Constitutional Tinkering and Democratic Institutions: a Case Study of the 2019 Electoral Process

Tiffany Chikamara [Kamara] Nwosu
TiffanyChikamara.Nwosu@chicagounbound.edu

Follow this and additional works at: https://chicagounbound.uchicago.edu/international_immersion_program_papers

Recommended Citation
Nwosu, Tiffany Chikamara [Kamara], "Constitutional Tinkering and Democratic Institutions: a Case Study of the 2019 Electoral Process" (2019). International Immersion Program Papers. 120.
https://chicagounbound.uchicago.edu/international_immersion_program_papers/120

This Working Paper is brought to you for free and open access by the Student Papers at Chicago Unbound. It has been accepted for inclusion in International Immersion Program Papers by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.
Constitutional Tinkering and Democratic Institutions: A Case Study of the 2019 Electoral Process

Kamara Nwosu*

Abstract

This paper will discuss the aspects of constitutional tinkering and its impact on democratic institutions by looking into the constitutional tinkering in the Nigerian constitution and its impact on democratic institutions focusing mainly on the electoral system. As a caveat, this paper focuses on the electoral process within an electoral system and not the methods by which election systems are determined. Thus, the paper focuses on the administration of elections and not the system by which votes are to be cast such as plurality method, approval voting or simple majority vote.

* J.D. Candidate 2020, The University of Chicago Law School; B.A. 2017, Boston University. This paper was produced as part of the author’s participation in the University of Chicago Law School’s 2019 International Immersion Program as well as an Independent Study directed under Prof. Tom Ginsburg of the University of Chicago Law faculty. For the opportunity to participate in IIP, the author would like to thank Ms. Aican Nguyen, Director of International Programs at the University of Chicago Law School, and the Program Selection Committee. Any errors are, of course, my own.
Constitutional Tinkering and Democratic Institutions: A Case Study of the 2019 Nigerian Electoral Process

Introduction

“While you can have elections without a democracy, you cannot have a democracy without elections.” Michael Bratton states this in his study of African elections. In his paper, “Second elections in Africa,” he discusses the phenomena of analyzing the second set of elections in African nation post-decolonization as a measure of the success of democracy in the nation. It is often taken as an indication of a transfer of power and authority. In this field of study, Bratton and others have shown the importance of an electoral system in the functioning of a democratic administration particularly, the consolidation of democracy in a nation. As Bratton argues in his paper, elections do not constitute a consolidated democracy but they are a necessary institution as part of an array of institutions that are needed for a successful democratic state. Noting the importance of elections and their systems, electoral institutions and processes are equally important. How these elections are controlled, managed and executed are vital aspects of the electoral system. In many nations around the world, such processes find their origin in the constitution. As with post-colonial African governments, constitutions formed an integral part of the independence process. Electoral processes are outlined in the constitution and are the products of the constitutional process. The development of electoral systems is an important example to use in analyzing the impact of constitutional tinkering on democratic institutions.

This paper will discuss the aspects of constitutional tinkering and its impact on democratic institutions by looking into the constitutional tinkering in the Nigerian constitution and its impact on democratic institutions focusing mainly on the electoral system. As a caveat, this paper focuses on the electoral process within an electoral system and not the methods by which election systems are determined. Thus, the paper focuses on the administration of elections and not the system by which votes are to be cast such as plurality method, approval voting or simple majority vote. Although the latter systems have a significant impact as to the outcomes of an election, the more fundamental question concerning constitutional design is the method by which these elections are administered and conducted. Though it is all well and good to have an innovative way of filling seats in Parliament or electing the executive candidates, it may have little impact where there is an inefficient system for counting these votes, encouraging voter turnout, providing campaign finance guidance, delimiting political parties and screening candidates for contest.

Constitutional Tinkering and Comparative Constitutional Design

Overview

2 Id.
3 Id. Bratton ultimately argues that second elections far exceed the importance of the watershed first round of elections that signal the consolidation of democracy. His theory states that thus, second elections specifically speak to the survival of these fledgling democracies and not merely consolidation.
“Constitution? Wetin be dat? Me a never see constitution before o. Na wetin c bi?” 3 “it is a political mistake to call the document they are handing over a constitution. This is because, it has nothing to do with the will of the people of Nigeria. It was done based on the way the military wants it, it is only a guideline and therefore citizens should regard it as a guideline.” 4 “We need to bring these nationalities around a conference table to discuss how we are going to live together as a country. As it is today, we are not a nation yet, we are a state.” 5 “The only effective solution to these agitations is in transparent, people-oriented government that is responsible and responsive to the needs of the governed.” 6 Nigeria has had eight constitutions. The first four were enforced and developed prior to its independence and the latter four are post-independence with significant suspensions due to military rule. In contrast, the US has maintained a single constitution albeit with a slew of major amendments, for 230 years.

There is significant debate concerning whether the constitutions that are edited, updated and amended lead to a more stable government than those that are not. 7 It is of such significant conversation that political science students are taught the connection between rigid and flexible constitutions and how these are related to the administration of the government and are in fact, tied to the character and expression of the state itself. For example, it is taught that the United Kingdom operates with an unwritten and flexible constitution that accords with their parliamentary system of government that permits for quick changes to constitutional norms. 8 The arguments surrounding constitutional tinkering and constitutional design form the core of this essay. Here, this essay seeks to show the benefits and drawbacks of constitutional tinkering in Nigeria through its electoral system.

**Constitutional Tinkering**

In this section, we seek to define the phenomena of constitutional tinkering and how it may apply in our main discussion on the application of such values on the Nigerian constitution as it pertains to the electoral process. In this discussion, several questions first arise; are modifications or amendments examples of tinkering or must there be a constitutional death for the tinkering to arise? Should such tinkering be the norm, that is, is there a number of years after which a constitution seems to be optimal and as such, there should be a reevaluation of its usefulness? What are the benefits of tinkering? The drawbacks? Is there a process the tinkering must follow and who are the principal actors in this space? To answer the question of what constitutional tinkering is, there must be discussion as to what the purpose is of constitutions. It has been made clear that in

---


4 Translation, “Constitution? What is that? I have never seen a constitution before. What is it?”

5 Prof. B.O. Nwabueze, quoted in New African Magazine, *Nigeria: Nine Constitutions in 24 years of democracy!* (25th Nov. 2013) The article title is misleading. At this point, Nigeria celebrating its 53rd anniversary and this article comes as the President, Goodluck Johnathan was considering yet another constitution to replace the 1999 constitution. This constitution was never formed.


