

# CONSTITUTIONAL ALTERATION AND DEMOCRATIC CONSOLIDATION IN NIGERIA

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## Abstract

*With the return to democratic rule in 1999, the Constitution of the Federal Republic of Nigeria, 1999 (as altered), which is modelled after the country's defunct Constitution of 1979, came into force. Since then, there have been calls for alteration of the Constitution by many Nigerians. Pursuant to these calls, a number of alterations have been made to the original constitutional text, with the objective of consolidating democratic governance in Nigeria. This paper broadly examines these constitutional alterations and considers their net implications for the democratic process of the country. Based on doctrinal methodology and secondary reference to empirical studies, the paper findings that some modest gains have been made through the alterations, especially in the areas of institutional strengthening of the National Assembly and the Independent National Electoral Commission (INEC). Nonetheless, the paper concludes that much still needs to be done to institute the devolution of powers in the country, through further constitutional alteration.*

**Keywords:** *Constitutional Alteration; Democracy; Democratic Consolidation/Process; Governance.*

## INTRODUCTION

The Constitution of the Federal Republic of Nigeria<sup>1</sup> provides for the Exclusive Legislative List in the Second Schedule, Part I. It consists of 68 items, on which only the federal government can legislate upon. The matters exclusively granted to the federal government include defence, foreign affairs, currency, taxation of income, profits, and capital gains, mines and minerals, banks, trade and commerce, amongst others.

The Constitution also confers concurrent powers on the federal government and the states in 30 items. Both the federal government and the state governments can pass laws on any matter listed in the concurrent list, which includes the allocation of revenue, industrial, commercial and agricultural development, scientific and technological research, amongst others. However, if a law passed by a state government conflicts with a law passed by the federal government, the federal law will prevail. The States have residual

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<sup>1</sup>. Constitution of the Federal Republic of Nigeria, 1999 (as altered) (the Constitution).

legislative power in matters in items listed neither as exclusive to the federal government nor current between the federal and state governments. This clearly shows that the federal government has much more powers than the state governments even though Nigeria operates a federal system of government. This has led some critics to describe Nigeria as operating a unitary system of government, rather than a federal system of government.

Consequently, since the return to democratic rule in 1999, there have been demands by many groups and individuals for alteration of the Constitution. Some have even canvassed for a new constitution or reversion to the 1963 Constitution<sup>2</sup>. In 2005, President Olusegun Obasanjo created the National Political Reform Conference with the aim of reviewing the federal structure of Nigeria, resource control, devolution of power to federating units, amongst others.<sup>3</sup> In 2014, President Goodluck Jonathan initiated a Constitutional Conference.<sup>4</sup> The aim of the Conference was to amongst others, discuss the future of Nigeria and to answer the unanswered national questions.<sup>5</sup>The two Conferences produced reports, which were never acted upon.

Society is constantly evolving; therefore, law reform should mirror the changes in society. In this wise, some have even argued that the law does not define society, but the law should reflect society. The argument by these theorists is that society develops the law by refining it. This argument underscores the need for periodic law reform to meet the legitimate demands of citizens with a view to attaining democratic consolidation. The National Assembly has made some alterations to the Constitution, with a view to meeting the aspirations of Nigerians.

Against this backdrop, it becomes pertinent to examine whether alterations to the Constitution in Nigeria since the return to democracy in 1999 have led to

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<sup>2</sup>. The 1963 Constitution (Republican Constitution) granted the regions autonomy. The regions were empowered to make laws for the peace, order and good government of their territories. Each region had executive and legislative arms of government, quite independent of the federal government.

<sup>3</sup>. A J Falode, 'Nation-building Initiatives of the Olusegun Obasanjo Administration in the Fourth Republic, 1999-2007' [2013] (19) *University of Mauritius Research Journal* .

<sup>4</sup>. Adeniyi S. Basiru, Mashud L.A. Salawu, Martins A. Arogundade, 'Jonathan's Constitutional Conference in Nigeria: A Reflection and a Radical Critique' [2016] (8) (1) *Journal of Humanities and Social Sciences*.

<sup>5</sup>. L Cheri, 'National Conference: Answering the Nigerian National Question' [2014] *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* (19) (5).

democratic consolidation. The paper is divided into six sections. Section one covers the introduction to the subject, section two discusses certain key concepts relating to law reform and democratic consolidation, section three discusses alterations to the Constitution since the return to democracy in 1999, section four discusses the procedural challenges in the alteration process and the efforts at mitigating them, section five analysis whether alterations to the Constitution since 1999 have led to Democratic Consolidation, while section five is the conclusion.

