**Name: Ogunbisi Oluwatobi Thelma**

**Department: International Relations & Diplomacy**

**Course: POL 104**

**MATRIC NO.:19/SMS09/055**

**ASSIGNMENT**

**CONSTITUTION IS IMPORTANT FOR THE CONSOLIDATION OF DEMOCRACY. HOWEVER, THE MAKING OF NIGERIA’S CONSTITUTIONS HAVE BEEN UNDER TWO POLITICAL DISPENSATIONS THAT HAVE ANTI-DEMOCRACY TENDENCIES, AND THIS HAS BEEN A GREAT IMPEDIMENT TO DEMOCRATIC GOVERNMENT IN NIGERIA. EXAMINE SOME OF THE LOOPHOLES IN NIGERIA’S CONSTITUTIONS OVER THE YEARS THAT HAVE AFFECTED DEMOCRACY IN NIGERIA.**

**THE CONSTITUTION**

The constitution as we know it is “the basic, fundamental law of a state which sets out how a state will be organized and the powers and authorities of government between different political units and citizens”. The constitution is colloquially referred to as the number 1 law of the land, to which all of government, citizens, corporate persons and other laws must defer in the event of any conflict.

The content and nature of a particular constitution, as well as how it relates to the rest of the legal and political order, varies considerably between countries, and there is no universal and uncontested definition of a constitution.

The constitution has functions that it serves that are very important to the proper governing of the society, some of which include:

* Declaring and defining the boundaries of the political community, meaning a country’s constitution distinguishes between those who are inside and those who are outside the polity.
* Expressing the identity and values of a national community, they may define the national flag, anthem and other symbols, and may take proclamations about the values, history and identity of the nation.
* Declaring and defining the rights and duties of citizens. The constitution declares the social, economic, political and cultural rights of every citizen.
* Establishing and regulating the type of government that is practiced in a particular society, they can divide or share power between layers of government or sub-state communities.

These and many more are the functions of a constitution, as we note the constitution holds great importance to the smooth functioning of a community and its government. The constitution is at intersection of legal, social and political life.

There is what we call the **constitutional order**, which is what represents ‘a fundamental commitment to the norms and procedures of the constitution’. It is much broader than just the constitutional text. It can include customs, conventions, norms, traditions, administrative structures, party systems and judicial decisions that are integral to the practical workings of the constitution.

*CONSTITUTIONS AND DIPLOMACY*

**Why have a constitution?**

Even the best constitution cannot pave a road or build a sewer; it cannot manage a clinic or administer a vaccine; it cannot educate a child or take care of an elderly person. Despite these obvious limitations, constitutionalism is one of the crowning achievements of human civilization. Countries that have succeeded in establishing and maintaining constitutional government have usually been at the forefront of scientific and technological progress, economic power, cultural development and human well-being. In contrast, those states that have consistently failed to maintain constitutional government have often fallen short of their development potential.

**An Analogy: The Constitution as rules of the Game**

Imagine two teams playing a game of football. If the team in possession of the ball could change the rules of the game and appoint its own referee, then the game would hardly be fair. One team would always win and the other would lose. This is like political life without a democratic constitutional order. The party, faction or group in power makes up the rules, and those in opposition are excluded from a game that is rigged against them. A democratic constitutional order acts like the rules of the game, and its guardians, for example, a constitutional court, are like the referee. They make sure that everyone can play the ‘political game’ fairly.

This is because constitutional government ensures ‘the fair and impartial exercise of power’; it ‘enables an orderly and peaceful society, protects the rights of individuals and communities, and promotes the proper management of resources and the development of the economy’ (Ghai 2010:3). In other words, constitutionalism empowers legitimate authorities to act for the public good in the management of common concerns while protecting people against the arbitrary power of rules whose power would otherwise be used for their benefit and not for the public good. The constitutions ensures that the government does not own the state: it simply manages the state, under the authority of higher laws, on behalf of citizens.

In this sense, constitutionalism is the opposite of despotism. Despotism is a system of government in which the governing authorities are a law unto themselves. Many states around the world have been despotic.

