

December 7, 2020

Senator Ovie A. Omo-Agege
Deputy President of the Senate/Chairman
The Senate's Ad-Hoc Committee on the Review of the 1999 Constitution
The Secretariat of The Committee
Room 0.28 Senate New Wing,
National Assembly Complex
Abuja

Dear Senator Omo-Agege,

Re: Towards a replacement of the 1999 Constitution

The #FixPolitics Initiative is a citizens-led research-based initiative designed to be executed as a *Big Push* for structural change of politics and governance on our continent. Our goal is to transform Africa's democratic practice into one that is "of the people, by the people, for the people". It represents a new way of thinking and engaging the existing political order by citizens acting in a collaborative and systemic way to produce sustained change that guarantees democratic progress and wellbeing of all persons.

The Senate's Ad-Hoc Committee on the Review of the 1999 Constitution's call for the submission of memoranda /proposals for further alteration(s) on the 1999 Constitution (as amended) and signed by Senator Ovie A. Omo-Agege (Deputy President of the Senate/Chairman); as well as the House of Representatives' Special Committee on the Review of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) and Order 18 Rule 9 of the Standing Orders of the House of Representatives (9th Edition) and the Updated Legislative Agenda of the 9th House of Representatives, Rt Hon. Ahmed Idris Wase - the Deputy Speaker / Chairman, House of Representatives Special Committee on Constitution Review's call for the submission of memoranda /proposals for further alteration(s) of the 1999 Constitution, refers.

1. Clearly, the observations of the Senator that the National Assembly has no direct powers to replace the Nigerian Constitution is sound in principle and in law. In principle, the legislature is a creation of the Nigerian Constitution, co-existing with the other two arms of government. It is, therefore, impossible that as a creation of the Nigerian Constitution, the legislature should have the power to reinvent itself or reinvent the country without the equal contribution of the other arms of government and the people to such a process. The idea of such a power will give the legislature constitutional sovereignty over every other arm of government and over the people.

2. In law, the Nigerian Constitution confers sovereignty on the people. Section 14(2) declares that ‘sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority’. This point is emphasised in the Preamble to the Nigerian Constitution which notes that ‘We the people of the Federal Republic of Nigeria...do hereby make, enact, and give to ourselves the following Constitution.’ There is no other legal provision that empowers the legislature to replace the role of the people as the recognised authors of the constitution. Clearly, the only power that the legislature has on this issue is to amend the Nigerian Constitution in accordance with the process outlined by the constitution itself.

3. Nevertheless, we call attention to the widely-acknowledged point that, in fact, the Nigerian Constitution has not been authored by the people. Instead, it was drafted under military guidance and imposed by military decree without a vote or ratification by the people of Nigeria. In terms of content, the Nigerian Constitution has also failed to transform society into a truly democratic one. Instead, it continues to entrench executive supremacy as designed under military regimes, while limiting judicial and legislative oversights. It has also failed to address contextual issues such as limiting public wastage, decentralising resource control, localising governmental powers, and providing institutional protections in areas of human rights and government accountability. The Nigerian Constitution has also failed to provide a clear path to free and fair elections as evidenced by the constant need to amend the Electoral Act, amongst other electoral challenges.

4. In short, the power of the National Assembly to amend the Nigerian Constitution is insufficient to address the numerous procedural and substantive challenges and flaws of the Nigerian Constitution. Any legal document that requires a constant stream of amendments in a period of just 20 years requires a serious overhaul. Today, public opinion, civil society, and academic scholarship have increasingly called for a process towards creating a new constitution.¹

5. While we acknowledge that the National Assembly lacks the constitutional power to write and impose a new constitution, we call attention to the point earlier made that the people have that power. Accordingly, we propose that the National Assembly should take on the role and responsibility of facilitating the process through which the Nigerian people can exercise their constitutional sovereignty to give themselves a constitution. This role is not only consistent with principles of constitutional democracy, it is also a validation of the provisions of the Nigerian Constitution.

6. The process of creating a new constitution for Nigeria through the input of the people can take many forms. There are several examples from similar processes in South Africa, Kenya, and an ongoing process in Ghana and we will be happy to provide further advice on this point. We should, however, emphasise that this process has to commence with the National Assembly enacting a law or a constitutional amendment authorising the process. The law or amendment should also include provision for a popular referendum on the final draft of a new constitution. These indicate the vital role that the legislature has to play in assisting the people to birth a new constitution.

¹ <https://www.thisdaylive.com/index.php/2020/11/16/olanipekun-nigeria-needs-genuine-restructuring-peoples-constitution-not-amendment/>; <https://www.vanguardngr.com/2020/03/calls-for-a-new-constitution/>

7. In view of the foregoing, we at the #FixPolitics Initiative urge the National Assembly to consider the following:

- a) Initiate a process towards the creation of a NEW CONSTITUTION as an amendment is inadequate to address the multiple structural issues that threaten the Nigerian State.
- b) Halt the current constitutional amendment process and immediately initiate a multi-stakeholders discussion of the pathway to a new citizens-led CONSTITUTION.
- c) Enact a law that will outline the drafting and transition process in support of b) above.

- d) Enact a constitutional amendment process that will authorise a referendum to accept the outcome of the drafting of the NEW CONSTITUTION. This is based on emerging popular consensus.

8. We at the #FixPolitics Initiative are able and willing to provide more advice on this and supplement the capacity of the National Assembly as may be required.

Thank you for your time and for your continued service to our country.



Obiageli "Oby" Ezekwesili
Chairperson, Work Study Group (WSG)
#FixPolitics Initiative



Auwal Musa Rafsanjani
Co-Chair, Constitutional, Political and Electoral
Reforms WSG, #FixPolitics Initiative