AN EXAMINATION OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (CFRN) 1999, INEC'S POWER TO ORDER SUPPLEMENTARY ELECTIONS AND THE DECLINE OF THE CONCEPT OF CONSTITUTIONAL SUPREMACY IN NIGERIA

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INTRODUCTION

Essentially, the constitution is a framework of rules which defines the functions, composition and the relationship between the organs of government, and the rights and duties of the governed with descriptive location, conferment, exercise, distribution and limitation of political power among the instruments of the state. Constitutional law governs the system of administration of the people and relationships between the individual and the state. The basis of the constitution lies

in the court's custodial function to preserve the wishes of the people against any attempt to be undermined by the government.[1]

The constitution of Nigeria is the supreme law of the Federal Republic of Nigeria. Nigeria has had a series of constitutions. The current constitution was enacted on 29th May, 1999, inaugurating the Nigerian fourth republic. The Federal Republic of Nigeria (INEC) dates back before the nations independence in 1960. The electoral commission was established in 1959 to conduct elections. Later on in 1960, The Federal Electoral Commission (FEDECO) was established to conduct the immediate post-independence federal and regional elections of 1964 and 1965 and this electoral body was dissolved after the military coup of 1966. In 1978, the Federal Electoral Commission was constituted again by the regime of General Olusegun Obasanjo to conduct the 1979 elections which pronounced Alhaji Shehu Shagari as winner and ushered in the Nigerian Second Republic and this body also conducted the 1983 general elections.[2]

In December 1995, the military government of General Sani Abacha established the National Electoral Commission of Nigeria (NECON) which conducted another set of elections. These elected institutions were not inaugurated before the sudden death of General Abacha on June 1998 aborted the process. In 1998, General Abdulsalami Abubakar's Administration dissolved NECON and

[1] *Edeko SE. The Legality of the Constitution versus the Dictates of Military Power in a State of Revolution. Sacha Journal of Policy and Strategic Studies Vol. 1, No. 1 pp 137 – 158.*
[2] *INEC Nigeria. INEC website. Independent National Electoral Commission. Retrieved 2007-03-19*

established the Independent National Electoral Commission (INEC). INEC organized the transitional elections that ushered in the Nigerian Fourth Republic on May 29, 1999.[3]

The 1999 Constitution of the Federal Republic of Nigeria vests the power and authority to organise and conduct elections in the Independent National Electoral Commission (INEC). INEC is established under Section 153 of the Constitution, while its functions and powers are outlined in the third schedule, part 1 Item F, paragraphs 14 and 15.[4]

The Electoral Act specifes the powers of INEC and describes how it will be organized to carry out its executive, administrative, and fnancial business, as well as how it will be structured to administer the elections.[5]

The Electoral Act spells out the following:

- The body responsible for conducting elections in Nigeria.
- How elections are conducted and the method of voting.
- Conditions for voter eligibility.
- The legal requirements for being included on the voters register.
- Conditions under which an election may be delayed or postponed, and the actions to be taken to reschedule such election.
- Election offences and their penalties.

[3] *INEC History. Independent National Electoral Commission. Retrieved 2010-02-13*
[4] *Electoral Act & INEC Guidelines Simplified. Policy and Legal Advocacy Centre (PLAC), 2019.*
[5] *Ibid pg. 5*

- Nominations criteria for candidates and political parties.
- Regulations for electoral campaigns.
- The process for counting of votes and declaring election results.
- Election Procedure for Area Councils.
- Mode of determination of Election Petitions arising from elections.

Other Powers & Functions of the Commission

- The Commission may delegate any of its powers and functions to any National Electoral Commissioner, Resident Electoral Commissioner, Electoral Officer or any officer under the provisions of this Act. ~ Section 152
- The Commission is vested with the power of issuing regulations, guidelines or manuals to give effect to the provisions of the Act ~ Section 153. It is also responsible for producing a Gazette containing the guidelines for the elections particularly on the step by step recording of the polls in the electoral forms beginning from the polling unit to the last collation centre where election results are announced. ~ Section 73
- The Commission may raise awareness of its functions through civic education, print and electronic media. This is consistent with the mandate conferred on the Commission in section 2(a) and (b) to carry out voter education. ~ Section 154

- Any defect or error on the part of an official of the Commission in relation to any notice, form or document issued to him/her or an act committed by him/her remains valid unless declared invalid by a competent Court or Tribunal. ~ Section 155

The Principal Electoral Act was passed by the National Assembly on 29 July 2010 and signed into law by President Goodluck Jonathan on 20 August 2010. The law provides the basic legal framework for regulating the conduct of Federal, State and Area Council Elections in Nigeria.

