NATIONAL CONFERENCE On The CONSTITUTION REFORM PROCESS IN NIGERIA

Report of Conference organised by Citizens' Forum for Constitutional Reform (CFCR)

Edited by
Otive Igbuzor and
Ololade Bamidele

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Report of Conference Organised by Citizens' Forum for Constitutional Reform (CFCR) at Nicon Hilton Hotel, Abuja, 12-16 November 2002

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PREFACE

The struggle for a genuinely popular constitution and the ascendance of a reign of constitutionalism, which would resolve some of the highly vexing concerns that have heated up the Nigerian state since Independence, has been an aspiration of the people and critical constituencies in the country. From the skewed and opportunistic efforts of consecutive military regimes to the half-hearted measures taken by civilian administrations, the constitutional documents that have arisen kept preserving different manifestations of the imbalance that has characterised the polity for so long. It was from this premise that the civil society in Nigeria considered an intervention in the process of constitution making as being imperative in order to restore balance to the country and consolidate its present democratic transition.

When the Citizens' Forum for Constitutional Reforms set about its task of offering an alternative platform for the re-making of the Constitution of the Federal Republic of Nigeria 1999, one of the critical objectives of the coalition was the drafting of a model constitution that would strive towards being a hallmark and synthesis of the various points-of-view and positions of the people of Nigeria. The document was also projected as proffering a means of resolving some of the persistent and nagging issues that have straddled constitutional (re-making) efforts in the country from the colonial to the Independence periods. This was the general context that informed the convocation of the Forum's National Conference on the Constitution Reform Process in Nigeria in November 2002.

Much of the work that the coalition has engaged in since inception has sought to enthrone the regime of a people-driven, process-led, and participatory option of constitution-making, which also affords a space to the perspectives of the civil society and other critical stakeholders whose opinions had been muted in the numerous closed-door, elitist, and centrist constitution-making processes of successive administrations in Nigeria. As a populist document, CFCR's model constitution is the culmination of a

painstaking outreach programme that involved the gathering of views and perspectives from communities, significant constituencies, and stakeholding units in the country. Furthermore, conferences were held in all the states and geo-political zones in Nigeria, which was also buttressed by a National Scientific Survey and a forum on the deliberations of the contentious issues evolving with the reform of the constitutional document.

The model constitution that issued from this process presents a very significant revision of the 1999 Constitution, which provides for and guarantees all the mechanisms that are crucial for the evolution of a people-centred democratic governance. It also forms the basis for a renewed level of advocacy in which institutions of government would be offered an image of the nature of co-existence that the Nigerian people subscribe to and how they wish to be governed, to which the administration will be challenged to respond to. This proceedings of CFCR's National Conference reveal how the nuts and bolts of the reviewed constitution was arrived at and tied together.

Dr. J. 'Kayode Fayemi,
Director, CDD

ACKNOWLEDGEMENT

The move for the convocation of a Sovereign National Conference was conceived and seriously canvassed for during the regime of the Nigerian maximum dictator, Gen. Sani Abacha (1993-1998), although one such conference with this purpose was convened but subsequently disrupted by this regime. Even with the return to civilian rule on 29 May 1999, the agitation for the need for a national conference to discuss the critical issues threatening the existence of the country has not abated. This was what led the Citizens' Forum for Constitutional Reform (CFCR) to conceive a project of organising conferences in all the states of the federation, which subsequently culminated in a National Conference.

The CFCR is grateful to our funders who provided the resources for the implementation of various aspects of our work. In particular, we are grateful to the MacArthur Foundation for funding the State Conferences and part of the National Conference; the Open Society Initiative for West Africa (OSIWA) for funding the zonal conferences; and the Ford Foundation for funding the National Conference.

Finally, credit goes to the National Coordinating committee, Zonal Coordinators, State Coordinators and the Secretariat for working tirelessly in ensuring the success of the conference. We hope that the Federal Government will heed the call of Nigerians and convoke a National Conference that would enable the restructuring of the federation and polity, and also produce a new and genuinely popular constitution for the country.

Otive Igbuzor
Secretary, CFCR
December 2002

CHAPTER ONE

INTRODUCTION

Otive Igbuzor

PREAMBLE

In the past forty-two years of Nigeria's Independence existence, the military has ruled the country for about thirty years, which has meant that the country has had very little experience of constitutional governance. The 1963 and 1979 Constitutions were suspended in 1966 and 1983, by military governments that preferred to rule through decrees and edicts. It is however well established that constitutions, as basic and fundamental laws of a land, are crucial to the proper functioning of any democracy.

It is no longer in dispute that the 1999 Constitution of the Federal Republic of Nigeria is essentially flawed, and this is a conviction shared by both the government and civil society, which made the Executive tier of administration in the country establish the Presidential Technical Committee on the Review of the 1999 Constitution with its membership drawn from the three political parties in existence in Nigeria at that point.

Meanwhile, the numerous crises and the spate of ethnic and religious violence threatening the country's nascent democracy and corporate existence are no doubt rooted in the socio-economic and political history of Nigeria. And, the persistence of these ills confirm the simple fact that the constitution has defects and cannot provide answers to the nagging questions in the polity. Therefore, there is an urgent need to make a people's constitution, which would significantly address the various concerns agitating the country. Such a constitution needs to reflect Nigeria's historical experiences, cultures, traditions and hopes for the future, and it should equally be a dynamic document that reflects the past, articulates the present, and anticipates the future. The opportunity for making a people's constitution

could also be creatively utilised to mobilise the people to resolve the intractable conflicts in the country and reform the nature of governance.

It is in recognition of the above that representatives of thirty four civil society groups met in Abuja from September 30 - 1 October 1999 to deliberate on the need for, and structure of a Citizens' Forum for Constitutional Reform in line with the resolution adopted at the Conference on "The 1999 Constitution and the Future of Democracy in Nigeria" organised by the Centre for Democracy & Development in Abuja in July 1999.

Immediately after the conference, the Government announced the establishment of a Presidential Technical Constitutional Review Committee of 24 members from the three political parties, to re-examine the constitution and advice the president on a bill to be presented to the National Assembly. Not long after this, the Upper House of parliament passed a bill requesting the Senate's Judiciary Committee to review the Constitution and submit its recommendation to the full house for consideration. The Citizens Forum for Constitutional Reform is a response and a complementary initiative aimed at mobilising grassroots opinion and independent monitoring of the Constitution review process. At present, the forum has eighty-two civil society organisations as members. The Presidential Technical committee has submitted its report to the President. The National Assembly has set up a Joint Senate Committee on the Review of the 1999 Constitution.

To undertake an effective mobilisation work, the forum decided that the issues to be addressed should be divided into short term and long-term. This conclusion came out of extensive deliberation of what is desirable and what is feasible within the framework of a constitution that is already in place. Consequently, it was agreed that the Nigerian constitution-making struggles should be seen in a continuum, comprising the on going review, but leading through a national dialogue and ultimately to a national conference to be ratified through a national referendum held on the product of the current review exercise. To this end, the following short term objectives were agreed:

1. To establish a vibrant network for sharing of resources, exchanging ideas, and supporting other initiatives on constitutional reform;
2. To mobilise popular opinion in the civil society and sensitise grass roots communities on constitutional reform;
3. To work with government, parliament and political parties in the constitution review process;
4. To do a thorough analysis of the terms of reference of the Government's Constitutional Review Commission and the Senate's Bill on the review of the 1999 Constitution;
5. To devise viable mobilisation strategies for a comprehensive constitutional reform process, through the sharing of different experiences, development of civic education materials and public enlightenment mechanisms;

In addition to the above, the following long-term objectives were also agreed:

- To produce an alternative model constitution, drawing strongly on the consensus reached at the level of civil society organisations as a basis for further discussions with the state and parliament sponsored initiatives.
- To campaign for an independent constitutional review commission charged with the production of an inclusive constitution for the country; and
- To work towards a national referendum/national conference on constitution making.

