RETHINKING THE NIGERIAN CONSTITUTION: THE WAY FORWARD

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ABSTRACT

Scholars have different propositions for the nature and functions of the law. One of such is that the law represents the spirit of the people, reflecting their background, beliefs and intents. The Constitution which is considered by some as the grund norm, should therefore be of such nature as to reflect the kind of society, its values, its form, bases and beliefs.

Since colonial times, Nigeria has evolved from one Constitution to another, changing and amending at different times. Having her first and in fact the only Constitution that had a proper representation of the people in 1979, Nigeria still stands at infancy in Constitution making owing to the several military juntas that bedevilled political progress in the country since independence. Getting it right is therefore still in view.

The current 1999 Constitution of the Federal Republic of Nigeria has just undergone a successful amendment, yet there have been more clamours for a constitutional conference to give the people another Constitution.

This paper examines the several problems and inconsistencies within the 1999 Constitution (as amended in 2011), these problems are approached both theoretically and pragmatically in discussion with a view to propose probable reforms for better governance of the people and ensuring correctness in the current operating legal system. This work also discusses certain areas of the Constitution, justifying their positions and the necessity to have them as we move forward. An attempt has been made to justify the proposals using several cases of impracticability of these sections of the Constitution that stand defective for the future of the Nigerian State. The methodology is library-based, physical and virtual.

The paper concludes that the Nigerian Legislature serves as a major tool to the transformation of the Nigerian State by a thorough and broad rethink of the constitution especially in these times when our democracy stands in check.

BACKGROUND

It is an established principle that every government derives its authority from the Constitution[1]. A Constitution should normally be a representation of the agreement between the citizenry and the government on how the State should be run and the citizenry is governed.

Nigeria comprises about 160 million people, a vast land mass filled with several ethnic groups and tribes that make the country one big entity of diversity on multiple grounds - culture, ideology and even history. It would thus seem a daunting task to engage in getting a constitution that would reflect the common intent of the people. As admitted by Samuel Gyandoh (Jr.), "it is also perhaps the most challenging theatre, or *locus celebrationis* of a fascinating drama being currently performed in several recently decolonized territories of Africa. That drama takes the generic form of a steady and determined transformation of multi-ethnic peoples into modern nation-states, largely through the constitution-making process"[2]. However daunting this task may pose itself to be, possibility is reinforced by necessity.

Through the years, different Constitutions have been made at different times in Nigeria. The amendments and adjustments, repeals and annulments of sections, subsections and provisions of these constitutions have put Nigeria on the current political pedestal that it stands on today. Questions as to validity and quality of the provisions of the constitution and the participation of the people involved have arisen over time.

The wordings of the preamble to the 1999 Constitution connote the principles of sovereignty and unity as a driving force for national goals. However, one overarching question has been how true the terms of this preamble are. Are we really united, did we really give ourselves the constitution, did we really resolve to remain indivisible and indissoluble, does the Constitution really promote good governance and welfare of persons, does it promote freedom, equality and justice? What are the consequences of going against this firm resolve?

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[1] This is also reflected in Section 14(2)(a) of the Nigeria 1999 Constitution.

[2] Gyandoh, O.S., 'History of Constitution-Making: The African Experience' being a paper presented at the Conference on Constitutions and Federalism, held at the University of Lagos, Nigeria, 23-25 April 1996.

For whatever answers that could be provided to these questions of the people as well as international bodies and countries, friends and foes, the issues of the Constitution of our country are not as enormous or super-daunting that without a resolve we dissolve, neither is it at a point that we rather live without one.

