IMPROVING SECURITY SECTOR GOVERNANCE AND EFFECTIVENESS:
AN ANALYSIS OF SELECTED SECURITY SECTOR REFORM BILLS BEFORE THE NIGERIAN NATIONAL ASSEMBLY
Improving Security Sector Governance and Effectiveness: An Analysis of Selected Security Sector Reform Bills Before the Nigerian National Assembly
# CONTENTS

<table>
<thead>
<tr>
<th>ACKNOWLEDGEMENT</th>
<th>ii</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXECUTIVE SUMMARY</td>
<td>iii</td>
</tr>
<tr>
<td>INTRODUCTION AND GENERAL BACKGROUND</td>
<td>1</td>
</tr>
<tr>
<td>Analysis Approach and Methodology</td>
<td>2</td>
</tr>
<tr>
<td>Research Limitations</td>
<td>2</td>
</tr>
<tr>
<td>Scope of Report</td>
<td>2</td>
</tr>
<tr>
<td>GLOBAL BEST PRINCIPLES/STANDARDS FOR SECURITY SECTOR REFORM</td>
<td>4</td>
</tr>
<tr>
<td>Role of the National Assembly in Security Sector Reform through Legislation and Legislative Oversight</td>
<td>5</td>
</tr>
<tr>
<td>ANALYSIS OF BILLS</td>
<td>8</td>
</tr>
<tr>
<td>ARMED FORCES</td>
<td>8</td>
</tr>
<tr>
<td>Armed Forces (Restriction on Use in Certain Internal Security Operations Etc.) Bill, 2017(SB341)</td>
<td>8</td>
</tr>
<tr>
<td>Armed Forces (Amendment) Bill, 2015 (HB 70)</td>
<td>16</td>
</tr>
<tr>
<td>Armed Forces Act (Amendment) Bill, 2015 (HB 149)</td>
<td>19</td>
</tr>
<tr>
<td>Armed Forces Act (Amendment) Bill 2016 (HB 802)</td>
<td>21</td>
</tr>
<tr>
<td>Defence Industries Corporation of Nigeria Bill, 2016 (HB 399)</td>
<td>25</td>
</tr>
<tr>
<td>Armed Forces (Amendment) Bill, 2016 (HB 411)</td>
<td>34</td>
</tr>
<tr>
<td>Army Colour (Prohibition of Use) (Amendment) Bill, 2016 (HB 687) consolidated with Army Colour (Prohibition of Use) Act (Amendment) Bill, 2015 (HB 46)</td>
<td>37</td>
</tr>
<tr>
<td>POLICE</td>
<td>40</td>
</tr>
<tr>
<td>Nigeria Police Development Fund (Establishment) Bill, 2016 (SB 433)</td>
<td>40</td>
</tr>
<tr>
<td>The Police (Amendment) Bill, 2018 (SB 453)</td>
<td>51</td>
</tr>
<tr>
<td>Crime and Criminal Tracking System Bill, 2015 (SB 03)</td>
<td>56</td>
</tr>
<tr>
<td>Firearms (Amendment) Bill, 2017 (SB489)</td>
<td>61</td>
</tr>
<tr>
<td>Firearms Act (Amendment) Bill, 2015 (HB 182)</td>
<td>64</td>
</tr>
<tr>
<td>PRISON REFORM</td>
<td>66</td>
</tr>
<tr>
<td>Nigerian Prisons and Correctional Service Bill, 2017 (SB125) AND Nigerian Prisons and Correctional Services Act, 2016 (SB 288)</td>
<td>66</td>
</tr>
<tr>
<td>The Special Maximum Security Prisons (Establishment) Bill, 2016 (HB 487)</td>
<td>74</td>
</tr>
<tr>
<td>Prisons Act (Amendment) Bill 2015 (SB192)</td>
<td>78</td>
</tr>
<tr>
<td>Correction and Rehabilitation Centre (Establishment) Bill 2015 (SB308)</td>
<td>79</td>
</tr>
<tr>
<td>INTELLIGENCE</td>
<td>80</td>
</tr>
<tr>
<td>Terrorism (Prevention and Prohibition) Bill, 2018 (HB 1296)</td>
<td>83</td>
</tr>
<tr>
<td>Nigerian Financial Intelligence Agency (Establishment, Etc.) Bill 2017 (SB 535)</td>
<td>93</td>
</tr>
<tr>
<td>OTHERS</td>
<td>98</td>
</tr>
<tr>
<td>Border Patrol Agents Bill 2016 (HB 524)</td>
<td>98</td>
</tr>
<tr>
<td>The Vigilante Group of Nigeria (Establishment) Bill, 2017 (HB 718)</td>
<td>102</td>
</tr>
<tr>
<td>The National Commission on Small Arms and light Weapons (Prohibition) Bill, 2018 (HB 1295).</td>
<td>109</td>
</tr>
<tr>
<td>Maritime Piracy and other Related Offences (Prohibition, Prevention, etc) Bill, 2017 (SB 364)</td>
<td>124</td>
</tr>
<tr>
<td>Piracy Bill, 2016 (SB 254)</td>
<td>129</td>
</tr>
<tr>
<td>Security Services Welfare Infrastructure Development Commission Bill, 2015 (HB 83)</td>
<td>132</td>
</tr>
<tr>
<td>AGGREGATE OBSERVATIONS AND RECOMMENDATIONS</td>
<td>136</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>141</td>
</tr>
<tr>
<td>REFERENCES</td>
<td>142</td>
</tr>
</tbody>
</table>
ACKNOWLEDGMENTS

This research was conducted under a project on Supporting Democratic Oversight and Accountability of the Nigerian Security Sector being implemented by Policy and Legal Advocacy Centre (PLAC) and our partner, the Geneva Centre for the Democratic Control of Armed Forces (DCAF). It is part of a larger Security and Justice Reform Project (SJRP) supported by the UK Conflict, Security and Stability Fund (CSSF). We therefore acknowledge their contribution and support in the production of this report.

PLAC would also like to acknowledge Ann Iyonu for leading the research effort and Prof. Offomze Amucheazi for his feedback and inputs.
EXECUTIVE SUMMARY

This report examines legislation as an instrument for security sector reform (SSR) in the National Assembly by analysing select key security sector bills pending before the 8th National Assembly. The report analyses the bills with the aim of assessing the extent to which proposals in the bills respond to security needs and challenges in the country. It reviews the objectives of the bills, summarises their key provisions, examines the wider context within which the bill is situate, relevant constitutional and/or legal issues as well as their level of compliance with good practices on security sector reform. This report explores bills mainly targeted at reform of the Armed Forces/Defence, Police, Intelligence and Prison sectors and other select bills that are cross cutting and have a bearing on each of the aforementioned sectors. The purpose of this report is to create awareness of the issues raised in the bill and its potential implications, highlight areas of likely intervention and opportunities for practitioners, civil society actors seeking to support security sector reform and to influence agenda setting on SSR in the legislature.

Predominantly, the report utilises both quantitative and qualitative methods, generated from primary and secondary data gotten through desk review and textual analysis of SSR bills before the National Assembly and a consolidation of findings with feedback from consultations with key stakeholders and implementing partners of the Security and Justice Reform Project (SJRP) funded by CSSF.

The report finds that some of the bills effectively responds to concerns in the security sector while others disclose a number of issues such as: minimal nexus to a broad security sector reform framework; adoption of a traditional non-responsive focus on state security, not human security; proposals with a risk of arbitrariness in enforcement and rights violations; non-transformative provisions; inadequate and inclusive oversight mechanisms; emphasis on punitive measures in response to security sector challenges; and, a general replication and overlap of functions of existing security apparatus.

Based on the analysis and findings, the report recommends that legislators/stakeholders should:
1. Ensure bills effectively respond to security challenges and comply with progressively good SSR/SSG standards;
2. Harness political will to ensure that public welfare and security remains the primary objective of SSR, promoting community-centred security services that adhere to the principles of participation, responsiveness and accountability;
3. Situate the bills within the greater context of democratic rule through an increased understanding of SSR/SSG;
4. Utilise public hearings to strengthen accountability, encourage citizens’ participation and entrench implementation monitoring;
5. Focus on strengthening the peace infrastructure, creation of multi stakeholder dialogues and projects that prevent conflict and promote social inclusion;
6. Ensure proper oversight of the Executive; and,
7. Strengthen existing security infrastructure as opposed to replicating functions in new security apparatus.
On possible avenues for Civil Society engagement, the report recommends the following actions:

1. Development of an integrated Civil Society Organisation (CSO) advocacy strategy towards building political will in favour of SSR. This should focus on small, concrete, complementary steps that CSOs can implement relatively quickly and easily, to yield and build on progressive results;
2. Development of sector-specific CSO working groups to monitor new security sector legislations for consideration by NASS to ensure timely legislative engagement;
3. Increase capacity of CSOs to monitor government policy and practice on security and justice issues;
4. Enhancement of technical capacity of CSO to provide policy advice on security and justice issues;
5. Building of wider audiences in favour of SSR generally, and the legislative process specifically, by increasing media coverage and raising public awareness;
6. Facilitation of the sensitisation and training of key actors and stakeholders on SSR;
7. Conduct of baseline and periodic independent assessment of legal and institutional frameworks against SSR principles;
8. Provision of support for development of a holistic draft SSR framework to suit the Nigerian context;
9. Facilitation of intra-agency and interagency round table discussions on SSR for stakeholders and actors;
10. Engagement in monitoring and evaluation of implementation and impacts of SSR activities;
11. Utilisation of new/social media platforms for engagement on SSR issues; and
12. Engagement at the highest levels on the need for sustainable and efficient goal-oriented SSR.
INTRODUCTION AND GENERAL BACKGROUND

Prior to, and since return to democratic rule, Nigeria has faced serious internal security challenges – the most critical ones currently being the Boko Haram insurgency in the North-East states of Borno, Yobe and Adamawa; the “Fulani Herdsmen” attacks in states like Benue, Plateau, Zamfara, Taraba and Kaduna; Niger-Delta militancy and spates of kidnappings all over the country. There are also security challenges posed by ethno-religious conflicts, resource-based conflicts, violent crimes, and election related violence. Obviously, these challenges impede socio-political stability and economic development not only in Nigeria but in the West African sub-region.

It has been argued that the long years of military rule in Nigeria led to the undermining of individual liberties, safety, security, access to justice and security sector governance by civilian oversight mechanisms. Indeed, a significant deficiency of Security Sector Governance (SSG) in Nigeria is the fact that the security sector has not been adequately embedded within a democratic governance framework. But while the legacies of colonialism, military incursions into politics and corruption have all contributed to the present security situation in the country, undoubtedly the absence of a robust security sector governance architecture is central in explaining the poor response in addressing security challenges in Nigeria. Nigeria’s archetypal response to security sector challenges over the years has been to establish a few alternate security apparatuses that run parallel with the traditional security sector agencies and performing similar functions. This approach has not been successful and significant gaps remain.

Essentially, the key security governance challenge in Nigeria revolves around promoting security institutions that are transparent, accountable, responsive, and fully cognizant of their roles and responsibilities. As such, there is the need to ensure adequate security for the population and to safeguard civil liberties and freedoms codified in the Constitution and other laws. Indeed, achieving these requires fresh thinking and innovative approaches.

It is in response to challenges such as those outlined above that Security Sector Reform (SSR) processes are designed to strengthen governance by restoring effectiveness, transparency, and accountability. SSR assumes greater importance in Nigeria considering current unprecedented security challenges and more especially the upcoming 2019 general elections and its potential to trigger violence.
It is difficult to find a comprehensive document detailing the security policy direction (setting out security priorities, determining roles and responsibilities of key security institutions, coordinating the implementation of security decisions and proper institutional management of security services) of the Nigerian government or a clearly defined SSR Legislative Agenda of the National Assembly. Notwithstanding, there have been attempts at both policy and legislative reform of the security sector by the executive and legislative arms of government respectively.

This research report examines legislation as an instrument for security sector reform in the National Assembly. It analyses several security sector related bills in the House of Representatives and the Senate with the aim of assessing the extent to which proposals in the bills respond to security needs and challenges in the country. Bills are also tested against the Constitution, existing laws, and global standards of security sector governance to determine, for instance, if they enhance the rule of law, human rights, and the oversight capacity of legislative committees. The report aims to identify gaps in security sector related bills before the National Assembly, opportunities for practitioners civil society actors seeking to support security sector reform and to influence agenda setting in the legislature.

Analysis Approach and Methodology
Various qualitative methods were used for this research report. These methods include:
1. Desk review and textual analysis of SSR bills before the National Assembly.
2. Consolidation of findings with feedback from consultations with key stakeholders and implementing partners of the Security and Justice Reform Project (SJRP) funded by CSSF.

Research Limitations
The report is limited to a preliminary consideration of the legal implications of the relevant Bills and their correlation with the SSR goals. The report does not consider their interplay with the wider body of existing laws in the context of SSR principles, although reference was occasionally made to the principal or related legislations to establish the context of the Bills. Additionally, although the report attempts to examine all available documents related to the bill being analysed, this was not always possible as access to materials such as the lead debates by the bills sponsors and consultations were severely limited.

Scope of Report
There are currently more than fifty security sector related Bills pending before both Houses of the National Assembly. The bills have ramifications for different sub-sectors of the security framework in Nigeria and their potential impact and usefulness varies accordingly. Hence, this report is intended to illuminate on the adequacy or otherwise of proposed legislations and assist in refocusing the efforts of the National Assembly in legislating on Security Sector Reforms by:

a) Identifying Key Areas in SSR: By examining the objectives, rationale and scope of the various bills before both Houses of the National Assembly and considering this against global standards and the peculiar security imperatives of Nigeria, the report identifies and highlights key security sector governance principles and elements bills/proposed legislations the National Assembly should focus on.
Nigeria does not have an SSR framework, but in 2015, the immediate past regime developed a National Security Strategy\(^1\) which envisioned an overarching strategy “to make Nigeria a violence-free, safe, peaceful, reliant, prosperous and strong nation” through the application of “all elements of national power to ensure physical security, build individual and collective prosperity, cause national development.”

In keeping with the principles of SSR/SSG, the National Security Strategy document recognizes that security is foundational to, and interdependent with peace, security, stability, sovereignty, democracy, the rule of law, freedom of enterprise and respect for human rights and fundamental freedoms. The National Strategy document conceptualizes security broadly, with its definition encompassing traditional elements of political and defence, as well as economic and social elements, human and minority rights, and environmental elements. A comprehensive concept of SSR should address four dimension: the political dimension of ensuring democratic and civilian oversight, the economic dimension concerning the allocation of resources for security purposes, the social dimension of guaranteeing the security of all citizens, and the institutional dimension of establishing functioning institutions that can fulfil their duties.\(^2\)

**b) Highlighting Governance and Democratic Issues in Bills:** The report highlights issues of democratic governance or control addressed or not addressed in the analysed bills. This is to ensure that reform proposals in the bills respond effectively to both the needs of the people affected by insecurity and government’s need to strengthen security institutions. This aspect of the review considers legislative and constitutional concerns, issues of implementation and enforcement, public policy relevance and contextual pragmatism and accountability in a democratic environment. Contemporary security challenges and the historical context of insecurity in Nigeria provides the backdrop to this discourse.

The report recognizes that the law making process is organic, with legislative bills being required to pass through a number of stages before its final passage and assent. Consequently, there is an examination not just of the content of the bills, but of its context and issues it seek to address. Furthermore, all of the bills analysed are at committee stage or further along in the process; the findings are expected to provide the committees with information to assess gaps that need to be addressed, either through their intervention or scrutiny, or in follow up work by the legislature in future.


GLOBAL BEST PRINCIPLES/STANDARDS FOR SECURITY SECTOR REFORM

Good Security Sector Governance (SSG) and Reform (SSR) aim at setting standards for State and human security by applying the principles of good governance to the security sector, thereby making security provisions, oversight and management more effective and more accountable, within a framework of democratic civilian control, the rule of law and respect for human rights.

According to DCAF SSR Backgrounder⁴, good SSG is based on the idea that the security sector should be held to the same high standards of public service delivery as other public-sector service providers. Good SSG principles include:

- **Accountability**: there are clear expectations for security provision, and independent authorities oversee whether these expectations are met and impose sanctions if they are not met.

- **Transparency**: information is freely available and accessible to those who will be affected by decisions and their implementation.

- **Rule of law**: all persons and institutions, including the state, are subject to laws that are known publicly, enforced impartially and consistent with international and national human rights norms and standards.

- **Participation**: all men and women of all backgrounds can participate in decision-making and service provision on a free, equitable and inclusive basis, either directly or through legitimate representative institutions.

- **Responsiveness**: institutions are sensitive to the different security needs of all parts of the population and perform their missions in the spirit of a culture of service.

- **Effectiveness**: institutions fulfil their respective roles, responsibilities and missions to a high professional standard.

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Efficiency: institutions make the best possible use of public resources in fulfilling their respective roles, responsibilities and missions.

SSR propounds a political and technical process geared towards achieving the SSG standards. According to the Centre for Integrity in the Defence Sector’s (CID) Integrity Action Plan, a comprehensive SSR process examines the relevant political, financial and human resource aspects, and implements reforms where necessary in accordance with the principles of good SSG. This process includes, at its core, ensuring a legislative framework that upholds these principles.

SSR targets structures, institutions and personnel responsible for the management, provision and oversight of national security. This includes four main categories of actors, namely:

i. Core security actors, such as Armed Forces, Police, Customs and Immigration, Border Control, and Intelligence Services;

ii. Security management and oversight bodies, such as the Ministries of Defence and Internal Affairs, financial management bodies and public complaints commissions;

iii. Justice and law enforcement institutions, such as the judiciary, prisons, state prosecutors, etc; and

iv. Non-statutory security forces, such as private security companies.

Role of the National Assembly in Security Sector Reform through Legislation and Legislative Oversight

The Constitution of the Federal Republic of Nigeria explicitly grants law-making powers at the national level to the National Assembly. The National Assembly is empowered to make laws for the peace, order, and good governance of the federation or any part of it with respect to any matter on the exclusive legislative list. This power also extends to matters on the concurrent list reserved for the National Assembly and to matters specifically conferred on it by the provision of the Constitution.

Similarly, Sections 88, 89, 128 and 129 of the 1999 Constitution of the Federal Republic of Nigeria embody the democratic oversight power of the National Assembly. This ‘power’ is conferred to enable the National Assembly expose corruption, inefficiency or waste in the executive or administration of laws within its legislative competence and in the disbursement and administration of funds appropriated by it. However, it must be noted that the power of the legislature to undertake legislative oversight is not absolute and must be exercised within certain constraints. Chief Justice, Earl Warren, American Jurist and politician succinctly captured the limits on the power of Legislative oversight thus:

"The power of congress to conduct investigation is inherent in the legislative process. The power is broad; it encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defect in our social, economic or political system"
for the purpose of enabling congress to remedy them. It comprehends probes into department of the Federal Government to expose corruption, inefficiency and waste. But broad as this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the congress... nor is the congress a law enforcement or trial agency. There are functions of the executive and judicial departments of government. No enquiry is an end in itself; it must be related to, and in furtherance of the legislative task of the congress. Investigation conducted solely for the personal aggrandisement of the investigators or to “punish” those investigated is indefensible ...”

The National Assembly is saddled with the all-important role of providing democratic oversight towards ensuring accountability of the security sector through legislative and other accountability processes. Ultimately, democratic oversight is crucial in ensuring accountability of security actors and subordination to democratic ethos as well as compliance and respect for the principles of the rule of law. Considering the intractable security challenges Nigeria currently faces and the failure to involve actors beyond the executive arm of government in the governance of the security sector, the need for Legislature to exercise its accountability or scrutiny functions efficiently and effectively becomes more pressing than ever. While the accountability role played by Legislature is important, it must consciously share that work with other agencies. As such, it is key to establish a proper working relationship between the legislature and other accountability institutions. To effectively fulfil this role, the National Assembly must possess a deep understanding of not only its oversight role and responsibility, but also, of SSR and global best practices of SSG.

In 2015, at the commencement of the 8th National Assembly, the two chambers of the 8th National Assembly adopted separate but similar Legislative Agendas, which encapsulates the policy direction of their legislative work. With respect to security, the House of Representatives legislative agenda states "the House will provide legislative backing to measures aimed at addressing National Security challenges including terrorism and insurgency in the North-East of the country, kidnapping, and crime generally. The legal framework to support the security services in tackling crime, terrorism and other National Security concerns would be given full support." Whereas the Senate legislative agenda states that the Senate will take legislative steps to tackle insecurity, specifically the Senate will revisit Bills aims at strengthening all law enforcement and regulatory agencies.

**Ensuring Legislation promotes the principles of SSR**

SSR is an inherently political undertaking that involves changing power structures. It presupposes a desire for transformation and does not take place in a vacuum devoid of politics and interests. Rather it has the most likely chance of succeeding where it can more easily link up with the governance agenda, thereby allowing for contextualized results driven reform, rather than a blind chase of conceptual principles.

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This complexity of SSR is that it is not only a technical matter of legislative reform, institutional restructuring and training, but also requires altering long and deeply established cultures, attitudes, and behaviours. Furthermore, even the success of the legislative process requires necessary social reorientation and reconceptualization of the functions and goals of the security sector.

Currently, multiple security sector related bills requiring urgent attention are before the National Assembly. However, a preliminary examination of a number of these bills reveals several issues:

i. **Areas of overlap of security functions:** The absence of a clear and detailed legislative agenda on the security sector, inadequate pre-legislative scrutiny, conflicting approaches and priorities has led to ad hoc, inconsistent and uncoordinated SSR efforts in the country. This problem reflects in the obvious overlaps and duplications of functions in the establishment of new security bodies, often seeking to address similar objectives without regard to existing legal frameworks or arrangements.

   Expert studies have found that inter-agency rivalry and lack of coherence among security agencies is one of the major impediments to efficient delivery of security services. Certainly, such duplication only serves to exacerbate inter-agency rivalry and lack of synergy amongst security agencies.

ii. **Failure to meet the Standards of good Security Sector Governance:** Proposals in a number of the bills fall far below acceptable standards for security sector governance.

   Well-articulated legislation that is adapted to the Nigerian context and consistent with rule of law, human rights and democratic governance is a key element of a good SSR/SSG framework. Such legislation lays the foundation for the establishment of the necessary characteristics under a democratically elected civilian authority.

   Against this context, Nigeria’s efforts at SSR must include legislative review to ensure that legislation does not fall short of the principles and standards of a good SSG. In this light, this research study is a first-level analysis of select proposed Bills currently before the National Assembly to assess the probable impact of the Bills’ provisions on the SSR objective.

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ANALYSIS OF BILLS

The analysis of security sector reform bills in the National Assembly is grouped as follows: Core security actors- Army and Police; Justice and Prison reform; Intelligence; and others. Under these categories, each bill is analysed guided by some/all of the following:
- Its objective and scope;
- The policy and political context;
- The implications of the Bill, including: legality and constitutionality; implications for the rule of law, safeguards for protection of rights and liberties; implementation and enforcement; and accountability; and
- Compliance and possible conflict with SSR.

ARMED FORCES

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<td>A Bill for an Act to Regulate the Use of Armed Forces of the Federation in Internal Security Operation and for this Purpose Prescribe the Conditions and Procedure for its Deployment in Aid to Civil Security Authorities to Suppress Domestic Emergencies such as Insurrection, Civil Disturbances, Ethno-Religious Clashes, Interdiction of Narcotics, Drug and Controlled Substances; Joint Military and Police Anti-Robbery Patrol and for Related Matters.</td>
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<td>Armed Forces (Restriction on Use in Certain Internal Security Operations Etc.) Bill, 2017 (SB 341)</td>
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<td>Senator David Umaru (APC:Niger)</td>
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Bill Objective and Summary
The Bill seeks to regulate the use of the armed forces of the Federation in internal security operations and prescribe the conditions and procedure for its deployment in aid to civil security authorities to suppress domestic emergencies. Some of its objectives include the following:

- To ensure the observance of the rules of engagement and internal conventions on the use of force and fire arms by the armed forces during internal security operations
- To promote information sharing and effective collaboration between the armed forces and the civil security authorities in the interest of Nigeria’s counterterrorism campaign;
- To stipulate conditions, procedure and other safeguards in the use of the armed forces in internal security operations;
- To ensure that the military capability of the armed forces to discharge its primary constitutional duty is not undermined and the statutory responsibilities of the civil security authorities is not unintentionally stultified;
- To stipulate punitive measures against arbitrary use of the armed forces; and
- Promote accountability regarding the use if the armed forces in aid to civil security authorities.

Permissible Use of the Armed Forces in aid of Civil Authorities
The Bill enables the President to authorise the use of the armed forces to aid civil security authorities in carrying out internal security operations either at his instance, the request of a Governor of a State or the Minister of the Federal Capital Territory – see Clause 6 (1) and clause 7. However, the Bill also outlines the 12 specific instances warranting the President, Governor or Minister of the Federal Capital Territory to call for such aid in internal security operations. These instances include the suppression of domestic emergencies, insurrection, interdiction of narcotics, drugs and controlled substances, anti smuggling or anti-robbery patrol etc.– clause 6.

The Bill is reminiscent of the United States’ "Posse Comitatus Act", which is a federal statute that restricts the government’s ability to use the Armed Forces in civilian law enforcement and internal security. However, exceptions include use of federal forces to quell domestic violence, aerial photographic and visual search and surveillance, assisting in search and seizure of vessels suspected of involvement in drug trafficking as well as use of military equipment in or utilizing federal troops for logistical support in the aftermath of natural disaster.

Prohibited Use of Armed Forces in Civil Engagements
Clause 8 of the bill prohibits the use of the Armed Forces to provide security and prevent breakdown of law and order during or shortly after elections, quell student demonstrations within or outside school campuses or quell anti-government demonstration by students or similar protests organized by workers, CSOs or public. This is akin to section 51A of Australia’s Defence Act 1903 (as amended, 2016), which limits the use of Armed Forces in connection with an industrial dispute.
### 12 SPECIFIC INSTANCES WHERE THE USE OF ARMED FORCES IS PERMISSIBLE

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<td>Suppression of domestic emergencies including insurrection, civil disturbances, ethno-religious violence, fire, flood, earthquake, other public disasters or equivalent emergencies that endanger life and property or disrupt the usual process of governance;</td>
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<td>Respond to violation of laws relating to nuclear and radiological materials;</td>
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<tr>
<td>Interdiction of narcotics, drug and controlled substances;</td>
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<tr>
<td>Interception of vessels, aircrafts and vehicles suspected of being involved in transporting persons as part of counterterrorism operation;</td>
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<tr>
<td>Respond to violations of laws relating to chemical, biological and weapons of mass destruction;</td>
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<tr>
<td>Aerial reconnaissance in order to monitor sea traffic along border or coastline, and communicate resulting information to the relevant civil security authority;</td>
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<tr>
<td>Respond to threat to national security posed by the entry into Nigeria of drug traffickers, illegal aliens, and terrorist group(s);</td>
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<td>Provide assistance for the removal of insurgents and/or quelling of secessionist, or civil disturbances provoked by terrorists attacks or armed invasion;</td>
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<tr>
<td>Providing assistance for the removal of an obstruction of justice or enforcement of a court order;</td>
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<tr>
<td>Anti-smuggling or anti-robbery patrol;</td>
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<tr>
<td>Joint Police- Military Security Task Forces to restore law and order following prolonged security threat in any part of the country; and</td>
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<tr>
<td>Cordon and search operations involving sealing off criminal hideouts to search for suspects, and to recover dangerous arms and ammunitions, vehicles and other dangerous equipment illegally stockpiled for suspected criminal activity in any location in Nigeria.</td>
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Conditions and Procedure for Deployment

The paramount consideration for deployment per Clause 7 is that for the Armed Forces to be deployed, the President must be assured that the deployment will not undermine the country’s military capability. A two-part test is to be applied to determine this; firstly, that there is domestic emergency that hinders the execution of the laws of the Federation or State and constitutes a threat to national security, and secondly, that the security threat is of a magnitude that cannot be handled by civil authorities.

At the State level, this request for assistance is to be made by the Governor of the State sanctioned by a resolution supported by two thirds majority of the House of Assembly, and in the case of the FCT, two thirds of the Senate specifying that any of the indicated 12 instances of domestic emergencies is present and cannot be brought under control except with the aid of the armed forces. Where the National Assembly is satisfied, a concurrent resolution will be passed acceding to the request. In addition to this, the National Assembly also has powers to approve the President’s decision to designate, equip and approve specialised training of particular divisions or commands of the various branches of the armed forces as may be necessary for its effective discharge of internal security operations.

The Clause further provides that the President may delegate these powers to any member or head of the Armed Forces of the Federation. This clause is in line with Section 218(3) of the 1999 Constitution, which states that the President can delegate his powers relating to the operational use of the Armed Forces. The bill however includes the requirement of a formal letter of delegation as stipulated in clause 7 (7).

While the said requests by the Governor or Minister of the FCT can be carried out by anyone acting on their behalf, there is an additional requirement limiting the President’s powers to delegate the powers given to him under the Bill to any member or head of the armed forces. Furthermore, any member or head of the armed forces that claims the President delegated such powers to him, must furnish the National Assembly with evidence of a written direction delegating such powers in line with section 218(3) of the 1999 Constitution (as amended).

Legistive Oversight

This bill contains oversight and accountability mechanisms, which reinforces the National Assembly oversight powers over security agencies. This is encapsulated in the following clauses:

- **Clause 7(8)** - gives either the Senate or House of Representatives or Legislative Committee powers to summon any member of the Armed Forces or any of the heads of the branches of the Armed Forces to determine whether the request to delegate the powers of the President to any member/head of the Armed Forces should be approved.

- **Clause 10** - The Bill makes provisions giving discretionary powers to the National Assembly to request for the Minister of Defence before its relevant Committees to offer explanations, submit an interim report on any on-going military exercise or discharge of its functions as authorised by the Bill or an Act of the National Assembly - **clause 10(2)**. However, National Assembly in such instance can only compel the Minister of Defence to appear before it after passing a concurrent resolution.
This position is different from a mandatory provision under clause 10(3) where the National Assembly must demand for an interim report from the said Minister if the military exercise goes beyond six (6) months or is longer than what was authorised by the National Assembly.

While the exercise of its discretion under clause 10(2) can only happen after a concurrent resolution by the Senate and House of Representatives it is unclear if a concurrent resolution is needed in the specified instances that make it mandatory for the National Assembly to request such report after the facts in clause 10(3) have occurred?

In addition, the Minister of Defence is required to furnish a report through the President to the National Assembly not later than two months after the conclusion of any military exercise. The report will indicate the nature, duration and objective of the exercise, military resources deployed and casualties. This is commendable, as it will encourage accountability and the observance of human rights on the part of the Executive.

Other provisions intended to strengthen parliamentary oversight of the security sector include the power of either chamber of the National Assembly or its Committees to summon any member of the armed forces or head of any of the various branches of the armed forces to obtain information. However, these is restricted to occasions where the President has made a special request for specialised training for the armed forces in internal security operations under the Bill or/and when it is considering a written direction delegating the powers of the President to any member or head of the armed forces.

Power to make regulations
The Bill authorises the Minister of Defence to make supplementary regulations such as orders, rules, guidelines or manuals for the effective implementation of the Bill’s provisions. It appears
that the supplementary regulations are generally targeted at safeguarding human rights and ensuring smooth collaboration and intelligence sharing between the armed forces and the civil security authorities. However, the regulations may also cover “any other matter that the Minister considers necessary or expedient for implementing the provisions of the Bill.” While this clause appears to give the Minister wide powers, clause 11(4) checks the exercise of the power by subjecting the Minister’s regulations to a yearly review. The bill however neglects to specify the person or body responsible for the review.

**Offences**

The Bill also stipulates heavy punitive measures against arbitrary use of the armed forces. The bill provides for offences such as:

- deployment of the armed forces in the prohibited instances,

- wilfully or negligently causing or allowing a subordinate military personnel to be used for purposes other than authorised by the Constitution or this Bill by a person subject to service law,

- wilful or negligent contravention of the regulations or rules of engagement made by the Minister of Defence in internal security operations.

Offenders are liable to face a court martial, a life imprisonment term upon conviction where death results from the action, or a shorter imprisonment term or a fine in less grievous instances (clause 8).

**Context and Rationale**

Terrorist attacks in the North-East and Farmers-Herdsmen crises in different parts of Nigeria have changed the security situation in Nigeria and demonstrate the blurring lines between internal and external security. More than ever before, the military is being deployed to carry out internal security operations.

The African Charter on Human and Peoples’ Rights (ACHPR) particularly cited Resolution 88 on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism in Africa, which calls on African States to ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples’ Rights and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention, the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum.”

This raises pertinent questions regarding internal deployments of military personnel such as: Under which conditions is the deployment of military personnel inside the country legal? Which specific tasks may be performed by the military and which acts are not to be performed? Is the military trained and equipped to perform police-like security tasks? If not, which additional training is necessary? In Belgium for example, there is a strict separation of the two kinds of homeland operations the military can execute. On the one hand there are safety operations (mostly to react on unintentional catastrophes) and on the other hand there are security operations (to
deal with intentional catastrophes). Police forces can ask for military support when they lack capabilities or manpower to respond to a certain situation. Just like in the Netherlands, military forces – if assisting police forces – are legally not entitled to perform law and order tasks. The final responsibility over their deployment lies with the Minister of Interior.

It is concerns such as the foregoing that the bill seeks to address. Generally, the bill provides for an effective legal framework for the use of armed forces in internal security operations as well as ensures the observance of the rules of engagement and international conventions on the use of force and firearms by the Armed Forces during internal operations.

**Constitutional and Legal Issues**

The expansive nature of the instances where the President can deploy the Armed Forces to aid civil authorities has potentials for conflicts due to duplication of functions. And it is unclear whether the Armed Forces in their intervention are to take over or to work in cooperation with the security agency requiring assistance. Some of those instances include:

- **Clause 7(1) (h)** - to provide assistance for the removal of insurgents and/or quelling of secessionists or civil disturbances by terrorists: Against the backdrop of the recent happenings regarding IPOB and Operation Python Dance, this clause has the potential of arbitrary application and legitimization of the loss of life of innocent civilians under the guise of quelling disturbances. In addition, there is likely for violation of Additional Protocol II 1977 of the Geneva Conventions of 1949 that Nigeria is party to and which provides legal protections for civilians in internal armed conflict situations.

- **Clause 7(1)(i)** – to provide assistance for the removal of an obstruction of justice or enforcement of court order: The Sheriff and Civil Processes Act charges specified individuals with the responsibility of enforcing court orders. It is a stretch to consider and advocate for the use of Armed Forces in this instance, which falls significantly below the threshold of insurrection or civil disturbance.

- It may also be useful to deeply examine the allowable instance of cordon and search premises or criminal hideouts for suspects and recover arms [Clauses 6 (1) (i) and (l)] as there is a potential for arbitrary applications of these powers. This was seen in 2013 when the Nigerian Human Rights (NHRC) Commission indicted the Nigerian Army and the Department of State Security (DSS) for using disproportionate force and killing about 7 civilians when they raided an uncompleted building in Apo, Abuja while looking for insurgents. It was found that the victims were homeless artisans and petty traders with no credible evidence of ties to Boko Haram.
Presently, some applicable laws on internal security operations include:

- Section 217(2)(c) of the Constitution which provides the basis of military aid to aid civil authorities in internal security operations, gives effect to the proposed Bill.

- The 1999 Constitution-see sections 33 (right to life), 34 (dignity of person), 35 (personal liberty), 40 (freedom of association), 41 (freedom of movement) 217 (establishes the Armed Forces of the Federation and provides the basis for their use) 218 (gives power to the President to determine the operational use of the Armed Forces) and 305 (that gives power to the President to issue a proclamation of a state of emergency)

- Section 8(1) of the Armed Forces Act, Cap. A.20, Laws of the Federation of Nigeria that provides that the President shall determine the operational use of the armed forces. Operational use is further defined under section 8(3) of the said Act as “for the purpose of maintaining and securing public safety and public order”.


**Consistency and Possible Conflict with SSR**

- As certain powers are expansive, there is potential for arbitrary application. It would be wise to take into consideration, the potential for arbitrary application of powers especially as it relates to internal security operations.

- Even though the accountability measures proposed in the bill bolsters the oversight powers of the National Assembly, it is desirable for some of the oversight responsibility to be extended to independent accountability institutions such as the National Human Rights Commission (this is probably implicit in its establishment law).12

**Comments**

Overall, the Bill is commendable for providing a framework for Armed Forces engagement in internal security operations. It is believed however that the desired effect of the Bill would be felt over time through proper implementation, as well as via training, re-orientation of the Armed Forces and enhancing of National Assembly’s capacity to properly oversee the activities of the Armed Forces in Nigeria.