ACTIVITIES OF THE FORUM

The Forum has 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 is guided by the principles of inclusivity, diversity, participation, transparency, accountability, autonomy, legitimacy and accessibility. The forum utilises diverse mechanisms that emphasise 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. The zonal and state co-ordinators have made contact with parliamentarians, political parties, non-governmental organisations, and community-based organisations with a view to forming coalitions of organisations for constitutional reform in each state of the federation. In addition to the above, the Forum has also agreed on the following nine critical areas as the main focus of its intervention in the constitution reform work:

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

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.

NATIONAL CONFERENCE ON CONSTITUTION REFORM PROCESS IN NIGERIA

Nigeria is at a critical juncture in her political history. The country is just coming out from long years of military rule operating a constitution handed over by the military. Government has initiated efforts to review the constitution. But there are doubts as to whether the government initiative will ensure participation by the people. The Citizens Forum since its formation has advocated for a review process that is all-inclusive, participatory, open, transparent, autonomous and accountable.

With the activities of the Forum so far, the informed section of the Nigerian public are aware of the need for a people driven process led constitution reform process. The forum also engaged in outreach programme, which involved mobilising popular opinion on the nine functional areas identified by the Forum as central to a people-led constitutional initiative. These are: *Federalism (to ensure devolution of powers); Engendering the language and content of the Nigerian constitution; Derivation Principles and Revenue Allocation; Constitutionally entrenched Independent Commissions; Freedom of Association and Political Parties; Social and Economic Rights; Access to Justice and the Rule of Law, Security Sector Reform and Citizenship and Residency Rights.*

The purpose of the National Conference is to collate the views of all Nigerians on the review of the 1999 Constitution, review the report of the outreach programme of the CFCR and synthesise the views of all Nigerians on the 1999 Constitution. It will eventually lead to the adoption of a model constitution for Nigeria.

CHAPTER 2

REPORT OF NATIONAL CONFERENCE

Ololade Bamidele

As the Conference commenced with the introduction and welcome of participants, guests, an overview of the evolution and growth of the Citizens' Forum, which developed out of the need to include the people of Nigeria in the process of constitution making in the country, was given. The efforts of all the organisations that have contributed to the amplification of the efforts of the Forum was commended, especially the Centre for Democracy and Development (CDD), the African Centre for Democratic Governance (AFRIGOV), and the International Human Rights Law Group. Also, special appreciation to donor agencies for their support of the activities of the network, and equally to members of the coalition who have toiled to ensure that the processes that the Citizens' Forum are committed to are sustained, was expressed. It was added that the conference would give all and sundry the opportunity to reflect on the past and see how far the Forum has come in its efforts, with the hope that at the end of the day people can agree on the kind of constitution that they want. Afterwards, gratitude was expressed to everyone for attending, while fruitful deliberations were wished for.

Following the welcome addresses were the presentation of goodwill messages from friends and members of CFCR. In his message, the Secretary-General of the Nigerian Supreme Council for Islamic Affairs, Dr. Lateef Adegbite, lauded CFCR for its determined efforts to produce a constitution that is inspired, designed and eventually endorsed by Nigerians, and stressed that it is only if this is achieved that we can proudly say that we have a Nigerian Constitution. The new constitution, therefore, must respect and reflect the diversities, such as ethnic and religious peculiarities, of the Nigerian people.

The Executive Director of the Centre for Advanced Social Science (CASS), Professor Omafume Onoge noted, in his message, that

Nigeria's 1999 Constitution has prompted much contention due, largely, to its inadequacies and the reluctance of the government to take into consideration the efforts of civil society organisations in the making of inputs into the constitution and its development. He said that out of the consultative process that is starting out, as far as possible a simple-worded document that reflects the cultural and spiritual aspects, hopes and aspirations of Nigerians should emerge. He underlined the need for the re-making of the Nigerian constitution to be widely broadcasted in order to ensure that people can make contributions to its refurbishment.

In his address, Dr. Kayode Fayemi, welcomed everyone to the conference. He pointed out that the Forum was established in order to push for the engendering of a constitution reform process that would be people driven; and the controversies that have arisen in the country recently have led to the acknowledgment, by leaders, of the need to actively engage the civil society and wider sections of people in the efforts at constitution building.

Dr Beko Kuti prodded the collective memory in respect of the havoc done to the body polity by authoritarian rule, the demise of the military junta, the emergence of a shaky democratic structure, and the presence of unsatisfactory constitutional provisions in the 1999 document. He acclaimed the Centre for Democracy and Development; the Secretary of the coalition, Otive Igbuzor; CFCR's Convenor, Dr Jibrin Ibrahim; Zonal and State Co-ordinators of the Forum; Civil Society organisations; and the funders who have made the initiative possible. Thereafter, he wished the Forum well in its endeavours.

On behalf of Dr. Dipo Fasina, the President of the Academic Staff Union of Universities (ASUU), Prof Ademola Popoola expressed the keen interest of the Union in the CFCR initiative, and in affirmation of the work being done by the coalition, he reiterated the condemnation of the Preamble of the 1999 constitution, which does not represent the wishes of the people of Nigeria. Others who delivered goodwill messages at the opening include Angela Odah, representing the Transition Monitoring Group (TMG), the representatives of the African Centre for Democratic Governance (AFRIGOV), the Movement for the Survival of the

Ogoni People (MOSOP), the Mbono Mkparawa Ibibio, Transparency International, the Yoruba Constitutional Group, the Shehu Shagari World Institute - Alhaji Nuhu, Bakassi, and Dr. Festus Iyayi, Comrade Erubami, the representative of Olisa Agbakoba, and the United Action for Democracy, which was represented by Bamidele Aturu.

During Session Two, when papers were presented, in *Constitutional Reform in Nigeria: the Journey So Far*, Dr. Kayode Fayemi recalled the historical beginning of this undertaking, and laid the two-prong approaches to the process out as including the work with the efforts of the Nigerian Executive and the Legislature and the attempt at producing a model constitution for the country. Various colloquia that were held to address contentious areas in the constitution include those of Revenue Allocation and Fiscal Federalism, Citizenship, Gender, Independent Commissions, Access to Justice, Security Sector Reform, Economic and Social Rights, and Federalism. These colloquia were hosted by AFRIGOV, the Law Group, CASS and CDD, and they led to the production of some of the positions of the coalition on how to resolve the problems of the 1999 Constitution. The position of CFCR on the revamping of the document was sent to the National Assembly, while the network also held a meeting with the Presidential Technical Committee on the Review of the 1999 Constitution. The Forum equally met with the Attorney General of the federation at that time.

Fayemi pointed out that state and zonal conferences were held which gave birth to a draft constitution, and it was felt that a National Scientific Survey should be held in order to identify and incorporate some more contentious issues spawned by the 1999 constitution. In addition, states and zonal co-ordinators of the Forum met in Abuja in July 2002 to lay the issues arising from the conferences bare. Dr. Fayemi regretted the fact that while the Federal Government adopted the memorandum sent to it by the Forum, it disregarded the positions and recommendations of the memorandum. He advocated that the production of the model constitution should not be the final work of the Forum but that its endeavours should be continued

until a proper constitution, which Nigerians can call their own, is in place.

