

LEGISLATIVE PROPOSALS ON AFFIRMATIVE ACTION FOR WOMEN

This document comprises different options for amending the existing legislative framework to provide for affirmative action provisions or the adoption of special measures to aid the increased representation of women in appointive and elective offices. The proposals put forward include amendments to the 1999 Constitution, the Electoral Act 2010 and a “standalone” bill. Each draft legislative proposal contains varying versions in the wording of the proposed amendments. The proposals/bills were developed under PLAC’s project on *Expanding Inclusivity and Women’s Representation in Nigeria* supported by the Embassy of France Innovative Projects from Civil Societies and Coalitions of Actors (PISCCA) grant. It is hoped that this will be a useful advocacy material on this subject.

Proposed Amendments to the 1999 Constitution

Option One: A Constitution Amendment of section 42 (chapter 4) to introduce a clear basis for affirmative action

Constitution of the Federal Republic of Nigeria (Alteration) Bill, 2019

New Section 42A

Right of women to proportionate representation in appointive and elective offices

Version A: *The State shall take specific positive action, through enabling legislation and other measures, to ensure that women are represented proportionately in all appointive and elective positions mentioned in this Constitution. OR women constitute at least 35 percent representation in all elective and appointive positions mentioned in this Constitution.*

OR

Version B: *The State shall take specific positive action, through enabling legislation and other measures, to ensure that women are represented proportionately in all appointive and elective positions, and for the purpose of this section, proportionate representation shall be at least 35 percent of women representation in all appointive and elective positions mentioned in this Constitution.*

Option Two: A Constitution Amendment creating an exception to the freedom from discrimination provision to allow for affirmative action laws

Amendment to section 42(3)

- (3) Nothing in subsection (1) of this section shall invalidate any law by reason only that:
- (a) the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria; and
 - (b) the law makes special provision for representation of groups marginalised on the basis of gender or disability in any elective office mentioned in this Constitution.**

OTHER PROPOSED AMENDMENTS TO THE CONSTITUTION

To ensure representation of women in the governing bodies of political parties and mandate respect of democratic processes and practices in the affairs of political parties.

Section 223- Constitution and rules of political parties

- (1) The constitution and rules of a political party shall-
- (a) provide for the periodical election on a democratic basis of the principal officers, members of the executive committee or other governing body of the political party, **and candidates for election**; and
 - (b) **Version A:** ensure that the members of the executive committee or other governing body of the political party and candidates for election shall reflect:
 - (i) the federal character of Nigeria; and
 - (ii) at least 35 percent representation of women**
- OR**
- (b) **Version B: ensure that the members of the executive committee or other governing body of the political party and candidates for election shall reflect the federal character of Nigeria of whom at least 35 percent shall be women.**

Section 228- Powers of the National Assembly with respect to political parties

The National Assembly may by law provide -

- (a) guidelines and rules to ensure internal democracy **democratic processes and procedures** within political parties, including making laws for the conduct of party primaries, party congresses and party conventions;
- (b) the conferment on the Independent National Electoral Commission of powers as may appear to the National Assembly to be necessary or desirable for the

purpose of enabling the Commission more effectively to ensure that political parties observe **democratic practices** of internal democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions.

COMMENTS

Pros

- The Constitution is the *grundnorm* of the land and thus the ideal law to situate such a novel provision. Also, section 42 is in Chapter IV of the Constitution, which contains Fundamental Human Rights.
- The most successful affirmative action measures/quota laws globally, were achieved through amendment to the Constitution of affected countries.
- Constitutional rules guarantee results. Its provisions cannot be challenged and will give women a solid basis to challenge discriminatory political party decisions, which is difficult to do currently.
- A constitution amendment will give strong constitutional backing to a consequential Electoral Act amendment or subsequent affirmative action laws.

Cons

- Constitution amendment is a long, complex and expensive process and requires the support of at least 24 States.
- Amendment to any fundamental human rights provision has a higher threshold; it requires the support of 4/5th majority of each chamber of NASS to pass.
- The provision could be seen as being discriminatory to men and thus face resistance. However, men and women have not enjoyed the same political access and opportunities, therefore this argument can be said to be untenable.
- Subsequent legislation may be needed to give effect to the proposed constitution amendments

Entry point: The 9th NASS has shared plans to embark on a further constitution review exercise, which can be leveraged on. Strong advocacy, mobilisation and public buy-in can help a Constitution amendment proposal to sail through. Similar amendments before NASS have failed due to lack of strong mass action and support.