7 *See for example, Zachary Elkins, Tom Ginsburg & James Melton, The Endurance of National Constitutions* 12 (2009); *See also Gedion Timothewos Hessebon, Contextualizing Constitutionalism* 185 (2017).

our modern governance, constitutions are a precursor to statehood.\textsuperscript{11} More strongly, they are vital to the survival of a state no matter the form they exist in.\textsuperscript{12}

A more interesting question is why? Constitutions did not really exist as formal legal documents until 1789 with the establishment of the official US Constitution. So, why are they so ubiquitous now? There are two forms of this answer; the first is more economical and defined by the constraints of rational actors, the second is more sociological and defined by the whims of history and the cultural factors that affected the decisions of states at the time post-1789.

**Constraints of rational actors**

Where a constitution is found, there is likely to be some form of a democracy existing. Following this logic, constitutions serve as a constraint to the rational majority power. By limiting choice and only providing for evaluation of relevant factors, constitutions promote democracy by ensuring that representation is protected.\textsuperscript{13} This is a brief explanation of this view. However, this view makes the following assumptions that aid in understanding the importance of constitutions. The rules provided by the constitution also pass a double check, they must be acceptable by the majority and they must be reasonable. Equally important is the check they provide for the minority view and the subsequent enhancement of the systems by which constitutional values are facilitated such as a strong judiciary and electoral system. Another aspect of this view is that it further shows that the constitution must further the ultimate goal of a democracy when it comes to rulemaking; that is, the Kantian goal of presenting a standard that no one has a reasonable argument to reject.\textsuperscript{14} Functioning in this manner, constitutions encourage debate on core issues and force information into the public sphere. As a result of this, it is evident that the limits and constraints are necessary conditions of constitutions and form their purpose. With the abundance of choice available for manners in which to govern, the constitution encourages the double check which necessarily eliminates those that do not pass the check.

**Sociological Discussion**

When discussing the purpose of a constitution, to outline the definition of constitutional tinkering and its importance to Nigerian constitutional development, these sociological and cultural factors come to the fore. A constitution born out of the necessity to dethrone colonialism and establish a constrained independence is not the work of rational actors and its purpose cannot be explained by the formulation described in the previous section. The rational majority power is not constrained but rather constrains. There is no evaluation of relevant factors as there is no common discussion of varying views. Views are not varied where the constitution is a necessity for independence.

**The Definition of Constitutional Tinkering**

Where this is the defined purpose of constitutions, then the constitutional tinkering process must provide and encourage this purpose and not detract from it. In fact, it may be said that where the tinkering does not further this purpose, it actually serves to encourage the direct opposite of the democratic nature of constitutions which is the death of the constitution through autocratic rule.\textsuperscript{15}

\textsuperscript{11} See n10 infra. There are some states that do not have codified constitutions such as the UK and yet, it may still be the case that these uncodified constitutions provide some guidance to statehood.

\textsuperscript{12} See NILS KARLESEN, JAMES BUCHANAN, WHY CONSTITUTIONS MATTER, 20 (2017).

\textsuperscript{13} Id at 5.

\textsuperscript{14} Id.

\textsuperscript{15} See for example, Lydia Gall, Hungary’s Latest Assault on the Judiciary, Human Rights Watch (14th Dec. 2018).
Tinkering thus, involves considerations and changes affecting democratic participation, economic development, national unity and political stability. More importantly, it serves to update outmoded institutions. Where any of these goals are effected through the a constitutional change, the constitution has been successfully tinkered with. Thus, these goals form our guideposts in analyzing the constitutional tinkering occurring in the context of elections.

**An Analysis of Constitutional Tinkering in West Africa**

Carrying out an empirical analysis of constitutional change gives some gravity and clarity as to the focus of this research. It helps narrow our analysis by bringing concrete examples of constitutional change and flesh out some of the external factors that may be affecting the rates of constitutional change in West African countries, including Nigeria. In addition, it aids in developing the lexicon for analyzing these constitutional changes and the importance of the delineation between amendments and replacements.

**Concrete Factors**

A preliminary analysis shows that there are 4 common factors in discussing the constitutional trends of West African states. These factors have been determined through a focus of the history of written constitutions of these states. As is the case with post-colonial states, written constitutions are the norm. However, there is a debate as to whether these constitutions form the fundamental aspect of determinant of governing within the state and whether there are other texts or norms that form a part of this? To this question, the answer in this paper is to focus, at this point on the quantifiable determinations on the fluctuations of the written constitutions in this context. As was evident in the relevant time period, outward, concrete and formalist expressions of statehood were key as was the implementation of a constitution. In this respect, therefore, considerations of the various promulgated constitutions will be fundamental in determining their impact on democratic institutions.

1. The phenomena of Independence Constitutions

15 of the 16 West African states, this number is based on the UN’s description of West Africa, have what I have determined as Independence Constitutions. These are constitutions enacted solely to achieve independence from colonial powers. The only state not to have such a constitution is Liberia as Liberia was not founded by African-Americans in the 1820s. These independence constitutions have a few commonalities. They are threadbare in their provisions, most highlighting the core debates surrounding independence and the core bargaining faced in the negotiations with the colonizing powers. At this point, it is important to give a few historical distinctions with the West African countries here. Consistently, there are three major colonial powers at play: The United Kingdom, France and Portugal. The United Kingdom

---


18 Cf Nwando Achebe, *Colonial Rule in West Africa*, West African Senior School Certificate Examination History Textbook, [https://bit.ly/2EewHnU](https://bit.ly/2EewHnU) (last accessed Nov. 2019). This analysis argues that the major powers also include Germany and Belgium. Though these were major powers in the establishment of colonial power in the region, they were not the major powers that eventually led to decolonization in the region post-WWII.
colonized: Nigeria, Ghana, Sierra Leone and The Gambia;\textsuperscript{19} France colonized: Guinea, Mauritania, Benin, Senegal, Mali, Niger, Burkina Faso, Cote d’Ivoire, Togo; Portugal colonized Cabo Verde and Guinea-Bissau.\textsuperscript{20} For the Portuguese sphere of influence, independence came as a result of Portugal’s Carnation Revolution, Revolução dos Cravos, in 1974.\textsuperscript{21} Where a military coup in Lisbon overthrew the Estada Novo regime, the resulting political shift emphasized the need to secure the independence of the African nations in the Portuguese empire.\textsuperscript{22} Thereafter in 1975, Cabo Verde achieved a negotiated independence alongside Angola, Mozambique and Sao Tome and Principe.\textsuperscript{23} Guinea-Bissau tells a different story with a violent, worker-led revolution against the Portuguese government beginning in 1956 and culminating with a unilateral declaration of independence in 1973, the year prior to the Carnation Revolution in 1974.\textsuperscript{24} In 1974, however, following the change in Portuguese government, the Portuguese troops were removed from Guinea-Bissau and their independence was officially recognized.\textsuperscript{25}

