

# CONSTITUTIONAL OBSERVANCE FOR SUSTAINABLE DEVELOPMENT; HOW FAR AFRICA? : A CASE STUDY OF NIGERIA

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**Abstract:** It is trite to say that Africa has been battling with the problem of underdevelopment for decades. African countries are often listed in the “Third World Countries”, “Less Developed Countries”, “Low Income Countries” and several other ignoble lists reflecting and depicting underdevelopment. The inability of African countries to achieve sustainable development despite various attempts by successive governments has been ascribed to many factors including bad leadership, corruption and insecurity. However, the non adherence of African governments to the dictates of their constitutions has not really enjoyed the needed academic focus and attention. The various definitions of constitution see it as the body of rules and regulations guiding the affairs of a state. A constitution can either be written or unwritten, rigid or flexible, federal or unitary in nature. A written constitution codifies all the rules and regulations of a state in a single document while an unwritten constitution has more than one document containing the guiding principles of the state. A rigid constitution is difficult to amend while a flexible constitution is easy to amend. A federal constitution shares political power between the central government and other component units of the state while a unitary constitution concentrates power and authority in the central government. Whether written, unwritten, rigid, flexible, federal or unitary in nature, a constitution should be the roadmap to and a sine qua non for national and sustainable development. Thus, if a constitution is well prepared, development should be assured. However, where there is a failure to achieve the desired development, then the level of the observance of the constitution should be called to question. This paper therefore seeks to beam the searchlight of research on the importance of constitutional observance for sustainable development in the African continent. Using Nigeria as a case study, it assesses the level of constitutional observance in Nigeria and its implication for development. It observes that bad leadership, corruption, insecurity and other societal ills characterizing Nigeria and other African nations are consequential to the culture of inattention to and non observance of constitutional provisions. It concludes that constitutions are central to sustainable development and that no matter how well planned a constitution is, it will remain in the realm of the abstract if it is not well interpreted and executed. It thus advocates for a culture of constitutional observance in the African continent.

**Keywords:** constitution, development, government, observance, sustainable development.

## INTRODUCTION

Africa in general and Nigeria in particular have been enmeshed in an unending search for sustainable development. Many lofty programs designed to ensure sustainable development at both the continental and national levels including the New Partnership for Africa’s Development (NEPAD), the Operation Feed the Nation, the Vision 2010, the Vision 20: 2020, et cetera, have all failed to achieve the desired results. Sustainable development has become a mirage that seems real at a long distance but gradually disappears as the distance reduces.

Indeed Africa is plagued with ills such as bad leadership, corruption and insecurity. Despite her rich mineral and human resources, she is arguably the most underdeveloped continent in the world. Nigeria presents a very good picture of a typical African country. Since her independence in 1960, her civilian leaders have always played the divisive politics of ethnicity and they had often been described by the military juntas who sacked them

from office as being grossly inept and corrupt. The military regimes did not fare better than the civilian administrations they displaced as their leaders were often egomaniac, autocratic and kleptomaniac (Akinmeji, 2011). Johnson-Odusanya (2013) avers that Nigerian leaders are more concerned with using their offices to achieve private and selfish goals than achieving national objectives. Corruption has become an institution of sorts in Nigeria and in its 2013 study of institutionalized corruption, Transparency International ranked the country 144<sup>th</sup> most corrupt country among 177 countries. Insecurity is also a major challenge to sustainable development in Nigeria. Adenuga (2014) notes that over 25,000 Nigerians living in the northern part of the country have lost their lives in recent times due to the activities of the Boko Haram group. Nigerian governments have also abdicated their major responsibility of governance and effective service delivery. (Adeoluwa, 2013).

While it is true that these ills make sustainable development unachievable, it is the standpoint of this study that they can only manifest unhindered when the laws of the society are rendered ineffective and that the only panacea to these ills is constitutional observance. When the provisions of the constitutions are strictly adhered to, the leadership will become responsible and responsive to the wishes of the people, corruption will be given zero tolerance and security threats will fizzle out.

