J-K GADZAMA LLP

Memorandum/Proposal for Further Alteration of the 1999 Constitution (as amended)

Submitted toThe Senate Committee for the Review of the 1999 Constitution

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By:

J-K Gadzama LLP
J-K Gadzama Court,
Plot 1805, Damaturu Crescent by Kabo Way,
Off Ahmadu Bello Way,
P.O. Box 20304,
Garki 2, Abuja.

Phone: +234 (0) 9 6233 600
Email: info@j-kgadzamallp.com
Website: www.j-kgadzamallp.com

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Introduction

J-K Gadzama LLP is a seasoned law firm in Nigeria which provides cutting-edge legal services with over thirty years of demonstrable hands-on experience in areas of legal practice in the African continent and the world at large. Our human resource covers a wide pool of legal expertise in all areas of law with satisfactory high calibre clients in the public and private sector, in and out of Nigeria.

In addition to meeting various legal and transactional needs across the globe, our firm also carries out several altruistic activities geared towards national and constitutional development. One of such is our contribution to proposed bills being considered by the National and State Houses of Assembly.

We also organize public lectures with topics that stir national building discussions with seasoned experts in diverse fields as speakers and an enormous audience. Additionally, we publish quarterly newsletters through which we appraise relevant issues in and outside the country, capture major events taking place in and around the firm, as well as educate and entertain our audience. Our firm's far-reaching popularity will further provide the much-needed publicity for this amendment process.

We have our offices in the cities of Abuja, Lagos, Maiduguri, Port Harcourt and Lassa in Nigeria, as well as offices in London, South Florida and Dubai.

This memorandum proposes amendments to the 1999 Constitution (as amended) for the executive, legislative and judicial structure, the electoral matters, the tiers of government and provisions relating to the revenue and finance. Furthermore, proposals are made for the amendment of the legislative lists, appointments of officers of government departments & agencies with other related issues.

The firm also places itself at the disposal of the Senate, especially the Committee for this Review of the 1999 Constitution to be available to provide any additional information, clarification and any form of advisory that the Committee would require towards achieving this all-important task.

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Rationale

The need for further amendment of the 1999 Constitution (as amended) at this point of Nigeria's political evolution cannot be over-emphasized. First and foremost, the further amendment is central to our collective desire as a nation to evolve through our dynamic experience to build a proper and active culture of citizen's participation to deepen our democracy, which we all can agree is the preferred system we desire for our dear country.

Secondly, for years, there have been consistent agitations for national dialogue as a means for defining and addressing the country's socio-economic and political challenges and fostering national development. Such agitations brought about 1994/1995 Constitutional Conference, the National Political Reform Conference convened by former President Olusegun Obasanjo in 2005 and the National Conference convened by President Goodluck Jonathan in 2014. These conferences made laudable recommendations which this further amendment would provide opportunities for their consideration where expedient.

Another importance of this further amendment is to appraise the progress earlier alterations have engineered to the country's socio-economic, political and national development. Review aspects of the alterations that are necessary to ensure their effectiveness.

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The Proposed Amendments

This proposal will consider the following issues with suggested amendments:

1. The Introductory Preamble
2. Local Government Administration and Autonomy
3. Electoral Reforms
4. Federal Structure and Power Devolution
5. Nigerian Police and Security Architecture
6. Judicial Reforms
7. Strengthening the Independence of oversight Institutions and Agencies
8. Residency and Indigene Provisions
9. Gender Equality for Women
10. Justiciability of Chapter II of the Constitution
11. Fiscal Federalism and Revenue Allocation
12. Others

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1. The Introductory Preamble

Preamble plays a silent but salient role in the life of a statute. It is often the first content any reader of a statute comes across and it sets the tone as well as shapes the mind of the reader on his/her expectation of all the provisions contained in the statute. The preamble also proves a helpful resource when a tribunal or court seeks to ascertain the intent of any provision of a statute when interpreting it. The 1999 Constitution rather than narrate the intent of the Nigerian people in providing for themselves a governing guideline, it shows an affinal with the military regime. Notwithstanding that the preamble is merely cosmetic and that the 1999 Constitution was in fact handed down by the military regime, we believe that having had some years of civil rule coupled with the consistent progress of altering the Constitution to suit the new reality, it is desirable to alter the preamble to reflect the yearning of the Nigerian people through their representatives. We will be proposing an alteration of the introductory preamble to capture the aspirations and desires of Nigerians to have a Constitution and who is better suited to carry that out, than the representatives of the people.

