

Constitutional Replacements in Nigeria: A Multifaceted Analysis

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Introduction

In March 2023, in Nigeria, 16 of the 35 Constitution amendment bills that had been sent by the National Assembly were signed into law by President Muhammadu Buhari, who was about to leave office (Majeed 2023).

The current Nigerian Constitution was originally promulgated as a military decree called the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, 1999, and it is commonly referred to as the 1999 Constitution. This Constitution stipulates that amendments can be made by a two-thirds majority vote in both the Senate (109 seats) and House of Representatives (360 seats) that constitute the National Assembly, and approval by resolution of at least two-thirds of the State House of Assembly (Nigeria currently has 36 states, therefore, at least 24 state legislatures) (Section 9(2)).¹ Based on this provision, the current 1999 Constitution has been amended four times (July 2010, November 2010, 2011, 2018) (Egbe 2022), and

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the 2023 amendment was the fifth one since the Constitution was enforced in May 1999.

The 2023 amendment included articles stating that three areas, such as correctional services (prisons) and railways, were to be transferred from matters of the exclusive legislative list, where the federal government has exclusive legislative authority, to matters of the concurrent legislative list, where both the federal and state governments have legislative authority; as well as articles to strengthen the financial independence of state legislatures and courts (Majeed 2023). In addition to the enactment of these 16 Constitution amendment acts, in June 2023, Bola Tinubu, who succeeded Buhari as president in May 2023, signed a Constitution amendment bill and established a law that unifies the retirement age for judges in superior courts, such as the Federal High Court, to 70 years (Angbulu 2023). Overall, the series of Constitution amendments in 2023 have been minor in terms of content and scope, as were the previous amendments.

Incidentally, there are various ways to ‘change a constitution’. In countries with written constitutions, ‘change in constitution’ or the amendment of articles is conducted through the regular procedures established by the constitution. This corresponds with the last five amendments to the 1999 Constitution of Nigeria. However, substantial changes to a constitution may be made without changing the provisions of the legal code (constitutional code) termed the ‘constitution’, but by changing the interpretation of the constitution, such as through government statements and Supreme Court precedents. Additionally, although not so frequent, there are cases in which the

legislative and executive branches enact or implement laws or policies that may conflict with the constitution to make substantial changes to the constitution.²

This study discusses Nigeria's constitutional changes focusing on constitutional replacement, which is the most macro-level form of constitutional change. However, this study does not discuss the explicit textual amendments to the Constitution such as the 2023 amendment, the interpretive amendments based on changes in the interpretation of the law such as government statements or judicial precedents, and the substantial changes to the constitution through the introduction of laws or policies that may conflict with the constitution.

In this study, constitutional replacement does not refer to partial amendments to the constitution, but rather the abolishment of the constitution in its entirety and the enactment of a new constitution in its place, or restoration of an old constitution. This is the most fundamental form of constitutional change, often observed during periods of national upheaval or large-scale system changes that are caused by political changes such as independence, revolution, coup d'état, or war. However, in Nigeria, this constitutional replacement has been repeatedly conducted since colonial times. Even today, society widely clamours for the abolition of the current 1999 Constitution and the enactment of a new constitution (Adamolekun 2005; Adesina 2020; Baje 2019; Ejime 2022; Ihonvbere 2000; Nwabueze 2022; Odusote 2022; Ogowewo 2000; Onyekwere 2021).

How has Nigeria's constitution been replaced to date? Why is a replacement of the current 1999 Constitution necessary? How have

efforts to replace the current constitution been developed and stalled? This study answers these three questions. However, in providing a multifaceted discussion on the constitutional replacement, this study does not aim to strengthen the understanding of Nigeria's constitutional code itself but aims to depict the narrative of 'nation-state building' in the federal state of Nigeria.

1. How Nigerian Constitutions Have Been Replaced

1-1 The Amalgamation of Northern and Southern Nigeria: 1914

The geographical framework of present-day Nigeria was largely shaped in January 1914, when the two British colonies of the Protectorate of Northern Nigeria and the Colony and Protectorate of Southern Nigeria came together to form the Colony and Protectorate of Nigeria. From the outset, the 1914 event was referred to as the 'Amalgamation of Northern and Southern Nigeria', avoiding the use of words such as 'unification' or 'integration'. This was based on the opinion of colonial government officials such as Frederick John Dealtry Lugard, who became Nigeria's first Governor-General. He stated that despite their establishment of a single colonial unit called Nigeria, they should not and could not immediately unify or integrate Northern and Southern Nigeria, which had vast sociocultural differences between them. Northern and Southern Nigeria were viewed as having only been formally but not substantially integrated, and for many years after 1914, the two regions were effectively ruled as separate administrative units (Lugard 1920).

At the time of the 1914 Amalgamation, Nigeria did not have a sin-

gle law termed as the 'Constitution'. This was primarily because the United Kingdom, which was its suzerain, distinguished between the 'crown colony', with the capital city of Lagos at its centre, and 'protectorates', with basic matters of governance separately stipulated by primarily issuing 'Letters Patent' for the former and 'Order in Council' for the latter (Nwabueze 1982, 34). As discussed later, this distinction between the crown colony and protectorates gradually disappeared, with major laws and regulations issued by the United Kingdom regarding Nigeria becoming largely unified in the form of Orders in Council. However, it appears that there was no idea of issuing a single law (Order in Council) termed as 'Constitution' that would cover both the crown colony and protectorates at the beginning of the Amalgamation. Initially, at the time of its establishment in 1914, Nigeria only had the following three basic laws in place regarding colonial governance: the Nigerian Council Order in Council, 1912, which established the Nigerian Council as an advisory body to the Governor-General; the Nigeria Protectorate Order in Council, 1913, which stipulated protectorate governance; and the Letters Patent, 1913, which stipulated the powers entrusted to the Governor-General of Nigeria (Nigeria. Constitutional Conference (1994–1995) 1995, 43).

