



# Step-by-Step

A

**GUIDE**

to the  
Process of amending the

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# NIGERIAN CONSTITUTION

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**PLAC**  
POLICY AND LEGAL ADVOCACY CENTRE





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

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# 1. INTRODUCTION

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A Constitution is the set of fundamental principles or established precedent according to which a State is governed. In other words, it is the organic and fundamental law that establishes the character and conception of government, its basic principles and the extent and manner of its sovereign powers.<sup>1</sup>

A constitution 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.

A Constitution may be written or unwritten and rigid or flexible depending on the nature of its amendment. Where it is written, the rules that govern its political system and the rights of citizens are contained in a single document but when it is unwritten, the fundamental rules of government can be found in its customs, usage, precedents, statutes and legal instruments rather than in a single codified document.

In addition, written Constitutions often have a rigid amendment process and special procedure for enacting, repealing or amending any giving law in comparison to unwritten Constitutions that adopt a more flexible process that allows the Legislature to amend laws in their Constitution by a simple or ordinary law making process.

However, most Constitutions require an amendment procedure that is more stringent than that required of ordinary legislation. Examples of such special procedures include passage by supermajorities in the legislature, direct approval by the electorate in

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<sup>1</sup> *What is Constitution? Definition of Constitution?.* Available at <https://thelawdictionary.org/constitution/>

a referendum and even a combination of two or more different special procedures. In some jurisdictions, a referendum to amend the Constitution may be triggered 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 referendum.

In Nigeria, the authority to amend the Constitution is derived from section 9 of the 1999 Nigerian Constitution, which provides that an amendment may be proposed with a two-thirds majority vote in both the Senate and the House of Representatives respectively and subsequently approved by a resolution of the Houses of Assembly of not less than two-thirds of all the States.

Going by its features of a Federal structure of government, Presidential system of government and a rigorous amendment process respectively, the 1999 Constitution of Federal Republic of Nigeria appears to have been inspired by the United States model. Article V of the United States Constitution clearly states the procedure for amending the US Constitution as well as its ratification. It requires a two-third vote of members of the Senate and House of Representatives proposing such an amendment followed by a ratification of three-fourths of the various State Legislatures. Alternatively, two-thirds of the State Legislatures can call a constitutional Convention for such purpose which could be followed by a ratification of proposed amendments from the Convention by three-fourths of the State Legislatures.

In Nigeria, both sections 9 (2) and (3) clearly outline the procedure for amending provisions of the Constitution. However, while Section 9(2) requires the votes of two-thirds of members of both houses of the National Assembly and approval by a



resolution of two-thirds of the States Houses of Assembly to make amendments to the Constitution, section 9(3) imposes a higher requirement of a four - fifth majority by both chambers of the National Assembly and approval by a resolution of two-thirds of the States Houses of Assembly where the amendments deals with the creation of new states, boundary adjustments, new local government areas, fundamental rights or the mode for altering the Constitution.

Proposals for Constitutional amendments in line with Sections 9(2) and (3) are usually carried out through the use of electronic voting at plenary to properly record the votes cast and avoid situations 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 personal interests.

While the need for Presidential assent to endorse the Constitutional amendment process has been debated in recent times, the two-fold procedure for proposal and ratification conveys the seriousness of a document from which all laws in Nigeria derive their validity from and which is described as the “grundnorm” of the land.

## 2. CHANGES TO THE TEXT OF THE CONSTITUTION

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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 like Nigeria, Republic of Ireland, Estonia and Australia, constitutional amendments originate as bills and become laws in the form of Acts of Parliament. There are however slight differences on further procedures required to bring such Acts or amendments into force. 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. In some other jurisdictions proposed constitution amendments do not originate as bills e.g. in the United States, a proposed amendment originates as a special joint resolution of Congress, which is not submitted to the President for his assent.

Constitution amendments are usually recorded in two main forms. That is either in the form of revisions to the previous text or by appending amendments at the end of the main text in the form of special sections of amendment while leaving the body of the original text intact.