In *A Critique of the Process of Making and Review of the 1999 Constitution in Nigeria*, Otive Igbuzor referred to the monograph "A Critique of the 1999 Constitution and Review Process". He ran through the history of constitution making in Nigeria, and noted that one key issue that arises is that of marginalisation. In 1922, Nigerians, with the exception of females, were allowed to vote for the first time and this was singularly on the consideration of property. It was only in 1957 that women were allowed to vote, and this did not extend to Northern Nigeria. Women were allowed to vote throughout the country, for the first time, in1979. Igbuzor lamented the elitist process enlisted by the government in the re-making of the constitution, its inaccessible language, and the ambiguous provisions e.g. section 156 contained in it. He made references to the very democratic constitution (re-)making methods adopted in countries like Uganda, Eritrea, and South Africa, and emphasised that what lent credibility to the processes include the numbering of the memoranda sent in for constitutional review, and the final procedures for the ratification of the document.

The lessons, he said, that comes from an awareness of these other processes includes the fact that political leaders are reluctant to bring about a constitutional reform process in Nigeria, hence civil society organisations are saddled with this responsibility. He thereby urged the government to attempt to be at the forefront of initiating and empowering the re-making of the document in the country. In terms of the way forward, he credited this to the formation of a review commission that would include all stakeholders in the production of a constitution, which would subsequently be discussed at a national conference.

Dr. Jibrin Ibrahim's presentation on *Citizens and the Challenge of Constitutional Reform: the Imperative of Developing Democratic Federalism in Nigeria* reiterated that the work of the Forum has been shaped by two necessities: the first being on a "reactive" level at which Nigerians have to be empowered

in order to take on an active part in the remaking of the country's constitution, as against the 'insignificant' and non - participatory role they have been traditionally consigned to in the engineering of the document. Second, Nigerians need to assure a "proactive posture" by asserting their citizenship right in the determination of the sort of political arrangement they would prefer to live in and operate within.

He did a brief assessment of the constitution review efforts of the government of Nigeria - from the evasive response of the Presidential Technical Committee on the Review of the 1999 constitution in recommending for genuine changes in a document, whose fundamentally contradictory character they had unearthed, to the constrained, if 'opportunistic', reaction of the National Assembly Joint Committee, which reduced constitutional reform to a campaign for/against a one term in office for political 'incumbents'. Dr. Ibrahim noted that CFCR has set the track for a more serious, profound, participatory and consensus-driven approach to the re-formulation of the 1999 Constitution; also, since the creation of a democratic polity is central to the concern of the coalition, much of the crises in the country can be seen to have evolved from the manner in which the Nigerian state has developed. Crucial to this is the centralist predisposition of the state (that brooks no autonomy to its federating units), and its cornering of the petroleum resources in the Niger Delta. This gave vent to a discourse on the contended notion of a National Conference.

CFRC, in the revelation of the presentation, has been at the fore of the crusade for the setting-up of a National Conference that would enable the federating units of the country to re-negotiate the structure and form of the Nigerian state. This arose from the perceived lack of the country to provide security for its citizens and communities, and to offer assurance in relation to the enforcement of laws. As such, the inability to operate its institutions effectively and provide a sustaining political identity for the country seems to have eroded the legitimacy and capacity of the state, hence the call for its political reform through a National Conference.

Dr. Ibrahim sketched the history of National Conferences in Africa as it first came up in the Republic of Benin, then Gabon, Congo, Mali, Togo, Niger and Chad, and described it as the fashioning of an instrument of political renewal that "reflects a deep desire to reverse the process of de-participation" of people in political structures that have constrained them since Independence from colonial rule. In as much as this call issues from the need to cast away the deleterious legacies of military regimes, it is yet tied to the agitations for the construction of a genuine federation in the country.

The presentation touched on the point that authoritarianism and exclusion have been catalysts for the failure of federalism in Nigeria, and these came about with Heads of States who accumulated enormous powers in office, and controlled the petroleum resources and the repressive apparatus of the state. With the domination of political power and resources by particular groups, which raised questions of equity and political justice, the fall-out of the situation is that many people have been renouncing their allegiance to the Nigerian State and consequently withdrawing into partisan (ethnic, religious etc.) enclaves.

The effect of this progressive sort of insularism, which some opinions seek to valorise as the march towards genuine federalism ("that the ethnic nationalities should be the building block of the Federation, with the right to self-determination"), as Dr. Ibrahim recounts from the experiences of the Soviet, Yugoslavian and Czechoslovakian federations, is that "it is a system that cannot but lead to disintegration of the state. (And) Members of Nigerian ethnic groups must be spared the political future of ethnic dictatorship, it is usually worse than Pan-ethnic dictatorship."

The presenter claimed that two problems arise with the ascendance of ethno-regional domination as political currency: (a) the question of the control of political power, and its instruments such as the armed forces and the judiciary; (b) the control of economic power and resources. These two instruments

are usually utilised in the pressure for the allocation of resources to groups and individuals, and they come alongside the calls of Nigerian elites for secession. Ibrahim then pointed out instances when calls for secession have issued as a result of the threat to the self-interest of the elite rather than those of the larger nation. From the call of the Sardauna of Sokoto in the 1950s; that of the Emir of Zaria in 1950; the call made by the political party, Action Group, in 1954; that of Michael Okpara, the Premier of the Eastern Region, in 1964, etc.

In terms of the crisis affecting the Nigerian State, Dr. Ibrahim locates this in the rentier economy operated in the country, and this is drawn against the backdrop of the dwindling of the petroleum rent, the increase in the obligations of the state, the continued impoverishment of workers and the middle class. While the majority of resources are concentrated in the Presidency, leading to all manners of contest for it, the growth and struggle of several 'political entrepreneurs' who would be locked out of the benefits of the "national cake" makes the presenter foresee a pending implosion. Therefore, Dr. Ibrahim noted the transition to civil rule as having made the expediency for political dialogue and restructuring clearer.

The most salient flaw of the 1999 constitution was observed as lying in the over-centralisation of powers within the federal government, and the subordination of other levels of government to it. There are few exclusive spheres of authority reposed in state and local governments, and wherever contradictions emerge between federal and state legislations, the latter is subject to the will of the former. This outlines an apparent structure of hierarchy. The Exclusive Legislative List (containing 68 items) in the Second Schedule of the constitution can only be passed into Law by the Federal Legislature. Also, state governments cannot secure external loans without the approval of the federal government, and they (states) cannot regulate labour matters; direct taxation (comprising incomes, profits and capital gains) is an exclusive federal preserve; and judges in the state service can only be appointed by Governors on the

recommendation of a federal executive body. As such, state governments do not have exclusive competence in any domain.

The Convenor of CFCR examined the failure of the nationalist project in Nigeria. He observed that after the military pacification of the various territories that were amalgamated into Nigeria, the singular most disruptive aspect to this has been "the failure to forge a cohesive state from the said territories". While tersely criticising the various actors who are describing the amalgamation as the mistake of 1914, he wondered whether states were ever "naturally constituted", but "formations (that) have occurred in a fluid and artificial manner", with state cohesion being fashioned out at a later point.

