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CONSTITUTIONALISM, DEMOCRACY AND SUSTAINABLE DEVELOPMENT IN NIGERIA

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Abstract

This paper argues that the popular consensus that democracy foster development takes for granted the fact that democracy can only foster development if a democratic practice is predicated on the ability of a society to imbibe a culture of constitutionalism. While the developed societies recognize this fact, and as early as 1215 limitation had been placed on the power of the king in England, the 21st century African's political class especially Nigeria, has continued to practice an unbridled exercise of political power. This paper maintains that, the failure to institutionalize mechanism of power control for the protection of the interest and liberties of the general populace including those of the minority jeopardizes the attainment of development. That until the Nigerian constitution entrenched the principle of constitutionalism that secure democratic process on the people, development will remain a Sisyphean task. Drawing examples from some countries the paper concludes that genuine development that is sustainable, can only be realized in Africa and most importantly in Nigeria if all ethnic groups, cultures and cleavages both individuals and groups are accorded their due rights of participating in the formulation of the constitution that guide their relationship with the state and among each other and the government adherence to the dictate of the people's constitution, this in turn helps to checkmate the excesses of government, then the people's rights, interests and preferences can be guaranteed and sustainable development ensured.

Keywords: *Constitutionalism, Democracy, Sustainable Development*

Introduction

There is a general consensus in recent times that democracy is a condition for development (Linz and Stephen 1997, Campos 1994). This axiomatic position takes for granted the fact that democratic sustenance is predicated on the ability of a society to

imbibe a culture of constitutionalism, as done in those societies that introduced democracy to the rest of the World, example, England, United State of America, Italy. The operation of governmental activities according to rules and norms agrees to by all in a kind of social contract call the constitution does not exist in most African State especially Nigeria. Meaning that, most African States lacks the culture of constitutionalism to back up democratic governance that can in turn aid development.

Democracy can only foster development if all democratic parameters are on ground and are strictly adhered to by all stake holders. An essential democratic parameter which the Nigerian government takes for granted, is the people's participation in the formulation of the constitution that guilds their code of conduct in the society is imperative. The formulation of the people's constitution is the foundation upon which successful democratic institution like United States of America, France, and Italy is built.

The importance of consolidating the hard earn democracy in Nigeria, after several years of military dictatorship, cannot be over emphasized, neither can it be too costly for a nation to seek development after the devastation of the country by civil war, the military, political and religious crises, presently the mayhem unleash by Boko Haram in the Northern part of the country and also, corruption perpetrated by political office holders. Moreover, as the largest democracy in Africa; Nigeria democratic sustenance is more likely to have direct implication for other African States. Studies have focused on democracy as a basis for good governance and peaceful co-existence of people in multi-cultural, religious and ethnic societies like Nigeria (King 1998; Adejumobi 2004; Ikelegbe 2005). However, pertinent to note is that, without a firm foundation of constitutionalism, any built democracy can jiggle.

The argument of this paper is that sustainable and genuine development will be unattainable in African and most especially in Nigeria if the political class continues to practice an unbridled democracy by refusing to give credence to the culture of constitutionalism which is the foundation upon which democracy is built. The crisis of democracy and sustainable development in Africa and specifically in Nigeria can only be resolved if democracy and development though different sides of the same coin are pursued with due respect for the interests of all the occupants of the society. Meaning that, development, as basically the attainment of the good life for all, is realizable if only the political class operates within the limitation of their powers and if individuals and groups are duly recognized as co-owner of the country.

Constitutionalism, Democracy and Sustainable Development: A Theoretical Linkage Constitutionalism:

Constitutionalism, is an idea linked with the political theory of John Locke, the founder of American republic "that government can and should be legally limited in its power, and that its authority depends on its observing these limitations" (Stanford Encyclopedia of Philosophy 2001). It has equally been traced to Magna Carta King John

Constitutionalism has been defined diversely by different scholars. For instance Gordon (1999) perceive constitutionalism as 'a political organization is constitutional to the extent that it "contain(s) institutionalized mechanisms of power control for the protection of the interests and liberties of the citizenry, including those that may be in the minority'.

