

Constitutional Design in Nigeria: Lessons for Recessed Democracies

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Abstract. Without argument and debate, democracy is critical to both human advancement and national development. Everything about human and national progress, it thus appear, revolves around the context of democratic experimentation. However, there exists a disconnection in the theory and practice of democracy especially in the Third World. The gap no doubt creates problems in the intellectual analysis of what type of democracy that is capable of nurturing and sustaining progress and development. There were, in the political and constitutional history of Nigeria, three attempts conceived and implemented by the military to write for the country a constitution. What, it is apt to ask, has the Nigerian experience provided to the world? Again, what in clear, specific terms can other countries of the world where democracy has recessed benefit from the Nigerian experience and lesson? The paper seeks to accurately address the many critical, epistemological issues in constitution drafting especially as extremely fragile political systems characterized as it were by heterogeneity founded on primordial considerations and attachments now attempt to reinvigorate their democracies. It seeks further the interrogation of the relationship between law and development as global societies review their foundations and mechanically formulate and implement decisions that are expected to consolidate their efforts at entrenching and institutionalising constitutional democracy within the capitalist framework of social organization and political liberalism of the western influence so as not to allow for democratic recession again. The methodology is qualitative with data collection and analysis scattered in secondary sources. The paper concludes on the note that writing a new constitution involves that certain elements and requirements should be fulfilled for it to bring about the consolidation of democracy and its consequent sustenance.

Keywords: Constitution, Constitution Design, Democracy, Democratic Recession.

1. Introduction

The paper starts from the angle and perspective of raising critical questions that are considered important in the appreciation of the contained argument and thesis. These questions are further relevant in the formulation of the problem of study and investigation. Consequently, what is constitution design? What is the character and pattern of its contemporary discourse? What are the contained problems and issues of epistemology? Relating constitution design to democratic recession would particularly require that further specific questions be asked. What is democratic recession? How can it be explained? What is the link between democratic recession and the design of constitution? What is the relationship in both theory and practice between the constitution and democracy? How does the relationship between democracy and development help in the appreciation of the relationship between democracy and constitution? How relevant and critical are these questions in the advancement of the study of the link between democracy and political stability? Can the Nigerian political experience offer insights into these questions and the answers to them? What specifically can the Nigerian political experience contribute to the world? What is in the political experience of Nigeria that explains the role of the military in the writing of constitutions? What justifications that can be made for the military involvement in the writing of constitutions? What political and legal theories that can explain this justification?

Some other critical questions can still be asked. What are citizens' civic responsibilities? How can the democratic framework of governance help in the

discharge of these duties and responsibilities? How can citizens adequately participate in matters that affect them? What are the hindrances, and how can these be bridged and ameliorated? What are the preconditions and requirements that allow for democracy? How have nation-states tried to provide these requirements and preconditions? Can links be established between political and economic recessions? How is the link connected to democratic recession? Do students, workers, professional groups and associations, among others, have roles to play in the institutionalization of democracy? How can the market distort or uphold democratic struggles and initiatives? How can democracy be deepened beyond giving citizens the opportunity to elect their representatives? What are the local peculiarities that do shape and influence the practice of democracy? What role does education play in the advancement of democracy? What makes liberal democracy to be popular? Do nation-states need to go for liberal democracy? What are the elements of liberal democracy? What are its threats and challenges? Are there models of democracy? What is the relationship between these models and political development?

Again, are military rulers political modernizers? What is the connection between and among political, economic, business and military elites in developing democracies? How are political parties formed in democracies? What are the requirements and provisions of the constitution with respect to ensuring the formation of national political parties? What is the connection between political parties and the practice of democracy? Does the existence of free and fair elections necessarily confirm that a political system is indeed democratic? What is the elective provision in a democracy? How can the provision be fulfilled and satisfied? Who and who should be involved in the management of elections? What should they seek to achieve? How can the larger interest of the society be satisfied in this management framework?

In addition, what are the political, economic and social values that do nurture democracy? How can these values be identified and systematically incorporated into the conduct of the affairs of citizens? What are the relevant political, economic and social institutions that are needed for the purpose of sustaining these values? Where the values are already battered and truncated, how can they be restored? What is the role of democracy in the restoration of these values? Do relationships exist between culture and the practice of democracy? What are the specific cultural practices that do hinder the deepening and advancement of democracy? What is

the relationship between culture and gender? Do women need protection in democracies? What kind of protection do they need? How can legislation help in the protection? What kind of legislation that is needed? What kind of political representation does the poor need? What role that is expected of the youth in a democracy? How can the international society help in the advancement, consolidation and sustenance of democracy? What roles that should be performed by international and global institutions in the spread of democracy? Specifically, what is the connection and relationship between the various development goals and priorities of the United Nations and the advancement of democracy domestically?