The findings indicate that there has been modest progress in democratic consolidation due to law reform initiatives since 1999 which led to the strengthening of institutions such as INEC, the National Assembly and State legislatures. There is however need for more reforms to entrench democratic gains. The paper recommends the need for constitutional alteration to align with the principles of federalism in order to enhance democratic consolidation.

### **Conceptual Framework**

These key concepts form the background of the topic: “Law Reform”, “Democracy”, “Democratic Consolidation”. An understanding of these key concepts will contribute to an appreciation of the paper. These concepts are briefly discussed below:

#### ***Law Reform***

Law reform means providing changes to laws in a particular jurisdiction with the aim of bringing them in line with the needs and expectations of the society. It is usually initiated by a body called the ‘Law Reform Commission’.<sup>6</sup>Indeed, the three organs of government namely the legislature, the executive and the judiciary are agencies of law reform. Changes in society that bring about law reform include a change in societal norms and values, ethics, morality, technological advances and events such as terrorism. Examples of such laws brought about by changes in society include cyber regulatory laws, terrorism

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<sup>6</sup>. Hillary N Onwe, *Groundwork of Legislative Drafting* (Snap Press Ltd. Enugu 2009) p 110.

prevention laws and proceeds of crime laws.<sup>7</sup> Suffice it to say that as society progresses, the laws of the land must progress with it through law reform. Consequently, one should not hold the impression that law reform applies only to improvements in existing laws, as doing so would be misleading. This is because law reform also covers the introduction of new laws within a legal system.<sup>8</sup>

Law reform can be conducted by the Executive arm of government through ministries, government agencies and ad hoc committees set up to tackle specific issues. The legislature may also establish committees to undertake the task of law reform. It may also be argued that the courts are also involved in the process of law reform in the form of decisions of the highest courts. It should, however, be noted that the role of the courts in law reform is limited. This is in view of the fact that decisions of courts are only limited to facts that come before them.<sup>9</sup>In Nigeria, the Law Reform Commission is the primary agency of government charged with the responsibility for law reform. This is by virtue of the provisions of Section 5 of the Law Reform Commission Act<sup>10</sup>. It must be however be observed that the Law Reform Commission, despite being given the responsibility for undertaking law reform in Nigeria has been underutilized.<sup>11</sup>

### ***Democracy***

This study seeks to establish a link between law reform and democratic consolidation. To achieve this task, it is pertinent to proffer a functional definition of the term democracy. Abraham Lincoln, the 16<sup>th</sup> president of the United States, famously defined democracy as a government of the people, by the people and for the people.<sup>12</sup> Democracy is a system of government involving freedom of the individuals in various aspects of political life,

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<sup>7</sup>. Kefas M Magaji, P C Okorie, 'Amendment of Legislation, Law Review and Law Reform' (Being a Lecture delivered at the regional training on translating policy into legislation: techniques for drafting legislative bills for parliamentary staff of ECOWAS member states at the ECOWAS Parliament Abuja on 6<sup>th</sup> July 2017).

<sup>8</sup>. C O Okonkwo, 'The Imperatives of Law Reform in the Law Making Process' [2012] *Nigerian Law Reform Journal* at 4.

<sup>9</sup>. *Ibid* at 6.

<sup>10</sup>. Cap N118 LFN 2004.

<sup>11</sup>. Kodinliye J Ezeobi, [2013] 'Dream Come True' *Nigerian Law Reform Journal* 53-66.

<sup>12</sup>. Manfred G Schmidt, 'Political performance and types of democracy: Findings from comparative studies' [2002] (41) *European Journal of Political Research* 147-163.

equality among the citizens, justice in the relations between the people and the government and the participation of the people in choosing those who govern them. As Schumpeter<sup>13</sup> argues, democracy entails an institutional arrangement aimed at reaching political decisions, which realizes the common good by allowing the people to decide issues through the election of individuals who carry out the will of the people. The other aspect of democracy emphasizes the centrality of competition to the emergence of political leadership. In this wise, democracy is an institutional arrangement aimed at arriving at political decisions in which individuals acquire the power by means of a competitive struggle for the people's vote. Larry Diamond<sup>14</sup> argues that a system could be said to be democratic if it ensures the following attributes amongst others:

- a. Substantial individual freedom;
- b. Freedom of ethnic, religious, racial, and other minority groups to practice their religion and culture and to participate equally in political and social life;
- c. The right of all adult citizens to vote and run for office;
- d. Genuine openness and competition in the electoral arena, enabling any group that adheres to constitutional principles to form a party and contest;
- e. Legal equality of all citizens under the rule of law, in which the laws are clear, publicly known and non-retroactive; and
- f. An independent Judiciary to neutrally and consistently apply the law and protect individual and group rights.

