

FACTSHEET ON JUDICIARY BILLS (PART 2)

This Factsheet contains summaries of select Judiciary bills proposed by the Executive and Members of the 10th National Assembly. The bills are in various legislative stages.

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JUDICIAL OFFICE HOLDERS (SALARIES AND ALLOWANCES ETC.) BILL 2024

Sponsor: Executive

This is an Executive Bill submitted to the National Assembly by the President via a letter dated Tuesday, 19th March, 2024, seeking to amend the Certain Political, Public and Judicial Office Holders (Salaries and Allowances, etc) Act 2002 by deleting the portions of the Act relating to judicial office holders, and establishing a new framework that stipulates the remuneration of judicial officers.

The Bill seeks to provide new salaries, allowances and fringe benefits to Judicial officers across the country to end prolonged stagnation in their remunerations and reflect contemporary socio-economic realities. President Tinubu had promised to review the remuneration of Judges as part of efforts to tackle corruption in the Judiciary during the visit of the leadership of the Nigerian Bar

Association to the State House in August 2023. The salaries of judicial officers was reportedly last reviewed about 16 years ago.

The bill was passed in the House of Representatives in April 2024 and is currently under consideration in the Senate

APPLICATION AND SCOPE

- The bill is applicable to Judicial Office holders as defined or outlined in Section 318 of the 1999 Constitution.
- The bill empowers the Revenue Mobilisation Allocation and Fiscal Commission to monitor the Federal Government's compliance with provisions of the bill relating to the payment of remuneration to judicial officers. The Commission may also recommend to the President, variations to the rates of the emoluments of judicial officers set out in the schedule to the bill.
- The Commission is empowered to make regulations prescribing penalties for non-

compliance with the provisions of the bill.

- The Bill seeks to prevent judicial office holders from earning multiple allowances. However, an exception to the rule prohibiting multiple allowances is if the allowance is from a membership of another office or second body. There may be need for further clarification to specify what amounts to multiple allowances that are prohibited.
- The Revenue Mobilisation and Allocation and Fiscal Commission is however empowered to determine the allowances of a judicial officer who by virtue of his office is a chairman or member of another office or body. For instance, where a judicial officer is appointed as a member or Chairman of an Election Petition Tribunal and by virtue of such appointment, earns allowances as determined by the Commission.
- The Bill vests the President with powers to vary provisions of the Schedule to the Act upon the recommendation of the Revenue Mobilisation Allocation and Fiscal Commission. The implication is that the salaries, allowances and fringe benefits which are contained in the Schedule can be reviewed upon recommendation of the Commission without reverting to the National Assembly. However, such order of variation must be published in the Federal Gazette.
- The bill stipulates January 1, 2024, as the effective date of the Consolidated Salaries and Allowances for Judicial Officers, which are provided in the Schedule to the bill. This implies that if signed into law, the new rates of emoluments for judicial

officers will be deemed to have become payable from January 1, in which case arrears will have to be paid.

Conversations around enhancing the independence of the Judiciary have been on the front burner for several years. The independence of the Judiciary has often been cited as a key element required to strengthen Nigeria's legal system and democracy. This independence largely translates to the financial autonomy of the Judiciary to the exclusion of interference by the Executive or any other arm of government, to enhance its ability to be neutral and non-partisan.

For a long time, the practice in most States was that the funds allocated to the State Judiciary and Houses of Assembly were administered and disbursed by State governments at their discretion, thereby compromising the independence of these two arms of government and hindering their administration. One of the major steps to address the issue was the passage and assent to a Constitution Alteration bill that provided for the financial autonomy of State Judiciary and Legislature under the administration of former President, Muhammadu Buhari. It essentially stated that the funds due to each of these arms of Government in the Consolidated Revenue Fund of a State shall be paid directly to each of them. When it was apparent that this alteration was not very effective in dealing with the issue, another alteration providing the mode of implementation of the initial alteration by stipulating details for the disbursement of funds to these arms of government at State level, was passed and assented to by President Buhari in March 2023.

In June 2023, President Tinubu signed another Constitution alteration bill which provides a unified retirement age for all judicial officers of superior courts of record. It further provides that all pensions, allowances and other retirement benefits of judicial officers shall be charged to the Consolidated Revenue fund of the Federation and paid directly by the National Judicial Council (NJC). This is to address the status quo where payment of retirement benefits of State Judges is left to the States governments to handle, and in many cases, these retirement benefits are owed or delayed by the States.

