

**THEORY AND PRACTICE OF CONSTITUTIONAL AMENDMENT VIZ-A-VIZ
CONSTITUTIONAL TRANSFORMATION IN SELECTED INTERNATIONAL AND
AFRICAN COUNTRIES WITH A FOCUS ON NIGERIA**

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Abstract

The Constitution is the human-made instrument that explains the structure of Countries, controls the powers and functions of government and individual rights, and provides unconstitutional matters with remedies. However, from time to time, this Constitution needs to be amended or altered to meet up with different social trends and developments. Hence, this study seeks to examine the various constitutional amendments and transformations that have taken place in the political structure of randomly selected sovereign states, specifically Nigeria, and also analyse whether these alterations are put into practice or exist just in theory. The methodology utilized in this study is the doctrinal and exploratory research methodology. The question of whether a constitutional amendment is genuinely feasible and whether the amendments or transformation of the Constitution have been implemented concerning the alterations made was explored. The study found, among others, that the constitutional amendments made through the years with significant alterations have not all been implemented and supported with public acknowledgment. Therefore, the ratio of constitutional amendment and constitutional transformation concerning theory and practice should not be imbalanced, but be the same weight. Lack of awareness of some alterations could also be one of the reasons for the impracticability of constitutional transformation. It was recommended that concerned government personnel help checkmate the powers of bodies that make policy which hinders the practicability of constitutional alterations. It was concluded that stakeholders explore awareness strategies to aid the implementation of those alterations in Nigeria.

Keywords: Constitutional Amendment, Constitution, Constitutional Transformation, Theory, Practice

1.0 INTRODUCTION

The Constitution serves as an integrating reality and also the support of a community as its fundamental political decision.³⁶³ Changes are bound to occur to constitutions made with the initial concept of regulating and controlling the deviant behaviours of people in a community, as new concepts are generally accepted norms that come to light due to evolution.³⁶⁴ Now, the tweaks and changes made to the contents of a constitution are amendments. It is important to note that these amendments have to occur according to the process of amendment provided and

³⁶³ Elliot Bulmer (2017). What is a Constitution? Principles and Concepts International IDEA Constitution-Building Primer 1 [Second Ed.]<<https://www.idea.int/sites/default/files/publications/what-is-a-constitution-primer.pdf>> accessed 15 June 2023

³⁶⁴ Larry Catá Backer, (2009). Theocratic Constitutionalism: An Introduction to a New Global Legal Ordering. Indiana Journal of Global Legal Studies, 16(1), 85–172.

stated in the Constitution, depending on the nature of the amendment.³⁶⁵ Hence, the process of altering or amending a law or Constitution by parliament or constitutional procedure is known as a constitutional amendment.³⁶⁶ A new political, social, legal, or economic system can be introduced into a nation's Constitution, with the values set by the constitutional framework used to actualize the change, which refers to constitutional transformation.³⁶⁷

The primary goal of a nation's government is for the amendments and transformations made to its country to be enforced and put into practice. Therefore, forces and agents must be implemented to actualize these alterations. The feasibility of carrying out a constitutional amendment and transformation was investigated using the experiences of recognized States and the frequency of such a process. The outcome of this research provides an answer to what precisely constitutional amendments and constitutional transformations comprise, how the processes are carried out, and why they are conducted. The study aims to assess the concept of constitutional amendments and their practicability, site examples of actualised processes of constitutional amendments, examine countries randomly across the globe based on the practicability of their constitutional alterations and accessible information, and critically analyse the practice of this concept in Nigeria.

1.1 CONCEPT OF CONSTITUTIONAL AMENDMENT

Concerning contemporary societies, counting from the 20th century upwards, the division of the substantial and recognized ideas of the Constitution will be helpful in the hypothetical examination of Constitutional amendments. Regarding the order of mention, the material concept of the Constitution denotes what it ought to legitimately and politically be and does not change its unique legitimate positive form.³⁶⁸ Either from natural law, morality, or political practice, it does not matter where the law is derived. A characteristic of this concept is that it attaches its constituent power, also known as original power, to the sovereign people. This power is a legal

³⁶⁵ Chapter 1, Part II, Sections 8 & 9 of the Constitution of the Federal Republic of Nigeria (CFRN) as altered: deals with alteration or amendment of the Constitution

³⁶⁶ Markus Böckenförde, Constitutional Amendment Procedures International IDEA Constitution-Building Primer 10. <https://www.idea.int/sites/default/files/publications/constitutional-amendment-procedures-primer.pdf> accessed 15 June 2023

³⁶⁷ Rodrigo Uprimny (2011). The Recent Transformation of Constitutional Law in Latin America: Trends and Challenges. *Texas Law Review*, 89, 1587-1609.

