

# **Constitutionalism and the National Question in Nigeria**

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The number one political contradiction or challenge in Africa today is how to deal with the national question. The continent's history and the contradictions and engagements of the post-colonial era have precipitated deep political fault lines and congealed interests on both side of the political divide. Put simply: on the one hand are those that are benefiting from the current status quo and see no reason for change. To this group, the "problems" of politics, economy and society would resolve themselves or be resolved with time. On the other hand are those that feel that the African past had been squandered, the present mortgaged and the future so uncertain that politics could no longer be taken for granted. Consequently, they have demanded a re-negotiation and recompacting of relations between the power elite and the people. This time, they are demanding to be fully involved in the process of remaking the constitution in order to ensure that those issues that affect them and their communities are not trivialized or relegated to the dustbin of political decision making.

This chapter advances one argument: in order to address the national question in Nigeria, the political elite can no longer be trusted to do the right thing. To safeguard even its own narrow interests, the power elite must concede to an open and popular recompacting of the constitution. Only a truly consultative and participatory process can put the national question up for democratic debate and negotiation without resort to violence. Such a consultative process could be utilized to mobilize and educate the people politically, establish new rules of politics, reconstruct institutions, and redefine the foundations of governance.

## **The National Question and the New Politics in Africa.**

Given the historical suffocation of civil society, the privatization of the state, and the arrogance of privatized power, the contemporary challenge for all Africans is how to take apart the state and subject the national question to popular debate. At all spheres of society, Africa is being rocked by new discourses, new alignment and realignment of social forces, the emergence of new institutions and leaders, and the construction of alternative political platforms. Given the extent of socio-economic deprivation of the last three or more decades as well as the levels of political repression and marginalization of popular communities, these developments represent a breath of fresh air. The culture of corruption, mismanagement, insensitivity to the plight of the poor, elite privatization of the state, and the subversion of traditional values and institutions culminated in new challenges to the state and its custodians. These challenges witnessed a new enthusiasm for democracy and human rights among women, students, professionals, workers, religious leaders, and other non-bourgeois constituencies. The result, as is now clearly evident, has been the gradual restructuring of political spaces to enhance pluralistic politics and re-establish new political values and the construction of new institutions. The issue today is that no matter the level of resource endowment, the size of the population, the size of foreign aid, or how well-intentioned some leaders might be, until the political question is resolved, peace and progress, much less growth, development and

democracy cannot thrive. The inherited state and class forces and structures can no longer move the cause of growth, development and democracy forward in Africa.

Today, irrespective of justified reservations, we can claim that here is an increasing feeling of euphoria in Africa. For a continent that was awash with brutal dictators, corrupt regimes, misplaced priorities, institutional decay, and social dislocation and violence, the recent political openings and renewed commitments to democratic values is a welcome relief. True, there is much to worry about in the illiberal democratic realities of the continent.<sup>1</sup> In fact, most of the newly elected politicians still act and sound very much like the dictators of the past. In Nigeria, elected politicians and appointed officials appear impatient with democracy and continue to see politics as an opportunity for very rapid primitive accumulation. Hence Claude Ake is convinced that: "The triumph of democracy may be more apparent than real. Democracy has had an embattled history struggling to survive in an environment in which support for it was rarely ever more than lukewarm and invariably ambivalent, confused or opportunistic, and opposition to it powerful, resourceful and unrelenting. By all indications it would be more appropriate to be lamenting the demise of democracy rather than celebrating its universal triumph."<sup>2</sup> This notwithstanding, the emergence of new issues, new discourses, new leaders, and new political parties on the continent's political landscape has altered the balance of forces and encouraged a radical realignment of political forces. Irrespective of the particular country concerned, there are certain common variables that are shaping the content and context of contemporary politics in Africa: the end of the cold war; donor complains about aid fatigue; the end of apartheid and the emergence of South Africa as a central player in continental politics; the increasing unpopularity of military juntas; the increasing influence and power of civil society groups and the emergence of a new breed of articulate and pro-democracy leaders. To these, we can add the new commitment of international organizations and Western governments to the new democratic agenda; the new recognition of the centrality of pluralism, gender, identity and nationality issues in the articulation of political platforms; and the political impact of globalization requiring at the minimum democratic practices, respect for human rights, and multiparty political arrangements.<sup>3</sup> Africa, in spite of its dependence, underdevelopment, and marginalization in the global divisions of labor and power has not been spared the impact of these developments.<sup>4</sup>

