

NAME: OKWUM CHIAMAKA

MATRIC NO: 19/SMS09/061

COURSE CODE: POL104

ASSIGNMENT: Constitution is important for the consolidation of democracy. However, the making of Nigeria's constitutions has been under two political dispensations that have anti-democracy tendencies, and this has been a great impediment to democratic governance in Nigeria. Examine some of the loopholes in Nigeria's constitutions over the years that have affected democracy in Nigeria.

Firstly, a country's constitution can be referred to as a body of basic laws, principles, conventions, rules and regulations, which govern the country. It specifies the limits of, as well as relationships between the various organs and agencies of government. Austin Ranney defined the constitution as the whole body of fundamental rules, regulations and laws written or unwritten, legal or extra-legal according to which a particular government must govern a given state.

SCOPE OF THE CONSTITUTION

The affairs of the state which the constitution of a state or country covers include:

- I. The system of Government: The constitution provides for the system of government to be operated in such a state whether unitary, federal, parliamentary, presidential or monarchical.
- II. It also specifies the political institutions and organs or agencies of government that exist in a particular state such as the legislative, executive, and judicial organs and their functions and limitations including the ministries, parastatals.
- III. The welfare of the citizens and means of achieving and it is also provided by the constitution.
- IV. Citizenship of the State: The constitution determines the basis of citizenship acquisition, duties and obligations of the citizens towards the state.
- V. An important aspect of the constitution is the process of amendment of the constitution or a part thereof.

SOURCES OF THE CONSTITUTION

The source of the constitution defines how a particular constitutional framework is arrived at. The following are some of the sources of the body of rules and regulations:

- I. **Parliamentary statute:** This refers to the first official source of any constitution. The function of law making is enjoyed mainly by the Parliament so that any law made by the Parliament automatically becomes the part of the constitution.
- II. **Conventional Rules:** This refers to patterns of political relationships, which have gained the acceptance of the citizens of any body politic.
- III. **Customs and Traditions:** These include the usages- usual practices of the people. Appadorai (1975) maintains that customs become law only when they are enforced by political authorities.

Other sources of the constitution may include: **Judicial precedents, Executive orders, International documents, Constitutional conferences.**

IMPORTANCE OF THE CONSTITUTION

- I. It prescribes procedures by which power is shared. The procedure thus, permits it also to determine what constitutional action is and what unconstitutional action is.
- II. It symbolizes the sovereignty of a nation.
- III. The constitution states the means whereby change of a government shall be achieved or effected.
- IV. It ensures procedural stability or institutionalized procedure. Procedural stability provides citizens with adequate foreknowledge of the consequences of their actions.
- V. It provides a system of legal guarantees for enforcing the rights of citizens, hence the declaration of the citizens' rights in most constitutions.

TYPES OF CONSTITUTION

There are various types of the constitution:

- I. **Written Constitution:** A written constitution is one in which the fundamental principles concerning the organization of government, the powers of its various agencies and the rights of the subjects, are written down in one document. E,g of various countries that practice the written the written constitution are Nigeria, U.S.A., Ghana, etc.
- II. **Unwritten Constitution:** This is a constitution in which the fundamental laws, conventions, principles, customs, norms, rules and regulations that govern a country are not written down in any single document.
- III. **Federal Constitution:** A federal constitution is one in which governmental powers are constitutionally shared between the central government and the component units of government, provinces and cantons.
- IV. **Unitary Constitution:** A unitary constitution ascribes all powers and authority of government in one central government. Thus, power is concentrated in the hands of the central government. Any other level of authority functions based on the power delegated to it by the central government.

CONSTITUTIONALISM

Constitutionalism is the doctrine that the power of the government should be conditioned and limited by the provisions of the laws of the land- the constitution so that human rights, security of persons, due process of law and the likes are protected from breachment by either public officials or private individuals. Simply put, Constitutionalism is an adherence to the constitution or acting in accordance with the constitution in the process of carrying out state duties.

