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Concerns on the amendment of the constitution of the federal republic of Nigeria, 1999

Gracious Akpokpokpo Gayovwi
Lecturer, Department of Jurisprudence and International Law, College of Law, Western Delta University, Oghara, Delta State, Nigeria

Abstract
Nigeria became a union in 1914 sequel to the amalgamation of the Southern and Northern Protectorates by the then Governor-General, Sir Fredrick Lugard who was the representative of the British Crown in Nigeria. The Amalgamation Constitution of 1914 assumed the maiden law and instrument that facilitated the amalgamation. The constitution failed and was jettisoned due to lack of adequate directive principles and political will. The failure of the Amalgamation Constitution of 1914 was the beginning of the constitutional failures witnessed in the governance of Nigerian. From the Clifford's Constitution of 1922 to the Richard's Constitution of 1946; the Macpherson's constitution of 1951 to the Lyttleton's constitution of 1954. The Independence constitution of Nigeria, 1960 met its waterloo because it was hardly enacted by Nigerians and the nationalists kicked hard for a republic. The advent of the 1963 Republican constitution failed because of sectional interest above national goals. The 1979 constitution was also caught in the same problem. The 1999 constitution, the present constitution of Nigeria has undergone several amendments in a short space of time and there seems to be an unending outburst for more review owing to several sectional anomalies traceable in its content. It is the argument of this writer that sectional anomalies or draconian provisions of the 1999 constitution of Nigeria is a clog to the good governance of Nigeria. Thus, it is the intension of this writer to identify the said anomalies and showtheir challenge, towards suggesting solutions to these challenges to ensure a better constitutional law practice in Nigeria. The approach in this regard is doctrinal. It is concluded by this author that a constitutional overhaul, involving all and sundry of the Nigerian state is needed to tackle the present problems of attempts at succession, marginalization, religious intolerance, social insecurity, and so on, caused by the abysmal provisions of the 1999 constitution of Nigeria to ensure the good governance of Nigeria.

Keywords: Constitution, amendment, referendum, grundnorm

Introduction
Descriptively, a constitution is a legal instrument that encompasses directive principles- practice directions that ensure adequate adherence to its provisions. A constitution is an embodiment of the values, norms, perceptions and virtues of a people, this being the case, its existence is a characteristics of the sovereignty of a nation. The constitution of a nation is so pivotal that every administration of a nation derives legitimacy from its provisions. This explains why its provisions, as a matter of procedure, are suspended in a coup d' et at in order for such an illegal administration to assess legitimacy particularly through decrees and edicts. It is indicated in this impression that illegitimate governance and mal-administration is the Achilles heel in Nigeria's constitution experience.

The making and practice of successful constitutions worldwide are sacred, reverent and basically professional; the Nigerian Constitution making experience when juxtaposed with those of several successful nations was bizarre and unorthodox- this is the reason for the draconian and undemocratic provisions in the 1999 Constitution. It therefore became expedient to stage an amendment to the provisions of the constitution.

The administration and procedure that culminated the making of the 1999 Constitution of Nigeria which is now the subject of amendment was unconventional and thus there are several undemocratic provisions contained in it necessitating its amendment. For example, the inclusion of ouster clauses- a device of dictatorship, is unbecoming. It is noted that the present effort of the National Assembly which has amended particular sections and its efforts to reappraise some additional sections of the constitution is a novel idea which must involve all arsenals towards an effective amendment.

The intention in this impression shall be to establish that the practice of a nation's constitution is autochthonous to its practitioners and not the reserve of a cabal and that being the case, it must of necessity be a projection of the collective initiative of the people. This intention shall imply a brief discussion on what a constitution entails, conventional procedures for constitution making and a sectional appraisal of particular sections of the 1999 Constitution (as amended) which need re-assessment and several other provisions which were not amended at all.

