

[SB. 362]

A BILL

FOR

AN ACT TO GIVE EFFECT TO SECTION 219 OF THE 1999 CONSTITUTION
OF THE FEDERAL REPUBLIC OF NIGERIA TO PROVIDE FOR THE
ESTABLISHMENT OF THE ARMED FORCES SERVICE COMMISSION
AND FOR OTHER RELATED MATTERS

Sponsored by SENATOR EYINNAYA ABARIBE

[] Commence-
ment.

ENACTED BY THE National Assembly of the Federal Republic of
Nigeria—

Preamble:

Cognizant that section 219 of the Constitution of the Federal
Republic of Nigeria 1999 (as amended) conferred powers on the
National Assembly to:

(a) in giving effect to the functions specified in section 217 of
the 1999; and

(b) with respect to the powers exercisable by the President
under section 218 of the Constitution; establish a body that shall
comprise such members as the National Assembly may determine
and which shall have power to ensure that the composition Armed
Forces of the Federation reflects Federal Character of Nigeria in
the manner prescribed by section 217 of the Constitution.

Aware that the functions specified in section 217 of the 1999
Constitution is the establishment and composition of the Armed Forces
of the Federation and such composition by virtue of section 217 (3)
shall reflect Federal Character of Nigeria.

Also aware that the powers exercisable by the President as the
Commander-in-Chief of the Armed Forces of the Federation under
section 218 of the Constitution include:

(a) power to determine the operational use of the Armed Forces
of the Federation;

(b) power to appoint Chief of Defence Staff, Chief of Army Staff, Chief of Naval Staff, Chief of Air Staff and Heads of any other branch of the Armed Forces of the Federation as may be established by an Act of the National Assembly.

Further aware that the Federal Character Commission as one of the Federal Executive Bodies established under section 153 (1) of the 1999 Constitution also has the constitutional mandate in Paragraph 8, Part 1 of the 3rd Schedule to the Constitution to ensure compliance with the Federal Character principle provided for in section 14 (3) and (4) of the 1999 Constitution, and shall work out an equitable formula subject to the approval of the National Assembly for the distribution of all cadres of posts in the public service of the Federation, and of the States, the Armed Forces, the Nigerian Police Force and other government Security Agencies, government owned companies and parastatlas.

ENACTED by the National Assembly of Nigeria as follows:

1 PART I — ESTABLISHMENT, ETC OF THE ARMED
2 FORCES SERVICE COMMISSION

3 1.—(1) There is hereby established a body to be known as the
4 Armed Forces Service Commission (in this Act referred to as “the
5 Commission”).

6 (2)The Commission —

7 (a) shall be a body corporate with perpetual succession and a
8 common seal; and

9 (b) may sue or be sued in its corporate name.

10 (3) The headquarters of the Commission shall be at the Federal
11 Capital Territory, Abuja.

12 2.—(1) The management of the Commission shall vest in the
13 following members, whose appointment shall be in line with the Federal
14 Character provision of the Constitution —

15 (a) a Chairman who shall be the Chief Executive and Chief
16 accounting officer of the Commission;

17 (b) the Chairman shall be a person of high repute and integrity,

1 and of unquestionable character/integrity;

2 (c) the Chairman shall hold the office for four years and may be
3 re-appointed for another four years and no more;

4 (d) the Chairman shall rank equal in service and remuneration
5 as a Director General as is the case with other Federal Government
6 agencies;

7 (e) the Chairman and members of the Commission (other than
8 the *ex officio* members representing ministries and institutions) shall
9 be appointed pursuant to Section 219 of the Constitution by the
10 President of the Senate in consultation with the Speaker of the
11 Representatives;

12 (f) six Commissioners nominated by the President representing
13 each of the six geopolitical zones and who shall be persons of proven
14 integrity and unquestionable character and subject to confirmation
15 by the Senate; and

16 (g) the Secretary to the Commission.

17 (2) The Chairman and other members of the Commission shall

18 —

19 (a) be appointed by the President subject to the confirmation by
20 the Senate;

21 (b) be persons of proven integrity and ability.

22 (3) The members of the Commission referred to in paragraph (d)
23 of Subsection (1) of this section shall be part-time members.

