

## **[EMERGING ISSUES ON GENDER AND CONSTITUTIONAL REFORMS IN NIGERIA]**

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### **Emerging Issues on Gender and Constitutional Reforms in Nigeria**

#### **1. Introduction**

Nigeria's experience with constitutional reforms since the enshrining of the Clifford Constitution in 1922 has been one in which gender considerations have been missing. Gender disconnect in the 1999 Constitution therefore was typically playing to a historically led precedent. In other words, although Nigeria has managed to move from one constitutional arrangement to another, the near exclusion of almost half of the population in terms of adequate constitutional provision has been constant. Systematically "gender neutral" provisions are embedded in the constitution making it quite difficult for marginalized groups and vulnerable persons such as women and persons with disability to assert or receive their basic rights. Consequent upon this, many Nigerians are seen or see themselves as appendages or after thoughts in the affairs of the Nigerian state.

Generally, it has been agreed by most commentators and writers that that the 1999 Constitution is flawed. Recent opinion has reiterated this assertion that the 1999 Constitution contains several defects which need to be amended in order to facilitate our unfolding democratic culture.<sup>1</sup> Efforts to address this marginalization concerns have been on since 1999 without any success.

The process of amending the 1999 Constitution has been tortuous. Issues are constantly emerging and new areas that were not seen as important are becoming more pronounced. At inception of the discourse for a gender inclusive constitution, prominent issues that resonated were those relating to the language of the constitution, affirmative action, socio-economic rights, religion (especially with the introduction of Shari'a legal system in some states) and citizenship among others.

Although the above issues are still burning and agitations for them still very much desired, other issues are gaining prominence in the light of present reality that the National Assembly which has the mandate to alter the Constitution as enshrined in Section 9 of the Constitution may be unwilling to carry out a wholesome amendment process. Based on emerging scenario, which is, setting up of the Mohammed Uwais Electoral Reform Committee (ERC) and subsequently the sending of six bills to the National Assembly on Constitutional and Electoral Reform by President Umaru Musa Yar'adua, it is becoming obvious that any form of Constitutional reform at this stage will deal in the main those that have import on electoral reforms. Therefore issues emerging on the whole question of gender and constitutional reforms are basically electorally defined. According to the ERC Report, "there is the need for a thematic Constitutional review relating to all provisions that have direct bearing on the electoral process without waiting for wholesale review of the 1999 Constitution."<sup>2</sup>

#### **2. Gender, Constitutional and Electoral Reforms**

Women and other marginalized groups in Nigeria had agitated over the years for reforms in constitutional and electoral reforms. Specifically the agitations had centered on call for use of affirmative action as a means of addressing the unequal representation of these groups in political participation. 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.<sup>3</sup> A policy process of this kind allows for rules that have the objective of enhancing equal opportunity for individuals and the amelioration of the position of dis-empowered groups.<sup>4</sup>

Engagement by the various groups calling for Affirmative Action found voice in recent times with the setting up of the Uwais Electoral Reform Committee on 28<sup>th</sup> August 2007. Persons and groups interested in the issues of gender, constitutional and electoral reform utilized the space provided by this Committee to push across their issues. Thus for agitators of Affirmative Action, the electoral reforms process gave new opportunities for engagement to actualize their demands. During the Public Hearing of the Uwais Committee, a group known as the Gender Electoral and Constitutional Memoranda Committee (GEM) emerged. The group led by the Hon. Beni Lar, then House of Representative Chair on Women Affairs on 24<sup>th</sup> June 2008 at the ECOWAS Secretariat made a 44-point demand of Nigerian women on the Constitutional and Electoral Reforms through a memorandum submitted to the Uwais Committee. In her words: "No fewer than seven amendments need be made in the constitution as far as gender equity is concerned. In the case of the Electoral Act 2006, we are proposing a 37-point amendment".<sup>5</sup> The presentations of such groups during the sittings of the Uwais Committee without doubt resulted in progressive recommendations by the Committee. Some of such recommendations are that:

- a. Six persons of unquestionable integrity, 2 of whom must be women and 1 of whom must come from each of the six geo-political zones of the Federation and one nominee of Women Organizations (be appointed in the Composition of INEC Board)<sup>6</sup>
- b. In making appointments of Ministers and Commissioners, special consideration should be given to the female gender.<sup>7</sup>

The platform created by the electoral reform process gave rise to the emergence of new impetus for demands in gender and constitutional reforms.

### **3. Proportional Representation**

Part of the terms of reference given to the Uwais Committee was to examine the electoral systems relevant to Nigeria's experience and identify best practices that would impact positively on the quality and credibility of the nation's electoral process. With the foregoing in mind, a topic that has been latent in gender and constitutional reform discourse, proportional representation was ignited.

Nigeria practices the First-Past-The-Post or majoritarian or winner takes all electoral system. According to the 1999 Constitution Section 179 (2): A candidate for an election to the office of Governor of a State shall be deemed to have been elected where, there being two or more candidates (a) he has the highest number of votes cast at the election; and (b) he has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the State.<sup>8</sup>

With the wave of imposition of candidates by political parties, godfatherism, monetization of politics and general election rigging, many gender analysts have opined that women and other marginalized groups would perform better if the proportional representation system is introduced. Proportional representation is a system which allocates parliamentary seats to political parties in proportion to votes received by those parties. The key advantages of the system are that it results in few wasted votes, facilitates minority parties' access to representation and makes power sharing between parties and interest groups (women and persons with disability inclusive) more likely. According to the United Nations Millennium Development Goals Report 2008, Women are elected in greater proportional representation in electoral systems that include quotas.<sup>9</sup> According to the Uwais report, a study carried out by International IDEA in 1997 shows that the Proportional Representation system is increasingly becoming popular around the world. 45% of the countries studied were either using the proportional representation (35%) or semi proportional representation, suggesting an increasing movement away from pure plurality-majority systems. The foregoing no doubt resulted in many women groups calling for the introduction of the proportional representation system which was reflected in the recommendations of the Uwais Report as stated below:

