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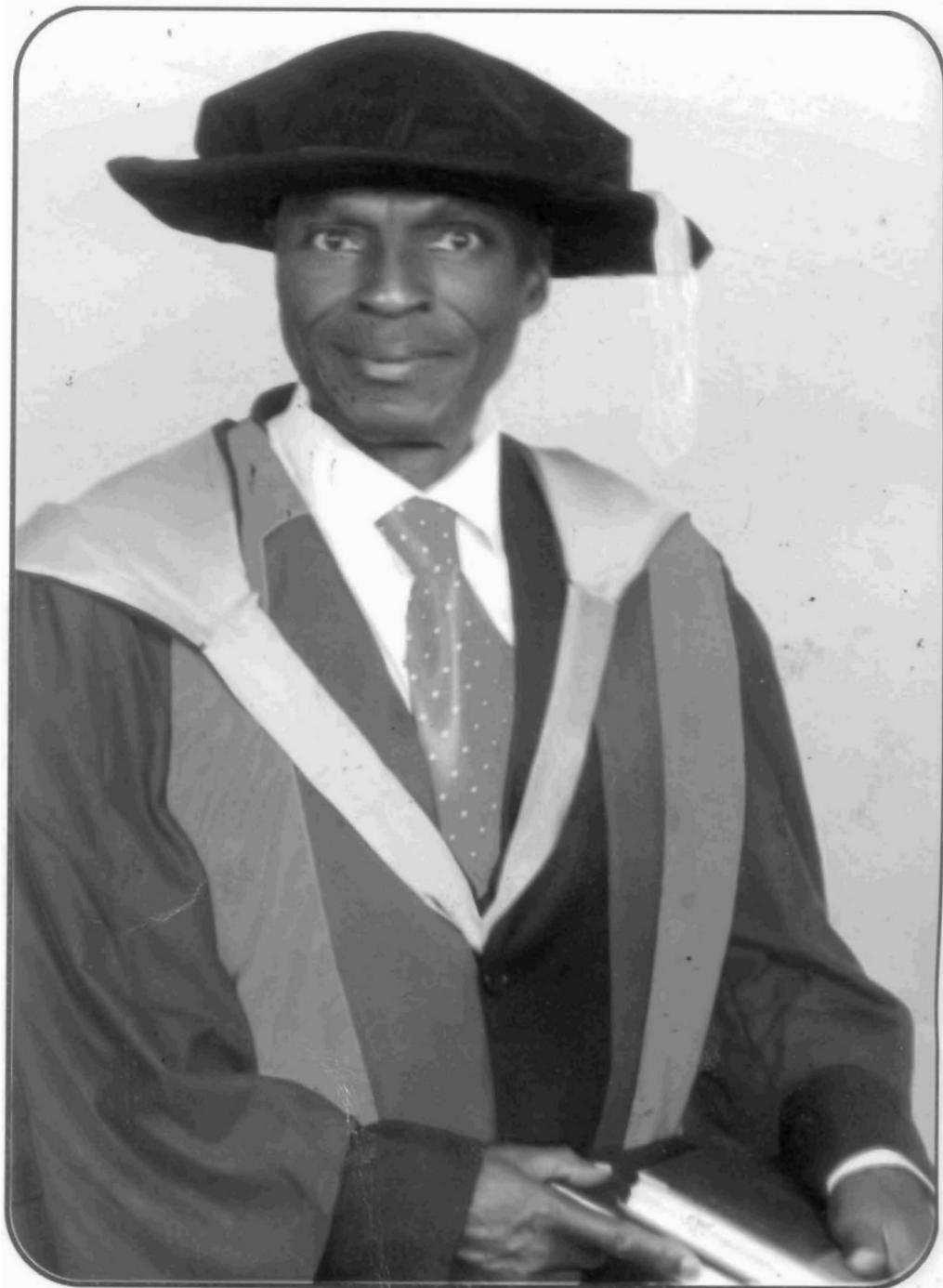
**PROBLEMS OF THE NIGERIAN
CONSTITUTIONS AND
CONSTITUTIONAL PROBLEMS
OF NIGERIA:
WORKABLE SOLUTIONS**

By

A.A. IDOWU, Notary Public
Professor of Law



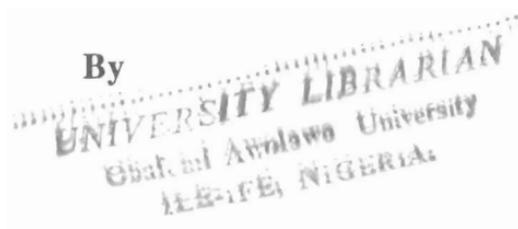
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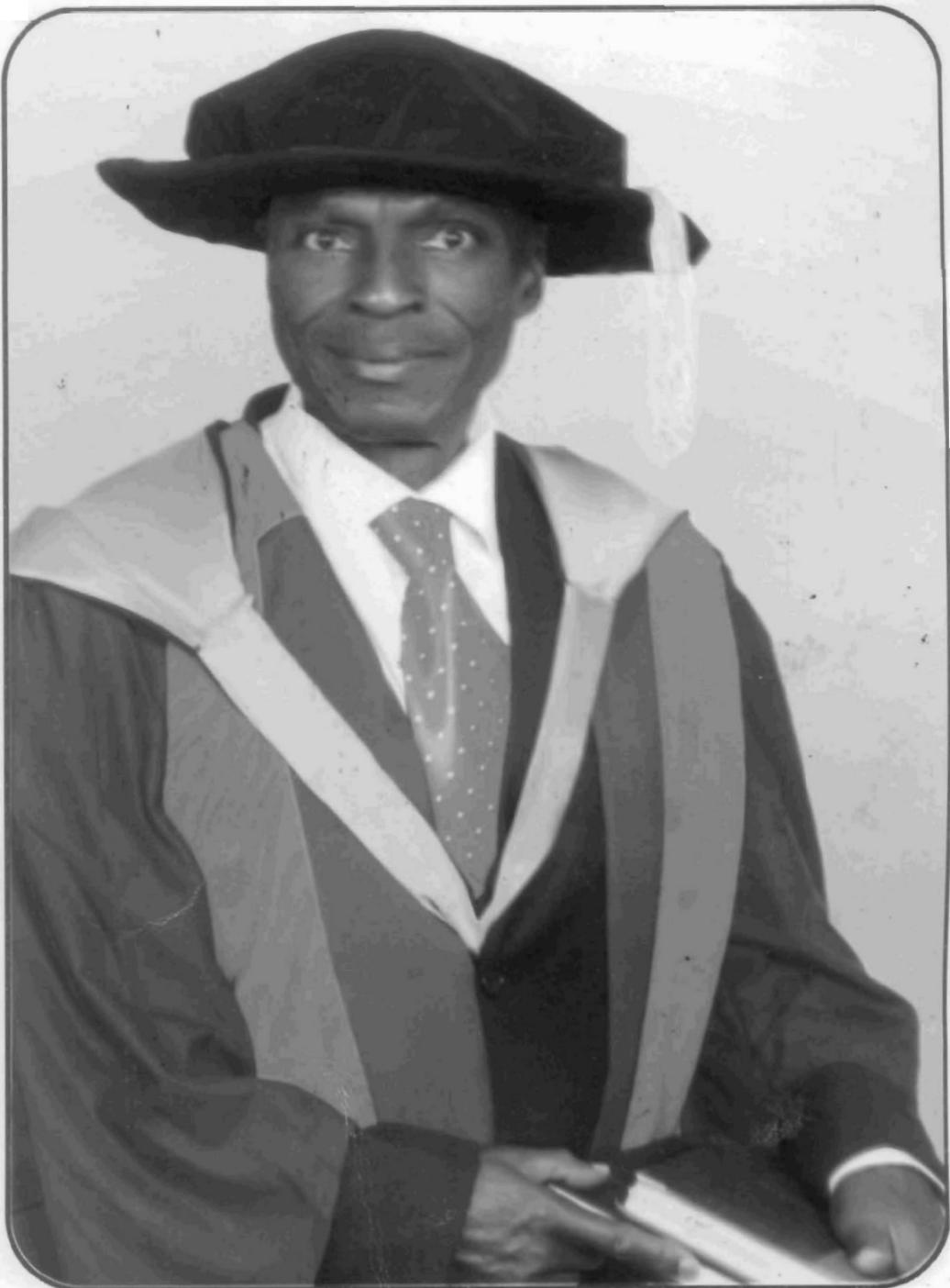
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PROBLEMS OF THE NIGERIAN CONSTITUTIONS AND CONSTITUTIONAL PROBLEMS OF NIGERIA: WORKABLE SOLUTIONS

**An Inaugural Lecture Delivered at Oduduwa Hall,
Obafemi Awolowo University, Ile-Ife, Nigeria
On Tuesday, 26th September, 2017**



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PROBLEMS OF THE NIGERIAN CONSTITUTIONS AND CONSTITUTIONAL PROBLEMS OF NIGERIA: WORKABLE SOLUTIONS

PREAMBLE – My Lords Spiritual and Temporal,
The Vice – Chancellor, the Registrar, Principal Officers of the University, Former Vice-Chancellors, Honourable Statesmen and Women, referred Religious Leaders and Traditional authorities, Business Gurus, Both retired and serving Security Officers of the State, icons of the Legislature, Executive and the Judiciary, Eminent Scholars and Colleagues, Members of the Press, seasoned Administrators, Students of this Great University, highly distinguished Ladies and Gentlemen, all other protocols duly observed.

With reference and esteemed humility and to the glory of the Almighty God, I stand before this intimidating audience to present the 308th Inaugural Lecture of this University and which is the 10th of its kind in the Faculty of Law. Past Professors in the Faculty who had delivered same were: K. Rowny 14/5/1974, D. A. Ijalaye 6/3/1978, J. A. Sagay 3/6/1982, A. A. O. Okuniga 17/5/1983, O. J. Odumosu 13/1/1987, J. O. Fabunmi 12/5/1987, S. A. Oretuyi 11/6/1991, M. T. Okorodudu – Fubara 13/4/1991 and M. O. Adediran 7/9/1999.

In complete soberness of my being, I acknowledge God and the Obafemi Awolowo University for the singular opportunity I got on 13th February 1988 to secure an appointment as a Junior Trainee Fellow in this renowned Ivory Tower.¹ My research endeavours have been obligatorily combined with other academic activities of teaching, administrative service, community development and supervision of LL.B, LL.M Long Essays, M. Phil and Ph. D Theses of my successful students, many of whom are scattered over continents of the world as Professional colleagues, Legal Consultants, Journalists, Military and Police Top-ranking Officers,

¹ *As contained in my letter of Appointment coupled with the relevant provisions of the ASUU-FGN Agreement of 2009.*

business gurus and employers of labour, Bishops of Episcopal Institutions, Professors, Attorneys – General, Magistrates, Judges of Superior Courts of Record within and outside Nigeria as well as Ambassadors Plenipotentiaries. It gladdens my heart that some of them are here seated.

INTRODUCTION

An Inaugural Lecture has been described as an intellectual enquiry into one or more identifiable problems of the society in which a scholar may be operating and a kind of debt or academic obligation owed a University Community by a Professor which ought to be discharged before a final disengagement from the institution.² Over the years, my research endeavours have been directed toward Public Law, with particular emphasis on Constitutional Jurisprudence and Human Rights. In addition to this broad area of research, some of my publications have also addressed certain divergent issues in Democratic Governance, Constitutionalism, Constitutional Democracy and Democratisation, Sustainable Development, Environmental Sustainability, Public International Law, National Security, Terrorism, and Terrorist acts, Local Governance, Governance, Leadership and Corruption, International Boundary Disputes with reference to the Bakassi Peninsula Land and Meantime Boundary Dispute between Cameroon and Nigeria, Equatorial Guinea Intervening, Immigration and Xenophobia, Female Genital Mutilations, homosexuality and women's rights. On issues of Constitutional Adjudication, Human Rights and Democracy, I have attempted some comparative studies of different judicial approaches to Constitutional and Statutory interpretations in common law nations such as the Federal Republic of Nigeria, the United Kingdom, the United States of America, Canada, Australia, India, Pakistan, the

² *Angus Stevenson (2007), New Shorter Oxford English Dictionary, 6th ed; Oxford University Press, London, P. 1348; See also, Oladeji. S. I. (2014), Educated and Qualified, But Jobless: A Challenge for Sustainable Development in Nigeria, Text of the 262nd Inaugural Lecture of the Obafemi Awolowo University, Ile-Ife, Osun State, Nigeria, P. 5; See again, [www.unilag.edu.ng/open doc. php](http://www.unilag.edu.ng/open_doc.php)*

Republic of Ghana, South Africa, Burma, Trinidad and Tobago, Uganda and the Gambia.