There are three amendments to the 2010 Electoral Act:

- The first amendment, the Electoral (Amendment) Act 2010, was aimed at providing for adequate time for the Independent National Electoral Commission (INEC) to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties.
- The second amendment, Electoral (Amendment) Act (No.2), 2011, contains only one amendment aimed at altering the time within which INEC shall stop the registration of voters before any general election under the Act from 60 days to 30 days to the election date.
- The third amendment, Electoral (Amendment) Act, 2015 contains a wide range of amendments which include provision for the tenure for the office of the secretary of the Commission, increased time frame for

transfer of registered voters and issuance of duplicate voters' card, appointment of polling agents and removal of the prohibition on electronic voting among others.[6]

REGULATIONS AND GUIDELINES FOR THE CONDUCT OF ELECTIONS

In exercise of the powers conferred by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2010 (as amended), the Independent National Electoral Commission (INEC) herein referred to as "the Commission" issues the following Regulations and Guidelines for the conduct of Elections (General Elections, Byeelections, Re-run Elections and Supplementary Elections). These regulations and guidelines are issued as a Decision Extract of the Commission of the 12th day of the month of January 2019. These Regulations and Guidelines supersede all other Regulations and/or Guidelines on the Conduct of Elections issued by the Commission and shall remain in force until replaced by new regulations or amendments supported by a Decision Extract of the Commission or an official gazette.[7]

INEC conducts a re-run election where no candidate meets the requirements of the majority of votes cast and the electoral two thirds, as provided in 41b (i) and (ii) above, a run-off election will be organized by the Commission within 21 days

[6] *Ibid pp 3.*
[7] *Independent National Electoral Commission Regulations and Guidelines for the Conduct of Elections 12th January 2019.*

in line with the provisions of Section 179 (2) to (5) of the 1999 Constitution as amended,[8] and supplementary elections conducted where an election is declared null and void for over voting in line with Clause 23 of these Regulations and Guidelines and it is ascertained that the total registered voters in the affected Polling Units may affect the overall result of the election, another date shall be fixed for supplementary election in the affected Polling Units. Where the margin of lead between the two leading candidates is not in excess of the total number of registered voters of the Polling Unit(s) where election was cancelled or not held in line with Sections 26 and 53 of the Electoral Act, the returning officer shall decline to make a return until polls have taken place in the affected Polling Unit(s) and the results incorporated into new form EC 8D and subsequently recorded into form EC 8E for Declaration and Return.[9]

CONSTITUTIONAL SUPREMACY IN NIGERIA

The concept of the supremacy of the constitution in traceable to the American constitutional evolution. It is the outcome of the federalist papers that emphasized the predominance of the constitution over and above the whims and caprices of its integrating units.[10] The constitution is thereby placed on a higher pedestal above all other laws in the legal system in so far as it regulates the government itself and all other organs of government in the legal system.

[8] *Ibid* pp 18.
[9] *Ibid pp 18.*
[10] *Inegbedion, N.A & Odion, J.O (2000). Constitutional law in Nigeria... Ibadan: Amfotop Books.*

The word supremacy comes from a Greek word 'supremos' which means supreme or superior to all others".[11] Supremacy of the constitution therefore means that the constitution is superior to every other law in the land. The notion here is that the constitution is always the final authority in the land as administered by the law court. It means that no other institution, person or persons, not even the legislature that assisted in making the law should claim superiority over the law. The supremacy of the constitution in relation to government and its functionaries, states that those government functionaries or agencies must recognize and obey the constitution of the state. Its influences and authority transcend any other institution in the state. Thus, the existence of the constitution makes it impossible to possess or exhibit arbitrary or absolute power.[12]

Dicey[13] defined the supremacy of the constitution as absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power. He stated clearly that supremacy of the constitution emphasizes equality before the law or equal subjection of all classes to the constitution and the right of individuals as defined and enforced by the courts. According to Alakija cited in Inegbedion and Odion[14], consequently, under the 1979 constitution, which is intalicize with the 1999 constitution, elaborate provisions were made for the establishment of courts

