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THE PRESIDENTIAL EXECUTIVE ORDER TO SAFEGUARD FEDERATION OIL AND GAS REVENUES AND PROVIDE REGULATORY CLARITY, 2026

Commentary by

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On February 13, 2026, the President of the Federal Republic of Nigeria signed Executive Order 9 of 2026 ("the Order") pursuant to Section 5 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (" the Constitution"). The order mandates direct remittances of all Royalty Oil, Tax Oil, Profit Oil, Profit Gas, and other government entitlements under Production Sharing and related Contracts to the Federation Account to curb leakages, eliminate duplicative deductions and restore constitutional revenue
entitlements of the Federal, State and Local Governments which were hitherto removed by the Petroleum Industry Act 2021 (" the PIA"). The legality of the Order has sparked nationwide controversy because its effect is the suspension of the certain provisions of the PIA, an act of the National Assembly. This commentary is a weigh in on this burning debate.

The legal, governance, and fiscal framework of the Petroleum Industry is principally regulated by the PIA. Section 1 of the PIA vests property and ownership of petroleum within Nigeria and its territorial waters in the Government of the Federation. This provision aligns with Section 44(3) of the Constitution, which establishes federal ownership and control of petroleum resources. By Section 64(b) and (c) of the PIA, the Nigerian National Petroleum Company Limited ("NNPC Limited") is to retain 30% of Federation revenues as a management fee on Profit Oil and Profit Gas derived from Production Sharing Contracts, Profit Sharing Contracts, and Risk Services Contracts. The PIA also allows the retention of 30% of Profit Oil and Profit Gas for the Frontier Exploration Fund under Sections 9(4) and (5). The apparent inconsistencies between the provisions of Sections 9(4) and (5) and 64(b) and (c) of the PIA and Section 162(1) of the Constitution, underpin the Order.

In summary, Section 162(1) of the Constitution directs all revenues or moneys raised or received by the Federation to be paid into the Federation Account. Section 162(10) of the Constitution removes every doubt as to the constituents of revenue for purposes of funds payable into the Federation Account. It says "revenue" means:

> "Any income or return accruing to or derived by the Government of the Federation from any source and includes –
>
> (a) any receipt, however described, arising from the operation of any law;
>
> (b) any return, however described, arising from or in respect of any property held by the Government of the Federation;
>
> (c) Any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body."

The position of the law is that a narrow interpretation of the constitution would do violence to its provisions and fail to achieve the goal set by the Constitution and such must be avoided[1]. "Revenue" as defined under Section 162 (1) of the Constitution should be interpreted in a broad manner. At any rate, the categorization of revenue under Section 162 (10) of the Constitution for the purpose of the Federation Account contemplates, among other things, income arising from the operation of any law (in this case even the PIA).

[1] See Saraki v. FRN (2016) 3 NWLR (Pt. 1500) 531 at 631-632

It is equally important to note the use of the word **'shall'** in Section 162 (1) of the Constitution connotes compulsion, mandatory, peremptory and admits of no discretion[2]. For this purpose, there is no provision in the Constitution permitting any Act of parliament to derogate from this provision, especially if such derogation benefits only the Federal Government or any of its agencies. This is more so as the Federal Government is a trustee of the Federation Account for the constituent units. In AG **BENDEL STATE V. AG FEDERATION**[3] the Supreme Court held thus;

> "**The position of the Federal Government in maintaining the Federation Account is, by virtue of S. 149 (1) of the Constitution, that of a trustee for the State Governments and the Local Government Councils of the States. It is settled that it is the duty of a trustee to keep a proper account of the trust he administers.**"

Section 1(3) of the Constitution provides that any law inconsistent with the provision of the Constitution is void to the extent of the inconsistency. Consequently, the provisions of the PIA permitting NNPC Limited to retain portions of Federation revenues are inconsistent with the Constitution, and as such null and void to the extent of that inconsistency.