With reference to the subjects of Constitutional Democracy, Good Governance and Fundamental Freedom, a host of my pieces have also vehemently condemned the Unitary Constitutional system of Nigeria, over-centralisation of powers at the Federal level, excessive domination of local authorities by the Federal and State Governments and other unworkable democratic and Constitutional arrangements which had attracted immense criticisms from members of the Public and which remain the foundation of endemic national problems. Such problems include, among others: corruption, political intolerance, indiscipline, marginalisation, discrimination, policy somersaults, religious crises coupled with relentless struggles against illiteracy, poverty, ethnicity, favouritism, unemployment, monolithic economy, warped federalism, unauthochtonous Constitution, lopsided revenue allocation and oppressive resource control. The problems have remained the bookends of crimes and disorders such as civil disobedience, Budget Padding, Boko Haram insurgency, Pipeline vandalism, cattle rustling, herdsmen invasions, armed-robbery, kidnapping, rape, defilements, hate speeches, despicable innuendoes, ethnic agitations and threat of secession seriously threatening the security and corporate existence of Nigeria.

The Vice-Chancellor, it is this wilderness of national problems in which I have found myself coupled with the present socio-economic realities and circumstances of Nigeria that prompted me to settle for the title of this Lecture: "Problems of the Nigerian Constitutions and Constitutional Problems of Nigeria: Workable Solutions". The topic arose from a study embarked upon for over a period of *Nine* years, precisely (2007 – 2016). The gravamen of this Lecture is to bring to fore, the chaotic problems of the Nigerian Constitutions and Constitutional Problems of Nigeria in their historico-legal, political, socio-economic, cultural and ethno-religious identities, not only with a view to eliciting further concern from members of this audience who are worthy

intellectuals of the Federal Republic of Nigeria but also, to proffer some workable solutions. Our ultimate goal at this lecture is to shed more light on appropriate strategies and innovations for the evolution of an autochthonous constitution and a governmental superstructure capable of ensuring justice, peace and stability so overwhelmingly needed by all Nigerians irrespective of class, race, vocation and religion.

Problems, Problematic and Workable Solutions

The title of this lecture appears problematic in the following dimensions: First, it raises problems relating to the Constitutions of Nigeria. Second, it lures us to inquire into problems associated with different Constitutions the country had been operating over the years. Third, the title is inquisitorial by raising problems and seeking workable or probable solutions. In my bid to examine, analyse, inquire into and investigate certain primordial and ultimate causes of the socio-economic, political, legal and constitutional problems of Nigeria, it has not been easy to locate a comfortable title but it was imperative to make do with one that is capable of generating relevant ideas and opinions potent enough to give us an intellectual soft-landing.

The etymology of the word “problem” is coined, from its Latin or Greek base “*quaestio or problema-Problemae*” meaning Problem or obstacle.³ Merriam Webster defines a problem as a question raised for inquiry, a serious consideration, an intricate or unsettled question, a source of perplexity, distress or vexation.⁴ Merio Pei attempted to deal with other related words to see a problem as a difficulty, a predicament, a quagmire, a dilemma or a quandary.⁵

³ Baxter & Johnson (1955), *Medieval Latin word List*, Oxford University, Press, London p. 331, see also, Simpson. D. P. (1964), *New English Latin Dictionary*, OUP, London, p. 799.

⁴ Merriam Webster (2000), *The Lexicon Webster Dictionary of the English Language Unabridged*, Delair Publishers USA, p. 759.

⁵ Merio Pei (1971), *Historical Sketch of the English Language*, Delairs Publishers, p.1

The Macmillan Dictionary⁶ holds that a problem is a difficult question, a matter of doubt or difficulty and something to be worked out.

Also, the Encyclopedia Britannica⁷ defines a problem as a thing or situation that is not easy to deal with or understand. It is a new or difficult task that tests the ability or skill of a person. In the same vein, the American Encyclopedia⁸ holds a problem to be the existence of a difficulty or a challenge facing an individual towards a goal and for which attempts must be made to provide some solutions to achieve the goal.

Some writers in Wikipedia⁹ rely on convergent and contextual examples of the word “Problem” to maintain that it is a situation very hard to deal with. On the other hand, the Thesaurus¹⁰ has opted for the adjectival equivalent of the word “problem” by describing something “Problematic” as a thing which is of the nature of a problem or something doubtful, uncertain, ambiguous and indeterminable.

All these definitions appear to explain the word “Problem” as a grammatical noun in abstract, rather than in concrete and practical forms. In the context of this lecture, I am intending to Juxtapose and relate such meanings not only in their realistic connotations but also in their normative and synonymous expressions. In Mathematics for instance, the nearest solution to the problematic expression, $1 + 1 = 2$. However, the Problems before us this evening are essentially anthropological and forensic seriously bordering on the affairs of men and not on numerical manipulation hence, very dangerous to approach mathematically. If they can be

⁶ *Macmillan Dictionary* (2009), Macmillan Press, London .p. 1659.

⁷ *Encyclopedia Britannica Inc* (2010), Britannica Inc; vol. 9, p. 715.

⁸ *Academic American Encyclopedia* (1989), Grolier Incorporated Press Connecticut, p. 560

⁹ Wikipedia, *the Free Encyclopedia*, <http://simplewikipedia.org/wiki/Problem> (accessed 25-6-16).

¹⁰ *Thesaurus English Dictionary*, <http://www.thesaurus.com/Problematic> (accessed 30 - 6 - 16), (2000) Collins Publishers, Glasgow, P. 937.

so approached Ladies and Gentlemen, why should the 2/3 of the 19 States of the Federation of Nigeria be held by the Supreme Court to be 12 ²/3 and not 13 States as experienced in the celebrated case of *Chief Obafemi Awolowo .v. Alhaji Shehu Shagari*¹¹. In view of the sensitive nature of this occasion, it is my duty to present before this great audience, my set of solutions to the problems raised notwithstanding their degrees of Probability, feasibility and workability. Though, we have joint obligation as Nigerians to be able to pinpoint at the end of this lecture any of the solutions likely to be workable. Solutions are said to be workable if they are capable of being put into effective operation, practical use, being handled, suitable for a purpose, doable, possible, attainable, executable and viable.

In other words, we shall be opting for any of the solutions to the problems of the Constitutions and Constitutional Problems of Nigeria hopefully or faithfully considered being workable. In the context of this discussion, the term “Problems of the Nigerian Constitutions” is taken as those obstacles, difficulties, questions, intricacies, perplexities, uncertainties and ambiguities relating to the origin, nature, content, language, framework and text of the various constitutional documents of Nigeria. The term has to do with all the past and present Constitutions of Nigeria in their formulation, philosophy, size, quality of expressions and comprehensibility.

Alius Manibus, the term “Constitutional Problems of Nigeria” is adopted as those socio-economic, cultural, religious and political factors militating against effective enforcement of the Provisions of the Constitutions of Nigeria. The term also relates to certain obstacles traceable to the activities of the people against proper application of the Nigerian constitutional documents. Constitutional Problems of Nigeria are also extra-constitutional or extra-legal issues working against the intention of the drafters of the Nigerian Constitutions and the aspirations of the citizens to access the benefits of constitutional democracy, democratisation

¹¹ (1979) 6 – 9 SC 51. *Alius Manibus* (on the other hand).

and the rule of law. The problems equally include such factors violative of the principles of constitutionalism and which are inhibiting free acceptability of the Nigerian Constitutions to the citizenry.

While ruminating over the Problems, problematic and workable solutions, I stumbled on the following research questions: What is a Constitution? What are the historico-legal and ethnic-political sources of the Nigerian Constitutions under consideration? What are the Prime factors behind a Constitution being acceptable or unacceptable to the people? Why are some Nigerian Constitutions acceptable or unacceptable to the people? What are the general problems of the Nigerian Constitutions and Constitutional problems of Nigeria? What are the features of the Nigerian institutional and political frameworks for the operation of Nigerian Constitutions? What are the Problems arising from these frameworks and what had been the reactions of Nigerians thus far? What were the various efforts by Nigerians to alter their Political and Constitutional arrangements and why were such efforts being opposed and who were the categories of people behind such unprofitable opposition? When will the power of the people prevail against the present Unitary System? How can the people of Nigeria in their diverse ethnic, cultural, linguistic and religious diversities be more organized to accept a governmental structure capable of effecting their socio-economic independence, political aspirations, safety and happiness without compromising the survival and corporate existence of the nation? If Nigerians had failed over a period of fifty years in their attempts at producing an acceptable constitution capable of consolidating their unity and which could be instrumental to the evolution of a federalistic superstructure needed for solving the nation's problems; can the people not live without a single constitution? After all, there are nations with enviable traditions of development *Sans* single constitutions or constitutions *in documento*.

The Vice-Chancellor, in our desire to profer workable Solutions to the Problems identified, we may disagree to agree, we may agree

to disagree, we may agree to agree and we may not agree at all. This is the essence of scholarship that unites us and a stark reality of fundamental problems of our nation staring our faces. Fortunately, no matter how controversial and debatable my solutions to the Problems appear to be, I am at this hour immune and Sovereign to any intervention from the audience since the University culture allows me to speak ex-cathedral and uninterrupted.

CONSTITUTION AND CONSTITUTIONALISM

In Public Law, the terms “Constitution and Constitutionalism are supposed to be bedfellows and bird of the same feathers but which may not fly together at the same season and in the same direction. In other words, the two terms may be mutually exclusive of one another depending upon a particular political structure and the process of making a Constitution. This is probably why Shola Omotola has affirmed that a Constitution may provide a good foundation for Constitutionalism but certainly not a guarantor.¹² Over the centuries, attempts to define or explain the word “Constitution” had been rooted in the intellectual foundation and the political culture which influenced the thought of each individual scholar or writer as well as the type of Constitution being operated in a country. Nevertheless, there is a general agreement that the Constitution of a country is that document, having a special legal sanctity, which sets out the framework and functions of the principal organs of government in that country and declares the principles by which such organs must operate.¹³

Writing as a British Scholar and on account of his experience about the longevity and the unwritten nature of the Constitution of

¹² Shola Omotola, (2009), *Democracy and Constitutionalism in Nigeria Under the Fourth Republic, 1999 – 2007*” *The Constitution: A Journal of Constitutional Development*, (2009), Vol. 9, No. 1, p. 40.

¹³ McIlwain.C.H, (1940), *Constitutionalism*, Masachusset Press, New York, p.145.

the United Kingdom, Holland¹⁴ defines a Constitution as the most basic law of a nation which constitutes an unwritten body of customs and legal principles for guiding the entire operation of the affairs of a nation and which may be modified by an ordinary Act of Parliament without recourse to any cumbersome political process. Though, this definition appears to capture the political arrangement of the United Kingdom as founded on an unwritten Constitution, it is somehow inadequate since it excludes the operation of the executive arm of government.¹⁵ In the same vein, Lawrence Tribe,¹⁶ Predicates his idea of a Constitution on the American experience of a written, rigid, unchangeable anyhow and long lasting. According to him, a Constitutional document is an historically discontinuous compendium of fundamental Principles and norms of government established clearly by the people of a nation and imbibed by them over time, and which mirrors a common political philosophy that binds the people together while retaining its supremacy as the apex of all the laws in that nation.

While the definitions of Holland and Tribe might be true of the British and American Constitutions on points of view of their flexibility, longevity and autochthony, the situation is not true of other types of Constitutions especially in many developing nations of Africa like Nigeria, where Constitutions are found to be products of either colonial rule or imposition by military authorities. On this note, Nwabueze,¹⁷ not only attempted to define a Constitution as a body of fundamental principles according to which a State is organised; he also went further to assert that though, most of the Constitutions of Countries in Africa

¹⁴ Holland .H (1906), *Unwritten Nature of the British Constitution*, Oxford Press, London, p. 368

¹⁵ Mowoe. M. K. (2008), *Constitutional Law in Nigeria*, Malthouse Press Ltd, Lagos, p. 2

¹⁶ Lawrence Tribe (1978), *Constitutional Law*, Foundation Press, Michighen, USA, p. 3

¹⁷ Nwabueze .B.O (1982), *The Presidential Constitution of Nigeria*, C. Hurst & Coy. Ltd. London, P. 7; See also Nwabueze .B.O (2003), *Constitutional Democracy in Africa*, Vol. 1, Spectrum Books, Ibadan pp. 36 – 58..

are featured with provisions declaring their perceived autochthony and Supremacy; those provisions were often difficult to enforce since those Constitutional documents arose out of imposition by military authorities.