### **Conceptual Framework**

#### **Constitutions**

Aristotle quoted in Ayanleye ( 2013 ) describes a constitution to be the way of life a state has chosen for itself to attain desired goals. Malemi (2006) sees it as an instrument of government made by the people, spelling out the structure of a country, regulating the powers and functions of government, the rights and duties of the citizens and providing remedies for unconstitutional acts. The Black's Law Dictionary defines it as "the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers". Whereas in the words of Sokefun (2011), the constitution is an instrument of government expressing a set of political principles about the nation's ideals, objectives and legitimate processes and spells out the aims and objectives of the people, the national government, the relationship between the governments, and defines and preserves personal liberties and makes provisions to enable government to perpetuate itself. A constitution can thus be simply referred to as the body of rules and regulations which is binding on the government and citizens of a state and which is acknowledged to be its roadmap to the attainment of national development. This definition throws up two major importance and functions of constitutions. Firstly, without a body of defined laws, the society will become anarchical, might will become right and there will be a descent into the Hobbessian state of nature where life is short, nasty, brutish and poor. However, where there are well defined rules and regulations guiding the relations between individuals, groups and the institutions of a state, law and order, which are prerequisites for sustainable development, will prevail. To be effective however, such rules and regulations must be binding on all and sundry and there must be punishments for disobedience and mechanisms for ensuring compliance and for punishing offenders. Secondly, without constitutions, it becomes almost impossible for a society to have a determined course of action for achieving development in all of its facets. A constitution however serves as a blueprint or manual for sustainable development as it states the form and system of government and the powers and functions of the institutions of the state needed for achieving the desired ends.

Constitutions can either be written or unwritten. A written constitution is a constitution in which all the rules and regulations in the state are codified into a single document. The 1789 Constitution of the United States of America is regarded to be the classic of written constitutions. An unwritten constitution is a constitution in which the laws regulating the affairs of the state are in more than one document. A classical example is the British Constitution which encompasses documents including the Magna Carta Act of 1215, petition of right 1628, the Bill of Rights of 1688, the Act of Settlement of 1700, Act of Union with Scotland 1706, the Parliament Acts of 1911 and 1949, the Supreme Court Judicature Act 1925, the Status of Westminster 1931, the Ministers of the Crown Act 1937, the Crown Proceedings Act 1947, the British Nationality Acts 1948 and 1981, the Indian Independence Act 1947, the laying of Document before Parliament (inter-relation) Act 1948, the Nigerian Independence Act ,1960, the Royal Assent Act 1967, etc. ( Oluyede:2001). Of a rule, most written constitutions are rigid, that is, difficult to amend while unwritten constitutions are more often than not flexible in nature, that is, can be easily amended. A main merit of written constitutions is their easy availability and reference. Also, their rigid nature makes it difficult for unscrupulous leaders to amend to suit their every whim and caprices. On the flip side however, its rigid nature may

discourage needed reforms. Unwritten constitutions, because of their flexible nature, hastens quick socio-economic and political reforms but they can become unwilling tools in the hands of dictators who can embark on a continuous journey of amendments in order to perpetuate themselves in office. The point however is that no type or form of constitution is better than the others as they are all designed to address the peculiar needs of different societies as heterogeneous societies are more prone to choose written constitutions while homogeneous societies prefer unwritten constitutions.

Basically, a constitution provides answers to the questions of why, how, and what. More often than not, constitutions are prefaced with preambles giving reasons for the enactment of such constitutions, the processes involved in their enactment and their aspirations. (Oyewo and Yakubu; 1998). For example, the Charter of the United Nations has an introductory note and a preamble which inform readers that the United Nations was established to save the world from a re-occurrence of the colossal loss of lives and property that attended the first and second world wars. It seeks to promote international peace and security through the development of friendly relations and cooperation among nations. The Charter also gives a glimpse into the various processes that led to its enactment and the processes for its amendments. The Constitutive Act of the African Union also has a preface with the aspiration of ensuring the speedy socio-economic and political development of the continent through the promotion of peace, security, stability and good governance. In its own preamble, the 1999 Constitution of the Federal Republic of Nigeria has the aspiration to promote unity, good government and the welfare of its citizens.