Subsequently, Nigeria had a total of nine constitutions enacted or enforced: five during the colonial period until independence (in 1922, 1946, 1951, 1954, and 1960), and four after independence (in 1963, 1979, 1989, and 1999). Thus, Nigeria has experienced nine constitutional replacements to date.³

The period of constitutional replacements is further divided into

two periods which is discussed in the following sub-sections. The first period is from 1922, when the first constitutional replacement occurred during the colonial period, to 1963, when the republican system was introduced following independence (1960); the targets of discussion during this period are the six constitutional replacements from 1922 to 1963. The second period is from 1966, when the first military coup d'état occurred, to 1999, when the current Fourth Republic (described later) commenced; the targets of discussion during this period are the three constitutional replacements from 1979 to 1999.

1-2 The 'Constitutions by Colonialists': 1922-1963

Each period has different reasons for the relatively frequent constitutional replacements in Nigeria. First, the five constitutional replacements during the colonial period were the result of the Nigerian colonial government's need to reform the manner in which the colonial state was governed in response to demands for democratization from African nationalists advocating for colonial liberation, and in the face of the crisis of the division of Nigeria (Kirk-Greene 1997).

In 1920, six years after the Amalgamation of Northern and Southern Nigeria, the National Congress of British West Africa (NCBWA) was established in Accra, the capital of the British Gold Coast (present-day Ghana) as a nationalist organisation to unite the four British West African colonies (Nigeria, Gold Coast, Sierra Leone, and the Gambia). Thereafter, the NCBWA requested that the British government ensure that at least half of the members of the Legislative

Council, which is the legislative body of each colony, be a democratically elected African representative. The 'Constitution' that was enacted for Nigeria in 1922 after such demands from nationalists was called the Clifford Constitution, named after the then Governor Hugh Clifford. However, the Clifford Constitution was not a single statute; it was a general term for following major laws and regulations: the Nigeria Colony Letters Patent, 1922; the Nigeria Protectorate Order in Council, 1922; and the Nigeria (Legislative Council) Order in Council, 1922. The Clifford Constitution expanded the legislative powers of the Legislative Council, which was previously limited to the Colony of Lagos, to the Protectorate of Southern Nigeria, and simultaneously established for the first time a total of four African electorate seats (three from Lagos and one from Calabar, which is a town in the southeast) in the Legislative Council (Elias 1967, 26; Olusanya 1980, 521–524; Udoma 2011, 74).

Furthermore, in 1946, after World War II, several basic laws were enacted under the initiative of the Governor of Nigeria, Arthur Richards, including the Nigeria (Legislative Council) Order in Council, 1946, which were enforced from 1947. These are collectively called the Richards Constitution. The Richards Constitution first divided Nigeria into three regions (northern, western, eastern) and provided for the establishment of Regional Councils with no legislative power in each region. The plan was to strengthen political ties between local and central governments by having traditional leaders participate in these Regional Councils and by having Regional Council representatives participate in the central Legislative Council. Thus, the Richards Constitution reorganised Northern and Southern Nigeria,

which were amalgamated but essentially ruled separately for over 30 years, into three regions with a more homogeneous governing structure, seeking to transform Nigeria into a single colonial entity both in name and in substance by linking local traditional leaders with central politics (Elias 1967, 35–37).

However, the Richards Constitution was strongly criticised by Nigerian nationalists as being undemocratic, and in response, the colonial government of Nigeria solicited the opinions and requests of the colonial people regarding constitutional amendments. In 1950, a large constitutional conference was held in the southwestern town of Ibadan, and in 1951, a new constitution known as the Macpherson Constitution was enacted under the leadership of Governor John Macpherson. Its official name was the Nigeria (Constitution) Order in Council, 1951, and the Macpherson Constitution was Nigeria's first constitutional code enacted as a single act. The Macpherson Constitution abolished the previous Legislative Council and established a House of Representatives in its place, and while continuing the three-region system introduced by the Richards Constitution, also granted limited legislative authority to Regional Councils that were previously not granted. Thus, although the constitution did not necessarily attempt to introduce full-fledged federalism into Nigeria, it was a step closer to the federalism that would be established later (Elias 1967, 38–41).

However, the Macpherson Constitution was terminated soon. In 1953, a motion was submitted to the House of Representatives aiming to achieve self-government for Nigeria in 1956, which led to confusion in the parliament regarding deliberations over the motion.

Thus, suddenly the incident elucidated the conflict between the South (i.e. western and eastern regions), which was actively seeking to achieve self-government, and the North, which was more cautious in its actions. Riots broke out in the North, which resulted in many casualties. Under such circumstances, the British government began considering the introduction of full-fledged federalism to Nigeria, which was experiencing serious regional conflict. A constitutional conference was held in London from July to August 1953 under the leadership of Colonial Secretary Oliver Lyttleton,⁴ and another conference was held in Lagos in 1954, with a new Nigerian constitution implemented in October 1954. This constitution, which was enacted as the Nigeria (Constitution) Order in Council, 1954, was called the Lyttleton Constitution, named after the Secretary of State for the Colonies at the time. Consequently, for the first time, Nigeria was officially reorganised as a federation comprising three regions (northern, western, and eastern), the British UN trust territory of Southern Cameroons (later annexed into present-day Republic of Cameroon), and the federal capital of Lagos. Simultaneously, each region had its own governor, prime minister, executive branch, legislative branch, and other governing bodies, and was provided wide-ranging legislative authority. Thus, Nigeria's federalism, which continues to the present day, was established (Olusanya 1980, 535–539).

In 1957, the western and eastern regions obtained internal autonomy from the United Kingdom, followed by the northern region in 1959. In October 1960, Nigeria achieved independence as the Federation of Nigeria, becoming a monarchical federal state headed by the British monarch. Nnamdi Azikiwe was appointed Governor-General,

as a representative of the British monarch, and Abubakar Tafawa Balewa was appointed the Federal Prime Minister. At the time of independence, the United Kingdom established the Nigeria (Constitution) Order in Council, 1960, through two constitutional conferences in 1957 and 1958. A constitution commonly known as the Independence Constitution was included in the appendix to this Order in Council. The Independence Constitution was a minor amendment to the Lyttleton Constitution and continued to grant broad legislative authority to the northern, western, and eastern regions of the federation. In addition to the Independence Constitution covering the entire federation, three regional constitutions were separately enacted, and included in the appendix of the 1960 Order in Council. Therefore, at the time of independence, Nigeria had a total of four constitutional codes, one of which was the federal constitution, and three of which were regional constitutions (Nwabueze 1982, 89).