[11] *Ewemie D. Benedict & Ainabor E. Augustine. Supremacy of the Constitution and Good Governance in Nigeria.*
[12] *Ibid pp. 1*
[13] *Dicey (1885). The Law of the Constitution. London: Oxford Press.*
[14] *Inegbedion, N.A & Odion, J.O (2000). Constitutional law in Nigeria... Ibadan: Amfotop Books.*

with requisite jurisdiction to entertain justiceable claims. Section 6 creates the regular courts of the land and in particular Sections 236 and 260 recognized the existence of the irregular courts like tribunals or quasi-judicial panels. The constitution equally provides for the protection of its jurisdiction from ouster clauses that may be contemplated by the legislature (see Section 4(8) of the 1979 and 1999 constitutions). In *Hon Mike Egbadon V Ron Joe Ekpenkhio and others,* the court of appeal re-emphasized that it was the duly of the regular courts of the land to act as the protector of the constitution and by implication observe strict adherence to the rule of law.[15]

A policy is a guide to the achievement of an objective. By constitutional policy, we mean the principles and objectives set out in the Constitution of the Federal Republic of Nigeria of 1999 (CFRN 1999) which act as a guide to achieving governmental objectives. A government without a guide is like an aircraft without a compass. In the words of Oguntade (JSC), the Constitution is the very foundation and structure upon which the existence of all organs of governance is hinged.[16] The arms of government have a valid constitutional legitimacy when they are not only recognised by a constitution but are duly regulated by the constitution in terms of the structure, scope of their powers and matters relating to the office holders qualification, election, selection or tenure. It is to be noted that

[15] *Ewemie D. Benedict & Ainabor E. Augustine. Supremacy of the Constitution and Good Governance in Nigeria.*
[16] *See the Governor of Kwara State & anor. v.Alhaji Issa Ojibara & 6 ors (2006) NSCQR Vol. 28, 101*

the CFRN, 1999 has generally prescribed principles which are binding on all organs of government and these principles constitute the policy of government in Nigeria[17]. In line with the above submission, the CFRN, 1999 provides that, "It shall be the duty and responsibility of all organs of government and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of the Constitution".[18]

From the foregoing, it is clear that the constitution recognizes citizens as equal and if the supremacy of the constitution is respected by all citizens, that is, the governed and the government, there is the possibility that good governance will be the order of the day.

The supremacy of the Constitution simply shows that the Constitution is a very powerful document in the current regime of the Nigerian Legal system. Within the lines of the provisions are words that are hardly contested for any reason whatsoever. While the judiciary is given the task of giving meaning to the words of the constitution by virtue of Section 6, it is expected that one should not say or do anything that will shake or threaten the supremacy of the constitution.

The constitution of the Federal Republic of Nigeria 1999 as amended is the number one Law in Nigeria. It is thus known as the grundnorm being the Supreme Law of the Land. The Supremacy of the Constitution is stated in Section 1(1) of

[17] *See sections 13,14,15,16,17,18,19,20,21,22,23 and 24, CFRN, 1999.*
[18] *Okeke GN & Okeke C. The Justiciability of the Non-Justiciable Constitutional Policy of Governance in Nigeria. IOSR Journal of Humanities and Social Science, Vol. 7, Issue 6, pp 09 – 14.*

the Constitution. According to the said provision, the constitution is supreme and binding on every person in the Country.[19]

Section 1(3) on the other hand goes a step further to state that any law that is inconsistent with the provisions of the Constitution is null and void to the extent of its inconsistency. The supremacy of the constitution has been given judicial recognition in plethora of cases including the Supreme Court and this is a well established fact.

Conclusion

Constitutionalism arose from the sovereignty of the people. In every democratic society with a written constitution, the source of such a document is identified as 'We the people'. As the people should not be subject to the arbitrary will of one person or a group of persons, it becomes necessary for the people to give birth to an organic document meant to dominate and regulate every phase of human conduct in the society. The people enjoy sovereignty because all powers emanate from them, but it is quite difficult for the people to maintain their sovereignty without a permanent document in accordance with which they must live in order to unite the community of man. To this end, the people have always preferred an organic document made by them. This document is known as the

[19] *Ebi Robert. The Supremacy of the Constitution, Not Its Perfection. Lawyard.*

constitution, and the spirit behind its bindingness is called constitutionalism. The constitution enjoys supremacy and effectiveness in the ordinary course of events. However, when there is a radical change of government, the effect is to nullify the constitution.

Conclusively, one observes that in Nigeria, the constitution made in accordance with the will of the people is the supreme law of the land. It enjoys supremacy over any other law. But the position changes when the said constitution is suspended and modified by an effective military decree which enjoys the obedience of the people. The problem, which arises from this, is the effectiveness of the rule of law.