

**AFE BABALOLA UNIVERSITY (ABUAD)
ADO-EKITI**

**AN
ASSIGNMENT**

ON

**CONSTITUTION IS IMPORTANT FOR THE
CONSOLIDATION OF DEMOCRACY. HOWEVER, THE
MAKING OF NIGERIA'S CONSTITUTIONS HAVE BEEN
UNDER TWO POLITICAL DISPENSATIONS THAT HAVE
ANTI-DEMOCRACY TENDENCIES, AND THIS HAS BEEN A
GREAT IMPEDIMENT TO DEMOCRATIC GOVERNANCE
IN NIGERIA. EXAMINE SOME OF THE LOOPHOLES IN
NIGERIA'S CONSTITUTIONS OVER THE YEARS THAT
HAVE AFFECTED DEMOCRACY IN NIGERIA.**

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DEPARTMENT: INTERNATIONAL RELATIONS AND DIPLOMACY
COURSE CODE: POL 104
COURSE TITLE: CONSTITUTIONAL DEVELOPMENT IN NIGERIA
MATRIC NUMBER: 19/SMS09/018
LEVEL: 100**

SUBMITTED TO:

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IN PARTIAL FULFILLMENT OF THE COURSE REQUIREMENT

AUGUST, 2020.

A constitution is an aggregate of fundamental principles or established precedents that constitute the legal basis of a polity, organisation or other type of entity, and commonly determine how that entity is to be governed. It is a set of rules that guides how a country, state, or other political organization works. It can also be defined as a statement of the basic laws of a nation, state, or group. Constitutions are traceable to the 18th century. The constitution, while it was enforced, describes the powers of government and, most importantly, limits to those powers so that the government can perform the duties which the people created it to do while restricting it from encroaching on their God-given rights. It is expected to bring stability, predictability and order to the actions of government.

In Nigeria, the type of constitution which is in place is a written constitution. The constitution of Nigeria is the supreme law of the Federal Republic of Nigeria. Nigeria has had a series of constitutions. The current constitution was enacted on 29 May 1999, inaugurating the Nigerian Fourth Republic. In the Nigerian constitution, the chapter 1 contains the general provisions; supremacy of the constitution, implementation of treaties, public order and security, legislative, judicial and executive powers. The chapter 2 contains the fundamental objectives and directive principles of state policy, chapter 3 contains citizenship, chapter 4 contains the fundamental rights of individuals, chapter 5 contains the legislative functions, chapter 6 contains the executive functions, chapter 7 contains the judicial functions, chapter 8 contains the federal capital territory, Abuja and general supplementary provisions.

Democracy is a system of government by the whole population or all the eligible members of a state, typically through elected representatives. It

is the control of an organisation or group by the majority of its members. It can also be defined as a form of government in which the common people hold political power and can rule either directly or through elected representatives. According to Abraham Lincoln, Democracy is a system of government, of the people, by the people and for the people. At the heart of debates about democracy are three contested principles, popular sovereignty, autonomy and equality. Also democracy consists of various principles which are rule of law, freedom of press, respect of human rights, active political processes and enlightened citizens. All of these are basic to democracy, meaning that democracy can't exist without all of them. This system of government is different from a monarch or dictatorship where one person has all the power, in this system each citizen has a say in the running of their government. There are two types of democracy; Direct and Indirect democracy. In direct democracy, decisions are made by majority rule, while in indirect democracy, citizens elect representatives to make laws on their behalf.

A constitution is important in democracy because it helps serve as a set of rules and principles that all persons in a country can agree upon as the basis of the way in which they want the country to be governed. The constitution also spells out the ideals the citizens believe that their country should uphold. A constitution is said to be important in the consolidation of democracy. Democratic consolidation is the process by which a new democracy matures, in a way that means it is unlikely to revert to authoritarianism without an external shock. A democracy is widely considered consolidated when several or all of the following conditions are met. Firstly, there must be a durability or permanence of democracy over time, including {but by no means limited to} adherence to democratic

principles such as rule of law, independent judiciary, competitive and fair elections, and a developed civil society. Some theorists believe that this secondary process of instilling democracy into the institutions of government is how consolidation occurs. The democracy must also be accepted by its citizens as the ruling form of government, thus ensuring stability and, again, minimizing the risk of reverting to an authoritarian regime.

A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. A constitution is not the act of a government, but of a people constituting a government, and a government without a constitution, is power without a right. Citizens, particularly professional politicians in their rush to get out of military rule wound up inheriting a constitution the military had developed during the many decades of their rule. But not many people ever believe that the claim in the preamble to the 1999 constitution: "WE THE PEOPLE of the Federal Republic of Nigeria; Having firmly and solemnly resolved..." is a statement of fact. It was for this reason, among others, that late Abiodun Oki spent the last months of his life pursuing his litigation on the falseness of this claim.

The most basic element in the making of constitutions was absent in the assemblage of the provisions of the 1999 constitutions. Any effort to amend a constitution based on a false premise may not be enough to silence calls for restructuring, constitutional conference, constituent assembly, people's constitution, etc. Any effort to amend the current constitution without referring it to a referendum will be tantamount to giving further legitimacy to a document that was designed by military

dictators bent on saddling citizens with a constitution marked by military identity-unitary, command-style system.

