

CONSTITUTIONALISM, GOOD GOVERNANCE AND DEVELOPMENT

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ABRIDGED VERSION

MEANING OF CONSTITUTION

The term constitution is derived from a Latin term 'constitutiones principis' which denotes an important law, usually the one proclaimed by the Roman Emperor. It has also been defined by Black's Law Dictionary as:

'The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers and guarantees individual civil rights and civil liberties.'

It is clear from this definition that institutions, organs, agencies and even officials of government owe their existence to the constitution and are bound to exercise the powers of such offices in line with and within limits of the constitution. While it may not be immediately clear from this definition, the state itself owes its existence to the constitution. The Constitution is supreme and is the organic law in every country in which it is present.

TYPES OF CONSTITUTION

A Constitution is either written or unwritten. A constitution is written when it is compiled into a single document. An example is the United States Constitution. It is also referred to as a codified constitution. An unwritten constitution is one which is not compiled into a single document. This does not mean that there are no written laws, it only means that there is no single document which can be referred to as that country's constitution.

FUNCTIONS OF THE CONSTITUTION

- 1. It constitutes the people into a State.**
Abbe Sieyes referred to the people as the 'constituent power' and the government created as the 'constituted power'. It is the avowed will that spurs the entire state to rise against any attempt by any part of the state to break away unlawfully.
- 2. It constitutes or creates powers, institutions and Principles of Government.**
The Nigerian Constitution creates and delineates the full ambit of executive, legislative and judicial powers in its sections 4, 5 and 6. It is in this regard that the doctrine of separation of powers becomes a pivotal and indeed a most crucial ingredient of constitutional or democratic governance.
- 3. The Constitution guarantees the freedom of the Citizens**
This is usually done by the provision of a Bill of Rights. Chapter IV of the 1999 Nigerian Constitution guarantees the freedom of citizens as their rights are clearly stated out in Sections 33-45.

4. The Constitution Declares the Ideals and Fundamental Objectives of a Nation and Affirms its Duty to the People

The preamble of a country's constitution is usually utilized for this purpose. Indeed out of the 160 odd Written Constitutions in the world, only 41 do not have a perambulatory affirmation. Such aspirations can also be found in Chapter II of the 1999 Nigerian Constitution, which contains the Fundamental Objectives and Directive Principles of State Policy.

5. The Constitution also ensures Social Justice for Sections or people in the Polity who have Peculiarities

This seeks to address ethnic, racial or even sexual peculiarities and prevent undue disadvantage over them. Section 14(3) and (4) of the 1999 Constitution provide for the implementation of the Federal Character Principle.

CONSTITUTIONALISM, GOVERNANCE AND DEVELOPMENT

Constitutionalism in its simplest form means the application of the Constitution in governance. It also means government according to the Constitution. It subjects the officials who exercise governmental powers to the limitations of a higher law. It is said therefore that, constitutional government is institutional government.

This is however not the case in Africa as the likes of Robert Mugabe (Zimbabwe), Mobutu Sese Seko (Zaire), Kamuzu Banda (Malawi), Jomo Kenyatta and Daniel Arap Moi (Kenya) and Idi-Amin (Uganda) have shown.

THE ROLE OF THE COURTS IN CONSTITUTIONAL IMPLEMENTATION

The beginning and end of constitutional observance in government or constitutionalism is the existence of an independent judiciary which would stand completely firmly and without any clog of any kind to balance power and its exercise between the armless citizen and the state machinery on one hand and between the powers that be themselves on the other hand.

(A) LIBERTY-THE RIGHT TO BAIL

The right to liberty is an inalienable right and every human endeavor through the ages is a product of that freedom to freely move, socialize, integrate and interact with fellow humans. No society in which the right of the individual to liberty has been denied or curtailed or abolished is likely to thrive. Sec 35(1) of the Nigerian 1999 Constitution provides for the right to personal liberty.

The Learned Writers of the "Halbury's Laws of England", 4th Edition emphatically stated the effect of bail at page 112 paragraph 166 thus;

"The effect of granting bail is not to set the defendant free, but, to release him from the custody of the law and to entrust him to custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place".

