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Transcript

Review and Reform: Key Elements and Implications of Nigeria's Constitution Review Process

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Governor Abiola Ajimobi

Nigeria is in the process of amending its constitution once again. This will be the second time that the constitution, that has been operative in the last 13 years, would be tinkered with. I am going to discuss this topic with the following outline:

- The concept of the constitution;
- The history of constitutional engineering in Nigeria;
- The key elements in the on-going Constitution Review in Nigeria and their implications;
- Conclusions

The constitution is the fundamental law that establishes the character of a government by defining the basic principles to which a society must conform, by describing the organisation of the government and regulation and distribution and limitations on the functions of different government departments; and by prescribing the extent and manner of the exercise of its powers.

It has also been described as a legislative charter by which a government or group derives its authority to act. Aristotle, in his classic, *Politics*, gave what has become an authoritative definition of Constitution as 'an organisation of offices in a state, by which the method of their distribution is fixed, and the sovereign authority is determined, and the nature of the end to be pursued by the association and all its members is prescribed'.

The constitution is one of the major contributions of Greek civilization to the world. An instrument of the state, the constitution became more popular in the 18th and 19th centuries in Europe and the United States of America. By the 20th century, it had been globally accepted that the constitution in the written or unwritten form is a necessary instrument for democratic and representative government.

In its ideal form, the constitution emanates from the people, although historical antecedents have not always made this possible in many instances. Incidentally, Nigeria falls in the category of constitutions that do not emanate in the ideal form.

Why Nigeria needs a constitution

As a country of about 350 ethnic nationalities with diverse cultural composition, languages and aspirations, it became automatically necessary for Nigeria to work with a constitution. This explains why the adoption of a constitution is almost as old as Nigeria. Her first constitution, the Clifford Constitution, was enacted in 1922, barely eight years after the amalgamation of Nigeria in 1914.

Nigeria has since experimented with 10 constitutions in its search for an acceptable constitution. These are the Clifford Constitution of 1914, Richardson Constitution of 1946, Macpherson Constitution of 1951, Lyttleton Constitution of 1954, Independence Constitution of 1960, Republican Constitution of 1963, the 1979 Constitution and finally, the 1999 Constitution. The 1999 Constitution was amended two years ago in 2010. However, the constitution is back on the surgical table because there is an overwhelming clamour for the amendment of many of its provisions.

I will highlight nine key elements in the Constitution Review with significant implications for the stability and development of Nigeria.

Power Distribution

When it comes to the distribution of power between the Federal Government and federating units, the fact is that the federal Government has exclusive jurisdiction over 68 legislative matters while it shares concurrent jurisdiction with states on 30 legislative matters. Where there is a conflict between the two on the exercise of such powers, the position of the federal government overrides that of the states. The implication is that the federal government is too powerful and too big for efficient delivery of some of the services like maintenance of urban roads, protection of the environment, secondary school education, disposal of refuse, etc. that have been assigned to it. For instance, the Federal Government is responsible for the maintenance of over 50,000 kilometres of federal roads. When a pot hole emerges on a federal road in my state, the Controller of works in the state reports it to the Zonal Works director who sends the file to Abuja. Abuja carries out due diligence to ascertain the claims and then processes the funds for repairs. Because this is a daily occurrence across the country, such repairs are done in batches. Several months and years are lost as these pot holes develop into craters, necessitating in some instances, award of contracts for new roads because the roads get too bad for repairs while awaiting federal attention.

One other implication is the federal government is biting off more than it can chew. A recent report by the federal government revealed that it has 11,886

abandoned projects which are worth N7.78 trillion dotting every part of the country. This does not allow for efficiency.

Therefore the review becomes a necessity. A reduction in the responsibilities of the federal government to make it mobile and efficient, and more responsibilities for the state in areas that affect the daily life of the people like roads, refuse disposal, protection of the environment and secondary school education for efficient service delivery.

Fiscal Federalism

On the issue of fiscal federalism, the fact is that the Federal Government controls 52% of federally collected revenue, leaving only 24% for the 36 state governments. The implication is that while states struggle to discharge their responsibilities because of scarcity of funds, the federal government is surfeit with too much resources resulting in the mismanagement and inefficient deployment of resources. Cases in point include the recent Subsidy and Pension scams in which hundreds of billions of Naira, which are more than the annual budget of most states, are misappropriated by some individuals without detection, for years.

