

Research on the current issues in the review of the 1999 Constitution of the Federal Republic of Nigeria from gender lens

The 1999 Constitution of the Federal Republic of Nigeria was put together by a 25-member 'Constitution Debate Collating Committee' which was headed by Hon. Justice Niki Tobi of the Court of Appeal (as he then was). The Committee was set up by General Abdulsalam Abubakar regime in November 1998 solely to organise nationwide consultations on the 1995 draft Constitution.

The Committee was given two months to complete its assignment, so it divided the country into zones, called for memoranda, organised debates, had special hearings and travelled to selected States, to listen to views from a wide range of groups. Nigerian women from different groups and organisations submitted memoranda urging the amendment of sections of that constitution that were discriminatory against women. Members of that committee made it clear that most of the proposals from the women's groups were integrated into the report. However, the Constitution of the Federal Republic of Nigeria (Promulgation) Decree no 24 of 1999 stated that the PRC made 'such amendments as were deemed necessary in the public interest and for the purpose of promoting the security, welfare and good governance..... of the people of Nigeria' In the end none of those issues raised by the women saw the light of the day or were reflected in the 1999 Constitution.

The process of making the 1999 constitution was highly flawed because the process allowed only limited consultations with the populace and also that the provisions are not gender sensitive. The 1999 Constitution has a patriarchy history like other constitutions before it both pre-colonial and post-colonial constitutions. In the pre-colonial constitutions, it was the 1954 Lyttleton constitution which was the fourth colonial constitution that allowed adults males and females in the Eastern and western Nigeria to vote unlike their Northern counter parts who were not allowed to exercise their electoral right. Indeed it was the 1979 constitution, the third post-colonial constitution that allowed Nigerian women in the North to vote and be voted for. The flawed and discriminatory nature of 1999 constitution both in the making process and in content lay the basis for the call for its review.

The unanimity with which all Nigerians condemned the 1999 constitution, calls for a review process which departs fundamentally from Government's elitist and restrictive approach. There have been various attempts by both the Executive and Legislative arms of government and Civil Society Organisations since 1999 when the Constitution was promulgated to review the 1999 Constitution of the Federal Republic of Nigeria. Below are some of the attempts by the Government and CSOs to review the 1999 Constitution:

In acknowledging the chorus of disapproval that has trailed the evolution and contents of the 1999 Constitution, the then President Olusegun Obasanjo inaugurated the Presidential Committee on the review of 1999 Constitution in 1999. The then National Assembly followed suit by establishing a Committee to review the 1999 Constitution in 2000. There was also the Political Reform Conference in 2005.

The first formal initiation of the dialogue process for constitutional reform by the Civil Society can be traced back to June 30-July 2, 1999, barely one month after the inauguration of the civilian regime when Centre for Democracy and Development in Nigeria, (CDD) a leading non-governmental Organisation in West Africa organised a conference on the 1999 constitution and the future of Democracy in Nigeria to set in motion the process to amend the constitution, at the end of the

conference, Citizens Forum for Constitutional Reform (CFCR), a coalition of Civil Society Organisations committed to constitutional reform was formed. The coalition has been leading the debate on constitutional reform in Nigeria and has produced a modal Constitution. The forum held several meetings to work out strategies for involving critical constituencies, communities and interest groups in the constitution reform process. The work of the forum was guided by the principles of inclusivity, diversity, participation, transparency, accountability, autonomy, legitimacy and accessibility. The forum agreed on the following nine critical areas as the main focus of its intervention in the constitution reform work:

1. Citizenship and Residency Rights
2. Federalism (to address the over-concentration of powers at the centre)
3. Engendering the language and content of the Nigerian Constitution
4. Fiscal Federalism/Resource Control
5. Constitutionally entrenched independent commissions
6. Freedom of Association and Political Parties
7. Social and Economic Rights
8. Access to Justice and Rule of Law
9. The role of the Security sector

In addition to the CDD initiative the Nigeria labour Congress (NLC) led an initiative, that led to a coalition called the Civil Society Pro-Democracy Network. This exercise of the NLC led to the publication of Democracy Report 2001, included in the six sections of the report is the Constitutional Reform Committee, which presented its draft report that was debated and at the second Civil Society Pro-Democracy Summit held March 20-21, 2002 at Abuja.

Since then, many Civil Society Organisations have been involved in the constitution reform dialogue. The National Assembly latest attempt to review the 1999 Constitution by inaugurating a joint Committee of both the Senate and the House of Representatives in 2008 to review or reform the 1999 is one of the several attempts made at reviewing or reforming the 1999 constitution by the Legislative arm of the government.

This work looked at the critical areas of the on-going constitution review or reform process from gender lens. There have been a number of efforts to engender the constitution since 1999. These include the meeting of the Women's Consultative Caucus (WCC), there was also the meeting organised by the National Centre for Women Development in January 2000, to review the 1999 Constitution and submit a report to the Presidential Technical Committee on the review of 1999 Constitution. The Citizens Forum for Constitutional Reform (CFCR) organised a colloquium on engendering the language and content of the Constitution. In addition, other groups since 1999 have produced gender perspectives on the constitution. The identified gender issues on the reform or review of the 1999 constitution of the Federal Republic of Nigeria by all the groups that have worked on engendering the 1999 constitution are as follows:

1. The language of the 1999 Constitution:

The language of 1999 Constitution is generally chauvinistic and gender insensitive. Although it has been argued in many quarters that the use of the word 'he' connotes both man and woman, this cannot be said to be true because this is a document that is supposed to be the people's document.