2. Local Government Administration and Autonomy

The current structure for the administration of the local governments under the 1999 Constitution is one that sits on the fence between the federal system – which the Constitution was intended to profess – and unitary system of governance. At best, the local government system has remained an idea in search of relevance. The local government administration system still breaths the air of the centralisation model introduced under military rule and thus betraying the ideals of federalism, the system of government we profess to practice under the 1999 Constitution. The ultimate goal for the creation of the local government administration system under the 1999 Constitution was to bring government closer to the people at the grassroots. It was also to accelerate development and enable the local population to participate and hold those in power accountable for their governance roles. Unfortunately, the current provisions for local government as the third tier of government under the 1999 Constitution have failed to establish a viable structure to attain the aforementioned goals.

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Section 7 (1) of the 1999 Constitution provides that: *The system of local government by democratically elected local government councils is under this constitution guaranteed; and accordingly, the government of every state shall, subject to section 8 of this constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.* The constitution assumes that the law and framework regulating the local government administration would be made by the state houses of assembly. Hence, the constitutional legal framework does not see or recognize the local government as the third tier of government, but merely as an appendage of the state government where the states enjoy absolute discretion over the local governments.

Also, the status of the federal and state government as tiers of administrations is clearly spelt out under the 1999 Constitution. Chapter V, Part I, from sections 47 – 89 of the 1999 Constitution makes elaborate and detailed provision for the legislative arm of the federal government as a tier, and Part II, from Sections 90 – 129 makes that of the state legislative arm of government. The 1999 Constitution equally makes clear provisions for executive powers and functions of the federal and state governments. The effect of these provisions is that there is an established constitutional autonomy and structure required for operations for these tiers of government. None has been made for the local government as such its constitutional status as the third-tier of government remains an idea and not reality.

More so, the 1999 Constitution in the second schedule provides for two types of legislative powers categorized as the exclusive legislative list and the concurrent legislative list. It is worthy to note that, the local government has no form of authority to exercise any powers either exclusively or shared on the matters contained in these lists. While one could think that other powers have been reserved for the local government under the fourth schedule where the functions of the local government are listed, a close perusal of that provision reveals that the local government, even in the discharge of those functions are mere effective administrative units of state governments. Consider item 2 (d) under the provisions for functions of the local council, it provides that: *The functions of a local government council shall include the participation of such council in the*

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government of a state as respects the following matters… and such other functions as may be conferred on local government councils by the House of Assembly of the state. This provision shows the unfettered discretion the Constitution grants the state governments to interfere in any manner they seem fit over the local government exercise of its functions in item 1 (a) – (k). This situation further undermines the third-tier status of the local governments.

Furthermore, the attempt made by the local government reform of 1976 to give financial autonomy to the local governments which the 1979 Constitution began to capture by recognizing the local government as a third-tier of government was thwarted by the 1999 Constitution via the introduction of the State Joint Local Government Account (SJLGA) provided for under Section 162 (6). This provision ensures that all finances of the local government are appropriated by the state at its pleasure. This is so despite the provisions of Section 162 (3) which clearly captures a disbursement of the amount of credit in the Federation Account to the federal, state and local government respectively. The 1976 reforms envisaged democratic federalism extending popular participation to the units of government closest to the people, i.e. the local government. To achieve this, a workable degree of financial autonomy guaranteed under the constitution is a *sine qua non*. However, with the creation of the SJLGA, the attempt to establish the third-tier status of the local governments is further frustrated.