In the celebrated case of **Abiola v Federal Republic of Nigeria (1995) 1 NWLR (PT 370) 155 @ 177**, the Court of Appeal while endorsing the validity of an oral application for bail held:

'Having regard to the provisions of Sec 118 and 123 of the C.P.A, I am more inclined to agree with Chief Ajayi SAN that Sec 118 of the CPA which is the correct law applicable in this case made no provision for the type of procedure to follow in making an application for bail, consequently the issue of distinction between subsections (2) and (3) does not arise. It is also my view that the learned trial judge was wrong in his conclusion that the application for bail must be in writing supported by affidavit evidence. I agree with Chief Ajayi that the trial court can treat the oral application made before it by the appellant on the materials placed before it, since the appellant was directly arraigned before it'

Despite the clear position of the law as stated above, some judges and even Magistrates still insist on formal applications for bail before such an application can be entertained. This ugly development rears its head where the accused person is brought before the court when the Police had not concluded their investigations or even in some instances when they have not commenced any!

Even where the bail is granted, the conditions are often so onerous as to amount to a denial of bail itself. Instances abound where individuals have been ordered to produce first class Obas, serving Ministers or Permanent Secretaries who must own landed properties in choice areas of the FCT as sureties.

ROLE OF THE JUDICIARY IN THE INTERPRETATION OF THE CONSTITUTION

The Courts are a creation of the Constitution. In the exercise of this power of adjudication, cases bordering on constitutional interpretation have been instituted before the Courts.

In **Alhaji Atiku Abubakar v A.G Federation & 5 Others (2007) 3 NWLR (Pt 1022) 601**, the Court of Appeal was called upon to answer some questions bothering on whether a Vice-President who had been elected on the same political platform as the President could, while still in office, change political allegiance and publicly criticize and berate the policies of the government of which he was a major functionary. The Court of Appeal found nothing wrong with the conduct of the Vice President and it ruled inter alia that, he had a right to Freedom of Association. The Supreme Court also affirmed the decision but noted that;

“What is required of him is to first resign and even after resigning from that office, he would still be precluded from dissociating himself from the collective responsibility for the decisions taken by the cabinet while he was in office”

The Supreme Court in essence hinged its decision on the argument that a literal interpretation of the Constitution did not empower it to act even in the face of an apparent breach of the constitution which in the words of the Supreme Court admittedly presented a novel situation never before encountered.

The facts of Atiku's case presented a situation which was clearly not in the contemplation of the drafters of our Constitution. However by its strict constructionist approach, the Supreme Court missed an important opportunity to judicially explore an uncharted terrain of dubious political horse trading with its effect on the polity and therefore could not lay down a path emblazoned with legal and Constitutional principles to guide against future occurrences of the like that was presented to the court for when all is said and done, such an event may well occur again.

ELECTION PETITIONS

Elections in various forms have for centuries become a part of the affairs of man. In Nigeria, the 1999 Constitution as well as the **Electoral Act 2006** contains numerous provisions regulating the conduct of election and eligibility into the various political offices. In addition to the various qualifications that a person must possess, one factor that cannot be wished away is the fact that such a person must have actually contested the election before being eligible by virtue of the return of votes to be declared elected or not.

In **Hon Rotimi Amaechi v INEC & Others (2007) 18 NWLR (Pt 1065) 105**, the Supreme Court had to decide who between Hon Rotimi Amaechi and Mr. Celestine Omehia was the actual candidate of the PDP at the Governorship election of 14th April 2007. It was held that the substitution did not comply with the Law and declared Hon Rotimi Amaechi as the de jure candidate of the party at the election and therefore declared him as the elected Governor of Rivers State. It suffices to state that in Nigeria, individuals and not political parties occupy political office. That is why the Constitution lays down the eligibility for individuals and not Political Parties seeking election in to the office of Governors among others.

THE WAY FORWARD

TRUE NIGERIAN PEOPLES CONSTITUTION

First and foremost, the question of our jaundiced federation should be addressed once and for all. The truth is, if everything has been okay with us as a people under a workable arrangement with fairness, equity and justice as our watchword, there would not have been any problem either in the Federal Executive Council or the National Assembly in complying with the clear provisions of Sections 144 and 145 of the Constitution where the President has obviously been unable to perform his constitutional duties. The truth is, ours represents a perfect example of what a federation should not be.