³⁶⁸ Benito Alaez Corral, (2020). Constitutional Amendment and Concept of Constitution, *International Journal of Human Rights and Constitutional Studies*, 7(4), 278.

power answerable to a higher law. This thought has supernatural ramifications for legitimate alteration as the alteration rule is dependent upon the constituent power as the power of the previous remains surrogated by the latter. Hence, the constitutional amendment power is limited both materially and formally since it cannot exceed the powers designated by the constituent ability to keep up with, improve likewise refresh the Constitution with its contents.³⁶⁹ It is also important to be aware that the essential rule can vary or substitute the Constitution and even act outside the entrenched Constitution amendment procedures as provided by the Constitution, either in the form of people's Referendum, constitutional conventions, and the like.³⁷⁰

The material concept views the constitutionality review of the constitutional amendments by way of an intrinsic and essential means for protecting the Constitution. For this, some legal courts, when not explicitly upheld via the positive regulation, self-engage themselves to survey and assume nullified revisions that subvert the fundamental design of the Constitution. According to the formal idea theory, Constitution should be described through its legal and not meta-positive form. It denotes that the Constitution be defined not based on its contents but on the legal form adopted. It gives the Constitution its formal outlook and dispenses its power to serve as the supreme authority in the nation. Therefore, the proper idea of the Constitution is descriptive and not regulating. There is no evident need to distinguish or differentiate between constituent power and constitutional amendment power, as the latter is the only power competent to either alter the contents of a preceding constitution or create a new constitution. In a situation or circumstance where the constitutional content provides for a democratic mode of the constitutional amendment, the constituent power would be attributed to the people.

From the formal concept of the constitution perspective, the constitutional amendment is theoretically essential for the progression of allying social code as permits for a pragmatic regulation to establish an alternative constitution whose creation is traceable to the modification of the former as a result of the constitutional amendments procedures provided by it. The Constitution is a result of this rigid, which is essential as the distinction between the systems of laws provides steadiness to constitutionalism's advantages. However, it does not safeguard any

³⁶⁹ Benny Y. Tai, (2010). Constitutional Game - An Analytical Framework of Constitutional Law and Constitutional Politics. *Journal of Politics and Law*, 3(1), 56–79.

³⁷⁰ Benito Aláez-Corral, *OpCit*, n. 6

supra-positive values that place conditions or any elaboration on the amendment of the constitutional content. The legitimate amendment ability is the most recognized component strength under the authorized concept of the Constitution. It follows that the constitutional amendment procedures as entrenched in the Constitution, and the constitutional amendment power can modify and even replace an existing Constitution. Constituent power and constitutional amendment can only be distinguished assuming the Constitution accommodates two amendment policies: an ordinary alteration measure as embedded in the Constitution and done by similar state organs, and an extraordinary one also embedded yet carried out by various state organs regarded as constituent bodies.³⁷¹

The substantial limitation of the constitutional amending power under the formal concept of the Constitution can be classified into heteronomous, autonomous, and absolute.³⁷² In order of mention, heteronomous restrictions stem from admitting a positive law other than the state. These types of restriction deals with modern society and their limits derived from International Law and the European Union.³⁷³ They are, however, relative and not absolute character, as the constitutional amending power could surpass them. However, the authorized efficiency of the heteronomous restrictions clatters with difficulties traced to its absence of description and ambiguous nature. Autonomous limitations refer to those limitations created by the Constitution of the state.³⁷⁴ They express a polymorphisms constitution as it distinguishes ordinary constitutional provisions, which are amendable according to the amendment procedures entrenched in the Constitution, and extraordinary constitutional provisions that are not amendable.

These absolute restrictions, however, are relative because they could be overridden by the ordinary power of amendment in cases where there is only one available procedure for the constitutional amendment; this entails abolishing the restriction and then changing the subject at

³⁷¹ J. I. Colón-Ríos, E. M. Hausteiner, H. Lokdam, et al. (2021). Constituent power and its institutions. *Contemporary Politics Theory* 20, 926–956

³⁷² Kodio Ahmed Hediouloum, (2019). Comparative Study on the Procedures, Limits, and Control of Constitutional Revisions, *Beijing Law Review*, 10(3), 579–615.

³⁷³ Daniel Oggunniyi and Adetutu D. Aina-Pelemo (2020). Hierarchy of Norms in Transitional Societies: Resolving the Tension between South Sudan's Transitional Constitution and the Revitalised Peace Agreement. *RUN Law Journal*, 3(1), 148-160.

³⁷⁴ Ruth Lapidot, (1994). Autonomy: potential and limitations. *International Journal on Group Rights*, 1(4), 269-290.

hand. Additionally, it could be overcome by an exceptional amendment power where two different constitutional amendment powers exist with differing scopes and methods of amendment. Lastly, substantial limitations could be called the most problematic classification of limitation, which refers to absolute restriction due to its complex compatibility with the formal concept of the Constitution. Its source of production is the very essence of law and not a solid State's organ will. These absolute restrictions are founded on the fact that the law and the Constitution were created by an authority motivated by a particular conception of the law to be enacted as a positive law.

