A Critique of the Constitution Alteration Process in Nigeria's' 7th and 8th National Assemblies

Usman Ibrahim*

Abstract

Since the beginning of the Fourth Republic in 1999, Nigeria has witnessed 3 successful Constitutional alterations. Secondly, during the regimes of President Olusegun Obasanjo and President Goodluck Ebele Jonathan about two proposals for the Constitutional alterations failed. It was noted that the procedures adopted for these alteration processes are in one way or the other, the same. One fundamental problem that kept on re-occurring in all the processes is the manner of involving the public in the alteration process. The only time the National Assembly (NASS) attempted to get it right was in the 7th NASS alteration process where the House of Representatives used the methodology of Peoples Public Hearing. Under this methodology, the Hon Speaker of the House directed all members of the House to go back to their constituents to seek their opinion on each item of the Constitution that was being considered for the alteration. In an attempt to comply with the direction of the Hon. Speaker, the members centralized the hearing in a particular location of each constituency. The Senate on its part, adopted the methodology of town hall meeting, regional, and national public hearing and international visits to the advance democracies, and discussions with experts on Constitutional law and federalism was adopted. The Senate also set a secretariat for collection of all memoranda from the general public. In the 8th Assembly, the NASS reviewed the 7th Assembly proposal that failed together with CONFAB report without seeking the opinion of the general public. This research examines these problems and many more and makes a little comparison with the South African and Switzerland approaches of involving the public in the law making process and made recommendations on the way forward.

Keywords: Alteration, Bill, Constitution, Legislative Aides, Public Hearing.

INTRODUCTION

The Constitution of the Federal Republic of Nigeria1999 (as altered) can be altered either by the Legislature [1] (the law makers themselves) as provided under section 9 of the Constitution and in accordance with procedure set out in the Standing Orders of both Houses.[2] It can also be altered by the Judiciary,[3] in exercising its power to review the functions of the other arms of government. This is usually carried out at the time of its interpretation, in order to give effect

* LL.B, LLM, BL, Research Fellow National Institute for Legislative and Democratic Studies (National Assembly) Abuja, Nigeria smnibrahim2@gmail.com 08036263860

[1] Section 4 and 58 of the Constitution of the Federal Republic of Nigeria

[2] Order XIII Rule 98 of the standing orders of the House of Representatives of July, 2014

[3] Note 1, Section of 6 of the Constitution.

to a certain provision or to ensure that some actions conform to the provision of the Constitution or to nullify some of the provision of a statute. In line with the above, this paper discusses the procedure of altering the Constitution under the 1999 Constitution; Constitutional alteration by the Judiciary; and the role of Legislative Aides in Constitutional Alterations. The objective of this research is to appraise 7th and 8th Assemblies Constitutional alteration process with the view of making recommendation on how to improve the subsequent processes. The paper also discusses the roles of legislative aides of the members of the NASS in the alteration process, with the view of making recommendation on the way forward.

However for the purpose of clarity, the paper provides clarifications for key concepts that are relevant to this research which includes: Bill Constitutional Alteration, Public Hearing and Legislative Aides. Bill: A bill is a legislative proposal and the first step in creating a new law. Every bill is assigned a unique number that either begins with "HR or HB" (to show the bill originated in the House of Representatives) or "S or SB" (to show it originated in the Senate). Most bills never become law. For a bill to become a law, the bill, in the case of National Assembly, must be passed in identical form by both the Senate and House of Representatives and then assented to by the President or Governor, in the case of a State. Constitutional Alteration, also referred to as 'Constitutional amendment, is a means by which the Constitution can be modified, altered, or changed, through the legislative assemblies. Public Hearing: Otherwise referred to as involving the public or public participation, is a hearing that within a reasonable limit, is open to anyone who wishes to observe, such a hearing is often characterized by the right to appear and present a memorandum before a given committee. Public hearing is a legislative decision that is open to the public held for the purpose of taking contributions on a bill that is under legislative scrutiny. Legislative Aides: is person who assists member (s) of the National and State Assembly in the performance of their Constitutional functions.

PROCEDURE FOR ALTERING THE CONSTITUTION

The authority to alter the Constitution by the Legislature is derived from section 9 of the 1999 Constitution[4]. The Constitution provides that an alteration cannot be passed by the National Assembly unless the proposal is supported by the votes of not less than two-third majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the states.[5] Where the proposal for alteration relates to the alteration

[4] Note 1 Sections 6.
[5] Note 1. Section 9.

of Section 8 (state creation and boundary adjustment), section 9 and chapter IV (Fundamental Human Rights), the proposal must be supported by the votes of not less than four-fifths majority of all the members of each House and also approved by resolution of the Houses of Assembly of not less than two-thirds of all the states. The provision of section 9 of the Constitution shows that the proposal for altering the Constitution shall emanate from the NASS and passed by the NASS, before sending the proposal to State Houses of Assembly for approval. In carrying out the alteration, areas of alteration must be identified in order to determine the number of votes required.

