



**STEP BY STEP**

**PROCESS OF AMENDING THE  
NIGERIAN CONSTITUTION**



# **A STEP-BY-STEP GUIDE TO THE PROCESS OF AMENDING THE NIGERIAN CONSTITUTION**



**Published by:**



**Policy and Legal Advocacy Centre (PLAC)**

Off Edwin Clark Way via Gilmor Junction,  
Guzape District, Abuja  
Nigeria

**With support from:**



© PLAC 2015

All rights reserved

## ACKNOWLEDMENT

PLAC wishes to acknowledge the support of the British Department for International Development (DFID) in the publication of this guide.

## TABLE OF CONTENTS

Introduction	1
Changes to the Text of the Constitution	4
Required Legislative Process in Nigeria	6
Steps in Amending the Constitution	7
Stakeholders in Constitutional Amendment	12
Recommendations	19
Conclusion	22

# 1. INTRODUCTION

A constitutional amendment is a formal change to the text of the written Constitution of a nation or state. In some jurisdictions, the text of the Constitution itself is altered; in others, the text is not changed, but the amendment changes its effect.

Most constitutions require that amendments cannot be enacted unless they have passed a special procedure that is more stringent than that required of ordinary legislation. Examples of such special procedures include super-majorities in the legislature, or direct approval by the electorate in a referendum, or even a combination of two or more different special procedures. A referendum to amend the Constitution may also be triggered in some jurisdictions by popular initiative.

In Nigeria, for instance, some interests and advocacy groups had called for a referendum to endorse the constitution amendment process. This position has continuously been rejected by the National Assembly on the premise that the 1999 constitution does not provide for a referendum.

The authority to amend the Constitution is derived from section 9 of the 1999 Nigerian Constitution. The Constitution provides that an amendment may be proposed with a two-thirds majority vote in both the Senate and the House of Representatives.

The 1999 Constitution of Federal Republic of Nigeria clearly took a cue from the United States model going by the

Federal structure of government, the presidential system of government and the amendment process respectively. Article V of the United States Constitution clearly states the procedure for amending the US Constitution as well as its ratification. It requires that two-thirds votes of members of the Senate and House of Representatives propose such amendment followed by a ratification of three-fourths of the various State Legislatures. An alternative method is that two-thirds of the State Legislatures calls a convention for such purpose, which would be followed by a ratification of proposed amendments from the convention by three-fourths of the State Legislatures. Although thousands of proposals for amendment have been made to the US Constitution, only 27 amendments have been ratified.

In Nigeria's case, Section 9 (2) and (3) clearly outlines the procedure for amending any provision of the Constitution. It requires the votes of two-thirds of members of both houses of the National Assembly and approval by resolution of two-thirds of the States Houses of Assembly. The provision is to avoid situations in our polity where the voice vote option could be used by Parliamentarians, propelled by promptings of a group of power brokers to change the provisions of the constitution to suit an individual's ambition to amass power.

This safe guard should be used in assessing the so called arguments now prevalent in the current debate in the National Assembly where members just stand up and argue that their "constituents" have mandated them to follow a particular line of action. Often times, that these arguments are not known to

be products of a people driven consensus but rather, a made up, self-serving position.

The Constitutional amendment provisions as envisioned by the framers of the Constitution is for there to be a two-fold procedure of proposal and ratification so as to reflect the seriousness attached to the exercise in strengthening and deepening democracy.