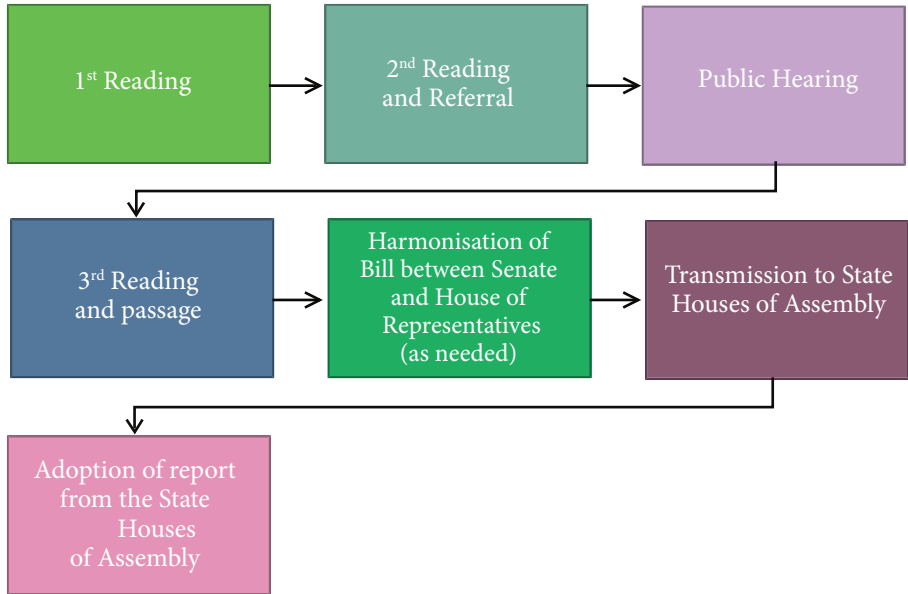
Where an amendment is recorded by revision to a previous text, portions of the original text may be deleted or new sections inserted among existing ones once the amendment becomes law.

However, where the second and less common method of appendage to the end of the main text is used, the doctrine of implied repeal will apply. 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. In Nigeria, the Law Reform Commission is responsible for the codification of all laws, including Constitution amendments.

### 3. REQUIRED LEGISLATIVE PROCESS IN NIGERIA

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Section 9 of the Constitution states that the National Assembly can only pass an Act to amend the Constitution when its proposal is supported by two-thirds majority of all the members of each chambers (i.e. 72 Senators and 240 Members) and approved by the resolution of at least two-thirds of the State Houses of Assembly ( i.e. 24 States).

## 4. STEPS IN AMENDING THE CONSTITUTION

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- 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, the Chief Justice of Nigeria or other Government officials, Private Member's Bills are initiated by interest groups and sponsored by members of either the Senate or the House of Representatives.

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 Business 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 its general principles 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 constitution amendment issues. In the National Assembly's case, this duty is usually performed by the Committee on the Review of the Constitution in the Senate or House of Representatives Bills – usually an ad-hoc Committee that is specifically assigned to critically review and make legislative input on constitution amendment proposals referred to it.

- c. The Committee reviews the Bill and may organise a public hearing and other consultations on the bill. At this stage, Bills are not only critically examined by the Committee but by identified stakeholders of the public who are often required to make written submissions of their view through a Memorandum to propose further amendments where necessary. The Committee is at liberty to develop new amendment proposals based on received submissions and outside of those committed to it.
- d. The amendment proposals are presented as one Constitution Amendment Bill or as several Bills touching on different subject matters in a report to plenary. The 8th Assembly for instance, adopted a piecemeal approach where constitutional amendment proposals were brought as separate bills rather than a single Constitutional Amendment Bill. This was done to avoid the 7th Assembly's experience with presenting multiple proposals in a single amendment bill, which were all jettisoned when the President refused to sign the bill. If the report and bill(s) as presented is adopted at this stage, it 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 then collated and counted, usually after electronic voting. The reason for this is two fold. Firstly, it is to ensure that the total number of Senators or House of Representatives 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-thirds 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. If an amendment occurs at either of the Houses on the bill or each House passes the bill with differences, a Conference Committee will be set up to harmonise the differences. This is because the two chambers are required to pass every bill, including constitution amendment bills in identical format.
- i. 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. Two-thirds of the numerical strength of each House will still 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 adopting an identical bill for transmission to the States.
- j. Where the bill is however adopted or passed in identical format by the two chambers i.e. without amendments, there would be no need for a conference or harmonization

as described above as it is deemed that they have passed a single uniform bill.

