

CONSTITUTION (FIFTH ALTERATION) BILL 2023



On Friday, 17 March 2023, President Muhammadu Buhari assented to the Constitution (Fifth Alteration) Bill, 2023. Exactly a year ago, the House of Representatives and Senate approved forty-four of the sixty-seven constitution alteration bills presented without differences and transmitted them to the State Houses of Assembly for their resolutions in compliance with the provisions of Section 9(2) of the Constitution. On 24 January 2023, the House of Representatives received thirty-five of the forty-four constitution alteration bills from the State Houses of Assembly, having been approved by not less than twenty-four State Houses of Assembly. The bills received were thereafter passed by the House of Representatives and transmitted to Mr. President for assent. Of the thirty-five consideration alteration bills transmitted, the President assented to sixteen bills, which is also known as the Constitution (Fifth Alteration) Bill, 2023 (“the Bill”).

The sixteen (16) bills assented to are-

1. Constitution (Fifth Alteration) Bill No.1 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to change the names of Afikpo North and Afikpo South Local Government Areas; and for related matters.
2. Constitution (Fifth Alteration) Bill No.2 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to change the name of

Kunchi Local Government Area; and for related matters.

3. Constitution (Fifth Alteration) Bill No.3 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to change the names of Egbado North and Egbado South Local Government Areas; and for related matters.
4. Constitution (Fifth Alteration) Bill No.4 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to correct the name of Atigbo Local Government Area; and for related matters.
5. Constitution (Fifth Alteration) Bill No.5 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to correct the name of Obia/Akpor Local Government Area; and for related matters.
6. Constitution (Fifth Alteration) Bill No.6 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to provide for the financial independence of State Houses of Assembly and State Judiciary; and for related matters.
7. Constitution (Fifth Alteration) Bill No.8 - the Bill seeks 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.
8. Constitution (Fifth Alteration) Bill No.9 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to delete the reference to the provisions of the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code, or Evidence Act; and for related matters.

9. Constitution (Fifth Alteration) Bill No.10 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to exclude the period of intervening events in the computation of time for determining pre-election petitions, election petitions, and appeals; and for related matters.
10. Constitution (Fifth Alteration) Bill No.12 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to provide for the post-call qualification of the Secretary of the National Judicial Council; and for related matters.
11. Constitution (Fifth Alteration) Bill No.15 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to delete the item “prisons” in the Exclusive Legislative List and redesignate it as “Correctional Services” in the Concurrent Legislative List; and for related matters.
12. Constitution (Fifth Alteration) Bill No.16 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to move the item “railways” from the Exclusive Legislative List to the Concurrent Legislative List; and for related matters.
13. Constitution (Fifth Alteration) Bill No.17 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to allow States to generate, transmit, and distribute electricity in areas covered by the national grid; and for related matters.
14. Constitution (Fifth Alteration) Bill No.23 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 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.

15. Constitution (Fifth Alteration) Bill No.32 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to correct the error in the definition of the boundary of the Federal Capital Territory, Abuja; and for related matters.
16. Constitution (Fifth Alteration) Bill No.34 - the Bill seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to require the Government to direct its policy towards ensuring the right to food and food security in Nigeria; and for related matters.

Essentially, Bills No. 1 to 5 are concerned with name changes of certain local government areas in the country, while No. 32 corrects the error in the definition of the boundary of the FCT. Bill Nos. 6, 8, 16, and 17 deal with the devolution of powers/promoting true Federalism and strengthening of State Houses of Assembly and the Judiciary, and Nos. 9, 10, 15, 23, and 34 deal with other varied matters.

A highlight the key provisions of the Bill are stated below:

BILL NO.	OLD PROVISION OF THE PRINCIPAL ACT	NEW PROVISION	COMMENTS
No.6	There was no old provision.	Part II, 3 rd Schedule of the Principal Act which establishes State Executive Bodies is amended to insert a new sub-heading “ State Bodies ”- “AA – State House of Assembly Service Commission”; and (c) inserting a new paragraph “IA”- “1A”. The composition, tenure, structure, finance, functions, powers, and other proceedings of the Commission shall be as prescribed by a Law of the House of Assembly”.	The amendment allows for financial independence to the State House of Assembly and State judiciary, which would promote an incorruptible and fair dispensation of justice.
No.8	Section 54: provides that the quorum of the Senate or the House of Representatives shall be one-third of all the members of the legislative house concerned. Section 96: provides that the quorum of a House of Assembly shall be one-third of all the members of the House.	Section 54 is altered by inserting after subsection (1), a new subsection “(1A)” – “(1A) For the inaugural and first sitting of the Senate or the House of Representatives, the quorum shall be at least two-thirds of all the members–elect of either the Senate or the House of Representatives”.	To alter the Constitution to regulate the first session and inauguration of members–elect of the national and State house of assemblies.
No.10	Section 285 (13): provides for the establishment and jurisdiction of election tribunals. Time for determination of pre-election matters, the establishment of Election Tribunals, and time for determination of election petitions Notwithstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision, or action complained of in the suit.	Section 285 is altered by inserting after subsection (13), a new subsection “(13A)” – “(13A) For the purpose of this section, where there is a natural disaster, war, or any State or national emergency or any other “force majeure” that prevents the filing of a pre-election matter, election petition, sitting of a court over a pre-election matter or the sitting of an election petition tribunal or appellate court, the period of the natural disaster, war, State or national emergency or any other “force majeure” shall not be reckoned with in the computation of time under subsections (5), (6), (7), (9), (10), (11) and (12) of this section”.	The amendment seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to exclude the period of intervening events in the computation of time for determining pre-election petitions, election petitions, and appeals. Usually, most pre-election matters must be filed within fourteen days after the occurrence of the event and the tribunal is to deliver judgment within one hundred and eighty days after the matter has been held. Previously, some pre-election matters have been dismissed based on the statute of limitation. This new provision addresses delays and will allow courts to hear deserving matters whose filings were delayed by intervening circumstances.

