

## **RESEARCH PROPOSAL**

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**TITLE OF THESIS:** Amending the Amendment Rules: A Proposal for Popular Procedures in amending the Nigerian Constitution

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## ABSTRACT

Constitutions are revered, not infallible. Consequently, procedures for amendment are essential features of modern constitution making. Constitution amendment procedures may be broadly categorized into *governmental* and *popular* typologies. A review of previous constitution amendments in Nigeria reveal that the governmental approach is what is in practice. As constitutions are viewed as expressions of popular sovereignty, amendments or alterations to them should reflect popular preferences. There is however the fear that a purely government-controlled process may reflect government preferences and fail to take into consideration community level input, ethnic consensus or even the aggregation of citizen preferences. For instance, important popular alteration proposals like devolution of power and the right to education and healthcare which are front burner issues in national discourse, have failed to scale through the amendment process, while less popular proposals on elections are easily passed. This raises the concern that popular preferences may be ignored in the governmental procedure and the judicially imported gatekeeping role of the President in the alteration process. It is therefore necessary to inquire into whether the alteration procedures have been exercised in the line with popular preferences. The outcome of this inquiry may form the basis for proposals to alter the alteration procedure or perhaps, suggest the inclusion of popular participation in the process of constitutional alteration.

The methodology to be employed in the study is doctrinal. However, the study shall examine and analyze existing data on constitutional alteration in Nigeria. In assessing whether the machinery of constitutional alteration has been deployed for the advancement of popular preferences, the study shall examine official proposals for the alteration of the Nigerian constitution from 1999 till date. This will involve the determination whether individual proposals

enjoyed popular backing; and a comparison of successful proposals with unsuccessful ones against the backdrop of said popularity. The study shall also compare popular proposals which are products of consensus reached at national conferences, dialogues and ethnic consensus that were not engaged by the alteration machinery with official proposals for alteration. The analysis will be carried out with the aim of discovering whether a pattern exists which can explain the success or failure of alteration proposals in Nigeria.

The study is expected to find that the machinery for alteration has not been readily deployed for popular concerns, while same is readily activated for political, less popular matters. It will also find that most popular proposals are not successfully passed, while less popular proposals are more likely to pass successfully. The study will also find that only few proposals emerging from national consensus procedures are engaged by the official alteration machinery. This will be the basis for advocating for an amendment of the procedure for constitutional alteration to include popular decision making. This is essential as it accords with the jurisprudence of popular sovereignty; which is the theory upon which all modern democratic constitutions rest.

## STATEMENT OF RESEARCH PROBLEM

Constitutional theory recognizes the people as the source of all political authority including the constitution. Therefore, the constitution and its amendment should reflect popular preferences, whether the amendment procedure is governmental or popular. The process for constitutional alteration in Nigeria is governmental. Governmental procedures for constitutional amendment should reflect popular preferences. Where popular preferences prevail, alteration performs its essential function of ensuring constitutional adaptation in response to changing circumstances and resolves flaws discovered in the practical operation of the constitution, thus enhancing its stability.

The problem however arises where the alteration machinery does not cater for popular preferences. Recent attempts at constitutional alteration by the current 9<sup>th</sup> national assembly have been met with apathy on one hand and clamor for an entirely new constitution by citizens. While the making of an autochthonous constitution is beyond the purview of the study, the existing scenario necessitates an investigation into the previous use of the alteration procedure. This is necessary at least to understand the reason for the apathy on one hand, and opposition to the procedure and calls for its replacement on the other.

An inquiry into the use of the power and machinery of constitutional alteration and its relationship with popular preferences is important, as it will help us to know whether constitutional alteration (as currently carried on) accords with the principle of popular sovereignty. This will serve as a guide as to whether or not there is a need to change the constitution alteration procedure.