Observers and legal commentators are of the view that the implementation of all the legal provisions geared at improving the independence of the judiciary, with the addition of the new rates of emoluments for judicial officers will be highly beneficial in strengthening the Nigerian Judiciary.

B

A BILL FOR AN ACT TO ALTER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 TO AMONGST OTHER PROVISIONS TRANSFER POWERS OF THE NATIONAL JUDICIAL COUNCIL TO APPOINT OR REMOVE JUDGES OF STATES COURT TO THE GOVERNOR OF A STATE AND AMEND THE THIRD SCHEDULE OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AND FOR RELATED MATTERS. (HB. 32)

Sponsor: Hon. Mohammed Bello El-Rufai

OBJECTIVES OF THE BILL

The bill seeks to take away the powers of the National Judicial Council (NJC) to make recommendations to the Governor for the appointment of judicial officers of the State High Court, Sharia Court of Appeal, and Customary Court of Appeal, and empower the State Judicial Service Commission to directly advise the Governor on the appointment of judicial officers for the State Judiciary.

It also seeks to transfer the powers of the NJC to discipline judicial officers, recommend judicial officers for removal and to manage the moneys of the judiciary, to the State Judicial Service Commission.

INTRODUCTION

The Nigerian Constitution tasks several bodies with the different responsibilities of appointing Judicial Officers (the executive President or Governor), recommending the appointment and removal of judicial officers and exercising disciplinary control over them (National Judicial Council - NJC) and confirming appointments and removals of heads of superior courts (the legislature). The aim is to uphold the principle of checks and balances.

The State Judicial Service Commission is responsible for advising the NJC on the nomination of persons for appointment as judicial officers of the High Court of a State, Sharia Court of Appeal of a State and the Customary Court of Appeal of a State. It is also empowered to recommend the removal of a judicial officer to the NJC. (Paragraph 6,

Item B, Part II of the Third Schedule to the Constitution).

The NJC on its part, is responsible for making recommendations to the President and Governor of a State for the appointment or removal of judicial officers of superior courts of record, i.e., Courts specified in section 6 of the Constitution, as well as exercise disciplinary control over them.

The Governor is responsible for appointing the judicial officers as recommended by the NJC and in the cases of heads of courts, the appointment is subject to confirmation by the State House of Assembly.

These provisions are aimed at ensuring transparency and accountability in the Judiciary. However, political interference in the appointment and removal of judicial officers remains a challenge and hampers on the independence of the Judiciary. In January 2019, ahead of the general elections, President Buhari unilaterally suspended the then Chief Justice of Nigeria, Hon. Justice Walter Onnoghen based on an allegation bordering on asset declaration to the Code of Conduct Bureau.

This bill seeks to completely take away the role of the NJC in this process, as well as transfer its responsibility of managing the funds of the Judiciary to the State Judicial Service Commission.

KEY PROVISIONS OF THE BILL

I. Appointment of Chief Judge of a State High Court, Grand Kadi, President of the Customary Court of Appeal of a State

The bill amends sections 271 (1), 276 (1) and 281 (1) of the Constitution to provide for appointment of persons into the offices of head of courts in the State Judiciary by the Governor on the advice of the State Judicial Service Commission and subject to approval by the State House of Assembly. For appointments to the offices of Grand Kadi and President of the Customary Court of Appeal, the bill specifies that the approval of the appointments by the State House of Assembly shall be by a simple majority.

2. Appointment of Acting Chief Judge of a State High Court, Grand Kadi of the Sharia Court of Appeal and President of the Customary Court of Appeal of a State

Clause 4 of the bill amends sections 271 (5), 276 (5) and 281 (5) of the Constitution to provide that the appointment of a person by the Governor to fill a vacancy in any of these offices will expire after a period of three months, except the appointment is approved by the State House of Assembly. The extant provisions of the Constitution on this matter require the Governor to appoint the most senior Judge/Kadi to take on the responsibilities of the office and this appointment ceases to have effect after three months. This is usually the case until the NJC recommends a person for substantive appointment into the office.

