

RETHINKING THE NIGERIAN CONSTITUTION

Honourable Justice Amina Augie
Justice of the Court of Appeal



Nigerian Institute of Advanced Legal Studies

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2012 President's Day Lecture at
The Nigerian Institute of Advanced Legal Studies

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Honourable Justice Andrew Ayuba
Justice of the Court of Appeal



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2008 Founders' Day Lecture of The Nigerian Institute of Advanced Legal Studies

By

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Justice of the Court of Appeal



The Nigerian Institute of Advanced Legal Studies
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Foreword

In an interesting contribution to the ongoing debate about getting the "right" Constitution for Nigeria, the Honourable Justice Amina Augie takes a refreshing approach to the issue in this year's Founders' Day Lecture aptly titled: *"Rethinking the Nigerian Constitution"*. The logic of her presentation is premised on the historical antecedents that have formed the basis for the present and which serve as pointers to what should or should not be done in the future.

Her lecture shows that over time, Nigeria has not been bereft of ideas about what a constitution should contain. Indeed she aptly demonstrates that apart from those provisions that may be termed universal, Nigeria's Constitutions have often featured provisions that are a direct response to critical issues of the day. Such provisions as those for rotational presidency; derivation as an essential feature of the revenue allocation formula; the federal character principle as well as the anti-coup provision among others, that have at different times been included in our constitutions confirm this.

Her rhetorical question, "is a well written Constitution the problem? answered in the negative, is the crux of her analysis. She is emphatic in the view that Nigerians need to move away from the parochial considerations that have often bedevilled our constitutional development to begin to consider the wider interest of the nation. She posits that in this regard, what is fundamental is the emergence of a visionary leadership that can bring about the required change and effectively propel a rethinking of Nigeria.

As with previous lectures in the series, it is our hope that this year's Founders' Day Lecture will be a valuable contribution to the promotion of constitutional stability and good governance.

Professor D.A. Guobadia
Director-General
December 2008

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"The political history of this nation is partly one of disillusionment with partisan politics and politicians. ... The search and solution have hung around the issue of a political system without adequate care of the supportive values. Our search has been to remedy immediate problems without sufficient attention to the long term issues. Not surprisingly, our efforts so far only succeeded in producing, inept and inherently unstable political arrangements, which have failed to synchronize our cultural ideals with our economic and political potentials". President Ibrahim Babangida (13th January 1986) ¹

*I*ntroduction

*E*verything changes and yet remains the same in our quest for a stable and virile political order for this country. It was in the process of such a search that President Babangida made the above profound observation. Profound in the sense that it is true, "our search has been to remedy immediate problems without sufficient attention to the long term issues", which is why nearly twenty three years after President Babangida addressed the Political Bureau that preceded the inauguration of a Constitution Review Committee and a Constituent Assembly, I have been asked to rub minds with all of you today on the open-ended topic of - "Rethinking the Nigerian Constitution."

The word "rethink" means to "consider again and come to a different decision". ²But the question is - did the People of Nigeria ever come together to consider a Constitution? There are two types of Constitutions in existence - written and unwritten. The British are well known for having an "unwritten Constitution."

However, it is the United States of America that must take credit for giving the world the novel idea of a single, written document called the "Constitution", which is simply defined as "the fundamental laws and practices that normally govern the operation

of a State or association".³ The Preamble to the US Constitution, which was framed and adopted by a Convention called for that purpose in 1787 and subsequently ratified by each State separately before it went into operation, reads as follows:

"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America". (Emphasis mine).

Delivering Judgment in the famous case of *McCulloch v. Maryland*⁴ Chief Justice Marshall of the United States of America, stated as follows:

"The Government proceeds directly from the people, is "ordained and established" in the name of the people - In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit.. It is the Government of all; its powers are delegated by all; it represents all; and acts for all." (Emphasis mine).

Coming home to Nigeria, the late Chief Bola Ige argued as follows:⁵

"I submit that since the exercise and power of a government derives from a Constitution, the government cannot logically, and should not, make it. Logically, government cannot create itself. Or, considering our experience with colonial and military

rule, it is better to say, it should not. As the Yoruba aptly put it, a knife does not sharpen, or sculpt, its own handle. A Constitution must proceed from the exercise of sovereignty by the people. The reason is that political theory had long accepted and affirmed the axiom that sovereignty – or if you like, power – belongs to the people. However, it was the American revolution of 1776 to 1787 which brought to the forefront.. that the people were the repository of sovereignty, which included constituent power, and that the people were the only entity which could exercise that constituent power. From 1787, the *THREE* opening words of the Constitution of the United States, *WE THE PEOPLE* have appeared in almost all written Constitutions, including those enacted by our own Military Governments. (Emphasis mine).

Nigeria has had nine Constitutions. Were any of them framed and adopted by a Convention called for that purpose and subsequently ratified by each Region or State separately, before it went into operation?

To answer that question, we will have to go down memory lane, not only to see how each of the nine Constitutions the country has had came into existence, but also to understand the dynamics behind their being enacted and by whom.

Historical Antecedents

Nigeria is a unique country; a country of multiple ethnic groups and languages as well as diversified cultural and religious backgrounds. With an area of 923.8 thousand square kilometres and a population of about one hundred and forty million, it is the most populous country in Africa, and its people comprise some 350