- a. The Electoral Act 2006 should be amended to ensure that 30% of party lists under the proposed Proportional Representation system are reserved for women and 2% for physically challenged persons without prejudice to their right to also compete for representation under the First-Past-The-Post system.<sup>10</sup>

#### **4. Twinning**

One emerging issue of discourse in gender and constitutional reforms which came as result of the electoral reform process is the concept of twinning. The proponents of twinning are of the view that for gender parity and equality to be achieved in Nigeria's political participation, political offices are to be shared between men and women especially those positions that require assistants or deputies. For instance where the President is male, the Vice President must be female or where the Governor of a State is female, the Deputy Governor must be male. This view point received a lot of latitude with the recommendation of the Uwais Report on the Composition of Independent National Electoral Commission and A Bill for an Act to amend the Independent National Electoral Commission ACT CAP 15 LFN 2004 and for Other Related Matters Connected thereto sent to the National Assembly by President Umaru Yar'adua. The Electoral Reform Report recommended in 2.2.4.2 (b) for a Deputy Chairman – who must be a person of unquestionable integrity. It stated further that the Chairman and Deputy must not be of the same gender. The Executive Bill to the National Assembly sought the amended of the Third Schedule to the Constitution on Independent National Electoral Commission by stating as follows, Section 2 of the Principal Act is amended –

- a) By substituting the existing sub section 1 with the following –
  - “(1) The Commission shall consist of –
    - (a) A Chairman who shall be the Chief Electoral Commissioner;
    - (b) A Deputy Chairman who shall however not be of the same gender with the Chairman...”<sup>11</sup>

#### **5. Federal Character Act**

The 1999 Constitution of Nigeria provided for a Federal Character Commission in Section 153 as one of the Federal Executive Bodies. The composition and powers of this Commission is

contained in Part (1) of the Third Schedule to the Constitution. It is also provided in Section 14 (3) and (4) that the composition of the government of the Federation, state and local council respectively or any of their agencies and the conduct of the affairs of the Government at these levels shall be carried out in such a manner as reflect the federal character of Nigeria. This according to the Constitution is to ensure that there is no predominance of persons from few states or few ethnic or sectional groups in that Government or in any of its agencies. The provision on federal character is purely jurisdictional and sectional. There are emerging demands that federal character should go beyond jurisdiction and sections and also include sex. According to the proponents of this view, "sex has been identified as one of the lines along which Nigeria sectionalizes and diversifies. That is why **section 42** of the same constitution prohibits discrimination (exclusion) on the grounds of **sex**."<sup>12</sup>

Women in Nigeria constitute almost half of the population. However, their level of involvement in socio-economic affairs of Nigeria remains very low. This could be seen in the literacy rates for males and females. The national literacy rate for females is only 56%, compared to 72% for males, and in certain states the female literacy enrolment and achievement rates are much lower. For example, girls' net enrolment in Sokoto State is 15%, compared to 59% for boys.<sup>13</sup> Also the level of political participation in terms of elective and appointive positions has shown that women are significantly marginalized. For instance in a 109-member Senate, only 9 Senators are female, less than 10% of the entire Senate seats.<sup>14</sup> It is in line with these shortcomings that the Gender and Affirmative Action Coalition send far reaching recommendations in its Memorandum to the House of Representative Committee on Federal Character which if implemented will go a long way in addressing the marginalization of women and thus address the gender disconnect in terms of political appointments and employments.

## 6. Conclusion

There is no gainsaying that the 1999 Constitution needs to be amended. The amendment of the Constitution should not just be done for the sake of amendment but the concerns of Nigerians especially women who constitute about half of the population must be taken into consideration. There are serious gender gaps in the Constitution that needs to be addressed. Without losing sight of previous concerns by women on issues like the language of the Constitution, citizenship/indigeneship questions, affirmative action and religion, new concerns such as the electoral system, proportional representation, twinning and so on must be given a pride of place. Nigeria must join the league of countries who are finding it more appropriate in giving their citizenry (especially women) greater role in economic and political life. This is one sure way of Nigeria attaining the Millennium Development Goals (MDGs) and realization of its Vision 20:2020 goal.

## References

<sup>1</sup> Report of the Electoral Reform Committee

<sup>2</sup> Ibid, pg. 75

<sup>3</sup> Ada Agina Ude, "The 1999 Constitution, Gender and Political Participation in Gender Gaps in the 1999 Constitution of Nigeria, ed. By Abiola Akiyode-Afolabi, pg. 100

<sup>4</sup> Ibid, pg. 101

<sup>5</sup> Report of GEM (unpublished)

<sup>6</sup> Report of the Electoral Reform Committee, pg. 26

<sup>7</sup> Report of Electoral Reform Committee, pg. 230

<sup>8</sup> Constitution of the Federal Republic of Nigeria, 1999

<sup>9</sup> Millennium Development Goals Report 2008

<sup>10</sup> Report of Electoral Reform Committee, pg. 229-230

<sup>11</sup> Executive Bill to the National Assembly on Amendment of INEC

<sup>12</sup> Gender and Affirmative Action Coalition Memorandum to the House of Representative Committee on Federal Character

<sup>13</sup> <http://bellevucollege.edu/liberalarts/sir/images/Nigeriafinal.pdf>

<sup>14</sup> <http://www.nassnig.org/senate/members.php>