

Legal Framework for Enacting a Peoples Oriented Constitution and Sustainance of Democracy in Nigeria

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Abstract

In every democratic government, the liberty, rights and participation of citizens in governance is guaranteed. In most cases, the constitution is the custodian of these rights. The constitution can only serve this purpose if it is truly the product of the people. The problem currently been faced by many countries today is lack of process led approach in constitution making. Successive constitutions in Nigeria are considered to lack these essential ingredients. The presumption about constitution making in many ancient and stable democracies of the world is that they were made by popular majorities, the truth, however remains that most constitutions, notwithstanding their longevity and survival over time were products of the minority elites and dominant groups. A constitution that guarantees true democracy must bear clear imprints of the people's contributions. In newly constituted and nascent democracies such as Nigeria, it is imperative to enact good constitution through consultative, inclusive and democratic means since sovereignty resides in the people.

I. INTRODUCTION, DEFINITION AND CONCEPTUALIZATION

Democracy is no doubt the vehicle for development world over. As democracy continues to take preeminence in many countries, the constitution can be identified as the major lubricant to its wheels. Nigeria's current democratic dispensation evolved as a result of domestic and external pressure after many decades of tumultuous military interregnum and autocracy¹. For many centuries, democracy in the United States of America's has become a magnum opus² which most countries including Nigeria have now adopted. Upholding the constitution and constitutionalism is a fundamental prerequisite of democracy. No system of government can be described as democratic if it does not operate a constitution that guarantees the structure, organization, and succession of government through free and fair periodic electoral process. The Blacks Law Dictionary defines constitution as the fundamental or 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 liberties³.

Basically, a constitution is understood to mean a set of norms, conventions, rules and procedures that has the objective of defining the behaviour of its constituents, whether they are individuals, groups of people, or special decision making and implementing institutions⁴. In this connotation, the constitution is a law which has the same effect as custom, legislative acts, ordinances, decrees and bye laws. There are basically two types of constitution-written and unwritten.⁵ The United States of America is the first to pioneer written constitution which is being adopted by most countries of the world today⁶.

It has been posited that the development of constitutions evolved with the development of law, and both are first dominated by unwritten custom which later metamorphosed into written enactments⁷. Even in general law, custom has not been completely eliminated, and this is also the case to some extent with constitutions. However, due to the overriding importance of constitutions, which has generated the necessity to have clear,

¹ Nigeria only had nine years of democratic experience between 1st October, 1960 when it got her independence and may 29th 1999 which ushered in the current stable democratic dispensation. The military had ruled the country from 1966 to 1979 and 1983 to 1999, a period of about 29 years. Stable and sustainable democracy is just fourteen years old in Nigeria.

² A master piece

³ 9th Edition, Bryan A.G, (eds) (USA: West Publishing Co. 2004) p. 353

⁴ Daudi R. M., Forms and Reforms of Constitution- Making with Reference to Tanzania. UTAFITI (New Series) Special Issue, Vol. 4, 1998-2001 p. 131

⁵ Britain is notable for operating an unwritten constitution

⁶ That notwithstanding, the United States, also operates through unwritten convention, for instance, the independence of the Central Bank (i.e., the Federal Reserve Board) is not explicitly stated in the constitution, as it is in some other countries. Yet, de facto the Board enjoys considerable autonomy because of a constitutional convention by virtue of which any attempt by the executive or the legislature to interfere with its activities would incur costly political sanctions. .

⁷ *ibid*

precise and unambiguous constitutions in modern times, unwritten constitutions are a rarity¹. The difference between a constitution and all other laws is that it is regarded as the ultimate man-made regulator and the source of all other laws.² Because of this perception, innovations have emerged in the fashioning of constitutions, to ensure that all important relationships and behaviour among the constituent parts of a society are spelt out therein, and others, on which usually a firm common agreement has not been struck within society, are left to other laws.

The contemporary age is dominated by a heightened consciousness about democracy, which is the ultimate agenda of reform in the political sphere. In the recent history of states whose political reform consists essentially of moving from the monolithic organization of society (represented by single-party, military and personal-rule regimes) to a more open plural form, the main rationale of constitutional reform is greater democracy and the strengthening of the democratization process. For this reason, current issues on constitutional processes and reform tends to be less about whether there is such a covenant or ground norm, and more about whether such constitutionalism is an attempt at guaranteeing democracy.