- k. The bill is then transmitted to the State Houses of Assembly by the Clerk of the National Assembly for their concurrence.
- l. A simple majority vote of members in 24 States will be required for each amendment to be approved. This is usually in the form of a YES or NO vote. *Note: In practice, State Assemblies have been known to “step down” or “defer” a bill they are unable to decide on instead of voting “No.” This still does not translate to a “Yes” vote.*
- m. When two-thirds of the States approve each clause by simple majority, returns are then made to the National Assembly after which it is adopted (usually in a ceremony) by the National Assembly before its transmittal to the President for assent. The Clerk of the National Assembly is expected to attach the Votes and Proceedings of the National Assembly and the State Houses of Assembly to show that the amendments meet the constitutional requirement for passage.

**Note** that some legislative experts argue that once the States approve the amendments, they should automatically come into effect as the Constitution does not expressly prescribe the requirement of the President’s Assent for constitution amendment bills. Further, that in a Federal system, when the States have ratified an amendment, it should be seen as the final and authoritative will of the people. This is the system adopted by the U.S. where the President has no formal role in constitution amendment. Others argue that



*the bill should obtain the President's Assent as Acts of Parliament require Presidential assent (see section 58 of the Constitution) and is a way of reinforcing checks and balances between the two government arms.*

- n. If the process is defeated at any stage, it will end any further step and will have to start afresh.
- o. The end of Assembly of every legislative house breaks the cycle of the amendment process. Therefore, the Constitution amendment process cannot go beyond the fixed period stipulated for any given Assembly nor deliberations on the amendments continue at the convening of a new Assembly.

**Note** *however, that recent Rules of the House of Representatives [Order XIII, Rule 1 (11)] now allow for constitution amendment bills not concluded in a previous Assembly to be taken up by a new Assembly. This was seen in the 7th and 8th Assemblies where the latter continued and concluded work on some constitution alteration bills began by the former but vetoed by the President. This provision however goes more to the issues and does not dispense with certain procedural requirements. For instance, the bill will still have to be reintroduced and made to go through the legislative stages or readings. The benefit of the rule is that the same issues can be brought back on table. Those considered settled can be prioritised and accelerated while certain procedures like a public hearing may be dispensed with except there are new issues or provisions introduced in the bill that require further consultations.*

## 5. STAKEHOLDERS IN CONSTITUTIONAL AMENDMENT

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### 5.1 Executive

In Nigeria, the Executive may propose a Bill seeking to amend the constitution and send it to the Legislature for consideration.

The Executive Arm of Government may also set up a Committee of its nominees to pursue the 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 Constitution amendment in bills form and transmit them to the National Assembly to avail the Legislature ample time do a proper job. In October 2016 for example, the Federal Government set up a 25-man Committee that was inaugurated by the Attorney General and Minister of Justice, Abubakar Salami (SAN) to suggest Constitution and Electoral reforms to improve the electoral process.

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

In practice, the President must assent to a constitution amendment bill before it becomes law in spite of the fact that 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; with particular mention of the opinions of Chief Richard Akinjide, SAN, Professor Taiwo Osipitan, SAN, Mr. Olisa Agbakoba, SAN and even 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 as to 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 an 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.

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 interpret the position of the Constitution on the matter. The 7th and 8th Assemblies, have sought to amend section 9(2) of the Constitution to dispense with the assent of the President. However, this amendment which implies that the President has to cut back on his powers has been vetoed by former President Goodluck Jonathan and incumbent President Muhammadu Buhari.

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 no need to refer to Section 58 (which requires Presidential assent for the passage of ordinary legislation) as it 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 emanating from public or interest groups that propose constitution amendments. In the 7th Assembly, the House of Representatives under the Leadership of the then 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 amendments to the Nigerian Constitution, as a key objective to be pursued in line with the aspirations of Nigerians. The 8th National Assembly also followed suit highlighting Constitutional Reforms as one of its key priorities in both chambers.

#### **5.3.1 Constitution Review Committees**

In the National Assembly, the Ad Hoc Committees on the Review of the Constitution is usually led by the Deputy Senate President and Deputy Speaker of the House as Chair in the respective chambers. Membership of the Committee typically includes the Principal Officers of each chamber and in the House, the convention is that one member from each State of the Federation and the Federal Capital Territory (FCT), Abuja are nominated to the committee. To facilitate the committee's work, external

Technical Experts on constitutional and legal matters are usually commissioned to assist it with developing its work plan, reviewing memoranda and making technical inputs to the bill.