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Long Title: A Bill for an Act to Amend the Armed Force Act Cap A20 Laws of the Federation 2004 to Make the Appointment of Service Chiefs Subject to Confirmation by the National Assembly

Short Title: Armed Forces (Amendment) Bill, 2015 (HB 70)

NASS Chamber: House of Representatives

Sponsor: Hon. Raphael Igbokwe (PDP: Imo)

**Bill Objective and Summary**

This Bill seeks to subject the appointment of Service Chiefs to confirmation by the National Assembly by amending section 18 (1) of the Principal Act. Accordingly, the provision which currently requires that the President consults with the Chief of Defence Staff will now read “The President, may after consultation with the Minister of Defence, and subject to confirmation by the National Assembly appoint such officers as he thinks fit in whom the command of the Army, Navy and Air Force, as the case may be, and their reserves shall be vested.” A perusal of the extant law shows that the requirement for confirmation by the National Assembly is already catered for. Thus, the only difference between the proposed clause and the extant clause is the proposal that the consultation is done with the Minister of Defence rather than the Chief of Defence Staff.

**Context and Rationale**

Although the Constitution and the Act already stipulates that the appointment of Service Chiefs shall be subject to confirmation by NASS, this is often observed more in breach. Except for the current service chiefs, the appointments of previous service chiefs were not subjected to the rigours of National Assembly’s scrutiny.13

At a public hearing held on this bill, the Chief of Defence Staff contended that the appointment of service chiefs should be strictly the prerogative of the President. He further suggested a restriction of the tenure of the service chiefs to two years, stressing that most of the service chiefs rarely stay in office for as long as four years.14

At the same hearing, the Speaker of the House of the Representatives noted that the amendment being sought is the current and correct position of the law and in line with recent judicial

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decisions. Reference was made in particular, to the case of *Festus Keyamo v President, Federal Republic of Nigeria and 4 others*, where the Federal High Court in a landmark decision given in 2013, set aside as unconstitutional the Armed Forces Modification Order, 2008, No. 50, made by President Yar’Adua purportedly pursuant to S.315 (2) of the Constitution. This Order deleted the requirement for the National Assembly to confirm the appointment of Service Chiefs. It held that Section 18 of the Armed Forces Act (similar to the amendment sought by this Bill) is consistent with the provisions of the Constitution and therefore valid. Keyamo had argued that the appointments of Service Chiefs, which are political appointments, could not be different from other political appointments such as the Chief Justice of Nigeria, Justices of the Supreme Court and Court of Appeal and Chairman of the Economic and Financial Crimes Commission, Ministers, etc. that require the confirmation of the National Assembly.

**Constitutional and Legal Issues**

Based on the aforesaid court decision, which still subsists, it can be said that Section 18 of the Armed Forces Act that subjects the appointment of Service Chiefs to the National Assembly’s confirmation subsists remains an integral part of Nigeria’s law and therefore the proposed amendment is superfluous.

It is important to note however, the interplay of S. 315(2) of the Constitution and the implication of leaving it as part of Nigeria’s laws. This provision confers law making powers on the executive arm of government by providing thus: “The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.” This provision was the basis for the modification order dispensing with the need for NASS approval of appointment of service chiefs. It was meant to be a transitional provision upon Nigeria’s transition from military to democratic rule. A deletion of this provision from the Constitution would be necessary to avoid a similar incidence.

There is also the issue of seeking ex-post facto legislative approval. For instance, in 2014, during the previous administration, new service chiefs were announced before their names were forwarded to NASS for confirmation. The same occurred in 2015 when President Buhari appointed service chiefs “in acting capacity” subject to NASS confirmation. Arguments made by some experts in this regard is that the President lacks the power to *suo motu* appoint the new service chiefs, effect or “approve changes in the military high command”, before (or even after) “briefing the leadership of the National Assembly” and before “requesting the National Assembly to confirm the appointments”. It was further argued that such approvals amount to “rubber-stamp” approvals. Typically, with other constitutional appointments requiring NASS approval, appointees are screened before they begin acting, but it does not seem to be the case

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16 Suit No.FHC/ ABJ/CS/611/08
with service chiefs’ approval. The term “subject to confirmation” or the timing of the approval may require better clarification and this bill fails to do that.

Finally it is not clear from the bill, why the bill proposes that the President should consult with the Minister of Defence before appointment rather than the Chief of Defence Staff as currently exists.

**Comments**

It is instructive to note that the National Assembly failed to pass a Constitution Amendment Bill, which sought to delete Section 315(2) from the Constitution in the on-going Constitution Amendment exercise. This underscores the lack of coherence in the legislature’s effort at reforming security sector related legislation.
The Bill seeks to provide for the appointment of the Chief of Defence Staff subject to confirmation by the National Assembly and for the appointment of service chiefs only from within the Officer Corps of their respective services.

The Bill proposes an amendment to sections 18 (1) and (4) of the Armed Forces Act dealing with the appointment of Service Chiefs. The current provision requires the President to appoint service chiefs after consultation with the Chief of Defence Staff. There is also no specific provision requiring that each service chief shall be drawn from their respective services.

In addition, clause 3 of the Bill seeks to expunge the currently existing subsection 4 which states, "The President may, before consulting with the Chief of Defence Staff, consult with the Armed Forces Council, but the question as to whether any consultation was held or what happened in the course of consultation shall not be enquired into."

The 1999 Constitution and the Armed Forces Act reference the position of the Chief of Defence Staff, but neither spells out the mode of appointment into this position. Thus, the amendment seeks to reinforce section 218(2) of the Constitution which confers powers on the President to appoint the Chief of Defence Staff, subject to such conditions as may be prescribed by an Act of the National Assembly.

While lawmakers believe that such key appointments should go through legislative scrutiny, the Chief of Defence Staff’s position on the matter of legislative approval of service chiefs is that that there is a risk of the position becoming politicised if subjected to NASS approval. At a NASS public hearing on the bill, a suggestion was made by the Defence Headquarters for section 18 of the Act to be deleted entirely and section 218 left as the only prevailing provision on the issue of the Chief of Defence Staff. The Chief of Naval Staff however expressed a different position by agreeing that the confirmation of the Service Chiefs by the National Assembly is in line with the principles of checks and balances. He further disclosed the trend of appointment of Chief of Defence staff position in most instances, from the army noting instead that a better arrangement would be a provision for a tenured rotation between the services in the Act.19

On the proposed new sub-section seeking to ensure that service men are appointed from within their respective services, it appears the intent is to be prescriptive and close a loophole in the law as there is no evidence that this is not the practice presently.

**Legal and Constitutional Issues**

**N/A**

**Consistency and Possible Conflict with SSR**

Presumably, this is intended to act as a check in the exercise of the powers of appointment conferred on the President. Approval of appointments is part of legislative oversight. Legislative scrutiny of executive appointments, particularly military leadership nominees is necessary to ensure that only competent officers are appointed. A rigorous and transparent scrutiny process will go a long way in increasing credibility and citizens’ confidence.
Bill Objective
The objective of the Bill is to make provision for the retirement age of army officers in the Act. It seeks to enact a new section 40 to state that “without prejudice to other requirements attached to the service of officers, the compulsory retirement age of officers of the Nigerian Armed Forces shall be 65 years, or 40 years of pensionable service, whichever is earlier, notwithstanding the provisions of any rule or law in force relating to the retirement age of public officers.”

There is another bill by the same sponsor on the same issue; A Bill for an Act to Make Provisions for the Retirement Age of Officers and Men of the Nigerian Armed Forces and for Related Matters 2016 (HB 527), which stipulates that the Public Service Rules that require the compulsory retirement at 60 years of age or 35 years of pensionable service shall not apply to officers of the Armed Forces. It further pegs the retirement age for officers at 65. While the former bill seeks to amend the Armed Forces Act, the latter seems like a proposed new legislation.

Context and Rationale
Section 28(2) of the Armed Forces Act allows for enlistment into the Army at 18 years. However, there is no uniform retirement age for army officers in the Act; this is regulated by the Armed Forces Harmonized Terms and Conditions of Service (HTACOS20). The HTACOS regulates the command, retirement, payment of retirement benefits, promotion and discipline of officers of the Armed Forces and prescribes an age ceiling for each cadre or rank (military personnel are to be retired from service on the attainment of a specific age on specific ranks). For instance, an officer at the rank of Colonel or Captain can only spend 5 years on regular commission or be a maximum of 55 years of age. Officers can only serve a maximum of 35 years after commission, however this can be extended by the Commander in Chief i.e. the President. (Paragraph 2 (10) (c) HTACOS)

This bill therefore aims to create a uniform retirement age similar to what is obtainable in the public service. The imperative for this amendment appears to come from the disenchantment within the military following incidents of compulsory retirements and alleged illegal extension of tenures of senior officers and service chiefs. 21
TABLE 1: HARMONIZED TERMS AND CONDITIONS OF SERVICE 2012 RETIREMENT SCHEDULE

<table>
<thead>
<tr>
<th>S/No.</th>
<th>Rank</th>
<th>Time on rank</th>
<th>Type of Commission/ Age Ceiling</th>
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<tr>
<td></td>
<td></td>
<td>RC</td>
<td>RC DSSC/DRC EC/SD/Branch</td>
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<tr>
<td>1.</td>
<td>Lt/SLt/Fg Offr</td>
<td>5 39</td>
<td>39 47</td>
</tr>
<tr>
<td>2.</td>
<td>Capt/Lt/Flt Lt</td>
<td>4 46</td>
<td>46 52</td>
</tr>
<tr>
<td>3.</td>
<td>Maj/Lt Cdr/ Sqn Ldr</td>
<td>4 50</td>
<td>50 55</td>
</tr>
<tr>
<td>4.</td>
<td>Lt Col/ Cdr/ Wg Cdr</td>
<td>5 53</td>
<td>53 57</td>
</tr>
<tr>
<td>5.</td>
<td>Col/Capt/Gp Capt</td>
<td>5 55</td>
<td>55</td>
</tr>
<tr>
<td>6.</td>
<td>Brig Gen/ Cdre/ Air Cdre</td>
<td>3 56</td>
<td>56</td>
</tr>
<tr>
<td>7.</td>
<td>Maj Gen/ R Adm/ AVM</td>
<td>57</td>
<td>57</td>
</tr>
<tr>
<td>8.</td>
<td>Lt Gen/ V Adm/ Air Marshal</td>
<td>59</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Gen/ Adm/ Air Chief Marshal</td>
<td>60</td>
<td></td>
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</table>

Source: Nigerian Armed Forces Harmonized Terms and Conditions of Service 2012

A reading of the provisions of the bill also shows that it is aimed at preventing the arbitrary extension of the careers of senior officers beyond the stipulated years in the (HTACOS) – a situation which appears to be becoming a trend and controversial issue within the Nigerian Army. News reports have revealed various allegations of forced retirement without due process, arbitrary termination from service of junior military officers and the extension of the careers of senior officers beyond their stipulated years in disregard of the rules. This has reportedly led to congestion in the senior officers’ cadre. In 2016, the Army was trailed with allegations...

of bias and arbitrariness when it compulsorily retired 38 officers on “disciplinary grounds.” This was followed by accusations of lack of fair hearing and calls for military justice reforms.

The retirements generated widespread disaffection within the rank and file of the military. Observers also criticised the move citing its potential to diminish morale and stifle professionalism and institutional memory in the military especially at a time when the country is reeling from insurgency. The proposed amendment is therefore aimed at safeguarding the careers of military personnel by codifying the provisions for "retirement age" in an Act of the National Assembly. It was perceived that allowing the age retirement to be determined in HTACOS would be tantamount to subjecting the careers of military personnel to the whims and caprices of the military bureaucracy.

There are however differing opinions here with some commentators suggesting an extension of service careers so as to benefit from the wealth of knowledge of more experienced officers. In this regard, it would be recalled that President Muhammadu Buhari extended the careers of his service chiefs citing their efforts in the counter-insurgency operations in the North-East and the security situation in the Niger Delta region as reason for the extension.

Constitutional and Legal Issues
By inserting a new clause in the Armed Forces Act to provide for a fixed retirement age of Officers in the Armed Forces, the bill whittles down on the powers of the executive and gives leverage for democratic control. Furthermore, by extending the compulsory retirement age of officers to 65 years of age or 40 years of pensionable service whichever is earlier, the bill potentially fosters the creation of a command structure that rewards merit and preserves institutional memory. Note that the Public Service Rules (2008 edition) applicable to all public officers stipulates the compulsory retirement age for all grades in the service as 60 years of age or 35 years of service whichever is earlier.

It should however be noted that section 26 of the Armed Forces Act allows the President to make regulations on commissioning of officers, their terms of service, promotion, retirement, resignation, dismissal and such other matters concerning officers of the Armed Forces as may seem to him necessary. This power is exercisable by the Armed Forces Council, which is empowered by section 4 to implement issues of command, discipline and administration of the armed forces. By implication, the issue of developing the HTACOS is well within their jurisdiction. Inserting a new provision in the Act on retirement appears to be in conflict with the aforesaid provisions of the Act. These provisions may require a consequential amendment to give full effect to the intention of the newly proposed provision on a mandatory retirement age requirement.

In the United States, the retirement age for the armed forces is staggered according to grades. According to US Code 1251, the retirement age is 62 years for regular commissioned officers in grades below general and flag officer grades while US Code 1253 stipulates a retirement age

of 64 years for regular commissioned officers in general and flag officer grades, while major generals or rear admirals could have their retirements deferred by the President to 68 years or Secretary of Defence to 66 years. This is useful in ensuring that seasoned officers are availed the opportunity to lend their expertise on National Security issues.

With respect to the issue of reforms of military justice and human rights of army officers, there have been calls for the National Assembly to review the Armed Forces Act to examine whether the Act meets the needs of the Nigeria Military to ensure good order and discipline in a fair and efficient way. At a 2016 roundtable on the administration of military justice system in Nigeria held by the Nigerian Bar Association, the Office of the Chief of Army Staff and the National Human Rights Commission, it was stated that military justice should be aimed at, among others, advancing national security by ensuring discipline and maintain public confidence. It was further stated that since 1999, there has been no legislative review of the Act to reform military justice and that the National Assembly needed to examine whether the Act meets the needs of the Nigerian Military to ensure good order and discipline in a fair and efficient way. While this bill does not explicitly attempt to address this subject matter, the issue of forced retirements against laid down rules and without redress has implications for citizens’ confidence in the military and expectations of non-partisanship in their activities.

Consistency and Possible Conflict with SSR
The bill seeks to enhance accountability and democratic control of the Armed Forces with regards to the issue of retirement.

Comments
The passage of this bill could mitigate concerns among citizens and military officers of what is perceived to be a flawed policy of arbitrarily retiring officers in their prime.

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<tr>
<td>Short Title:</td>
<td>Defence Industries Corporation of Nigeria Bill, 2016 (HB399)</td>
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<td>NASS Chamber:</td>
<td>House of Representatives</td>
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<tr>
<td>Sponsor:</td>
<td>Hon. Oluwole Oke (PDP: Osun)</td>
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**Bill Objective and Summary**

This Bill seeks to repeal the Defence Industries Corporation of Nigeria Act Cap D4 Laws of the Federation of Nigeria 2004 and enact the Defence Industry Corporation of Nigeria (DICON) Bill 2016 to promote self-sufficiency in local arms manufacture by reforming and revitalizing DICON to be able to provide equipment to meet the needs of Nigeria’s Armed Forces, Police and Paramilitary Forces.

**Below is a summary of the bill’s exhaustive provisions:**

1. **Repeal of the Defence Industries Corporation Act of 1964**
   
The bill repeals the extant law relating to the Defence Industries Corporation and replaces it with the proposed Defence Industry Corporation of Nigeria Bill, 2016. The current law establishes DICON to operate, maintain and control factories for the manufacture, storage and disposal of ordnance, ancillary stores and materiel.

2. **Functions of the Corporation**
   
The function of the Corporation is expanded to meet and satisfy the material needs of the Armed Forces and other security agencies in an efficient and cost effective manner in addition to other needs pertaining to technology, research and development and its applied scientific needs. The Corporation is also to develop utilize, market and export normal and advanced military technologies and meet its civil non-defence technological needs in its object clause.
The Corporation is responsible for:

a. Operating, maintaining and controlling factories for the manufacture, storage and disposal of ordnance, ancillary stores and materiel;

b. Providing for the alteration of any manufacture, storage or disposal of ordnance and ancillary stores and materiel (i.e. armament, ammunition, equipment);

c. Acquisition of defence items;

d. The conduct of research and development for the Nigerian Defence Sector;

e. Initiating and managing technological projects;

f. Supporting and maintaining any defence industrial capabilities;

g. Developing, manufacturing, producing, selling and exporting defence items and advanced military hardware; and

h. Operating as a platform for industrialisation and technological advancement of Nigeria.

In addition to the foregoing, the Corporation is to carry out commercial activities, procure commercial material and form partnership and joint ventures subject to the approval of the Minister of Defence. This clause is a new addition to the establishing law for DICON. Extant provisions do not stipulate the functions of the Corporation. Furthermore, this bill reference to procurement of “commercial material” in clause 5(ii) is vague and requires proper definition to aid the implementation of the Act.

3. Establishment and Tenure of the Board

The Bill establishes a Board for the Corporation with the mandate to attain the objects of the Corporation and to ascertain the policy direction of the Corporation. This is a new addition, which is not contained in the current law. The members of the Board are to be appointed by the President on the recommendation of the Minister in charge of Defence with the approval of National Assembly. The Board is to be constituted with 18 persons including a Director General, Secretary, 6 persons from each geopolitical zone, a representative of the Federal Ministries of Defence, Science and Technology, Industry, each Branch of the Armed Forces, Nigerian Police and Department of State Security and two representatives from Civil Society. Each member is to hold office for a term of four years and renewable once for another period of four years.

4. Appointment and Removal of the Director-General

The Bill stipulates that the Director General shall be appointed by the President, and he or she must be a serving or retired military officer at the rank of Brigadier or above. The Director General shall also be the Chief Executive Officer of the Corporation. The current law situates this responsibility on the Minister. The Bill further subjects the removal of the Director General to the approval of two-thirds majority of the National Assembly.

5. Operation of Ordnance Factories and other Ancillary Factories

The Bill provides that the Corporation shall operate an ordnance and ancillary factory on a sound commercial basis to fulfill the normal defence requirements of the armed forces. However, the phrase “sound commercial basis” is vague and does not clearly specify which capacity the factory
should run at. Also, limiting the operation of the ordnance and ancillary factory to the requirement
of the armed forces does not take into consideration the needs of other security agencies.

6. **Conflict of Interest**
The Bill provides that members of the Board and employees disclose any direct or indirect interest
that such person, his or her spouse, partner or family member has in relation to any acquisition
or procurement activities and withdraw from participation in the activity in question unless the
Board deems it trivial or irrelevant. Failure to make disclosures is an offence punishable upon
conviction with a fine or imprisonment for a period not exceeding 10 years. The bill requires that
in addition to strategic defence needs of Nigeria, the corporation, in the location of its factories,
should apply the Federal Character principle.

7. **Sources of Funding**
According to Clause 11, the Corporation is to be funded by:
   a. Such sum as may be required for the completion of any building erected as an ordnance
      factory and taken over on the appointed day;
   b. Moneys from time to time voted by the National Assembly;
   c. Revenue, including interest derived from its investments; and
   d. Money obtained from sources consistent with the objectives of the Corporation.

8. **Commercial Activities**
The Bill empowers the Corporation to form wholly or partly owned subsidiaries for commercial
activity, joint venture or special purpose vehicles for commercial purpose, enter into partnerships
and compulsorily acquire moribund industries. By allowing the corporation to embark on such
commercial activity, it raises a question of the balance between commercial interest and national
interest and could potentially create an avenue for corruption to fester.

The bill restricts the provisions of the Firearms Act from applying to the corporation particularly
as it relates to importation, assembly, repair or disposal of firearms and ammunition by
the corporation or any of its licensed companies, issuing licenses to manufacturers, sellers
and persons involved in leasing of defence articles. The corporation is also allowed to make
regulations for such licensing and distribution with the Minister’s approval.

9. **Right of First Purchase**
According to Clause 26, items produced by a private manufacturer must be offered for sale to the
Corporation first, where the Corporation does not want to purchase the items, a certificate of non-
purchase is issued, following which the manufacturer can sell domestically or export the defence
items. The authorisation to sell firearms domestically is somewhat vague i.e. it does not say to
whom, but it is assumed that the sale is to be made to national agencies authorised to possess
and use weapons. Otherwise, it raises a security issue as it could increase the proliferation of
weapons, which is not ideal in view of the current security challenges in the country.

10. **Compulsory purchase from the Corporation**
The Bill provides that the Armed Forces or other security agencies must purchase defence
items from the Corporation and where the Corporation does not have the required items, it
can be purchased from a licensed manufacturer or distributor. It also provides that if neither
the Corporation nor licensed party has the Defence item, the buyer may purchase from other manufacturers or distributors where the Corporation issues a letter of no objection. In addition, the Corporation is not allowed to export defence items without an export permit issued by the Minister.

**Context and Rationale**

The ongoing war against Boko Haram has exposed the dire state of the Nigerian defence industry setup. DICON was primarily established to produce small arms and ammunition for the Nigerian Army and other security agencies. The Corporation also uses its excess capacity to produce machinery spare parts for industries and other products for civilian use. The company has produced an assault rifle similar to the AK-47 and has also developed 60 and 81 mm mortars. DICON remains the only legal small arms and light weapons manufacturer in Nigeria, but has been plagued with insufficient and inconsistent funding, according to the Jane’s Information Group. When compared to some of its contemporaries, Nigeria clearly lags behind in the global arms race. The Brazilian industry, for instance, which started in the early 1960s just as Nigeria’s, has undergone such rapid development and sophistication that its products are now sought after even in the United States and other Western countries. Some of the Brazilian products that have attracted interest in the US include the Embraer range of aircraft and the A-29 Super Tucano attack aircraft.

There is also the argument that unless concerted efforts are made to develop a capital defence industrial base within the country, the process of industrialisation and economic growth will stultify because export earnings will not rise sufficiently fast to finance the increased imports required to address security challenges bearing in mind that Nigeria is a net buyer and market for foreign-made weapons systems and manufacturers.

**Background on DICON**

DICON was established in 1964 for the production of arms and ammunition for the nation’s military and other security agencies. It has a factory in Kaduna that reportedly produces mainly rifles and civilian tools, although it is unclear if it actually manufactures all the components or just assembles them. The Corporation flourished during the Nigerian Civil War, which occurred between 1967 and 1970 but went into decline thereafter. ²⁶

DICON is reportedly currently operating below optimum and this has been attributed to outdated and run-down equipment, low patronage by security agencies, poor funding for research and development, obsolete products and lack of a strategic development plan and defence production policy to guide its operations.²⁷ The fall of DICON has also been attributed to a strategic decision by successive military administrations not to support its growth, as a way of

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forestalling coups and overthrow.  DICON was reportedly established at about same time as the Brazil Defence Industry, but the later has progressed from manufacturing of mere ammunition to combat helicopters including the Super Tucano Aircraft, which Nigeria just purchased from the US.

Absence of private sector participation (PSP) has also been cited as a major challenge for DICON and the bill tries to address this by making provision for partnership with the private sector and empowering the corporation to issue licenses for the manufacture of defence items. Many advanced and developing countries allow private sector participate in defence equipment production so as to enhance self-sufficiency. For instance, India adopted a policy in 2001 that allowed 100 per cent private participation in defence production, subject to licensing. As has been seen with Nigeria’s experience in procurement of arms, lack of self sufficiency and dependence on foreign suppliers tends to weaken bargaining power and hinders technical knowledge and growth. PSP in any government sector is however dependent on wider reforms and government policy on the issue. Some examples of anticipated private sector participation in defence sector activities have been identified to include facilities management, infrastructure services, research and innovation, co-ownership or co-financing of projects, build-operate-transfer arrangements, etc. The bill in fact allows the Corporation to enter into joint ventures with private entities and to issue licenses to manufacturers of defence articles.

Unfortunately, DICON has an outdated Act, which is inadequate for Nigeria’s present day security realities and not in tandem with the current administration’s policy and commitments on developing this area.

Nigeria’s Defence Industry Policy
Nigeria’s 2014 security strategy, developed under the Goodluck Jonathan administration states among others, that the Armed Forces of Nigeria will deliberately cultivate and drive the development of a time-bound, objective-driven Military Industrial Complex (MIC) that exploits the entire human and material resources of the Nigerian nation. It however admits that an active science, technology and innovation base effectively is needed to drive national security and development. The 2006 National Defence Policy also made commitments to ensuring that defence research and development is properly funded, fully functional, and given a proper sense of direction. It further underscored the support and encouragement of local private sector participation in military and defence related industries. This policy has however been criticized for not taking into cognizance, the realities of the absence of an industrial and technological development base in the country or a harmonious policy framework to encourage development in science and technology, stating that Nigeria is not even close to meeting both its military and non-military needs. Accordingly, this defeats any efforts to achieve the defence industry objectives of the policy.

28 Ibid n.26
Efforts to revamp DICON

Increased military operations in the country as a result of insurgency has led to Nigeria’s need for advanced weaponry. In 2015, President Buhari shared his plans to overhaul DICON so as to reduce the country’s dependence on imported arms and bringing about self-sufficiency in military equipment. He noted that the Ministry of Defence had been tasked to draw up clear and measurable outlines for development of a modest military industrial complex for Nigeria and further asked the National Agency for Science and Engineering Infrastructure (NASENI) to partner with DICON to commence the manufacturing of light weapons.

It is three years into the administration and there is no evidence of seriousness on the part of the Executive at realizing this. It is particularly surprising that an executive bill on the matter did not emanate from the President, but that instead, a private member’s bill on this issue is what is before NASS. Before then, in 2012, the Jonathan administration set up a committee to revitalize DICON and the committee even submitted a report with their recommendations. It is however unclear what became of that report.

The current internal security challenges and an underdeveloped military industry has forced Nigeria into the purchase of arms from foreign countries. This was not helped by a ban on sale of arms to Nigeria by the United States predicated on poor human rights record. Although the ban has been lifted, one key lesson from the experience is that an arms embargo or sanction can restrict the country’s ability to obtain necessary weapons to secure its borders. And like one report rightly put it, it subjects domestic security policies to a high level of interference from big arms suppliers. The Nigerian Airforce for instance, admitted its reliance on foreign Original Equipment Manufacturers (OEM) for the supply of spares, which are usually highly priced and not delivered promptly, stating that such reliance foretells a threat in terms of military readiness and depletion of financial resources.

Economic Benefits of a Developed Defence Industry

The defence industry is a major industrial sector that is crucial for economic growth. It is a wide sector often comprising commercial entities that manufacture, arms, aerospace and naval systems. For instance, the European Union (EU) notes that its defence industry comprising aeronautics, land and naval systems, and electronics is a key sector for Europe’s ongoing development as a world leader in manufacturing and innovation and responsible for increased

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36 See: https://www.facebook.com/hqnigerianairforce/posts/1950892175123724. Some advances made by its Research and Development Department on solutions for maintenance of aircraft fleet and equipment were also cited. But it is unclear what the level of these advancements are.
job creation and technological innovation. According to the Stockholm International Peace Research Institute (SIPRI), “arms sales of the world’s 100 largest arms-producing and military services companies (the SIPRI Top 100, excluding China) totalled $374.8 billion in 2016.” Arms sales by US-based companies in the Top 100 rose by 4.0 per cent to $217.2 billion in 2016. With 38 companies ranked in the Top 100 for 2016, the USA accounted for 57.9 per cent of the total Top 100 arms sales. Furthermore, a 2017 report by Deloitte states that America’s aerospace and defense exports supports over 1.4 million US jobs. Consequently, a well-positioned DICON can lead to economic benefits for the country. Increased military spending by African countries means that there is a strategic opportunity for Nigeria in defence items manufacture and export.

In the light of this, the concept of national defence and security should be centred on the fact that the indigenous economic infrastructure serves as the base for technological advancement of not just the military alone but also other vital areas of national development such as agriculture and socio-economic empowerment.

**Constitutional and Legal Issues**

- The provision for compulsory acquisition of moribund industries in clause 17 may have implications for the right to property as enshrined in sections 43 and 44 of the 1999 Constitution. Furthermore, it does not specify whether the industries to be acquired include both public and private entities. The issue of compulsory acquisition is however mitigated by a provision for compensation where it occurs.

- The Bill seeks to limit the application of the Firearms Act to the activities of the Corporation in Clause 21, particularly as it relates to importation of any firearm or manufacture, assembly, repair or disposal of such firearm or ammunition. It also provides that any ordnance factory created under the bill shall be recognised as a public armoury. It is important to note that Nigeria is signatory to the ECOWAS Convention on Small Arms and Light Weapons, which enjoins member states to strictly regulate and control arms transfer and manufacture within their territories via a national commission set up for the purpose. If domesticated, it could have implications for this bill. There may also be cross cutting issues with the Arms Trade Treaty which Nigeria is signatory to. It is a multilateral treaty that regulates the international trade in conventional weapons and it came into force on 24 December 2014.

**Consistency and Possible Conflict with SSR**

- The inclusion of representatives of geo-political zones in the composition of the Board took into account the ethno-religious fault lines in the country and is probably aimed at forestalling issues of domination by a particular region. The Nigerian Defence Headquarters

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however criticised this proposal saying that allowing geopolitical representation would introduce sectional interest. The proposal to have members of civil society represented was also criticised as being unnecessary in light of the purely military and technical nature of the corporation’s functions.41

- While a developed defence industry has many benefits, studies show that there is a high potential for fraud and corruption in this sector. Certain proposals in the bill failed to consider the wider context of SSR such as economic reforms and anti-corruption measures – being areas that directly affect the security of individuals, society and the state. Hence, the wide powers given to the Corporation in addition to the restriction of the application of the Firearms Act, (although appearing necessary in light of its functions) calls for exercise of caution.

- The Stockholm International Peace Research Institute (SIPRI) notes that the military tends to be one of the most corrupt sectors of government, and arms procurement—domestic and international—is especially subject to corruption, in both developed and developing countries.42 It further estimates that corruption in arms trade contributes approximately 40 per cent to all corruption in global transactions with one expert noting that “the leading arms firms in virtually every major arms-producing country have been implicated, including reputable firms from the most respectable countries.”43 Some notable infractions include bribery of politicians and government officials, inflation of contract prices, opaque procurement processes and even questionable lobbying practices i.e. arms corporations funding election campaigns of legislators so that they can push for increased defence spending that would benefit their business.44

- Nigeria as an arms buyer, has had its fair share of scandals, the most notorious being the two (2) billion dollars controversial arms procurement deal in 2014 involving former National Security Adviser, Col. Sambo Dasuki as well the $15 million arms funds seized by South Africa which Nigeria said was for legitimate arms procurement. The question is, if the country is unable to manage existing corruption risks in procurement of arms, how can it then manage the risks of operating a large government run defence industry with intersecting public and private/commercial interests? One study found that country level factors play a crucial role in influencing firm level corruption risk in the defence industry.45 For instance, countries with effective governments and strong legislative oversight are associated with lower levels of defence industry firm level corruption.46 Furthermore, countries with low parliamentary levels of corruption risk also face low levels of firm level corruption risk. It can

43 Global Security, “World Wide Corruption” Available at: https://www.globalsecurity.org/military/world/corruption.htm
44 https://www.ft.com/content/ca2a3476-47e5-11d9-a0fd-00000e2511e8
46 Ibid
be implied from these findings that weak oversight can have negative implications for firm level corruption in the industry.

• The role of the National Assembly in this regard is crucial. While the bill institutes certain accountability processes, and oversight mechanisms to strengthen democratic control, if those processes and mechanisms are not properly implemented, it may hamper effective and efficient management of the corporation.

• Typically, oversight should begin with policy oversight, which is inadequate in Nigeria. During a PLAC-DCAF assessment of some NASS security sector related committees in 2017, legislators reported not being part of the formulation of security or defence policies and being unaware of what it entails. Transparency International (TI) notes that an absence of effective oversight of defence policy could lead to centralisation of power and will be much more susceptible to corruption and in an extreme form, it may lead to state capture.\footnote{Transparency International, “The quality of legislative oversight of defence in 82 countries”. Available at http://ti-defence.org/wp-content/uploads/2016/03/Watchdogs-low.pdf} Even where such policies are adopted, there may be a disconnect between policy and budgeting and procurement practice. Transparency International (TI) lists Nigeria as a country with very high corruption risk in its defence sector.\footnote{Ibid} High risk countries are characterized by provision of limited information on defence spending to parliaments, provision of inadequate audit reports or lack thereof, and failure to legally regulate classification of documents therefore leaving it to individual discretion.

• The DICON bill, in clause 12, commendably provides for submission of the corporation’s annual budget estimates to the Minister of Defence as well as audit and investigation by the Auditor-General. This provides a basis for legislative oversight in terms of appropriation and review of audit reports by NASS public accounts committees. The real test however, would be in actual oversight and this has been a challenge with NASS as their oversight actions have not been particularly significant in this regard either due to limited technical capacity or lack of political will.

Comments
The security of Nigerian citizens’ can only be guaranteed to the extent it has the capacity for self-defence and to offer protection from both ideological and military interferences from other States. A strong and cohesive innovation and technology policy as well as a strong industrial base is crucial for the objectives of this bill to be met.

\footnote{Ibid}
Long Title: A Bill for an Act to Amend the Armed Forces Act Cap A20 Laws of the Federation of Nigeria 2004, to among other things Provide for Specific Duties for the Armed Forces Reserve in order to Serve as a Rapid Response Mechanism with Capacity to Intervene in Emergency and Internal Security where the Nigerian Police were Overwhelmed and for Related Matters

Short Title: Armed Forces (Amendment) Bill, 2016 (HB 411)

NASS Chamber: House of Representatives

Sponsor: Hon. Muhammad Sani Abdu (APC: Bauchi)

Bill Objective and Summary
The Bill seeks to strengthen the Nigerian Armed Forces capacity by making provisions for the mobilisation of the Armed Forces Reserve to serve as a rapid response mechanism to intervene in an emergency and situations involving internal security where the Nigerian Police is overwhelmed.

This Bill seeks to amend the Armed Forces Act by substituting the existing section 3 with a new provision on functions of the Army Reserve, which is not indicated in the existing law. It also provides for the call up of the Reserve by the President where the service chiefs or the National Assembly via a joint resolution determines that the Police is overwhelmed. In addition, it transfers the powers to make regulations for the Armed Forces Reserve from the President to Chief of Defence Staff and other Service Chiefs. The rationale for this is not clear from the Bill’s provisions. The current section 3 provides that the President may make regulations governing the pay, duties and methods of recall of members of the Armed Forces Reserve.

Duties of the Armed Force Reserve
The proposal outlines the functions of the Armed Forces Reserve as follows:

- That it shall, on the order of the President step in to maintain peace and order on a joint resolution of National Assembly or on the advice of the Service Chiefs that the Police is overwhelmed;
- Protect and assist in rescuing civilian populations during the period of emergency in collaboration with other relevant security agencies;
- Recruit and train able people in counter terrorism, rioting, climate and other natural disasters;
- Serve as a rapid response unit for counter terrorism, rescue mission on climate and other natural disaster on the President’s directive; and
- Undertake such national and international assignments related to national security as may be directed by the President.

It is noteworthy that the aforesaid proposed duties are similar to what is obtainable in other climes such as the United States, UK and Australia where the Reserves support personnel on
humanitarian missions, disaster relief activities and combat operations and assist in providing security at major events to support Police efforts. Reservists are often former military members who have reached the end of their enlistment or resigned their commission.

A similar amendment bill (HB 1037) by Hon. Abdulrahman Shuaibu Abubakar (APC:Adamawa) proposes to include the members of Corps of the Nigerian Commissionaires (CNC) as members of the Armed forces Reserve. The CNC also referred to as the Nigerian Legion is a group of ex-service personnel. It further proposes that the reserve be made up of Officers, Warrant officers, non-commissioned officers, soldiers, ratings and aircraftsmen who are transferred to it on completion of their period of service in the Armed Forces and officers from other services as the President may prescribe (this is already provided for in section 2 of the Armed Forces Act).

