

## FACTSHEET ON JUDICIARY BILLS (PART I)

This Factsheet contains summaries of select Judiciary bills proposed by Members of the 10th National Assembly. The bills are in various legislative stages and public hearings have not been held on them at this time.

### A

A BILL FOR AN ACT TO ALTER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA CAP. C23 LPN 2004 TO CONFER JURISDICTION ON THE FEDERAL HIGH COURT TO TRY OFFENSES ARISING FROM VIOLATIONS OF THE PROVISIONS OF THE ELECTORAL ACT AND ANY OTHER RELATED ACT OF THE NATIONAL ASSEMBLY AND FOR RELATED MATTERS (HB. 115)

*Sponsor: Hon. Muktar Tolani Shagaya*

### OBJECTIVE OF THE BILL

The bill seeks amend Constitution to enable the Federal High Court to exercise concurrent jurisdiction with the High Court of the Federal Capital Territory and High Courts of States with respect to the prosecution of electoral offences.

### INTRODUCTION

Electoral offences have been a major challenge in Nigeria's electoral system and are largely unaddressed since the Independent National Electoral Commission (INEC) who is responsible for prosecuting offenders has repeatedly admitted to lacking the capacity to adequately carry out this responsibility. To address this issue, a bill to establish a National Electoral Offences Commission was introduced in the 9th National Assembly but was not passed in the Senate. The establishment of a Commission to prosecute electoral offences was one of the recommendations of the Uwais Electoral Reform Committee constituted in 2007.

According to Section 145 (1) of the Electoral Act 2022, Magistrate Courts, the High Court of a State and the High Court of the Federal Capital Territory (FCT) have jurisdiction to try electoral offences. The bill seeks to extend this jurisdiction to the Federal High Court. Public discourse has often focused on

tackling the lack of manpower and political will to prosecute electoral offences, rather than increasing the number of courts with jurisdiction to try these offences.

## KEY PROVISION

The Bill amends section 251 of the Constitution to expand the jurisdiction on the Federal High Court by conferring it with concurrent jurisdiction for the trial of electoral offences, alongside the High Court of a State and the High Court of the Federal Capital Territory (FCT).

The sole aim of the bill is to expressly confer additional jurisdiction on the Federal High Court to try matters relating to the offences under the Electoral Act or other election related offences.

## OBSERVATIONS

- i. Electoral offences are rooted in do or die politics. They are bolstered by impunity and lack of accountability. The high incidence of malpractices and violence that have characterised elections in Nigeria are far above the number of electoral offence-related cases initiated by INEC in the courts. Most electoral offences are neither investigated nor prosecuted. For instance, it was reported in the news media that in 2016, the National Human Rights Commission (NHRC) documented a list of about 66 individuals indicted for various electoral malpractices in the 2007 and 2011 elections which was disclosed in the course of election tribunal proceedings. The list was said to have been submitted to

the Attorney-General of the Federation at the time, but there is no evidence of action being taken against these persons. While the proposal to increase the number of courts with jurisdiction to try electoral offences is commendable, it is pertinent to make a commensurate measure to empower the authorities that can prosecute electoral offenders and ensure they do their work.

- ii. If the bill is passed into law, an amendment of section 145(1) of the Electoral Act may be required to bring it in conformity with the Constitution by the inclusion of the Federal High Court as a court with competent jurisdiction to try electoral offences.

## RECOMMENDATION

The bill to establish a National Electoral Offences Commission should be revisited and passed as prosecution is a much bigger issue than jurisdiction to try offences.

### B

A BILL FOR AN ACT TO AMEND THE COURT OF APPEAL ACT TO PRESCRIBE THE NUMBER OF JUSTICES OF THE COURT OF APPEAL, INCREASING THE NUMBER TO ENSURE SPEEDY ADMINISTRATION OF JUSTICE PURSUANT TO THE CONSTITUTIONAL PROVISIONS OF SECTIONS 217 AND 237 (2) (B) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA AND FOR RELATED MATTERS (SB. 37)

*Sponsor: Senator Orji Uzor Kalu*

## SCOPE

The bill seeks to amend the provisions of the Court of Appeal Act to increase the number of Justices of the Court from ninety (90) to one hundred and fifty (150). The aim of this proposed amendment is to ensure that the Court has the requisite workforce to provide for the creation of more divisions of the Court and thereby ensure the speedy administration of justice.