## 2. CHANGES TO THE TEXT OF THE CONSTITUTION

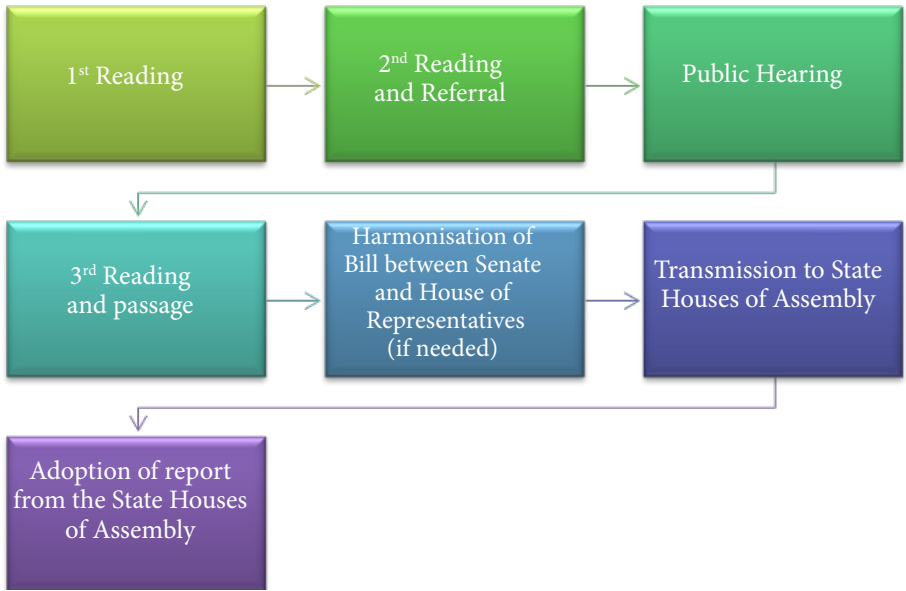
There are a number of formal differences, from one jurisdiction to another, in the manner in which constitutional amendments are both originally drafted and written down once they become law. In some jurisdictions, such as the Republic of Ireland, Estonia and Australia, constitutional amendments originate as bills and become laws in the form of Acts of Parliament. This may be the case notwithstanding the fact that a special procedure is required to bring an amendment into force. Thus, for example, in the Republic of Ireland and Australia, although amendments are drafted in the form of Acts of Parliament, they cannot become law until they have been approved in a referendum. By contrast, in the United States, a proposed amendment originates as a special joint resolution of Congress that is not submitted to the President for his assent.

The manner in which constitutional amendments are finally recorded takes two main forms. In most jurisdictions, amendments to a constitution take the form of revisions to the previous text. Thus, once an amendment has become law, portions of the original text may be deleted or new sections may be inserted among existing ones.

The second, less common method is for amendments to be appended to the end of the main text in the form of special sections of amendment, leaving the body of the original text intact. Although the wording of the original text is not altered, the doctrine of implied repeal applies. In other words, in the event of conflict, a section of amendment will usually take

precedence over the provisions of the original text, or of an earlier amendment. Nonetheless, there may still be ambiguity whether an amendment is intended to supercede or to supplement an existing section in the text.

### 3. REQUIRED LEGISLATIVE PROCESS IN NIGERIA



Section 9 of the constitution stipulates that the “National Assembly can only pass an Act to amend the constitution when its proposal to amend the constitution has been supported by two-thirds majority of all the members of each chamber and is approved by the resolution of at least 24 Houses of Assembly of the States.” This section of the constitution states the procedure to be adopted in amending the constitution.

## 4. STEPS IN AMENDING THE CONSTITUTION

- a. Proposals for amendment to the Constitution usually come in the way of Bills. Bills originate either from the Executive or a Member of the National Assembly, as a Private Member Bill. While Executive Bills are initiated by the President, Chief Justice of Nigeria or other Government Official on the one hand, Private Members' Bills are initiated by interest groups and sponsored by members of either the Senate or the House of Representatives on the other hand.

The Bill's presentation is preceded by its receipt by the President of the Senate or Speaker of the House of Representatives as the case may be and sent to their respective Rules and Procedure Committees for scheduling on the Order Papers for an introduction into the Houses. At its presentation, the long title is read out for first reading marking the beginning of the legislative process. It is important to note that the Bill goes through the same procedure in each chamber of the National Assembly.

- b. Usually, a Bill is read for a second time and the general principles of the Bill debated during plenary, after which it is referred to a Committee that has been specifically assigned within the lifespan of the Assembly to critically examine and legislate over the issues in contention. Bills proposing amendments to the Constitution are

forwarded to the Committee on the Review of the Constitution in the Senate or House of Representatives, which is an ad-hoc Committee that it usually set up to steer the Constitution Review Process in the National Assembly.