**Context and Rationale**

There is a general consensus that Nigeria’s military is overstretched with their intervention in various conflicts in different parts of the country. A robust force is therefore needed to cope with these challenges as well as the challenge of the country’s expanding population. The House of Representatives in adopting a motion on the “Need to Re-energise the Nigerian Military and Paramilitary Forces to meet Urgent National Demands”\(^49\), noted that presently, Nigeria faces unprecedented security challenges that have overstretched security forces. This situation is undeniably the same with the Police, hence the need for support in exceptional circumstances. In his lead debate, the bill sponsor underlined the need for the establishment of a reserve force that will include retired military personnel whose experience would assist in dealing with security challenges. He further explained that the Reserve would be expected to draw its budget from the Federation Account.\(^50\)

The Nigerian Constitution has provided for the establishment and composition of the Armed Forces of the Federation under Section 217, while Section 220 makes provision for the establishment and maintenance of adequate facilities for carrying into effect, any Act of the National Assembly providing for compulsory military training or military service for citizens of Nigeria. Similarly, section 2 of the Armed Forces Act makes provision for the establishment of an Armed Forces Reserve but it did not specify the circumstances where they could be called to action. Therefore, this proposal intends to fill this gap in the Armed Forces Act by making provisions for situations where the Army Reserves can be mobilised to respond to emergency security challenges in the country to bolster Police efforts. In this regard, it is important to note that there are other security agencies set up to supplement Police duties such as the Nigerian Security and Civil Defence Corps (NSCDC). There are also recent efforts by NASS to establish the Vigilante Group of Nigeria to exercise similar functions. These have to be taken in context in setting up the Reserve and clarifying functions of each agency, which often tend to overlap. It is unclear if civilians would be part of the reserve as is the practice in other jurisdictions.

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49 Motion on the need to re-energise the Nigerian Military and Paramilitary Forces to meet urgent national demands presented by Hon. Rimamnde Shawulu Kwewum dated May 2, 2017

In other jurisdictions, setting up of a Reserve is often seen as being more time and cost effective than conscripting and training of army recruits. More so, when viewed from the angle that Reservists are usually trained civilian professionals or retired experienced service personnel who are not on active duty, except for when they are called up.\(^{51}\) It is also seen as a good way of reducing expenditure, especially when a country is not at war as it reduces the costs of having to mobilise the army (whose primary role is to protect the country from external aggression) to respond to internal conflicts.

Notwithstanding the desirability of establishing an Armed Forces Reserve, the cost implications of maintaining a Reserve without undermining essential military and police services are issues that would need to be examined deeply. The government must find the resources to sustain the use of reservists without it having and adverse impact on the national defence budget or undermining essential military and police services.

**Constitutional and Legal Issues**

Clause 3A of the bill empowers the Chief of Defence staff in consultation with the service chiefs to make regulations governing the pay, duties and methods of recall of members of the Armed Forces. This is in conflict with Section 3 of the Principal Act, which empowers the President as Commander in Chief to make such regulations. A consequential amendment or deletion of the existing provision may be necessary here. Furthermore, even though an Armed Forces Reserve is mentioned in the Armed Forces Act, this bill is not explicit on the source of the Army Reserve.

**Consistency and Possible Conflict with SSR**

By subjecting the exercise of the powers of the President to order for the mobilisation of the Armed Forces reserves to a resolution of the National Assembly, the bill does not give excessive powers to the President. However, this provision for the call up of the Reserve by the President also gives another option for the service chiefs to determine that the Police is overwhelmed meaning that the National Assembly’s intervention here is not exclusive. Furthermore, there appears to be no guidelines for making this determination. There is also the probability that the National Assembly or Police would disagree that they are overwhelmed and therefore do not need military assistance. Furthermore, it is unclear why the bill empowers the Chief of Defence Staff to make regulations for pay, duties, etc. of the Reserve as against the President as currently exists.

**Comments**

While the use of the Army Reserve would go a long way in supplementing the personnel needs of the Army, caution should be exercised to avoid detracting from the expedience of properly equipping, staffing and training the Nigeria Police, which is the primary authority designed to secure the lives and property of citizens.

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Bill Objective
The primary objective of the Bill is to deter the use of army green colour on private vehicles by increasing the fine for violation. The 2015 bill (HB 46) additionally seeks to provide stiffer penalties and include aircrafts and water vessels to the type of vehicles that are not to be painted army green colour. The extant law prohibits the use of army-green colour for use on personal motor vehicles.

Context and Rationale
This law was originally enacted in 1977, which was a military era. It however has its roots in colonial legislation and ordinances proscribing the use of military attire or uniforms by civilians.\(^{52}\) During the military era, there was zero tolerance by the army of civilians appearing in camouflage or “camo’ outfits or using army green coloured private vehicles. Offenders were often severely punished. This is still a very current issue with recent reports of soldiers harassing civilians who put on camouflage outfits\(^^{53}\) and allegations by the army, of criminals donning military gear to pass off as soldiers and terrorise citizens. In response to recent allegations by Amnesty International of deadly attacks on civilians by “persons” in military vehicles and uniforms, the Army argued that the attacks were perpetrated by terrorists passing off as soldiers.\(^^{54}\) In 2015, the National Security Council (NSC) banned the use of camouflage by para-military agencies except for the Police (when on joint operation with the military or on special operations) due to security implications and concerns on proliferation of camouflage uniforms in the country.\(^^{55}\)

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On the face of it, the bill appears to be necessary in view of current security threats posed by the activities of criminals and terrorists. The proposed upward review of fines from its current N200 to N20,000 and N500,000 as proposed by the two bills respectively appear necessary in light of economic realities and inflation trends. One of the bills further proposes an optional twelve months imprisonment term. However, while a fine could be an effective deterrent in the case of ordinary citizens, it is unclear how this approach will effectively work in the case of terrorists and other hardened criminals.

HB 46 proposes to amend Section 1 of the Principal Act to expand the coverage of the law in terms of the kinds of vessels or machines that are prohibited from having the Army colour, if they do not belong to the Nigerian Army. Aircraft and Water Vessels are now added to the list and are defined as follows:

- “Aircraft” means any machine that is able to fly in the air by gaining support from the air, airplane, helicopters, etc.
- “Water Vessel” means a mechanically or manually propelled (sic) such as ships, boats, hovercraft and submarines, etc. intended or adapted for use on water.

**Constitutional and Legal Issues**

The proposed amendment mutually reinforces the provisions of sections 109 and 110 of the Criminal Code Act, which prohibits unauthorised use of uniforms or clothing and insignia that bear likeness to the uniforms of the Police, Armed Forces, or any government authority.

**Implementation & Enforcement**

The enforcing authority is established under the Principal Act and this vests the authority to seize or cause to be seized any vehicle violating the provisions of the principal Act on the Police. However, there is potential for arbitrary application. For instance, Section 2 of the principal Act appears to provide for two distinct enforcement processes. The first process submits to due judicial process, whereby the imposition of the fine and imprisonment requires a prior conviction before a court of law, which complies with the principle of fair hearing. The second process, which provides for the seizure of the purported violating vehicle, does not contain the same safeguards, thereby resulting in risk of arbitrary enforcement. While the schedule to the principal Act clearly delineates the range of prohibited colours together with its manufacturer’s code and range groupings; there is no process for verification that the actual colour being used by the civilian violates the colours listed; For instance, it mentions “Nigerian Army Deep Bronze Green” and all shades of green within “Range: BS 4800-BS 38IC 1964.” As can be seen, the latter is a technical specification and it is unclear if these are colour shades that one can objectively identify without some sort of specialist verification. This therefore leaves the determination of colour to the eyes of the impounding officer.

The Act provides for seizure by a police officer and removal to the premises of any government premises, and not a designated and secure location for this specific purpose. The Act further indemnifies all acting authority from liability for any damage caused to the vehicle caused while gaining access, seizure and while the vehicle is in custody. Finally, a seized vehicle can only be reclaimed with authorisation of a senior police officer, if he is satisfied that the owner has made arrangements to have the vehicle repainted in a different colour.
The proposed amendment reviewing the penalty upwards is timely and appropriate. However, other challenges within the Principal Act should be addressed to curb possibility of arbitrary enforcement.

**Consistency and Possible Conflict with SSR**

- There is the potential for violating fundamental right to fair hearing.

- The proposed extant law does not make provision for accountability measures on the enforcing authority to ensure effectiveness and non-arbitrariness in the implementation of its provisions. It is also important to mention here that in actual practice, the Army often enforces the prohibition on the civilian use of army colour and not the Police.

**Comments**

- It would have been more desirable to undertake a wholesome amendment of the Principal Act. More so, it is unclear how this amendment would significantly curb or deter the current security challenge of illegal use of military camouflage.

- Even though the prohibition of the use of army green colour seems to restrict the right to freedom of self-expression and may be invalid, there is no evidence of any court case to determine the legality of such derogation.
POLICE

| Long Title: | A Bill for an Act to Establish the Nigeria Police Development Fund and for Related Matters |
| Short Title: | Nigeria Police Development Fund (Establishment) Bill, 2016 (SB 433) |
| NASS Chamber: | Senate |
| Sponsor: | Sen. Abu Ibrahim (APC: Katsina) |

Bill Objective
The purpose of the Bill is to revamp the Nigerian Police by establishing a special intervention fund for the training and retraining of police personnel, for the provision of equipment, offices, barracks accommodation and related facilities to enhance the security service delivery of the NPF. The Bill principally creates a funding mechanism for the Nigerian Police Force that allows for a judicious utilization of funds – one that is transparent and accountable. The Fund is to operate for a period of 10 years after which it would be liquidated, and its assets transferred to the Nigerian Police Force, except it is renewed for a further period by an Act of the National Assembly.

There is a similar bill passed by the House of Representatives as follows:

| Long Title: | An Act to Establish the Nigeria Police Trust Fund and for Related Matters, 2018 |
| Short Title: | Nigerian Police Trust Fund (Establishment) Bill, 2018 (HB 894) |
| NASS Chamber: | Senate |
| Sponsor: | Hon. Olamide Oni Johnson (PDP:Ekiti) |

Objective of HB 894:
The objective of the Bill is to provide a legal framework for the management and control of a special intervention fund for training and retraining of personnel of the Nigeria Police Force and for the provision of state of the art security equipment and other related facilities for the enhancement of the skills of the personnel of the Nigeria Police in the handling of operational equipment and machineries.

Summary/Highlights of Provisions of the Senate Bill
Sources of Funding
Clause 4 of the bill provides for the sources of the Fund to include:
(a) an amount constituting half percentage (0.5%) of the total revenue accruing to the Federation Account;
(b) a levy of 0.005% of the net profit of companies operating businesses in Nigeria;
(c) an amount not less than 30 percent of money accrued to the Cyber Security Fund as provided under Section 4(5) of the Cybercrimes and Related Matters Act, 2015;
(d) aids, grants and assistance from international bilateral and multilateral agencies, non-Governmental organisations and the private sector;
(e) grants, donations, endowments, bequests and gifts, whether of money, land or any other property whatsoever, from any source;
(f) moneys realised from investments made by the Development Fund; and
(g) any other moneys which may accrue to the Fund from time to time.

The Board
The Bill establishes a 22-person multi-sectoral Nigeria Police Development Fund Board to be headed by the Vice President of the Federal Republic of Nigeria. There would be an Executive Secretary to be appointed by the President on recommendation of the Minister of Police Affairs, as the CEO of the Fund and Secretary to the Board. Other members will include the Minister of Police Affairs; Chairman, Police Service Commission; representatives of relevant Ministries and Departments; Governors; representatives of the private sector; and professional associations.

The Board will be responsible for setting out broad policies and programmes for the training and re-training of personnel, approving the disbursement of monies to finance projects of the NPF, scrutinising and approving projects that qualify for financing, exercising control over the management of the Fund including issue of guidelines on its use, monitoring and ensuring the collection of revenues from the Federation Account and liaising with relevant MDAs for collection and safekeeping of funds. The Board is empowered to award contracts, invest monies, enter contractual arrangements and public-private partnerships as well as monitor and evaluate implementation of financed projects. In discharging its functions, the Board shall identify the funding needs of the Police through the Minister of Police Affairs.

Application of the Fund
The Development Fund shall be applied towards the following purposes -
- training and re-training of the personnel of the Police Force and its auxiliary staff within and outside Nigeria;
- enhancement of the skills of the personnel of the Police Force and its auxiliary staff for improved proficiency in the use of operational equipment and machineries;
- purchase of equipment, machineries, including operational vehicles;
- construction of police stations, sporting facilities, officers’ mess, living quarters and barracks;
- procurement of books, instructional materials, training equipment for use at Police colleges and other similar training institutions;

56 Composition includes the Minister of Police Affairs, Chairman of the Police Service Commission, Inspector General of Police, Representatives of the Ministry of Finance, Budget & National Planning, Ministry of Justice, a Governor from each of the 6 geo-political zones, permanent secretary in charge of Ministry of Police Affairs, 4 representatives of corporate bodies appointed by Mr. President with one each from the Oil & Gas sector, communications sector and finance sector, representatives of the Nigerian Union of Local Government Employees, Nigerian Union of Road Transport Workers, and Nigerian Bar Association.
• defraying the cost of participation of personnel at conferences and seminars relevant to or connected with policing or intelligence gathering;
• for overall improvement, performance and efficiency in the discharge of the duties and responsibilities of the Police.

Accountability & Oversight Provisions
The Bill provides for an accountability mechanism in clauses 23 and 24, which requires the Board to submit a report of its activities to the President at the end of every three months, as well as an annual report incorporating the auditor’s report no later than three months before the end of each year. Clause 20 requires the Board to submit its budget estimates to the Minister, not later than the 30th of June every year while clause 21 makes provision for audit of the Fund.

Comparison between the Senate & House Bills
The House bill was passed in February 2018 and is almost on all fours with the Senate bill except for a few provisions. A summary comparison of both bills is as follows:

• Both set up the fund as a corporate body with perpetual succession, capable of suing and being sued.

• Sources of Fund is the same except for the 30% of money accruing from the cyber security fund which appears only in the Senate bill.

• The purpose of the Trust Fund is the same.

The House Bill seeks to establish a Nigeria Police Trust Fund (Trust Fund). It was initially proposed to operate for a period of six (6) years from the commencement of the law unless extended for a further period by the National Assembly (Clause 2(2)). This proposal however was not adopted by the House prior to passage and was subsequently deleted, meaning there is no recommended time limit. The Senate bill on the other hand proposes ten (10) years.

• The House bill fails to establish the Board or its composition. On the other hand, the Senate sets up a diverse board composition, which seems unwieldy with no clear purpose as to the proposed diversity e.g. State Governors from the 6 geopolitical zones, representatives of the road transport workers and local government employees unions etc.

• The House bill establishes a Police Reform Trust Project Implementation Committee, which shall comprise of the Minister of Police Affairs as Chairman and six (6) other members and shall report to the Board. (Clause 12). Apart from stating that they must be persons of proven integrity, the bill does not set out requisite qualifications for the persons who shall comprise the Implementation Committee. Furthermore, it is unclear why the bill sets up an implementation committee when there is provision for a board, an Executive Secretary as CEO and staff to implement the objectives of the fund.

• There are differing provisions on the appointment of the executive secretary. The SB 433 provides that the appointee should be a person of integrity and have not less 15 years cognate experience in either public administration, law, finance, or management. HB894 however “requires that the appointee have qualifications and experience “as are appropriate for a person required to perform the functions of that office under this Bill. This appears to
be subjective. Furthermore, the Senate Bill provides for a single term of five (5) years for the office, while the House Bill provides for a three (3) year renewable term.

- Clause 18 of the House bill makes financial provisions for the day-to-day administration of the fund one of which is an annual budgetary allocation appropriated by National Assembly for the management of the Trust Fund. This raises a pertinent question as to why such a Fund should receive budgetary allocations from NASS for its administration, in addition to other monies it is to receive as grants, gifts etc. Especially considering that clause 19(4) then goes on authorise the board to apply proceeds of monies it receives to meet the cost of administration and pay salaries thereby duplicating sources of funding of administration.

- The Senate Bill does not provide for an annual budgetary allocation. It instead provides in clause 6(c) that 10% of the total monies accruing to the fund shall be set aside yearly for administration and management of the fund, maintenance services, project monitoring and evaluation and other administration related issues. It also provides in clause 18(b) that the proceeds paid into the account of the fund shall be used to pay salaries, fees and other remunerations and allowances to the board and employees. Again, this clause is not an elegantly crafted provision as it references other clauses of the bill in a manner that makes it difficult to comprehend.

- The provisions on submission of quarterly and annual reports are the same.

It appears both bills were drafted from the same source, but with minor differences. Both need to be reviewed for errors and inconsistencies.
TABLE 2: COMPARISON OF APPLICATION OF FUNDS IN THE SENATE AND HOUSE BILLS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• For the training and retraining of police personnel and for the provision of equipment, offices, barracks accommodation and related facilities</td>
<td>• To meet the training and re-training needs of the personnel of the Nigeria Police Force and its auxiliary staff</td>
<td></td>
</tr>
<tr>
<td>• Communications and Information technology infrastructure</td>
<td>• For enhancement of skills of staff</td>
<td></td>
</tr>
<tr>
<td>• Patrol/operational vehicles, crafts and other facilities;</td>
<td>• For overall improvement, performance and efficiency in the discharge of duties and responsibilities</td>
<td></td>
</tr>
<tr>
<td>• Aid in complementing the budget for arms/ammunition;</td>
<td>• Purchase of equipment and machineries including operational vehicles</td>
<td></td>
</tr>
<tr>
<td>• Operational/administrative logistics, personnel welfare, etc</td>
<td>• Construction of police stations and provision of living facilities</td>
<td></td>
</tr>
<tr>
<td>• Construction of police stations, procurement of training materials and equipment for police colleges</td>
<td>• Finance procurement of books, instructional materials, training equipment to be used at Police colleges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Meet the cost of participation of NPF personnel at seminars and conferences related to policing or intelligence gathering.</td>
<td></td>
</tr>
</tbody>
</table>

Context and Rationale
The self reported problem of poor funding of the Nigeria Police Force is a perennial one. This lack of funds has been said to impact negatively on the ability of the Force to effectively carrying out its law-keeping responsibilities. Despite repeated promises by successive governments to deal with this problem, nothing substantial has been achieved so far, rather the remedy has tended to be the establishment of new paramilitary and security outfits with similar policing frameworks leading to further stretching of already overstretched funds. This Bill is an attempt to deal with this problem by establishing a Fund to alleviate some of the undesirable outcomes of the poor funding of the Nigeria Police Force. It also has the benefit of creating diverse funding opportunities for the Nigeria Police Force from corporate bodies, aid, grants and assistance from international bilateral and multinational bodies.

In his lead debate, the bill’s sponsor mentioned that the Bill was put forward to respond to the need to set up a funding arrangement in response to the financial needs of the Nigerian Police Force; to bridge the significant shortfall in budgetary allocations to cover overhead costs and to provide a sustainable funding arrangement for the Nigerian Police Force. The Bill builds on the perceived success of similar schemes in past years such as the Presidential Police Equipment
Fund set up in 2006 during the Obasanjo administration and the M.D. Yusuf Police Reform Committee in 2008. These Funds raised the sums of N50 billion and N120 Billion respectively for the purchase of police equipment. The schemes were however unsustainable due to the lack of an enabling law, which this Bill seeks to provide. To that extent, this is a commendable Bill, the passage and implementation of which would be a welcome development to members of the Force.

Unfortunately, its provisions demonstrate an attempt to provide a temporary/piecemeal solution to the problem, as the bill is unlikely to provide a lasting solution to the deeper problems in the institution, which includes corruption, mismanagement of existing funds and lack of accountability on spending. These are peculiarities that can be easily carried over into the use of this fund if not addressed.

There has also been criticism of certain provisions of the bill. An example is the plan for the Fund to be funded by a percentage of the Consolidated Revenue Fund of the Federation. It was argued that the allocation of 0.5 per cent from the total revenue accruing from the federation account to the Fund is contrary to Section 162 of the 1999 Constitution (which provides that “all revenues” collected by the Federal Government should be paid into this account).\(^57\) The argument here is that the proposal to fund the Police Fund from the Federation account would require an amendment to the Constitution. The decentralisation of the Police to allow for State Police has been suggested instead as a suggestion to the problem of policing in Nigeria. This would however require Constitution amendment as well and an attempt by the 7th Assembly to do this failed. With the 8th Assembly, State Police did not feature prominently on the agenda as it failed to make it into the constitution amendment bills.

It is instructive to note in this regard that a number of State governments have been responsible for funding the operations of the Police and many therefore cite it as one of the reasons the Police should be decentralised and put under State authority. While a lot of the funding is unstructured and unreported, some States have a developed a legal framework to address this. An example is the Lagos State Security Trust Fund (LSSTF); a public-private partnership framework that is set up to raise and house funds from public and private organizations for procuring and maintaining crime fighting equipment for security agencies in the State. The fund has successfully assisted in procuring critical security equipment such as surveillance helicopters, operational vehicles, motorbikes, arms and ammunitions, patrol boats, and Armoured Personnel Carriers for security operations. The Lagos State model has been commended as one that is effective and reduces risk of fraud and corruption.

On the issue of State Police, there are counterarguments with commentators citing likelihood of politicisation, bias, arms proliferation as well as weak oversight mechanisms at the State level.\(^58\) Irrespective of where one stands on the argument, the issue of accountability and respect for

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human rights are larger SSR issues that cannot be ignored. It is important to note that apart from these two bills, there are several other bills seeking to set up trust funds for the Police Force. These bills seem to be a legislative priority for NASS as they have progressed further than other bills dealing with substantive reforms to the Police Act. Reform of other critical areas e.g. the Police Act and Police Regulations, which have implications for delivery of security to citizens, have remained largely not prioritised.

Successive governments in Nigeria have come out with different agenda aimed at reforming the police, and have made several other recommendations going beyond funding arrangements. One common theme across these recommendations is the need to address the structural factors affecting the NPF, not just funding. One of such recommendations that have been made is the need to review the Police Act, which defines how the Police operate i.e. recruitment, administration, discipline, internal oversight etc. Recruitment and appointment processes have been criticised for not being clear-cut and for being partisan.

Findings from a 2012 report by a CSO Panel on Police Reform\(^{59}\) found that the constitutional and statutory framework under which the NPF operates to be a significant challenge to the effective performance of its functions. The Panel identified two issues in the legal framework of the NPF i.e. lack of operational autonomy, which has led to politicization and lack of professionalism in the NPF, and an opaque leadership appointment procedure, which has the potential to rob the NPF of the services of its most competent officers at leadership levels. The Panel recommended an amendment of the constitution to make the process of appointing the IGP to be more transparent and competitive. The Panel also criticised the duplication of Policing agencies, and this appears to still be a trend with the passage of the Peace Corps and Vigilante Bills.

The Panel agreed that poor funding of the NPF is a challenge and flagged issues such as low budgetary allocation, incomplete release of budgeted funds and late release of funds (these same issues were highlighted in the lead debate on SB 433). It however criticised the practice of donation of funds and equipment to the NPF by State, local governments and private bodies, which are not captured in their annual budget and often contribute to corruption in the NPF. This point was emphasised at a Public Hearing by the House Committee on Army in November 2017; where it was noted that it was important to have an understanding of the Police funding process at the different levels; headquarters, zonal, division etc. especially as it relates to budget preparation. It was also pointed out that other funding sources to the Police are not usually captured in the budget and this was important so as to make a correct assessment of Police needs and avert misuse of funds.

**Constitutional and Legal Issues:**

1. The inclusion of a “sunset clause” (a provision within a law that provides that the law shall cease to have effect after a specific date unless further legislative action is taken to extend the law) is useful for determining if the Fund is accountable and adhering to its objectives.

2. The funding provisions of the bill in clause 4 (1)(b) i.e. allocating 0.5 per cent of the total

revenue accruing to the Federation Account to the Fund, contravenes the provisions of Section 162 of the 1999 Constitution. Monies held in the Federation Account are meant to be shared exclusively between the Federal Government, State and Local Governments. As such, for that clause to have any form of validity, the Constitution must be amended to allow such deduction.

3. Clause 4(e) provides for the Fund to receive grants, donations, endowments, bequests and gifts, whether of money, land or any other property whatsoever, from any source. The expression “from any source” unqualified could expose the Fund to legal challenges if such grants, donations, endowments or gifts are received from illicit sources. At the barest minimum, the legality of source of should be qualified.

4. There are no offences or penalties for misuse of the funds. This may be worth considering.

5. The bill says that the Fund can sue and be sued meaning that donated monies or properties can be attached following execution of a court judgment to that effect. The TETFUND Act has a provision restricting execution against the property of the Fund. The inclusion of such protections may be worth considering.

6. Some parts of the bill are badly drafted. This may be as a result of lack of pre-legislative scrutiny before the bill was presented. Examples include:

a. Errors in the Senate bill such as wrong cross referencing of clauses in the bill, typos/omissions and references to the bill as an Act e.g. Clause 14(h) of the bill makes reference to the executive secretary working with the implementation committee established “under section 15 of this Act”. Clause 15 provides for removal of the secretary and not establishment of a committee. In fact, there is no mention of an implementation committee anywhere else in the bill. The schedule to the bill however provides for the board to set up committees as it deems fit but does not make use of the word “implementation committee.”

b. Clause 15 of the Senate bill empowers the President to remove the executive secretary “notwithstanding the provision of section 16 of the Act”. Again, clause 16 refers to appointment of staff of the fund and therefore makes no sense when read together. The provision on removal appears to give wide discretionary powers to the President to remove the Executive Secretary and ignores the earlier provided five (5) years tenure position for this office. The House Bill, which is the same on this issue appears to state the correctly intended position i.e. that notwithstanding the provision on tenure of the Executive Secretary, he/she may be removed from office by the President where any circumstances arises which in the opinion of the President makes the Executive Secretary no longer capable of carrying out the duties and responsibilities of the office.

c. Furthermore, Clause 6 (c) of the House Bill says that the fund shall “carry out such other activities as considered necessary for the attainment of the objectives of this Bill. Term of three years in the first instance and may be eligible for re-appointment for another term of three years and no more.” There seems to be an omission here, as the provision does not make sense.
Consistency and Possible Conflict with SSR

- The accountability provisions of the Bill in clauses 23 and 24 appear to be narrow in the sense that the Board is obliged to report only to the President.

- The ambiguity in the sources of funding, is counterintuitive, and may result in interference with political and organizational autonomy.

- The Bill attempts to cover all issues pertaining to the administration of the Fund; however, the issue of the composition of the Board, the ambit of its application, the President’s power of appointment of the Executive Secretary solely on the recommendation of the Minister of Police Affairs, as well as the President’s extensive powers to give directives of a general nature to the Board (as mentioned in Clause 25) need to be revisited.

- There is the question of whether if the bill becomes law, it would mean an automatic prohibition of donations to the NPF outside of the ambit of the law. Will private individuals and corporations be compelled to put intended donations into the Fund? Would there be measures in place to ensure that every single extra-budgetary resource goes into this Fund? If there are measures, how will it be implemented to ensure that donation to the Police are captured solely in the Fund and not diverted? When persons and institutions that may be investigated later by the same Police fund the institution, could there not arise a conflict of interest? There is also the question of whether NASS would be expected to appropriate for items already covered by the fund, if this bill passes?

- Notably, while other countries have similar funding arrangements, the fund is sourced directly and entirely from the government. For example, in the United Kingdom, the government established the Police Transformation Fund – a police-led initiative\(^60\) where it would be making available up to a billion pounds of the Funding over a period of four years. Thus, Crest Advisory (UK), an independent consultancy, focused on criminal justice and policing notes that “Police forces can bid for this money backed by a robust business case setting out the benefits they expect to deliver” and “to build a credible case, however, forces will need commercial partners to provide strategic capabilities in change and programme management, digital communications and data analysis, and tactical capabilities to respond to specific challenges”\(^61\)

- In the United States where the Police is decentralised, funding is provided via appropriation by local jurisdictions. However, where this is insufficient, several federal programs and grants are available to supplement resources and provide equipment to local police. Such assistance includes the transfer of surplus of weapons, vehicles and other equipment from the nation’s military to its state and local law enforcement agencies.\(^62\) For instance, the 1033 Program created by the National Defense Authorization Act (1997) authorizes the transfer of

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\(^{61}\) See: Crest Advisory, “Momentum grows for police transformation funding”. Available at: https://crestadvisory.com/billion-pound-police-transformation-fund/. Last accessed: 12 June 2018

excess military equipment to civilian law enforcement. However, in 2015, President Obama signed Executive Order 13688, which limited and prohibited certain types of equipment transfer e.g. armoured vehicles, starting in 2016. President Donald Trump subsequently rolled back this order in 2017. 63

While this may appear to have a tangential relation to the NASS bills, it raises the issue of whether there would be a check on the nature of operational equipment to be procured by the NPF from the trust fund. Lessons from the US may be useful here where there have been criticisms of militarization of law enforcement due to the military-grade nature of weapons and equipment they procure to fight local crime. Critics argue that such equipment give the feeling of the Police being an occupying force patrolling a hostile territory as against a civilian protection agency while supporters say such equipment is useful in life or death situations. There is the question of whether this is a foreseeable problem in Nigeria. It can however be argued that the current military take over of internal security in various States renders the point moot. At the end of the day, it is expected that unique country needs would be a determining factor in equipment purchase. What is foremost is the need for proper oversight and accountability for the policing done in Nigeria and for citizens and communities to be part of this process.

Comments

1. Looking at the current bills on Police funds in question, the success of its implementation will be hinged on the checks and balances put in place to ensure the proper utilisation of the Fund and sums accrued. The Bill currently stipulates that quarterly and annual reports be submitted to the President detailing a report of activities and administration of the Fund. In view of the present challenges in the country with allocations for capital projects and lack of results, stricter measures may need to put in place to ensure proper utilisation of the funds considering the fact that company profits, grants and aid from international agencies and non-governmental agencies would be used. It is laudable that the Bill provides a fixed period for the Fund in order for it not to exist in perpetuity and this would be a measure to gauge its success.

2. Police reform efforts should be linked to broader institutional reforms covering the whole criminal justice sector. While a more robust financial commitment to Police development is required to reflect its increased importance in achieving Nigeria’s security objectives, it requires a long-term approach and sustainable funding.

3. The amount of money directed at police reform may not be as important as how it is disbursed and applied. Hence, accountability mechanisms must be backed by the requisite political will to apply sanctions for corruption.

4. There is a need to be conscious of ethical issues surrounding private-corporate funding of

the police. There must be watertight monitoring and control mechanism for the purpose of ensuring the right balance between private-corporate funding and effective performance of the core functions of the police. While those partnerships have become a catalyst that provides substantial financial benefits to policing, it also brings the police closer to inappropriate influences, especially in a country like Nigeria where the rich and corporations are daily accused of capturing the police for private security at the expense of public security.
### Capital Budget Allocations

<table>
<thead>
<tr>
<th>S/N</th>
<th>Year</th>
<th>Capital Proposal N</th>
<th>Capital Appropriation</th>
<th>Amount Released &amp; Cash-backed</th>
<th>Balance Not Released N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2012</td>
<td>49,986,488,369</td>
<td>9,656,295,375</td>
<td>7,035,558,743</td>
<td>2,620,736,632</td>
</tr>
<tr>
<td>2</td>
<td>2013</td>
<td>218,831,118,588</td>
<td>14,096,000,000</td>
<td>11,061,463,428</td>
<td>3,034,536,572</td>
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<tr>
<td>3</td>
<td>2014</td>
<td>218,831,118,588</td>
<td>7,340,000,000</td>
<td>3,453,492,502</td>
<td>3,886,507,498</td>
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<tr>
<td>4</td>
<td>2015</td>
<td>345,756,469,886</td>
<td>17,800,000,000</td>
<td>8,900,000,000</td>
<td>8,900,000,000</td>
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<tr>
<td>5</td>
<td>2016</td>
<td>331,000,000,000</td>
<td>16,107,272,000</td>
<td>10,026,818,000</td>
<td>6,080,454,000</td>
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</tbody>
</table>

### Overhead Cost Allocations

<table>
<thead>
<tr>
<th>S/N</th>
<th>Year</th>
<th>Overhead Proposal N</th>
<th>Overhead Cost Allocation N</th>
<th>Amount Released N</th>
<th>Balance Not Released N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2012</td>
<td>52,380,215,760</td>
<td>8,103,952,375</td>
<td>8,103,952,375</td>
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<td>2</td>
<td>2013</td>
<td>56,693,843,764</td>
<td>7,683,952,375</td>
<td>7,683,952,375</td>
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<tr>
<td>3</td>
<td>2014</td>
<td>56,693,843,764</td>
<td>8,499,861,314</td>
<td>5,228,679,520</td>
<td>3,271,181,794.00</td>
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<tr>
<td>4</td>
<td>2015</td>
<td>71,894,140,124</td>
<td>5,895,797,734</td>
<td>4,838,790,846</td>
<td>1,057,006,888.00</td>
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<tr>
<td>5</td>
<td>2016</td>
<td>90,645,426,172</td>
<td>9,250,565,307</td>
<td>6,369,343,519.18</td>
<td>2,881,221,787.82</td>
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</tbody>
</table>

### The Estimates for Running the Force

<table>
<thead>
<tr>
<th>S/N</th>
<th>Activity</th>
<th>Total average required annually</th>
<th>Total amount released in 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Fuelling of Police Vehicles (14,306 vehicles)</td>
<td>19.9 Billion</td>
<td>809 Million</td>
</tr>
<tr>
<td>2</td>
<td>Maintenance of Police Vehicles</td>
<td>7.04 Billion</td>
<td>486 Million</td>
</tr>
<tr>
<td>3</td>
<td>Uniforms and Accouterments (Kits)</td>
<td>14.5 Billion</td>
<td>1 Billion</td>
</tr>
<tr>
<td>4</td>
<td>Local Travels and Transport</td>
<td>200 Billion</td>
<td>368 Million</td>
</tr>
<tr>
<td>5</td>
<td>Barracks and Office Accommodation</td>
<td>700 Billion</td>
<td>2.3 Billion</td>
</tr>
<tr>
<td>6</td>
<td>Investigation</td>
<td>200 Billion</td>
<td>151 Million</td>
</tr>
<tr>
<td></td>
<td>Total for 2016</td>
<td>1.14 Trillion</td>
<td>5.11 Billion</td>
</tr>
</tbody>
</table>

NB: In regards to budgetary allocation for 2017, the Inspector General of Police in his presentation during the public hearing on the Nigeria Police Reform Trust Fund Bill, stated that the total amount required to run the Police was N1.13 Trillion of which N211 Billion was allocated in the budget. Specifically, for capital expenditure the Police proposed N162 Billion of which N20 Billion was allocated.

Source: Nigerian Police Force 64 (Figures for 2016)

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64 Paper Presented by IGP Ibrahim Kpotum Idris, NPM, MNI, at the Public Hearing on a Bill for an Act to Establish the Nigeria Police Reform Trust Fund and for other Related Matters, On Tuesday 11th July, 2017 at the National Assembly Complex, Abuja. Available at: http://www.npf.gov.ng/more_news.php?id=245
**Bill Objective and Summary**

The objective of the bill is to remove certain discriminatory provisions in the Police Act to ensure that women and men have equal opportunities in the Nigerian Police. It seeks to achieve this by reinforcing the constitutional prohibition against discrimination on the basis of gender, stipulating the enlistment criteria for men and women into the Nigeria Police Force and increasing the penalties for offences under the Act.

The Bill seeks to amend section 14 of the Act, which provides for enlistment into the police force by providing additional criteria for enlistment, as well as provisions specific to gender. For instance, proposed inclusions include that candidates shall face constituted panels regardless of gender and only citizens of Nigeria can enlist.

It enumerates criteria for enlistment as a recruit constable for men and women, respectively, which includes a minimum and maximum age for recruitment at 18 years and 28 years; minimum height requirement of 1.67 meters; certification of mental and physical acuity; requisite secondary school-level academic qualifications; good character; and freedom from “pecuniary embarrassment”. The Bill does not propose enlistment criteria for other ranks within the Nigeria Police Force.

It proposes that a married policewoman should not be granted any special privileges by reason of her married status and should be subject to posting and transfer as if she were unmarried. It further seeks to insert a new provision in the Act to provide for maternity leave for all pregnant police officers, irrespective of marital status, and in accordance with provisions of general order.

Additionally, the bill prohibits discrimination against any person based on gender in accordance with the provisions of Constitution by specifically providing that “No Act, Law, subsidiary instrument made under the Principal Act or any other law shall discriminate against any person on the basis of gender in accordance with the provisions of section 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).”

Other proposals in the bill border on increased fines and terms of imprisonment for offences such as assault or obstruction of a police officer, refusing to aid an assaulted police officer, impersonating a police officer, harbouring a constable and failure to comply with a notice of appointment of emergency special constables. Some of the current fines are low as N20 to N50 and the aim is to bring them in line with current realities.
Context and Rationale

The patriarchal nature of the Nigerian society that perceives women as the ‘weaker sex’ and attributes superiority to men has contributed in no small measure, to the promotion of discriminatory practices against women. Such discriminatory practices have become institutionalised and found legal expression and backing in various laws, especially those related to the security sector. For example, in Section 118(g) of the Nigeria Police Regulations, married women are prevented from seeking enlistment in the Nigerian Police Force and in section 127, when an unmarried policewoman is pregnant, she would be compulsorily discharged from the Police Force. She can only be re-instated on the approval of the Inspector General of Police. Similarly, under Regulation 124 of the Police Act, a woman police officer who is interested in getting married must initially apply in writing to the Commissioner of Police in her State command for approval, which would only be given after what seems like a background check on the intending spouse.

