

## CONSTITUTION AMENDMENT REQUIRES PRESIDENT AND GOVERNORS TO CONSTITUTE CABINET WITHIN SIXTY DAYS OF THEIR SWEARING IN

**TITLE:** *Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) (No. 23) Act, 2023 to require the President and Governors to submit the names of persons nominated as Ministers or Commissioners within sixty days of taking the oath of office for confirmation by the Senate or State House of Assembly; and for related matters*



### Introduction

This constitution amendment, signed by President Muhammadu Buhari, indicates a timeframe for the President and State Governors to appoint nominees to their cabinet and mandates such nominees to present evidence of assets declaration before their confirmation.

It alters the provisions of **sections 147 and 192** of the Constitution by providing that the President or a State Governor shall forward to the Senate or State House of Assembly as the case may be, the names of their nominees for confirmation as Ministers or Commissioners **within**

**sixty days** after the date the President or Governor has taken his or her oath of office.

The amendment however recognises the power of the President or State Governors to fill vacancies that may occur later i.e., to appoint Ministers or Commissioners at any other time during their tenure. Since cabinet members serve at the pleasure of the President or Governor, this preserves their prerogative to change their Ministers or Commissioners as they choose. This is of course still subject to legislative approval.

**Note:** Confirmation of executive appointments is a legislative oversight mechanism that provides for checks on the executive branch. The Senate is the only House responsible for confirming executive appointments at the Federal level. The House of Representatives has no role here. The States run a unicameral legislature and therefore have no need for this distinction.

## 1. Timeline for Appointing Nominees

Formation of a cabinet is critical for any new administration to begin the job of governing the country. Thus, placing a timeframe for nomination of Ministers and Commissioners by a newly sworn-in President or Governor can be said to be useful in ensuring that key government officials are in place and there is no significant interruption in the running of government business. Gaps and delays in making such key appointments is known to slow the day-to-day operations of government ministries, hamper decision making and implementation of time-sensitive government policies.

The failure of President Buhari to constitute his cabinet more than five months after he first assumed office in 2015 was a defining factor in Nigerians' assessment of his government at its beginning. The verdict was that the administration was an unresponsive one lacking in urgency and direction. The President had at the time, written an opinion piece where he responded to his critics saying that such task could not be rushed as he was installing new rules of conduct and good governance. He cited as an example, President Obama's delay in having a cabinet in place several months after taking office, saying that the United States did not cease to function in the interim.

It is however important to note that the United States has a lengthy cabinet confirmation process involving rounds

of investigations, financial disclosures, background checks, testimonies and hearings by relevant legislative committees. As such, it can be said that the delay comes from this process and not the naming of the person(s). For instance, the nomination of U.S. Secretary of State, Antony Blinken was announced in November 2020, and he was confirmed two months later - on 26 January 2021 - six days after the presidential inauguration.

In the Nigerian case, the delay witnessed comes from the nominations and not the confirmation process. Moreover, the tendency is for legislators to defer to the President's or Governor's choice and allow nominees to "bow and go" during confirmation proceedings while ignoring critical questions of fit, qualification, competence, as well as valid concerns raised by the public and opposition.

With this amendment, long-drawn-out nominations would be avoided even though sixty days may still be considered by some observers to be too much time to spend in appointing a cabinet. There is also the question of whether this sixty-day timeframe had to be locked into the Constitution which is inflexible and difficult to amend.

A number of countries, the United States inclusive, often adopt Presidential Transition Laws to take care of similar administrative issues in a transition period, including facilitating the process of nominations and confirmations for key cabinet positions. Perhaps, this could be why the United States did not cease to function in the interim like President Buhari described.

Nevertheless, it is expected that with or without legislation, a serious government desirous of accomplishing its policy goals and addressing urgent national matters would hit the ground running instead of waiting to fully expend the legally allowed time frame to appoint its key functionaries.

**Note:** The Senate, on 1<sup>st</sup> March 2023 concurred with a House of Representatives Transition Bill originally sponsored by Speaker Femi Gbajabiamila. Titled, **Presidential (Transition) Bill, 2023**, the bill aims to provide smooth transition of power from one government to another. The bill has not received Presidential Assent. It is unclear if this will happen considering that President Buhari has signed an Executive Order No. 14 of 2023 that authorised the set-up of a team to facilitate and manage Presidential transition to the incoming administration.

## 2. Declaration of Assets and Liabilities

There is a second amendment in this Alteration Act which augments existing constitutional provisions to prohibit the Senate and State Houses of Assembly from going ahead with confirmations where evidence of completion of declaration of assets and liabilities by nominees has not been presented.

**Sections 149 and 194** of the Constitution already provide for declaration of assets and liabilities by persons nominated to be Ministers and Commissioners. It says that such persons “*shall not commence the duties of the office*” unless they have made these declarations as prescribed in the Constitution. The new amendment which appears in **sections 147 and 192** of the Constitution tightens this requirement by demanding that asset declaration be completed before confirmation.

It should be noted that for ministerial nominees who have previously held public office, the Senate Rules already provide that they must make available their certificates of asset declaration before confirmation.

**Order 120 (a) of the 2022 Senate Standing Orders** specifically provides that:

*“The Senate shall not consider the nomination of any person who has held any public office as contained in part II of the Fifth Schedule of the constitution prior to his nomination unless there is written evidence that he has declared his assets and liabilities as required by Section 11(1) of Part 1 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria. Such declaration shall be required for scrutiny by the Senators.”*

In spite of this, the Senate has been found to be in breach of this provision and that of the Constitution by screening nominees who did not submit their asset declaration certificates, particularly persons who previously held public office. For instance, in 2019 it was alleged that most of the ministerial nominees were screened before the submission of their asset declaration certificates and it appeared this had happened with previous Assemblies.

The proper procedure would be for the documents to be submitted before commencement of the screening and not after. This requirement is now explicitly captured in the Constitution by mandating the Senate and Houses of Assembly to not confirm nominees in such instances.

**Note:** While this Act was under discussion in the National Assembly, part of the proposed alterations to sections 147 and 192 was that, at least, ten percent of cabinet positions should be left for women. Unfortunately, this proposal did not scale through at the National Assembly.



## 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 process.

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