The Concept of Constitution
There is no universal convention of the definition of a constitution; this might be as a result of the complexity of law as a subject area. Nevertheless, a constitution as a concept has several definitions from many writers.

In a literal and unprofessional perspective, a constitution is often referred to as a formal document, which contains the systems and organs of government. However, this is not the case when a constitution is considered carefully and critically. In a critical, careful and professional point of view, a constitution is an embodiment of all the Rules, Conventions, Codes, Laws and Acts that can be assumed in a given legal system. In this regard, Wheare (1980) [13] opines that a constitution means that whole system of legal rules that regulate the government of a country. According

to the author, a constitution consists of the whole system of legal rules, non-legal rules and extra-legal rules that are enforceable by the courts. The extra-legal rules are not enforceable by the law courts but are nevertheless accepted by the people as binding on them. Some examples are conventions, customs and practices. In the Nigerian circumstances, legal rules are the rules enacted by the National Assembly including the Bye-laws of the Local Government Councils. Extra-legal rules, though not democratic are also part of the constitution. Examples are the decrees made by the Federal Military Government and the Edicts of the State, Military Administrations, which form part of the Nigerian legal system. In short, a Decree-the Federal Republic of Nigeria (Promulgation Decree) No. 4 of 1999 facilitated the enactment of the present constitution. On the other hand, the non-legal rules are customs and traditions that are not enacted by parliament but form accepted local usage over a period of time. Conventions are also part of non-legal rules. This definition is all embracing because it considers a constitution in the context of a body of all the rules that make up a legal system and not in the context of a single written document.

Also, in defining what a constitution entails, Finer (1970) [4] asserts that it is:

> Codes of rules, which govern the allocation of functions, powers and duties amongst various governmental agencies and define the relationship between them and *the public.*

Here, Finer defines a constitution in terms of a collective or mass body of laws which contains the means through which functions and duties of government agencies in relation to the public are carried out. This is an appropriate depiction of what a constitution entails.

However, in the opinion of the Bryan (2004) [3], a constitution may be referred to as:

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

The Black's law dictionary explores what a constitution is as a single fundamental document that establishes institutions and the mechanism to be implored in governance.

In addition, Inegbedion and Odion (2000) [5] suggest that an ideal constitution should as much as possible reflect the ideals and values of the entire citizenry. In relation to this, particularly in the case of Rafiu Nabiu V. A.G. of Kano State (1980) 8-11 SC 148, Udo Udoma, JSC (as he then was) described the constitution as a written, organic instrument made to serve not only the present generation, but also several generations yet unborn and because it is autochthonous, it of necessity, claims superiority to and over and above any other constitution. These two latter definitions explain the constitution as a single fundamental document that contain rules and regulations meant to be adhered to by the citizenry but does not view a constitution as an entire body or mass of laws in a given legal system. In my humble opinion, these views of the constitution are restrictive and not broad.

In summary, what is being explained here is that a constitution gives validity and credence to all other laws and operates in conjunction with those laws, and based on this fact, a constitution is not just a single document, but technically, it extends to the entire mass of laws constituting a legal system. Thus, under the provision of section 315 of the 1999 Constitution (as amended) all existing laws that conform to the provisions of the constitution shall operate with regard to the constitution. It follows that in Nigeria, apart from the constitution, other laws like the Evidence Act, Criminal and Penal Codes, Electoral Act, etc, put together form the constitution of the Federal Republic of Nigeria.

Constitution Making and the Nigerian Experience

In order to understand the foundational loopholes in the 1999 Constitution prompting its review, it is vital to note the conventional procedures for the making of a democratic constitution which ought to be the point of reference in the drafting and making of the 1999 Constitution. It is important to note that the procedure to be adopted in the making of a nation's constitution depends chiefly on the pattern of government.