- c. The Committee reviews the Bill and may slate a public hearing and further consultations; and then, propose amendments to the plenary. At this stage, Bills are not only critically examined by the Committee but by identified stakeholders in the public who are often required to make written submissions of their views through a Memorandum and propose amendments where necessary. The Committee is at liberty to develop new amendment proposals based on received submissions and outside of those committed to it through an Executive or Private member Bill.
- d. The amendment proposals are presented as one Constitutional Amendment Bill in a report to the Plenary. If it is adopted, the Bill progresses to Third Reading.
- e. Before the Bill progresses to Third Reading, every member of the legislature votes either in support or against each specific item in the Bill. Here, the proposals to the Constitution are often presented in the form of a clause. A two third majority of all the members of each House is needed for each clause to be deemed as passed except where the proposal borders on the creation of new states, boundary adjustments, new local government

areas, fundamental rights and on the mode for altering the Constitution. In such cases, a four- fifth majority is needed.

- f. The Votes are collated and counted. The reasons for this are two fold. Firstly, it is to ensure that the total number of Senators or House of Representative Members in attendance are not below the minimum number required to pass a proposed clause. Secondly, this is to ensure that any proposal that is passed meets the stipulated requirement of an approval by a two-third majority.
- g. Once two-third of the total number of Senators or Members voting in each chamber is achieved in any of the proposals of the Committee, the process moves to the next stage.
- h. Once the voting process in one House concludes, it is then sent to the other House who will in turn vote respectively so as to achieve a two-third majority of its members. *(Note: At this stage, both Houses could decide to harmonise their positions on the Bill before sending it to the States Houses of Assembly for concurrence).*
- i. If two-thirds of each of the Houses passes the proposals without amendment, it would then be transmitted to the State Houses of Assembly by the Clerk of the National Assembly for their concurrence.
- j. A vote of simple majority of members in 24 states will be required for each amendment to be completed.

- k. If an amendment occurs at either of the Houses, when it is transmitted to them, a Conference Committee will be set up to harmonise differences.
- l. If both Houses are not able to harmonise positions, the Bill will be returned to the respective chambers of the National Assembly for fresh voting.
- m. Two-thirds of the numerical strength of each House will be required to pass it at this stage. This would mean a minimum of seventy-two Senators and two hundred and forty Members of the House.
- n. Once passed, it is transmitted to the State Houses of Assembly for concurrence.
- o. When two-thirds of the States approve each clause by simple majority, the amendment automatically comes into effect. Returns are then made to the National Assembly and should mean that the amendments come into effect. There is however the debate whether at this stage, the returned bill from the States automatically comes into effect or if it should be sent to the President for his assent.
- p. If the process is defeated at any stage, it will end any further step and will have to start afresh.
- q. The end of Assembly of every legislative house breaks

the cycle of the amendment process. Therefore, the Constitutional amendment process cannot go beyond the fixed period stipulated for any given Assembly nor deliberations continue at the convening of a new Assembly.

## 5. STAKEHOLDERS IN CONSTITUTIONAL AMENDMENT

### 5.1 Executive

In Nigeria, the Executive may propose a Bill seeking to amend the constitution and send it to the Legislature for consideration. Unlike the process by which a law is passed, the executive branch, (or the President), in many jurisdictions, plays no official role in the amendment process.

The Executive Arm of Government may set up a Committee of its nominees to pursue an objective of amending the Constitution. The committee will be expected to submit its report after conducting public hearings and other activities to make the process an all-inclusive exercise. From the inputs gathered at the public hearings, the Executive will articulate all the views and suggestions on constitutional amendment in bills form and transmit them to the National Assembly to avail the legislature ample time do a proper job.

*“Assent: A decision of the Federal High Court in Olisa Agbakoba Vs National Assembly”*

Part of the bills process in the National Assembly is that the President assents to it before it becomes law. However Section 9 of the Constitution, which deals with amendments to the Constitution itself, does not expressly state that the President’s assent is required. Prominent legal scholars in Nigeria have written divergent

opinions on whether the President's assent is required in the constitutional amendment process; particular mention must be made of the opinions of Chief Richard Akinjide, SAN, Professor Taiwo Osipitan, SAN, Mr. Olisa Agbakoba, SAN and most recently the official position of the Nigerian Bar Association who have argued that the proposal for the alteration of the 1999 Constitution as passed by the National Assembly and approved by more than two-thirds majority of the State Houses of Assembly cannot take effect as amendments to the 1999 Constitution in the absence of the assent of the President.

