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**Case Study
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(Internal perspective)

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DIALOGUE FOR CONSTITUTIONAL REFORM IN NIGERIA

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1. PREAMBLE

It is well established all over the world that democracy is the best form of government even though scholars and practitioners are not agreed on the definition, content and form of democracy. But there is agreement that democratic culture needed for the blossoming of democracy requires dialogue and consensus building. Unfortunately, since the Northern and Southern protectorates were amalgamated to form the territory now known as Nigeria in 1914, there has never been an inclusive dialogue process leading to a social compact or a legitimate constitution. Meanwhile, constitution making and reform is very important in any nation because the constitution is the fundamental law of the land, which contains the rules, conventions, and other practices by which a society governs itself. The constitution of a country is perhaps the most important instrument of governance since any other law or policy that is inconsistent with the provisions of the constitution is null and void and of no effect. This point was underscored by the I-IDEA report on Democracy in Nigeria when it stated there is the need for a new social compact to be negotiated between the state, civil society and the private sector through an inclusive national dialogue.

It is therefore not surprising that since the country returned to a civilian rule in 1999, attempts have been made by civil society organizations, intergovernmental organizations, international organizations and government to initiate a dialogue process for constitutional reform. Despite these attempts, a legitimate constitution has not been produced for the country in November, 2004. It is therefore necessary to understand the dynamics of dialogue for constitutional reform with a view to improving on future dialogue process. This study attempts to understand the dialogue process in Nigeria with a view to drawing lessons from the process.

2. BACKGROUND TO THE DIALOGUE PROCESS

Nigeria has had very long years of military rule. Out of the forty four years of post independence Nigeria, the military ruled the country for about thirty years. Nigeria gained independence in 1960. The First Republic lasted only six years and the military took over political power by force in 1966. The military ruled for thirteen years and handed over power in 1979. The Second Republic lasted only four years and the military took over again in 1983. The military ruled for another sixteen years and handed over power on 29th May, 1999. It is important to point out that military rule eroded democratic culture of dialogue and consensus building. It has been documented that military rule in Nigeria militarized the institutions of the family, the educational

system, community relations, religion, the judiciary and the economy. A study conducted by the Centre for Democracy and Development stated that there is:

“..... militarization of family and kinship relations with men assuming a militaristic command attitude towards women and children, resulting in widespread domestic violence, abuse and anti-democratic tendencies within the civil society. Adults beat children all the time, men beat women, some were killed or maimed, while the culprits were accountable to no one.....authoritarian orientation of the civilian educational administrators and government officials who ban legitimate staff and students Unions.....Traders speak of the practice of using army officers to collect debts or settle scores, the use of hired killers to murder rivals, and the use of religious rituals and sorcery in the spiritual warfare that is thought by some to accompany trade.....Transport companies routinely hire armed escorts to protect the passengers from robbers but the armed men that the passengers usually encounter are at the countless military and police roadblocks, brazenly extracting illegal tolls from every passing driver, thereby inflating transport fares.....some communities have adopted the barracks mentality of “might is right” especially in the contest for elective political office, characterised by thuggery and violence. Some traditional rulers run secret cults with which they intimidate people in rural areas and extort money from them as fines without due process.”ⁱⁱ

From the above, it is clear that the prolonged nature of military rule constricted democratic space, entrenched authoritarianism, and nurtured militarism in Nigeria.ⁱⁱⁱ The impact of military rule on the dialogue process was aptly captured by Adebayo Adedeji who argued that:

Whenever it (the military) exercises political power, military administration is perforce infected by the command system. Power is centralized and the approach to governance is inevitably top-down. Debate, discussion and dialogue are replaced by order, decree and command. Disagreement is tantamount to rebellion, and demonstrations are analogous to mutiny. Popular participation in governance is unthinkable. Thirty years of military government did succeed in turning Nigeria into a highly centralized polity.^{iv}