Find below a table showing some of the proposal for the fourth alteration and the number of votes required, that did not succeed in the 7th Assembly

S/N	SUBJECT	SECTION OF THECONTITUTION	VOTE
1	Rotation of power	New provision	
2	Local government	Section 7	2/3
3	State police	Section 214	2/3
4	Political structure	Sections 221 to 229	2/3
5	Judicial reform	Chapter VII	2/3
6	Citizenship question, settler and indigene ship dichotomy	Chapter III	2/3
7	Security	Section 11	2/3
8	Politicization of religion and pro-ethnicity.	Section 10	2/3
9	Dispensing with Presidential Assent	Section 58	2/3
10	Altering Section 9 of the Constitution.	Section 9(4)	4/5
11	Financial Autonomy to State Houses of Assembly	New provision	
12	Revenue sharing,	Section 162 to 163	2/3
13	States creation,	Section 8	4/5

The National and State Houses of Assembly are guided by the provisions of the 1999 Constitution (as altered) and its Standing Orders (brought pursuant to sections 60 and 101 of the Constitution which empowers the Legislature to regulate its proceedings). The procedure, in relation to a bill, means subjecting a bill at the floor of the House to the proper legislative processes (from its introduction to the final assent or overriding-veto) as prescribed by the Constitution and the standing orders. The law-making process is, perhaps, the most captivating of all the roles and duties performed by the legislature under a Constitutional framework.

The alteration process consists of several stages. A draft bill is prepared, scrutinized, adopted and published in the bills journal. Every bill must receive three readings before its passage, namely, first reading, second reading and third reading which shall be in different days unless the House unanimously directs otherwise. The procedures for introducing legislation and seeing it through committee are similar in both the House and Senate. Legislative proposals originate in a number of different ways, but no matter where a legislative proposal originates, it can only be introduced by a member of the Legislature. The first and second readings of any Bill for altering the provision of the Constitution shall be considered and proceeded with in accordance with the procedure on Bills as provided in the same Constitution,[6] and the House Standing Orders[7]. After the 2nd reading, the Bill is committed to a Special Committee of the House on Constitutional Alteration for further legislative action. In Constitution alteration, the legislative action of the committee starts after second reading, and usually includes public that will give opportunity for members of the public to make input.

ANALYSIS OF PUBLIC HEARINGS IN THE ALTERATION PROCESS

Involvement of the public in Constitutional alteration process in Nigeria is a requirement in the legislative process[8]. This system is sometimes called stakeholders hearing or public hearing. The hearing is usually carried out after the Constitution alteration bill has passed through second reading[9] in a legislative house of the National Assembly and referred to a relevant committee for further legislative action. The hearing gives the public opportunity to make input in the bill on important issues that relate to substance of the bill and the modalities for the implementations.[10] On certain controversial legislative issues, it can be important to conduct a thoughtful public process in advance of any public hearing.[11] Hearings often occur late in the process and may leave citizens with the impression that local officials do not want to hear their ideas. The format of hearings often leaves little, if any, room for reasonable discussion, give or take, or response to prior testimony. There are reasons for holding a public hearing in Constitution alteration such as to open discussions about a bill; To communicate and clarify needs about a bill; to communicate a sense of community concern about a bill; to increase

[6] Section 58 subsection (1) to (5) of the Constitution.

[7] Note 2, Oder XII Rules 79 to 88

[8] Ibid

[9] Ibid

[10] A research report on *transparency and public participation in law making process (a comparative overview and assessment of the situation in Macedonia) in 2010,* commissioned by the Organization for Security and Co-operation in Europe (OSCE) Spillover Monitor Mission in Skopje. It was developed by Emina Nuredinoska (Macedonian Center for international Cooperation – MCIC, Macedonia) and Katerina Hadzi-Miceva Evans (European Center for Not-for-Profit Law - ECNL, Hungary) at pages 17 to 18

[11] ibid

community awareness about a bill; to attract media attention about a bill; to show your side of controversial issues about a bill; to re-open public dialogue on issues that have fallen out of the public mind about a bill; to counter your opponents' arguments against your group or initiative about a bill; to find a solution to a community problem about a bill; to gather information for the bill.

Participation in law-making processes means a possibility for the citizens, civil society organizations (CSOs) and other interested parties to influence the development of policies and laws that affects them.[12] The importance of involving the public in these processes is increasingly recognized by European Union (EU) institutions, and national governments.[13]

BENEFITS OF INVOLVING THE PUBLIC IN LAW MAKING PROCESS

Involving the public in the law making process has practical, philosophical and ethical benefits, and below are some of such benefits: It helps meet internal regulations and requirements of a legislative assembly, such as standing orders of a given assembly. Many programs, laws and rules require some level of public participation; it adheres to democratic principles[14]. Some peoples' culture and society embrace the notion that people have the right to influence what affects them.