Option Three: Amend the Electoral Act to mandate political parties to have at least 35% of their candidate lists filled by women.

Proposed Amendments to the Electoral Act

Amendment of section 31- Submission of list of candidates and their affidavits by political parties (*Insert a new subsection 2*)

- (1) Every political party shall, not later than 60 days before the date appointed for a general election under the provisions of this Act, submit to the Commission, in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections, provided that the Commission shall not reject or disqualify the candidate(s) for any reason whatsoever.
- (2) ***A list of candidates submitted to the Commission by a political party for election into:***
 - (a) ***the Senate shall have at least one-third of candidates from one gender; and***
 - (b) ***the House of Representatives, State Houses of Assembly and Area Councils of the Federal Capital Territory shall have at least 35 percent of candidates from one gender.***

Amendment of Section 87- Nomination of Candidates by Parties

DIRECT PRIMARIES

- (1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.
- (2) The procedure for the nomination of candidates by political party for the various elective positions shall be by direct or indirect Primaries.
- (3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.

Version A: Provided that in conducting primaries for National Assembly elections, all parties shall ensure that at least one candidate from the three senatorial districts of a State shall be a woman and at least 35 percent of candidates for House of Representatives seats shall be women.

OR

Version B: In conducting primaries for National Assembly elections, all parties shall ensure that at least one candidate from the three senatorial

districts of a State shall be a woman and not more than 65% of candidates for House of Representatives seats shall be from one gender.

OR

Version C: In conducting primaries for National Assembly elections, all parties shall ensure that at least one candidate from the three senatorial districts of a State shall be a woman and not less than 35% of candidates for House of Representatives seats shall be from one gender.

FOR STATE ASSEMBLIES

Version A: In conducting primaries for State Houses of Assembly, all parties shall ensure that at least 35% of candidates for House of Assembly seats shall be women. OR

Version B: In conducting primaries for State Houses of Assembly, all parties shall ensure that not more than 65% of candidates for House of Assembly seats shall be from one gender.

OR

Version C: In conducting primaries for State Houses of Assembly elections, all parties shall ensure that not less than 35% of candidates for House of Assembly seats shall be from one gender.

INDIRECT PRIMARIES

(4) A political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the procedure outlined below –

- (a) in case of nomination to the position of presidential candidate, a party shall –
 - (i) hold a special presidential convention in the Federal Capital Territory or any other place within the Federation that is agreed by the national Executive Committee of the party where delegates shall vote for each of the aspirants at the designated centre, and
 - (ii) the aspirant with the highest number of votes at the end of voting, shall be declared the winner of the Presidential primaries of the political party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party;

(b) in the case of nomination to the positions of Governorship candidate, a political party shall, where it intends to sponsor candidates-

- (i) hold a special congress in the State Capital with delegates voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party, and
- (ii) the aspirants with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party, for the particular State;

(c) In the case of nomination to the position of a candidate to the Senate, House of Representatives and State House of Assembly, a political party shall, where it intends to sponsor candidates-

- (i) hold special congresses in the Senatorial District, Federal Constituency and the State Assembly constituency respectively, with delegates voting for each of the aspirants in designated centre on specified dates;
- (ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party; and

(iii) Version A: In conducting primaries for National Assembly elections, all parties shall ensure that at least one candidate from the three senatorial districts of a State shall be a woman and at least 35% of candidates for House of Representatives seats shall be women.

OR

Version B: In conducting primaries for National Assembly elections, all parties shall ensure that at least one candidate from the three senatorial districts of a State shall be a woman and no more than 65% of candidates for House of Representatives seats shall be from one gender.

OR

Version C: In conducting primaries for National Assembly elections, all parties shall ensure that at least one candidate from the three senatorial districts of a State shall be a woman and no less than 35% of candidates for House of Representatives seats shall be from one gender.

(iv) Version A: In conducting primaries for State Houses of Assembly, all parties shall ensure that at least 35% of candidates for House of Assembly seats shall be women.

OR

Version B: In conducting primaries for State Houses of Assembly, all parties shall ensure that no more than 65% of candidates for House of Assembly seats shall be from one gender.

OR

Version C: In conducting primaries for State Houses of Assembly elections, all parties shall ensure that no less than 35% of candidates for House of Assembly seats shall be from one gender.