The main inquiry of the study therefore is whether the current procedure for constitutional alteration takes into account popular preferences. The research questions flowing from this inquiry are as follows:

1. are the official proposals for constitutional alteration when considered individually driven by popular preference?
2. what is the relationship between successful and unsuccessful proposals for constitutional alteration, or, is there a pattern that explains the relationship between successful and unsuccessful proposals for constitutional alteration?
3. what is the relationship between popular proposals emanating from national conferences and other consensus procedures on one hand and official proposals for alteration?

## AIM AND OBJECTIVES

The aim of the study is to examine the process of constitutional alteration in Nigeria.

The objectives of the study are to:

1. review the procedures for the alteration of the constitution since 1999;
2. determine whether previous alterations of the constitution were driven by popular preferences;
3. compare successful and unsuccessful proposals in order to explain the pattern of constitutional alteration in Nigeria;
4. compare proposals from national conferences and other consensus procedures with government proposals for constitutional alteration to determine the relationship between them; and,
5. propose the adoption of popular procedures for constitutional alteration flowing from the findings of the work.

## METHODOLOGY

The study will employ doctrinal and socio-legal methods of legal research. Doctrinal research will involve an examination of both successful and unsuccessful proposals for constitutional alteration since 1999, as well as a review of the relevant theoretical and conceptual bases for constitutional alteration. Each official proposal for alteration will be examined and reviewed to determine if they were popular, and whether they were passed. From the aggregate of these proposals, comparisons will be made and conclusions drawn.

Also, official alteration proposals will be compared with other popular proposals produced from national conferences, national dialogues, ethnic consensus and positions, declarations and other consensus procedures which aggregate citizen preferences, all with a view to interrogating the extent of adoption or government attention to these proposals, hence its responsiveness. This will aid the discovery of the existence or otherwise of patterns which may explain the relationship between successful and unsuccessful alteration proposals; and by extension the relationship between government and popular preferences.

In assessing the popularity or otherwise of official proposals, the work will rely on socio-legal research methodology. It will examine each official proposal and test their popularity by a review of existing public records on the subject matter of each alteration proposal, as recorded or contained in media reports, newspapers, magazine articles, position papers, and declarations etc. by groups or bodies representative of popular interests, (which may be sectional in some instances, for specialized subject matters). The search will be internet and library based, and will focus on prominent people groups and civil society organizations and their positions on the alteration proposals. Positions expressed by government bodies do not fall into the popular

category, and will not be considered for the purpose of the study, as the focus is on popularity of alteration proposals within non-government circles.

For a conclusion of popularity to be reached on a subject matter forming an alteration proposal, the review of official records will disclose popular discussion in a manner sufficient to engage public interest. Single issue publications do not meet the criteria, as the matter must be sufficiently discussed to sustain the conclusion of popularity, either nationally, or within specialized groups (in the case of specialist or professional demands, depending on the nature of the matter). Secondary data will be aggregated, compared and contrasted under the above stated categories and its results will form the findings of the study.

## SCOPE OF STUDY

The study shall be limited to a consideration of the procedures for alteration of the 1999 Constitution of the Federal Republic of Nigeria together with the successful and failed attempts at altering it since the year 2000. It is intended to examine specific proposals for said alteration, as proposed from 1999 till date. The date was chosen because the commencement date of the current constitution was 5<sup>th</sup> May, 1999. The study shall also consider popular proposals which emanated from national conferences and national dialogues organized within the period covered by the study. It shall also look at positions of ethnic nationalities and other popular groups that have made proposals for the alteration of the constitution. These popular proposals shall be juxtaposed with official proposals for constitutional alteration occurring within the period under study.

## EXPECTED FINDINGS

The expected findings of the study are that:

1. the procedure for constitutional alteration in Nigeria is governmental;
2. majority of the previous official proposals for alteration of the constitution were not driven or backed by popular preference;
3. most successful alterations are merely textual and not fundamental, while most popular proposals for constitutional alteration are unsuccessful;
4. a minute percentage of proposals emerging from national conferences and other consensus arrangements are engaged by the alteration machinery; and,
5. the adoption of popular procedures will result in the reflection of citizen preferences in the constitution alteration process.