24 (4) The supplementary provisions set out in the Schedule to this
25 Act shall have effect with respect to the proceedings of the Commission
26 and the other matters contained therein.

27 3.—(1) Subject to the provisions of Section 4 of this Act, a member
28 of the Commission, other than *ex-officio* members shall each hold
29 office —

30 (a) for a term of four years and no more and

31 (b) on such terms as to remuneration;

1 salaries and allowances as may be prescribed by the National Assembly
2 but not exceeding the amount as shall have been determined by the
3 National Revenue Mobilization Allocation and Fiscal Commission.

4 4.—(1) Notwithstanding the provisions of section 3 of this Act, a
5 person shall cease to hold office as member of the Commission if —

6 (a) he becomes bankrupt, suspends payment or compounds with
7 his creditors ; or

8 (b) he is convicted of a felony or any offence involving dishonesty
9 or fraud or

10 (c) he becomes of unsound mind, or is incapable of carrying out
11 his duties ; or

12 (d) he is guilty of serious misconduct in relation to his duties ; or

13 (e) in the case of a person possessed of professional qualifications
14 he is disqualified or suspended, other than at his own request, from
15 practicing his profession in any part of the world by an order of a
16 competent authority made in respect of that member.

17 (2) A member of the Commission may be removed by the
18 President if he is satisfied that it is not in the interest of the Commission
19 or the interest of the public that the member should continue in office.

20 (3) Where a vacancy occurs in the membership of the
21 Commission, it shall be filled by the appointment of a successor to
22 hold office for the remainder of the term of office of his predecessor,
23 so however, that the successor shall represent the same interest and
24 shall be appointed by the President subject to confirmation by the Senate.

25 5.—(1) Notwithstanding the provisions of Section 4 of this Act,
26 the Chairman and any other member, may at any time be removed
27 from that office by the President acting on an address supported by
28 two- thirds majority of the Senate praying that he be removed for
29 inability to discharge the functions of the office (whether arising from
30 infirmity of mind or body or any other cause or for misconduct).

31 (2) A member may resign his appointment by a notice in writing

1 under his hand, addressed to the President and that member shall on
2 the date of the receipt of the notice by the President cease to be a
3 member of the Commission.

4 PART II — FUNCTIONS AND POWERS OF THE COMMISSION

5 6.—(1) The Commission shall —

6 (a) have the power and authority pursuant to section 219 of the
7 1999 Constitution of the Federal Republic of Nigeria (as amended)
8 to ensure that the composition/appointment of Service Chiefs of the
9 Armed Forces of the Federation reflects federal character of
10 Nigeria in the manner prescribed in section 217 (3) of the 1999
11 Constitution;

12 (b) ensure that the functions specified in section 217 of the 1999
13 Constitution; and the powers exercisable by the President in the
14 appointment of Service Chiefs and Officers Corps and other Ranks
15 of the Armed Forces of the Federation in section 218 of the 1999
16 constitution reflects Federal Character of Nigeria;

17 (c) recommend to the President from among the best and most
18 qualified, most educated and most experienced members of the
19 Armed Forces of the Federation for appointment as —

20 (i) Chief of Defense Staff,

21 (ii) Chief of Army Staff,

22 (iii) Chief of Air Staff,

23 (iv) Chief of Naval Staff,

24 (v) Director of Military intelligence; And Heads of other Arm-
25 bearing Security Agencies and ensure that such appointments
26 reflects federal character principle of Nigeria;

27 (d) recommend to the President the removal from office as
28 Service Chiefs and Head of other Arm-bearing Security Agencies
29 on ground of misconduct, abuse of office, breach of any section of
30 the Constitution, the Armed Forces Act or any other Act of the
31 National Assembly.