Modern democratic constitutionalism is based on two principles: (i)*representative government, enabling citizens to participate in public affairs and hold their government to account;* and (ii) *the protection of rights (especially the due process of law, freedom of speech and religious tolerance),* through which citizens are insulated from abuses of power.

**NIGERIA’S CONSTITUTION**

The constitution of Nigeria is the supreme law of the federal republic of Nigeria. Nigeria has had a series of constitutions, with the current constitution which was enacted on 29th May 1999, inaugurating the Nigerian Fourth Republic. As previously explained about the constitution, it also implies on the Nigerian constitution, with it being the supreme law over the land.

**Inadequacies of the current Nigerian constitution**

The 1999 constitution of the Federal Republic of Nigeria has been widely criticised as a document that was put hurriedly together by the military in preparation for hand over to the civilian government at the inception of the fourth Republic. Several of the challenges faced in Nigeria today are said to be perceived from the imbalances and inadequacies of the constitution.

Nigeria is a federal system which operates a written constitution. The country being governed by the 1999 constitution has 320 sections divided into 8 chapters and 15parts with 7 schedules.

**Some evidence of some constitutional gaps and case examples:**

1. **Gender disparity,** in this constitution this matter of 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/Indigenship 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 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.

1. **The case of Anzaku & 33 others v Ex. Gov NASG & 2 ORS**

There was a breach of constitutional provision on the issue on indegenship. 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.Other missing gaps in the 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 constitution 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 right.
* 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 to the federal character principle has not enthroned ethnic emancipation both in the structure of political appointments and similar pubic offices.
* Right to inheritance: In the 1999 constitution there is a gap 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.

1. **The case of Yar’A duah’s III health and constitutional loophole:**

Umaru Musa Yar’A duah was the president of the fifth republic and suddenly took ill while in office. His prolonged absence from Nigeria for reasons of illness, without constitutional transfer of power and authority to Dr.Goodluck Jonathan the vice president to act on his behalf revealed a major constitutional lacuna in the Nigerian constitution and threatened the nation’s political authority. Whereas, the provisions of the 1999 constitution is clear with regards to matters relating to permanent incapacity of the president or vice president; the point is made clear in section 144(1)a & b,(2),93) 7 (4) a & b that the president’s health condition must be confirmed by a panel of medical practitioners who shall certify same in a report which will be published in the official gazette of the government of the federation.

The problem this creates is that due to the circumstances of the President’s ill health, he was unable to transmit to the Senate President and the Speaker of the House of Representatives the required written declaration to his intention. As a result, there was confusion in the polity. Should the Vice President go and assume office as President? Should he continue to wait for the return of the President, or perhaps his recovery? If the latter option is considered, what would be the implication of this for the state? Since accurate information on President Yar’A duah’s sickness was in short supply, the rumour mill gained the upper hand. Thus, public reaction to a news report in the American Chronicle that Yar’A duah had died on 10th December 2009quickly prompted a rebuttal by presidential spoken early January 2010.

President Yar’A duah’s brief interview with BBC brought out long a subdued anger laced with cooling proverbs and philosophy. “ The truth is like oil. No matter how much water you pour on it, it will surely float to the top. One day the truth will come out” (BBC 2010).

Against the backdrop of President Yar’A duah’s condition, as of 9th February, 2010, at least two remedies, potentially available months later, were not quickly taken.

First, relevant aspects of this case, were not taken to the level of the Supreme Court and so did not resolve the pending matter authoritatively within its powers. Second a complete appeal of section 144 of the 1999 constitution was not taken to its logical conclusion and so did not end the matter in an orderly manner for the removal of Nigeria’s de jure Commander in Chief. But not subsisting doubts would have been removed, yes in the minds of several close friends of President Yar’Adua and co-defenders of his cause for whatever reason.

1. **The Case of Waziri Tambuwal’s Defection:**

A major gap in the Nigerian constitution was revealed in the case of former Speaker of the House of Representatives Aminu Waziri Tambuwal who around October 2014, had defected from the People’s Democratic Party (PDP) to the opposition of All Progressives Congress (APC). This action spawn a round of controversy in the polity in view of its implication. Is the trend healthy for the political development of Nigeria? Does it portend stability for a political party. Does the law on regulating political parties’ activities allow such defection? What actually is the position of the law on the subject matter?

