

Name: Onyekwere Charles Onyebuchi

Matric no: 19/sms09/066

Dept: International Relations and Diplomacy

Course: Pol 104

Date: April,2020

TERM PAPER. On the loopholes in Nigeria's Constitution that affects Democracy.

The 1999 Constitution of the Federal Republic of Nigeria has been widely criticized as a document hurriedly put together by the military in preparation for hand over to the civilian government at the inception of the Fourth Republic. Several of Nigeria's challenges are attributed to perceived imbalances and inadequacies of the constitution. Attempts to amend the constitution to really address the imbalances have proved abortive. The seventh assembly made some headway in the amendment, but, unfortunately, it did not receive presidential assent before the expiration of the tenure of the last administration.

In the pre independence period Nigeria had many constitutions introduced by the colonial government. First was the Clifford Constitution of 1922, then, the Richards Constitution which came into force in 1946 and was suspended in 1950 while the McPherson and Littleton Constitutions were opened between 1951 and 1954 respectively.

In 1960, Nigeria adopted the Independence Constitution this was followed by some other post – independence constitutions such as the 1963 republican constitution, the 1979 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 between 1968 to 1970.

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 12th Presidential election 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 hence it was hurriedly formulated by an outgoing military head of state and this possibly influenced the constitution making as it wasn't fully formulated by civilian lawmakers, thereby makes the constitution questionable if it fully portrays the features of a democratic constitution .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/indigenship, 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.

This work however 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.

However it's very important to note that there's no perfect constitution in the world, strength and weakness of each constitution largely lies with those that practice it particularly, the decision makers. Hence each constitution is expected to evolve to meet up with the changing needs of the country. Having said this, some considerable weakness of the Nigeria 1999 constitution;

The constitution is not a product of any constitutional conference. It was hurriedly prepared by the outgoing military government of General Abdulsalam Abubakar, The constitution was commissioned by the last Military administration before return to civilian government in 1999, it is strewn with ambiguous statutes, military governance concepts, over centralization of governance, and protection for special interests. Thus, many Nigerians continue to criticize it and see it more as a military constitution than the civilian constitution. More so The constitution fails to define the roles of the traditional rulers in government, The constitution also is not clear on the functions and creation of the local governments. This makes local governments 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 classical example was Lagos vs Federal Government during Obasanjo's administration. However, the exclusive list is too bogus that is to say The exclusive list is too large, therefore the federal government becomes too powerful, while the state governments are left with too little power. This is very unusual in a federal state. This condition makes the states and the local government to be too dependent on the centre, therefore making the federal government to be too dominant, while the states and local governments become unnecessarily dependent on the centre. The Powers the constitution accord to the President is too much and seem superior to all other arms thus making some presidents to abuse the office and disregard the powers of the other organs. The federal character principle contained in the constitution may not encourage meritocracy and The immunity enjoyed by the president and the governors is usually abused.

In addition, Certainly, there is no perfect constitution anywhere in the world, the goodness of a constitution often lies with the rationality of the institutions of the state. Also, imperfections are removed through amendments over a period of time. Therefore, many of the shortcomings in the constitution will be addressed through amendment as the situations demand

In conclusion The first duty of the incoming civilian administration, legislators and civil society should have been a constitutional amendment.

A civilian constitution is necessary to achieve more effective democratic governance, curb the excessive powers of the executive, whittle down loop holes and statutes that promote an unduly powerful central government, special interests and religious sentiments etc.