1 (e) approve promotion from among the best, most competent
2 and qualified officers as Heads of Military formations/branches
3 such as General Officers Commanding Divisions of the Nigerian
4 Army and their equivalent in the Navy and Air Force:

5 PROVIDED that in making such recommendations the Commission
6 shall observe the Federal Character principle and adopt an
7 equitable template to spread the offices of the Service Chiefs,
8 and Officers Corps and other Ranks of the Armed Forces of the
9 Federation among the six geo-political zones of the country;

10 (f) subject to the provisions section 215 (1) and 216 (2) of the
11 1999 Constitution on the powers of the Nigerian Police Council to
12 advise the President on the appointment of Inspector General of
13 Police, and notwithstanding any other provision in any other law
14 establishing any other security agency; the Commission shall have
15 the power to recommend to the President from a among the best
16 and most qualified, most educated and most experienced officers
17 of the Nigerian Police Force, State Security Service (SSS), National
18 Intelligent Agency(NIA), Office of the National Security Adviser
19 (ONSA), and the Nigerian Security and Civil Defence Corps
20 (NSCDC), Nigerian Custom Service, Nigerian Immigration service
21 and Nigerian correctional service; persons for appointment as
22 Inspector General of Police, Director General of SSS, Director
23 General NIA, Director General ONSA, and Commandant General
24 of NSCDC, Comptroller General of Customs, Comptroller General
25 of Immigration, Comptroller General of Immigration, Comptroller
26 General of Prisons, and Head of the Federal Fire Service:

27 PROVIDED that in making such recommendations, the
28 Commission shall take into cognizance the federal character
29 principle and the geo-political zones of the country that produced
30 the four Service Chiefs provided in this section, and ensure that
31 the Heads of other Security Agencies provided in this sub section

1 spread equitably among the six geo-political zones of the country;
2 (g) the Commission shall have power to make regulation in the
3 performance of its functions to ensure that each zone of the Federation
4 is equitably represented in the appointments of Service Chiefs and
5 Officers Corps and other Ranks of the Armed Forces of the
6 Federation and Heads of other Security and para-military and armed-
7 bearing security agencies of the Federation, and ensuring that the
8 most competent and qualified person from each zone is appointed
9 at all times;

10 (h) notwithstanding the provision in any other law establishing
11 the Armed Forces, Nigerian Police Force and other security/para
12 military agencies, Commission shall supervise and approve upon
13 certifying that Federal Character provided in this Act has been
14 duly observed, all promotions in the Armed Forces of the
15 Federation, Nigerian Police Force and other Security and para-
16 military and Armed-bearing security agencies of the Federation;

17 (i) carry out such other functions as the President may, from
18 time to time, direct.

19 (2) The Commission shall not be subject to the direction, control
20 or supervision of any other authority or person in the performance of
21 its functions other than as is prescribed in this Act.

22 7. The Commission shall have power to —

23 (a) pay the staff of the Commission such remuneration and
24 allowances as are payable to persons of equivalent grades in the
25 Civil Service of the Federation;

26 (b) enter into such contracts as may be necessary or expedient
27 for the discharge of its functions and ensure the efficient performance
28 of the functions of the Commission ; and

29 (c) do such other things as are necessary and expedient for the
30 efficient performance of the functions of the Commission.

31 8. The Commission may, subject to such conditions as it may

1 think fit, delegate any of its powers under this Act —

2 (a) to any officer in the service of the Nigeria Police Force ; or

3 (b) to a committee consisting of such number of persons, one of
4 whom shall be named as Chairman, as may be prescribed by the
5 Commission.

6 PART III — STRUCTURE OF THE COMMISSION

7 9.—(1) There shall be established in the headquarters of the
8 Commission the following Departments —

9 (a) the Department of Administration and Personnel Management;

10 (b) the Department of Investigation;

11 (c) the Department of Finance and Supply;

12 (d) the Department of Planning, Research and Statistics; and

13 (e) the Department of Legal Services.

14 (2) The Commission may, with the approval of the President,
15 increase the number of Departments as it may deem necessary and
16 expedient to facilitate the realization of the objectives of the
17 Commission.

18 PART IV — STAFF

19 10.—(1) There shall be for the Commission, a Secretary to the
20 Commission who shall be appointed pursuant to section 219 by the
21 Senate President in consultation with the Speaker of the House of
22 Representatives who shall —

23 (a) be an officer in the Civil Service of the Federation not below
24 the rank of a Permanent Secretary;

25 (b) have such qualification and experience as are appropriate for
26 a person required to perform the functions of that office under this
27 Act;

28 (c) be accounting officer of the Commission ; and

29 (e) hold office on such terms and conditions as to emolument,
30 conditions of service as are applicable to the Civil Service of the
31 Federation.

