

TITLE: CURRENT ISSUES IN CONSTITUTION DEBATES AND WOMEN

EXECUTIVE SUMMARY

National discourse on the Review of the 1999 Constitution of the Federal Republic of Nigeria intensified when President Umaru Musa Yar' Adua announced the setting up of a committee of the National Assembly to review it. Much of the debate since then has revolved around familiar issues that had been raised severally since 1999. However new insights to some of the time worn concerns began to emerge when the Justice Muhammad Uwais led Electoral Reforms Committee (ERC) submitted its Report. The Report which was based on widespread consultations and public hearings drew instant national attention not just because it highlights what is wrong with Nigeria's electoral system and proffers solutions but also because it re-enforces the need to reform the 1999 Constitution. Besides the Uwais Report, a lot of the national debate is being devoted to issues that emerged from hindsight after the 2007 elections with the litigations that followed many results. There is for instance the question of the real tenure of a governor whose election victory is revalidated by a court midway into his or her term, and also the seeming dissonance in the judgments of different Election Appeal Courts even when the facts are similar. There are strong arguments in favour of placing a time limit on election cases and swearing in elected persons only after the cases have been disposed of. Many commentators seem to be in favour of stringent constitutional provisions against defection from one party to the other by elected persons. Although media reports on women's voices have been few, the issues of women's rights as Nigerian citizens, their rights as wives and mothers, their rights to health, the issue of gender based affirmative action, discrimination and formal gender equality remain as germane as they were in 1999.

PURPOSE OF STUDY: The purpose of the study is to find out the topical issues in the current national debate on constitutional reforms in order to reflect their gender perspectives in the proposed Memorandum by Gender and Development Action (GADA) to the National Assembly.

METHODOLOGY: The study is a qualitative desk top research based on the contents of randomly selected issues of seven national newspapers covering a period of 20 months from January 2008 to August 2009. The newspapers are, The Guardian, The Punch, The Vanguard, The Sun, The Nation, The Spectator and Thisday.

INTRODUCTION:

The late renowned Constitutional Lawyer and women's rights activist Prof. Jadesola Akande wrote, "*The exclusion of Nigerian women from constitution making predates the 1999 constitution. Constitution making in the past had systemically and deliberately excluded women. For example, beginning from 1960 with independence Constitution, women had been virtually excluded simply because they were not in the legislative bodies. The constitution delegation from Nigeria to Britain that preceded that Constitution had only three women nominated by the Political Parties. The Republic Constitution of 1963 was the same. All the Constitution drafted during the military regimes, to all intents and purposes, excluded women. The few women appointed into the drafting /review Committees during the military years lacked the capacity to make the impact because they were very few and there were not numerous constitution-drafting bodies, except on the basis of speculation by the press.*"ⁱ

Nigeria's leaders tend to treat history with levity; and as a result they learn nothing from the past and forget nothing. Public policies, usually formulated by recycled public office holders, are not much more than past mistakes embellished to look like new solutions to perennial problems. In many respects official ways of doing things have not changed substantially since colonial days. Because government and the governed are still perceived in terms of rulers and subjects; the top to bottom approach to national issues persists. Most policies are formulated and are implemented without due consultations with those who are to be affected by the actions. The limitations imposed by this faulty system have been most glaring in the making of successive constitutions for Nigeria.

The constitution of a country sets the parameter for the coming together of the different components of the nation, and defines the principles for the evolvement of a cohesive political entity. For this reason, certain principles are essential for the making of a constitution that would be acceptable to the majority if not all the constituent units of the nation. The Citizens' Forum for Constitutional Reforms,(CFCR) a Coalition of civil society organisations that is at the forefront of the campaign for a more acceptable Nigerian constitution has identified these principles as exclusivity, diversity, participation, transparency and openness, autonomy, accountability and legitimacy. Where most of these ingredients are lacking in the process, the resultant document is most unlikely to stand the test of time; and this has been the Nigerian experience. When put to the test of the above seven principles Nigerian constitutions since Lord Lugard's administration have been faulted and this to a large extent accounts for the dysfunction of the polity and the mounting complaints from various groups.