Badejo and Obah – Akpowoghagha (2015) observed that section 68(1)(g) of the 1999 constitution is clear on the fate of a member of the Senate or House of Representatives whom decamps from one party to another. Such member loses his seat by implication. It reads inter alia;68(1) A member of the Senate or of the House of Representative shall vacate his seat in the house of which he is a member if (g)being a person whose election to the house was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House member was elected: Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or a merger of two or more political parties or factions by one of which he was previously sponsored. However, the claims by politicians is the right to freedom of association.

Ene & Ogbochie (2014) argued that there were provisions in the 2010 Electoral Act to check persistent cross carpeting from one political party to another, providing conditions for defection of elected officer however constitutional loopholes are exploited by politicians give ends. Though the constitution guarantees freedom of association but the flimsy excuse politicians give for their defection is a source of concern and its inimical to the development of democracy. Ogunbodeeded on (2015) observes that cross carpeting has become a norm in the eyes of political actors, every executive seems tenable and every step taken is a means of outwitting opposition parties. He reasoned that Tambuwal may have taken the decision for his political survival, the aftermath of that action led to the removal of his security details by the Inspector General of Police (IGP),# Suleiman Abba. The IGP ought to have known that section 40 of same constitution states that; every person shall be entitled to assemble freely and associate with other persons and in particular he mayform or belong to any political party, trade union or any association for the protection of his interest.

According to Flava(2014), the President of Nigeria Bar Association Alegeh Senior Advocate of Nigeria (SAN), attributed the leadership crisis in the Federal House of Representatives over the defection of the speaker, Aminu Tambuwal to constitutional loopholes and ineffective administration of justice leading to the withdrawal of Tambuwal’s security aides by the Nigerian police. Alegeh explained that the constitution never envisaged such political scenario such as the defection of either the speaker or senate president from one party to the other since both officers were meant to preside in the Housone among other law makers (Flava 2014).

He argued that the police erred by withdrawing the security details of speaker as it had no constitutional powers to determine whether Tambuwal’s defection was constitutional or not (Flava 2014). This politicsl twist occasioned by the gap created in the Nigerian constitution was worsened by the poor intervention of the court in dealing with such constitutional lacuna. The role of the court in matters of constitutional defects is very critical. It is important for the court to always act in order to uphold democracy.

Alegeh also described as unacceptable the pending court cases of some People’s Democratic Party (PDP) lawmakers who decamped on the APC, which he said lasted for an upward of eight months in court, noting that the argument surrounding Tambuawl’s defection would not have arsien, if such cases had been constitutionally resolved (Flava 2014).

**Conclusion**

Arguably a lot of problems arise from the 1999 constitution. Going by the history of the 1999 constitution which is largely described as a military invention emerging from decree 24 of 1999. As discussed, issues emanating from the constitution reveal that actual practice of constitution is far from what the document makes provision for. As it is expected, no body of laws is quite capable of addressing all maters in a political society ( Ezra 1964; Dudley 1978). While noting that constitutions must be forward- looking to capture future events, it will always require some fine tuning from time to time as events unfold. From the analysis of this review, it is imperative to state that the loopholes created in the constitution have derailed democracy deepening, particularly such gaps have been a lee way for politicians to commit impunity which invariably distorts peace and sustainable economic and political development of Nigeria.

These bizarre political events will have a long term effect on the coming generations and particular their understanding and adherence to constitutional dictates. This compels the critical need to redress this enormous challenge. The Nigerian constitution contains several provisions that make it a stumbling block for consolidating democracy in view of this challenge, it is therefore recommended that there is need to review the 1999 constitution. It must reflect present realities. Also, the court which is seen as the last hope of the common man, should adjudicate on infringement on these letters in our statutory book. Thus, constitutionalism which has been an integral part of democratization has been largely missing in the Nigerian constitution this calls for urgent policy attention.