



What a written constitution might contain and other forms of supplementary constitution

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Abstract

Most countries of the world have a written constitution and most are amiable amendment and very few exhibit rigidity and therefore difficult to amend. However only a handful countries, Israel, New-Zealand, and UK have no written constitution Also conventions are separate matter and are not characteristics of constitution but it forms an extension of a constitution. It is the author desire therefore to address the relationship convention and other legal supplements share with a constitution. These legal documents are not themselves in form of written constitution, but they appear in form of assembled information that may be seen in published magazines and other legal documents. Therefore also included in this article will be conventions, judicial review, statutes (organic law). But constitution of every country is different, because different historical contexts have generated different preoccupations and priorities but certain features and functions exist that may be associated with constitution in general, and this will be exploited.

Keywords: constitution, written constitution, supplementary constitution

Introduction

Most countries of the world have Constitution often as a symbol of self governing entity and very much often these constitutions are written in form of a document. But very few countries constitution is not written such as New Zealand, Israel, and notably United Kingdom. The constitution of any country is a determinant of its political value but the value and importance that is ascribed to constitution is different from country to country. However for any constitution it should contain some characteristics otherwise it might possibly lost its value as an instrument of effective governance. In recent years constitutional writing has moved away from just civil and political issues to include human social issues. This is a strong novelty in any cotemporary countries of the world, and therefore cotemporary definitions tend to include economic and social connotation. International bodies, contemporary writers and academics such as Loveland (2000) Riker and Watts, (1973) Wolf-Phillips (1968) Nwabueze (1973), Ewing *et al* (1977) have defined constitution in a more social and economic terms and foremost in this push are the; international organisations such as the United Nations, European Union. Therefore, all written constitution must and should fulfil the social, political and economic reality of the country that is meant to guide.

What a Written Constitution Contain

The first category is that it ideals and values. This is usually a statement of the ideals underlying the constitution, and of the general purposes and goals fostered by the constitution. Ideals like freedom, justice and equality are usually enshrined in the written constitution. This part of the constitution is not usually justiciable, which means no legal sanction results from failure to fulfil these obligation objectives. Its importance lies in the guidance it provides as how the government ought to operate

and what government ought to be trying to accomplish. This can be seen in Chapter 11 of the Nigerian Constitution entitled 'Fundamental Objectives and at state level directive Principles of State Policy.

A second category concerns the basic structure and organization of the government. This portion of the constitution specifies the organ or branches of government. Examples in the Nigerian Constitution are the legislature, the executive and the judiciary, and administrative commissions. It also prescribes the composition and functions of these organs, the qualifications that must be meant by members of the different organs, and the procedures to be followed by these organs. It will also specify the relationship between the different organs of government, and the relations between those organs and the people.

The third category involves the distribution of powers. Government powers maybe distributed in two different ways. First, independent powers may be distributed between a nation and a government and other territorial units of government. e.g. states, provinces, Cantons, etc. This is typical of a federal system and Nigeria is a federal constituted state.

The forth category is fundamental rights. Virtually all written constitutions contain a description of certain basic rights, which belong to all people subject to the constitution; for example, chapter IV of the Nigerian Constitution prescribes the fundamental rights of all Nigerians. These rights are sometimes referred to as human rights, civil rights, civil liberties, fundamental freedoms, individual rights, etc.

The fifth and final category to be noted is that of formal amendment procedures. Almost all written constitutions require special procedures for amendment that are different from the method used to enact ordinary law. The amendment procedures of any constitution are often used to indicate whether a constitution is rigid or flexible. Thus these are the

five general categories of subject matter, which appear in any written constitution, and the Nigerian Constitution has it. It is important to note that the examination of the written constitution alone will not necessarily provide an accurate indication of how a particular government works. The actual operation of the government machinery is in the hands of human beings; and human beings are notoriously subject to influence by their own values, goals, prejudices, norms, attitude, behaviour and other personal consideration, as well as by their perception of the needs and conditions of society at large. Their actions, as individuals and in groups, may shape the institutions of government in a way not contemplated by the written constitution. Thus an organ of government may turn out, in practice, to be quite different from its description in the written constitution.

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Other Forms of Constitutional Supplement

A. Conventions

Conventions are sometimes called non-legal rule. Conventions are sometimes called non-legal rule and is different from written Constitution, which has its root from adoption by Constituent assembly and Organic Laws, which desired its existence form statute. The clarity of convention is succinctly given as: (the) whole collection of rules which, though not part of the Law, are accepted as binding, and clearly form a part of the system of government. Although Conventions are generally obeyed, they are expressed in the formal and official manner of the written Constitutions, Organic Laws and Judicial decisions. They are strictly speaking not part of the Law. Conventions are not official Laws but are customs and practices of the people who are members of, and who operates the Government. This means that generally conventions are un-written but not necessary so for example standing orders, which regulates or governs the internal procedures of the legislation budes but they are not part of the written constitution. Conventions are equally as binding as rules desired from the other three sources; but the binding strength depends very much on the restrain shown by those in power and the ethics regarding responsible Government. For example, the US Constitution does not give power to the President to dismiss high officials in the executive branch of Government, yet right from time of early years of the nation, the US president has exercised a broad power to dismiss executive officials. This conduct has become well established and has been accepted as part of US Constitution by custom. Consequently, today no-one queries the legitimacy of the presidential powers of dismissal of senior officials, not with standing the fact that it is not provided for by the constitution. Britain renders a typical example of convention, which, has arisen, from custom and practice.