The current reality where most states run the local governments as their operational units so much that most local governments are administered (both executive and legislative arms) by appointees of the state government rather than elected officials, does show that the system of local government administration maintained by the 1999 Constitution is not tenable. It has been abused more than often making it difficult if not impossible to achieve the aim of bringing governance and its dividends closer to the people. It has become normal for state governments to spend monies from the SJLGA on projects ordinarily appropriated for local governments all in the bit to justify their spending from the SJLGA. The usefulness of the local governments should be felt and not just exist on paper.

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In the light of the above, we will be proposing that this committee consider improving upon the provisions of the 1999 Constitution to clearly establish the local government as the third-tier of government with its executive and legislative structures constitutionally guaranteed in unmistakable terms and not mere desires. The amendment should do away with the wide powers granted to states (either the executive or legislative arm) to manage issues of local government organization, structure and finance. The legislations made by some states to manage, especially the finance of the local government from the SJLGAs have been honoured more in breach without consequence.

To clearly outline the proposal, we recommend as follows:

i. The local government should be unambiguously established under the constitution as an autonomous unit of government with its administrative structure and functions as in Chapter V, Parts I and II for the federal and state governments respectively. The above provision should override the pretence expressed in Section 7 of the 1999 Constitution.

ii. The SJLGA should be removed from the 1999 Constitution and replaced by a new regime of fiscal federalism where local governments will access their funds directly and be accountable for all that is allotted to them.

iii. The minimum qualifications for eligibility to seek election as a local government executive and legislator should be reviewed, as indeed that for all elective positions in the country should be. Administering the local government is a complex task with a responsibility like building inclusive participation; it is recommended that having a degree or Higher National Diploma should be the minimum threshold for contesting. Years of experience should be an operational advantage for those seeking the position.

iv. Finally, the Local Government Service Commission (LGSC) should be strengthened and accorded its pride of place in the constitutional, just as that of the federal and state governments.

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3. Electoral Reforms

The importance of elections cannot be overemphasized. This is because elections and other political processes associated with it are pivotal to the quality of a country's governance and can either greatly advance or set back a country's democratic development. The quality of a nation's electoral process reflects the crop of leaders it produces and has a direct correlation to the quality of governance and prosperity of that nation.

The former President of Liberia, Her Excellency, Ellen Johnson Sirleaf once said that *Africa is poor because it is poorly governed*. Greg Mills, the South Africa Writer in the same light stated in his book "Why Africa is Poor and What Africans Can Do About It" stated that *Africans are poor because their leaders have chosen that path for them*. These commentaries go to show how the fortunes of many Africa countries, including Nigeria, are greatly determined by its quality of leaders, not businessmen, entrepreneurs, professionals or even scientists. The more reason why Nigeria must pay key attention to its electoral process to ensure we have leaders who will better the fortunes of the citizens.

The 1999 Constitution has already had some laudable electoral reforms through earlier alterations. Worthy of note is the limitation of time to conclude the hearing and appeals of election petitions and most recently, the lowering of the age qualification to contest for the offices of the president, governor, senate, house of representative and the states houses of assembly, to allow more citizen participation in electioneering. These reforms became necessary after different electoral experiences with a view to making the process better and more credible.

In view of the 2019 elections, especially from reports of election observers which pointed out a number of shortcomings, such as the last-minute postponement of the election, political violence that led to over 100 deaths, political parties internal squabbles, the intimidation of voters and journalists, operational problems at the Independent National Electoral Commission (INEC) and a dramatic decline in participation we believe that further electoral constitutional reforms are necessary to ensure a much better and credible electoral process so as to not have a repeat of the regression the 2019 polls was generally held to have made.

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First, it is proposed that henceforth funds for electoral umpire should be considered and approved at least 9 months before elections and also, all funds for electoral umpire should come as a first-line charge from the consolidated revenue fund. Failure on the part of either INEC Officers, or any member of the executive or the legislators to ensure this consideration at the required speed should be treated as an indictable impropriety. This is to enable the electoral umpire have all it requires well ahead time to avoid operational lapses.