After Nigeria achieved independence in 1960 as a monarchical federal state comprising three regions, in August 1963, the midwestern region was separated from the western region, and a four-region system was introduced. Thereafter, in October 1963, the country shifted from a monarchy to a republic, changing to the present-day name of the Federal Republic of Nigeria. The Act to Make Provision for the Constitution of the Federal Republic of Nigeria, 1963, was enacted in conjunction with this transition to a republic, and this is generally called the Republican Constitution.

All the constitutions during the colonial period, including the Independence Constitution, were mainly established by Orders in Council of the United Kingdom. In contrast, the 1963 Republican Consti-

tution was established in the form of an 'act' by the then Federal Parliament of Nigeria. Additionally, following the transition to a republic, regional constitutions were amended through deliberations by Regional Councils and other governing bodies. These facts indicate that the Republican Constitution and the four regional constitutions enacted and enforced in 1963 were not legal codes bestowed by the United Kingdom (monarch) as had been the case until then, and could be said to be the first 'people's constitution' established by the Nigerian people through their own representatives. This is particularly evident from the fact that the Preamble to the Republican Constitution for the first time included the phrase 'We the people of Nigeria', which had never been included in previous colonial constitutions.

However, despite the Republican Constitution being a constitution of the people of Nigeria, it was only in a formal sense. Indeed, the Republican Constitution was the first constitutional code enacted by the Federal Parliament of Nigeria, and for example, in terms of content, the head of state was changed from the British monarch to the president as the country transitioned to a republic. However, with the exception of some institutional changes, the Republican Constitution was in essence simply a 'rehash' of the Independence Constitution that was established by the Order in Council. This is why the prominent Nigerian constitutional scholar Benjamin Nwabueze declared that 'The 1963 Constitution was not autochthonous' (Nwabueze 1982, 90). Essentially, although the Republican Constitution was enacted by Nigeria's parliament after independence, it had a strong legal continuity with the colonial-era constitutions leading

up to independence, having a strong characteristic of a ‘constitution (given) by colonialists’ rather than a ‘people’s constitution’ (Ogowewo 2000, 138–139).

1-3 The ‘Constitutions by Soldiers’: 1966–1999

Nigeria’s post-independence constitution did not transcend the colonial legacy of the United Kingdom and become, using Nwabueze’s expression, ‘autochthonous’, until after 1966, which was the year of Nigeria’s first military coup d’état. The coup occurred on 15 January 1966, resulting in the collapse of the First Republic.⁵ Thereafter, Nigeria faced 29 years of military rule, interspersed with brief periods of the Second Republic (October 1979–December 1983) and the Third Republic (August–November 1993), until the commencement of the present-day Fourth Republic in May 1999. This long period of military rule could broadly be divided into the following periods: the First Military Rule (13 years and 8 months) from January 1966 to September 1979, and the Second Military Rule (15 years and 2 months if excluding the Third Republic) from January 1984 to May 1999. This long period of military rule had a major influence on the subsequent constitutional replacements of Nigeria.

The following three points can be indicated as the effects of the long period of military rule on the constitutional replacements of Nigeria. First, if the colonial-era constitutions were primarily ‘constitutions by colonialists’ established by the Order in Council of the British monarchy, then Nigeria’s constitutional code since 1966, including the current constitution, would be ‘constitutions by soldiers’ that were promulgated in the form of military regime statutes called ‘de-

crees’.

Second, colonial-era constitutional replacements were conducted in response to demands for democracy by nationalists and to maintain the integrity of Nigeria, whereas constitutional replacements since 1966 were developed as part of the transitional programme to civilian rule by successive military regimes.

Third, all the constitutions enacted under military regimes tended to be extremely centralised, despite maintaining the appearance of federal constitutions.

Considering these three points, the development of constitutional replacements under military rule is discussed in the following paragraphs.

General Johnson Thomas Umunankwe Aguiyi-Ironsi, who assumed total control following the January 1966 coup, suspended or amended some articles of the Republican Constitution and regional constitutions immediately following the coup (Decree No. 1 of 1966). He reviewed the entire constitution, however, in May 1966, before the review results were made available, he issued a decree that abolished federalism and introduced a unitary system (Decree No. 34 of 1966). However, this provoked strong domestic opposition, and the Ironsi military regime was ultimately overthrown in a second coup that occurred in July 1966.

Lieutenant Colonel Yakubu Gowon, who subsequently assumed power, first restored federalism (Decree No. 59 of 1966), however, in May 1967, he abolished the four-region system and introduced a 12-state system (Decree No. 14 of 1967). The chief purpose of this reform was to divide the eastern region, which was undergoing sep-

aratist movements at the time, into multiple states in an attempt to separate the Igbo, which was the region's primary ethnic group, from other ethnic minorities. Further, this served as an important opportunity for a major transformation of Nigeria's federalism, that is, a decentralised system comprising constituent units called 'regions' that are granted a wide range of authority, to that of a centralised one comprising constituent units called 'states' that were weakened by fragmentation. Therefore, Gowon's introduction of the 12-state system in 1967 was also called a 'constitutional coup' in Nigeria (Suberu 2001, 87). In response, the Igbo military governor of the eastern region, Chukwuemeka Odumegwu Ojukwu, strongly opposed the introduction of the 12-state system and declared the establishment of the Republic of Biafra three days after the announcement, and Nigeria experienced a civil war called the Biafran War for the next 30 months.