According to Cohen<sup>15</sup>, democracy is a system of community government in which the members of the community participate in decision making which affects them, either directly or indirectly. This definition suggests that democracy is a system of government in which the people effectively participate in the decision-making processes impacting on their lives.

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<sup>13</sup>. Joseph Schumpeter, *Capitalism, Socialism, and Democracy* (Allen and Unwin 1976).

<sup>14</sup>. Larry Diamond, *The Spirit of Democracy: The struggle to build free societies throughout the world* (Times Book, New York 2008), 22.

<sup>15</sup>. Cohen C, 'Democracy Athens' (2001) *University of Georgia Press Democracy Report, Publication on Civil Society Pro-Democracy Network.*

### ***Democratic Consolidation***

The term democratic consolidation connotes transition from authoritarian rule to civil rule. This transition should be to democratic systems that lead to a stable and enduring democracy. Democratic consolidation, therefore, creates strong institutions.<sup>16</sup> Essentially, arriving at a consolidated democracy requires nurturing democratic values and ethos. It also involves evolving and strengthening institutions to prevent a reversal to authoritarian regimes. In this regard, the role of a dynamic civil society cannot be overemphasized. It is the duty of civil society to check abuses of power, to hold public officials accountable for their actions in the management of public resources and also to mitigate political conflicts.

### **Alterations of the Constitution and Democratic Consolidation**

Based on the various definitions of democracy stated in the previous section, it is striking that all democracy theories view democracy as a wonderful system of government that enhances human freedom, dignity, individual and communal development amongst other attributes. Considering the fact that Nigeria has experienced 20 (twenty) years of uninterrupted democracy, it is thus pertinent to test this notion by considering whether constitutional alteration in Nigeria since 1999 has led to democratic consolidation in Nigeria:

- i. 1999-2003: During this period, there was no constitutional alteration. Instead, there was wrangling between the executive and the legislature with both organs of government setting up committees to review the constitution but with no results at the end of the exercises.<sup>17</sup>
- ii. 2003-2007: During this period, the Obasanjo-led administration set up the National Political Reform Conference in January 2005, ignoring the opposition to this move by the National Assembly. The final recommendations of the Conference were presented as a Constitutional Amendment Bill to the National Assembly. The recommendation for tenure elongation muddled up the attempts to amend the Constitution

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<sup>16</sup>. Kwasau, M, 'The Challenges of Democratic Consolidation in Nigeria's Fourth Republic' [2013] (9) (9) *European Scientific Journal*.

<sup>17</sup>. Igbuzor O, Ibrahim J, 'Making a People's Constitution' in O Igbuzor and J Ibrahim (eds), *A Citizens' Approach to Making a People's Constitution in Nigeria* (Citizens Forum for Constitutional Reform 2005).

and led to the failure of the motion to amend the Constitution at the Senate in May, 2006.<sup>18</sup>

- iii. 2007-2011: During this period, the Uwais-led Electoral Reform Committee was set up due to the flawed 2007 elections. The Report of the Committee made some recommendations that required amendments to the Constitution. The two chambers of the National Assembly also set up *ad hoc* Committees on the review of the Constitution. The two chambers of the National Assembly decided to form a joint committee, but disagreements between the two houses even led to both houses trading blames on which house was superior over the other.<sup>19</sup> The implication was that the process of Constitutional amendment remained stalled. Nonetheless, some major amendments were eventually made to the Constitution that were relevant to credible elections. Few amendments were also made that were outside the purview of electoral matters. One of such amendments was the amendment of Section 145 of the Constitution with new wordings that gave the National Assembly power to make a resolution by single majority of each house to allow the Vice President to perform the functions of the President if the President is out of the country and fails to transmit a letter within 21 days. This power was also granted to the state houses of assembly with regard to the Governor of a state. After the amendments, another round of controversy arose as to whether Presidential assent was required to amend the Constitution. The National Assembly, borrowing from the American experience argued that presidential assent was required, while the executive argued otherwise.