Dr. Ibrahim revealed that the roots of the incohesion goes back to 1914 when the amalgamation in itself, was motivated by limited objectives - a linking up "of some aspects of separate colonial administrative mechanism rather than a political unification of peoples." Then, the administrative machinery, the railways, telegraphs, customs and excise, and the Supreme Court where unified while education, public works, health, agriculture, forestry, lands and survey and local governments still remained separate. Even still, the Lieutenants Governors in Enugu and Kaduna had real powers within their spheres of influence, and were not deputies to the Governor in Lagos. To Ibrahim, this structural peculiarity was exacerbated with the coming of regions in 1939, which reinforced the division of the country into three and the appointment of Chief Commissioners in the regions. Therefore, "not only has commitment to the Nigerian nation state been shallow for most of our history, even the practice of national governance has not been entrenched in our political norms".

This has not only recurrently led to expressions of dissatisfaction with the architectural nature of the polity, but has consistently resolved in the calls for secession. An important offshoot of this structural disequilibrium and an improper federal composition is evident in the challenge posed by the Sharia question.

While remarking that the promotion of democracy and federalism is crucial to the survival of a complex society like Nigeria's, although this would not come by easily, Dr. Ibrahim asserted that the constitution of the country would have to be fundamentally re-made in a very popular participatory way that would include inputs from community organisation, professional groups, trader unions, civil society, women groups etc., as against the erstwhile dependence on a small politically elite. And, some of the issues to be deliberated upon when the constitution is being modified have to comprise: the democratic devolution of powers, the guarantee of group and collective rights, the nature of the state in relation to ethnic and religious questions, the establishment of a multi-party system anchored on genuine pluralism, the building of genuine and representative democratic structures and institutions in the state and civil society. Importantly, the crucial issue of the ownership, control and distribution of resource would need to be considered in the constitutional reform process.

For Ibrahim, in coming up with delegates for the constitutional reform discussion, representations needs not be derived on the basis of ethnicity, as some people do not have ethnic identities or would prefer not to be recognised on such basis. Moreover, he reiterated his distaste for a construction of Nigerian federalism on the constituent structure of ethnic identity/nationality, and his belief that it is very difficult, if not impossible to build a workable federation on ethnic grounds. Ibrahim argued that not only are there over four hundred ethnic nationalities of varying populations in the country, but historically, the "political building blocks (in Nigeria) have been territorial rather than ethnic." He observed that even pre-colonial Hausa and Yoruba states where based on territorial, rather than ethnic configurations - why then do some people want to retrogressively invent ethnic political entities in the post-colonial era? He observed that if ethno-regionalism has been recognised as the manifestation of the problem in the country, this does not make for the fragmentation into ethnic bastions as the solution to it.

Some of the positions that Ibrahim cites to truss-up his argument include that of First Republic Governor of Kano State, Abubakar Rimi, which is that, as an instance, if the military were restructured/decentralised along state/structural lines, the fact that one would have only people from a particular zone in its force (to the exclusion of others), and several analogous forces will lead to a condition of dismemberment and insularity. Also, the recourse to the creation of ethnic enclaves would pose a challenge to many historically mixed populations or borderland communities - (who would definitely defy such puritanical categorisation!) such as Jos, Kafanchan, Kaduna, etc. - which would only be resolved through war.

Equally, on the level of conceptualisation, ethnic reductionism defeats the spirit of federalism, which engenders a republicanism that allows people of various extraction to go about and settle anywhere in pursuit of their lawful activities, while they are protected by the fundamental charter of rights. Within this concept, states/local governments are administrative units enjoying local autonomy within the federation. Besides in a modern economy, the free movement of goods persons and services is crucial to development.

Further to the foregoing, Christian Ita's position that ethnicity, as the constituent unit of a federation will positively erode loyalty to the larger group - the Nigerian nation was cited. And there is the opinion of Sanusi Lamido that the formation of ethnic enclaves that are powered by ethnic armies is not the solution to the problem of the country, as no section of the country can claim to the monopoly of political virtue. Finally, the call for the convocation of a national conference through which the political life and identity of Nigeria will be re-negotiated was reiterated.

A remark was made during the Plenary Session that it will be erroneous to assume that every Muslim wants Sharia and also that every Christian detests Sharia. Of importance to this point was how Sharia affects women, as experiences in states where the religious legislation have been implemented do not seem to

be encouraging. The discrimination the legislation inspires is gender focused, and in countries that have witnessed shifts from civil to criminal Sharia, there have been much injustice. Therefore, how can Sharia be implemented and practiced in a way that will be favourable to a lot of people?

A representative of National Association of Women Academics wanted to know more about the discourse on settlers/indigenes, and the insider and outsider dimension to questions of resource control and political domination.

Importantly, it was wondered how many of the over 90 NGOs present at the conference could carry further, work on, and practicalise the agreements and big challenges, such as the issue of the National Conference mentioned by Dr. Ibrahim, reached during the sessions.

The need to start engaging the power structure in the society was observed, as Otive Igbuzor's exposition on the political leadership's lack of interest in constitutional reform and also the necessity of setting up a commission to negotiate the process of revamping the document was re-phrased. Moreover, it was claimed that the values of the society in relation to constitution making would have to be appraised.

Some participant thought that Dr. Ibrahim made some mistakes, which ought to be re-presented for further discussion, particularly the problem of identity that Dr. Ibrahim referred to. And on the issues raised by Dr. Adegbite that there is hardly a consensus on Sharia by Muslims, it was noted that in Sharia law, there are materials and cultural contents that relate to the society, which the law cannot exist in isolation of.

The fact of the constitution as not being explicit about voting rights, and that a lot of women seem to have lost out on this was observed, while it was stated that, however, all what women want back is their rights and not sympathy. Following this, a participant was amazed at why no rich person has been prosecuted on the issue of Sharia issue yet, and that it was wrong

to use the criterion of language to classify or identify ethnicities, as some smaller groups would always be marginalised.

It was pointed out that in living in a Sharia state, there are some fundamental conflicts occurring between Sharia legislation and international human rights law, and that these must be resolved through the question of power.

On Thursday 14 November 2002, a drama titled "A New Beginning" was staged with popular artistes like Ejike Asiegbu and Francis Duru in appearance. The play depicted how a participatory approach to constitution making and a national conference could be utilised as means of tackling the seemingly intractable problems confronting a nation.

DISCUSSION ON THE MODEL CONSTITUTION

In the States and Zonal Conferences Report, an account was given that although there was unanimity in a number of issues, there were some regionally specific focuses, which are highlighted below:

In the North-Central Zone, it was observed that:

- Minority rights have not been properly taken care of.
- The constitution should be simplified and interpreted in ethnic languages, along side the three major languages.
- Citizenship/residency rights need to be distinguished from indigeneship, which should be defined on the basis of claims to the traditional stool and ancestral religious beliefs; and indigenes should enjoy the privileges of political appointments and benefit from the centre on the basis of the principle of Federal Character.
- The current 13 percent of derivation in the 1999 constitution should be maintained, and that at least 30 percent of appointive offices be reserved for women to ensure gender representation in government.

In the South-South Zone, it was suggested that:

- Rather than the Federal Government's control of resources, States as federating units should be allowed to manage the resources in their areas and contribute an acceptable percentage of the income accruable from these to the Federal Government.
- Social and Economic Rights should be made justiceable.
- Ethnic minority rights should be guaranteed and protected, and the Land Use Act and other legislations that vest all land and resources on the Federal Government should be repealed.

In the North-West Zone, it was decided that:

- The federal system of government should be maintained and there should be a clear definition of powers and functions of the local government; also more powers should be devolved to the state and local governments.
- The current practice that place the resources of the nation with the Federal Government should continue, but that more resources should be allocated to the states where these resources are sourced from to enable them tackle the problems associated with the exploitation of these resources.
- The establishment of state police ought to be rejected for the fear of its manipulation in the hands of State Executives.
- State Electoral Commissions should be removed from the constitution and that 30 percent of appointive positions need not be reserved for women.