The procedures by which constitutions are made obviously vary from one political culture to another. In situations where the procedure is in a Federation, then it is more complex because the states are individually involved in separate constitution making in addition to the federal constitution as compared to the less cumbersome nature in a unitary system of government (Association of Nigeria Scholars for Dialogue, 1998). Be that as it may, there are two aspects of any good constitution that are a common feature in a normal constitution making – each of this is subsumed in the will of the people.

Firstly, the process by which the constitution is constructed and then approved is of paramount importance. The citizenry must play the roles in the process. Thus, there is a Constitution Drafting Committee or Body wherein persons versed in constitutional law are appointed to prepare a draft, which will include several recommendations from interest groups. The government may also give terms of reference Akande (2000) [2]. Again the people are constituted into a Constituent Assembly whose membership will consist of interest groups, elected or nominated, depending on consensus. This group participates in debates which involve articulation of viewpoints on proposed content of the said constitution. At the end there is ratification of the draft copy by the interest groups which involves the use of referenda, or by way of legislative acts, by representatives of the people.

Secondly, the Contents of the constitution, stated as sections or articles are the substance of the constitution. These are arrived at from the memoranda of groups. The constitution drafting body might also work with terms of references, for example, the system of government, mode of operation of constitutional document, constitutional amendment procedure, etc. In all, the citizens' level of participation determines the popularity of the constitution.

The Nigerian Constitution making experience is bedevilled by illegitimate administrations and irregular procedures. For instance, the first ever constitution made for Nigerians was spear-headed by Sir Fredrick Lugard, the then Governor-General of the territory now known as Nigeria- it is called the Amalgamation Constitution of 1914. Soon after this constitution was made, several others like the Clifford's, Richard's, Mcpherson's, Lyttleton's, Independence and

Republican constitutions were made. One feature in the making of these constitutions is that the drafting process was influenced by the colonial masters and thus irrespective of whether Nigerians formed part of the process for their making or not, the resultant documents were not democratic documents.

Again, at the incursion of the military into public governance through coup d 'etat there was a re-enactment of mal-administration and illegitimacy in public policy and implementation. This is chiefly because a military administration is not legitimate and it follows that all acts or procedures from such government ought to be regarded as illegal and illegitimate. Thus the attempts made in 1976 at enshrining a constitution which was later referred to as the 1979 Constitution was not democratic. In short, the Chairman of the Constitution Drafting Committee (CDC) expressed his displeasure in this way:

> The idea that a Decree is necessary must have owed its existence to a failure to appreciate that a constitution enacted by a representative assembly specially elected for that purpose possess a legitimacy superior to that to be derived from any other authority:- **salus populi suprema lex.**

It will be recalled that it was the amended provisions of the 1979 constitution that were adopted as the 1999 Constitution when a military administration, desirous of returning the nation to a democratic dispensation engaged the amendment of the 1979 constitution- it is referred to as the 1999 Constitution. The purported resolution adopting the terms of the 1979 constitution with its amendments as the 1999 Constitution was never made public. According to Akande (2000) [1], it was when the 1999 Constitution was published that a glimpse of what transpired was made public.

In summary, the 1999 Constitution is under review because the procedure for the making of constitutions all over the world, as briefly highlighted above was not complied with, thus the constitution is not a democratic document. In fact, it ought to be overhauled for a new one to be adopted and given credence by the people.

Review of the Constitution of Nigeria

It is instructive to note that Nigeria has been bedevilled by myriad of problems, ranging from maladministration to politics, social and educational insecurity; unfriendly environment, etc. But one other problem that Nigeria has is the lack of the realization of a people-oriented constitution as the constitution of the Federal Republic of Nigeria. Since the amalgamation of the Northern and Southern Protectorates and the colony of Lagos in 1914, the geopolitical area called Nigeria has had nine (9) Constitutions- five (5) under British colonial masters and four (4) after Nigeria attained independence. The longest lasting constitution is the present 1999 Constitution which is the focus and presently facing review because of draconian provisions contained in it.