Brigadier General Murtala Muhammed, who seized power in a bloodless coup in July 1975 after the end of the Biafran War, announced his own programme for a transition to civilian rule and established the Constitution Drafting Committee in October 1975, however, he was gunned down in February 1976. Thereafter, the civilian rule transition programme was taken over by Brigadier General Olusegun Obasanjo, and from October 1977 to June 1978, the Constituent Assembly met to deliberate on the draft constitution that was prepared by the Constitution Drafting Committee (Udoma 2011, 376–407; Williams 1988). In October 1979, a transition to civilian rule was achieved, and Shehu Usman Aliyu Shagari became president. The Constitution of the Federal Republic of Nigeria (En-

actment) Decree, 1978, was enacted in 1978 and enforced in 1979 for the transition to civilian rule. This was called the 1979 Constitution, named after its year of enactment. The 1979 Constitution replaced the British-style parliamentary cabinet system that was adopted in the Republican Constitution with an American-style presidential system in which the president was elected by direct election for the first time (Section 122–129).

However, the Second Republic, which began with the establishment of the Shagari civilian government, did not last long. At the end of December 1983, Major General Buhari staged a coup and overthrew the Shagari civilian government, assuming full control in January 1984. Consequently, Nigeria again entered a long period of military rule (Second Military Rule). Despite increasing his tendency to repress human rights, Buhari was unable to adequately respond to the severe economic crisis that followed the oil boom, which led to a backlash from within the military and other sources, and he was overthrown in a coup in August 1985, simply one year and eight months after taking control.

In January 1986, Major General Ibrahim Badamasi Babangida, who subsequently assumed power, established the Political Bureau, which comprised experts, to examine various political issues, including constitutional review (Oyediran 1997), and in July 1987, the Bureau officially announced its own civilian rule transition programme. Thereafter, in September 1987, the Constitution Review Committee was established to formulate a new draft constitution based on the contents of the 1979 Constitution and the Political Bureau report; the draft constitution prepared by the Committee was deliberated

on at the Constituent Assembly, held from April 1988 to April 1989 (Akindele 1997). Thus, the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, 1989, was promulgated in May 1989. This was called the 1989 Constitution. This constitution was the first Nigerian constitution to specify the introduction of a two-party system, but otherwise largely followed the 1979 Constitution (Bah 2005, 118–119). However, following repeated schedule delays and changes, the civilian rule transition programme led by the Babangida government collapsed because of the confusion surrounding the presidential election of 12 June 1993. Babangida stepped down from power in August 1993, appointing civilian Ernest Shonekan as the head of the Interim National Government.

Thus, the Interim National Government was classified as a civilian government because it was headed by a civilian, and was called the Third Republic. However, this was only in a formal sense, and in reality, the Interim National Government was strongly under the influence of the military and did not have the autonomy or legitimacy of a civilian government. In November 1993, Shonekan was forced to resign as the head of government following pressure from the military, with the government collapsing in only three months.

General Sani Abacha, who abolished the Interim National Government and assumed power, announced from an early stage his intention to transition to a civilian government to ward off criticism both at home and abroad. In June 1994, the National Constitutional Conference was established to consider a draft constitution (Agbaje 1999). A new constitutional decree was promulgated in 1995, however, owing to Abacha's sudden death in June 1998, the 1995 Consti-

tution remained unenforced and faded away.

General Abdulsalami Abubakar, who was appointed head of state in June 1998, established the Constitution Debate Co-ordinating Committee in November 1998 and drafted a new constitution based on the 1979 Constitution. In May 1999, a transition to civilian rule was achieved, and Obasanjo, who was the former head of the military regime, became president as a civilian. This ended the approximately 15-year Second Military Rule, with Nigeria ushering in a new era of civilian government known as the Fourth Republic, upon which the present-day 1999 Constitution was enacted.

This section provided a historical overview of Nigeria's nine constitutional replacements to date, roughly divided between the six 'constitutions by colonialists', including the Republican Constitution; and the three 'constitutions by soldiers', including the current constitution. The next section organises and discusses the arguments of those who advocate for a complete replacement of the present-day 1999 Constitution.

2. Why the 1999 Constitution Should Be Replaced

As aforementioned, Section 9 of the 1999 Constitution stipulates the amendment procedure, and the Constitution has already been amended five times between its enforcement in 1999 to 2023. Nevertheless, many people are widely calling for the complete abolition of the current constitution and enactment of a completely new constitution in its place, or the restoration of a previous constitution. Why are there strong calls in Nigeria for the complete replacement

of the 1999 Constitution despite its partial amendments? This section examines the arguments of those calling for a complete replacement of the 1999 Constitution, broadly dividing them into two aspects: (1) procedural aspects (lack of legitimacy, and deceit of the military), and (2) substantive aspects (decline of federalism).

2-1 Procedural Aspects

(1) The Lack of Legitimacy

Advocates for the replacement of the 1999 Constitution have most often indicated the 'lack of legitimacy' as the basis for their argument. The Constitution states in its Preamble that 'We the people of the Federal Republic of Nigeria...do hereby make, enact and give to ourselves the following Constitution'. However, as aforementioned, the 1999 Constitution was a decree that was formulated in a short period of time under the Abubakar military regime, and it was not subject to a referendum, nor was it deliberated by the Constituent Assembly, which constituted people's representatives. Thus, the 1999 Constitution is not a 'people's constitution' that was drawn up as the collective idea of 'We the people of the Federal Republic of Nigeria', but merely a constitution that was semi-unilaterally imposed on the Nigerian people by the military regime, which had remained in power illegally for many years, upon transition to civilian rule. Therefore, the fact that the 1999 Constitution is 'dressed up' (in the Preamble) as if it were a constitution that was independently established by the Nigerian people themselves is, for example, derided by Romiti Williams, a constitutional scholar who led the drafting of the 1979 Constitution, as a 'document that tells lie against itself', and

strongly criticised by legal scholar Itse Sagay as a ‘fraud’ (Adesina 2020).

However, Nigeria, has never had a legal code, including the 1999 Constitution, that could be described as a ‘people’s constitution’. Of the nine constitutional codes enacted to date, the five that were enacted during the colonial period and the Republican Constitution enacted immediately after independence were established primarily by an Order in Council of the British monarchy or as an extension of that legal tradition. On the other hand, the three constitutions after the 1966 coup were established as decrees by military regimes. No referendum was held under Nigerian military rule for enacting the constitution. Thus, the three constitutions enacted under the military regimes were not ‘people’s constitutions’ either, although they allowed a limited civic participation process.