In the North-East, it was agreed that:

- The mineral resources of Nigeria should remain under the control of the Federal Government, since the Supreme Court has decided on the matter.
- Any state that wishes so should be free to adopt the Sharia legal system, provided its terms are not applied to non-Muslims.
- The idea of State police must be abolished.

- There is no need for a National Conference since a democratic government is already in place. And the National Assembly can address all matters, including the nature of federalism that is wished for.
- Equitable gender representation in government has to be striven for. More powers have to be allocated to the federal government, and there should be clear division of powers between the three arms of government.

In the South-West, it was resolved that:

- The federal system of government should continue, but with region as the federating units.
- There should be regional police and army, and that respective regions should decide what to do with the ethnic militias in their midst. 30 percent of leadership positions in the country ought not to be reserved for women.
- Regions should control their resources, and 15 percent was recommended as taxes to the Federal Government. A sharing formula of 50 percent to the regions and the remaining 50 percent remaining within a common pool to be shared by the federating units was advocated for.
- A Sovereign National Conference (SNC) is the ultimate solution to the resolution of the crises of the Nigeria nation.

In the South-East Zone, it was agreed that:

- A least 30 percent of all appointive positions should be reserved for women, but for elective positions, the contest should be on equal terms with men.
- Federating states should control and manage their resources, and the constitutional position barring judges from practicing after retirement should be expunged from the constitution.
- Two non-consecutive terms be allowed to State and Federal Chief Executives, with the second term coming after one or two other terms by other officers. This is to prevent the advantage of incumbency during elections.

- A National Conference has to be called on order to enable Nigerians to formulate a newer constitution.

After the forerunning, CFCR's draft model constitution was presented. And in tandem with this, clarifications were made that materials for the production of the draft model constitution came from three main sources: the colloquia organised by the Forum, its various State and Zonal outreach programmes and the National Scientific Survey that was conducted by the coalition.

It was expounded that CFCR utilised a process led and participatory approach in making the draft model constitution. This started with debates and consultations at the level of communities, which snowballed into constitutional conferences in all the States of the Federation and Abuja. These were followed by conferences in the six geopolitical zones of the country, and the materials generated from the above processes were complemented with a National Scientific Survey that was carried out in order to determine the opinion of Nigerians on what they would like to go into or see in a constitution that they can call their own. Thus, the process of making the draft model constitution was characterised by debate, dialogue and the building of consensus on contentious issues.

The draft model constitution is made up of eight chapters and four schedules. Chapter One includes general provisions and upholds the supremacy of the constitution. It provides that the constitution shall not loose its force or effect even if its order is overthrown by undemocratic means. It also provides for the powers of various organs and tiers of government. Chapter Two, titled the Fundamental Philosophy of Governance elucidates the principles that should guide governance, the economy, education, foreign policy etc. Chapter Three speaks to issues of Citizenship and Residency. Chapter four, entitled Human Rights, guides the questions concerning the rights to life, human dignity, liberty, fair hearing, family life, religion, freedom of expression, peaceful assembly, education, health, housing, environment, work, affirmative action, culture, and the rights of mothers, children,

the control of resources, the issue of minorities, the disabled etc. Chapter Five deals with the establishment, composition, power and operation of the Legislature, while Chapter Six deals with the Executive, and Chapter Seven relates to the judiciary. Chapter Eight caters for the Federal Capital Territory (FCT) and other miscellaneous provisions. The First Schedule of the constitution defines the legislative powers in a Federal and State list while the Second Schedule describes the powers of independent Commissions. The Third Schedule provides for the federal Election Tribunal, and the fourth Schedule pertains to oaths.

The draft model constitution is refreshingly different from the 1999 Constitution, and attempts to address its flaws. For instance, the draft model constitution is written in a simple language, which is gender sensitive, that an average Nigerian can understand. Furthermore, the draft tries to capture what Nigerians have been clamouring for - true or genuine federalism. To this extent, it provides for State Constitutions and the State police. In addition, the document guarantees economic, social and cultural rights and makes them justiceable. The outlined corpus of legislation guarantees the right of women and provides for affirmative action. Moreover, it provides for an independent judiciary, independent commissions and the control of resources by States of the Federation.

Following the presentation of the profile of the draft constitution, a contributor to the discourse suggested that there has to be a discussion on what should constitute the federating units of the constitution before we the contents of the model constitution would be adopted. This subsequently spawned a long discussion.

THE GROUP WORK

After the extended debate, the conference was divided into four groups to discuss the nature of Nigeria's federation, as well as the contents of the model draft constitution. The specific sections that the groups discussed were:

Group One: Chapters 1 and 2
Group Two: Chapters 3 and 4
Group Three: Chapter 5 and 6
Group Four: Chapters 7, 8 and the Schedules

Report of the Group Work

Group One:

(1) Nigeria shall be a federation
(2) The Nigerian federation shall be composed of federating units defined by one or more of the following considerations:
(a) Territorial or geographical contiguity.
(b) Social, historical and cultural similarities, including but not limited to ethnic and religious identities.
(c) Economic viability.
(3) (a) In constituting the federating units, groups shall have the right to freely decide which part of the federation they want to belong to and with whom, on the basis of the consideration enumerated in subsection 2 above
(b) Such a decision by groups shall be by two-thirds majority in a referendum in which every person 18 years and above shall be eligible to participate
(4) The current subsection 2 of the constitution will now become subsection 4
(5) The federating units of the country will be the states, as defined above.

Group Two:

(1) Nigeria shall be a federation
(2) The Nigerian federation shall be composed of federating units defined by one or more of the following:
(a) Geographical or territorial contiguity
(b) Ethnic identity
(c) Historical and cultural identity
(d) Economic viability

Group Three:

1. Nigeria shall be a federation
2. The Nigerian federation shall be composed of federating units defined by one or more of the following:
   (a) Geographical or territorial contiguity
   (b) Ethnic identity
   (c) Group identity
   (d) Economic viability

Group 4:

The federating units shall be states, the structure of which shall take cognisance of ethnic nationality, territorial contiguity, and cultural and linguistic identity.

In the overall harmonisation of reports, the position of Group One was adopted.

In the Group Report on Chapters of the Model Constitution, the feedback from participants focused mainly on the general editing of the document, and in the discussions and comments on the document, the following observations were noted:

1. Conditions for citizenship of Nigeria needs to be clearly stated in the model constitution.
2. On the conditions for the derogation of Human Rights, persons were given the responsibility to submit to the secretariat.
3. The section on spousal rights should be re-phrased.
4. The requirement for recall ought to be one-tenth instead of one quarter.

CHAPTER THREE

COMMUNIQUE ISSUED BY THE CITIZENS' FORUM FOR CONSTITUTIONAL REFORM (CFCR) AT THE NATIONAL CONFRENCE ON THE CONSTITUTION REFORM PROCESS IN INIGERIA HELD AT NICON HILTON HOTEL ABUJA FROM THE 12TH - 16TH OF NOVEMBER 2002.

