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INTRODUCTION

The vast majority of contemporary constitutions describes the basic principles of the state, the structures and processes of government and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act. This higher law is usually referred to as a constitution.

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. Nevertheless, any broadly accepted working definition of a constitution would likely include the following characteristics.

A constitution is a set of fundamental legal-political rules that:

- are binding on everyone in the state, including ordinary lawmaking institutions;
- concern the structure and operation of the institution of government, political principles and the rights of citizens;
- are based on widespread public legitimacy;
- are harder to change than ordinary laws (e.g. a two-third majority vote or a referendum is needed);
- as a minimum, meet the internationally recognized criteria for a democratic system in terms of representation and human rights.

Constitution is a body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed. (Oxford Dictionary).

A constitution as an aggregate fundamental principles or established precedents that constitutes the legal basis of a polity, organization or other types of entity and commonly determine how that entity is to be governed. (Wikipedia)

Constitution can be written as in the case of Nigeria; it is rigid generally so also with the procedures of amendments. An unwritten is one in which most of the principles of the government have never been enacted in the form of laws. It consists of customs, conventions, traditions and some written laws bearing different dates.

FUNCTIONS OF A CONSTITUTION

- Constitution can declare and define the boundaries of the political community. These boundaries can be territorial (the geographical borders of a state, as well as its claims to any other territory or extra-territorial rights) and personal (the definition of citizenship). Thus, a country's constitution often distinguishes between those who are inside and those who are outside the polity.
- Constitution can declare and define the nature and authority of the political community. They often declare the state's fundamental principles and assumptions, as well as where its sovereignty lies. For example, the Nigeria constitution (1999) declares that Nigeria is an indivisible, secular, democratic and federal republic and that national sovereignty belongs to the people, who exercise it through their representatives and by means of elections. The constitution of Ghana (1992) states that, the Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised'.

- Constitutions can express the identity and values of a national community. As nation-building instruments, constitutions may define the national flag, anthem and other symbol, and may make proclamations about the values, history and identity of the nation.
- Constitution can declare and define the rights and duties of citizens. Most constitutions include the basic civil liberties that are necessary for an open and democratic society (e.g. the freedom arbitrary arrest or unlawful punishment). Many constitutions go beyond this minimum to include social, economic and cultural rights or the specific collective rights of minority communities. And some rights may apply to both citizens and non-citizens, such as the right to be free torture or physical abuse.
- Constitutions can establish and regulate the political institutions of the community- defining the various institutions of government; prescribing their composition, powers and functions; and regulating the relations between them. It is almost universal for constitutions; to establish legislative, executive and judicial branches of government. In addition, there may be a symbolic head of state, institutions to ensure the integrity of the political process (such as an electoral commission), and institutions to ensure the accountability and transparency of those in power (such as auditors, a court of accounts, a human rights commission or an ombudsman). The institutional provisions typically provide mechanisms for the democratic allocation and peaceful transfer of power (e.g. elections) and mechanisms for the restraint and removal of those who abuse power or who have lost the confidence of the people (e.g. impeachment procedures, motions of censure).

- Constitutions can divide or share power between different layers of government or sub-state communities. Many constitutions establish federal, quasi-federal or decentralized processes for the sharing of power between provinces, regions or other sub-state communities. These may be geographically defined (as in most federations, such as Argentina, Canada or India), or they may be defined by cultural or linguistic communities (e.g. the 1994 constitution of Belgium, which establishes autonomous linguistic communities in addition to geographical regions).
- Constitutions can declare the official religious identity of the state and demarcate relationships between sacred and secular authorities. This is particularly important in societies where religious and national identities are interrelated, or where religious law has traditionally determined matters of personal status or the arbitration of disputes between citizens.
- Constitution can commit states to particular social, economic or development goals. This may take the form of judicially enforceable socio-economic rights, directive principles that are politically binding on the government, or other expressions of commitment or intent.

DEMOCRACY

U.S. President Abraham Lincoln (1809-1865) defined democracy as “Government of the people, by the people, for the people”. Democracy can also be defined as government by the people especially rule of the majority, a government in which the supreme power is vested in the people and exercised by them directly or indirectly through system of representation usually involving periodically held free election. (Merriam – Webster)

CONSTITUTION AND DEMOCRACY

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.

NIGERIA'S CONSTITUTION MAKING HISTORY FROM COLONIAL TO MILITARY RULE

Constitution is important for the consolidation of democracy however, the making of the Nigerian constitution have been under two political dispensations that have anti-democratic tendencies and this has been a great impediment to democratic government in Nigeria.

Between the amalgamation of the Northern and Southern British Protectorate in 1914 and independence, four constitutions were established by different colonial administrations. These were Clifford constitution of 1922, Richards constitution of 1946, Macpherson constitution of 1951 and the Lyttleton constitution of 1954. All these constitutions had their problems ranging from isolation of certain parts of the country, disenfranchisement, of a large percentage of Nigerians, non-provision of true leadership either at the center or in the region, it did not provide for coalition or team spirit, etc. From 1960 to date Nigeria has been governed by five different constitutions. The independence constitution ushered in a new democratic government after

almost five decades of colonial rule from 1914 to 1960. In 1963, the Republican constitution was adopted to principally end political attachment to the England as a former British colony.