I alluded earlier to the 11,886 abandoned federal projects at a cost of N7.78 Trillion. It is unlikely that the federal government will experience such large scale wastage if it had fewer responsibilities and lesser funds to play with. These are funds that can be better utilised at the state level where Nigerians yearn for the means of better life.

There therefore exists a need for a review of the elements of fiscal federalism to allow more resources for the states. This should allow states' control of the resources in their domain to encourage creativity and hard work in revenue generation. The present system of 'feeding bottle federalism' in which states assemble monthly in Abuja for federal allocation does not allow for hard work. It is important to note that many of the milestones in many parts of the country were accomplished in the First Republic when states had more control on their resources. This allowed for healthy rivalry among states and the outcome is the many landmarks that still mark out the leaders of that era as the heroes of Nigeria.

Let me drive home this point with my experience as Governor of Oyo State in the last 16 months. Our priorities are infrastructure development, human capacity development, promotion of peace and good governance, rural development and integration and poverty alleviation and economic

empowerment of our people. In 16 months, we have rehabilitated 205 roads, provided intervention employment for 20,000 youths, treated over 300,000 people through mobile health clinics, trained 8,046 civil servants, rehabilitating 66 primary health centres, building two new housing estates, about to start constructing a 110 km circular road to ease traffic in the state capital and open up new corridor of development for the state; construct a light rail to move the 3 million people of Ibadan around and build a cargo airport to expand our economy. We cannot achieve all of this because 92% of the monthly federal fund allocation we receive is used to pay wages. Yet, we can generate more money if our fiscal federalism is reviewed to give us control over many of the revenue sources in our state that are being controlled by the federal government.

Control of the Police.

On the topic of police control, the constitution puts the control of the Armed Forces and the Police Force under the Federal Government. The implication is that the provision for State Governors as Chief Security Officers of their respective states is largely meaningless because the police do not report to them. Valuable time is wasted in cases of security challenges because police authorities seek approval for action from the federal government rather than the governors who are on ground and who feel the impact of such security challenges. Furthermore, previous administrations at the federal level used this control of the security apparatus to intimidate, arm-twist and undermine state governments, especially when they belonged to rival parties. The implication is that security in the states is compromised and the safety of lives and property has not received the best attention because of this structural problem.

There is a need for a provision for state police which will guarantee fast and immediate response to security challenges. This provision will also allow for indigenous police service that will leverage on its knowledge of the local communities to detect and prevent crime. I acknowledge fears in many quarters of abuse of such state police by state governors. This can be allayed with constitutional checks and balances like the inclusion of paramount traditional rulers, representatives of the federal government and the armed forces, and notable groups like the Nigeria Bar Association and the judiciary in the State Police Service Commissions.

INEC and Electoral Reforms

Let me acknowledge that recent elections in Nigeria have benefited from the disposition of President Goodluck Jonathan. It has not always been so. And because we cannot guarantee that every president will have similar disposition, there is need to strengthen the electoral system to ensure that the will of the people is reflected in the outcome of elections.

The fact is that extant constitutional provisions allow the president to appoint the INEC board that will superintend the election in which he is likely to be a candidate. INEC reports to the president. Its funding relies on the disposition of the president as well. All these have serious implications for the independence of INEC and the possibility of having free and fair elections in the country.

There is therefore a need for constitutional provisions that will guarantee the independence of INEC and that will enhance the possibility of free and fair elections. This should include the appointment of INEC by an independent body headed possibly by the Chief Justice of Nigeria. We should also consider the inclusion of representatives of political parties who have members in the National Assembly as members of INEC board. INEC funding should be first charge of the federation account as a mechanism for checks and balances. Only the recurrent expenses of INEC are at present excluded from presidential approval.

Tenure of Elected Officials

Extant constitutional provisions limit elected president and governors and their deputies to a maximum of two terms of four years. As a former senator and governor who has contested election three times in this dispensation, this provision allows elected executives only about two years of service. This means he has one year to settle in as a newly elected office and one year to prepare for election if he wants a second term.

The implication of this is unhealthy system because for the development that Nigerians seek, we need executives that can devote considerable time to the task of governance. Besides, those two or even four years are grossly inadequate to make significant changes in the society.

I believe the second term politics is too much of a distraction for elected officials. The tenure of president and governors and their deputies should be amended to 5 or 6 years without the opportunity of a second term. This will ensure that the 5 or 6 years are devoted to state work. In addition, the

removal of incumbents from the second term elections will reduce the use of incumbency factor to undermine the democratic rights of other contestants within the political parties or in the general election.