In its original conception, Aristotle¹⁸ maintained that the word “Constitution” is an English word with its Greek equivalent as “*Politeia*”, meaning the arrangement of the offices in a “Polis” or in a “State”. A modern expression of the Aristotle’s idea is that a Constitution is a political document which deals with the arrangement of the offices of government in a country. Recent scholars like John Alder¹⁹ et al, described a Constitution as a set of legal rules which governs the relationship in a State between the ruler and the ruled while Christo King,²⁰ gave a broader description by stating that a Constitution is the set of the most important rules that regulate the relations among the different parts of government of a given country and also the relations between the different parts of the government and the people of the country. I am inclined to subscribe to the assertions of the two Legal Scholars because Constitutional questions and problems before us as Nigerians, actually concern the rules which identify our political rulers and which define the nature and extent of the rulers’ powers and which also stipulate the conditions for their exercise. The relevance of the people in the act of making a Constitution has been graphically reflected in the opinion of Cooley,²¹ who defined a Constitution as a written instrument agreed upon by the people of the Union or of a particular State, as the absolute rule of action and decision for all departments and officers of the government in respect of all the points covered by it which it must control until it

¹⁸ Aristotle’s *Politics* (384 B.C.) quoted in *Britannica* (2010), Britannica Inc; London, pp. 555 – 556.

¹⁹ John Alder (2002), *General Principles of Constitutional and Administrative Law*, Macmillan Press, Newcastle, UK, p. 3.

²⁰ *Op. Cit*; p. 4

²¹ Cooley .C.N (1894), *American Constitutional Law*, Lim. 3, quoted with approval in the *Black’s Law Dictionary* (2004), West Publishers, Connecticut, New York, p. 385.

shall be changed by the authority which established it, and in opposition to which any act or ordinance of any such department or officer is null and void.

Still on the character, nature and functions of a Constitution, Garner & Others,²² had described a Constitution as the organic and fundamental law of a nation 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 and regulating, distributing and limiting the functions of the different departments and prescribing the extent and manner of the exercise of sovereign Powers. Basing his own explanation of a Constitution on a mathematical expression, **Kayode Eso**²³ posited that a Constitution of a nation should be an “original and fundamental norm, the alpha and omega, the *fons et origo*, the Grundnorm” and the Highest Common Factor (H.C.F) in the hierarchy and authority of other laws and legal order. In the light of the above references to the postulations of eminent Scholars and those of others²⁴ very inconvenient to accommodate for the sake of brevity; and on the grounds of the Problems of the Constitutions and Constitutional problems of Nigeria; I crave your indulgence to evolve my own definition of a Constitution by juxtaposing the wider conception of Bolingbroke²⁵ with the judgement of John Marshall in the celebrated case of *Marbury .v. Madison*.²⁶

The Vice-Chancellor, I hereby conclude that a Nigerian Constitution *de lege ferenda* (as it ought to be), is that assemblage of laws, institutions and customs, derived from certain fixed

²² *Ibid.*, p. 84

²³ Kayode Eso (1989), “*Thoughts on Law and Jurisprudence*”, MIT Publishers, Lagos, p.219

²⁴ See de Smith S. A. (1964), *The New Commonwealth and its Constitutions*, Stevens & Co., London, P. 109; Hood Phillips. O. (1967), *Constitutional and Administrative Law*, Sweet & Maxwell, London, P. 6; Wade .S. L. (1970), *Constitutional and Administrative Law*, 8th ed; Longman, p. 29.

²⁵ Bolingbroke. P. (1733), *A Dissertation Upon Parties*, Armitage Press, London, p. 88

²⁶ (1803) 7 Cranch, 137.

principles of reason, directed to certain fixed objectives of public good that compose the general system, according to which the people have agreed by a referendum to be governed and which ultimately delineates the mighty hand of the people through which certain first principles of fundamental law are established. The word “hand” in this definition does not refer to anatomical or biological hand but rather, it signifies the “*consensus ad idem*” (united opinion) of the people of Nigeria whole – heartedly agreeing upon a set of rules, norms, policies, ethics, values and a political structure as authoritative and binding on them to the exclusion of all other existing laws for the overall purpose of regulating the affairs of the nation and ordering their destiny.

While tracing the tradition of Constitutionalism to ancient Athens, Wormuth²⁷ understood it to denote a kind of government designed to protect the Principles of Liberty whether or not they are supported by Public Opinion or elected representatives. Some modern writers have drawn certain correlations between Constitutionalism and Constitution. According to Sartori, liberal constitutionalism entails a higher law, written or unwritten called a Constitution compiled in such a way to admit Judicial review, independent Judiciary, due process of law and a binding procedure for law-making as well as checks and balances in governmental relations,²⁸ all aiming at preventing arbitrariness and authoritarianism. Kuper and Kuper embraced this idea by contending that Constitutionalism ensures that a Constitution functions as an effective and significant limit on government being antecedent to government, while those who are governed are constrained by its terms.²⁹ Kupers’ views were also *adumbrated* by Robert Dahl who contended that Constitutionalism is a method

²⁷ Wormuth, F. D. (1949), *Origins of Modern Constitutionalism*, Harper & Brothers Press, New York, p. 89.

²⁸ Sartori. G. (1987), *The Theory of Democracy Revisited*, 39, Chattam House Publishers, New York, p.114

²⁹ Kuper .A. and Kuper .J. (1985), *The Social Science Encyclopedia*, Routledge Press, London, p. 77

of organizing governments that depend on, and adhere to a set of fundamental laws properly articulated in a Constitution.³⁰

There is also a group of scholars who decided to relate Constitutionalism to the culture, behavior and disposition of the people towards the Constitutions of their countries depending upon political circumstances which led to the evolution of individual Constitutions. Alec Stone³¹ has defined Constitutionalism as the commitment on the part of people in any given political community to be governed by Constitutional rules and principles, their commitment to live under a Constitution, rather than to seek to undermine or destroy, it. This may be an opinion somehow relevant to the political circumstances of Nigeria.

Benjamin Nwabueze was on a firm ground by holding that Constitutionalism recognizes the necessity for government with a limitation upon its powers in order to prevent arbitrariness.³² He lamented that there are many countries in the world with written Constitutions but without Constitutionalism.³³ This contention tallies with that of Webster who defined Constitutionalism as:

the doctrine or system of government in which the governing power is limited by enforceable rules of law and concentration of power is prevented by various checks and balances so that the basic rights of individuals and groups are protected.³⁴

³⁰ Robert Dahl. (2000), "A Democracy Paradox", *Political Science Quarterly*, Vol. 115(1), p. 38.

³¹ Alec Stone (2009), *Constitutionalism, Legal Pluralism and International Regimes*, Yale Law School Legal Scholarship Repository, p. 626

³² Nwabueze .B.O. (1973), *Constitutionalism in the Emergent States*, C. Hurst & Coy. Ltd, London, p. 2

³³ *Ibid.*

³⁴ Merriam Webster (2006), *Comprehensive Dictionary*, Funk & Wagnalls Publishers, Florida, p. 209

One uncommon scholar who made an attempt to conceptualise Constitutionalism beyond legalism and formalism was de Smith whose assertion was relied upon by Ihonvbere³⁵ that in liberal political discourse, Constitutionalism revolves around the twin issues of individual rights and limited powers of government. Hear de Smith:

Conceptualisation of the idea of Constitutionalism is that it involves the proposition that the exercise of governmental powers shall be bounded by rules, rules prescribing the procedure according to which legislative and executive acts are to be performed and delimiting their permissible content. Constitutionalism becomes a living reality to the extent that these rules curb arbitrariness of discretion and are in fact observed by the wielders of political power, and to the extent that within the forbidden zones upon which authority may not trespass. There is significant room for the enjoyment of individual liberty.³⁶

In a bid to offer solutions to the problems before us, it may not be out of place to depart from legalistic and formalistic interpretations of the word “Constitutionalism” by adopting a more holistic explanation quite tangential to Constitutional Problems of Nigeria. The Vice-Chancellor, I want to see Constitutionalism in Nigeria as:

a process for developing, presenting, adopting and utilizing a political structure that defines, not only the power relations between political

³⁵ Ihonvbere .J. (1991), “Constitutional Reforms and Democratization in African”, *International Journal of Comparative Sociology*, vol.41 No.s27 – 54.

³⁶ De Smith S. A. (1964), *Op. Cit.* p. 109.

communities and Constituencies, but also defines the rights, duties and obligations of citizens of Nigeria. Such rights so defined ought to be clear to the citizens who should not only value and treasure the rights; the process of enforcement must be transparent and effective. In other words, Constitutionalism in Nigeria should be conceptualised on human worth and dignity as manifested by people's desire to obey their Constitution, the right of citizens to political participation, freedom from poverty and self-determination. Our governments and leaders must be hedged in by Constitutional limitations on what they can do and what they cannot do. Constitutionalism in Nigeria should not be an end in itself, it ought to be a means to an end and that end should be good governance through transparent, inspirational, God-fearing and innovative leadership where, in the words of Jimoh Ibrahim,³⁷ there should be no collapse of the pyramid of trust between the government and the people.

OVERVIEW OF THE NIGERIAN CONSTITUTIONAL HISTORY AND DEVELOPMENT

It is a painful but notorious fact that the Nigeria's Constitutional history and development are issues traceable to the colonial intervention of Great Britain. Hence, any rigorous intellectual

³⁷ Jimoh Ibrahim (2016), "Nigeria and Collapse of Pyramid of Trust", *Saturday Mirror*, 20th May, back Page, www.nationalmirroronline.net (accessed 20-05-16).

attempt at diagnosing the Problems of the Constitutions and Constitutional Problems of Nigeria must be premised on the country's historical and Constitutional affiliations with its former colonial masters.

The name "Nigeria" was formed from River Niger, the biggest river in Nigeria by Lady Shaw Fredrick Lugard, Wife of the First Governor-General of Nigeria, who coined the name from the two words "Niger Area" as Nigeria.³⁸ The British Authorities penetrated Nigeria and this was followed by annexation of Lagos in 1861. Nigeria's history of Constitutional development can be divided into two main epochs:³⁹

(1) **The Colonial, Pre-independence and Pre-republican Epoch**

This epoch captured six Constitutional instruments⁴⁰ in the following order: The first was the 1914 Lugard Constitution which amalgamated the Colony and Protectorate of Southern Nigeria with the Protectorate of Northern Nigeria under the colonial authority of the British Monarch administered by **Sir Fredrick Lugard**, the 1st Governor-General of Amalgamated Nigeria. Eight years later, the 1914 Lugard Constitution was replaced by **Sir Hugh Clifford** Constitution of 1922, the 2nd Constitution which established a 46-member Legislative Council bestowed with the responsibility of making laws for the colony of Lagos and the Southern Provinces. The **Arthur Richard's** Constitution of 1946 came third by dividing Nigeria into three Eastern, Northern and Western Regions. It was this Constitution that initially introduced regionalism into the structure of Nigerian government. The fourth in the series was **Sir Macpherson** Constitution of 1951 which

³⁸ Dare Babarinsa (2016), *The Nigerian Century*, Gashia Media Ltd, Lagos, p. 12; See also, Tree & Trees (2014), *Nigeria: Constitutional History and Legal Complex*, Law Nigeria .com.lawnigeria@gmail.com, p. 5.