### **Sustainable Development**

Adenuga (2014) quoting Gwandu (2013) describes sustainability as the preservation and rehabilitation of resources that have been treated carelessly in the past in order to make them available for future generations. He also defines development to be the increase in the well being of the people of a state. The European Council on Current Sustainable Development Strategy (2006) sees sustainable development as the quest to ensure a better quality of life for everyone, now and for generations to come. Johnson-Odusanya (2013) avers that sustainable development includes developing the economy, ensuring the welfare of the people and protecting the environment for the well being of the people.

### **Government**

The Black's Law Dictionary sees government to be the machinery by which the sovereign power in a state expresses its will and exercises its functions. It also sees it as the framework of political institutions, departments, and offices, by means of which the executive, judicial, legislative and administrative business of the state is carried out. The Business Dictionary also describes it as a group of people that governs a community or unit through the setting and administration of public policy and exercising executive, political and sovereign power through customs, institutions and laws within a state. The Law Dictionary explicitly describes it as "the regulation, restraint, supervision or control which is exercised upon the individual members of an organized jural society by those invested with the supreme political authority, for the good and welfare of the body politic".

The various definitions of constitutions considered show that it is binding, not only on the governed, but also on the government. Even in parliamentary systems of government where the notion of parliamentary supremacy holds, parliamentarians are not necessarily above the law but have the consent of the people and the legal right to amend the constitution as they deem it fit. Their conducts are even regulated by the constitution itself and Britain, which has been earlier described as the classical example of a nation with an unwritten constitution and is also seen as a very good model of parliamentarianism, is arguably one of the foremost law abiding nations in the world. Thus, wherever a constitution exists, not only in theory but also in practice, it is the supreme power. In essence, governments are tools of achieving constitutional goals. The 1999 constitution of the Federal Republic of Nigeria succinctly asserts its sovereignty by stating in Section 1 (1) that "this constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.

Basically, governments have three main arms which includes the legislature, the executive, and the judiciary. The legislature is saddled with the duty of making and amending laws, the executive implements and enforces the laws and also has the constitutional duty of overseeing the daily administration of government, and the judiciary interprets the laws and uses them for judicial arbitration. According to Sagay (2000) the doctrine of separation of powers advocates the independent exercise of these three governmental or constitutional functions, by different bodies of persons, without interference or control or domination, by one of the other or others.

## **Theoretical Foundation Constitutionalism**

The Black's Laws Dictionary defined constitutionalism as "a complex of ideas, attitudes, and patterns of behavior elaborating the principle that the authority of government derives from and is limited by a body of fundamental laws". Ladan (2006) describes it as a government that is limited by the law, a state in which the constitution is supreme and its provisions binding on every authority established and exercising power under the constitution including the legislature, judiciary and executive. McIwain (1958) simply refers to it as the administration of public affairs with strict conformity to the principles and objects of the constitution. Kay (1998) also aligns his views with this definition by succinctly describing constitutionalism as the power of a constitution to guide and direct governments. The main thread running through these definitions is that the constitution is sovereign and all institutions of government are to be subordinated to its dictates. Simply put, constitutionalism connotes the presence of the rule of law which guarantees good governance.

Constitutionalism is predicated on the social contract theory which establishes a contract between the people and governments. The people consent to the existence of governments and follow their lead on the understanding that the governments will be committed to the good of the society and will guarantee their fundamental human rights. The Stanford Encyclopedia of Philosophy (2012) associates constitutionalism with the social contract theory of John Locke which places constitutional limitations on the powers of government and ties its very existence, authority and legitimacy to the observation of these limitations. The government thus has the duty to follow the dictates of the constitution to the letter.