The questions no doubt provide the necessary theoretical bases for the paper, in particular understanding its main thrust and the contained argument and thesis. Its specific focus on Nigeria is to draw attention of global intellectual community to some of the inadequacies that are contained in existing formulations and explain further why the inadequacies prevent the development of standards of international applicability. Democracy, the paper argues, has not international standards of assessment and evaluation. What democracy is, its assessment and evaluation should take into consideration local peculiarities with respect to how people participate in decisions that affect them.

Nigeria, notwithstanding its local problems, is the largest democracy among the black world. With a population of about 180 million people, she operates a federal constitution of the presidential variant. Even though political parties in Nigeria are lacking in ideologies, poorly organized and hijacked by powerful and influential elites, the labour and other organized groups remain potent and committed in the efforts at deepening its democracy. Mass media and press organizations remain critical watchdogs and ever protected by the constitution. The economy is mono-cultural and heavily dependent on oil and hence subject to the vicissitudes of international capitalism. What Nigeria earns from oil determines her prosperity at every point in time. Increased earnings from petro-dollars impact positively on the initiation of capital projects and significantly contribute to the existing revitalization and rejuvenation initiatives. Admittedly, oil is both a curse and blessing. Oil-producing areas suffer from degradation, neglect and lack of development. Corruption cuts across the strata of the society and happens everywhere including faith-based organizations. Nigeria is extremely plural and variegated. Religion is powerful and determines

everything. There are massive gaps between the leaders and followers. Leaders lack the required vision and the followers remain permanently blind. Formal education is still very poor even though there is increasing level of political and civic consciousness as a result of prolonged economic hardship and stagnated political leadership.

2. Conceptual and Analytical Framework

What are the concepts that are useful in the fulfillment and achievement of the purpose of the paper? Equally, in what intellectual framework of analysis should the study of constitution design be situated? The answers to the questions are important in establishing and justifying the basis of the paper. The concepts include: constitution, constitution design, democracy and democratic recession. It is important and necessary that we should quickly examine them in turn.

What, therefore, is the paper's understanding of the constitution? The constitution is the fundamental legal charter of any country. This means that the constitution, as a political framework, spells out the way and manner in which a country is to be governed. Governing a nation/political system further requires the establishment of an arrangement that clearly and carefully spells-out the distribution and allocation of powers between and among the tiers of government. Constitution fundamentally addresses the problem of exercise of political power and further defines what this power is and the mode in which it is to be exercised. It incorporates into it the rights, duties and responsibilities of political institutions and citizens. It provides the framework for the determination of issues and the resolution of differences and conflicts that are associated with the practice of government. Finally, the constitution defines and describes the purpose of government and the civic responsibilities of the citizens.

While recognizing the many forms and varieties of the constitution and the complexities and simplicities associated with how a constitution is amended which further explains whether it is rigid or flexible, written and unwritten, the paper's understanding of the constitution is that it is a codified document. It is this codification that further allows easy reference to it in terms of interpretation. The codification of the constitution is preceded by certain processes and procedures. The summation of these procedures and processes is explained by the idea of constitution design, writing and preparation. This particular operationalization of the meaning of the constitution in the paper is further justified in the sense that it

allows for critical examination, discussion and analysis of the many issues especially in theory that do shape the writing and design of the constitution.

Again, because the case study of the paper, Nigeria, is a federal system of government, federalism, it is being emphasized, boldly requires a written and rigid constitution. This is what the experience of it confirms. Therefore, looking at the constitution from the angles of tradition of practice and simplicity of amendment are not common features of federal political systems. Federalism specifically requires for a constitution that is both written and rigid and the existence of independent judicial system that settles and resolves differences and conflicts arising from the understanding and interpretation of the constitution. The paper's view of the constitution is therefore in line with the theoretical and practical bases for the examination and analysis of federal political systems.

What is constitution design? Constitution design is defined in the paper as the summation of all the processes and procedures that are involved in the writing of a constitution. It is further the understanding of the drafters and framers of a constitution with respect to the inherent choices and limitations that are contained in the different types of constitution. In addition, the paper's understanding of constitution design is that it is the architectural and mechanical expression of the fundamental purpose of government as agreed to by all stakeholders affected by the necessity for the constitution. Constitution design hence incorporates the philosophical and fundamental bases of government especially with particular regard to how the contained fundamental purpose is to be achieved. Furthermore, constitution design is the bold attempt to institutionalize in a political system the mechanisms of politics and administration that allow for the fundamental existence of government and the achievement of goals and objectives that further justify its existence. Finally, the paper views constitution design as a programme of demilitarization and re-civilianization especially as conceived by a military regime that intends to transit to democracy.

