



# **ELECTORAL HUB MEMORANDUM ON CONSTITUTIONAL REVIEW**

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## About the Electoral Hub

The Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), is a multidisciplinary strategic think-tank which seeks to provide solutions to improve the credibility and integrity of the electoral process. It is conceptualized to complement the roles and activities of the different institutions, stakeholders and drivers of the electoral process and governance. The Electoral Hub's aim is to strengthen electoral governance and accountability in Nigeria through the provision of data and critical analysis supporting the credibility and integrity of the electoral process. We believe that the integrity of the electoral process is crucial in improving the electoral governance architecture and democracy in Nigeria. We also believe in contextual analysis for solutions rooted in the principles of justice and equity

Our core values are knowledge-exchange, inclusion, justice, equity, transparency and accountability.

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## Introduction

The ongoing constitutional review is an initiative by the National Assembly to amend salient parts of the 1999 Constitution of Nigeria that require attention. In view of this, public hearings are scheduled to hold in the six geo-political zones of the country on Wednesday, 26 May and Thursday, 27 May 2021. The issues for the public hearing include, among others, gender equity and increased participation of women, the federal structure and power devolution, local government autonomy, fiscal federalism and revenue allocation, establishment of state police, adjudication of election and pre-election matters, electoral reform, political parties, independent candidacy, socio-economic rights, residency and indigeneship, immunity, timeline for assent of Bills and Appropriation Bill, and state/local government creation.

In this light, the Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), presents this memorandum highlighting key issues that require attention in the constitutional review process.

## Issues and Recommendations

### Increased Representation of Women

The federal legislature in Nigeria is bicameral, with the Senate consisting of 109 members representing the states equally,<sup>1</sup> and the House of Representatives consisting of 360 members representing the states proportionally.<sup>2</sup> The state legislatures are unicameral with 24 to 40 members.<sup>3</sup> Despite these provisions for representation in the legislatures, women are vastly underrepresented. According to a report by CDD, in the 2019 general elections women won just 5% of all contested seats.<sup>4</sup> We therefore support the move to create additional special seats for women in the national and state legislatures as part of the constitutional review process. This is in line with practices in other countries around the world, such as Rwanda, South Africa, and Samoa, which use temporary special measures to promote women's representation in parliament.

The use of reserved special seats as a temporary special measure is particularly suited for our first-past-the-post (FPTP) electoral system. This can be illustrated with the example of Samoa, which uses reserved seats for women with its FPTP system. Since the introduction of this system, the Samoan Parliament has always had at least 10% of members of Parliament as women, thus raising women's political representation in the country "above the regional Pacific average of 6.7% (excluding Australia and New

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<sup>1</sup> Section 48, 1999 Constitution of Nigeria (as amended)

<sup>2</sup> Section 49, Ibid

<sup>3</sup> Section 91, Ibid

<sup>4</sup> CDD, *Gendered Contests: Women in Competitive Elections*, <https://www.cddwestafrica.org/wp-content/uploads/2019/10/Women-in-Competitive-Elections.pdf>

Zealand)”.<sup>5</sup> The creation of additional special seats for women is therefore likely to improve the dismal state of women representation in our legislatures currently.

### **Local Government Autonomy**

The 1999 Constitution of Nigeria guarantees democratically elected local government councils.<sup>6</sup> However, it does not indicate the term or tenure of these councils. The result is that many states hold local government elections whenever they please. For example, Borno State went for thirteen years before conducting its fourth local government election in 2020, while Anambra has held just two local government elections since 1999.<sup>7</sup> Indeed, only FCT has had regular local government elections since 1999.

Another issue regarding local government autonomy is revenue allocation. The Constitution provides that the amount standing to the credit of local government councils in the Federation Account shall be allocated to the states, which will then allocate the revenue to the councils.<sup>8</sup> This means that the local governments lack financial autonomy and are within the control of state Governors. To illustrate this point, there have been examples of state Governors arbitrarily dissolving democratically elected councils and replacing them with appointed caretakers, in flagrant disregard of the Constitution. This practice occurred recently in Oyo and Katsina States, thus indicating the extent to which local government councils are at the mercy of state Governors.

In order to improve the autonomy and efficiency of local governments, it is important to amend the Constitution and provide definite terms and tenures for local government councils just like other elective offices in Nigeria. There is also a pressing need to allocate revenue directly to councils in order to increase their financial autonomy and reduce the control of state Governors over them. As the lowest level of government which is closest to the grassroots, the importance of local governments cannot be overemphasised. It is therefore imperative to improve their autonomy and efficiency by making these alterations to the Constitution.

### **State Policing**

The current structure of the Nigerian police is federal, as the Constitution establishes the Nigeria Police Force and states that no other police force shall be established for the Federation or any part thereof.<sup>9</sup> This federal policing has proven to be inadequate, as

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<sup>5</sup> Australian Government, *Case study: Women in Samoa's parliament reach 10 percent*, <https://www.dfat.gov.au/news/news/Pages/women-in-samoas-parliament-reach-10-percent>

<sup>6</sup> Section 7(1), 1999 Constitution of Nigeria (as amended)

<sup>7</sup> *Deepening Democracy: A Reflection on the 2020 Local Government Elections in Nigeria*, Electoral Hub Technical Paper 6/2021, <https://electoralhub.iriadev.org/electoral-hub-technical-paper-on-deepening-democracy-a-reflection-on-the-2020-local-government-elections-in-nigeria/>

<sup>8</sup> Section 162(5)-(8), 1999 Constitution of Nigeria (as amended)

<sup>9</sup> Section 214(1), *ibid*

evidenced by the rising crime rate and insecurity in the country. State policing can serve as a solution to this problem, as it would provide for Police Officers who are familiar with the terrain of their state, including their culture, tradition, geography and even crime history. This, in addition to the increased manpower that would come from having a police force in each state, would provide for better detection and prevention of crimes in the country. State policing would also mean that Governors, who are the Chief Security Officers in their states, can better manage the crime situation within their states. In order to improve the efficiency and effectiveness of the Nigerian police, we therefore support the amendment of section 214 of the Constitution to provide for state policing.

### **Immunity**

The Constitution provides for immunity for members of the executive, in particular, the President, Vice-President, Governors, and Deputy-Governors.<sup>10</sup> This means that they are immune from civil or criminal proceedings, arrest, imprisonment, and any court process compelling them to appear and testify in court. This provision has been abused in the Nigerian context, as members of the executive are able to act with impunity knowing that they are protected by their office from civil or criminal liability.

In order to solve this problem, we recommend that section 308 of the Constitution should be amended to the effect that when a member of the executive commits a crime, they should be impeached and held liable for their actions. This is in line with the practice in other developed countries such the United States, which provides in its Constitution that “the President, Vice-President and all civil officers shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors”.<sup>11</sup>

### **Conclusion**

We commend the National Assembly for their initiative in organising the public hearings on constitutional review, and we call on them to adopt the following recommendations:

- additional special seats should be created for women to increase their representation in the national and state legislatures;
- definite terms and tenures of local government councils should be provided for in the Constitution;
- revenue should be allocated directly to the local governments rather than states;
- state policing should be established; and

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<sup>10</sup> Section 308, *ibid*

<sup>11</sup> Article II, Section 4, Constitution of the United States

- criminal activity should be a ground for impeachment of members of the executive, so that they can be held liable for their actions.

We are hopeful that these alterations to the 1999 Constitution of Nigeria will promote the unity and good governance of the Nigerian nation.



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