The Immunity Clause

Section 308 of the 1999 Constitution protects the president, the governor and their deputies from any court proceedings during their tenures. This provision has been blamed for the high incidence of illegalities attributed to these categories of public officials.

This constitutional provision has been inserted to protect these officials against distraction because of our litigious culture as a people. For me, I do not see anything wrong in removing the Immunity Clause if it will enhance the integrity of our democratic system.

But the question I ask is this: if erring presidents and governors were not prosecuted while they were in office because of the Immunity Clause, how many of the 1999 - 2007 class of president and governors have been prosecuted since they left office in 2007 - 5 years ago? We need to look deeper into why so-called big men do not face justice in Nigeria, rather than focusing on the Immunity Clause. Nigeria needs a justice system that will not sacrifice justice on the altar of class or wealth. We need a system where the so-called big men cannot buy or delay or frustrate justice.

Judicial Reform

I have alluded to the challenge in our judicial system where the big man appears immune from judicial punishment. The judiciary has no doubt played an important role in the development of Nigeria and we have a duty to praise the men of honour and integrity who have done this.

But there is need for improvement. Our judicial process is expensive to the extent that it puts a lot of our people at great disadvantage. The judicial process is also too slow that it perennially confirms that justice delayed is justice denied. Our constitutional review should emphasise this to retain the confidence of our people in the judiciary. Furthermore, we need to review constitutional provisions that allow the National Judicial Council to determine the number of judges a state needs and to approve their appointments on the nomination from states. Only a state can determine the number of judges it needs. The national control has led to less number of judges in some states in contrast to the number of cases in the courts.

Zoning/Ethnic Balancing

In 1963, Nigeria introduced ethnic balancing into recruitment of officers into her armed forces. It went further in 1979 to introduce the federal character principle into appointments into federal offices in the 1979 Constitution. Since 1995, there have been agitations to formalise this arrangement in the election of the President of Nigeria.

As a nation of 350 ethnic nationalities with a history of mutual suspicions of domination, Nigeria cannot run away from some form of ethnic balancing in federal appointments. After all, the constitution is a document devised to assure everyone in the polity about the extent of its rights and obligations. However, since 1963, Nigeria has advanced significantly that one can say without any fear of contradiction that there is hardly any skill that one cannot find in any part of the country. This means we have to review the arithmetic of ethnic balancing to give more reference to merit.

The agitation for the zoning of political offices, especially that of the president, is a further demonstration that the mutual fear of domination still subsists. However, since evidence has shown that Nigeria has advanced considerably for competent men to emerge from any part of the country and given the exigencies of national politics which may make rigid constitutional provisions counter-productive at critical periods, my opinion is that the issue of zoning of offices should be left to political parties to determine as events and circumstances dictate.

Gender Balancing

There is no provision in the 1999 Constitution that guarantees adequate representation for the female gender in Nigeria. This is despite evidence that more than 50 per cent of the Nigerian population is made up of females. This is an irony for a nation that has made constitutional provisions like the federal character to ensure that ethnic nationalities are represented in government. Women constitute a major human resource for the development of any human unit whether family, group or nation. No nation that does not cater for the representation of 50 per cent of its populated can lay serious claim to equality and being desirous of taking advantage of its enormous human resource.

Although in the Oyo State government cabinet, we have 20 women playing senior roles as Commissioners, Special Advisers and Assistants to the Governor, Nigeria needs more women in senior positions to leverage on their capabilities. For instance, only 4 women are senators in the 109-member

Upper House while only 17 women are members of the 360- strong House of Representatives. I know the ability of the female gender because I and my son are a minority in my nuclear family of 6. As I have benefited from the abilities of the female gender in my family, Nigeria stands to benefit more if it allows adequate representation for our women in government.

Conclusion:

Having highlighted the key elements in need of amendment in the 1999 Constitution, which are by no means exhaustive, I wish to state categorically that a new constitution is not the solution to the myriads of challenges confronting Nigeria. The constitution can only provide the framework for the operation of our government. The responsibility for good governance and the development of Nigeria lies on a responsible leadership and a vigilant followership. It is our readiness to make the constitution work that will ensure that the on-going constitution review is worthwhile. Let me leave you with the words of Winston Churchill who says, 'We don't know whether if we change, things will improve. But for things to improve, we have to change'.

Thank you all. God bless Oyo State. God bless Nigeria.

QUESTIONS AND ANSWERS

Question 1:

Your Excellency, we thank you for being here today. My question is, is it possible that we will come back to a confederation again?