One clear indicator of the new politics and political environment on Africa is the emergence of new leaders, discourses, organizations, demands, networks, and contestations for office and power that have altered political spaces significantly. To be sure, in the broad opposition, there are problems of grandstanding, corruption, opportunism, over-personalization of issues, limited creativity, ideological bareness, and proliferation of parties and movements that are unable to reach accommodation with each other. As well, women are still very much invisible in the mostly urban-based and donor-dependent opposition movements. But the struggle is still in its infancy and as it develops, issues, leaderships, and methods will become crystallized.<sup>5</sup> Whatever the situation, the points of emphasis today are social justice, transparency, accountability, popular participation, human rights, gender equity, environmental protection, and democratization: these are the issues that condition, determine and drive politics in contemporary Africa. It is within the context of the issues above, that new demands for constitutional reforms or for the rewriting of national constitutions have emerged. This

agenda has been pushed in various ways by thousands of non-governmental organizations across the African continent.

The first two decades of political independence in Africa witnessed the containment of the robust enthusiasm for freedom that had informed the popular challenges to colonial domination. The new power elite simply Africanized or indigenized the exploitative, repressive, and arrogant appropriation and deployment of power that had been the tradition of the colonial state. This often required the containment of the media, the marginalization of rural areas, the harassment of political opponents, and the subversion of the constitution. Within two decades of political independence therefore, the continent was littered with coups and counter-coups, civil and inter-state wars, ethnic violence, agitations for autonomy, alienation from the state and its custodians, and the withdrawal of support for public policies. Good governance was thrown over-board and leaders busied themselves with the construction of dubious ideologies, personality cults and looting their respective treasuries. As political decay, uncertainty, violence, and disillusionment replaced the euphoria of *Uhuru*, even fractions of the power elite began to construct parallel structures of power and opportunities. This was evidenced in the use of foreign schools for the wards, reliance on foreign hospitals for medical attention, use of foreign banks, airlines and advisers; the use of private security in place of public police, the reliance of private water bore-holes and private electricity generators in place of publicly provided alternatives, and investments abroad rather than in the local economy. In some way, the African elite lost faith in the substance or quality of post-colonial governance.

The postcolonial state was privatized and used only as an instrument for rapid primitive accumulation and its instruments of coercion were frequently deployed to settle private disagreements and the control of power by political despots. Coupled with economic mismanagement, rabid corruption, irresponsible political behavior and squandermania, the near abandonment of the state by its very custodians weakened it and made it largely irrelevant to the daily lives of the people. The state was now seen and treated as enemy by the people, a force that was to be avoided, cheated, attacked, and subverted as opportunity permitted. Such a state had no room for the rule of law, social justice, human rights, and constitutionalism. All these were sacrificed on the alter of political expediency, the hunger for power and the arrogance of a political elite with only a tenuous relationship to real production. Because governance had lost its worth in the eyes and lives of the people, they withdrew their loyalties from the state and its custodians. Even a task like tax collection virtually became impossible. Most governments had to rely on thugs and private collectors to collect basic taxes from non-public employees. One of the major consequences of this retreat into political atavism was that constitutions became useless documents that meant nothing to how power was defined, perceived, appropriated, and deployed. Arbitrary rule and the wanton deployment of violence took over and there was no difference between Nigeria and Ghana under the military on the one hand and Kenya, Cameroon or Zambia under so-called civilian rule.

