

April 2024

## CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (ALTERATION) BILL, 2023 (ESTABLISHMENT OF STATE POLICE) (HB. 617)

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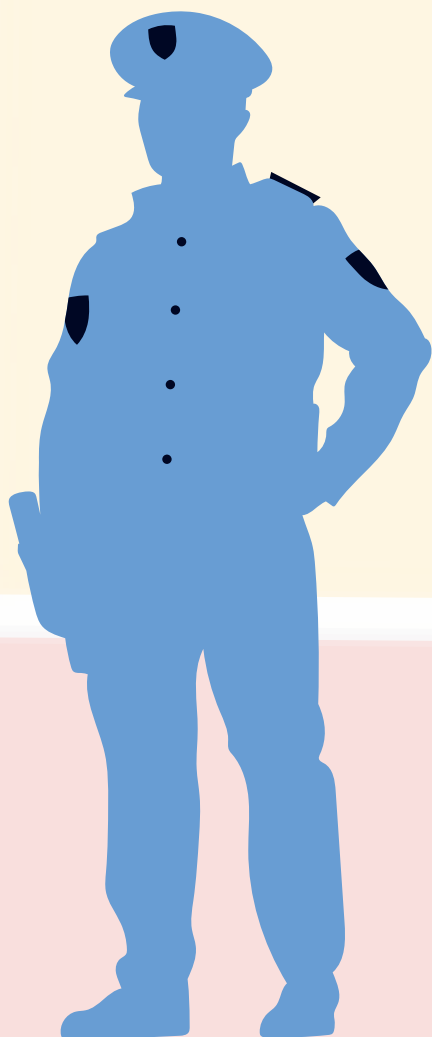
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### Context

This bill is designed to improve public safety and strengthen law enforcement in Nigeria by decentralizing the Police. The proposal in the bill provides for state police existing alongside the federal police and outlines a constitutional framework for states that choose, to establish and maintain their own police service. The bill further aims to clarify the scope of the powers/responsibilities of the federal and state police, and to provide for their funding and oversight.

### Background

As Nigeria grapples with rising security challenges, including terrorism, insurgency, kidnappings, ethno-religious as well as resource-based conflicts and other violent crimes, the Nigeria Police Force continues to battle with maintaining law and order in the country with very little success. As it is presently constituted, the Nigeria Police Force faces many challenges impeding the effective discharge of its responsibilities. These challenges include inadequate workforce, poor remuneration, lack of equipment and infrastructure, systemic corruption, low morale, and eroded credibility.

The escalating and unprecedented insecurity, the inability of the federal police command, and the failure of Governors to direct the affairs of state commands of the Police Force have spurred agitations

for the establishment of state police as the solution for the escalating insecurity in the country. Although described as chief security officers of their states, Governors have often lamented their inability to respond effectively to security challenges within their states as the Police Commands within their domains answer only to the commands and control of the Inspector General of Police, who in turn answers to the President.

Proponents of state police believe that the current structure of the Nigeria Police is over-centralized and overly bureaucratic, thereby impeding quick response to security threats. Furthermore, they argue that as each state has its peculiar security concerns, terrain and culture, it makes sense for states to have their police service that can be shaped and driven by leadership at the local level so that they are fit for purpose. For example, if officers are posted or rotated only within a state, they are more likely to develop a keener sense of the security challenges within the state than those often transferred across the country. A local Police, possessing a stronger connection with the community, would inherently understand the local terrain, language, culture, geography and local leadership. Others have argued that states are reluctant to invest in building the capacity of Police Officers because the beneficiaries could easily be transferred to other states, depriving the investing state of the benefits of such investment.

Proponents of state police also argue that to reflect a true federal system, the Constitution should enable states to establish their Police per the autonomy states are meant to have in managing their affairs. It is also worth noting that decentralized policing is widely practised in countries that operate a federal system, including India, the United States, South Africa, and Switzerland.

Notwithstanding the potential benefits of the state police, opponents have cited the genuine fears of potential abuse by political leaders and operators. Another fear is that regional leaders could use state police to undermine national unity by advancing secessionist ideas. Concerns also exist regarding funding for the State Police.

The desired outcome of the proposed amendments in the Bill aims to address these concerns and

strengthen law enforcement to enable the Police to be more effective in combatting the rising but peculiar security challenges in the various States of the Federation.

## **Key Provisions of the Bill**

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### **1. Establishment of Federal and State Police (Section 214)**

Clause 12 of the Bill amends section 214 of the Constitution to provide for the establishment of a Federal and State Police respectively. It outlines the functions of the Federal Police; empowers the National Assembly to make law(s) to prescribe for the structure, organization, administration, and powers of the Federal Police; and provides a framework and guidelines for the establishment of State Police for the States.

The proposed amendment further makes provisions expressly forbidding the Federal Police from interfering with the operations of any State Police or the internal security affairs of a state save in certain instances, such as – to contain severe threats to public order where it is shown that there is a complete breakdown of law and order within a state which the state police is unable to handle or where the Governor of a state requests the intervention of the Federal Police to prevent or contain a breakdown of law and order in the state. It is worth noting that any intervention in such instances shall only be effective with the approval of a two-thirds majority of the Senate.