It must be pointed out that the nature of the birth of a constitution determines its ability to survive and endure. Lately, the concept of a people's constitution, which vaguely refers to a constitution proposed and ratified by some kind of mass constitutional conference or subjected to a referendum, has re-surfaced, just over two centuries ago. It has been argued, for example, that most constitutions of African states-and especially former British colonies or possessions-lack legitimacy, and are highly contested because, despite their facilitation of smooth transitions to new administrations, they did not involve "the people"³. Even where subsequent constitutions have superseded transitional ones, it is argued, there has not been an involvement of "the people", and therefore the constitutions remain aloof, imperial and oppressive. It is only when "the people" participate through a national or mass constitutional conference that legitimacy can be realized. In the background of this thinking there has always been some vague notion that most European constitutions were worked out in popular conventions⁴, and that the American constitution was the direct result of such mass constitutional gathering. To many, this presumed popular approach to constitution-making explains the survival and endurance of the European and American constitutions against the test of time. Thus the history and legacy of America's Constitutional Convention of 1787 in Philadelphia has produced images of democratic and popular participation in constitution-making that have contributed to the respect with which the resultant American Constitution is treated.

Although every constitution is likely to be challenged by any new generation, it is less probable that a constitution perceived to have been historically approved by the majority of a previous populace will meet with such abject sectional disapproval as does the 1999 constitution of the Federal Republic of Nigeria, which is perceived differently. However, the perceived "popular" beginnings of a constitution are only a small part of the explanation for its survival and endurance. For Instance, the convention that worked out the US Constitution was discussed by 55 delegates representing 12 of the 13 states of the American Confederation from May to September 1787. Due to objections by some delegates, only 39 signed the final text of the Constitution. The procedure for the ratification of the new constitution required approval by a simple majority at conventions in two-thirds of the 13 states. There were bitter struggles for and against the constitution, and many issues about which there were struggles, including the lack of adequate constitutional safeguards for fundamental rights.⁵ The constitution was finally approved by all states nearly three years later in 1790, amidst all these bitter differences of opinion. That is why John Adams, a later US President, once wrote that the Constitution was "extorted from the grinding necessity of a reluctant people"⁶. Evidence of gross dissatisfaction with the Constitution was recorded even immediately after ratification⁷. The US Constitution was therefore criticized as being a minority

¹ With the exception of Britain which still operates unwritten constitution

² That is why it is usually referred to as the ground norm

³ Liundi G., A proposal For a new Constitutional Order. A paper Presented to a Symposium of of the Society For International Development. British Council , Dar es Salaam (1994) P10, Cited in Daudi R.M., *Supra* note 4 at P. 136 .See also Makaramba R.V., A new Constitutional Order for Tanzania? Why and How. Occassional Paper For Friedrich Ebert Stiftung and the Tanganyika Law Society, Dar es Salaam, also cited in Daudi R.M., *Supra* note 4 at P. 136

⁴ *Ibid* at p 8

⁵ A majority of those who opposed the Constitution were small farmers and craftsmen, while many of those who called for its approval were merchants, shippers, manufacturers, bondholders, land speculators, lawyers and ministers.

⁶ See Daudi R.M., *Supra* note 4 at P. 136

⁷ At the first sitting of Congress in 1789, there were 103 proposals for amendment. Only 10 were eventually ratified, and they are now collectively known as the Bill of rights, but it is interesting to note

constitution, not only in its preparation but also in its aspirations, and it had glaring human rights omissions in its beginnings. Even Most of the European constitutions as at then, fell short on human rights provisions, and some did not advance in this area for an extremely long period¹.

II. GLOBAL WAVES OF CONSTITUTION MAKING

There has been much concern with constitutions and constitution-making in the last three to four decades. The world order has changed a great deal in this time; the final mopping-up of colonialism, with the emergence of new states, the end of military regimes, the collapse of communism, and efforts to end civil conflicts, particularly in multiethnic states, have all contributed to the production of constitutions. The variety of contexts in which constitutions have been made shows that the primary purposes a constitution serves vary considerably such as nation- building as a new state emerges; the consolidation of democracy as the military retires to the barracks or authoritarian presidents are deposed; liberalism and the creation of private markets with the end of communism; peace and cooperation among communities to end internal conflicts. These purposes determine the orientation of the constitution, and the process by which it is made².

