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ASSIGMENT (10 marks)

Question

Constitution is important for the consolidation of democracy tendencies, and this has been a great impediment to democratic governance in Nigeria. Examine some of the loopholes in Nigeria’s constitution over the years that have affected democracy in Nigeria.

ANWSER

 As one of the world’s most deeply divided countries, Nigeria perennially has sought to redesign constitutional institutions to contain inter-group conflict. The struggle to stabilize Nigeria’s fragmented society has seen wide-ranging institutional experiments, including civilian and military rule, centrifugal and centralized federalisms, presidential and parliamentary systems, and various institutions for restraining the legendary political corruption at the heart of the country’s disintegrative ethno-political conflicts.

Nigeria’s constitutional evolution can be demarcated into three broad phases as follows. First, over the period from 1914 until independence, the British “amalgamated” Nigeria into one single colonial entity, gradually transforming the new state into a parliamentary federation of three major ethnic regions. This British legacy unraveled shortly after Nigeria gained independence in 1960 with the collapse of the First Nigerian Republic in a bloody military coup in 1966 and the subsequent outbreak of the Nigerian civil war (1967-70).

Second, during 1966-1999, Nigeria’s military rulers transformed the country’s constitutional institutions in response to the failure of the First Republic and the outbreak of civil war. Three mega- constitutional changes defined this transition:

* a change from a federal territorial structure with a small number of large constituent regions to one with a large number of relatively small states;
* a huge expansion in the powers and resources of the central government and a corresponding reduction in the autonomy of subnational units; and,
* a shift from a parliamentary system of government to a presidential structure. Additionally, the military sought to create agencies for restraining the political malfeasance at the roots of the country’s instability.

Finally, the period since 1999 is the longest phase of civilian rule in Nigeria’s constitutional history. It has seen governmental, civic and ethno-regional bodies immersing themselves in multifaceted and contentious constitutional politics in a bid to reform or restructure the military’s centrist and allegedly undemocratic constitutional legacy. Nonetheless, the basic elements of this legacy (multiple states, centralized federalism, presidential governance, and the quest for credible agencies of restraint) have remained intact.

Nigeria’s constitutional odyssey reflects a constant struggle to manage the country’s extraordinary ethnic, regional and religious diversity. With three major ethnic groups (the Hausa-Fulani, Ibo, and Yoruba), hundreds of smaller ethnic communities, and approximately equal numbers of Christian and Muslim adherents, British-created Nigeria is among the most ethnically diverse countries in the world. In order to hold Nigeria together during a colonial era of growing socio-economic modernization and ethnic mobilization, the British spearheaded various constitutional reform conferences that culminated in the grant of independence to Nigeria as a Westminster-style parliamentary federation of three major ethnic regions in 1960.

1. Nigeria’s First Republic (1960-66), however, proved unviable. The extensive postmortems on the Republic have implicated at least four institutional factors, namely, the unbalanced federal territorial structure, the subversive power of large regional units vis-à-vis the central government, the fragmentation and weakness of the central political executive in the face of this regional divisiveness, and the fragility and paucity of institutions that could restrain manipulations of political power.

A flagrant defect of the First Republic’s federalism was the size of the predominantly Muslim Northern Region, which was larger and more populous than the two southern, predominantly Christian, regions (the Eastern and Western administrations) combined. This created a classic “dual power situation” (with the “core” Northern Region usurping and rivaling the central government), deepened ethnic insecurity and anxiety, and encouraged ethno-secessionism.1 The fact that the North

was poorer and less modernized than the South aggravated this structural defect, highlighting the tension between the political hegemony of the north and the socio-economic primacy of the south.

Another flaw of the federal system was that it denied a measure of self-government to Nigeria’s minority ethnic communities, including the Kanuri, Nupe, Tiv, Igala, Jukun, and the Ilorin-Kabba Yoruba in the Northern region; the Edo, Urhobo, Ijaw, Itsekiri, and the Western Igbos in the West; and the Ibibio, Annang, Efik and Ijaw in the East. These groups, which constituted approximately one-third of the population of each region, alleged “political repression, socio-economic discrimination, and even cultural extinction by the majority groups.”2 Consequently, they spearheaded intense and sometimes violent statehood movements, including agitations for Middle Belt and Bornu states in the North, for Calabar-Ogoja-Rivers (COR) state in the East, and for Mid-West state in the West. Although northern and eastern politicians in control of the federal government successfully schemed to create the Mid-West in 1963 in a bid to dismember and weaken the opposition-controlled Western Region, they firmly resisted the excision of minority states from their own regions, thereby leaving the country’s minority problems substantially unresolved.

Having so few regional units, which prevented the fluidity, flexibility, or crosscutting regional alliances that would have flowed from multiple regional actors, also undermined Nigeria’s pre-military federalism. Instead, national politics polarized around a succession of bitter inter-regional conflicts over the control of central and regional governments. These fierce struggles culminated in the Western regional election fiasco of 1965, which directly precipitated the first military coup in January 1966.

The instability inherent in the federal territorial structure was compounded by the considerable constitutional powers of the regions, which reflected the strong inter-regional suspicion and contending ethnic nationalisms that led to the establishment of the federal system in 1954. The regions controlled all matters of internal policy and administration (including education, agriculture, health, public works and secondary roads), and were assigned revenue sources (income tax, and the return to them on a derivation basis of major federally collected export, import, and mining taxes) designed to give them “maximum financial independence.”3 In addition, the regions were empowered by the fact that they became internally self-governing before the federation as a whole, by the concentration of talented indigenous personnel in the regional administrations (where career prospects were brighter due to early regional indigenization programs), by the regional character of the leading political parties, and by the absence of strong, united, or coherent political leadership at the federal level.

