

## **Constitutional Debate in Nigeria Since 1999: A Historical Perspective**

**By**

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### **Abstract**

The paper in examining constitutional debate in Nigeria since the Fourth Republic considered the 1999 constitution of the Federal Republic of Nigeria as a valid document that ushered Nigeria into a new democratic regime. It argued that series of reforms on our national law was born out of the desire that the existing law never portrayed the views of the entire citizens which in effect had imposed burdens to the National Assembly to seeking for a generally accepted constitution. However, the structural conflict theory as applied in the work explains that agitations and violence experienced was rooted from disaffection of bad governance due to the implementation of non-peoples driven constitution. Despite the various constitutional process and issues in the constitutional dialogue, its significance focused on national development. Historical methods of research mainly, the use of published materials and inter-disciplinary approach were adopted. Finally, recommendations geared towards achieving an acceptable constitutional dialogue were proffered to solve problems that could generate from Nigeria constitution

**Keywords: Constitution, Debate, Fourth Republic, Democracy, National Development**

### **Introduction**

The 1999 constitution of the Federal Republic of Nigeria is a comprehensive document that provides for issues of relevance to the legal framework which it seeks to establish. Before May, 1999, the country Nigeria experienced about fifteen years of military rule, in which all the ideals of federalism were virtually jettisoned in favour of a quasi-federal government in which the State Government were totally subject to the whims and caprices of the centre.

The Nigerian constitutional procedures which produce the president, his or her Vice, Governors and their Deputies to office and their impeachment procedures were the most controversial. Since the fourth republic, the procedures of impeachment in various

constitutional reforms or debate has been the most misunderstood, even by legal practitioners and judges (Omoruyi, 2001:94). Within the period, other procedural drives such as resignation, removal upon medical ground, removal upon judicial determination upon electoral petition were not misunderstood as in the case of impeachment.

As many Nigerians considered the 1999 constitution as military driven, the first, second and third alterations to the 1999 constitution enacted during the sixth Assembly (2007 – 2011), significant amendments were not made. The seventh Assembly (2011 – 2015), undertook a constitution review process, but it ran into a logjam despite the huge amount of state resources deployed into the process (Idayat, 2007:2). Nevertheless, the Eight Assembly (2015-2019) commenced the review process with the establishment of two separate ad-hoc committees in the House of Representatives and the Senate in January 2016.

Between October 1, 1960 and May 29, 1999 that ushered the fourth republic, Nigeria had been under the military regime for twenty nine years. After the death of Gen. Sani Abacha, the process of handing over to a democratically elected government on May 29, 1999 was continued and completed by Gen. Abdusalani Abubakar who hurriedly constituted a 25 member constitution debate collating committee established in November 1998 under the leadership of Justice Niki Tobi of Court of Appeal who alleged to have reported that majority of Nigerian preferred the 1979 constitution. Consequent upon this, the Provisional Ruling Council (PRC) then went on with the 1979 constitution and made some amendments. This was reinforced by Decree No. 24 of May 5, 1999 promulgating the 1999 constitution as it recognized that “such amendment were necessary in the public and for the purpose of promoting the security, welfare and good governance to the people of Nigeria”.

As the 1999 constitution is been criticized of having military background, the study is therefore undertaken to ensure that subsequent constitutions in Nigeria should be a people-driven constitution that will cover the interest of the diverse regions in Nigeria.

### **Theoretical Framework**

The structural conflict theory is used in the discussion of this work. The theory explains that agitations and violence are the outcome of disaffection caused by bad governance and the mal-handling of the people’s resources. The foundation of this theory as popularized by Marx, cited in Faleti (2006), Coser (1967), Seeman (1980) and Oberschall (1978) is based on social conflict approach in which they prescribe a materialistic interpretation of history towards existing social arrangements and a political programme of revolution or reform.

Marxism on its historical materialism present conflicts as mostly tied to economic structure and social institutions.

In an attempt to relate structural conflict theory to the study on constitutional debate implies that series of agitations and violence in Nigeria is as a result of non-people's driven constitution which possibly must have favoured some people or regions against other members of the country. Under this situation, the disadvantaged group always express their resentment through agitations and conflict. Egbewole (2005:30) in support of the view posit that "man by nature in any society is in a constant state of confusion, conflict, disagreement and crises during constitutional process.

The main argument of the structural conflict theory is built into the particular ways societies are structured and organized. The theory looks at social problems like political and economic exclusion, injustice, poverty and structural inequality as sources of conflict.