- (d) in the case of the position of a Chairmanship candidate of an Area Council, a political party shall, where it intends to sponsor candidates-
 - (i) hold special congresses in the Area Councils, with delegates voting for each of the aspirants at designated centres on a specified date, and
 - (ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party.
- (5) In the case of a Councillorship candidate, the procedure for the nomination of the candidate shall be by direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the Commission as the candidate of the party.

Version A: Provided that in conducting primaries for Area Councillorship candidacy, all parties shall ensure that at least 35% of candidates shall be women.

OR

Version B: In conducting primaries for Area Councillorship candidacy, all parties shall ensure that not more than 65% of candidates shall be from one gender.

OR

Version C: In conducting primaries for Area Councillorship candidacy, all parties shall ensure that not less than 35% of candidates shall be from one gender.

COMMENTS

Pros

- The amendment to the Electoral Act, which governs affairs of political parties and the Independent National Electoral Commission (INEC) is ideal for detailed provisions on rules governing elections.
- The Constitution empowers NASS to make rules for Federal and State levels elections. NASS can exercise this power by amending the Electoral Act.
- The Act is better suited for providing an implementation and oversight mechanism for affirmative action/special measures.
- The process of Electoral Act amendment is quicker and less complicated than Constitution amendment. It does not require the approval of the States and has a lower threshold; it requires a 2/3rd majority of each chamber of NASS to pass.

Cons

- Electoral Act amendments in recent times have suffered setbacks, therefore attaching this amendment to other Electoral Act amendments may be detrimental. Considering that Electoral Act amendment bills are usually consolidated, the failure of one proposal can lead to the failure of others.
- There might be pushback from political parties who do not want to support women.
- Section 31 of the Act currently prohibits INEC from rejecting party lists. Unless this provision is amended or qualified, implementation and enforcement could be poor, especially if there is no Constitution amendment backing it. On the other hand, women candidates can sue for non-compliance.
- This proposal does not guarantee that women will be elected, but it increases the pool of women candidates and improves their chances of winning.

There are conflicting opinions on whether or not a Constitution amendment is required first before affirmative action can be inserted in the Electoral Act, as the Constitution has an equality clause in section 42, which implies that advantages should not be created for persons on the basis of sex. There is no evidence that this has been tested and clearly interpreted by the Courts.

Entry point: The President and the 9th NASS has embarked on a further Electoral Act review exercise, which can be leveraged on. Strong advocacy and mobilisation is also needed here.

Option Four: A standalone bill, outside the Constitution and Electoral Act, that provides for a minimum number or percentage of women for elective offices.

Women's Representation in Legislative Houses Bill, 2019

ARRANGEMENT OF CLAUSES

Clause:

1. Objectives of this Act
2. Scope of application
3. Conduct of primaries
4. Elections of women into the Senate, the House of Representatives and the Houses of Assembly
5. Elections of women into the Area Councils of the Federal Capital Territory
6. Monitoring and compliance
7. Power to make rules and issue guidelines
8. Interpretation
9. Short Title/ Citation

A Bill

For

An Act to Prescribe Special Measures to Enhance Women's Participation and Representation in the Senate, the House of Representatives, Houses of Assembly and the Area Councils of the Federal Capital Territory, Abuja and for Related Matters

Sponsored by

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1. Objectives of this Act

The objectives of this Act are to:

- (a) provide for women's representation in the legislative houses in Nigeria in accordance with the obligations incumbent upon Nigeria as a State Party to the African Charter on Human and People's Rights ('the Charter');
- (b) ensure Nigeria's compliance with the provisions of Article 9 of the Protocol to the Charter requiring State Parties to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action; and
- (c) establish an appropriate legislative framework, in addition to other measures, that will ensure women's representation at all levels in the legislative houses.

2. Scope of application

The provisions of this Act apply to all political parties in the presentation of candidates for elections into:

- (a) the National Assembly of the Federation, comprising the Senate and the House of Representatives of the Federal Republic of Nigeria;
- (b) the Houses of Assembly; and
- (c) the Legislative Houses of the Area Councils in the Federal Capital Territory, Abuja.

3. Conduct of primaries

- (1) In the conduct of primaries for the elections referred to in section 2 of this Act, a political party, before submitting the list of its qualified candidates to the Independent National Electoral Commission (in this Act referred to as 'the Commission') shall ensure that all processes and procedures for the conduct of primaries are carried out to ensure compliance with the provisions of this Act to achieve its objectives.
- (2) For the purpose of this section, "primaries" shall have the meaning ascribed to it under the Electoral Act.