Today, the political picture, though not quite clear, is radically different. Irrespective of frustrations over the depth and direction of political liberalization in Africa, the truth is that the political environment, the issues and the actors have changed dramatically.<sup>6</sup> Though it is still a very long and painful way to the promised land of

democracy and good governance, even the old buzzards of African politics have, at the very least, changed the language and style of their political activities. The contestation for hegemony or control of the state is no longer dominated by the tiny class of elites. As well, it is no longer fashionable to develop a guerilla army and engage the state over disagreements on political reforms just as coups are becoming increasingly unacceptable to the larger society. Indeed, in many African states, the political fraction of the power elite not only feels terribly embarrassed at its shameful performance on all fronts but it is also on the retreat even if temporarily. Its poor performance in governance and economic development since the 1960s has eroded its legitimacy in the eyes of the people. Rabid populism, intimidation of civil society and political opponents, and the manipulation of primordial loyalties are no longer sufficient to buy or guarantee the support of the people. It is not amazing therefore, that the conservative custodians of state power have had no problems with conceding their failures and inviting or incorporating credible opposition elements into existing power structures to give a veneer of legitimacy or political rebirth. This is one way to understand Daniel arap Moi's inclusion of Richard Leakey in his cabinet to assist with public service reforms in Kenya. Even military juntas have had to make a hasty retreat from power as was the case in General Abdulsalam Abubakar's junta in Nigeria. General Sani Abacha's rule had thoroughly delegitimized the military and aroused a robust civil society opposition to continued military rule.<sup>7</sup> The only way to survive the growing and well-organized opposition response was to organize a programmed withdrawal from power largely under its own terms. In Senegal, Abdou Diouf conceded defeat to Abdoulaye Wade in the March 2000 election as soon as he saw the monumental shift engineered by the active participation of young persons who were dissatisfied with the status quo.<sup>8</sup> In Zimbabwe, the political opposition capitalized on the economic crisis precipitated by corruption and mismanagement by the ruling party as well as the opening provided by the constitution review process to explode the myth of Robert Mugabe's political invincibility.

In place of the one-party or no party state, we now have a plethora of political parties.<sup>9</sup> Even Uganda's so-called "Movement System" is underscored by the continuing existence of powerful political parties and a robust pressure on Yoweri Museveni's National Resistance Movement (NRM) government to open up the political system to multiparty political competition.<sup>10</sup> In place of military dictatorship, we are seeing civilianized military juntas as in The Gambia, Ghana, Togo, Burkina Faso, and Niger. In place of endless murderous wars, we are seeing pacted conflict resolution initiatives with varying levels of resilience as in Sierra Leone, Liberia, Ethiopia, Eritrea, and even Rwanda. To be sure, there is a sense in which the new leaders in these nations such as Yoweri Museveni, Paul Kagame, Isias Afwerki, and Charles Taylor can be regarded as reformed warlords or civilianized military elites that must be watched very closely. The reality of the present is that they have all subscribed to democracy and constitutional governance. In short, all over the continent, the discourse of politics now reflects issues of women, gender equality, transparency, constitutionalism, and the cultivation of democratic values.

It is in the context of these contestations and engagements as well as changing character of politics within and beyond the continent that we can understand the new interest in constitutions and constitutionalism. Most African states are now beginning to appreciate the centrality of constitutions to the democratic process. In fact, countries like

Ethiopia, Eritrea, Uganda, Namibia, and South Africa have opted for variants of participatory constitution making as mechanisms for mobilizing the populace, resolving festering conflicts, and reforming the nature of governance.<sup>11</sup> They have also utilized constitution making as a weapon for reconstructing post-conflict relationships and building new institutions. Others like Ghana, Cote d'Ivoire, Mali, and Nigeria have used constitution making as a strategy for organizing a transition from military dictatorship to democratic rule. Yet, others like Zambia and Kenya have used constitution review processes to contain political opponents or civil society groups as part of a strategy to maintain the status quo. Laudable as these new developments are, they have unfortunately not been guided by any systematic articulation of mechanisms and principles.<sup>12</sup> As is now well known, the inability of nations to initiate a democratic, popular, and inclusive constitution making process has left deep gaps in the transition process and constrained the ability of the elite to govern. Nigeria is a good example of a nation where bad constitution making has become the one of the principal causes of state delegitimation, intra-and inter-elite conflicts, and deepening distrust between the state and its agents on the one hand and civil society on the other. In fact, the transition project has been mediated, even contained by the lack of a new approach to the issues of nationality, identity, citizenship, social justice, and popular participation in politics.