Democracy, in the opinion of the paper, is the specific arrangement and design of the constitution to allow for citizens participation in the decisions that affect them. Democracy is further viewed in the paper as the mechanisms of law, politics and administration that encourage the participation of the citizens in the affairs that affect them. A cardinal principle in which the understanding of the concept of democracy is based in the paper is popular

participation. And critical to the encouragement and institutionalization of political participation in any political system is the idea of election, and this is to be held periodically. Free press, the existence of competitive political groups, independent and impartial electoral empires, consciousness and political education of the citizenry are vital to democracy as conceived in the paper. Democracy, as the paper conceives of it, is a nexus existing between the practice of politics and the constitution. Democracy, in the paper, is not viewed as existing outside the framework of the constitution. This has become important to emphasize because of the imperative need to make distinctions and differences between anomic behaviours and genuine activities intended to promote democracy. A democratic behaviour or activity is as prescribed and allowed by the constitution. In a democracy, everybody operates or is expected to operate in line with the provisions of law and the constitution.

The final concept that requires specific understanding and definition in the paper is democratic recession. What is democratic recession? This is a term used in the paper to describe the impediments to democracy. Impediments to democracy are the obstacles, problems and limitations that tend to hamper its practice. The paper further defines democratic recession as the reduction of democratic activities by these obstacles and limitations. The practice of democracy, the paper advances the viewpoint, is one that can be measured and gauged. We can for instance measure and gauge the extent to which citizens involve themselves in affairs that affect them through the formulation of certain empirical indices. Democratic practice, the paper holds the opinion exists within certain context and that we can know, study and investigate this context. Democracy, the paper argues further, depicts the political life of a nation and political life is the series of activities enveloping the pursuit of interests through the framework of competitive politics. A recession in the democratic framework and discourse happens when all the components mentioned earlier slide significantly to the extent that creeping authoritarianism invades a supposedly democratic arrangement. Democratic recession therefore amounts to creeping authoritarianism.

Having defined and situated the intellectual context proper for the understanding of the paper, what is the paper's choice of analytical framework and how can this be justified? Analytical framework and disquisition, it is here recalled, are the body of ideas in literature that help in the understanding of the argument of the paper. It is particularly important to

clarify further that "body of ideas" as an academic expression is used in the paper to refer to not only theories but the totality of the thoughts found in literature that help in the understanding of constitution design in particular, and the experience of Nigeria in general. Analytical framework and disquisition hence represent the whole thoughts that help in the understanding and expansion of the discourse on democracy. This has to be because the purpose of the constitution (and its writing) is to protect and advance democracy in both theory and practice.

Liberalism and the liberal conception and understanding of democracy jointly provide this framework of analytical disquisition. From the liberal viewpoint and perspective, democracy is: "the government of the people, by the people and for the people". In other words, democracy provides the political framework that allows for citizens the right to take their destinies into their hands and ultimately determine it. In this regard, the purpose of the paper is for now not to determine the extent to which democracy is "government of the people, by the people and for the people". Rather, it is to situate the body of the argument herewith advanced within the framework of popular participation of the citizens in the affairs that affect them.

The liberal view, analysis, interpretation and knowledge of democracy exist in extant literature. What is critical at this juncture is for the paper to present a summary of this view and further justify its appropriateness and suitability for the paper. The liberal understanding of democracy revolves around the existence of certain characteristics and attributes. These include: fundamental rights, political parties, independent judiciary, constitution, free and fair election, press freedom, etc. The contained justification for the adoption of this framework of understanding by the paper is that constitution design and the totality of the issues and problems of epistemology relating to its study can be best understood when we apply these attributes and using them to in turn investigate the co-existence and co-relationship between and among the issues and problems.

3. Constitution Design: Issues and Problems in Theory

What should be the appropriate framework of constitution design? This is a big theoretical puzzle. Answering the question props-up fundamental issues and problems in the epistemology of constitution writing. What are these issues and problems and how

does their knowledge explain the understanding of constitution design? Before the questions are answered, it is important that we urgently engage ourselves in some other vital, complimentary issues and problems of epistemology of note. We can begin the answering of the questions by situating the expected answers within the broad theoretical examination, discussion and analysis of the constitution. Among others, what first are the constitution and its purpose in political systems? Knowing what the constitution is and its purpose need further be situated in the origin and purpose of government.

Government is no doubt the greatest invention ever made by man. Government came into existence as a formulation by man to justify his existence. Government, again, is the first outcome of man's ability to challenge his environment and thinking faculty simultaneously. Man fought to bring an end to the brutality associated with living with other fellow men. He thought of developing a permanent institutional framework that would put an end to emerging barbaric attitudes and behaviours following the significant improvements in the mode of production and social relations of production. With the cooperation of his fellow men, the period of the Dark Ages eventually came to an end. Might was no longer right. Both the strong and the weak formed for themselves a government assigned with the responsibility of protection of life and properties by maintaining law and order. With significant improvements in political development, the idea of a constitution came up.

