

An overview of the constitution amendment procedures in Nigeria and Ghana

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ABSTRACT: Constitutions are fundamental and foundational laws of a state. The validity of other laws and official actions depends on the degree of their conformity with the Constitution. Constitutions are designed to provide a long-term structural framework for the legal ordering of a state. Because of their centrality to the stability of the state, constitutions are designed to resist incessant alterations and modifications. The degree of rigidity of a constitution is determined by the processes involved in its amendment. There are several models or formulae of constitutional amendment. They all seek to balance constitutional stability with social dynamism. The intention is to prevent sacrificing social development for constitutional stability. The models of constitutional amendment procedures include legislative supermajority, bicameral consensus, referendum, reference to federating units, etc. In this paper, a comparative analysis of the respective procedures for constitutional amendment in Ghana and Nigeria is undertaken. The paper adopts the doctrinal research methodology and examines primary sources especially the respective constitutions, case law and scholarly opinions. The analysis reveals that the procedure for constitutional amendments is determined by the status of the provisions of the constitution sought to be amended. The paper identifies the models applicable to the amendment of different classes of constitutional provisions in both countries and highlights areas of similarities and differences.

Keywords: Nigeria, Ghana, constitution, amendment, referendum.

INTRODUCTION

A constitution is the “organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers” (Black’s Law Dictionary). It is a “charter of government deriving its whole authority from the governed.”

There are different types of constitutions depending on the classification parameters used. For example, using devolution of power as a classification method, constitutions are classified as unitary, federal or confederal. Applying the system of government criterion, a constitution can be presidential, parliamentary, monarchical, collegiate

or a hybrid of these systems. With regard to ease of amendment, constitutions are divided into rigid and flexible constitutions.

A constitutional amendment is “a deliberate and formal change to the constitution, made in accordance with the procedures laid down in the constitution itself, which alters the existing provisions or adds new ones, and has the effect of changing the constitutional framework” (Levy, 2000). From the above definition, the elements of a constitutional amendment are:

1. Formal changes to the constitution;
2. Compliance with the constitutional procedures for the changes; and
3. Alteration of the constitutional framework.

This paper is concerned with the amendment processes of

two rigid constitutions namely, the Constitution of the Federal Republic of Nigeria (CFRN) (1999) and the Constitution of the Republic of Ghana (CRG) (1992). The paper identifies the models or formulae for amendment applicable to different categories of constitutional provisions in the two countries (Malemi, 2006).

The paper is divided into five sections excluding the abstract. The first part is the introduction followed by a discussion of the procedure for constitutional amendment in Nigeria. The third part is an overview of the procedure for amendment of the Constitution of the Republic of Ghana. The fourth part identifies the similarities and differences between the amendment procedures of the two constitutions while the last part is the conclusion.

PROCEDURE FOR AMENDMENT OF THE NIGERIAN CONSTITUTION

As stated in the introduction to this paper, the 1999 Constitution of the Federal Republic of Nigeria is a rigid constitution. This implies that its amendment requires strict adherence to prescribed procedures. The constitution itself provides for the procedural steps for its amendment. This paper identifies two classes of amendment procedures for the Nigerian constitution. These are the general amendment procedure under section 9(2) of the 1999 Constitution and the special amendment procedure under section 8 and section 9 (3) of the constitution. (Lawal, 2015). These two amendment procedures are now discussed in the rest of this part of the paper.

General amendment

The general amendment procedure applies to the amendment of all the sections and provisions of the constitution except the provisions of Section 8, Section 9 and Chapter IV of the constitution (1999 Constitution of the Federal Republic of Nigeria). The excepted sections relate to state and local government creation together with boundary adjustment, constitutional alteration procedures and fundamental human rights, respectively. The general amendment procedure is governed by Section 9 (2) CFRN which provides that:

“An Act of the National Assembly for the alteration of this Constitution, not being an Act to which section 8 of this Constitution applies, shall not be passed in either House of the National Assembly unless the proposal is supported by the votes of not less than two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two-thirds of all the States” (1999 Constitution of the Federal Republic of Nigeria).