Not only is the centre (called the federal government) too strong, it is just too attractive and unwieldy. The mad rush to the centre is a product of **over attractiveness made possible by the designers of our own brand of federation.** All revenues accruable from all the nooks and crannies of the country go to the center from where the center now decides on what each state should get.

THE CENTRAL GOVERNMENT

The American form of Presidential System of Government, currently being experimented by Nigeria, without mincing words, is too **expensive for our resources to conveniently accommodate.** It is high time we faced the reality of our existence.

Our erstwhile rulers who imported that system **wholly** and applied same willy-nilly did not do us any good at all. That is the bitter truth. The American presidential system in Nigeria has been nothing but a huge failure. We simply cannot afford 36 State Houses of Assembly, 36 Cabinets of Commissioners, large number of State Legislators, National Assembly of more than 400 Legislators, thousands of staff for all these offices, over 40 Federal Ministers and numberless staff and assistants.

At the centre, Ministers should be elected to represent the six geo political zones of the country on party basis. These ministers are to assist the Prime Minister in the administration of the center. The federal ministers would reduce in number considerably and be less than half of the present number in view of the drastically reduced number of subjects which the center would handle.

Again there is no need for the present bicameral legislature at the center. The National Assembly comprising Senate and House of Representatives is not only too expensive to maintain, it is also unwieldy. Under a new arrangement being proposed, there would only be one legislature with representatives elected directly from the six geo political zones. The business of lawmaking would be on part-time basis while sittings may be three weeks in a quarter. Their remuneration would be sitting allowances only and nothing else.

ZONAL GOVERNMENT

Each geo political zone would have a parliament of elected representatives of the people from the states on party basis. More importantly, sitting shall be on part-time basis with sitting allowances as opposed to fantastic salaries, allowances, gratuity and pension and all the outrageous perquisites presently being enjoyed by our so-called lawmakers who do every other thing other than law-making.

For the Zonal government system to be effective, I would suggest and indeed recommend that we revert back to the structural arrangement under the 1963 constitution. What I am saying in effect is that important items such as Agriculture, education, health etc should be left to the zonal governments to administer while crucial items that affect the entirety of Nigeria such as currency, foreign affairs, army, and customs amongst others should be the exclusive preserve of the center.

REVENUE AND DISTRIBUTION

Nigeria, arguably, parades one of the most expensive "federations" in the world whereby the annual revenue and budget is less than that of New York City alone which has no army, no ministers, no National Assembly, no State Assembly, and no foreign embassies.

Today, not only is the center attractive, it is where everything happens. A situation where the centre takes about 45-55% of the entire revenue leaving the remainder to be shared between 36 States and 774 Local Governments is anything but fair, more so this when the center contributed nothing to the collective pool.

It is my humble view that the present sharing system is unconscionable and utterly unjust. Under the 1963 Constitution the federal government was entitled to pay to each region a sum equal to fifty percent of the proceeds of mining rents and royalty in respect of minerals derived from each region.

The question then is whether it would still be reasonable to apply the 1963 formula where the derivative States would keep about fifty percent of the entire nation's wealth. The military adopted the extreme position by completely ignoring the 1963 formula and the interest of the oil producing States. The military then arrogated to the federal government the lion share of the revenue - a position leading to underdevelopment of the states. The States from which oil were being explored suffered serious setbacks to their farming as exploration processes naturally destroys fish and farmland in the region leaving the people completely devastated. Indeed this underscores the very basis of the agitation by these people.

OIL - A CURSE AS OPPOSED TO A BLESSING

If the truth must be told, oil has been more of a curse than a blessing. With the advent of oil and the over-reliance placed on the product by subsequent

governments at the expense of the erstwhile revenue earnings, Nigeria was **practically turned into a mono-economy.**

Simply put, agricultural products were totally abandoned. Perhaps the worst hit region is the South-Western part of Nigeria where cocoa, for years remained its major revenue earner. It is on record that all the wonders performed in this region during the days of regional governments that placed Western Region conveniently as the pace-setter were made possible through earnings from cocoa and other agricultural products.