Section 5 of the Constitution vests executive powers in the President which powers are to be exercised in accordance with the Constitution and the doctrine of separation of powers delineating the powers of the Legislative, Executive and Judicial arms of government under Sections 4, 5 and 6 of the Constitution. Thus, where the President holds the view that the provision of an Act of the National Assembly is inconsistent with the Constitution, he is entitled to initiate an Executive Bill before the National Assembly to seek an amendment to bring the impugned provision into conformity with the Constitution. Alternatively, the President may invoke the jurisdiction of the courts to obtain a judicial determination on the alleged inconsistency. Nigerian constitutional jurisprudence has consistently treated the determination of constitutional invalidity as primarily a judicial function.[4]

However, it is important to consider the effect of an act considered void and by implication a nullity. It is now well settled that where an act is void, it is void and nothing can be added to it or even subtracted from it for that matter. It is expressed in the Latin ex nihilo nihil fit[5]. As Denning L.J. stated while commenting on nullity succinctly in **U.A.C. LTD. V. MACFOY**[6], "**If an act is void then it is in law a nullity. It is not only bad, but incurably bad...And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.**" Also, in **UDUCHE & ORS V. UDUCHE & ANOR**[7], the Court said: "**When an act is void, it remains void and nobody, not even a Court, can validate it or give life to it.**"

Consequently, given that the provisions of PIA being examine, contradicts Section 162 of the Constitution, even the President cannot by executive order give life to or take away from it. The provisions are incurably bad ab initio. It is taken that it never existed. It is founded on nothing

2 See Opara v. Amadi (2013) LPELR – 20747 (SC)

3 (1983) LPELR – 3153 (SC)

4 Olafisoye v Federal Republic of Nigeria (2004); Ugba v Suswam (2014) 14 NWLR (Pt. 1427) 264 (SC)

5 See Nzom & Anor v. Jinadu (1987) LPELR-2143(SC)

6 (1961) 3 ALL E.R at p.1172

7 (2017) LPELR-42884(CA) (Pp. 25 paras. D-D)

and is condemned to crumble like a pack of cards even without the aid of an executive order by the President. That 30% of Profit Oil and Profit Gas had hitherto been retained for the Frontier Exploration Fund pursuant to void provisions does not cure the nullity.

As such, the argument that by bypassing all available legal recourse, the President overstepped the limits of executive authority and acted beyond the constitutional mandate and that in doing so, the President effectively breached provisions of the Constitution, which he purports to uphold does not hold water. It is our argument that the action by the president was a mere surplusage. Whether he directed by an executive order that the Constitution be adhered to or he approached the court to strike down the offending provision of the PIA or he approached the legislature to amend the law does not take away from the nullity of the said provision which in law is non-existent for being void. In fact, there is nothing to set aside by executive order as it were.

In **KPEMA V. STATE**[8], the Supreme Court stated thus:

> **It is well settled that where an act is void and a nullity in law it is stricto sensu unnecessary for the person concerned by the act, because no legal effect results from such an act, to apply to have them set aside... This Court has similarly declared in Animashawun v. Osuma (1972) 4 S.C. 200 at p. 212 where it was said, "In the first place, when a party believes or has reason to believe that a transaction liable to affect his rights is null and void, he is under no obligation to ask for a declaration that the transaction is null and void. Moreover, we observe with respect that a void transaction cannot be set aside because being void ab initio there could be nothing set aside." (underlining ours).**

Furthermore, by virtue of Section 1 (1) of the Constitution, the provisions of the Constitution are superior to every provision made in an Act or Law and are binding on and must be observed and respected by all persons and authorities in Nigeria. This includes the President and also the legislature who cannot and should not make laws inconsistent with the Constitution. This is as all other legislations determine their validity by not being inconsistent with the provisions of the Constitution[9], which is the fons est origo.

In abiding obedience to the authority of the Constitution (which is highly placed than the PIA in the hierarchy of laws), the President, as the head of the Federal Government which is maintaining the federation account as a trustee for the constituent units has now taken upon himself the onerous duty (being head trustee of the Account) vide an executive order to not only maintain the Account, but to ensure that revenues and undertakings that improve the Account are collated and remitted thereto.

Going by the forgoing and in conclusion, the executive order issued by the President is merely a rehash of the provision of the Constitution. It is therefore unlikely that any Court will set aside the executive order.

[8] (1986) LPELR-1713(SC) (Pp. 31-32 paras. G)
[9] See Advertising Practitioners Council of Nigeria (Apcon) V. The Registered Trustees of International Covenant Ministerial Council (ICMC) & Ors (2010)

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