Gov. Abiola Ajimobi:

I believe many think that is a right thing to do. I believe we should decentralize as much as possible, allow the states to have more powers. Even in the American democracy that we are copying, they have a state police there, and they are relatively autonomous. The federal government is only concerned with foreign affairs, they have their security services, but the states are relatively autonomous in what they do. And I advocate this and I believe this is possible.

Question 2:

The current constitution has been drafted by the military. Is it possible to eradicate that by making it more 'civilian'?

Gov. Abiola Ajimobi:

I think we are in the process that is why we are reviewing it. I think that will come into place soon.

Question 3:

You have talked of the importance of decentralization of power, especially in fiscal policies. In terms of welfare redistribution, would you support creation of additional states in Nigeria, and if so would you support creation of an Okuku State?

Gov. Abiola Ajimobi:

My own idea of state creation is that I think that we have too many states and that is why there are financial problems among the Northern states. Before you know it, your own family may want to become a separate state. I honestly believe that we should not create any more states. In fact, I believe we should

reduce them for efficiency and effectiveness. To me the bigger the state is the more likely its chances of survival, instead of Balkanizing Nigeria. Today as a governor I invest a lot in a particular area, different from where I come from to develop agriculture. If I knew they will secede soon, I would not do that.

Question 4:

There has been nothing mentioned regarding the problems of mental illnesses. We should not forget the less able in our society. I am wondering whether the Nigerian constitution should not have provisions for the defence of the less privileged in our society. How could the challenged people be better taken care of in this context?

Gov. Abiola Ajimobi:

Provisions for disadvantaged are important and I believe we are doing a lot in that regard. My wife is active in this area and we are trying to help many disadvantaged that we have. That is why we have many houses taking care of them.

Question 5:

On the issue of youth employment - you have mentioned the 20,000 youth programme you did. There is a model practiced in India: the national employment guarantee scheme for young people. Now, looking at youth employment across the country is this something that you would favour and if yes, what kind of framework would you see to guarantee employment for young people? Is there a model you look to establish?

Gov. Abiola Ajimobi:

I think this Indian example is a brilliant idea. What I am more interested is what I call man-power development, human capital development. Whether you would like to believe it or not most of the youths that are not employed today are in fact unemployable. We discovered that many of them lack skills - they need skill acquisition. They require this middle level man power skills training. Everybody goes to university to read and speak English but they do not learn how to work. And many of them cannot even use computers. They are not computer literate. What I would like to advocate foremost is to introduce in the school curriculum skill acquisition, vocational training, where

people when they leave they can then be useful. I think they should either learn that in the schools or have one year of skills acquisition in the youth service training. Then these people will be able to contribute to society - so I will guarantee employment when people are employable. In order to be employable there is a need for skills acquisition training.

Question 6:

I would like to know if when the police system is given to state governments whether there would still be abuse?

Gov. Abiola Ajimobi:

If we are going to abuse it you can only abuse it for four years of your term and maybe another four years of a second term. Also, if there is mismanagement or abuse, it is unlikely that it will appear in all states at the same time. It is better to have 36 states where the decisions are made, rather than one corrupt man at the centre deciding for the whole country. Fear of mismanagement on state level is also not a good argument against state police - because a plane crashed we will not walk in Nigeria instead of flying. What is important for us is that if we fail, let it not be because we did not try.

Question 7:

Speaking of the constitution review, we would like to know what exactly you want the reforms to be? Especially regarding the gender issues. And should we not be discussing this back home instead of in Chatham House?

Gov. Abiola Ajimobi:

I am recommending, as at the moment there is nothing in the constitution on this issue, that we introduce explicit provisions guaranteeing equal rights of women. The environment from which you are talking is also very important. Chatham House is seen as a body that has promoted, generated and helped in articulating useful ideas and policies that have helped in development of Nigeria. So if I come here and say it, it is more believable and it is being said in a more conducive environment as if I was saying this as one of the governors - which is the same what I said back at home. I will say the same wherever there is the opportunity to say it.

Question 8:

Do you think that by decentralizing government to state level the whole problem of providing water and electricity would change in the country?

Gov. Abiola Ajimobi:

I think more decentralization does not mean federal government would not participate. It would complement our efforts, but the primary responsibility should be with the states, secondary responsibility can be the federal government because in the end we have discovered that there are projects that the federal government has started in many states and yet they remain uncompleted. I believe decentralization will help us.