



ELECTORAL HUB MEMORANDUM ON CONSTITUTIONAL REVIEW

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About the Electoral Hub

The Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), is a multidisciplinary strategic think-tank which seeks to provide solutions to improve the credibility and integrity of the electoral process. It is conceptualized to complement the roles and activities of the different institutions, stakeholders and drivers of the electoral process and governance. The Electoral Hub's aim is to strengthen electoral governance and accountability in Nigeria through the provision of data and critical analysis supporting the credibility and integrity of the electoral process. We believe that the integrity of the electoral process is crucial in improving the electoral governance architecture and democracy in Nigeria. We also believe in contextual analysis for solutions rooted in the principles of justice and equity

Our core values are knowledge-exchange, inclusion, justice, equity, transparency and accountability.

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Introduction

The ongoing constitutional review is an initiative by the National Assembly to amend salient parts of the 1999 Constitution of Nigeria that require attention. In view of this, public hearings are scheduled to hold in the six geo-political zones of the country on Wednesday, 26 May and Thursday, 27 May 2021. The issues for the public hearing include, among others, gender equity and increased participation of women, the federal structure and power devolution, local government autonomy, fiscal federalism and revenue allocation, establishment of state police, adjudication of election and pre-election matters, electoral reform, political parties, independent candidacy, socio-economic rights, residency and indigeneship, immunity, timeline for assent of Bills and Appropriation Bill, and state/local government creation.

In this light, the Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), presents this memorandum highlighting key issues that require attention in the constitutional review process.

Issues and Recommendations

Increased Representation of Women

The federal legislature in Nigeria is bicameral, with the Senate consisting of 109 members representing the states equally,¹ and the House of Representatives consisting of 360 members representing the states proportionally.² The state legislatures are unicameral with 24 to 40 members.³ Despite these provisions for representation in the legislatures, women are vastly underrepresented. According to a report by CDD, in the 2019 general elections women won just 5% of all contested seats.⁴ We therefore support the move to create additional special seats for women in the national and state legislatures as part of the constitutional review process. This is in line with practices in other countries around the world, such as Rwanda, South Africa, and Samoa, which use temporary special measures to promote women's representation in parliament.

¹ Section 48, 1999 Constitution of Nigeria (as amended)

² Section 49, *ibid*

³ Section 91, *ibid*

⁴ CDD, *Gendered Contests: Women in Competitive Elections*, <https://www.cddwestafrica.org/wp-content/uploads/2019/10/Women-in-Competitive-Elections.pdf>

The use of reserved special seats as a temporary special measure is particularly suited for our first-past-the-post (FPTP) electoral system. This can be illustrated with the example of Samoa, which uses reserved seats for women with its FPTP system. Since the introduction of this system, the Samoan Parliament has always had at least 10% of members of Parliament as women, thus raising women’s political representation in the country “above the regional Pacific average of 6.7% (excluding Australia and New Zealand)”.⁵ The creation of additional special seats for women is therefore likely to improve the dismal state of women representation in our legislatures currently.

Electoral Reform

The 1999 Constitution of Nigeria establishes the Independent National Electoral Commission (INEC) as a federal executive body.⁶ It also provides that the Chairman and members of the Commission shall be appointed by the President subject to confirmation by the Senate.⁷ Given the important role that INEC plays in organising, among others, presidential and legislative elections, it is improper that the members of the Commission are appointed by the President. We therefore recommend the amendment of section 154 of the Constitution to provide for the appointment of INEC Commissioners by an independent body. This will better protect the independence and impartiality of the Commission.

Another issue relating to electoral reform is independent candidacy. Independent candidacy is not currently allowed under our laws, because a political aspirant must be a member of a party and be sponsored by that party before they are qualified to stand for elections.⁸ The problem with this requirement is that it promotes partisanship and, in a situation where majority of the members of the legislature belong to the party of the President, ineffective scrutiny. In the Nigerian context, it has also led to a situation where parties are viewed purely as mechanisms to propel people into power, since there is no other way to get into office. We therefore recommend the amendment of sections 65(2), 106, 131, and 177 of the Constitution to the effect that a person need not be a member of a party or sponsored by that party to stand for presidential, governorship, or legislative elections. When there are more independent candidates in office, it is likely to result in higher efficiency and more effective scrutiny, since the officials will be free from partisan obligations.