On the other hand, Henkin (1998) observes that, constitutionalism implies that the constitution cannot be suspended, circumvented or disregarded by political organs of government, and that it can be amended only by procedures appropriate to change of constitutional character and that give effect to the will of the people acting in a constitutional mode." He further posits that constitutionalism "implies that public authority can legitimately be exercised only in accordance with the constitution, there can be no extra-constitutional government, no exercise of public authority by any person or institution not designated pursuant to the constitution.

To (Amuwo) 1998, constitutionalism is a positive, people-friendly interpretation and application of constitutional principles, values and norms locating popular sovereignty in the people engender a particular kind of culture and politics that largely tame manifestation of both the mass society and communal identities. He contend further that, constitutionalism, is the sinews of liberal democracy and sine qua non of civil legitimacy. Constitutionalism denote a set of principles in the organization of polity: effective restraints upon the power of those who govern; a guarantee of individual fundamental rights (ranging from freedom of speech and expression to equal justice and right to privacy); the existence of an independent tribunal to enforce these rights; genuine periodic elections by universal suffrage; and generally the enthronement of rule of law, that is the absence of any form of arbitrariness, and equality of all before the law (Nwabueze, 1973).

Philosophically, constitutionalism is based the belief in the uniqueness of the human person. A human person is believed to have a convictional core, the propelling force behind the self which should remain inviolable and is maintained in its uniqueness and genuine autonomy (Adewoye, 1994). Adewoye further, posits that constitutionalism springs from the nature of man. Man, according to him loves power, in the hands of whoever exercises it, it could be an unruly horse, hard to tame or restrain. Yet it is also true that the human psyche, because it is linked with the creative intelligence, cannot for long, endure denials of opportunities for self-expression. As a result, dialectical struggle between the exercise of tyrannical power and the yearning for freedom by the oppressed has been a major landmarks event in the history of mankind. Memorable among these events are the natural law doctrines of the Stoics and the medieval Church; the Magna Carta and the 17th century English Revolution resulting to the Bill of Rights (1689) and the Act of Settlement (1701); the American Revolution (1776) and the French Revolution (1789); the 1848 Revolution in Europe and its aftermath; and the modern day International Bill of Human Rights which since 1976 most would agree has attained the status of international law (Friedrich, 1968)

Constitutionalism emphasis the principle of individuality, as Gewirth (1982) puts

it, the primary objective of constitutionalism is to ensure that each person have rational autonomy in the sense of being a self-controlling, self-developing agent who can relate to other persons on the basis of mutual respect and cooperation in contrast to being a dependent, passive recipient of the agency of others. From the perspective of the individual persons, constitutional should enable them to control their own lives and effectively pursue and sustain their own purpose without being subjected to domination and harm from others. Constitutionalism connotes a democratic spirit, an attitude of give and take in public affairs, a consciousness on the part of the individual of the limitation of power, sense of accountability, a readiness to do justice (Nwabueze, 1973)

Given credence to the importance of constitutionalism in a federal state Lutz, 1998 (a): 150) posit that it is important within the ambit of constitutionalism, to interrogate the origins of federalism in a federation; the notion of popular sovereignty or the sovereign power in lieu of the monarch and the constitution of popular sovereignty at the national level. How relevant is the foregoing to democracy and sustainable development in Nigeria? This is the question this paper seeks to examine.