For French and British West Africa, it was a different tale. Independence was negotiated with the French government following an overwhelming campaign by activists such as Ahmed Sekou Touré of Guinea and Leopold Sédar Senghor of Senegal.\textsuperscript{26} The same was done with the Crown by activists such as Kwame Nkrumah. Thus, these independence constitutions serve a very formalist purpose on the cusp of new government. In a similar manner to the experience of the United States and their Articles of Confederation these constitutions needed to show independence and preparation of international engagement whilst providing hope to the newly minted citizens without enhancing strife or discontent. They had a tough job and were all unsuccessful. Noticeably, they were based on the constitutions of their correspondent colonial powers. They adopted their forms of government and the rights attendant in them. One thing is also clear, these constitutions served the bare minimum to achieve statehood with the UN. The UN being an important indicator of true independence in the ‘50s and ‘60s, these constitutions bore provisions that were akin to the UN Declaration of Human Rights and the UN Charter, the core founding documents of what has been argued by some as the formation of an international constitution.

2. Coups, Civil Wars and Other Disruptions

As quickly as these constitutions were formed, they were replaced. The West African countries, save for Cabo Verde and including Liberia, have all suffered through a coup or civil war or other political disruption resulting regime change.\textsuperscript{27} This section gets into the question of to what

\textsuperscript{19} See Amy Tikkanen, \textit{British West Africa}, Encyclopedia Britannica, \url{https://www.britannica.com/place/British-West-Africa} (2nd March 2012)
\textsuperscript{22} Id.
\textsuperscript{23} The Editors of Encyclopedia Britannica, \textit{The New State After Salazar}, Encyclopedia Britannica, \url{https://www.britannica.com/place/Portugal} (14th Dec. 2019)
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{27} See Integrated Network for Societal Conflict Research Data Page, Center for Systemic Peace, \url{https://www.systemicpeace.org/inscrdata.html} (last accessed Nov. 2019), this page contains raw data on all coups from 1946-2018; See also Judd Devermont and Jon Temin, \textit{Africa’s Democratic Moment}, Foreign Affairs, \url{https://fam.ag/2PGzOKI}, (Jul. 2019).
extent is constitutional change epiphenomenal? That is, to what extent was constitutional change affected by the regime change here? Following an Independence Constitution, constitutional change was often expected. However, coups present an interesting analysis. There have been 43 coups across West Africa since the various declarations of Independence in 1960. The earliest coup occurred in Senegal in 1962 and the most recent was in Burkina Faso in 2015. These preliminary figures seem to underscore what I had been taught in Government class in secondary school in Nigeria, coups bear a contagion effect, where one country experiences it, a neighboring country may just do the same. And indeed, the frequency and spread of these coups may echo this. In 1966, Ghana, Nigeria and Burkina Faso all experienced coups. Reflecting on the status of the constitutions at the time, the result is a mixed bag.

The sustenance of a constitution during a coup is in effect determined by the coup itself, the reasons behind it, the purposes or objectives of the coup plotters and the impact of public participation. In some instances, the installed regimes promoted the constitution, others suspended the constitution and operated by military decree and yet others used the coup as a tool for drafting a new constitution. At most, this research shows that “abrupt changes in regime, in the direction of either democracy or autocracy, will increase the probability of replacement.”

3. Constitutional Change Surrounding Necessary Rights and Perceived Governmental Inefficiencies

Constitutional change surrounding substantive rights and governmental structure were very common in this period among the West African states. The constitutional changes were expected considering the laxity of the Independence Constitutions. These changes focused on changing their form of government, for example, several states changed from semi-presidential or parliamentary systems of government to presidential systems of government. A more popular area of substantive constitutional change concerned electoral processes such as changing from a one party to a multiparty state, term limits for Presidents and other attempts to maintain a position of power by the politicians in power. This is pertinent for the review conducted in this paper as it draws attention to the possible outcomes of constitutional tinkering when it comes to electoral processes. These states used their constitutions to effect this change as opposed to using Acts of parliament or other forms of legislation. This means that there is a perception of a staying power of constitutions and there is formality and legitimacy given to the composition of the constitution.

4. Constitutional Referenda

Finally, there is a commonality in the use of referenda in adopting a constitution. In these states, there have been referenda conducted to determine the entry into force of constitutions in the state. Constitution drafting commissions and assemblies were called and discussion on the terms of the constitution and the necessary change as discussed in the previous section that is reminiscent of talk surrounding Independence. In fact, in some cases, it is almost exactly similar as the parties involved remain largely the same. This is an example of how this constitutional tinkering also enhances democratic process. In most of these constitutional referenda, the voting populace has a

---

29 Id.
30 ZACHARY ELKINS, TOM GINSBURG & JAMES MELTON, THE ENDURANCE OF NATIONAL CONSTITUTIONS 115 (2009)
direct say as to whether they support the proposed constitution. Even though, our contemporary example of the drawbacks of constitutional referenda is currently working its way through the public approval process, it is still a powerful tool of gauging the will of the public on an important issue as to the substance of the constitution.\textsuperscript{31} Here, we refer to the constitution itself.

**An Historical Analysis of Nigerian Constitutional Development**

The brief summary of constitutional change in West Africa shows that these states and Nigeria are no strangers to drastic change in constitutions. It also gives some insight into the phenomena discussed in the earlier sections on constitutional tinkering. Focusing more specifically, this paper turns to Nigeria’s constitutional development and the concrete changes that its constitution has experienced since its official establishment in 1914.\textsuperscript{32}

**Colonization**

This period saw the introduction of Nigeria’s first constitutions. These include the Clifford Constitution, the Richard Constitution, the Macpherson Constitution and the Lyttleton Constitution.\textsuperscript{33} It is from these constitutions that an underlying theme develops and permeates through all of Nigeria’s subsequent constitutions. Here is the evidence of the beginnings of regionalism and divisions of power along tribal and ethnic lines that serve as the crux of Nigeria’s post-independence constitutions.