HISTORICAL BACKGROUND OF NIGERIA'S CONSTITUTIONS

Nigeria's political history is well connected with its attempts at constitution making. Nigeria went through the amalgamation in 1914 and then struggled up until 1960 to gain independence. The parliamentary system which was set up did not last for more than six years after which the military took over. Since independence till date, Nigeria has had about 29 years of military rule. Nigeria's political misfortunes in the past and the failure to evolve a united, prosperous and just nation can be blamed partly on inadequate and defective structures and institutions as well as on the orientation which British colonialism bequeathed to the young nation at independence and the reluctance of succeeding Nigerian governments to tackle these problems decisively.[3]

One of such orientations is that of Constitution making which Nigeria has attempted about ten times: The 1914 Amalgamation Constitution, the 1922 Clifford Constitution, the 1946 Richards Constitution, the 1951 Macpherson Constitution, the 1954 Lyttleton Constitution, the 1960 Independence Constitution, the 1963 Republican Constitution, the 1979 Constitution, the 1989 Constitution and the 1999 Constitution.[4]

The Colonial Experience

The 1914 Amalgamation Constitution was a document that explained that the Southern Provinces and Northern Protectorates had become fused as one Nigeria regardless of the land mass and diverse cultures and social backgrounds,

With the change of government in 1922, Sir Hugh Clifford gave the country another Constitution. Much information does not exist on the process of making this constitution. The constitution was introduced by the Governor and it replaced both the Legislative Council of 1862 and the Nigerian Council of 1914.

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[3] Political Bureau Report 1987

[4] Otive, I., 'Nigeria's Experience in Managing the Challenges of Ethnic & Religious Diversity Through Constitutional Provisions' 2002

As a result of political awakening of the people with the advent of the 1922 constitution, a memorandum was submitted in 1924 by the West African Students' Union in London, demanding a federal constitution.[5] In March 1945, by a Sessional Paper, No 4 of 1945, a motion was brought into the Legislative Council, moved by the Chief Secretary to the Government, Sir Gerald Whitely, seconded by the Rev O. Effiong and passed unanimously by the House. It was as a result of this that the Richards Constitution of 1945 was born. There was a single legislature for the entire country. There were three groups of provinces North, West and East and there would be an African majority, but not elected in both the groups of provinces and Central Legislative House.[6]

It seemed as though the colonialists who had the full technical know-how on drafting constitutions had decided to play dictators in the region. Agitations began in 1949 barely 3 years after the last Constitution. As Dare and Oyewole noted, "with the promulgation of the Constitution, many people were angry because the Governor did not consult the nation before the Constitution was drawn up. It was therefore regarded as an arbitrary imposition on the country."[7] There thus arose the need for a more people-oriented Constitution. [8]

Respecting the peoples' wish, Sir John Macpherson set out to change the former system. A select committee of the Legislative Council, comprising all the Nigerian Members of the Legislative Council together with the three Chief Commissioners, the Attorney-General, the Financial Secretary and the Chief Secretary being the Chairman was set up. The committee recommended that the widest spectrum of public opinion should be consulted at every level of the society. Accordingly, consultations started from Village and District Levels, on to Provincial and Divisional Levels and then at Regional Conference Level. After this, a Draft Committee was set up to comprise three representatives of each Regional Conference, One representative of the Colony Conference and one of the Lagos Conference. Their duty was to submit a draft constitution after due consideration of deliberations made at the different conferences to the Nigerian members of the legislative council together with the other conference representatives. The General Conference was to then examine the

[5] Aro, O. I., 'Towards the People's Constitution in Nigeria' 2010 Vol 7(2) Journal of Law and Diplomacy p87

[6] Justice Kayode Eso, Opening Address at the Conference on Constitutions and Federalism, held at the University of Lagos, Nigeria, 23-25 April 1996

[7] Dare, L., and Oyewole, A Textbook of Government for Senior Secondary School, Ibadan, Onibonoje Press and Book Industries (Nig) Ltd. 1987 p132

[8] L.C.D Third Session, Vol 1, 1949, p.330

recommendations of the Drafting Committee and then submit it for debate in the Regional House and the Legislative Council. The final document was then submitted for the approval of the Governor and the Secretary of States of Colonies for final approval.[9]

No doubt, the 1951 Macpherson Constitution was a people's constitution.[10] After this Constitution even though it was short-lived by crises, there were the 1954 and the 1960 Constitutions before independence. The pattern of procedure for Constitution making had considerably changed, with political parties more firmly rooted and established. The British Administration now had to negotiate constitutional changes with the leaders and representatives of the political parties. As a result, series of constitutional conferences in London and Nigeria became the modes of constitution making. The wide consultations involved led a writer to assert that "…probably no constitution in the world will ever have been put through such an elaborate and democratic process of discussion."[11]