The current constitution fails to meet the basic conditions identified by Tom Paine in the epigraph overleaf: "A constitution is a thing antecedent to government, and a government is only the creature of a constitution". In the case of the 1999 constitution under the amendment by lawmakers, a government happens to be a thing antecedent to a constitution and a constitution is a creature of a military government that should not have existed in the first place, because it was never endorsed by the people. For as long as the most important rules governing government-citizen relations questionable, as the 1999 constitution has been since it first came out into the open, there is the likelihood that no much energy will continue to be dissipated on debates about what type of union the nationalities that constitute Nigeria prefer. Having a properly negotiated constitution remains, even in the 21st century the core of democracy.

The making of Nigeria's constitutions over time have been under two political dispensations which are the military rule and the colonial rule. These periods have bestowed on Nigeria's constitutions the various characters that accompany the regime. Under the military rule, the constitutions were made and characterised by the retaining of monopoly of force over the citizens and having them as instruments of oppression. On the other hand, during the colonial rule, the constitutions were made not for citizens but for subjects and also they controlled the participation of Nigerians in politics. This is where the anti-democratic tendencies of these constitutions can be seen, in the sense that anti-democracy literally means anything against democracy, and anything against democracy is said to be against the people or the will of the people. From the two

political periods that have been since the making of the constitutions, it can be said that the democracy is grundnorm, because the people had no say in the making of the constitutions or in deciding that which affects them. It was either the military rulers or the colonial rulers that got to make the provisions of the constitutions and the people never got the opportunity to sit together to debate or talk about the conditions for living together and settlement of their disputes, but these colonial and military rulers were the ones to determine their political destiny and participation in politics and this has been an impediment to the democratic governance in Nigeria.

The military rule has served Nigeria poorly because it relentlessly operated under an ideology of centralization of governmental functions, particularly after the military putsch of 1975. The most tangible and nagging consequence of this mania of centralisation is the 1999 constitution of the Federal Republic of Nigeria. In modern times, national constitutions have the dual supreme purpose of overcoming historic impediments to progress and of enabling the countries for which they are drafted to participate with competence in the sophisticated international community of peoples and nations of the 21st century. Nigeria's military leaders have misread the central canons of the nation's history. Firstly, they treated Nigeria's cultural diversities as disabilities that have to be cured. Secondly, military rulers have used the instrument of centralization of governmental structures and functions as a vehicle for overcoming what they saw as inefficiencies that regional diversities compel.

In colonial rule, the major problem confronting Nigeria's corporate existence as a sovereign nation which is the problem of ethnicity and ethno-religious conflict as well as the underlying cause of the socio-

economic privations. The problem of ethnicity is widely attributed to the effects of colonialism. Another problem in the constitutions that were in place during the colonial rule were the restrictions placed on the elective principles, retention of veto powers by governors, the legislative council was dominated by Europeans and the right to vote was limited to people with high income, the constitution was being imposed on the people. This era of constitutional making in Nigeria was entirely dominated by the British imperial colonialists. The constitutions in this period though developed in Nigeria and was meant as an instrument of governance for Nigerians, was none the less entirely made and by the British without taking into consideration the people, the constitutions were meant to rule. This nonplus attitude by the British in dealing with Nigeria's affair feuds up anger and disquiet amongst Nigerians especially the Nationalists who were already at the time demanding a change in British attitude towards the affairs of Nigeria.

Constitutional development is a dynamic process and as such susceptible to a number of short comings. 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 Lyttelton 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. 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-months 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. 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 weakness or flaws that contradict the desire and spirit of the constitution. The loopholes reveal what is termed a lacuna in legal parlance.

The 1999 constitution of the Federal Republic of Nigeria has been widely criticised as a document hurriedly put together by the military in preparation for hand over to 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. Some of the contentious issues, which the proposed review needs to address, according to Amosun, include derivation formula, revenue allocation, fiscal federation, state creation, resource control, local government creation by states, state police, and the perceived long-standing marginalisation of the ethnic minorities and a few regions of the country. Amosun, however, warned that whatever amendments to the constitution should be done to ensure the indivisibility of the Nigerian nation.

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 for. As it is expected, no body of laws is quite capable of addressing all matters in a political society. While noting that constitutions must be forward-looking to capture future events, it will always require some fine tuning from time to time as events unfold. From the analysis of this, it is imperative to state that the loopholes crated in the constitution have derailed democracy deepening, particularly such gaps have been a lee way for politicians to commit impunity which invariably distorts peace and sustainable economic and political development of Nigeria.

The bizarre political events will have a long term effect on the coming generations and particularly their understanding and adherence to constitutional dictates. This compels the critical need to redress this enormous challenge. The Nigerian constitution contains several provisions that make it a stumbling block for consolidating democracy. In view of this challenge, it is therefore recommended that there is need to review

the 1999 constitution. It must reflect present realities. Also, the court which is seen as the last hope of the common man, should adjudicate on infringement on these letters in our statutory book. Thus, constitutionalism which has been an integral part of democratization has been largely missing in the Nigerian constitution this calls for urgent policy attention.

Talking about the loopholes, 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 majority of Nigerians want priority attention.

Moreover, the 1999 constitution not only continues the marginalisation of women but also discriminates against women. There is no specific equality 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 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 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.

Also, 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 Nigerian continue to criticize it and see it more as a military constitution than the civilian constitution. It is also said that the recognition of the sharia courts contravenes the description of the country as being secular. It's like having two contradictory constitutions.

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 defaults issues should be viewed as part of the process of building consensus and strengthening our democracy. As polarising as these are, with robust engagement, inclusive participation and process-led initiatives we can resolve the contentions and agree on some of the issues.