Similar discriminatory provisions can be found in the Nigerian Drug Law Enforcement Agency (NDLEA) Act. For instance, under Article 5(1) of the NDLEA Order, 2002, “All female applicants shall be unmarried at the point of entry and shall upon enlistment remain unmarried for a period not less than two years.” Furthermore Article 5(2) provides that, “all unmarried female members of staff that wish to marry shall apply in writing to the Chairman/Chief Executive, asking for permission, stating details of the intended husband.” Indeed, the prevalence of such outdated provisions in security sector laws and regulations is appalling.

It is worthy to note that recently, Civil Society groups have mounted legal challenges to those discriminatory provisions and the Federal High Court sitting in Lagos, in one of those cases, has declared illegal and unconstitutional the provision of the Police Act, which prohibits a woman police officer from marrying a man of her choice without the permission of the Commissioner of Police in the command where she is serving. This was sequel to the suit filed by the Women Empowerment and Legal Aid Initiative (WELA) challenging the constitutional validity of Regulation 124 made pursuant to the Police Act.65 WELA argued during the trial, that since a male police officer is not subjected to the same inhibitions, Regulation 124 is inconsistent with section 42 of the Constitution and Article 2 of the African Charter on Human and Peoples’ Rights which prohibits discrimination on the basis of sex. It therefore urged the Court to expunge Regulation 124 from the Police Act as it is not reasonably justifiable in a democratic State like Nigeria which has domesticated the African Charter on Human and Peoples Rights and ratified the Protocol to the African Charter on Human and People Rights on the Rights of Women in Africa and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Constitutional and Legal Issues

1. The provisions seeking to prohibit special privileges for women irrespective of marital status [clause 1(7)] and providing for maternity leave for female police officers is already contained in Regulations 125 and 126 to the Act. The only difference is that the current regulation provides for maternity leave for a “married” woman police officer while the bill changes this to a “female” police officer. It is not obvious why these provisions are being replicated in the

Act. Perhaps, it could be because the Act supersedes the Regulations. Notwithstanding, the provisions cannot co-exist in two separate parts of the law therefore a consequential deletion in the Regulation may be necessary.

2. This bill is a modest contribution to the efforts to eliminate gender discrimination. However, it does not go far enough in addressing the problem. In fact, some of the proposals in the bill could have an unintended effect of engendering more gender discrimination. For instance, the proposal in Clause 2(7) of the bill provides to the effect that a married female police officer shall not be granted any special privileges by reason of the fact that she is married and shall be subject to posting and transfer as if she is not married. While this provision on the face of it seems to promote the principle of equality, an inequitable burden could be placed on married female officers, potentially infringing on their right to personal and family life in a way that does not affect their male or unmarried female counterpart. Without safeguarding provisions, this provision could be applied arbitrarily in a way that can force married female officers into a dilemma of having to choose between their job and family life.

3. Certain enlistment criteria are potentially discriminatory against women, including the preclusion of pregnant women from enlisting into the Nigeria Police Force, and the imposition of a uniform height requirement for male and female. Prequalification of candidates based on a minimum height requirement excludes a significant proportion of citizens. Studies have demonstrated that minimum height requirements are anecdotal and are based on politically oriented assumptions; they are not scientifically associated with physical fitness, and do not have implications on the ability to carry out police work. Stipulating the same height requirement in recruitment for both men and women in Clause 2(4)(b) is also not equitable, as studies have shown that adult men are on the average, taller than women. Furthermore, clause 2 (5) (c), which indicates pregnancy as a ground for exclusion from enlistment, also amounts to gender-based discrimination. Rather, emphasis should be placed on mental acuity; and on physical fitness or agility tests, while ensuring also that these tests are gender equitable.

Implementation and Enforcement
The Bill did not make special provisions for implementing the gender policies encapsulated in the bill. For effective implementation, existing mechanisms i.e Police Gender Desk can be utilised. Their mandate could be broadened to cover coordination and awareness-raising.

Consistency and Possible Conflict with SSR
- Promotes prima facie gender parity in recruitment processes, and increased protections for specific vulnerable group, being pregnant women, regardless of marital status.
- Potential gender-based discrimination and inequitable practices in recruitment and posting, contravening the participatory principle of SSR.

66 A research, published in the Journal of Clinical Endocrinology and Metabolism recently, identifies a gene on the Y chromosome as one of the reasons why adult men are on average 13cm taller than women. As women are generally shorter than men, fewer percentile of women would be able to meet the criteria. Read more: D. Kingsley; “Genes explain why men are taller”, ABC Science Online, (Australia, September 11 2001). Available at: http://www.abc.net.au/science/articles/2001/09/11/363100.htm
Comments

1. A more holistic approach to addressing the problem of gender discrimination is required. It might be more desirable for the National Assembly to review security sector legislations to identify gender discriminatory practices embedded in them, with a view to drafting comprehensive legislation for the entire security sector to address same.

2. While noting the commendable preliminary efforts towards promoting reform in the Nigeria Police Force, the Bill’s proposed amendments do not go far enough in ensuring that police reform incorporates gender equality and gender equity. It remains paramount that in order to ensure the adequacy of legislative and policy reform, there needs to be further and more in-depth research to fully examine and understand gender issues using qualitative methodology.
**Bill Objective**

The object of the Bill is to provide for the design, development, installation and management of a robust crime and criminal tracking system for the Nigerian Police. It also aims to enhance national security through automation of criminal records with biometric identification information for background security checks, crime investigation, prosecution and counter-terrorism. Specifically, the Bill includes issues such as the details to be contained in such registry, the uses to which information from the registry are to be put to, the location and coordination of the registry, the manner of its operation and access to the records contained in it.

**Context and Rationale**

Criminality in any country is a big challenge to security, governance and even the economy. Nigeria needs a comprehensive national data bank for its security and anti-graft agencies to be able to effectively check corruption and crime, security and human rights violations. The upsurge in crime due to poverty, insurgency, ethno-religious tensions and other factors in Nigeria have accentuated the need for more intelligence gathering and sharing in the security sector. Criminal records in Nigeria are manually kept and often in an uncoordinated form and does not meet the demands of law enforcement in the 21st century. There have been cases of difficulty in properly identifying ex-convicts with no proper records to establish that fact. Also, it has been argued that most of the fraud taking place across Nigeria is as a result of the lack of a data bank to reveal history and details of perpetrators. The establishment and operation of a crime registry is therefore indispensable to the effective operation of the security system in Nigeria. The establishment of a central criminal registry also comes with benefits for crime prevention and businesses or institutions looking to get a quick and efficient character check on individuals.

It should be noted that there are already plans by the Police to fill this gap. In 2016, the Vice President announced plans to establish a Nigeria Police Crime and incident database (NPCID) and even laid the foundation for the construction of the centre estimated to cost N16 billion. The Inspector General of Police, Ibrahim Idris, at the event, stated that the Police Crime and Incident database will be a central data bank aimed at professionally profiling criminal elements and crimes committed across the country.67

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Highlights of the Bill

Establishment of the Police Central Criminal Registry ("the Registry")
It establishes a registry to store information and digitalize all records pertaining to – crime and criminals, criminal cases and their progress, fingerprints, date of arrest, outstanding warrants and charges, etc. The registry is also expected to maintain links with Prisons and relevant governments agencies, Interpol and collect information on Nigerian convicted locally and abroad.

Issuance of Character Certificates
The Registry shall require and store information for the issuance of clearance and character certificates for the purpose of obtaining vehicle licenses, driver’s license, admission into the universities, employment in the private & public sector, military & paramilitary recruitment, travel visas, renting or leasing of accommodation, sales of firearms, transportation of explosives, etc.

Analysis of Crimes Data
While the Crime and Criminal Database Tracking System ("the System") focuses on collecting data related to crimes reported to the Police, the Registry shall be responsible for collecting, editing, and analysing reported crime data from individuals and all law enforcement agencies nationwide.

Networking
The Police Headquarters, State Police Commands, Area Commands, and all Divisional Police Stations shall be networked and interconnected. The System shall after its installation, enhance the national security through automation of criminal records with biometric identification information for background security check, crime investigation and prosecution and other allied citizens services. The networking is to be done by a consultant appointed by the Police and operating on a Public Private Partnership (PPP) basis.

Portal for Inter-Security Agencies Connectivity
The Consultant shall provide, arrange and implement the integrated secure portal for inter-security agencies connectivity and connection to Embassies for visa application and security background checks.

Management of the System
Trained police officers shall be responsible for the management and control of the front end of the system, while the consultant shall be responsible for the backend and every other necessary support services to ensure the smooth operation of the System, and the foreign & local training for the technical and operational staff of the Police Force.

Funding
The Consultant shall finance, design, develop, install and manage the robust Crime and Criminal Tracking System ("the System") on a Public-Private Partnership (PPP) basis for the Nigerian Police, covering:
• The Police Headquarters
• Area Commands
• State Police Commands
• Divisional Police Stations
The System shall enhance national security through automation of criminal records with biometric identification information for background security check, crime investigation and prosecution, etc.

The Consultant shall fund the system (already selected and mentioned in Clause 17), on a PPP arrangement with the Nigerian Police with no expense from the government. The investment in the system shall be recovered from the revenue generated through issuance of the character certificate and security clearance; and the sharing formula shall be 90% for the Consultant and 10% for the Police Force.

*Access to Records*

The Registry may make all criminal records and histories accessible to the public, except for most juvenile histories. Criminal history of anyone may be used for background checks for licensing, immigration, international travel and visa, etc.

*Prohibition of Access*

The Registry may in special cases exclude members of the public from gaining access to certain information in the public record either for privacy of the criminal, especially when the person is acquitted, or it may jeopardize the safety or success of an investigation. The Registry is empowered to determine such exclusion.

*Police Character Certificate*

Where an application is made, and the prescribed fee is paid for a background check, the Registry shall, in the absence of such criminal record issue a certificate of good character within four (4) weeks of receipt of the application. Where there is a criminal record, the Registry shall determine whether the offences are relevant to the application and take a decision on it within eight (8) weeks of the receipt of the application. A person may also run a check on him/herself and if there is a criminal record, apply to have it amended if the records are incorrect or incomplete, subject of course to the decision of the registry.

*Refusal of Certificate*

Where an application is refused, the Registry shall notify the applicant of its reason for such refusal.

*Constitutional and Legal Issues*

This bill has a laudable objective but has certain provisions that may not be appropriate for legislation. For instance, in what reads like a business contract provision, clause 14 of the bill, in outlining the responsibilities of parties to the project (indicated as the Nigerian Police Force and the Consultant) requires the Police to provide necessary infrastructure for the installation of the system, promote the project to other security agencies and obtain duty waiver for import of necessary equipment by the Consultant. The Consultant on the other hand is required to fund 100% of the project, as well as install, manage and train on the use of the system. The duration for management of the system and return on investment, except mutually renewed, is 35 years. The bill requires the consultant to fund 100% of the project and take 90% of revenue generated therefrom; and further requires the Police to obtain duty waivers for importing relevant project equipment?
In addition, it is not clear why the bill requires the Police to “promote” the project to other agencies. Promoting projects is not the duty of the Police and could potentially open the door to unethical behaviour or corruption. It is unclear what happens if the Police fails or refuses to promote use of the system or if other agencies or embassies refuse to be linked up to it. There are no measures or protections in place to avoid sabotage or compromise of this system by cybercriminals or even the consultant. Moreover, leaving sensitive criminal records to be managed by a private body for such a long duration (35 years) does not seem like good or sustainable practice.

Clause 17 of the Bill interprets the term “Consultant” as Richfield Technologies Limited, which shall be appointed under Clause 3 of the Bill (when it becomes an Act). The mention of the name of the Consultant clearly shows that the Consultant was identified before the Bill was presented. A consultancy of this nature should require an open and transparent selection process. Prior identification and selection of the Consultant is unethical and raises suspicion of bias or conflict of interest, which are flagrant violations of the Procurement Act. Moreover, it is unknown to Nigerian law for a project consultant to be appointed in a legislation.

A change of Consultant will be difficult in the long run if the name of the Consultant is embedded in the Bill. The implication of selecting a Consultant prior to presenting the Bill for first reading and including the name of the Consultant in the Bill is that, if the Bill becomes law, an amendment will be required before the Consultant can be changed.

Another point to note is that the Administration of Criminal Justice Act (ACJA) 2015 has already made exhaustive provisions on keeping of criminal records as follows:

- **Section 15(1)** provides for the recording of personal details of suspects i.e. height, photo, fingerprints, details of offence etc.

- **Section 16** requires the Police to establish a Central Criminal Records Registry. For this purpose, every State Police command shall establish a Criminal Records Registry, which shall keep and transmit all such records to the Central Criminal Record Registry. It further mandates the State or Federal Capital Territory (FCT) Police Command to transmit all court decisions in all criminal trials to the Central Criminal Records Registry within thirty (30) days of the judgments.

- **Section 29** also makes provisions for remittance of criminal records. Pursuant to this, the Inspector-General of Police and the head of every agency authorised by law to make arrests (e.g. EFCC, NDLEA, Customs, etc.) is mandated to remit quarterly, a record of all arrests made with or without warrant in relation to federal offences within Nigeria to the Attorney-General of the Federation. Security agencies heads at the State level are required to do the same i.e. remit arrest records to the State Attorney General in respect of State offences or arrests within the State. The report shall contain the full particulars of arrested suspects as prescribed by section 15 of this Act. The Attorney-General of the Federation is also mandated to establish an electronic and manual database of all records of arrests at the Federation and State level.
• Sections 33 makes further provisions requiring the Police stations to remit monthly records of all suspects arrested without warrant to the nearest Magistrate who shall transit them to the Attorney-General of the Federation via the Criminal Justice Monitoring Committee. The National Human Rights Commission, the Legal Aid Council of Nigeria or a Non-Governmental Organization can request for these reports from the Attorney-General.

• Section 111(1) requires the Comptroller-General of Prisons to make returns every 90 days to the Chief Judges of the Federal High Court, Federal Capital Territory, the States, and the President of the National Industrial Court where the prison is situated and to the Attorney-General of the Federation of all persons awaiting trial held in custody in Nigerian prisons for a period beyond 180 days from the date of arraignment.

The major point of difference between these provisions and the bill is the public access that the later offers for purposes of background check. Both have the same objective of curing the challenges occasioned by lack of records in our judicial system.

*Legal and Ethical Use of Data*

Although the bill attempts to take care of this issue, ethical use of data remains a challenge globally, even in advanced countries. For this reason, many countries have enacted comprehensive data protection legislation to protect citizens’ right to privacy including use of such data in law enforcement.

*Accountability and Oversight Mechanisms*

Dealing with an issue as sensitive as the establishment and management of a central criminal registry, the bill fundamentally lacks the essential oversight mechanisms and accountability processes that would promote compliance with ethical, statutory, and regulatory standards.

*Consistency and Possible Conflict with SSR*

The operation of a digital crime registry can contribute to effective communications and information sharing between the police, and other security sector actors, enhancing their effectiveness in fulfilling their mandates.

Overall, the Bill proposes functions that are already within the ambit of standard police operations. Even though the financial cost of funding this registry in an already overburdened system is shifted to a private investor (the consultant), it however raises concerns relating to accountability. The inclusion of “business like” clauses in the bill and prominence of the consultant overshadows the bill’s objectives and puts it in questionable light.
Long Title: A Bill For an Act to Amend the Firearms Act, Cap F28, Laws of the Federation of Nigeria, 2004 to Provide for Increase of Fine and Provide for Destruction of Firearms Illegally Imported Into the Country or in Possession of Individuals Without Valid License and for Related Matters.

Short Title: Firearms (Amendment) Bill, 2017 (SB489)

NASS Chamber: Senate

Sponsor: Senator Gbolahan Dada (APC: Ogun)

Bill Objective and Summary
The Bill aims to amend the extant law to include an increase in penalties for certain offences under the Act – such as possession of muzzle-loading firearms within a specified area without a license, late or none notification of loss, theft or destruction of firearms, failure to comply with the provision that deals with a registered dealer’s armoury, sale or transfer of firearms or ammunition – to fines of up to N100,000 or terms of imprisonment for two years or both.

It also proposes three new sections (new sections 39 to 41) on seizure and destruction of confiscated and illegal firearms. It increases the fine for failure to stamp all firearms from N1,000 to N100,000. The new sections empower any officer of the Nigerian Armed Forces, Nigeria Police Force, Nigerian Customs Service, Nigeria Security and Civil Defence Corps and officers of any other law enforcement agency to seize and confiscate any illicit and illegal firearms imported into the country without valid import documents or valid license. It also empowers the seizing agency to designate a safe place and officer for the storage of seized firearms and to arrange a public place for the physical destruction of the firearms.

The Bill requires that the weapon be held for a maximum of seven (7) days and the destruction ceremony hold in the presence of observers and media in line with good practices and in compliance with the International Small Arms Control Standards (ISACS) developed by the United Nations Coordinating Action on Small Arms (CASA). Firearms subject to seizure and destruction include those surrendered under the government’s Amnesty programme, weapons recovered from crime or part of a weapons collection programme as well as military surplus. Tampering with or stealing such recovered arms will result in a minimum sentence of ten (10) years imprisonment. In addition, proposals are made for policy initiatives for recycling and reusing waste materials derived from the destruction of firearms seized and revenue generated shall be paid into the Consolidated Revenue Account.

Context and Rationale
This amendment is timely and apt in terms of its policy relevance and political expedience. The increase of the penalties for various offences under the Principal Act fulfils a public policy expectation on the legislature to ensure that laws and regulations are up-to-date and reflects
current realities. This is an area where the legislature has often been slow to act with similar outdated penalty prescriptions still subsisting in various criminal legislations in the country.

The proliferation of firearms and ammunition has an obvious causal effect on the incidence of violent crimes in Nigeria. Hence, the proposed amendments for the increase of fines prescribed under the Principal Act, destruction of illegally imported or acquired firearms and measures to prevent the circulation of such firearms.

This Bill takes into cognisance the United Nations Report, which states that out of over 80 million small arms floating freely in the West African sub-region, 70% are in the hands of few individuals and groups in Nigeria. The menace of illegal and illicit firearms poses a grave danger to the security apparatus and it arms negative elements in the society who seek to destroy the security and safety of the citizens. This can be seen with the Boko Haram insurgency, the Niger Delta military, the farmers-herders conflicts and the increasing spate of kidnapping in-country. The Bill aims to build public confidence in overall efforts to eradicate illegal firearms and prevent illegal firearms from finding its way back into the society. It is also aims to create an additional revenue stream for the government while attaining environmental ideals.

With the inclusion of public destruction of firearms in the presence of observers and media, it responds to the issue of public mistrust of security forces as well as the need to assure the public that said weapons have been destroyed and would not make its way back into society. It can be argued that destruction seeks to improve safety and security by reducing the total number of illicit weapons in public circulation, preventing re-circulation and aid national counter-proliferation measures to combat illicit arms trade. However, destroying the firearms in a location accessible to members of the public might be a danger to the public.

**Legal issues**

- **Power to seize and destroy**- According to this Bill, any officer of the Nigerian Armed Forces, Nigeria Police Force, Nigerian Customs Service, Nigeria Security and Civil Defence Corps and officers of any other law enforcement agency is empowered to seize and destroy confiscated weapons. A perusal of the Principal Act shows that the Nigerian Police is entrusted with the administration of this Act. By expanding the number of security agencies to administer provisions of this Act may be seen as a duplication of functions, which in turn may have an adverse effect on the effectiveness of those agencies and lead to conflict between them.

- **Database of firearms**- By the proposed new clause 39(3) the head of the agency is to designate an officer as record keeper and create a place for safe custody of the firearms. The officer is to keep a database of the make, model, caliber, serial number and other details. This is consistent with the International Small Arms Control Standards (ISACS) developed by United Nations Coordinating Action on Small Arms.

- **Physical destruction**- the Bill includes a clause providing for physical destruction of illegal and illicit firearms but does not prescribe for the mode and there is no direction as to the designated party to prescribe such policy. Research shows that simple and cheap techniques of physical destruction include burning, sawing, cementing and crushing by tracked vehicle.
• *Timeframe for destruction* - The amendment proposed the destruction of all firearms seized pursuant to the provisions of the amendment within seven (7) days. Whilst there is a provision for such destruction to be prevented by a court order, the possibility of securing such order within seven (7) days in all cases of abuse is not realistic.

**Consistency and Possible Conflict with SSR**

• It contributes generally to the reduction of arms proliferation and potentially significant contribution to SSR/SSG goals.

• There are potentially issues of effectiveness of security agencies.

• There appears to be attempt to build in accountability and transparency with the provision for the use of a register and observers, these however need to be strengthened especially in view of the expansion of the role of other security agencies.

• There is the larger issue of proliferation of small arms and light weapons which this bill does not comprehensively address.
Long Title: A Bill for An Act to Amend the Firearms Act No 32, Cap. F28, LFN 2004, To Increase Penalties for Offences, Miscellaneous Provisions Under the Act and Other Matters Connected

Short Title: Firearms Act (Amendment) Bill, 2015 (HB 182)

NASS Chamber: House of Representatives (Passed)

Sponsor: Hon. Odebunmi Olusegun Dokun (PDP: Oyo)

Bill Objective
The objective of the bill is to tighten control of acquisition and possession of firearms and ammunition to protect the public against assaults by firearms, used by terrorists, criminals or any other type of attack by increasing the penalties for illegal possession and dealing in firearms. The Bill also provides for the destruction of firearms illegally imported into the country or owned by individuals without a valid license. This bill is similar to SB489 but with less exhaustive provisions.

Context and Rationale
Terrorist attacks, insurgency, herdsmen attacks, militancy, mass shootings, and increase in criminal activities in Nigeria and neighbouring countries have highlighted the dangers posed by certain firearms circulating within and across the country. The proliferation of firearms and ammunition is linked to high incidence of violent crimes in Nigeria.

The bill is therefore a legislative intervention to address this problem. The current legal regime regulating ownership of and dealing in firearms and ammunition is grossly inadequate to address the problem. Hence, the bill aims to increase security for citizens, whilst allowing lawful ownership and possession of firearms under certain conditions.

Key Provisions of the Bill
Similar to SB 489, proposed amendments in the bill include an increase in penalties for certain offences under the Act – such as possession of muzzle-loading firearms within a specified area without a license, late or none notification of loss, theft or destruction of firearms, failure to comply with the provision that deals with a registered dealer’s armoury, sale or transfer of firearms or ammunition – to fines of up to N200,000 or terms of imprisonment for four (4) years or both. The current fine is N1,000 or a two (2) year imprisonment term. Failure to produce a license for a firearm or ammunition or the firearm or ammunition itself at the request of a “security officer” (currently Police Officer) will result in a fine of N500,000 or one (1) year imprisonment for first offenders; one million naira or three (3) years imprisonment for a second offender; or 3 million naira and ten (10) years imprisonment for a third offender. The current penalty for this offence is one hundred naira or imprisonment for six (6) months. The same penalty appears in Regulation 48 to the Act which stipulates penalties for contravening regulations related to renewal/revocation of license on disposal of firearm, procedure to be followed when a license holder leaves Nigeria, deposit of firearms in a public armoury etc. The penalty is now increased from one hundred naira or six (6) months to a fine of N200,000 or 3 years imprisonment or both.
In addition, it also proposes an increase in the amount to be paid as fees for licenses, permits and registration, and renewals. The current fees are as low as one Naira and five Naira. These pecuniary amendments take into account inflation and the fact that penalties should reflect contemporary realities. It is one of the anomalies of Nigeria's criminal legislations that most penalty provisions in laws, including those from colonial times, have never been updated.

Furthermore, the bill amends Section 29 of the Principal Act to define “Reasonable time” to be given by a “security officer” (currently police officer) for compliance with the request to produce a license pursuant to the provisions of section 28 of the extant Act as “not less than twenty-four hours and not more than seventy-two hours.” The current provision does not stipulate a time thereby giving the officer some discretion on timing.

**Constitutional and Legal Issues**

It may be important to include the definition of “security officer” in the bill.
### PRISON REFORM

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<tbody>
<tr>
<td>Short Title:</td>
<td>Nigerian Prisons and Correctional Service Bill, 2017 (SB125)</td>
</tr>
<tr>
<td>NASS Chamber:</td>
<td>Senate</td>
</tr>
<tr>
<td>Sponsor:</td>
<td>Sen. Mohammed Shaaba Lafiagi (CON) (APC:Kwara)</td>
</tr>
</tbody>
</table>

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<tr>
<th>Long Title:</th>
<th>Bill B- A Bill for an Act to Repeal the Nigerian Prisons Act Cap 478 Laws of the Federation of Nigeria 2010 and Make Comprehensive Provisions for the Administration of Prisons in Nigeria and for Related Matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short Title:</td>
<td>Nigerian Prisons and Correctional Services Act, 2016 (SB 288)</td>
</tr>
<tr>
<td>NASS Chamber:</td>
<td>Senate</td>
</tr>
<tr>
<td>Sponsor:</td>
<td>Sen. Babajide Omoworare (APC: Osun)</td>
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</table>

**Bill Objective**

The Bills have very similar provisions and aim to enhance the provision of correctional and rehabilitative services in Nigerian prisons by formalising and broadening the institutional framework for the administration of prisons and stipulating clear-cut rules in dealing with persons awaiting trial in detention to engender a more efficient prison system. The Bills seek to repeal the extant Prisons Act and enact a new law that sets up a Nigerian Prisons and Correctional Service for the administration of prisons in Nigeria.

**Context and Rationale**

In Nigeria, the Prison system whose overriding objective should be correction, rehabilitation and reform of inmates, is more recognised as a breeding ground for hardened criminals who often come out worse than when they entered into prison. This is further worsened by the sheer number of suspects who are yet to be convicted and are awaiting trial. According to the National Bureau of Statistics in 2015, 70% of men and women in prisons in Nigeria are awaiting trial. To put the
figure in numbers, in 2016 it was found that 48,550 out of 68,723 prison inmates were awaiting trial. This number excludes persons in police cells or detention centres. The hostile environment in the Nigerian prison system also renders inmates susceptible to physical and psychologically abuse despite the provision in section 34 of the 1999 Constitution (as amended) that guarantees the dignity of their person.

Some of the major problems of the prisons system include the overpopulation of prisons, the lack of rehabilitative components in the administration of prisons and prisoners, the high number of detained persons awaiting trial in prison, and the lack of a coherent policy in prison administration. Furthermore, the absence of an inmate database itemising the entry, trial, outcome and departure of prisoners and/or those awaiting trial exacerbates these issues.

Key Provisions of the Bills
The Bills are very similar in content with slight variations. Although, the Bills change the name of the Nigerian Prison Service to the Nigerian Prisons and Correctional Service, the role of the Controller General and the use of Zonal Headquarters and State Commands are retained. The Bills empower the Minister to declare any public building with the requisite facilities in an appropriate location within Nigeria to be a prison. It also gives directions on what constitute a prison and their various classifications. They enumerate the functions, structure of the Prison Service and the role of lawyers in the employment of the Service. Some of the roles of lawyers include the monitoring and provision of legal representation, supporting case tracking of prisoners and educating prisoners of their rights and obligations under the law. Lawyers can also render such legal services as the Service may require although they are prohibited from acting as defence counsel to inmates-see clauses (2) and (3) of the Bills.

Both Bills designate the Controller-General of Prisons as the head of service who shall exercise full operational control over it- see clause 5 of Bills SB 125 and SB 288 respectively. However, they differ on the qualifications of appointment of the Controller-General. For instance, SB 125 recommends his/her appointment from amongst serving General Duty prison officers in clause 4(1) while SB 288 provides for a senior prison not below the rank of Assistant Controller General with requisite academic qualifications not less than a first degree or its equivalent professional and management experience- clause 4(2) However, both Bills stipulate a single four-year tenure for the Controller-General -see clause 5 (2) of SB 125 and 288 respectively. They also provide for the headquarters of the Service to be in Abuja.

Both Bills also slightly differ in their proposed composition of a Prisons and Correctional Service Commission. For instance, under SB 125 the Commission shall consist of a Chairman who must either be a retired General Duty Prison Officer not less than the rank of Deputy Controller-General of Prisons or a retired High Court judge with not less than ten years experience on the Bench with 7 other members drawn from Prisons, the Ministry of Interior, Nigerian Bar Association, National Human Rights Commission or Civil Society Organisation in addition to the Comptroller General who plays an advisory role [Clause 9]. This position is different from SB 288, which establishes the Prisons Service Commission with a Chairman appointed by the President and 8 other members drawn from Prisons, Ministry of Justice, National Human Rights Commission, Nigerian Bar Association and 2 representatives from Civil Society Organisations; one of which must be from a Women’s society- clause 8(1). Unlike their position of a single term for the Controller-General,
both Bills provide for a renewable term of 4 years for the Chairman and members constituting the Commission- see clause 10(1) and 8(2) of Bills A and B respectively. The Bills also introduce a mechanism where the Service collects vital information such as the biometrics of such a person from a person sentenced, committed or transferred to prison- see clause 17 and 18 of both Bills respectively.

It is expected that the collection of such vital information will feed into a database of Prisoners and improve data on prison population, help to disaggregate the data of persons awaiting trial, sick prisoners, prisoners that have been transferred and various other classifications.

Other notable highlights in the Bills include the provisions for the transfer of prisoners, the production of prisoners before Courts, and medical check up where the Prisoner is suspected of being of unsound mind. Importantly, SB125 prohibits persons awaiting trial from being remanded in prison for more than 3 months if a prima facie case has not been established against him- (clause 23). There is also a provision for the State Controller to notify the Chief Judge of the State where a prison has exceeded its capacity – clause 16(4) of SB 125. Where this happens, the Chief Judge is expected to take necessary steps to rectify the overcrowding- clause 16(5) of SB 288.

In addition to the foregoing, the Bills enable prison officers to use firearms or weapons in certain instances such as where a prisoner is attempting to escape or where he has reasonable grounds to believe that he or any other officer or person as the case may be is in danger of life or limb or other grievous harm is likely to be caused by him- clause 25(3) of both Bills respectively. However, as a general rule, the prison officer must give warning to the prisoner of his intention to fire – see clause 25(4) of both Bills respectively. There is also a general rule that the use of weapons in such circumstances must be to disable as far as possible rather than to kill- see clause 25(6) of SB 125 and 288.

A Prison Officers’ Reward Fund is also created in both bills to be financed from fines and forfeitures paid by prison officers who have committed disciplinary offences under their regulations or standing orders. SB 125 mandates training for staff as conditions for deployment and career progression, whilst both bills provide vocational and remedial training for convicted prisoners. The Bills make it an offence to bring prohibited items in the Prisons and provide for prison service money to be appropriated for inmates’ feeding. It also makes a provision for the cost of feeding to be reviewed at a period not exceeding 5 years and details the procedure for handling jailbreaks.

**Constitutional and Legal Issues**

1. *Establishment of the Nigerian Prison and Correctional Service*- The establishment of the Nigerian Prisons and Correctional Service in clause 9 of both Bills seeks to create a Nigerian Prisons and Correctional Service Bill that conforms to modern day practices of the 21st century and rehabilitative justice. For instance, the provisions on preparing offenders for re-introduction into society by providing for vocational and educational courses available departs from the traditional notion of incarceration that Prisons are better known for. Clause 1(3) of SB 288 states that “the service shall perform the task of corrections as the key aim of imprisonment in Nigeria” giving hope that the correctional element will makes the prison system more humane. In addition to the Nigerian Prisons and Correctional Service, it is notable that both Bills also establish a Prison Service Commission. However, while SB 288 is explicit that the Commission shall be responsible for the administration of the Prison Act, (clause 7), this can only be inferred from the general functions of the Commission in SB 125. In addition to the
general functions of the Commission outlined in both Bills, it may make Standing Orders regulating its proceedings or any Committee thereof (clause 16(1) in SB 288. This is different from the position in SB 125 where the power to make regulations and standing orders are vested in the Controller-General (clause 34(1) who plays a primary role in the administration of the service – clause 2(2)

2. **Category of Prisons** - According to the extant Prisons Act, the Minister is empowered to classify prisons. The extant law provides for convict prisons, provincial and divisional prisons and juvenile prisons. The position is slightly different from the aforementioned Bills in question. SB 125 for instance, provides for a maximum security prison for all classes of prisoners, a medium security prison for all classes of prisoners, open prison for the treatment of long-term first offenders, farm centres for convicts with good conduct who have less than six months to serve, provincial prisons for convicts serving two years imprisonment or less and satellite prisons for convicts either serving a minimum sentence of three months imprisonment or awaiting trial for minor offences. SB 288 provides for High Security prisons for death row prisoners, persons imprisoned for life, kidnapping, drug trafficking and convicts sentenced to at least ten years imprisonment among others, a Minimum Security Prison for those who commit murder, armed robbery, rape, defilement and convicts serving a five year sentence or above, a Medium Security prison for persons convicted of theft, battery, fraud, forgery, stealing, debtors, civil offenders and all other serving sentences of below five years.

SB 288 also makes provisions for Open Prisons for the treatment of long-term offenders, Farm Centres for convicts with good conduct who have six months or less to serve, Satellite Prisons that are very far from the main prison and will be used mainly for keeping persons awaiting trial, Female Prisons for female offenders and Borstal Institutions for the treatment of juvenile offenders. SB 288 further adds that all female offenders be divided into at least two divisions - That is maximum or medium female prisons while it classifies juvenile offenders in Borstal Institutions into 4 categories. This ensures that as much as possible, persons with the most serious offences are separated from persons with the least serious offences. There is a provision in clause 17 of SB 288 stating that every prisoner confined in prison shall be deemed to be in the legal custody of the Prison Superintendent.

3. **Functions of the Service** - Both Bills have identical functions that seek to provide for the safe, secure and humane custody of prisoners and identify the cause of anti-social behaviours of convicled person. This, sets in motion a mechanism for reforming and rehabilitating prisoners towards their re-integration into society, initiating behaviour modification, prisoners empowerment through opportunities presented by the deployment of vast educational resources and vocational skills acquisition. This is an improvement on the extant law, which does not expressly state the functions of the Nigerian Prisons Service.

4. **Revenue sharing** - Clause 3(4) of SB 125 provides that the Controller-General shall approve the sharing of revenue due to the Service from any enterprise. It prescribes a sharing formula to be one-third set aside for the inmates participating in the activity, one-third for the prison where the activity has taken place and a third to be paid into the Consolidated Revenue Fund. However, it fails to specify what is meant by enterprise or activity or the auditing authority for the funds and is ambiguous on whether the one-third paid into the
Consolidated Revenue Fund of the Federation can be used later for the welfare of prison inmates or not. This should be clarified.

5. **Powers and Functions of the Controller-General** - Both Bills provide that the Controller General is the head of Service and exercises full operational control over it and all its departments and units - see clause 5(1)(b) of SB 125 and B. The Controller General is also mandated to establish Zonal Headquarters and State Commands under clause 5(3) and 5(4) of both Bills respectively. Furthermore, the Controller General is given some key functions to aid the actualising of the Correctional service. These functions include being in charge of developing a plan at the beginning of each year, stating the objectives of Prisons and Corrections Service in terms of Custody, Rehabilitation, Corrections, Crime Control, the phased programme of action for energising the vocational farm centres for increased yield and productivity and a comprehensive plan for inmate training and productivity in all rehabilitation centres among others. The Controller-General can delegate his powers under the proposed Bills. When he is absent from office, the most senior Deputy Controller-General shall act for him. However, the person acting for him cannot deal with any matter involving a change of policy and must report any matter of importance dealt by him during such absence - clause 7 and clause 5(3) of SB 125 and 288 respectively. However, the Bill fails to stipulate what amounts to an absence and does not take into consideration special circumstances such as protracted illness that should allow the most senior Deputy Controller-General the power to make such important policy decisions.

6. **Tenure of Controller General** - Both Bills provide that the Controller General shall hold a single tenure of not more than 4 years. This could be increased to tenure of two terms to encourage continuity and consistency of reform policies.

7. **Human Rights Issues** - The Bill enables the appointment of two or medical qualified practitioners and clinical psychologist to inquire into a person’s mind under clause 21(2) and 22(1) of both Bills respectively. The State Controller or Prison Superintendent (in an emergency), can also may also direct the removal of such a prisoner to a specified hospital where there is no suitable accommodation under clause 22 and clause 23 respectively. Other provisions seeking to guarantee the human rights of prisoners include the provision of lawyers in the employment of the Prisons Service which may be deployed to fast track trial cases of inmates, educate prisoners of their rights and privileges and render such legal services as may be required. However, as earlier mentioned, counsels of the Service are prohibited from functioning as defence counsel to inmates - clause 3 of both Bills. Even though Clause 27 of the Bills provide for a medical officer appointed for a prison, SB 288 goes further by mandating for a hospital/clinic that would cater for the medical needs of prisons and staff.