Most African leaders are now realizing that a truly popular constitution would serve the interest of those in power and establish a legitimate basis for governance. New democratic constitutions would for the first time bring contending, even warring communities and personalities together and precipitate a national collective discussion of vexing issues of ethnicity, revenue allocation, religion, rights, citizenship, and soon. As well, a people-driven constitution making approach would contribute significantly to the reduction of conflicts and pressures on the state, its institutions and custodians.<sup>13</sup> Aside from using the process to resolve burning national issues, a participatory approach is probably one of the best panaceas to instability, public cynicism, alienation from government, coups and counter-coups. When a people collectively compact a constitution, they can also be expected to defend it against political adventurers and other anti-democratic forces. It is equally the best way to cultivate a culture and tradition of reliance on dialogue and consensus rather than the resort to violence in the political process. While the old foxes of African politics have tried every trick to use constitution making to eliminate opponents, consolidate power, redirect opposition pressure away from the state, manipulate emerging voices and leaders, they have met with resistance from popular groups. The value of this approach is yet to be fully recognized and exploited in most of Africa. It is indeed refreshing to observe that Africans are no longer taking things for granted these days. They no longer trust the promises or words of the "big man." They want their rights constitutionalized and the rules of politics clearly defined. Constitutions have become "the soul" of African nations.

### **The National Question in Nigeria: Dismantling the Postcolonial State**

Africans are beginning to see constitution making as the most legitimate strategy for dismantling of the oppressive neocolonial state and restructuring it to reflect the needs of the majority. This explains the attraction that constitution making has for human rights activists, new political leaders, prodemocracy movements, women's and nationality groups. The problems of marginal or powerless communities arise from the unequal

access to the structures of power. A popular, open, and democratic constitution making approach would enable them articulate the issues that affect them and become part of a process of compacting a constitution that would accommodate such issues.<sup>14</sup> A constitution is no longer just a “power map” of society but also an instrument for addressing pressing social, cultural, and economic questions as well as “an embodiment of consensus around constitutionalism.”<sup>15</sup> The constitution is “an expression of the general will of a nation... a reflection of its history, fears, concerns, aspirations, vision, and indeed, the soul of that nation.”<sup>16</sup> Making a constitution is no longer the preserve of the power elite. Rather the “constitution is that single document under which diverse and even ideologically opposed groups unite and rally in defence of democracy.”<sup>17</sup>

Allow me to point out that the root of our problems lie in how the Nigerian state was constructed; the nature and character of its custodians; the politics and power balances that contribute to the articulation of public policy; and the general inability of the custodians of state power to develop a sense of nation and a national project. The Nigerian elite has become obsessed with the “power project” not for promoting growth and development but for inflicting pain and misery on the peoples of Nigeria. This project is also a diabolical strategy for subverting the goals of nationhood and recycling the inherited distortions and disarticulations of the Nigerian social formation. Let us briefly examine the character of the so-called power elite in Africa in order to throw light on why it has failed to construct a stable, hegemonic, democratic and sensitive state.

Its illegitimacy, compounded by its lack of hegemony is well articulated by Claude Ake thus:

The lack of autonomy of the African state and the style of politics that is associated with it produces governments that are lacking in legitimacy. Given the Hobbesian character of politics, only a limited range of social forces articulate as constitutive elements of the state, and the government which emerges from the political struggle is necessarily based on a very narrow range of interests. It becomes extremely difficult to endow the government with any veneer of legitimacy. The high incidence of political violence in the political struggle and the heavy reliance of the government on coercion reveal starkly the nature of the political system as a form of domination. This is underlined by the absence of even the liberal façade of democratic choice, the lack of institutionalization of accountability, the lack of any meaningful form of popular participation and of any prospects of changing the government by peaceful means. Without a veneer of legitimacy, the government is delinked from the society and alienated from it. This makes the mobilization of the society for development impossible.<sup>18</sup>