Women in particular have faulted the 1999 Constitution for its failure to take into account the gender based disparities that have remained a constraint to balanced national development. These disparities which exist in many spheres of life are most glaring in the areas of decision-making and political participation. Based on the expectation that a truly democratic representative government would best advance their interests, women's groups mobilized for participation in the civilian rule. General Abdusalami Abubakar's Transition Programme gave them the leverage to organise awareness programmes such as the Women in Public Life summits initiated by Gender and Development Action [GADA] that culminated in the drafting of A Political Agenda for Nigerian Women. The National Democratic and Equality Vanguard [NADEV] a political association, was also launched under the leadership of late Professor Jadesola Akande. During the debate on the draft Constitution these groups called for the provision of the principle of Affirmative Action so that in the event of inadequate elective positions, it could be used to create gender balance through appointive office. However, the Constitution that became operational in May 1999, was silent not only on the issue of gender based Affirmative Action but also on harmful traditional practices. Apart from the provision on non-discrimination on the basis of race, religion or sex, the 1999 Constitution of the Federal Republic of Nigeria is blank on the specific issues of women's rights. Even though it provides for the federal character principle as a means of closing developmental inequality that exists among the different geo-political zones, the constitution fails to recognize or address gender disparities.

Before the 1998-1999 elections many observers believed that women stood a good chance of building on the relatively impressive performance experienced during the elections supervised by Generals Babangida and Abacha respectively. The gender blindness of the constitution is not a surprise to many observers given the virtual exclusion of women from

the process of making it. The Sani Abacha regime, which started the process in 1995, erred in the first instance when it set up the constitutional conference with only eight women out of 369 delegates. In constituting the membership of the forum, the regime made provision for 96 appointees which could have served as a leverage to include a sizeable number of various interest groups, and more especially women. Instead persons who had been described as friends and stooges of the former military ruler were hand picked. Worse still, the General Abdulsalam Abubakar Constitution Debate Committee that was set up to collate and coordinate views on the draft 1995 Constitution had only four women.

There was palpable relief when former President Olusegun Obasanjo set up in October 1999, an 18 member multi party Technical Committee to review the Constitution. The number was later increased to 24 and included only four women. In December 1999 when the call for memoranda by the Presidential Technical Committee on the Review of the Constitution was published in the newspapers, the National Centre for Women set up a team of experts made up of men and women from Civil Society Organisations to study the Constitution and recommend the sections that needed to be addressed in order to ensure that the language as well as issues concerning women were addressed and reflected in the proposed amendments.

According to Akandeⁱⁱ even though that effort led for the first time, to the preparation and presentation of a memorandum of Nigerian women's position on the 1999 Constitution, the minority report on women's rights and the Gender Equity written by six members of the of the Presidential Review Committee, it did not form part of the issues listed public debate /comments on the Constitution review process.

In 2005 President Obasanjo convoked a National Political Reform Conference (NPRC) with 400 delegates. When the names of the delegates were announced, there were only 29 women which represented about 7% of the total number. Women NGOs organised under the Women's Organisation for National Representation and Cohesion (WORNACO). The organisation which is now a Coalition of 203 civil society organisations held a summit to seek consensus on the agenda for women in the NPRC. The result was a Womanifesto- a charter on women's demands. Unfortunately the 29006 attempt at Constitution Amendment which was marred by the third term agenda of the president, took little cognizance of all the memoranda on women's issues. The list of 100 areas for amendment published by the National Assembly before the process was truncated had only two items related to women's demands.

NATIONAL DISCOURSE

Although many Nigerians received with initial skepticism President Musa Yar' Adua's avowed intention to amend the Constitution, public interest become progressively enkindled with the setting up of the Joint Committee on Constitution Review by the National Assembly on January 7, 2008. The Nigerian Bar Association kicked off National discourse a few days later when their then President Mr. Olisa Agbakoba (SAN) called for an institutionalized periodic review of the Nigerian Constitution. He also made a case for piecemeal amendment of the constitution which he said was preferable to a wholesale reform. In his opinion the key areas for consideration were the conferment of sovereignty to the people of Nigeria, the conferment on every citizen the right to go to court over breach of the constitution and also the provision of constitutional sanctions for unconstitutional take over of government.ⁱ Elder statesman, Chief Anthony Enahoro