Essentially, Nigeria has only experienced ‘constitutions by colonialists’ enacted during the colonial period in the form of Orders in Council by the British monarch, which includes the six constitutions from the Clifford Constitution (1922) to the Republican Constitution (1963), with the sixth Republican Constitution after independence included as a colonial legacy; and ‘constitutions by soldiers’ enacted during the post-independence period of military rule in the form of decrees by military regimes, which includes the 1979 Constitution, the 1989 Constitution, and the 1999 Constitution. Therefore, truly acquiring a constitution that represents the collective will of ‘the people of the Federal Republic of Nigeria’ as stated in the Preamble of the current constitution would require both the complete abolishment of the 1999 Constitution, which lacks legitimacy as a ‘people’s

constitution', and the establishment of a new constitution in its place. This is the crux of the argument commonly made regarding the lack of legitimacy of the 1999 Constitution by many who advocate replacing it (Ihonvbere 2000).

(2) The Deceit of the Military

In contrast, Tunde Ogowewo of King's College London argued that the 1999 Constitution was invalid from a perspective that clearly distinguished itself from that of the lack of legitimacy, however, emphasised procedural aspects. Immediately after the enactment of the current constitution, Ogowewo published an essay titled 'Why the Judicial Annulment of the Constitution of 1999 is Imperative for the Survival of Nigeria's Democracy' (Ogowewo 2000), in which he advanced his unique argument that the 1999 Constitution should be judicially annulled by Nigerian courts.

According to Ogowewo, the need for Nigerian courts to annul the current constitution is not because it was enacted by a military regime and lacks legitimacy as a 'people's constitution'. He stated that the 1999 constitution should be annulled by Nigerian courts because the serious 'deceit' by the military regime (Ogowewo 2000, 135) towards the people was hidden in the enactment of the Constitution.

Ogowewo did not subscribe to the short-sighted perspective that a 'constitution by soldiers' always lacks legitimacy as a 'people's constitution', regardless of its process or content. This is why he holds the 1979 Constitution, which was enacted under a military regime similar to the 1999 Constitution, in high regard, referring to it as 'Nigeria's first (and only) constitution that was an act of the people'

(Ogowewo 2000, 140). This is because despite its enactment under military rule, it was formulated with the wisdom of Nigerians that was clearly separated from the previous 'constitutions by colonialists', making it the country's first autochthonous constitution. Moreover, Ogowewo argues that the 1979 Constitution was formulated through a long, extensive, and highly democratic deliberation process, albeit under military rule (Ogowewo 2000, 140–141). Owing to these excellent characteristics, the 1979 Constitution became the basis for the 1999 Constitution.

Therefore, why does Ogowewo, who praises the 1979 Constitution as 'Nigeria's first (and only) constitution that was an act of the people', advocate for the annulment of the current 1999 Constitution, which largely follows the content of the 1979 Constitution? This is not because there was a fundamental problem with the content of the 1999 Constitution, but because it was newly enacted in place of the 1979 Constitution, despite having almost the same content as the 1979 Constitution.

According to Ogowewo, if the Abubakar military regime, which was aiming for an early transition to civilian rule, supported the contents of the 1979 Constitution, then there should have been an option to make partial amendments as required rather than a complete abolishment of the constitution. However, in reality, the Abubakar military regime did not amend the 1979 Constitution, but abolished it and enacted the 1999 Constitution in its place. Ogowewo believed that, by doing so, the Abubakar military regime was attempting to escape responsibility for the numerous constitutional violations committed by the military during the period of Second Military Rule

(Ogowewo 2000, 145–146).

The 1979 Constitution stipulated that ‘This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria’ (Section 1). Therefore, the military was bound by the provisions of the 1979 Constitution. Nevertheless, after the military coup in December 1983, the military overran the supremacy of the constitution by arbitrarily and illegally amending and abolishing the 1979 Constitution. The Abubakar regime diverted the public’s attention from the constitutional violations committed by successive military regimes during the period of Second Military Rule and sought immunity from them by abolishing the 1979 Constitution and enacting the 1999 Constitution (which had almost the same content), thereby implementing a constitutional replacement. This was done because once the 1979 Constitution was abolished, it would no longer be possible to legally question constitutional violations by successive military governments during the period of Second Military Rule based on the constitution. Furthermore, such constitutional violations by the military could not be pursued based on the newly enacted 1999 Constitution. This was because these acts of constitutional violations occurred before the enforcement of the 1999 Constitution. Ogowewo refers to this clever scheme of the military to absolve itself from past constitutional violations as the ‘deceit of the military’ that was underlying the enactment of the 1999 Constitution (Ogowewo 2000).

If the Nigerian courts accept the 1999 Constitution as a legitimate constitutional code, it will not only allow the military to be excused for past constitutional violations, but could also lead to a recurrence

of military coups in the future. This is because regardless of the constitutional violations committed by the military after seizing power through a coup, so long as a constitutional replacement is implemented at the time of a transition to civilian rule, the military would be excused from all constitutional violations, which would reduce the risk to the military in the event of a future coup. Therefore, Ogowewo advocated that the past constitutional violations by the military not be excused, and the courts, as the judicial branch, not the government or legislature, must respond to appropriate complaints and declare an annulment of the 1999 Constitution based on the 1979 Constitution, which remains the only legitimate supreme law, to prevent future coups or protect Nigeria's democracy (Ogowewo 2000).

2.2 Substantive Aspects

(1) The Decline of Federalism

The argument calling for a complete replacement of the 1999 Constitution on the grounds of its lack of legitimacy and deceit of the military questions procedural aspects such as the process and background of the enactment of the constitution. In contrast, some argue for constitutional replacement by indicating issues with the substantive aspects of the current constitution, that is, the content of its articles (Adesina 2020; Baje 2019; Ejime 2022; Odusote 2022; Onyekwere 2021). However, if there was some type of problem with the articles themselves, then it would be sufficient to amend the problematic article alone based on the prescribed procedure without a constitutional replacement. However, among those who advocate

for a complete constitutional replacement while indicating the problems with the provisions of the current constitution, there are many who have doubts about Nigeria's current federalism and call for fundamental or large-scale reform. Therefore, they view only partial amendments to the 1999 Constitution, which is the federal constitution, as insufficient, and advocate for a complete replacement. One of the values widely common among such commentators is the idea of 'true federalism' (Adamolekun 2005; Farayibi 2017).