The impact of military rule on the dialogue process can be better appreciated when situated within the context of what scholars have termed the three “waves” of African governance from the 1950s to the 1990s.^v The first phase occurred in the 1950s and the 1960s with the departure of the colonial powers and it was characterized by one party rule, intolerance of opposition and charismatic leaders who fought for independence. The second wave started in the 1970s when brutal dictatorships collapsed in some countries (Uganda, Central African republic and Equatorial Guinea) while in some countries, elections for legislative seats were held (Senegal, Burkina Faso, The Gambia, Botswana and Mauritius) but some countries regressed into authoritarian rule after brief experimentation with democracy (Nigeria and Ghana). The third wave commenced in the late 1980s and early 1990s with the collapse of the Soviet Union that marked the end of the cold war that heralded multi-party democracy in many African countries. It has been documented that at least 38 countries held “founding” elections between 1989 and 1994.^{vi}

As at 1998, Nigeria was still under military rule but military regime was thoroughly discredited that the regime of Gen. Abdulsalami Abubakar was forced to put in place a transition process that

lasted only eight months. Although Nigerians agreed that the period of the transition was too short and hurried, people accepted the programme with all the shortcomings including the outcome of the 1998/9 elections because of overwhelming consensus and commitment that “the military must go”.

Due to the pariah status of Nigeria under Abacha, the Abdulsalami’s administration committed to the hand over to a civilian administration hurriedly developed a 25 member “Constitution debate collating committee”^{vii} established in November 1998. The committee headed by Justice Niki Tobi of the Court of Appeal, was alleged to have reported that the majority of Nigerians preferred the 1979 Constitution. The Provisional Ruling Council (PRC) then went to work on the 1979 Constitution, and made what it considered some necessary amendments. This view was reinforced by the Decree No. 24 of May 5, 1999 promulgating the 1999 Constitution as it recognized that “such amendments were necessary in the public interest and for the purpose of promoting the security, welfare, and good governance ...of the people of Nigeria”.

3. THE STUDY AND METHODOLOGY

The focus of this study is to analyse the dialogue process for constitutional reform in Nigeria since return to civilian rule in 1999 with a view to determining the concrete outputs and impacts and drawing lessons from the process. The methodology adopted in this study is documentation analysis and interview. This study has benefited from four sources of information. First and foremost, the study has tapped into the thinking and reflection of the author who has participated actively in the dialogue process for constitutional reform in Nigeria. Secondly, reports of the dialogue process were analysed. Thirdly, reports and writings of participants in the dialogue process were utilized. Finally, interview and discussion was held with analysts and participants of the dialogue process. The list of the interviewees is attached as appendix 1.

4. THE DIALOGUE PROCESS IN NIGERIA

The dialogue process for constitutional reform in Nigeria started immediately after return to civilian rule in May, 1999. As noted above, during the military rule, the environment was hostile and intolerant of any debate and dialogue process. However, the return to civilian rule created a conducive environment for the dialogue process to commence. The key actors in the dialogue process has been civil society organizations, intergovernmental organizations, international organizations and government. The dialogue process for constitutional reform can be said to have started even before the formal inauguration of the civilian administration. The elections were conducted in 1998 and early 1999 without the promulgation of the constitution. The Constitution was only enacted into law only a few days to inauguration of the new civilian administration through Decree No 24 of 5, May, 1999. So, the contestants were contesting for positions for which they did not know the legal basis. Many people therefore criticized the 1999 Constitution as an imposition from the military.

(a) Civil Society Process

But the formal initiation of the dialogue process can be traced to June 30- July 2, 1999, barely one month after the inauguration of the civilian regime when a leading nongovernmental organisation in West Africa, the Centre for Democracy and Development (CDD) organised a conference on the 1999 constitution and the future of Democracy in Nigeria. The conference was

attended by the Minister of Justice and Attorney General of the Federation who promised “to set in motion the process to amend the Constitution.”^{viii} At the conference, the Citizens’ Forum for Constitutional Reform (CFCR), a coalition of civil society organisations committed to constitutional reform was formed. At present, the coalition has over one hundred members. Since its formation, the Forum has been leading the debate on constitutional reform in Nigeria. Since then, many organizations have been involved the dialogue process. In addition to the initiative by the Centre for Democracy and Development (CDD), the Nigeria Labour Congress (NLC) led initiative, which brought together over thirty (30) Civil Society Organisations called the Civil Society Pro-Democracy Network. This led to the publication of Democracy Report 2001^{ix}. Included in the six sections of the report is the Constitutional Reform Committee, which presented its draft, was debated and adopted at the second Civil Society Pro-Democracy Summit, which held March 20-21, 2002 at Abuja.