The Court of Appeal is established by section 237 of the Constitution of Federal Republic of Nigeria 1999. The Constitution provides for a minimum number of forty-nine Justices in addition to the President of the Court, bringing the required minimum number of justices to a total of fifty.

The Court of Appeal, in the hierarchy of courts in Nigeria, is the penultimate court and has both appellate and original jurisdictions. The Court of Appeal in exercising its appellate jurisdiction can hear and determine appeals from lower courts regarding criminal and civil matters. Its powers extend to the constitution of Election Petition Tribunals that adjudicate disputes arising from National Assembly, Governorship and State Houses of Assembly Election Tribunals. The Court, by virtue of section 239 of the Constitution, also has original and exclusive jurisdiction as a Court of first instance in Presidential Election Petitions.

The Court is said to be faced with the challenge of responding to a large volume of cases. The increasing caseload and delay in the judicial process have been attributed mainly to an inadequate number of judicial officers to manage the workload.

The bill aims to address this by altering the provision of section 1 of the Court of Appeal (Amendment) Act 2013 which provides that *“The number of the Justices of the Court of Appeal, including the President of that Court, shall be ninety.”* The amendment seeks to delete the number *“ninety”* and insert *“one hundred and fifty.”*

In the preceding Court of Appeal (Amendment) Act 2005, the number of justices of the Court, including its President, was fixed at 70. Since then, new divisions of the Court have been created bringing it to twenty.

The effect of increasing the number of judges is that additional divisions of the court can be created to bring the Court closer to litigants, reduce the workload of the Court, enhance its performance and expedite the dispensation of justice. The bill, if passed, will also have financial implications as remuneration and infrastructure must be made available to accommodate additional Judges. The Senate, in its consideration of this bill needs to take these into consideration as well as some typographical errors in the bill such as a reference to section 217 of the Constitution cited in the Bill Heading, which is irrelevant to the subject matter. Section 217 of the Constitution deals with the establishment and composition of the Armed Forces of the Federation.

A similar bill is under discussion in the House of Representatives and recently passed second reading. Sponsored by Hon. Patrick Umoh, it seeks to increase the number of

Justices of the Court of Appeal from 90 to 150 as well and provide for the appointment of a minimum of 6 Justices in every Judicial division of the Court for speedy and efficient justice delivery and to improve citizens access to justice and related matters. The sponsor, in his debate, argued that because most of the divisions of the court do not have up to 6 justices, two panels of the court cannot sit simultaneously to attend to cases.

It bears mentioning that inadequate judicial manpower is also caused by vacancies in the Court of Appeal resulting from deaths, retirements and elevation to the Supreme Court. If they are filled as a matter of priority, it will go a long way in addressing the immediate issues related to inadequacy of judicial manpower. This may be an alternative or an immediate relief to the alteration of the Court of Appeal Act to give room for additional number of Justices.

Another bill by Hon. Patrick Umoh targets the number of Supreme Court Judges. Titled “*A Bill for An Act to alter the provisions of the Constitution of the Federal Republic of Nigeria, 1999, to increase the number of justices of the Supreme Court for speedy and efficient justice delivery and to improve citizens’ access to justice; and for related matters (HB. 1345)*,” it seeks to alter Section 230 (2)(b) of the Constitution to increase the number of Supreme Court Justices from “*twenty-one*” to “*thirty-one*.”