⁵ Australian Government, *Case study: Women in Samoa’s parliament reach 10 percent*, <https://www.dfat.gov.au/news/news/Pages/women-in-samoas-parliament-reach-10-percent>

⁶ Section 153(1)(f), 1999 Constitution of Nigeria (as amended)

⁷ Section 154, *ibid*

⁸ Sections 65(2), 106, 131, 142(2), 177, and 187(2), *ibid*

Local Government Autonomy

The 1999 Constitution of Nigeria guarantees democratically elected local government councils.⁹ However, it does not indicate the term or tenure of these councils. The result is that many states hold local government elections whenever they please. For example, Borno State went for thirteen years before conducting its fourth local government election in 2020, while Anambra has held just two local government elections since 1999.¹⁰ Indeed, only FCT has had regular local government elections since 1999. There have also been examples of state Governors arbitrarily dissolving democratically elected councils and replacing them with appointed caretakers, in flagrant disregard of the Constitution. This practice occurred recently in Oyo and Katsina States, thus indicating the extent to which local government councils are at the mercy of state Governors. In order to improve the autonomy and efficiency of local governments, we therefore recommend the amendment of the Constitution to provide definite terms and tenures for local government councils just like other elective offices in Nigeria.

A related point is that the electoral management bodies responsible for conducting local government elections, the State Independent Electoral Commissions (SIECs), lack the funds and capacity to effectively conduct elections. The Constitution establishes SIECs as state executive bodies.¹¹ It further provides that Chairmen and members of these Commissions shall be appointed by the Governor of the State subject to confirmation by the State House of Assembly.¹² This role of Governors in appointing SIEC Commissioners further compounds their control over the Commissions. We therefore recommend the amendment of section 198 of the Constitution to provide for the appointment of SIEC Commissioners by an independent body. This will better protect their autonomy and increase their ability to successfully conduct local government elections.

Similarly, the Constitution should provide that SIEC funds should be paid directly from the consolidated revenue account directly to the Commissions just like it is done for INEC, instead of relying on state allocations.¹³ This will reduce the control that state governments have over SIEC funding, and also increase the Commissions' capacity to conduct local government elections.

Another issue regarding local government autonomy is revenue allocation. The Constitution provides that the amount standing to the credit of local government

⁹ Section 7(1), *ibid*

¹⁰ *Deepening Democracy: A Reflection on the 2020 Local Government Elections in Nigeria*, Electoral Hub Technical Paper 6/2021, <https://electoralhub.iriad.org/deepening-democracy-a-reflection-on-the-2020-local-government-elections-in-nigeria/>

¹¹ Section 197(1)(b), 1999 Constitution of Nigeria (as amended)

¹² Section 198, *ibid*

¹³ This would involve a replication of section 81(3) of the Constitution

councils in the Federation Account shall be allocated to the states, which will then allocate the revenue to the councils.¹⁴ This means that the local governments lack financial autonomy and are within the control of state Governors. allocate revenue directly to councils, thereby increasing their financial autonomy and reducing the control of state Governors over them.

As the lowest level of government which is closest to the grassroots, the importance of local governments cannot be overemphasised. It is therefore imperative to improve their autonomy and efficiency by making these alterations to the Constitution.

Judicial Reform

The Constitution provides for the establishment of National and State Houses of Assembly Election Tribunals which shall have original jurisdiction to hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly or State House of Assembly.¹⁵ It also provides for the establishment of Governorship Election Tribunals which shall have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State.¹⁶ Furthermore, the Constitution provides that the Court of Appeal shall have original jurisdiction to hear and determine any question as to whether any person has been validly elected to the office of President or Vice-President, or whether their term has ceased or their office is vacant.¹⁷

This increasing role of the judiciary in deciding election and pre-election matters has been referred to as the ‘judicialisation of politics’. This not only threatens the independence and impartiality of the judiciary, but also negatively impacts public opinion, as the judiciary might be perceived to be involved in partisan politics.

