

The Constitution

Constitutional and Political Reforms

Why so many important constitutional amendments fail

Cheta Nwanze

FAIL

Federal Republic of
1999



Key Recommendations

- The various groups agitating for a review of Nigeria's dysfunctional constitution must identify allies to create a confluence of interests.
- Finding ways to appeal to the self-interest of the people in power is essential to make Nigerian constitutional reform a reality.
- The potential for generating public pressure through social media needs to be better leveraged by Nigerians seeking progressive reforms.
- An inclusive national dialogue which gives voice to all of Nigeria's regions and influential constellations will stand a better chance of delivering workable constitutional change and progress.

The 1999 elections ended 16 years of military dictatorship and ushered in what has thus far been Nigeria's longest period of sustained civilian rule. The 1999 Constitution was a document crafted by the military, and was in turn based on the 1979 Constitution, which had ended Nigeria's first period of military dictatorship.



In 1994, Gen. Sani Abacha convened the Constitutional Conference Commission under the chairmanship of Justice AG Karibi-Whyte. A draft Constitution was submitted to Abacha in 1995, but he did not attend to it. A public hearing was started after Abacha's death and a seemingly wide-ranging group was allowed to debate it in Benin, Enugu, Ibadan, Jos, Kaduna, Kano, Lagos, Maiduguri, Port Harcourt and Sokoto. This group comprised representatives of the judiciary, labour unions, the security services and the press, as well as doctors, engineers, university lecturers, farmers, bankers, market women and students. The committee submitted its report to Gen. Abdulsalami Abubakar on 30 December 1998, after which the Armed Forces Ruling Council (AFRC) debated it. The AFRC accepted some of the recommendations and rejected others, and the Ministry of Justice published an amended draft Constitution. After further amendments, the AFRC on 5 May 1999 promulgated the draft Constitution by Decree No. 24 of 1999 as the Constitution of the Federal Republic of Nigeria 1999.

From the start, the 1999 Constitution was plagued by concerns over its legitimacy. It opens with the words “We the people” – a phrase that has been characterised as an untruth, especially by socio-cultural

groups that were left out of the debates in 1998. It has also been pointed out that it was adopted by decree rather than referendum. This led to demands for the convening of a Sovereign National Conference where the very basis of the relationship between the constituent ethnicities in Nigeria could be debated and agreed upon, before a constitution was debated.

Successive governments have failed to heed these calls. Rather, the preferred method has been to amend the Constitution through the National Assembly. This has had mixed results. During the second term of President Olusegun Obasanjo, among the proposed amendments to the Constitution was one to grant the president a third term in office. As all amendments were packaged in a single Bill, the defeat of the third term proposal meant the defeat of all the other proposed amendments.

2014 constitutional amendments

Prior to the 2015 general elections, the National Assembly again engaged in the process of amending the Constitution, and again decided to bundle all proposed amendments into one Bill, which was forwarded to Jonathan for his assent. One of the proposals would eliminate presidential vetoes of constitutional amendments, and so Jonathan did not give his assent. As the Bill's passage took place close to federal elections, there was no time to override the president's veto before the end of the National Assembly's tenure, meaning that all proposed amendments were defeated.

Constitutional amendments since 2015

Before the 2019 general elections, the National Assembly decided to split all proposed constitutional amendments into individual bills to avoid a repeat of the 2014 veto. Fifteen individual bills were passed by the National Assembly and transmitted to the states for ratification. Three bills fell at this hurdle.

Of the 12 bills duly passed, only five have been accepted by President Muhammadu Buhari, including the so-called “Not Too Young to Run” amendment, lowering the minimum age for contesting certain elective positions. Other constitutional amendments have been subject to presidential vetoes, including (not surprisingly) the amendment to restrict the president's ability to veto constitutional

amendments, an amendment requiring the president and state governors to submit their appropriations bills 90 days prior to the end of the fiscal year, and one granting legislators immunity from legal action for statements made on the floor of the legislature.

While some amendments can rightly be considered frivolous, such as that requiring the inclusion of former senate presidents and speakers in the Council of State, there were several missed opportunities.