2.0 CONCEPT OF CONSTITUTIONAL TRANSFORMATION

The transformation of a constitution entails introducing or adopting a new essential factor or system in the Constitution of a state. An economic, political, or social system might be adopted and amended into the Constitution.³⁷⁵ Constitutional transformation can, however, bring about remarkable changes in the conduct of a state and is usually done for the betterment of situations and circumstances and not for its detriment. A remarkable example of a country that has passed through an acknowledgeable constitutional transformative process is South Africa which has brought about the concept of transformative constitutionalism. Before 1994, South Africa disrespected and trampled upon the human rights of the people without a care. The interim Constitution, established in 1994 after a challenging but protracted negotiating process between the Apartheid regime and its opponents, brought about numerous improvements for the people in the country. The most distinguished changes were the actualization of peoples' rights and freedoms regardless of race and the substitution of legislative power for constitutional supremacy. As a result, transformative constitutionalism is described as a constitutional legislation that aims to eliminate historical racial, sexual, or other forms of discrimination against a particular group of people or individuals.³⁷⁶

³⁷⁵ Grimm, Dieter, *The Origins and Transformation of the Concept of the Constitution* 'Constitutionalism: Past, Present, and Future (Oxford, 2016; online edn, Oxford Academic, 20 October 2016), accessed 15 September 2022.

³⁷⁶ Mashele Rapatsa, 'Transformative Constitutionalism in South Africa: 20 Years of Democracy' (2014) 5 *Mediterranean Journal of Social Sciences* accessed on 10 April 2022; Atsuhito Isozaki, (2019) *The 'North Korea's Revamps Its Constitution*, [The Diplomat] Available at <https://thediplomat.com/2019/08/north-korea-revamps-its-constitution> accessed 15 June 2023; Jong Kyo Jin, (2019) *North Korea's latest constitutional revisions are a retreat to the past* [Daily NK] Available at <https://www.dailynk.com/english/north-korea-latest-constitutional-revisions-retreat-past/> accessed 15 June 2023; Broadbent, Joseph E., and L.H. Pike, (1943) 'Constitutional Amendments in

3.0 COUNTRIES THAT HAVE UNDERGONE CONSTITUTIONAL AMENDMENT

Various contemporary communities have made alterations and amendments to their constitutions resulting from the evolution of new customs to create new laws that would lead to better governing of the people. This act is often carried out with the people as the primary concern, as their interests are respected. Examples of some countries of the world that have undergone and still undergoing constitutional amendments are as follows:

3.1 UNITED STATES OF AMERICA

The Constitution of the USA since 1789 has undergone reform or alteration twenty-seven (27) times.³⁷⁷

- 1791 (10 times in this year) ● 1795, 1804, 1865, 1868, 1870,
- 1913 (2 times in this year) ● 1919, 1920,
- 1933 (2 times in this year) ● 1951, 1961, 1964, 1967, 1971, and 1992

The 27th alteration in 1992 forbade members of Congress from raising their salaries while the current Congress is in session; instead, any approved rise must go into effect during the next Congress. The text reads thus: "No law, varying the compensation for the services of the senator and representatives, shall take effect until an election of representatives shall have intervened." These alterations are duly implemented.

3.2 AUSTRALIA

The Constitution of Australia was amended eight (8) times in 1906, 1910, 1928, 1946, 1967, and 3 times in 1977.³⁷⁸ One of the main alterations to the Constitution in 1977 can be seen in section 128. The 1977 alterations approved electors in the Australian territories to vote through the mode of Referendum. The alteration is also called the Senate Casual Vacancies Bill of 1977. As earlier stated, this alteration allowed Australians to vote their representatives into power. Section 128

Australia' Journal of Comparative Legislation and International Law 25, pp1-24, accessed 15 June 2023; 'Documenting Democracy' (1977) accessed 15 June 2023

³⁷⁷ Zimmytws, (2021). All Amendments to the US Constitution, <https://www.history.com/topics/united-statesconstitution/amendments-us-constitution> accessed 15 June 2023

³⁷⁸ Scott Bennett, (2003). The Politics of Constitutional Amendment. Research Paper no. 11 2002-03 https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0203/03rp11 accessed 15 June 2023

also provided a new means of altering the Constitution, which is to be done through a Referendum. The alteration of 1977 is still evident today in Australia.

3.3 GERMANY

Germany's law, sometimes known as the fundamental law, was first approved in 1949 as a temporary framework required for the fundamental and foundational formation of the state up to German reunification.³⁷⁹ The components of the Basic Law comprised all the features that have functioned effectively for over 60 years. Since 1949, there have been more than sixty (60) modifications to the fundamental legislation. The 1956 rearmament clauses in the Constitution and the 1968 emergency law were notable additions. It is essential to note that major constitutional revisions were also passed in 1994 after Germany's reunification and in 2006 and 2009 to rearrange Germany's federalist powers and financial structures, and they were executed.

3.4 MALAWI

Malawi is located in South Eastern Africa and operates a presidential republic system of government and since 1994 it has been a multi-party democracy.³⁸⁰ The present Malawi constitution has been subjected to several amendments from textual amendments to its provisional adoption of the May 18, 1994 Constitution, and came into force in 1995.³⁸¹ The Malawian Parliament has amended her Constitution nine times, amending over 90 sections between 1994 and 2005.³⁸² Prior to the adoption of the 1994 constitution, in 1992, the Malawian Parliament passed the Constitution Amendment (Referendum on Malawi's Political System) Act which provided that the president might at any time call for a referendum where eligible citizens would cast their votes to arrive at a decision bordering on national interest. Following the

³⁷⁹ D. Grimm, M. Wendel, and T. Reinbacher (2019). European Constitutionalism and the German Basic Law. In: Albi, A., Bardutzky, S. (eds) National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law. T.M.C. Asser Press, The Hague. https://doi.org/10.1007/978-94--273-6_10

³⁸⁰ Nexus Commonwealth Network "Malawi" (2020) Accessed from <https://www.commonwealthofnations.org/sectors-malawi/government/> retrieved on 21st June, 2023.