1 (2) The Secretary shall subject to the general direction of the
2 Commission through the Chairman be responsible —

3 (a) for the day to day administration of the Commission;

4 (b) for keeping the books and proper records of the proceedings
5 of the Commission; and

6 (c) for —

7 (i) the administration of the secretariat of the Commission ;
8 and

9 (ii) the general direction and control of all other employees of
10 the Commission subject to the directives of the Commission.

11 (3) The Commission shall have power to —

12 (a) employ either directly or on secondment from any civil or
13 public service in the Federation or a State such number of employees
14 as may, in the opinion of the Commission, be required to assist the
15 Commission in the discharge of any of its functions under this Act;
16 and

17 (b) pay to persons so employed such remuneration (including
18 allowances) as are applicable to other officers of equivalent rank in
19 the Civil Service of the Federation.

20 11.—(1) Service in the Commission shall be approved service
21 for the purposes of the Pensions Act.

22 (2) The officers and other persons employed in the Commission
23 shall be entitled to pensions, gratuities and other retirement benefits
24 as are enjoyed by persons holding equivalent grades in the Civil Service
25 of the Federation.

26 (3) Nothing in Subsections (1) and (2) of this section shall prevent
27 the appointment of a person to any office on terms which preclude the
28 grant of pension and gratuity in respect of that office.

29 (4) For the purposes of the application of the provisions of the
30 Pensions Act, any power exercisable there under by the Minister or
31 other authority of the Government of the Federation, other than the

1 power to make regulations under Section 23 thereof, is hereby vested
2 it' and shall be exercisable by the Commission and not by any other
3 person or authority.

4 PART V — FINANCIAL PROVISIONS

5 12.—(1) The Commission shall establish and maintain a fund from
6 which shall be defrayed all expenditure incurred by the Commission.

7 (2) There shall be paid and credited to the fund established pursuant
8 to Subsection (1) of this section —

9 (a) such monies as may, from time to time, be granted or lent to
10 or deposited with the Commission by the Federal or State
11 Government or any other body or institution whether local or foreign.;

12 (b) all monies raised for the purposes of the Commission by way
13 of gifts, loan, grants-in-aid, testamentary dispositions or otherwise;
14 and

15 (c) proceeds from all other assets that may, from time to time,
16 accrue to the Commission.

17 (3) The fund shall be managed in accordance with the rules made
18 by the Commission, and without prejudice to the generality of the power
19 to make rules under this subsection, the rules shall in particular contain
20 provisions —

21 (a) specifying the manner in which the assets or the fund of the
22 Commission are to be held, and regulating the making of payments
23 into and out of the Fund ; and

24 (b) requiring the keeping of proper accounts and records for the
25 purpose of the Fund in such form as may be specified in the rules.

26 13. The Commission shall apply the proceeds of the Fund
27 established pursuant to Section 12 of this Act —

28 (a) the cost of administration of the Commission;

29 (b) the payment of salaries, allowances and benefits of members
30 of the Commission or any Committee of the Commission;

31 (c) the payment of salaries, remuneration, allowances, benefits,

1 pensions and gratuities payable to officers and employees of the
2 Commission;

3 (d) the payment for all contracts, including mobilization,
4 fluctuations, variations, legal fees and cost on contract
5 administration;

6 (e) the payment for all purchases ; and

7 (f) undertake such other activities as are connected with all or
8 any of the functions of the Commission under this Act.

9 14.—(1) The Commission may accept gifts of land, money or
10 other property on such terms and conditions, if any, as may be specified
11 by the person or organization making the gift.

12 (2) The Commission shall not accept any gift if the conditions
13 attached thereto are inconsistent with the functions of the Commission
14 under this act.

15 15.—(1) The Commission shall, not later than 30th September in
16 each year, Estimates submit to the President an estimate of the
17 expenditure and income of the Commission during the next succeeding
18 year.

19 (2) The Commission shall cause to be kept proper accounts of
20 the Commission in respect of each year and proper records in relation
21 thereto and shall cause the accounts to be audited not later than 6
22 months after the end of each year by auditors appointed from the list
23 and in accordance with the guidelines supplied by the Auditor-General
24 for the Federation.

25 16. The Commission shall, at the end of every quarter in each
26 year submit to the President a report on the activities and administration
27 of the Commission.

