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QUESTION : Examine some of the loopholes in Nigeria's constitution over the years that have affected the democracy in Nigeria

Constitution refers to those rules , principles , and regulations , which may be codified or written in a legal document or unwritten which guide the administration of a nation . In every human society nation , state or region , powers to rule and govern are given to certain group of people , who are to observe specified rules , regulations and principles in administering the nation . Those guiding rules and regulations and principles are referred to as the constitution of that country .

In the constitution of any country , human rights , civic responsibilities , equality and justice , rule of law separation of power etc. are entrenched . Succinctly , a constitution can be viewed as the Steering wheel of a state that shows the direction for all actions and activities of people and government . This means that the citizen , the government and all the spheres human life economic , social , and political and religion are controlled and safeguarded by the constitution of a nation .

The constitution of Nigeria is the supreme law of the federal republic of Nigeria . Nigeria has had a series of constitution was enacted on 29 May 1999 , inaugurating the Nigerian fourth republic . The development of Nigeria constitution dates as far back as 1914 when Nigeria was born with the amalgamation of the Northern and Southern protectorates by Fredrick Lord Lugard . Between this time and now , Nigeria has witnessed series of constitutional developments .

The first constitution is known as the Hugh Clifford constitution of 1922 . In 1922 , a colonial man known as Sir Hugh Clifford became the second colonial governor in Nigeria . He abolished the legislative council in Lagos colony and the Nigerian Council , which were to make laws and advise the governor on policy , matters respectively . Clifford's constitutions introduced elective principle into Nigerian political culture as a means for democratizing decision making process on arising issues in Nigeria .

The constitution of 1922 emerged as a result of criticisms of the Nigerian council by the national congress of British west Africa . the Nigerian council was established by Lord Lugard after 1914 for two main reasons . First , the existing legislative council was too small to legislate for the newly unified protectorate . Second , the creation of a new council with a larger composition it was thought , would enable the governor to secure expressions of public opinion from all sections of the newly Amalgamated protectorate . However , there were some defect of the Clifford constitution . A major defect of the 1922 constitution was its isolation of the northern provinces by virtually excluding the territory from the legislative council . This politics of isolationism was a reflection of the "divide and rule " policy of British colonial administration . Secondly , the exclusion of African official or non – official representation in the executive council is another defect of the 1922 constitution in view of the fact that the legislative council . A legislative move by the legislative

council advised the governor unfavourably . The elective principle was restricted to Lagos and Calabar and therefore did not affect the entire country .

After the death of Bouillon , Arthur Richard became the new Nigerian colonial governor in 1943 . He submitted the modified boudillion constitutional reforms and these were passed into laws by the British parliament in 1946 . There were three objectives of the constitution which were : To promote and strengthen unity among the existing regions in Nigeria , it sought to recognize the diverse nature and to ensure more participation of Africans in the discussion of their domestic affairs . Richard constitution provided for both central legislative council and regional councils . The three regions north east and west and were represented in the Lagos based law making body its function was to make laws for the whole nation .

The Richard constitution has both merits and demerits just like other constitutions which affected the democracy of the nation. One of the merit/advantage of the Richard constitution is that it unified Nigeria under one central law – making body . The concept of regionalism was fully developed strengthen and consolidated . Nigeria was divided into three regions north south east and west . The establishment of native authorities was commendable . Africans participations in the deliberation on their own affair was increased . The existence of regional councils enhanced adequate representation of the various interests and groups in the nation . One of the demerits of the Richard constitution is that it failed to adequately consult the frontline political leaders before it was adopted . Also , the regional councils were mere rubber stamps which could only advise the governor without any law-making power . Hence they were toothless bulldogs that could back without biting ability .

The Macpherson constitution succeeded that of Richard's in 1951 . Before the adoption of this constitution ,he extensively consulted all

the levels of the society to gather , galvanize and aggregate public opinions on it . the constitution provided houses of representatives , council of ministers and regional legislatures .one of the merits of the Macpherson constitution is that it allowed for extensive consultation and debate at various levels of the society before it was first adopted . Nigerians were for the first time made ministers , although without portfolio . it operated a quasi federal system of government by allowing the sharing of powers between the central and regional governments . however , the regional governments were not given full autonomy because their powers were still subject to the veto power of the central governments . it also increased the legislative council membership to 136 members with more Nigerians featuring in the council . one of the loopholes of the Macpherson constitution is that the constitution failed because it was unitary and federal by nature . the ministers were selected from the regions and therefore owed allegiance to their respective regions in the cultural executive council . the ministers were put in charge of policy matters rather than being made as heads of ministries / departments . also , the political conflict between the northern and southern hemispheres over the need for self internal government crippled the success of the constitution .

Since the independence , Nigeria has had several attempts at a workable constitution . other nations have trodden a similar path . for instance following the declaration of independence and the revolutionary war in 1776 , the original 13 states of the united states of America operated an article of confederacy , a necessary but unwieldy document that institutionalized a central government . the article lasted for 8 years before it was jettisoned for the current constitution of united states .