The Citizens Forum for Constitutional Reform (CFCR) a coalition of over ninety civil society organisations committed to a process led and participatory approach to constitutional reform in Nigeria convoked a National Conference on the Constitution Reform Process in Nigeria. The conference held from the 12-16 of November 2002, was attended by leaders of civil society organisations, development agencies, ethnic organisations, political Parties both registered and unregistered, religious organisations, organised labour, students, market women and representatives of legislative, executive and judicial arms of the government. The Conference adopted a model constitution for Nigeria

Prior to the Conference, the Forum held several meetings to work out strategies for involving critical constituencies, communities and interest groups in the constitution reform process in Nigeria. The work of the Forum is guided by the principle of inclusivity, diversity, participation, transparency, accountability, autonomy, legitimacy and accessibility. The Forum had also organised outreach program, which involved debate of the issues arising from the review of the 1999 constitution in all states and zonal levels. There was also a conference on the review of the constitution in all the states and zonal conferences in all the six geopolitical Zones. A national workshop was organised on the contentious issues in the review of the 1999 constitution. The coalition equally conducted a national scientific survey to solicit the views of the Nigerian people on the 1999 constitution.

The National Conference observed that:

1. Political leaders, on their own volition rarely decide to bring about fundamental constitutional reforms.

2. Political parties and the political class are not interested in constitutional reforms; they are more interested in capturing and exercising political power.
3. The Constitution making process in Nigeria has not been participatory, and so the people cannot relate to the final document as their own.
4. That the 1999 constitution is elitist, militarist and ambiguous.
5. That the preamble of the 1999 constitution tells a lie against itself.
6. That the constitution is not gender sensitive and does not take into consideration the needs and aspirations of women.
7. The constitution does not sufficiently protect democratic structures from being overthrown by military Juntas.
8. That the 1999 constitution is full of contradiction and lapses, which had generated conflicts and controversies in the body polity of the Nigerian state.
9. That the 1999 constitution does not promote transparency and accountability.

The conference adopted a model constitution for the country with the following features:

1. A constitution written in simple, gender sensitive language that any average Nigerian can understand.

2. A constitution, which by its preamble reflects the aspiration of the people of Nigeria.
3. A constitution, which is protected from being violated and preserves its democratic structures.

4. A constitution which creates a federation composed of federating states defined by one or more of the following:
   a. Territorial or geographical contiguity
   b. Socio-historical and cultural similarities including but limited to ethnic and religious identity
   c. Economic viability

5. A constitution, which guarantees economic, social and cultural rights and makes them justiceable.

6. A constitution, which guarantees the rights of women and children and provides for Affirmative Action.

7. A constitution, which provides for independent judiciary, independent commissions and control of resources by the states of the federation.

8. A constitution that promotes transparency and accountability.

9. The conference rejects the single term for President and Governors.

The conference called on Civil Society Organisations to:

1. To advocate for the adoption of the model constitution.

2. To mobilise the people of Nigeria to enjoin the political leaders to adopt a people driven and process led constitution.

The conference called on the government:

1. To set up a Constitution Review Commission made up of representatives of the executive, the National Assembly, Non-Governmental Organisations (NGOs), ethnic groups, professional groups, labour and Students. The work of the Commission should include considering the model draft constitution put together by CFCR.

2. The work of the commission should also be guided by the principles of participation, transparency, legitimacy and accessibility.

3. That this process of reviewing the Constitution should take cognisance of the diverse nature of the Nigerian people.

CFCR expresses appreciation to all the participants, civil society organisations that took part in the production of the model constitution, media, international partners in this process and resource persons whose expertise CFCR typed in achieving this great feat.

Dr. Jibrin Ibrahim
Convenor, CFCR

Mr. Otive Igbuzor
Secretary, CFCR

Ms Abiola Akiode-Afolabi
Chairperson,
Communiqué Committee

Mr. Justice Egware
Member,
Communiqué Committee

CHAPTER FOUR

CONSTITUTIONAL REFORM IN NIGERIA: THE JOURNEY SO FAR AND THE WAY FORWARD

CFCR Secretariat

PREAMBLE

The issues of constitution making, constitutional reform, and constitutionalism have been topical in Africa for many reasons: first, at independence, constitutions were imposed on countries by departing colonial administrations and the political elite without the participation of people in the processes of the making of these documents. Second, political rulers have governed without reference to the contents of constitutions, which has been described by scholars as the existence of constitutions in situations devoid of a culture of constitutionalism.[1] Third, in many African countries, military coups have taken place and the first casualties of these unfortunate incidences have been constitutions and legislative bodies.

The history of Nigeria is dominated by the three foregoing factors. And, as we have argued elsewhere, three approaches to the making of constitutions in Nigeria can be delineated.[2] First: the approach of colonialists in drafting and imposing constitutions on the people of the country. Through this method, constitutions were made in London and brought down to Nigeria for implementation. This was how the 1914 Amalgamation, 1922 Clifford's and 1946 Richards' Constitutions were made. People did not participate in the making of these Constitutions at all. A slight variation of this mode occurred with the limited consultation of people in the making of the 1951 and 1954 Constitutions. However, despite the supposed consultation, people did not have any say in the drafting or approval of the

[1] *Okoth-Ogendo, H. W. O. (1991), "Constitutions without Constitutionalism: Reflections on an African Paradox" in Shivji, G.I. (Ed), State and Constitutionalism: An African Debate on Democracy. Harare: Southern African Political Economy Series.*

[2] *Igbuzor, O and Ibrahim, J (Eds.) (Forthcoming), A Citizens Approach to Making a Peoples' Constitution in Nigeria.*

document that finally came out. The second approach has been the utilisation of constitutional conferences, wherein all the contentious issues in a polity or political arrangement are agreed upon after which a constitution is enacted. This was the means by which the 1954, 1960 and 1963 Constitutions were made. The third approach was through the setting up of Constitution Drafting Committees, which were essentially creations of the military, to draft constitutions for the country. Therefore, it can be said that the experience of constitution making in Nigeria, particularly during colonial and military rule did not tally with the theoretical notions of a constitution as a political consensus, covenant or contract.

In this presentation, we will situate the emergence of the Citizens' Forum for Constitutional Reforms (CFCR) as a significant coalition that has been at the frontline of championing the call for the making of a newer constitution through a process-led and participatory methodology, which would lead to a regime of respect for the rule of law and constitutionalism, in Nigeria. The presentation is divided into five parts, with the first part tracing the history of CFCR and outlining its principles, structure and mechanism of operation. The second part discusses the approach of CFCR in its work on constitutional reform, and the third part describes the activities that the Forum has engaged in since its formation. While the fourth part highlights the features of the Model constitution adopted by the Forum, the final part proposes the way forward for constitutional reform in Nigeria.

1. FORMATION OF CFCR

The Citizens' Forum for Constitutional Reforms came into existence as a result of the perceived need to create an alternative platform for the enthronement of a more populist, people-centred, process-led, and participatory methodology of constitutional reform and re-making. This is in order to re-inscribe the very critical views of the civil society, which had been shut out of the elitist and shallow processes of the revamp of the Constitution of the Federal Republic of Nigeria 1999 sponsored by the federal Executive and National Assembly, into the centre

of the discourse on the re-making of this constitution. As a coalition of over ninety civil society organisations, it is also tasked with the obligation of raising popular awareness towards the attainment of constitutional governance. Currently, the Forum has a National Steering Committee comprised of nine persons, six Zonal Co-ordinators and State Co-ordinators in the thirty-six states of the federation and the Federal Capital Territory (FCT), Abuja.