The National Assembly has in its attempt at reviewing the 1999 Constitution in 2008 set up an 88-member Joint Constitution Review Committee (JCRC). This committee was characterised by controversy especially disagreements between the two chambers of the National Assembly over who is to preside over the committee. This prompted the National Assembly to carry out the process separately just like the way other bills are treated. Thereafter, the House Review Committee submitted its report Nyam (2010) [8].

In all, both Houses of the National Assembly succeeded in amending several sections in the Nigerian Constitution, to wit, sections 66, 69, 75, 76, 81, 84, 107, 110 and 116. Other are sections 132, 135, 137, 145, 156, 160 178, 180, 182, 190, 200 and 228 (a) and (b). The Houses also amended sections 229, 233, 239, 246, 251, 272 and 285. In this regard, we shall particularly consider several sections of the amended provisions of the Nigerian Constitution which need further review and other sections which were not reviewed by the National Assembly, either in the first or second Alteration Act. This shall be done by categorizing the provisions of the Nigerian Constitution in four (4), to wit, legislative review; executive review; judicial review, and Miscellaneous review.

Legislative Review

It is a preliminary principle of constitutional law that the legislature is that body that is saddled with the law making powers of government. The 1999 Constitution (as amended) refers to the Legislature as the National Assembly made up of the Senate and the House of Representative.

Apart from the provisions of the constitution that have been amended by the National Assembly, one is of the candid opinion that there are several other provisions or sections of the constitution that ought to be amended. An example is the provision of section 53 (2) of the 1999 Constitution (as amended) regarding the order for the presiding at a joint session of the National Assembly. While the constitution provides for precedence, it is silent on which of the Houses is superior or inferior to the other in such sittings. This has induced war of words in several occasions, for example, the Joint Constitution Review Committee (JCRC) could not hold its sittings jointly because of the afore-mentioned vagueness.

Also, the 1999 Constitution (as amended) in sections 54 and 96, on quorum of the National Assembly (two-thirds of all members) does not seem to envisage the situation where there has been no challenge that a quorum has not been formed or where there was a quorum at the beginning and the House went out of quorum. In this regard, a further review of the constitution is essential moreso as the constitution does not prescribe any method for determining the attainment of a quorum or when the House has run out of quorum.

Another legislative area where a review is essential is in section 58 of the constitution. Under the section, the Houses have powers to make laws through the passages of bills which are presented to the President for assent. The constitution is however silent on the mode of assent when the constitution is amended. This had sparked controversy in the Houses which argued that the President has no power of assent. But in a swift reaction, a Senior Advocate of Nigeria, Olisa Agbakoba, instituted a proceeding against the House in court and it was decided that the assent of the President is essential Iriekpen (2010) [6]. The decision of the court it is still germane for the said decision to be entrenched in the constitution.

Furthermore, it is provided in the 1999 Constitution (as amended) that decisions shall be arrived at by both Houses of the National Assembly by casting of votes in this manner:

> Except as otherwise provided by this constitution any question proposed for decision in the Senate or the House of Representatives shall be determined by the required majority of the members present by voting and the person presiding shall cast a vote whenever necessary to avoid an equality of votes but shall not vote in any other case.

Votes are cast by voice votes in the National Assembly. Our contention in this regard is that the National Assembly should assume a more professional national outfit by being responsible for the votes cast by members of the House as it is practiced all over the world. This entails an adoption of a more clearer voting pattern that can make it possible for members of the House to be associated with the votes that they cast. In the United States of America, for example, the Washington Post Company has a documentation of votes cast by Barrack Obama in the Legislature on important bills, nominations and resolutions. This enabled the average United States citizen to predict his kind of personality. Nigeria is matured democratically for this novel idea.

Executive Review

It is a *sine qua non* if the rule of law is to be relevant in any society that a separate body be established to execute and implement the laws made or passed by the legislature and the courts' interpretation of same. The body saddled with this responsibility is the executive and it is one of the three (3) arms of government. The said executive powers are vested in the President and may exercise same through the Vice-President and Ministers of the government.