Post Colonial Constitutions

By the 1960 Independence Constitution, the powers of the British Parliament to legislate for Nigeria were totally terminated but Nigeria was still a Monarchy and it therefore still retained its relationship with the Queen of England as Head of State. As opined by Justice Kayode Eso, the 1963 Republican Constitution came as a result of the schism in the ruling political party in the West and the declaration of emergency in the region. This led to the well known Case of *Akintola v Adegbenro* which went to the Privy Council concerning the interpretation of the constitution as to the powers of the Governor in removing the premier. Not satisfied with the decision of the Privy Council, the politicians moved to amend the Constitution which led to the major change of removal of allegiance to the Crown and vesting it in the State.

With the military taking over government in 1966, the Constitution was suspended and legislative activities were only for the propagation of the dictatorial governance of the heads

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[9] Kalu Ezera, Constitutional Development in Nigeria, 1960, and B.O. Nwabueze, Constitutional Law of the Nigerian Republic, 1964; Nigeria, No. 464A, official Despatch from the Colonial office, dated July 15, 1950; see also Nigeria Gazzette, July 6 1950 and Times, London July 27, 1950 p.5

[10] Sagay, I.E., 'Setting the Agenda for Constitutional Development in Nigeria' in *Strengthening Nigeria's Constitution for Sustainable Democracy* London Centre for Democracy and Development p 14: "the Nigerian constitution came into being after an unprecedented process of consultation with the peoples of Nigeria as a whole…"

[11] Miss Perham, West Africa Weekly Magazine, August 25, 1951, p778

of state. Return to civilian rule seemed like eternity, until the military coup that put General Murtala Muhammed in power took place. He immediately appointed 49 people (popularly known as the 49 wise men) led by the very respected Chief F.R.A. Williams to take on the task of drafting a Constitution that would then be presented for debate at the constituent assemblies before promulgation. The Constituent Assembly comprised 230 members from across the country which together with the Constitutional Drafting Committee, deliberated on the 1979 constitution from October 1977 to July 1978. This shows that the constitution-making followed a similar process with that of the 1951 constitution as there was consultation with the people before it was adopted as the country's constitution and a safe handing over to Civilian Rule in 1979. The only difference which flawed it from the possibility of being called a "people's constitution" is the fact that the deliberations of the committees were not subjected to a referendum

In 1989 there was a draft of the 1989 constitution, which was debated by an elected Constituent Assembly (with one-third of the members appointed by the regime). But as Jega pointed out, fundamental alterations were effected through another review process undertaken by the regime.[12] In 1994, the Sani Abacha-led regime also called for a Constitutional conference with about 380 persons of wide representation, from the constituencies, as well as pressure groups. These constitutional conference delegates presented a draft Constitution – the 1995 Constitution that did not get promulgated as a result of the corrupt nature of the dictator.[13] Some authors are however of the opinion that the constitution was a "model Constitution for Nigeria".[14]

At the death of Abacha and the beginning of General Abdulsalam's regime, a new Committee was set up called the Constitution Debate and Coordinating Committee. This was made up of about 26 military officers. This has been the major source of criticism of this Constitution. Some claim it is a mere replication of the 1979 Constitution; others outrightly call it an illegitimate Constitution, not having emanated from the wishes and consent of the people.

[12] Jega, A.M., 'Popular Participation in Constitution Making: The Nigerian Experience' in Alemlika, E.E.O and Okoye F.O. (eds), Constitutional Federalism and Democracy in Nigeria [1999] Kaduna Human Rights Monitor

[13] See Akiyode Afolabi in "Gender Participation in Constitution Making";

[14] Justus A. S., (Ed): Issue in Constitutional Law in Nigeria, Faculty of Law, Olabisi Onabanjo University, Ago-Iwoye, Ogun State, Nigeria, 2002 at p 113

THE 1999 CONSTITUTION: A BRIEF OVERVIEW

> *"We the people of the Federal Republic of Nigeria*
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> *Having firmly and solemnly resolved, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding*
>
> *And to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people*
>
> *Do hereby make, enact and give to ourselves the following Constitution"*

The above is the preamble of the 1999 Constitution of Nigeria. The Constitution was passed on to the 1999 civilian government of Chief Olusegun Obasanjo by the military government of General Abdusalam Abubakar. This civilian government claimed to get its authority from this Constitution and began the return march towards sustainable democratic rule. The 1999 Constitution has 8 Chapters, 320 sections and 7 schedules.