1 The Land Use Act Amendment

This amendment sought to remove the Land Use Act from the Constitution and thereby subject it to the normal process of legislative amendment. This Act, which vests title to all land in the government, is a colonial relic. One of its key impacts is that no Nigerian actually owns land, but instead rents from the government for a fixed term of 99 years. The title granted to land, through a “Certificate of Occupancy”, can be revoked at any time by the government. This is one reason why many foreign investors are wary of making Nigeria a long-term investment decision, a practical example being international oil companies that mainly lease property. The inclusion of the Land Use Act in the Constitution means it cannot be amended easily. The amendment was defeated by a clique of northern senators who complained that it would be an avenue for resource control (a hot-button issue). The defeat of this amendment was a blow to those hoping the country was ready to signal its openness to international business.

2 The Distributable Pool Account Amendment (Fourth Alteration No. 5)

In Nigeria, revenue is allocated at the federal level to all three tiers of government, but while the federal and state governments maintain separate accounts, local government revenues are paid into a joint account operated by state governments. Thus, state governments are in total control of all activities of local governments and often refuse to call local elections, with state governors preferring to appoint caretaker chairmen who effectively are rubber stamps. Because of this, greater emphasis is placed on state- and national-level offices, to the detriment of grassroots governance. The amendment sought to change this by



making it mandatory for local governments to receive their allocations directly. State governors, unwilling to see their absolute domination of local councils ended, buried it.

3 Local Government Amendment (Fourth Alteration No. 6)

This amendment was a follow-up to Alteration No. 5 and sought to make local government elections mandatory by including them in the Constitution and providing for the tenure of Local Government Councils. As noted above, state governors are averse to the notion of democratically elected local government councils, preferring to appoint caretaker chairmen whose loyalties are not in doubt.

4 The Timeframe for Cabinet Appointments and Gender Quota Amendment

Upon his election in 2015, Buhari spent six months governing without a cabinet. This amendment sought to prevent a recurrence by providing a time limit within which the president, and state governors, would be required to submit the names of their cabinet nominees to the legislature. This amendment also sought to increase the participation of women in governance by mandating the reservation of 35% of ministerial appointments for women. Nigeria is at variance



with the rest of West Africa, as women hold fewer than 10% of elective and political positions. A woman has never been elected as a state governor in Nigeria, and the highest positions to which women have been elected are deputy governor and a smattering of federal legislative positions. The only woman who has ever been a governor in Nigerian history is Anambra's Virginia Etiaba, who acted from November 2006 to June 2007 while the courts ruled on, and eventually overturned, the impeachment of Peter Obi by the state legislature. In a country whose population is split nearly 50-50 along gender lines, this great imbalance must urgently be addressed. Buhari failed to submit the list of his ministerial nominees to the Senate two months after being sworn in for a second term.

5 The Devolution Amendment

Nigeria is nominally a federation of states. However, the Constitution retains several matters exclusively for the federal legislature, while others can be jointly legislated upon by the states and national assemblies. The amendment sought to move some issues from the exclusive legislative list to the concurrent list, including policing. This amendment never made it out of the National Assembly for numerous reasons, not least the retention of federal might. This overbearing federal might is clear in key economic decisions. For example, Abia (with a gross domestic product [GDP] of \$9 billion) cannot build a railway linking its commercial hub, Aba, to Port Harcourt in Rivers (GDP \$21 billion), a mere 61 km away. This is because railways are the exclusive preserve of the federal government, which decided to build a railway between Kaduna (GDP \$10 billion) and Abuja, more than three times the distance between Aba and Port Harcourt, and with far less potential passenger traffic.

6 The Independent Candidacy Amendment

The decision by the National Assembly to amend the Constitution to allow independent candidacy was greeted with much fanfare. However, a curious thing has since happened. Although the amendment was approved by the National Assembly, it seems to have disappeared, and is not even mentioned as one of the amendments defeated by state governments.

Why amendments fail

Clearly, in the matter of consequential amendments to the Constitution, at federal and state level the executive wields outsized influence. The fact that the president can decide to veto amendments that have been approved by the states is a matter of concern. Even after meeting the thresholds of joint approval by both chambers of the National Assembly and ratification by two-thirds of the states, a constitutional amendment is still subject to one person's approval. This is a holdover from the military era, when the head of state wielded ultimate power without any checks other than a fear of junior officers. Constitutional amendments are lengthy and costly affairs, involving several hours of debate and parsing of memoranda. To fail based on a presidential whim is comically undemocratic.