Nigeria has maintained federalism from the enactment of the Lyttleton Constitution (1954) at the end of the colonial period to the present day, with the exception of a brief period in 1966. Therefore, of the nine constitutional codes of Nigeria, six since the Lyttleton Constitution, that is, the Lyttleton Constitution, the Independence Constitution, the Republican Constitution, the 1979 Constitution, the 1989 Constitution, and the 1999 Constitution, were all federal constitutions. However, despite collectively referred to as federal constitutions, the substance of the federalism stipulated in the first three constitutions, which refer to the 'constitutions by colonialists', differed significantly from that in the last three constitutions, which refer to the 'constitutions by soldiers', including the current constitution.

The original federalism of Nigeria, which was stipulated by the Independence Constitution and the Republican Constitution, was oriented towards decentralisation, with regional authorities that were relatively strong when compared with the federal (central) state. Today, those who emphasise the realisation or revival of 'true federalism' regard the federalism of the First Republic period immediate-

ly following independence as ideal. However, Nigeria's federalism subsequently changed into one that was extremely centralised, with the status and influence of the federation becoming significantly strengthened under long-term, authoritarian military rule. The present-day centralised federalism in Nigeria has been derided as 'unitary federalism' (Ihonvbere 2000, 361–362) or 'bastardized federalism' (Adamolekun 2005, 387).

The scars of the decline of federalism that occurred under the military regime, that is, the excessive centralisation of federalism, could be found throughout the current constitution. For example, the former Independence Constitution and the Republican Constitution defined Nigeria as a federal state comprising three to four regions and a federal capital (Independence Constitution: Section 2; Republican Constitution: Section 3). However, the current 1999 Constitution states that its constituent units are 36 states and the federal capital territory (Section 2). Thus, at the time of independence, Nigeria primarily comprised a few large-scale subordinate administrative units called 'regions', where the status of the region relative to the federation was relatively high, and their authority and financial scale were also large. However, the military regime that was later established reorganised the subordinate administrative units into 'states' and fragmented them. Specifically, since the military regime adopted a 12-state system in 1967, the system changed to a 19-state system in 1976, 21-state system in 1987, 30-state system in 1991, and the present-day 36-state system in 1996. The result of this military regime-led fragmentation (i.e. weakening) of the federal constituent units was that Nigeria's federalism was transformed into

one that favours centralisation, with the federation clearly superior to the (weakened) states in terms of size, finances, and legislative and executive powers.

However, one cannot expect the current National Assembly to implement reforms that would return this excessively centralised ‘false federalism’ to the decentralised ‘true federalism’ of the past. This is because the National Assembly enjoys the powers and interests concentrated in the federation under the 1999 Constitution. It is unlikely that members of the National Assembly would take the initiative towards giving up the benefits and privileges they enjoy (Adamolekun 2005, 402–403). If that is the case, then replacing the entire constitution, rather than a partial constitutional amendment led by the National Assembly as stipulated in the 1999 Constitution, is essential for realising ‘true federalism’. This can be said to be the crux of the argument of those who advocate for the replacement of the 1999 Constitution and the realisation of ‘true federalism’.

However, there is no provision in the 1999 Constitution for a complete constitutional replacement, and it is uncertain whether it is feasible to cause a constitutional change that would be described as a macro- or mega-level action without any legal basis in the Fourth Republic period during peacetime, when there are no sudden political changes such as coups or revolutions (Suberu 2015, 566).

In conclusion, this would be difficult. As mentioned above, Nigeria has experienced constitutional replacements relatively frequently. However, in the case of Nigeria after independence, the constitution was replaced alongside the transitions from a monarchy to a republic and from military to civilian rule, and there has never been a

constitutional replacement that did not involve such a change in government. Therefore, despite people arguing that the 1999 Constitution has several serious problems, whether procedural or substantive, achieving a complete replacement under the present-day Fourth Republic does not appear realistic unless a major political change occurs. Nevertheless, there has been a socio-political movement in Nigeria to replace the 1999 Constitution.

The next section discusses how movements and trends that advocate for a replacement of the 1999 Constitution have developed and failed so far. It focuses on the discourse called restructuring, which has been receiving prominence in the Nigerian society since the 1990s.

3. How the Attempts to Replace the 1999 Constitution Have Failed

3-1 The Restructuring

In Nigeria, the idea or movement to implement a reorganisation of excessively centralised federalism is generally referred to as ‘restructuring’ (El-Rufai 2017; Jooji 2019; Nsiegbe and Lezie 2020; Nwosu 2016; Odeke and Onuoha 2023; Olafusi 2021; Pearse 2017; Premium Times 2023; Ugbede 2018; Kperogi 2022). Although difficult to define precisely, a significant review of the constitution, which broadly defines the nature of Nigeria’s federal state, is undoubtedly of particular interest for many advocates of restructuring. The movement advocating for a replacement of the 1999 Constitution during the Fourth Republic period developed within, or was almost integrated with, this larger socio-political trend of restructuring.

However, restructuring can be traced back to the early 1990s, shortly before the commencement of the Fourth Republic and the 1999 Constitution. An important trigger for this was a political incident that occurred in neighbouring Benin in 1990. In February 1990, Benin, under the dictatorship of President Mathieu Kérékou, held the *Conférence Nationale Souveraine*, the first in Africa, in response to growing demands for democratisation. This *Conférence Nationale* in Benin declared sovereignty, suspended the constitution, and created a transitional legislative and executive branch for democracy, disbanding in only 10 days. However, following its success in Benin, the *Conférence Nationale* was convened in rapid succession in a semi-domino effect in Francophone African countries such as Gabon, Togo, Mali, Niger, and Zaïre (present-day Democratic Republic of the Congo) (The National Conference 2014, 18–19).