The “proposal” as used in the provisions reproduced above refers to a bill for an Act to amend the constitution. Therefore, a general amendment process commences with a bill in either house of the bicameral National Assembly (1999 Constitution of the Federal Republic of Nigeria) seeking to amend any provision of the constitution except the provisions which fall under the special amendment procedure. The bill goes through the legislative processes of lawmaking enumerated in section 58 of the Constitution. These processes include first reading, second reading, committee stage, report stage and third reading or passage. (Olorunfemi, 2011). The bill is then sent to the other house of the National Assembly where it undergoes the same process too. If the bill is passed by both houses of the National Assembly, it is then presented to the president for his assent (1999 Constitution of the Federal Republic of Nigeria).

An Act seeking to alter the constitution under the general amendment procedure requires the votes of a two-thirds majority of the members of each house of the National Assembly and the approval by resolution by the Houses of Assembly of not less than two-thirds of all the states of the federation. (Policy and Legal Advocacy Centre, 2015). The summary of the procedure outlined above is that an amendment of the constitution under the general amendment procedure requires the passage of the amendment Act by a two-thirds majority of the members of each house of the National Assembly and the approval by resolution of the Houses of Assembly of at least two-thirds of all the States of the Federation (Policy and Legal Advocacy Centre, 2015).

Some commentators have expressed reservations on the necessity of a presidential assent to a constitutional amendment. They have argued that once an Act seeking to amend the constitution has been passed in accordance with the provisions of section 9 of the constitution, it becomes operational without presidential assent (Abdulwahab, 2010). However, this dispute was resolved by the decision of the Federal High Court, Lagos Division (coram: Okechukwu Okeke, J) in *Olisa Agbakoba v. National Assembly & Anor*, wherein the court held that constitutional amendment without presidential assent was inchoate by virtue of non-compliance with section 58 of the constitution. The National Assembly itself has deferred to the powers of the president to assent or withhold assent to a constitution amendment Act. They have since heeded the decision in *Olisa Agbakoba* and sent every such Act to the president for assent and have accepted his decisions whenever he withholds his assent. Thus, the necessity of a presidential assent to a constitution amendment Act can now be regarded as settled law.

Special amendment

As stated earlier, the special amendment procedure applies to the amendment of constitutional provisions

relating to state/local area government creation, boundary adjustment, fundamental human rights and the amendment section of the constitution. The amendment processes of these items are provided for in sections 8 and 9 of the constitution (Nigeria, 1999).

With regard to state creation, the process commences with the receipt by the National Assembly of a request for the creation of a state supported by at least a two-thirds majority of members representing the area demanding the creation of the new state in each of the Senate and the House of Representatives, the House of Assembly in respect of the area, and the local government councils in respect of the area (Policy and Legal Advocacy Centre, 2015). The proposal for the state creation is then subjected to a referendum in the area demanding the state creation and if approved by at least a two-thirds majority of the people of the area where the demand for the creation of the State originated; the result of the referendum is then approved by a simple majority of all the States of the Federation supported by a simple majority of members of the Houses of Assembly (1999 Constitution of the Federal Republic of Nigeria). Upon receipt of the approval of the majority of the Houses of Assembly, the National Assembly is required to pass the Act creating the new state through the legislative procedure outlined in section 58 of the constitution. A two-thirds majority of the members of each house of the National Assembly is required to approve the proposal after the referendum (1999 Constitution of the Federal Republic of Nigeria).

The creation of new local government areas also requires compliance with the special amendment procedure under section 8 (3) of the constitution (Nigeria, 1999). The process starts with the submission of a request for the creation of a local government area to the House of Assembly of the relevant state supported by at least two-thirds of the members representing the area demanding the creation of the new local government area in each of the House of Assembly in respect of the area, and the local government councils in respect of the area (1999 Constitution of the Federal Republic of Nigeria). Like in the case of state creation, the proposal is subjected to a referendum in the local government area from where the demand for the creation of a new local government originated. If the proposal is approved by at least two-thirds of the people of the local government, the proposal will be sent to all the local government councils in the state (1999 Constitution of the Federal Republic of Nigeria). If the proposal is approved by a simple majority of the members in each local government council in a majority of all the local government councils in the State, the House of Assembly then approves the result of the referendum by a resolution passed by at least two-thirds majority of members of the House of Assembly. After completion of the procedure enumerated above, the House of Assembly must make returns to the National Assembly to enable the National Assembly to make consequential amendments to

the constitution to reflect the new local government areas created (A.G Lagos Vs. A.G Federation, 2004).