In 2010 and 2011, three alterations were made to the Constitution. The Constitution of the Federal Republic of Nigeria (First Alteration) Act was passed in June 2010 by both Houses of the National Assembly.<sup>20</sup> On 16<sup>th</sup> July

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<sup>18</sup>. Samuel Egwu, 'The National Assembly and Constitutional Reform Agenda in the Fourth Republic', in Ladi Hamalai and Rotimi Suberu (eds), *The National Assembly and Democratic Governance in Nigeria* (National Institute for Legislative Studies 2014) 215.

<sup>19</sup>. *Ibid.*

<sup>20</sup>. Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010.

2010, it received the approval of a two-thirds majority of the State Houses of Assembly. The Constitution of the Federal Republic of Nigeria (Second Alteration) Act was passed by the Senate and the House of Representatives in November 2010. On 29<sup>th</sup> November 2010, it received the approval of two-thirds of the State Houses of Assembly. The Constitution of the Federal Republic of Nigeria (Third Alteration) Act was passed in December 2010 by both Houses. It received the approval of a two-thirds majority of the State Houses of Assembly on 8<sup>th</sup> January 2011. A summary of the three alterations is presented below:

*First Alteration Act 2010:* The alteration of Section 76 of the Constitution was intended to overcome the Supreme Court decision in *Attorney General of Abia State & 35 Ors. v Attorney General of the Federation*.<sup>21</sup> Some provisions of section 15 of the Electoral Act, 2001 relating to the date of elections were challenged for constitutionality in that case. The Supreme Court held that some provisions of the said section 15 of the Electoral Act 2001<sup>22</sup> were either in pari materia with some subsections of sections 76 (1) & (2); 116 (1) & (2); 132 (1) & (2); and section 178 (1) & (2) of the Constitution and consequently inoperative while those inconsistent with them were held void.

The alteration to Section 81 of the Constitution was meant to authorize first line charge on expenditure from Consolidated Revenue Fund to INEC, National Assembly and Judiciary. The alteration was intended to promote the independence of the institutions. Before the alteration, only the judiciary enjoyed financial autonomy under the section. Section 84 of the Constitution was also altered to permit the Recurrent Expenditure of INEC to be a Charge upon the Consolidated Revenue Fund (First Line Charge).

The alterations to Sections 135(2) and 180(2) of the Constitution were on tenure of office of the President and Governor respectively in case of re-run election. This alteration sought to ensure that persons whose elections were annulled do not gain undue advantage if they win the re-run election. As may be recalled, the Supreme Court held in *Peter Obi v Independent National Electoral Commission*<sup>23</sup> that the tenure of a Governor who succeeds in an

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<sup>21.</sup> [2002] 6 NWLR (Pt 763) 264.

<sup>22.</sup> The Act was repealed Electoral Act 2002, CAP E 6 LFN, 2004.

<sup>23.</sup> [2007] 11 NWLR (Pt 1046) 565.

election petition begins to run from the date the oath of office was taken. The alteration seeks to exclude a Governor or President who wins re-run election after the nullification of his initial election from spending more time in office than he would have spent if his election had not been nullified.

Section 160 of the Constitution was altered to provide powers to the Independent National Electoral Commission to make its own rules or otherwise regulate its own procedures and not be subject to the approval or control of the President. The alteration thus enhanced the independence of INEC.<sup>24</sup>

*Second Alteration Act 2010*<sup>25</sup>: Section 233 of the Constitution was altered to grant the Supreme Court jurisdiction on appeals from the Court of Appeal on whether any person has been validly elected to the office of Governor or Deputy-Governor of a state.

*Third Alteration Act 2010*:<sup>26</sup> Section 254C (1) of the Act, affirmed the status of the National Industrial Court as a superior court of record. The alteration also gave the Court an elaborate jurisdiction to include labour matters, sexual harassment in the workplace and human trafficking. Based on the provision, the jurisdiction is exclusive to it and cannot be concurrently exercised or shared among the other High Courts on the same pedestal of authority or power. Premised on this, the decisions of the Supreme Court in the cases of *Attorney General, Oyo State v National Labour Congress*<sup>27</sup> and *National Union of Electricity Employer & Other v Bureau of Public Enterprises*<sup>28</sup>, which limited the jurisdiction of the National Industrial Court and placed it at par with the jurisdictions of the Federal High Court, the State High Court and

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<sup>24</sup>. O N Ogbu, 'A Critical Analysis of the Constitution (First Alteration) Act' [2012] (10) *The Nigerian Juridical Review* 49-72.