The success of the *Conférence Nationale* in these Francophone African countries, particularly in Benin, had limited impact on Nigeria's Babangida military regime, which had already developed its own transition programme to civilian rule. However, it had a significant impact on the civil society forces that were resisting the military regime. More specifically, in Nigeria, elites and organisations criticising military rule and advocating for democratisation were inspired by the success of the *Conférence Nationale* in Benin and began to advocate holding a Nigerian version of the Sovereign National Conference as a countermeasure to the civilian rule transition programme led by the military regime (Omitoogun and Onigu-Otite 1996, 3–9). From around this time, civil society elites and organisations began to draw up a blueprint for the reorganisation of federal-

ism, which had become excessively centralised under military rule, by holding the Sovereign National Conference, resulting in growing momentum for the restructuring movement. However, as early as 1990, at least two attempts were made by elites and groups to hold a conference emulating the *Conférence Nationale* of Benin, however, both failed owing to the interference and pressure from the Babangida military regime (Omitoogun and Onigu-Otite 1996, 5).

It was in this context that the June 1993 presidential election results were annulled. This incident suddenly gave momentum to civil society forces who advocated for the holding of a Sovereign National Conference to realise restructuring (Amuwo and Hérault 1998, 7).

3-2 The 'Failure' of the Two Trends of Restructuring

In Nigeria, a presidential election was held on 12 June 1993, under the Babangida military regime, in preparation for a transition to civilian rule. Yoruba businessman and politician Moshood Kashimawo Olawale Abiola appeared to have won the presidency, however, the election results were later annulled by the military regime. Following this June 1993 incident, leaders of ethnic groups in the south, particularly the Yoruba and Igbo, who strongly opposed the military regime, began to strongly demand a Sovereign National Conference (Omitoogun and Onigu-Otite 1996, 5). Specifically, in May 1994, traditional leaders from five southwestern states, where many Yoruba people lived, submitted a memorandum to the government, and demanded that the national constitutional conference that was scheduled to be held by the military regime be held as a Sovereign Na-

tional Conference, whose decisions could not be amended or rejected by anybody (Committee for the Promotion of Yoruba Agenda 2015).

Additionally, in May 1994, a private organisation called the National Democratic Coalition (NADECO) was established by 49 elites, including Yoruba elder statesman Anthony Enahoro, who strongly opposed the annulment of the June 1993 presidential election results by the Babangida military regime and the heavy-handed policies of the Abacha military regime that was subsequently established. As a coalition organisation that brought together elites and groups seeking democracy, the NADECO began to advocate for a Sovereign National Conference and drafting of a new constitution at that conference (The National Conference 2014, 19).

Furthermore, in December 1998, the Conference of Nationalities in Nigeria was held in Lagos, which brought together representatives of diverse ethnic groups from all over Nigeria (Onwudiwe 1999). This conference, which was held in response to the Abubakar military regime's civilian rule transition programme, was organised by the Campaign for Democracy, which was a private organisation headed by a medical doctor Beko Ransome-Kuti, with this conference also confirming the need to hold a Sovereign National Conference in the near future (Aluko 1999).

Thus, restructuring received momentum as 'Restructuring from Below' by civil society forces following the annulment of the June 1993 presidential election results and continued to develop throughout the 1990s with the Sovereign National Conference as one of the pivots. Certainly, a replacement of the 1999 Constitution was not yet on the table, however, the Sovereign National Conference did

have some idea of how to formulate a decentralised federal constitution. However, when the transition to civilian rule was realised in May 1999 and the Fourth Republic began, not only were civil society forces, but also the federal government (civilian government) were 'involved' in the restructuring debate. This is referred here as 'Restructuring from Above'.

Obasanjo of the People's Democratic Party (PDP), who was inaugurated as the first president of the Fourth Republic, established the Presidential Technical Committee on the Review of the 1999 Constitution in October 1999 and promptly initiated a review of the centralised constitution (Igbuzor 2005), however, ruled out a Sovereign National Conference, which was a demand of the civil society forces. However, in December 2004, President Obasanjo suddenly announced his intention to hold a completely new national participatory conference in 2005 called the 'National Dialogue'. The 'National Dialogue' proposed by President Obasanjo was later officially renamed the National Political Reform Conference (NPRC) and was held in Abuja, the federal capital, from February to July 2005. The NPRC was not the Sovereign National Conference that civil society forces had previously demanded, however, it was a large-scale conference with public participation that was conscious of this concept. Approximately 400 people participated in the conference, including elder statesmen, military veterans, representatives of professional organisations, and representatives from each state, where they discussed various topics, including reorganisation of excessively centralised federalism and a review of the constitution (Owete 2014). However, the NPRC report was subsequently submitted to the

Obasanjo government, and Umaru Musa Yar'Adua of the PDP, who became president in May 2007, also established a committee to examine the report, however, the proposals by the NPRC never materialised as policies (Premium Times 2023).

However, civil society forces, who believed that their idea of a Sovereign National Conference had been 'hijacked' by the federal government (Ojo 2014, 92), strongly opposed the Obasanjo government's NPRC and called for its boycott. They initiated their own conference to counter such 'Restructuring from Above'. Specifically, from February 2005 to the following year, sessions at the People's National Conference (PNC), which was sponsored by a private organisation called the Pro-National Conference Organization (PRO-NACO), were held intermittently in parallel with the NPRC (Adamolekun 2005, 403–404). After a series of deliberations at the PNC, the 'Draft of the People's National Conference Proposed Constitution for the Federal Republic of Nigeria' was formulated. This 'Draft of the People's Constitution' was developed as a draft replacement of the 1999 Constitution and recognised the right of self-determination for each ethnic group and established an 18-region system based on ethnic groups instead of the current 36-state system (Suberu 2015, 561–563). However, although this draft was subsequently submitted by Enahoro to the Yar'Adua PDP government, it was effectively ignored.

In May 2010, after the death of President Yar'Adua in office, Vice President Goodluck Ebele Jonathan took over the presidency. President Jonathan, in his Independence Day speech in October 2013, pledged to create a new forum for the 'National Conversation'. The

National Conference (Confab) was held in Abuja in March 2014, which was the 100th anniversary of the Amalgamation of Northern and Southern Nigeria. Approximately 500 people participated in Confab, including elder statesmen, former bureaucrats, journalists, academics, representatives of various organisations, and elected officials from each state, where they discussed various issues including constitutional amendments (The National Conference 2014; Pearse 2017). Although the Confab report was submitted to the Jonathan government in August 2014, similar to the Obasanjo government's NPRC, it subsequently produced no concrete results (Jonathan 2018, 99).