Constitution as an idea came into being as a human formulated mechanism to begin to standardize the framework of government as a result of the emerging role differentiation which again necessitated the imposition of sanctions. First, as tradition of practices to guide and evaluate the discharge of governmental duties and responsibilities and later, as a codified document that can be easily referred to so as to be able to settle disputes and conflicts between and among individuals, and between individuals and the state. The idea of written and unwritten constitution later followed. The centrality of political power in particular its exercise and the fact further that the exercise was abused led to the need to safeguard the constitution and hence the idea of flexible and rigid constitutions within the emerging political structure of federalism and unitarism.

Scholars, in particular political scientists and political philosophers, have, over the years, reflected deeply on the advantages and disadvantages of constitutions

to political systems- see Appadorai (2004), Harris (1979), Laski (1982), Kapur, (2006), Anifowose and Enemuo (1999), Ayeni-Akeke (2008) and Rodee et al.(1983), among others. Also, they were able to establish certain prerequisites and preconditions. For instance, it is generally held that a federal system of government requires written and rigid constitutions to make provisions for and protect the allocation of powers and responsibilities between and among the tiers of government- see Jinadu (1979), Livingston (1956), Oyovbaire (1985), Wheare (1951a) and Wheare (1953b), among others. Federalism, it is further reasoned, requires the spirit of democracy and hence a precondition for the discussion, examination and analysis of the basis in which the allocation of powers revolves around- see Jinadu (1982), Livingston (1952), McMahon (1955a), McMahon (1972b) and Maddox (1941), among others.

While recognizing that the constitution is important and desirable, nation-states, given their historical and political experiences, are expected to both adopt and adapt the framework of government that would satisfy their dreams. The specific fact that no nation develops alone without borrowing from other people's lessons, helps to explain the seriousness that is giving to constitution design and preparation. Consequently, what are the problems and issues in the theory and epistemology of constitution design?

First, what is hoped to be achieved? Constitution-design seeks to tackle the problem of goal and objective of a state. Drafters and framers of constitution are hence confronted with how to articulate an encompassing goal that would take care of all the political, economic, social and cultural interests that constitute a political system. Second, they are equally confronted with how to develop and entrench appropriate framework in the provisions of the constitution that would allow for the permanent and sustained achievement of the articulated goal and objective. Third and final, there is the problem and issue of how to protect the objective of the state and the framework of achieving the objective in a manner that ensures accountability and transparency.

These three issues and problems further require comprehensive and detailed examination, discussion and analysis for the paper to be able to sustain the argument that is contained in it. Hope is critical to any situation and circumstance. A hopeless situation and circumstance and by extension, a hopeless political system are both not very encouraging. Hope drives any desire and it is hence critical if as human beings we are to overcome our difficulties and problems. The hope of any nation rests on the

specification of the goals and objectives that are to be achieved and the institutionalization of the procedures of law, politics and administration necessary for the achievement of these goals.

A very critical issue and problem in the design of the constitution is therefore about *what* goals and objectives, and *how* the goals and objectives can be achieved. The general understanding of what question is that the goals and objectives of every nation and political system are the protection of citizens' lives and properties, and the provisions of the goodies of life. The goodies of life are the critical social infrastructure and amenities that make for comfortable and convenient living. Again, it is further accepted that beyond stating clearly what these goals and objectives are, there must as well be the established modalities and institutional frameworks for their achievement. This is what the *how* question entails. The drafters and framers of a constitution therefore become confronted with the development and formulation of provisions on the achievement and realization of the purpose of government.

The usual practice, going through the constitutions of the political systems of the world, is clearly defining the responsibilities and duties of the state and making further distinctions between these duties and responsibilities vis-à-vis the private sector. Before the eventual collapse and disintegration of the then Union of Soviet Socialist Republics, some constitutions of the world, within the framework of the socialist mode of societal organization, appropriated the responsibilities and duties in relation to the primary and secondary purposes of government to the state. Other constitutions divide these duties and responsibilities between the state and the private sector. In pure capitalist systems of societal organization, the secondary functions and duties of government remain assigned to the private sector, while the state is restricted to the "provision of enabling law and environment"

Realizing and achieving the *how* question further involve deliberate promulgation of laws beyond making provisions in the constitution. These laws are legion, but they specifically address a particular subject matter. Agencies and boards of government for instance were/and still are established to address for examples, the provision and supply of electricity, water, and telephone/communication services. Usually, they have particular Acts of parliament establishing them like the Electricity, Water and Railway Boards. These Acts further provide for the structure and operational management of these

enterprises. Their reforms through the policies of privatization and commercialization have specially promulgated laws and acts. What the purpose, goal and objective of a state are, and how to achieve these purpose, goal and objective, are perennial and permanent issues and problems of constitution design.

The final issue and problem of constitution design revolve around the development of the mechanism for the permanent protection of the questions examined and discussed above. This is usually done by making rigid the amendment procedures of critical provisions of the constitution especially in political systems operating the federal principle. Not only are these provisions rigid to amend, there is as well the deliberate effort to maintain and sustain the independence of some of the bodies like the courts charged with the responsibilities to, among others, protect the provisions of the constitution. The processes and procedures of appointment of judges and their salaries are usually insulated from the practice of politics, among others. At this juncture, it is important to now ask: how have the nations of the world approached the resolution of these three critical priority areas and problems and issues? This leads to the discussion and analysis of the Nigerian experience.