28 17.—(1) The Commission shall prepare and submit to the
29 President, not later than 30th June in each year, a report in such form
30 as the President may direct on the activities of the Commission during
31 the immediately preceding year, and shall include in the report a copy

1 of the audited accounts of the Commission for that year and the auditor's
2 report thereon.

3 (2) The President, Upon receipt of the report referred to in
4 Subsection (1) of this section, cause a copy of the report and the audited
5 accounts of the Commission and the auditor's report thereon to be
6 submitted to each House of the National Assembly.

7 PART VI — MISCELLANEOUS

8 18.—(1) For the Purposes of providing offices and premises
9 necessary for the performance of its functions under this Act, the
10 Commission may, subject to the Land Use Act —

11 (a) purchase, or take on lease any interest in land, or other
12 property; and

13 (b) construe offices and premises and equip and maintain same.

14 (2) The Commission may, subject to the Land Use Act, sell or
15 lease out any office or premises held by it, which office or premises is
16 no longer required for the performance of its functions under this Act.

17 19. Subject to the provisions of this Act, the President, may give
18 to the Commission directives of a general nature or relating generally
19 to matters of policy with regard to the performance by the Commission
20 of its functions and it shall be the duty of the Commission to comply
21 with the directives.

22 20.—(1) Subject to the provisions of this Act, the provisions of
23 the Public Officers Protection Act shall apply in relation to any suit
24 instituted against any officer or employee of the Commission.

25 (2) Notwithstanding anything contained in any other law or
26 enactment, no suit shall lie against any member of the Commission,
27 the secretary or any other officer or employee of the Commission for
28 any act done in pursuance or execution of this Act or any other law or
29 enactment, or of any public duty or authority or in upon of any alleged
30 neglect or default in the execution of this Act or such law or enactment,
31 duty or authority, shall lie or be instituted in any Court unless—

1 (a) it is commenced within three months next after the Act neglect
2 or default complained of; or

3 (b) in the case of a continuation of damage or injury, within six
4 months next after the ceasing thereof.

5 (3) No suit shall be commenced against a member of the
6 Commission, the Secretary, officer or employee of the Commission
7 before the expiration of a period of one month after written notice of
8 intention to commence the suit shall have been served upon the
9 Commission by the intending plaintiff or his agent

10 (4) The notice referred to in Subsection (3) of this section shall
11 clearly and explicitly state the cause of action, the particulars of the
12 claim, the name and place of abode of the intending plaintiff and the
13 relief, which he claims.

14 21. A notice, summons or other document required or authorized
15 to be served upon the Commission under the provisions of this Act or
16 any other law or enactment may be served by delivering it to the
17 Secretary or by sending it by registered post and addressed to the
18 Secretary at the principal office of the Commission.

19 22.—(1) In any action or suit against the Commission, no execution
20 or attachment of process in the nature thereof shall be issued against
21 the Commission.

22 (2) Any sum of money which may by the judgment of any court
23 be awarded against the Commission shall, subject to any direction
24 given by court where notice of appeal of the said judgment has been
25 given, be paid from the general reserve fund of the Commission.

26 23. A member of the Commission, the Secretary, any officer or
27 employee of the Commission shall be indemnified out of the assets of
28 the Commission against any proceeding, whether civil or criminal, in
29 which judgment is given in his favour, or in which is acquitted, if any
30 such proceeding is brought against him in his capacity as a member of
31 the Commission, the Secretary, officer or employee of the Commission.

1 24. Any person who, immediately before the coming into force
2 of this Act is the holder of any office in the Nigeria Police Force shall
3 on the commencement of this Act continue in office and be deemed to
4 have been appointed to his office by the Commission under this Act.

5 25. The Commission may, with the approval of the President
6 make regulations, generally for the purposes of giving full effect to
7 this Act.

8 26. In this Act, unless the context otherwise require —

9 “Commission” means the Armed Forces Service Commission
10 established by Section 1 of this Act;

11 “member” means a member of the Commission and includes
12 the Chairman.

13 “President” means the President, Commander-in-Chief of the
14 Armed Forces.

15 “Secretary” means Secretary to the Commission appointed
16 pursuant to Section 10 of this Act

17 27. This Bill may be cited as the Armed Forces Service
18 Commission (Establishment etc.) Bill, 2020.