### **5.3.2 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 done, the chamber 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 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 7th and 8th National Assembly's Constitution Review process, several bills, including those sponsored by legislators, were proposed to the National Assembly and considered by the Constitution Review Committees of both chambers.

### **5.3.3 Voting Pattern**

The voting procedure in dealing with amendments includes each chamber considering clause by clause, the Report laid by the ad-hoc Constitution Review

Committees and voting on each clause. Voting is usually via electronic device to determine how members voted on the various clauses in the Constitution Review Report and to determine if the constitutional requirement for supporting proposing amendments was achieved.

## **5.4 Citizens / Interest Groups**

The general public/interest groups play a pivotal role in Constitutional review through engagement with the process. In the past, the Legislature has embarked on zonal hearings on Constitution review in the six geo-political zones to ensure public enlightenment and receive input on proposals. Citizens/Interest groups may also be called upon to give feedback in public hearings after a constitution amendment proposal passes second reading. In the 7th Assembly, the House of Representatives circulated a 43-item questionnaire to constituents that was used to develop its amendment proposals.

## **5.5 The Media**

The Media plays an important role in shaping and guiding discourse on Constitution review and explaining how it affects citizens. This platform could generate healthy debate around constitution amendments, enable the legislature to be acquiesced of citizen preferences and increase political participation in a manner that deepens democracy.

## 6. RECOMMENDATIONS

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Constitution amendment is a necessity in democracies worldwide to enable the society responds to changing social, political and economic needs and realities. It is also important for addressing gaps and inadequacies, promoting rights and protecting minority or special interest groups. However, it is important the process is a rigorous, transparent and inclusive one so as to prevent and protect the society from politically motivated or selfish interests and even unnecessary changes with no long term purpose.

Constitution review in other democracies has taken a pattern where political leaders, interest groups, civil society groups and state actors hold consultations on key areas of review through a people driven process as the Constitution is ultimately owned by the citizens.

In Nigeria, successive efforts have been made by the 4th, 5th, 6th 7th and 8th Assembly to alter different sections of the Constitution. While the 6th Assembly enacted the 1st, 2nd and 3rd Alteration Acts, the 4th Alteration Act was successfully carried out by the 8th Assembly who adopted a piecemeal approach of sending separate Bills to the President for assent. The 8th Assembly had adopted this approach following the 7th Assembly's failure to secure assent from the then President Goodluck Jonathan even after its proposals were passed at the National Assembly and adopted by States.

That notwithstanding, the failure to pass critical bills desiring more devolution of powers from the Federal Government to States, local government autonomy, early budget presentation and other socio-economic issues has increased agitations for restructuring and a sovereign constitutional conference.



Therefore, future amendments may need to concentrate on critical areas of the polity such as:

- Devolution of powers
- Local government autonomy
- Indigeneship/citizenship rights
- Socio economic rights such as Health, Education, Housing,
- Security
- Agriculture
- Resource control
- Infrastructure
- Gender inclusion and minority rights

While some are of the view that the present Constitution review process in Nigeria has been hampered by a lack of awareness by the average citizen on the nature and contents of the Bill; this deficit merely highlights the importance of collaboration by all stakeholders, in ensuring that the process of engagement is as inclusive as possible. The media in particular play a large role in educating, informing and disseminating as much as possible, the contents of proposed Constitution amendments.

## 7. CONCLUSION

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Legal jurisdictions of the world have different processes or procedures for altering their Constitution or grundnorm. The Nigerian process requires careful and methodical fulfillment of conditions laid out in the Constitution as outlined in this publication.

A major challenge however has been how to keep track of successful amendments. At this time, Nigeria has had four successful amendments to the Constitution numbered 1,2,3, and 4. These amendments, in their different numbers may not always be readily available at the same time or place thereby leading to confusion.

Also, while the 8th Assembly has been able to pass some amendments, the agitations following the failure of passage of critical bills that sought to increase the devolution of powers from the Federal government to States, strengthen local government autonomy and enhance the political participation of women emphasise the need for innovative and creative strategies to curb agitations for secession and/or a Sovereign National or Constitutional Conference.

This strategy should 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. It must also seek to plug legal loopholes in the existing document and address current concerns. This will encourage ownership, acceptance and consolidate the unity of the Nigerian people.



## 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.