A constitutional amendment is also subject to the impulses of governors unwilling to relinquish some of their power, such as the long-held control over local government councils and their finances. Any amendment seeking to remove this control is likely to be frustrated, as the governors are unwilling to give up this electioneering war chest.

Previous years have seen the defeat of numerous gender-focused bills, and as such the defeat of the Affirmative Action for Women Amendment was not a surprise. Nigeria is a deeply patriarchal society where large sections of the population believe the place of a woman is in the kitchen and the bedroom. This attitude, reinforced by religious beliefs, makes amendments focusing on the rights of women and girls difficult to push through.

The failure of the Land Use Act Amendment and the related failure of the Devolution amendments can be attributed to multiple factors. The North-South dichotomy and the top-down, command-and-control nature of the Nigerian state are perhaps the major ones, as revealed by fears that amending the Land Use Act would lead to “resource control” by states.

Why amendments succeed

From the above it thus seems clear that in order for a constitutional amendment to succeed, it is necessary to appeal to the enlightened self-

interest of all those involved, from the legislature to the executive. During the campaign for the Not Too Young to Run Amendment, social media proved to be a useful tool, with effective appeals to the older generation to pass the torch to the youth. Yet despite the eventual passage of the amendment into law, youth participation in the political space is likely to remain low for economic reasons. Political party elections are prohibitively expensive in a country that is the poverty capital of the world. As a result, in order to give proper effect to this amendment and remove barriers to the youth's participation, consequential amendments must be made to the electoral laws.

One amendment that has succeeded in the current process is that permitting the Independent National Electoral Commission to de-register political parties. While the amendment has been criticised as undemocratic, it is justifiable on the grounds that there are far too many “suitcase” political parties incapable of winning an election. Indeed, the most recent general election witnessed the strange phenomenon of political parties' conducting primaries for elective offices, and then endorsing the candidates of other parties for the same positions to which they themselves had nominated candidates. However, it can also be argued that the proper thing to do here is not to deregister these parties, but to tighten the electoral rules to prevent their being abused. Additionally, the consistent failure of state governments to conduct local government elections means that there is no real ability to measure the grassroots effectiveness of any political party.

This paper has shown that the key requirement for the success of an amendment is a confluence of executive and legislative interests at federal and state levels. The impetus for the amendment can come from civil society, but at the end of the day interests must align or the amendment will fail.

Next steps

The current amendment process has seen a number of important and much-needed changes abandoned, despite their value to the country. The issues of gender representation, devolution of power and updating of the property ownership structure are vital if Nigeria is to become an attractive destination for more than companies seeking a quick turnaround on their investment. Some strategies to achieve the necessary

reforms are:

- I. **Use social media:** Growing Internet access in the country has made social media more accessible than ever before. This has also facilitated the rise of social media-created campaigns that have an impact in the real world, as demonstrated by recent campaigns against sexual assault and harassment of women by members of the security agencies.
- II. **Create a confluence of interests:** It is important that amendments and the arguments around them are framed in a way that limits emphasis on the potential for upsetting the status quo, and instead shift to legacy building for those who control the levers of power. Only when this is done can difficult amendments be passed.
- III. **Appeal to the self-interest of those involved:** Amendments are more likely to pass when those at the centre of the process consider their passage to be in their own self-interest rather than simply being public-spirited. Advocates should therefore actively seek out means to appeal to the self-interest of legislators and governors who drive and control the process if they wish to succeed.
- IV. **Generate public pressure:** Legislators, no matter how skewed their election, remain public servants and are therefore subject to pressure from their constituencies. During the debates over the constitutional amendment to grant a third term in office to then-president Obasanjo, several senators stated that they had no choice but to oppose the amendment owing to public opinion in their constituencies, and their desire not to offend their electorates. Educating the voting public on the importance of some of these amendments will translate into effective pressure on legislators to secure their passage at both federal and state levels.

It is important that Nigeria not give up on the process of amending and improving the Constitution. However, the process can only be truly effective if all stakeholders see the value of looking beyond narrow interests and truly coming together to serve the bigger picture.