³⁹ *Ibid.*, p.1

⁴⁰ Elias. T. O. (1967), *Nigeria – The Development of its Laws and Constitution*, Stevens & Sons, London, pp. 26 – 28; See also, Nwabueze .B.O (1982), *A Constitutional History of Nigeria*, Butterworths, London, p. 90.

sought to introduce a colonial hybrid arrangement of both federal and unitary legal frameworks with majorities in the Central Legislature, Central executive Council and the Regional Houses of Assembly.⁴¹ The 1954 **Littleton** Constitution came 5th by making regional governments independent of the central government in respect of subjects and legislative powers allocated to them. This Constitution could be described as the overriding legislative instrument that laid the foundation of a classical Federation for Nigeria.⁴² The 1960 Independence Constitution was the 6th in the colonial, pre-independence and pre-republican epoch. This Constitution provided for a parliamentary system of government, three Eastern, Northern and Western Regions, a bicameral legislature at the federal and regional levels with the legislative powers of government delineated into the Exclusive and Concurrent lists while the British Monarch was still the Head of State of Nigeria.⁴³

(2) **The Post – Independence Constitutional Epoch**

The first instrument in this epoch was the 1963 Republican Constitution of Nigeria which established a parliamentary system of government by replacing the Governor-General appointed by the British Monarch with the President, elected directly by members of the Nigerian Federal Legislature. This Constitution recognized a Head of Government in person of the Prime Minister, **Abubakar Tafawa Balewa** and a titular Head of State, the President, **Dr. Nnamdi Azikiwe. Adediran** had erroneously maintained that the 1963 Constitution severed the “Constitutional umbilical cord binding Nigeria to Great Britain”⁴⁴ not remembering that the 1963 Constitution was not autochthonous because it was enacted by Parliament by virtue of the power

⁴¹ Aghalimo. S.O. (2006), “Dynamics of Constitutional Development in Nigeria 1914 – 1999” in *Indian Journal of Politics*, XL, No. 2, April – Sept, p. 6.

⁴² *Ibid*; p. 7

⁴³ See Parts I & II of the Schedule to the 1960 Independence Constitution.

⁴⁴ Adediran M.O. (2000), “Separation of Powers in the 1999 Constitution: A Myth or Reality?” Paper Presented at the Biennial Law Week of the Ilorin Chapter of the Nigerian Bar Association, April 18 – 20, p. 7.

derived from the Pre-existing 1960 imperial Constitution. Following the military incursion into the Politics of Nigeria between 1966 and 1979, the Second Republic was ushered in by the 1979 Constitution which set up Nigeria under a Presidential system with a federal structure of government. The Constitution featured a 19-State governmental apparatus, a Federal Capital Territory, three organs and three levels of government. The life-span of the 1979 Constitution was abruptly terminated under President **Shehu Shagari** on 31st December, 1983 through a *coup d'etat* by **Muhammadu Buhari** and **Tunde Idiagbon**.

The 1983 military intervention was followed by other extra – Constitutional regimes such as the **Ibrahim Babangida** who attempted to introduce the 1989 Constitution through a Decree⁴⁵ but which never saw the light of the day. Next to this was the **Ernest Shonekan** Interim Civilian – led regime which was toppled by a Palace Coup led by **Sani Abacha** (1983–1998) who organised the 1995 draft Constitutional arrangement that suffered the same faith as the 1989 Constitution. The demise of Sani Abacha in 1998, led to the military administration of **Abdulsalam Abubakar** who raised a Constitution Debate Coordination Committee which tinkered with the 1979 Constitution and the 1995 Draft Constitution before submitting its report at the end of December, 1998. The 1999 Draft Constitution was finally signed into Law on May 5, 1999 to become the Constitution of the Federal Republic of Nigeria 1999. In summary, the Vice Chancellor, Eleven Constitutions had been enacted in Nigeria out of which, nine have actually been put into operation while two suffered untimely death even before their conceptions.

PROBLEMS OF THE CONSTITUTIONS

The glaring problems associated with the 1914 Constitution of Sir Fredrick Lugard featured the creation of the Legislative Council of Nigeria whose jurisdiction was confined to the Southern Provinces including the Colony of Lagos while the Governor – General made

⁴⁵ The Constitution (Promulgation) Decree No. 12, 1989 and Decree No. 24 1999.

laws for the rest of the country. This arrangement was considered by **Idowu** and others as lopsided and constitutionally deficient.⁴⁶ Also, all the institutions established under that Constitution were designed to facilitate the maintenance of law and order for social control and economic exploitation. The amalgamation by Sir Lugard as consolidated by the 1914 Constitution was done without proper consultation to seek embracing opinions of the people and so, different nationalities at different stages of economic and political development were undemocratically lumped together.⁴⁷ The wide powers conferred on the Governor – General by the 1914 Constitution led to absolute and unrestricted powers not acceptable to the Nigerian Nationalists of the time.

The Clifford Constitution of 1922 had been severely criticised for excluding natives from government affairs and over-centralisation of powers in the central authority. The Constitution maintained that only Africans with minimum gross income of £100 a year were eligible to vote and be voted for thereby, disenfranchising eligible voters and contestants for Political Positions.⁴⁸

The adoption of Sir Arthur Richard's Constitution in 1946 led to the division of Nigeria for the first time, into three colonized regions namely: the Eastern, Northern and Western Regions. This Constitution authorised direct representatives of the people through native authorities and House of Assembly, to an enlarged Legislative Council thereby, creating an imbalance structure among the regions and the States which later evolved from them. Apart from the problem of its imposition on the people, Udo Udoma had also noted that the Richard's Constitution of 1946 was

⁴⁶ Idowu. A. A. (1999), *Judicial Interpretation of Human Rights Provisions of the 1999 Constitution*, Ph.D Thesis of the Obafemi Awolowo University, Ile-Ife, Nigeria, pp. 2 – 5

⁴⁷ *Report of the Constitutional Conference in London (1958)*, Government Press, Lagos, pp. 23 – 31.

⁴⁸ *Ibid.*

a stratagem adopted by the British Government to diffuse Political agitations for self-government by Nigerian nationalists.⁴⁹

The 1951 John Macpherson Constitution came into being after unprecedented processes of Consultations with the people at the village, district, divisional, provincial, regional and national levels. Dikemgba remarked that “no other Constitution so widely reached out to the people of Nigeria than the Macpherson Constitution”.⁵⁰ The Constitution established a Federal System and also introduced African elected majorities in the Central Legislature and in the Regional Houses of Assembly having reasonable independence in their own spheres. The problems of the Macpherson’s Constitution included inefficient institutional framework or insightful national leadership for the management of inherent tensions or conflict at the regional and national levels brought about by its federal structure.

Also, the establishment of a Regional Legislature by the Constitution led to the emergence of ethnic-based Political Parties like the National Council of Nigerians and the Cameroons (NCNC), the Action Group (AG) and the Northern Peoples’ Congress (NPC). The Political culture of acrimonies, do-or-die electoral contests, hooliganism and violent campaigns by politicians of the time which were inherited by their successors also led to the fall of the First Republic.

The Lyttleton Constitution of 1954 took after the Macpherson Constitution of 1951. In trying to lay a foundation for a classical federation, the socio-economic, tribal and ethnic differences between peoples of different regions were not properly taken into full cognizance. The Constitution compelled the major component units of Nigeria to be separated but still lumped together for the sake of central administration and with a view to facilitating effective coordination of all component units for administrative and economic governance by the British Authorities. Looking at

⁴⁹ Udo Udoma (1994), *History and the Law of the Constitution of Nigeria*, Malthouse Press Ltd; Lagos, p. 45

⁵⁰ Tree and Trees (2014), *Op. Cit*; p.2

the feature and problems inherent in the enactment of the Colonial Constitutions, **Obafemi Awolowo** had condemned all of them for lacking essential ingredients which often weigh heavily in favour of true federalism.⁵¹

The problems associated with the 1960 Independence Constitution were rooted in its origin and text. The Constitution designated the Governor – General as a representative and agent of the British Queen instead of the people of the independent and Sovereign State of Nigeria. The effect of this arrangement was to render Nigeria a dominion territory contrary to the very nature and basis of the independence obtained by the country on first October, 1960.⁵² Also, the 1960 Constitution denied Nigeria an effective dominion over its judicial powers since it gave appellate authority over Nigeria to the Privy Council established by the British Queen instead of vesting such powers in the Federal Supreme Court of Nigeria and its judges.⁵³ In addition, this Independence Constitution which was Parliamentary, did not contain adequate provisions for positive socio-economic transformation and national integration due to its regionalistic comprehension.

The fundamental derogations from Nigeria's Sovereignty embedded in the 1960 Independence Constitution and other challenges inherent in its operation led to agitations for the 1963 Constitution. Nwabueze had pointed out some of the incurable problems of the Constitution by saying that:

“The 1963 Constitution was not autochthonous because it was enacted by Parliament by virtue of the power derived from the Pre-existing imperial Constitution... as such; it was ineffective to break the tie that linked

⁵¹ Obafemi Awolowo (1966), *Thought on Nigerian Constitution*, Sweet or Maxwell, London, p. 21.

⁵² Section 78(2) of the 1960 Independence Constitution of Nigeria

⁵³ Obilade A. O. (1998), *The Nigerian Legal System*, Spectrum Books Ltd; Ibadan, p. 38

*Nigeria's legal order to the British Government*⁵⁴

By establishing republicanism into the governmental structure, the 1963 Constitution, not only introduced equality of States at the federal level to favour the tyranny of majorities,⁵⁵ it also separated the position of the Head of State from the Head of Government. This Constitutional dimension of a West Minister Model could not fit into a typical African / Nigerian society where every leader wants to asset all authorities without restraint. The result was a chain of clashes between the President and the Prime Minister, the climax of which was the Federal election crisis of 1964, all leading to the first military *coup d'etat* of January 15, 1966. The military take-over which was equally followed by counter coups, violent upheavals and tension among the rank and file of the Nigerian Armed Forces ultimately led to the Nigerian Civil War, 1967 – 1970.

Through a combination of sincere and dissimulated efforts of military Heads of States like Yakubu Gowon, Murtala Mohammed and Olusegun Obasanjo; the Constitution Drafting Committee initiated by Murtala Mchammed in 1975, submitted its report in 1976, which led to the adoption of the Presidential Constitution of the Federal Republic of Nigeria 1979 under the Executive control of Shehu Shagari. It was difficult to hold that the 1979 Constitution emanated from the majority of Nigerians because it was not adopted by the people through a referendum. Although, there was a Constituent Assembly put together by a Military Decree,⁵⁶ out of its 230 members, twenty were appointed by the military government while others were not elected directly by the people but by the local councils serving as illegal electoral colleges and through electoral procedures not legitimized by any law or a

⁵⁴ Nwabueze. B. O. (1964), *A Constitutional History of Nigeria*, Butterworths, London, p. 30

⁵⁵ Wheare .K.C.(1953), *Federal Government*, Greenwood Press, London, p. 40.

⁵⁶ The Constitution Drafting Committee Decree 12, 1977

Constitution.⁵⁷ Such a Constituent Assembly could not have adopted a Constitution on behalf of the people hence; the 1979 Constitution was not autochthonous. The 1979 Constitution was also Presidential in nature thereby, looking like a copy work of the American Constitution. This was one of the reasons why most of the Nigerian Judges, while interpreting it, had the tendency to relate their decisions to those of the American Judges even when cases before them could be so peculiar to the Nigerian society. In this respect, **Idowu** had suggested that judicial approach to the interpretation of the Nigerian Constitution should be developed on the peculiarities of Nigeria first, before a recourse to circumstances of other nations.⁵⁸ This position was based on the decision of Udo Udoma in *Nafiu Rabi'u .v. The State*⁵⁹ where it was held that:

It is not a correct approach to the proper interpretation of our Constitution to begin by looking to the meaning or interpretation of a statute or a Constitution of a foreign country...

On the content, the 1979 Constitution was much lengthy and voluminous with so many sections, sub-sections and provisions. The Constitution of the United States of America which was the Nigeria's model, consists only Twenty-three articles and twenty sections. The Nigerian 1979 Constitution on the other hand, consisted Eight Chapters, Four Separate Parts, Six Schedules, Three amendment military decrees and Two hundred and Seventy-nine Sections thereby, making judicial interpretation very difficult. Lamenting on this Constitutional peculiarity, *Mohammed Bello held in Abraham Adesanya .v. The President of Nigeria*⁶⁰, that:

⁵⁷ Suberu .R.T. (1988), "Background Principles of Nigeria's Presidential System", in Ayeni .V. J and Soremekun .K. (eds), (1988), *Nigeria's Second Republic*, Daily Times Publications, Lagos, p. 79.

⁵⁸ Idowu A. A. (2012), "Constitutional Interpretation", in *Commonwealth Judicial Journal*, London, Vol. 20, No. 1, pp. 12 – 15.

⁵⁹ (1980) 8 – 11 SC, p. 130.

⁶⁰ (1981) 2 NCLR, p. 358.

“In view of the complexity of the provisions of our Constitution, its peculiarities of details, its subjection of the provisions of some of its sections to the provisions of the other sections and the necessity for cross references to discover the scope of some of the sections, I prefer to be on the side of caution...”

