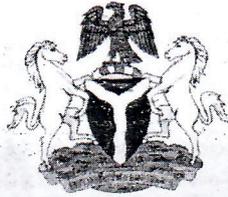


ATTORNEY-GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE

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Federal Ministry of Justice
Plot 71B, Shehu Shagari Way
Maitama, Abuja FCT
Nigeria

Ref. No: LD/BILL/3046/II

26th May, 2023

The Chief of Staff to the President,
State House,
Aso Villa,
Abuja



RE: CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (FIFTH ALTERATION (NO. 37) BILL, 2023

I write in reference to your letter ref no. SH/COS/156/A/2226 dated 10th May, 2023 on the above subject, forwarding a correspondence from the Clerk of the National Assembly requesting for the President's assent of the of the Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) (No. 37) Bill, 2023.

2. I have critically reviewed the Bill and I wish to state as follows:

- a. The provisions of the Fifth Alteration Bill appear to be far-reaching, unduly wide and ambiguous. The Bill has made no justification for the peculiar extension of the retirement age for judges and enlargement of the retirement benefits for all judicial officers in the Country. This creates huge financial and unexpected burden on the Federal Government.
- b. Currently, Section 291(1) of the Constitution already provides that Judicial Officers in Supreme Court and Court of Appeal shall cease to hold Office at the age of 70years. The Section provides that: **A judicial officer appointed to the Supreme Court or the Court of Appeal may retire when he attains the age of sixty-five years and he shall cease to hold office when he attains the age of seventy years.**
- c. The Fifth Alteration therefore seeks to enlarge this provision to all Judicial Officers of Superior Courts including National Industrial Court, Federal High Courts, High Courts of the States & FCT, Sharia Court of Appeal and Customary Courts of Appeal.

OFFICE OF THE ATTORNEY-GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE

d. This would not only lead to stagnation in career growth of judges as those currently on the bench would have to stay longer, preventing others from being elevated to higher Courts or record; It would also exponentially increase the wage bill for Judicial Officers to be borne by the Federal Government.

e. Furthermore, with regards to pension for Judicial Officers, Section 291(3)(c) & (4) of the Constitution currently provides for the regulation of pensions for Judicial Officers by both the Federal and State Governments. The Section provides that: *Any person who has held office as judicial officer— [other than Chief Justice of Nigeria, a Justice of the Supreme Court, the President of the Court of Appeal or a Justice of the Court of Appeal who enjoy pension for life], shall be entitled to such pension and other retirement benefits as may be regulated by an Act of the National Assembly or by a Law of a House of Assembly.*

f. Accordingly, the Federal Government enacted the Federal Judicial officers (Administration of pension) Act 2007, which transferred the responsibility and administration of pension of the Federal Judicial Officers from the Department of Establishments in the Office of the Head of Service of the Federation to the National Judicial Council. Similarly, State Governments are responsible for the pension of Judicial Officers in the State Courts of Record.

g. These provisions are now being amended by the Fifth Alteration which now restricts the power of the Federal Government to make law with respect to Judicial Officers who retire after the age of 65. Regardless of extant economic realities of the Federal Government, by virtue of the fifth alteration, all judges who retire after attaining 65years of age would be entitled to payment of their salaries for life, including all allowances in addition to any other benefit to which they may be entitled.

h. By virtue of the Constitution, the only persons entitled to payment of their last salaries for life as pension are the President, Vice-President and Justices of the Supreme Court and Court of Appeal. In the case of the latter, its only applicable if the Justices retire at or after the age of 65 and have spent not less than 15years.

i. In addition, the proposed alteration also placed this additional huge expenditure on the Federal Government by eliminating the responsibility of States to pay these altered retirement benefits.

j. I also wish to observe that in Nigeria Government Policy is for Public Servants to retire upon attaining the age of 60years. However special consideration was given to

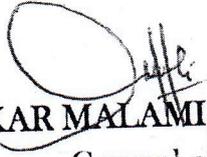
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the Justices of the Supreme Court and Court of Appeal as well as lecturers and Professors who retire at the age of 65 or 70 years as the case may be. The proposed alteration extends the retirement age of judges in all the above listed Superior Courts of Record and may lead to further agitation for extension of retirement age of Justices in the Supreme Court and Court of Appeal.

k. Finally the proposed alteration to the Constitution is ambiguous and creates confusion. On the one hand, the Bill places the retirement benefits of the affected Judicial Officers under the exclusive purview of the Federal Government through the NJC, while on the other provides that the same Judges shall be entitled to pensions, gratuities and other retirement benefits for Public Officers as provided for by the Federal and State Governments.

3. In view of the above, it is my considered opinion that the President declines assent to the Bill as there is no justification for the huge and unexpected financial burden on the Federal Government, the Bill is contrary to Government Policy on retirement age and would lead to stagnation in the career projection for Officers in the Judiciary.

4. Accept the assurances of my warm regards and best wishes, please.


ABUBAKAR MALAMI, SAN, CON
Honourable Attorney General of the Federation and
Minister of Justice

RESTRICTED

STATE HOUSE,
ABUJA,
NIGERIA.



SH/COS/ *1561A/2226*

10th May, 2022

Reference:

The Honourable Attorney-General of the Federation & Minister of Justice
The Federal Ministry of Justice, Abuja.

The Honourable Minister
The Federal Ministry of Finance Budget and National Planning, Abuja.

The Chief Justice of Nigeria
The Office of the Chief Justice of Nigeria, Abuja.