Indeed, it has also been pointed out that the increased adjudication of election matters has affected the independence of INEC, making it increasingly dependent on whatever the directive of the Court is, instead of the Commission’s own election timetable.¹⁸

All of these show that the increasing adjudication of election and pre-election matters is a threat to the effectiveness of democracy and elections in Nigeria. However, we recognise that due to the low level of intra-party democracy in Nigeria currently, there is need for aggrieved candidates to seek remedies through the courts. We therefore

¹⁴ Section 162(5)-(8), 1999 Constitution of Nigeria (as amended)

¹⁵ Section 285(1), *ibid*

¹⁶ Section 285(2), *ibid*

¹⁷ Section 239(1), *ibid*

¹⁸ Jude Tochukwu Omenma, Court Adjudications on Pre-Election Disputes in Young Democracies: The Impact on Electoral Management Body in Nigeria, 1999-2011”, *International Journal of Euro-Mediterranean Studies*, July 2019, page 128, <https://www.researchgate.net/publication/334760542>

recommend that while courts and tribunals can determine some pre-election and election issues, they should be prevented from determining disputes related to electing members of parties' executive committees, their principal members, or other governing bodies. This should reduce the litigious nature of the electoral process in Nigeria to some extent, until we reach a level where there is a high level of internal democracy within parties.

Increased Independence of Public Institutions

The Constitution establishes certain public institutions such as the Office of the Auditor-General of the Federation and the Office of the Attorney-General of the Federation.¹⁹ The Auditor-General is appointed by the President on the recommendation of the Federal Civil Service Commission, subject to confirmation by the Senate.²⁰ The President also has the power to solely appoint persons to act in the office of the Auditor-General for a period not exceeding six months.²¹

The Constitution further provides that the Attorney-General shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation.²² In practice, the Attorney-General is the Minister of Justice. Being a Minister, the Attorney-General is appointed by the President subject to confirmation by the Senate.²³

Given the important roles that these institutions perform, it is imperative that their independence is guaranteed. However, this independence is threatened by the fact that they are appointed by the President. We therefore recommend the amendment of section 86 of the Constitution to provide for the appointment of the Auditor-General by the Federal Civil Service Commission instead of the President. Furthermore, we recommend the separation of the Office of the Attorney-General from the Ministry of Justice. This will mean that the Attorney-General is no longer a Minister, and thus free from the control of the President. The Attorney-General can then be appointed by the National Judicial Council rather than the President.

The shifting of the responsibility of appointment of the Auditor-General and the Attorney-General from the President to independent bodies such as the Federal Civil Service Commission and the National Judicial Council should increase the independence of these bodies and their ability to perform their functions effectively.

¹⁹ Sections 85 and 150, 1999 Constitution of Nigeria (as amended)

²⁰ Section 86(1), *ibid*

²¹ Section 86(2)-(3), *ibid*

²² Section 150(1), *ibid*

²³ Section 147, *ibid*

Conclusion

We commend the National Assembly for their initiative in organising the public hearings on constitutional review, and we call on them to adopt the following recommendations:

- additional special seats should be created for women to increase their representation in the national and state legislatures;
- the appointment of INEC Commissioners should be done by an independent body rather than the President;
- political aspirants should be allowed to contest elections as independent candidates;
- definite terms and tenures of local government councils should be provided for in the Constitution;
- SIEC Commissioners should be appointed by an independent body, and their funds paid directly to them;
- revenue should be allocated directly to the local governments rather than states;
- courts and tribunals should be prevented from determining disputes related to electing members of parties' executive committees, their principal members, or other governing bodies;
- the Auditor-General should be appointed by the Federal Civil Service Commission, rather than the President;
- the Office of the Attorney-General should be separated from the Ministry of Justice; and
- the Attorney-General should be appointed by the National Judicial Council rather than the President.

We are hopeful that these alterations to the 1999 Constitution of Nigeria will promote the unity and good governance of the Nigerian nation.



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