**A BILL FOR AN ACT TO ALTER THE PROVISIONS OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 TO SET TIME WITHIN WHICH CIVIL AND CRIMINAL CAUSES AND MATTERS ARE HEARD AND DETERMINED AT TRIAL AND APPELLATE COURTS IN ORDER TO ELIMINATE UNNECESSARY DELAY IN JUSTICE ADMINISTRATION AND DELIVERY AND FOR RELATED MATTERS. (HB. 618)**

*Sponsors: Hon. Benjamin Okezie Kalu; Hon. Gaza Jonathan Gbefwi; Hon. Dennis Idahosa Hon. Nnolim Nnaji; Hon. Ademorin Kuye; Hon. Blessing Onuh; Hon. Mark Bako Useni; Hon. Chinedu Obika*

## SCOPE

This bill seeks to amend section 287 of the 1999 Constitution by inserting a new section 287A to specify a timeline within which civil and criminal causes and matters are to be heard and determined at trial and appellate courts to eliminate unnecessary delays in justice administration and delivery.

The bill makes the following key provisions:

- Requires a trial superior court of record to deliver judgement in writing within 270 days from the date of filing of a civil or criminal matter and within 330 days in exceptional circumstances
- Requires a trial inferior court of record to deliver judgement in writing within 210 days from the date of filing of a civil or criminal matter and within 270 days in exceptional circumstances

- Requires an Appellate court to deliver judgement in writing within 180 days from the date of filing of appeals arising from civil or criminal matters and within 270 days in exceptional circumstances.
- Provides that non-compliance with the stipulated timeframe for delivering judgement does not nullify a judgement.
- Provides that a Judicial officer or presiding officer of any court that delivers judgement on a matter beyond the prescribed time relying on exceptional circumstances shall before the beginning of a new legal year report such matter to the National Judicial Council (NJC) with reasons and the NJC shall determine whether the reasons stated by the judicial officer amounts to exceptional circumstances.
- Empowers the National Judicial Council to make rules specifying non-contentious issues, less complex matters commenced by way of originating summons, motions and what amounts to exceptional circumstances for the purpose of enforcing the provisions of bill.

*Exclusion of Election Petitions in the Application of the Bill*

The Bill excludes the application of its provisions to Election Petition matters. Election Petitions are civil matters but are expressly excluded in the purview of the proposed constitutional alteration. This is mostly because Election Petitions are in a class of their own.

**D**

**A BILL FOR AN ACT TO ALTER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 TO STRENGTHEN THE PROCEDURE FOR REMOVAL OF JUDICIAL OFFICERS IN ORDER TO GUARANTEE THE INDEPENDENCE OF THE JUDICIARY; AND FOR RELATED MATTERS (HB.1354)**

*Sponsor: Hon. Patrick Umoh*

The bill seeks to alter section 292 of the Constitution to outline a procedure to be adopted to remove or suspend a judicial officer.

Section 292(1) makes no express provision for the National Judicial Council to play a role in the removal of Heads of Courts (e.g., Chief Justices and Chief Judges) as it states that they can be removed by the President/Governor on an address supported by two-thirds majority of the Senate or House of Assembly as the case may be, without more. However, a joint reading of section 291 and Paragraph 21 (b) and (d) of Part I of the Third Schedule to the Constitution, which empowers the NJC to recommend to the President/Governor, the removal of judicial officers from office and to exercise disciplinary control over such officers, shows that the NJC has a role to play in not only the appointment, but the removal and discipline of Judges.

The Courts have held that any misconduct attached to the office and functions of a judicial officer must first be reported to and determined by the NJC. This means that the conditions specified under Section 292(1)(a) (i) and (ii) of the Constitution for the exercise

## E

of the power of removal (such as inability to discharge the functions of office; infirmity, misconduct etc.) must be satisfied before the President/Governor and the Senate/House of Assembly can validly remove such officer. And that the NJC is indispensable in ensuring that these conditions are satisfied.

There are several cases of the abuse of the removal process of heads of courts, such as Governors and State Assemblies removing or attempting to remove Chief Judges without recourse to the NJC. Similarly, there have been cases of sacked Judges challenging the recommendation of their removal from the bench by the NJC and alleging lack of due process and fair hearing in the removal proceedings.