The above statement shows that there exist divergent historical tracks for the emergence of constitution in different countries. While some could be traced to revolutionary outbreaks, social and economic crisis,³ others could be linked to colonial history, national reunification exercise or the era of political independence⁴. Thus, many of the nation's constitution⁵ have witnessed one form of discontinuity or the other at various times. which normally create an interregnum during which the constitution is tentatively suspended while other bodies are empowered to make laws.⁶ These ugly trends which characterize many third world countries have greatly impinged the growth of constitutional governments and the development of democratic culture.

Modern constitution making started in the late eighteenth century. Between 1780 and 1791, constitutions were written for the various American states, the United States, Poland and France. In the wake of the 1848 revolutions in Europe,⁷ many countries adopted new constitutions to replace the ones imposed on them by the imperialists. After the First World War, the newly emerged states of Poland, Czechoslovakia and German States also wrote their constitutions⁸. After the Second World War, the defeated nations like Japan, Germany and Italy equally adopted new constitutions. With the breakup of the French and British colonial empires, India and Pakistan adopted new constitutions. This process continued until the 1960s where in many cases, new constitutions were modeled alongside those of the former colonial powers such as the constitutions of Ivory Coast which was modeled on that of the French Republic, whereas Ghana and Nigeria followed the British Westminster model. Consequent upon the fall of dictatorships in Southern Europe,⁹ Portugal, Greece and Spain adopted new democratic constitutions and after the fall of communism in 1989, a number of former communist colonies in both Eastern and Central Europe adopted new constitutions.¹⁰ This wave has continued up till the present time with the enactment of new constitutions in most countries and amendment of existing constitutions to cope with the exigencies of contemporary age.

that the imperfection of the original US Constitution generated so many amendment proposals and resulted in 10 such amendments within the first cycle of the business of Congress. As at today there are a total of 27 amendments to the US Constitution.

¹ For example, the Swiss Constitution did not enfranchise women until 1972

² Michelle B., Jill C., Yash G., Anthony R., Constitution Making and Reform: Options For the Process (Switzerland: Interpeace 2011) p. 13

³ Such as the making of the American constitution of 1787 and the French constitution of 1791

⁴ As in the case of Nigeria.

⁵ Nigeria inclusive.

⁶ See for example, the Constitution (Suspension and Modification) Decree No. 1. of 1984. Such situations normally portray a fusion of both legislative and executive powers in the military government. The recent Friday, August 1, 2008 military takeover in Mauritania by General Abdul Hazez is quiet illustrative. See also, *Military Governor of Ondo State and Anor. v. Adewunmi and Others (1998) 1 Mod. Q.L.R 49; Labiyi Anretiola (1992) 8 NWLR (Pt.23) p.139.*

⁷ Which took place in more than 50 countries involving some German and Italian States

⁸ See Agnes H. M., *The New Democratic Constitutions of Europe (1929)* pp 46-48. Cited in Jon E., *Forces and Mechanisms in the Constitution- Making Process. An Essay Presented at the 1995 Breinerd Currie Lecture at the Duke University School of Law on February 13th, 1995*

⁹ In the mid 1970s, specifically between 1974 and 1978

¹⁰ See generally Jon E., *supra* note 18.

III. ORIGIN AND HISTORICAL EVOLUTION OF THE NIGERIAN CONSTITUTION

The Colony of Lagos came into existence in 1861.¹ The British continued to extend their influence to the South and North of the Niger and established the southern and Northern Nigeria in 1900. In 1914, the two protectorates were amalgamated by the British colonial administration into one colony and Sir Fredrick Lugard was appointed the Governor General. He established the Nigerian Council². In 1921, Sir Hugh Clifford became the Governor and Commander in Chief of the Armed forces of Nigeria. He dismantled the Nigerian Council and promulgated the Clifford constitution in 1922³. In 1931, Sir Donald Cameron was appointed Governor General of Nigeria and later replaced by Sir Arthur Richards in 1945, who came out with the Richards Constitution of 1946.⁴ This constitution was in operation until 1948 when Sir John McPherson became Governor General and under his regime, the McPherson Constitution came into existence in 1951.⁵

In 1954 a new constitutional arrangement known as the Littleton Constitution came into existence, which was targeted at ushering Nigeria into independence in 1960. Under this Constitution, the Executive Council and the regional Houses of Assembly became increasingly run by Nigerians as the country drew nearer to independence. To a large extent, however, the administration was ultimately controlled by the Governor General, at the center, and the Governors in the regions.