It has currently undergone three alterations since its promulgation in 2010 and 2012. These alterations have been along the lines of presidential absence, judicial powers, electoral tribunals, which have all been as a result of our national experiences while other salient issues as to be discussed below remain in wait for the legislature to consider.

The 1999 Constitution of the Federal Republic of Nigeria acquired the force of Law through the Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1999, Decree No. 24. The Constitution was gifted to Nigeria by the military in compliance with the Transition to Civil Rule (Political Programme) Decree 1998.

The Constitution of the Federal Republic of Nigeria (Promulgation) Decree[15] states to the effect that the Constitutional Debate Coordinating Committee received large volumes of data from Nigerians, oral presentations at public hearings and organised seminars, workshops and conferences. The preamble of the Constitution which is reproduced above, states 'WE THE PEOPLE of the Federal Republic of Nigeria' This statement suggests that the Constitution was made through a participatory process. This in itself amounts to a false self claim[16]

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[15] 3rd Paragraph of the Decree

[16] Community Rights Initiative, "We Cannot Go on Like this," a position paper presented at the Conference of the Peoples of the Niger Delta and the 1999 Constitution, Port-Harcourt 2-04 November, 1999, p.1.

The 1999 Constitution[17] has been one of the most debated, with Nigerians finding several of its provisions selfish, repressive and some downright offensive. It is obvious that the 1999 Constitution was hurriedly put together; it was also exclusively done and devoid of consultation and popular participation[18].

There are several issues with the Constitution as it is today, the authors would identify some of these issues, which cannot by any means be exhaustive, and also propose probable reforms.

Objectives or Not?

Chapter II of the 1999 Constitution contains the Fundamental Objectives and Directive Principles of State Policy. The immediate preceding Section[19] provides that

> '*No treaty between the Federation and other Country shall have the force of Law except to the extent to which any such decree has been enacted into Law by the National Assembly'*

It would then be correct to interpret that once a Treaty has gone through the domestication and implementation processes, it becomes part of the body of Laws in Nigeria. The efficacy of Section 12(1) was affirmed in Abacha V. Fawehinmi[20]. This implies that Nigeria then acquires two sets of responsibilities and obligations under that Treaty. The first is its international obligations to the Treaty[21], and the second being the obligations under the treaty as a local Law upon its domestication.

The obligations that were acquired under the African Charter on Human and People's Rights which was signed, ratified[22] and domesticated[23] and has now become part of the body of

[17] The 1999 Constitution was described by eminent lawyer, Chief Rotimi Williams, SAN, as 'a document that lied against itself'.

[18] Dynamics of Constitutional Development in Nigeria, 1914-1999 Indian Journal of Politics (XL No 2&) April -Sept 2006 S.O. Aghalino

[19] Section 12(1) CFRN 1999

[20] (2001) 51 WRN29

[21] The Pacta Sunt Servanda Principle

[22] Signed by Nigeria on 31/08/1982, ratified on 22/06/1983 and deposited on 22/07/1983

[23] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Chapter A9 (Chapter 10 LFN 1990) Laws of the Federation of Nigeria 1990

Laws in Nigeria are quite simple and easy to achieve by a government that is ready and possesses the political will to do so. The obligations acquired by Nigeria were consigned to Chapter II in the drafting of the 1999 Constitution which is Non Justiciable. This implies that all these rights have been left within the regime of objectives and that the government cannot be held responsible for default with relation to any of them.