<sup>25</sup>. Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.

<sup>26</sup>. Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

<sup>27</sup>. [2003] 8 NWLR (Pt 821) pg 1.

<sup>28</sup>. [2010] 7 NWLR (Pt 194) 538.

the High Court of Federal Capital Territory, Abuja have ceased to have validity of law.<sup>29</sup>

Apart from listing the National Industrial Court as one of the courts established by and under the constitution for the Federation, the alteration went on to state the composition of the Court to include the President and such number of judges as may be prescribed by an Act of the National Assembly including the procedure, qualification and criteria for their appointment. For the court to be properly constituted, Section 254 of the Constitution stipulates that in exercising any jurisdiction conferred upon it by the Constitution or any other law, the National Industrial Court shall be duly constituted if it consists of a single Judge or not more than three Judges as the President of the Court may direct. Furthermore, Section 254(c) (1) and (2) provided extensively for such labour or labour related civil causes or matters that are within the ambit of the Court's jurisdiction. This also includes exclusive jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith, notwithstanding anything to the contrary in the Constitution by virtue of the provisions of Section 254(c) (2) thereto.<sup>30</sup>In July 2017, The National Assembly passed the fourth Alteration Bills to the Constitution. Highlights of these included the following:

- i. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 1, 2017 (Composition of Members of the Council of State)* – This bill sought to alter the Third Schedule to include former Presidents of the Senate and Speakers of the House of Representatives in the composition of the Council of State.
- ii. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No 3, 2017 (Devolution of Powers)* – This sought to alter the Second Schedule, Part I & II to move certain items to the Concurrent Legislative List to give more legislative powers to States.

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<sup>29</sup>. Fagbemi Sunday, 'Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis'

[2014] (28) *Journal of Law, Policy and Globalization*.

<sup>30</sup>. Ejere, O D, Akhabue, D A, 'Legal Implications of the Constitution (Third Alteration) Act, 2010 on the Jurisdiction of the National Industrial Court (NIC)'[2017] *IOSR Journal of Research & Method in Education (IOSR-JRME)*.

- iii. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 4, 2017 (Financial Autonomy of State Legislatures)* – This alteration sought to provide for the funding of the Houses of Assembly of States directly from the Consolidated Revenue Fund of the State.
- iii. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 9, 2017 (Political Parties and Electoral Matters)* – This sought to alter section 134 & 179 to provide sufficient time for INEC to conduct bye-elections; and section 225 to empower the Independent National Electoral Commission (INEC) to de-register political parties for non-fulfillment of certain conditions such as breach of registration requirements and failure to secure/win either a Presidential, Governorship, Local Government chairmanship or a seat in the National or State Assembly or a Councillorship.
- iv. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 20, 2017 (Judiciary)* – This bill contained a vast array of alterations with regards to the Judiciary such as the composition of the National Judicial Council, and empowering Justices of the Supreme Court and Court of Appeal to hear certain applications in chambers thereby enhancing the speedy dispensation of justice.
- v. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 23, 2017 (Citizenship and Indigeneship)* – This Bill sought to alter Section 25 of the Constitution to guarantee a married woman’s right to choose either her indigeneship by birth or by marriage for the purposes of appointment or election.
- vi. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 27, 2017 (Reduction of Age Qualification)* – This Bill sought to alter the Sections 65, 106, 131, 177 of the Constitution to reduce the age qualification for the offices of the President and Governor and membership of the Senate, House of Representatives, and the State Houses of Assembly.
- vii. *Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 32, 2017 (Deletion of the Land Use Act from the Constitution)* – The Bill sought to alter the Constitution of the Federal Republic of Nigeria, 1999 to delete the Land Use Act from

the Constitution so that it can be subject to the regular process of alteration.<sup>31</sup>

Some of these proposals were passed by both houses, whilst some such as the devolution of powers failed at the Senate. As the Senate came under pressure from many Nigerians for its decision to reject more powers to the states, Senate President Bukola Saraki stated that the Senate may revisit its rejection of the devolution of powers bill to the states under Constitutional Review.<sup>32</sup>

The Bills that were passed into law included:

- i. *Fourth Alteration Act No. 4:*<sup>33</sup> This alteration provides for the funding of the Houses of Assembly of States directly from the consolidated revenue fund of the State by substituting for subsection (3) of Section 121 of the Principal Act which formerly read: “*Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the courts concerned*” a new subsection (3) which now reads “Any amount standing to the credit of the:

(a) *House of Assembly of the State; and*

(b) *Judiciary;*”

- ii. *Fourth Alteration Act No. 9:*<sup>34</sup> This alteration provides INEC with sufficient time to conduct bye-elections where no clear winner has emerged in an election by substituting for the word, “*seven*” days, in line 2 of subsection 4 and 5 of Sections 134 and 179 of the Principal Act, the words “*twenty-one*” days. The alteration further made provision for grounds for de-registration of political parties by inserting after section 225 of the Principal Act, a new section 225A

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<sup>31</sup>. Full List of 1999 Constitution Alterations.  
<<https://www.channelstv.com/2017/07/27/full-list-1999-constitution-amendment/>>19 October 2017.

<sup>32</sup>. <<http://thenationonlineng.net/devolution-powers-bill-can-still-revisited-says-saraki/>> accessed 24 October 2017.

<sup>33</sup>. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No.4) Act, 2017

<sup>34</sup>. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No.9) Act, 2017.

which empowers INEC to de-register a political party for any of the stated reasons.

- iii. *Fourth Alteration Act No. 16*:<sup>35</sup> This alteration disqualifies a person who was sworn-in as president or governor to complete the term of an elected president or governor from being elected to the same office for more than a single term by inserting after subsection 2 of Sections 137 and 182 of the Principal Act anew subsection (3) to this effect.
- iv. *Fourth Alteration Act No. 21*:<sup>36</sup> This alteration provides for the time frame for the determination of pre-election matters by substituting for the marginal note of Section 285 of the Principal Act, a new marginal note “Time for determination of pre-election matters, establishment of Election Tribunals and time for determination of election petitions” and substituting for its subsection (8), a new subsection (8) which empowers a tribunal or court to suspend its ruling on a preliminary objection or any other interlocutory issue touching on its jurisdiction to the final judgment stage. This fourth alteration further altered section 285 of the Principal Act by inserting new subsections “(9) – (14)” to the effect that every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event and judgment in writing is to be given within 180 days; appeal from a decision in such pre-election matter is to be filed within 14 days from the date of delivery of the judgment and same shall be heard and disposed of within 60 days from the date of filing of the appeal. The section, as altered, also explains what constitutes a “pre-election” matter and precludes an election tribunal or court from declaring any person a winner at an election in which such a person has not fully participated in all stages of the election.

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<sup>35</sup>. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 16) Act, 2017.

<sup>36</sup>. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 21) Act, 2017.

- v. *Fourth Alteration Act No 27*.<sup>37</sup> This alteration<sup>38</sup> reduces the qualifying age for the office of the President, membership of the House of Representatives and the State House of Assembly by substituting the word, “thirty-five” and “thirty” in sections 65 (1) (b) and 106 (b) of the Principal Act respectively, with “twenty-five”; and substituting the word, “forty” in 131 (b) of the Principal Act with the words, “thirty-five”.<sup>39</sup>

### **Procedural Challenges of Altering the Constitution**

The Constitution provides for six different types of alterations. To this end, there are different procedures for the creation of new states, boundary adjustment, the procedure for creating a new local government area, and the procedure for adjusting the existing local government areas.<sup>40</sup> There are also separate procedures for amending specific provisions of the Constitution and other amendments.<sup>41</sup> Our focus is on Section 9 of the Constitution which provides for two different criteria for the alterations of specific provisions, and the alteration of any other part of the Constitution. Section 9 (2) of the Constitution provides that an Act of the National Assembly that seeks to alter the Constitution not being an Act to which Section 8 applies shall not be passed in either House of the National Assembly unless the proposal is supported by the two-third majority of all members of that House and approved by the Houses of Assembly of not less than two-thirds of all states. The procedure for the alteration in Section 9 (3) of the Constitution is very stringent as it provides that an Act for the purpose of altering the provisions of sections 9<sup>42</sup> and 8<sup>43</sup> or chapter IV of the Constitution shall only be passed by either House of the National Assembly if the proposal is approved by four-fifths majority of members of each House and thereafter approved by the resolution of Houses of Assembly of two-thirds of all the states. Many jurists

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<sup>37</sup>. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No 27) Act, 2017.

<sup>38</sup>. Nicknamed Not Too Young to Run Act.