Nigeria became an independent nation on 1st October 1960, through an Act enacted by the British Parliament in 1960, entitled 'An Act to make provision for, and in connection with, the attainment by Nigeria of Fully Responsible Status within the Commonwealth.' The 1960 Constitution otherwise called the independent constitution was established⁶ in Nigeria a parliamentary government with a central government and three regional governments.

In 1963, Nigeria became a republic. The 1960 independent constitution was revoked, thereby giving rise to the Republican constitution. The British monarch ceased to be head of government and Nigeria no longer regarded the Judicial Committee of the Privy Council as the highest court.

The first military coup in Nigeria was staged in 1966⁷. The 1963 Constitution of the Federal Republic of Nigeria was suspended as well as subordination of the other parts of the Constitution to the decrees and edicts of the military government⁸. Military rule continued until 30 September 1979.

On 1 October 1979 Nigeria ushered in the Second Republic, which was anchored on the 1979 Constitution of the Federal Republic of Nigeria⁹. In a bid to ensure popular participation in the making of the 1979 Constitution, the military government introduced an elaborate process of consultation and representation for its drafting. First, a Constitution Drafting Committee (CDC) was established to produce a draft of the constitution. The CDC consisted of two representatives of each of the states of the federation, a number of technocrats recommended by

¹ Following the conclusion of a Treaty of Cession between King Dosumu and his chiefs with the British crown

² With the aim of developing an intelligent opinion in relation to the administration of Nigeria

³ This Constitution for the first time introduced the Legislative Council for Nigeria.

⁴ Some of the reasons advanced for the introduction of this constitution inter alia are promotion of the unity of Nigeria and the need to secure the participation of Africans in their own affairs, and evolving a constitutional framework that embraces the whole Nigeria and re- establishing a legislative council that represents all sections of Nigeria.

⁵ This Constitution devolved more power to the regions, making them more autonomous with respect to certain defined areas. In addition, more Nigerians were elected into the regional Houses of Assembly than the appointed official members. Furthermore, the Federal House of Representatives became dominated by elected Nigerians. In spite of this, the colonial executive maintained a firm control over law-making.

⁶ Section 1 of the constitution stated that this constitution shall have the force of law throughout Nigeria and, subject to the provisions of Section 4 of this constitution, if any other law (including the constitution of a region) is inconsistent with this constitution, the constitution shall prevail and such other laws shall to the extent of its inconsistency, be void.

⁷ This was a bloody coup led by Major Chukwuemeka Kaduna Nzeogwu that killed Alh. Tafawa Balewa, Alh. Sir. Ahmadu Bello, Chief Samuel Ladoke Akintola and Chief Festus Okotie Eboh. See generally, Ademola J.A., Trends in Constitution Making in Nigeria (Ibadan; Demyaxs Books Ltd. 2003)

⁸ See the Constitution (Suspension and Modification) Decree No 1 1966. See also *Lakanni v Attorney General* (Western State) , 1971 1 UILR 201.

⁹ Part of the preamble to this constitution restated the resolve of Nigerians to stay together as one indivisible and indissoluble sovereign nations dedicated to the pursuit of African solidarity and world peace under the direction of God..

the military government, and representatives of civil society and other stakeholders. The draft constitution was then submitted to a Constituent Assembly, made up of 203 elected members, and twenty persons nominated by the military government. The Constituent Assembly received memoranda from the public and held public meetings and sittings designed to ensure popular participation. At the end of this process, the submitted draft was promulgated as the 1979 Constitution.