SB 125 also has provisions addressing the issue of liberty and the continued detainment of persons without trial. Clause 23 for example enables persons awaiting trial and remanded for more than 3 months to be released provided that a prima facie case is not established, is a bailable offence and the accused is a first time offender provided the suspect is able to provide a competent surety. Furthermore, both Bills provide for the State and FCT Controllers to render monthly returns of prisoners who have been in lawful custody awaiting trial in clause 24(4) and 24(5) to the Chief Judge of the State, FCT and Attorney General.
However SB 125 goes further by mandating for the Chief Judge to release persons who have been in custody awaiting trial for a period longer than the maximum period prescribed for the offences and to release them in accordance with the Constitution.

Section 35 (4) of the 1999 Constitution (as amended) states that he/she must be tried within a period of

"(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date."

This is further complemented by clause 16(4) of SB 125 and clause 17(4) of SB 288 which seek to address the issue of congestion of prisons by mandating that the State Controller notify the Chief Judge of the State or the State Criminal Justice Committee where the prison has exceeded its capacity of inmates. Where this happens, SB 125 gives a longer 3 months period for the Chief Judge to take necessary steps to rectify the overcrowding (clause 16(5)) while SB 288 gives the Chief Judge a month to do so (clause 17(5)). In addition, the State Controller of Prisons in conjunction with the Prison Superintendent has the power to reject the intake of prisoners where the prison in question is filled to capacity-clause 16(6) of both Bills. The Controller General of Prisons or anyone acting on his behalf may also order the transfer of any prisoner whether convicted or not to a suitable prison for security or administrative reasons.

However, the order of the State Controller of Prisons must be in writing-see clause 18(1) and 20(1) of both Bills respectively. There are also provisions that seek to distance prisons from the general public. For instance, under SB 125, no structure can be erected anywhere less than 50 metres from the outer limit of the prison land while SB288 prevents the erection of any structure less than 30 metres from its outer limits- see clause 2 of both Bills respectively. Both Bills also prevent a prison officer from using firearms, teargas or such other weapons against a prisoner escaping or attempting to escape unless the officer has reasonable grounds to believe that he could not otherwise prevent the escape. –clause 25 of both Bills. This is in addition to the general rule in clause 25 (4) of both Bills mandating prison officers to give warning to a prisoner that he/she is about to fire.

8. **Inmates feeding appropriation**- The Bill provides for monies to be appropriated for inmates feeding. Furthermore, it subjects the cost of feeding to review not exceeding 5 years from the date of its last review- see clause 32 and clause 31 of SB 125 and SB 288 respectively. This takes inflation into account. Both Bills also provide for Prison Officers Reward Fund in clause 28 where fines and forfeitures of erring prison officers are paid for offences against discipline or standing orders made under this Bill.

9. **Incorporation of International norms and standards**- In some respects, the Bills incorporate the basic safeguard for prisoners as contained under relevant international instruments such
as, the Universal Declaration of Human Rights, the International Convention on Civil and Political Rights (ICCPR), the Convention against Torture and other Cruel, Degrading Treatment or Punishment and the United Nation Standard Minimum Rules for the Treatment of Prisoners (adopted by the U.N Economic and Social Council in 1957). For instance, the provision in clause 25 of both Bills mandating prison officers to give warning to a prisoner that he/she is about to fire upholds article 5 of the Universal Declaration of Human Rights and article 6 of the ICCPR respectively which protect the right to life. The provisions in the Bill preventing continued detention, separating juvenile prisons from those of adults and the provision of legal assistance are also in accord with article 9, article 10(b) and article 14 (3)(d) of the ICCPR respectively. The separation of prisoners into different categories and provision for medical care is also in line with Rule 8 and 22 of the United Nation Standard Minimum Rules for the Treatment of Prisoners respectively. They also comply with section 33, 34 and 35 of the 1999 Constitution (as amended), which protect the right to life, dignity of person and personal liberty respectively.

However, in some respects the Prisons and Correctional Services Bill could incorporate more international standards. For instance, Rule 9 of the United Nation Standard Minimum Rules for the Treatment of Prisoners provides for every prisoner to be in a cell all by himself, Rule 11 also provides for the windows to be large enough to enable prisoners read or work by natural light while Rules 13 and 15 provide for adequate bathing and shower instruments and water and toilet articles necessary for health and cleanliness. Rule 20 also goes beyond merely providing for the appropriation of food for prisoners and its periodic review after every five years (as seen in clause 32 and clause 31 of SB 125 and 288 respectively) by providing for “food of nutritional value adequate for health and strength of wholesome quality and well prepared and served. It also provides for drinking water whenever a prisoner needs it. Other provisions that can be incorporated from the UN Rules include the provision of at least one hour of suitable exercise if the weather permits (Rule 21 (1)) and for every prisoner on admission to be provided with written information about the regulations governing the treatment of prisoners of his category if he/she is literate or orally where otherwise- Rule 35. There is also a provision in Rule 53(1) providing for the women’s wing to be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution where the prison has a male and female wing. This will help to reduce the incidence of abuse that has been widely reported in female prisons. Furthermore, in addition to the general conditions governing the use of firearms and weapons by prison officers in the bills, there should be a general rule preventing other common instruments of restraint, such as handcuffs, chains, irons and strait-jacket from being applied as tools of assault on prisoners in line with Rule 33 of the UN Rules.

**Accountability**

As earlier mentioned, Clause 24(4) of both Bills provide for the Controller of a State or FCT prison, to render monthly returns to the Chief Judge of a State or the FCT, of prisoners who have been in custody awaiting trial. Clause 16(4) of SB 125 and clause 17(5) of SB 288 also seek to address the issue of congestion of prisons by mandating the State Controller to notify the Chief Judge of the State or the State Criminal Justice Committee when the prison has exceeded its capacity of
inmates in 3 months or a month respectively. SB 125 also mandates the Chief Judge in question to release such persons as provided in the Constitution in clause 24. To ensure the effective implementation of this provision and enhance accountability on the part of the Controllers when implementing this provision, the Bill can be further enhanced by the inclusion of a penalty for failure to render monthly returns. A mechanism should also be put in place to hold the Chief Judge accountable for failing to make the appropriate order within the time frame stipulated.

**Consistency and Possible Conflict with SSR**

- It is commendable that the provision of appointment of a Controller General is not politicised and requires a person who has grown within the ranks of the prison service with requisite experience. Clause 4(1) of SB 125 for instance provides for his/her appointment from among either serving General Duty prison officers while clause 4(2) of SB 288 provides for a senior prison officer not below the rank of Assistant Controller General who may be more effective in achieving the Bill’s objectives and that of the prison service as a whole.

- By looking into the training of inmates, the provision of healthcare and addressing the issue of persons awaiting trial, it is evident that human rights were considered. However, these could be more extensive to encompass issues highlighted above.

- There appears to be an attempt to improve the participation of women in the oversight of prisons with the inclusion of a seat for a women’s society in the Prisons Service Commission in SB 288.

**Comments**

- The Bills are silent on the role of the Immigration and Prisons Board as set up by the Immigration and Prisons Services Board Act 1986 to formulate general policy guidelines for the Immigration and Prisons Services as well as manage and control the administration of Immigration and Prison Law.

- The provision of Satellite Prisons in both Bills for persons serving non-violent crimes or awaiting trial is commendable.
### Bill Objective
The bill seeks to establish a distinct maximum-security prison for the purpose of the exclusive detention, custody and imprisonment of persons suspected or convicted of terrorism, insurgency, kidnapping and other crimes against the state.

### Context and Rationale
With the increasing number of persons accused of terrorism and insurgency, many have raised concerns over their potential influence on other inmates serving their sentence or being detained in prison. The question is often asked whether Nigerian prisons can effectively curb extremist perspectives and violent political ideologies from spread by convicted terrorists to other prisoners and even those awaiting trial.

Presently, the Nigerian prison system currently deals with high-security terrorist convicts and suspects by sending them to regular and maximum-security prisons. There is little or nothing being done to prevent them from establishing relationships with other inmates capable of propagating religious extremism or radicalisation. The Bill is an effort to use legislation to prevent the spread of radical or violent ideology, and isolate such offenders from other inmates.

### Key Provisions of the Bill
1. Clause 1 provides for the establishment of a maximum-security prison for the detention, custody or imprisonment of persons suspected or convicted of terrorism, insurgency, kidnapping or other heinous crimes against the State.

2. Clause 2 (1) provides for the location and infrastructure of maximum-security prisons on a remote island, a desert or forest at least 16 kilometers from the nearest human habitation. Clause 2(4) provides that every special maximum prison shall be for the imprisonment of convicts and suspects of terrorism, insurgency and kidnapping. However, for the purposes of separation of prisoners, no person below the age of 18 years shall be kept in such prisons except he/she is charged, remanded, detained or convicted with other accomplices for the act of terrorism, insurgency or kidnapping- clause 2(6).
3. Clause 3 provides for Correctional Facilities that will transform a convict or suspect of terrorism, insurgency or kidnapping to a better citizen. It provides indicators of what such correctional facilities should include like psychological lectures, sport equipment and de-radicalization and correctional facilities to transform the convict or suspect- clause 3(2).

4. Every prisoner confined in a maximum-security prison shall be deemed to be in the legal custody of the Controller General whether he or she is outside the precincts of the prisons- clause 4(1) and 4(2). Accordingly, the Controller-General can ask for any prisoner to be moved to any prison within Nigeria to decongest prisons, stop an outbreak of a disease in prison or for any other reason as desirable to provide for the temporary shelter and safe custody of a prisoner -clause 5 (2). Furthermore, an order by the Controller General for the detention of prisoners in a place outside the prison shall be deemed to form part of the prison until the order is cancelled- clause 5(3). He may also order that a prisoner is taken to a place if it is in the public interest to do so- clause 6(4)

5. Like the Nigerian Prisons and Correctional Service Bill considered above, medical practitioners can be appointed to examine a prisoner and inquire into the soundness of his/ her mind-clause 7 (1). The Controller-General may also quarantine such prisoner or prisoners in a location of the prison with the necessary medical facility, attention and medical precaution to ensure that there is no outbreak of an epidemic-clause 8(1). It is notable that Clause 8 specifies that sick prisoners with contagious disease posing a threat to life may be quarantined within the medical facility of the prison instead of being taken to the hospital as provided in the Prisons Act. This suggests that the designated Special Maximum-Security prison has adequate medical facilities. There is a provision under clause 12(6) providing for the functions of a medical officer of a prison to be performed by medical officers in the public service of the Federation or of a State in the Federation- clause 13(1). This is similar to clause 27 of the Prison and Correctional Services Bills (SB 125 and SB 288 considered above). However, clause 27 of the Bills envisage the functions of a medical officer to be undertaken by an officer in the Civil Service of the Federation where no medical officer has been appointed for a prison.

6. Clause 9(6) prevents inmates in such special maximum-security prisons from being granted a prerogative of mercy by the Governor of a State or President of the Federal Republic of Nigeria under the Constitution until they have served their sentence.

7. Clause 10 generally restricts the use of weapons by a prison officer except the prisoner is escaping and the prison officer has reasonable ground to believe that the escape of the prisoner could not otherwise be prevented. A prison officer may also use a weapon if he has reasonable grounds to believe that the officer or person’s life is in danger or likely to have grievous harm. The general rule here is for the use of weapons as far as possible to the purpose of disabling a prisoner and not to kill- -clause 10(6). Similar provisions are contained in section 25 of the Nigeria Prisons and Correctional Service Bills. However, the Special Maximum Security Prisons Bill appears to go beyond the Prisons and Correctional Service Bills by authorising a prison officer to execute a prisoner or prisoners who is suspected of being freed where there is an invasion with a view to releasing prisoners outside the facility. - clause 11(1).
8. Certain visitors such as the Chief Justice of Nigeria and other Justices of the Supreme Court, the President and other Justices of the Court of Appeal, the Chief judge and other Judges of the Federal High Court and any other persons deemed fit by the Minister of Interior in consultation with the President of the Federal Republic of Nigeria shall be ex officio prison visitors (as a result of their office). However, an officer in charge of a prison facility or Director may authorise persons he deems fit as voluntary visitors- clause 12(1)-(3).

9. Clause 12(6) prevents persons who are in detention awaiting trial or have been convicted from being entitled to visits from any relation, spouse or family member except by a retained legal practitioner or where none exists, by a court appointed legal practitioner- clause 12(6)

10. Clause 14 provides for offences such as the giving or taking from any prisoner, alcohol liquor, tobacco, intoxicating or poisonous drugs or article prohibited by Regulations, knowingly harbouring and employing any person under sentence of imprisonment who is illegally at large, commanding, counselling or soliciting mutiny. The offences in clause 14 are similar to the ones in clause 31 and 30 of SB 125 and 288- the Prisons Correctional Service Bills respectively. This appears to be an irony as although the Special Maximum Prisons Bill seeks to address terrorism, insurgency and kidnapping (in clause 1) among others, most of the offences in clause 14 of the Bill dealing with offences do not substantiate this objective. There is only one clause in 14(i) providing for a penalty of a fine of N 1,000,000 (one million Naira) or imprisonment for a period not exceeding 5 (five) years or both for the propagation and the indoctrination of prisoners about religious intolerance, hate crimes or genocide.

11. The President may make regulations with respect to the organisation and administration of the rights of prisoners as enshrined under the Constitution through the Attorney-General - clause 15 of the Bill.

**Constitutional and Legal Issues**

Clause 9(6) prevents inmates in such special maximum-security prisons from being granted the prerogative of mercy by the Governor of a State or President of the Federal Republic of Nigeria until such persons have served their sentence. This appears to contravene sections 212 and 175 of the 1999 Constitution as amended. Section 212 of the Constitution gives the Governor of a State power to grant any person convicted of any offence created by any law of a state a pardon, either free or subject to lawful conditions. Similarly, section 175 of the Constitution gives the President the power to grant a pardon to any person convicted of an offence created by an Act of the National Assembly either freely or subject to lawful conditions. Therefore, it is likely that clause 9(6) will fall foul to section 1(3) of the 1999 Constitution (as amended) that states that laws inconsistent with the provisions of the Constitution shall, to the extent of the inconsistency, be void.

The Bill also substantially lacks provisions reiterating the right to life, dignity of the person, personal liberty and the right of those awaiting trial to be brought before a court of law within a reasonable time as envisaged under section 33, 34 and 35 of the 1999 Constitution (as amended).

It is also worrying that clause 11(1) authorises a prison officer to execute a prisoner or prisoners who is suspected of being freed where there is an attempted jailbreak as a general rule. This
appears to derogate from the right to life principle guaranteed under section 33 of the 1999 Constitution (as amended).

**Consistency and Possible Conflict with SSR**

- The combination of security and preventative measures for the de-radicalisation of convicts and re-integration to transform a convict or suspect to a transformed and better citizen is good SSR strategy. However, the bill lacks provisions that emphasise the importance of training prison officers with the necessary tools to meet these expectations. It is also unclear whether the provision for correctional facilities in clause 3 to “de-radicalize” and “transform” a convict or suspect to a reformed and better citizen is based on facts or assumptions.

**Comments**

- Some of the provisions in the proposed Special Maximum Security Prisons Bill are similar to the proposed Nigerian Prisons and Correctional Service Bills. Therefore, it might be helpful to merge the Bills particularly as SB 288 of the Nigerian Prisons and Correctional Service Bill provides for a high security prison containing terrorists, kidnappers and other convicts who have committed serious crimes.

- As earlier mentioned, although the Bill is designated as a prison for the detention, custody and imprisonment of persons suspected or convicted of terrorism, insurgency and other crimes, it only has one offence in clause 14(i) speaking to its objectives. Therefore, more provisions seeking to address these objectives could be included in a further draft to reflect this. There may also be cross cutting issues with the Terrorism Prevention Act.
Long Title: A Bill for an Act to Amend the Prisons Act Cap P29 Laws of the Federation 2004 to Provide for a Mother and Baby Unit for the Care of Female Prisoners who are Nursing Mothers and their Babies and for Related Matters.

Short Title: Prisons Act (Amendment) Bill 2015 (SB192)

NASS Chamber: Senate

Sponsor: Sen. Oluremi Tinubu (Lagos: APC)

Bill Objective and Summary
The Bill seeks to amend the Prisons Act by inserting a new section 8 to provide for a crèche and a mother and baby unit in prisons. The crèche is meant to be located in a conducive and safe environment. The unit will be staffed by qualified staff and would cater to babies within 0-36 months born to female prisoners. The Bill also stipulates that a baby born in the prison will not have the prison listed as the location of birth on the birth certificate. The female prisoners who are nursing mothers shall be permitted to stay in the unit with their babies until the babies are weaned at 24 months and handed over to the crèche staff for the remaining 12 months.

Context and Rationale
This Bill seeks to address a fundamental problem within the Nigerian Prison system, especially as it relates to pregnant or nursing mothers serving sentences by providing for a mother and baby unit for the care of nursing female prisoners and their babies. It can be argued that separating infants with their mothers in has the potential of impeding all round growth of the infant and cause retardation. Thus, the Bill is a welcome addition as it looks to improve the welfare of female prisoners particularly new and expectant mothers and the Nigerian child. Notwithstanding the foregoing, certain key issues ought to be raised.

Legal Issues
• Qualified staff: the Bill does not state what amounts to qualified staff in clause 2(1). An interpretation section stating whether this includes medical personnel such as nurses, midwife or childcare experts would be helpful in this regard. This is particularly important as crèche attendants are expected to take care of the babies for the last 12 months of their 36 months stay in clause 2(4) of the Bill.

• Birth Certificate: the Bill provides that where a child is born in the prison, the location of birth will be omitted from the birth certificate. Although this is currently included in the Prison Rules, its inclusion in the Prison Bill legislation is welcome and will help safeguard the rights of such children.
• **Financing:** The Bill does not have any provisions relating to the finances required for the creation and maintenance of the crèche and baby units envisaged in clause 2(1) nor the “basic facilities and materials to enhance the well being and comfort” of mother and baby within the prison yard under clause 2(4) of the Bill. However, an addendum to a bill shows that there will be a pilot phase in 10 prisons across the country and that the establishment of these units will require an estimated sum of N149,550,000. There is however no clear indication of the source of its funding.

**Comments**
The general objectives of this bill is already being somewhat practiced in the prisons, however codification would go a long way in institutionalising the practice. Furthermore, the Bill appears to reinforce certain aspects of the Child Rights Act, 2003 such as the provisions of Section 1 that provides for the best interest of the child to be the primary consideration in every interest concerning a child. Section 2(1) also provides for a child to be given such protection and care as is necessary for his/her well-being while section 4 states that every child has a right to survival and development. However, it fails to elaborate on certain key areas such as the recruitment of qualified staff, omission of what happens to the baby after the 36 months period and the source of financing the crèche, baby units and basic facilities in line with its objectives in clause 2. The Bill could also be enhanced by the provision of pre-natal and post-natal care in line with Rule 23(1) of the United Nation Standard Minimum Rules for the Treatment of Prisoners (adopted by the U.N Economic and Social Council in 1957). Nevertheless, this Bill is a step towards addressing the welfare of female prisoners and providing care for their children.

**Consistency and Possible Conflict with SSR**
• The Bill seeks to improve service delivery to female provisions, by responding to some human rights concerns.
Bill Objective
The objective of this Bill is to establish a Correction and Rehabilitation Centre to provide support services for prisons particularly in the area of reformation, education and youthful offender programming. It provides for non-custodial measures as an alternative to imprisonment and the rehabilitation of prisoners. It also seeks to address the issue of prison congestion through reintegrating and reforming offenders.

Context and Rationale
According to a 2018 Prison Survey Report by the Prisoners’ Rehabilitation and Welfare Action (PRAWA), overcrowding puts severe pressure on scarce resources available and often results in poor welfare with an implication to the right to life, health and human dignity. As there is a push towards a more rehabilitative approach, the objective of the Bill is to support a prison system capable of rehabilitating and reintegrating prisoners. The Bill takes into consideration the gap in the rehabilitation system of offenders in Nigeria, particularly juvenile offenders. The Bill seeks to bring the Nigerian Prisons system and administration in line with the objectives of the United Nations Standard Minimum Rules for the Treatment of Prisoners, 1990. The Bill departs from the traditional concept of prisons as it provides for the reformation, correction and rehabilitation of inmates.

Key provisions of the Bill
The Bill establishes the Correction, Reformation and Reintegration Centre (the Centre or CRRC) [Clause 1] to be governed by the Immigration and Prisons Services Board [Clause 2]. The Board is empowered to provide and maintain the centres, provide guidelines for the expansion programmes of the Centre, supervise the management of the affairs of the Centre and make regulations reviewing the functions of the Centre [Clause 3].

The Centre is given the responsibility of offering training to Centre staff and inmates as well as
providing certificate programmes, community re-integration programmes, support services, place convicted felons in the community through parole and prepare offenders for release [Clause 5]. The Board shall appoint a Deputy Comptroller of Prisons, who shall be the Executive Secretary of the Centre. The Deputy Controller appointed must have requisite knowledge in reformation, reintegration, offender management and programming- Clause 6. Other employees of the Centre are also required to have knowledge of the reformation of prisoners and may be appointed by the Board either by way of transfer or secondment from any of the public services of the Federation or otherwise as it considers necessary [Clause 6 (2)].

The Bill provides that the Centre shall be funded by subvention and budgetary allocation from the Federal Government as well as gifts, loans and grants from national, bilateral, multilateral agencies, state and local governments [Clause 7]. These funds shall be applied to the administration and expansion, remuneration, development and maintenance of property and publicity of Centre activities among others- [Clause 8]. Service in the Centre shall be approved service for the purpose of the Pension Reform Act- Clause 6(3).

Legal Issues

• Establishment of the Correction, Reformation and Reintegration Centre- The Bill establishes the aforementioned Centre, to be controlled by the Immigration and Prisons Services Board. By virtue of the Immigration and Prisons Services Board Act 1986, the Board is responsible for formulating general policy guidelines for the Immigration and Prisons Services as well as control and manage the administration of the Immigration and Prison Laws. Taking into cognizance, the functions of the Centre, it gives the Board a wide range of powers exceeding the responsibilities given under the 1986 Act. The enactment of a new law to establish the Centre is superfluous as it can be inserted into the existing Prisons Act in order to create a nexus between the Centre and its relationship with the Prisons.

In addition to the foregoing, the interpretation clause defines the Board as the Civil Defence, Fire, Immigration and Prison Services Board, which is at variance with clause 2 of this Bill.

• Functions of the Centre- The Bill gives the Centre a wide range of responsibilities without creating a nexus with necessary criminal procedure law and the extant Prisons Law. This may likely create problems of supervision. Furthermore, the functions pertain to provision of training, parole services and community supervision and integration programmes through the use of halfway house schemes, work release schemes and home detention schemes. This is designed to be external yet integral to the prison management and criminal justice systems. The functions also do not address youthful offender programming specifically.

The Bill seeks to provide for a correction and rehabilitation centre to cater for rehabilitation programmes and training schemes. However, the Nigerian Prison Service already has After Care Unit programmes, which are embedded with the prisons service and are not external to it.

68 This is with the exception of clause 5 (h) where the centre is to provide support services for all prisons in the areas of… youthful offender programming.
- **Funds for the Centre**- The Centre will be maintained by a fund to be financed by budgetary allocations, gifts, loans, aid from national, bilateral, multilateral agencies, state and local governments. These funds are to be applied to the cost of administration and expansion, remunerations, allowances and pension of employees, development and maintenance of any property vested in or held by the Centre or to publicize and promote the activities of the Centre. The funds, however, are not applied to the actual activities towards reforming, reintegrating, development and integration of community supervision and integration programmes.

**Consistency and Possible Conflict with SSR**
The Bill encourages transparency and accountability in use of funds for the Centre as it provides for the account of the centre to be audited in line with Guidelines supported by the Auditor-General of the Federation and provides for its Board to prepare and submit an annual report on the Centre’s activities to the Nigerian President not later than 31st September each year- Clause 10.

**Comments**
- The Establishment of the Correction, Reformation and Reintegration Centre in clause 1(1) of the Bill to be governed by the Immigration and Prisons Services Board in clause 2 complements the Immigration and Prisons Services Board Act 1986. The said Act states that the Board is responsible for formulating general policy guidelines for the Immigration and Prisons Services, controlling and managing the administration of Immigration and Prison Laws. However, the interpretation clause of the Bill is at variance with clause 2 of the Bill as it defines the said Board as the Civil Defence, Fire, Immigration and Prison Services Board. This should be addressed.

- Despite the stated objective of the long title of the Bill, the provisions of the Bill do not specifically address elements of youthful offender programming as it seems to target all classes of offenders instead.

- The Bill departs from the traditional concept of prisons as a place of incarceration by taking a modern approach towards rehabilitative justice. However, for logistic reasons it might serve greater purpose and have a greater impact if it is embedded in the Prisons Act rather than being a stand-alone legislation.
**Bill Objective**

The objective of the Bill is to provide a comprehensive unified legal framework for all terrorism related matters including detection, prevention, prohibition and punishment, measures for the implementation and enforcement of regional and international conventions, extra territorial jurisdiction of the courts, procedure for declaring an organisation a terrorist organisation, suppression of the financing of terrorism, measure for the detention, freezing, search and seizure of terrorist property and compensation of victims of terrorist activities.

The purpose of the Bill includes among other things to-

a) harmonise the Terrorism (Prevention) Act 2011 and the Terrorism (Prevention) (Amendment) Act 2013 and to corrected numbering challenges in the existing legal framework;

b) repeal the Terrorism (Prevention) Act 2011 (as amended); and

c) establish institutional frameworks including the Nigeria Sanctions Committee for the implementation, coordination and enforcement of its provisions.

The Bill also seeks to domesticate certain international conventions and United Nations Resolutions, which has been signed and/or ratified by Nigeria.69

**Context and Rationale**

Terrorism is a growing global threat to international peace and security, especially since the 9/11 attacks in the United States. In Nigeria, it became a firmly established problem with the advent

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69 Lead Debate of Hon. Kayode Oladele at the Second Reading of the Bill
of Boko Haram, the infamous insurgent group, which has reportedly claimed approximately 20,000 lives, displaced 2.6 million and destroyed property worth $5.9 billion since 2009. Following the appearance of Boko Haram in Nigeria, offshoots such as Ansaru have also made an appearance; both groups having affiliations with internationally listed and known terror groups such as Al-Qaida and ISIL.

The Global Terrorism Index has ranked Nigeria, for the third year running as the 3rd most terrorised nation in the world after Iraq and Afghanistan respectively. With the growing ties between local and foreign terrorist groups, it is necessary for Nigeria to take concerted efforts to bring its anti-terrorism laws in regards to terrorism financing and suppression of terrorism activity in Nigeria, in conformity with ever changing international jurisprudence.

It is worthy of note that there is no comprehensive international instrument on terrorism but the body of international law on the subject is made up of a series of different international conventions, resolutions and regional instrument. Furthermore, the difficulty in addressing terrorism related issues is also evidenced by the lack of a universal definition of the term.

The sponsor of the Bill in his lead debate provided the following background and context to the Bill, charting its history and efforts to bring forth a more comprehensive legislation.

- In the absence of domestic legislation to address this growing threat, the National Assembly in 2011 enacted the Terrorism (Prevention) Act. The purpose of the Act was to provide for measures for the prevention, prohibition and combatting of acts of Terrorism, the financing of terrorism in Nigeria and for the effective implementation of the United Nations Convention on the Prevention and Combatting of Terrorism and the Convention on the Suppression of the Financing of Terrorism. The enactment of the Act brought about a new regime in Combating terrorism and terrorism financing in Nigeria. The enactment of the Act was a credit to the Nation’s image especially before the Financial Action Task Force (FATF) and the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). The Act prior to its enactment was transmitted to these bodies for their review and it was found that although Nigeria had the political will to come up with the Act, the Act was inadequate for combatting terrorism financing in Nigeria. Following the passage of the Act, Nigeria was required to review the Act as a matter of urgency or face the risk of being blacklisted for non-compliance with FATF recommendations.

- In addressing the recommendations made by both the FATF and the GIABA, efforts were made by the Federal Ministry of Justice at achieving a comprehensive review of the 2011 Act. In 2012, the Ministry of Justice forwarded a Bill to amend the 2011 Act, which incorporated the FATF and GIABA recommendations, and which was enacted into Law in 2013 as the Terrorism (Prevention) (Amendment) Act, 2013. The Act amends the Terrorism (Prevention) Act, 2011 and makes provision for extra-territorial application and strengthens the criminalisation of terrorism financing offences. The 2013 Act brought the country’s Combating Terrorism and Terrorism Financing (CFT) regime in conformity with international good practices and largely in compliance with the FATF recommendations.

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70 Counter-Extremism Project, “Nigeria: Extremism and Counter-Extremism” Available at: https://www.counterextremism.com/countries/nigeria


72 All of which are included in this bill.
Noting the lack of cohesion in the anti-terrorism laws as presently constituted, this Bill harmonises the 2011 Act and 2013 Amendment Act and further brings the law in conformity with the UNODC Model Legislative Provisions Against Terrorism And The African Model Anti-Terrorism Law 2011. The Bill benefited from global legislations on the subject matter including from jurisdictions such as United States, United Kingdom, South Africa, Kenya, etc. 

Key Provisions of the Bill
The Bill retains significant portions of the Terrorism (Prevention) Act 2011 (as amended) and it cures several defects in the extant law attempting to bring it in line with international good practices. In addition, the Bill makes a number fundamental additions, these include:

1. Expanded definition of “acts of terrorism”- The expansion of the definitions of what constitutes acts of terrorism to incorporate any weapon, explosive, biological, chemical, nuclear or other lethal device to a terrorist group. Accordingly biological, chemical, radiological or nuclear weapons (“BCRN weapons”) was defined under the Interpretation section.

2. Lead Agency- Clause 5 give to the State Security Service (DSS), the role of coordinating security sector agencies and the responsibility of gathering of intelligence and investigation of offences under this Bill.

3. Kidnapping, hijacking, etc. - The crime of kidnapping and hijacking has now been incorporated into the Bill.

4. Offences Relating to Civil Aviation, Safety of Ships and Fixed Platforms- A new Part was created to incorporate and criminalize offences such as hijacking of aircrafts, offences against the safety of civil aviation, offences against safety at airports serving military or civil aviation, offences against the safety of ships or fixed platforms, use and discharge of biological, chemical and nuclear (BCN) weapons and other substances from ship or fixed platform, transportation of BCN weapons or other dangerous substances on board a ship, transportation of persons intending to commit offences on board ships, transportation of certain offenders on board ships, offences with explosives or other lethal devices, handling of radioactive, nuclear materials or devices, use of radioactive or nuclear material and offences relating to nuclear facilities.

5. Designation of Specified Entities and Revocation of Charities- A new part is inserted on Designation of Specified Entities and the revocation of charities. It empowers the Attorney General to designate a suspect who is reasonably believed to have committed or facilitated the commission of a terrorist act in connection with a proscribed entity as a specified entity. This part also provides for the designation of a terrorist or terrorist group (Clause 47) by the Attorney General on the recommendation of the DSS. This covers persons who have been involved in the commission, preparation or instigation of acts of terrorism, membership of

73 Lead Debate of Hon. Kayode Oladele at the Second Reading of the Bill
a terrorist group, linked to a terrorist group or where a person or group is subject to the control of persons outside Nigeria is suspected to have committed or instigated acts of terrorism, listed as an entity involved in terrorist acts by a United Nations Security Council Resolutions or instrument of the African Union or ECOWAS or considered a terrorist group by a competent authority of a foreign state. Where the person so designated is a citizen of Nigeria other than by birth, his or her citizenship may be revoked.

6. Responsibilities of airlines, commercial carriers, tour operators and travel agents- A new part is created to address responsibilities of airlines, commercial carriers, tour operators and travel agents. The responsibilities under clause 52 include not facilitating, promoting or aiding and abetting terrorist activities, notifying its clients of its obligations, inserting these obligations in contracts with suppliers and conditions of service, It also provides that any of the subjects who fail to comply shall upon conviction pay a fine of not less than 10 million Naira, forfeit the vessel or aircraft to the agency established to collect proceeds of crime or both.

7. Incorporation of certain provisions of the “Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2013” into the Bill- Regulations 18, 19 and 4 of the “Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2013; dealing with arms embargo, travel ban and Nigeria Sanctions Committee respectively were incorporated into the Bill for the purpose of reinforcement, enforcement or implementation. The Nigeria Sanctions Committee to formulate policy and effectively implement regional and UN resolutions particularly as in relation to the consolidated list, which is the list of terrorist, violent and/or extremist groups so designated by the United Nations.

8. Power to declare a State of Emergency- Clause 65 of the Bill provides for the power to declare a State of Emergency. According to the clause, subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the President may in accordance with the advice of the Federal Executive Council by proclamation published in the Official Gazette, declare a state of emergency in Nigeria or in any part of Nigeria as part of anti-terrorism measures.

9. Dealing with the threats posed by foreign terrorist fighters
   The challenge of foreign terrorist fighters is dealt with as follows:
   a. Clause 66(1)(b)(iv)(b) of the Bill which gives the Federal High Court powers to try “an alleged offender that is in Nigeria and not extradited to any other country for prosecution”. and
   b. The incorporation of the United Nations Security Council Resolution 2178 (2014). The Resolution in its article 4 calls upon all member states, in accordance with their obligations under international law, to cooperate in efforts to address the threat posed by foreign terrorist fighters, including children, preventing financial support to foreign terrorist fighters, and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters.

10. Establishment of a Special Victims Trust Fund- The Fund is established to pay compensation, restitution and damages to victims of terrorist activities and fund terrorism
prevention programmes. It is to be managed by the Accountant-General of the Federation and put under the care of a Committee.

**Legal Issues**

1. **Definition of Terrorism**: In the international scene, there has been difficulty in achieving a universal definition of terrorism. Traditionally, terrorism was seen as a crime, one without international connotations. This however changed with the increase in terrorism related attacks and conflict. The Bill defines an act of terrorism in Clause 2(3); this definition incorporates the UNODC Model Legislative Provisions Against Terrorism, particularly on what constitutes terrorism such as destruction of a fixed platform located on the continental shelf, seizure of an aircraft, ship or other form of public transport, bombing and other acts of violence at airports, as well as offences relation to BRCN weapons, to name a few. An achievement of a comprehensive universal definition of terrorism may result in Nigeria having to amend its definition of what amounts to terrorism.

2. **Coordinating role of the State Security Service (DSS)** - This bill designates the DSS as the lead agency for gathering of intelligence and investigation of the offences. The DSS has been made responsible for the enforcement of laws, adoption of measures to prevent and combat terrorism, establishing partnerships with Civil Society Organisations to educate and increase awareness. There is however the issue of whether the DSS should be the coordinating agency as the Office of the National Security Adviser, which has been given a lesser role, is supposed to be in charge of Intelligence by virtue of Section 4 of the National Security Agencies Act. There is also the argument that the DSS is the primary domestic intelligence agency in Nigeria; that it operates as a department within the Presidency and is under the control of ONSA. Following the provisions of this Act, the ONSA is supposed to be the co-ordinator of the operations of the DSS, National Intelligence Agency and Defence Intelligence Agency. A comparison of the role of the ONSA and the DSS as prescribed by the Bill does not capture this existing arrangement nor adequately respond to it.

3. **Reduction of Penalty**: The blanket discretionary death sentence in the Principal Act has been removed. This can also be seen in regards to other offences such as provision of devices to a terrorist (Clause 12), recruitment of persons to be members of terrorist groups or to participate in terrorist acts (Clause 13), dealing in terrorist property (Clause 17). The penalties for these offences have been reduced to a minimum of 20 years and maximum of life imprisonment. This position appears to be informed by the gradual move away from capital punishment by many advanced democracies. For instance in the general comment by the UN Human Rights Committee on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), it was inferred that abolition of death penalty is desirable and all measures of

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74 B. Saul, “Attempts to define ‘Terrorism’ in International Law” Legal Studies Research Paper 08/115 (Sydney, October 2008)
75 Section 4 National Security Agencies Act 1986
abolition should be considered progress. A mandatory death penalty is however retained for certain offences where death occurs. For instance offences against an internationally protected person (Clause 6), hostage taking, kidnapping or hijacking (Clause 18), offences against the safety of ships or fixed platforms (Clause 32), offences with explosives or other lethal devices (Clause 37) and handling of radioactive, nuclear materials or devices.

4. **Kidnapping and hijacking**- This bill expands the offence of hostage taking to include kidnapping and hijacking. Kidnapping is considered a grave violation of international law and hijacking is equally prohibited under several international laws such as the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 and the International Convention against the Taking of Hostages, 1979. The Senate recently passed an Abduction, Wrongful Restraint and Conferment for Ransom bill, 2017, which makes it an offence to hold any person for ransom, abduct or wrongfully restrain or confine a person against their will. The bill prescribes life imprisonment or death penalty in the event that death occurs.

5. **Preparation to commit acts of terrorism**- Clause 24 makes it an offence to engage in any conduct in preparation to commit an act of terrorism. This may be subject to abuse by security personnel or could be used to advance political aims of ambitious persons.