### **Explication of Concepts**

Constitution is the fundamental rules governing the politics of a nation or sub-national body, it is the *grund-norm*, the *fons est origo* (origin) of all laws with exception to a parliamentary state. The word was first used after the "Glorious Revolution" of 1688 in Britain when the deposed king, James II was accused of having violated the fundamental constitution of the kingdom (Mcbean and McMillan, 2003:117). Also the constitution of a country or organization is the system of laws which formally states people's rights and duties, and to which all other laws and regulations are subordinates.

Similarly, Egbewole (2005:29) explains that, the constitution of a state is expected to represent the aggregate views of the generality of the citizen of the state which possibly informs the traditional commencement provision "we the people of Nigeria enact and give to ourselves the constitution". In most constitutions of civilized nations, it is however said that from the onset, there is no perfect constitution and therefore provisions are made copiously for its amendment to give room for the society to move towards perfection, and to adapt to evolving national situations and enhance national growth.

But, against the view of Erhagbe and Oghi (2011:1), they defined constitution as a comprehensive document that provides for issues of relevance to the legal framework which it seeks to establish. Also, a constitution is an instrument of government embodying fundamental rules of any nation, to establish and regulates the structure of the country. It regulates the powers and functions of the government as well as states the rights and duties of individuals in a given society. Constitutional which is derived from constitution

simply relates to the constitution of a particular country or organization. Constitutional arrangement is proof free in the sense that it is not fault free. While a debate is a discussion or argument about a subject on which people have different views. Relating these to constitutional debate, therefore implies discussions or arguments on crucial issues relating to the procedures and substance of a constitution for a country.

### **Constitutional Reform Process in Nigeria Since 1999**

The process for constitutional reform in Nigeria started immediately after the return to civilian rule in May, 1999. During the military, the environment was hostile and intolerant of any debate and dialogue process. However, the return to democratic rule created a conducive environment for a constitutional debate processes to commence. Ogbuzor (2005:2) identified civil organizations, intergovernmental organizations, international organizations and government as the key actors for constitutional debate. Within the period, various constitutional debate came under the administration of President Olusegun Obasanjo, Goodluck Jonathan and Muhammed Buhari. It is however evident that with the problems associated with the 1999 constitution, many people criticized it as an imposition from the military, and questioned it's autochthony.

#### **i) Civil Society Process**

The constitutional debate process is traced from June 30 to July 2, 1999, one month after the inauguration of the civilian regime of President Obasanjo, when a leading non-governmental organization in West Africa, the Centre for Democracy and Development (CDD) organized a conference on the 1999 constitution and the future of democracy in Nigeria. The conference was attended by the Minister of Justice and Attorney General of the Federation who promised to set in motion the process to amend the constitution. At the conference the Citizens' Forum for Constitutional Reform (CFCR), a coalition of civil society organizations committed to constitutional reform was formed. Since its formation, the forum has been leading the debate on constitutional reform in Nigeria.

In addition, to the initiative by the Centre for Democracy and Development (CDD), the Nigeria Labour Congress (NLC) led an initiative which brought together over thirty civil society organizations called the civil society pro-democracy network.

The CFR in their wisdom agreed on the following areas to be incorporated in the constitution.

- a) Citizenship and residency rights
- b) Federalism (to address the over-concentration of power at the centre)
- c) Fiscal federalism and resource control

- d) To constitutionally entrenched independent commissions
- e) Freedom of association and political parties
- f) Social and economic rights
- g) Access to justice and the rule of law
- h) The role of the security sector

**ii) Government Process:**

Consequent upon the conference organized by the Centre for Democracy and Development (CDD), the Federal Government inaugurated the Presidential Technical Committee on the review of the 1999 constitution on 19<sup>th</sup> October, 1999. The committee reinforced the common belief that constitution making is a technical issue reserved for lawyers and technocrats. The process of the government's presidential committee on the review of the 1999 constitution included both state and zonal consultations. The committee received about two million written memoranda and five hundred oral presentations.

The committee worked for seventeen months and submitted its report in February 2001. And between 30<sup>th</sup> April and 29<sup>th</sup> May 2001, zonal presentation of the report was made in the six geopolitical zones of the country in a similar pattern. Professor Jerry Gana, then Minister of Information presented the report. Government officials and selected individuals were called upon to speak based on the report presented. Despite the fact that, the analysis of the report shows that it was a bundle of contradictions and subversion of the will of the people, the most important issue of derivation formula and resource control stood out and constitute the greatest test of the political will of the constitution review process (Agabi, 1999).