This bill seeks to clearly indicate a removal procedure in section 292 (1) by proposing the inclusion of a provision that says that the address required of the Senate or House of Assembly before removal shall only be made upon the receipt of a memorandum from the National Judicial Council certifying that the judicial officer was accorded the right to fair hearing with respect to the issue in question and that, in the opinion of the National Judicial Council, a prima facie case for removal of the judicial officer has been established against the officer.

The bill further adds that it shall be a gross misconduct for any person to remove or suspend, or attempt to remove or suspend, or participate in the removal or suspension of a judicial officer through any means other than prescribed in the Constitution.

## A BILL FOR AN ACT TO ALTER THE PROVISIONS OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) TO PROVIDE FOR TRANSITION OF SUBSTANTIVE HEADS OF COURTS IN NIGERIA; AND FOR RELATED MATTERS (HB. 1230)

*Sponsor: Hon. Kwamoti Bitrus Laori*

### SCOPE

This bill seeks to amend sections 238 (4) and (5) of the Constitution dealing with vacancy in the office of the President of the Court of Appeal. It mandates the National Judicial Council (NJC) to nominate a new President of the Court of Appeal within the three months period that is constitutionally allowed for the most senior Justice of the Court of Appeal to be appointed to temporarily perform the functions of a President of the Court of Appeal where there is a vacancy. Subsection (5) of section 238 of the Constitution currently allows an extension of this three months period which would allow the re-appointment of another Justice to continue in acting capacity. But if the NJC recommends a person for substantive appointment into the office within the three-months period, the person so recommended will become the substantive office holder if approved by the Senate and sworn in. The bill seeks to ensure that a substantive successor is recommended by the NJC by prescribing a single period of three months for the officer in acting capacity during which a new person must be nominated.

The bill further requires that in the event of retirement, the National Judicial Council shall forward a name, three months before retirement of the incumbent, to the President of the Federal Republic of Nigeria for appointment as President of the Court of Appeal, subject to the confirmation of the Senate.

## F

### A BILL FOR AN ACT TO ALTER THE PROVISIONS OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 TO CONFER ORIGINAL JURISDICTION ON THE COURT OF APPEAL ON MATTERS RELATING TO THE OFFICE OF A GOVERNOR OR DEPUTY GOVERNOR OF A STATE; AND FOR RELATED MATTERS (HB.1341)

*Sponsor: Hon. Patrick Umoh*

#### SCOPE

This bill seeks to amend Section 239(1) of the Constitution of the Federal Republic of Nigeria to make the Court of Appeal the court of instance for Governorship Election Petitions.

It proposes the insertion of new subparagraphs “(d)”, “(e)”, and “(f)” after the existing subparagraph (c) of section 239 (1) dealing with original jurisdiction of the Court of Appeal. The proposed amendment reads as follows:

*239. (1) Subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether -*

*“(d) any person has been validly elected to the office of Governor or Deputy Governor under this Constitution; or*

*(e) the term of office of Governor or Deputy Governor has ceased; or*

*(f) the office of Governor or Deputy Governor has become vacant.”*

Consequentially, it deletes the provision in section 246(1)(c)(ii) of the Constitution which provides for appeals as of right to the Court of Appeal from decisions of the Governorship Election Tribunals on any question as to whether any person has been validly elected to the office of a Governor or Deputy Governor. Furthermore, it amends Section 285 of the Constitution by deleting subsection (2) that establishes Governorship Election Tribunals and deleting the reference to the Governorship Election Tribunal in subsection (3). Finally, it deletes Paragraph 2 of the Sixth Schedule to the Constitution which outlines the composition of the Governorship Election Tribunal.

This proposal seems to be aimed at reducing the number or levels of courts/tribunals that can hear Governorship election petitions from three to two to expedite the disposal of such petitions. If this bill passes, petitioners will only get a single and final appeal at the Supreme Court.



## 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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