The Constitution of the Federal Republic of Nigeria 1999 has equally been described by **Falana** and **Nwabueze**,⁶¹ as a false document which tells a lie against itself right from the preamble which states *inter alia* that:

“We the people of the Federal Republic of Nigeria; Having firmly and solemnly resolved; TO LIVE in unity and harmony as one indivisible and indissoluble Sovereign Nation...DO Hereby MAKE, ENACT AND GIVE TO OURSELVES the following Constitution”.

The reservation was premised on the non-inclusion of the majority of Nigerians in the processes that led to the making and adoption of the 1999 Constitution. It has been said that the enforcement of some of its provisions on legislative, executive and judicial powers, immunity in governance, resource control, revenue allocation, Federal Character Principle, Civil Service, Human Rights, Fundamental Objectives and Directive Principles of State Policy, Political Transition, Devolution of Powers, Prohibition of State Religion, ouster clauses (section 6(6) (c) & (d) etc; are serious obstacles to the proper realization of political and fiscal federalism

⁶¹ Falana. F (2009), “Constitutionalism and the Invention of the Nigerian State,” Paper presented at the Nigerian Bar Association Lecture, Lagos Airport Hotel, Ikeja, 15th January, pp. 11 – 14; Nwabueze B.O. (1973), *Constitutionalism in the Emergent States*, Hurst & Co., London, pp. 51 – 62.

in Nigeria.⁶² Having condemned the non-autochthonous character of the 1999 Constitution, Ihonvbere further contended that the document fails to address the peculiarity of the State, Custodians of State Power, critical issues of hegemony and the inability of the elite to initiate national projects, the national questions of production, monolithic economy, exchange relations, expensive governance, money politics, corruption and concept of Constitutionalism upon which politics and political discourse in most developing nations are predicated.⁶³ On the whole, material evidence tends to show that in making the 1999 Constitution, there was a deliberate strategy by the military Junta to treat the report of the Constitution Review Committee as a secret document only for their consumption instead of encouraging a process capable of building a sense of belonging from Nigerians as a perfect device for institutionalising workable democracy and democratisation.

In addition to the problems of the 1999 Constitution, it has been discovered that many fake and pirated copies of the document are now in circulation with many grammatical, punctuational, semantic and other clerical errors. Such distorted copies are being used in the courts of law by judges and lawyers with grave consequences on interpretation and application of the Constitution.

The Vice – Chancellor, the *fons et origo* of the problems of all Constitutions in Nigeria right from the colonial era till date, could be traced to the Nigerian leaders and the politicians who never demonstrated a positive relationship with civil society and showed enough respect for down-trodding members of their communities. Hence, the idea of giving the people an opportunity to discuss issues intended to be enshrined in the Constitution so as to make

⁶² See Part II, schedule 1 to the 1999 Constitution, Chapter II, Chapter IV, Sections 415, 10, 162(2). See also, Onimode. B. (1999), "Fiscal Federalism and Revenue Matters in the Nigerian Constitution", Paper presented at a Conference organized by the Centre for Democracy and Development, Nicon Hilton Hotels, Abuja, p. 9

⁶³ Ihonvbere J.O (2000), "How to Make an Undemocratic Constitution: The Nigerian Example" in *Third World Quarterly*, Vol.21, No. 2, pp. 350 – 351.

the document **factum populis** (deed of the people) never entered into their calculation. Making this unfortunate trend of affairs to thrive, has been the culture of silence and complacency on the part of Nigerians due to symptoms of illiteracy, poverty and prebendalism. If the Constitutions which are supposed to be pilot documents for attaining effective administration of the affairs of the nation are themselves faulty or problematic, little wonder why Nigeria has been battling with numerous problems, most of which are indigenous to the Constitution.

CONSTITUTIONAL PROBLEMS OF NIGERIA

Many Nigerians are on the same page that the following Constitutional problems of Nigeria must be provided workable solutions in order to put the country on the paths of growth and sustainable development:

(a) Colonial Indoctrination of Political Elites and Imprecise Political ideology

The political elites who assumed power since independence had been indoctrinated into various colonial devices enshrined in different colonial Constitutions being used as instruments of absolutism, impunity, exclusion and alienation.⁶⁴ This political identity is still noticeable among the Present group of politicians who are struggling and pretending to serve the State in their selfish interest. Many political leaders and their parties in Nigeria lack well-conceived and proper ideology capable of picturing their characters, prowess and competence so needed to advance the course of the nation.

(b) Military Intervention in Politics

Incidents of rude, violent and unpredictable military incursion into politics of Nigeria had resulted into loss of lives, power struggle, illegal suspension of the Constitution, violation of human rights, disobedience to the orders of Courts, the Constitution and Rule of Law; corruption, exclusion of people from Constitution-making, inordinate ambition to remain in power etc; all of which had been

⁶⁴ *The Constitution* (2009), *Op. Cit.*, p.51.

counter – productive to Constitutional and democratic development of Nigeria.

(c) Deprivation of Federating Units of their Resources, Resource Control and Revenue Allocation

Agitations for resource control over natural resources of each State of the Federation had started long ago as led by Isaac Adaka Boro, but later became protracted in 1996 with the case of *Kenule Beeson Sara-Wiwa & Ors. v. President of Nigeria & Ors.*⁶⁵ Such agitations have always been resisted and perceived by various governments as being contradictory to the provisions of the 1999 Constitution,⁶⁶ which vest all mineral resources of the nation in the Federal Government. Lately, the agitations have been fuelled by environmental degradation of many host communities arising from oil exploration activities of the Oil Multinational Companies. Despite some amnesty Programmes of the Federal Government since 2006 and the current Clean-up of the Ogoni land, continued regime of gas flaring and environmental pollution have caused militants in the host communities like the Niger Delta Volunteer Force (NDVF), the Movement for the Emancipation of the Niger Delta (MEND) and the Niger Delta Avengers (NDA) to engage in Oil and Gas Pipe-line Vandalisation and Kidnapping.⁶⁷

According to **Idowu**,⁶⁸ the concept of resource control is that the Federal Government should address the question of ownership and control of natural resources in such a way that people would have equity stakes in resources produced in their local communities

⁶⁵ (1995) Unreported Special Military Tribunal, Port-Harcourt.

⁶⁶ See Section 44(3) thereof; See also, *A. G. Federation .V. A. G. Abia State & Ors* (2002)6 NWLR (Part 764) 542.

⁶⁷ *The Guardian*, "Militants Form Parallel Government, Want Inclusion in Amnesty", Sunday, July 10, 2016, pp. 1 & 10, www.guardian.ng (accessed 10/7/16)

⁶⁸ Idowu A.A. (2000), "Legal and Constitutional Issues Embedded in the Resource Control Agitations in Nigeria". *Journal of Social and Policy Studies: Development Africa Consortium*, Vol. I No.2 p. 177

thereby, making them more financially buoyant and less dependent on the Federal Government.

Agitations for resource control are also tied to revenue allocation from the Federal Government to the federating units *vis – a–vis*, the provisions of section 163 of the 1999 Constitution (as altered). The present allocation formula of 53% to the Federal Government, 27% to States, 21% to Local Governments and 13% to zones of derivation has been considered lopsided, dismal and unrealistic. The argument is that why should the Federal Government and other States that contribute less to the aggregate revenue continue to take the lion's share and leave States that are the major providers of the country's main sources of revenue poor and beggarly?

(d) Exclusion and Alienation

Along the issue of resource control are also volatile agitations against exclusion and alienation of some minorities and interest groups from different parts of Nigeria. For instance, agitations from South East and South South of Nigeria have always been premised on marginalisation and painful reminiscence of the Nigerian Civil War championed by some groups like the Movement for the Actualisation of the Sovereign State of Biafra (MASOB), the Indigenous Peoples of Biafra (IPOB) etc. Many at times, such agitations have led to violent acts of destruction of lives and properties as well as destruction of Public peace and order.

(e) Ethno-religious and Cultural Pluralism

It has been stated in many contemporary debates that Nigeria covers about 1.9 thousand hectares of land in area, with about 180 million people and over 300 ethnic groups of different religions, cultures and traditions. These differences and varieties to some extent, appear to be inhibitory to the unity of purpose of all Nigerians in asserting common positions on issues of law, policy, socio-economic and political struggles for the progress of the nation. On the other hand, opinions have also been expressed that

the big size and population of Nigeria characterised by different ethnic and religious identities are also factors of advantage in terms of tourism, socio-economic and political development.⁶⁹ Unfortunately, the political structure of Nigeria has not been properly captured in workable and acceptable Constitutional documents to facilitate effective use of her big size, population and diversities to ensure the promotion of good government, welfare of the people and the growth of the nation.

(f) Political Arrangement, Over-centralisation of Powers, Electoral Process and Cost of Governance

The Nigerian political arrangement is a product of military rule as reflected in the 1999 Constitution which has given room for warped federalistic structures, concentration of powers in the Federal Government while the one-line command of the military rule has turned the country into a unitary federation. Electoral process also has a lot of challenges featuring legal and Constitutional defects, non-independence of regulatory institutions like the State and Federal Independent Electoral Commissions, official corruption, immunity for Chief Executive, irregular party-defections by Politicians and lack of defined political ideology for political Parties. Other problems of electoral process are over-bearing and attractive emoluments for too many political officeholders resulting in excessive cost of governance, culture of monolithic or two-party system, domination of political Land Scope by the same set of politicians, expensive procedures for Party formation and registration which encourage elite-dominated politics and marginalisation.⁷⁰

⁶⁹ Whittaker C.A.(1981), "Second Beginnings: New Political Framework", *African Affairs*, Issue 11, p.2; See also, Otite, O. (1973), *Ethnic Pluralism and Ethnicity in Nigeria*, Shanesson Press Ltd; Ibadan p.18

⁷⁰ Larry Diamond (1987)" Issues in the Constitutional Design of a Third Nigerian Republic" *African Affairs*, Vol.,86, No. 343, P. 217 . See also, Ihonvbere J.O. (2000), *Op. Cit.*; p.359.

(g) Disregard for Constitutionalism, Rule of Law and Leadership Crisis

Disregard for constitutionalism and the Rule of Law as a Constitutional problem of Nigeria manifests itself in the intentional attitude of most Nigerians to disrespect and neglect the Constitution, the rule of law as well as other statutory and institutional policies of government even at the presence of law-enforcement personnel. It would appear that in countries like the USA, Canada, United Kingdom, Germany, Netherlands etc; people do not respect God but they respect their laws. Nevertheless, since God is the ultimate Author of laws and He is interested in justice through laws, it may be safe to conclude that people in those countries have respect for God and the law. Hence, they have workable systems. In Nigeria, despite the proliferation of churches, mosques and other religious institutions, people disobey both God and the law. This is the reason behind intolerable malfunctioning of our systems and societies. In the same vein, a lot of leadership crises like wickedness, greed, covetousness, insatiable desires, selfishness and pride are afflicting Nigeria. These unfortunate traits of Nigerian leaders have prevented them from utilising the resources of the nation adequately to provide basic amenities for the people while many of them have indulged in the acts of diverting funds meant for salaries of their workers to private purses and unprofitable ventures.

Disregard for the Constitution and the rule of law also feature disobedience to orders of competent courts of law by people in government as indicated in the case of *Tewogbade & Sons Ltd. v. A.G. Oyo State*,⁷¹ where Sulu-Gambari JCA, noted with disdain that:

“It is unfortunate if the impression is created that there is a separate law binding on the citizen from that binding on the government. It is all the more intolerable and dangerous if

⁷¹(1991) 2 NWLR 52; See also, the Pronouncement of Uwais JSC in *Governor of Lagos State v. Odumegwu Ojukwu* (1986) 2 SC 277 at 298.

government tends to create a posture indicating that it may choose not to obey certain orders of court. That will be tantamount to executive recklessness which may lead to lawlessness”.

A combination of the above stated leadership inadequacies have forced the people to lose confidence and respect for most political leaders, continue to disrespect the Constitution and laws, embark on self-help to press home their demands despite the unconstitutional strategies to force them into obedience.