The main features of the 1979 Constitution were a presidential system of government (which was a dramatic departure from the parliamentary system of government under the 1963 Constitution); a bicameral national assembly; a chapter of non-justiciable fundamental objectives and directive principles of state policy; a bill of rights; a federal system of government; a local government system; and independent national institutions. This civilian was however terminated on 31st December, 1983 following a coup which brought in major General Muhammadu Buhari as the head of state¹

In 1984, four years after the commencement of the Second Republic, the Nigerian military staged a coup and took power on 1 January 1984 which led to the suspension of the operation of the 1979 Constitution.

Another coup d'état occurred in 1985. In order to assuage the agitation for civilian rule, the leadership of the military government announced a return to civilian rule in 1989. To achieve this, a process of constitutional review began in 1986 with the establishment of a Political Bureau, which engaged in extensive deliberations and consultations with Nigerians on the nature of an appropriate constitution. On the submission of its report, a Constitution Review Committee was established to conceive a constitution in line with the Political Bureau's report. A Constituent Assembly, made up of elected and nominated members, reviewed a draft constitution, with public input. At the end of this process a 1989 draft constitution was presented to the federal military government².

The 1989 Constitution was operational until 1993 when, in the wake of events following the annulment of an election conducted on 12 June 1993 under its framework, it was suspended by the military and an Interim National Government (ING) was established³.

In December 1993 another military coup took place, and the ING was sacked⁴. Another process of constitutional review began, culminating in the 1995 draft constitution, which was never promulgated.

Following the death of General Sani Abacha in 1998, a change of guard brought General Abdulsalami Abubakar to power, with a mandate to return the country to civilian rule. To achieve this objective a 15-member committee was established to produce a draft constitution. The draft constitution produced by that committee was promulgated by the federal military government as the 1999 Constitution.⁵ The 1999 Constitution was bequeathed by the military after ruling the country for twenty-eight of the thirty-nine years of Nigeria's post-colonial history. Such domination has been one of the defining features of Nigeria's constitutionalism. The constitution clearly bears the imprimatur of the military style of governance characterized with its unitary approach to federalism.

In making the 1999 constitution, there was no evidence of imputes from Nigerians, yet the preamble to the constitution copiously speaks to the people as providing for them a constitution for the purpose of promoting the good governance and welfare of all persons on the principles of freedom, equality and justice⁶ The constitution further declares Nigeria to be a state based on democracy and social justice⁷

¹ Among the reasons canvassed was widespread allegations of corruption and ineptitude on the part of political leaders.

² See the Federal Military Government (Supremacy and Enforcement of Powers) Decree 1984. ³ See the Constitution (Suspension and Modification) Decree No 17 of 1985

³ Chief Ernest Shonekan became the head of Nigerian Interim Government.

⁴ This Coup brought in General Sanni Abacha.

⁵ See Section 2 of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree No. 24, 1999

⁶ See the preamble to the 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁷ *Ibid* Section 14

It has been contended that the 1999 constitution is purely a military legacy characterized with fundamental flaws that have made it rather unitary than federal¹.

Right from 1922 to 1999, Nigeria has had nine constitutions. None of these constitutions were framed and adopted by a constitutional conference called for that purpose and ratified by the people, yet the phrase “We the people”² has continued to appear in the constitution³

The phrase “WE THE PEOPLE” is a derivation from the preamble to the United States Constitution which was framed up for that purpose in 1787 and subsequently ratified by each state separately before it went into operation.⁴ Delivering judgment in the famous case of *McCulloch v. Maryland*⁵ Chief Justice Marshall of the United States stated that the government proceeds directly from the people, is ordained and established in the name of the people – In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.. It is the government of all; and acts for all.

What Chief Justice Marshall is stressing here is that political theory had long accepted and affirmed the axiom that the people are the repository of sovereignty and that a constitution must emanate from the exercise of sovereignty of the people.

IV. CONSTITUTION MAKING PROCESS

Ironically, there exists no body of literature that deals with constitution -making process in a distinctive, positive and explanatory perspective⁶. The focus of countries world over has been on providing a constitution rather than the process by which it is made. It was initially the prerogative of the monarch to decide on and grant the constitution to the people⁷. In the early middle years of the twentieth century, democratic processes of constitution-making became the norm, with the principal responsibility assigned to a parliament or constituent assembly (though many constitutions were still made without much public participation). Since the last quarter of that century, the emphasis has shifted to the active and intensive participation of the people—whether as individuals, social organizations, or communities—in the process⁸. This shift has been facilitated considerably by the broadening of the concept of people’s democratic rights, including public participation, as reflected in the International Covenant on Civil and Political Rights, and particularly the right of self-determination.