The 1979 Constitution introduced the provisions of Non-Justiciability to economic, social and cultural rights under the Fundamental Objectives and Directive Principles of State Policy in Chapter II. The Non-Justiciability of the provision implies that there are no mechanisms for alleging violations. Without such mechanisms of allegations, it is not clear how violations will be identified and dealt with[24]. It is imperative to note that for the most part, most of the fundamental rights entrenched in Chapter IV would be unrealisable without Chapter II becoming justiciable. Taking a closer look at one of the Social Objectives under Chapter II[25], it was stated categorically that,

'The sanctity of the Human Person shall be recognised and human dignity shall be maintained and enhanced'

Section 20 under the Environmental Objectives also provides that,

'*The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'*

Issues relating to the health, safety and welfare of persons, adequate medical and health facilities, equal work and pay, no discrimination, humane work conditions and so on were copiously mentioned under Chapter II. No mention however was made of how the government intends to achieve any of them.

Section 33 as a Fundamental Right under Chapter IV, provides for Right to Life, Right to Dignity of Human Person[26] and other contingent rights. It is imperative to note that the Right to Life of a person and the dignity of his person cannot be protected where the individual does not have access to safe environmental conditions including safe water to drink, access to free or affordable medical care when needed and other related things that are ancillary to healthy living. Looking at the persisting scenario in the Niger-Delta region of Nigeria where gas flaring has become a daily occurrence for years in some areas and oil spills have polluted water bodies and farmlands, it is obvious to the discerning that the Constitution in its present state does provide adequate protection for the people in the region due to the fact that they cannot hold the government responsible for the provision of the situation. This has resulted in

[24] I.A. Ayua, D.A. Guobadia, A.O. Adekunle, (eds.) 2000 Nigeria-Issues in the 1999 Constitution. Nigerian Institute of Advanced Legal Studies, p191

[25] Section 17(1)(b)

[26] Section33 and 34

the recourse to Regional Courts[27] and Foreign Courts for members of the community to be able to get a certain level of redress[28].

The question that comes to mind is - How does the government intend to protect the right to life of a person who does not have a safe and sanitary environment to live in, unpolluted water to drink and access to affordable medical care when needed? Does this not seem very hypocritical? Is the Constitution giving with one hand and taking back with the other?

Electoral Reforms and the Right to Fair Hearing

A cursory look at the provisions of Section 285 in the 1999 Constitution before the alterations would reveal that no time limit was provided for the disposal of an election petition matter. This led to unnecessary elongation of election petition matters as some petitions lasted as long as the term of office for the disputed seat. In most cases, the respondents (mostly the incumbents) would almost serve out their tenures by the time the final judgements were delivered-[29]. This was addressed in the Alteration Act[30], where the 180 days principle was introduced. Section 29(e) of the First Alteration Act altered Section 285 and introduced new subsections '(5)'-'(8)'

> *'(5) An election petition shall be filed within 21 days after the date of the declaration of result of the elections.*
>
> *(6) An election tribunal shall deliver its judgement in writing within 180days from the date of the filing of the petition.*
>
> *(7) An appeal from a decision of an election tribunal or Court shall be heard and disposed of within 60days from the date of the delivery of judgement of the tribunal.*
>
> *(8) The Court in all appeals from the election tribunal may adopt the practice of first giving its decision and reserving the reasons therefore to a later date.'*

The second Alteration Act[31] which was made in November 2010 in its Section 9 further substituted for the provisions of Section 285 of the Constitution and Section 29 of the First Alteration Act. The provisions of Section 9 of the Second Alteration Act is more detailed than that of the Constitution and the First Alteration Act but the provisions with relation to

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[27] SERAP V. Federal Republic of Nigeria before the Court of Justice of The Economic Community of West African States (ECOWAS) December 2012. www.courtecowas.org

[28] Four Nigerian farmers, with the support of the Dutch non-governmental organization Friends of the Earth, sued Royal Dutch Shell in the Dutch District Court of The Hague for four oil spills between 2004 and 2009

[29] As witnessed in Ekiti, Anambra, Osun and other states.

[30] Constitution of the Federal Republic Of Nigeria(First Alteration) Act, 2010

[31] Constitution of the Federal Republic of Nigeria(Second Alteration) Act 2010

the 180 days for the disposal of a petition and 60 days for appeal was retained in subsections 6 and 7 respectively.

It is the opinion of the authors that the peculiarities of the Nigerian society were not taken into account in the drafting of this alteration. It is obvious to anyone who is an observer of the Nigerian system that it would be a near impossibility to institute and complete an election petition within 180 days as said time is too restrictive.