Democracy as a concept has known many connotations and applications at different times and at different countries of the world. However, "despite the differences in name and interpretation, a common thread runs through all conceptions of democracy. It is a condition where community of people exercises collective autonomy. Through democracy, member of a given public- a demos take decisions that shape their destiny jointly, with equal rights and opportunities of involvement and without arbitrarily imposed constraints on debate, in one way or another, democratic governance is participatory, consultative, transparent and publicly accountable. The most popular definition of democracy is the one given by Abraham Lincoln that perceives democracy as "the government of the people by the people and for the people". Corroborating, McPherson (1966) defines it as originally meant rule by the common people, the plebeians. It is very much a class affair; it means the sway of the lowest and the largest class." While Lord Bryce, on his own part posit that "democracy is government in which the will of the majority of qualified citizens rule." John Plamentz, opines that "democratic government means government by persons freely chosen and responsible to the governed." It is all about empowerment of the people in the state affairs and because democracy allows majority to have its way and minority to exercise it right and generally it allows people to struggle for their rights, it automatically fosters national unity and development where ever it is *properly practiced* (Osaghae, 1996).

As Scholte (2004) simply puts it, by one mechanism or another, democratic governance rest on the consent of the governed. For scholars like Robert Dahl, "a key characteristic of democracy is the continuing responsiveness of the \and the Fourth phase (1966-99). Whichever division given to the Nigerian constitutional making, none of the phases of the constitution can be trace to the period the people participated in the drafting or approval of the constitution.

The different constitution-making of the colonial era were mostly motivated by

nationalists agitation. The people did not participate in the drafting nor the approval of the constitution (Igbuozor, 2005). Within this period Nigerian experienced six major constitutional making. These include the Amalgamation Constitution of 1014, the Clifford Constitution of 1922, Richard Constitution of 1946, Macpherson Constitution of 1951, Lyttleton Constitution of 1954 which was regarded as the first federal constitution in Nigeria, and lastly the Independence Constitution of 1960.

The post independence constitution-making on the other hand have been mostly the act of the military and as Momoh and Said (1999) noted that there is an intrinsically contradictory relationship between military and democracy. Since the military and democracy contradict each other, and democracy and development are opposite side of the same coin then a constitution made by the military cannot sustain development, which has been the case since Nigeria's independence. As Asobie (1998) argued,

A cardinal principle in the making of a federal constitution is that the process of bringing into being must be such as to ensure that the constitution is an "original act" of the people, the masses. A constitution is the product of, or the original act of, the people if it is the handwork of the masses of the people. To begin with, the draft constitution should be the product of true representative of the people. "True representatives," means persons whose viewpoints and interests are to a large extent a reflection of the viewpoints and interests of the overwhelming majority of the population. It also means, in a federal polity, persons drawn from different territorial/cultural sections of the nation. Besides, for a constitution to be regarded as an "original act" of the people, the draft must be intensely debated by the people and finally approved by them in a referendum. If a constituent assembly is involve in the process, the people should ideally elect its member and its deliberations and decisions should come, after the draft is made, but before it is subjected to a referendum of the whole electorate. Any centrist deviation from this model of enacting and amending a federal constitution may be regarded as a manifestation of centralizing trends in a federal polity.

The process of enacting and amending a federal constitution in Nigeria is totally at variance with Asobie position above, agreeing with him that, anything short of this in a federal setting should be regarded as manifestation of centralising trend in a federal polity which is detrimental to the course of federalism and development.

At the return of Nigerian to democracy in 1999, and with three regimes in government since then, these regimes have operated and still operating under a military instituted constitution of 1999. This constitution has been tailed with diverse controversies. According to Kuye, (2001) the constitution was made during the military regime. The constitution was approved by the Armed Forces Ruling Council made up of 26 persons, all males. The people did not participate in the process of making the constitution. This is why the preamble which begins with "WE THE PEOPLE of the Federal Republic of Nigeria..... do here by make, enact and give and give ourselves the following constitution" has been severely criticized in Nigeria as being a false claim.