The resolution of the committee was that were problems with the process of making the 1999 Constitution as well as the content of the Constitution. First, the Constitution was made during a military regime, approved by the Armed Forces Ruling Council made up of 26 persons all males, while the people did not participate in the process of making the Constitution. The conclusion was that the preamble which began with “WE THE PEOPLE of the Federal Republic of Nigeria do hereby make, enactwas a false claim^x .

As we have argued elsewhere, constitution-making experience in Africa shows that there are two distinct strategies, which we called the old approach and the new approach^{xi} . In the old approach, government appoints or stage-manages the election of a constituent assembly, parliamentary committee, technical committee, special task force or select committee of conservative lawyers and politicians to write a constitution for the country. The process of the old approach ensures that there is little or no debate, no consultation with ordinary people and no referendum on the draft constitution before it is decreed or passed into law. Even if the process allows some limited debate, the result is predetermined and manipulated and not informed by the logic and content of the debate. The old approach inevitably leads to imposed or authoritarian constitution^{xii} . The new approach is a process led and participatory approach that puts a lot of premium on dialogue, debate, consultation and participation. It is guided by principles which include among others inclusivity, diversity, participation, transparency and openness, autonomy, accountability and legitimacy^{xiii} . The CFCR adopted the new approach as its strategy for constitutional reform in Nigeria.

The Forum held several meetings to work out strategies for involving critical constituencies, communities and interest groups in the constitution reform process. The work of the forum was guided by the principles of inclusivity, diversity, participation, transparency, accountability, autonomy, legitimacy and accessibility. Inclusivity means that all voices and opinions including those of minority groups should be heard and reflected. Efforts must be made to bring in the views and concerns of people from all works of life. Every identifiable community should be invited, assisted and encouraged to participate in the review process. Nationality groups, women, students, the armed forces, the illiterate, the disabled, the poor, the rural dwellers, the youth, professions, trade unions, religious groups, traditional rulers, community organisations, prisoners, human rights organisations, pro-democracy groups, political parties, cultural organisations etc. should be involved to say what they will like to see in the constitution. Diversity entails that the Committee charged with the review process and the process itself must reflect existing diversity

in terms of ethnic identity, language, religion and gender. It is the responsibility of the country's leadership and those leading the process to ensure that this diversity is reflected. If this diversity is not reflected, the final document cannot claim to be democratic, legitimate and reflective of popular view. The principle of Participation requires that the process must take on board the involvement of people at all levels in debating freely the content of the constitution. Every effort must be made to ensure that people participate in the process. Participation by the people is crucial because if the people do not participate, both the process and the final document will be useless and irrelevant to democratic renewal that is so badly needed in the country. It is necessary that the people not only participate in the process but also should have easy access to the process and the final constitution; understand it and use it in the defence of their individual and collective rights. The principle of participation is pivotal because the centrality of constitution to the democratic process is increasingly being recognised by scholars, activists and governments all over the world. Transparency and Openness requires that the process must be transparent and open and must be seen by all to be so. To ensure transparency and openness, all submission made to the review panel; analysis of the submissions and the draft constitution should be filed, annotated, published and circulated widely. Furthermore, anyone who submits a memorandum should be acknowledged and drafts and final copy of the constitution sent to him/her. Another basic principle is autonomy. The body charged with leading the review process must be autonomous and independent from government control. It should not be tied to the whims and caprices of any arm of government. Furthermore, the final document to emerge from the process must not be tampered with by the government, and the process must be seen to be free from government control. In addition, the body charged with the responsibility of reviewing the constitution must be accountable to parliament and the people. There should be periodic publication of report and progress of work in an open and transparent manner. Finally, the process should be guided by the principle of legitimacy. A national referendum should be conducted to test the popularity of the draft constitution. The minimum vote for approval should be 51% of "yes" votes. The referendum will further popularise the contents of the constitution and give the people the opportunity to review the draft constitution and be sure that politicians have not eliminated their collective views. From the above, it is clear that the forum utilised diverse mechanisms that emphasised the need for consensus, public enlightenment and the use of simple and local languages that various communities will find easily accessible.

