

# Towards a People's Constitution (2)



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Creating legislation is the business the Constitution of the Federal Republic of Nigeria, 1999 vests in the Senate and the House of Representative. Ideas for laws come from many quarters, members of the National Assembly themselves, the President, Governors State Legislators and ordinary citizens.

Before a bill becomes a law it must pass both houses of the National Assembly and must be signed into law by the President.

In each house of the National Assembly a bill must go through four stages and receive three readings before it can be passed into law. However, there are exceptions with regard to certain bills.

A bill goes through the following, Stage one: the identification of the need for a bill (proposal stage).

Stage two: first reading- the Clerk of the Senate/House reads the short title of the bill and tables it before the Senate President/ Speaker. Second reading - members of the Senate/ House may ask for further explanations as to the effect of the bill. There is also at this time a general debate on the bill.

Committee stage - a committee is assigned to deliberate on the bill and amendments are made to the bill

Report stage - the committee gives a report on the bill to the Senate/House

Third reading- the Senate/ House is asked to vote on the bill and further amendments are made to the bill if necessary.

Stage three: a clean print of the bill with all amendments is produced and signed by the Clerk and endorsed by the Senate President /Speaker

Stage four: the bill is presented to the President for assent

The length of time it takes for laws to be passed and enacted makes one wonder if we will ever move this country forward. The process is long and far too slow for a country like ours in a hurry and in desperate need of reform.

We are not in doubt that our country desperately needs a new constitution.

With the National Conference in full swing, the issue of a new constitution has been raised time and time again by Nigerians expecting a new beginning. As the confab progresses however it is becoming clear that the decisions reached at the National Conference may amount to nothing whatsoever if the Constitution is not amended accordingly.

There appeared to be a ray of hope two weeks ago, when the Senate committee on the review of the 1999 Constitution presided over by the Deputy Senate President, Senator Ike Ekweremadu, presented six new proposals. One of these was to empower the President to initiate the process of proposing a new Constitution and I thought, finally, history was about to be made. The reason proffered for this proposal was that if the President was empowered to initiate the process for a new Constitution, the issue of a vacuum arising from the absence of a referendum on the outcome of the National Conference in the Constitution would be taken care of. Furthermore in the event that the delegates at the National Conference decide to propose a new Constitution, the President through the amended Section 9 of the Constitution would provide legal backing to initiate the process. The proposals also sought to amend Section 3(b) of Clause 2 of the constitution dealing with how a new Constitution can be processed. Section 9 of the first Alteration Bill provided for how a new constitution

can come into being through the National Assembly. The aim of this insertion was to make provision for the President in addition to the National Assembly to initiate the process of a new constitution.

Section 9(1) 1999 constitution provides that:  
(1) The National Assembly may, subject to the provision of this section, alter any of the provisions of this Constitution.

(2) An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.

(3) An Act of the National Assembly for the purpose of altering the provisions of this section, section 8 or Chapter IV of this Constitution shall not be passed by either House of the National Assembly unless the proposal is approved by the votes of not less than four-fifths majority of all the members of each House, and also approved by resolution of the House of Assembly of not less than two-thirds of all States.

(4) For the purposes of section 8 of this Constitution and of subsections (2) and (3) of this section, the number of members of each House of the National Assembly shall, notwithstanding any vacancy, be deemed to be the number of members specified in sections 48 and 49 of this Constitution.

Not surprisingly this specific proposal generated a heated debate in the Senate, with rather interesting observations. Some Senators viewed the proposed amendment as a transfer of their exclusive power to the Executive whilst others did not think we needed a new Constitution at all. Furthermore, the timing created suspicion in the minds of opposing Senators.

It is worthy of note that since 2013, a proposal for a new Constitution has been in the pipeline but for whatever reason it has never seen the light of day.

Sadly, based on the resolution of the committee, Senator Ike Ekweremadu withdrew the controversial proposal on the grounds that it might not survive the voting process. Yet even if the resolution had not been withdrawn, the attendance at the session did not even make up the two-thirds of all members required by the Senate to vote on the constitutional amendment proposal.

Quoting from Professor Ben Nwabueze's article (see our p.12), the fact that the Constitution (1999) was not made by the people constitutes a flaw in it that cannot be cured. Nothing can change its character as a Constitution made, not by the people, but by the FMG and simply imposed on the people by that Government. Thus, even if all the proposals to be contained in a new Constitution for Nigeria were to be integrated into it (i.e. 1999 Constitution), it would still remain what it is, a constitution made by the FMG, and would still not meet the desire and demand of Nigerians for a new Constitution made by the people themselves and for themselves, and deriving its authority, as the supreme law of the land, directly from the people by means of a referendum. In other words, the 1999 Constitution can never become a democratic or a Peoples Constitution by integrating into it all the decisions and outcomes of the deliberations by the National Conference, as it is established and constituted by President Goodluck Jonathan. Integrating the decisions of the National Conference into the 1999 Constitution is like putting new wine into an old, cracked bottle contaminated by dead decomposing things inside it, the effect

of which would be to emasculate our aspirations for rebirth, greatness and unity.'

To make a constitution by the people will require a Constituent Assembly (also known as a constitutional convention or constitutional assembly). Unfortunately the National Conference is not a Constituent Assembly and can only make recommendations to the President on suggested amendments. The President thereafter can forward these suggested recommendations by way of a Bill to the National Assembly to amend the Constitution. That Bill will be a Special Bill because it will have to go through all the special provisions within the constitution for amendments. Thereafter the Special Bill would be taken to all the States of the Federation to be approved by two-thirds of all State assemblies. They must agree to the proposed amendment before it comes back to the National Assembly for further special provisions. This illustrates how difficult, cumbersome and expensive this process of amendment is.

If one considers what occurred when Senator Ibrahim Mantu's committee had the responsibility of pushing through constitutional amendment during President Obasanjo's regime we may have to think again if this process is worth the time spent. They travelled to all the assemblies of each state, held public forums, spent billions of Naira and it all ended with no amendments. It collapsed under the suspicion that it was part of the third term agenda.

Various suggestions have come up among which is that the 1999 Constitution was a schedule of decree 24 of 1999 made by the military. If you repeal the said decree, sections 8 and 9 of the 1999 Constitution will cease to exist paving the way for a new constitution. The flaw in this argument is that the National Assembly would cease to have any existence by law.

The best way forward is for the present National Assembly to promulgate an act converting the confab into a Constituent Assembly with powers to make a new constitution. All being equal the eventual product of the Constituent Assembly would now be a new constitution which would be brought into force by an act of the present National Assembly with the consent of the President. With that one single act the new constitution would become a people's constitution, which would lay to rest the criticism that all our other constitutions have been a donation of military governments.

So, it is clear that the National Assembly cannot be ignored in any process of constitution making or amending in our country.

