**Name**: JIMOH AISHA OMOBUKOLA

**Matric no**: 19/sms09/036

**Department**: INTERNATIONAL RELATIONS AND DIPLOMACY

**COURSE TITLE**: CONSTITUTIONAL DEVELOPMENT IN NIGERIA

**COURSE CODE**: POL 104

**ASSIGNMENT TITLE**: TERM PAPER

**QUESTION**: CONSTITUTION IS IMPORTANT FOR THE CONSOLIDATION OF DEMOCRACY. HOWEVER, THE MAKING OF NIGERIA’S CONSTITUTIONS HAVE BEEN UNDER 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.

Nigeria is a heterogenous country with diverse regional, religious, and ethnic divisions. On October 1 Nigeria added to its list of vital statistics a new status as the world's fourth largest democracy. The list was already impressive. One African in four is a Nigerian; with a population of 80 million or more, Nigeria is larger than any country in Europe. It is also the world's eighth largest producer of crude oil and has been the United States' second largest supplier for six years, neither joining in the Arab boycott of 1973-74, nor cutting exports for policy reasons subsequently.

If any nation typified political scientist Richard Skylar’s characterization of the African continent as a "workshop of democracy," it would certainly be Nigeria. The country has experimented with different federal, state, and local government systems, learning more about its needs, resources, and constraints with each experiment. Despite the predominance of military regimes during the three postcolonial decades, Nigerian society has retained many of the fundamental building blocks of a democratic polity: vigorous entrepreneurial classes, a broad intelligentsia and numerous centers of higher education, a dynamic legal community and judiciary, diverse and often outspoken media, and, increasingly, courageous human rights organizations.

Despite the differences in character and composition of the successive governments, it is still possible to identify the major threads of Nigeria's institutional evolution. As the nation finds itself once more on the threshold of transition from military to civilian rule, promised for 1992, examination of these threads is essential for understanding the Nigeria that will become the Third Republic.

Nigeria is essentially an artificial creation, which, like most other African states, is a product of colonialism. This fact is central to understanding the country's government and politics, which have been conditioned and bedeviled by the problems of accommodating several diversities: ethnic, linguistic (there are between 250 and 400 distinct languages), geopolitical, religious (there is a deepening cleavage between Christians and Muslims), and class.

These numerous challenges raise doubts about this unproven appellation. Our politics has become a platform for impunity, graft and fragrant disobedience to the laws of the land. These factors have, ultimately, reduced our respect among the comity of nations. And one question we all need to ask ourselves is whether our acts show similitude of a giant. Actually, a greater percentage of the Nigerian people see things from a politically sentimental perspective.

Constitutionally, Nigeria is presently governed by the 1999 Constitution but recent political happenings in the country show we are not governed by any law. Consider this, in pre-independence period, there were many constitutions used to rule over us by colonial masters. The Richard’s Constitution came into force in 1946 and was suspended in 1950 while the McPherson Constitution and Lyttleton Constitution were operated between 1950 and 1954 respectively. And then, enter the post-independence constitutions. From the above, it is clear that the role of the constitution in governance and democracy cannot be overemphasized. It is a legal book that states how a given nation should be governed. Therefore, the court, which is seen as the last hope of the common man, should adjudicate on infringement on these letters in our statutory book.

Last October, the Speaker of the House of Representatives defected from the ruling People’s Democratic Party (PDP) to the opposition All Progressives Congress (APC). This development once again indicates a loophole in our constitution. Section 68 (g) of the 1999 Constitution is clear on the fate of a member of the Senate or House of Reps who decamps from one party to another. Such member loses his seat by implication. Though the constitution guarantees freedom of association but the flimsy excuse politicians give for their defection is a source of concern and it is inimical to the development of democracy. In our society, cross carpeting has become a norm in the eyes of political actors; every excuse seems tenable and every step taken is a means of outwitting opposition parties. Tambuwal may have taken the decision for his political survival, the aftermath of that action led to the withdrawal of his security aides by the Inspector General of Police, Suleiman Abba. Without being sentimental to the issue at hand, the IGP ought to know 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 may form or belong to any political party, trade union or any association for the protection of his interests” Therefore, does it mean the speaker is not entitled to his rights anymore? With the provision of the constitution he has the right to move to any political party if his former party is in crisis.