Paying attention to the public's ideas, values and issues results in more responsive and democratic governance; it can create more substantive decisions and outcomes. Better results occur when decision-makers have access to more information. Public involvement brings more information to the decision, including scientific or technical knowledge, knowledge about the context where decisions are implemented, institutions involved, history and personalities. More information can make the difference between a good and poor decision.

More perspectives. Additional perspectives expand options and enhance the value of the ultimate decision. The more views you gather in the process of making a decision, the more likely your final choice will meet the most needs and address the most concerns possible. Increased mutual understanding. Public participation provides a forum for decision makers and stakeholders to understand each other's' issues and viewpoints. The discussions broaden the

[12] Ibid
[13] Ibid
[14] Ibid

knowledge base as each one contributes to the decision. Free consultation, involving the public provides free consultation to public projects. Members of the public bring technical expertise, specific knowledge about the effects of decisions, local experience and history, and other specialized experience to the decision-making process. It can identify problems that can and should be solved. Good public participation processes help to quickly identify key difficulties, challenges or opportunities; create better, deeper understanding of the situation, problems, issues, opportunities and options for action; manage single-issues advocates; build better relationships; manage conflict more effectively; build a coalition of support; get it right the first time. It can enhance future problem-solving capacity. A good process can greatly enhance, rather than diminish, future problem-solving capacity. Participants will see and experience success that can be applied to future situations[15]. It can also assist in strengthening democracy; preventing conflict among different groups and between the public and the government and increasing confidence in public institutions[16].

CONSTITUTIONAL ALTERATION PROCESS

In the 7th Assembly, the House of Representatives used the methodology of Peoples Public Hearing[17]. Under this methodology, the Hon Speaker of the House directed all members of the House to go back to their constituents to seek their opinion on each item of the Constitution that is being considered for the alteration. In an attempt to comply with the direction of the Speaker, the members centralized the hearing in a particular location of each constituency. After the hearing reports were submitted to the House Committee on Constitution Alteration for consideration and reporting to the Committee of the whole House. The hearing took place only in a single area selected by the member representing the constituency. The methodology adopted by the House of Representatives, actually, attempted to conduct a public hearing in line with report for the National Campaign for People's Right to Information (NCPRI) of April, 2011 and UN Human Rights Committee on Public Participation in law making process.[18] However, the members did not reach the grass root. This is because as the hearing was centralized, the average Nigerian may not be able to transport and feed

[15] Note 10 at pages 17 to 18
[16] Note 7, PP 12 to 14.
[17] 7th National Assembly Report on the Constitutional Alteration Bill
[18] Note 7

himself to the venue of the hearing[19]. Secondly, the members did not properly embark on serious sensitization campaign to enlighten the people on the content and the rationale behind the alteration process[20]. As a result of these shortcomings, most of the people that voted followed the voice vote without actually knowing how the law would affect them. Thirdly, the deaf, dumb and blind persons were not carried along in the process. This is because the members of the House did not use special communication experts and brails for this category of people. Furthermore, the hearing did not capture a reasonable percentage of the people in the constituency[21]. These deficiencies made the entire process grossly defective, but nevertheless, is a good attempt in the right direction compared to previous alteration processes.

In the 7th Senate, the methodology of town hall meeting, regional, and national public hearing was adopted[22]. The Senate also set a secretariat for collection of all memoranda from the general public. Thus, the "participatory" approach constituted a key guiding principle of the entire process.[23] This approach is critical to achieving the broad principles of Constitution review, especially those relating to building an active citizenry and an effective governance framework. The Senate also invited seasoned experts on Constitutional law and federalism as consultants to provide research papers and reports on the many areas of Constitutional governance for the consideration of the committee[24]. The Senate also undertook study tours to the International Law Institute in Washington DC, Forum of Federations in Ottawa, Canada and to India where the Committee met and interacted with parliamentarians, judges, government officials, scholars and Nigerians living in diaspora[25]. They were able to gain new insights into the practice and challenges of federalism. Furthermore, they met and consulted with Civil Society Organizations and organized interest groups in order to learn from them the strengths and weaknesses of the Constitution[26]. In this methodology, the same problem suffered by the methodology adapted by the House of Representatives repeated itself here. As it is did not cure the defect observed in the process.