3. Appointment of a Judge of a State High Court, a Kadi of the Sharia Court of Appeal and a Judge of the Customary Court of Appeal of a State

The bill amends sections 271 (2), 276 (2) and 281 (2) of the Constitution to provide for the appointment of a judicial officer in the State Judiciary by the Governor **on the recommendation** of the State Judicial Service Commission instead of the NJC as currently exists.

4. Removal of Powers of the National Judicial Council

The bill deletes subparagraphs (c), (d) and (e) of paragraph 21, Item I, Part I of the Third Schedule to the Constitution, which empowers the NJC to do the following:

- Recommend to the Governor, persons for appointment as judicial officers in the State Judiciary;
- Recommend to the Governor, judicial officers for removal from office; and
- Discipline judicial officers.

The bill proposes an amendment to paragraph 6, Item C, Part II of the Third Schedule to the Constitution to vest powers in the State Judicial Service Commission to do the following:

- Advise the Governor on the nomination of persons for appointment to the offices of the Chief Judges and Judges of the High Court of a State, Grand Kadi and Kadis of Sharia Court of Appeal of a State and the President and Judges of Customary Courts of Appeal of a State;
- Exercise disciplinary control over the aforesaid judicial officers except the powers of appointment and removal;
- Advise the Governor on the removal of heads of courts and other judicial officers for inability to discharge the functions of

the office or misconduct; (The removal of heads of courts is subject to confirmation of two-third majority of the State House of Assembly.);

- Recommend to the Governor, the removal of heads of courts in the State (no further conditions or basis for removal mentioned)
- Manage funds for the Judiciary – i.e., collect, control and disburse all moneys, capital and recurrent, for the State Judiciary.

OBSERVATIONS

- i. The bill stipulates that appointments to the offices of the Grand Kadi of the Sharia Court of Appeal and President of the Customary Court of Appeal of a State require approval by a simple majority of the State House of Assembly. It does not propose the same requirement for appointments into the offices of Chief Judge of a State. The reason for this is unclear.
- ii. The bill seeks to exclude the role of the NJC in the process of filling a vacancy in the offices of heads of court in the State Judiciary. Curiously, it does not substitute the NJC with the State Judicial Service Commission in this process but removes the recommendation of a replacement altogether and replaces it with an approval by the State House of Assembly.

The current provisions of the Constitution stipulate that when the office of the head of court is vacant, the Governor is

required to appoint the most senior judge to take on the functions of the office in acting capacity for a period of three months, after which the appointment lapses and another judge will have to be appointed to the office. This ensures that the office is not left vacant at any time. When the NJC recommends a person for substantive appointment into the office of the head of court, this removes the three-month limitation, meaning the person so recommended may take up and hold this office until he or she is sworn in by the Governor. There will be no need for further appointments by the Governor. The approval of the State of House of Assembly is still required before the person recommended by the NJC can be sworn in. The NJC's recommendation ensures that the correct successor is appointed into the office.

By removing the recommendation of the NJC and replacing it with approval by the State House of Assembly, there is no authority to make a recommendation for appointment to the position. This implies that the State House of Assembly can approve the appointment of the most senior judge appointed by the Governor when the vacancy occurred or any other judicial officer who is appointed after the appointment of the most senior judge expires at the end of three months. This may be problematic for the tradition of succession by seniority that is practiced in the Judiciary.

iii. One provision in clause 13 of the bill says that the State Judicial Service Commission shall advise the Governor on the removal

of heads of courts and other judicial officers for inability to discharge the functions of the office or misconduct subject to legislative approval. Another provision in the same clause 13 says the Commission shall recommend to the Governor, the removal of heads of courts in the State, but without more. On the face, it appears to be an error, but on a further look, can be interpreted as giving additional powers to the Commission to recommend removal of such judicial officers for no reason. Meanwhile, the members of this Commission are made up of the same heads of courts.

iv. It is unclear if the expressions '**on the advice**' of the State Judicial Service Commission in the appointment of the heads of courts and '**on the recommendation**' of the State Judicial Service Commission in the appointment of other judicial officers of those courts, have different meanings in this bill.

v. This bill is targeted at the State Judiciary alone. It does not make a corresponding proposal for the Federal Judicial Service Commission to take over the functions of the NJC in relation to judicial officers of the Supreme Court, Court of Appeal, Federal High Court and National Industrial Court, nor for the Judicial Service Committee of the Federal capital Territory (FCT) to take up those powers in the case of the High Court of the FCT.

vi. The bill restricts the powers of NJC to make recommendations for the appointment, removal and exercise of disciplinary control of judicial officers to the Judiciary at the Federal level only.