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (FIFTH ALTERATION)
(NO.37) BILL, 2023

1. We refer to the correspondence on the above-mentioned subject matters, as indicated below:

Originator	Ref. No.	Addressee
The Clerk of the National Assembly	NASS/CNA/37/Vol.1/285	Mr. President

2. You may wish to note that pursuant to Section 58(4) of the Constitution of the Federal Republic of Nigeria, the President normally has only 30 (thirty) days to assent to a Bill presented to him by the National Assembly.
3. You are kindly requested to revert with your detailed and considered views **on or before Friday, 19th May 2023**, indicating whether or not the President should assent to this Bill
4. Please accept the assurances of my highest regards.

Prof. Ibrahim A. Gambari
Chief of Staff to the President

CC:
C-in-C Admin

RESTRICTED



Office of the Chief of Staff to the President C-in-C



Clerk to the National Assembly

FEDERAL REPUBLIC OF NIGERIA

Three Arms Zone, PMB 141, Garki Abuja
Office Tel. No. 0816-500-9426 E-mail: cna.office@nass.gov.ng

NASS/CNA/37/Vol.I/285

8th May, 2023

The President

Commander-in-Chief of the Armed Forces
Federal Republic of Nigeria
Presidential Villa
Abuja



**CONSTITUTION OF THE FEDERAL REPUBLIC OF
NIGERIA, 1999 (FIFTH ALTERATION)
(NO. 37) BILL, 2023**

In consonance with the Provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004, I wish, with due respect, to forward to Your Excellency, the authenticated copies of **Constitution of The Federal Republic of Nigeria, 1999 (Fifth Alteration) (No. 37) Bill, 2023** for your consideration and assent.

2. After Your Excellency's assent, one copy of the signed Bill should be retained in your office while the other two are to be returned for our further action, please.

3. With my highest regards.

SANI MAGAJI TAMBAWAL, fcna
Clerk to the National Assembly

**CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (FIFTH
ALTERATION) (NO. 37) ACT, 2023**

EXPLANATORY MEMORANDUM

This Act alters the Constitution of the Federal Republic of Nigeria, 1999 to ensure uniformity in the retirement age and pension rights of judicial officers of superior courts of record.

**CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (FIFTH
ALTERATION) (NO. 37) ACT, 2023**

Arrangement of Sections

Section:

1. Alteration of the Constitution
2. Substitution for section 291
3. Citation

CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 (FIFTH ALTERATION) (NO. 37) ACT, 2023

A Bill

For

An Act to alter the Constitution of the Federal Republic of Nigeria, 1999 to ensure uniformity in the retirement age and pension rights of judicial officers of superior courts of record; and for related matters.

[]

Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria —

1. The Constitution of the Federal Republic of Nigeria, 1999 (in this Act referred to as "the Principal Act") is altered as set out in this Act. Alteration of the Constitution
2. Substitute for section 291 of the Principal Act, a new section "291" — Substitution for section 291

"291. (1) A judicial officer appointed to any of the superior courts of record specified in section 6 (5) of this Constitution may retire when he attains the age of sixty-five years and he shall cease to hold office when he attains the age of seventy years.

(2) Any person who has held office as a judicial officer of a superior court of record —

(a) for a period of not less than ten years shall, if he retires at or after the age of sixty-five years, be entitled to pension for life at a rate equivalent to his last annual salary and all allowances in addition to any other retirement benefit to which he may be entitled;

(b) for a period of less than ten years shall, if he retires at or after the age of sixty-five years, be entitled for pension for life at a rate as in paragraph (a) of this subsection pro-rata the number of years he served as a judicial officer in relation to the period of ten years, and all allowances in addition to other retirement benefits to which he may be entitled under his terms and conditions of service; and

(c) in any other case, shall be entitled to such pension and other retirement benefits as may be regulated by an Act of the National Assembly.

(3) All pensions, allowances and other retirement benefits to which a judicial officer may be entitled, shall be a charge upon the Consolidated Revenue Fund of the Federation and shall be paid directly by the National Judicial Council.

(4) Subject to the provisions of this section of the Constitution, the provisions of any other law that provides for pensions, gratuities and other retirement benefits for persons in the Public Service of the Federation or of a State shall apply.”

3. This Act may be cited as the Constitution of the Federal Republic of Nigeria (Fifth Citation Alteration) (No. 37) Act, 2023.

I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA, 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.



SANI MAGAJI TAMBAWAL, fca
CLERK TO THE NATIONAL ASSEMBLY

8th DAY OF May, 2023

**SCHEDULE TO THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999
(FIFTH ALTERATION) (NO. 37) BILL, 2023**

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Constitution of The Federal Republic of Nigeria, 1999 (Fifth Alteration) (No. 37) Bill, 2023	An Act to alter the Constitution of the Federal Republic of Nigeria, 1999 to ensure uniformity in the retirement age and pension rights of judicial officers of superior courts of record; and for related matters.	This Bill alters the Constitution of the Federal Republic of Nigeria, 1999 to ensure uniformity in the retirement age and pension rights of judicial officers of superior courts of record.	2 nd May, 2023	8 th January, 2023

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.


SANI MAGAJI TAMBAWAL, fena
 Clerk to the National Assembly
 8th Day of May, 2023

MUHAMMADU BUHARI, GCFR
 President of the Federal Republic of Nigeria

I ASSENT.

..... Day of, 20....