[19] This what I personally witnessed at the hearing.
[20] Ibid.
[21] Ibid.
[22] Note 17.
[23] Ibid
[24] Ibid
[25] Ibid
[26] Ibid

This is because, the methodology of House of Representative is better in terms of involving the public from grass root. The town hall meetings were not properly organised, because the hall cannot accommodate 1 per cent of the population of the various area[27]. Where the meeting was carried out in an open place no reliable public address system, the forum became more of political rallies than public hearing. At the regional and national public hearings, the official language was English and not all people understand or communicate in English Language[28]. The Senate did not make provision for transportation, feeding and other logistics that would enable reasonable number of people to attend[29]. Similarly, the Senate did not properly embark on serious sensitization campaign to enlighten the people on the content and the rationale behind the alteration process[30]. The deaf, dumb and blind were also not carried along in the process[31]. These deficiencies made the entire process grossly defective and more of academic exercise than public hearing but it is also a good attempt in the right direction compared to previous alteration processes.

In the 8th Assembly, both the Senate and House of Representatives started the process from reviewing the literature developed by the 7th Assembly to find out what went wrong and to examine some of the challenges that led to the failure of the exercise[32]. In the 7th Assembly process, the alteration bill was one and the entire process died because the President did not give his assent. In the light of the above, the 8th National Assembly reviewed the 7th Assembly proposal, while adapted some recommendations from the CONFAB Report of 2014 with few additions for the consideration by NASS. The joint committees held retreat in Lagos where speakers and majority leaders from all the Houses of Assembly of the States as well as one female legislature from each house of assembly attended. Since the process is more or less literature review, both the Senate and House of Representatives did not embark on public hearing. Though, the public were not properly involved in the 7th Assembly Constitutional alteration process, it could have been a better opportunity for this National Assembly to learn from previous mistakes and set a better phase for the process, particularly in public participation. The only observable innovation is that the 8th Assembly Alteration Bill was

[27] This problem was noticed at the venue of all the meetings.
[28] Ibid
[29] Ibid
[30] Ibid
[31] Ibid
[32] https://www.vanguardngr.com/2017/07/national-assembly-to-vote-on-32-constitution-alteration-bills accessed on 15/01/2018

divided based on the item considered for alteration. This system enables the President to give assent to all the Bills or select few and give assent instead of rejecting the entire process.

All the observable shortcomings in the mechanisms adopted by the 7th Assembly in public participation in the alteration process are still active. This is because no attempt has been made by this Assembly to make improvements. At the end of the public hearings, the Special Committee reports back to the House, while the Committee of the whole House considers the report of the Special Committee. In the clause by clause consideration in Committee of the whole, a clause or question shall be deemed passed if it is supported by positive vote of 2/3% majority of all the members of the House[33]. If the alteration dealt with sections 8 and/or 9 the percentage is 4/5% of all the members of the House[34]. Thereupon, a clean copy of the Bill shall be prepared and read the third time, by a vote of 2/3% or 4/5 majority of the members. The Bill as passed shall be forwarded to the Senate for concurrence or to the House as the case may be. In the event of variation between the Senate and House versions, a conference committee will be set by the leadership of both houses for resolution. The conference committee will submit harmonized copy of the Bill to each house for adoption in the plenary.

At the conclusion of the process in the NASS, a clean copy of the alteration Bill as passed by the NASS will be transmitted to each Clerk of the 36 State Houses of Assembly, by the Clerk to the NASS for approval by resolution. Each of the State Houses of the Assembly shall communicate its resolution on all the clauses, and the clause(s) that got the required votes shall stand passed. At this stage, the State Assemblies are expected to involve the public within their various constituencies to make input in the process. The input of their people shall determine the resolution of a given Assembly. Unfortunately, the members, usually, restrict themselves to the precincts of their complex and pass a resolution on each item as transmitted to them by the NASS[35]. This is the second opportunity for perfecting the Bill, which supposed to remedy some of the deficiencies observed in the processes carried out by the NASS. But the opportunity was not utilized. When the alterations are approved by 2/3 of all the State Houses of Assembly, a clean copy, certified by the Clerk to the NASS, shall, as soon as possible, be presented to the President of the Federal Republic of Nigeria for his assent, within 30 days. This was where Nigerians witnessed a little controversy, in the 6th National Assembly alteration

[33] Section 9 of Constitution (as altered) Note 7 Order XII Rules 79 to 88 of House Standing Orders 2014.
[34] Ibid
[35] Ibid

Bill, on whether the presidential assent is required in Constitution alterations (in Third Alteration) see the case of *Olisa Agbakoba VS NASS*[36] where Justice Okechukwu Okeke of Federal High court, sitting in Lagos, nullified the amendment of the 1999 Constitution by the NASS without the assent of President Goodluck Jonathan. The veto power gives the Executive right to participate decisively in the legislative process. It is a feature of Presidential system of government whereby, upon receipt of a bill passed by the legislative assembly, the President or the Governor of the State, as the case may be, may decide to veto the bill by not signing it into law, and return same to the Legislature with a statement stating grounds of his objections. This is what happened in the case of alteration proposed in the 7th Assembly. Upon receipt of the Executive veto, the Legislature may re-examine the grounds of objections and, if the grounds are found to be meritorious, the NASS may make alterations and the bill shall again be sent to the President for assent.