(h) Corruption and Indiscipline

Despite the plethora of meanings and features ascribed to corruption, its manifestation comes to fore, when a public officer, a corporate worker, an individual citizen or a trader indulges in untoward acts of indolence, greed, stealing, connivance, manipulations, shame, scandal or refusal to perform an official or regular duty except when offered a bribe, undue reward or a promise of an advantage capable of influencing the persons involved not to follow what is legal, constitutional, morally defensible, due process and justice.⁷² On the other hand, the word “indiscipline” connotes lack of self-control, weak character, poor conduct, shamelessness, uncouthness, disrespect for moral values and things of virtues. Most Nigerians are enmeshed in these unfortunate traits of humanity. As integers of Constitutional problems, corruption and indiscipline have caused irreparable damage in the following ways: inability of leaders to ensure productive governance; courts of law struggling to give justiceable interpretations of the Constitution and other laws, failure by the military, police and other law-enforcement agencies to enforce

⁷² See Janusz Symonides (1998), *Human Rights: New Dimensions and Challenges*, UNESCO Publications, Astgate Press, Aldershot, pp. 13 – 16; Arowolo .D. E. “Constitutionalism and Insurgencies in Nigeria” *Journal of Applied Behavioural Science*, Vol. 2 June, 2014, P. 222, “The State, Democracy and Corruption in Nigeria”; *Academic Leadership Journal*, Vol. 8 No. 3, 2010, pp. 1 – 8 etc.

laws and perform their duties to defend the security of lives and property; traders not ready to use correct weights and measures; disgruntled citizens not respecting the Constitution, laws and their leaders. It is rather unfortunate that Nigeria had produced the best of human resources which have failed to meet her expectations.

(i) **Tenuous Nature of Judicial Independence**

One of the cardinal Constitutional problems of Nigeria is the fragile or tenuous nature of the independence of the judiciary often described as the last hope of the common man. Up till now, it has been difficult in Nigeria to arrive at a practical and effective institutional separation of the judiciary from the other arms of government which would have been a necessary tool for bulwark against all forms of tyranny, victimisation and oppression. The nation's Constitutional framework has not been able to achieve complete freedom of the judiciary from the enclaves of the legislature, executive, politicians and other influential members of the society.⁷³ Also, the appointment, conditions of service, tenure of office, and remunerations of judicial officers are tied to the aprons of the Executive coupled with the questionable nature of personal integrity, character, conduct, professional and intellectual competence of some of Nigeria's judges, lawyers and other judicial Administrators who; according to **David Ijalaye**,⁷⁴ are expected to be faithful and co-worshippers in the temple of justice. These are bookends of incompetence, injustice, abuse of legal process, miscarriage of justice, judicial indiscipline and recklessness. The rot in the judiciary as manifested in the arrest, detention and prosecution of some Nigerian Judges by Law Enforcement Agencies in 2016, amounted to one of the Constitutional problems of Nigeria which has inhibited progressive development and growth of the Constitution and Constitutionalism.

⁷³ Sections 230 – 296 of the 1999 Constitution (as altered 2010)

⁷⁴ Ijalaye .D.A. (1992), "Justice as Administered by the Nigerian Courts", *Justice Idigbe Memorial Lecture Series Five*, University of Benin, - City, 6th February, 1992.

(j) **Illiteracy and Poverty**

Renowned scholars like **Kuti, Soyinka, Akingba, Oshoba, Akinrinade, Iyayi, Olorode, Awopetu, Fasina** and others, have unrepentantly condemned the various military and civilian governments in Nigeria for their counter-productive policies of privatization and poor funding of education sector, looting public treasuries and failure to devote the UNESCO standard of 26% of the National Budget to funding education at all levels.⁷⁵ This development had contributed to mass illiteracy in Nigeria both in proportions, quantity and quality. It is also sad to note that Nigeria has been reported to have the world's largest number of children and youths out of school.⁷⁶ Regrettably too, the relevant provisions of the 1999 Constitution which fraudulently announce the desire of the government to provide free education at all levels were never made justiceable.⁷⁷ As one of the Constitutional problems of Nigeria, illiteracy has prevented effective mobilisation and education of the people around the Constitution so as to enable them understand it, claim its ownership and employ it, not only to defend their individual or collective rights but also, to protect the entire democratic superstructure.

On the issue of poverty, research works confirmed that at least, 50% of the poor in Africa were from Five East African countries and Nigeria.⁷⁸ Particularly in Nigeria, out of about 161.5 million of Nigerians in poverty, 69.8 and 91.2 million were said to be located

⁷⁵ See Omotoye Olorode (2014), "Neo-Liberal Siege against Nigeria: in Memory of Festus Ikhuoria Ijayi," Text of a Lecture delivered at the University of Benin, Benin City, 22nd November, pp. 18 – 20.

⁷⁶ Akanbi. G.O. (2014), "Future Directions for Education in Nigeria", Lecture delivered at Emmanuel Alayande College of Education, Oyo 12th November, pp. 4 – 6.

⁷⁷ Sections 18(3), and 6 (6) (b) on Non-Justiceability of free education and Directive Policy of the State.

⁷⁸ Simi Afonja *et al* (2001), *Research and Policy Directions on Poverty in Nigeria*, Centre for General and Social Policy Studies, OAU, Ife, Nigeria, Anchor Press, Ife p. 11.

in urban and rural areas respectively.⁷⁹ Illiteracy and poverty are two sides of the same coin because each of them is capable of laying the foundation for the other to thrive. Poverty pains more than disease. A poor person can be an angry person who is also a potential criminal having no respect for the Constitution and the rule of law. The combine effect of illiteracy and poverty makes it difficult for many Nigerians to know their rights let alone when such rights are violated and the Constitutional or legal procedures to follow in asserting and protecting their rights.

(k) Security Challenges

Nigeria and her people have been experiencing spate of insecurity of lives and property since the end of the Nigeria Civil War in 1970. The issue had become more serious since 1999 and at present, remain almost unmanageable in size and dimension featuring armed robbery, political assassinations, poverty, kidnapping, gas/pipeline vandalisation, threats of secession, Boko Haram insurgency, ethno-religious crises, labour unrest, civil disobedience, cultism, students' unrest, herdsmen insurgency, natural disasters, environmental pollution etc. Insecurity has not only led to colossal loss of lives and property; it is also working against foreign investment and impacting negatively on the international image of Nigeria as well as posing a serious threat to the territorial integrity and corporate existence of the State. Justice in the course of legal or Constitutional adjudication has been described by **Ademola Popoola**⁸⁰ as a function of peace seriously needed for Constitutional development, social justice, growth and the security of the nation. In the same vein, **Idowu and Adedeji** have also argued elsewhere, that there was always a strong nexus between Public Order, State Security, Democracy and

⁷⁹ Shan A. P. (2013), "Poverty, Facts and Statistics", www.globalissues.org/article/26 (accessed 27/11/13).

⁸⁰ Popoola A. O. (1992), *Some Aspects of Constitutional Adjudication in Nigeria*, Ph.D, Draft Thesis of the Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria, Chapter 10.

Democratization while the later could hardly be achieved in the absence of the former.⁸¹

RESEARCH QUESTIONS

Attempt to provide workable solutions to different Constitutional problems of Nigeria as stated above will lead to a reexamination of some of the hypothetical questions posited at the onset of this lecture. What was the Nigerian political structure embedded in the colonial, 1960 and 1963 Constitutions as compared to what is presently operating under the 1999 Constitution and why is the present structure being rejected by the people? What are the main problems arising from this unacceptable political structure and why are the various proposals by many Nigerians for altering it being rejected? Who are the people behind such rejection and what are viable or workable solutions?

FEDERALISM IN NIGERIA: *QUID PRO QUO*

The present Nigerian political structure as entrenched in the 1999 Constitution has been described as federalism, warped federalism, unitary federalism, centripetal federalism etc. No matter the cognomens, historical antecedents have revealed that the structure emanated from Sir Clifford Constitution, 1922 and solidified by the Richard's Constitution, 1946. Garner and others have defined federalism as a league or compact between two or more States to become united under one central government.⁸² In the opinion of K.C. Wheare, federalism is the method of dividing political powers within a country so that general and regional governments are each within a sphere, co-ordinate and independent.⁸³ Benjamin Nwabueze was more explicit by contending that a nation is divided between a central government and a number of regionalized governments in such a way that each exists as an entity separately and independently of the other and operate directly on the persons

⁸¹ Idowu .A.A. and Adedeji. A. A. (2003), "Public Order, State Security and Democracy in Nigeria", *Proceedings of the Annual Conference of Nigerian Association of Law Teachers*, University of Maiduguri, p. 122.

⁸² *Black's Law Dictionary* (2004) *Op. Cit.*

⁸³ Wheare .K. C. (1953), *Federal Government*, Greenwood Press, London, p. 10.

and property within its territory, possessing a will of its own and the apparatus for conducting its affairs, sometimes on matters exclusive to it.⁸⁴ Chief Obafemi Awolowo,⁸⁵ a foremost Nigerian Federalist, was not so much interested in theoretical definitions but in the reason *de'taire* for a federal government suitable for the Nigerian situation. He said:

“If members of a State, though belonging to one nation, have for a long period of time, lived as geographically separate and autonomous, each group will insist on retaining a large measure of autonomy like the case of Nigeria. In that manner, only a federal Constitution will be suitable...”

On how federalism could better be achieved in Nigeria, Awolowo propounded further that:

*“...each group however small, is entitled to the same treatment as any other group however large... Opportunity must be afforded to each to evolve its own peculiar political institution. Each group must be autonomous in regard to its internal affairs”.*⁸⁶

The recent unabated agitations for redefining federalism in Nigeria with its different names and descriptions could be traced to the activities of the colonial masters who did not bother to reflect on linguistic, cultural and ethno geographical diversities of the people. The superficial and lop-sided federal system created by the

⁸⁴ Nwabueze .B.O (1972), *Op. Cit*; p.1.

⁸⁵ Awolowo Obafemi (1968), *The People's Republic*, Faber & Faber Press, London, pp. 100 – 110.

⁸⁶ Awolowo Obafemi (1971), *Path to Nigerian Freedom*, Feber and Faber, London, p. 54.

colonial government resulted into the severance of contiguous communities while communities without historic-cultural affinities and economic identities were merged.⁸⁷ Unfortunately, over a period of Fifty years of this unsatisfactory political structure, the Nigerian political elites had not been able to fashion out enduring socio-economic and political policies capable of evolving a federal system expected by the people to resolve numerous problems of the country. At present, much agitations *quid pro quo*⁸⁸ are on, for a departure from this federalistic structure.

In between 1960 and 1963, the regional government in Nigeria under the 1960 and 1963 Independence and Republican Constitutions featured the defunct Eastern, Northern and Western Regions. At that time, the country was practising a federalist regional system within the context of a Prime Minister Model of Parliamentary Democracy. Each region was to some extent, financially autonomous, operating its own constitution and able to develop within the confine of its available resources. The regions donated reasonable percentage of their revenue to fund the Central Government while political powers were not deeply concentrated in the Central Government as we have it now. Unfortunately, and with the intervention of the military in politics on January 15, 1966; Decree No. 34 was promulgated to wipe out the regional structure in order to pave a way for the creation of the first set of 12 States in Nigeria.

RESEARCH EFFORTS

In a bid to arrive at workable solutions to the Problems of the Constitutions and Constitutional Problems of Nigeria with particular emphasis on the three contentious problems of the Constitutions, Federalism and Restructuring; my study adopted unstructured interviews, purposeful random sampling questionnaire premised on primary and secondary sources of information from the six geo-political zones of the country and the

⁸⁷ Abdul Alkhali (2009), "The Quest for True Federalism in Nigeria", in *The Constitution: A Journal of Constitutional Development*, Vol. 9, No. 9. P. 1.

⁸⁸ Latin, "because of this and therefore that".

Federal Capital Territory namely; the North East, North Central, North West, South East, South South and South West. One of the most popular cities in each of the Six zones and the Federal Capital Territory was chosen as follows:

North East	-	Maiduguri
North Central	-	Kaduna
North West	-	Sokoto
South East	-	Enugu
South South	-	Port Harcourt
South West	-	Lagos
Federal Capital Territory	-	Abuja

Unstructured interviews and copies of questionnaire capable of eliciting relevant information about the legitimacy of the 1999 Constitution, adequacy or otherwise of its provisions were conducted on sensitive issues like the legislature, local government, legislative lists, immunity, resource control, revenue allocation, State Police, creation of States etc. Other contiguous issues included: legislative-executive relations, judiciary, devolution of powers, political and fiscal federalism, ethno-religious identities, marginalisation, security and the possibility of merging different ethnic nationalities for proper restructuring of the nation. Data collected were subjected to content and contextual analyses based on relevant theories of Constitution, Constitutionalism, Federalism and Nationhood.

The responders were sourced across the following major classes of people in all the six geo-political zones and the Federal Capital Territory, Abuja; ex-political and military leaders; serving politicians; civil servants; public officers; officers and men of the police and armed forces; para-military personnel; judicial officers; diplomats; legislators, religious leaders; traditional rulers; members of the National Youth Service Corps; students; farmers; marketers; artisans; transporters; street and shop traders etc.

