by legal framework need legal framework to be scrapped, merged, relocated, or subsumed. Consequently, the President needs to refer the agencies involved in the re-structuring

process to the law makers for legislative action.

Assembly needs to enact an Act or Acts scrapping the relevant agencies.

c. The legislative activities to be performed by the National Assembly in relation to the restructuring process requires the passing of bills by both the Senate and House of Representatives and assented to by the President. As such, the thirteen Agencies to be merged need to be facilitated by Acts of the National Assembly. The National Assembly need to draft amendment bills for each Agency to be merged providing that one of the Agency will be merged with the other Agency and the Agency to be merged will be repealed in the same amendment bill. For instance, Nigerian Investment Promotion Commission will be merged with Nigerian Export Promotion Council by amending the Nigerian Export Promotion Council Act to provide for the merging and also provide for the repeal of the Nigerian Investment Promotion Commission.

c. The same mode of amendment should apply to Agencies that are being subsumed by other Agencies.

d. Most of the Agencies that are being relocated to another Agency or Ministry were established by government policy. Therefore, they do not require law to be relocated. The President only needs to direct the receiving Ministry or Agency to implement the directive. Amended will only arise is the establishment Act had specifically mentioned a supervisory agency other than the one mentioned in the presidential directive.

e. For agencies to be scrapped, where they were established by law, the National

CONCLUSION

The President has the power to direct the execution and maintenance of laws, especially the Constitution and Acts of the National Assembly. However, the President cannot go beyond his mandate and perform functions vested in the legislature. With regards to Agencies, Commissions, Institutions, etc. created by government policy, the President has the power to issue directives on such Agencies which must be implemented. Where such Agencies, Commissions and Institutions are established by law, the directives of the President, where they concern the merging, subsuming, scrapping or relocation of such entities, cannot be implemented without the intervention of the Legislature. The lawmakers are mandated by section 4 of the CFRN 1999, to make laws, which includes amending and repealing laws and section 58 of the CFRN 1999 provides the mode of making such laws, which is by passing Bills in the House of Representatives and Senate. This brief concludes that the directives of the President on the restructuring of the Federal Government Agencies must be implemented after careful consideration and compliance with extant laws and the Constitution.