³⁸¹ The Republic of Malawi (Constitution) (Amendment) Act 1994 (No 31 of 1994).

³⁸² The Malawi Law Commission "Amendments of the Constitution & Preservation of its Sanctity" (2006) Constitutional Review Programme Discussion Paper No.7

referendum, the Constitution (Amendment) Act was passed which provided that Malawi was to be a multi-party state³⁸³, prior to this Malawi was a one-party state.

Currently, the Constitution of the Republic of Malawi was amended in 1994, 1995³⁸⁴, 1997, 2001, and 2017. Besides from the series of amendments made, the Malawian Parliament had also made exceptional amendments that are crucial to the well-being of the populace. The Constitution of Malawi (Amendment) Act of 1994 provided for the establishment of the Malawi Human Rights Commission. The Constitution of Malawi (Amendment) Act of 2001: this amendment made changes aimed at strengthening the independence of the judiciary. The Constitution of Malawi (Amendment) Act of 2010 introduced changes aimed at strengthening the decentralization of power in Malawi. In 2017 the Malawian parliament voted to enact a constitutional amendment that abolished child marriage by repealing some sections.³⁸⁵

3.5 GHANA

Ghana operates a presidential republic system of government.³⁸⁶ It was the first country in Sub-Saharan Africa to gain independence on 6th March 1957 from its colonial master, Great Britain, the same colony as Nigeria.³⁸⁷ The supreme law of the Republic of Ghana is the Constitution, just like Nigeria. It was adopted on the 28th of April 1992 through a national referendum, and made up of 26 chapters, excluding the preamble.³⁸⁸ Ghana's current Constitution has been amended several times.³⁸⁹ Some of the significant amendments include the 1996 amendment which addresses the decentralization of power from the central government to the local

383 R.E. Kapindu "Update: Malawi Legal System and Research Resources" (2019) HGLSP Accessed from https://www.nuyglobal.org/blobalex/Malawi1.html#_edn11 retrieved on 21st June, 2023.

384 International Labour Organization "NATLEX: Database of National Labour, Social Security and related Human Rights Legislation"(1990-2014).Accessed from https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=44020&p_lang=en retrieved on 21st June, 2023.

385 The Constitution of Malawi (Amendment) Act of 2010, Section 22 (7) and (8)

386 Rotimi Ajayi and Yinka Fashagba (2012). Introductory Text in Political Science, Landmark University, Omu-Aran, Kwara State, Nigeria, Available at <<https://core.ac.uk/download/pdf/32227141.pdf>> accessed 21 June 2023

387 Gbenga Emmanuel Afolayan, (2013). The democratization process in Ghana: key issues and challenges- UN library, pp 116-136. doi: <https://doi.org/10.18356/6c1065f3-en>

388 Constituteproject.com (2023) 'Ghana's Constitution of 1992 with Amendments through 1996' Available at https://www.constituteproject.org/constitution/Ghana_1996.pdf accessed 21 June 2023

389 Ghana's Constitution of 1992 with Amendments through 1996

authorities, also, the 2001 amendment abolished the death penalty as a mandatory sentence for certain offences and other amendments.³⁹⁰

The 2010 amendment introduced a provision that requires presidential candidates to declare their assets before taking office, and it is duly enforced. Meanwhile, Nigeria made little or no effort in implementing this legal provision in Nigeria.³⁹¹ In the recent amendment bill, Ghana's Constitution posited the need for a regular and transparent review of the Constitution at least once every ten years, which helps to ensure that the Constitution reflects the changing needs and aspirations of the Ghanaian people.³⁹² Nigeria however does not have or has not made any law as regards the transparent review of the Constitution and any law that has been created in line with this has been far from transparent.

3.6 SOUTH AFRICA

The Republic of South Africa operates a parliamentary system of government with a three-tier and an independent judiciary.³⁹³ The Constitution of the Republic of South Africa, 1996, was approved by the Constitutional Court (CC) on 4 December 1996 and took effect on 4 February 1997. It replaced the Interim Constitution of 1993 and introduced a new democratic system.³⁹⁴ Since its adoption, the Constitution has been amended seventeen times. It was amended in 1997, twice in 1998, twice in 1999, in 2001, twice in 2002, twice in 2003, 2005, 2007, twice in 2008, 2009, and 2012.³⁹⁵

In comparison to Nigeria's constitution, the significant South Africa constitutional amendments were the constitutional amendments of 1997 which addressed the establishment of the Judicial Service Commission (JSC), enhances the independence of the judiciary, and promotes a fair and impartial judicial system.³⁹⁶ While Nigeria's constitution lacks a specific amendment that

³⁹⁰*Ibid*

³⁹¹*Ibid*

³⁹²*Ibid*

³⁹³South African Legal Research, (2023) Available at <https://guides.ll.georgetown.edu/c.php?g=365528&p=2469555> Accessed 21 June 2023.