The Composite of Data Obtained on the Contentious Problems is illustrated in Table One “A” and “B” below:

TABLE ONE (A)
NUMBER OF RESPONDERS TO CONTENTIOUS PROBLEMS IN THE SIX GEO-POLITICAL ZONES AND THE FEDERAL CAPITAL TERRITORY

Geo-political Zone	Major City	No. of Responders	Contentious Issues →								
			(1) 1999 Constitution (as altered) acceptable	(2) 1999 Constitution not acceptable	(3) 1999 Constitution Suitable for Present Federalism	(4) 1999 Constitution Not suitable for Present Federalism	(5) Present Federalism Acceptable	(6) Present Federalism Not Acceptable	(7) New Constitution desirable	(8) New Constitution not desirable but present Constitution to be amended	(9) Present Govt. of Nigeria to be restructured by merging States and different ethnic groups
North East	Maiduguri	207701	9213	15233	11198	13236	9900	14534	14570	9864	14770
North Central	Kaduna	366970	6709	27048	11636	32121	10696	33061	12640	31118	10542
North West	Sokoto	227501	3118	23653	9066	17698	7056	19708	23221	3543	8390
South East	Enugu	395606	32922	13620	14430	32112	12000	12941	33601	12941	13167
South South	Port Harcourt	457406	7705	46111	13490	40322	14031	39781	14113	39699	40610

South West	Lagos	460416	14054	40112	9154	45012	8054	46112	44999	9167	10617
Federal Capital Territory	Abuja	453196	12207	41277	11278	42206	11180	42304	40117	13201	12307
Total No of Responders		2.568796									
Total No. of Responders to Contentious Issues in Geo-Political Zones and Abuja			85928	207054	80252	222707	72917	208441	18326	119533	102903

TABLE ONE (B)
NUMBER OF RESPONDERS TO CONTENTIOUS PROBLEMS IN THE SIX GEO-
POLITICAL ZONES
AND THE FEDERAL CAPITAL TERRITORY

Contentious Issues →			(10) Not Possible to Restructure Govt. of Nigeria by merging States and different Ethnic Groups	(11) Power to make New Constitution be given to the Present National Assembly	(12) Power to make New Constitution be given to competent, reliable, non-partisan citizens of Nigeria	(13) The Present Full-time Legislature to continue	(14) Part-time Legislature at all levels of Government be adopted	(15) Less Power To Federal Govt. while States and Local Govts to control their Resources	(16) Present Power sharing Between Federal, States and Local Govts to Continue	(17) Present Power sharing Between Federal, States and Local Govts. Not to Continue
			Geo-political – Zone	Major City	No. of Responders					
North East	Maiduguri	207701	9764	10696	14323	9011	15423	20065	4369	12217
North Central	Kaduna	366970	33362	11107	32212	13182	30722	25535	21544	23736
North West	Sokoto	227501	18374	10177	16587	9077	18687	18832	7932	13382
South East	Enugu	395606	33375	16870	29672	18222	28320	31381	15432	23270

South South	Port Harcourt	457406	13202	11201	42611	13602	40210	41600	12212	26906
South West	Lagos	460416	43554	13043	41123	11053	43113	44100	10066	27083
Federal Capital Territory	Abuja	453196	41177	11476	42177	13326	39992	41108	12210	26659
Total No of Responders										
2,568,796										
Total No. of Responders to Contentious Issues in Geo-Political Zones and Abuja			92808	74470	218705	87473	216467	222621	76625	153253

FINDINGS

A close study of the content and contextual analyses of all responses, ideas and opinions expressed by well over Two Million, Five Hundred and Sixty Eight Thousand, Seven Hundred and Ninety-six (2,568,796) persons in Nigeria through selective and purposeful random sampling between 2007 and 2016 revealed as follows:

- (a) The 1999 Constitution (as altered) is not acceptable to most Nigerians who are claiming that the document was forced on the people by the military.
- (b) The relevant provisions of the Constitution on sensitive issues like devolution of powers, revenue allocation, resource control, legislative functions, State Police, creation of States etc; cannot be applied to evolve, sustain and support true principles of federalism in Nigeria.
- (c) Protracted debates on ideal federalism and agitations for restructuring the Nigerian State have been persistent, recurring, on-going, periodical, intermittent and staccato.
- (d) Any agitations for total restructure of the government of Nigeria being premised on disintegration formulae or devices will be counter – productive because the distinctive ethnic nationalities may not be prepared to be separated and merged for the purpose of serious restructuring and political federalism. In other words, fiscal federalism which is capable of making the States or federating units more viable and autonomous is welcome rather than geo-political federalism likely to disintegrate the nation.
- (e) A new Constitutional framework that will facilitate effective national security, less cumbersome procedures for creation of States and Local Government Areas, resource control, power-sharing, Part-time legislature and credible electoral process is urgently needed in Nigeria.
- (f) Over the years in Nigeria, the various Political approaches at redressing the problems of the Nigerian Constitutions and constitutional problems of Nigeria had been perfunctory and left in the hands of political gladiators and opportunists who were short of adequate skills for evolving

necessary strategies and innovations required for arriving at workable solutions.

WORKABLE SOLUTIONS

(1) A New Constitution

The authority and power to make and adopt a new Constitution for Nigeria should not be vested in a National Assembly. Members of the National Assembly were purportedly elected to make laws and not to make a Constitution. In fact, the involvement of the National Assembly in altering some provisions of the 1999 Constitution over the years had been procedurally inconsistent with the provisions of Section 9 thereof. Making a Constitution for the whole country should concern a more larger, appropriate and acceptable cross-section of the nation consisting of citizens acknowledged as accredited representatives of the people. The people who should be engaged in making a Constitution should be more dispassionate, knowledgeable, experienced, loyal and disciplined and not mere political gladiators who are more interested in their selfish economic and political aspirations. In other words, I am submitting that a new Constitution for Nigeria should be drafted by eminent Nigerians so tested and trusted as seasoned patriots with sound knowledge in Legislative Drafting, Constitutional interpretation and adjudication. The process of adopting a new Constitution should be by a referendum. As a fundamental political instrument and the grundnorm of the nation, a Constitution is neither made in a hurry nor forced on the throat of the people.

The new Constitution being proposed should be an effective and authoritative legal framework consisting relevant provisions on Part-time legislature sitting 36 times a year, autonomy for States to control their resources and pay an agreeable percentage to the Federal Government, equitable formula for sharing revenues jointly owned by Federal, State and Local Governments, effective devolution of powers, State Police, proper electoral system that will guarantee free, fair and credible elections, over-hauling land

use policies, amendment of the Land Use Act and expunging it from the Constitution etc.

(2) **Devolution of Powers**

The Constitution of the Federal Republic of Nigeria 1999 (as altered) paves a way for undue concentration of powers at the Federal level even at the expense of socio-economic, cultural and political viability of the States and Local Government Areas. For instance, the Constitution creates an Exclusive Legislative List which consists of 68 items reserved only for the Federal Government and a Concurrent Legislative List which bears only 30 items meant to be legislated upon by both the Federation and the States while giving the Federal Government an overriding power.⁸⁹ There is no distinct legislative power for the Local Government. Only residual items which may not be covered by the Federal and State Governments are often left for the Local Government Authorities which are not viable in most circumstances.

The new Constitution for Nigeria should contain provisions specifically creating *Three* distinct Legislative Lists. The Exclusive Legislative List should contain only issues peculiar to the exercise of sovereign powers by the Federal Government through a Part-time National Assembly over all the federating units such as defence, Citizenship, population, census, foreign affairs, Central Bank, Federal Capital Territory etc. More items should be put in the Concurrent and Residual Lists to give more powers to the State and Local Governments to control their resources and pay an agreeable percentage to the Federal Government. The Centre should be less – overbearing to allow smooth inter-governmental relations and to encourage centrifugal force of operation in the nation's federalistic apparatus rather than centripetalism.

(3) **Part – Time Legislature**

The desire for Part-time legislature at all levels of government in Nigeria arose out of agitations of ineffectiveness, greed and reckless conduct against most of the legislative members of the

⁸⁹ See Second Schedule, Parts 1 & 11 thereof.

Federal and State Houses of Assembly and the Local Government Legislative Councils. Legislative members who were supposed to be watch-dogs of the executive and other arms of government were the ones being accused of financial recklessness, budget padding, flambuoyancy and corruption. Sections 4 to 129 of the 1999 Constitution should be overhauled in the new Constitution to pave a way for part-time legislature, raising the qualifications of members, payment of Part-time Civil Service emoluments, reduction of sittings to 36 times a year, cancellation of constituency projects fund, jumbo pay and outrageous allowances as well as outright rejection of legislative immunity.

(4) MUCH ADO ABOUT RESTRUCTURING

The 1999 Constitution (as altered) which features the present unitary federalism has been pronounced imperfect while the entire structure of government in Nigeria has also been declared to be due for total restructuring. The word “re-structuring” in this context, has to do with practical acts of re-arranging or re-organising the entire Constitutional and political frameworks⁹⁰ of government in Nigeria to ensure a satisfactory stable pattern of principles, policies, laws and institutional relationship between citizens *inter se* and between the citizens and their leaders for stability and corporate existence of the nation.

While efforts had been made through National Conferences to recommend a new Constitution for Nigerians, successive National Assemblies had also struggled to alter certain provisions of the 1999 Constitution. These instances of trials and errors which had not met the aspirations of Nigerians have prompted relentless agitations for complete restructuring and overhauling the entire structure of the government of Nigeria under a different Constitution and a federalistic arrangement called “True Federalism”.

Scholars like Holmes Jean, Lord Haldane and Walter Bagehot have pronounced against the use of the term “True Federalism” while

⁹⁰ Merriam Webster (2006), *Op. Cit* p.971

contending that Federalism is a Universal political concept for structuring the affairs a nation depending upon certain socio-economic, cultural, Linguistic, ethnic, political and religious diversities.⁹¹ They pointedly maintained that if citizens and political stakeholders in a country were capable of running their affairs under a structure that satisfied their yearnings and aspirations, then such a structure if designed as federalism could be called “True Federalism,” Perfect Federalism”, “Ideal Federalism” or “Workable Federalism”. If the structure could not meet the requirements of a universal conception or the aspirations and yearnings of the citizens, it stands to be condemned and be miniaturised by such names as “Warped Federalism”, Imperfect Federalism”, Centripetal Federalism” and “Unitary Federalism” as in the case of Nigeria. The same goes for a Constitution which is not acceptable to the people and whose provisions cannot be freely enforced to consummate the socio-economic and political aspirations of the people.

The call for restructuring by converting the six geo-political zones to regions with sizeable number of States as practised in the First Republic may be difficult to attain at present due to the awareness of the people in the federating units of their right to self-determination and the urge to maintain their ethnic, religious, socio-economic and political identities. Regionalism in the First Republic was practicable due to certain factors such as colonial intervention in the political structure of Nigeria, long term agitations by the nationalists for political independence, the nation’s scanty population, less reliance on oil wealth, little consciousness of the citizens of their ethno-religious identities, socio-cultural and political relevance coupled with their trust and confidence in past political leaders who were able to unite the people and the nation through transparent and incorruptible leadership.

⁹¹ Mowoe. K. M. (2008), *Op; Cit*; pp. 49 – 53

^{91a} (1869) U.S 131

Today, the country has been further polarised, fragmented and pluralised through the creation of States, Local Governments and Local Government Development Areas. Regionalism is now a political conundrum which may be very difficult to reintroduce into the Nigerian federalistic superstructure. What swept regionalism away in Nigeria was a combination of agonizing factors of political intolerance, military intervention in politics, the Nigerian Civil War and much dependence on oil wealth at the expense of the fiscal autonomy of federating States. The Vice-Chancellor, I wish to profess that a recourse to proper regionalism in the present Nigeria may likely be possible through another incident of a decisive, ruthless and brutal military intervention predicated on another civil war which most reasonable and peace-loving Nigerians are not contemplating. The Vice-Chancellor, though war can be an instrument of peace, to get peace through war can also be unpalatable catastrophe.