The scope of the powers of the President has always been a matter of controversy. The present 1999 Constitution (as amended) has failed to define the limits of the executive powers of the President in section 5 (1) (b). The said section 5 (1) (b) states:

> ...the executive powers of the Federation shall extend to the execution and maintenance of this constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.

It can be inferred from the above provision that the President is given the power to do practically anything in the guise of "maintenance of this constitution" even at the risk of infringing on the functions of the other organs of government. One is of the strong opinion that this constitutional provision is too wide and vague in a democratic society and unduly concentrates power at the centre; this is the reason why some erroneously say that the presidency is a matter of do-or-die, Obi (2008) [9].

One other provision under the executive arm of government that needs to be reviewed is the provision of section 143 (2) (b) and section 188 (2) (b) of the 1999 Constitution (as amended). The provision is on the impeachment of the President and Governor of a state, respectively. While the constitution clearly states that the President or Governor must be served notice of the allegation within seven (7) days of the Senate President receipt of the signed notice, the amended constitution is still silent on the mode of service, which we are opined ought to be categorically stated- direct and substituted service (if the holder of such office is evading service). This came to the fore in 2014 in the process for the impeachment of a governor. The governor could not be served with the notice which prompted the House of Assembly of the state to publish the notice Kumolu (2008) [7]. Arguments were for and against the procedure of the House of Assembly because the constitution is silent on it.

Furthermore, legal practitioners are also concerned about the provision of sections 144 (1) (a) and 189 (1) (a) of the 1999 Constitution (as amended). The sections provide for the removal of the President, the Vice-President, a Governor or a Deputy-Governor on the grounds of ill-health. Under the section, if the Executive Council of the Federation (or of a state) passes a resolution by a two-thirds majority of all its members (not just those present or those voting) in which it declares that the President or the Vice-President (the Governor or the Deputy Governor) is incapable of discharging the functions of his office, then steps are prescribed for the removal of such a political office holder. Here, we are concerned about the responsibility given to the Executive Council of the Federation and states in determining the capability of their bosses. We believe strongly that this conscience role should be determined by the courts and not political appointees of bosses. In a past regime where the Executive Council was called upon to determine their boss' capability, it never did, Oyesina (2010) [12].

Additionally, the provision of sections 145 (1) and 190 (1) of the Nigerian Constitution (as amended) provides that when the President or a Governor is proceeding on vacation or is unable to discharge the functions of his office and transmits a written declaration to the President of the Senate in that regard, the Vice President or the Deputy Governor shall discharge the functions of the President or the Governor of a state in acting capacity until the President or Governor transmits another written declaration to the contrary. This vital provision is meant to promote continuity of governance in the absence of an office holder. However, we are concerned about the vagueness of the effect of the President's or a Governor's written declaration of intention to resume, that is, does it have an immediate effect or must it be deliberated upon and approved by the National Assembly or state House of Assembly. There was a scenario in one of the States of Nigeria where a Governor purported to have sent a written notice of resumption to the state's House of Assembly, only for the House to request him to formally address her first before resumption, Anonymous (2013) [2]. An amendment of the constitution is vital in this regard.

Finally, the provision of sections 153 (1) and 197 (1) of the constitution establishes certain federal and state executive bodies including Code of Conduct Bureau, Federal Judicial Service Commission (NJSC), Independent National Electoral Commission (INEC) and National Judicial Council (NJC). Furthermore, sections 154 (1) and 198 confer the power of the appointment of the chairmen and members of the bodies on the President (subject to the confirmation of the Senate) and state Governors, respectively. It is my contention, in conjunction with what was stated earlier that the constitution prescribes too wide powers to the President, that these bodies are conscientious bodies that ought to be independent of governmental influence in order for them to be able to carry out their sacred functions effectively. A body appointed by a political office holder cannot be free from the influence of such a

politician. This ought not to be. On the contrary to the constitutional provisions it is strongly suggested that these bodies should be appointed by the courts and subjected to the rectification of the Senate in the federal government or the Houses of Assembly of the states to ensure professionalism and independence.

