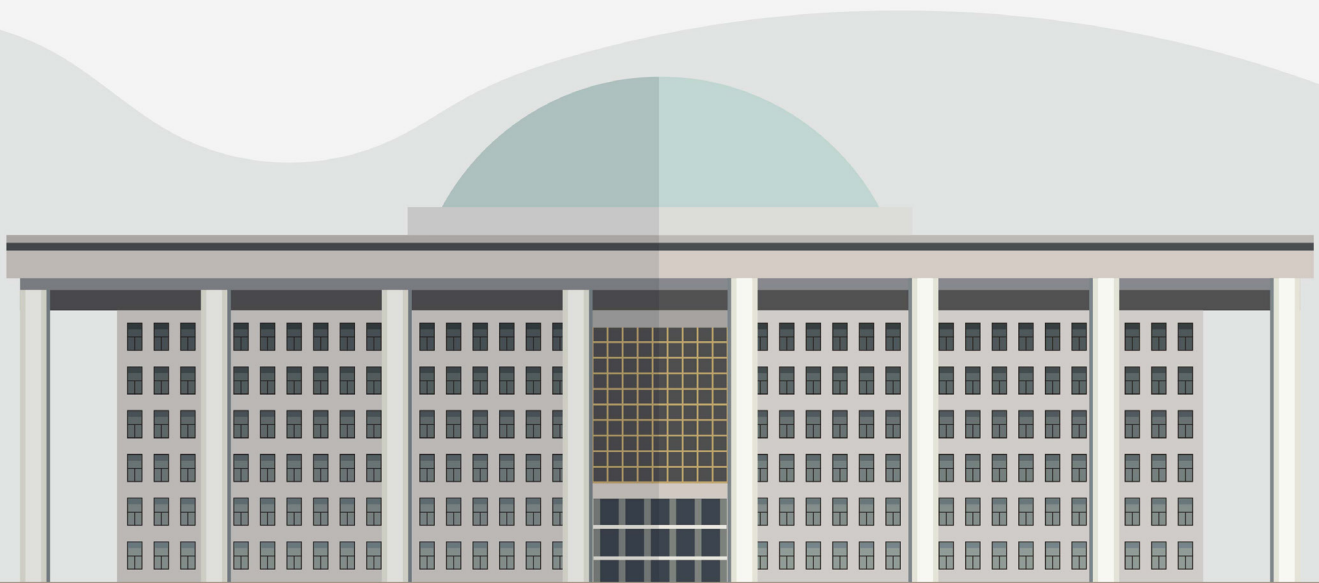


CONSTITUTION AMENDMENT CREATES NEW QUORUM FOR INAUGURATION OF MEMBERS-ELECT OF THE LEGISLATURE

TITLE: *Fifth Alteration (No.8) Act to alter the Constitution of the Federal Republic of Nigeria, 1999 to regulate the first session and inauguration of members-elect of the National and State Houses of Assembly; and for related matters.*



Introduction

One of the Constitution Alteration Acts signed by President Muhammadu Buhari in March 2023 alters **Sections 54 and 96 and 311** of the Constitution to stipulate the quorum for inauguration and first-sitting of a new Assembly and mandates the use of existing Standing Orders of each legislative House at the inauguration.

In particular, the amendment stipulates that the quorum for the inaugural or first sitting of the Senate and the House of

Representatives shall be **at least two-thirds of all the members-elect** in each chamber. The same quorum applies to the first sitting of each State House of Assembly. The Act further provides that an outgoing Assembly's Standing Orders (i.e., rules guiding legislative proceedings) should be used for the first sitting of the Assembly, but can be modified later.

1. Amendment to Sections 54 and 96 on Quorum for Legislative Houses

Quorum in the legislative context, refers to the total number of members of a Legislative Assembly, Chamber or House that must be present to constitute a meeting of that House. By virtue of **section 54 and 94** of the Constitution, the quorum of the Senate, House of Representatives or a State House of Assembly is one-third of all the members of the House concerned. Until now, there was no distinction between quorum for a first sitting of the House or its inauguration and subsequent sittings, but this amendment has introduced this distinction.