Secondly, it is proposed that the constitution unbundle the INEC into two distinct bodies. One should be responsible for political party registration, regulation as well as monitoring of primaries amongst other political party related issues. The other will cater solely for conducting elections. It is believed that this reform will aid transparency, encourage inclusiveness and increase the chances of accountability. It would improve the Nigerian election management mechanism.

It is further proposed that Section 221 of the 1999 Constitution be altered to capture individual candidacy. The insistence that only political parties should canvass for votes has created a situation where people struggle to control political parties and impose their anointed as against popular candidates, thereby denying the popular candidate and the voters the opportunity to be voted for and to vote which is guaranteed under the 1999 Constitution. The number of voters who participate in voting at general elections is much greater than those who vote at political parties' primaries. This clearly shows the participation level of the citizens at party politics is low as such the citizens will be subjected to the choice of few under the umbrella of a political party. It is believed that elections into local government council will gain much from this alteration to allow independent candidacy. More so, that the Constitution should not allow the inability to finance a political party limit the exercise one's fundamental of being voted for in elections.

Finally, it is proposed that the involvement of members of the Military (Army, Navy and Air Force) in elections should in unambiguous words, be abrogated. Situations that could warrant their involvement should be minimal

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and clearly defined. The 2019 election, as well as other preceding polls, had the observers' reports consistently pointing accusing fingers at members of the military for intimidation, which result in the low turnout of citizens to participate in the different elections.

4. Federal Structure and Power Devolution

It has been said that the centralized nature of powers of government under the Nigerian federal system is the major bulwark standing against equal and progressive development of states and local government councils. It also stands against the effective exploration of the resources that can be found in Nigeria for development purposes. A call for the devolution of federal powers has always been on the front burner of every constitutional review. In the past, there have been proposals for amendment to move certain items from the exclusive legislative list to the concurrent legislative list, but that failed.

This issue however will keep occurring because indeed, with some much power concentrated at the centre, the federal government has brought little or no development fortunes to the states talk less of the local government councils. It seems more, that the interest of every central government is to have states serve at their beck and call due to the large amount of funds it controls and distributes monthly as allocations. If the country is interested in making progress that will better the lot of its citizens, the National Assembly, as well as State Houses of Assembly, must take the courage to shrink the exclusive legislative list in favour of the states and local government councils. Items such as fiscal relations, accessing minerals and oil, policing and railways must become areas where each state takes its destiny into its own hands.

It is proposed that in order to have a viable federation with the effective exploration of resources for development and bring dividends of governance closer to the people, certain items must be moved from the exclusive legislative list to the concurrent list, certain items should also be moved from the concurrent legislative list to an introduced residual legislative list and a clear residual legislative list for the local government councils. The national assembly would always maintain its exclusivity of the exclusive

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legislative list, the state assemblies should likewise be limited to its shared powers over the concurrent list and some shared powers over the residual legislative list. This will require the deletion of Section 4 (7) (a) of the 1999 Constitution.

It is proposed that items 28 on fingerprints, identification and criminal records and 46 on posts, telegraphs and telephones should be moved to the concurrent legislative list as well as the residual legislative list.

Furthermore, items 33 on insurance, 43 on patents, trademarks, industrial designs & merchandise marks, 45 on policing & other security services, 48 on prisons, 54 on quarantine, 55 on railways, 58 on stamp duty and 39 on mines, minerals including oil fields, oil mining, geological survey and natural gas, should be moved from the exclusive legislative list to the concurrent legislative list.

Notwithstanding these alterations, the federal legislature still maintains its superiority over the state legislatures. It is advised that on matters that bother on fiscal relations the federal and state legislators should enact laws that encourage a commercial joint venture between states and the federal governments.