The third class of constitutional amendment that requires the special amendment procedure is in the area of boundary adjustment. There are two types of boundary adjustment envisaged by the constitution. These are state boundary adjustment and local government boundary adjustment. The procedure for the adjustment of the boundaries of a state is provided for in section 8 (2) of the constitution (Nigeria, 1999).

In the case of state boundary adjustment, the process starts with the submission to the National Assembly of a request for adjustment of the boundary supported by a two-thirds majority of the members representing the area demanding the boundary adjustment and the area affected by the boundary adjustment in each of the two houses of the National Assembly, the House of Assembly of the state in respect of the area and the local government councils in respect of the area (Policy and Legal Advocacy Centre, 2015). Thereafter, the proposal is approved by a simple majority of the members of each house of the National Assembly and the House of Assembly in the area concerned.

The adjustment of the boundary of a local government area commences at the House of Assembly of the state concerned with the receipt in the House of Assembly of a request for adjustment of the boundary of a local government area supported by two-thirds of the members representing the area demanding and the area affected by the boundary adjustment in each of the House of Assembly in respect of the area and the local government council in respect of the area. The proposal is then approved by a simple majority of the members of the House of Assembly (Nigeria, 1999).

It can be deduced from the foregoing that constitutional amendment is a multi-layered process in Nigeria. There are three stages in the general amendment procedure. These are obtaining the support of a two-thirds majority of the National Assembly; receiving the approval by resolution of the Houses of Assembly of at least two-thirds of the states and finally obtaining a presidential assent to the amendment. However, the special amendment procedure features referenda (in the case of the creation of new states or local government areas) and the support of a four-fifths majority of the members of the National Assembly in addition to the procedural steps for general amendment.

In summary, the models of constitutional amendment in Nigeria include bicameral consensus, legislative supermajority, referendum, reference to federating units and presidential assent (Nigeria, 1999).

PROCEDURE FOR AMENDMENT OF THE GHANAIAN CONSTITUTION

The Constitution of the Republic of Ghana, 1992 is a rigid

constitution given its recondite amendment procedures (Asare, 2014). The procedure for constitutional amendment in Ghana is outlined in Chapter 25 of the constitution. Art. 289 (1) of the constitution provides that "Subject to the provisions of this Constitution. Parliament may, by an Act of Parliament, amend any provision of this Constitution" (Constitution of the Republic of Ghana, 1992). This provision has been interpreted in some quarters to mean that the power of amendment of the Ghanaian constitution is vested solely in parliament. It has been argued that no other person or authority is competent to initiate the constitutional amendment process in Ghana except Parliament. The Constitution is divided into two parts for purposes of amendment. These are "entrenched provisions" and "non-entrenched provisions (Asare and Prempeh, 2010).

Entrenched provisions

The entrenched provisions are 19 provisions listed in art. 290 (1) (a)-(s) (Constitution of the Republic of Ghana, 1992). The amendment process of an entrenched provision of the constitution commences with a bill in Parliament submitted to the speaker who is to refer the bill to the Council of State for its advice (Constitution of the Republic of Ghana, 1992). The Council of State is required to give its advice within thirty days of the referral. After receiving the advice of the Council of State, Parliament then publishes the bill in the Gazette and waits for six months before taking further legislative actions on it (Constitution of the Republic of Ghana, 1992).

Following the first reading of the bill in parliament, it is subjected to a national referendum in which the minimum voter turnout threshold is 40% of the registered voters in the country. 75% of the voters who participate in the referendum need to vote in support of the amendment before Parliament can pass it. If the required supermajority votes in support of the bill at the referendum, Parliament is mandated to pass it. The final stage of the constitutional amendment process is the presidential assent (Asare and Prempeh, 2010).

Non-entrenched provisions

All constitutional provisions are non-entrenched articles except those designated as entrenched articles in art. 290 (1) (a)-(s) (Constitution of the Republic of Ghana, 1992). Art. 291 deals with the procedure for amendment of non-entrenched provisions of the Ghanaian constitution. Art. 291 (1) (a) and (b) provides that before a bill for the amendment of a non-entrenched provision of the constitution is introduced in Parliament, it must have been published twice in the Gazette with a three-month interval between the publications (Asare, 2014). Also, ten days

must elapse from the last publication before the introduction of the bill in parliament.

After the first reading of the bill in parliament, the speaker is to refer it to the Council of State for its consideration and advice. The council is obliged to offer its advice within thirty days of the referral (Asare and Prempeh, 2010).