The post-colonial state, as we all know, is unsteady, uncertain, violent, aloof, inefficient, and reliant on manipulation and intimidation. In several regards, it simply continued the policies and programs of the colonial state. The construct of post-colonial politics was a clear recipe for disaster. The state, unable to emerge as a relatively autonomous force became the primary instrument of accumulation for the weak postcolonial elite. The struggle became how to penetrate the state and use it to support all sorts of dubious primordial claims. The resultant struggles contributed to the fragility and instability of the state and made it easy to find excuses for subverting the constitution directly and/or indirectly. Those who captured the state, its instruments of force and resources, simply personalized it, wiped out all features of sensitivity, and imaginary and real enemies were found and immediately eliminated or forced into exile. The state was hardly the sort of

force that was capable of opening up the political space, mobilizing the people, and building a true foundation for democratic politics and constitutional rule.<sup>19</sup> This undemocratic and non-hegemonic construct was to be appropriated and presided over by an equally unsteady, weak, fragmented, and largely unproductive elite. In this equation, democratic governance and constitutional rule were gradually faded out of the political landscape. The poor and weak in society, in particular social or ethnic minorities became the first victims of an irresponsible and desperate post-colonial state.

The dominant class at political independence was a pathetic parody of what a dominant *class* really is. This reality complicated the continent's chances of engaging the forces of neocolonialism and the contradictions of underdevelopment. Thus, right from the 1960s, the possibility of building new structures of accommodation, pluralism and good governance were mediated, even subverted by the *nature* of Africa's political elite. The new elite, including the nationalists, settled into an unequal, exploitative, and subservient relationship with foreign capital at the expense of the workers and peasants.<sup>20</sup> Aside from the fact that it was small in size, it was also a very pretentious, underdeveloped, dependent, corrupt, and highly fragmented class. It lacked confidence in itself. It was reliant on foreign tastes, markets, and its world-view was externally determined. It had only a tenuous relationship to *production* and its accumulative base depended on its lucrative but unproductive relationship with foreign capital. Its economic strategy was largely determined by its ability to divert public resources away from development and basic needs into private interests and foreign bank vaults. With its tenuous accumulative base, the African bourgeois class turned to the state as its instrument of accumulation. Thus, rather than building a productive base in industry and agriculture, the bourgeois class began to extend the powers of the state to build up its own capital base. This required the abridgement of popular rights, the diversion of public resources to serve private ends, the construction of extensive security networks, and increasing intolerance for the opposition. It also required the development of vicious strategies of primitive accumulation and political containment that saw the working classes and peasants as the main victims. With time, the media, students, trade unions, peasant associations, minorities, and professional groups became victims of the emergence of the "big man."

### **Tendencies in Contemporary Nigerian Politics**

The consequences of the contradictions of Nigeria's history and post-colonial politics have generated certain broad and specific tendencies that continue to shape the country's political economy. It is important to take a look at these tendencies because Nigerians are wont to forget or ignore them in the face of pressures from dictatorships and illiberal democratic arrangements. The military has been unable to engage, mediate, or contain these tendencies and contradiction largely due to its commandist structure and character. The contradictions arising from the tendencies have survived various forms of military arrangements since 1966. Civilian governments have hardly done better. Many, like the Obasanjo government behave like military juntas. Others simply were too steeped in disorganization and corruption, and too impatient with democracy that the contradictions of underdevelopment were simply multiplied. While post-colonial political alignments and realignments have been critical to the nature of Nigerian politics and society, the fundamental basis of the

society has not changed even if new issues, institutions, contradictions, and coalitions have been introduced and in some ways power relations have been marginally reconfigured.

The structure of the Nigerian federation reflects the vacillations between civilian and military dictatorships. Years of military rule have turned the weak federation inherited at political independence into a unitary system. Most of the current politicians, bureaucrats, and other political actors have become used, even addicted to the commandist and authoritarian ways of the military. This development has had far reaching implications for stability and democracy. Perceived or real inequities arising from a wobbled federal arrangement or non-arrangement for that matter, have congealed loyalties to alternative sites of power. The net result is the further erosion of an already tenuous legitimacy. Opportunistic military officers have frequently capitalized on this situation to grab power and initiate another gyration in the complex waters of Nigerian politics.