No.15	Part I of the Second Schedule provides for “Prisons” as item 48 on the Exclusive Legislative List.	The Second Schedule to the Principal Act is altered by inserting after paragraph 10, a new paragraph “10A” - “Correctional Services 10A (1) The National Assembly may make laws for the Federation or any part thereof with respect to - (a) correctional service and the establishment in any part of the Federation of correctional centres and custodial facilities; and (b) the establishment of any authority for the management of federal correctional centres and custodial facilities in any part of the Federation. (2) A House of Assembly may make laws for the State with respect to - (a) correctional service and the establishment in that State of correctional centres and custodial facilities; and (b) the establishment in that State of any authority for the management of State correctional centres and custodial facilities in any part of that State”.	The amendment seeks to alter the Constitution of the Federal Republic of Nigeria, 1999 to delete the item “prisons” in the Exclusive Legislative List and redesignate it as “Correctional Services” in the Concurrent Legislative List. Currently, there are no State Correctional Services in Nigeria. Every Custodial Centre is a Federal Facility. The effect of the amendment deleting the item “Prisons” from the Exclusive Legislative List and inserting it in the concurrent legislative list gives powers to the State(s) to create and regulate services necessary for the operation of correctional facilities within the State. This extends beyond the provision of food, clothing, security, programs, and health care for convicted criminals, to the creation of programs for rehabilitation.
No.16	Part I of the Second Schedule provides for “Railways” as item 55 on the Exclusive Legislative list.	Part I of the Second Schedule to the Principal Act is altered in item 55, by deleting the word “Railways” under the Exclusive List and inserting the same under Part II of the Second Schedule Concurrent Legislative List Extent of Federal and State Legislative powers.	The effect of deleting the item “Railways” from the exclusive legislative list and inserting it in the concurrent legislative list gives powers to the State(s) to build and run railways in their states. This makes it possible for States to regulate and invest in such infrastructure. It will further enhance the States’ capacity to meet the transportation needs of its people.
No.17	Paragraph 14, Part II of the Second Schedule provides for the Concurrent Legislative List and empowers the States to enact laws with respect to the generation, transmission, and distribution of electricity <i>to areas not covered by a national grid system</i> within that State.	The Second Schedule to the Principal Act is altered in Part II, paragraph 14 (b), by deleting the word, “not”, so that it now reads that “State may make laws for the generation, and distribution of electricity <i>to areas covered by a national grid system</i> within that State.	Section 13, Concurrent List of the Principal Act empowered the National Assembly to make laws for the Federation concerning electricity and <i>“the generation and transmission of electricity in or to any part of the Federation and from one State to another State”</i> . Notably, distribution is not mentioned.

			<p>Section 14 empowers a House of Assembly to make laws for the State also concerning electricity and "<i>the generation, transmission and distribution of electricity to areas not covered by a national grid system within that State</i>".</p> <p>Paragraph 3.1.3 of the National Electric Power Policy (NEPP), 2001 states that: "<i>The State Governments will carry out their responsibilities for the development of off-grid electrification and their joint responsibilities with the Federal Government on the establishment of power stations as set out in the 1999 Constitution. The State's role will also include regulation of off-grid non-centrally despatched electricity operations, which are wholly limited within the State boundaries.</i></p> <p>A holistic reading of the constitutional provisions and the NEPP, suggests they mean that all electricity operations carried on within a State and not under the instructions of the TCN-SO (also known as the Nigerian System Operator), are "<i>off-grid</i>" operations and are, therefore, the exclusive preserve of state law and regulation.</p> <p>However, this amendment enables States to regulate the generation, transmission, and distribution of electricity in areas covered by the national grid. This will do away with the monopoly of the federal government in electricity generation, transmission, and distribution. Against the struggle of the federal government to ensure a stable supply of electricity, states with the resources can now invest in power infrastructure and regulate them to address the power supply needs of their people.</p>
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