Judicial Review

The provision of section 6 (1) and (2) of the 1999 Constitution (as amended) vests the judicial powers of the federation as well as the states on the courts. The courts are clearly spelt out in subsection (5). These include the Supreme Court, Court of Appeal, Federal High Courts, Federal Capital Territory High Courts, Sharia Court of Appeal, Customary Court of Appeal, High Courts of States, etc.

One remarkable issue that is not considered in the amendment of the constitution is the lack of consideration for the federal system of government which we assume to be operating. In a federating nation like the United States of America, all courts are created both in the Federal or Central Government and the States or Regions of the Federation. Thus, it is a misnomer for the Nigerian Constitution to create a Supreme Court and a Court of Appeal at the Federal level and restrict the States to the High Courts and other lower Courts of Record when the constitution is boldly captioned as "Constitution of the Federal Republic of Nigeria". In short, section 2 (2) of the 1999 Constitution (as amended) provides that "Nigeria shall be a Federation consisting of States and a Federal Capital Territory". In the case of A. G. Kano State V. A. G. Federation (2007) 148 LRCN 1286 r. 3, a federation is defined as the Federal Republic of Nigeria, as envisaged in section 318 of the constitution. A federating unit allows for autonomy for its components (states) but this is not the case in Nigeria, which is the reason states do not have their Supreme Courts nor Courts of Appeal as practiced in other federations like that of the United States of America. A constitutional amendment is needed in this regard.

Other brief considerations that certainly need review are the provisions that empower the President and Governors of States to appoint the heads of courts- Justices, Judges, Grand Kadis and Kadis, Presidents of courts, etc it is my conceived opinion that the judicial arm of government is a distinct arm and just like the other arms- the Legislature and the Executive- whose appointments or elections are not done by the judiciary, the judiciary should be allowed to operate its own internal structure because this level of influence from the other arms of government is contrary to the doctrine of separation of powers.

Lastly, I am also concerned with the constitutional provision on the establishment of the National Judicial Council (NJC) in section 153 (1) (i) of the 1999 Constitution (as amended). The NJC is a regulatory and disciplinary body of the Bench and the judiciary in general. The establishment of this body is not in accordance with the principle of federalism as the NJC is not established at the state level in section 197 (1) of the Nigerian Constitution. The implication of this is that the federal government is responsible for the regulation and discipline of the Bench and the judiciary in general. This in my opinion is not a federal procedure as practiced all over the world. The constitution needs another assessment in this regard.

Miscellaneous Review

One of the provisions of the constitution, I submit, is becoming a strange practice in a federal system of governance is the local government. Sequel to the provision of section 7 and the fourth schedule of the 1999 Constitution (as amended) the system of local government by democratically elected Local Government Councils is guaranteed even when the constitution is a federal constitution which by principle recognises only two (2) levels of governance- central and regional governments. It is even more disheartening to note that in practice, the local government is not more than a state government parastatal. Some writers also believe that the local government is an appendage of the state government (Okoye, 2001) [10]. The case of A. G. of Lagos State V. A. G. of the Federation (2003) 12 NWLR Pt. 833 is particularly hinged on the starvation of the Local Government of Lagos State of funds accruing to them allegedly withheld by the Federal Government. All that has been said are indications that in a federal system of government, the local government system is not tenable. A review of the constitution is vital in this regard.