However, those who hold contrary views maintain that the president whose functions are well articulated in Part II, Section 5(1)(a) and (b) of the 1999 Constitution has no formal constitutional role in the amendment process as stipulated by Section 9 of the Constitution.

In 2010, the National Assembly carried out amendments to the Nigerian Constitution. The question then arose whether the amendments could become valid without the President giving his assent to it. To follow up the question and public discourse on the matter, former president of the Nigerian Bar Association (NBA), Olisa Agbakoba, sued to force the National Assembly to present the amended constitution to the President for his assent. On November 8, 2010, a Federal High Court in Lagos presided over by Justice Okechukwu Okeke declared in the Olisa Agbakoba case, that the amended Constitution is invalid without the President's signature. Consequently, the National Assembly took the amended Constitution to the President who then assented to it. This in

effect meant that the President's assent was not dispensed with in the 2010 exercise.

Experts however argue that the National Assembly should have pursued an appeal of the Lagos Federal High Court decision and gotten the Supreme court to clearly state a proper interpretation of the state of the position of the Constitution on the matter. The National Assembly as if to settle the question however, made explicit proposals and proceeded to amend section 9(2) of the Constitution to dispense with the assent of the President. This will however require the President assenting to a cut back on his powers before it can come into effect.

Be that as it may, some still argue that the president can neither veto an amendment proposal by the National Assembly nor the approval of two-thirds majority of the Houses of Assembly. They further argue that since there is no ambiguity in the provisions of section 9 of the 1999 Constitution; there is therefore, no need to refer to Section 58 of the Constitution, which is inapplicable anyway. According to the proponents of this view, Section 9 is sacrosanct and cannot be departed from, varied or added to by the proponents of presidential assent.

## 5.2 Judiciary

The second major way the meaning of the Constitution changes is through the judiciary. As the ultimate arbiter of how the Constitution is interpreted, the judiciary

wields more actual power than the Constitution alludes to. The complex role of the Supreme Court in constitutional amendment derives from its authority to invalidate legislation or executive actions, which, in the Court's considered judgment, conflict with the Constitution. This power of "judicial review", though not explicitly provided in the Constitution, has given the Court a crucial responsibility in assuring individual rights, as well as in maintaining a "living Constitution" whose broad provisions are continually applied to complicated new situations.

### 5.3 Legislature

One of the major functions of the Legislature is to enact laws, which includes altering provisions of any law or the Constitution. Further, members of the Legislature have the power to sponsor bills proposing constitutional amendments.

Following the inauguration of the 7th House of Representatives in June 2011, the Leadership under the Speaker of the House, Rt. Hon. Aminu Waziri Tambuwal, CFR, issued a Legislative Agenda, which encapsulated the policy direction of the House. The Legislative Agenda, in Principle 5, identified further amendment of the Nigerian Constitution, as a key objective to be pursued in line with the aspirations of Nigerians. While the Senate did not adopt a Legislative Agenda document, it also highlighted Constitutional Reforms as one of its key priorities.

### *5.3.1 Constitution of the Constitution Review Committees in the 7<sup>th</sup> National Assembly*

At the beginning of the 7<sup>th</sup> National Assembly in 2011, the leader of both chambers in the Senate and House of Representatives constituted Ad Hoc Committees on the Review of the Constitution in September 2011 to drive the process of further amending the Constitution with the Deputy Senate President and Deputy Speaker of the House as Chair in each Chambers respectively. Membership of the Committee included the Principal Officers of the each chamber and for the House, a member to represent each State of the Federation and the Federal Capital Territory (FCT), Abuja. A few members were included to represent special interests.

### *5.3.2 Methodology and activities of the Constitution Review Committee*

The Ad hoc Committees on Constitution Review in the Senate and House held several meetings aimed at enabling members to be fully involved in its work. Given that Members of the Committee would not have time, owing to their busy schedules to attend to the technical aspects of the work, the Committee would appoint Technical Experts to assist it with developing the Work Plan for its activities. The team of experts would include experts on constitutional and legal matters and civil society organizations.

