

## STATES &amp; LOCAL FINANCE



## The IGR Initiative

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**M**OST CITIZENS OF SOCIETY crave order, peace and equity and finance their ancillary architecture and infrastructure through their tax obligations. For many, it seems like an aberration to consider the deliberate deployment of this justice ecosystem, namely the judiciary, the police, special order and peace task forces and the prison institution for revenue generation. Champions of this line of thinking hold that while governments can appropriate revenue opportunities naturally from these institutions, they should not deliberately include revenue growth as their subsidiary objective. Governments' pecuniary objectives should not weaken society's peace, human rights, and justice aspirations. More so, the justice system's effectiveness manifests in the strength of the rule of law and private property rights protection, substantially determining the pace of entrepreneurial prosperity and the attendant subnational revenue prospects. On the other divide are scholars who hold that substantial revenue maximizing opportunities exist in virtually all aspects of governance, enabling further strengthening of good governance depending on the entrepreneurial focus of those in political authority. The justice system is not exempt. There are at least three ways in which the justice system contributes to subnational independent revenue growth, namely through its interpretation and enforcement of tax laws and rules, user fees for legal activities, fines for contravention and the recoveries of assets looted or in dispute.

Governments and their tax authorities have a claim on taxpayers through the instrumentality of tax laws, compelling the transmission of parts of their income and other assets to them. In the so-called social contract, the right of governments to impose taxes has traditionally become popular and supported by most people. Taxes become some form of payment for the provision of public goods, citizens' protection, and the rule of law primarily deemed government responsibility. Although there are many commonalities across the tax laws of different countries, their tax codes are typically distinct. Tax laws only deliver results with their enforcement and interpretation. Fortunately, these two functions operate within the justice system and fundamental legal framework. In the latter, ethical principles are operational, namely that the imposition of taxes must have the backing of the law applied impartially. At the same time, the raised

revenue is only deployable for lawful public purposes and not for the personal needs of those in authority. Therefore, tax laws and the resultant revenue effects would be absent without a properly functioning justice system.

People who break the law are subject to jail time, fines, injunctions, damages, and other unpleasant penalties. Fines and other forms of financial penalties contribute to public revenue. Most tax payment defaults, breaches of the peace and social order, environmental pollution such as waste disposal at unapproved sites and a legion of serious traffic safety violations now frequently result in fines of several hundred thousand naira. These constitute the infringement system designed to deter illegal activity and allow citizens to settle disputes outside of court by paying a fixed penalty. Sometimes the financial implications of infringement go beyond merely paying the applicable fines but may require the involvement of legal professionals. When combined with covering non-compliance penalties and the prosecution's legal costs, breaking the law is expensive. The infringement system increasingly gains popularity in government circles because of its fiscal attractiveness. First, it does not often incur the extra burden of complex legal processes and the attendant cost implications on maintaining the court system. Second, it rarely leads to jail terms requiring additional government spending to keep the prisoner. Third, when not excessive and unduly punitive, it promotes good governance and citizens' trust in the government.

The justice system, primarily the state judiciary, raises substantial funds for subnational governments and still holds significant prospects for expansion. The opportunity is equally open when state police come on stream. There are at least six significant sources of revenue from the state courts. The first is the filing of fees for suits and other court processes. There is hardly any engagement in the court that does not require the payment of fees tagged as "filing". The second, which may also fall into the "filing" category, is the payments made to obtain affidavits and oaths for several purposes. Since affidavits provide significant legal cover for all sorts, including missing documents and certificates, the demand for them is pretty high. The third is the fines imposed by the court as part of its judgments, which are sometimes both discretionary and arguably arbitrary. The judiciary also harvests significant revenue from probate commissions for grant-

## Leveraging the justice system to grow subnational IGR

ing letters of administration on estates. Since probate charges depend on the value of the estate, both real and liquid, the size of realizable amounts is usually quite huge. Other sources include the registration of a will and the execution of court orders by bailiffs. Fortunately, most states and local governments have a well-spread-out court system comprising customary, magistrate, and high courts, all in this business of generating revenue in the proclamation and execution of justice.