THE PROCESS OF MAKING THE CONSTITUTION

The Forum believes that the process of making the constitution is as important as the final product that ensues from it. Meanwhile, the history of constitution making in Nigeria shows that some wise men (rarely women) are appointed to write a constitution for the country. The Citizens Forum is of the view that this is not a proper way to make a constitution. The Forum argues that constitution making should not be a secret affair dominated and directed by political elites especially conservative lawyers and politicians. The Forum argues that the constitution review process in Nigeria should be guided by the principles of inclusivity, diversity, participation, transparency and openness, autonomy, accountability and legitimacy.

a. Inclusivity: 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 would like to see in the constitution.

b. Diversity: that 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.

c. Participation: that the process must take on board the involvement of people at all levels who are engaged in debating the content of the constitution freely. Every effort must be made to ensure that people participate in the process. Those leading the process must ensure that they put mechanisms such as the acceptance of oral memoranda; the organisation of debate; conduct of discussions in local languages and aggressive publicity of the programme in order to ensure that participation of people in the process in place. 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 forum endorses the argument that participatory approach to constitution making is probably one of the best panaceas to instability, public cynicism, and alienation from government, coups and counter coups.* 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.

d. Transparency and Openness: that the process must be transparent and open and must be seen by all to be so. There should be no "no go areas" and "no hidden agenda". 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.

e. Autonomy: that 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. There should be an act of the National Assembly establishing the body. 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.

f. Accountability: that 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.

g. Legitimacy: that finally, 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.

Structure and Mechanisms of Operations

The Forum has a National Co-ordinating Committee of nine persons headed by a Convener and Deputy Convenor. At least 30 percent of members of the National Co-ordinating committee are women. In addition, six Zonal Co-ordinators were elected to represent the six geo-political zones of Nigeria and charged with the responsibility of mobilising people within their specific regions. CFCR has state coordinators for all the states of the federation and Abuja. The Centre for Democracy & Development serves as the secretariat for the work of the Forum.

National Co-ordinating Committee

Members of the National Co-ordinating Committee of CFCR are Mr. Chima Ubani, General Ishola Williams (Rtd.), Dr. Jibrin Ibrahim, Dr. Sam Egwu, Dr. P.O. Donli, Ms. Amina Salihu, Mrs. Sylvia Akpala, Mr. Pini Jason, and Mr. Anyakwe Nsirimovu. Dr

Jibrin Ibrahim was elected as Convenor and Dr. Sam Egwu as Deputy Convenor of the Forum. The Secretary of CFCR, Mr. Otive Igbuzor is from the Centre for Democracy & Development.

Zonal Co-ordinators: Hussaini Abdu (North West), Umar Parte (North East), Nankin Bagudu (North Central), Anselem Eyo (South-South), Chima Offor (South East), Wale Okunniyi (South West).

State Co-ordinators: Ms. Nnenna Udeh (Abia), Alhaji Abubakar Abba Tahir (Adamawa), Mr. Onyekah Okey Bethrand (Anambra), Mr. Innih Archibong (Akwa Ibom), Ms. Azumi Bako (Bauchi), Ms. Didi Walson Jack (Bayelsa), Mr. James Apam (Benue), Mr. Simon Ogwuche (Borno), Ms. Felicia Arikpo (Cross Rivers), Ms. Lillian Nwokobia (Delta), Ms. Queen Odom (Ebonyi), Mr. Osa Eghosa (Edo), Mr. Muyiwa Cole (Ekiti), Chima Ofong (Enugu), Ms. Naomi Nuhu (Gombe), Mr. Uche Wisdom Durueke (Imo), Bashir Habu (Jigawa), Mallam Hussaini Abdu (Kaduna), Mallam Ibrahim Muazzam (Kano), Mallam Mustapha M. Inuwa (Katsina), Dr. Usman Shehu Umar (Kebbi), Mr. Shaibu Moses Etila (Kogi), Dr. J.F. Oyedele (Kwara), Mr. Francis Abayomi (Lagos), Mr. Ishaku Usman (Nasarawa), Mr. Reuben B. Ziri (Niger), Mr. Justice Egware (Ogun), Dr. Bayo Aborishade (Ondo), Dr. Ademoji (Osun), Mr. Segun Ogundipe (Oyo), Mr. Francis U. Kwede (Plateau), Ms. Florence Amiesimaka (Rivers), Dr. Bala J. Yauri (Sokoto), Mr. Joshua Kalla (Taraba), Mallam Aliyu A. Shehu (Yobe), Mallam Sanusi Hashimu(Zamfara), and Auwal I. Musa (Federal Capital Territory, Abuja).

2. THE APPROACH OF CFCR

As we have argued elsewhere, the experience of constitution making in Africa reveals two distinct strategies, which we call the old and new approaches[3]. In the old approach, the government appoints or stage-manages the election of a constituent assembly, parliamentary committee, technical committee, special task force or a select committee of

[3] Igbuzor, O (2002), "Making Democracy Work in Nigeria: The Civil Society and Constitutional Reform" in Bujra, A and Adejumobi, S (Eds.), Breaking Barriers, Creating New Hopes: Democracy, Civil Society and Good Governance in Africa. Trenton, New Jersey, Africa World Press

conservative lawyers and politicians to write a constitution for the country. This approach ensures that there is little or no debate, consultation with ordinary people, or referendum on the draft constitution before it is decreed or passed into law. Even if the process allows some limited debate, the result is usually predetermined, manipulated, and not informed by the logic and content of the debate. This inevitably leads to an imposed or authoritarian constitution[4]. The new approach is process-led, participatory, and places much premium on dialogue, debate, consultation and contribution from all stakeholders. It is guided by principles, which include (among others) inclusivity, diversity, participation, transparency and openness, autonomy, accountability and legitimacy[5]. The CFCR adopts the new approach as its strategy for constitutional reform in Nigeria.

3. ACTIVITIES OF CFCR

The Forum has held several meetings to work out strategies for involving critical constituencies, communities and interest groups in the constitution reform process. In its work, CFCR utilises diverse mechanisms that emphasise the need for consensus-building, public enlightenment, and the use of simple and local languages, which various communities would find easily accessible.

The coalition organised a seven-day training programme for all the members of its Steering Committee, Zonal and State Co-ordinators, and officials of the secretariat on Negotiation skills, Conflict Management and Principles of Constitution Making. Then the Zonal and State Co-ordinators 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 in Nigeria:

[4] Ihonvbere, J. O (2000), Towards a New Constitutionalism in Africa. London: Centre for Democracy and Development (CDD) Occasional paper Series No. 4
[5] Citizens' Forum for Constitutional Reform (2001), The Position of Citizens Forum for Constitutional Reform on the 1999 Constitution of the Federal Republic of Nigeria.

1. Citizenship and Residency Rights
2. Federalism (to address the over-concentration of powers at the centre)
3. Engendering the Language and Content of the Nigerian Constitution
4. Fiscal Federalism/Resource Control
5. Constitutional Entrenchment of Independent Commissions
6. Freedom of Association and Political Parties
7. Social and Economic Rights
8. Access to Justice and the Rule of Law
9. The Role of the Security Sector

The Forum has organised colloquia on all the above thematic areas, which has brought together civil society institutions working on specific themes relating to constitutional reform and specialists/academics from Nigeria and abroad to share their experiences and comparative knowledge on the outlined issues. The colloquia also enabled the Forum to engage in comprehensive examinations of 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 coalition. These discussions offered deep insights into the defective nature of the Nigerian constitution, as well as materials for the production of an alternative model constitution, which is a cardinal objective of the Forum.