<sup>39</sup>. The Hydra-Headed Fourth Alteration.  
<<http://lawpavilion.com/blog/the-hydra-headed-fourth-alteration/>> accessed on 10 July, 2019.

<sup>40</sup>. See Section 8 of the Constitution.

<sup>41</sup>. See Section 9 of the Constitution.

<sup>42</sup>. Section 9 provides for mode of altering the Constitution.

<sup>43</sup>. Section 8 provides for procedure for altering the Constitution for the purpose of creation of new states and boundary adjustment.

have criticized the procedure for altering the Constitution as being difficult and cumbersome. This has led some to assess the Constitution as being in the class of rigid constitutions.<sup>44</sup>

In fact, since the National Assembly embarked on the Constitution (First Alteration) process in 2010, there has been controversy regarding the alteration procedure. The National Assembly, having completed the alteration exercise, refused to send the Bill to the President for presidential assent on the ground that such assent was unnecessary because it was not envisaged by section 9 of the 1999 Constitution (as altered), which spells out the procedure for amending the Constitution. The argument by members of the National Assembly was that Section 9 does not prescribe any role for the President, as such, presidential assent was unnecessary. The members further argued that since the 1999 Constitution (as altered) is modelled after the United States Constitution, which does not require presidential assent for its amendment, the 1999 Constitution (as altered) logically, will not also require presidential assent before its amendment can take effect.

Professor Itse Sagay, commenting on the matter asserted that the amended Constitution did not require the President's assent. In his view, the amended Constitution could assent itself if it met the 2/3 requirement of membership of the State Houses of Assembly.<sup>45</sup> He further posited that the President's assent is unnecessary according to Section 9 of the constitution. He contended that since the amendment is a law jointly passed by the National Assembly and State Houses of Assembly, the President cannot sign laws made by state Houses of Assembly because it is outside his jurisdiction.<sup>46</sup> On the other hand, it should be noted that Section 9 of the Constitution cannot be read in isolation but must be read with sections 58 and 59 of the Constitution. Those Sections prescribe the mode of exercising Federal legislative power by the National Assembly. The mode commences with the introduction of a Bill in either chamber of the National Assembly and terminates with the President assenting

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<sup>44</sup>. Aguda O *Understanding the Nigerian Constitution of 1999* (MIJ Publishers, 2000) 142.

<sup>45</sup>. <<https://www.vanguardngr.com/2010/11/constitution-amendment-controversy/>> accessed 15 April 2019.

<sup>46</sup>. *Ibid.*

to the Bill before it becomes law, subject, however, to the power of the National Assembly to override a presidential veto by a two-thirds majority. It should also be noted that to the extent that the constitutional amendment is initiated through a Bill, it must be concluded with an opportunity given to the President to either give presidential assent or withhold the same in accordance with the procedure laid down by Section 58.<sup>47</sup>

Nigeria can also look at the practice in other jurisdictions to articulate ways to ease the difficult process of altering the Constitution. For instance, in Switzerland, the procedure for amendment of the constitution may take the form of adoption of a new or totally revised Constitution. If the federal parliament by an approval of each of its two houses, passes a new draft for a total or partial revision of the constitution, a referendum is held to validate or reject the constitution.<sup>48</sup> In France, the Constitution was amended by the Constitutional Act of 1960, through a direct referendum, without any parliamentary procedure, though this has been criticized and the current practice is for an amendment of the Constitution to be passed by both House. The review becomes final if it receives three-fifth of votes cast by Congress convened by the President or it is approved by referendum.<sup>49</sup>

### **Has Constitutional Alteration led to Democratic Consolidation?**

Democratic consolidation implies that democracy is entrenched in the polity to the extent that principles of democracy are followed willingly by citizens. Looking at the positives, Nigeria has had uninterrupted democratic governance for 20 years. One of the main reasons for law reform initiatives is to respond to events that could stifle democratic progress. So far, alterations to the Constitution have provided for first-line charge on expenditure from Consolidated Revenue Fund to INEC, National Assembly and Judiciary; granted powers to the Independent National Electoral Commission to make its own rules or otherwise regulate its own procedures and not be subject to the approval or control of the President; reduced the age requirement for the

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<sup>47</sup>. Ilias B Lawal, 'The review of the Constitutional Amendment Procedure and Presidential Assent in Nigeria' *Journal of Law and Conflict Resolution* [2015] (7) (5); Nathaniel Inegbedion, 'Constitutional Amendment' Lecture Hand-Out (University of Benin, 2017).