Also, it is considered that the provision of section 11 (4) of the Nigerian Constitution is ambiguous, vague and quite uncertain. The subsection provides:

> At any time when any House of Assembly of a State is unable to perform its function by reason of the situation prevailing in the state, the National Assembly may make such laws for the peace, order and good government of that State with respect to matters on which a House of Assembly make laws as may appear to the National Assembly to be necessary or expedient until such time as the House of Assembly is able to resume its functions, and any such laws enacted by the National Assembly pursuant to this section shall have effect as if they were laws enacted by the House of Assembly of the State: provided that nothing in this section shall be construed as conferring on the National Assembly power to remove the Governor or the Deputy Governor of the State from office.

The question that needs to be asked is what is the precise limitation of this power? Better still, how can it be determined that the House of Assembly of any State is unable to perform its function? Can the National Assembly be justified if it makes laws for a State House of Assembly when States are accorded a level of autonomy in federalism? What is the denominator for determining the interest of public order and security in this circumstance? It is strongly opined that this provision is borne out of a Military rationale of centralization of government which is not realistic in a federal system of government. It is therefore suggested that this provision be expunged from the constitution.

This impression marvels at the provision of section 29 (4) (b) of the 1999 Constitution (as amended). The provision of section 29(1) provides that a Nigerian citizen may renounce his citizenship so far he is of full age and does so in the prescribed manner. Section 29 (4) (a) defines the majority age as eighteen (18) years. However, we believe strongly that the provision of section 29 (4) (b) which provides that any woman who is married is deemed to be of full age or majority age, is misconceived. It is established that there are parts of Nigeria where their religion allows them to marry minors on mutual consent of parents. There is a report that a

Senator of the Federal Republic of Nigeria got married to a minor citing his religious faith as a basis for his action Osewa, 2014) [11]. In this situation should such a minor be regarded as a major or of full age because she is married with the knowledge that the action contravenes the Child Rights Act, 2003? Certainly not.

Finally, chapter II of the 1999 Constitution (as amended) has the expression "Fundamental Objectives and Directive Principles". The said expression has been defined as the directive principles laid down by the policies which are expected to be pursued in the effort of the nation to realize the national ideas. These policies include educational, social, economic, environmental, etc policies. The said report further stressed that they are so tagged because government in developing countries are often pre-occupied with acquisition of power than giving attention to these basic areas and if these areas are inserted as fundamental rights, then government will continually be liable for inadequacies. As compelling as this, the said items in chapter II of the constitution ought to be items of right not privilege.

The provisions of chapter IV of the constitution- fundamental rights, where the items of chapter II ought to be cited have been described as those rights essential to the realization of human aspirations, without which life is meaningless, nasty, brutish, short and characterised by the survival of the fittest. An example of a fundamental right 'hidden' in chapter II of the constitution is the right to affordable education. The enforcement of the violation of this right and others has been rendered unjustifiable by the provision of an ouster clause- section 6 (6) (c) of the 1999 Constitution (as amended). The establishment of schemes like the Universal Basic Education Programme introduced through the Universal Basic Education Act which is aimed at compulsory education at the primary level of education and the passing of the Child Rights Act, which aims at protecting the child and guaranteeing the child's education, are all indication that government is aware of its responsibilities but only shying away from them.

In all, I believe strongly that an ouster clause is not a democratic device; thus the provision of section 6 (6) (c) is undemocratic and misconceived and should be expunged from the Nigerian Constitution. Also, all the items in chapter II of the constitution should be recognised as rights to be enforced at the court of competent jurisdiction.

Conclusion

What has been said so far is that a constitution is a legal device or instrument that encompasses all the laws in a given legal system because all laws derive validity from it. It was therefore seen that the efforts in making a constitution must be conventional or else the constitution will not be valid.

Several sections of the 1999 Constitution (as amended) by the National Assembly were identified. It was seen that apart from the amended sections of the constitution, several other sections that need to be amended were identified and reasons proffered. It is however my candid opinion that since the identified short-fallen in the Constitution is the fundamental problem of the 1999 Constitution, a more people oriented Constitution ought to be made to put the present anomalies to rest. This will help to reduce or stop the calls for amendment.

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