4. The Nigerian Experience of Constitution Design and Writing

Constitution design and writing in Nigeria are as old as the history of the Nigerian state- see Mackintosh (1966), Kumu and Aliyu (1977), Ofonagoro and Ojo (n/d), Dent and Austin (1981), Oyediran (1979), Coleman (1960), Akinsanya (2002a), Akinsanya (2002b) and Olusanya (1980), among others. The Nigerian state came into existence as a result of the Amalgamation of 1914 by the British colonial impostors. There were colonial constitutions in 1922, 1946, 1951 and 1954 up to 1960 when she gained her political independence. In-between these Constitutions were the Constitutional Conferences of 1953, 1957 and 1958. Nigeria had another Constitution in 1963 with her attainment of Republican status. This is her First Republican Constitution. With the military coup of January, 1966, the operation of this constitution came to an end abruptly with the promulgation of the Unification Decree by Major-General Aguiyi Ironsi. Between May, 1967 and January, 1970, there was a civil war- see Panter-Brick (1970), Panter-Brick (1978), Kirk-Greene (1971) and Obasanjo (1980), among others.

The short background history of Nigeria accomplished above is intended to demonstrate how drafters and framers of the constitution in Nigeria have attempted to grapple with the problems and issues of constitution-design in theory. Between 1970 when the civil-war ended and 1999 which marked the beginning of the Fourth Republican Constitution, there were attempts and initiatives by the military to write constitutions for Nigeria through their famous Political Transition Programmes- see Olagunju et al. (1993), Uya (ed.) (1992), Oyediran and Agbaje (eds.) (1999), Oyediran (1988), Diamond and Lipset (1988), Bangura (1986), Bangura (1988), Ibrahim (1986), Olagunju and Oyovbaire (1991), Adedeji et.al. (1995), Onouha and Fadakinte (eds.) (2002) and Ajayi and Olaniyi (2004), among others. Interestingly, the most ambitious, the most comprehensive and the longest implemented Political Transition Programme was the General Ibrahim Badamosi Babangida Transition Programme that produced the never implemented 1989 Constitution despite the huge resources committed into it. The Political Transition Programme of General Ibrahim Badamosi Babangida led Nigeria to nowhere but anarchy and hopelessness- see Diamond et.al (eds.) (1997) and Bratton and Walle-De (1997), among others.

For the purpose of the paper, a study is here made of the Murtala/Obasanjo Political Transition Programme that was implemented between October, 1975 and October, 1979. It is therefore apt to ask: what were the elements of the constitution design that formed the integral part of the Political Transition Programme? What can the world benefit from this experience of Nigeria? What are the issues and problems of epistemology of constitution design emanating from the focus on this Nigerian experience? What are the relationships in both theory and practice that can be established between these issues and problems and the political future of Nigeria? How are these issues and problems particularly related to the advancement of democracy? How do they as well help in the academic explanation and analysis of the causes and consequences of democratic recession? The focus on the Murtala/Obasanjo Political Transition Programme is further justified by the fact that the General Abubakar Abdusalam Administration had only a Political Time-Table of nine months and not a Political Transition Programme in the standard of practice of military rule in Nigeria. The 1999 Constitution (as amended) which the administration bequeathed to Nigerians was written by unknown names and hands, fraudulent and deceptive. It was promulgated into law by virtue of Decree NO. 24 of

5th May, 1999 titled: “Constitution of the Federal Republic of Nigeria (Promulgation Decree). Reference can therefore not be made to it for the purpose of the paper. The paper’s case study is the making of the 1979 Second Republican Constitution. We need to however situate the whole exercise historically for us to be able to understand the elements of the 1979 Constitution and relevance to contemporary societies.

On July 29, 1975, Brigadier (later General) Murtala Ramat Mohammed, the architect of the 1979 Second Republican Constitution of Nigeria, overthrew the military regime of General Yakubu Gowon, and on 1st October, 1975 announced a programme of demilitarization and return to civil rule in Nigeria. Contained in the programme were:

- The drafting of the constitution and the creation of new states.
- Re-organization of the local government and the conduct of elections into it and the Constituent Assembly.
- Liberalization of the political space to allow for the formation of political parties.
- The conduct of elections into federal/state legislatures and a return to civil rule on 1st October, 1979.