The first constitution, the Clifford Constitution in 1922 was developed in order to provide regulation and legislation for the southern part of the country.\textsuperscript{34} It established a Legislative Council and an Executive Council. However, it emphasized a regional structure. The south of the country would be governed by this Constitution and the various councils it established but the north of the country would remain governed by Proclamations issued by the Governor-General, at the time, Hugh Clifford. This was also the first constitution to include the elective principle and this meant that the Legislative and Executive councils bore elected seats.\textsuperscript{35} This was a major change in the colonial administration of the country at the time. It is important to note that the first major change enshrined in Nigeria’s first constitution involves the availability of elective seats on the national legislature. It also embodies the element of regionalism as this requirement was only extended to a few seats in the South.\textsuperscript{36}

The Richard Constitution that followed bore some of the same issues. Promulgated after World War II in 1946, the Constitution sought to provide greater self-determination for Nigerians and other Africans as well as provide a constitutional legislative framework that extended throughout the whole country and not just the southern portion.\textsuperscript{37} This came on the heels of several negotiations with the Crown Colony administration in Britain following the 1929 Aba Women’s Riots.\textsuperscript{38}


\textsuperscript{33} *Id.* The four pre-Independence constitutions were named after the colonial Governors-General that enforced their application.

\textsuperscript{34} *Id.* at 425.

\textsuperscript{35} *Id.*

\textsuperscript{36} *Id.* The North was excluded at the time as the British Colonial Government had a different means of governing the region.

\textsuperscript{37} At the time, Eastern Nigeria comprised a small section of Western Cameroon as well.

\textsuperscript{38} See Adaobi Onyekagbu, *The real story behind the Aba Women’s Riot and the list of people that died*, Pulse NG, (8th Sept. 2019).
constitution, of import was the establishment of the Regional Houses of Assembly that saw the participation of Nigerians but again, the regional division of legislative power.

This was clamored for in the 1951 MacPherson Constitution. At this point, those who would advocate for Nigerian independence had enjoyed the opportunity to participate in the decisionmaking for the country and sought a greater extension of those powers as a precursor to independence.\textsuperscript{39} There were several calls for an African-majority Legislative Council, which had emerged as the central administrative council in charge of coordination of the regional bodies. Thus, this constitution featured the establishment of a National Assembly comprised of the House of Representatives which functioned as Nigeria’s central legislature and a central executive council known as the Council of Ministers. This structure was also applied at the regional level. The last constitution before independence was the Lyttleton constitution.\textsuperscript{40} Here, the elements of a loose federal system of government were instituted. Thus, each region was given a form of sovereign status, a confederation of states within Nigeria. A move that would greatly exacerbate the regional divisions within the country.

\textbf{Independence Constitution 1960}

As previously mentioned, independence constitutions are important. However, they are not so for their content but for what they represent. The independence constitution represents validation and confirmation of a new state as well as acknowledgment of self-determination in some form. Negotiated independence constitutions were made to be changed. Nigeria’s is no different. This is because the sovereignty negotiated at independence is not sovereignty belonging to the new state but sovereignty protected and enforced by the colonial power.\textsuperscript{41} At the time of Nigeria’s independence, the Crown maintained control over their legislature. This means that the bills could not become law without the Queen’s approval.\textsuperscript{42} The Queen remained the head of State and as such, all executive functions were carried out in her name. Finally, the Queen played a role in the approval of the appointment of judges and could provide discrete forms of relief in the criminal justice system such as entering a \textit{nolle prosequi} order and offering political pardon.\textsuperscript{43} In addition, final appeal was referred to the Privy Council in the UK. Thus, this country may have established a form of independence but left serious questions about the extent to which sovereignty may have been guaranteed.

The most important aspect of the independence aspect of the constitution was as an example of its importance as a defining document. The first section of the document is the supremacy clause. It states that,

the Constitution shall have the force of law throughout Nigeria and, subject to the provisions of Section 4 of this Constitution, if any other law (including the constitution of a region) is inconsistent with this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.\textsuperscript{44}

\begin{flushright}
\textsuperscript{40} \textit{Id}\.
\textsuperscript{42} \textit{Id} at 74.
\textsuperscript{43} \textit{Id} at 75.
\textsuperscript{44} NIG. CONST. (1960) §1.
\end{flushright}
This showed their readiness to seek independence. In 1957, a debate raged in the Nigeria House of Representatives on when to seek independence.\footnote{\textit{House of Representatives of Nigeria, Nigeria Debates Independence on 26 March 1957 as Recorded in the Official Report} (1957).} The motion before the House sought that the delegates to be sent to London for the Nigerian Constitutional Conference should seek Independence for later that same year in 1957.\footnote{Id.} However, the House of Representatives expressed concerns at these debates that are eerily premonitory of the constitutional history that would result post-independence. In advocating for a later date of Independence so as to have more time to plan for independence, then Minister of Transport, later the first Prime Minister of Nigeria, Hon. Abubakar Tafawa Balewa stated that,

we will cherish the plea that the development of a federal system of government in any country largely depends on the even progress of the units comprising the Federation… Man at times, Sir, is by nature suspicious, and it is therefore natural for the people of the North, though greater than the South in numerical strength, to fear domination.\footnote{Id at 17.}

Here, his concerns reflect the entrenchment of regionalism and the fear that administration as an independent nation has left about the individual administration of the various regions. These fears would come to a head less than six years later when he was assassinated during a military coup organized by military members from the South of the country.

In advocating for the same outcome, Mr. Jaja Wachuku, Representative of Aba in the House of Representatives, later the first Speaker of the House of Representatives, first Ambassador to the UN and the first Foreign Minister of Nigeria, stated that,

we are realistic enough to appreciate that the problem of government is not like putting off your suit and putting it on again. There is certain preparatory work that must be done… Sir, we must prepare for independence. If we do not want to become a laughingstock to the world, we must prepare for this independence.\footnote{Id at 12.}

This preparation that Mr. Wachuku spoke of included the Independence Constitution. As is necessary in seeking independence, there is a relevant global stage and this constitution was an opportunity to explain the success of independence to the world at large, although this may have been short lived at the time.