The Forum organised a seven-day training programme for all steering committee members, zonal and state co-ordinators and officials of the Forum's secretariat on Negotiation skills, Conflict Management and Principles of Constitution Making. The zonal and state co-ordinators then made contacts with parliamentarians, political parties, non-governmental organisations, and community-based organisations in each state of the federation. In addition to the above, the Forum agreed on the following nine critical areas as the main focus of its intervention in the constitution reform work:

1. 1. Citizenship and Residency Rights
2. 2. Federalism (to address the over-concentration of powers at the centre)
3. 3. Engendering the language and content of the Nigerian Constitution
4. 4. Fiscal Federalism/Resource Control
5. 5. Constitutionally entrenched independent commissions
6. 6. Freedom of Association and Political Parties
7. 7. Social and Economic Rights
8. 8. Access to justice and the rule of law

9. 9. The role of the security sector The above focal areas which formed the agenda of the dialogue by civil society was determined through study and discussions by members of the critical issues for consolidating democracy. Initially only seven areas were agreed upon but as the dialogue progressed, two new focal areas (access to justice and rule of law and the role of the security sector) were added. The Forum has organised colloquia on all the above thematic areas. The colloquia brought together civil society institutions working on specific themes and specialist academics and practitioners from Nigeria and abroad to share their experiences and comparative knowledge. The colloquia also enabled the Forum to engage in a thorough examination of the various sections of the 1999 Constitution with a view to providing a basis for the mobilisation work of the State and Zonal co-ordinators of the Forum. It also offered insights as well as materials for the production of the alternative model constitution, which is a cardinal objective of the Forum.

The Forum also submitted a memorandum to the National Assembly Committee on the review of the 1999 constitution. Equally, the Forum submitted memoranda to the presidential Committee on provisions for and practice of Citizenship and Rights in Nigeria and the presidential Committee on National Security in Nigeria. The CFCR then embarked on an elaborate outreach programme to involve Nigerians in the making of a constitution they can call their own. Prior to the commencement of the outreach programme, a national Workshop on the 1999 Constitution and a training programme on Constitution Making was organized for all officials of the forum and other civil society organizations. The outreach programme involved debate of the issues arising from the review of the constitution at the community, local government, state and national levels. The outreach programme led to the organisation of conference on the review of the 1999 constitution in all states of the federation and Abuja. In addition, zonal conferences were held in the six geopolitical zones of the country. At the end of zonal conferences, some contentious issues were obvious such as federalism, fiscal federalism, political parties, State Police, affirmative action and religion. The Forum therefore organized a workshop on Contentious issues in the review of the 1999 Constitution where consensus was reached on many of the issues. Moreover, the Forum conducted a National Scientific Survey to determine the views of Nigerians and gather quantifiable data on the trends and responses of Nigerians to the 1999 Constitution. This was rounded up with a national conference where all the positions were considered. At the National Conference, a model constitution was adopted for Nigeria.

From the above, it is clear that the CFCR utilised a process led and participatory approach in making the draft model constitution. It started with debate and consultation at the communities, which snowballed into constitutional conferences in all States of the Federation and Abuja. This was followed by zonal conferences in the six geopolitical zones of the country. The materials generated were complemented with a National Scientific Survey to determine the opinion of Nigerians on what they want to see in a constitution they can call their own. Thus, the process of making the draft model constitution was characterised by debate, dialogue and consensus building on contentious issues.