If the bill is passed by a two-thirds majority of the members of parliament, it is then presented to the president for his assent. The main difference between the amendment of entrenched provisions and the amendment of non-entrenched provisions is that in the case of entrenched provisions, a referendum and a 75% supermajority of votes are required whereas in amending non-entrenched provisions two-thirds supermajority of parliamentarians (without a referendum) is sufficient (Asare, 2014).

All bills for the amendment of the constitution must be accompanied by a certificate of compliance with the constitutional procedure before the president can assent to it. In the case of a bill for amendment of entrenched provisions, there is a further requirement of a certificate from the electoral commission signed by its chairman and bearing its seal stating that the bill was approved in a referendum in accordance with the provisions of the constitution (Asare, 2014).

SIMILARITIES AND DIFFERENCES BETWEEN THE AMENDMENT PROCEDURES OF THE GHANAIAN AND NIGERIAN CONSTITUTIONS

There are obvious similarities between the respective amendment processes of the two constitutions under review. First, both constitutions are rigid making their amendment procedures difficult. Also, both procedures feature referendum for entrenched provisions or special amendments and require a parliamentary supermajority (Asare, 2014). Third, both constitutions demand a higher supermajority for the amendment of entrenched or special provisions than for the amendment of non-entrenched or general provisions. Finally, both procedures for amendment do not create any specific role for the judiciary. Only the executive and the legislature are explicitly assigned roles in the amendment processes (Asare, 2014).

There are equally obvious differences identified in the procedures for constitutional amendment in Ghana and Nigeria. The two countries operate different systems and structures of government. These structural differences are inevitably reflected in the procedures adopted for the constitutional amendment. For example, Nigeria operates a federal structure while Ghana is a unitary state.

Therefore, the constitutional amendment process in Nigeria involves referrals to the federating units whereas Ghana does not because of the absence of federating units. Similarly, Ghana has a unicameral legislature while

Nigeria maintains a bicameral legislature at the federal level and unicameralism in the states. Consequently, Nigeria's constitutional amendment procedure demands bicameral consensus whereas such practice does not apply to Ghana (Osunyikanmi, 2024).

Furthermore, the constitutional amendment process can technically be initiated in a House of Assembly of a state (as in the case of the creation of new local government areas and adjustment of local government areas' boundaries), parliament is the sole initiator of constitutional amendments in Ghana (Osunyikanmi, 2024).

In Ghana, the president is expressly assigned the duty of assenting to bills that amend the constitution whereas the Nigerian constitution is silent on the necessity or otherwise of presidential assents to constitutional amendments. Also, while the Nigerian president can withhold his assent to the constitutional amendment, it is doubtful whether his Ghanaian counterpart can validly withhold his assent to a bill that seeks to amend the constitution. Some commentators have argued that the role of the president of Ghana in assenting to a constitutional amendment is merely ministerial and he cannot withhold his assent once all the constitutionally-prescribed steps for amendment have been complied with (Asare, 2014). This position seems to find support in the use of the mandatory term, "shall" in couching the provisions of art. 291 (6) and art. 291 (4) of the Ghanaian constitution. However, the incorporation of section 58 of the Nigerian constitution into the constitutional amendment process has saved Nigeria from such doubt. In other words, the Nigerian president's discretion to withhold assent to a constitutional amendment is not in dispute (Osunyikanmi, 2024).

Another area of difference between the two procedures is that the Ghanaian Parliament cannot proceed with constitutional amendment without referring the proposed amendment to the Council of State for advice whereas there is no similar requirement in Nigeria. Moreover, the publication of a bill to amend the constitution in the Gazette in Ghana is absent in Nigeria. While Ghana makes double publications in the Gazette and a ten-day delay after the second publication before Parliament can proceed with amending non-entrenched provisions, the Nigerian constitution has no equivalent provision for publication in a gazette of a bill seeking to amend the constitution (Osunyikanmi, 2024).

CONCLUSION

This paper set out to compare and contrast the amendment procedures of the 1992 Constitution of the Republic of Ghana with the amendment procedures of the 1999 Constitution of the Federal Republic of Nigeria. It found out that both countries operate rigid constitutions and have stringent procedures for amendment. However,

there are marked differences in their amendment processes. These differences are largely a function of the differences in the respective structures of government operated by the two countries.

CONFLICT OF INTEREST

The authors declare that they have no conflict of interest.

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