If however, the Houses are of the opinion that the Presidential veto lacks merit, they can ignore the alteration and override the Presidential veto by passing the Bill into law by two-thirds majority of each of the Houses[37]. Upon the President assenting, the Bill becomes an Act or when the veto is overridden by 2/3[38], the bill automatically becomes law without assent of the President. The process of enrolment begins after the presidential assent or when veto is overridden. The Clerk, to the NASS shall cause the Government printer to publish the Act in triplicate. The printer publishes the Act accordingly on vellum and returns them to the Clerk of the National Assembly.

The latter shall retain one copy for his records, delivers one copy to the President and the other copy to the Chief Justice of Nigeria for enrolment, where it is enrolled in the Supreme Court and it becomes an Act of the NASS.

JUDICIAL REVIEW AS ANOTHER MEANS WAY OF LEGISLATIVE PROCESS

The attempt to alter the Constitution for the 4th time in the 7th Assembly was checked by the Court in the exercise of its power to review the legislative and executive powers. At the conclusion of the alterations by the National and State Houses of Assembly, the National Assembly transmitted clean copy of the alterations to President Goodluck Jonathan for

[36] Unreported cases delivered by at Federal High Court Lagos in 2010.
[37] Section 58 of the 1999 Constitution as amended.
[38] Ibid

Presidential assent in fulfilment of requirements stipulated under Section 58(1). However On Wednesday, 15th April, 2015, the President of the Senate, David Mark, read on the floor of the Senate during plenary sitting, a letter addressed to the Senate by President Goodluck Jonathan.

In the letter, the President pointed out what he considered as defects that may not make the bill for the 4th Alteration of the Constitution enjoy his assent unless and until such defects are reviewed or reconsidered by the National Assembly. Particularly, the President faulted Section 4 of the 4th Alteration Bill, 2015, which attempts to alter Section 9 of the Constitution by inserting a new subsection 3A, which in effect has jettisoned the assent of the President in the process of Constitutional alteration. The President advanced reasons for withholding his assent as he stated in his letter as follows: ‘’However, this alteration can only be valid if the proposal was supported by votes of not less than four-fifth majority of all the members of each House of the NASS and approved by a resolution of the House of Assembly of not less than two-thirds of all the states as provided by Section 9(3) of the 1999 Constitution.” This is a fundamental requirement of the Constitution and in the absence of credible evidence that this requirement was met in the Votes of Proceedings of the National Assembly, it will be unconstitutional for the President to assent to the Bill.

In light of the above, the NASS started exploring ways of exercising powers given to them under section 58(5) to override the veto of Mr. President. On realizing this development, the Attorney General of the Federation filed a suit against the National Assembly at the Apex Court[39] praying for an Order to stop the NASS from exercising the powers given to them under section 58(5). Consequently, the Supreme Court stopped the National Assembly from going ahead with its plan to override the veto of Mr. President. This can be seen in a ruling delivered by Chief Justice of Nigeria Justice Mahmud Mohammed (as he then was) “ in order to give learned Senior Counsel to the Plaintiff time to address the Court on the salient issues surrounding this case regarding the proper parties having regards to requirement of the Supreme Court (Additional Jurisdiction) Act Cap S16 LFN 2004 and Sections 232 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) prescribing original jurisdiction of court and the parties and the parties can invoke that original jurisdiction. This case is further adjourned to 18/6/2015 for the parties to address the Court on the issue. Meanwhile, pending the hearing of the parties on 18/6/2015. Status quo ante shall be maintained in the matter. In

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[39] SC214/2015.

other words, no steps shall be taken to alter the current position of the subject matter of the suit by the defendant or the Plaintiff.". Since then, the parties did not resume the trial.

In another development, Olisa Agbakoba (SAN) was dissatisfied with the decision of the NASS to remove the powers of the President of giving assent under constitution alteration. He instituted a case against the NASS and the case was titled *Olisa Agbakoba Vs National Assembly*[40]. Federal High Court sitting in Lagos ruled that the alteration of the 1999 Constitution as passed by the NASS and approved by more than two-thirds majority of the State Houses of Assembly cannot take effect unless assented to by the President.