Casting our sight at other nations , we can see that different constitutions lay emphasis on different national aspirations . the patriotic agitations for constitution review in Nigeria have

questioned the legitimacy of the 1999 constitution mostly on the ground that it was imposed by the departing military in 1999 without the benefit of a plebiscite , referendum or national conference . its acceptance in 1999 was provisional , a kind of modus vivendi to ease out the military and pave the way for national rebirth democracy and reconstruction . this paper therefore is an attempt to examine the major defaults of the 1999 constitution of Nigeria . a fundamental flaw of the 1999 constitution is the lack of consultation and participatory input of the people its directly affect . Nigerians as well as the senate are fully aware of the shortcomings , ambiguities , lack of clarity and even confusing provisions of the 1999 constitution . and the senate has severally attempted to address some of these issues and determination to face them for the sake of the nation never deserted from Nigerians . evidence abounds in a number of national interest and unity . on the very surface of this concept , it is assumed that a country needs continuity in its government to continue to meet the demands of modern day governance . its not prudent for members of a government to be elected out of office in one election as that would not argue well with the above concept . but in Nigeria with its current democratic structure, theoretically , all in government from the president to the members of the house and senate to even state governors and legislators can all be voted out in one election . this and a couple of other notable defects seriously undermined the strength and elasticity of the 1999 constitution to protect our democratic social and heterogeneous structures and ideology .

There are problems with the process of making the process of making the 1999 constitution as well as the content of the constitution . the constitution was made during a military regime . the constitution was approved by the armed forces ruling council made up of 26 persons all males . the people did not participate in the process of making the constitution . this is why the preamble

which begins with 'WE THE PEOPLE of the federal republic of Nigeriado hereby make , enact and give to ourselves the following constitution' has been severely criticised in Nigeria as being a false claim . (kuye 2001) . this is why we can say that although the 1999 constitution is a legal document . The content of the 1999 constitution does not take into account the

political history of the country. In addition there are a lot of

inconsistencies and provisions that do not meet the wishes and

aspirations of the people. A few examples will illustrate this point. First and foremost, the history of Nigeria shows that it is a federal system. But the constitution is very unitary. There is over concentration of powers at the centre. The constitution establishes a judicial council to control the appointment, promotion and discipline of both state and federal judicial officers. Secondly, the language of the constitution is problematic in two respects. It is written in masculine gender as if there are no women in Nigeria. Again, it is written in legal jargons that are very difficult to understand. The trend today is to write constitution in a simple language that the average person can understand. Thirdly, the constitution does not guarantee economic, social and cultural rights. Provisions for adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits and welfare of the disabled are provided for under chapter two titled fundamental objectives and directive principles of state policy. These provisions are not justiciable under the 1999 constitution and cannot be enforced. Meanwhile, these are the issues on which majority of Nigerians want priority attention. Fourthly, there is a lot of inelegant drafting. For instance, section 222 dealing with the registration of political parties gives the impression

that political parties only need to register with the Independent National Electoral Commission (INEC) but Section 40 gives the proviso that INEC will have to accord recognition to the parties.

Another example of inelegant drafting is Section 156, which prescribes the same qualifications for members of Federal executive bodies of which INEC is one and members of the House of Representatives. Meanwhile, Section 65 gives membership of political parties as one of the qualifications for becoming a member of the House of Representatives.

This means that members of INEC charged with the responsibility of organising and supervising elections in the country must be members of political parties. We do not think that this is the intention of the constitution. Too, electoral petition processes should not be completed before any elected person is allowed to take oath of office is another contentious issue. Since the annulment of Anambra state gubernatorial election in 2006, there have been increasing call for reconsideration of the issue. Although the Supreme Court has rule that an elected official's tenure starts from the day he or she takes the oath of office, some Nigerians are of the view that elections time table should provide sufficient time for termination of petition.

Moreover, the 1999 constitution not only continues the marginalisation of women but also discriminates against women. There is no specific equality clause. There is no affirmative action clause. Whereas Section 26 makes it possible for any man to confer citizenship on his foreign spouse by registration, the same right is not extended to women. In addition, the constitution does not provide a liberal regime for political parties to operate. Finally, the constitution vests all the resources in the country on the federal government.

There is no doubt that this is a negation of the principles of fiscal federalism. We cannot but agree with Ihonvbere when he argued that “ the 1999 constitution failed to address in its entirety the character of the state; the nature of the custodians of state power; the critical issue of hegemony and the inability of the elite to initiate a national project; the national question, production and exchange relations; and other primordially determined or constructed identity questions. Constitution making has always been a challenging issue in any polity. Because it is expected to put together the aspiration, commitment, values and agreement of different communities, debates can be polarising, contentious and in some cases conflictual. These default issues should be viewed as part of the process of building consensus and strengthening our democracy. As polarising as these issues are, with robust engagement, inclusive participation and process-led initiatives .we can resolve the contentions and agree on some of the issues. The imperfections or the problems of our constitutions has reduced the value of our democracy. Human rights been taken for granted and even the rule of law is not respected anymore . For example, during this lockdown period, the military used this opportunity to tarnish human rights by flogging or even killing people. We can say an important feature of democracy which is the rule of law was taken for granted but of its limitation which was when the country is on emergency. The lawmakers didn't provide enough rule to guide the country when it is on a state of emergency, creating chaos in the democratic regime.