5. Nigerian Police and Nigerian Security Architecture

Section 214 of the 1999 Constitution provides for the establishment of the police force for the federation. This section displays a system whereby the police is under the management and control of the Federal government at the expense of the federating units – the state government. However, this arrangement has so far not favoured the country. The police has been faced with an avalanche of problems. These issues include the accountability of the Police Force, the high surge of crimes in different states of the country and the inability of the police under exclusive Federal control to curb them poses a huge flaw to the federal arrangement. It is believed that when policing is closer to the society of its jurisdiction, it enables the police to easily detect and uproot crimes. Where there is a common language which is known and understood by the police, there would be a free flow of communication and understanding between the police and the people. We

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believe that the creation of state police will provide appreciable solution to the current security challenges and enhance the effectiveness of the police in ending criminality in the country.

The creation will entail the moving of item 28 on fingerprints, identification and criminal records, item 45 on police and other government security services and item 48 on prisons from the exclusive legislative list to the concurrent legislative list to allow states fashion out their respective internal security architecture. This will enable genuine, beneficial and effective collaborations between police forces of each state to the other and the federal police. We believe this reform is long overdue. Each chief security officer of the state should appoint its head, or better still, each state should be given the constitutional leeway to determine how issues of appointments will be handled. Nigeria must not only profess federalism but be to practice its tenets as well.

6. Judicial Reforms

The Nigerian Judicial System has been in a precarious state for several years. The problem facing this sector ranges from judicial corruption to a lack of judicial independence, delays in the justice system, technicalities surrounding enforcement of judgments, undue interference in the appointment of judicial officers, among others.

Calls for a comprehensive Judicial Review have been rife in various quarters. Accordingly, the Senate Committee on the Review of the 1999 Constitution is a platform that is long overdue to provide a viable opportunity to address the grey areas, in a bid to fine-tuning and strengthening the administration of justice in Nigeria.

We would propose certain constitutional reforms in the following areas we consider key for the Nigerian Judiciary:

a. **Speedy Trial Process***:* It is a notorious fact that court processes in Nigeria often times are mired in undue delay, excessive complications and technicalities. These issues, without doubt, do not help in achieving a speedy, just and fair administration of justice.

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President Muhammadu Buhari recently echoed this concern at the just concluded 60th Nigerian Bar Association Annual General Conference when speaking through the Vice President, Professor Yemi Osinbajo that court trials are "terribly slow" and suggested a twelve to a fifteen-month time limit for the commencement and conclusion of criminal and civil trials in the country.

Section 294 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) on the issue of determination of causes and matters specifies that every court shall deliver its decision not later than ninety days after the conclusion of evidence and final addresses. We propose that this section can be altered to place a trial timeline and limit since the trial process is what constitutes delay most times. It is understood that while criminal trials could be easily regulated with timelines, it might be difficult to provide a timeline for civil trials considering the right of individuals to commence and withdrawn as they deem fit, more so, it is personal rights and liabilities that are being determined and not one of the public.

This proposal we admit could be better served in inferior legislations to the Constitution, however, the Constitution must at this point of our evolution provide a framework if the problem of delayed trial processes must be tackled.

There is no doubt that litigants and parties have been frustrated by protracted and cumbersome trial processes in Nigerian courts, with some even pushed to the extent of abandoning their cases. A reform is indeed quite indispensable.

b. **Appointment of judicial officers:** It is often said that judiciary is the last hope of the common man. However trite this saying is, it undoubtedly underscores the huge importance and sacredness of the judicial arm of government.

The extant constitutional arrangement requires the appointment of heads and judges of federal courts is made by the President and that

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of the states made by the Governor, on the recommendation of the National Judicial Council (NJC), with the appointment of heads of courts subject to confirmation by the Senate and State Houses of Assembly. By leaving the appointment of judicial officers in the hands of the Presidents or Governors, we believe the independence and sacredness of the judiciary are being undermined. The NJC is comprised of hugely experienced and immensely respected officers in the legal profession who have what it takes to conduct a comprehensive appointment process of judicial officers. Since examinations and other screening activities are conducted by the NJC, why then leave the appointment to the President?