Despite these vast prospects, the judiciary, in particular, complains of inadequate funding of its operations, claiming financial marginalization compared to the executives and legislature, with the former determining what they get. The kernel of the protestations on financial autonomy derives its foundation from this seeming marginalization. Of course, the subsidiary implication is the impact of the funding inadequacy on the dispensation of justice. State judiciaries such as the Edo State believe they generate substantial revenue, at least enough to cover their recurrent spending and deserve financial autonomy. Albeit not within the subnational government structure, the prospective state police should also be one of the strongholds for nontax revenue. In their 2015 budget presentation, the Nigerian Senate committee on police affairs directed the police force to generate revenue for its activities. Like the judiciary, the police force has several channels through which it generates revenue, such as bail charges, police reports and extracts, corporate and VIP security services, etc.

While the activities of the police are currently outside the jurisdiction of subnational governments, some quasi-policing activities, such as traffic and waste management offences, considerably lie within their control. The offence management architecture of both activities generates substantial revenue for the subnational government that accords it proper attention. Compared to most other states in the country, Lagos State has much better-developed laws and violation management mechanisms for both activities. In some instances, traffic law violations can attract up to N200,000 penalties. Penalties for defaults in which management payments and other infringements on public sanitation law have severe financial implications. Unfortunately, most states in Nigeria do not have a management system close to that, thereby losing out on enormous revenue generation opportunities.

With pervasive corruption and the stealing of public funds, special investigative units and tribunals leading efforts in recovering looted funds remain necessary. At the federal level, recovered Abacha loot continues to enhance fiscal prospects. Once more, despite being federal justice institutions, organisations like the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and



Financial Crimes Commission (EFCC) have assisted in the investigation of numerous cases involving lost and stolen funds by various state governments, with significant recoveries in many of them. Recovered looted funds are to subnational governments what extraordinary income is to corporate organisations. As a result, subnational governments with the political will and liver to take on those who either misused or stole their wealth can leverage the justice system, such as special tribunals, ICPC and EFCC, to earn this extraordinary income where they apply.

Thus far, we have presented the subnational government's independent revenue prospects within the justice system as if they do not have side effects. As pointed out at the beginning, there are numerous concerns regarding profiteering or mainstreaming revenue objectives within the justice system. One obvious downside of this revenue expansion channel is the possibility of increasing fees payable on the consumption of judiciary services and the crowding out of those who may not be able to pay the increased fees to access justice. Secondly, a prioritised focus on revenue generation may result in target setting implications for punitive assessments and other revenue expropriation strategies that make life more uncomfortable for the citizens. Again, the race to meet targets can sometimes lead to abuse of laid-down judicial procedures and mischievous targeting of perceived enemies of the government to generate more revenue.

Untidy cities, infractions of traffic regulations and congestion, unpaid taxes, default on other financial obligations to the government, and official corruption are rooted in insufficient laws and their weak enforcement where they exist. Constantly, growing city populations across the country also put pressure on

hygiene and traffic conditions, prompting equally rising levels of infringement. The only way to contain the traffic menace and mounting refuse dump in many subnational government cities is to comprehensively implement the laws governing them. To ensure prompt prosecution of offenders expected to pay suitable fine options instead of imprisonment, the Lagos State government at one point established mobile courts accompanied by relevant governmental revenue collecting organisations. Such justice system-driven revenue campaigns enhance citizens' compliance and the enthronement of societal order and create a welcoming business environment.

In a final analysis, the justice system remains at the core of economic growth, the primary source of subnational revenue. Entrepreneurial progress is the driver of fiscal growth. However, without an effective justice system, there would be weak rule of law and inadequate property rights protection, which are the bedrock of entrepreneurial success and the minimization of underground economic activities. In the former, business activities blossom as the law protects business contracts and agreements and entrepreneurs' rights over legitimately acquired assets. The inevitable consequence is the continued growth of income and assets from which the government earns more revenue to the extent that the strength of their revenue collection institutions permits. In the latter, the law hunts down illicit business activities, creating unfair competition for firms operating legitimately and denying the government its well-deserved revenue.

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