The deepening economic crisis has had very deep implications for politics, specially the building of democratic institutions. There is a tendency to ignore the economics of transition politics. In the Nigerian situation, deindustrialization, mass poverty, economic dislocation, environmental abuse, rising foreign debt and debt-servicing obligations, and the neglect of rural areas and producers continue to significantly affect the nature of Nigerian politics. The failed structural adjustment program and in particular, the unequal distribution of the pains and costs of adjustment have generated new political coalitions and interests that cannot be ignored in any serious discussion of the politics of the country. How can poor people tolerate the political shortcomings of the elites? How much participation can be expected from a poverty-stricken and alienated populace? Will the neo-colonial state have the resources to fully operationalize the requirements of a full democratic system? These issues have created a wide gulf between the leaders and the people thus making the cultivation of democratic values almost impossible.

The shifting or changing character of the Nigeria military is a central feature of contemporary Nigerian life. What to do with the military remains part of the critical political discourse in Nigeria. Yet, containing the military remains a very prominent political and vexing question. The proposals have been as diverse as there are interest groups: demobilization, re-education, constitutional control, reorganization, retraining, regionalized commands, total disbanding, and the democratization of recruitment into the military. Many of these prescriptions that are being insisted upon by some nationality groups and aggrieved communities are reflective of total dissatisfaction with the nature of the Nigerian federation, the character of leadership, and the injustices that pervade the country. Without doubt the Nigerian military has disgraced itself beyond redemption and aside from deliberately distorting national political structures, institutions, and relations within and between communities, it also remains a serious challenge to the survival of post-military democratic arrangements. In more recent times, the retired fraction of the military elite has begun to make a direct bid for power while retaining the capacity to significantly influence party formation, funding, selection of candidates, ministerial appointments and political alliances. The capacity to execute these critical political initiatives has been directly related to the extent of corruption perpetrated while in office. These have clear implications for the nature of power politics in Nigeria.



The threat of authoritarianism continues to stare Nigerians in the face. This is a tendency that has steadily built up since political independence but was given a specific form or character by the rapacious military juntas, especially the Badangida and Abacha juntas. The clear evidence is in the ease with which the late General Abacha almost succeeded in civilianizing himself and his brutal dictatorship. Though he died unsung and to the relief of several national and international constituencies, Abacha continues to enjoy the loyalty of elements across society that were part of his diabolical political agenda. Such a dictatorship would have made only superficial pretensions to democracy with the existence of five so-called political parties and a national assembly while continuing the suffocation of civil society. Nigerians would for a long time have problems with how to wear down the authoritarian values and attitudes bequeathed by the military. This would not be easy because many of those that have been elected as legislators and into executive positions had been ardent supporters of the past dictatorships. While the only hope for effectively addressing this problem lies in strengthening civil society, it will require a lot of understanding and concessions from the custodians of state power to get on this path. This is currently not on the political screen in Nigeria. If anything, authoritarian tendencies continue to shape the character of politics especially under Obasanjo's limited regard for the constitution and the illiberal dispositions of the political elite.

The management of primordial identities and politics remain critical to determining the context of Nigerian politics, indeed, the future of the Nigerian nation-state. This has developed over the years into one of the top five national contradictions that has led to the loss of thousands of lives and would continue until adequately addressed. There are several dimensions to this. Not only in terms of suspicions and contradictions between ethnic, religious, and regional interests but also within each primordial constituency. The tendency has been to focus so much on the contestations between the majority Igbo, Yoruba, and Hausa ethnic groups that the minorities have been more or less ignored. As well, within each of the majority groups are significant coalitions and divisions that mediate the ability of groups to act as absolute mobilizational weapons. In other words, while ethnicity and religion remain very critical issues in the formulation of political interests and postures, they are also being mediated by issues of class and the relative consciousness of the Nigerian people as they confront the challenges of survival. To be sure, the ethnic and minority issue is directly tied to the questions of political restructuring, refederalization, revenue allocation, and democratic consolidation. If the political elite remains insensitive to popular demands on these issues, ethnic postures would get consolidated and become ever more violent. Already, invented identities are complicating the ability of ethnic groups to articulate clear political agendas. This has led to an internalization of violence as sub-ethnic groups engage each other in a struggle for supremacy and identity, as well as spurious claims to territory. On the other hand, the unsteady state responds with more violence to this internalization thus further complicating opportunities for political negotiation.