ⁱThe Guardian, Thursday, January 10, 2008. page 7

stepped up the discourse immediately by calling for the greater participation of ordinary Nigerians in the process of Constitution review. He said, “It is true that members of the National Assembly are representatives of the people, there are views that are better expressed by the man on the street and in the village than elected representatives.”ⁱⁱ The Lawyer/Activist, Chief Gani Fawehinmi, shares Enahoro’s views. In Fwehinmi’s opinion, the main problem with the 1999 Constitution is lack of due process in its making. He regards the method by which it came to being as a fundamental flaw. He therefore advocated for a new Constitution which should be made by representatives of a cross section of groups and interest and “be presented to the Nigerian people in a referendum.”ⁱⁱⁱ

In an interview published in *Thisday* of January 15, 2008, the immediate past Chief Justice of the Federation, Justice Salihu Modibo Alfa Belgore, on his part noted that there are aspects of the constitution that need urgent attention for democracy to thrive in Nigeria. He condemned in no uncertain terms the extant provision which confers the power to appoint the Chairman of the Independent Electoral Commission (INEC) on the President. The retired Chief Justice argued that such can never make for true independence of the electoral umpire or free and fair election. He also called for the amendment of section 292 of the Constitution that deals with the removal of judicial officers from office. Another legal luminary, and former President of the World Court, Prince Bola Ajibola raised an issue of fundamental importance in the fight against corruption by calling for the removal of the Immunity Clause as contained in Section 308 of the Constitution, saying that the section had “given rise to unbridled corruption.”^{iv} The Judge however also joined the handful of Nigerians calling for a Constitutional role for Traditional Rulers. This was re-echoed by the Senate President, David Mark later in August as reported on page 16 of *Thisday* of August 2008. On his part, the former Minister of External Affairs, Prof. Bolaji Akinyemi was more concerned about fostering the band of Federalism. One of the ways to do this according to him is to locate each of the three arms of government in different part of Nigeria.^v

Also in August 2008, Law Makers from the South South geopolitical zone held a retreat in Port Harcourt where they canvassed a return to the 1963 Constitution “that allowed 50 percent derivation principle for the Federating units,”^{vi} thus maintaining their traditional stand on true Federalism. That position was soon reechoed by the Governor of Ogun State in an interview. The Governor of Lagos State, Babatunde Fashola, had earlier in the year referred to true federalism as “the basis for true national integration and development.”^{vii} And True Federalism remains the most popular demand of the peoples of Southern Nigeria.

The priorities for political parties seem to be different. *Thisday* of February 11, 2008 reported on page nine that political parties under the auspices of Inter-Party Consultative Committee, resolved to press for a seven-year single term of office for President and Governors, saying this would help reduce the negative impact of incumbency factor during election.

ⁱⁱ *Thisday*, January 11, 2008

ⁱⁱⁱ *The Guardian*, May 27, 2008, page 113

^{iv} *The Sunday Punch*, January 13, 2008 page 11

^v *The Punch*, February 29, 2008, page 8

^{vi} *Thisday* August 11, 2008 page 10

^{vii} *The Punch*, January 2, 2008, page 9

A new impetus was given to the debates following the pronouncements at the launch of a book by renowned Constitutional Lawyer, Prof. Ben Nwabeze. Several eminent Nigerians used the platform to draw attention to what in their opinions needed to be amended.^{viii} Prof. Iste Sagay, also a Constitutional Lawyer emphasized the issues of true Federalism, separation of powers and rule of law. On his own part the celebrant, Prof. Nwabeze, said the Constitution should be amended to allow majority of votes, not legal technicalities to decide the winner in any disputed election. Understandably, the former Governor Orji Uzor Kalu who had been in a battle with the Economic and Financial Crimes Commission (EFCC) even while he was in office canvassed the retention of the Immunity Clause that currently shields the President and Governors from prosecution while they are still serving. Towing ex Governor Kalu's line, the former Governor of Lagos State and also Activist/Lawyer, Femi Falana, warned against the removal of the Immunity Clause, as it would create room for frivolous litigations that are likely to hamper governance.