For the drafting of a new constitution for Nigeria, in September, 1975, a fifty- member Constitution Drafting Committee was announced with the nationally acclaimed legal luminary in person of Chief F.R.A. Williams as Chairman. Other members included: Dr. A.Y. Aliyu, Prof. S.A. Aluko, Mr. M.S. Agulu, Mr. Ali Al-Hakim, Alhaji Abdul-Rasaq, Dr. I.D. Ahamed, Chief. R.O.A. Akinjide, Dr. K. Abayomi, Dr. C. Abashiya, Chief Obafemi Awolowo, Alhaji A. Buba, Alhaji N. Bamali, Mr. P.R.V Belabo, Alhaji M. Daura, Prof. T.S. David-West, Prof. V.P. Diejomaoh, Mr. David D. Dimka, Prof. Billy J. Dudley, Prof. E.C. Edozieu, Chief I. Ekanem-Ita, Dr. U.O. Eleazu, Prof. E.U. Emovan, Alhaji S. Gaya, Mr. R. Gbadamosi, Dr. T.O. Idris, Mr. Bola Ige, Prof. O. Ikime, Mr. S.G. Ikoku, Alhaji I. Imam, Mr. K. Isola-Osobu, Alhaji S.M. Liberty, Mr. M.A. Makele, Alhaji S. Malami, Col. P. Martins, Dr. K.O. Mbadiwe, Chief I.I. Murphy, Prof. B.O. Nwabueze, Prof. G.A. Odenigwe, Dr. P. Okigbo, Alhaji F. Okunu, Dr. S. Osoba, Dr. O. Oyediran, Dr. I. Tahir, Alhaji A. Talib, Dr. M. Tukur, Mr. G.P. Unongo, Dr. Y.B. Usman and Dr. O. Wali. Alhaji Igidado Idris acted as Secretary and Chief Obafemi Awolowo, it is important to note, declined to serve on the Committee- see Oyediran (ed.) (1979), Akinsanya (2002a) and Akinsanya (2002b), among others.

At the inauguration of the Committee, General Murtala Mohammed on 18th October, 1975 emphasized that the Supreme Military Council which he headed believed in the continued existence of a united Nigeria. He therefore directed that the envisaged constitution should endeavor to: “eliminate cut-throat political competition based on a system or rules of winners-takes-all”; “discourage institutionalized opposition to the government in power”; “establish the principle of public accountability for all holders of public office”; “eliminate over-centralization of power in a few hands”; “evolve a free and fair electoral system”; and devise measures to depoliticize population”. He further directed that the achievement of the above would require: “genuine and truly national political parties”; and “executive presidential system of government with the president and vice-president elected by the people and aligned with clearly defined functions”; “an independent judiciary”; “corrective institutions such as the Corrupt Practices Tribunal and Public Complaints Bureau”; and “constitutional restriction on the number of states to be further created”- see Akinsanya (2002a) and Akinsanya 2002b), among others. On 14th September, 1976, the committee published a two volume report titled: Report of the Constitution Drafting Committee containing the Draft Constitution Vol. I and Report of the Constitution Drafting Committee Vol.II. Two members of the Constitution Drafting Committee in persons of Dr. Olusegun Osoba of the Obafemi Awolowo University, Ile-Ife and Dr. Yusuf Bala Usman of the Ahmadu Bello University, Zaria produced the Minority Reports which were not accepted by the Federal Government- see FRN (1976a), FRN (1976b) and FRN (1976c), among others.

A Constituent Assembly, according to Decree No.50 of 1977 comprising of two hundred and three (203) members, was constituted “to consider and accept the draft constitution”. The Chairman of the Constitution Drafting Committee and the Chairman of its various sub-committees were nominated by the Supreme Military Council to be part of the Constituent Assembly. Justice Udo Udoma and Justice Buba Ardo served as the Chairman and Deputy Chairman of the Constituent Assembly. The Constituent Assembly eventually approved some recommendations of the Constitution Drafting Committee and with its own initiatives and ideas articulated a document providing for the 1979 Second Republican Constitution. The National Youth Corps Decree No. 24 of 1973, the Public Complaints Commission Decree No. 31 of 1975, the Nigerian Security Organization Decree No. 16 of 1978, and

the Land Use Decree No.6 of 1978 were forcefully introduced, and became part of the Constitution by the then Supreme Military Council headed by General Olusegun Obasanjo.

5. The Lessons of the Nigerian Experience to the World

It is absolutely necessary and important to ask: what lessons did the Nigerian experience provide to the world? The Nigerian experience helps in the appreciation of the elements and requirements of constitution writing and design especially in extremely plural, variegated and complex societies. What are these elements and requirements and to what extent do they shed light on the epistemology of constitution writing and design? The elements and requirements revolve around: composition, history of the political development of the country attempting to write a new constitution, philosophy and fundamental objectives and purposes of government, and the development and formulation of the appropriate political structure necessary for realization of the goal and objective of government.