³⁹⁴(No date a) National Archives and Records Administration. Available at: <https://clintonwhitehouse4.archives.gov/Africa/south.html> (Accessed: 22 June 2023).

³⁹⁵ (No date a) The constitution – parliament of South Africa. Available at: <https://parliament.gov.za/constitutional-amendments> (Accessed: 22 June 2023).

³⁹⁶Department of Justice and Constitutional Development (no date) Amendments to the Constitution, The SA Constitution. Available at: <https://www.justice.gov.za/constitution/amendments.html> (Accessed: 22 June 2023).

explicitly addresses the structure and composition of the judiciary, which can raise concerns about the independence and effectiveness of the judiciary. Also In the constitutional amendments of South Africa in 1999 dealt with the inclusion of the National House of Traditional Leaders in the proceedings of the National Council of Provinces (NCOP) recognizes and respecting the cultural diversity and historical significance of traditional leadership structures.³⁹⁷ Nigeria's constitution on the other hand does not have a specific amendment that grants formal recognition and participation rights to traditional leaders, which can limit the representation and influence of traditional institutions in the legislative process.

3.7 KENYA

Kenya operates a presidential republic similar to that of Nigeria, it is a democratic state and it gained independence from the United Kingdom on 12 December 1963 (Dominion) and 12 December 1964 (republic).³⁹⁸ The current constitution was adopted in 2010 and replaced the 1964 constitution.³⁹⁹ Ever since the constitution was adopted in 2010, it has been amended 5 times⁴⁰⁰; the first one in 2015, which made it mandatory for the commission to publish the results of a presidential election at the constituency level, the second in 2016, which provided for the nomination of a female candidate by political parties for elections in order to promote gender equality, third in 2017, which set aside a percentage of county government for emergency funds, the fourth in 2019, aimed to reduce the high wage bill of the government and the fifth in 2020, formed to address various challenges facing the country, including ethnic and religious divisions, etc.⁴⁰¹

The second amendment of the Kenyan constitution, which covers gender equality as it regards women in positions of political power, contradicts the Nigerian constitution which makes very minimal provision for such. The results of the 10th Assembly results showed a decline in female

³⁹⁷ International Labour Organisation-Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en (Accessed: 22 June 2023).

³⁹⁸ Constituteproject.com (2023) 'The Constitution of Kenya, 2010' Available at <https://www.constituteproject.org/constitution/Kenya_2010.pdf The Constitution of Kenya> accessed 21 June 2023

³⁹⁹ Naomi Gichuki, (2015) Kenya's Constitutional Journey: Taking Stock of Achievements and Challenges. Law in Africa, 18, 130-138.

⁴⁰⁰ Constituteproject.com *Op Cit*, n 18

⁴⁰¹ The Constitution of Kenya (Amendment) Bill 2015, 2016, 2019 and 2020

representation at the National Assembly.⁴⁰² 378 women ran for seats in the previous Senate and House of Representatives elections but only 17 women succeeded, this implies that women in Nigeria still have not been supported as it relates to holding the reins of power.⁴⁰³ Also, there are significant developments with regard to curbing corruption from the Kenyan government e.g., the establishment of a new and independent ethics and anti-corruption commission (EACC), there has however been no law as such which has been implemented by the Nigerian government.

3.8 UGANDA

The root of constitutionalism in a country could be linked with colonial history. Hence, the Uganda Constitution has undergone numerous amendments since its independence from the British colony in 1962, and the most significant is the diverse Legal Notices issued by sovereign powers in 1967.⁴⁰⁴ This extended the tenure of the President to five years, increased the parliament's life term, and abolished the kingdoms, among others.⁴⁰⁵ Due to several practices of undemocratic acts and the over-concentration of sovereign powers on the President, the 1995 Ugandan Constitution was promulgated on 27 September 1995.⁴⁰⁶ The most remarkable part of the Constitution, when compared with the previous ones, is the inculcation of the opinion of separation of rules among stakeholders, that is, decision-making (executive), lawmakers (legislative), and interpreters of law (judiciary).⁴⁰⁷

Subsequently, the Constitution was improved or amended by a simple Referendum. The Referendum of the year 2000 initially approved a no-party system of government. After several agitation and problems surrounding the no-party system, the 2005 referendum later restored it to

⁴⁰²UdoraOrizu, (2023) 'Women underrepresented with only 17 members in 10thN' Assembly' [THISDAY Newspaper] <<https://www.thisdaylive.com/index.php/2023/03/20/women-underrepresented-with-only-17-members-in-10th-nassembly>> accessed 21 June 2023

⁴⁰³*Ibid*

⁴⁰⁴ Oloka-Onyango, Joe (1995). Constitutional Transition in Museveni's Uganda: New Horizons or Another False Start? Journal of African Law, 39(2), p. 159

⁴⁰⁵ Deng Kur Joseph (2017). Constitutional Reform and Good Governance in Uganda: A Case Study of The Uganda Parliament. A Research Report Submitted to the Faculty of Law in Partial Fulfillment of the Requirements for the Award of a Bachelor of Laws of Kampala International University. p.18 <https://ir.kiu.ac.ug/bitstream/20.500.12306/8557/1/Deng%20Kur%20Joseph.pdf> accessed 19 September 2022.