But on the part of Chief G.O.K. Ajai (SAN) the burning issue was the need for a return to the old order when Judges were paid from the consolidated revenue.

Another significant contribution to the debate was from the largest Civil Society Coalition the Transition Monitoring Group (TMG) consisting of over 200 NGOs waded into the discourse calling for the amendment of Sections 285, 233 and 246 of the Constitution in order to ensure uniformity in the judgments of Appeal Courts on disputed election results.^{ix} According to the TMG Chairman, Mr. Festus Okoye, the call became necessary owing to the confusion arising from the judgment of the Court of Appeal concerning the Governorship elections in Sokoto and Kebbi States where there were different judgments despite similar facts in the two cases.

The example of the TMG was later followed by the Coalition for Change (C4C) at the end of a stakeholders conference it jointly organised with the National Human Rights Commission (NHRC). It issued a communiqué calling for the excision of Section 6(6) (c) from the Constitution in order to make the Socio Economic Rights enumerated in Chapter 2 of the Constitution actionable in court.

The Patriots is a loose association of eminent Nigerians whose creation was facilitated by the late legal luminary Chief F.R.A. Williams (SAN) during Obasanjo's regime. The group has never shied away from controversial and contentious national issues. In an interview published in the Guardian of March 27, 2008 Chief Ladi Williams the Secretary of the organisation endorsed the call for the immediate review of the 1999 Constitution disclosing that the Patriots had earlier prepared a proposal recommending that the Country to be divided into six regions along the lines of the current geopolitical zones.

Also lending its voice to idea of restructuring, the apex Igbo Socio-Cultural Organisation Ohaneze Ndigbo used the forum of Igbo Day to canvass for restructuring of the country along the six region line and also for True Federalism.^x

Despite the obvious benefits of the Federal Character principle, many Nigerians believe it is obnoxious. One of them is the Prelate of the Methodist Church of Nigeria, Dr. Ola Makinde who said in a chat with journalists, that the principle of Federal Character denied people who were qualified the opportunity to serve the country.^{xi}

^{viii} The Guardian, April 22, 2008, page 8

^{ix} The Punch, April 21, 2008, page 9

^x Thisday, October 3, 2008, page 20

^{xi} The Punch, June 29, 2009, page 10

CONSTITUTION AND ELECTORAL REFORMS

Early in President Umaru Musa Yar' Adua's regime, he set up a 22 person Electoral Reform Committee to look into the Nigeria's Electoral System and practices and recommend appropriate changes. The Committee submitted a report in which it recommended a comprehensive overhaul that would include the change of the electoral system from First Past the Post to Proportional Representation. Other recommendations included gender based affirmative action in appointive and elective positions, party reforms, and public participation in appointment of INEC Chairperson.

Owing to the radical nature of some of the recommendations, the White Paper Committee set up by government rejected many of the suggested changes. More significantly, it turned out that a good number of the ERC recommendations would require Constitutional to legalize them. Instantly the Uwais Report as the ERC report is popularly known became the rallying point for vigorous national discourse on the future of the Nigerian polity. Since the submission of the report, its content has indeed dominated debate on Constitutional and Electoral Reforms. The Punch of March 30, 2009 devoted one page to the issues arising from the report; some of which include appointment of INEC Chairperson, abolition of State Independent Electoral Commission (SIEC), and conclusion of all litigations arising from disputed election results before swearing in of elected person, and independent candidates.

Amid the clamour for the wholesale implementation of the Uwais Report, there were constant calls for creation of more States. Senator Ikechkwu Obiora representing Anambra South Senatorial District was reported in the Spectator of April 24 – 30, 2009, as calling for the creation of two more States in the South East.

Discussion on the Uwais Report continued to dominate despite Federal Government's attempts to justify the rejection of some of the recommendations. On the appointment of INEC Chairman through a process that would involve both political parties and the National Judicial Council (NJC) government hinged its rejection on the doctrine of separation of powers. However, many proponents of the Uwais Report insist that the role of the NJC as the report recommended does not interfere with the President's power to appoint. This is because the NJC is only to recommend the public nominee to the President.