Thus with the advent of oil and Nigeria's over dependence on it, there occurred mass exodus from farms to the cities. Instead of large cocoa plantations, we were foisted with empty farmlands, dried cocoa trees and empty villages.

The sorry picture in the Western Part of Nigeria equally applied to the Eastern and Northern parts of Nigeria. Groundnut pyramids disappeared from the North while rubber plantations and oil palm were left to rot away in the Western and Eastern parts of the country. The result: everybody now looks unto oil as the only saviour.

The evil effect of over dependence on oil as explained above therefore is the promotion and glorification of laziness, unproductiveness, and outright idleness of many states in Nigeria.

THE LOCAL GOVERNMENT STRUCTURE

The Constitution of the Federal Republic of Nigeria, 1999 recognizes three tiers of government namely, Federal, State and Local Governments. As we all know they operate on parallel basis. It is conceded that local government administration is very important because it is the closest to the grass root especially for developmental purposes.

Under the present system, revenue allocations are made to the three tiers with the state governments being the custodian of the allocations meant for the local governments.

Some State Governments see themselves as the overlords of their Local Governments. Consequently, not only do some Governors withhold the allocations meant for their local governments, they even fail to make 10% contribution from their revenue to the local governments. A state government pounces on the monies meant for local government, sits on it and that is without contributing anything to the development of grassroots. No wonder government officials and their state executives find it so easy to feed fat on these monies. In the new dispensation and or structure being proposed, nothing of sort would be accommodated again.

My suggestion is that states should be made to contribute part of their own allocations towards the growth and development of the grassroots. More importantly, allocations meant for the local governments should go straight to them without the state governments having anything to do with the local government allocations.

We have to revisit the situation whereby local governments' Councilors earn fat salaries. It is both wasteful and uncalled for. The present number of local governments should be revisited. With 774 local governments, some of them very unproductive with nothing to show for their existence in terms of infrastructural development and positive impact on the lives of the people at the grassroots, there is definitely no justification for the continued retention of this high number.

In organized climes across the globe, Councilors (or their equivalent) serve **on part time basis with periodic sittings.** Not only that, professionals and seasoned retired administrators and captains of industry willingly participate in local administration as they see service at this level as a golden opportunity to serve and affect positively the lives of the people at the grassroots. Apart from serving on part-time basis, these professionals on local administration sit at weekends and mostly without remunerations! Where remunerations are paid, they are only in respect of sitting allowances without more!

It is my humble suggestion that election into local councils should no longer be on political party basis but strictly on zero party. I am making this recommendation taking into cognizance Nigeria's peculiar situation coupled with our pronounced underdevelopment and poverty-stricken

grassroots.

While I am not advocating a wholesome "importation" of certain system or practice from a particular foreign country, I however consider it not out of place to borrow from other climes appropriate systems which can easily be adjusted to suit our peculiar circumstance, here in Nigeria. No society, I venture to say, has one hundred percent originality in this area as there would always be something to borrow from others.

CONVOCATION OF A SOVEREIGN NATIONAL CONFERENCE

There is the school of thought that, sovereignty belongs to the government including the National Assembly hence it is improper to hold a sovereign national conference. **I believe that sovereignty belongs to the people and not any arm of the government.**

In a democratic set up, the government is an agent of the people and not the master of the people. Others argue that there is no need for the convocation of a sovereign national conference because the National Assembly which is a body of elected people should be able to amend the constitution and address all the issues which a national conference would address.

This argument in my humble view, overlooked the fact that the issues to be turned over to the National Conference include the tenure of assembly members, the reduction of the number of the houses of assembly, the reduction of the number of legislators, the abolition of huge salaries, gratuity and pension and allowances, the reduction of the present structure of the country including states which are their constituencies.

It is inconceivable that the beneficiaries of the present system would look kindly to these vital issues which in my view can only be addressed by the National Conference. I cannot imagine an M.D. of a company who is on N2million per annum suggesting the liquidation of his company and substituting thereof only sitting allowance. Clearly, the members of the present National Assembly and State House of Assembly have pecuniary interest to protect which in the circumstance would becloud their judgment.