⁴⁰⁶*Ibid*, p.20

⁴⁰⁷ *Ibid*, p.25

a multi-party system and removed the two-term restriction placed on the presidency.⁴⁰⁸ The recent alteration⁴⁰⁹ is the 2017 constitutional amendment that repealed and removed the age restriction provided for the qualification for the presidency,⁴¹⁰ It automatically empowers mature youth to continue to rule until the death date. In contrast, the 2018 CFRN reduced the eligibility for the Presidency, Governors, and House of Representatives to allow the youth to participate in politics but undermined other factors that could hinder the implementation of that constitutional alteration and remained silent about the age limit.

4.0 CONSTITUTIONAL AMENDMENT PROCEDURE IN NIGERIA

A constitutional amendment is a legal modification to a country's written Constitution, state, or nation. The constitutional provisions can be changed and amended. A constitution can be described as rigid or flexible, written or unwritten, depending on how it is changed.

A written constitution is often distinguished by having elements linked to a single document. It frequently has strict amending procedures, which refer to a separate process for altering, modifying, or repealing constitutional provisions. In an unwritten constitution, content is linked to its norms, precedents, laws, and preferences rather than one document. Its flexible modification process allows the parliament or legislature to change constitutional laws straightforwardly or ordinarily.

The Nigerian Constitution needs to be amended, as also a majority of written and inflexible constitutions. This process uses unique techniques like passage by supermajorities in the legislature, referendum procedure, voter approval, or even a mix of two or more different specific methods. Section 9 of the Constitution grants the authority to amend The Federal Republic of Nigeria's (CFRN) 1999 Constitution, stipulating that a two-thirds majority vote is required to propose an amendment in both the Senate and the House of Representatives. After that, it needs to be ratified by not less than two-thirds of the House of Assembly of every Nigerian state.

⁴⁰⁸*Ibid*, p.26

⁴⁰⁹ Article 102(b) of the 1995 Uganda Constitution (as altered)

⁴¹⁰ Benson Tumasirwe (2017), The Basic Structure Doctrine and Constitutional Restraint: Take-away from the "Age Limit" Decision. <https://cepiluganda.org/wp-content/uploads/2019/06/Basic-Structure-Doctrine.pdf> accessed 19 September 2022

The procedure for the amendment of the constitution is outlined in sections 9(2) and (3) of the 1999 Constitution of Nigeria. Section 9(2) must get two-thirds of the members' votes to pass to bill. It is essential to get the vote of the National Assembly and the Houses of Assembly of all the states for Nigeria's Constitutional amendments. Section 9 (3) stipulates that a higher standard is necessary for both the National Assembly and the State Houses of Assembly by a four-fifths majority⁴¹¹ to the beginning of new states, redrawn borders, and the creation of new local government units, Constitutional modifications are done through electronic voting frequently used in plenary for Sections 9(2) and (3) to accurately and effectively record the votes cast and prevent circumstances where Parliamentarians might manipulate the voice vote option through the prodding's of a group of influential people acting as a catalyst to alter constitutional provisions to serve their interests. The two-step process that must be followed for the Constitution to be ratified underlines how important it is, as it serves as the "grundnorm" of the country and is the foundation upon which Nigerian law derives its validity.⁴¹²

It is critical to note that Constitutional modifications are documented in two primary types. It either takes the shape of changes or reassessments to the earlier text or by adding additions at specific portions of amendment to the conclusion of the main text, maintaining the integrity of the original text's main body throughout. When a change is made to a prior text and documented as a revision, bits of the original text may be removed or new sections added after the revision has been published an amendment becomes law. On the other hand, if the second and less frequent recording technique, the appendage technique, is used after the main text, the doctrine will be implied repeal, meaning that in an amendment conflict, the resolution clause will prevail above any prior amendments or the original text's clauses.⁴¹³ The Law Reform Commission is the agency charged with codifying all laws, including changes to the Constitution in Nigeria. The Constitution specifies that a Constitutional Amendment Act may only be passed by the National Assembly when its proposal has the backing of a two-thirds majority of each chamber's

⁴¹¹ policy and Legal Advocacy Centre, 'A Step-by-Step Process of Amending the Nigerian Constitution'(2014) accessed 9 April 2022 Law Nigeria Admin, 'Constitution Of Nigeria{ 1960, 1963, 1979, 1999 With All Amendments And Alterations}'(2020) accessed 15 June 2023

⁴¹² Oghenechuko Arodovwe (2022) The 1999 constitution as 'grundnorm'. [The Guardian News]. <https://guardian.ng/opinion/the-1999-constitution-as-grundnorm/> accessed 15 June 2023

⁴¹³ PLAC, (2019). A Step-by-Step Process of Amending the Nigerian Constitution. 2nd Edn, <https://placng.org/i/wpcontent/uploads/2021/05/Step-by-Step-Guide-to-the-Process-of-Amending-the-Nigerian-Constitution.pdf> accessed 15 June 2023

members, 72 Senators, 240 Representatives, and a resolution that has received the support of at least 24 State Houses of Assembly, or 72 Senators and 240 Representatives.⁴¹⁴

The Nigerian Constitution has to be amended through some procedures, which are the following:

1. A bill has to be proposed. It comes from an Executive or National Assembly member as a Private Member's Bill. The executive Bill is initiated by the head of state, Nigeria's Chief Justice, or other government representatives. Interest groups frequently propose private member bills sponsored and endorsed by the Senate or the House of Representatives. The presentation of the Bill is preceded by the President of the House of Representatives or the speaker of the Senate before they are dispatched to their respective Rules and Business Committees to schedule the meeting on the Order Papers for a good opening into the Houses. When the Bill is presented, at the first reading, the title is announced, marking the beginning of the legislative process. The exact process is followed in each house of the National Assembly.
2. After being read a second time, its guiding concepts are examined and argued. After that, presented to the Committee created specifically to provide an essential examination of the constitutional amendments issues.
3. The Committee considers the proposal and has the authority to order a public hearing and take further actions in the form of legislative consultation. At this point, the Bill is looked at by identifying public stakeholders, who must give in a memorandum providing feedback and incorporating suggestions for additional changes where necessary.
4. In a report to the plenary, the amendment suggestions are offered as a single Constitution Amendment Bill or several Bills relating to several topics. For instance, the 8th Assembly used a fragmentary plan, where constitutional amendment proposals were brought as separate bills rather than a single constitutional amendment bill. If the constitutional amendment report bill(s) provided are approved, the third reading proceeds.
5. Each legislator must vote either in favour of the proposal or against it opposing every clause in the measure. Each clause shall be ratified by two-thirds of the votes cast and be approved unless the proposed legislation relates to the establishment of new states, changes to state or municipal confines, the formation of new local government regions,

⁴¹⁴ The Constitution of the Federal Republic of Nigeria, 1999 (amended) s 9

the safeguard of fundamental rights, or the method for altering the Constitution, in which case a four-fifths majority is necessary.

6. The members' votes are collected and tallied electronically to guarantee that the full complement of senators or members of the House of Representatives, as applicable, of attendees meets the minimal requirement for passing a proposed provision. The procedure proceeds to the next step, which checks that any approved proposal fulfils the stand criterion: a two-thirds majority.
7. As long as the requirement of two-thirds of the total number is met, it moves on to the next stage.
8. If either of the houses alters the measure or if each house adopts a different version of the law, a Conference Committee is formed to harmonize the disparities, as every item is required, including constitutional amendments, to be approved by the two houses in identically formatted invoices.
9. The Bill will be returned to each house of the National Assembly for a further vote if both houses cannot reach a consensus on their viewpoints. At this point, it will still need the votes of two-thirds of the members of each house to pass to the next stage.
10. If the measure is approved in the same manner by the two chambers of the National Assembly, no conference would need to be held, and there would be no need for harmonization.
11. The National Assembly Clerk transfers the Bill to the States Houses of Assembly for their support and approval.
12. For the amendment to be passed at the state level a simple majority of members in 24 of the federation state must vote in favour of it; typically, it is expressed as YES or NO vote. However, it is crucial to note that State Assemblies have been characterized to step down or 'defer' a bill they cannot decide.
13. When each provision is approved by a simple majority in the State Houses of Assembly after being linked to the National Assembly by a majority, it is then accepted as usual before being delivered to the President for approval; the National Assembly conducts a formal ceremony.⁴¹⁵ The votes must be attached, per the National Assembly clerk's

⁴¹⁵ I. B. Lawal (2015). The review of the Constitutional Amendment Procedure and Presidential Assent in Nigeria. *Journal of Law and Conflict Resolution* 7(5), 26–30.

instructions, both the National Assembly's and the State Houses of Assembly's actions to demonstrate that the modifications comply with the requirements of the Constitution for passage.

5.0 CONSTITUTIONAL AMENDMENTS IN NIGERIA

Nigeria has experienced its share of constitutional amendments as the 1999 Constitution of Nigeria has been amended. The 1999 constitution has been amended four (4) times: 2010, 2011, 2017, and 2018. Each time of amendment has remarkable and specific amendments, that is, significant constitutional alterations.

In 2010, The Federal Republic of Nigeria's Constitution was significantly changed to include the National Assembly's financial independence and the independence of the National Electoral Commission. The following changes have been made:

- Amendment to the Federal Republic of Nigeria's Constitution, 1999
- Section 66 Amendment
- Section 69 Modification
- Section 75 Modification
- Section 76 Amendment
- Section 81 Amendment
- Section 84 Amendment
- Section 107 Amendment
- Section 110 Modification
- Section 116 Amendment
- Sections 132 Amendment
- Section 135 of Amendment
- Section 137 Amendment
- Section 145 Amendment
- Section 156 Amendment
- Section 160 Modification

- Section 178 Amendment
- Section 180 Modification
- Section 182 Amendment
- Section 190 Amendment
- Section 200 Modification
- Section 229 Modification
- Section 233 Amendment
- Section 239 Amendment
- Section 246 Modification
- Section 251 Modification
- Section 272 Amendment
- Section 285 Amendment
- The 2010 amendment's second change also included new guidelines for the Independent National Electoral Commission's schedule for holding national elections.
- The third modification to create the National Industrial Court included an act to amend the Federal Republic of Nigeria's Constitution.