6. **Crime to impersonate security service agency**- Clause 25 penalises any person who assumes the character of a security officer, particularly an officer with the DSS. This provision is in tandem with section 109 and 110 of the Criminal Code Act, which, prohibits unauthorised use of uniforms or clothing, and insignia that bear likeness to the uniforms of the police, armed forces, or any government authority as well as the Army Colour (Prohibition of Use) Act 1976.


8. **Specified entities**- Clause 43 gives the Attorney General the power to designate an entity as a “specified entity” on the recommendation of the National Security Adviser (NSA) where the entity knowingly committed, attempted to commit, participated or facilitated the commission of a terrorist act. This provision is flawed in a number of ways. Firstly, the provision does not define what an “entity” entails and what it means to be a “specified entity.” Secondly, it gives excessive powers to the Attorney General without adequate checks and balances before such designation. Thirdly, although there is provision for redress with an

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application made to the Attorney General for revocation of the Order, this application may be futile as it puts the power to designate a person or organisation as a “specified entity” solely in the hands of the Attorney General without an external check. This is different from the proscription of terrorist organisations/ entities, which is subject to judicial review as can be seen in clause 44.

9. Charities - The Bill gives power to the Registrar-General of the Corporate Affairs Commission to sign a certificate refusing or revoking the registration of any charity linked to terrorist groups. This provision therefore means that the Companies and Allied Matters Act may need to be consequentially amended to cover for this increased power of the Registrar General and the grounds for refusal or revocation of registration. However, it is noteworthy that section 594 of CAMA does not state the grounds for refusal under part C. Part C of CAMA provides for the registration of charities and NGOs, particularly section 594, which gives members of the public the power to object to the registration of such entity. Presently, there is a Companies and Allied Matters (Repeal and Re-enactment) Bill before the National Assembly. It can also be argued that there is a likelihood of abuse here, as the government may target certain CSOs and NGOs.

10. Nigeria Sanctions Committee - The Bill sets up a sanctions committee with the responsibility of formulating and providing general policy guidelines on the effective implementation of United Nations Security Council Resolutions (UNSCR) and instruments of the African Union and Economic Community of West African States (ECOWAS). This Sanctions Committee is set up in line with the Sanctions Committee set up by the United Nations Security Council 1267 (1999) to put in restrictive measures concerning individuals and groups on the Consolidated List. This Committee has already been established with a mandate to “trace and freeze financial flows of terrorist organisations. The Committee membership includes the Minister of Justice and Foreign Affairs, the National Security Adviser, the Director General of the State Security Service, Inspector General of Police, Central Bank of Nigeria Governor and the Chief of Army Staff and a Lieutenant General.”

The Committee was however constituted without the Minister of Interior, Director General of the Nigerian Intelligence Agency, Chief of Defence Staff and Director of the Nigeria Financial Intelligence Unit as stipulated in clause 49. The Consolidated Sanctions List is the list of “all individuals and entities subject to sanctions measures imposed by the Security Council.” These measures include freezing of funds and other financial resources and denial of permission for any aircraft to take off and land in territory owned by the entity on the Consolidated List. Boko Haram was added to this list as a result of its association with Al-Qaida by virtue of the UNSCR 1267 of 1999 and 2083 of 2012. This position is reiterated in the UNSCR 2349 of 2017 where it calls for “Member States to move vigorously and decisively to cut the flows of funds and other financial assets and economic resources to individuals, groups, undertakings and entities on the ISIL and Al-Qaida Sanctions List, including Boko Haram”.

11. **Responsibilities of airlines, commercial carriers, tour operators and travel agents**- The Bill includes a part putting every airline operator, sea vessel operator, commercial carrier, tour operator and travel agent under an obligation not to aid and abet, facilitate and promote terrorist activities. This includes requiring them to insert clauses in contracts with suppliers that comply with these obligations as well as include clauses in their conditions of service. This may affect ease of doing business or increase their costs.

12. **Investigation and Search without a warrant**- The Bill gives any officer of the DSS power to enter, search and arrest a person or premises in the case of verifiable urgency or threat to life. Considering the asymmetrical nature of terrorism, this provision may be critical to forestall any disaster. However, this may infringe on the right to privacy of the person under Section 37 of the 1999 Constitution (as amended). This constitutional provision is however subject to section 45 of the Constitution which states that, “nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order.” Notwithstanding the foregoing, there are safeguards put in place requiring a duly endorsed copy of the list of items taken to be handed to the person upon whom the search was made after the search, although it is unclear who is to endorse the list.

13. **Interception of Communications Order**- Clause 58 of the Bill requires an ex-parte order for a person’s communication to be intercepted. This provision is made without prejudice to any other law. Section 146(2) of the Nigerian Communications Act 2003 provides that “a licensee shall, upon written request by the Commission or any other authority, assist the Commission or other authority as far as reasonably necessary in preventing the commission or attempted commission of an offence under any written law in operation in Nigeria or otherwise in enforcing the laws of Nigeria, including the protection of the public revenue and preservation of national security.” While Section 148(1) (c) states, “on the occurrence of any public emergency or in the interest of public safety, the Commission may order that any communication or class of communications to or from any licensee, person or the general public, relating to any specified subject shall not be communicated or shall be intercepted or detained; or that any such communication or its records shall be disclosed to an authorised officer mentioned in the order.” These provisions do not provide for a judicial order prior to interception.

14. **Jurisdiction**- This Bill states that the Federal High Court would have jurisdiction to preside over matters emanating from this Act. It also provides for extraterritorial jurisdiction by giving the Federal High Court jurisdiction to hear and determine proceedings, whether or not the offence was commenced in Nigeria and completed outside Nigeria. Extraterritorial jurisdiction “connotes the exercise of jurisdiction, or legal power, outside territorial borders”. 80 This provision adopts the recommendation of the UNODC model legislation (Article 26) and AU model anti-terrorism law (Articles 44-46). It can be argued that by providing for extraterritorial jurisdiction, the bill fulfils the international obligation to bring terrorists to justice and deny them safe haven. 81

15. **Correlation with Proceeds of Crime Bills and Nigerian Financial Intelligence Unit (NFIU)**- The Bill incorporates the Proceeds of Crime Bills and the NFIU in its creation of responsibilities and actions. For instance, clause 28 (3) provides for the transfer of assets and properties

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belonging to an entity who has committed a crime under this Bill to a fund or agency established under law for the recovery of proceeds of crime as opposed to the Federation Account. Similarly clause 52 stipulates that any airline operator, sea vessel operator, commercial carrier and the like, who contravenes the clause shall be liable to a pay a fine of not less than N10,000,000 to an agency established for the recovery of proceeds of crime. This can also be seen in clause 72 mandating forfeited funds and funds realised from sale of assets to be paid into the Confiscated and Forfeited Assets Account. These provisions are included in anticipation of the passage of the Proceeds of Crime Bills before the National Assembly. It is noteworthy that these bills are currently awaiting committee report in their respective chambers. The Nigerian Financial Intelligence Unit is incorporated under Part Eleven by giving the unit the responsibility of reporting officers in breach of their obligation to report suspicious transactions relating to terrorism (Clause 74).

16. *Extradition and Protection from Discrimination*—The Bill embeds protections for persons expected to be extradited, ensuring protection from extradition where the prosecution is on the basis of a person’s race, religion, nationality, ethnic origin or political opinion (Clause 79). This is in line with constitutional provision on the right to freedom from discrimination on the basis of ethnicity, place of origin, sex, religion or political opinion.  

17. *Consequential amendments*—Although the Bill in clause 85 makes a consequential amendment to the EFCC Act by deleting section 14 of the Act, which has to do with offences relating to terrorism, this consequential amendment will need to be made to the EFCC Act itself.  

**Consistency and Possible Conflict with SSR**

- On the issue of accountability, the Bill increases judicial oversight on actions of security agencies particularly those with the capacity of infringing on the right of individuals. Examples are clauses 44, 53, 56, 58, 67, to name a few. Even though there is this increase in judicial oversight, it is not reflected across the bill, particularly in relation to specified entities where the Attorney General is the maker of the decision and the reviewer of said decision. This goes against the latin maxim and natural justice principle, *nemo iudex in causa sua*.

- The Bill does not readily address the issue of transparency, instead there are provisions which allow for opaque practices such as clause 43. Several provisions allow for the designation of an entity as specified or proscribed as well as the refusal and revocation of the registration of a charity on the basis on intelligence report. Although there is room for judicial review of such decisions, it is unclear if such intelligence report will be opened for review and in order for an adequate application to be put forward.

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82 This account will be established under clause 146 of Proceeds of Crime Bill (SB 376 sponsored by Sen. Mohammed Hassan.) At present this power resides with the Economic and Financial crimes Commission under sections 20, 26(3) and 34 of the Economic and Financial Crimes Commission (Establishment) Act, 2002.  
83 Proceeds of Crime Bill (HB872 Sponsored by Hon. Kayode Oladele) and Proceeds of Crime Bill (SB 376 sponsored by Sen. Mohammed Hassan.  
84 Section 42 of the 1999 Constitution (as amended)
• The Bill strengthens the anti-terrorism legislation in Nigeria, thereby making it more coherent. In doing so, it could improve the effectiveness of the security agencies as it clearly delineates responsibilities.

• There are certain provisions, which may infringe on constitutional and human rights of affected persons. The Bill however takes steps to mitigate these to some extent by putting safeguards with the inclusion of judicial intervention.

• This Bill is also in line with the ECOWAS Counter-Terrorism Strategy and Implementation plan 2013, which seeks to ensure operational capacity and political commitment in countering terrorism and violent extremism.

Comments
This Bill is the most comprehensive proposed anti-terrorism legislation before NASS.
Bill Objective
The objective of the Bill is to establish a central body known as the Nigerian Financial Intelligence Unit (NFIU) that shall be responsible for receiving, requesting, analysing and disseminating financial intelligence reports and information to law enforcement, security and intelligence agencies. The Unit shall be independent under the Bill and domiciled with the Central Bank of Nigeria.

The Bill aims to replace the extant Financial Intelligence Unit under the Economic and Financial Crimes Commission (EFCC) with an autonomous Unit backed by robust regulatory framework to ensure transparency, effective and efficient management, administration and the institutionalisation of best practices in financial intelligence management in Nigeria.

Other principal objectives of the Bill include providing a legal, institutional and regulatory framework for effective and efficient management administration for the NFIU, strengthening the existing system for combating money laundering and associated predicate offences and making provision for the Unit to exchange information with Financial Intelligence Institutions or other similar bodies whose work relates to money laundering or terrorist financing activities.

Key Provisions of the Bill
• Part 1 states the objectives of the bill, which include establishing the Nigerian Financial Intelligence Unit, charged with the responsibility of institutionalising best practices in financial intelligence management in Nigeria. Other principal objectives of the Bill include providing a legal, institutional and regulatory framework for effective and efficient management administration for the NFIU, strengthening the existing system for combating money laundering and associated predicate offences and making provision for the Unit to exchange information with Financial Intelligence Institutions or other similar bodies whose work relates to money laundering or terrorist financing activities.

• Part 2 establishes an independent and operationally autonomous NFIU that shall be domiciled within the Central Bank of Nigeria. It also enumerates the function and powers of the Unit.
Part 3 establishes the Office of a Director (who shall be appointed by the President to head the NFIU subject to Senate’s confirmation) and other staff of the NFIU. Under the Bill, the Director is the Chief Executive and Accounting Officer. The Director shall hold office for a four (4) year renewable term. It provides for the security screening of employees of the Unit. It further establishes Departments, Special Units and Technical Units for the effective and efficient discharge of its functions and powers under the Bill.

Part 4 provides for a Fund for the NFIU to be credited from:
- Take off grants and/or other subventions received from the Government of the Federation
- Budgetary allocations approved by the National Assembly for the Unit
- Grants, gifts, donations from international organisations and donor agencies on terms and conditions that are not inconsistent with the functions of the Unit and must be disclosed to the National Assembly.

The Fund is to be managed in accordance with the Financial Regulations applicable in the public service of the Federation and to be applied to the cost of administering the unit, reimbursement of expense of committee members, payments of salaries, fees as well as maintenance of property. This part further contains reporting and accountability provisions e.g. proper and regular keeping of accounts, auditing and submission of budget estimates and annual report to the National Assembly.

Part 5 gives the NFIU wide monitoring and supervisory powers. For instance it is empowered to hold a secured central database for all reporting institutions and issue directives placing an account under surveillance where there is financial intelligence enquiry but adds that an account surveillance shall not exceed a period of ninety days commencing from the date of the directive. The directive may be issued where the amount is related to an account that is the subject of a report of the type referred to in the Money Laundering (Prohibition) Act, section 55 of the Terrorism (Prevention) Act or an inquiry in relation to money laundering, associate predicate offences, financing of terrorism or the proliferation of weapons of mass destruction conducted on behalf of a foreign financial intelligence Unit. In other cases, such directive may be issued where there are reasonable grounds to believe that the owner of the account is suspected to have committed a money laundering offence, committed a terrorism financing offence, has property derived from unlawful activity or whether there are reasonable grounds for believing that the material which may be provided in compliance with the directive is likely to be of substantial value, whether or not by itself to the financial intelligence inquiry for the purposes of which the directive is sought- see clause 16.

There is a provision for the Unit to conduct joint inspections of reporting institutions.

There is also a provision in the bill that requires self-regulatory organisations to provide details of every member registered by them for the purposes of the Money Laundering and Terrorism Acts. Such details include:
- The address of the Head Office of the institution
- Addresses of its branches
- Nature of business
- Beneficial owner
- Contact details
• Number of employees
• Date of registration
• Name of individual within the institution responsible for reporting

• Part 6 mandates the NFIU to supervise authorities on compliance with its Financial Action Task Force counter measures from time to time. The NFIU is responsible for the identification, assessment and compilation of reports on risks of money laundering, terrorist financing and proliferation of weapons of mass destruction. Accordingly, it shall consult with relevant agencies and reporting institutions in developing enforcement measures, guidelines and policies necessary for the mitigation of the risks of money laundering, terrorist financing and proliferation of weapons of mass destruction.

• Part 7 stipulates the law governing legal proceedings against the Director or Members of the Unit.

• Part 8 provides for penalties for any person who has an obligation to report breaches of any of the Bill’s requirements or fails to comply with notices, an order or direction. In all these cases, the person shall be liable to pay such administrative penalty as may be prescribed under the Bill. However, an application for review of such penalties can be made to the Unit and further appeal to the Federal High Court. This part also dissolves the administrative body known as the Nigerian Financial Intelligence Unit established under the Economic and Financial Crimes Commission (EFCC) Act. Also, all assets, funds, resources, rights and obligations vested in the dissolved Nigerian Financial Intelligence Unit established under the EFCC Act shall continue under this Bill. The Minister for Justice will be responsible for making guidelines for the implementation of the bill.

TABLE 3: OFFENCES AND PENALTIES UNDER THE NFIU BILL

<table>
<thead>
<tr>
<th>Offences</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disclosure of Confidential Information</td>
<td>This penalises persons who make a disclosure that is likely to be detrimental to the investigation or a financial intelligence inquiry or falsifies, conceals, destroys or disposes of documents that are relevant to an inquiry of the NFIU- clause 18(1)</td>
</tr>
<tr>
<td></td>
<td>While individuals who make such a disclosure shall pay a fine of not less than N500,000 or imprisonment for a term of not less than two (2) years or both, a financial institution or other body corporate shall pay a fine of not less than N50,000,000.</td>
</tr>
<tr>
<td></td>
<td>However, an officer of the NFIU who discloses or causes to be disclosed any information that may have come to his possession during the course of his duties commits an offence and shall be investigated and where indicted shall be prosecuted for criminal disclosure- clause 18(3)</td>
</tr>
<tr>
<td></td>
<td>A convicted officer of the NFIU in breach of this provision shall be liable to imprisonment for a term not less than five (5) years without the option of fine and dismissal from office clause 18(3)</td>
</tr>
</tbody>
</table>
### Administrative Penalties

Any person who has an obligation to report but breaches any of the Bill’s requirements or fails to comply with notices, an order or direction shall be liable to pay such administrative penalty as may be prescribed under regulations made pursuant to the Bill.

However, a penalty may not be imposed where there are reasonable grounds to show that the person took all reasonable steps and exercise due diligence to ensure compliance.

In its decision on whether the person failed to comply with a requirement of the Bill, the NFIU must consider whether the person or entity followed any relevant guidance that was issued, approved and published in a manner approved by it.

It must also notify the person of its decision to impose the penalty and the amount, the reasons for imposing the penalty, the right of review and right to appeal against the decision.

Penalties imposed under this section are payable no later than two (2) working days from the date of the award, following which 10% of penalty shall accrue for each day of default. – clause 25

### Obstruction of the Agency or Authorised Officer

This penalises any person who obstructs the NFIU or any of its authorised officers exercising any of its functions.

An individual in breach of this provision shall be liable to an imprisonment term of not less than three (3) years or a fine of N200,000 for every day the obstruction persists. However, an entity in breach shall be liable to the fine of One Million Naira set for every day the obstruction persists.

The Unit is also within its rights to withdraw the licence of any person or entity for contravention. – clause 27

### Context and Rationale

In the late 90s, Nigeria was regarded as a pariah because of money laundering and advance fee fraud, which went by the moniker, “419” after section 419 of the Nigerian Criminal Code. This culminated in the blacklisting of Nigeria as a non-cooperative country having limited legal and regulatory framework to tackle Money Laundering and Financing of Terrorism by the Financial Action Task Force (FATF). The Nigerian Financial Intelligence Unit (NFIU) was therefore created in 2004 return to fulfil the requirement by FATF.

In addition to being the coordinating entity for the receipt and analysis of financial disclosure of Currency Transaction Reports and Suspicious Transaction Reports in line with Nigeria’s anti-money laundering and combating the financing terrorism (AML/CFT) regime, NFIU also disseminates intelligence gathered to competent authorities. Its powers derive from the EFCC (Establishment) Act of 2004 and the Money Laundering (Prohibition) Act of 2004 & 2011. It is domiciled at the EFCC being a law enforcement agency and has three (3) central roles, which are receiving, analysis of financial intelligence and dissemination of such intelligence to end-users. The Bill was initiated in response to Nigeria’s suspension from the Egmont group, which is a global network of 154 Financial Intelligence Units (FIUs) responsible for setting standards and best practices for financial intelligence units. At its last general meeting in July 2017, it issued a threat to expel the country if the NFIU is not given autonomy from the Economic and Financial...
Crimes Commission in accordance with global standards by its next meeting scheduled for March 11 to 16, 2018 in Buenos Aires, Argentina. Specifically, it identified the following deficiencies in NFIU:

- Lack of operational autonomy;
- Lack of a comprehensive legislation on mutual legal assistance; and
- Lack of a comprehensive legislation on recovery of stolen assets and proceeds of crime.

**Constitutional and Legal Issues**

- **Domiciliation of NFIU with Central Bank** - The Bill dissolves the administrative body known as the Nigerian Financial Intelligence Unit (NFIU) established under the Economic and Financial Crimes Commission (EFCC) Act and domiciles the Unit as created under the bill in the Central Bank of Nigeria. However, every regulation, order, requirement, certificate, notice, direction, decision, authorisation given or done by the said dissolved administrative body shall continue to have effect as if made, issued, given or done by the Nigerian Financial Intelligence Unit that is established under this Bill. All the 14 FIUs in West Africa are administrative in nature except Nigeria, which is given the added responsibility of being a law enforcement centre. For example, Ghana’s Independent Board and Executive Director is located in the Ministry of Finance; Gambia’s Independent Board and Director is located in the Central Bank; Senegal’s, Benin’s, Mali’s, and Togo’s Independent Directors and Board are all located in the Ministry of Finance. Outside Africa, most FIUs in the world are domiciled in the Ministry of Finance, Justice or Central Bank.

- **Consequential Amendments** - The Bill seeks to amend the EFCC Act, the Money Laundering (Prohibition) Act and the Terrorism (Prevention) Act so that they are consistent with the Bill’s provisions. In particular, it seeks to delete section 2 (c) of the EFCC Act, which provides that the Economic and Financial Crimes Commission is the designated Financial Intelligence Unit in Nigeria responsible for the coordination of the various institutions involved in the fight against money laundering and the enforcement of all laws dealing with economic and financial crimes in Nigeria. However, this also means that the aforementioned Acts must undergo separate and consequential amendments to give effect to the provisions of the Bill, when assented to by the President. It also gives powers to the Attorney General of the Federation and Minister of Justice to make regulations necessary or expedient for the efficient implementation of the Bill’s provisions.

- **Data and Privacy Concerns** - The NFIU’s wide powers of account surveillance, holding a central database for reporting institutions and entry and inspection have privacy and data implications. The same applies to the requirement for self-regulatory bodies to provide details of their member organisations. Such wide powers always raise the concern of likelihood of arbitrariness.

**Consistency and Possible Conflict with SSR**

Establishing the NFIU as an autonomous agency is likely to promote information sharing and synergy amongst financial and security sector agencies, while reducing competition, territoriality and turf battles. The bill is a response to an important international commitment made by Nigeria. While it is commendable, it is expected that respect for the constitutional rights of citizens would be given prominence in its implementation.
Bill Objective
The objective of the bill is to enhance national security by establishing a specialised Directorate within the Nigeria Immigration Service to effectively man and patrol Nigerian border to prevent illegal immigrants, terrorists and other criminals from entering Nigeria.

Context and Rationale
Nigeria has been grappling with the problem of porous, poorly marked and non-demarcated borders— an issue that has become very prominent with the recent insurgency crisis and farmer-herdsmen crisis. Most of the Boko Haram attacks have occurred in Borno, Adamawa, and Yobe which are North East States sharing borders with other West African countries, such as Cameroon, Chad, and Niger. The Sambisa forest and the Lake Chad Basin have also been prime areas for Boko Haram activity. 85 While the herdsmen crisis on the other hand is concentrated more in the Middle Belt area, the Nigerian government has contended several times that the perpetrators are not locals but foreigners from Libya. There have also been cases of influx of refugees from the Republic of Cameroon to some border communities in Cross River State86. All these lead to the question of how these persons gain entry into the country unnoticed.

It is said that Nigeria has more than 4,000 kilometres of international land with Chad, Cameroon, Benin, and Niger, and a coastline of 774 kilometres, most of which are unmanned. The Nigerian Immigration Service (NIS) notes that of about the 1, 500 identified land border crossings into Nigeria, only 114 had approved control posts manned by immigration officials and other security

agencies and that there are over 1,400 illegal routes, which are not manned.\textsuperscript{87} With only about 22-23,000 staff, the NIS is not equipped to effectively manage border security.\textsuperscript{88} These of course exclude routes that are unknown to the agencies. For instance, it was reported that over 250 footpaths mostly unknown to security agencies exist between Damaturu and Maiduguri axis with direct link to Cameroon, Chad or Niger.\textsuperscript{89} Inadequate personnel, equipment, and facilities are compounded by cases of corruption at the border with agents demanding money in exchange for free passage.\textsuperscript{90}

The globalisation process and Nigeria’s signing of the Economic Community of West African Countries’ (ECOWAS) 1979 Protocol on Free Movement of People, Goods and Services has also been highlighted as one of the causes of the country’s border problems.\textsuperscript{91} Critics point out that the treaty, which permits the citizens of every member country to engage in trade and other legal activities within the sub-region, has opened the doors to the proliferation small arms and light weapons (SALW), contrabands, criminals, trafficking, illegal migrants and other activities that constitute serious security threats to the lives and properties of citizens.\textsuperscript{92} Interrelations across communities residing along poorly demarcated borders have also made application of stringent border control rules difficult. The presence of a plethora of agencies working with the NIS at the border, e.g. the Nigeria Customs Services, the Department of State Security, the Nigerian Border Police, the military, the Port Health, NDLEA, NAFDAC and the Nigeria Police border patrol appear to be insufficient to bring the situation under control.\textsuperscript{93}

The Nigerian Immigration Service currently has a Border Management Directorate headed by a Deputy Comptroller General with four (4) Divisions as follows:

- Land Control Post and Land Patrol;
- Airport Control and Aerial Patrol;
- Seaport Control and Marine patrol;
- Border Services.

\textsuperscript{87} Ibid n.85
\textsuperscript{88} PM News (2014), “Nigeria has over 1,400 illegal border routes – Immigration Boss” \textit{PM News} (Nigeria, April 24 2014). Available at: https://www.pmmnewsnigeria.com/2014/04/24/nigeria-has-over-1400-illegal-border-routes-immigration-boss/
\textsuperscript{91} The protocol was established by the ECOWAS Member States in 1979 with the aim of promoting integration by facilitating the free movement of people, goods and services within the West Africa without Visa; this simply means that any ECOWAS citizen who poses valid travelling document and International Health Certificate can travel the in region without a visa. See ECOWAS Protocol relating to Free Movement of Persons, Residence and Establishment 1979 A/P.1/5/79
In addition to the foregoing, Nigeria also has a joint border patrol agreement with the Republic of Niger, which was recently renewed. This implies the presence of border patrol agents. In addition to the agencies currently operating on the Nigerian border, the Nigerian Armed Forces, specifically the Air Force and Navy have been brought in to contribute to border security, particularly after the 2012 terrorist bombings and killings.

Some of the solutions proffered to address the problem of border security include a comprehensive mapping of Nigerian borders with a view to identifying the levels of migration risks posed by the various sections. This would help in deciding the types of policing measures to adopt at the different areas. Others include use of innovative technology – radar and alarm systems; and dealing decisively with corrupt agents as well as introduction of modern technology.

The bill seeks to provide a new legal framework to address the problem via the set-up of a border patrol directorate. However, it raises certain key issues/questions. For instance, whether there is need to create a unit that is separate from what already exists.

**Key Provisions of the Bill**

Clause 1 establishes the Directorate of Nigeria Immigrations Border Patrol Agents, headed by a Deputy Comptroller General in the Immigration Service, and confers the responsibility for the coordination, operation, direction, posting and training of Immigration Officers deployed to the Directorate and designated as Border Patrol Agents.

Clause 2 prescribes the general duties of the Directorate, including but not limited to deployment and designation of Border Patrol Agents; border patrol and surveillance; conducting specialised training in furtherance of the Directorate’s mandate; and creation of divisions, units and stations of operation as deemed fit.

Clause 3 prescribes the general duties of the Border Patrol Agents, and they include among others, patrol of Nigeria land borders to prevent illegal migration, preventing unlawful entry into and exit from Nigeria; detection and prevention of smuggling, unlawful entry of aliens, trafficking and terrorism; apprehension of violators of immigration laws; prevention of border crimes and improvement of quality of life among border communities as well as use of smart border technology to carry out border surveillance.

Clause 4 provides for specialised training for its Border Patrol Agents on various subjects while clauses 5 and 6 provide for use of approved uniforms, ranks and insignia and use of firearms in a manner approved by the Comptroller General (CG) or Minister of Interior. Lastly, clause 7 empowers the directorate to procure necessary equipment subject to approval of the CG and in accordance with the provisions of the Public Procurement Act 2007.

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Constitutional and Legal Issues

- **Existing Legal Framework:** The Bill seeks to create a unit that is already provided for in the law. According to section 2 (d) of the Immigration Act 2015, the Nigerian Immigration Service is given the duty of “border surveillance and patrol. Furthermore, the command and structure of the Service as provided for in section 6(f) of the same Act includes “officers in charge of Border, land, Marine and Air Border Patrol Units.” Thus, what the Bill seeks to do is give more direction as to the mandate of the Border Patrol Unit, especially in view of recent realities. The intent of this Bill can be provided for by way of an amendment to the Immigration Act 2015 or regulations as made by the Minister of Interior. It is therefore unnecessary to enact a new Bill targeted solely at the Border Patrol Unit, a unit that is already in existence. The Bill would hold more weight if it sought to increase the capacity of the Nigeria Immigration Service to carry out this function or to proffer a way of streamlining the border patrol responsibility, which is executed by a number of agencies.

- **Restriction to Land Borders:** Clause 3(1) of the Bill empowers the Directorate to patrol land borders specifically. This provision fails to reference the other borders through which illegal aliens or smugglers may enter the country such as Air and Sea. This is provided for in the larger Immigration Act 2015 in section 6(f). It is necessary to include them in the scope of border patrol envisaged by the bill to keep pace with increasing demand and security requirements.

- **Power to Procure:** The Bill in clause 7 gives the Directorate power to procure necessary equipment subject to the approval of the Comptroller General. The Comptroller General is however not provided under the Bill, which instead creates a role for the Deputy Comptroller General. The inclusion of the Comptroller General presupposes that there is a correlation between this Bill and the Immigration Act 2015.

Consistency and Possible Conflict with SSR

- The Bill could lead to inefficiency of border security agents as there is a duplication of efforts.

- No clear articulation of the delimitations of the use of force. The provisions do not propose non-violent methods and minimum appropriate use of force. Legitimate use of force is not determined by law and do not emphasise restraint, proportionality and adequacy.

- Potential for breach of adherence to the rule of law with the use of firearms as well as the power to procure.

- There are no external accountability provisions, nor reporting requirements on implementation of the legislation mentioned in the bill. It appears the bill is meant to exist side by side with the Immigration Act 2015, which contains wider provisions.
Para-military groups

| Long Title: | A Bill for an Act to establish the Vigilante Group of Nigeria (VGN), charged with the responsibilities to, among others, provide community policing, maintenance of law and order and community service for Nigerians and for other related matters, 2017. |
| Short Title: | The Vigilante Group of Nigeria (Establishment) Bill, 2017 (HB 718) |
| NASS Chamber: | House of Representatives |
| Sponsor: | Hon. Abbas Tajudeen (APC: Kaduna) |

**Bill Objective**

The objective of the Bill is to establish the Vigilante Group of Nigeria at all levels of government (Federal, State and Local) with the aim of providing community policing, maintenance of law and order and community service for Nigerians.

**Context and Rationale**

Nigeria in recent history has been bedevilled with a number of security challenges, some of which has been prior highlighted. There is also the perception that the security forces have been unable to adequately respond to these situations, resulting in the rise of vigilante groups springing up around the country. One of such vigilante groups in the civilian joint task force (CJTF), which has been instrumental in countering the Boko Haram insurgency in the North East. Thus, the Bill aims to formally create vigilante groups across all levels of government to contribute to the maintenance of law and order in Nigeria.

Furthermore, in attempting to respond creatively to the security challenges, the legislature’s solution has been to establishment more quasi-security agencies and the VGN is one of such innovations. In addition, the Vigilante Group is seen as a means of responding to the dire unemployment issue in the country, akin to the purpose of the Nigeria Peace Corps sought to be created.

It is noteworthy that the Vigilante Group of Nigeria is currently in existence and this Bill merely serves to give the Organisation legal backing, and enablement for government funding.

**Key Provisions of the Bill**

- **Establishment of the Vigilante Group of Nigeria and Governing Board of the Group** - the VGN is established and expected to have an office the Federal, State and Local Government levels. A governing board for the group is also created to be headed by the Minister of Police Affairs. The board would be responsible for providing general policies and guidelines for major expansion programmes of the Group, overall management and general administration, recruitment, training and setting of terms and conditions of service for group members.
Functions of the Group - The Group has a wide range of functions. Some of it includes assisting the Nigerian Police and other security agencies in the prevention and detection of crime, protection and preservation of public utilities, maintenance of law and order in social gatherings, establishing links with other services in intelligence gathering and dissemination, responding to distress alarms of residents of the community. Others include “community service” functions such as clearing of drainages and sewages; establishing measures to minimise or prevent flooding, prevent erosion, drought, desertification, bush burning, fire incidences, arson, drowning in rivers; clearing and maintenance of roads; clearing of oil spillage; provision of security on market days; securing places of worship; checkmating pick pockets, swindlers, illicit drug dealers, and substandard products; creating public awareness; advocating for and instilling national values and ethics etc.

Conflict management role - The group is also given specific roles in preventing conflict, during conflict situations and post conflict. Responsibilities pre-conflict include public enlightenment and establishment of Early Warning Signs Indices, designing societal reorientation and attitudinal change programmes etc. During conflict, the group is expected to assist the military and other law enforcement agencies as well as victims via provision of first aid, psychological support etc. Post conflict management duties include assessment of safety and security of affected areas as prelude to any damage assessment or relocation of displaced persons, preserving and guarding public utilities from damage and vandalism prior to the return of community members to their homes, helping in rebuilding homes and reviving economic activities, reintegration, peace building and mobilising people for rebuilding of communities.

Command Structure - The structure proposed by the Bill includes a Commandant General at the National Level, five Deputy Commandants General and three Assistant Group Commandants – each charged with a different responsibility. At the State level, there is a twenty-three level command hierarchy or ranks ranging from the State Commandant to Assistant Group Superintendent while at the Local Government level there is a fifteen level hierarchy headed by the Local Government Commandant and goes down to Group Sergeant. In addition, it is stated that the Group shall be made of volunteers and regular members.

Equipment - The government would be responsible for providing equipment for the group and this includes operational and utility vehicles, communication gadgets, detective equipment such as scanners, cameras, bomb detectors as well as other operational and administrative equipment such as rain coats, blankets, whistles, reflective jackets etc.

Financial Provisions - the Group would be funded by take off grants, annual subventions and budgetary allocations received from Federal Government; monies appropriated by the National Assembly; monies lent, deposited with or granted by the Federal, State or Local Government; grants, gifts and donations from international organisations and donor agencies; and donations from other organisations. It further adds that the group shall be paid allowances from security vote and overhead costs for upkeep of its national secretariat and for meeting other incidental expenses.
Submission of annual estimates and annual report - Provisions are made for submission of annual estimates and expenditure to the Minister for Police Affairs, keeping of proper accounts, and submission of annual reports to the Federal Executive Council via the Minister.

Discipline of members – Provisions on offences by group members e.g. acting in contravention of the group’s objective, taking part in an illegal assembly, abetting the commission of an offence and taking part in a strike. The penalty is an imprisonment term of not less than one (1) year. There is also a requirement of secrecy by officers of the group. The penalty for this is N50,000 fine or imprisonment for a term not more than two (2) years.

Power to Obtain Information – the Group and its officers are authorised to have access to all the records of any person affected by the bill for the purpose of discharging their duties and may demand information via notice in writing from such persons.

Directives – The Minister may give the Group or Commandant General, directives on matters of policy or as he may consider necessary for maintaining public safety and order. The Governor of a State is empowered to do the same at the State Command level. Powers to make regulations for administering the provisions of the bill are given to the Board with the approval of the Minister.

Transitional Management of the Group- The bill provides that at its commencement, the Inspector-General of Police shall subject to the Minister’s approval, appoint a serving Police Officer not below the rank of Commissioner of Police to serve as Chief Executive Officer and Accounting Officer of the Vigilante Group in the Federation; Chief Superintendent of Police as Chief Executive Officer of the Vigilante group in every State and the FCT; and, Assistant Superintendent of Police as Chief Executive at every Local Government Area.

Constitutional and Legal Issues

Functions of the Group- The Bill in Clause 4 stipulates that the Group shall assist the Nigeria Police and other security agencies in prevention and detection of crime, apprehension of offenders, the protection of lives and property and the preservation of law and order, protection and preservation of public utilities, establish links with other services in intelligence gathering and dissemination and response to distress alarms. The Bill also prescribes community service and conflict and disaster functions in Clauses 5 and 6 respectively. This function primarily falls within the purview of the Nigerian Police by virtue of section 4 of the Police Act, which states that the Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order and the protection of life and property.

The Bill also charges the Group with providing community policing, a function already being carried out by the Police. In simple terms, community policing is “a collaboration between the police and the community that identifies and solves community problems.” In fact, there is a Community Policing Unit under the Police Inspectorate. If the aim of this Bill is to provide community policing this can be done by strengthening this unit.
In addition, there are other security agencies charged with assisting the Police such as the Nigerian Security and Civil Defence Corps (NSCDC) that is charged with assisting in the maintenance of peace and order and in the protection and rescuing of the civil population during the period of emergency (see section 3(a) of the Nigerian Security and Civil Defence Corps Act 2003 (as amended)).

There might also be a significant overlap of functions with existing government agencies such as the following:

- Environmental Protection Boards- clearing of drainage and sewages (clause 5(a)); putting in place measures to prevent erosion (Clause 5(c)), counter drought and desertification (clause 5(d)) and encouraging environmental sanitation and prevention of water pollution (Clause 5(o));

- National Orientation Agency- advocating for and instilling national values and ethics of discipline, integrity, dignity of labour, social justice, religious tolerance, self-reliance and patriotism (Clause 5(n)) and designing and implementing robust societal reorientation and attitudinal change programmes throughout the nation towards culture of preventing violent conflicts and disasters (Clause 6 (1)(d));

- National Emergency Management Agency- making preliminary assessment of safety and security of affected areas as prelude to any damage assessment or relocation of displaced persons (Clause 6 (3)(a));

- State Ministry of Works and Federal Road Management Agency- assist in clearing and maintaining remote (feeder) roads linking various communities and markets (Clause 5 (g)); and

- National Oil Spill Detection and Response Agency- clearing of oil spillage in oil producing communities (Clause 5(h)).