So far, gender perspectives to the issues had been grossly under played. However the Nation of April 29, 2009 carried an interview with the Executive Director of Gender and Development Action (GADA) Ada Agina- Ude in which she later called for the inclusion of gender –based affirmative action in the constitution as a temporary measure to increase women's political participation. She also raised some the issue of ensuring to total abrogation of child marriage by expunging Section 29 (4) (a) of the 1999 Constitution.

This was a time when the revalidation by the courts of some disputed gubernatorial election results, threw up the issue of the actual tenures of the governors concerned. According to Section 180 (2) of the Constitution, a Governor's tenure begins when he is sworn in. Mr. Onyema Omenuwa, a lawyer with Olisa Agbakoba Chambers was reported in Thisday of May 19, 2009, page 8 to have argued that a re-run for such governors would be another form of tenure elongation. Obviously this particular issue will gain more prominence when the 2011 elections draw nearer.

As expected, the Uwais Report on Electoral Reform continued to dominate attention especially when the Senate threw out the Presidents Bill that seeks to create Political Parties Regulation and Registration Commission (APPRC) as recommended in the Report.^{xii}

In a statement issued by Conference of Nigeria Political Parties (CNPP) as reported in Thisday, May 14, 2009, page 10. The organisation insisted that the NCJ must be in charge of selecting the INEC Chairperson. The debate on these electoral issues become fiercer when on April 30, 2009 the President sent Seven Bills to the National Assembly seeking to amend the Constitution to fall in line with the government's selectively approved issues and modes of electoral reform. Among the approved areas was the setting up of the PPRC which was mainly of concern to politicians.

For many Nigerians other important issues include Residency Right and defection of serving elected person from the party that gave them the platform. The question of defection came to prominence when Bauchi State Governor Isa Yuguda who was elected on the platform of the ANPP defected to PDP and threatened to impeach his Deputy Garba Gadi if he did not follow suit. In the midst of the agitations that followed the defections, the Deputy Senate President Ike Ekweremadu stirred the hornet's nest on July 31, 2009 when he announced that it would be impossible to create new States given the rigorous process stipulated in Section 8 of the 1999 Constitution.

When it was becoming obvious that the government was doing everything to have its way in the reform process, eminent politicians and political activists got together to form the Coalition of Democrats for Electoral Reforms (CODER). The group which has been demanding the wholesale adoption of the Uwais Report was at the House of Representative Public Hearing on Constitutional and Electoral Reforms which held on Wednesday August 12, 2009 to make their views known. The former Vice President Atiku Abubakar also on that occasion demanded for the independence of both INEC and Police. Other organisations that stand on wholesale implementation of Uwais Report include Alliance for Credible Elections (ACE)^{xiii}

EMERGING ISSUES

Ahead of the inauguration of the National Assembly Joint Committee on Constitution Review the Thisday of October 26, 2008, reported that the Senate President, David Mark had two weeks earlier listed areas of the 1999 Constitution that in the view of the Senate should be considered for review. He mentioned the following 15 areas:

- Whether and how the Fundamental Obligations of the Government could be made binding and actionable.
- Whether or not the scope of the rights of citizens could be expanded beyond its present confines.
- Ways and means of attaining the complex autonomy and independence of the legislature.
- Uniformity/Harmonization of tenure for Chief Executives at Federal, State and Local Governments.
- The issue of removal or retention of immunity clause as it pertains to Chief Executives at all Tiers of Government

^{xii} The Punch, May 27, 2009, page 8

^{xiii} Thisday, August 27, 2009, page 23

- The desirability or otherwise of the subsistence of State Independent Electoral Commissions.
- The autonomy of Independence of National Electoral Commission
- The autonomy or otherwise of Local Government Councils as truly third tier of Government would be reviewed as well as where to locate the powers of Local Governments.
- The abrogation or otherwise of State/Local Government Joint Account
- State Creation
- Devolution of powers
- Revenue sharing and related matters
- Election matters and litigation processes
- Mineral resources (right of exploration and exploitation)
- True Federalism within the Nigerian Nation.