The approach of the CFCR drew heavily from the experiences of countries of Africa that have used the new approach such as Eritrea, Uganda and South Africa. However, in all these countries, the processes were led by Constitution Commissions set up by the government which used the new approach to produce constitutions that were adopted and now in use in those countries. The case of CFCR led to the production of a model constitution which is now being used as an advocacy tool for the review of the 1999 Constitution. The challenge is for government to set up

a Constitutional Commission to utilize the new approach to produce a popular constitution for Nigeria.

It is instructive to note that from conception, the CFCR was conceptualized to be all-inclusive. However, in its work, the consultation was dominated by NGOs especially at the zonal and national levels. Although political parties were invited to participate at its colloquia, only Alliance for Democracy (AD) consistently attended the colloquia. Labour and the organized private sector were only represented in a few of its meetings. However, despite the limitations of the CFCR process, it was a more elaborate and participatory process when compared to the processes embarked upon by the Presidential Technical Committee on the Review of the 1999 Constitution and the National Assembly.

(b) Government Process

In response to various criticisms and keeping to the promise made at the conference organized by CDD, the federal Government inaugurated the Presidential Technical committee on the review of the 1999 Constitution on 19 October, 1999. The name of the committee as a “technical committee” reinforces the common belief that constitution making is a technical issue reserved for lawyers and technocrats. The view was reinforced when the committee called for memoranda to be sent to it “in ten copies typed in double spacing and submitted personally or by speed post or by e-mail.”^{xiv} In addition, the committee gave only one month for people to submit memoranda. This elitist approach would have excluded the poor, the uneducated, those who have no access to computers and those who cannot afford the cost. It therefore elicited criticism from a broad section of Nigerians. The committee responded positively and extended the time for submission of report. The process of the government’s presidential committee on the review of the 1999 Constitution included both state and zonal consultations. The committee received about two million written memoranda and one half million oral presentations. It is important to note that the meetings were poorly attended. But in response to criticism from the civil society, at the time of submission of the report of the committee, the word “technical” has dropped out of its name.

The committee worked for one year, five months and submitted its report in February, 2001. Between 30 April and 29 May, 2001, zonal presentations of the report were made in the six geopolitical zones of the country. The pattern of the zonal presentations were similar. The then Minister of Information, Prof. Jerry Gana presents the report to the gathering. Government officials and pre-selected individuals are called upon to speak and people are asked to collect copies of the report. People struggle to collect copies of the report and there is a stampede and government officials leave the venue with siren blaring vehicles and the dialogue is over.

The report of the committee was presented in two volumes. Volume one contained the summary of deliberations and recommendations while volume two is a draft constitution supposedly based on the recommendations. But an analysis of the report will show that it is a bundle of contradictions and subversion of the will of the people as enunciated in their submissions. In the preamble to the report, it acknowledged that “Nigeria has never had a really participatory or people driven constitution making approach”(pp1-2, Vol.1). There is no doubt that all Nigerians will agree with this position. A careful reading of the report will show that the report captured correctly the mood, presentations and positions of Nigerians regarding various contentious issues

but refused to make the recommendations that will amend the constitution along those lines. For instance, on revenue allocation, Derivation and Resource control, the report stated that “the derivation principle or formula from natural resources was accordingly rejected in several parts of the federation in preference for a return to fiscal federalism principle under which federating states (or regions under the 1963 constitution) owned, controlled and developed the natural resources which were located on their land” (P43, Vol.1). The report further stated that “The twin issues of Derivation formula and resource control stand out and constitute the greatest test of the political will of the constitution review process to effect the desired restructuring of the Nigerian Federation so that justice is done to all stakeholders in the Nigerian Nation” (p43, Vol. 1). Now, what is the recommendation of the committee to address this issue? The committee recommended that the derivation formula as contained in section 162(2) of the 1999 constitution be increased substantially beyond the 13 percent minimum (p44, Vol.1). Meanwhile, in its proposed bill for amendment in volume 2 of its report, Section 162(2) was lifted verbatim as Section 169(2) of the proposed amended constitution without increasing the derivation percentage beyond 13 percent.