For the purpose of clarity, this paper throws more light on the concept 'Judicial Review'. It is another form of legislative process where the decision of court becomes a law. Judicial Review is the power of the courts to interpret a given statute to declare it proper or contrary to the Constitution in line with our legal system.[41] It also includes reviewing the executive act either contrary to, or in accordance with, the Constitution, with the effect of rendering the act invalid or vindicating its validity and so putting it beyond challenge in future.[42] In the case of *Abdulkarim v Incar Nig, Ltd*.,[43] the Supreme Court of Nigeria, per Nnaemeka Agu JSC, succinctly highlighted the scope of judicial review within the Nigerian Constitutional jurisprudence as follows: In Nigeria, which has a written presidential Constitution, judicial review entails three different processes; namely: (i) The courts particularly the Supreme Court, ensuring that every arm of government plays its role in the true spirit of the principles of separation of powers as provided for in the Constitution. (ii) That every public functionary performs his functions according to law, including the Constitution; and (iii) For the Supreme Court, that it reviews court decisions including its own, when the need arises in order to ensure that the country does not suffer under the same regime of obsolete or wrong decisions. It is significant to note from the outset that in Nigeria, the power of judicial review is expressly conferred on the courts by the Constitution.[44]. This power of Judicial review is to ensure

[40] Note 14.
[41] Imo Udofa, (2015) *The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects.* Journal of Law, Policy and Globalization ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.40.
[42] B.O. Nwabueze, The Presidential Constitution of Nigeria (London: C.Hurst & Company (Publishers) Ltd in Association with Nwamife Publishers Ltd., 1982) p. 309.
[43] (1992) 7 NWLR (Pt. 251) 1.
[44] 1999 Constitution, as amended s. 4(8); s. 6(6)(a).

obedience to its provisions by all persons and authorities since any violation of its provisions will be an illegality.[45]

The Constitution's supremacy is also assured since any derogation from it will be declared void because it is unconstitutional. The vesting of executive powers of the federation in the President and the exercise of such powers by him are made subject to the provisions of the Constitution.[46] The executive power so vested in the President extends to the execution and maintenance of the Constitution itself and all laws made by the National Assembly. Thus, the President shall ensure by his actions that the provisions of the Constitution are observed and enforced. The President, subject to the provisions of the Constitution, may exercise the executive powers by himself either directly or through the Vice President and Ministers of the government of the Federation or officers of the public service of the Federation.[47] It follows that executive acts or omissions could relate not only to the direct acts or omissions of the President but also to the acts or omissions of the entire executive arm of the federal government including institutions constituting the public service of Nigeria. The provision of section 1(2) of the Constitution of the Federal Republic of Nigeria, 1999 stresses the supremacy of the Constitution and insists that Nigeria can only be governed in accordance with the provisions of the Constitution. By means of judicial review, the judicial organ of government exercises a measure of control and check over the legislature and the executive. The power of court to give meaning of a statute or an act of the executive may render a statute a nullity or amend an existing law or policy. Where the law is declared a nullity, the legislature must repeal the law or amend the law to bring it in conformity with the decision of court. Similarly, where the judicial decision add or reduce something from the construction of the statute, it may also form the basis for amending the existing law. These are some of the reasons why judicial review forms an important component of legislative research.

The Provisions of section 30 of *Legislative Houses (Powers and Privileges) Act*[48] has ousted the jurisdiction of court, which violates the principles of separation of powers. The adverse effect of this provision which appeared both undemocratic and uncivilized has paved way for

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45 Chales Manga Fombad, "Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa". www.saifac.org/docs/repapers/RPS%20NO%2018paf. Accessed 10/01/2018.

46 1999 Constitution, as amended, section 5.

47 Ibid.

48 *Cap. L12 LFN, 2004.*

the decision of the Court of Appeal in the case of *Hon. Mike Balouwu and 3 others VS Peter Obi*[49] declare section 30 of the Act a nullity.

COMPARATIVE CONTEXTS[50]

SOUTH AFRICA

Legislative Structures and Relevant Provisions in South Africa National legislative authority is vested in Parliament which consists of two houses: the National Assembly (NA) and the National Council of Provinces (NCOP).[51] The Constitution also provides for provincial legislatures and local government structures, which have varying degrees of legislative power. The NA and the NCOP represent different interests in the legislative process, with the NA representing "the people . . . to ensure government by the people" and the NCOP representing "the provinces to ensure that provincial interests are taken into account" in the legislative process.[52] The participation of both houses of Parliament is required in the legislative process. If either of these democratic institutions fails to fulfill its Constitutional duty in relation to a bill, which includes the duty to facilitate public participation, Parliament has failed to fulfill its duty.[53] The Constitutional duty to facilitate public involvement in the Legislative and other processes is found in section 59(1)(a) for the NA; section 72(1)(a) for the NCOP; and section 118(1)(a) for provincial legislatures. Section 1(d) sets out the founding values of a multi-party system of democratic government, which, according to the court, include ensuring accountability, responsiveness and openness. The Preamble of the Constitution expresses the values that underpin the goals agreed upon for the establishment of a society based on democratic values: social justice and fundamental human rights.[54] The Court interpreted the provision in the Preamble which states that— "The foundations for a democratic and open society in which government is based on the will of the people" as indicating that "the people of South Africa reserved for themselves part of the sovereign legislative authority that they otherwise delegated to the representative bodies they created."[55]