- **Power to Obtain Information** - The provision allowing any person (Commandant General, Officer or Employee) to have right of access to all records of any person or authority affected by this Bill confers wide powers on the Group as it relates to obtaining information. The potential implication of this is worrisome as it could create an avenue for abuse of right to privacy.

- **Transitional Management** - Clause 31 of the Bill provides for transitional management but does not state what will be managed or the purpose of the transitional management. By the use of the term “transition”, it presupposes that this is an interim measure. If this is the case, an end to the transition period or management is not prescribed. The term “transition period” is also not defined.
<table>
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<tr>
<th>Agency/Organisation</th>
<th>Legislation and Functions</th>
<th>Overlapping function in present Bill</th>
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</table>
| Federal/ State Ministry of Environment      | The main function of the Ministry revolves around the following key environmental issues, especially, in the area of policy awareness, enforcement and intervention:  
- Desertification and Deforestation;  
- Pollution and Waste Management;  
- Climate change and clean Energy;  
- Flood, Erosion and Coastal Management (Shoreline Protection)  
- Environmental Standards & Regulations | Clearing of drainage and sewages (clause 5(a)); putting in place measures to prevent erosion (Clause 5(c)), counter drought and desertification (clause 5(d)) and encouraging environmental sanitation and prevention of water pollution (Clause 5(o)) |
| Environmental Protection Boards            | National Environmental Standards and Regulations Enforcement Agency (NESREA) Establishment Act 2007 (Section 7 (c)- (d))  
(c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wildlife, pollution, sanitation and such other environmental agreements as may from time to time come into force  
(d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement | Clearing of drainage and sewages (clause 5(a)); putting in place measures to prevent erosion (Clause 5(c)), counter drought and desertification (clause 5(d)) and encouraging environmental sanitation and prevention of water pollution (Clause 5(o)) |
| National Oil Spill Detection and Response Agency | National Oil Spill Detection and Response Agency (Establishment) Act 2006-Section 6(1)(d) Co-ordinate the implementation of the Plan for the removal of hazardous substances as may be issued by the Federal Government; | Clearing of oil spillage in oil producing communities (Clause 5(h)) |
| National Orientation Agency | National Orientation Agency Act 2004 section 3 (f) (i) (k)- (l) (f) propagate and promote the spirit of dignity of labour, honesty and commitment of qualitative production, promotion and consumption of home-produced commodities and services; (i) propagate the need to eschew all vices in public life including corruption, dishonesty, electoral and census malpractice, ethnic, parochial and religious bigotry; propagate the virtue of hard work, honesty, loyalty, self-reliance, commitment to and the promotion of national integration; (k) mobilise Nigerians for positive patriotic participation in and identification with national affairs and issues; and (l) sensitis, induct and equip all Nigerians to fight against all forms of internal and external domination of resources by a few individuals or groups. | Advocating for and instilling national values and ethics of discipline, integrity, dignity of labour, social justice, religious tolerance, self-reliance and patriotism (Clause 5(n)) and designing and implementing robust societal reorientation and attitudinal change programmes throughout the nation towards culture of preventing violent conflicts and disasters (Clause 6 (1)(d)) |
National Emergency Management Agency | National Emergency Management Act 1999-section 6(1) (f)- co-ordinate and facilitate the provision of necessary resources for search and rescue and other types of disaster curtailment activities in response to distress call. | Making preliminary assessment of safety and security of affected areas as prelude to any damage assessment or relocation of displaced persons (Clause 6 (3)(a))

Federal/ State Ministry of Works | Monitoring and Maintenance of Roads and Bridges | Assist in clearing and maintaining remote (feeder) roads linking various communities and markets (Clause 5 (g))

**Enforcement and Implementation**
There is an indication throughout the Bill that the Group will be under the supervision of Ministry in charge of Police Affairs and the Nigerian Police Force:

- **Clause 2(2)** which provides that the Minister in charge of Police Affairs be the Chairman of the Board as well as a person not below the rank of an Assistant Director to represent the Ministry in charge of Police Affairs and legal adviser to the Ministry in charge of Police Affairs.

- **Clause 31(1)** provides for a serving Police Officer not below the rank of Commissioner of Police to serve as Chief Executive Officer and Accounting Officer of the Vigilante Group in the Federation, a serving Police Officer not below the rank of Chief Superintendent of Police as the head in every state of the Federation and FCT and a serving Police Officer not below the rank of Assistant Superintendent of Police in every Local Government Area.

By these clauses, the positions of authority given to the officers in the Nigeria Police Force and their nationwide spread even to the local government level illustrates that this is sub-police group to aid policing in Nigeria and promote Community Policing in Nigeria.

**Consistency and Possible Conflict with SSR**
The multiplicity of quasi-security agencies with similar functions affects the effectiveness and efficiency of security agencies.

**Comments**
In the interpretation clause, some key terms are lacking definition such as “employee”, “volunteer”, “commission”, “service” and “transition period”.

Small Arms and Light Weapons (SALW) Bills

Introduction
- There are currently two bills related to SALW before the House, which have been consolidated:
    The objective of this bill is to establish a National Commission on Small Arms and Light Weapons charged with the responsibility to regulate and prohibit the proliferation of small arms, ammunitions and light weapons and sensitize the public on the dangers of small arms and light weapons in order to discourage their production.
    The objective of this bill is to provide for the establishment of a commission in line with the Economic Community for West African States (ECOWAS) Convention on Small Arms and Light Weapons. This is the most comprehensive of the three bills, which most closely resembles the provisions of the ECOWAS Convention.\(^6\)

- There is one bill related to SALW before the Senate:
  This bill is currently at first reading and is similar to HB 1295.
  The objective of this bill is to establish the National Commission for the Prohibition of Illegal Importation of Small Arms and Light Weapons in Nigeria with organised management structure charged with the responsibility to regulate, strategise and formulate policies to eradicate the proliferation of small arms and ammunition, and prohibit the illegal importation of small arms, ammunition, chemical and light weapons.

Context & Rationale
Local news reports are awash with the high numbers of illicit weapons floating across Nigeria and seizures of caches of arms at the borders. Citing a 2016 United Nations report, it is reported that there are millions of small arms floating freely in the West African sub-region and that 70% of an estimated 500 million of these arms are in the hands of few individuals and groups in Nigeria.\(^7\)
News reports further reveal that in 2016 in Rivers State alone, “a cache of heavy weaponry was harvested when 22,430 militants, criminals and cultists embraced the amnesty offer of the state government... surrendering about 1,000 firearms, 7,661 rounds of ammunition, and 147 explosives.”\(^8\)

This issue was discussed at a recent exchange of good practices between Nigerian and Ghanaian...

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\(^6\) See ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials was subsequently adopted on 14 June 2006. Available at: http://www.poa-iss.org/RegionalOrganizations/ECOWAS/ECOWAS%20Convention%202006.pdf


\(^8\) Ibid n.97
parliamentarians at the Kofi Annan International Peace Keeping Centre in Ghana, where participants expressed their concerns on the issue and discussed opportunities for broader regional collaboration across West Africa. With the high incidence of the use of illicit arms in the Boko Haram insurgency, farmers-herdsmen crisis, as well as the persistent problems of armed robbery, kidnapping, and other criminal activities, setting up of a mechanism to curb the threats and devastating consequences from the use of small arms and light weapons (SALW) is long overdue.

Proliferation of small arms and light weapons (SALW) poses a threat not just to Nigeria, but also to stability and security in the West Africa sub-region. This was why the ECOWAS Heads of State and Government decided at a Summit in Dakar in 2003 to come up with a legally binding Convention for its member states. The ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials was subsequently adopted on 14 June 2006 (hereafter the ECOWAS Convention). This legally-binding instrument was adapted from the ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons, a non-binding instrument which was lacking a solid implementation mechanism.

The Convention seeks to promote the establishment of a culture of peace, establishment of arms register/regional database of arms, enhancing weapons control at border posts, education and public awareness campaigns, training for security forces, review and harmonisation of legislation and administrative procedures governing small arms, and the collection and destruction of surplus and unauthorized weapons. It enjoins member states to ban the transfer of SALW within its territories (with exception on transfers needed for a member state to meet its legitimate security needs or participate in peace support operations). It further enjoins members to ban transfer of SALW to non-state actors and regulate the manufacture of arms within their territories.

Among many provisions, the ECOWAS Convention provides for institutional arrangements to implement its provisions, including the establishment of National Commissions and National Action Plans, the reinforcement of state security forces, promotion of sub-regional cooperation and partnership with civil society. It states that in cases where they do not already exist, “National Commissions must be established in accordance with the guidelines contained in the ECOWAS Manual of operational procedures for National Commissions”; and that existing National Commissions must be reinforced in accordance with the requirements of the Convention.

It also provides that the Commissions must be granted an independent budget line and that national SALW Action Plans must be developed with the participation of all stakeholders, particularly civil society. Of the 15 member states of ECOWAS, Nigeria and The Gambia are the only states, which are yet to establish a national commission.

99 The exchange visit was organized by PLAC & DCAF under the SJRP project with support from CSSF
101 The convention in Article 22 (a) requires member states to “strengthen sub-regional cooperation among defence and security forces, intelligence services, customs and border control officials in combating the illicit circulation of small arms and light weapons.”
 Definitions

Article 1 of the Convention, defines light weapons and small arms as follows:

1. Light Weapons: Portable arms designed to be used by several persons working together in a team and which include notably:
   - heavy machine guns;
   - portable grenade launchers, mobile or mounted;
   - portable anti-aircraft cannons;
   - portable anti-tank cannons, non-recoil guns;
   - portable anti-tank missile launchers or rocket launchers;
   - portable anti-aircraft missile launchers;
   - mortars with a calibre of less than 100 millimetres;

2. Small Arms: Arms used by one person and which include notably:
   - firearms and other destructive arms or devices such as an exploding bomb, an incendiary bomb or a gas bomb, a grenade, a rocket launcher, a missile, a missile system or landmine;
   - revolvers and pistols with automatic loading;
   - rifles and carbines;
   - machine guns;
   - assault rifles;
   - light machine guns.

 Nigeria's Efforts at Implementing the Convention

At the executive level, there is currently a Presidential Committee on small arms and light weapons (PRESCOM) with the objective of combatting the illicit accumulation and trafficking of SALW and their ammunition.103 Recently, the government set up a committee to transform the powers of PRESCOM to the prescribed National Commission (NATCOM).104 Unfortunately, previous administrations have made similar efforts but with no concrete results. The former President, Goodluck Jonathan, set up a Committee on Small Arms and Light Weapons in 2013105 but there was no indication in its terms of reference, of plans to establish a permanent structure with sufficient powers. The current administration has also committed to setting up modalities to transform the existing Presidential Committee on Small Arms and Light weapons to a National Commission.

The National Assembly has on many occasions expressed concerns over the SALW and the negative impact it has on the security apparatus of the nation. However, proposed legislation on the matter introduced in the previous 7th Assembly was never passed. Bills before the current 8th Assembly have also not progressed far. The role of NASS is critical here, as it needs to provide a legal framework to enable the commission to operate as intended in the Convention. These bills are targeted at doing that. A summary of their provisions is contained in the table below.

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103 Presidential Committee on Small Arms and Light Weapons Website. Available at: http://prescom.ng/about-us/
<table>
<thead>
<tr>
<th>S.No</th>
<th>HB 1295</th>
<th>HB 1343</th>
<th>SB 339</th>
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<tbody>
<tr>
<td>1.</td>
<td><strong>PART I – Establishment of the Commission and Board</strong></td>
<td><strong>PART I – Establishment and membership of the Nigeria National Commission against the Proliferation of Small Arms &amp; Light Weapons</strong></td>
<td><strong>PART I – Establishment of the National Commission against the Illegal Importation of Small arms, Ammunitions and Light Weapons</strong></td>
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<td></td>
<td>The Bill sets up the Commission and a Board to administer its activities. The Commission is expected to partner with government and international security agencies to formulate policy and strategy to limit the proliferation of weapons in Nigeria and West Africa, engage in public awareness campaigns on the dangers of small and light weapons. The commission is also empowered to establish a regulatory institution to facilitate the containment of SALW.</td>
<td>This part establishes the commission against the proliferation of SALW to promote and ensure coordination of concrete measures for effective control of SALW.</td>
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<td>The Commission is established as a body corporate with head office in FCT and offices in the 6 geo-political zones of the country.</td>
<td>- The commission is established as a body corporate</td>
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<td>The Commission’s governing Board is chaired by a retired Chief of Defence Staff and comprised of representatives of Ministries of Defence, Finance, Interior, Foreign Affairs, retired service chiefs, DG of the DSS, CG of Customs, six persons from each geo-political zone and the Director General of the Commission (The DG).</td>
<td>- Membership of the commission includes: The Minister of Foreign Affairs as the Chairman; one person each from the Ministries of Internal Affairs, Defence, and Justice, the State Security Service, the Nigerian police Force, Civil Defence Corps (NSCDC), Customs Service, and the Director General (DG) who shall be the secretary of the commission. Other members include two representatives of civil society organisations engaged in control of proliferation of SALW.</td>
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<td>Non ex-officio members are to be appointed by the President on the recommendation of the Senate in consultation with the House of Representatives. They are to serve for a four-year renewable term. They can resign their appointment via writing to the President.</td>
<td>- Non ex-officio members are to be appointed by the President on the recommendation of the Minister (defined as Foreign Affairs Minister in the interpretation section). They are to serve for a four-year renewable term.</td>
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<td>The board is generally responsible for the supervision and management of the commission.</td>
<td>- The President can remove and replace a non ex-officio member if he thinks that it is not in the best interest of the commission or public for the person to continue to act.</td>
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<td>- The commission is allowed to co-opt a person to act as Adviser at meetings of the commission but that person cannot vote at such meetings.</td>
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<td>- It lists the objectives of the commission as being to take over the functions of the National Task Force for the Prohibition of the Illegal Importation of Goods, Small Arms, ammunitions and Light Weapons (NATFORCE). It also requires that the commission encourage private sector participation and collaboration in the illegal importation of weapons. Other objectives are similar to provisions in the House bills.</td>
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<td>- It sets up a board made up of the following:</td>
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<td>- The Chairman of the board (also its CEO and accounting officer)</td>
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<td>- One representative from each geopolitical zone,</td>
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<td>- Above non ex-officio members are to be appointed by the President subject to Senate confirmation</td>
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<td>- a representative each of the Ministers for Foreign Affairs, Internal Affairs, and Finance</td>
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<td>- the Inspector General of Police, the chief of Naval Staff, the Comptroller General of the Customs Service, the DG of the State Security Services; and,</td>
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<td>- Two representatives of the importers Association of Nigeria (IMAN) who shall be part time members</td>
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<td>- The board members are to serve for a 5-year renewable term. There are no special qualifications apart from the fact that they must be persons of proven integrity</td>
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2. **PART II – Functions and Powers of the Commission**

- The functions and powers of the commission include, among others, putting in place programmes to prevent and eradicate SALW, advising the board on formulations of policies as contained in the Convention on Small Arms and Light Weapons (doesn’t mention ECOWAS) to providing information on the production and importation of small and light weapons, receiving and studying periodic reports from Nigerian Police Force on registration and licensing of arms and more. These are to be done in line with the convention on small arms & light weapons, as well as other relevant conventions.

- The Commission is made subject to the control and supervision of the President.

**PART II – Functions of the National Commission**

This bill has exhaustive provisions here and they include:

- Establishment of programmes of action to prevent, combat and eradicate illicit trade in SALW
- Formulating strategies for the reduction of proliferation of small arms
- Public sensitisation
- Updating of the register of SALW and transmitting them to ECOWAS or other international organisations
- Advising ECOWAS and the United Nations on exemptions to be granted for weapons of categories 1, 2, 3 to meet legitimate national defence and security needs or to participate in peace support operations.
- Providing recommendations to ECOWAS and the AU and UN on exemptions to be granted under the convention.

Similar provisions are contained in part 1 of the bill. It provides for functions of the board, which includes policy formulation, and other functions directed by the President. Unlike the House bills, it includes setting up a joint task force to arrest illegal arms importers. It goes further to make provisions for a legal adviser to the board.

**Notes:**
- There is a provision here requiring that the President shall nominate the DG of NATFORCE as the pioneer chairman of the commission.
- Similar to the House bills there are other provisions on board vacancy and conditions for cessation of membership e.g. resignation, bankruptcy, mental incapacity, criminal conviction etc. However, the President can remove a board member if dissatisfied.
- Reminiscent of the legal provision for the Independent National Electoral Commission (INEC), the bill stipulates that that the commission shall not be subject to the direction or control of any other authority or person in the performance of its functions. It is unclear if this confers any special privileges on the commission because unlike INEC, this commission is not an “independent” body and is already made subject to the direction and supervision of the President.
S.No | HB 1295 | HB 1343 | SB 339
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- Liaising with the secretariats of the three bodies aforesaid and that of the programme for Coordination for Assistance on Security & Development (PCASED)\(^{107}\) on issues related to the convention. It is unclear why this programme is mentioned as it was reportedly set up to be temporary.
- Initiating and developing mechanisms for information exchange with the commissions of other member states, the AU and UN.

3. **PART III – Structure of the Commission**
   **Management and Department**
   - This part defines the departments of the commission and sets up a management committee headed by the Director General and composed of the Directors of the various departments for the general administration of the commission.
   - The board may from time to time set up an Advisory committee made up of NGOS and identified stakeholders to advise the commission and monitor its activities.

**PART III - Management and Staff**
   **Management**
   - This part sets up the management and staff of the commission, including the DG who shall be appointed by the President on the recommendation of the Minister of Foreign Affairs (no Senate confirmation mentioned).
   - The DG shall be the chief executive and accounting officer of the commission.
   - It is specifically stated that the DG shall have experience on SALW matters and ensure that the Commission is guided by Nigerian laws and best practices.
   - The bill further stipulates a 4 year renewable term for the DG.
   - The commission may give general directives to the DG on the management of the commission.

**PART II – Structure and Management of the National Commission**
Similar to HB 1295 and unlike HB 1343, this bill defines the departments of the commission and sets up a management committee comprising department directors and headed by the “Secretary” to the commission (appointed under the bill in Part III).

4. **PART IV- Staff of the Commission**
   This part makes general provisions for the staff of the commission, their remuneration, pensions etc. Most importantly, it provides for the appointment of the DG who shall be the chief executive and accounting officer of the commission and shall be appointed by the President and confirmed by the Senate.

**Other Staff of the Commission (Part III continued)**
   - There are other exhaustive provisions on delegation of powers by the DG, appointment and secondment of staff from other agencies, staff training schemes etc.
   - any such staff being appointed or seconded would be required to go through a strict security screening by the State Security Service and adjudged to not be a security risk.
   - The commission is also empowered to establish departments and special units for the effective discharge of its functions, but the names of the units are not indicated.

**PART III – Staff of the Commission**
This part makes provisions for the secretary and staff of the commission.
- The Secretary shall be an officer in the civil service not below the rank of Permanent Secretary and to be responsible for the day-to-day administration of the commission, among other functions.
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| 5.   | PART V- Financial Provisions  
- The Commission is to maintain a fund to be funded by National Assembly appropriations, grants and loans from Federal and State governments, other bodies and institutions either local or foreign, gifts, testamentary disposition, and proceeds from assets.  
- The fund is to be expended for purposes of administration, payment of salaries, fees, remunerations, allowances, pensions and gratuities, as well as for purchases, payments for contracts, and undertaking activities connected to the functions of the Commission.  
- Provisions are also made for submission of the commission’s annual estimate and expenditure to NASS via the President (not later than 30th September of each year), keeping of proper accounts, auditing (not later than 6 months after year end), and submission of quarterly reports of its activities to the President. An annual report accompanied by audit reports to the President is also required not later than 30th June of each year following which the President shall forward same to NASS. | PART IV- Financial Provisions  
A fund is established for the commission which is to be made up of the following:  
- take off grants and annual subventions from the Federal Government  
- budgetary allocations approved by NASS  
- grants, gifts and donations from international organisations and donor agencies provided there are no attached terms and conditions inconsistent with the functions of the commission.  
- charges, fees, sums and other funds accruing to the commission  
- The funds are to be used to defray expenses incurred from running the commission, including salaries and remunerations.  
- Provisions are made for submission of annual estimates and expenditure (not later than 30th August of each year) to the Minister for approval.  
- There are also provisions on keeping of proper records, and accounting, keeping of funds in reputable banks. In addition to is a requirement auditing of accounts (within the first 4 months of each financial year) and submission of report from same to the Auditor-General for submission to NASS.  
- Finally, there is provision for submission of annual report to the President via the Minister, which is to include reports of money laundering and terrorist financing trends and its administration during the preceding year. | PART IV- Financial Provisions  
A fund is established for the commission which is to be made up of the following:  
- take off grants from the Federal Government  
- NASS appropriations  
- grants and loans from Federal and State governments, other bodies and institutions either local or foreign (similar to HB 1295)  
- monies raised by the commission, proceeds accruing to the commission etc.  
- similar to the House bills, the funds are to be used for salaries, administration, purchases etc.  
- Provisions for annual reports are the same as those contained in HB 1295 save for the requirement for quarterly reports to the President, which is not contained in this bill. |
| 6.   | Provisions on legal proceedings and indemnity are contained in Part VI (see below) | PART V- Legal Proceedings against the Commission  
Similar to part VI of HB1295, the provisions here relate to limitation of suits against the commission, service of documents, restriction on execution against the commission’s property, and indemnity of its officers. | Part V is missing from the bill, due to a mis-numbering of parts. Provisions on legal proceedings and indemnity are contained in Part VI (see below) |
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<td>7.</td>
<td></td>
<td>PART VI - Collection, Storage, Destruction, Management and Stockpiling of Small Arms</td>
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<td>This bill contains exhaustive provisions here in line with the ECOWAS convention.</td>
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<td><strong>Collection, Storage, and Destruction of Small Arms</strong></td>
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<td>The bill mandates the commission to collect surplus and obsolete small arms, seized light weapons, unmarked light weapons, illicitly held light weapons, small arms collected in the implementation of peace accords, or programmes for voluntary submission of weapons. Such arms shall be registered and securely stored or destroyed.</td>
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<td>- The commission is to promote and implement programmes for the voluntary submission of arms.</td>
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<td>- The commission is also to ensure effective, safe and secure management of national stocks of small arms and light weapons. In addition, it shall ensure that dealers and manufacturers do same in accordance with appropriate standards and procedures.</td>
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<td>8.</td>
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<td>PART VII – Register of Small Arms and Light Weapons and Register for Arms for Peace Operations</td>
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<td><strong>Register of SALW</strong></td>
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<td>The commission shall keep and maintain on a permanent basis, a computerised register of SALW and a database for recording several details relating to the description of the product, names and addresses of owners, date of registration and information concerning the transaction such as the shipper, point of departure, transit and destination, export, transit, and import licenses, insurer and financial institution etc.</td>
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### Register of Arms for Peace Operations

- The commission is also mandated to maintain a register of SALW used in peacekeeping operations within and outside ECOWAS territory so as to control their movements and ensure their withdrawal at the end of the operations. Arms used, seized or destroyed during peacekeeping operations shall be declared to ECOWAS, AU and the UN executive secretariat. Further to this a Registrar of Arms is to be appointed to maintain the register and transmit it to the ECOWAS secretariat.

### PART VIII- Control of the Manufacture of Small Arms and Light Weapons

- The Commission shall be responsible for controlling the manufacture of SALW in Nigeria and the regulation of the activities of manufacturers of SALW. In addition, it shall adopt strategies for the reduction or limitation of the manufacture of SALW.
- The commission shall also prepare a list of local manufacturers of SALW and ensure their registration in the Register of SALW.
- Further to this, the commission is empowered to reject request for the manufacture of SALW thereby implying that the commission has some sort of licensing authority.
- There are provisions aimed at ensuring the tracing of illicit weapons via sharing of information by the commission with ECOWAS, AU and the UN on illicit arms, seized arms, trafficking in weapons.

There is also a provision aimed at promoting exchange of information between these parties to promote tracing and requiring the commission to share information on manufacture, marking system, transfers, exports, inventory, loss, theft, loss, destruction etc. in the case of SALW that are not illicit. The commission can however initiate a tracing request to either of the aforesaid bodies if it considers certain weapons found in Nigeria to be illicit. If the commission is in receipt of a tracing request from an ECOWAS member state, it must respond in a reliable way within one month.
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<td>10.</td>
<td><strong>PART VI- Miscellaneous</strong></td>
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<td>This part makes provisions allowing the President to give the commission directives of a general nature or relating to matters of policy related to the functions of the commission. It further empowers the commission to make regulations pursuant to the bill with the President’s approval. Other provisions here include provisions on acquisition of premises and offices, limitation of suits against the commission, service of notice and summons, indemnity of staff of the commission etc. An interpretation section is included to define certain terms in the bill.</td>
<td>This part contains provisions on design and implementation of public awareness programmes to promote a culture of peace and involve citizens in the effort towards curbing the proliferation of SALW. In line with Article 23 of the ECOWAS protocol, the bill mandates the commission to partner with civil society organisations (CSOs) at all levels, women and youth groups to achieve this, and as well, encourage CSOs to play a leading role in creating awareness and educating citizens. In transitional provisions, the National Committee in SALWs (NATCOM) domiciled in the Ministry of Foreign Affairs is dissolved with its rights, obligations, and liabilities to be taken over by the new commission. Lastly, the bill authorises the Minister to issue guidelines and regulations in furtherance of effective implementation of its provisions.</td>
<td>This part contains provisions on acquisition of property by the commission, as well as protective provisions on limitation of suits, indemnity, execution of court processes etc. Similar to HB 1295, it empowers the President to give the commission directives of a general nature on matters of policy related to the functions of the commission. In line with the bill’s earlier provision for the commission to take over the current role of NATFORCE, a savings provision is included to transform officers of this body into officers of the new commission by stating that they shall continue in office and be deemed to have been appointed into office by the Commission. This seems at odds with the new structure being proposed and powers granted the board/commission on administration. Another consequential provision transferring the assets, liabilities, interest and cause of action of NATFORCE to the commission is also included. Finally, the commission is empowered to make regulations to provide for offences, punishment, prosecution, etc. This is not specifically indicated in the House bills.</td>
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<td>11.</td>
<td><strong>Schedules</strong></td>
<td><strong>Interpretation Section and the Schedule</strong></td>
<td><strong>There is no interpretation section or schedule to the bill.</strong></td>
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<td>The schedule contains supplementary provisions relating to proceedings of the board</td>
<td>Clause 30 of the bill defines various terms. An example is “small arms” and “light weapons” which are in accordance with Article 1 of the ECOWAS Convention. Supplementary provisions in the schedule to the bill make provisions for proceedings of the commission</td>
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Legal Issues

• Potential overlap with the Firearms Act
  - The main issue with this bill is its potential overlap with the Firearms Act and its accompanying Regulations, which was enacted in 1959. This law has been criticised for being obsolete and out of tune with modern day realities. Consequently, there may need to be a review of this Act as it places responsibility for control of possession of firearms, registration, licensing, manufacture etc. squarely on the President and the Nigerian Police. There would also need to be a stocktaking and harmonisation of other Nigerian legislations dealing with arms, and even border security and terrorist financing to give effect to the spirit of the ECOWAS convention.

• Cross cutting Issues with other pending NASS Bills
  - There are various bills currently before the House and Senate to amend the Firearms Act, but a lot of them focus on upward adjustment of penalties, which are useful but not comprehensive. One of such Firearms Act amendment bills (SB489) currently before the Senate committee on Judiciary and Human Rights however proposes some commendable provisions on keeping of a database for firearms and destruction of seized arms in line with the International Small Arms Control Standards (ISACS) developed by the United Nations Coordinating Action on Small Arms (CASA). However, it fails to take into consideration the ECOWAS Convention and Nigeria’s commitment thereto.
  - There is also a bill before the House to amend the Defence Industry Corporation of Nigeria (DICON) Act. Currently, DICON exists to operate, maintain and control factories for the manufacture, storage and disposal of ordnance (i.e. weapons) and ancillary stores and materiel (i.e. military equipment). Unfortunately, the corporation is currently functioning below capacity, which the bill seeks to address. Proposed amendments to the DICON Act, which are made in line with commitments by the Nigerian government and its defence policy, includes expanding the mandate of the corporation to not only supply Nigeria’s defence needs, but also for it to be commercially viable via manufacture and sale of military equipment, issue of arms manufacturing and import licenses to private sector operators etc. The extant DICON Act has in fact, provisions restricting the application of the Fire Arms Act to preclude its manufacture, assembly, repair, or disposal of firearms. In 2015, President Buhari gave directives for the corporation to commence manufacture of light weapons with another agency. While the resuscitation and advancement of the corporation is seen by many as much-needed development, its proposed new role and functions vis-à-vis the role of the Nigerian Police and the proposed Commission on SALW needs to be examined and clarified to promote coordination.

106 The Programme for Coordination and Assistance on Security and Development (PCASED) is a mechanism charged with providing technical support to ECOWAS member states on the implementation of the Moratorium on the Importation, Exportation and Manufacture of Light Weapons in West Africa, which has now transformed into the ECOWAS Convention. The programme was established in March 1999 for a 5-year period in order to support the Moratorium. See: http://archive.grip.org/en/siteweb/images/NOTES_ANALYSE/2007/NA_2007-04-01_EN_I-BERKOL.PDF. See also: https://www.un.org/press/en/1999/19991122.dc2670.doc.html

- All proposed bills and laws should promote further collaboration, in line with the ECOWAS Convention principles.

**Power to make regulations**: In HB 1295 and SB 339, the Commission is mandated to make regulations with the approval of the President. It is usually the case with similar establishment bills that it is the Minister in charge who makes regulations and thus empowering the Commission to make regulations is a deviation from practice. The reason for such proposal is also unclear. HB 1343 situates this responsibility with the Minister of Foreign Affairs.

**Implementation and Enforcement**
- There may be cross-cutting issues with the powers of the Police as well as border security in the Nigerian Customs Service who are required to stem the flow of these arms.
- SB 339 tries to transform NATFORCE into the new commission, while HB1343 tries to do same with NATCOM. Within the executive, the plan is to have PRESCOM transform into the commission. These are issues that would need to be resolved.
- The current administration has been a proponent of reduced government expenditure. Establishing a commission to control small arms would run contrary to this. Moreover, the cost implication of implementing the bill when passed is unknown.
- The use of “prohibition” in the title of HB1295 is misleading and ought to read establishment.
- Overall, a comprehensive and coordinated framework at addressing SALW issue is key.

**Consistency and Conflict with the ECOWAS Convention and best practices**

**Partnership**
According to international best practices, although most small arms-related activities are meant to be carried out by National Commissions, specific partnerships should also be developed around a number of specific and clearly defined issues. In particular, partners could include parliaments, relevant ministries, media, UN agencies/regional organisations, donors, political parties, security agencies, local firearms manufactures, firearms importers, the judiciary and local CSOs (cf. Article 23 of the ECOWAS Convention). Ideally, partnerships should revolve around specific activities – e.g. undertaking national SALW Surveys or carrying out awareness-raising campaigns, and should be developed as early as possible. The selected bills should be more specific about the kind of partnership that should be put in place – e.g. HB 1295 does not seem to elaborate at all on the matter.

**Supervision**
There is no commonly-agreed best practice as regards the institution under which authority/supervision the Commission should be placed, which depends on the administrative and legislative mechanisms of each country. However, based on national experiences, some recommendations can be formulated:
- The location of a National SALW Commission under the supervision of a “parent ministry”
can be beneficial for both the continuity of the work of the Nat Com and its financial sustainability. However, the selection of the ministry can have significant bearings on the functioning of the Commission. Therefore, it should be carefully considered. E.g. locating the commission under a civilian ministry (cf. ministry of internal affairs/ interior) might enhance the transparency of the work of the Commission and facilitate its coordinating function;
- In case of inter-ministerial tensions/ competition over the control of the Commission, it may be more appropriate to place it under the direct authority of the Presidency/ Prime Minister);
- In any event, bills should avoid creating an institutional/ ministerial monopoly over the Commission, which would lead to one particular ministry/ institution to take control over it. This would seriously undermine the capacity of the Commission to work in close cooperation with other ministries/ institutions.

### Location

To ensure appropriate representation of the National Commission at the local level, some member states have established decentralised bodies. This way, they seek to better address SALW issues, which are specific to local contexts and encourage local participation/ ownership.

### Composition/Membership

For the National Commission to be able to develop a comprehensive and coordinated strategy, it is important that it has an inclusive membership. According to international best practices, it should ideally include representatives of appropriate security and law enforcement agencies, relevant CSOs and ministries (including education and finance, which can assist in the development of awareness activities and ensure that resources are made available for the Commission, respectively)\(^\text{108}\). Its membership should also be gender balanced. Finally, the total number of members should not exceed 30 people to remain in workable limits. Besides, no reference seems to be made to gender balance

### Term length

Efforts should also be made to avoid high staff turnover, especially among regular staff members (secretariat). Instead, commission members should serve as long as possible with a view to ensuring continuity and preserving the institutional memory (preferably for at least three years according to international good practices).

### Appointment of staff

The designation of the Chairperson is very important as strong leadership is critical for the credibility of the institution.

The selected bills do not seem to spell out criteria to select the Chairperson. In bills HB 1295 and SB 339, no special qualifications are requested apart from the fact that “they must be persons of proven integrity”. Only HB1343 provides for a number of criteria: “the Director General shall have experience on SALW matters and ensure that the Commission is guided by Nigerian laws and best practices.” These discrepancies should be tackled.

### Powers/ Missions (tracking, storage, destruction, etc.)

The ECOWAS Convention contains very detailed provisions relating to marking and record keeping. Among other measures, it calls for: the establishment of computerised national

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108 E.g. In Liberia, the Ministry of Tax and Customs is part of the Commission as it monitors border transactions and plays an important role in border control.
databases and registers (Art. 9); permanent maintenance of records on SALW (Art. 9); the establishment of a sub-regional register (Art. 10); the marking of SALW with ‘classic’ and ‘security’ markings on as many parts of the weapon as possible (Art. 18); the marking of ammunition with unique mark, to identify lot, manufacturer, and country and year of manufacture (Art. 18).

The selected bills refer to the marking of arms but do not set out specific measures relating to the marking of ammunition.

**Independence**

It is essential that the National Commission can carry out its mandate in a totally independent manner and should not be subject to any form of political influence. HB 1295 contains provisions allowing the President to give the Commission “directives of a general nature or relating to matters of Policy related to the functions of the commission”. This might poses a threat the Commission’s independence from political influence.

**National Action Plan**

The development of a National Action Plan is a legally-binding requirement from the ECOWAS Convention, which provides that: “member states shall elaborate their National Action Plans on Small Arms and Light Weapons. Such action plans shall be developed through a national information gathering process involving all relevant national stakeholders including civil society, and the convening of a national forum of all stakeholders to deliberate on the elements to be included in the National Action Plans” (Article 24).

National Action Plans should be adapted to the local context and seen as a living instrument that can respond to constantly changing operational circumstances. It should contain a number of essential information, such as: a definition of SALW, in line with the ECOWAS Convention; a description of the situation related to trafficking in SALW in the country; the aim and operational objectives of a national small arms Action Plan; a list of existing and proposed small arms legislation from ECOWAS member states; priorities in addressing small arms issues; foreseen activities within the Action Plan (e.g. awareness raising, weapons collection and destruction); requirements for resource mobilisation; steps to ensure the monitoring, evaluation, reporting and dissemination of SALW information throughout the implementation of the Action Plan.

**Maritime Piracy Bills**

**Note:** The Senate has 2 (two) Bills for consideration on the subject matter of Maritime Piracy and ancillary matters, namely: the Maritime Piracy and other Related Offences (Prohibition, Prevention, Etc) Bill, 2017 and the Piracy Bill, 2016.

Of the two Bills, this the Maritime Piracy and other Related Offences (Prohibition, Prevention, Etc.) Bill, 2017 is wider in scope, demonstrates greater compliance with national and international
law, and has greater specificity towards meeting the objective for which the Bill is proposed. Powers and procedures are more clearly articulated, and delimitations in closer conformity with international standards.
Bill Objective

The Bill specifically covers acts committed on all Nigerian sea vessels, all sea vessels at any Nigerian port, or within Nigerian Territorial waters. The application of the Bill excludes all sea vessels belonging to the Nigerian Police and sea vessels and aircraft belonging to the Nigerian Armed Forces. Activities of the Nigerian Armed Forces during an armed conflict; vessels belonging to or in custody and service of the Nigerian government; etc. are also excluded.