The Encyclopedia Britannica however argues that the mere existence of a constitution in a polity does not guarantee constitutionalism. True constitutionalism, according to the encyclopedia, entails stability of fundamental procedures which must not be changed arbitrarily, regular accountability of public officials to the people, the conduct of public officials as representatives of the people, division of power among several organs of the government, and the openness of the government and the disclosure of its affairs to the people.

### **A Synopsis of the Constitutions in the First and Second Nigerian Republics The Independence Constitution of 1960 and the Republican Constitution of 1963**

The Independence Constitution which came into effect on the 1<sup>st</sup> of October, 1960 conferred an independence status on Nigeria and made her a full-fledged member of the committee of nations. The constitution was patterned after the British Westminster (Parliamentary) System and the Queen of England was still retained as the ceremonial Head of State and she was being represented by the Governor-General. Executive powers were transferred from the Governor-General at the federal level and the Governors at the regions to the Prime Minister and Premiers respectively. However, unlike the Westminster System, the constitution was written and federal in nature. The constitution was amended in 1963 to address its apparent weaknesses. Despite its name, the 1960 constitution only gave partial independence as the Queen was still the Head of State. The 1963 constitution removed that anomaly by making a Nigerian indirectly elected in the Parliament as President and ceremonial Head of State. Though the 1960 constitution made provisions for a Supreme Court, the court was supreme only in name and not in power as appeals could be made against its judgments to the British Privy Council. The 1963 constitution however made the Supreme Court truly supreme by cancelling appeals against its judgments. The creation of a new region called the Mid-Western region which increased the number of regions from three to four. The republic was however brought to an abrupt end by a military coup on January 16, 1966 on the allegations that the civilian leaders were more interested in pursuing narrow and divisive sectional/ethnic interests than in ensuring the unity and development of the Nigerian state (Ikusaanu : 2005). Thus, it was not the failure of the constitution that led to the early demise of the first republic but the immaturity of its operators as witnessed by the intense ethnicity and unhealthy rivalry that characterized the politics of the republic.

For thirteen years, the military held sway in Nigerian politics and because military rule rejects constitutions and constitutionalism, Nigeria lost its legal direction for a sustained development. Unfortunately, this was the era of the oil boom when the discovery of petroleum in commercial quantities and exportation brought immense wealth into the coffers of the state but the absence of constitutionalism, which is the foundation of an accountable and responsible government, made this wealth to be frittered away. By its very nature, military rule impacts negatively on socio-economic and political development and as Adenuga (2009) quoting Huntington (1957) maintains that politics and administration are beyond the scope of military competence.

### **The Republican Constitution of 1979**

In 1979, there was a transition from military rule to a democratic dispensation. In an apparent move to avoid the pitfalls of the first republic, the constitution, which was promulgated into effect on 1<sup>st</sup> October, 1979, was a radical departure from the 1960 and 1963 constitutions as it was modeled after the American Presidential System in which the Executive President is both the Head of State and Head of Government. It was hoped that the system which had kept the United States of America, a heterogeneous society just like the Nigerian state, going for over two centuries and which had leveraged her into one of the most developed states in the international will also help to foster unity and development but this was not to be as the republic was sacked by a military coup in 1983. Despite the change in the type of constitution, the second republic did not last as long as its predecessor because Nigerian civilian leaders had apparently not learnt any lessons from the demise of the first republic. The justification for the seizure of political power by the military was also ascribed to the ineptness, corruption and the politics of ethnicity that characterized the second republic (Agwunobi, 1992; Martins-Kuye, 1998). Indeed, if the principle of constitutionalism as it obtains in the United States of America had been observed, the military would have had no reasonable justification for intervening in Nigerian politics.