Finally, Mallam Shehu Shagari, then Representative of South-West Sokoto to the House of Representatives, later the first democratically elected President of Nigeria, summed up the necessity of a proper plan for independence. He said,

Nigeria to-day has reached a stage in its political development when our responsible citizens must realize that the achievement of freedom or self-government or independence … is not an end in itself. It is not even a means to an end but only an awakening to the realization of greater responsibilities, immense sacrifices and still desirous of unlimited courage. It is high time we put up our plans for an independent Nigeria. Until this is done, all talk about such freedom or independence is merely empty.\footnote{\textit{House of Representatives of Nigeria, Nigeria Debates Independence on 26 March 1957 as Recorded in the Official Report} 48-9 (1957).}
Practically, the Independence Constitution also foreshadowed difficulties that will arise regarding the elections process. There was a section of the Constitution that concerned matters that were insulated from control by ministers. This established that the conduct of legislative elections was to be entrusted to independent commissions, the electoral commissions established directly by the Constitution for the federation and for each region. It explicitly stated that in the conduct of elections, each commission shall be free from control by any other person or authority. There were some exceptions for officers from the appropriate houses of legislature for the delimitation of voter constituencies. Finally, it provided for the involvement of both the executive and legislature in the appointment of persons to form the election committee. It also prevented removal except for cause, that is inability or misbehavior.50

Republican Constitution of 1963

This constitution marks a change in the system of government in Nigeria. “One of the most significant changes made by the 1963 Constitution was to sweep away the imperial basis of the pre-existing constitution.”51 The change from monarchy to republic is significant in our analysis as this marked a definite attempt for autonomous rule within the nation. From here on, constitutions developed would be based on a derivation of legitimacy that was not guaranteed by the British government but by the will of the Nigerian people.52 In establishing a break from monarchical government, this constitution introduced a President of the Republic who was the Head of State and Commander-in-Chief of the Armed Forces. Thus, vesting the executive authority retained by the Queen within the Nigerian government.53 It vested the judicial power retained by the Privy Council in the UK, in the newly created Supreme Court of Nigeria. Finally, it removed the legislative approval power retained by the British government and created a veto system with the Executive and the Legislature. It also sought to provide a federal system of government for the country.54 This is important in establishing concepts of separation of powers and the nature of the various governmental branches. This constitution retained the same features of the 1960 Constitution with regards to the insulation of particular organs of government from influence by the executive, legislative and judicial branches. It also maintained a parliamentary system of government.55

Constitution of Military Government

Military government is complex because it is based on and full of contradictions. In Nigeria’s case, military rule poses a lot of constitutional issues particularly those regarding the legitimacy of military decrees, actions to be taken against those who plotted the coup (so called, “coup plotters”), transition from military to civilian rule and finally, resolution of conflicts between military decrees and existing constitutional provisions. Although there have been 8 coups in Nigeria’s history, the first presents the most interesting constitutional question and illustrates the main arguments of this paper. On January 15th, 1966, a coup was executed by disgruntled young majors within the Nigerian army led by the charismatic Major Chukwuemeka Kaduna Nzeogwu.56 He gathered a small force of other majors and officers of similar rank and assassinated the Prime Minister, Alhaji Tafawa Balewa,

50 See B.O. Nwabueze, A CONSTITUTIONAL HISTORY OF NIGERIA, 121 (1982).
51 Id at 89.
52 Id at 90. This section has an interesting discussion on autochthonous constitutions in the Nigerian context.
53 Id.
54 Id.
55 Id.
the Premier of the Northern Region, Alhaji Ahmadu Bello, the Premier of the Western Region, Chief Samuel Ladoke Akintola and the Minister of Finance, Chief Festus Okotie-Eboh.57

The reasons for this coup begin with the controversy surrounding the 1964 national elections. These elections embodied the issues with the administration of the government and the electoral process that plague Nigeria today. The political parties were not national in character but regional. The elections of 1959 did not leave any party with a majority. Thus, two parties formed a coalition, the Northern Peoples’ Congress (“NPC”) and the National Convention of Nigerian Citizens (“NCNC”) under the leadership of Dr. Nnamdi Azikiwe. This formulation was unlikely given the tribes represented but created a path for integration of Northern and Southern tribes.58 This coalition held together under the mutual hostility towards the Action Group (“AG”) party.59 A new state was carved out of their region which exacerbated tensions in the region. In 1962, a state of emergency was declared in the region and several prominent AG party members were arrested. As a result of all this, the party was devastated.60 This crisis led to a realignment of the political parties bringing the United Progressive Grand Alliance, (“UPGA”) and the Nigerian National Alliance (“NNA”) parties to the fore.61 These two parties would contest in the 1964 elections in addition to NCNC, NPC and AG. There was a reign of terror instigated by each party to gain votes in the election. This encouraged a widespread thuggery, vandalism and violence all throughout the days leading up to the election. This was so great that the NPC, AG and the NCNC all threatened to secede from the federation.62 As a result of this, the western region (now AG and UPGA) staged a boycott of the elections.63

At this point, the elections were conducted amidst widespread violence and disruption. The results were disputed by all parties and there was a call for a cancellation of the results and a new election. The new election took place in 1965 but with continued disputes by all parties. It was this constant disruption and scrambling for power by all the major party leaders including, Alhaji Ahmadu Bello and others that spurred the coup in January 1966.64 The January 1966 Coup serves as a template for analyzing the other coups that occurred in Nigeria.

An interesting case decided by the Nigerian Supreme Court in 1970 provides analysis into the January 1966 coup and the legal standing of the military government, the constitution and Nigeria’s sovereignty.65 In Lakanmi v. The Attorney-General (West), a public officer, not affiliated with the military, under the regime of Colonel Yakubu Gowon, (who became Head of State and Supreme Commander of the Armed Forces as the result of a coup in July of 1966), was cited for allegedly corrupt practices.66 A military commission of inquiry found him and others guilty of corruption and recommended the forfeiture of their assets to the Federal Military Government, (“FMG”). In contesting this in the Ibadan High Court, Lakanmi asserted that Public Officers Edict of 1967 under which the order of forfeiture was given was inconsistent with the Public Officers Edict of 1966.67

57 Id.
59 Id.
60 Id at 176.
61 Id.
62 Id at 178.
63 Id at 182.
67 Id.
They asserted this position so as to invalidate the application of the decrees and retain Constitutional protections.\textsuperscript{68}

At the Nigerian Supreme Court, the issue raised was whether the Federal Military Government was a revolutionary government under which the Constitution bore no legal significance or a constitutional interim government that must ensure the continued existence of the constitution.\textsuperscript{69} In answering this question, the court determined that Lakanmi had successfully argued the necessity doctrine as applicable in this case. Here, the court stated that the hand-over of power to the armed forces took place by virtue of the necessity doctrine and so was consistent with the constitution.\textsuperscript{70} As such, the constitution must be upheld by the interim constitutional government. The necessity doctrine states that it was necessary as a matter of national emergency and exigent circumstances at the time of the coup for the civilian government to hand over power to a military government and this was done in order to preserve the sovereignty of the state.\textsuperscript{71} In rejecting the revolutionary government claim, the court found that because those who effected the coup, (Major Kaduna Nzeogwu and others) were not connected to those who ultimately took power, (Major General Aguiyi-Ironsi), it is not the case that the Federal Military Government as it exists is a revolutionary government.\textsuperscript{72} The importance of then maintaining the constitution is then emphasized here. Even where violence, constitutional crises and military government had occurred, the constitution remained paramount.