Indeed, one of the most widely criticized features of the First Republic was the perceived “lack of decisiveness and drive at the center” arising from the dual, collegiate, structure of the federal parliamentary executive.4 In particular, the federal government was debilitated by a public clash of ethno-political interests between President Nnamdi Azikiwe and Prime Minster Tafawa Balewa over the composition of the federal government (with President Azikiwe unsuccessfully seeking to prevent the reappointment of Balewa as prime minister following controversial federal elections in 1964), over the control of the armed forces, and over the constitutional future of the federation.

The greatest source of instability in the First Republic was, however, the intense premium on the control of political power and the absence of strong countervailing institutions to prevent personal, factional or sectional abuses of power. In an underdeveloped political economy like Nigeria, where access to political power is the primary avenue to affluence and influence for groups and individuals, political competition can become intensively destructive, and overwhelm and consume institutions like the judiciary and electoral administration that are designed to regulate the struggles for power. But the constitutional arrangements of the First Republic lacked effective mechanisms to strengthen or insulate such potential institutions of restraint. Instead, the First Republic was degraded and destabilized by the politicization, manipulation or enfeeblement of major nonpartisan institutions like the judiciary, electoral administration, local police forces, and even the military, as ethno-political factions struggled violently for political power at national and subnational levels. Unrestrained by a rule of law or independent oversight institutions, political competition in the First Republic morphed into a succession of political shenanigans and electoral frauds “that heightened ethnic and regional polarization, intensified political violence and intolerance, and heavily eroded the popular legitimacy” of the Republic.

The military’s constitution-making procedures were originally implemented during the making of the 1979 Constitution and were largely replicated subsequently in the eighties and nineties. They had five basic elements:

(1) Articulation of an unambiguous centrist constitutional vision: The military set the broad parameters of Nigeria’s post-civil war constitutions. As enunciated with particular bluntness and clarity by heads of state like Generals Murtala Mohammed and Ibrahim Babangida, these included a closely regulated system of national (rather than ethnic) political parties, presidential government, a centralized and multi-unit federalism, an ethnically inclusive central government reflecting the “federal character” or ethnic diversity of the country, and a rejection of grand radical ideological philosophies like socialism.8

(2) Elaboration of the military’s vision by civilian technocrats: The military entrusted the elaboration of its centrist vision to groups of academics, lawyers and other technocrats, who translated it into constitutional documents. During 1975-76, a 49-member Constitution Drafting Committee (CDC) drafted the 1979 Constitution, which provided the template for subsequent military-initiated constitutions in 1989, 1995 and 1999. The CDC, which included at least two members from each of the then twelve states, comprised both “learned members in disciplines with direct relevance to constitution-making and eminent Nigerians with some experience in constitution-making,” all of whom “were committed to a strong federal authority.”

 Following the collapse of the Second Republic, successive military administrations constituted similar technocratic constitution review bodies, including the 17-member Political Bureau of 1985, the 46-member Constitution Review Committee in 1987, and the 22-member Constitution Debate Coordinating Committee (CDCC) of 1998. Despite occasional voices of dissent, these Committees mostly produced constitutional proposals in accordance with the military’s specifications or centrist vision.

(3) Attempted legitimization of the military’s vision through representative assemblies: Reflecting its formal commitment to democratization, the military sought to give broad legitimacy to its constitutional blueprints through directly or indirectly elected constituent assemblies. Comprising a total of 232 members in 1977-78, 567 delegates in 1988, and 369 members in 1994-95, these assemblies were tasked with debating and ratifying constitutional blueprints produced by the military’s constitutional technocrats. However, the limited powers of these assemblies were underscored by their more or less explicit designation as advisory or deliberative (rather than sovereign) bodies, by the injection of several military appointees into the assemblies, by the selection of the leadership of the assemblies by the military, and by the restrictions (so-called “no go areas”) that the military often placed on the deliberative freedoms of the assemblies.

(4) Preservation of the military’s constitutional sovereignty: Most important, the military reserved to itself final authority to approve, reject, or amend any decisions made by constitutional drafting or debating bodies. In 1978, 1989 and 1995, for example, the military made significant amendments to constitutions approved by constituent assemblies. In 1999, the military dispensed with a constituent assembly altogether and, acting on the CDCC’s advice, simply amended and updated Nigeria’s 1979 constitution, promulgating it as the 1999 Constitution.

(5) Rigid constitutional entrenchment and irreversibility of the military’s institutional legacy: A relatively rigid constitutional amendment formula (involving ratification of any constitutional changes by concurrent legislative supermajorities at federal and regional levels) has been a broadly supported feature of Nigeria’s constitutional settlement since the First Republic. But the military, while suspending constitutional niceties for much of its rule and restructuring the federation largely unilaterally, supported both the restoration of a rigid constitution amendment formula as well as an expansion in the subjects included in Nigeria’s post-military constitutions. In 1978, for instance, the military decided to elevate two of its policies, the Land Use Decree and the National Youth Service Programs, from mere statutory decree-laws into provisions entrenched in the forthcoming 1979 Constitution.