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ASSIGNMENT ON THE LOOPHOLES OF NIGERIA CONSTITUTION AFFECTING DEMOCRACY

“The Nigerian constitution contains several provisions that make it a stumbling block for consolidating democracy, tracing back to the inception of disunity people which evolved to a dual dispensation of anti-democratic rule”

Nigeria was finally conquered in the early 1900 by the false of the British,which led to the making of Lagos as the crown colony this marked the beginning of one of the very exploitative and anti-democratic rule which was the colorization of Nigeria.this dispensation was so cruel to the people Nigeria and in this period we were ruled with the system of indirect rule and in some part of the the country like the southern east they made use of the warrant chief systems, as I said before this system was essentially for the exploitation of the Nigeria people in he sake of colonization us through the high tax and the partial exchange and the extortion of our raw materials.

Many colonial masters or governor general came and ruled at interval but one very significant thing about some of them was that most of them came with the initiation of a constitution, this constitution were mostly made for there own selfish interest and Nigerians were not highly into the constitution, the first to was the lord Fredric lugard constitution of 1914 which pave way for the Nigeria council,and we had the Clifford constitution of 1922 and subsequently we had other constitution like; macpherson of 1951, Richards of 1946 and lytellton of 1954.In 1960, Nigeria adopted the Independence Constitution this was followed by some other post – independence constitutions such as the 1963 republican constitution, the1979 constitution and the 1999 constitution respectively (FGN 1963; 1979; 1999)

Much of the post “Independence Nigeria was characterized by military interregnum, giving little or no room for constitutional practice. Since the fall of the first republic as a result of the first military coup in 1966, Nigeria experienced series of coups and counter coups giving rise to a thirty month civil war between1968 to 1970.the nation was still very week and fragile, this coup saw to the dawn of Nigeria as a country this coup also led to a counter coup and subsequently other coups because of the need for power this era was was very fierce this period was a very bad mark to Nigeria and this lasted for about 45 years or more this ushered in new military head always, the constitution was always always suspended and they ruled by decrees.There was a great influence or tampering of Nigeria democracy in fact it was consider dead in the 1967 we had an intrastate war which unforgettable in the history of the nation how ca a country like Nigeria fight a way so soon this was because of the military intervention and quest for power this era or antidemocratic phase was a loophole to the Nigeria democracy the right of the people which are the strongest pillar for democracy was infringe they were deprived of there fundamental obligation and rights.

In 1979 Nigerian adopted a presidential constitution following the Second republic which also came to an end with another coup in 1983. The Third Republic was aborted as a result of the annulment of the June 12thPresidentialelection which created tension in the polity. In 1999 Nigeria returned to civilian rule, with democracy as a system of government it retained the existing federal structure which implies the constitutional share of power between the centre and the federating component units. The 1999 constitution was adopted and used as the supreme law of the state .A number of case scenarios and constitutional matters suggest that the 1999 constitution has a number of gaps which have been at issue in effective governance and politics in Nigeria. These constitutional loopholes which have not been given adequate scholarly attention remain the source of several controversies that continue to threaten political stability and democracy transformation in Nigeria. Salient among them include but not limited to; Questions of citizenship, power transition, power sharing, inter party conflict etc. These remain recurring issues which the Nigerian constitution is still grappling with. These gaps point to the areas of weaknesses or flaws that contradict the desire and spirit of the constitution. The loopholes reveal what is termed a lacuna in legal parlance. These lacuna often reoccur in political practices and governance when they are rarely envisaged hence the need for a brief review. The paper argues that these gaps have adverse implications on the quality of Nigeria’s democracy and its deepening. It shows how these gaps reflect poor governance and political participation which contradicts the ideals of democracy.In this my paper I will explore causal linkages of these relevant case examples and events including actors as well as evidence based analysis to establish and interrogate the fundamental issues suggestive of constitutional gaps in Nigeria’s nascent democracy. And vividly as we all know the 1999 constitution marked the begging of Nigeria democracy so basically I will be scrutinizing the 1999 constitution and it failures because it have lots of failures that have not been put into control till today as I even type now which is very discouraging to us as the center piece of Africa democracy as the giant of Africa it is very alarming because we act in way as if the nation has a failed government which is undermining to the people of Nigeria so I will be writing on a short overview of the 1999 constitution that primarily is the birth of Nigeria democracy.