**iii) Inter-government Process**

The intergovernment process that facilitated constitutional debate or dialogue process in Nigeria since 1999 was the International Institute for Democracy and Electoral Assistance (I-IDEA). The I-IDEA initiative was at the instance of President Olusegun Obasanjo who invited the institute in April 1999 immediately after his election victory. Their report which centred mainly on democracy stipulated Continuing Dialogues for Nation-Building and Zonal Workshops in view of constitutional review. They further concluded that a new social compact was desirable to breaking the antidemocratic features in Nigeria society, and that a people's constitution is a key to unlocking the varied potentials of the Nigerian nation. Finally, it was recommended that having a people's constitution is linked to the consolidation of democracy in Nigeria.

**iv) Development Partners**

Immediately after Nigeria's return to democratic rule in 1999, many international organizations revised their Country Assistance plan to include support for constitutional reform. Examples include Ford Foundation, USAID and UNIFEM. These organizations provided support to government and civil society organizations to engage in the dialogue process.

**The 2005 and 2013 Constitutional Conference in Nigeria**

The 2005 constitutional conference was constituted by President Olusegun Obasanjo in February 2005 when he convened a National Political Reform Conference (NPRC) that comprised persons nominated by the President, State Governors as well as some members of certain ethnic groups and other associations.

The role of the conference as announced by the then Attorney-General of Nigeria, Chief Akinlolu Oluyinmi was only to make recommendations which the National Assembly and Presidency will consider and decide how to integrate the views into the constitution. However, the conference was simply part of the process to give Nigerians a constitution generally accepted by the people. Because of the nature of its composition, the conference had a lot of problem that affected realization of its goals. Consequent upon the failure of the constitutional conference of 2005, on 1<sup>st</sup> October, 2013, President Goodluck Jonathan announced that a National conference would be convened to enable Nigerians discuss about the future of the country and proffer solutions to disturbing national issues.

The National Conference which started on March 17, 2014 had 492 delegates drawn from different sections of the society; comprising Elder Statesmen, Traditional Rulers, Military and Security personnels, retired civil and public servants, organized labour, youths, women, political parties, religious organizations etc. Unfortunately, decisions reached at the CONFAB were not implemented by President Mohammed Buhari as President Goodluck Jonathan lost his election in 2015.

**Major Issues in Constitutional Debate Since 1999**

In the constitutional debates that took place in Nigeria since 1999, important issues discussed include:

**i) How individuals Run for Elective Position:** At present individuals contesting for elective position only do so under a registered political party. During the constitutional conference, one of the proposals was the introduction of independent candidacy in local, state and federal levels elections. This proposal which was initiated in the 2010 constitution

amendment process was rejected by the thirty-six (36) States Houses of Assembly. If the proposal was passed into law, the amendment would have been in-line with the election of the African Court on Human and Peoples Rights.

**ii) Age of Eligibility:** Reduction of age of eligibility to run for elective offices, otherwise known as “Not Too Young to Run” was a crucial issue advocated in Nigeria’s constitution amendment process. The bill seek to reduce the minimum age to run for the presidency from forty (40) to thirty-five (35), for state governorship from thirty-five (35) to thirty (30), while for the senate from thirty-five (35) to thirty (30), for the House of Representatives from thirty (30) to twenty-five (25), and set the minimum age for membership to the State House of Assembly at twenty-five years. The proposal been a welcome development is unlikely to generate immediate result for the inclusion unless conscious efforts are made to engaging young people in the democratic process (Idayat, 2017:4). This is based on the fact that, a review of the constitutions of fifteen (15) member states of ECOWAS reveals that over ten countries have their eligibility age for President at thirty-five (35) years.

**iii) Reduction of Political Parties:** This was a response to the judicial invalidation of a provision of the Electoral Act empowering the Electoral Commission to deregister political parties that fail to win any contested seat for Federal and State executive and legislative organs. Against this, the Court of Appeal had ruled that the constitution did not require political parties to win in elections to be operational. But, if it passes, the amendment would certainly override the decision of the court. The intension of this procedure was to reduce the number of political parties as against over ninety (90) political parties as at 2011 general election in Nigeria.

**iv) Promoting State and Local Government Autonomy:** This, as a reoccurring proposed constitutional amendment establish a special and dedicated funding account for local government. It also provides that only democratically constituted local governments may access allocation of funds. Such an amendment will guarantee the democratic existence of local government and possibly ensure for development at the local level. When this come into operation, it will solve the problem of state and local government to maintain a joint special account, whereby all the powers of local government chairman are under the control of the governor.

**v) Limitation of Executive Discretion:** On this issue, one of the proposed amendments was to remove the veto powers of the president over constitutional

amendments. This amendment failed to come into law, after President Jonathan vetoed the proposed amendments.