On the Land Use Act, the report states that “ One of the most controversial pieces of legislation in Nigeria today is the Land Use Decree of 1978 which sought to harmonize the various Land Tenure systems in the country and thereby ease the acquisition of land for public purposes”(p64, Vol. 1). The report further stated that “The preponderant view in several parts of the country was that the Land Use Act was unduly oppressive and had in fact outlived its usefulness. Nigerians argued that it was mischievous of Government to have tied the Act with the constitution in the belief that it will ease the wrongful appropriation of the land, which naturally belonged to the people. They maintained that the right of the people to ownership of land was an inalienable right which government could not, by any pretentious trusteeship, take away from the people. The promulgation of the Land Use Act was therefore seen as an anti-people and undemocratic action by the military Government (pp64-65, Vol.1). But what did the committee recommend? The committee recommended that the status quo as provided in Section 315(5) of the 1999 constitution be maintained. This approach runs through the entire report in all the contentious issues identified by the committee such as political structure, secularity, judiciary, women, human rights, state-federal relations, the military, the police force, political parties and local government.

From the above, it is clear that the committee had a pre-determined position on all the issues. The recommendations were not based on the memorandum received. They tried against the content of the memoranda, logic and reason to preserve the status quo (the 1999 constitution) that has been so severely criticised by all. It is pertinent to note that at the time of presenting the report, government gave citizens six months to debate the report after which an amended version will be presented to the national assembly as a bill. Unfortunately, as at November, 2004, no amended version has been produced. There have been two National Assembly process of reviewing the 1999 Constitution since the return to civilian rule in 1999. The first committee set up in May 2000 by the last Assembly was meant to review the recommendations of another committee of eminent Nigerians (Presidential Technical Committee) set up by the executive to review the 1999 Constitution. Although the mandate of the committee was a nationwide tour, meetings with stakeholders – executive, traditional institutions, labour movement, youths, the organized private sector, and religious leaders, the processes were marred from the start. For instance, the committee had its secretariat at the Sheraton Hotel and Towers, which made it inaccessible to the poor and excluded.

Above all else, the first effort to review the constitution suffered further setback because the bill was not read a third time before the tenure of the Assembly lapsed in 2003. one quick conclusion is that this committee devoted its four years term to reviewing a strategic document such as the Constitution without success.

The second committee inaugurated on the 30 October 2003 was termed the reconstituted National Assembly Joint Committee on the Review of the 1999 Constitution. The inauguration took place at the National Assembly Complex in Abuja. Deputy Senate President, Ibrahima Mantu, as Chairman, heads the Committee made up of 80 members drawn from both Houses of the National Assembly. The Deputy Speaker of the House of Representatives, Mr Austin Opara, is Deputy Chairman of the Panel.

However, one year down the line, the deputy speaker of the House of Representatives and the Vice Chairman of the Technical Committee on the review of the 1999 Constitution has blamed lack of funds for the slow pace of the exercise.^{xv}

© Intergovernmental Process

The main intergovernmental process that facilitated a dialogue process in Nigeria on return to civil in 1999 is the International Institute for Democracy and electoral Assistance (I-IDEA). The I-IDEA initiative was at the instance of the President, Chief Olusegun Obasanjo who invited I-IDEA in April, 1999 immediately after his election before swearing in to “support the process of democratic reform.”^{xvi}

The inter-governmental process can be anchored on the initiative of I-IDEA in Nigeria, which led to the production of no less than two key reports on ‘Democracy in Nigeria’-one of them Continuing Dialogue (s) for Nation-Building, and the other, Report of the Zonal Workshops.

Situating both works within the challenges of democratization in Nigeria, several conclusions can be made: that a new social compact is desirable to breaking the antidemocratic features in the Nigeria society, that a people’s Constitution is key to unlocking the varied potentials of the Nigerian nation, and finally that having a people’s Constitution is linked to the consolidation of democracy in Nigeria.

Making a comparison of the above with the report of the zonal workshops held in the series of continuing dialogues, especially the views of Nigerians who participated in the six workshops and those spoken to during courtesy visits – religious leaders, politicians, civil society activists, academics, amongst others, it is clear that Nigerians continue to hold on to the efficacy of dialogue and inclusive politics for the consolidation of democracy and the building up of the nation.