Giving the present state of insecurity of lives and property in Nigeria, economic recession, poverty among the people, unemployment and youth restlessness; coupled with different and contradictory perspectives of Nigerians to the subject of Restructuring, it may not be politically auspicious to embark on such restructuring formulae or devices capable of setting different ethnic nationalities and peoples of diverse culture and socio-religious identities on a collision course to disintegrate Nigeria and disobliterate her corporate existence. It has to be painfully admitted that since Nigeria is a Federation established on constitutional ideology that the country is indivisible and indissoluble like the United States of America which is also an indestructible union; it has always been very difficult to pull out of a Federation than to pull out of a Confederation. In the Celebrated case of *Texas .V. White*,^{91a} the American Supreme Court held that though the United States of America was an indestructible Union, only a resolution or consent of States could lead to a successful secession or break-away.

So long as the Preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as altered) remains as:

“WE THE PEOPLE of the Federal Republic of Nigeria; HAVING firmly and solemnly resolved; TO LIVE in unity and harmony as one indivisible and indissoluble, Sovereign Nation under God dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding; AND TO PROVIDE for a Constitution for the purpose of promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people.

DO HEREBY MAKE, ENACT AND GIVE TO OURSELVES the following Constitution:-

And so long as the endowment and distribution of Crude Oil in Nigeria by God remain as it is, it may be practically difficult if not impossible for any civilian regime to alter the present beggaristic structure in favour of regionalism no matter its crave for true federalism.

Instead, I hereby propose a new Constitution consisting of enforceable provisions for the creation of sizeable and viable number of States in each of the six geo-political zones to reduce the cost of governance and to enable each State to manage its resources. This arrangement will prevent the present culture of laziness among States and beggaristic federalism. Alia Verba, I am clamouring for a legal, constitutional and socio-political frameworks capable of laying a solid foundation for prosperity, self-reliant development among the constituent parts premised on healthy competition and comparative advantage. I am seriously advocating for a restructured Nigeria based on concepts of intellectual debates, definitions,

sincere negotiations and a workable constitution suitable for bringing about profitable socio-economic, political and policy reforms; efficient welfarist government that caters for the youth, the aged and physically challenged instead of a 'restructured' country that will give room for the existing politicians and other opportunists to emerge as new masters ever more powerful to oppress, alienate and exclude the citizens.

The present hiccupps in the course of Constitutional, political and economic development of Nigeria should not be seen by Nigerians as omens of bad hope or an end of the road for the nation. Great nations of the world today, had experienced worst dilemma in their political history and development. They were able to overcome their teething problems due to their culture of hard work, commitment, sincere loyalty to their nations and transparency in running the affairs of their governments.

Saint Augustine once pronounced that there were many ways to the city of God⁹² just as we can submit today that there can be many avenues by which Nigerians can arrive at workable solutions to the problems of the Constitutions and Constitutional Problems of Nigeria. The Problems under consideration being anthropological and forensic, there may not be permanent or stereotyped solutions at any given time. Hence, Nigerians are hereby called upon to consider the following recommendations capable of raising fundamental issues relevant to the problems of the Constitutions and Constitutional Problems of Nigeria:

RECOMMENDATIONS

1. Nigerians should be allowed to make and give to themselves a Constitution that will meet their imprimatur instead of dissipating their energies and useful resources on periodic amendment of the 1999 Constitution which is a

⁹²Jackson .R. H. (1968), *Jurisprudence in Action*, Cambridge Press, London, p. 189; See also, *The City of God* (1906) OUP, p. 62. *Alia Verba* (in other words).

military Decree No. 24, of 1999 but hitherto, being masqueraded as a Constitution.

2. In a bid to enhance further, Constitutional governance and the efficacy of political structure, President Muhammadu Buhari is enjoined to revisit the 1995, 2005 and 2014 Reports of various National and Political Conferences, the 2007 and 2011 Uwais and Lemu Reports on Electoral Reform in Nigeria.
3. The people and citizens of Nigeria who will be objects of the proposed workable federalism and the new Constitutional document should be ready to re-orientate themselves so as to fit properly into the “change begins with me” as propounded by President Muhammadu Buhari on September 8, 2016. Members of this University Community should not be left out of this impressive scheme of change mantra following the advice of the immediate Acting Vice- Chancellor, Professor Anthony Elujoba in September, 2016 that “we should start doing things Right”. In the same vein, **Jimoh Ibrahim**,⁹³ has advocated for a change in the Praxes of Nigerians in terms of discipline, diligence, innovation and leadership competence so that the new structure of government and the Constitution being proposed may not result into a circuitous or unworkable expedition.
4. The new Constitutional document should provide a workable framework for equal opportunities for Nigerians on the basis of freedom, equality and justice and to have equal access to education, socio-economic, cultural and political infrastructure irrespective of their ethnic, religious and political affiliations.
5. Corruption in Nigeria remains a permanent obstacle to workable Constitutional democracy and democratization. It is also a crime against humanity and a repressive force against the integrity and good image of Nigeria. Government and the people should be more resolute in

⁹³ Jimoh Ibrahim (2015), “Leaders and their Praxes”, *Saturday Mirror*, 10th October, p. 56, www.nationalmirroronline.net (accessed 10 – 10 – 16)

combating this destructive institution by including in the new Constitution and other anti-corruption laws, stiffer and devastating sanctions like; death penalty, life imprisonment, confiscation of stolen properties and parading the convicts before Nigerians particularly their indigenous people.

6. The proposed workable federalism and new Constitution should be a formidable framework for complete independence of the judiciary with particular reference to modes of appointment of Judges who will stand tall in their integrity and be able to do justice without fear or favour, affection or ill will. The office of the Attorney-General should be separated from the office of the Minister of Justice and the Commissioner for Justice at the Federal and State levels respectively. The office of the Attorney-General should also be an elective position so that the legal officer ought to be loyal to the people and not to the Executive attending meeting of the State or Federal Executive Council. While it has been asserted by **Ijalaye** that justice is a product of the quality of judicial officers who are co-worshippers in the Temple of Justice;⁹⁴ Desmond Tutu had also cautioned that in a country where there is no justice, peace is the eventual casualty.⁹⁵
7. In order to stem the tide of insecurity of lives and property in Nigeria, the new Constitution should contain enforceable provisions on State and Community Policing and those that will enable the people to have unhindered access to education, economic, social, political and civil rights. Government at all levels should diversify economic resources, revamp the economy, provide enabling environment for gainful employment rather than outrageous

⁹⁴ Ijalaye D.A. (1992), "Justice as Administered by the Nigerian Courts" in *Justice Idigbe Memorial Lecture Series Five*, University of Benin Press, Benin City, pp. 9 – 15.

⁹⁵ Press Statement at the Murtala Muhammad International Airport, Lagos, Nigeria, on his visit to Nigeria in 1992.

- capital investment in the acquisition of arms and ammunition to fight unending crime and criminality.
8. Prebendal Politics, Kleptocracy and gerontocracy should be avoided in the political culture of Nigerians while justiceable provisions should be enshrined in the new Constitution to prevent vicious circle of immature elites and old politicians in the corridor of powers as if there are no better and more intellectually endowed and reputable citizens. In this regard, I am proposing that every person who desires to go into politics in Nigeria should not be less than 40 and not more than 60 years of biological age.
 9. Nigerian political leaders should learn to be loyal and sincere to the electorates and be subject to their control. The Pyramid of trust, according to **Jimoh Ibrahim**, is collapsed when political leaders mismanaged the nation's resources that are meant to provide basic necessities of life for the people. On the other hand, Nigerians should learn to love their leaders, pray for them and respect the laws of the land. In advanced nations like the UK, USA, Canada, Germany, Australia, USSR etc; it has been despicably observed that the people respect their laws more than God. However, since God remains the Architect of laws,⁹⁶ things work better in those countries as opposed to Nigeria where people refuse to obey God and their laws!
 10. The Federal Character Principle should be well harmonised in the Proposed Constitution to further manage the country's diversities and not as an instrument of political settlement of allies who helped to secure victory at the polls.
 11. Arguments have been canvassed that since Nigerians are finding it difficult by the day to realize their aspirations in the course of living together within a political entity, the principle of indivisibility should be renegotiated. However, it is hereby submitted that there are numerous socio-economic, cultural, political and diplomatic advantages in

⁹⁶ See 1st Timothy Chapter One verse 8, "But we know that the law is good if a man uses it lawfully".

the big size and population of Nigeria. It is advisable to retain our Constitutional ideology that “Nigeria is one, invisible and indissoluble sovereign State...under God”.

12. Governments at all levels should cut down over-bearing and overbloated expenses of governance. Excessive number of political advisers and personal aids of political leaders should be drastically reduced. The Oransanya’s Report of the Federal Government Committee on Reduction of Federal and States Parastatals to reduce the cost of governance should be revisited.
13. Political positions should not be made to attract much financial rewards and remunerations. Politicians should receive normal salaries and pensions as Public Officers in Civil Service of the nation while politics should be less expensive and de-monetised.
14. Studies in innovations, Strategies, Constitutional Law, Constitutional Adjudication and Interpretation should further be intensified in all Faculties of Law and other cognate Faculties in Nigerian Universities with the provision of adequate funds for teaching and research.
15. I am also submitting that just as the ultimate destiny of Nigerians lies in their hands to ensure good governance at all times, so also the destiny of effective application of laws and constitutional adjudication lie in the sovereignty of the people. In the July 2017 celebrated case of *Economic and Financial Crimes Commission .V. Professor Anthony Elujoba* (2017) S/No/HC/E/14/01; the concerned citizens and students of the Obafemi Awolowo University Ile-Ife, insisted **uncompromisingly** and **brigante bravado** that **Justice** had to be done at the daze of the State and the Judiciary. The court was made ungovernable on that day and there was sufficient confusion **Prima Prosmaque**.
16. It is painful to observe recent signals from the presidency tending to show that some highly placed political leaders are turning a deaf ear to the agonizing calls from many Nigerians for a new Constitution and workable federalistic

structure.⁹⁷ This development is unbelievable in view of the persistent slogan of “change” by the present administration.

The President and his Cabinet cannot afford to cause more harm to their efforts at ensuring effective freedom of speech and the right to self-determination of Nigerians in the course of running a democratic government. This may be counter-productive. It was Fatai Williams who warned that:

“When you drive men and women from public arena where debate is free, you send them to the cellar where revolutions are borne. It is indeed better to have uproar than a whisper”⁹⁸

CONCLUDING REMARKS

First and foremost, I thank the God Almighty by whose grace I became one of the numerous beneficiaries of the good works and selfless efforts of the founding fathers of this University. I thank my teachers most especially, Emeritus Professor **David Adedayo Ijalaye (SAN)** who supervised my Ph.D study, relatives and other individuals who had been influencing my life and ‘panel-beating’ me into the present shape of my existence. My mother confirmed that I was very bad from the onset but my father insisted that it was a prerequisite for the attainment of manhood. I am grateful to renowned scholars, NICON and ENERGY GROUPS anchored by **Dr. Jimoh Ibrahim, CFR**, my students, academic and professional colleagues whose wealth of experience, contributions in cash and kind, had constituted the gravamen of this study and much of the attainments in the course of my career. My profound gratitude to staff and students of the Faculty of Law, my computer personnel, the entire staff and students of the University and those of the Obafemi Awolowo University Press. Unlike most inaugural lectures that had never seen the light of the day for the

⁹⁷ See *The Guardian*, July 21, 2016, p. 61; *The Punch*, May 30, 2016, *National Mirror*, July 31, 2016, p. 9.

⁹⁸ Speech at the opening ceremony of the Court of Appeal, Jos branch on 21st Mach, 1983 and Published in *The Sketch*, Ibadan, Tuesday, 21 – 03 – 83, p.1.

implementation of their far-reaching recommendations⁹⁹, the Vice-Chancellor, by the grace of God, those who matter in this country are here and within the next Seventy-Two hours, copies of this inaugural lecture will be on the *Attention Table* of the President and Commander – in – Chief of the Armed Forces, Federal Republic of Nigeria.

I will ever be grateful to God for enriching my home with a wife of my peace – Kemi, my biological children, Bose, Shola, Seun, Yemi and Tolu as well as other uncountable children, God has given us the grace to nurture *in loco parentis*.

The Vice-Chancellor, Your Excellencies, Highly Distinguished Ladies and Gentlemen; I am done, the market is over and my basket is empty. This is my *terminus ad quem*. I thank you all.

⁹⁹ For instance, only *One* Inaugural Lecture from the Obafemi Awolowo University was published in 2002 by the National universities Commission. See *National Universities Inaugural Lectures Series* (2002), ed; Dr. Noel .B. Salic, Department of Academic Planning and Research, National Universities Commission, Abuja, Orleans Link Nigeria Ltd., Abuja, p. v.

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