### **The Nigerian Fourth Republic and the Observance of the 1999 constitution, How Far?**

For about seventeen years, Nigerians were once again subjected to the destructive rule of military dictatorship. The Babangida and Abacha regimes took the whole country through very expensive and wild goose transition changes which were largely packaged to transmute the military rulers into civilian leaders. Their aspirations were however cut short by the will of God and the sheer opposition of the civilian populace. Of note is the fact that there was an abortive third republic under the Babangida regime which was truncated when Babangida annulled the presidential election of 1993 which has been described as the fairest and freest election in Nigerian political history (Adenuga : 2009). Gen. Abubakar Abuldsalam, who took over the reins of power with the demise of Abacha in 1998 commenced a transition programme which successfully gave birth to the fourth republic with the promulgation of the 1999 constitution into effect on the 29<sup>th</sup> of May, 1999. The 1999 constitution is largely a revised edition of the 1979 constitution and there is the need to consider if its provisions are being adhered to so as not to encounter the tragedies of the first and second republics.

Section 10 of the constitution expressly states that the Government of the Federation or of a State shall not adopt any religion as state religion. However, the adoption of the sharia law which is predicated on the Islamic religion by some states in northern part of the country is a contravention of this rule.

Section 14 (2) b gives the main duty of government to be the security and welfare of the people. The Nigerian state is thus supposed to be a welfare state however in actual reality, welfarism has not been the hallmark of successive Nigerian governments (Johnson-Odusanya; 2013). Nigerian governments are insensitive to the welfare needs of the masses and are more concerned with gaining influence and affluence (Jega, 2007; Derin, 2007). Nigeria has also become a very insecure place to live in. In the fourth republic alone, over 25, 000 deaths have been traced to the handiwork of the Boko Haram group alone and for years, the Nigerian government has not shown enough resolve in combating the Boko Haram menace. Recently, the group abducted over 200 girls from a secondary school in Chibok, Borno state and over a month after, the government is yet to locate and liberate them from the hands of these vicious insurgents.

Section 14 (2) c ensures the participation of the people in the composition and affairs of the government. According to Ayanleye (2013 ), the most visible and main way through which the people participate in the composition and affairs of government is through elections. She avers that elections in African states are mere caricatures as elections are often rigged to favor the preferred candidates of an oligarchy. Thus, the wishes of the electorate are often neglected and elections, which are supposed to be instruments of ensuring the orderly and peaceful process leadership succession and change, have often become tools of entrenching dictatorship and unpopular governments and violence and instability have become major characteristics of the electoral process in Africa. Nigeria is not an exception in this regard as Adenuga & Aborisade (2011) note that most of the elections, especially presidential elections, that have held in the fourth republic have been characterized by improprieties especially in the forms of rigging and violence.

Section 15 tasks the government to (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation; and (b) secure full residence rights for every citizen in all parts of the federation. Recently, the Lagos State government 'deported' some indigenes of Anambra state back to their home state. Though the Lagos state government had explained the reasons for her action and had even apologized to all

concerned, the debacle is a pointer to the fact that constitutional provisions are always contravened by governments in Nigeria.

In Section 15 (5) the constitution gives a zero tolerance for corruption and it saddles the state with the responsibility of abolishing all corrupt practices and abuse of power. Fifteen years after this constitution was promulgated, corruption is still as endemic as ever and all the anti- corruption agencies are often perceived to be agents of persecuting the perceived opponents of the government while the corrupt government officials and their cronies are treated like sacred cows and even if prosecuted, they usually end up paying a pittance out of their loot into the treasury in a plea bargaining process (Johnson-Odusanya: 2013). Worthy of note is the case of James Ibori, a former Governor of Delta State, who was acquitted of corruption charges by a Nigerian Law Court but who was later convicted of corruption by a British Court.