Apart from the fact that it is not the people's constitution as claimed, equally noted are

diverse errors in the constitution. As Igbuzor rightly put it "the content of the 1999 Constitution does not take into account the political history of Nigeria". Some examples of the constitution's provision which does not enhance development and meet with the wishes and aspiration of the people include the following:

- " Historically Nigeria is a federal state while the constitution is unitary, because there is over concentration of powers at the center,
- " the constitution establishes a judicial council to control the appointment, promotion and discipline of the both state and federal judicial officers,
- " the language of the constitution is written in masculine gender as if there are no women in Nigeria and also it is written in legal jargons that makes it difficult for the people to easily understand,
- " the constitution does not guarantee economic, social and cultural rights of the people. For instance the provision for adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, unemployment and sick benefits and welfare of the disabled are provided for under chapter two titled Fundamental Objectives and Directive Principles of State Policy. These provisions are not justice able under the 1999 Constitution and cannot be enforced (Kuye, 2001).

Igbuzor further posit that there is a lot of inelegant drafting. For instance, Section 222 stipulate that political parties simply need to register with the Independent National Electoral Commission(INEC) while, Section 40 gives the condition that INEC will have to accord recognition to the parties. Also Babawale, (2007) noted that the constitution constitutes an obstacle in the effort to protect local autonomy, one it fails to stipulate clearly policies that could help generate a supranational consciousness in the generality of the people. These are among the numerous lapses noted with the 1999 constitution, while some grievances are openly aired by scholars, non-governmental organizations, and some agitation groups, others simply takes the laws into their hands. Taking laws into their hands has resulted in ethnic crises, Niger Delta crises, and more recently the issue of Boko Haram in the north has been a serious challenge to the Nigerian nation and its occupants.

The Nigerian Democracy Since 1999

In 1960 Nigeria gained independence after much struggle. For the fifty years of Nigeria as an independent state, the military had ruled the nation for 29 years while democratic government alternated in between military rules for 21 years. However the fourth republic which is the present republic has been the longest democratic government the nation has ever witness and it is hoped that the military will not return or come near political power again in Nigeria. However, as noted by Mahler (2003). "Democratization is not an unstoppable process, which proceeds as it were in agreement with the laws of

nature, as the spokesmen of transition research long had us to believe. Democratization can advance but it can also come to a standstill and go into reverse, because it is a complex and dynamic process in which many factors are at work and which is ultimately fashioned by each country's historical specificity".

Samuel Huntington popularly referred to this tendency of democracy as the waves of democracy. As a nation Nigeria could be said to be experiencing her third wave of democracy. As posited by Igbuzor 2005, the road to the present democratic dispensation was rough. People lost their lives, many went on exile. There was endless transition, 'stepping aside' and what some public commentators have termed 'divine intervention' it is the responsibility of all Nigerians to ensure that this hard won democracy is not only protected but also deepened and consolidated.

After 12 years of democratic rule in Nigeria, one can say that the Nigerian democracy is amoral because instead of breeding development the reverse has been the case. Assessing the success of democracy in the past 10 years Obadina 2009 in *The Westerner*, sampled the opinions of elder statesmen like Chife Ayo Adebajo, a renowned economist, Professor Sam Aluko, veteran Lawyer and NADECO chieftain, senator Biyi Durojaiye and chief Titi Ajanaku and from the responses of these prominent Nigerians a consensus emerged that the challenges facing the country now far outweigh the little gain of the past 10 years, noting that in an ordinary election, the will of the people have been viciously trampled upon in the 2007 general election. These challenges have manifested and are still manifesting in ethnic politics, corruption, poverty, militancy and agitations from diverse groups (it started with the Niger Delta and migrate to terrorism: the Boko Haram sect in the northern part of the nation) religious crises, mindless political killings which sadly, took the lives of some Youth Corp members in the 2011 election.