The case of ANPP v. Alhaji Mohammed Goni & 4 Ors and Alhaji Kashim Shettima & 1 Other v Alhaji Mohammed Goni & 3 Ors[32] is instructive. The said decision, delivered on February 17, 2012, made it unambiguously clear that the import of the provisions of Section 285(6) is that; '*an election petition tribunal must mandatorily deliver its judgment within 180 days from the date of filing of the petition, failing which, the tribunal becomes automatically stripped of its jurisdiction to continue further hearing of the petition'*.

The decision further made clear that Section 285(6) equally covers situations where an order for retrial of an election petition is given by an Appellate Court. By practical implication, where an order for retrial is given by an Appellate Court, such order can only be valid if it is given before the expiration of the originally stipulated 180 days from the date the petition was filed. Even at that, such retrial order becomes absolutely ineffectual, and a nullity, the moment the originally allotted 180 days expires.

Terminating the petitions midstream, left petitioners without a hearing and just determination as mandated in S.36 (1) of the 1999 Constitution which states that

> **"***In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or tribunal established by law and constituted in such manner as to secure its independence and impartiality***."**

It is well settled that where a plea of breach of fair hearing has been successfully raised, established and upheld, the court lacks the necessary competence or jurisdiction to delve further into any issues of merit in the case[33]**.** Once an appellate Court comes to the conclusion that a party entitled to be heard before a decision was reached was not given the opportunity of hearing … the judgment thus entered is liable to be set aside[34]

[32] Suit numbers SC. 1/2012 and SC.2/2012 respectively.

[33] Araka v Ejeagwu (2001) FWLR (pt 36) 830, (2000) 15 NWLR (pt 692) 684 at 718 (Ayoola JSC); Okereke v. Nwankwo (2003) FWLR (pt 158) 1246, (2003) 9 NWLR (pt 826) 592 SC; Ewo v Ani (2004) All FWLR (pt 200) 1484, (2004) 3 NWLR (pt. 861) 610 SC

[34] Bamayi v The State (2004) FWLR (pt 46) 956 at 974 (D-E) (Uwaifo JSC)

In the case of Mohammed v Kano N.A.[35], it was held that fair hearing must involve a fair trial, and a fair trial consists of the whole hearing**.** Obih v Mbakwe[36] stressed that the primary duty of a Court is to hear and determine issues before it on the merits. It was emphasized that the right of fair hearing must carry with it the right of the parties and their witnesses to be heard and the issues in controversy between them to be resolved on their merit. Any statute, which shuts out such a right from being pursued in a court of law when there is a violation or threatened violation of it, is unconstitutional.
The Supreme Court in Ibrahim v Osim[37], further stated that any party whose right is to be determined must be given a reasonable opportunity of being heard.

In contrast, the same Supreme Court with regards to the 180 days and 60days principle stated,

> "*When the Constitution provides a limitation period for the hearing of a matter (in this case 180 days) the right to fair hearing is guaranteed by the courts within 180 days. Once 180 days elapsed the hearing of the matter fades away along with any right to fair hearing. There is no longer a live petition left. There is nothing to be tried even if a retrial order is given. It remains extinguished forever.*"[38]

Justices of the Supreme Court have stated in discussions with the press that the Supreme Court was helpless and that the only thing that could be done to ensure that litigants' fair hearing was not violated was for the constitution to be amended[39].

It is the opinion of the authors that the provision of the 180 days and the 60 days rule respectively is not well considered and it is a tacit denial of the Right to Fair Hearing of the Parties involved.

Self Serving Alterations?

Section 69 of the 1999 Constitution provides for the procedure for recall of Legislators

> *69. 'A member of the senate or of the House of Representatives may be recalled as such a member if-*
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> *(a) There is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one -half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and*

[35] (1968) 1 All NLR 424

[36] (1985) 6 NCLR 783 at 795

[37] (1988) 4 NWLR (pt. 82) 257, (1988) 6 SCNJ 203

[38] Senator John Akpanudoedehe V. Godswill Obot Akpabio Per **Bode Rhodes-Vivour** J.S.C.