In the same vein, there was a proposal to reduce the period during which the President may withdraw funds from the consolidated account after the expiration of the annual budget from six to three months. While the Nigeria fiscal year ends in December of every year, it became a culture for budgets to be signed late into the fiscal year. For example, the 2017 budget was only signed into law on 12<sup>th</sup> June 2017, and the 2016 budget was signed on 5<sup>th</sup> May, 2016 after several allegations of budget padding. The idea behind the proposal was to hasten the adoption of budget.

Another proposed amendment in the constitutional debate required the President and Governors to appoint executive cabinet within thirty (30) days of inauguration to form executive council at the federal and state level. Instances where appointments were not timely made included Governor Aregbesola of Osun State who after his victory in 2015 took more than two years before the appointment of commissioners. Also was President Mohammed Buhari who stayed more than five months before his appointment of ministers, for the claim that "Ministers are only there to make noise". (<http://www.vanguardngr.com/2015/09/ministers-make-a-lot-noise-buhari>). The proposal was against the fact that, the 1999 constitution only requires the President to appoint at least the Ministers from each state, who shall be an indigene of such state without providing for a timeline. In addition, the proposed amendments also require the President and Governors to add portfolios to the list of appointees sent to Senate and State Houses of Assembly for confirmation.

Also was a proposal that seek to ban anyone who succeeds a President or a Governor and completes the tenure of such President or Governor from contesting for that same office more than once. The proposed amendment settled the situation that involved former President Goodluck Jonathan following the death of late President Umar Yar'Adua. Other amendment proposals included all past senate president and speakers of the House of Representatives as members of the Council of State provided they were not removed through impeachment (<http://allafrica.com/view/group/main/main/id/00035.htm>)

**vi) Immunity for Legislators for Speech in the Course of Duty:** The constitutional grant of immunity in the 2017 constitutional debate for members of the National Assembly in respect of words spoken or written at a plenary session or committee proceeding was not accepted. However, the proposal only bans the use of words spoken or written during



legislative proceeding against them in court of law, and does not protect legislators against criminal offences.

### **Some failed Proposals**

Despite the above issues discussed during constitutional dialogue or debate, there were some silent proposals that failed. Among them were:

A proposal seeking for a minimum requirement of women representation of about 30% at the federal and 20% at the state level. This amendment failed because of the religious, cultural and patriarchal tendencies of the senators. Also, a related amendment to grant women the right to adopt either the state of their husband or their state of birth for consideration for appointment or elective position equally failed.

On devolution of power and state restructuring, many described the centralize nature of Nigerian federation as a major bulwark against equal development of state and the effective exploitation of resources for development purposes. Besides, a proposed amendment to move certain items, such as fiscal relations and policing, from the exclusive federal legislative list to the concurrent legislative list failed. Devolving of more powers to the states was one of the contentious issues as many saw it as a way to smuggle the state formation and restructuring agenda into the constitution.

Again, the proposal to remove the Land Use Act from the constitution and to ensure the independence of the Attorney General during constitutional debate within the period failed. This is because removal from the constitution would have made needed reform less cumbersome and put the issue on political agenda.

**vii) Challenges of Constitutional Reform in the Fourth Republic:** Since 1999, constitutional reforms in Nigeria has been faced with several challenges. The first is that political leaders on their own power hardly decide to bring about fundamental constitutional reforms. In the post colonial era, civil society organizations, intergovernmental organizations and international organizations remains the driving force for constitutional reforms.

Also, political parties and the political class are not interested in fundamental reforms, rather they are more interested in capturing and exercising political power. Infact, most political class during constitutional debate argued for regional interest as against the national interest.

Similarly, the constitution making in Nigeria is always based on the old approach where people do not participate fully and so cannot relate to the final document as their own, thereby giving rise to the issue of whether or not the 1999 constitution as emended is truly autochthonous. Again, the leadership of our country has a big role to play in initiating the process for making a people's constitution. If the leadership is honest and committed to constitutional reform, a lot of progress will be made during constitutional dialogues.

Finally, the civil society has a great role to play in constitutional reforms. Civil society in Nigeria led by the citizens forum had always isolated the fundamental issues of the 1999 constitution and place them on the public domain.

### **Conclusion**

The expression that the 1999 constitution was an imposition by the military government persuaded the quest for constitutional restructuring and other fundamental issues in the constitution which brought about convening a national conference. In achieving a people oriented constitutional conference, membership should not only be an assembly of elder statesmen, but one which will directly engage the citizens and other non-state actors.

Despite the agreements and resolutions reached during constitutional reforms in both the constitutional conferences and the National Assembly since 1999, it is however established that the problems of implementation relies on the various successive government. Finally, other crucial issues which failed in the constitutional dialogue should be reconsidered in the subsequent constitutional reforms in Nigeria.

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