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[49] pt. 1028 (2007) 5 NWLR at pg 488-502-503

[50] An article produced by Karen Syma Czapanskiy and Rashida Manjoo tiled "The Right of Public Participation in the Law Making Process and the Role of Legislature in the Promotion of this Right" published on Duke Journal Of Comparative & International Law [Vol 19:1 accessed at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1060&context=djcil on 28/08/2014

[51] S. AFR. CONST. 1996 ch. 4, §§ 42 (1), 43(a), 44(1).

[52] Ibid..

[53] Doctor for Life Int'l V Speaker of the National Assembly & Others 2006 (12) BCLR 1399 (CC) (S. Afr.).

[54] S. AFR. CONST. 1996 pmbl. ("We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to—Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights . . .

[55] Supra- Doctors for Life, 2006

The right to political participation is further strengthened by the political rights found in Section 19 of the Constitution and the clause protecting freedom of expression found in Section 16 of the Constitution.[56] Altogether, according to the Court, this language indicates a broader notion of political participation than simply the right to vote.[57] The applicant in this case, an advocacy organization called Doctors for Life,[58] complained that, during the legislative process leading to the enactment of four statutes, the NCOP and some of the Provincial Legislatures did not comply with their Constitutional obligations to facilitate public involvement in their legislative processes. They argued that there had been a failure to invite written submissions and conduct public hearings on these statutes. The court referred to the four statues collectively as 'health statutes.[59] The respondents denied the allegations and argued that both the NCOP and the various provincial legislatures had complied with the duty to facilitate public involvement in their legislative processes. The respondents also challenged the applicant's assertion as to the scope of the duty to facilitate public involvement. Their contention was that, although the duty to facilitate public involvement requires public participation in the law-making process, essentially all that is required of the legislature is to provide the opportunity to make either written or oral submissions at some point in the national legislative process.

The majority of the Court found that, regarding section 72 (1)(a) of the Constitution, Parliament had failed to comply with its Constitutional obligation to facilitate public involvement before passing the Choice on Termination of Pregnancy Amendment Act and the Traditional Health Practitioners Act. Adopting a social and historical context approach, the Court held that certain statutes require mandatory public consultations. Which statutes require such consultations can depend on such things as the nature and importance of the bill, requests received for consultations, and whether or not promises had been made in response to such requests. Public consultations in such circumstances would be an indicator of respect for the views of affected

[56] See S. AFR. CONST. 1996 ch. 2, §§ 16, 19.
[57] Supra- Doctors for Life, 2006
[58] According to the website of Doctors for Life International, "Doctors for Life stands for the following 3 principles: For sound science in the medical profession, the sanctity of life from conception till death, and for a basic Christian ethic." Doctors for Life International, Mission Statement, http://www.doctorsforlifeinternational.com/about/mission.cfm (last visited July 29, 2008) cited by the authors of the article- Karen Syma Czapanskiy and Rashida Manjoo tiled "The Right of Public Participation in the Law Making Process and the Role of Legislature in the Promotion of this Right"
[59] Supra-Doctors for Life, 2006. The health statutes mentioned included the: Traditional Health Practitioners Act 35 of 2004 (intending to bring about a new dispensation of recognizing and regulating traditional health healers); Choice on Termination of Pregnancy Amendment Act 38 of 2004 (making provision for registered nurses, other than midwives, to perform termination of pregnancies at certain public and private facilities); Dental Technicians Amendment Act 24 of 2004 (making provision for persons who have been employed as dental laboratory assistants for a period of not less than five years under the supervision of a dentist or dental technician, and who have been trained by these professionals, to perform the work of a dental technician); and the Sterilisation Amendment Act 3 of 2005. There was no dispute as to whether the National Assembly had fulfilled its constitutional obligation to facilitate public involvement in connection with the 'health statutes.' This had taken place through the acceptance of written submissions made to the National Portfolio Committee on Health, and also by the holding of public hearings.

people. Adequate consultation is even more crucial in contexts where the affected groups have been previously discriminated against, marginalized, silenced, received no recognition, and have an interest in laws that will directly impact them. The Court concluded that both the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act were adopted in a manner inconsistent with the Constitution and both were declared invalid.