Resource generation and distribution often called "revenue allocation" in Nigeria remains one of the most critical aspects of power politics in Nigeria that is hidden behind the veil of ethnic identity. In some way, this is related to the structure of Nigerian federalism and the dominant role of the center. It is also tied to the question of minority rights, center-periphery relations, and the traditional contestation for hegemony between the dominant groups. Of course, given the neglect of non-oil wealth, the focus today is on oil, which

generates well over half of national revenues and about 95 per cent of foreign exchange earnings. The Nigerian rentier state has not just become the source of accumulation but it has also become the focus of elite competition and thus a stabilizing force: no one wants to hurt or kill the golden goose that lays the eggs! But minorities, oil producing communities, oil producing states, and bourgeois elements from oil producing areas are not pleased at the deprivations their communities suffer and the perceived ways in which oil wealth is used to promote development in non-oil producing areas. Until demands for a just and equitable formula for revenue allocation is found, these increasingly restless communities would continue to challenge the legitimacy of the state and reject existing policies. If the central government does not want to grant the demands from the oil producing states and communities for the use of the derivation principle as the basis of revenue allocation, then it has to find an alternative formula that would satisfy the communities.

The character, organization, discipline, world-view and politics of the Nigerian political elite negates possibilities for democracy and federalism. Though it has always collaborated with military juntas, it has not fared well under the military. It has been abused, manipulated, intimidated, and rendered almost useless by a rather arrogant military structure. Though it is only just beginning to reorganize itself, it would continue to pay for its experience under the military in the next three to four decades. It does not help an elite to be perceived by the populace as corrupt, irresponsible, unprincipled, unreliable, and useless. As indicated earlier, the tenuous relation of the Nigerian elite to productive activities is directly responsible for its subservience to foreign capital and its reliance on the state for accumulation. Its fixation on primitive accumulation has prevented it from developing powerful constituencies, forging a vision for the country, and developing an ideological context for growth and development. This bourgeois class is highly factionalized and fractionalized and has been unable to significantly operate beyond the narrow confines of its ethnic and regional as well as ethnic enclaves. Unless this bourgeois class begins to seriously construct its politics across primordial lines, it would remain incapable of constructing the type of national constituencies needed to build a new politics for democracy and development. The elite has already begun to pay for its allegiance with the past dictators as civil society groups are steadily capitalizing on the newfound democratic environment to question the credentials and credibility of the political elite, in particular, those holding political and elective positions. Developments over Sharia law, contestations in the Niger Delta and Lagos, and permanent rumors of military coups are indicators of an unsteady and uncertain elite in charge of an unstable and non-hegemonic state. This is hardly a recipe for democracy or federalism because political uncertainty encourages absolutism and the privatization and concentration of power. The shallowness of its efforts at a national character and platform is evident in the ease with which such efforts dissolve into ethnic and other forms of engagement in the face of crisis.

A tendency that does not appear to have improved is the largely conservative political agenda and world-view of the Nigerian elite. Nigerian politicians do not discuss gender and the environment. Largely a reflection of their conservative and opportunistic disposition, gender and environmental issues are beginning to emerge as critical issues influencing constituency building and democratic politics. Without doubt, the emergence of several NGOs and the experiences of the minority communities especially the Ogonis and the Ijaws have contributed significantly to introducing the critical themes of

minorities, resource control, the environment, and gender into political discourses in Nigeria. Environmental questions are now directly tied to contradictions and conflicts over questions of revenue generation and allocation and refederalization. As well, the corrupt and insensitive political styles of the custodians of state power is beginning to galvanize women all over the country to develop clear political programs. If, in the context of current global debates, Nigerian politicians still fail to take these issues seriously, we can understand why they remain insensitive to the demands of non-bourgeois constituencies for a new democratic compact.