We propose that the appointment of all judicial officers be done by the NJC, subject to confirmation by the Senate or State Houses of Assembly as the case may be. This will promote and uphold the independence of the judiciary and strengthen the credibility of our judicial officers.

c. **Composition of the National Judicial Council:** The current composition of the NJC vis-à-vis membership is such that the Chief Justice of Nigeria (CJN) is solely responsible for the appointment of the following members:

- Five retired Justices.
- Five Chief Judges of the States.
- One Grand Khadi.
- One President of the Customary Court of Appeal.
- Five members of the Nigerian Bar Association.
- Two persons who are not Legal Practitioners.

This means of the twenty-five members of the NJC, the CJN is solely responsible for the appointment of nineteen, that’s seventy per cent of the entire members. It is our view that this appointment structure is not healthy, and should be reviewed.

We, therefore, propose an appointment structure wherein the six geo-political zones provide six judges who would be members of the NJC.

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The NJC would be saddled with the responsibility to develop a time-table of each state within the six geo-political zones to take turns in presenting their chief judges to the membership of the NJC.

Furthermore, we have various distinctive scholars of law around our tertiary institutions. These notable scholars have contributed significantly to the development of our legal system by authoring books, engaging research into various facets of law, as well as training scores of lawyers in the country and beyond. It is therefore not only desirable but a necessity to have selected scholars of law in active teaching to be members of the NJC through the National Association of Law Teachers (NALT). Every judiciary in the world that thrives take pride in that fact that their judges are not just masters of laws but ideological as well. The inclusion of law teachers will help ensure that persons who take the judicial fire-walking to the bench show some affinal of ideology.

d. **Separation of the Office of the Attorney General of the Federation and the Minister of Justice:** The call to have a constitutional separation of the offices of the Attorney General of the Federation (AGF) and the Minister of Justice has continue to prevail since the turn of the 4th republic in 1999. The 1999 Constitution have vested the functioning of these two office in one person. We believe that these offices need to separated for efficiency and distinct functions appropriated for each one.

We would be proposing that the constitution should establish the office of the AGF as distint from the office of the Minister of Justice. While the Minister of Justice should satisfy the constutitional requirements to be appointed a minister – which includes being partisan – the AGF should be non-partisan and have a minimum of 15 years post-call experience as a legal practitioner. The President should be the appointing authority of both occupants subject to the approval of the Senate.

The Minister of Justice will handle matters relating to advising the government on policy issues such as justice reform, public legal

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education, etc. Also, it will be withn the functions of the Minister of Justice to suprident over all justice sector executive institutions and serve as a supervisor for all legal departments in the all ministeries, departments and agencies of government. Furthermore, he/she will serve as a liason between the executive arm of government and the judicial arm. The Minister of Justice at all times remains answerable to the President.

The AGF on the other hand will be saddled with the mandate of prosecuting and defending causes on behalf of government. The office of the AGF will be for a term certain of 5 years only without renewal. The AGF though appointed by the President, he/she will be answerable to the Senate who can impeach him/her by an absolute majority where he fails to show diligence in the discharge of his mandate or has been indicted by his/her professional body for misconduct. The AGF will also be required to submit periodical reports of his stewardship to the Senate.

7. *Strengthening the Independence of oversight Institutions and Agencies*

Oversight institutions in Nigeria such as Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC), Federal Inland Revenue Service (FIRS), Standard Organization of Nigeria (SON), Federal Competition and Consumer Protection Council (FCCPC) among others are saddled with the responsibility of regulating certain sectors of the Nigerian polity. Due to the nature of their functions, they are expected to enjoy a high level of independence which would bring about optimal service delivery.

A major step towards strengthening the independence of these oversight agencies and institutions is to change the appointing authority of their heads. While the subsisting structure gives the appointment powers to the President of Nigeria, we propose a system where three persons are nominated for each of such office by the judiciary, i.e. NJC, presented to the Senate for screening, and the cleared candidate(s) are presented to the President to appoint anyone from the list and where only one person is cleared, the President appoints that candidate. Any veto the President has

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towards any of the candidates cleared by the Senate should be presented to the NJC within a time within which NJC considers and either presents another person to replace the rejected candidate or overrule the President veto. Where the President refuses or fails to make an appointment from the choices presented to him by the Senate within a specific period of time, the Senate will by simple majority select who will occupy the office under consideration and where the candidate cleared is one person, the person assumes the duties he was cleared for accordingly without recourse to the President.