### *5.3.3 Referral of Bills to the Committee*

Often times, Constitution amendment bills come in several separate documents. Such bills would be made to go through the normal bill stages, however, when they have been read a second time and a debate on their general principles is done, the House in question entertaining the bill usually refers it to the Constitution Review Committee for further legislative action. The Committee is mandated to consider those Bills that are referred to it by the House after they have been read for the second time. The Committee's duty is to report back to the plenary on clauses of the bill that they recommend for adoption and those that they think should be excluded. It is important to note that in practice, where there are several bills seeking to amend a particular legislation or different constitutional provisions, the bills can be consolidated and taken as one. In the 7<sup>th</sup> National Assembly's Constitution Review process, several bills, some sponsored by legislators, were proposed to the National Assembly and considered by the Constitution Review Committees in both chambers.

### *5.3.4 Voting Pattern*

The voting procedure in dealing with amendments includes each House considering clause by clause, the Report laid by the ad-hoc Constitution Review Committees and voting on each clause. Voting could be via electronic device to determine the various clauses

in the Constitution Review Report adopted by members and to record the manner individual lawmakers voted.

## 6. RECOMMENDATIONS

Constitutional review in other democracies have taken such pattern where interests groups, civil society groups and state actors hold consultations on key areas of review through people driven process because ultimately, the Constitution is for the citizens in a society. Any process that fails to meet the basic test is driven by ambition of the political class interested in grabbing power for sake of power.

In the 7<sup>th</sup> National Assembly review process, far reaching amendments to the Constitution were sought. The House of Representatives in particular circulated a 43-item questionnaire to constituents, which it used to develop its amendment proposals. Some observers were of the view that fewer items selected through rigorous procedure of legislative scrutiny would have been tabled for amendment by the National Assembly, so that time could be devoted to it in assessing the merits and demerits. The reason given is that constitutional amendment is a regular function of the parliament, therefore a new session of the legislature could easily continue the process. The argument here is similar to the argument for a piece meal approach to amending the Constitution as against embarking on comprehensive amendments.

This notwithstanding, the 2014 Constitution amendment process was able to scale through the National Assembly and State Houses of Assembly, leaving the President's assent to complete the process.

In future amendments, there may be a need to concentrate on critical areas of the polity such as:



Security



Education



Agriculture



Human Empowerment



Infrastructure



Sufficient Publicity for Public Hearings



Public Enlightenment before Commencement of the Exercise

The media's role in ensuring that the contents of the constitutional amendments are comprehended and shared by the wider populace cannot be underestimated. Consequently, a socially conscious media that understand their responsibility to educate, inform, and set an agenda for society must facilitate the constitutional review process.

Some are of the view that the present Constitutional review process in Nigeria has been hampered by a lack of awareness by the average citizen on the nature and contents of the Bill; despite containing many innovative alterations.

Nevertheless, the level of constitutional awareness in past Constitution amendments has been credited to various factors which include the activities of political parties, labour unions, educational systems, military intervention in government and agitation, by some nationalist/regional groups. To this end, a meaningful constitutional review process must be spear headed by a collaboration of vital partners.

## 7. CONCLUSION

Legal jurisdictions of the world have different processes or procedures for tampering or altering their Constitution or grundnorm. The Nigerian process requires careful and methodical fulfillment of conditions laid out in the Constitution. This procedure is outlined in this publication, however, a major challenge for practitioners, courts and citizens is how to keep track of successful amendments. At this time, Nigeria has had three successful amendments to the Constitution numbered 1,2,3. These amendments are scattered in their different numbers and may not always be readily available at the same time or place leading to confusion.

With the failure of the government of President Jonathan to successfully conclude the National Constitutional Conference and the uncertainties surrounding the 4<sup>th</sup> amendments to the Constitution, it is clear that the 8<sup>th</sup> National Assembly will need to return to the drawing board to be able to successfully pass any future alterations to the Constitution.

The future alteration to the Nigerian Constitution will need to adopt innovative and creative strategies to end for all times the constant refrain of activists constantly agitating for a sovereign national conference. The strategy should also aim to deliver a new Constitution in one single document that would be readily and easily accessible to all Nigerians and handy for judges, legal practitioners and citizens. A new Constitution should also seek to plug legal loopholes in the existing document and address current concerns.

# About PLAC

Policy and Legal Advocacy Centre is a non-governmental organisation 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. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding from philanthropic sources.