SWITZERLAND

The Swiss Confederation or *Confoederalio Helvetica* is a federal state, with a political structure comprising three governmental levels: the Confederation, 26 cantons and 2551 communes. This three-level polity is also mirrored in the concept of a three-fold citizenship- federal, cantonal and municipal.[60] Switzerland has a strong tradition of participatory democracy, with the cantons enjoying wide-ranging powers of 'self and shared rule.' As regards the former, cantons possess their own legislative, executive, and judicial bodies ie each canton has its own Constitution, parliament, executive, and judiciary, with the opportunity of making decisions about its own democratic system and Organization[61]. Cantons even has treaty making powers.[62] (Unlike the system in Nigeria where only the National Assembly can legislate on treaty) By virtue of the shared rule, Cantons are guaranteed active participation in the decision making at the federal level in three levels–

(a) through their elected representatives in the Council of State (one of the chambers of the Federal)Assembly;

(b) in the Constitution-making process- according to Article 140(I)(a) of the Constitution, amendments to the Constitution must be submitted to the vote of the people and the cantons. Consequently, revisions of the Constitution are only accepted if a majority of the people and cantons 109 approve the amendments; and

(c) in the federal law-making process- when drafting provisions of a federal act, the Federal Council or the Parliamentary committee have to initiate

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[60] See Article 37(1) of the Swiss Constitution.

[61] Thomas Fleiner, Alexander Misic, Nicole Topperwien, Swiss Constitutional Law (2005) made available at fn. 58 at page 39.

[62] Note 90, Article 56(1) of the Constitution.

a consultation procedure, which allows the cantons, political parties and other interested groups to express their views about the new law

Apart from these provisions for cantonal participation, Article 147 also imposes a duty to consult with the public before introducing or amending a law–

'The Cantons, the political parties and interested groups shall be invited to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties.'

The Consultation Procedure Act[63] sets out the requirements for public participation in the law-making process. The aim of the consultation procedure is to allow 'the cantons, political parties and interested groups to participate in the shaping of opinion and the decision-making process of the Confederation.' In particular, the following participants are invited to submit an opinion in order to obtain information on the material accuracy, feasibility of implementation and public acceptance of a federal law– a. The Cantons; b. The political parties represented in the Federal Assembly; c. The National umbrella organizations for the communes, cities and mountain regions; d. The National umbrella organizations for the economic sector; and e. Any other interest groups relevant to the individual case.

REFORMING THE ALTERATION PROCESS: SOME RECOMMENDATIONS

The following set of recommendations are made to ensure a fair, transparent, efficient and effective ways of Constitutional alteration, particularly on how to carry the general public in the process:

1. The strongest method of Constitutional alteration is by enhancing involving the public in the process. This can be achieved through a Constitutional amendment imposing a duty to facilitate adequate public participation, which is similar to the South African approach.

2. Where Constitutional amendment is considered too tedious (as is the case in Nigeria) to facilitate public participation, a statute setting out the main

[63] Federal Act on Consultative Procedure (CPA, SR 172.601).

requirements governing the legislative and law making process ought to be enacted, similar to the Swiss approach.

3. A Code of Practice for public consultation can be developed to provide modalities for public participation that could be used to reach a wider audience e.g. a young person's version, a Braille and audio version and other language versions and an 'easy-read' version.

4. Consultations should be Flexible and ought to be granted to the local authorities to determine the manner in which to conduct consultations. However, certain basic principles must be observed. Thus, consultations ought not to be confined only to inviting written comments; public hearings should also be held to enable oral presentations.

5. The consultation documents should be clear, simple and concise and in a language most suited to the target audience.

6. It is also important for the legislators/government to explain the reasons for its final act/rule/decision, by responding to 'key' or 'major' criticisms and providing explanations for the rejection of 'significant' plausible alternatives.

7. Some legis lative authorities and their staff lack the human capital to effectively facilitate public participation, information distribution and education campaigns. The government should imbibe the culture of periodic capacity building for both the legislators and legislative staff to have a broader understanding of legislative process. In the alternative consultants that specialized in the area of public hearing can be engaged in the process.

CONCLUSION

This paper criticized Constitutional alteration procedure in the 7th and 8th Assemblies. From the criticisms, it can be observed that since the beginning of the fourth republic in 1999, Nigeria has witnessed 3 successful Constitution alterations. Secondly, two proposals for the Constitutional alterations failed in administration of President Obasanjo and Good luck Jonathan One fundamental problem that kept on re-occurring in all the processes is the manner

of involving the public in the alteration process. The only time the National Assembly attempted to get it right was in the 7th National Assembly alteration process where the House of Representatives used the methodology of Peoples Public Hearing.

The Senate on its part, adopted the methodology of town hall meeting, regional, and national public hearing and international visits to the advance democracies, and discussions with experts on Constitutional law and federalism was adopted. In the 8th Assembly the National Assembly reviewed the 7th Assembly proposal that failed together with CONFAB report without seeking the opinion of the general public.