Today, the range of participants in the constitution-making process has increased greatly, as have the issues that constitutions need to address. Consequently, considerable attention is paid to the design of the constitution-making process and the fundamental principles that must determine the substance of a constitution. The design of the process is often a matter of domestic negotiations.⁹

The way and process a constitution is made plays a crucial role in strengthening the nation’s political systems as well as securing a durable democracy. Despite this, little attention has been paid to how to design and implement

¹ For example, the exclusive legislative list is deliberately skewed in favour of the Federal Government as it contained 68 items while the concurrent list only contains 12 items, meaning that nothing is really left for the states.

² Which was invented by the United States of America in 1787

³ Beginning with the Nigerian Republican Constitution of 1963, 1979 and 1999 constitutions

⁴ The preamble to the American Constitution states “ We the people of the United States, in Order to form a more perfect union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general welfare, and secure the Blessings of Liberty to ourselves and our Prosperity, do ordain, and establish this constitution for the United States of America

⁵ 4 Wheat 17 US. 316 (1819)

⁶ Robert K. M., Forces and Mechanisms in the Constitution -Making Process. Essay presented as the 1995 Brainerd Currie Lecture at the Duke University School of Law on February 13, 1995. P.1. Recently, however, a publication of Interpeace has attempted to provide guidance about the range of tasks and institutions involved in the process of making a constitution. See generally Michelle B., Jill C., Yash G., Anthony R., *supra* note 16. This work shall attempt to provide myriad of tasks that needs to be carried out in making a new constitution

⁷ We find traces of this belief in several constitutions made as late as the twentieth century—for example, in Ethiopia, Jordan, Kuwait, Nepal, and Saudi Arabia.) Many constitutions were imposed on a vanquished or colonized people (for example, in Western imperial systems—the MacArthur constitution in Japan after World War II, and to a lesser extent in postwar Germany and in colonies at independence.

⁸ As in processes in such diverse countries as Bolivia, Kenya, Papua New Guinea, Thailand, and Uganda.

⁹ Sometimes it is determined or influenced by the international community (especially in situations of intense internal conflict, as in Afghanistan, Cambodia, Kenya, Kosovo, Namibia, and Zimbabwe).

a participatory and inclusive constitution –Making process that supports enduring democracy. Making a constitution in a democratic, participatory transparent, inclusive and representative way involves a lot of tasks. Accomplishing these tasks is critical to sustenance of democracy, especially in this twenty first century.

Research has shown that there is no unified approach to constitution making, and the tasks involved does not follow neatly prescribed procedures or stages. Ideas about constitution making, procedures and content of constitutions that originate in one place are often copied or modified in other places. No matter the approach used, the following tasks have of necessity been identified to be performed by constitution- makers;¹

- a. think through and research the issues facing the country;
- b. consider the choices of constitutional arrangements that will best respond to the issues;
- c. educate and consult the people about the issues and the choices;
- d. negotiate among major political groups and those with powers of decision-making about the constitutional choices;
- e. administer and manage the constitution-making process;
- f. draft, debate, and adopt a new constitutional document; and
- g. make arrangements for implementation of the new constitution.

V. SOME EMERGING GUIDING PRINCIPLES IN CONSTITUTION MAKING PROCESS

As noted earlier, there are dearth of practical guidance for national constitutional- makers and the international community on how to design and implement a constitution making process that engenders democracy. To This calls for formulation of guiding principles in the process of making today's constitution.

It has been contended that the broad principles of “participatory” constitution-making may be summarized as public participation, inclusiveness (including gender equity) representation, and transparency².

a. Public participation

There is now an established trend to build into the process broad participatory mechanisms in order to improve the chances of the new constitution enjoying a high degree of popular legitimacy. The forms of public participation now go beyond voting for constitutional representatives or in a referendum. Instead, they include civic education and media campaigns, public consultation (both on how the process should be undertaken and on the substance of the constitution), national dialogue, and other creative means.

b. Inclusiveness (including gender equity) and representation

This means attempting to draw in all key stakeholders to the constitutional negotiations. Special efforts should be made to reach out to marginalized segments of society, such as the disabled, women, youth, indigenous populations, and the poor. Some recent constitutional processes have deliberately undertaken special measures to ensure that women are represented by at least 25 percent in constitution-making bodies, and that they participate more fully during each stage of the process³.

c. Transparency

A transparent process enables the public, the media and civil society to participate by keeping them informed about how the process will be conducted, the modes of appointment and election of their representatives, the adoption process, their role in the process, and providing feedback about the results of public consultations. Transparency also involves providing for media access at appropriate times.