(d) International Organisations

When Nigeria returned to civilian rule in 1999, many international organizations revised their

Country Assistance plan to include support for constitutional reform. Examples include the Ford foundation, USAID, OSIWA and UNIFEM. These organizations provided support to government and civil society organizations to engage in the dialogue process. For instance the Ford Foundation gave two million dollars to the Presidential Committee on the reform of the 1999 Constitution. It also supported many CSOs including CDD, CFR, WARDC, CENCOD and CDHR. OSIWA supported the citizens forum for Constitutional reform. UNIFEM supported the dialogue process to mainstream gender.

5. ASSESSMENT OF THE DIALOGUE PROCESS

A critical assessment of the dialogue process in Nigeria will reveal that in all the processes, the greatest number of participants are from the NGO sector. Even the executive initiative, which was made up of representatives from political parties as members of the committee had very little participation from party members. In the civil society initiative, participants were identified based on the relevance of their work to constitutional reform and taking into consideration the focal area being considered. Open invitation was also given to the general public during conferences. For instance, during the discussion of issues on security sector, scholars, practitioners and relevant agencies in

¹ Democracy in Nigeria: Continuing Dialogues Report of the Zonal Workshops, I-IDEA, 2001, P. 21.

the security sector were invited to participate. In the government initiative, selected government officials were invited to participate and open invitation was given to members of the public. Interestingly, majority of the people that responded to the government invitation come from the NGO sector.

Women participated to varying degrees in the dialogue process. When the Presidential Technical Committee on the Review of the Constitution was set up by the President on 19th October, 1999, women were completely excluded but as a result of outcry by the civil society, the membership of the committee was increased to include women.

Enthusiasm by citizens to engage in the dialogue process

An assessment of the dialogue process for Constitutional reform in Nigeria shows that the enthusiasm of the citizenry and the tempo of engagement are high. That this is the case is borne out of the growing understanding that an inclusive process of Constitutional making is a process by which a nation births, and writes itself, its past, present and future². In fact, as various reports shows, the call for constitutional reform is meant to achieve: the issue of over-concentration of power at the Federal Level (power sharing), revenue allocation, gender equality, and peaceful co-existence, amongst others³.

Agreement by citizens on many issues

Analyses of reports by various organizations on the 1999 Constitution raises critical issues the citizenry are agreed on in strengthening democracy in Nigeria. From the reports of Citizens Forum for Constitutional Reforms (CFCR), Democracy Report, an initiative of the Nigeria Labour Congress (NLC), the Center for Democracy and Development dialogue series, the issue of decentralization came up, the dilemma of local governance, minority issues and rights, gender equity and political representation, review of the Electoral Act, a condemnation of the First-Past-The-Post electoral system, and the recommendation of Proportional Representation, among others are some of the points of convergence and consensus among the citizenry⁴.

Differences between the desires of ordinary citizens and the ruling class

One of the major challenges of the dialogue process of Constitutional reform in Nigeria is the difference in strategy on how to go about constitutional reengineering between the ruling elites and the people. This view was captured by the report of a conference organized by Citizen's Forum for Constitutional Reform (CFCR) documenting that the political class has so far proved to be incapable of or unwilling to push for the creation of

² Democracy in Nigeria: Continuing Dialogue for Nation Building, 2001, P.12.

³ Interim Report of the Expert Group Meeting on Constitution-Making in Nigeria, CDD, 1998.

⁴ National Scientific Survey on the 1999 Constitution of the Federal Republic of Nigeria, Citizens Forum for Constitutional Reform (CFCR), Research Report 2003.

Constitutions that would promote just and equitable societies, and are distracted by a chance to exercise power instead⁵.

Recognizing this challenge, there was an attempt at bridging the gap between the State and Civil Society⁶, which one of the reports of the working group titled generating consensus among diverse stakeholders' captured. This is without recognizing the potential obstacles that captured the discord amongst groups within civil society on issues of the Constitution, which could erode its legitimacy in the discourse on Constitutionalism in Nigeria.