This is significant because the first sitting of an Assembly has unique features such as the reading of the Proclamation for the first session of the Assembly issued by the President (*see section 64 of the Constitution*) or by a State Governor as the case may be (*section 105 of the Constitution*). Other key features are the presiding of proceedings by the Clerk of the National Assembly/State Assembly due to the fact there is no elected Presiding Officer at that time and the roll-call of members elect. However many would agree that the most significant feature is the election of Principal officers or leadership for each House. The election is known to be preceded by serious political negotiations and campaigning by contenders, and keenly followed by political watchers and average citizens alike.

With this amendment, the serious business of election of principal officers can only be done by a super majority of legislators, and anything less will be deemed unconstitutional. The amendment is informed by controversies in the past over the number of members present and voting required to elect principal officers as well as the operative rules for doing same.

In June 2015, the Senate was enmeshed in a controversy following the election of the President and Deputy President of the Senate contrary to the wishes of the ruling and majority party, the All Progressives Congress (APC). The Senate President was elected unopposed with 57 lawmakers present and voting, while 51 were absent. This led to debates over whether quorum was formed before the election as stipulated by the Senate Standing Orders with some arguing that the constitutional requirement of a one-third quorum for the Senate which is also reproduced in its Standing Orders, does not apply to first sitting of the Senate. In other words, many felt that a substantial majority of members should be electing principals officers.

Another controversy (discussed in more detail in the second amendment below) was that the emergence of the Principal Officers was facilitated by new Standing Orders for the Senate, which was surreptitiously produced by some persons and used for the inauguration of the 8th National Assembly without approval and adoption by members.

The State Assemblies have also had their own fair share of controversies regarding quorum at inauguration. In 2019, 11 legislators in the 31-member Bauchi State House of Assembly elected a Speaker, while the rest of the members elected a second Speaker in a separate election. Similarly, the Speaker of the Edo State House of Assembly was elected by 9 out of 24 members in 2019. In both cases, the members were alleged to have been secretly inaugurated and convened to carry out the elections. As it turned out, the view that the constitutionally required one-third majority quorum was formed in both cases seemed to trump opposing arguments against the legality of the elections and manner in which they were carried. This constitution amendment with its clear provision now puts these contentions at rest.

2. Amendment of section 311 on Standing Orders of the Legislature

Another key issue the amendment addresses is the Standing Orders to be used at the inauguration. This is important because the Standing Orders of each House outlines the Rules for election of their Principal Officers.

An amendment to **section 311** of the Constitution states that the Standing Orders of the Senate, House of Representatives or State House of Assembly, as the case may be, in existence before its dissolution shall apply to the proceedings of the first session of that Assembly. It however adds that the Standing Orders may be modified within a reasonable time after the inauguration and first session of the new legislative houses to bring them into conformity with their proceedings.

The aim of this provision is to ensure smooth transition of legislative powers in the National and State Houses of Assembly and prevent possible mischief or the possibility of the Standing Orders of a House being amended to alter the Rules for election of Principal officers during inauguration.

This problem was witnessed at the inaugural sitting of the 8th Senate where it was alleged that leadership of the Senate at the time was elected based on an unlawfully amended or “forged” 2015 Senate Standing Orders, containing provisions different from the preceding 2011 Senate Standing Orders that was meant to be operative. The amendments in question were said to be hurriedly done and in secret to create an unfair advantage by changing the mode of voting without debate and adoption of the amended rules by members of the Senate as required. For instance, it was found that portions of the Rules had been amended to provide for secret ballot in the elections, which did not exist before. Also, a provision in the Rules that had allowed all senators-elect to participate in the “nomination and voting” for

the President and Deputy President of the Senate was amended to remove the word “nomination.” For critics, this act was not only aimed at procuring an unfair advantage but was also fraudulent since it was done without regard to due process. Criminal proceedings were subsequently initiated against the suspected parties. This singular incident created legitimacy issues for the persons elected, and in fact, can be said to be a major catalyst of the rocky executive-legislative relations that characterised the 8th Assembly.

Finally, it should be noted that this amendment also updates this section of the Constitution, as the original enactment in that provision refers to the Standing Orders of each House established **under the former Constitution**, and this is defined in section 311(6) as the 1979 Constitution. This was a savings provision which preserved the application of existing Standing Orders in the 1999 Constitution, but has now been deleted by this Constitution alteration for being obsolete.





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