It smacks of discrimination against female sex, contrary to its own provisions of non-discrimination in section 42. As there is a new window opportunity for the review of 1999 constitution, there is urgent for women, women's representatives and their allies to start campaigning for the engendering of the language and the content of the 1999 Constitution.

2. Citizenship and Residency Rights:

Section 26 of the 1999 Constitution discriminates against women in the area of residency rights. Nigerian men, under the constitution have the right to acquire citizenship for their foreign wives by registration while Nigerian women cannot legally extend the same right to their foreign husbands. Section 26 further confers citizenship by virtue of registration on a person who is not a Nigerian by birth, if the President is satisfied that 'he is a person of good character.....has shown intention to domicile in Nigeria and has taken Oath of Allegiance prescribed in the Constitution'. The provision in section 26 states that the section shall apply to a foreign woman who is married to a Nigerian or any Nigerian child of full age and capacities born outside Nigeria whose grandparent is a Nigerian. This excludes a foreign man married to a Nigerian woman but applies to a foreign woman married to Nigerian man. The privilege in section 26(2)(a) which grants citizenship by registration to any woman married to a citizen of Nigeria is thus not extended to a man married to a citizen of Nigeria.

Furthermore, section 29(4)(b) dealing with renunciation of citizenship needs to be amended. It provides that 'any woman who is married shall be deemed to be of full age.' This is discriminatory as there is no similar provision regarding a man. Section 29(4) (b) encourages child marriage. There is also the issue of indigeneship or 'indigeneity' that works to deny women equal rights and equal opportunities in both in their state of origin or assumed husband's state. In the extreme cases, it renders women stateless as they are denied decision-making positions because they are married to men who are not of the same state of origin as them. This position also worsens the case of a foreign woman married to Nigerian.

Section (3) of section 42 which guarantees freedom from discrimination indirectly endorses discrimination. It provides that nothing in subsection (1) of the section 'shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the state or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in Nigeria'. The implication of this provision is that there can be a valid law or policy restraining the appointment of 'any' person e.g. a woman, to any office in the State or armed forces or even an incorporated company. This provision can be used to justify discrimination against a woman by an appointing authority.

The 1999 confers equality on all citizens of Nigeria irrespective of Ethnic group, place of origin, Sex, Religion or Political opinion. But it does not define discrimination against women. Section 42 of the Constitution is narrow and leaves room for discrimination against women. In engendering the 1999 Constitution in the review of 1999 constitution, efforts should be made to expand this section to ensure that gender equality is incorporated into the constitution, and a clear definition of discrimination adopted. Provision should be made for the establishment of a Gender Equality Commission that will be independent and autonomous.

3. Social and Economic Rights:

The Chapter 11 of the 1999 Constitution provides for social- economic rights purports to create equal opportunities for men and women, but it is not justiciable by virtue of the restrictions inherent in section 6(6) of the same constitution. Unfortunately, these are rights that embody the immediate needs of the people. The proposal to the review committee by women and their allies should include making this section justiciable.

4. Modification of Customary Laws:

In the principle of equality of men and women a section should be inserted in the reviewed constitution to outlaw any custom or tradition that discriminate against women because customary laws deny women of the right to life, right to equality, right to inherit property, right to bodily integrity and dignity. The reviewed constitution should also repeal any state or federal legislation such as section 55 of the penal code that is discriminatory. Cultural/Traditional practices that dehumanise women should be prohibited.

5. Affirmative Action:

Affirmative Action refers to attempts to make progress towards substantive, rather than merely formal equality of opportunity for those groups, such as women or minorities, which are underrepresented in significant positions in Nigerian society, by explicitly taking into consideration the defining characteristics sex or race which has been the basis for discrimination. In Nigeria, starting from 1979 Constitution of the Federal Republic of Nigeria, equality as a principle was reflected in Chapter 11 on Fundamental Objectives and Directive Principles of State Policy. But how far have these provisions increased the representation of women, one may ask? Not much has been achieved as far as the issue equality or equal representation is concerned. This does not need to be the case since equality is an intrinsic part of equity and both are aspects of the philosophy behind the 1999 Constitution. It therefore goes to show that the pursuit for equity through affirmative action for women and other marginalised groups is legitimate. It is therefore proposed that this principle of affirmative action should be entrenched in the reviewed constitution, that women groups, their representatives and their partners should ensure that affirmative action should form part of the new constitution.

Interestingly is the fact that affirmative action is not new to Nigeria constitutional law. It is embodied in the Federal Character Principle which introduces equitable representation on the basis of geography and not composition of population.

Generally, in engendering the review of 1999 Constitution of Federal Republic of Nigeria in the on-going review or reform exercise what Nigerian women and their allies are asking for is a gender sensitive review of the 1999 Constitution, especially in the areas of language, citizenship and residency rights, social-economic rights, the need to have a clear definition of discrimination, abolition of discriminatory laws, practices, customs and traditions that deny women their rights. To insert Affirmative Action clause and need for gender and social justice commission in the reviewed constitution to address the issues of discrimination. It is stated that these critical areas of concern as identified by women groups, organisations, representatives and allies have been on-going conversation since 1999.