RELATIONSHIP BETWEEN CONSTITUTIONALISM AND THE CONSTITUTION

1. Both constitution and constitutionalism serve the same purpose of preventing leaders and those in authority from becoming autocratic, protecting the rights of the citizens and ultimately providing the forum for peaceful co-existence in a given state or country.

2. While constitution is a body of basic laws, rules and regulations determining the structure and power of the government of a state as well as the rights and duties of the citizens, constitutionalism functions as limitations imposed on government through the application of the constitution.
3. Thus, constitutionalism insists on the strict adherence to the provisions of the constitution as a vehicle of liberty, social justice and peace.

THE ADVANTAGES OF THE CONSTITUTIONAL DEMOCRACY

1. There is equality promotion;
2. In constitutional democracy there is an absence of power monopoly;
3. Constitutional democracy ensures and protects the rights of people;
4. Free choice of leaders; stronger and more reliable administration that is elected by citizens;
5. A responsible attitude to duties, as a sign of gratitude to voters; ensures changes and stimulates the formation of a better society for people ("people for people").

FUNDAMENTAL CONSTITUTIONAL VALUES

1. The protection of freedom for self-expression and conscience, which determine the development of a full-fledged citizen within a particular society.
2. The fundamental human rights in the community are defined mainly by the constitution, as well as by the following legislative acts, which determine and explain the basic principles: the African Charter on Human and People's Rights, the United Nations Convention on the Rights of the Child, and the Universal Declaration of Human Rights.
3. Privacy within civil society: all residents of a country with constitutional democracy are guaranteed the right to be protected from sudden intrusions from the side of government.
4. The right for justice: the use of the fair procedure in responding to crimes.

THE PAST CONSTITUTIONS IN NIGERIA

Colonial era (1914–1960)

Nigeria's first constitutions were enacted order in the council during the colonial era, when the country was administered as a Crown Colony. The constitutions enacted during this period were those of 1913 (which came into effect on 1 January 1914), 1922, 1946, 1951 and 1954.

In 1946 a new constitution was approved by Westminster and promulgated in Nigeria. Although it reserved effective power in the hands of the Governor-General and his appointed Executive Council,

The so-called **Richards Constitution** (after Governor-General Sir Arthur Richards, who was responsible for its formulation) provided for an expanded Legislative Council empowered to deliberate on matters affecting the whole country. Separate legislative bodies, the houses of assembly, were established in each of the three regions to consider local questions and to advise the lieutenant governors. The introduction of the federal principle, with deliberative authority devolved on the regions, signaled recognition of the country's diversity. Although

realistic in its assessment of the situation in Nigeria, the Richards Constitution undoubtedly intensified regionalism as an alternative to political unification.

The pace of constitutional change accelerated after the promulgation of the Richards Constitution. It was suspended in 1950 against a call for greater autonomy, which resulted in an inter-parliamentary conference at Ibadan in 1950. The conference drafted the terms of a new constitution.

The so-called **Macpherson Constitution**, after the incumbent Governor-General, John Stuart Macpherson, went into effect the following year.

The most important innovations in the new charter reinforced the dual course of constitutional evolution, allowing for both regional autonomy and federal union. By extending the elective principle and by providing for a central government with a Council of Ministers, the Macpherson Constitution gave renewed impetus to party activity and to political participation at the national level. But by providing for comparable regional governments exercising broad legislative powers, which could not be overridden by the newly established 185-seat federal House of Representatives, the Macpherson Constitution also gave a significant boost to regionalism.

Subsequent revisions contained in the **Lyttleton Constitution**, named for Oliver Lyttelton, 1st Viscount Chandos and enacted in 1954, firmly established the federal principle and paved the way for independence.

Constitutional independence (1960)

Nigeria's first constitution as a sovereign state was enacted by a British order in council so as to come into force immediately upon independence, on 1 October 1960. Under this constitution Nigeria retained Queen Elizabeth II as titular head of state.

1963 constitution (First Republic)

Independent Nigeria's second constitution established the country as a federal republic. It came into force on 1st of October, 1963 (Nigeria's third anniversary as an independent nation). The 1963 constitution, which was based on the Westminster system, continued in operation until a military coup in 1966 overthrew Nigeria's democratic institutions.

