

National Confab Report: Time to Implement, or Not?

Recently there have been calls on President Muhammadu Buhari to implement the recommendations of the 2014 National Conference and I am indeed intrigued by why this sudden agitation has raised its head one year into the new dispensation. It is worthy of note that every now and again the newspapers are agog with a new cause for propaganda just like the latest on restructuring Nigeria.

There have been a variety of reasons given for this call for implementation of the Confab report, one of the most prominent of which is that its outcome is in tandem with the APC manifesto. Others are equally of the view that although the report may have been produced under a PDP government, it is not a PDP document but rather a Nigerian people's document; that the report was adopted by consensus by all the delegates to the Conference from the north to the south, east and west and that as such the report should be seriously considered for implementation. All well said but the thought that the sum of seven Billion Naira (N7 Billion) was expended in organising the confab over 5 months is painful enough to imagine especially in these harsh climes. The issue here is not whether all 492 participants were appointed and none elected but rather what was achieved after all was said and done is the issue. Delegates to the Confab have a good reason to bring it to light in the hope that it may be considered in some form or the other.

Nigeria has had a history of conferences preceding constitutions starting with the Independence Constitution in 1960, the Republican Constitution in 1963 that was then followed by the 1979 Constitution which made significant changes as the country moved from a parliamentary to a presidential system of government. In 1995 we had the General Abacha National Constitutional Conference and then the General Abdulsalami Abubakar Constitutional Conference of 1999 both leading to the 1999 Constitution and finally in 2005 President Obasanjo's National Political Reforms Conference. When the National Conference was inaugurated on March 17th 2014 by former President Goodluck Jonathan there were mixed reactions, ranging from the euphoric all the way down to the outrightly sceptic, as we have been down this road many a time before. There was particular criticism of the timing and the sincerity of the government at setting up such a mammoth committee of 492 delegates so close to the next general election. Furthermore one of the key questions being asked - and it became a cause for great debate - was whether the conference had the capacity to address the pertinent national issues of the day and if it had the power to draft a new constitution.

Former President Johnathan himself said that 'the outcome of the confab would be subjected to the approval of the National Assembly. Therefore, what is being planned is not a National Conference but an aspect of the constitutional amendment process.' More so when the terms of reference required that the conference was to advise the Government on the legal framework, legal procedure and options for integrating the decisions and outcomes of the National Conference into the Constitution and laws of the country. The constitutionality of the conference was an issue long before its inauguration and an action had been

instituted in the Federal High Court against the Federal Government on the grounds that the Government did not have the constitutional power to convoke or convene a national conference without the consent of the National Assembly. To quote from the President's speech then, 'the conference is open for us to table our thoughts and positions on issues and make recommendations that will advance our togetherness. The issues range from form of government, structures of government, devolution of powers, revenue sharing, resource control, state and local government creation, boundary adjustment, state police and fiscal federalism, to local government elections, indigeneship, gender equality and children's rights, among others'.

Professor Nwabueze at that time in a THISDAY LAWYER interview of 1st April 2014 did say that President Jonathan had inherent powers to convene the type of conference he has convened but lacked the power to set up a conference that would be competent to adopt a constitution that would be legally binding.

The then 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. 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 that 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 heated debate in the Senate, with rather interesting observations on it. 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. Based on the resolution of the committee, Senator 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 nearly meet the two-thirds of all members required by the Senate to vote on the constitutional amendment proposal.

I have read in its entirety the 900 page Final Draft of the 2014 National Conference Report and it is pertinent to note that some of the recommendations are already being implemented by the current government within its own specific agenda. For example on corruption, which this administration is focusing on eradicating hook, line and sinker, the Report states in strikingly familiar language that 'corruption remains the single most debilitating problem confronting Nigeria's development efforts. Its corrosive impact continues to undermine governance, stability and progress. It distorts and undermines efficient allocation of resources and by extension the country's capacity for competitiveness. It reduces the net value of public spending as well as the quality of services, public infrastructure and the volume of tax revenues and it encourages misappropriation and mis allocation of resources. Politically, corruption desecrates the rule of law, respect of human rights, public accountability and transparency. It undermines the electoral process, it creates and exacerbates the problem of legitimacy for governments and its institutions.'

Similarly on the issue of mining, the Report noted that 'mines and minerals including oil fields, oil mining, geological surveys and natural gas should be retained in the Exclusive Legislative list as specified in the 1999 Constitution of Federal Republic of Nigeria (as amended) but the Report recommended that the section of the Constitution be amended to read 'mines and all minerals including oil fields, oil mining, geological surveys and natural gas, provided that a) the government of the state where mining activities take place shall be involved in matters relating thereto; b) the Federation shall create a special fund to develop mines and minerals in states where such resources are underdeveloped.' Just as in the Ministry of Solid Minerals Development's Roadmap for the Growth and Development of the Nigerian Mining Industry also provides for a Solid Mineral Development Fund.

On the issue of pastoralists/nomadic livelihood the Report stated that a) an integrated development and livelihood modernisation programme should be designed and implemented to address the issue of settling nomadic herdsmen into settled communities based on established cattle ranches with fodder development technologies and including abattoirs, processors and other businesses along



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the livestock value chains. The Federal Government also plans to introduce grazing reserves in order to tackle clashes between herdsmen and some communities in the country.

Creating legislation is indeed the business the Constitution vests in the Senate and the House of Representatives. Ideas for laws come from many quarters, members of the National Assembly themselves, the President, Governors State Legislators and ordinary citizens. 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 was not a Constituent Assembly and could 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 need to be taken to all the States of the Federation to be approved by two-thirds of all State assemblies before it coming back to the National Assembly for final submission to the President.

This illustrates just how difficult, cumbersome and expensive this process of amendment is. The length of time it would take for a constitutional amendment to be passed makes one wonder if we will ever move this country forward in this manner. The process is long and far too slow for a country like ours in a hurry and in desperate need of reform.

Some of the recommendations of the National Conference may be considered independently as the government works towards restructuring the country but some are so ridiculous as to simply beggar belief, such as the recommendation to create a further eighteen (18) states in a country with 36 states already where so many are not independently viable but rather live off central government allocations, requiring the present Government to bail them out severally, all in just the last 12 months. Why on earth then would we want to add more? As for those who feel that this is the only way that government can reach their people, the rejoinder is that surely the greater, accelerated economic development of their existing states is the answer.

The Conference was still to take a decision on whether to recommend amendment to the 1999 Constitution or a brand new Constitution at the close of its plenary in July 2014. Those who are angling for the implementation of the report of the National Conference would therefore be better advised to look towards the National Assembly. We are not in doubt that our country desperately needs a new constitution but there must be the political will power to do so successfully.