## EXPECTED CONTRIBUTION TO KNOWLEDGE

The study expects to contribute to knowledge as follows:

1. the procedures for popular alteration of the constitution such as popular initiatives and referendums, if adopted will accommodate popular preferences.
2. the introduction of procedures for popular alteration of the constitution reflecting the aggregate of citizen preferences will enhance the legitimacy and longevity of the constitution.

## TENTATIVE THESIS OUTLINE

### 1. Chapter One

- 1.1. Introduction
- 1.2. Statement of Research Problem
- 1.3. Aim of Research
- 1.4. Research Questions
- 1.5. Theoretical Framework for study
- 1.6. Methodology
- 1.7. Scope of Study
- 1.8. Findings
- 1.9. Expected Contribution to Knowledge
- 1.10. Structure of Thesis

### 2. Chapter Two: Literature Review

- 2.1. Democracy as a Background Theory
  - 2.1.1. Direct, Participatory, Deliberative Democracy
  - 2.1.2. Representative, Liberal Democracy
- 2.2. Popular Sovereignty
- 2.3. Constituent Power and Constituted Power
- 2.4. Constitution and Constitution Making
- 2.5. Constitutional Legitimacy
- 2.6. Theories of Constitutional Amendment
  - 2.6.1. Why Constitutional Amendment?
  - 2.6.2. Nature of the Power of Constitutional Amendment

- 2.6.3. Methods of Constitutional Amendment: Formal and Informal
- 2.6.4. Unconstitutional Constitutional Amendments
- 2.6.5. Extent of Constitutional Change: Amendments, Alterations or Dismemberments?
- 2.6.6. Failure of Amendment Rules and Constitutional Moments
- 2.7. Typologies of Constitutional Amendment
  - 2.7.1. Governmental Procedures
  - 2.7.2. Popular Procedures
- 2.8. Conceptual and Theoretical Framework for Study
  
- 3. Chapter Three: Amendment Procedure in the 1999 Constitution
  - 3.1. The Role of the National Assembly
  - 3.2. The Role of the State Houses of Assembly
  - 3.3. The Role of the President
  - 3.4. State Creation and Boundary Adjustment (Section 8)
  - 3.5. Eternity (Unalterable) Clauses
  
- 4. Chapter Four: Official Alteration Proposals since 1999
  - 4.1. Constitution Amendment Bill, 2005
  - 4.2. Constitution (First Alteration) Bill, 2010
  - 4.3. Constitution (Second Alteration) Bill, 2010
  - 4.4. Constitution (Third Alteration) Bill, 2011
  - 4.5. Constitution (Fourth Alteration) Bill, 2014

- 4.6. Constitution (Fourth Alteration) Bill, 2017
  
5. Chapter Five: Popular Proposals for Constitutional Alteration since 1999
  - 5.1. National Political Reform Conference, 2005
  - 5.2. National Conference (Confab), 2014
  - 5.3. Calls for a Sovereign National Conference and Position of Ethnicities
  - 5.4. Other Popular Demands
  
6. Analysis of Data on Constitutional Alteration Proposals
  - 6.1. Analysis of Successful and Unsuccessful Proposals
  - 6.2. Analysis and Comparison of Official and Popular Proposals
  - 6.3. Discussion of Findings
  - 6.4. Alternative Policy Choices
  
7. Chapter Seven: Summary, Conclusion and Recommendations
  - 7.1. Summary & Research Findings
  - 7.2. Conclusion
  - 7.3. Recommendations

## CONCLUSION

Amendment or alteration processes are meant to preserve constitutions. However, this preservative role is only effective where popular views are reflected in constitutional change. The absence of this may result in the rejection of the constitution, and therefore its failure. It has also been said that he who holds the power to amend the constitution is the true sovereign. In line with the principle of popular sovereignty, there is therefore the need to review the process of constitutional alteration, to make it reflective of the foundational principles of the constitutional order. The issue of constitutional alteration is thus critical to the stability and survival of the constitution, and is therefore deserving of attention.

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CERTIFICATION

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