### **2. Appointment of Inspector General of Police and the Commissioner of Police of a State (Section 215)**

Clause 13 of the Bill seeks to engender accountability in the appointment of the Inspector General of Police and Commissioner of Police of a State by providing for a check on executive powers. It grants the legislature – the Senate and House of Assembly of a State, respectively, the power to ratify those appointments. It also requires that those appointments by the President or the Governor be on the advice of the National Police Council (renamed in the bill from the Nigeria Police Council).

### **3. Removal of the Inspector General of Police and the Commissioner of Police of a State (Section 216)**

The proposed amendments in Clause 14 of the Bill section seek to prevent abuse and enhance the independence of the offices of the Inspector General of Police and the Commissioner of Police of a state by prescribing a stringent mode of removal. It provides certain specific grounds for removal and subjects any such removal by the President or Governor to the approval of a two-thirds majority of the Senate or House of Assembly of the State, respectively.

### **4. Review Mechanism regarding Directions concerning the Maintenance of Public Safety and Order (Section 215)**

To ensure independence and guard against abuse in the command and control of the State Police, a proviso in Clause 13(5) of the Bill permits the Commissioner of Police of a State to request that a matter be referred to the State Police Service Commission for review where they feel that a direction given by the Governor is unlawful or contradicts general policing standards or practice.

### **5. Legislative Oversight of State Police (Section 215)**

Clause 13(6) of the Bill empowers the National Assembly to prescribe a bi-annual certification review of the activities of State Police by the Federal Police Service Commission to ensure they meet with approved national standards and guidelines of policing and their operations do not undermine national integrity, promote ethnic, tribal or sectional agenda or marginalize any segment of the society within the state. This lever of check addresses the concern that regional leaders could use state police to undermine national unity. The requirement for the Senate and State Houses of Assembly to confirm appointments of the Inspector General of Police and State Commissioners of Police respectively is also a form of legislative oversight.

### **6. Funding (216A)**

Clause 14(b) of the Bill aims to allay the fears of funding the State Police. It proposes that the Federal Government ‘may’ provide grants and aid to State Police on the recommendation of the Federal Police Service Commission subject to the approval of the National Assembly to provide adequate resources for policing. It is instructive to note that the Bill used the helping verb “may,” which has a permissive legal effect. The mandatory helping verb “shall” should have been used instead if the intended legal effect is to impose a duty.

### **7. Concurrent Legislative List (Second Schedule, Part I & II)**

Clause 15 of the Bill alters Parts 1 and 2 of the Second Schedule to the Constitution by moving Policing from the exclusive to the concurrent legislative list. The powers of the federal and state governments to make laws concerning the Police are delineated. Hence, while the National Assembly may make laws for the organization and administration of the Federal Police and the framework for the structure, powers and approved guidelines of state and community Police, the House of Assembly of a State may make laws for the establishment, organization and administration of state and community police within the state. It further relaxes the provision that gives only the federal government legislative powers over arms and ammunition, by creating an exception on lights arms for policing to allow States legislate on this item.

### **8. Monitoring & Oversight: Federal Police Service Commission and State Police Service Commission (Second & Third Schedule to the Constitution)**

One of the proposed amendments in Clause 16 of the Bill provides for the composition and functions of the National Police Service Commission (to replace the existing Police Service Commission) and establishes the State Police Service Commission. The Commission shall comprise, among others, Six retired police officers not below the rank of Assistant Commissioner of Police representing each of the geo-political zones of the country to be appointed by the President subject to confirmation by the

Senate, three retired police officers (in the case of State Police Service Commission) to be appointed by the Governor from each senatorial zone of the state subject to confirmation by the State House of Assembly. Other members include representatives of the National Human Rights Commission, Public Complaints Commission, Nigerian Labour Congress, Nigerian Bar Association and National Union of Journalists.