- vii. The bill empowers the State Judicial Service Commission to collect, control and disburse all moneys, capital and recurrent, for the State Judiciary. It should be noted that a further amendment of section 121 (3) of the Constitution by the Fifth Alteration (No. 6) Act of 2023 creates new provisions on Judiciary funding. The new section 121 (3B) provides that *“All moneys due to the House of Assembly of the State and the Judiciary of the State for capital and recurrent expenditures shall be paid by the State Accountant-General into the House of Assembly of the State and Judiciary of the State accounts in monthly installments respectively.”*

Transferring the responsibility of managing the Judiciary’s fund to the State Judicial Service Commission may exacerbate the challenge of the financial independence of the State Judiciary, as funds that come to State bodies are usually controlled by the Governors.

Overall, this is likely to be a contentious bill as it significantly cuts down the powers, roles and responsibility of the National Judicial Council and increases the likelihood of interference by the State Governors and State Houses of Assembly in the affairs of the Judiciary. The proposal for the State Judicial Service Commission comprising the heads of the courts in the State to suggest the nomination and removal of judicial officers without input from the National Judicial Council removes a layer of oversight and insulation.

A BILL FOR AN ACT TO ALTER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999, CAP. C24 LAWS OF THE FEDERATION OF NIGERIA 2004, THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (THIRD ALTERATION) ACT NO.3, 2010 TO ESTABLISH THE CODE OF CONDUCT AS A SUPERIOR COURT ESTABLISHED BY THE CONSTITUTION TO ENHANCE ITS EFFICIENCY, AND FOR RELATED MATTERS (HB.1214)

Sponsor: Hon. Solomon T. Bob

This bill seeks to establish the Code of Conduct Tribunal (CCT) as a Superior Court of Record in Nigeria just like the High Court and Federal High Court, among others. It includes the Code of Conduct Tribunal (CCT) in the lists of Courts mentioned in Section 6 (5) of the Constitution as Superior Courts of Record.

It proposes new sections 254 (G) to 254 (J) immediately after provisions dealing with the National Industrial Court, to establish the Tribunal, provide for the Chairman and other members, provide for its jurisdiction and powers which shall include the jurisdiction to determine whether any of the provisions of the Code of Conduct Act has been breached or contravened by a public officer.

It makes several consequential amendments such as making the Chairman of the Code of Conduct Tribunal a member of the Federal Judicial Service Commission and National Judicial Council similar to other Heads of Courts, providing for the appointment of a person to the office of the Chairman of the

Tribunal to be made by the President on the recommendation of the National Judicial Council subject to confirmation of the Senate, and so on.

There have been arguments over the place of the Tribunal in the hierarchy of Courts. The Code of Conduct Tribunal had stated in the past that it is not bound by the decisions of the High Court as they are courts of equal Jurisdiction. Because the Constitution allows appeals from the CCT to the Court of Appeal (*section 246 (1) and Paragraph 18(4), Part I of the Fifth Schedule to the Constitution*), some contend that the CCT is a superior court of record with coordinate jurisdiction with the Federal High Court. Supporters of this view also cite the CCT's jurisdiction over violations of the Conduct of Conduct prescribed for public officers in the Fifth Schedule to the Constitution and the stringent removal process of members of the tribunal which requires legislative approval.

Many others however argue that the Code of Conduct Tribunal is not a Court vested with judicial powers within the scope of the Constitution and is merely an administrative court. Further, they add that the officials of the Code of Conduct Tribunal are not Judicial Officers within the scope of section 318 of the Constitution.

The Tribunal chair and members are not under the disciplinary oversight of the National Judicial Council, but the Presidency. They also do not subscribe to the judicial oath before assumption of office. There have been suggestions for the Constitution to be amended to designate the CCT chairman and members as judicial officers and bring them under the disciplinary purview of the NJC. This bill seems to be aimed at putting this matter to rest by fully establishing the Code of Conduct Tribunal in the same manner as other Superior Courts of Record in the Constitution.

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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