Furthermore, we will be proposing a tenure of 3 months and renewable for another 3 months maximum for any person appointed in an 'Acting' capacity over any ministry, board, agency, department or parastatal of government. Also, any person who merely occupies a position or an office in an acting capacity would not be entitled to any severance package, where provided for that position or office.

8. Residency and Indigene Provisions

Indigeneship has become one of the most contested subjects in the country, given its implications for political and economic opportunities. In Nigeria, a person has to be 'indigenes' to access certain economic and political opportunities at the federal as well as state and local government levels. However, what makes a person indigenous is not formally defined in the Constitution.

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) recognizes indigeneship in some sections. Section 147(1,2 &3) in providing for the appointment of Minister of the Federal Government recognizes the principle of Federal Character under section 14(3). Similarly, section 171 (5) of the Constitution makes it mandatory that the President shall comply with the federal character principle in the appointment of other key public officers of the Government of the Federation including the ambassadors, high commissioners and permanent secretaries or heads of any extra-ministerial departments of the government of the federation.

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Despite the indigeneship principle, political and economic imbalances still exist amongst the various states or ethnic groups that make up Nigeria and this is as a result of its implementation. The inclusion of the federal character principle in Chapter II Constitution which is ordinarily non-justiciable hinders its smooth implementation and enforcement because it deprives citizens the locus to approach the court to enforce the principle of federal character. This incites the Government to disregard the principle of federal character in the composition of the Government of the Federation and its agencies.

In light of the above, we will be proposing that this committee consider reviewing the Constitution to provide a definition for indigeneship, since one stands to gain certain rights & privileges with it and make its compliance obligatory.

To clearly outline the proposal, we recommend as follows:

i. The Constitution should make provision as to the definition of who is an indigene?

ii. The failure to implement should be made justiciable and citizens have the right to approach the courts to enforce it.

iii. In the implementation of the principle in recruitment, regards should be also made to the merit of the position.

9. Gender Equality for Women

Section 15 of the constitution prohibits the discrimination of an individual in all ramifications on grounds of sex/gender of an individual. Although this section appears to guarantee gender parity in socio-economic sectors, the reality is, the non-justiciability of this section have undermined the effectiveness of the aspirations of the Constitution in this regard.

Also, **Section 26** of the 1999 Constitution appears to prioritize the rights of the male gender by allowing only a man to confer citizenship on a woman and not vice-versa. It is imperative that Section 26 be amended to read "

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the President may confer Nigerian citizenship on any 'person' who has been married to a citizen of Nigeria " hereby granting rights to both women and men to confer citizenship on their spouse.

The participation and representation of women in Nigeria are at an alarmingly low rate. This is a huge blow on the face of Nigeria especially in this 21st century where governments around the world have embraced gender equality to a very large extent. Women play a huge role in society and have shown competence in all spheres of life including politics. While it is valid to say that, the 1999 Constitution has largely not prevented women from participating in politics to secured position or that it is the general norm of Nigerian societies that women participate less actively in politics, the reality is, the law remains the best tool for entrenching social engineering. The Constitution in the Nigerian situation is the best tool to uplift the country from this scourge. We believe that the issue of female gender participation is one that requires constitutional intervention.

Therefore we will be proposing that the constitution provides for a certain threshold percentage, at least 35% of all appointments under the constitution to be women. This will cover all appointments in federal, states and local government councils. Also, it will cover appointments to be made under the different arms of government. Once the power to appoint by a certain authority is derived from the constitution either directly or indirectly, the authority saddled with the duty of carrying out such appointments must appropriate 35% of it to women without disregarding other parameters provided for under the constitution, such as federal character, academic or professional qualifications.