**OVERVIEW OF THE NIGERIAN CONSTITUTON OF 1999**

Nigeria is a federal system which operates a written constitution that is confined to a single document which constitutes the supreme law of the land. The country is presently governed by the 1999 constitution but recent political happenings in the country perhaps show that the country is far from being governed by any law but it is said widely by some scholars that nigeria is is suffering from a de facto contitutional resident which means we are relying on a constitution that is not used to govern us so how do we say we are in a democratic system. The constitution was adopted on 29 May, 1999. It has 320 sections divided into 8 chapters and 15 parts with 7schedules.

The government is made up of of the Legislature, Executive and Judiciary. The legislative made up the Senate and a House of Representatives which shall have powers to make laws for the peace, order and good governance of the federation or any part there- of with respect to any matter set out with exclusive legislative list as contained in the second schedule to the constitution part1 thereof to the House of Assembly of States .the National Assembly is also conferred with powers to make laws on any matter in the concurrent legislative list, set out in part 11 of the second schedule or any matter the constitution empowers it Under section 4(5) where a law enacted by the House of Assembly of a State is inconsistent with that made by the National Assembly; the later shall prevail and the State Assembly.

Where the executive its self is the seat of the presidency and its cabinet which are the ministers the President holds executive powers while those of the state are vested in the Governor both of whom may exercise the powers themselves or assign their Vice and Ministers in case of the president and deputy Governor and Commissioner in the case of the Governor

But I cant continue without aligning the role of the judiciary the third organ of the government which their main work is to interpret the constitution that we are still talking about is it that they have not being take there constitutional work effectively or what? That they cannot work against stain to our precious democracy

Not withstanding this provision, actual practice of the Nigerian constitution produces different outcome, a fact made evident by the myriad loopholes created by the constitution itself. Case examples of some of the constitutional gaps follow below.

**Gender Disparity**

In the 1999 constitution, gender disparity is discernible. For instance , in section 26 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/Indigenous 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 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 indigent 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.

**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.

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 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 199 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 right to dignity of womanhood, section 34,their political and economic rights, section 14;right to inheritance, land use act etc. Equally there are important case examples to buttress gaps in the Nigerian constitution as follows

**The Case of Yar’A duah’s 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 144that 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’A duah 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. 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?.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.Since accurate information on President Yar’A duah’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’A duah had died on 10th December 2009 quickly prompted a rebuttal by presidential spokesmen early January 2010.

**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 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 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 who 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 of 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 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 may form or belong to any political party, trade union or any association for the protection of his interest This political 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 to the APC, which he said lasted for an upward of eight months in court, noting that the argument surrounding Tambuwal’s defection would not have arisen, if such cases had been constitutionally resolved.

**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 the constitution is far from what the document makes provision As it is expected, no body of laws is quite capable of addressing all maters in a political society. And this problems or loopholes had really eaten deep into the countries democracy which till today is still very very vivid to us as citizens and as scholars as international scholars. We are meant to look into this matter and try to solve it because it is as if that we don’t have a nation anymore we have to look for way to solve this essential and recurring problem we have as a nation that as can be traced back from the beginning or from the inception of Nigeria as a nation. We need a review we need a check on the constitution for the consolidation of Nigeria democracy,The Nigerian constitution contains several provisions that make it a stumbling block for consolidating democracy as I said at the beginning of my slide and review Thus, constitutionalism which has been an integral part of democratization has been largely missing in the Nigerian constitution this calls for urgent policy attention.