It is instructive that the really perplexing issues arising from the 2007 experience and the court cases hardly featured in Senator David Mark's list of priorities. Among these emerging issues are:

- Tenure of Governors whose elections were revalidated after litigations
- Lack of uniformity in Appeal Court verdicts
- Appropriate time to swear in elected persons- before or after disposal of court cases
- Putting a reasonable limit to the period of post election litigations
- Defection by elected persons from the parties in which they won elections

An examination of the issues above, both the Senate's priorities and the emerging issues from public discourse, there is an absence of definitive women's issues. However, the real matter for concern both for women and the nation as a whole is the virtual absence of gender perspectives in the reportage on Constitutional Reforms.

RECOMMENDATIONS

With regard to politics and women's participation in governance, the Uwais Report adequately deals with Affirmative Action and internal democracy within political parties which are essential for increasing women's presence in public office. It also highlights the advantages of Proportional Representation as an electoral system which allows for the representation of parties in parliament according to the percentage of votes they get in elections.

Consequently, the following areas should continue to take prime position on the agenda on women's issues in relation to the 1999 Constitution:

The Language of the 1999 Constitution

The language of the constitution should be gender sensitive. As a result, All the sections where the masculine is used as a generic pronoun to denote men and women should be amended to read "him/her" or "the person".

Residency Rights

The 1979 Constitution introduced the concept of indigeneity into Nigerian public law. It stated that the indigeneity of a state is conferred on a person whose parents or grandparents was a member of a community indigenous to a particular state. Section 147 of the 1999 Constitution provides that the President shall appoint at least one Minister from each state who shall be an indigene of such a state. Meanwhile, the problem of indigeneity has caused

a lot of problems in Nigeria. Women who are married to men from another state suffer worse dilemma, as they can neither lay claim to the state of their parents nor that of their husbands.

Citizenship

- Section 25-33 should be amended so that any man (foreigner) who is or has been married to a Nigerian woman will be eligible for citizenship by registration just as any woman who is or has been married to a Nigerian man is eligible for citizenship by registration.
- A married woman shall also be deemed to belong to the state or be part of her husband's state.
- Section 14 which provides that the composition of government of the Federation or a State or Local government in the conduct of its affairs should be carried out to reflect federal character in the case of Federal Government and diversity of peoples in State and Local Governments should be made justiciable. Subsection 5 should be added to section 14 to give 30 percent proportional representation to women.

Health

- The right of women to pre-natal and post and natal care should be enshrined
- Section 29; subsection 4(b) which provides that any woman who is married shall be deemed to be of full age should be deleted.

Discrimination and Gender Equality

There should be a clear provision in the constitution affirming gender equality and non-discrimination based on sex. There should be provision prohibiting any culture, custom or tradition, which is against human dignity. In this regard, section 42 should be amended as follows:

- Section 34 on the right to the dignity of the human person should be strengthened. Subsection (a) should read: No person shall be subjected to torture or to inhuman or degrading treatment whatsoever; the subjection of any man, woman or child to torture, or degrading treatment on the basis of culture, custom, tradition or religion shall be prohibited. Subsection (d) should be added and it should read: No person shall be subjected to any law, culture, custom, tradition, religion or gender practice which undermines his or her dignity, welfare or interest.
Section 37 on the right to private and family life should be strengthened TO reflect equity and equality.

Independent Commissions

The 1999 Constitution makes provision for Federal Executive bodies such as Federal Character Commission, Federal Civil Service Commission, Federal Judicial Service Commission, Police Service Commission etc.

These bodies are dependent on the Executive for appointment, direction and funding. There is the need for constitutionally entrenched independent commissions independent of the executive. The funding of such commissions should be from the consolidated fund. The appointment of the members should be subjected to an approval mechanism that is open and transparent.

INEC and the Political Party Registration and Regulation Commission (PPRRC) will take care of women's interest if run along the recommendations of the Uwais Committee

Gender and Social Justice Commission

A Gender and Social Justice Commission would ensure gender equity and social justice.

Its functions should include:

- To promote gender equity and ensure the establishment of social justice in all spheres of life
- Ensure that all discriminatory laws, policies and practices that are in conflict with basic principles of equality and social justice should be repealed
- Monitor the observance of social and economic rights
- Monitor all appointments to ensure that they reflect the principle of federal character or gender balance
- Monitor the implementation of social and economic rights.

