

NAME; Toluse David(19/SMS09/076)

POL 104

Question

Examine some of the loopholes in Nigeria's constitution over the years that have affected democracy in Nigeria

The new democratic dispensation in Nigeria was launched again in 1999 leading to the emergence of the fourth republic. It would seem that democracy has increased the culture of impunity in some people while political differences are believed to have fueled some of the challenges that have erupted. Democracy was highly embraced by all with expected hope that it will deliver good dividends and socio-economic development. But not far into the fourth republic, the body polity became overheated by lots of challenges namely: election malpractices, military coups, bad governance, majority tyranny over minority rights, political party indiscipline, abuse of power, constitutional breaches etc. These challenges are strongly affecting democratic stability and consolidation. Adaptation of the liberal democratic system to suit the country's cultural values and peculiarities should lay the basis for people centred development strategies that will empower them to be active participants in policy making and implementation, under a political climate characterized by the rule of law and constitutionalism. Unless these categorical steps are taken, the country may experience another democratic breakdown that will spell doom for the nation-state. Democracy has been described as the government of the people in which law is supreme, rulers and subjects' alike being subject to it. Democracy, adequately understood, is a theory that sets some basic principles according to which a good government, whatever its form, must be run. Such principles include those of justice, equity, freedom, liberty, accountability, openness and transparency in government. Indeed, effective democratic forms of governance rely on public participation, accountability and transparency. In this regard, democracy not only prescribes how political power should be acquired but also what to do with it or how it should be exercised. Therefore, democracy specifies who constitutes the legitimate government and wields the authority inherent in the state (the elected representatives), how they acquire authority (free and fair elections, choice between parties) and how they are to exercise it (in broad harmony with public good) (Parekh, 1993). This makes democracy amenable to moral and ethical justifications or judgements. Hence, good governance forms the philosophical foundation upon which democracy and democratic theories are built (Ogundiya, 2010). Democracy has thus been recognized as the only moral and legitimate way through which a society can be administered. However, the main attributes of democracy is that, those holding political office do not have automatic security of tenure but can be challenged and even displaced in accordance with the will of the people through a wide range of institutional mechanism. Thus, the core ideas and ingredients defining democracy are participation, accountability and transparency; that the people determine who govern them, and that those who govern give account of their stewardship through periodic election is one of the most important mechanisms for the realization of the objectives of democratization. It is also important to note that, elections are not only meant to ensure, confirm or re-affirm the legitimacy of the governors through a regular consent, but also to provide a fertile ground for democracy to thrive. Moreover, if we go by St. Augustine's definition – government that Nigeria ever had could qualify as "Mafua Government". The word "Mafua" within the paper's context means government infested

with power drunken, self seeking, ideology-barren, orientation less operatives; usually selected by their kind and of course scarcely ever elected by the people. Even in the guise of multi-party election, those to rule are clearly predetermined and chosen even before elections takes place (Ogundiya, 2010:205). Democracy in Nigeria is lamed and in terms of its conceptual outcome has failed to meet the expectations of the people. Furthermore, Nigeria's democracy (if it could be so described) has tended to promote inequality rather than equity. Arguably once Nigeria's most serene city, Yobe State now synonymous with senseless violence, largely occasioned by misgivings and primordial sentiments and prejudices among inhabitants. Predictably, the mixtures of ethnicity and faith have taken the strife to unimaginable, deadly heights. Neighbours who had lived in harmony for decades have turned on one another with murderous fervour. That has led to the loss of thousands of lives. Numerous buildings and other valuables have been razed. Law enforcement agents now comb worship centres in Yobe State on Fridays and Sundays to safeguard them. For a nation whose citizens boast of belonging to either Christianity or Islam, two of the world's greatest faiths, that indeed is a sad commentary (Egwu, 2011). This theory is justified due to the fact that, it can help examine analytically the challenges of democracy in Nigeria's Fourth Republic as it designs the systematic structure through which a democratic political system can effectively function. Liberal theory of democracy is an interesting theory in this work. Its values lies in the fact that it exposes and explain the expectation of any political system, especially as it emphasizes the conduct of credible elections which is one of the factors responsible for consolidating democracy.

Nigeria's democracy landed on a good platform with the existence of democratic institutions, plural society, vibrant civil society organizations and critical mass media among others. These ingredients have the structure and capacity to make democracy thrive in Nigeria. But it is germane to note that, Nigeria's democracy has remained grossly unstable since the return to this popular form of governance in 1999. The political terrain has been home with lots of challenges precipitating against the genuine realization of the system. In fact the impediments to the nations unending desire for a true democracy seem to assume a more perilous proportion by the day. These challenges are:

- **Military Coups** The first major challenge to the survival of democracy in Nigeria has been and remains military coups, as they always prevented democracy from rising above the level of a toddler since 1966. Democracy needs to be nurtured by oiling democratic institutions not by truncating them through coups and counter coups. Where there are mistakes as there often are, Nigeria will do better to use all constitutional means to combat gross abuse of democratic processes, procedures and institutions than allow coups as the necessary messianic option.
- **Election Malpractices** The next major challenge is the inability to conduct free and fair elections. Nigeria in 2007 general elections, witnessed a lot of irregularities and malpractices. The final report of the European Union Election Observer Mission (EU EOM) led by Mr. Max Van den Berg (Netherlands). Member of the European Parliament, on Nigeria's 2007 elections, reveals the extent of this major challenge when it says: The team undertook observation of 33 of the 36 states plus the Federal Capital Territory (FCT)..... The 2007 states and federal elections fell far short of basic international and regional standards for democratic elections. They were marred by poor organization, lack of essential transparency, widespread procedural irregularities, substantial evidence of fraud,

widespread voter disenfranchisement at all different stages of the process, lack of equal conditions for political parties and conditions and numerous incidents of violence. As a result, the process cannot be said to be credible. Given the lack of transparency and evidence of fraud, particularly in the result collation process, there can be no confidence in the result of these elections. The above summation of our 2007 elections by the EU elections observer mission shows the enormity of this challenge. It was not surprising that the president then, late Musa Yardua set up the Electoral reform panel under the chairmanship of the former chief Justice of the federation, Justice Uwais to make prescriptions for surmounting this malaise once and for all.

