Nigeria: A constitutional Democracy without Constitutionalism
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FRAMEWORK OF PRESENTATION

• Introduction
• Conceptual clarification of key terms
• characteristics of Constitutional Democracy
• Challenges to Consolidating Constitutional Democracy
• Recommendations
• To End
Introduction

• Constitutionalism as a political theory suggests that a government should be limited in its actions and accountable to its citizens for its actions.

• It encompasses the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule but also that such a government should be able to operate efficiently and in a way that it can be effectively compelled to govern within its constitutional limitation.

• Therefore constitutionalism in any democracy must and should remain the controlling and regulating force in governance.

• It should be the basis for building a civilized nation that is fair to all its citizens and solve their problem.

• World’s advanced democracies have attained greatness because their democracies are anchored on constitutionalism.
Introduction

• Nigerian political leaders make ample references to developments and advancements in these advanced democracies in terms of relative technological development, economic progress, political stability, free and fair election, security of lives and property, food security, quality education, good health facilities, employment opportunities without asking what exactly these countries have or are doing right?

• Nigeria since independence has adopted series of constitutional reforms that produced constitutions which ordinarily should promote constitutionalism and good governance; however, there has been persistent evolvement of a culture of disrespect for constitutionalism in governance.

• So, the aim of this seminar presentation is to consider what need to be done to entrench a sustainable culture of constitutionalism in governance in Nigeria.

• To achieve the above, the critical question that will be addressed in the seminar is, how can Nigeria develop or engineer through constitutional and democratic processes, a political will that is conducive to or supportive of constitutionalism; that is democracy, limited government through separation of powers, enforcement of fundamental rights provision, rule of law rather than arbitrary rule and development rather self-enrichment.
Conceptual clarification of key terms

• **Constitutionalism**
  The concept of Constitutionalism combines the idea of a government limited in its idea and accountable to its citizens. Constitutionalism as a concept rests on two main pillars. (1) limitation on the power of the state based on defined core values (2) Mechanism for ensuring that the limitations are legally enforceable.

• **Democracy**
  The definition of democracy with greater universality of acceptance is that given by Abraham Lincoln, a government of the people by the people for the people. Underlying idea is the popular basis of government and consent of the governed freely given by means of election.

• **Democratic government**
  Concerning the place of democracy in constitutional democracy, a government need not be democratic to be constitutional, nor need it democratic to be constitutional. However, a government must be both constitutional and democratic to be a constitutional democracy. Thus, it is the combination of the two concepts that is called constitutional democracy.
Introduction

• **Constitutional Government**
According to Nwabueze, a constitutional government connotes a government under constitution which has force of a supreme, overriding law and which imposes limitations upon it. In other words, a constitutional government is a government according to laid down rules in the constitution.

• **Constitutional Democracy**
Constitutional democracy can be defined as a system of government in which there are clear limits of political authorities and the electorate has the power to remove poor performing governments.
It is the type of democracy where powers of the majority are exercised within a framework of the constitution designed to guarantee the majority right. The whole mark of constitutional democracy is the fact of limitation upon government, including mechanisms for checks and balances as limited.
Characteristics of Constitutional Democracy

- **Popular sovereignty.** The people are the ultimate source of the authority of the government which derives its right to govern from their consent. S.14 (2) (a) of the Constitution.

- **Minority rights.** Although “the majority rules,” the fundamental rights of individuals in the minority are protected. Under constitutional democracy, the rights of the voiceless or the unprivileged are well secured through the constitution. Ss.33-45 of the Constitution.

- **Limited government.** The powers of government are limited by law and a written or unwritten constitution which those in power obey.

- **Institutional and procedural limitations on power.** There are certain institutional and procedural devices which limit the powers of government.

- **Separated and shared powers.** Powers are separated among different agencies or branches of government. Each branch has primary responsibility for certain functions such as legislative, executive, and judicial functions. However, each branch also shares these functions with the other branches. Ss.4,5 &6 of the Constitution.


- **Institution that support democracy;** That is INEC, Police, EFCC, ICPC, National Human Rights Commission.

- **An Independent Judiciary;** S. 6.
Characteristics of Constitutional Democracy

- **Checks and balances.** Different branches of government have adequate power to check the powers of other branches. Checks and balances may include the power of judicial review, the power of courts to declare actions of other branches of government to be contrary to the constitution and therefore null and void. S. 4 (8) of the Constitution

- **Due process of law.** Individual rights to life, liberty, and property are protected by the guarantee of due process of law. Ss. 33-45 of the Constitution

- **Leadership through election.** Elections insure that key positions will be contested at periodic intervals and that the transfer of governmental authority is accomplished in a peaceful and orderly process.

- **Basic freedom:** The constitution allows the people to know their rights and ensure that their rights are protected. There is basic freedom of interference from the people in the affairs of government

- **Majority rule:** This is the rule that gives the majority the chance to express their views and opinions in the affair of the government. Majority rule gives leadership rights to the people and thereby gain the full support and recognition of the masses.
Challenges of Consolidating Constitutionalism

• Abuse of power,
• Aberrational behavior of politicians,
• Persistent intra institutional conflict

• Inter institutional conflict
Challenges of Consolidating Constitutionalism

• Revival of authoritarianism through sham elections as a cover
• The electoral processes often do not ensure free and fair election
• Executive dominance
• Weak oversight capacity of the legislature
• Absence of institutional Autonomy
• Insufficient linkage with civil society organizations
• Absence of strong party system to promote constitutionalism
Recommendations

- Constitutionalism and democracy may not be working well today in Nigeria but there is no better alternative. The critical issues then are these: how can we stabilize the rocky Nigerian Constitutionalism so as to prevent democratic into a depression? How can we design systems that will ensure that elections will be genuinely competitive and not a contest between enemies? How can we reduce the cost of loosing election while at the same time encourage parties in the elections to play by the rules of the democratic game?. My recommendations in this presentation are based on responses these questions.

- First and foremost, the three arms of government must and should promote the culture of constitutionalism in the conduct of government business.

- The court system should be made independent, accountable, efficient, impartial, accessible, affordable and credible.
Recommendations

• Further, the key institutions of the justice system administration be structurally strengthened to discharge their duties ethically and professionally
• Effective mechanisms should be put in place to ensure enforcement of court rulings against government because disobedience of court rulings is a great threat to the entrenchment of democracy and Constitutionalism.
• Democratic institutions be strengthened to make them effective, independent, and accountable.
• Since constitutionalism creates a calming balance among different interests in society as well as between individual liberty and state powers, it is the responsibility of every member of the society to contribute to the process.
• Political parties should embrace constitutional and democratic values in the internal organization of their affairs in order to promote internal party democracy and transparency.
Recommendations

• Designing electoral system that reflect the popular
• Enhancing democratic quality of elections through electoral processes
• Promoting inclusive and participatory democracy
• Constitutional entrenchment of key principles and institutions of accountability similar to South African chapter 9 institutions designed to uphold constitutional democracy and accountability.
In recent times, issues of democracy, good governance and development have dominated political, social and economic discussion in Nigeria.

These issues are so important that concerted efforts are being made by international, regional and subregional organizations to raise the consciousness of their members achieving the goals of democracy, good governance and development.

Democracy and good governance can only thrive in a polity with a culture of constitutionalism.

Thus, the greatest threat to democracy and good governance in Nigeria is the near absence of the culture of constitutionalism.