Overwhelming call for a National Conference

On the issue of a National Conference, there are three sides: one of which is the overwhelming call for a conference, particularly on the part of a large section of civil society. The second dimension to the call is the outright condemnation of the call, particularly on the part of government apologists, who parade the existence of a National Assembly as a counter point. The final dimension, which represents the third view, is hinged on the fact of caution. This position calls for caution as it states that the deep-rooted governance challenges in Nigeria may not be wished away by a National Conference.

However, what should be emphasized is the fact that most Nigerians see a conference, whether it is a Constituent Assembly, or a Constitutional conference as key to re-engineering the governance process.

6. LESSONS LEARNT AND THE WAY FORWARD

There are a lot of lessons that can be learnt from the experience of dialogue process for constitutional reform in Nigeria. First, it has shown that political leaders on their own volition hardly decide to bring about fundamental constitutional reforms. In post colonial Nigeria, the driving force for constitutional reform are civil society organizations, intergovernmental organizations and international organizations. Secondly, political parties and the political class are not interested in fundamental constitutional reforms. They are more interested in capturing and exercising political power. In Nigeria, the 1999 elections were conducted without enactment of the law authorising the constitution. It was after the elections, just before the swearing in ceremony that the constitution was released. Politicians contested for positions without the knowledge of the constitutional provisions regarding the positions they were contesting for. Meanwhile, the absence of a constitution was not an issue during the electioneering campaigns. Thirdly, constitution making in Nigeria is always based on the old approach. The people do not participate and so cannot relate to the final document as their own. The people are alienated from the

⁵ National Conference on the Constitution Reform Process in Nigeria. Report of Conference organized by Citizens' Forum for Constitutional Reform (CFCR), November 2002, Otiye Igbuzor and Ololade Bamidele (ed). ⁶ The 1999 Constitution and the Future of Democracy in Nigeria. Bridging the Gap between the State and Civil Society. The CDD Conference Report, 1999.

political process and the end result is lack of respect for the rule of law, corruption and conflict. Despite attempts by civil society to advocate for the new approach, the government and political elite have not wholeheartedly adopted the new approach. Fourthly, the leadership of a country has a big role to play in initiating the process for making people's constitution. If the leadership is honest and committed to constitutional reform, then a lot of progress will be made. But it has been argued that "when a leadership is resistant to reform and openly engages in repressive practices to prevent a public discussion of reforms, no matter when reform is eventually initiated, such a leadership has already squandered the goodwill for genuine constitutional reform."^{xvii} Finally, the civil society has a great role to play in constitutional reform. The civil society in Nigeria led by the Citizens Forum has been able to isolate the fundamental issues of the 1999 constitution and placed them on the public domain. They have X-rayed the 1999 constitution and shared experiences from other parts of the world with Nigerians. They have led the debate on the review of the 1999 constitution. They have also made far reaching recommendations for a fundamental review of the of the constitution. Whether these recommendations will find their way into the reviewed constitution will depend on the balance of forces between agents of change and those who want to preserve the status quo. Despite the role of civil society, it has a lot of limitations. If government officials are unwilling and unresponsive to the advocacy demands of civil society, very little in terms of concrete output and impact can be achieved in terms of producing a new constitution.

ENDNOTES

ⁱ International Institute for Democracy and Electoral assistance (I-IDEA)(2001), *Democracy in Nigeria: Continuing Dialogue(s) for Nation Building*. Sweden, I-IDEA.

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LIST OF INTERVIEWEES

1. 1. Chief Joy Ezeilo, Former Commissioner of Women Affairs, Enugu State, Executive Director, Women Aid Collective.
2. 2. Comrade John Odah, General secretary, Nigeria Labour Congress
3. 3. Mr. John Ikubaje, Secretary, Citizen's forum for Constitutional reform (CFCR)
4. 4. Mr. Jide Ojo, Program manager, Electoral reform Network (ERN)
5. 5. Muyiwa Adekeye, I-IDEA