The court recognized that it cannot “expect that constitutions make provisions for all exigencies. No constitution can anticipate all the different forms of phenomena which may beset a nation.”\textsuperscript{73} The constitutional inquiry here continues to be interesting as the doctrine of necessity was read in as a legal and constitutional argument by virtue of the common law system. In effect, the judicial branch of the government is informing a military power of its constitutional validity using an extraconstitutional doctrine. Through that doctrine, the object here was to “save the state and society from destruction and if this can be done only by abdicating sovereign power to a body best able to achieve the object, then abdication of sovereignty ought to be within the permissible ambit of the doctrine.”\textsuperscript{74} This further means that the FMG was handed the entire sovereignty of the state. Part and parcel of that sovereignty is the constitution. To then answer the issue in the case, the court then stated that the FMG had sufficiently established through military decree, its ability to create laws as well as its ability to amend the constitution. The latter power is not unfettered or limitless. It is governed by the doctrine of necessity as it existed at the time of the exigency. Thus, this particular decree seeking to amend the constitution and take such corruption claims out of the ambit of the judiciary is unconstitutional.

This case is highlighted as an important illustration of not only the importance of the constitution, but the effectiveness of constitutional norms to ensure some form of democratic process. An underlying question and concept throughout the case was whether the existence of a constitution was as important or even more important than the retention of sovereignty. As this case

\textsuperscript{68} The constitution referred to here is the 1963 Constitution.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
\textsuperscript{72} Id.
\textsuperscript{73} See B.O. Nwabueze, \textit{A CONSTITUTIONAL HISTORY OF NIGERIA}, 170 (1982).
\textsuperscript{74} Id.
describes, the answer is twofold. First, in Nigeria, the constitution here forms as a source of legitimacy for the government itself. You could say that in deciding in this manner, the court considered its own existence, for it would not be so but for the existence of the Constitution. Second, without the constitution, military decrees offer no accountability. Throughout the case’s procedural history, several decrees were issued to maintain the FMG’s power to issue such orders of forfeiture without judicial review. As in *Marbury v. Madison*, the case marks a daring intervention into the executive power but also, a strong endorsement for the applicability of the constitution.

1979 Constitution

Nigeria returned to civilian rule on October 1, 1979 with the adoption of the 1979 Constitution. The main change here from the 1963 constitution is the switch from a parliamentary system of government to a presidential system of government. This constitution showed the work of the Constituent Assembly which had been assembled by the immediately preceding military government led by General Olusegun Obasanjo (later President of Nigeria) The presidential system of government was chosen to combat the failings of the parliamentary system which had seen the state besieged by military overthrow and civil war all due to the previous civilian government’s inability to form a cohesive government at the 1964 elections. The perceived inefficiencies sought to be corrected by the presidential system include the following; conflict and instability arising from the separation of the head of the executive from the head of government, complexity and uncertainty of government relations and the weakening of leadership by collective power and responsibility.

In forms of solutions made in the presidential system adopted in the constitution, Chapter II on the fundamental objectives and directive principles of state policy embodies the ideals. In drafting this chapter at the Constituent Assembly, Prof. B.O. Nwabueze stated that,

> A constitution operating as law and imposing judicially enforceable restraints upon government should not abandon its other function as a source of legitimacy for those political concepts and governmental relations are, by their very nature non-justiciable. Nor should it renounce its role in the affirmation of fundamental objectives and ideals or directive principles of government which serve to inform and inspire governmental actions along desirable lines. It is in this combination of judicially enforceable restraints and the legitimation of needed non-justiciable government powers and relations that the singular achievement of the US Constitution lies.76

Here, Prof. Nwabueze is discussing that oft fraught dichotomy between true sovereign power and the needs for control over the various political branches.

This is a salient discussion for the inquiry carried out by this essay because the discussion of the importance of electoral management and the elections process forms a judicially enforceable restraint that may also cross into the realm of the fundamental objectives necessary to inform and inspire governmental action. Finally, this constitution offers the federal character of the nation. This provision in §14(3) of Chapter II of the Constitution acknowledges that with the heterogenous population there have been issues with regards to composition of government agencies either favoring or disfavoring members of certain tribes or ethnic groups.77

---

75 See B.O. NWABUEZE, A CONSTITUTIONAL HISTORY OF NIGERIA, 253 (1982).
77 NIG. CONST. §14(3) (1979).
In response to this, the federal character provision states,

The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that government or in any of its agencies.78

This provision is also important in establishing the issues to be faced by any national electoral commission going forward. The 1979 constitution did not address those issues itself, but the 1999 constitution, which is still in force with amendments today, will.

1999 Constitution and Current Amendments

This constitution entered into force on May 29th, 1999. The 1999 constitution comes as an amendment to the 1979 constitution.79 In 1998, Gen. Abdulsalami Abubakar agreed to hand over power to a democratically elected civilian President in 1999.80 In the same year, he adopted the 1979 Constitution as to be entered into force upon the successful completion of elections in 1999. In effort to carry out this promise, he created the Independent National Electoral Commission and appointed a former Supreme Court Justice, Ephraim Akpata to be its first chairman.81 The 1999 constitution remained as the 1979 Constitution and adopted only a few amendments. It is under this constitution that this inquiry finds grounds to appeal for constitutional guarantees for a democratic national election management process.