1979 constitution (Second Republic)

The 1979 constitution, which brought in the Second Republic, abandoned the Westminster system in favor of an American-style presidential system, with a direct election, directly-elected. To avoid the pitfalls of the First Republic, the constitution mandated that political parties and Federal Executive Council (Nigeria cabinet) positions reflect the "federal character" of the nation: political parties were required to be registered in at least two-thirds of the States of Nigeria or states, and each state had to have at least one member of the cabinet from it.

1993 constitution (Third Republic)

The 1993 constitution was intended to see the return of democratic rule to Nigeria with the establishment of a Third Republic, but was never fully implemented, and the military resumed power until 1999

1999 constitutions (Fourth Republic)

The 1999 constitution restored democratic rule to Nigeria, and remains in force today. In January 2011, two amendments of the 1999 constitution were signed by President Olusegun Obasanjo, the first modifications since the document came into use in 1999.

The making of Nigeria's constitutions has been under two political dispensations that have anti-democracy tendencies, and this has been a great impediment to democratic governance in Nigeria.

Firstly, being anti-democratic refers to one who is opposed to the principles or practice of democracy. This is as a result of democratic disappointment in Nigeria.

With such a low dividend on democracy, and with 'democracy' being so costly and toxic to the body politic, it is no surprise that many Nigerians have begun to question their loyalty to the received wisdom that democracy is superior to its alternatives.

For many Nigerians and Africans democracy has failed. It has failed to live up to its publicized benefits – tangible and intangible. So glaring is this failure and so painful are the betrayals of Africa's 'democrats' that ten thousand Nigeriens recently poured into the streets of Niamey to rally in support of the new military regime there. Westerners may be scrambling to comprehend this dramatic reversal of public opinion from a craving for a democratic overthrow of a military dictatorship eleven years ago to an enthusiastic embrace of a military overthrow of a 'democratic' regime today. But this is something that people in neighboring Nigeria can explain and understand. The exuberant Nigeriens at the rally were not expressing a preference for military autocracy. They were voicing their disillusionment with a failed democracy. The material promise of democracy, that is, the supposed correlation between democracy and improved standards of living, has yet to materialize for Nigerians in almost eleven unbroken years of 'democracy'.

'Democracy' has provided the perfect cover for corruption – massive corruption. 'Democracy' has – forgive the redundancy – democratized corruption. Under the military, corruption was a quasi-monopoly; it was tightly controlled by a small cohort. Under our 'democracy,' the need to cultivate political support and immunity means that the loot has to circulate. Democracy has also made corruption legitimate. In the days of the military, the zones of legal and illegal monetary appropriation were clearly demarcated, so we could tell easily when an act of corrupt self-enrichment had occurred. Not anymore. Under our current 'democratic' practice, public officials steal legally. They only have to underwrite what they steal as a licit item in the budget bill. This can be done in a few choreographed, taxpayer-funded committee sittings and a hurried process of debate-less approval.

Political office holders can even steal in anticipation, carefully documenting future thefts and including them as budgetary earmarks or exculpatory footnotes in legislations. And it's all legal – and perfectly within the procedural norms of our 'democracy.' Where the law did not exist to legitimize the theft, our legislators have enacted or been goaded by executive carrots and sticks into enacting one-off bills to authorize acts of pillage deemed in the pecuniary interest of legislators and their executive partners. Democracy has licensed and unleashed novel evils on our country. Consider this: The Borno State House of Assembly recently passed a bill awarding stupendous severance perks worth tens of millions of naira annually to the governor and his deputy – for life! And it's all legal and within the rules of our 'democracy.'