4. Elections of women into the Senate, the House of Representatives and the Houses of Assembly

- (1) Where a general election is to be held in the country, a political party, in the

presentation of its list of candidates to the Commission, shall ensure that in the case of-

- (a) the Senate, at least one candidate from the three senatorial districts of a State is a woman;
- (b) the House of Representatives, at least 35 percent of the total number of candidates are women;
- (c) a House of Assembly, at least 35 percent of the total number of candidates are women.

- (2) In complying with the provisions of subsection (1) of this section, the political parties shall by their constitution and rules, make provisions for the nomination of women candidates among the Senatorial districts, Federal constituencies and the State constituencies.

5. Elections of women into the Area Councils of the Federal Capital Territory

Where elections are to be held into an Area Council of the Federal Capital Territory, Abuja, a political party shall ensure that at least 35 percent of the total number of candidates for the electoral wards of the Area Council are women.

6. Monitoring and compliance

- (1) In furtherance of the objectives of this Act, political parties shall comply with the principle of non-discrimination under section 42 of the Constitution, to give full effect to the rights of women to participate and be represented in elective offices in Nigeria.
- (2) The political parties shall, in the implementation of the provisions of this Act, ensure strict adherence to the democratic processes and procedures in the Constitution and the Electoral Act.
- (3) The Commission shall monitor and ensure compliance with the provisions of this Act.
- (4) The Commission shall prepare and submit to the President and the National Assembly, not later than one year after every general election, reports on the status of implementation of the provisions of this Act.

7. Power to make rules and issue guidelines

The Commission shall make rules and issue guidelines to ensure the effective implementation of the provisions of this Act and to achieve its objectives.

8. Interpretation

In this Act, unless the context otherwise requires-

"Commission" means the Independent National Electoral Commission established under the Electoral Act;

"Constitution" means the Constitution of the Federal Republic of Nigeria 1999;

"Electoral Act" means the Electoral Act 2010;

"Electoral ward" has the meaning ascribed to it under section 105 of the Electoral Act;

"House of Assembly" means a House of Assembly of a State of the Federation;

"legislative houses" means the Senate, House of Representatives or a House of Assembly;

"Protocol" means The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

9. Short Title/ Citation

This Act may be cited as the Women's Representation in Legislative Houses Act, 2019.

Explanatory Memorandum

This Bill seeks to prescribe special measures for participation and representation of women in the Senate, House of Representatives, Houses of Assembly and Area Councils in the Federal Capital Territory, Abuja with appropriate mechanism for monitoring compliance with the provisions of the Act.

COMMENTS

Pros

- This could be the quickest law to pass, as it would be free from issues surrounding the Electoral Act 2010 and the complexities of Constitution amendment.
- It would keep the focus on the issue of women's representation and ensure it is not forgotten when lumped with other electoral reform issues.
- It is most appropriate for a law that is merely a temporary measure i.e. with a "sunset clause" or provision stating that the law will lapse: e.g. until 2023 or 2027 or be removed after 1, 2 or 3 elections or until women attain 35% representation
- The Law can be passed with support from a 2/3rd majority of each chamber of NASS. It does not require approval of State Assemblies.
- A dedicated and influential sponsor(s) can push this bill through till the end.
- It is a good way of enforcing the culture of gender sensitivity within Parties.

Cons

- Arguments could be made that it contravenes the equality clause in section 42(3) of the Constitution, unless a strong legal/counter-argument is made.
- It may require additional regulations or guidelines by INEC, although this is not a huge challenge.
- Prescribing such additional nomination rules for political parties and INEC separate from the Electoral Act could lead to fragmented legal provisions, although this is a manageable problem.
- INEC cannot reject party lists, unless the Electoral Act is amended/qualified to allow them to do so on the ground that a candidate list does not have the minimum requirement of women. In the absence of this however, failure of parties to comply can be a basis for legal action by women candidates.
- Reserved seat quotas (i.e. seats reserved in parliament) fare better than Legislated candidate quotas (i.e. reserved candidate spots within political parties). Obtaining candidacy does not guarantee a win and a seat in the Assembly, therefore even where Parties meet the 35% threshold, it does not translate to 35% representation within the Assembly. However, candidate quotas increase women's chances of winning.

Entry point: The proposed bill is grounded on the African Charter (Maputo protocol), which Nigeria is a signatory to. It also draws from the National Gender Policy. These can be used to formulate arguments to elicit support for the bill. As usual, strong advocacy, mobilisation and public awareness can help the amendment proposals to sail through.

About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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