<sup>48</sup>. Ankit Singh, 'Amendment Procedure in Switzerland, United Kingdom and France' <<https://www.slideshare.net/AnkitSingh879/ammendment-procedure-in-switzerlandunited-kingdom-and-france>> accessed 31 October 2019.

<sup>49</sup>. *Ibid.*

Office of the President and Membership of the House of Representatives and State Houses of Assembly; provided financial Autonomy of State Legislatures and State Judiciary; Provided INEC with Sufficient time to conduct bye-elections and provide grounds for deregistration of political parties, amongst others.

Furthermore, the National Assembly was able to stop the third term agenda of President Obasanjo, a feat that most legislators in Africa have not been able to achieve. Since the return to democratic rule, two national conferences have been held under Presidents Obasanjo and Jonathan. The recommendations of these conferences have not seen the light of day. Within this period, however, the National Assembly has made several alterations to the Constitution. This demonstrates practically that the National Assembly is the more viable option for law reform, rather than any conference by what so ever nomenclature.

Looking at the negatives, however, it is worthy to note that Nigeria is still in a stage of transitional democratization. Samuel P. Huntington<sup>50</sup> stated in his theory of the third wave of democratization that the global trend of democratic transitions since Portugal's "Carnation Revolution" in 1974 had seen more than 60 countries throughout Europe, Latin America, Asia, and Africa undergo some form of democratization. Scholars like Larry Diamond<sup>51</sup> have however criticized the theory, stressing that so-called democratic transitions are little more than transitions to semi-authoritarian rule, as demanded by the international realities of a post-cold war world. In line with the argument that Nigeria is still a transiting democracy, the impact of years of military rule cannot be wished away. The country is in a learning curve. It will take years for democracy to be fully entrenched to the extent that negative forces hindering democratic growth such as culture of impunity, electoral violence, corruption, suppression of state legislatures, stifling of local governments by state government amongst others, would be tackled. One area, which the National Assembly may consider an alteration to the Constitution, is

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<sup>50</sup>. Samuel P Huntington, 'Democracy's Third Wave' [1991] (2) (2) *The Journal of Democracy*.

<sup>51</sup>. Larry Diamond, 'Thinking About Hybrid Regimes' [2002] (13) (2) *The Journal of Democracy*.

devolution of powers to the States and Local Governments. The central government is currently too strong and attractive in terms of control of natural resources, appointments into offices and distribution of favours. Items in the exclusive legislative list of the Federal Government, such as prison, pensions, stamp duties, Marriages, Evidence Law and Police, should not be exclusive to the Federal Government.<sup>52</sup>

## CONCLUSION

This paper analyzed the impact of constitutional alteration to democratic consolidation in Nigeria since 1999. The paper discussed the alterations that have been made to the Constitution by successive administrations in the country. The procedural challenges of altering the Constitution were discussed and lessons from other jurisdictions were highlighted. It has been noted in the paper that modest gains have been made in democratic consolidation through various alterations to the Constitution. In this regard, the institutional strengthening of INEC and the National Assembly has been acknowledged. However, it has also been noted that Nigeria is a transitional democracy. In fact, democracy cannot be consolidated so long as such basic tenets of democracy like the conduct of free and fair elections based on the laid down electoral laws, the institutionalization of the rule of law, entronement of internal party democracy, amongst others, are constantly abandoned. In view of this, full democratic consolidation can only be achieved over time owing to the legacy of military authoritarian regimes. It is recommended that in order to enhance democratic consolidation in Nigeria, an alteration should be made to the Constitution, to provide for devolution of powers to the states in areas such as taxation (stamp duties, capital gains and value-added tax collection), railways, prisons, evidence, labour, mines and minerals. It is also recommended that the National Assembly may consider altering the Constitution to provide that amendment to the constitution should be validated by referendum, after such amendment is passed by both houses of the National Assembly, in line with the practice in other jurisdictions as discussed in this paper. Doing so would remove the difficulty of referring constitutional alterations to the state houses of assembly.

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<sup>52</sup>. This was stated by Professor Taiwo Osipitan (SAN) in an interview he granted to Thisday Newspaper on 8<sup>th</sup> August 2017  
<<https://s3-eu-west-1.amazonaws.com/leadersandco/wp-content/uploads/2017/08/07203559/LAWYER-AUGUST-8.pdf>> accessed on 20 October 2017.