Context and Rationale
Maritime piracy is not only a Nigerian or African problem but a global one. With the advent of globalisation, the end of the Cold War and an increase and intensification of global trade, traditional hotspots of piracy centred in Asia have moved to the African coast with concentration on the Nigerian and Somali coast. Furthermore, the prevalent socio-economic problems in countries such as Nigeria and Somalia have created an atmosphere for piracy to thrive.109

The issue of maritime security is a prominent concern of Nigeria and other states in the Gulf of Guinea whereby gaps in maritime security allow for the rise of security threats, including piracy, smuggling and trafficking, illegal exploitation of offshore resources and infrastructure, illegal transportation of weapons, and channels for support of terrorist and insurgent groups. Effective maritime governance and a smoothly functioning infrastructure ensure the viability of the global

commons, whereas poorly governed or ungoverned maritime spaces also invite undue security risks.

A recent report by the International Maritime Bureau revealed that Nigeria is one of the hotspots for sea piracy. The Report states as follows, “of the 27 seafarers kidnapped worldwide for ransom between January and March 2017, 63 per cent were in the Gulf of Guinea. Nigeria is the main kidnap hotspot with 17 crew taken in three separate incidents, up from 14 in the same period in 2016, in total, 92 vessels were boarded, 13 were fired upon, there were 11 attempted attacks and five vessels were hijacked in the first nine months of 2017.”\textsuperscript{10}

It further states that “the Gulf of Guinea is a major area of concern, consistently dangerous for seafarers” with increased and signs of kidnappings.\textsuperscript{11}

This position was confirmed by the Director General of NIMASA who stated that Nigerian waters are deadly and unsafe during a G7 Friends of the Gulf of Guinea Group in 2017. Inferences from this meeting show that there is a general impression that Nigeria is not doing enough to tackle piracy.

An argument that has been made is that maritime piracy has an adverse effect on national security.\textsuperscript{12}

The responsibility for maritime security is given to the Nigerian Maritime Administration and Safety Agency (NIMASA) by virtue of section 22(p) of the NIMASA Act. The Agency however did not take any action on this till last year when it awarded a surveillance contract to check rising piracy. In addition, a $186 million fund has been set up to combat piracy in a bid to safeguard Nigerian waters and vessels moving in and out of the country. The Fund is meant to acquire three (3) new ready for war ships, three (3) aircrafts, twelve (12) vessels and twenty (20) amphibious vehicles.

The issue of maritime piracy also feeds into the fight against terrorism as the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 is considered one of the international anti-terrorism provisions. Nigeria became a party in February 2004\textsuperscript{13} and has since failed to domesticate it.

\textbf{Key Provisions}

1. **Application of the Bill**- Clause 3 states that this Bill applies to all Nigerian ships and all other ships in Nigeria’s territory. This does not include vessels belonging to Nigerian security agencies.

2. **Definition of key terms**- Clause 4 provides definitions for key terms such as maritime

\begin{footnotesize}

\textsuperscript{11} Ibid

\textsuperscript{12} Ibid n.110

\end{footnotesize}
piracy, Biological, Radioactive, Chemical and Nuclear (BRCN) weapons, floating platform, Nigerian Territorial Waters, what amounts to obstruction, serious injury and damage and unlawful acts to name a few.

3. **Offences and penalties** - The Bills make it an offence to attempt, conspire, aide or abet the commission of the offence of maritime piracy, an act of maritime piracy or any other unlawful act against the safety of maritime navigation, offences by corporate bodies and wilful destruction of evidence. (Part 2)

4. **Power of arrest, search and seizure** - This power is given to the Nigerian police or other relevant law enforcement agency. However specifically on seizure of vessels and aircrafts used in furtherance of crimes under this Bill, the Nigerian Armed Forces is listed alongside the Nigerian police. (Clauses 14-15)

5. **Prosecution of Offences** - Power to prosecute offences under this Bill is given to the Attorney General of the Federation (Clause 18).

6. **Jurisdiction** - The Federal High Court is given jurisdiction to try offences under this Bill (Clause 20). The Bill also gives extraterritorial jurisdiction to the court in Clause 21.

7. **Incident Reporting** - The Bill stipulates in Clause 26 that any incident that may constitute an offence be reported by the following persons without delay, if they have knowledge of the incident - The crew representative, insurers, law enforcement officials or authorities, to name a few. Reports are to be sent to the Agency in charge being NIMASA.

8. **Coordinating Ministry** - Clause 27 confers coordinating power of all maritime activities under the Bill on the office of the Minister of Transport. The mandate includes supporting all relevant security, intelligence, law enforcement and navy services to prevent and combat maritime crime; ensuring effective formulation, implementation of a comprehensive maritime strategy; and building capacity of all relevant security, intelligence, law enforcement and naval services.

9. **Establishment of a Piracy and Unlawful Fund** - Clause 28 provides for the establishment of a Piracy and Unlawful Fund for co-financing the duties of maritime law enforcement agencies combating piracy. However, the definition of maritime law enforcement agencies is open-ended, and includes statutorily authorised bodies.

10. **Adaptation and modification of existing laws** - The Bill in clause 30 provides for the adaptation and modification of offences covered in the bill and provided under the Criminal Code and Penal Code to enable all provisions be read in conformity.

**Constitutional and Legal Issues**

- **Conformity with International Norms on Piracy** - The explanatory memorandum and
provisions of the Bill reference UNCLOS to the extent that it relates to maritime piracy\textsuperscript{114}, including the definition of piracy; powers and limitations for arrest and seizure; liability for wrongful seizure without adequate grounds; etc. The Bill also goes further to include extra territorial jurisdiction.

- **Court Jurisdiction over Matters Relating to Piracy** - Clause 20 vests jurisdiction to hear matters concerning offences under the Bill in the Federal High Court, this is consistent with Section 7 (1) (d); 7(2); and 7 (3) of the Federal High Court Act, and with Section 1 of the Admiralty Jurisdiction Act, Cap A5 LFN, 2004. Both Acts vest the Federal High Court with exclusive jurisdiction over all civil and criminal matters relating to Admiralty.

- **Confirmation of NIMASA responsibility on the issue of Maritime Piracy** - This Bill affirms responsibility of maritime security as conferred in section 22(p) of the NIMASA Act. This Bill expanded on this by specifying what acts threaten maritime security and constitute maritime piracy.

- **Adequacy of Sanctions and Punishments** - The Bill provides penalties for offences under the Bill, in keeping with the gravity of the offence of maritime piracy. For natural persons, the Bill proposes penalties ranging from life imprisonment and minimum N250 million fine for offences causing death, to 15 years or N150 million or both for an offence in possession of firearm, explosive or BRCN weapon; and 15 years and N150 million for an offence causing grievous bodily harm. The Bill also provides criminal liability for juridical persons/corporate entities, including N500 million fine, N250 million for each director or principal officer/management, fifteen (15) years imprisonment and restitution of gains from piracy; and for unlawful acts under the Bill, N250 million; N175 million and twelve (12) years imprisonment, and restitution for varying offences. Interestingly, the Bill is distinct in that it does not prescribe the death penalty for offences causing death, although Nigerian penal law generally recognizes the death penalty. This move may be attributable to Nigeria being in keeping with the global move towards the abolition of the death penalty.

- **Respect for Human Rights, particularly Fair Trial Principles** - The Bill upholds the principle of fair trial, including pre-trial justice under clauses 16 & 17, with respect to arrest, custody and preliminary inquiry for alleged offenders. By Clause 19, there is no preclusion of institution of civil proceedings against accused persons whether convicted or discharged. The Attorney General of Federation has jurisdiction to prosecute cases and bears the burden of proof in such cases, including the burden of establishing transfer of assets in other countries to be

\textsuperscript{114} Articles 100-107 United Nations Convention on the Law of the Sea (UNCLOS) 1982
forfeited to the Nigerian government.

**Enforcement and Accountability Provisions**

- *Delineation of Roles and Mandates:* There is a clear delineation of enforcement roles under the Bill under Clause 27 for the coordination; administration, and operationalization of the Act. Clause 15(1) of the Bill gives any member of the Armed Forces, the Nigerian Police or other statutorily authorised agency extensive powers to seize a vessel or aircraft or anything reasonably believed or appearing to be associated with an offence under this Bill; and powers of investigation including search and seizure; prosecution; sealing up premises; trace and freezing; etc. Clause 20 vests jurisdiction to hear matters concerning offences under the Bill in the Federal High Court, this is consistent with Section 7 (1) (d); 7(2); and 7 (3) of the Federal High Court Act, and with Section 1 of the Admiralty Jurisdiction Act, Cap A5 LFN, 2004. Both Acts vest the Federal High Court with exclusive jurisdiction over all civil and criminal matters relating to Admiralty. Clause 18 vests the power to prosecute the Attorney General of the Federation, subject to the CRFN and Administration of Justice Act, and the administration of the Act generally, including ensuring conformity of laws with UNCLOS and any other international standards. However, the rationale for the vesting of the coordination of all maritime activities in the office of the Minister of Transport is unclear.

- *Establishment of Piracy and Unlawful Fund:* It is inefficient and unjustifiable to establish a Fund to defray expenditures for activities already carried out by maritime law enforcement agencies in the course of their regular duties, and funded through the individual agencies. This is key as the lead agency- NIMASA is a revenue generating and self funded agency. Furthermore, the inclusion of gifts and financial contributions by beneficiaries of the services of maritime law enforcement agencies as a funding source may be inappropriate and may cause, or appear to cause an erosion of the autonomy of these agencies. As such, it should be a transparent process to ensure that it is not used as a means of leveraging on, and eroding the autonomy of these agencies.

**Compliance and Possible Conflict with SSR**

The Bill makes significant inroads into entrenching provisions that would strengthen SSR, including protection of human rights, particularly the right to fair hearing. The Bill generally conforms to international standards with respect to maritime piracy. However, the problematic provisions include illogical vesture of coordination role in the Minister of Transportation, and the establishment of a piracy and unlawful fund.
Bill Objective

As provided in the Explanatory memorandum, the Bill’s objective is to make special provisions for the suppression of Piracy and provide for punishment for the offence of piracy in Nigerian territorial waters. However, save for Clause 2 of the Bill, which provides for the definition of terms under the Bill, the provisions pertain to prosecution and punishment of the offence of piracy, and makes little to no reference to suppression measures.

Key provisions

- **Definition**: Clause 2 provides for the interpretation of terms used throughout the bill such as designated court and piracy. The Definition of Designated Court is ambiguous as it states that the designated court is that mentioned in the bill, however this is not provided for in any clause of the Bill. There is however constant reference to designated court throughout the Bill.

- **Offence of Piracy**: The Bill in clause 3-5 makes it an offence to commit an act of piracy, attempt or be an accomplice to an act of piracy.

- **Conferment of powers to arrest, investigate or prosecute**: The Bill in clause 6 empowers the Federal Government to confer on any officer of government the powers of arrest, investigation and prosecution exercisable by police officers.

- **Speedy Trial**: The Bill provides for the designation of one or more courts and the territorial jurisdiction of the Court by the Federal Government after consulting the Chief Justice of the Federation.

- **Application of the Criminal Code Act**: It provides for the application of this Act in proceedings by the Designated Court (Clause 10).

- **Arrest and Seizure**: The Bill provides that every country may seize a pirate ship or aircraft or vessel taken by pirates on the high seas or outside the territory of any state.

- **Geographic Zone**: This Bill provides for the application of the bill outside the exclusive economic zone of Nigeria including outside the territorial waters and Nigerian Continental
Constitutional and Legal Issues

- **Court Jurisdiction over Matters Relating to Piracy**- Contrary to the provisions of the Federal High Court Act\(^\text{115}\) and the Admiralty Jurisdiction Act\(^\text{116}\), which vest the Federal High Court with exclusive jurisdiction over criminal and civil issues regarding Admiralty, clause 8 does not specify the designated court with jurisdiction to adjudicate offences under the Bill. Rather, it vests such powers to specify the designated court and confer territorial jurisdiction upon the Federal Government, after consulting with the Chief Justice of the Federation. Furthermore, a reference to Magistrate in Clause 9 (1)(b) increases the uncertainty as to which court is the designated court.

- **Application of the Criminal Code Act**- In Nigeria, the Criminal Code Act is a substantive criminal law in Nigeria but not the sole substantive law as it is only applicable in the Southern part of Nigeria. However, in matters of procedure which govern the investigation and adjudication of criminal cases, the applicable law is the Administration of Criminal Justice Act 2015, where the law has not been domesticated the Criminal Procedure Act and Criminal Procedure Code are applicable. It is unclear whether the application of the Criminal Code Act extends to pre-trial issues.

Enforcement & Accountability

- **Power of Arrest and Seizure of Property**- By Clause 6 (1), any officer of government may, by notification, be conferred with the powers of arrest, investigation and prosecution. Clause 13(2) limits power of seizure to warships and military aircraft; or other ships and aircraft clearly marked as identifiable as being in the Nigerian government’s service, or authorised to that effect. However, the Bill does not make provision for any process or procedure.

- **Compliance with the Principle of Fair Trial**
  - Clause 8 provides for speedy trial of offences, which may be construed as conforming to elements of the principle of fair trial.
  
  - The conditions for granting bail under Clause 11 (1) (b) are problematic as they are contrary to the conditions for granting bail under the Criminal Code Act. Furthermore, the condition of the Court’s satisfaction of “reasonable grounds for believing that (the accused) is not guilty of such offence” is tantamount to a bias or preclusion to a verdict of not guilty before trial and is contrary to the principle of fair trial and due process.
  
  - Clause 6 (3) permits, without cause, for the accused to be tried in absentia, which violates the principle of natural justice, *audi alteram partem* or the right of the accused to be heard.

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\(^{115}\) Section 7 (1) (d); 7(2); and 7 (3) of the Federal High Court Act. Available at http://www.nigeria-law.org/FederalHighCourtAct.html. Accessed on 29 March 2018.

Lack of Procedural Rules or Accountability Provisions
The Bill does not contain any accountability provisions, as stated above, nor to ensure that purpose of the amendment is being achieved. There is no provision for independent oversight of the various security sector actors, be it the enforcement agencies and officers, or the judiciary.

Compliance and Possible Conflict with SSR
The Bill does not conform to international standards to curb Maritime piracy, nor does it uphold the protection of human rights, particularly, the right to fair trial. There are no provisions for independent accountability by a civil institution, nor for community participation in oversight.
Security Services Welfare


Short Title: Security Services Welfare Infrastructure Development Commission Bill, 2015 (HB 83)

NASS Chamber: House of Representatives

Sponsor: Hon. Joan Onyemaechi Mrakpor (PDP: Delta)

Bill Objective
The Bill proposes establishment of a new Commission, namely Security Services Welfare Infrastructure Development Commission, and gives it the mandate to Review the state of welfare infrastructure of the security services. The Bill applies to Security Services’ welfare infrastructure, which includes housing, transport, utilities, education and healthcare (Clause 6(2)).

Key provisions
The Bill establishes the Security Services Welfare Infrastructure Development Commission (“the Commission”) to carry out the following functions which include determining minimum standards for welfare infrastructure; developing methods and projects for welfare infrastructure developments; operation of a welfare development fund; supervision of execution welfare development projects; periodic review of welfare infrastructure; and ensuring efficiency, effectiveness and maintenance of the welfare infrastructure in Nigeria (Clause 6(1)).

The beneficiaries of the Bill are the Security Services, which definition under Clause 15 (the Interpretation Section) of the Act comprises the Nigerian Army, Nigerian Air Force, Nigerian Navy, Nigeria Intelligence Agency, State Security Service, Defence Intelligence Agency, Nigeria Police Force, Nigeria Custom Service, Nigeria Immigration Service, Nigeria Security and Civil Defence Corps, and Nigeria Prison Service. These institutions each already have welfare management mechanisms. Some services, such as the Police are aiming to strengthen their welfare mechanisms with legislation (the Nigeria Police Development Fund (Establishment) Act, 2016 currently under consideration by the Senate is an example).

The Commission is to be managed by a Chairman who has retired from active service, having attained the equivalent rank of Brigadier General; ten (10) Commissioners, with at least one (1) Commissioner from each of the Security Services; and a professional from outside the security services (Clause 3). A commissioner shall hold office for a period of four (4) years and shall be eligible for re-appointment for a further period of four (4) years and no more (Clause 4).
Functions of the Commission: -
The functions of the Commission shall be to:

- identify the welfare infrastructure necessary in every security service establishment in Nigeria;
- determine the minimum standard of welfare infrastructure to be used in every security service;
- determine the method for the development of the welfare needs of every unit of the security services;
- collect and maintain a fund to be constituted from 5% of the Federation Account to be allocated for that purpose in the budget;
- deploy such fund (which it collects and maintains) for the development of security services welfare infrastructure
- supervise the execution of the development of security services welfare infrastructure;
- review the state of welfare infrastructure in the security services from time to time by embarking on regular inspection and assessment of same
- ensure the efficiency, effectiveness, maintenance and preservation of welfare infrastructure provided for security services.

Powers of the Commission: -
The Commission shall have the power to:

- procure, hold or own any such movable or immovable property as may be necessary for giving effect to the provisions of this Bill (when it becomes law);
- lease mortgage, sell or otherwise dispose of any property acquired or held under this Bill (when it becomes law);
- liaise with international agencies, security services or other bodies as it may deem necessary to enhance the performance of its functions under this Bill;
- invest its unspent fund in such manner as is necessary for giving effect to the provisions of this Bill;
- borrow or obtain credit facilities for the purpose of giving effect to the provisions of this Bill (when it becomes law);
- accept contributions, donations or gifts from any person, body or government upon such terms and conditions, if any, that will not prejudice the Commission in the discharge of its function;
- maintain an account with a reputable bank in Nigeria (Clause 7).
- Appoint an administrative secretary who shall be responsible for the day-to-day affairs of the Commission and perform such other functions as the other staff, the Commission may from time to time assign to him (Clause 9) and such other staff as may appear necessary for the efficient performance of its functions under this Bill (Clause 10).

Delegation of Powers: -
The Commission may delegate any of its powers under this Bill in such condition as it may deem fit:

- To any of the security services (or the Reserve Army if there is any); and
- To any officer in the security services


**Funding of the Commission**
The Commission is to be funded by the following sources:

- Such monies as may from time to time be allocated by the Federal Government by way of grants or budgetary appropriation or both;
- Contributions or donations for persons;
- Interests, profits or other return on investment (Clause 12)

The Commission may use the fund to defray all expenses in connection with the performance of its functions; remuneration, fees and allowances of the Commissioners; fees, salaries, pension and gratuity of officers, and other officer under the authority of the Commission. The Federal High Court shall have jurisdiction in any dispute arising out of or in the performance of the function of the Commission (Clause 14(2)).

**Context and Rationale**
Poor funding for operations and welfare of the Nigerian Security Services continues to be a challenge cited for ineffectiveness, low morale, and possible compromise of the services in carrying out their law-keeping responsibility. This Bill seems, on its face to attempt to address this problem by standardising welfare infrastructure for the various security services by creating a new institution with implementing and oversight powers.

Research shows that the “salary of a Constable in the Police or a Private Soldier in military can barely sustain a family of two. In fact, at times they end up spending their entire salaries on transport fare to work because not all of them have vehicles to take them to their duty posts.” It is noteworthy that the different security agencies have made attempts to improve welfare of their personnel. For instance, the there has been renovations and constructions of new accommodation for the Nigerian Army as seen with the “Nigerian Army School of Artillery in Kachia, Kaduna State and the building of a new army barracks in Otukpo, Benue State”. This is also the case with the Nigerian Police, for instance police officers have been urged to register with the National Health Insurance Scheme and the Police Pension Office has set aside 200 million Naira for retirees for an improved welfare scheme. These efforts are however inadequate. The Speaker of the House of Representatives at a retreat of security related committees of the National Assembly and security agencies called for improved welfare of security agencies and this is one of such private members bills targeted at ameliorating the situation.

**Constitutional and Legal Issues**
Duplication of existing welfare structures- Though the welfare infrastructure of security services is very important, establishing another government agency is not. Security agencies have administrative divisions responsible for welfare, therefore a new and separate entity is not advisable. However, if the administrative units are not performing optimally, they could be strengthened for better results. As such, this Bill is simply creating an overarching supervisory body to duplicate functions of the individual state security sector agencies.

**Sources and Application of Funds**
The Commission’s funding would come from government grants; budgetary allocation, specifically 5% of the Federation Account; gifts and contributions from any source as long as it is consistent with the objective of the Commission’s mandate; borrowing; proceeds from invest unapplied funds, among others. The inclusion of gifts and financial contributions as a funding
source should be a transparent process to ensure that it is not used as a means of leveraging on, and eroding the autonomy of these agencies. More importantly, Section 162 of the 1999 Constitution provides that monies in the Federation Account should be shared by the Federal, State and Local Governments meaning that any proposal to disburse monies from such account for purposes not mentioned in the Constitution will require constitution amendment.

Delegation of Powers
It is unclear why the Commission is being empowered to delegate any of its powers to any of the security services (or the Reserve Army if there is any); and to any officer in the security services. This is a sweeping provision that could give room to abuse and arbitrariness. Moreover, the commission is supposed to be a departure from what exists, therefore allowing the commission (with a full time management committee and staff) to delegate powers to the same security agencies/officers currently managing welfare of its officers and from which such responsibility is being shifted via this bill seems counter intuitive.

Accountability
The Commission is required to submit within 3 months of the end of the previous financial year, an annual report, which shall include an audited balance sheet and statement of income and expenditure, particulars of contributions donations and gifts received by the Commission; a report of the Commissions strategies and plans for the next financial year. Furthermore, the bill provides for budgetary allocations by the government, but fails to provide for submission of annual estimates to the National Assembly. In addition, provisions on proper keeping of records and auditing are also not comprehensive. The membership of the management of the commission is also not constituted in a way to promote effectiveness and accountability e.g. there is no qualification requirement for the 10 commissioners and professional being proposed.

Consistency and Possible Conflict with SSR
The objectives of the bill is commendable; however, rather than addressing these challenges by strengthening existing welfare mechanisms, the age-old and empirically ineffective response has been to establish new frameworks, which end up placing an increasing administrative burden on government’s limited funds. This Bill, as with many similar Bills is an attempt to address this problem by employing an approach that has a proven track record of ineffectiveness. Furthermore, the lack of appropriate accountability mechanisms gives room for a continuation of the challenges of corruption, non-responsiveness, inefficiency and ineffective delivery of its mandate. There are no clear innovative provisions to address the challenges faced by the welfare of the security services.

Comments
Furthermore, the Bill has structural defects, e.g. the numbering of the Clauses in the Schedule starts at number 3, which suggests either the omission of provisions or misnumbering of the Schedule.
AGGREGATE OBSERVATIONS AND RECOMMENDATIONS

Security Sector Reform (SSR) demands a transformation of laws, institutions, policies, culture, attitudes, and behaviours which first requires a preliminary identification of the shortcomings within a dysfunctional security sector. Therefore, for legislation to be an effective tool for SSR, it must respond in an holistic and adequate manner to the identified baseline deficits and deficiencies within a contextualised SSR framework for Nigeria.

However, the general finding is that while the proposals in a number of the bills are commendable, there are gaps and challenges in their potential effectiveness as a tool for SSR. Observations and recommendations obtained from feedback from interviews of relevant stakeholders and partners are summarized below:

1. **Minimal nexus to a security sector reform framework**
Some of the bills do not demonstrate any nexus to a security sector reform framework. They often remain institution-specific, adopt a piecemeal rather than holistic approach, and are reactive rather than proactive. There is no contextualisation of the bills to specifically address the root causes of Nigeria’s security challenges, nor are they tailored to effectively respond to the Nigerian context.

**Recommendation:** Ensure that legislation and policy effectively respond to security challenges and progressively good SSR/SSG standards. Ensure compliance with relevant international standards including (without being limited to) UN (Mandela Rules), Bangkok Rules, the African Charter on Human and Peoples’ Rights Article 5, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Reference should also be made to best practices from other countries, like Canada, South Africa and Botswana. The South African Police Act, for example, is an ideal model for democratic policing, and the United States, United Kingdom and Germany give a good reference of transparent defense budgeting systems.

Furthermore, it is also essential to establish clear monitoring of implementation of legislation, including mid-term review/evaluation to assess the effectiveness of the legislation in accomplishing its specific objective.
2. **Traditional Non-Responsive Focus on State Security, not Human Security**

The provisions generally seem to focus on state security as opposed to human security. There is little demonstration that the bills are responsive to the different security needs of all parts of the population, nor is there present a spirit of a culture of service. This is demonstrated in the proposed increased permissiveness of arming of security forces in a number of the Bills, and the potential suppression of rights.

**Recommendation:** There needs to be political will to ensure that public welfare and security remains the primary objective of SSR, promoting community-centred security services that adhere to the principles of participation, responsiveness and accountability.

3. **Risk of Arbitrariness in Enforcement and Rights Violations**

There is a risk of arbitrary enforcement of the provisions of some of the Bills, including the use of force, due to lack of, or potential avenues for disregard of due process and the rule of law in a number of the proposed Bills.

**Recommendation:**
While cases of arbitrariness may be mitigated using Judicial Review of Administrative Action\(^\text{117}\) i.e. the inherent authority of courts in Nigeria to supervise the proceedings and decisions of a person or body of persons charged with the performance of a public duty, the National Assembly should institute a mechanism that submits proposed legislations to an honest inquiry of the human rights compatibility of a given measure in any proposed legislation. Additionally, proposed bills should outline clear and specific administrative review and accountability processes/measures to monitor enforcement and make provisions obliging the responsible agency to issue guidance to its personnel on enforcement procedures.

4. **Non-transformative Provisions**

While a number of the bills such as the prison bills have commendable and progressive proposals, some others generally lack transformative character. Security policy formulation is largely dominated by the core security forces with a strong political influence without a clear separation between political and operational control. Civilian participation in oversight is virtually non-existent at the worst, and ineffective at the best.

**Recommendation**
All stakeholders, including NASS and Civil Society Organisations need to enhance their understanding of SSR/SSG in and of itself, and within the greater context of democratic rule. Civil society also has a key role to play demanding accountability and contributing evidence based findings from their work to the legislature and defence structures, building capacity of non-state actors, and awareness-creation to foster a deeper understanding of the issues. Political will is important in ensuring that democratic governance principle is upheld. There should be a clear separation between political and operational control.

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\(^{117}\) See for example Order 34(1) Federal High Court Rules 2009 and Order 40(1) High Court of Lagos State Civil Procedure Rules 2012
5. **Need for Adequate and Inclusive Oversight Mechanisms**
Generally, the bills need more oversight and grievance mechanisms, and should promote robust community participation or involvement. The security forces have primarily, a self-regulation and oversight role, which does not sufficiently promote the accountability and transparency principles of SSR/SSG.

**Recommendation**
Proposed legislation should strengthen accountability, frameworks and mechanisms, including independent oversight mechanisms and citizens’ participation and entrenchment of implementation monitoring. There should be consultations with relevant stakeholders at all administrative levels via hearings to ensure that community concerns are prioritized.

6. **Emphasis on punitive measures in response to security sector challenges**
Some of the bills generally prescribe increasing punitive measures such as fines and imprisonment, and increased weaponisation as a response to security sector challenges.

**Recommendation**
Priority should be given to laws that strengthen the peace infrastructure, create multi stakeholders dialogue, as well as projects that prevent conflict and promote social inclusion, and ensure proper oversight of the Executive.

7. **General Replication and Overlap of Functions of Security Apparatus**
There is a tendency towards duplication of functions across the security sector, and separation of already existing functions.

**Recommendation**
The powers vested in the Immigration Service, FRSC, NSCDC, etc. should be separated from the functions of the Police. Furthermore, to promote efficiency, prosecution should be carried out by the Ministry of Justice while the Nigerian Police should only concern itself with prevention and detection of crime.

**DEVELOPING NEXT STEPS**

**Strategising for SSR**
SSR involves individual but integrated activities to promote the goals and ends of the Nigerian government to provide safety, security, and justice in a manner that conforms to democratic principles and the rule of law. It requires a multidisciplinary approach involving intra-agency and inter-agency assessment of capabilities, effectiveness, strengths and weaknesses, assets and resources, and gaps, both operational and financial. Effective sectoral reform must all follow a process of coordinated ownership, assessment, planning, training, implementation, and monitoring and evaluation.

- **Ownership** – The starting point for SSR is political will. All relevant actors and stakeholders demonstrate ownership and a sustained commitment to reform, including the likelihood of relinquishing a level of operational powers and turf control. Furthermore, SSR must be programmatic and not simply anecdotal, and must go beyond general sweeping vision and
mission statements, to incorporate specific plans, programmes and activities specifically designed, implemented and monitored towards attaining SSG.

• **Assessment** – This requires a thorough mapping of the security sector infrastructure, including legislation and policy, institutions and actors and value systems that inform the status quo, to understand their functions and interactions, and identify systemic legal, institutional, economic, political and social, conditions that contribute to ineffective governance. The assessment will form a baseline for developing a shared understanding of the challenges, and the necessity and opportunities for change.

• **Planning** – Strategic planning involves developing a coherent SSR strategy that outlines an informed and synchronized sequence the activities that improve SSG. It should emphasise a graduated, multiyear approach that promotes long-term sustainability of SSR, and does not overburden the country with unrealistic, overly ambitious SSR goals. Strategic planning will involve leveraging on the strengths of the relevant institutions, and taking into account availability of sufficient resources, priorities, and timelines, clearly articulating the expected outcomes, and developing benchmarks to evaluate the achievement of these outcomes.

• **Training & Capacity Building** – Extensive training is inevitable for ensuring the adequate professionalisation of institutions. Sustainable capacity building will require the incorporation of SSR modules into training programmes.

• **Implementation** – phased implementation of the agreed SSR strategy, with interagency synchronisation of activities and programmes. There will be need to ensure that implementation of the SSR strategy remains on track of the agreed timelines.

• **Monitoring and evaluation** – The implementation of the SSR programmes and activities should be regularly assessed, monitored and evaluated, and lessons documented to ensure they deliver on the intended results. Less than effective strategies and activities should be modified accordingly.

**Room for Civil Society Organisations (CSO) engagement**

It has been established that successful SSR requires buy-in from a range of actors and stakeholders, including CSOs who play an indispensable role in supporting the establishment of democratic governance. Possible avenues for CSO engagement include the following:

• Develop an integrated CSO advocacy strategy towards building political will in favour of SSR. This should focus on small, concrete, complementary steps that CSO can implement relatively quickly and easily, to yield and build on progressive results;

• Develop sector-specific CSO working groups to monitor new security sector legislations for consideration by NASS to ensure timely Legislative engagement;

• Increase capacity of CSO to monitor government policy and practice on security and justice issues;
• Develop technical capacity of CSOs to provide policy advice on security and justice issues;

• Build wider audiences in favour of SSR generally, and the legislative process specifically, by increasing media coverage and raising public awareness;

• Facilitate sensitisation and training of key actors and stakeholders on SSR;

• Conduct baseline and periodic independent assessment of legal and institutional frameworks against SSR principles;

• Provide support for development of a holistic draft SSR framework to suit the Nigerian context;

• Facilitate intra-agency and interagency round table discussions on SSR for stakeholders and actors;

• Engage in monitoring and evaluation of implementation and impacts of SSR activities;

• Utilise social media platforms for engagement on SSR issues; and

• Engage at the highest levels on the need for sustainable and efficient goal-oriented SSR.
CONCLUSION

SSR should be a deliberate process that seeks to address gaps through various deliberate and strategic measures, including a coherent and cohesive legislation. For the most part, many of the proposed legislations are a commendable attempt at addressing specific issues in the sector, however, it appears that the gaps that they seek to fill have not necessarily been considered within a broad SSR context, or under a governance framework. The result of this is a body of bills that does not cohesively promote SSR/SSG within a democratic context. Furthermore, SSR must be clearly linked with democracy, and requires long-term, sustained political will of all stakeholders with adequate consideration of the cost and other implications of proposed reform. With a few exceptions, some of the bills also appear to replicate or separate functions that already exist within the purview of security sector apparatus. As such, any legislative effort that has the principles of SSR/SSG as a goal must reconsider the Bills in the light of the SSR/SSG principles, and discard or amend inconsistent provisions or Bills. It is also important to ensure effective implementation of laws, to avoid inevitable redundancy of such laws. All processes, from enactment to monitoring and oversight must incorporate a robust transparency and wide stakeholder involvement, including citizens’ engagement.
REFERENCES

• 10 US Code Ss. 151 & 152
• A. Andrzejewski, “War weapons for Americas local police departments”, Forbes (United States, May 10 2016). Available at: https://www.forbes.com/sites/adamandrzejewski/2016/05/10/war-weapons-for-americas-local-police-departments/#36f0e6d54af4
• Admiralty Jurisdiction Act, Cap A5 Laws of the Federation Nigeria, 2004
• A. Fleurant et al, "The SIPRI top 100 arms-producing and military services companies, 2016" SIPRI Factsheet, December 2017. Available at https://www.sipri.org/sites/default/files/2017-12/fs_arms_industry_2016.pdf
• A. Ebipade "IG committed to improve welfare of police officers- DIG" Nigerian Tribune. Available at http://www.tribuneonlineng.com/83998/
• A Paper Presented by IGP Ibrahim Kpotun Idris, NPM, MNI, at the Public Hearing on a Bill for an Act to Establish the Nigeria Police Reform Trust Fund and for other Related Matters, On Tuesday 11th July, 2017 at the National Assembly Complex, Abuja. Available at: http://www.npf.gov.ng/more_news.php?id=245
• B. Saul, “Attempts to define ‘Terrorism’ in International Law” Legal Studies Research Paper 08/115 (Sydney, October 2008)
• C. Chikelu, “Establish National Commissions on Small Arms, Light Weapons, UNOWAS Urges Nigeria, Gambia” Leadership (Nigeria, December 7 2017). Available at: https://


• Crest Advisory, “Momentum grows for police transformation funding”. Available at: https://crestadvisory.com/billion-pound-police-transformation-fund/

• Constitution of the Federal Republic of Nigeria 1999 (as amended)


• ECOWAS Protocol relating to Free Movement of Persons, Residence and Establishment 1979 A/P.1/5/79

• ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials was subsequently adopted on 14 June 2006. Available at: http://www.poa-iss.org/RegionalOrganizations/ECOWAS/ECOWAS%20Convention%202006.pdf

• Economic and Financial Crimes Commission (Establishment) Act, 2002

• Editorial Board, “Nigeria’s weapon production plan”, *The Guardian* (Nigeria, August 27, 2015). Available at: https://guardian.ng/opinion/nigerias-weapon-production-plan/


• Federal High Court Act Cap. 134 Laws of the Federation of Nigeria 2004
• Federal High Court Rules 2009
• Festus Keyamo v President, Federal Republic of Nigeria and 4 others Suit No.FHC/ ABJ/CS/611/08
• Global Security, "World Wide Corruption" Available at: https://www.globalsecurity.org/military/world/corruption.htm
• Alexander, “Boko Haram terrorists were mistaken by students for soldiers” The Telegraph, (UK, September 30 2013). Available at: https://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10345524/Boko-Haram-terrorists-were-mistaken-by-students-for-soldiers.html
• High Court of Lagos State Civil Procedure Rules 2012
• International Covenant on Civil and Political Rights, adopted on July 27 1982
• J. Ameh, “Reps, DHQ disagree in appointment of defence chiefs” Punch (Nigeria, August 1 2017). Available at: http://punchng.com/reps-dhq-disagree-on-appointment-of-defence-
chief/

- Lead Debate of Hon. Kayode Oladele at the Second Reading of the Bill
- Motion on the need to re-energise the Nigerian Military and Paramilitary Forces to meet urgent national demands presented by Hon. Rimamnde Shawulu Kwewum dated May 2, 2017
- National Human Rights Commission (Amendment) Act 2010
- National Security Agencies Act 1986
• Nigerian Armed Forces Harmonized Terms and Conditions of Service 2012
• Presidential Committee on Small Arms and Light Weapons Website. Available at: http://prescom.ng/about-us/
• Proceeds of Crime Bill (SB 376) sponsored by Sen. Mohammed Hassan
• Reuters Report, "Nigeria’s President buharo announces weapons production plan” - https://goo.gl/ffHWdVv
• S. S. Ulmer, Supreme Court, Policy-making and Constitutional Law (New York, USA, McGraw-Hill, 1986)
• The Punch, "Soldiers force lady to undress for wearing camouflage". Available at http://www.punchng.com/soldiers-force-lady-to-undress-for-wearing-camouflage/
• UNODC, Model Legislative Provisions Against Terrorism Commentary, September 2002
• Vanguard Editorial, “Need to mop up small, light weapons”,
• V. Ikuomola, “Sambo inaugurates committee on DICON”, *The Nation* (Nigeria, October 19, 2012). Available at: http://thenationonlineng.net/sambo-inaugurates-committee-on-dicon/


About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens’ participation in Nigeria. PLAC works to enhance citizens’ engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

The main focus of PLAC’s intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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