[39] http://www.thisdaylive.com/articles/election-petitions-scourt-expresses-frustration-with-180-day-limit/148203/ Accessed on 1st August 2013.

(b) The petition is thereafter in a referendum conducted by the Independent National Electoral Commission within 90 days of the receipt of the petition, approved by a simple majority of the vote of the persons registered to vote in that community'

The conditions prescribed in the above Section 69 were altered in Section 3 of the First Alteration Act where the following was introduced;

3. Section 69 in the Principal Act is altered, in Paragraph (a), by inserting immediately after the word 'member' in line 4, the words, 'and which signatures are duly verified by the Independent National Electoral Commission'

In the first place, the Provisions of Section 69 of the 1999 constitution are very difficult to meet, this is important to ensure that the recall process is not a ready tool in the hands of mischief makers. The new introduction of Section 3 of the First Alteration Act further complicates the procedure, making it a near impossibility to meet.

Assuming for instance that a legislator comes from a constituency of 10 million registered voters, the petition must first be signed by more than 5 million registered voters, approved by a simple majority of registered voters in the Constituency in a referendum by the Independent National Electoral Commission, and then each signature would then be verified by the commission. This is a very onerous task which might frustrate a legitimate recall process.

Qualification for membership of the National Assembly

Section 65 of the 1999 Constitution gives the criteria for membership and right of attendance at the National Assembly as follows;

65 (1) subject to the provisions of Section 66 of this Constitution, a person shall be qualified for election as a member of-

(a) The Senate, if he is a citizen of Nigeria and has attained the age of thirty-five years; and

(b) The House of Representatives if he is a citizen of Nigeria and has attained the age of thirty years;

(2) A person shall be qualified for election under subsection (1) of this Section if-

(a) He has been educated up to at least School Certificate Level or its equivalent; and

(b) He is a member of a political party and is sponsored by that party.

Section 65 is one of the Sections that in the opinion of the authors should be considered for possible amendment. This is so because of the state of the Nigerian educational System. The job of a lawmaker is one that should not be done by just anyone. It has become apparent with the drafting that comes out of the National Assembly that the qualification of at least Secondary School Leaving Certificate level as provided for in Section 65(2) (a) is not adequate when placed side by side the law making duties that a Lawmaker has to do. The

Nigerian Legislature has a major part to play in the reform process. Nigeria cannot afford to have unschooled people handling her Laws.

Federal or Unitary System?

The basic tenets of a federal system of government according to K.C. Wheare[40] are:

At least two levels of governments and constitutional division of powers among the levels of governments, each levels of government being co-ordinate and independent, each levels of government being financially independent, he argued that this will afford each levels of government the opportunity of performing their functions without depending or appealing to the others for financial assistance. Independent Judiciary, and in terms of the amendment of the Constitution, no levels of government should have undue power over the amendment process.

A cursory look at the second Schedule of the Constitution which deals with the legislative powers of the National Assembly under the executive legislative lists makes provisions for arguably the most important sectors in Nigeria. The import of this is that, the ability of the State assemblies to legislate on these matters is restricted. And to this extent, the pseudo-sovereignty of the States in the Federation is greatly checkmated in such a way that the federal arrangement appears in reality to be a unitary one. Under our present system as provided for in the 1999 Constitution[41], the States (federating units) are not allowed to maintain their own police force or make Laws for instance in the State Assemblies to regulate their own prison system.

For example, *murder, kidnapping, stealing,* and *rape* are state crimes (that is criminal offences defined in, and punished by the criminal code laws or penal codes of the States in the "Nigerian Federation"). *Terrorism* and *Treason* are Federal Offences (that is criminal offences defined in and punished by the Criminal Code Act or Penal Code Act of the "Nigerian Federation", and designated as federal offences therein; or defined in and punished by any other federal criminal legislation (an Act of the National Assembly).

The ideal arrangement is that a criminal suspect accused of infracting a state offence or crime should be apprehended, investigated, detained and tried by the State Police (or Local Government Area Police, in appropriate cases) and by the office of the Attorney-General of a State. When such a person is convicted, he or she is made to serve terms in a state prison facility.