During the PDP administration, which lasted from 1999 to 2015, there were two large-scale public participation conferences that were modelled on the Sovereign National Conference: the NPRC under the Obasanjo government, and the Confab under the Jonathan government. However, no significant results relating to restructuring were achieved. In contrast, Buhari of the All Progressives Congress (APC), who assumed office as a civilian president in May 2015, did not hold large-scale meetings as during the PDP administration, however, established a committee within the ruling APC called the Committee on True Federalism in August 2017 to examine various problems related to federal restructuring, including constitutional amendments (El-Rufai 2017). The committee, which was chaired by Kaduna State Governor Nasir Ahmad El-Rufai, submitted its report to the APC in January 2018, which included 12 decentralisation-oriented proposals, such as the introduction of referendums in the constitutional amendment process and the creation of new state prisons

(Shibayan 2018). These El-Rufai Committee proposals were not actively considered by the federal government or the National Assembly for the first few years (Abdullahi 2022), however, some of the proposals were adopted in the fifth constitutional amendment in 2023.

Similar to the Buhari government, the Tinubu APC government, which was established in May 2023, has advocated for the realisation of a ‘true federalism’ and the promotion of decentralisation, however, it appears that the government is no longer attempting to hold large-scale citizen participation conferences such as those held during the PDP administration, instead trying to proceed with a limited reorganisation of federalism through only minor partial constitutional amendments.

Thus, the federal government’s ‘Restructuring from Above’ temporarily received momentum during the PDP administration, and two large-scale conferences that were modelled on the Sovereign National Conference were held, however, no notable results were achieved, and it has continued to lose momentum with the establishment of the APC government (2015), which was critical of the PDP. However, some of the civil society forces that led the ‘Restructuring from Below’ called for a Sovereign National Conference, however, these calls no longer had the vigour they once had. As these two restructuring movements lose their way, the 1999 Constitution, despite being partially amended, has not been abolished or replaced for a quarter of a century. In Nigeria, where a constitutional code lasted anywhere from a few years to 10 years, the 1999 Constitution has already become an impressive ‘long-lived constitution’, with its

'longevity record' continuing to be updated on a daily basis. Will the 1999 Constitution continue unreplaced in the future?

Conclusion

This study focused on the macro-level constitutional change of 'replacing the constitution' and discussed constitutional replacement in Nigeria from a multifaceted perspective. Specifically, Section 1 provided a historical overview of the nine constitutional replacements from 1914, when the Amalgamation of Northern and Southern Nigeria occurred, to 1999, when the current constitution was enacted, by broadly dividing them into 'constitutions by colonialists' and 'constitutions by soldiers.' Next, Section 2 organised the arguments of those advocating for the replacement of the current 1999 Constitution into those based on procedural aspects (lack of legitimacy, and deceit of the military) and substantive aspects (decline of federalism). Finally, Section 3 placed the movements advocating for the replacement of the 1999 Constitution within the larger framework of restructuring and explained how the 'Restructuring from Above' and 'Restructuring from Below' have each lost their way and stalled.

Therefore, this study comprises three types of discussions on Nigeria's constitutional replacements, although with different approaches. These three discussions were presented in a chronological order. However, there may have been insufficient interconnections between each discussion.

This study attempted to depict the narrative of Nigeria's 'nation-state building', with the subject matter of constitutional change.

This was achieved by setting the constitutional code as the subject of discussion, but not discussing micro-level constitutional changes such as amendments to its text, and rather, by discussing macro-level constitutional changes such as constitutional replacement, from a multifaceted perspective.

Regarding the possibility of a replacement of the 1999 Constitution, it is unlikely in the absence of some major political changes in the future. However, although there is an interrelationship between the constitution and 'nation-state building', the two are not necessarily synonymous. Therefore, even if Nigeria does not change its constitution under the Fourth Republic in near future, this does not signify that the dynamics of Nigeria's 'nation-state building' detailed here are static or have subsided. The dynamics of Nigeria's 'nation-state building', which has continued for over a century since the Amalgamation of Northern and Southern Nigeria in 1914, will lead to a change in the constitution that defines what type of federal state Nigeria should be. This is one of the implications of this study, which has discussed 'replacing the constitution' from a multifaceted perspective.

Notes

- 1 However, amendments to Section 8, which addresses the creation of new states; Section 9, which sets out the procedures for constitutional amendments; and Chapter IV (Section 33–46), which addresses fundamental rights, require a four-fifths majority vote of all members of both the Senate and House of Representatives, and approval from at least two-thirds of state legislatures (Section 9(3)).

- 2 For example, between 2000 and 2003, 12 states in northern Nigeria (re) introduced Sharia-based penal codes. However, the 1999 Constitution stipulates that 'The Government of the Federation or of a State shall not adopt any religion as State Religion' (Section 10). Therefore, the introduction of Sharia in the northern states may be in conflict with the spirit of the current constitution, which prohibits the adoption of a state religion (Last 2008, 60). Nevertheless, even today, over 20 years after its promulgation, both the 1999 Constitution and the Sharia-based penal codes of the northern states (or the Sharia-based penal code contained in the general penal code) continue to co-exist.
- 3 The 1995 Constitution (described later), which was enacted but ultimately not enforced, is excluded here.
- 4 Please refer to Colonial Office (1953) for details of the Nigerian Constitutional conference held in London in 1953.
- 5 Nigeria achieved independence as the Federation of Nigeria in October 1960 and became a republic in October 1963. Therefore, strictly speaking, Nigeria's First Republic refers to the period from the transition to a republic until its end (October 1963–January 1966), however, generally speaking, the period from independence to the collapse of the First Republic (October 1960–January 1966), which includes the three years before the transition to a republic, is referred to as the First Republic (Osaghae 1998, 31).

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