Expanding further, Adebayo opines that democracy has been on leave for the past era of its return in Nigeria. According to him "with the series of election petitions in court, Nigeria couldn't score an average if assessed on its performance on the tenants of democracy; we have only had a civilian regime and anti-democratic vices. The fourth Republic has been characterized as Obasanjo's government that never heeded court orders. Rigging of elections (a lot were contested in court including the Presidential elections). Killing of political opponent with no traces of the killer examples includes the late Anthony General of the Federation Chief Bola Ige, onetime governorship aspirants of Lagos and Ogun states in the persons of Funsho Williams, and Dipo Dinna. The elections of 2003 and 2007 witnessed increased level of thuggery, assault, snatching of ballot boxes and allegation of doctored results.

The ordinary citizens are not left behind from this dose of democratic experience and weak constitution. The citizen can be molested and even be killed by the supposedly custodians of the law without the people knowing their right, thereby making most people afraid of seeking redress in the court of law. Some may want to seek redress; but they are most times too impoverished by the social economic condition of the country. For instance police assaults and killing of the people are widely reported in national dailies

few among this common trend are: officers of Nigerian Police Force raided the palace of implies in turn a society in which the member are independent of each other, none being subservient to another, as in an aristocratic society, where every wealthy aristocrat "constitutes the head of a permanent and compulsory association, composed of all those who are dependent upon him, or who he makes subservient to the execution of his designs" (Tocqueville 1956).

In the absence of constitutionalism, unity politics in a federal society become antithetical to several things: conflict resolution; cooperative federalism; dual legislation and dual citizenship. Similarly, notions and processes of self-government, decentralization, individual and communal liberty, economic well-being and civilization become largely circumscribed and attenuated. The tendency in such politics is to think that actually existing federal systems is a function of political sloganeering; that the more the desire for unity is expressed, the more likely a viable federation will evolve or emerge. Also, by not carrying the people along; by evacuating them out of the civic public realm consequent upon a copious process of demonisation of politics and politicians, such state miss perhaps the most energizing and propelling force of federal practice, namely the people. Amuwo, 1998.

Constitutionalism, Democracy and Sustainable Development in Nigeria

Development has been an issue of increased concern among scholars, activists, politicians, development workers at both national and international organizations. Regardless of different perceptions to development what cannot be denied by all is the fact that development steer up positive changes, validated in increased capacity of people to have control over intellectual resources and ideology, material assets, employment, equality, participation in government, political, economic and social independence, obtain physical necessities of life, gender parity, adequate education, and justice in its multidimensional perspective. While it is generally agreed among most scholars that democracy and development are two sides of the same coin. For democracy to foster development it must transcend conduct of election (Yusuf 1996)s. The values of democracy should be exhibited in the family, workplace and all kinds of institutions in the society. Beyond representation, the operationalisation of democracy should demonstrate the notion of popular power where the citizens would not only be the repository of power in the society but will actually participate in everyday politics and influence the policies, allocation and utilization of resources (Igbuzor 2005).

The empowerment of the citizens on the other hand cannot be achieved without the entrenchment of constitutionalism. Constitutionalism will become an illusion if the process of making the constitution lacks diversity, participation, inclusivity, transparency and openness as it is the case in Nigeria. As argued by Igbuzor 2005, the process of making a constitution is as important as the content. From the history of constitution making in Nigeria, there is a clear evidence that the old approach of making constitution is not process led and participatory and the product has never met the wishes and

aspiration of Nigerians. It is only when the process of the constitution is inclusive, that the people can be empowered, constitutionalism established and development that can be sustainable realized. Example of countries like South Africa, Eritrea and Uganda are pointers in this direction where the people participated in the process, there is a clear difference because the product enjoys legitimize and sustainable development on track.

Conclusion

This paper has been able to argue that an important parameter for sustainable development which Nigerian government since independence takes for granted is the entrenchment of constitutionalism, which can only be realized by involving the generality of the people in the constitutional making process. Constitutionalism is fundamental to democracy and it lays the foundation for sustainable development in societies that genuinely seeks after development. Constitutionalism, if entrenched will curb ethnic and religious crisis. It will even go a long way to restrain the incidence of corruption that has perpetrated poverty among the populace.

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