The Nigerian Electoral Process

The current Nigerian electoral process is best exemplified by looking at the process of the 2019 general elections. The 2019 elections were "marred by violence and intimidation, with the role of the security agencies becoming more contentious as the process progressed," “this damaged the integrity of the electoral process and may deter future participation.”82 In the early hours of February 16th, the Independent National Electoral Commission, (“INEC”) announced that the presidential and national assembly elections scheduled to take place that very day, were postponed to the following week. The Chairman of INEC, Mahmood Yakubu stated that “the commission came to the conclusion that proceeding with the election as scheduled is no longer feasible.”83 No further explanation was provided for this change. This change led to widespread accusations of corruption as the move was seen to greatly disadvantage the opposition party PDP as they had already spent large amounts of money ferrying agents all over the country to coordinate voting initiatives and had to spend more money to ensure they were present for the new election date. In contrast, the ruling party, APC, whose President Muhammadu Buhari was running for reelection, did not have to spend nearly as much because they relied on government institutions to coordinate their voting initiatives.84 The election related violence involved disruptions to

78 Id.
80 See Jibrin Ibrahim and Dauda Garuba, Governance and Institution-Building in Nigeria, Consortium for Development Partnerships, 32 (2008)
81 Id.
83 Id.
84 Id.
Incumbent President Buhari won his second term against his major opponent former Vice President Atiku Abubakar and his party, PDP.

The issues in that election administration can be shown through a description of the Nigerian electoral process as it currently exists. Electoral governance involves the interaction of constitutional, legal and institutional rules and organizational practices that determine the basic rules for election procedures and electoral competition; organize campaigns, voter registration, and election day tallies; and resolve disputes and certify results.\textsuperscript{86} (\textit{cite Omotola 539}) Thus, such electoral management boards are part of "a set of institutions and rules that together determine the probity of electoral processes and in emerging democracies, where administrative processes are weak and distrust across political actors is high, their role at the center of electoral processes tends to be more visible."\textsuperscript{87} (\textit{cite Omotola 539})

The Constitution lays out the functions, composition and powers of INEC. These are important to analyze as the Constitution is not the only source of INEC’s powers. In 2010, the national assembly passed the Electoral Act which provides for more powers, structure and formation for INEC as well as for state independent electoral commissions.\textsuperscript{88} As we will see, it may be problematic what functions and powers are prescribed in the Constitution as opposed to in the Act.

The 1999 Constitution establishes INEC under §153 while its functions and powers are outlined in the Third Schedule to the Constitution, part 1 item F, paragraphs 14 and 15. The Constitution provides that INEC

\begin{itemize}
  \item a. “organize, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a state and to the membership of the Senate, the House of Representatives and the Houses of Assembly of each State of the Federation;”
  \item b. register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;
  \item c. monitor the organization and operation of the political parties, including their finances;
  \item d. arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
  \item e. arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution
  \item f. monitor political campaigns and provide rules and regulations which shall govern the political parties;
  \item g. ensure that all Electoral Commissioners and Returning Officers take and subscribe the Oath of Office prescribed by law
  \item h. delegate any of its powers to any Resident Electoral Commissioner; and
  \item i. carry out such other functions as may be conferred upon it by an Act of the National Assembly.\textsuperscript{89}
\end{itemize}

\begin{flushleft}
\textsuperscript{85} Id.
\textsuperscript{87} Id.
\textsuperscript{89} NIG. CONST. SCHEDULE 3, PART 1, ITEM F, §§ 14, 15. (1999)
\end{flushleft}
The Constitution, therefore, highlights the core functions of INEC and also details the composition of the Commission. These include a Chairman and twelve other members called National Electoral Commissioners. The Chairman of INEC is to be appointed by the President subject to Senate approval and in consultation with the Council of State. A key update in the 1999 constitution is that it provides INEC with the power to delimit and create senatorial districts for election to the senate and the constituencies for the election to the House of Representatives. The Constitution otherwise maintains the independence of the electoral commission by stating that “in exercising its power to make appointments or to exercise disciplinary control over persons, …, the Independent National Electoral Commission shall not be subject to the direction or control of any other authority or person.”

The Electoral Act of 2010 provides a broader definition of the powers and provides more rules and guidelines for INEC. This stems from (i) as stated in the Constitution. Thus, the national assembly has constitutional authority to regulate INEC. The relevant provisions in the Act include; civic and voter education, cancelling election results, maintenance of the voter register, print and issue of voter’s register and cards, issuance of duplicate voter cards, registration and deregistration of political parties, giving notice of elections, establishment of polling units, prosecution of electoral offenses.

The electoral process in the country is then wholly controlled by INEC who in turn is a creature of the Executive and the Legislature. The executive has primary control over appointment while the legislature maintains control over the more functional aspects. The Constitution, however, provides a substantive check. In 2018, the National Assembly proposed amendments to the 2010 Electoral Act. The changes they suggested involved scheduling the presidential election to follow the gubernatorial and state houses of assembly elections. The current Act allows for national assembly elections, presidential elections and then state house assembly and gubernatorial elections. However, the Constitution provides some discretion for INEC to select the timing of elections. Despite that fact, timing was prescribed in the Electoral Act and then sought to be amended in 2018 but then vetoed by the President on the grounds that it went against the Constitution. This back and forth shows that at base the Constitution is an important consideration because even with these rules, INEC still set its own schedule for the national elections providing for the presidential elections and national assembly elections taking place at the same time and the state house and gubernatorial election occurring the following month. Here, we see the impact of enshrining such powers in the Constitution.

Factors Impacting Nigerian Elections

The previous section noted the electoral process and which bodies are in charge of supervising and conducting the elections. For the major races, the entire process of the election from setting the time, registering the political parties, providing rules for campaigns, campaign financing, registering voters, organizing the actual voting, tallying the votes, releasing the results and prosecuting election offenses, is handled by one organization, INEC. This means that they wield a lot of power, however with the constant reports of election violence, particularly with the

---

90 NIG. CONST. SECTION D §71 - ELECTIONS TO THE NATIONAL ASSEMBLY (1999)
91 NIG. CONST §158. (1999)
92 NIGERIA: ELECTORAL ACT (2010)
94 Id.
accusations of election rigging, INEC is not fully able to complete its mandate. Here are the factors impacting the efficacy of INEC and Nigerian elections.

**Partisanship and Control**

The over-centralization of power is pertinent here. Due to the current structure of INEC’s powers, all parties in power have sought to maintain this equilibrium to ensure that INEC is particularly reliant on the whims of the Presidency to carry out its duties. As such, depending on the party in power, INEC’s guidelines may reflect a specific party’s intentions over the other. This was particularly the accusation by opposing parties during the 2019 election scandal. This also implies that partisan control provides structural limitations on INEC power, which it does. The primary area in this consideration is composition. In the constitution, the composition is dictated by the President with consultation from the Council of State and approval by the National Assembly, however this is not a true check on the Executive’s power to dominate the appointments process. It is still the case that the persons that the President selects are ultimately approved by the corresponding authorities.