The composition of the committee that will be assigned with the responsibility of drafting a new constitution is the first requirement and element of constitution writing and design exercise. This is critical because it addresses the fundamental issue of political representation. Any Constitution Drafting Committee should be comprised of the large and extensive interests that exist in any political system. These interests are important to be accommodated in the framework of constitution writing so as to ensure that the outcome remains acceptable to everybody. Critical to the composition element and requirement is the need to ensure that drafters and framers of the envisaged constitution have the professional competence. This suggests further that those to be appointed have the competence and skill of constitution writing and design. Lawyers, academicians, professionals, business and professional elites have the necessary requirements and skills that are important in drafting and framing constitutions.

Arising from the Nigerian experience is the need to always consider the history of the political development of the political system and society that plans to provide for itself a new constitution. History generally repeats itself. It is therefore necessary that bad history is disallowed to repeat itself. Extremely plural societies and communities of the world are prone to civil wars and political strives and social turmoil. These ugly experiences do repeat themselves

or have contained in them the potentials that are capable of threatening political stability permanently. They need therefore be avoided. By the entrenchment of certain provisions in the new constitution some of the factors and processes that bring up these ugly experiences can be both curtailed and managed. The 1979 Constitution of Nigeria, our reference case study, particularly provided for what is called “federal character” in the appointment and recruitment exercise into the civil service and political offices generally. This is to ensure that all interests are accommodated in the framework of decision-making. It helps, especially if well implemented, to address accusations and counter-accusations relating to marginalization and internal colonization usually made by political groups especially in the competition for political offices.

The third element and requirement of constitution writing and design is to ensure that the new constitution has properly contained in it the philosophy of government and its fundamental objective to the citizens. Government, to be reminded, came into being following the negative consequences and effects of the period of the Dark Ages. Notwithstanding the criticisms that citizens levy against their governments, there is still the understanding that no individual and group, no matter how powerful, should be assigned with the responsibility of protecting and providing for all. There is therefore the need to have expressly, unambiguously and clearly written in any Constitution the philosophy and overall responsibility of government to its citizens. The idea of philosophy incorporated into any constitution is to help citizens to appreciate the direction of any government. The direction of government provides important and relevant details about the organization of resources for the common good. Citizens then have the opportunity of availing themselves with the requirements of how to plan for their existence as social being. For this reason, chapter two of the 1979 Constitution of Nigeria in section 14(1) boldly declared that: “The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice”- see FRN (1979). Section 14(2) further declared that: “Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority”; and further that: “The security and welfare of the people shall be the primary purpose of government”. However, the only default with this is that there was no further provision to the effect that Nigerians can take government to court when it fails to provide for their welfare.

The fourth and final experience of the Nigerian case study is that framers and designers of a new constitution should provide for appropriate and relevant political structure that is capable of ensuring the realization of the philosophy and goal of government. All over the world, the structure of government is either federal or unitary. Both have their inherent advantages and disadvantages. Scholars and public policy experts suggest for instance that federal system of government is good and appropriate for socially and ethnically variegated societies. They further suggest that relatively homogenous societies of the world should go for unitary system of government- see Maddox (1941), Mogi (1931), Riker (1964), Landecker (1952) and Livingston (1952), among others. There is however, the failure of recognizing the fact that both homogenous and heterogeneous societies have their peculiarities and histories of political development. In the case of Nigeria, and against the backdrop of the fact that her federalism was imposed by the British colonial lords and that the practice of politics during the First Republic led to a civil-war, General Murtala Mohammed, the architect of the 1979 Constitution, suggested to the Constitution Drafting Committee the need to recognize the continuing existence of Nigeria within the federal framework of government.

6. Broad Discussion and Analysis of the Problems and Issues of Constitution Design Arising from the Nigerian Experience

So far, the paper has concerned itself with the critical examination and analysis of the problems and issues of constitution design in theory and with particular reference to Nigeria. In addition, the lessons of the Nigerian case study have been highlighted. Yet, and still considered important for the paper to discuss and analyze, is the critical examination and analysis of the problems and issues of constitution design arising from the Nigerian experience. This will further help in the appreciation and examination of the relationship between constitution design and democratic recession. The point that is being raised is an important component of the contemporary epistemological discourse on constitution design. From the Nigerian and other Third World experiences of militarily conceived and supervised constitution design and drafting, there is the problem and issue of democratic recession especially after the conduct of between two and three elections following the expiration of political regimes and their tenures. This calls for the discussion and analysis of the competence and moral authority of the military to engage in constitution design and drafting. This

section of the paper is therefore meant to discuss and analyze the role of the military in the epistemology of constitution design and drafting.

Military rulers and their regimes, in the opinion of some scholars, are modernizers- see Doorn-van (1975), Johnson (1962) and Harries-Jenkins and Doorn-van (1976), among others. This means specifically that the military, by virtue of its nature and character, have what it takes to bring underdeveloped and backward political systems to the path of growth and development politically, socially, culturally and economically. How tenable is this assertion, one is compelled to ask? Military experiences in Latin America, Africa and in some countries of Europe and Asia, have contrasting and conflicting results and outcomes. Authoritarianism, it is admitted to, helps to explain the miracles of the “Asian Tigers”. But the African and Latin American experiences are nothing to write about. Retired army generals and the military as a whole are the architects and executioners of the enveloping political corruption that accompany the return to civil, democratic rule. They played and still continue to play important roles for instance in the formation of political parties, sponsorship of civil society groups and candidates for elections, establishment of media houses and organizations, arrangement of political and administrative successions, and in poverty alleviation efforts, among others, since they are now integral elements of business and trade communities directing, supervising and controlling activities within the economy.