It has been contended that designing a constitution – making process on the basis of the above elucidated principles has a range of beneficial effects such as;

¹ See exhaustively- Michelle B., Jill C., Yash G., Anthony R., Constitution Making and Reform: Options For the Process, supra note 16 at p 5

² Ibid at pp 9-10

³ Inclusive, participatory and transparent processes usually take a considerable amount of time to complete. In the constitution-making processes in Uganda [1995], South Africa [1996], and Bougainville–Papua New Guinea [2004], national actors took years to deliberate on their new constitutional order because of the special measures they adopted for greater public participation, transparency, and inclusion at each stage of the process. They did so in processes that involved little international guidance (though in Uganda and Bougainville there was international support in terms of funding, and a limited provision of advisors).

- a. providing a framework within which divided groups can work toward consensus on proposing a governance framework promoting a durable peace;
- b. influencing the contents of the constitution by reflecting the concerns and rights of minorities;
- c. informing constitution-makers about the aspirations of the people;
- d. creating political space for the emergence of new actors and strengthening civil society actors;
- e. building trust between communities and leaders through dialogue;
- f. educating the public about constitutionalism;
- g. improving public ownership of the resulting constitution;
- h. laying foundations for democratic and participatory government and a culture that respects the rule of law;
- i. enhancing public willingness to defend the constitution and achieve its implementation; and
- j. Strengthening and consolidating existing democratic institutions.

VI. TASKS AND RESPONSIBILITIES IN CONSTITUTION MAKING

Constitution making has today become complex involving variety of tasks to be accomplished at various stages and the proliferation of actors and institutions. This shall be succinctly discussed under the following;

a. Drafting the constitution

A distinction must be made between the process by which decisions are made on the content of the constitution and the process of writing it. For the first, there are several options. Traditionally the draft constitution was prepared by the legislature or the constituent assembly, usually through a committee. The assembly also debated and adopted the text of the draft.

Today, however, many drafts have been prepared by a body other than the one that debates and approves the constitution. Such a body is generally called a constituent Assembly¹; usually supposed to consist of experts.² For the Assembly to prepare the draft, it will normally be bound by certain predetermined goals and key elements of its procedure.³ How expert opinion is to be balanced by views that are more political or “populist” is decided in part by this kind of division of responsibilities. The advantage of this is that this part of the process—the vital decisions on the draft constitution—can to some extent be distanced from political parties, tap expert knowledge, promote public participation, and formulate proposals oriented toward national rather than sectarian interests, and can consequently provide a fair basis for negotiations, facilitating a compromise.

The actual drafting (writing of the text) is normally, and should be, left to legal drafters, who will decide on the structure (architecture) of the constitution and the language of the text. The temptation to allow assembly members to draft the text should be resisted. The fixed and relatively well understood meaning of legal terms serves well the need for precision and consistency. Drafting is also not a suitable task for a large body of people. It is important to choose drafters who have experience drawing up constitutional instruments, which are in many respects different from ordinary legislation. As far as possible, simple language should be used instead of vague ones. Drafters should be given the freedom to use their professional judgment on the architecture and text of the constitution, and should respect the policy decisions made by the assembly.

b. Debating the draft constitution

This means allowing time for public scrutiny and comments on the draft constitution before it is ratified by the assembly⁴. The advantage of this practice is that it affords the public the opportunity to react to a concrete and comprehensive set of proposals, and assess with some confidence its significance for them and the state. If there has been opportunity for prior public consultation, they can now judge to what extent their views have been incorporated. The period of public consultation can also be seen as a chance for “peer review,” an examination of the document’s strengths and weaknesses, and the opportunity to correct policy and drafting errors. It is therefore important to ensure that the public is correctly informed about the contents of the draft and allowed to make an assessment of it. Here civil society and academics can play a vital part.