CFCR has submitted memoranda to the National Assembly Joint Committee on the Review of the 1999 Constitution, the Presidential Technical Committee on the provisions for and practice of Citizenship and Rights in Nigeria, and to the Presidential Committee on National Security in Nigeria. The coalition has equally carried out an elaborate outreach programme that sought to involve Nigerians in the making of a constitution that 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 were organised for all officials of the Forum and other civil society organisations. The outreach programme involved debates on issues arising from the need to review the

constitution at community, local government, state and national levels. It subsequently resulted in the convocation of conferences on the evaluation of the 1999 constitution in all states of the federation and the Federal Capital Territory, Abuja. In addition, zonal conferences were held in the six geopolitical zones of the country, at the end of which certain contentious issues relating to the notions of Federalism, Fiscal Federalism, Political Parties, State Police, Affirmative Action, and Religion were identified. Spring from the forerunning, a workshop on Contentious Issues in the Review of the 1999 Constitution was organised where consensus was reached on many of the issues mentioned above. Moreover, CFCR conducted a National Scientific Survey in the effort to further determine the views of Nigerians on the 1999 Constitution and to gather quantifiable data on the trends and responses of Nigerians to the document. This process was concluded with a national conference during which the various positions that had come up on the constitution were considered, and a model constitution was adopted for Nigeria.

4. MODEL CONSTITUTION OF CFCR

When the Citizens' Forum for Constitutional Reform was formed in July 1999, one of its cardinal objectives was the production of a model constitution for Nigeria. The methodology for achieving this was conceived of as being through a participatory development and Bottom-Up approach, which involves the taking on board of the opinions/contributions of all the critical stakeholders and people of the country. Therefore, from the beginning of its work, CFCR has been gathering materials for the making of an alternative model.

The materials that went into the draft model constitution came from three main sources: (a) the colloquia organised by the Forum; (b) the coalition's outreach programme; and (c) the National Scientific Survey. CFCR is firmly of the conviction that the process utilised in the making of a constitution is as important as its content. And, as it has been noted above, the history of constitution making in Nigeria reveals that the document has either been imposed on the people of the country without consulting them (1914, 1922 and 1946); with limited consultation

but no input from citizens in the drafting of or approval of the corpus of legislation (1951, 1954); or that the constitution has come into existence through Constitutional Conferences (1951, 1954, 1960 and 1963) or a circle of handpicked conservative lawyers and politicians (1979, 1989 and 1999), which was a strategy that was perfected during military rule.

CFCR employed a process-led and participatory mode in the making of the model constitution. This commenced with debates and consultation at the level of communities, which snowballed into constitutional conferences in all states of the federation and the Federal Capital Territory, Abuja. Following these outreach programmes were zonal conferences held in the six geopolitical zones of the country, and the materials generated from the conferences were complemented with findings from the National Scientific Survey. Thus, the process of making the model constitution was characterised by debate, dialogue and the building of consensus on contentious issues.

The model constitution is made up of eight chapters and four schedules, with Chapter One containing general provisions and upholding the supremacy of the constitution. This section provides that the constitution shall not loose its force or effect even if the constitutional order is overthrown through undemocratic means. It equally provides for the powers of various organs and tiers of government. Chapter Two, entitled the Fundamental Philosophy of Governance elucidates the principles that should guide governance, the economy, education, foreign policy etc, while Chapter Three provides for citizenship and residency. Titled as Human Rights, Chapter Four comprises of provisions on the right to life, human dignity, liberty, fair hearing, family life, religion, expression, peaceful assembly, education, health, housing, environment, work, affirmative action, culture; the rights of mothers, children, minorities, disabled; the right to the control of resources etc. Chapter Five deals with the establishment, composition, power and operation of the legislature, while Chapter Six is on the Executive, and Chapter Seven concerns the judiciary. Chapter Eight provides for the Federal Capital Territory (FCT) and consists of other

miscellaneous provisions. The First Schedule to the constitution defines the legislative powers contained in the Federal and State Lists, whereas the Second Schedule describes the powers of independent commissions. The Third Schedule provides for the Federal Election Tribunal and the Fourth Schedule informs about oaths.

This new model constitutional document is refreshingly different from the 1999 Constitution, as it seeks to address the flaws in the latter. For instance, it is written in simple language in a manner that any average Nigerian can comprehend. Also, this utilisation of language is gender sensitive. Furthermore, the model corpus of legislation attempts to capture what Nigerians have continuously been clamouring for - the enthronement of true/genuine federalism in the country. To this extent, the document provides for the coming into existence of State Constitutions and State police forces. In addition, the constitution guarantees economic, social, and cultural rights and makes them justiceable. It also ensures the rights of women and grants affirmative action. Moreover, the model constitutional document provides for an independent judiciary, independent commissions, and the control of resources by the states of the federation.

The content of the constitution is a reflection of the process through which it was arrived at, and it is an established fact that when a participatory method is engaged in the making of a constitution, this results in the evolution of a constitution that is radically different, new, progressive, and which meets the wishes and aspirations of ordinary people.[6]

5. THE WAY FORWARD

From the foregoing, it is clear that the people of Nigeria have never really participated in the making of a constitution under an elected civilian regime. Therefore, present efforts at

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[6] *Bazaara, N (2001), "Mixed Results in Uganda's Constitutional Development: An Assessment" in Kibuana, K; Peter, C. M; and Bazaara, N. (Eds), Constitutionalism in East Africa: Progress, Challenges and Prospects in 1999. Kampala: Fountain Publishers.*

reviewing the 1999 Constitution offers Nigerians a good opportunity to make a constitution which they can call their own. Unfortunately, the review processes sponsored by various levels of the government have not been guided by principles that would lead to the production of a people's constitution.

There are responsibilities, concerning the government and civil society, which flow from this defect that need to be taken cognisance of in the effort to move the agenda for the making of a peoples' constitution forward. The government needs to quickly set up an independent commission for the review of the 1999 Constitution, made up of representatives of the Executive, the National Assembly, Non-Governmental Organisations (NGOs), ethnic groups, professional groups, labour and students. At least 30 percent of the members of the commission should be women, and the body has to be constituted by people of impeccable integrity who will be allowed to operate in an independent, open and transparent manner. The commission would have to collate all the work that has been done on the review of the 1999 Constitution so far, and utilise the principles of the new approach enunciated above in its generation of the required information for the task of constitutional reconstruction. Thereafter, the report of the commission should be subjected to a National Conference and the draft constitution issuing from this process offered for adoption after a referendum.

The challenge for the civil society is enormous, as it has been documented that the political class has proved either to be incapable of or unwilling to push for the creation of constitutions that would promote just and equitable societies, and are distracted by a chance to exercise power instead.[7] For us at the Citizens Forum, we need to identify strategies that will move the agenda for the making of a peoples' constitution and the enthronement of an era of constitutionalism forward.

[7] *Centre for Democracy and Development (CDD)(200), The Zimbabwe Constitutional Referendum: The Report of CDD Observe Mission. London, Centre for Democracy and Development.*

APPENDIX 1

ABOUT CITIZENS' FORUM FOR CONSTITUTIONAL REFORM

Citizens' Forum For Constitutional Reforms is a coalition of over 90 civil society organisations that are committed to a process led and participatory approach to constitutional reform in Nigeria. In over three years of the work of the Forum, the network has hosted various colloquia, conferences, seminars, workshop and training programmes across geo-political zones, States and local governments in Nigeria on the need to revamp the deeply contentious Constitution of the Federal Republic of Nigeria 1999.

The Forum has also continued to sensitise Nigerians on the cardinal principles of inclusion, diversity, participation, transparency, openness, accountability and autonomy, which are crucial to the making of democratic constitutions. While much of the opinion and directions of CFCR is chronicled in its numerous publications, its affairs are administered by a National Coordinating Committee, Zonal and State Coordinators located in the six geo-political zones of Nigeria, and in the Federal Capital Territory, Abuja.

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