- **Bad Governance** is a major challenge to the survival of democracy. The widespread back of basic infrastructure and pervasive corruption in the Nigerian polity pose a serious threat and challenge to democracy. When citizens feel that appropriated funds are not well managed in the common interest, it discourages loyalty to the nation and kills the spirit of patriotism.
- **Majoritarian Tyranny over Minority Rights** The issue of majority rule and minority rights is still a challenge as the ethnic minorities in the oil producing areas of the south-south geopolitical foreign exchange earnings has consistently cried out against overt and prolonged neglect of their region by the majority ruling the country over the years. Some disgruntled elements have even resorted to militancy as a way to ventilate their grievances thereby threatening the survival of democracy in Nigeria. Democracy requires a stable political and economic environment to thrive.
- **Political Party Indiscipline** The activities of political parties are a far cry from the prescriptions of the constitution and pose a major challenge. Political parties and their members still breach with impurity the constitutional provisions that no association should retain, organize, train or equip any person or group of persons to be employed for the use or display of physical force or coercion in promoting any political objective in a manner to arouse apprehension. Political thuggery and even political assassination are still a prominent feature bedevilling Nigerian politics. For example, the EU EOM notes thus “violence was a major issue of concern and incidents increased as the election drew nearer. Credible reports indicated that at least 200 people including candidates and policemen were killed in election related incidents. This is unacceptable not only with respect to the right to life, but also to the democratic process”.
- **Abuse of Power** The unrestrained use of power by government against citizens still poses a challenge. The invasions of Odi and Zaki Biam by the Government forces which involved serious loss of lives detract from the concept of democracy. The forceful demolition of houses in the federal capital, Abuja and the consequential homelessness without compensation or alternative accommodation in many cases could be seen as extravagant use of power which reinforces undemocratic norms.

- **Constitutional Breaches** The threat to the fundamental rights of citizens during political campaigns and after elections is a monumental challenge. The right to life of many political opponents has been truncated for political reasons. The country is replete with stories of political assassination that thwart full expression of people's democratic will. Any situation that detracts from the fundamental rights of speech, movement, assembly, life, dignity of the human person and fair hearing as usually and after elections remain a veritable threat to democracy.
- **Gender Disparity** In the 1999 constitution, gender disparity is discernible. For instance, in section 26(2)(a) and 29(4)(b) the word women was not often used unlike gender which was largely used in the entire section pointing to the marginalization of the word women and gender equality.
- **Citizenship/Indigeneity Crisis** There is one phrase whose exact denotation is problematic namely: indigeneity to: which was first used in the Constitution of the Federal Republic of Nigeria (CFRN) 1979. The term was not properly spelt out in the 1999 constitution and it has often created problems in understanding and delineating who is an indigene and who is not beyond that what should be considered in the context of indigeneity and what should not. Again, there is a lacuna on aspects of citizenship involving male foreigners married to Nigerian women and wishing to gain Nigerian citizenship. Section 26 defined a Nigerian citizen and process of citizenship by naturalization and registration, however the silence about the process of citizenship for non - Nigerian men perhaps results in challenges of marriage instability.
- **Other missing gaps in the Nigerian constitution include but not limited to the question of prohibition; Sexual Discrimination; The Federal Character Principle; Right to inheritance**
Prohibition: The term remains rather vague and indistinct in the constitution and often seen as a stand-alone phrase that may prove difficult and contradictory in practical terms
Sexual Discrimination: This is another term in the constitutional that has been poorly implemented in practical terms. The right to dignity of womanhood has also been poorly internalized and implemented in the Nigerian constitution as women and their rights have been marginalized
The Federal Character Principle: This is an invention of the 1999 constitution aimed to reflect federal presence in all aspects of events or activities such as political offices, including the composition of the national football team. However since its adoption the federal character principle has not enthroned ethnic emancipation both in the structure of political appointments and similar public offices
Right to Inheritance: In the 1999 there is a gap in contextual application of the clause right to inheritance much of the crisis is reflective of persisted quarrels among families on the demise of its breadwinners
The Land Use Act: This has been a colonial legacy and often equates land grab and alienation. It extends beyond the use of land alone rather encompasses the natural resources therein. In the particular case of the oil rich Niger Delta there are repeated incidence of resource marginalization as constitutional dictates are not followed. There are other key issues that require urgent attention such as sexual discrimination, section 42(1-3); right to dignity of womanhood, section 34, their political and economic rights, section 14(3); right to inheritance, land use act etc. Equally there are important case examples to buttress gaps in the Nigerian constitution as follows;
- **4.4. The Case of Yar'Adua's Ill Health and Constitutional Loophole**

- Conclusion, just the two major constitution of Nigeria were mentioned above from the references found .

References

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