¹ As was the case of United States Constitution

² Preferably in law and other fields like in economics, political science, and public administration.

³ Including consultation with the people.

⁴ That is, the Legislature or any other body responsible for such ratification.

c. Enacting the constitution

The first decision to be made is about which body will have the primary responsibility for approving or rejecting the draft constitution. Here the choice, as noted above, is frequently between the legislature and the constituent assembly. The second decision is whether there should be more than one stage of approval. The most common instance of more than one stage is when there is a referendum. It is important that there should be ample opportunity to consider the suitability of the draft, but too many approvals place hurdles in the way of enactment, give further opportunities to the spoilers to regroup, and perhaps need to be avoided.

d. Implementing the constitution

Constitution-making process should pay special attention to the mechanism for a constitution's implementation and enforcement. This is seldom done as part of the constitution-making process. In some recent processes this matter has been addressed by a variety of measures. One of such is by annexing a schedule to the constitution dealing with transitional matters; another containing a list of legislative and other steps necessary for implementation and deadlines for action; an independent commission with responsibility for supervision and implementation; a constitutional provision that principles should be implemented by executive authorities so far as possible, even if no legislation has been passed; a provision that courts should be able to give orders within the same framework; the empowering of civil society to participate in the implementation and mobilization of the constitution; and making the implementation of certain principles a condition, for example, for the assumption of specified powers by the executive or the legislature¹.

VII. NEXUS BETWEEN A PEOPLE ORIENTED CONSTITUTION AND SUSTENANCE OF DEMOCRACY IN NIGERIA

As noted earlier in this paper, Nigeria has only had nine years of democratic experience from 1st October, 1960 when it got her independence and May 29th 1999 which ushered in the current stable democratic dispensation. The military had ruled the country from 1966 to 1979 and 1983 to 1999, a period of about 29 years. Stable and sustainable democracy is just fourteen years old in Nigeria, bringing the total to twenty three years of democratic experience. The country has had a tumultuous constitutional history as many of them were bequeathed by unconstitutional regimes. The 1999 constitution of the Federal Republic of Nigeria which is the operative constitution is a product of the military government and as such, has received incessant attacks and criticisms which led to its amendment in 2011. At present, many amendments are being proposed. The country is equally battling with internal security challenges of the Boko Haram insurgents, amongst widespread corruption, mal administration, electoral malpractices, massive unemployment and abject poverty. It has been posited that there cannot be any development anywhere without peace. Peace can only be attained when law and order is maintained². Therefore, the right to life, right to personal liberty, right to freedom of expression, thought, conscience and religion, right to lawful and peaceful assembly and association which are vital to human existence and democracy of Nigeria cannot be compromised. No nation can thrive and progress without peace. It can therefore be conveniently said that it is only through a jealous preservation and advancement of the Rule of Law that Nigeria can succeed in its democratic and peace building efforts. How can a country progress and develop when, its citizens live in fear and do not have all their fundamental rights secured? Nigeria cannot therefore pretend to bid for developments without negotiating for peace which cannot be bought save with the price of the Rule of Law and sustenance of democracy.

VII. CONCLUDING REMARKS

This work has addressed the nexus between a people's oriented constitution and sustenance of democracy in Nigeria. The constitution plays a vital role in sustaining democracy if the operators strictly adhere to constitutionalism. Creating a constitution that entrenches durable democracy is a highly technical and delicate task. The 1999 Constitution of The Federal Republic of Nigeria has been greatly criticized on the ground that the views of the people were not incorporated. The constitution has been greatly criticized as suitable for a unitary rather than a federal system which it claims to be.³ Apart from the fact that the constitution is the product of the military, it is fraught with so many peculiar interests. In order to sustain Nigeria's nascent democracy, there is need for an enactment of a people's oriented constitution.

¹ See generally Michelle B., Jill C., Yash G., Anthony R *supra* note 56 at pp.28-31

² Even at the international level, it is apposite that failure of some regimes to maintain law and order threatens the world peace.

³ For example, the Exclusive legislative list under Part I of the second Schedule to the constitution contains 68 items while the concurrent list under Part II only contains 30 items