Independent National Electoral Commission

The third schedule should be amended as follows:

- Action to ensure gender balance in the appointment of members and Chair of the INEC in line with the recommendations of the Uwais Report
 - Establishment of Political Party Regulation Commission
 - Affirmative Action in party executive position
 - Proportional Representation Electoral system and Affirmative Action in party lists
- Section 221-229 should be amended to reflect the suggestion that members of the commission should be non-partisan.

Social and Economic Rights

The 1999 Constitution provides for social and economic rights in sections 13 -24 (chapter two). These include the right to engage in economic activities, maximum welfare and happiness, suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits, welfare of the disabled, adequate medical and health facilities and free education at all levels including free adult literacy programme. But the provisions are not justifiable. This means that one cannot go to the court to claim damages for breach of the provisions.

- Additional social and economic rights should be entrenched in Chapter Four of the constitution and made justiciable. The rights to be included are:

Spousal Rights

A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.

The National Assembly shall, as soon as practicable after the coming into force of this constitution, enact legislation regulating the property rights of spouses.

With a view to achieving the full realization of the rights referred to in subsection (2) of this section:

- A. spouse shall have equal access to property jointly acquired during Marriage; and
- B. assets which are jointly acquired during marriage shall be distributed Equitably between the spouses upon dissolution of the marriage.

Equality of Sexes, Non Discrimination Inclusion of a Gender Equality Clause in the Constitution

The essence of a gender equality clause in a constitution is to set the stage for equality of the sexes and also give more teeth to any provision on non-discrimination on the basis of biological differences. In that case it is essential to guarantee women full and equal dignity of the person with men. This should go together with a provision that ensures that laws, cultures or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited. In furtherance of this the state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them realize their full potential and advancement.

Given the numerous instruments centered around women's rights such as CEDAW and the Declaration on the Elimination of Violence Against Women it is necessary to have specific provisions to protect women's rights, taking into account their unique status and natural maternal functions in society. And in the area of political, economic and social activities it is imperative to ensure equal opportunities.

The Following Clauses are essential for gender equality

- Women shall be accorded full and equal dignity of the person with men.
- The state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them realize their full potential and advancement.
- The state shall protect women and their rights, taking into account their unique status and natural maternal functions in society.
- Women shall have the right to equal treatment with men and that right shall include opportunities in political, economic and social activities.
- Without prejudice to article 42 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.
- Laws, cultures or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.

Culture and Religion

Constitution should provide that

- Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution.
- All customary practices which dehumanize or are injurious to the physical and mental well-being of a person are prohibited.

Rights of Mothers

Constitution should provide that

- Special care shall be accorded to mothers during a reasonable period before and after childbirth; and during those periods, working mothers shall be accorded paid leave.
- Facilities shall be provided for the care of children below school-going age to enable women realize their full potential.
- Women shall be guaranteed equal rights to training and promotion without any impediments from any person.

Affirmative Action and Electoral System

Affirmative action is intended to supplement non-discrimination; it is a broad term encompassing a host of policies that seek to support weak groups in society.

- An inclusion of an Affirmative Action clause to close the gender gap in decision making and political participation
- A change in the electoral system from First Past the Post or Majoritarian to List Proportional Representation, a system that favours numerical and social minorities. (We endorse the recommendations of the Uwais Committee) on gender –based affirmative action to close the gaps in political participation
- An amendment of section 12 of the 1999 Constitution to make it easier for Nigeria to domesticate international conventions such as The Convention of the Elimination of all forms of Discrimination Against Women (CEDAW), Beijing Declaration and Platform for Action, (PFA) and the Declaration on the Elimination of Violence Against Women and the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa

Fourth Tier of Government

- The creation of a fourth tier of government to be constituted through a zero party system entirely formulated by the people in the locality so as to create more opportunities for women and other minority groups.

ⁱ Akande, Jadesola (2008) Gender and the Constitutional Reform Process: Imperative of a Dialogue. Page 3

ⁱⁱ Ibid, page 4