The National Conference, call it Sovereign, Constitutional or National shall be made up of patriotic professionals elected on zero party basis by their constituencies and shall include elected members of professional bodies and unions.

CONCLUSION

What I wish to advocate is, that it shall be a condition precedent that the National Conference shall not have power to discuss cessation or dis-membership of the country. Regardless of the manner in which we came together as one country, the fact remains that we have lived together for over 100 years and we have a lot to gain by remaining as one. The theme of the conference must be how best to sustain and restructure the country for the good of all.

News *from the* **Firm**

It is with profound gratitude that the Firm appreciates all those who contributed in one way or the other towards making a success out of the 3rd in the series of the Public Lectures of the Firm, which took place on the 30th of March, 2010, at the Transcorp Hilton Hotel Abuja, with the theme "Constitutionalism, Good Governance and Development".

The entire Counsel in Chambers also wish to congratulate one of their own, Chukwudi Prince Oli, Esq. of Counsel whose family was just blessed with a bouncing baby boy, Chidubem Prince Oli Jr. The Firm wishes the Oli's, blissful parenthood.

In the same vein, the Firm congratulates one of its staff, Miss Oluwafamilayo Oluwafunke Hannah on her nuptials, which happy event took place on Saturday, 22nd May, 2010 at the Redeemed Christian Church of God, Rehoboth Cathedral, Ibadan Road, Ile-Ife, Osun State. The Firm wishes her a happy, fruitful and blissful married life.

BAR NEWS

- Nigerian Bar Association, National Executive Committee (NEC) Meeting.**
Date: Thursday, 3rd Friday, 4th June, 2010
Venue: Dutse, Jigawa State.
- Nigerian Bar Association (NBA) Delegates' Conference.**
Date: 29th July, 2010.
- Nigerian Bar Association, Annual General Conference.**
Date: Saturday, 24th Friday, 30th August, 2010
Venue: Kaduna, Kaduna State.
- International Bar Association (IBA) Conference.**
Date: Sunday, 3rd Friday, 8th October, 2010
Venue: Vancouver, Canada.

PHOTO NEWS:



At the 3rd in the series of Messrs. J-K Gadzama & Partners' Public Lecture held at Transcorp Hilton Hotel, Abuja. From left to right: His Excellency, Deputy Governor of Ekiti state, Dr. Tae Sikiru Lawan, Aare Afe Babalola SAN, CON and Hon. Justice S.M.A Belgore GCON, Former Chief Justice of Nigeria.



From left to right: M.A Abubakar Esq., Chief Gadzama SAN, Hon. Justice S.M.A Belgore, former Chief Justice of Nigeria, Aare Afe Babalola SAN, CON (standing), Prince Kayode Adetokunbo SAN, Hon. Justice Mahmud Mohammed, JSC, representing the Chief Justice of Nigeria, Hon. Justice Aloysius Katsina-Alu, Professor Awwalu Yadudu and Hon. Nkirueka Onyejiocha of the House of Representatives, at the Public Lecture of Messrs. J-K Gadzama & Partners in Abuja.

Photos from Continuing Legal Education Program



At the Lecture on "The people ingredient to successful civil litigation; effective client relations" delivered by Mr. Steve Snyder, an American Lawyer from the United States of America at the Messrs J.K Gadzama & Partners' Abuja Office. From Left to Right: Zachary Ochoga, Esq., D.H Bwala, Esq., Yusuf Yamta, Esq., S.I Bamgbose (Mrs.), Mr. Steve Snyder, R.O Yusuf (Managing Partner), N.N Shalitha (Miss), Mr. Mathew Kormylo, Nne Eze (Miss), U.M Jawur, Esq. and C.P Oli, Esq.



Students from Funtaj International School Abuja, with Counsel from Messrs. J-K Gadzama & Partners' Abuja Office, during their one week School attachment to the Abuja Law Office.

PARTNERS IN THE FIRM

- (1) CHIEF JOE-KYARI GADZAMA MFR, SAN, FCI Arb.
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