Because the purpose of promulgation and coming into existence of a new constitution is designed not only to enthrone democratic rule, but as well to ensure that the possibility of the return of the military to power is completely eliminated, we need to therefore examine the political activities of army generals and retired officers in the efforts at consolidating and sustaining democracy in Africa in particular. The examination is again critical and justified because the idea of constitutional design for societies generally is to permanently institutionalize the processes and values of democracy and further ensuring that political development is patterned among it. The Nigerian experience of the examination and analysis of the problems and issues contained in constitution design is to re-direct research attention and focus on how the military and the emerging military-politicians can completely submit themselves to civil authority and control through the framework of the constitution. This is no doubt the challenge of contemporary constitution design.

The accomplishment of the above requires first establishing that relationships exist in both theory and practice between constitution and democracy. The deliberate entrenchment of contradictory and insufficient relationships in the provisions of the constitution for example, is capable of creating hiccups in its operation when it comes into existence. Having made the remark, we need to further examine the political activities of army generals and retired officers to be able to reveal the practical relationship between constitution and democracy. The hiccups arising from the operations of the constitution further help to characterize and describe the practice of democracy. The practice of democracy further provides information about whether or not it is potent. The potency is equally important in knowing whether or not democracy has recessed. There is signal to the effect that democracy has recessed in Africa and that the military-politicians are the ones largely responsible for this.

The connection between the constitution and democracy further exists in the fact that provisions in the constitution such as fundamental rights bring about democratic practice. The rights to associate, express oneself, etc., lead to the existence and formation of political parties that in turn present candidate for elections. Specifically, the right to speech brings about the expression and articulation of opinions as seen canvased on print media. Without the entrenchment of fundamental rights into the constitution, the practice of democracy is meaningless. Retired army generals who are now politicians possess the relevant skills, abundant wealth, and intelligence gathering techniques and use same to serve their interests at critical points in democratic struggles. With extensive networks already established in business, banking and financial sub-sectors of the African economies and with the connivance of their “boys” in secret services of the state, emerging military-politicians easily deploy their skills to hit any target. With the endemic corruption plaguing media networks and houses, their views on any political subject matter are adequately articulated, presented and propagated. Military-politicians in Africa and elsewhere in the Third World even though publicly identify themselves with certain political parties, however have their secret hands in the many dimensions of politics to the extent that they control and provide direction in other political parties and groups outside their identity frameworks. As master-strategists in the game of politics, they have a way of slowing down the tempo of political activities and democratic struggles in particular. Their influence is no doubt overwhelming. They are capable of either frustrating or aligning

political and democratic activities to sooth their interests. They are therefore critical components and elements of contemporary democratic practice in Africa. Any effort and initiative targeted at democratic consolidation and sustenance must take into cognizance their activities. They need therefore be accommodated in the scheme of things if we do not want democracy to recess.

Arising from the above discussion and analysis, how can the military be accommodated in the political and legal theories that are being used to explain, discuss and analyze democratic recession and further provide for sustainable democratic practice? Contemporary constitution design, it is hereby suggested needs to allocate roles to the military, both serving and retired beyond the protection of a country against external aggression. The military can be assigned with the responsibilities to, among others, train the youths and young graduates of Africa in farming and animal husbandry, readiness for wars and management of natural calamities and disasters, enforcement of disciplines in schools and the development of new orientation for nationalism and patriotism, among others. For the countries of the world especially Eastern Europe coming out of the debris of the preponderance of the state in economic activities and “ethnic cleansing”, they need to have in their constitutions (existing and anticipated) the deliberate promotion of the liberal contents and elements of democracy especially revolving around the entrenchment of fundamental rights such as freedoms of expression, association, etc. Political parties need be particularly encouraged to grow and develop around the issues and problems of governance and sustainable development.

7. Conclusion

Attempts and efforts have been made in the paper to provide, using the Nigerian experience, a thorough and critical discussion and analysis of the problems and issues involved in the design and writing of a new constitution. The examination, discussion and analysis of the Nigerian experience help in the formulation of the elements and requirements of writing a new constitution. The Nigerian experience, the paper argues and holds, is capable of study and adaptation by societies of similar characteristics. The paper particularly used the phenomenon of military-politicians to try to explain the causes of democratic recession. The paper concludes on the note that writing a new constitution involves that certain elements and requirements should be fulfilled for it to bring about the consolidation of democracy and its consequent sustenance.

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