Having obtained formal independence in 1960, the nascent Nigerian state continued in its search for a reliable guideline that would reflect the aspiration of its newly independent people. Thus constitutional conferences were held both in London and Lagos as was the case in 1957 and 1958 respectively, for the purpose of ushering in the independence constitution of 1960. Unfortunately, instead of the independence constitution marking a total departure from the imposing Lyttleton constitution, the constitution remained fundamentally colonial. The political reality was that despite formal independence the Nigerian state was still being colonized by Britain, with the queen of England serving as Nigeria's constitutional monarch and the final court of Appeal for Nigeria.

The 1979, 1989 and the present 1999 constitutions were advanced by the military as part of their transition to civilian rule, in between these constitutions, extra-constitutional laws and decrees were shaped and enforced by the military. The military also abolished arms of government and seized the function of law-making. Consequently Federal governance became an exclusive right of the military through military legislative organs (Elaigwu 2007:103).

Superficially, the constitution-making process under the military was to be participatory especially as constituent assemblies (CAs) were inaugurated with members largely elected. Nevertheless, despite attempts at employing democratic procedures, the military's undemocratic temperament in the management of constitution –making processes in Nigeria's political history affected the credibility of the process and the perceived legitimacy of the

constitutions. The precedent set in colonial Nigeria has severely affected the present democratic government in the management of the constitution-making process.

CONSTITUTION REVIEW IN NIGERIA'S NEW DEMOCRATIC SETTING

Since the return of democratic rule in 1999, the Nigerian elites have made attempts to respond to the yearnings of groups and governments over the review of the constitution. On October 19, 1999 the former President, Olusegun Obasanjo set up a Presidential Technical Committee on the Review of the 1999 Constitution. The advisory committee worked for one year and five months, holding public sitting and examining submissions and memoranda before eventually turning in a report (1) the report was then forwarded to the National Assembly for appropriate action. Other attempts were made by President Goodluck Jonathan's administration all in a bid to review the constitution foisted on Nigerians by the Military Junta (the 1999 constitution).

LOOPHOLES IN THE NIGERIANS CONSTITUTION OVER THE YEARS THAT HAVE AFFECTED DEMOCRACY IN NIGERIA

It is very important to note that there is no perfect constitution anywhere in the world. Strength and weaknesses of each constitution largely lie with those that practice it, particularly the decision makers. So each constitution is expected to evolve to meet up with the changing needs of the country. Many times we wonder what is the problem with Nigeria, we watch the American Senators in action both at plenary and committee. We may have also observed the strict separations of powers in that part of the world that we went to borrow their constitution. We borrowed in words but not in practice. American Presidents are not as powerful as other citizens in the world think. Despite the bravado of the American President internationally, at home the American President is limited in power.

Having said this, for the sake of this assignment, I would dwell on the 1999 constitution. The 1999 constitution of the federal republic of Nigeria has been widely criticized as document hurriedly put together by the military in preparation for hand over to the civilian government at the inception of the Fourth Republic. Several challenges are attributed to perceived imbalances and inadequacies of the constitution which has affected democracy negatively over the years in Nigeria. Attempts to amend the constitution to really address the imbalances have proved abortive. The 7th assembly made some headway in the amendment but unfortunately, it did not receive presidential assent before expiration of the tenure of the last administration.

The eight assembly, in its legislative agenda pledged to deliver on much needed amendments but couldn't conclude before the expiration of its tenure too. Some of the contentious issues which the proposed review need to address includes;

- a. Derivation formula
- b. Revenue allocation
- c. Fiscal federalism
- d. State creation
- e. Resource control
- f. Local government creation by states
- g. State police
- h. And perceived long-standing marginalization of the ethnic minorities and a few regions of the country.

Other observations of the 1999 constitution which are contentious are that:

- The constitution is not a product of any constitutional conference. It was hurriedly prepared by the outgoing military government of General Abdulsalam Abubakar. Thus many Nigerians continue to criticize it and see it more as a military constitution than the civilian constitution.
- The constitution fails to define the roles of the traditional rulers in government
- The constitution is not clear on the functions and creation of the local government. This makes local government to be at the mercy of the other governments. Then this issue of creation of more local governments has been a major source of conflict between states and federal governments. A classic example was Lagos vs Federal Government during Obasanjo's administration.
- The exclusive list is too bogus. It makes the federal government to be too dominant, while the states and local governments become unnecessarily dependent on the center.
- Power of the President are too much. This makes some presidents to abuse the office and disregard the powers of the other organs.

Having outlined some of the loopholes in the 1999 constitution of the Federal republic of Nigeria, it is pertinent to note that democracy cannot be effectively practiced where too much power is concentrated at the middle and where the federating states are not allowed to develop at their own pace using the available resources within their domain. The unfair practice of revenue sharing at the center has made it difficult for democracy to thrive in Nigeria since most federating states do not look inward and as such become parasite on the other states.

Too many items being on the exclusive list as contained in the 199 constitution is a serious impediment for the growth of democracy in Nigeria. Examples of such items are:

- a. Security
- b. Power
- c. Prisons/correctional centers etc.

These aspects if allowed to be in the concurrent list whereby state government are allowed to establish their own will help in freeing the federal government of too much responsibilities, improving the security situation of the country, improve the thinking capacity of the state governors and how to generate money and above all ensure development and upliftment of democracy in Nigeria. Above all, for democracy to thrive in Nigeria we must practice true federalism.

References

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