It is imperative to state that most Nigerian youths are brainwashed into believing a lie. And currently, the actors in this political show are contributing to these delinquencies among the youth as they increase the pace at which it grows.The way we play our politics will have a significant effect on legislation and budget. A house divided against itself cannot stand, so goes a saying. So, if the unity of a legislative house that should make laws to uplift the lives of the citizen is compromised, then what is the hope of the common man on the street?

Without prejudice to Tambuwal’s matter in court, it is imperative to state that the loopholes created in our constitution have given room to politicians to commit impunity that distorts peace and sustainable economic and political development.

Therefore, the 1999 Constitution must be thoroughly reviewed to checkmate individuals from committing official impunity. The review must be done in a way that will prevent politicians citing on section 40 of the constitution thereby escaping the hammer of section 68 (g). The lacuna in our law that gives room to impunity should be identified and blocked.

**EVIDENCE OF SOME CONSTITUTIONAL GAPS AND CASE EXAMPLES**

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 were 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/Indigene ship 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.

3. The Case of Anzaku & 33 others v Ex. Gov NASG & 2 ORS There was a breach of constitutional provision on the issue on indigene ship. This event took place in December 2004 in Jos North central Nigeria where the Appeal court Jos Division ruled that the Nasarawa state government acted in error in deploying a local. this was discriminatory and at variance with section 42 and 46 of the constitution of the federal republic of Nigeria.

The United Global Resolve for Peace (UGRFP), an NGO, has said that the present Nigeria Constitution does not reflect the spirit and intention of the people as it was inherited from the military. The group made the observations during a joint news briefing in Abuja addressed by Mr. Olaseni Shalom and Mr. Pelumi Olajangbesi, the Executive Director and the Executive Secretary of the organization respectively. According to them, restructuring is not just moving things from the concurrent list to the exclusive list but giving Nigerians the opportunity of sitting together to discuss the basis of the corporate existence of the country.

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 or 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:

**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.

* The Case of Yar’Aduah’s Ill 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 Good luck 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. Where- as, 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. Between 23 November 2009, when President Yar’Aduah was hurriedly taken to a specialist hospital in Jeddah, Saudi Arabia and 9 February 2010, when his Deputy Dr Good luck Jonathan, was by a Resolution of the Senate and the House of Representatives, declared acting President and Commander in Chief of the Armed Forces, the Nigerian polity experienced one of its greatest threats to the constitutional democracy and the rule of law. While Section 144 expresses the permanent incapacity of the President or Vice President; Section .145 treats the circumstance by which the Vice President could act on behalf of the President in his absence Section 145 reads thus; Whenever the President transmits to the President of the Senate and the Speaker of the House of representatives a written declaration that he is proceeding on vacation or that he is otherwise unable to discharge the functions of his office, until he transmits to them on the contrary such functions shall be discharged by the Vice President as acting President. The problem this creates is that due to the circumstance 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 ahead 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’Aduah’s sickness was in short supply, the rumor mill gained the upper hand. Thus, public reaction to a news report in the American Chronicle that Yar’Aduah had died on 10th December 2009 quickly prompted a rebuttal by presidential spokesmen early January 2010. President Yar’Aduah’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). At a public rally led by noble laureate Professor Wole Soyinka in Abuja following the same BBC interview, angry demonstrators spoke out before members of Nigeria’s House of Representatives. One of these was an activist Najatu Mohammed, who explained that the issues at stake was not Yar’Aduah’s statement on the BBC, that the issue was that he has abdicated without leave, without permission, so this calls for his impeachment. Yar’Aduah is paid by the federal Republic of Nigeria, he is accountable! At the same Abuja rally, Nigerian Pastor Tunde Bakare re-echoed what Najatu Mohammed said “Everyone, east, north, west and south of our country should take these words home. The Presidency is not a birth right. The presidency is a constitutional office. President Yar’Aduah is not fit to occupy that office. Therefore, Umaru Yar’Adua go home” (Nigerianmuse2010). This solemn assembly is not for the sake of Jonathan Good luck, it is for the sake of good Governance. Enough is Enough! (Nigerian muse 2010). The position of the Ohaneze Ndigbo a pan Igbo socio- cultural organization on the State of the Nation came out in a public statement in early February 2010 .In it, its president General, Ambassador Ralph Uwechue, said; Ndigbo call on all Nigerians to realize that the way and manner the issue of the president’ s absence in relation to the status of the Vice President is currently handled puts the Constitution of the federal republic of Nigeria into jeopardy. Ndigbo (Igbo People) urge all Nigerians to note that whatever puts the constitution in jeopardy puts the nation in jeopardy. All steps must now be taken urgently to put an end to this machination to put the constitution and the integrity of the nation in jeopardy (Punch 2010). Uwechue said that Ohaneze urges all Nigerian to step forward now and make sure that the position and prestige of the Vice President as provided in the constitution of the federal Republic of Nigeria is not diminished or undermined (Punch 2010). As President Yar’Aduah’s BBC interview failed to provide some adequate balm for frayed political nerves, rumors helped to spread more and more wild fires nationwide. The kinsmen of the Vice President Dr Good luck Jonathan, took the bull by its horn. In a statement entitled “Niger Delta warns against setting Nigeria on fire “, the Ijaw Monitoring Group (IMG) (a group from Dr Jonathan ’s ethnic extraction) gave the rest of civil society some inkling of what bothered their minds. Moreover, to the surprise of stakeholders in civil society, President Yar’Adua, as sick as he was in Jeddah took a midnight flight and arrived at the International Airport, Abuja, on 24 February 2010, under cover of darkness with his Brigade of Guards present to salute their commander- in -Chief. Meanwhile none of that succession of events was known to Dr Jonathan, appointed acting President on February 2010. Pro Jonathan group were miffed by that military arrangement while others on the side of President Yar’Adua rejoiced. The serious implications of this clash of interest alarmed other stakeholders at home and abroad. Even so, it was in clear conflict with sections 1(3) of the 1999 constitution which specifically stipulates; If any other law is inconsistent with the provision of this constitution, this constitution shall prevail and any other laws hall to the extent of the inconsistency be void. More over President Yar’Adua, though very sick remained Commander- in- Chief of the Armed Forces a tittle also assumed by Dr Jonathan as Acting President. Hence, any attempt to justify that illegal duality as de jure and de facto Commander- in-Chief, flouted both the letter and spirit of the 1999 constitution. Besides, in the context of Nigerian cultural precepts and practice, any human being with two “heads” is a clear abnormality or abomination. Translated in the political arena, what Nigeria had at the level of headship, silently from 23 November,2009 and openly from 9th February 2009 was the constitutional equivalent of an abomination no more and no less (Tamuno,2012). Against the back drop of President Yar’Adua’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 all 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.

For democratic governance to thrive in Nigeria, the people must be vigilant and demand accountability from the leaders. It has been proven that „the strength of a democracy is only as great as the will of the people to uphold it. ‟ For all these to be possible the citizens must be politically educated and mature. This would enable the future leaders to make ethical decisions and for the people to begin to make political office holders accountable while within and outside office.

According to Mahatma Gandhi, “politics without ethical principles” is among the “social sins of humankind.” Nigeria has the potential (human and material resources) to translate to a great democracy if the politicians (and the people) can change their mind-sets and learn to play ethical politics that adds good value to the system. This entails a paradigm shift in the manner in which Nigeria is governed. As Albert Einstein has noted, “the specific problems we face today cannot be solved at the same level of thinking we were at when we created them.” The political leaders should do more and talk less.

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 the 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). From the analysis of this, 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. Thus, constitutionalism which has been an integral part of democratization has been largely missing in the Nigerian constitution this calls for urgent policy attention.

**REFERENCES**

1.Exploring the missing gaps in 1999 constitution: a review by George Anokwuru, Edmund Obomanu.

2.THE CHALLENGES OF DEMOCRATIC GOVERNANCE IN NIGERIA by Lanre Olu-Adeyemi.