This is also because the President’s party is also the party in power at the legislative level. Thus, in order to ensure that these officials do not engage in partisan policymaking, there should be more restrictions imposed that determine who may be a viable candidate for the position. As this is only made clear for the Chairman, this solution should extend to the other members of the Commission particularly the regional commissioners. In addition to recommendations on the composition of the committee, job security also needs to be considered. Under the constitution, the Committee members may be removed for cause and are only in power for term of 5 years. This has been done twice before under the Babangida military regime and the Chairmen who were dismissed were both professors and they were dismissed for vague and questionable reasons. The first was Prof. Eme Awa, who was removed for his uncompromising stance on the management of the electoral commission, the second was Prof. Humphrey Nwosu who decided not to follow the military government’s decision to annul the 1993 presidential elections. This then leads to the issue of funding. Funding is important to establish true independence of the Commission. The constitution does not provide for an independent source of funding for the Commission, rather it is determined as a part of the executive branch budget determination. This leaves INEC entirely beholden to the express whims of the President or the party in power to determine what functions it may carry out.

**Infrastructure**

As a result of the lack of funding, job security and independence, infrastructure is a major issue affecting the proper conduction and function of INEC. This includes the coordination of the bureaucracy and particularly, the on the ground implantation of the elections themselves. This tight control by the other branches of government has constrained the capability of INEC. It is now reliant on ad hoc staff to implement the electoral process. This is problematic because INEC is a federal body and a creature of the national constitution, there is a problem with gathering volunteers and with a lack of infrastructure, it is difficult to coordinate with state departments to organize people to work at the polls and to help with voter registration. This is such a problem that after almost every election, INEC has a tendency to lay some of the blame on their temporary staff.

---

96 Id.
Non-structural Factors

Asides from factors relating to composition and structure of INEC, there are other extraconstitutional factors that adversely impact its effectivity in conducting elections. The most important of which involves reachability. Due to the landscape and geographical formations across the state, there are some parts that are far more difficult to reach than others which exacerbates the problems of funding and ad hoc staff. This also dovetails into the security issues in certain regions of the country. In the middle between the Northern and Southern sections of the country, the Middle Belt region is besieged by attacks from nomadic herdsmen, in the far northeastern region, Boko Haram has maintained a stranglehold on the people and resources of the region. As a result of Boko Haram’s terrorist activities in the region, large numbers of people have been forced from their homes thus leading to a huge internal displaced persons issue in the surrounding states in the region. Finally, in the southern Delta region, there are environmental issues related to oil spills in the region rendering many people in the area homeless. All these factors affect the reachability of these individuals and lead election results to not be representative of the public at large.

Future Outlook

This section seeks to analyze how these issues may be dealt with using the main tool identified in the previous sections, that is, constitutional tinkering. It has been demonstrated that constitutional tinkering may provide a broader means of evaluating the effectiveness of the democratic institutions being employed by the state. It has also been shown that constitutions form an important part of government and have remarkable staying power particularly within West African states. In Nigeria, there needs to be a serious reorganization of INEC to provide for certain constitutional guarantees. The justifications for these not only arise from the theories discussed in previous sections of this paper but from the general tenets of international law which will be discussed below.

A Constitutionally Regulated INEC

The major question here is a discussion as to whether this constitutional change would go in the direction of a more centralized or a more decentralized set of rules surrounding electoral commissions. This is an important discussion as it defines the structure by which INEC would operate. Looking at the issues illustrated above, there are clear benefits to engaging in a decentralized set of rules in order to reduce the possibility of partisan control by the federal government. It will encourage greater civic participation in the conduct of elections and allow for innovations in different areas in not only the conduct of elections but voter registration, education, etc. It might follow the example of other countries such as the UK and the US, both of which allow for local governments to conduct their elections. Thus, not only would decentralization encourage the participation of the public at large in the conduct of elections but may also reduce the costs of having to hire more official rather than ad hoc staff for such a limited purpose. Finally, decentralization may cure concerns of public distrust in the institution

98 Id.
and tribal affiliation. In order to achieve this however, INEC needs stricter regulation enshrined in the Constitution, in addition to stricter protections for state independent electoral commissions. In the constitution needs to be strict guarantees on funding, job security and delegations of power, in particular provisions that stipulate the decentralization of the election operations headed by the Independent National Electoral Commission. In practice, this requires an evaluation of the most effective and efficient means of delineating the exact process of engaging in a decentralization mechanism that is able to promote the operation and capabilities of democratic institutions in the state. The Constitution is not the only means through which electoral reform may be carried out. There are certain advances in technology that are currently being tried out by local governments in local elections that have been very successful. There is an argument that a broader controlled attempt on a national scale may be equally successful.100

The International Independent electoral commission

In international law, there is not a lot of scholarship for what the standards should be in this field. This is mostly because of the following reasons; electoral management bodies are seen as distinct creatures of the state and it is difficult to frame an international framework based on vastly different local standards. However, there is some consensus in the international community on the distinct function of electoral management bodies and their impact on the function of other democratic institutions. The main conclusion is that newer democracies tend to trend towards independent committees with centralized power. However, as pointed out in the previous section, it may be even more stabilizing for there to be a decentralized set of rules surrounding electoral management boards. The important emphasis here is not only the independence of these electoral institutions but an independence that is defined in terms of funding, appointment, job security and infrastructure. A standard for electoral committees must emphasize independence above all else. It is in this manner that true democracy may be guaranteed such that it reflects public opinion.101

Conclusion

This paper has argued for the firm inclusion in the Nigerian Constitution certain safeguards to protect the integrity of the Independent National Electoral Commission. In highlighting this aspect, this paper analyzed the importance of constitutions, their staying power and the particular implications this has for relatively newer democracies in West Africa. In that vein, there is much more to be said on the impact of constitutional change on democratic institutions. However, this paper shows that with regards to electoral systems, such constitutional guarantees are necessary to the proper functioning of newer democracies.102


102 I wrote this paper primarily to show the impact of the history of constitutional guarantees particularly, the legacy of colonialism on the conduct of Nigerian elections. My research has shown to me that this is an integral area that needs to be worked on to protect the expression of democracy. I am looking forward to engage in more research on this issue.