The above provision should be one of intervention, in that it will be operative for a specified period of time, let's say 25 – 30 years after which it ceases to be operative as a valid section under the constitution. If the members of parliament at that time consider that this provision is still expedient, the parliament will considers revalidating the provision. Its' revalidation will be considered as an amendment of the provision of the constitution. For clarity purposes, the proposal made here can be likened to the one provided for by the establishment of the Assets Management Corporation of Nigeria (AMCON) whose mandate is to be exhausted within a certain period of time

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by carrying out certain interventional acts in a critical sector of the economy. The under-participation of the female gender in leadership in Nigeria is likewise at a critical state and requires a similar intervention.

Furthermore, the constitution should generally forbid any government institution, private, association and others alike from listing conditions either for hiring or for providing any opportunity that excludes any person on account of their gender or whether they are married or not. Any of such provisions will be unconstitutional, null and void.

10. Justiciability of Chapter II of the Constitution

Chapter II of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (made up of 12 sections spanning from sections 13 to 24) contain the political, economic, social, cultural and developmental rights of the citizens. The chapter as far as good governance and accountability is concerned happened to be the strongest tool through which the citizens could keep the government on their toes and truth to their flamboyant political campaign promises and manifestos. However, it beats rationality and logic that this particular chapter of the Constitution was left best as an embellishment with no enforceability. To delve into the reason for the non-justiciability of Chapter two of the Nigerian constitution is to commence a voyage of no return as there is no justification for same. This particular act by the draftsmen of the Nigerian Constitution has been criticized, not just by scholars but the Nigerian citizens; even international bodies and organization.

Non-justiciability presupposes limitations on the organ of government entitled to interpret the constitution, which is the judiciary. It further amounts to a denial of the rights (albeit; the economic rights) of Nigerian citizen who upon infringement of rights as provided in chapter II CFRN 1999 ought to seek redress in Courts of law. Such is simply an aberration since the constitution is not just the supreme law or grundnorm but also the organic (living) law that must be progressive in order to achieve social justice, development as well as eschew corruption.

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Moreso, the constitution as the supreme law of the nation ought to grow as the nation grows; as held in ***Oyewunmi v Ogunesan (1996) 3 NWLR (Pt. 137) 182***. Therefore, in the present era of issues of rights and development, no economic and/or social rights provisions in any constitution ought to be made non-justiciable. Otherwise, the government cannot be held accountable to the people which in turn will propagate corruption and hinder development.

Thus section 6(6) (c) of the Constitution ought to be deleted. By so doing, value is added to the Nigerian Democracy.

Furthermore, Chapter II of the Nigerian Constitution ought to be altered to include provisions for sanctions for failure to keep to the promises made in manifestos of political parties and their candidates, which are modelled after the chapter.

11. Fiscal Federalism and Revenue Allocation

In Nigeria today, the resources of the country belong the federal government, and the fund to be generated is kept in the federation account and is shared monthly among the three tiers of government: the federal, state and local government. This is a misnomer. Federating units are supposed to tap their resources to generate revenue and pay an agreed percentage as tax to the centre or the federal government. This makes the states to be inferior and subservient to the centre. Many activists have been agitating for true federalism to enable the states to control their resources. As observed by Professor Ohwona, there is nothing like true federalism. Either it is Federalism or Unitary. Concentrating the wealth of the country at the centre is an outstanding feature of a Unitary Government. Why is it that some sections of Nigeria are agitating for fiscal federalism in a country that claims to be a federation? The principles of federalism should affect everything. For example, in the US, the federating units manage their resources and pay tax to the central government. There has never been such agitation. Under the regional government in the first republic, Nigeria made remarkable progress with the three and later four regions using the resources at their disposal to make life meaningful for their citizens.

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12. Others

As noted under the proposal for local government administration and autonomy, the qualification for to contesting to the elected position of all officers of federal, states and local government council must be a minimum of a university degree or higher national diploma or its equivalent. This is so important because crucial decisions that affect the economy require sound knowledge in areas which a school certificate level education may not be sufficient enough to prepare one for as seen in practice.

Conclusion

We hope that the proposal will aid in guiding the members of this committee to carry out the crucial task of spearheading the review of the 1999 Constitution (as amended).

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