One of the most important features of the British convention is for example, when the executive is defeated in the House of Commons (the Lower House of the British Parliament) it must resign from office even though there has been no formal Law to this effect. There is no doubt that if this ever happens, the

Cabinet will offer its resignation. The rule has grown by custom. It is now fully accepted as binding as formally enacted Laws of the constitution.

However there is a problem associated with convention because it is difficult to ascertain when a particular pattern of behaviour, in fact becomes binding! For example, prior to 1940, no American President has ever been appointed to office for a third time with the exception of Federick. D. Roosevelt who was elected four times but there was nothing precluding this, but it was profess by scholars that custom had made a third term on constitutional for a President of the United States. In fact the President Theodore Roosevelt, decided no to stand for a third term, at least partially because he believed there was an un-written Constitution rule against it; but overcame his personal delusions and decided to run but he was rejected by the electorates, in part because of their belief that a third term was against the constitutional rule. In Ghana, conventions have not gained momentum because the country as a state is still relatively young but the practices and methods of politicians are already establishing patterns of conduct, which may become conventions in the future

B. Judicial Review

In the US, the constitution is what the Supreme Court says it is, because the Supreme Court is the highest court in the land and there is no appeal from its decisions. Almost very often, the language used in the Constitution and Organic Law is brief and subject to interpretation because it is inherently vague and ambiguous. This ambiguity does lead to different interpretations of the meaning of the language and disagreement of the essence. Many of these disagreements will become the subject of Lawsuits before the court of justice. It will then be the responsibility of the judges to interpret the brief, vague or ambiguous language of the constitution. The court in rendering its judgment, must out of necessity say what the constitution means, with its decision, the judges are adding new material to the constitution. These decisions are usually published in the UK and elsewhere, in the UK and some other countries in the form of Law reports of the various courts, thus becoming an important source of the Constitution.

Over a long period of years, as small cases on Constitutional matter, reach the courts, judicial decision become a large part of the constitution. The US, with its oldest written constitution document in the world and also as a result of the existence of its continuity has over a thousand judicial decisions, which interpret various aspects of the constitution. Ghana in its short turbulent existence as a state has experienced many judicial decision, which will as time goes by become part of its constitution.

C. Statutes or Organic Law

Statutes or Organic Laws are laws passed by the legislatures in the same method as ordinary legislation but which nevertheless have special status. The status are deem special because they establish the basic structure and organization of government policies. Because written constitutions vary in the way they tend to provide for all aspects of government, for example some are more elaborate than others; the American Constitution enthused Joye and Igweike ^[1] contains only

seven articles and twenty-six amendments, while the Nigerian Constitution contains 279 sections and 6 schedules that cover about 140 similar pages.

Therefore it is more likely that the text of the Nigerian Constitution will regulate many aspects of government functionalities than the U.S Constitution because of its faint nature. The U.S Constitution does not state the nature or organizational structure of the executive department under the control of the President, Therefore these unfilled constitutional gap are where legislations are pushed in the ordinary manner to fill the gaps left by the text of the constitution and statute enacted in this manner is called Organic Law.

Conclusion

We have now seen that no matter whether a constitution is written or unwritten it must be supplemented by other forms of laws. Invariably different types of constitutions abound, such as Federal constitution, as in Nigeria, Cameroon, Germany, India, America: Westminster or Parliamentary model as in Britain, Unitary, traditional, monarchy, Oligarchy, and depending on the structure of government a country adopts, one of these constitutional methods would be adopted. Thus Nigeria exhibits a federal structure of government and with it a federal constitution.

What needs to be asked at this juncture is that despite the central position a constitution occupies in the governance of a country and the recognition of it by every nation as an instrument of necessity for any government, some constitutions are more workable than others and in fact many do not work well at all! Why does this happen?

Summary

A constitution is according to Wheare ^[2] is indeed the resultant of a parallelogram of forces- political, economic, and social –which operate at the time of its adoption. Therefore, we should expect that the constitution of different countries would vary to the extent that the political, economic, and social forces vary in different countries and this in itself will determine the meaning and importance attach to constitutions in different countries and also the success and failure of the constitution will very much depend on the socio-economic and political circumstances in any particular country. Consequently, the constitution of a particular country will be tailored to fit the needs of that country and therefore important to recognise the uniqueness of constitutions and to avoid measuring the worth and ideal of one constitution with another. Therefore no matter how well written is a constitution, it will fail if the people who are meant to be the custodian of the constitution fail in their duties to uphold to the ideals of the constitution also the environment under which a constitution operates would be a major determinant of its failure and success, all as a result of political culture.

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