There was a fourth amendment (No. 27) in 2017, which among other things, allowed for the reduction in the legal age requirement for participation in the House of Representatives and the President's office as well as the state assembly. In addition, there are;

- Amendment to the Constitution of 1999
- Section 65 Modification
- Section 106 Amendment
- Section 131 Amendment

In the fourth Amendment No. 16, which took place in 2017, the Constitution was changed to make it illegal for someone to serve as President or governor after being sworn in or being elected to the exact position of President or Governor for more than one term—no—21 of the 2017 constitutional amendments allowed for the decisions of pre-election issues and associated issues.

Additionally, the fourth modification, No. 9 and No. 4, which took place in 2017, modifies the requirements of The Independent National Electoral Commission established by the Federal Republic of Nigeria's Constitution with enough time to hold bye-elections and offer reasons for de-registering political parties, ensuring that the House of Assembly of States is funded directly from the State's Consolidated Revenue Fund, and dealing with related issues.

Unfortunately, some of these changes are more theoretical than practical, for instance, reducing the age requirement for membership of the State House of Assembly and the House of Representatives, and the Office of the President. The composition of political parties in Nigeria makes it challenging for young people and women to get involved in politics because of the amount of set for pre-primaries, and the application form needs to be more in reach for young people and women. In Nigeria, Action Party Congress (APC) and Peoples' Democracy Party (PDP)⁴¹⁶ Recent presidential nomination forms are N100, 000, 000.00k (One Hundred Million Naira) \$140 845.07 and N40, 000, 000, 00k (Forty million Naira) \$56, 338.03 respectively, aside from other political expenses.⁴¹⁷ Hence, the study found that the practicability of these constitutional alterations⁴¹⁸ is more theoretical, considering the economic and academic structure of Nigerian youth, and women within that age may lack the resources to compete on an equal footing with more experienced competitors.

6.0 CONCLUSION

Universally, countries have used various approaches to change their constitutions, and the constitutional transition is no exception. The concept is being practiced and actualized, as seen in the instant study. The ground norms of various countries have been and are still being modified to accommodate the everyday changes that come to light due to the evolution of customs, practices, and technology. It is essential to understand that constitutional transformation and constitutional amendment are done by the government of a State to entrench new laws that will aid in the effective and efficient control of society as well as benefit the society at large. With

⁴¹⁶ Samson Ezea (2018). High cost of nomination forms, Nigerian youths, and challenges of electioneering. [The GuardianNews]<https://guardian.ng/saturday-magazine/high-cost-of-nomination-forms-nigerian-youths-and-challenges-of-electioneering/> accessed 15 June 2023

⁴¹⁷ Samson Itodo, Political party nomination fees and the shrinking political space (2022) <https://www.premiumtimesng.com/opinion/528081-political-party-nomination-fees-and-the-shrinking-political-space-by-samson-itodo.html> accessed 15 June 2023

⁴¹⁸ sections 65, 106, and 131 of the 1999 Constitution of the Federal Republic of Nigeria (as altered)

Nigeria as an object of study, constitutional amendments have been made, and new ones are yet to surface. The amendments must be put into practice as is done in the selected developing and developed countries considered in this study. However, it needs to be fully acknowledged by the nation's people due to a lack of proper information dissemination. Constitutional amendments, likewise constitutional transformation, are necessary for modern contemporary society. If not adopted and practiced, other world communities would leave the country in question behind.

7.0 RECOMMENDATIONS

Constitutional amendment and transformation are essential for the prevalence of democracy in modern societal constitutions as it enables society to respond to changing social, political, and economic needs necessary for addressing disparities and inefficiencies, advancing rights, and safeguarding marginalized and minority groups. The authors make the following recommendations:

1. Redefinition of democracy is urgently needed in Africa so countries' past, present, and future will not remain in the hands of particular political leaders. The few African countries addressed in this study can draw lessons from some developed countries like Germany, and the United States, among others.
2. From the African countries studied, Nigeria could learn from Ghana's constitutional amendments the importance of regular response to the needs of the people and fathom it into her Constitution.
3. The process for the alteration should be rigorous, with specific required actions to prevent the manipulation of the Constitution for selfish desires, including unnecessary changes with no definite long-term purpose.
4. In democratic countries, the task of reviewing the Constitution has taken on a pattern, where government officials, interested organisations, non-governmental organisations, and individuals can participate in discussions on crucial issues using a method that is driven by the people since the Constitution is controlled by the people, this should be ensured in Nigeria.

5. In Nigeria, constitutional amendments should be done with the interests of the people and the betterment of the government as a priority, with the practicability of the theory foreseen by the drafters to prevent hindrances to its implementation.
6. Non-specialists or laymen in Nigeria should be made aware of the amendments made to the Constitution. Therefore, the contents of the amendments must be disseminated across the Federation to encourage political participation and propagate democracy. This can be actualized through mass media, symposiums, sensitization programs, and inculcating into Universities' curricula etc.
7. A policy could be made to checkmate the powers of some bodies that likely hinder the easy implementation of any constitutional alterations.
8. Future amendments should be considered in the following areas in Nigeria:
 - Advocate for gender equality and the protection of minority groups' rights.
 - Safety and Security
 - Cultivation Methods.
 - Natural Resource Management.
 - Public Work Projects.

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