Similarly, a criminal suspect accused of infracting a federal offence or crime should be apprehended, investigated, detained and tried by the Federal Police Force or Service, and by the office of the Attorney-General of the Federation. When such a person is convicted, he or she is made to serve terms in a federal prison facility.

What we have now is lumping together of both federal offenders and state offenders at the criminal apprehension, investigation and prevention stage; and at the imprisonment or criminal judgment enforcement stage.

The Nigeria Police Force, established and provided for under Section 214-216 of the Constitution, and under an Act of the National Assembly (Police Act), as a unitary organisation, and other sister security organisations (SSS, DMI, NIA, EFCC, ICPC,NSCDC etc) that are similarly established and provided for by law, investigate all state and federal

[40] K.C. Wheare, Federal Government, 4th ed. (London: Oxford University Press, 1963)

[41] 1999 Constitution, 2nd Schedule items 45 and 48

crimes; and the Nigeria Prison Service, unitarily organised and operated by the Federal Government of Nigeria, houses those serving custodial punishments.

This oddity does not make local and state governments take responsibility for law enforcement and punishment of crime in their domains. And so law enforcement and crime punishment controlled by the Federal Government from the centre, becomes unwieldy and ineffective.[42]

The erosion of the powers of the States is also pronounced when Part II of the Second Schedule of the Constitution, which deals with the concurrent powers of the federal government and the federating states, is examined. section 4 (5) in clear language, gives the National Assembly express power where there is a conflict between the laws enacted by a State Assembly and the National assembly. This gives the impression that the States are mere appendages of the federal government when in reality they are part of a whole.

It is very important that our Constitution becomes clearer and we follow through with the system of government we intend to practice as a people rather than pick and choose what suits us from each system.

Conclusion and Recommendation

This paper has discussed the historical perspectives of Constitutional development in Nigeria, the 1999 Constitution, its three Alterations and effect of selected issues that may or may have not been altered and at the same time proffering possible solutions to some of these issues.

The underlying factor for Constitutional amendment is participation of the people although the mode of amendment may differ from Country to Country[43] The National Assembly have rejected all suggestions that a *sovereign national conference* be convoked to discuss, write and agree on a new constitution for Nigeria, a Constitution, which must be ratified in a popular referendum, to pass the test of legitimacy. Instead, the National Assembly has, thus far, embarked on an endless, time consuming and money-guzzling "panel-beating" of the congenitally flawed military decree being operated as the Constitution.

It is the opinion of the authors that the Nigerian Legislature albeit an important force in getting our Constitution right as a people cannot continue to panel beat the military gift we got in the name of the 1999 Constitution. As it has been noted, participation of the people is one of the basic tenets of Constitutional Development.

It is recommended that we organise ourselves towards drafting a new Constitution that would best reflect our values as a people. The Constitution is the organised Law of a State and

[42] Jiti Ogunye; State Police: The Poverty of vision at the National Assembly (1) **http://premiumtimesng.com/opinion/140064-state-police-the-poverty-of-vision-at-the-national-assembly-1-by-jiti-ogunye.html** accessed on August 23rd 2013.

[43] Maxwell M. Gidado; The Amending Process Under the 1999 Constitution. I.A. Ayua, D.A. Guobadia, A.O. Adekunle, (eds.) 2000 Nigeria-Issues in the 1999 Constitution. Nigerian Institute of Advanced Legal Studies P348

anything antecedent to a government. It is therefore, not a subject fit for the National Assembly ALONE, rather, it is a matter fit for a constituent assembly, with sufficient education in the Nigerian people. The process should be highly participatory, with public hearings organised, Constitutional Conferences and call for presentations from experts, civil society organisations, members of the Nigerian Bar Association and members of the Public. The outcome should be subject to a referendum.

Due to the fact that Nigeria is a multi-ethnic and multi-lingual society, once the process is concluded, the Constitution should be translated into all the major Nigerian languages in other to bring it within the sphere of knowledge of the ordinary Nigerian. It would also be better if the verbosity of the language of the Constitution is greatly reduced as its sheer volume turns off the ordinary Nigerians who are not legal minds from perusing its contents.

The Nigerian Constitution needs to evolve from its present state to a legislation that WE THE PEOPLE of Nigeria gives ourselves.

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