In order to promote national prosperity and ensure sustainable development, Section 16 (2) c asks the government to operate the economic system in such a way as not to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group. Section 16 (2) d also mandates the state to ensure the provision of suitable and adequate shelter and food, reasonable national minimum living wage, old age care and pensions, and that unemployment, sick benefits and welfare of the disabled are provided for all citizens. These provisions are geared towards making Nigeria a welfare state but as noted earlier, welfarism has not been a forte of successive Nigerian governments. Oluyomi (2009) reports that food supply has become very little and instable and that people's access to it has also become inadequate.

Section 17 (d) also tasks the state to provide adequate medical and health facilities for all persons. It is however common knowledge that the medical and health facilities in Nigeria are grossly inadequate. The political class and rich patronize the medical and health centers in the developed countries of Europe and America and lives are daily lost to health conditions that could have been resolved if the facilities are readily available and accessible. Section 18 (1) directs government to ensure that there are equal and adequate educational opportunities at all levels. It has been reported that out of the 62 million children who are currently out of school all over the globe, about 10 million are Nigerians (Onuba; 2014). Adenuga (2012) avers that many Nigerians lack access to quality education as many state owned educational institutions lack the manpower and infrastructure, because of low budgets to the education sector, to provide good education. The fees of the private institutions which provide quality education are however too expensive for the average Nigerian.

Section 20 also tasks the government to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria. Funmilayo (2012) reports that Nigeria's environment, including the land, water, vegetation, wildlife and atmosphere, still continues to suffer degradation. He identified the environmental challenges in Nigeria to include drought, pollution, deforestation, desertification, bush burning, erosion and the indiscriminate dumping of toxic and hazardous wastes and he listed the effects on sustainable development to include reduction in agricultural production, loss of soil fertility, loss of biodiversity, climatic change, spread of diseases, reduction in the quality of life of people, untimely death and scarcity of resources, most especially, the non-renewable ones.

## **Conclusion**

*Law may well be an aid to good governance but law is by no means the most potent factor in establishing peace and harmony. Government is carried out by men not laws and cannot be effective in themselves...the virtuous man is in himself the source of law and so if a virtuous rules, so will order however few the laws there are. If he is not virtuous, he is incapable of applying laws however adequate they may be nor will he be able to deal with continually changing situations and the result will be chaos. The prosperity of the state therefore depends on the quality and conduct of rulers.*

-Chu Chong, former Chief Judge of the Chinese Supreme Court

This study affirms that constitutions are crucial for attaining sustainable development but that African states have not been able to achieve the desired development because their governments have not made the observance of the constitutions of their states a culture. With the Nigerian fourth republic as a case study, it concludes that African states will continue to be mired in the murky waters of underdevelopment until its leaders are ready to abide by the dictates of the constitutions.

## Recommendations

African nations and the Nigerian state in particular, should develop a tradition of strict adherence to and observance of constitutional provisions. The norm, hitherto, is to see the laws as being only applicable to the governed while the ruling class either neglects them or manipulate them to get undue advantages and this has created a crisis of confidence, not only in the governments, but also in the constitutions. Thus, mechanisms for punishing offenders must be empowered and no cow should be considered sacred and the constitutions must truly regain their sovereignty. When the laws become applicable to all the classes of people in the state, peace and security, which are sine qua non for sustainable development, will become guaranteed.

The judiciary, which is commonly referred to as the last hope of the common man also needs to be strengthened. The judiciary is the custodian of the constitution and its interpreter. These duties must be the exclusive preserve of the judiciary and must not be usurped by or delegated to any other organ or institution of government. The judiciary must not be tied to the apron strings of any other organ of government and its interpretations and judicial decisions must have binding force. The onus is also on the members of the judiciary to conduct themselves in ways that will breed the respect of all and sundry.

The legislature also has the duty to make laws that are unambiguous and easy to understand. To make constitutions more effective and binding on the citizenry, there must be wide and adequate consultations before any law is made or amended. More importantly, citizens need to be constantly informed and educated about constitutional provisions. Finally, the fact that although the constitution is the roadmap to sustainable development, it will remain in the world of the abstract if its provisions are not properly observed, should always be in the consciousness of the people.

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