## Observations

- i. The bill introduces a framework that allows federal and state police authorities to exist side by side, but in doing so, creates an arrangement that does not reflect a strong federal model in terms of sharing of powers. Examples are having federal government representation and bodies such as the Public Complaints Commission and National Human Rights Commission in the composition of the State Police Service Commission and allowing the federal police to intervene (with legislative approval) where there is a complete breakdown of law and order within a state which the state police is unable to handle. This is however attributed to the greater objective of the bill which is to decentralise the police while maintaining a level of federal supervision to address fears that state police would be difficult for some states to fund and can be captured or weaponised by governors of states where executive accountability is typically weak.
- ii. It should be noted that the bill does not mandate a state to adopt state police, which means that states that cannot afford its own police service may choose to continue with the federal police only.
- iii. A decentralized police system must have certainty regarding how the levels of policing interact. As such, a key consideration in drafting constitutional amendment proposals relating to the Police is guidance on jurisdictional authority and the relationship between the Federal Police and State Police as well as among the different state police authorities. In the bill, policing power is held concurrently between the federal and state governments, meaning that both levels of government may make laws and exercise control over the Police in their respective jurisdictions. This creates the need for dispute-resolution mechanisms because of the overlap between the federal and state governments' powers. Therefore, the bill needs to clarify which level of government takes priority in a conflict between the Federal Police and State Police.
- iv. There is also no provision in the Bill clearly establishing a mechanism for coordination among the different levels of government and their respective police authorities. This is critical for cross-jurisdictional crimes.
- v. The provision in clause 14 that outlines a removal criterion for the Inspector General of Police and State Commissioner of Police subject to legislative approval is commendable as it is a global best practice and would help secure their tenure.
- vi. On appointments of officers to the leadership cadre of the Police, particularly the Inspector General of Police (IGP), it has been suggested by police reform experts that a better practice for such position is a clear nomination and selection process that ensures placement on merit, qualification, professional competence and character. An example is the United Kingdom's Metropolitan Police (Scotland Yard) where appointments to the leadership cadre is done through open advertisement and interview. Aside from the requirement of Senate approval, this bill mostly retains the existing appointment procedure with the President appointing the IGP on the recommendation of the National Police Council.
- vii. The bill also retains the constitutional provision that says that the IGP should be from among the serving members of the Police. There are concerns that allowing the President to nominate from a broad cadre of officers irrespective of rank or seniority, creates a situation where an officer who is not the most senior or qualified can be promoted or fast-tracked ahead of his peers and seniors. This practice has led to the forced retirement of very senior police officers. It should be clearly stated that the IGP must be a Senior Police Officer not below the rank of an Assistant Inspector General of Police with demonstrable professional and management experience.



- viii. The bill retains the provision that allows the President to give to the IGP, lawful directions considered necessary for public safety and public order and mandates the IGP to comply with such directions without question. This provision has always been seen as a *carte blanche* and unchecked power granted to the President, but the bill seems to mitigate this by deleting the provision in the current section 215 (5) of the constitution to allow judicial review of this power.
- x. The Bill contains some grammatical errors, and some clauses are poorly drafted. For example:

- Subclause (3) of Clause 12 should not have paragraphs (a) and (b) but instead, Subclause (3)(a) should have been numbered as Subclause (3) and Subclause (3)(b) as Subclause Clause (4) to read – *“The State Police shall be responsible for the maintenance of public security, preservation of public order and security of persons and property within a State to the extent that the State has power to make laws under the Constitution.”*

As it is presently drafted, it does not convey the true intention of the lawmaker, which is to empower State Governments to make laws and exercise control over the Police in their respective States to the extent permitted by the Constitution.

- ix. The bill grants a broader range of functions and powers to the proposed Federal Police Service Commission. In addition to the appointment, removal and discipline of police officers, the commission is empowered to supervise the activities of both the federal police and state police, and prescribe standards for all police services in the country in training, criminal intelligence database, forensic laboratories, etc. Furthermore, the Federal Police Service Commission can recommend the discipline of not only federal police officers, but also state police officers from the rank of Assistant Commissioner of Police and above. The state commission on the other hand will focus on the discipline of lower cadre officers below this rank.
- The word *“interface”* is wrongly used instead of *“interfere”* in clause 12 (4).
  - There is a lack of clarity and precision as to what would constitute “a complete breakdown of law and order” within a state that a state Police is unable to contain and how that could be shown as required by the provisions of Clause 12(4)(a) of the Bill. This should be clearly defined to prevent meddling and undue interference by the Federal Police.

- xi. Gender Considerations: Since the ratification of UN Security Council Resolution 1325, it has been widely understood that increasing the number of women within the security sector makes for a more effective police force. Many studies have concluded that having women police officers improves police response to violence against women, reduces police brutality and excessive force, and strengthens community policing reforms. Furthermore, diverse police forces can assimilate more easily with the civilians they protect. For these reasons and others, many recent constitutions have addressed the specific issue of women within the Police. It might be helpful if the bill expressly provides for gender equality within the police service and establishes provisions such as quotas to ensure women’s inclusion in both state and federal Police.

This set up, which gives the federal commission oversight powers over federal and state police officers is reminiscent of the Nigeria Judicial Council (NJC), which is a central authority that recommends the appointment and discipline of both federal and state judges. By so doing, the involvement of the state/governors is statutorily limited. This is one of the bill’s attempts at addressing fears of interference and capture.

- xii. Fiscal Impact/Financial Implication: The proposed amendment in the Bill would alter the current constitutional framework to enable the establishment of state police in most if not all the states of the federation. This would involve recruiting and training new personnel (including paying their wages and benefits), the construction of new infrastructures, and procuring equipment and operational vehicles.

The proposed amendment is, therefore, expected to have a significant fiscal cost or economic impact on the budgets of the Federal Government and States. However, some of the costs associated with the amendment could be absorbed using existing resources.

Apart from the provision that says the federal government may provide grants and aid to the state police, the bill says nothing else on funding. Reform advocates have stressed the need for decentralisation of financial management powers to police commands and formations to ensure that funding needs for policing are properly captured. With the creation of state police, it is important that the existing funding structure and its associated problems at the federal level are not carried into the state police structure. Further details on funding would need to be clearly outlined and captured in an Act of the National Assembly or State Laws on policing.

## References

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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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