Though Nigeria's democratic setbacks may not yet entitle us to reject democracy altogether or to be receptive to military rule. But we are at a crossroads, and if we continue with this charade, a Niger-like scenario of democratic disillusionment may be in the horizon. We cannot continue along this path: Abusing democracy, invoking it to legitimize all that is abhorrent but neglecting to fulfill its utilitarian promises to Nigerians. In this 'democracy' every government action is

conceived through the lens of politics, not of patriotism. Instead of asking if a policy or initiative is good for the Nigerian people elected officials ask if it would look good politically. Instead of asking how a policy might help Nigerians, officials ask how it would win them the next elections – how it would enrich campaign donors and party godfathers and how much it would generate for the election war chest. This permanent campaign culture is a costly drawback of democracy and has reached a head in the United States, the prototypical practitioner of the presidential system of government. The difference is that America's robust economy can absorb the cost; Nigeria's cannot.

EVIDENCE OF SOME CONSTITUTIONAL GAPS AND CASE EXAMPLES

There are roadblocks to a strong democracy in Nigeria at all levels of government. Conflict—triggered by political competition and communal, ethnic, religious or resource allocation rivalries—poses a major threat to democracy. Corruption pervades the daily lives of Nigerians. Many government institutions do not adequately engage with citizens or the private sector and lack the capacity to carry out their mandates. Further, civil society lacks both the capacity and the resources to effectively engage with government and advocate for change.

1. 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.
2. Citizenship/Indigence Crisis There is one phrase whose exact denotation is problematic namely: indigenous 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 indignity 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.
3. The Case of Anzaku & 33 others v Ex.Gov NASG & 2 ORS There was a breach of constitutional provision on the issue on indengship. This event took place in December 2004 in Jos North central Nigeria where the Appeal court Jos Division ruled that the Nassarawa state government acted in error in deploying a local government Staff to the alleged local government of origin. The court ruled that this was discriminatory and at variance with section 42 and 46 of the constitution of the federal republic of Nigeria. George Anokwuru & Edmund Obomanu International Journal of Political Science (IJPS) Page | 38 The Nigerian democratic constitution in its language exhibits how much value it places on the worth of each and every one of its citizens. it does not and will not condone indeed(will)not tolerate class or ethnic, etc. discrimination whether by any law of the land or any action on the part of any executive or administrative authority or person or the state in sharing advantage and even disadvantages based on sex, race, place of origin ethnic ,religious or political affiliation.

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.

With the inception of the 21st century in Nigeria politics, the expectation for good governance became high.. This was as a result of the country's return to democratic system after several years of military regimes in 1999. However, despite its return to a civilian administration, the menace has been on enjoyment of democratic dividends. This study, therefore, makes a conceptual and explorative understanding of Nigeria's 21st century democratic dispensation. The study infers that despite years of civilian rule since 1999, there are challenges ranging from election malpractices, insecurity, poverty and economic mismanagement which pose threat to the current democratic dispensation in Nigeria. The qualitative method of study is adopted and secondary data used. This study, therefore, recommends that the constitution should be thoroughly checked and reviewed in order to effect positive changes in the society. The political leadership must have the will to turn around the socio-economic and political challenges facing the country so as to ensure development in all sensitive and non-sensitive sectors. If all these are given adequate attentions, Nigeria's democratization would be positioned higher in the midst of other democracies.

Leadership crises in Nigeria have been attributed to failure of political leaders to imbibe democratic principles and provide necessary infrastructures. Trait theory was used to guide the study. However, a critical analysis of the extant literature indicated that selfish desires of political leaders to wield powers and control the state apparatus, corruption, recycling of leaders, illiteracy and lack of political education and wrong interpretation of politics by the players and their admirers are primarily responsible for leadership problems in Nigeria and inability of political class to truly adopt democratic principles in discharge of their constitutional functions. Based on these findings we proffered the following solutions: that political parties should enthrone internal party democracy in choosing party candidates, poverty alleviation should be vigorously pursued and conquered since a hungry man is an angry man, mass literacy and education of the populace should be considered a necessity.

REFERENCES

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3080442

<https://www.legit.ng/1207341-advantages-constitutional-democracy.html>

https://www.researchgate.net/publication/326392014_Nigeria_and_21st_Century_Democratic_Dispensation

<https://www.pambazuka.org/governance/failures-nigerian-democracy>

<https://www.usaid.gov/nigeria/democracy-human-rights-and-governance>

https://en.wikipedia.org/wiki/Constitution_of_Nigeria