The rise of critical and militant opposition politics in Nigeria evaporated to a large extent with political independence. It was only resuscitated in a national sense following the 1993 annulment of the presidential election result won by Chief M.K.O. Abiola of the Social Democratic Party (SDP). Since then, the country has moved along very significantly on the political front. Yet, all has not been well in spite of the emergence of scores of civil liberties organizations, new leaders, and opposition movements on the political terrain. The opposition has been vulnerable to penetration, domestication, corruption, and incorporation by the state and its agents. Many opposition movements have been characterized in several ways by undemocratic conduct, ideological bankruptcy, marginalization of women, ethnic and regional chauvinism, opportunism, limited vision, weak political programs, and a failure to effectively network for effectiveness. Many are simply urban based, depend excessively on foreign sources of funding, do not strive to build new dialogues or cultivate new constituencies, and continue to have a very narrow definition of politics and power. How the opposition works out its own politics and interacts with civil society organizations will be critical to how Nigerian politics will be constructed and reproduced in the future. The withdrawal of the military from politics in May 1999 has now opened up new challenges and paths to engaging the state and its agents. The trend towards the clarification of objectives, identifying and training new leaders, building new networks, and working out more effective strategies to ensure maximum impact would continue to be critical to the depth and direction of democratic politics in Nigeria. This would equally determine, to some extent, how the military would react to the politics of power struggles in the future.

Finally, the tendencies that have prevented the strengthening of civil society, the construction of state hegemony, or the cultivation of democratic values have combined with other contradictions to reify power, prevent political engineering, and have led to authoritarian tendencies even under the so-called democratic regime of Olusegun Obasanjo. This is where we must locate the problems of political restructuring and the challenges of refederalization after decades of irresponsible and vicious military dictatorships.

## **Reifying Political Power and the Rise of Bigman Rule**

It is important to understand the root of our current predicament. While it is true that the Nigerian state is not constituted to build democracy, its custodians are much worse. It is the character and hollowness of the world-view of this elite that has precipitated Nigeria's contemporary predicament and the difficulty of refederalization. This is the more amazing given the obvious relevance of refederalization to the resolution *of*

deepening political crisis and violence in the country. One of the consequences of colonialism in developing societies is the legacy of the reification of power. Because the colonial state was absolutist in every sense, it combined the power of life and death and dispensed power without consultation or accountability. The colonial governor or district officer was the executive, judiciary, and legislature all rolled into one. The indigenous elites that had been structurally incorporated into the power and economic networks of colonialism following World War II were nurtured in the context of these undemocratic values. Indeed, many actively participated in the brutalization of their peoples and were rewarded with all sorts of decorations. Given the tenuous relation of the African elite to productive activities, political independence witnessed the capture of political power without economic power. Consequently, accumulation, survival, and domination could only be guaranteed through the unmediated control of state power. The new elite was thus forced to devise strategies of ideological containment, depoliticization, diversion, violence, and human rights abuses to ward off opposition. This situation in itself raised the premium on power to new and frightening proportions. To capture, control and effectively deploy political power therefore, villages were raided, taxes were imposed, communities were punished for not voting rightly, and suspects or enemies of the state were found in all nooks and corners of the society. The military formations were strengthened as private security outfits were set up and armed to the teeth. External scapegoats were found abroad and promptly blamed for the failures of misguided policies. In short, the postcolonial African elite squandered all opportunities to mobilize the people and deploy their unbounded energies to the task of decolonization, development, and democracy. It is no wonder that one after the other, the postcolonial regimes were sacked or consumed by the very contradictions they had created. The battle between factions and fractions of the power elite revolved around how to capture and monopolize the state at the expense of popular groups and other marginalized constituencies. The last concern for such beleaguered elite was sharing the power that they had managed to grab through all sorts of underhand and clearly extra-legal methods. Yet, the entire theory and practice of federalism, especially in plural societies, is anchored on power sharing.

What has become power sharing in the context of Nigerian federalism would normally be a good political agenda designed to open up opportunities to disadvantaged communities and give all nationality, religious, and cultural groups an almost equal opportunity to manage the affairs of the nation. But in the Nigerian context, we need to be very cautious if we are to understand the driving forces behind the strident calls for power sharing that has become a national obsession. The truth is that Nigerian politicians have been calling for new patterns of power sharing not because they are genuinely interested in gaining a share of power in the interest of their respective nationality, religious, or interest groups, but because they see such arrangements as an easy route to grab power and deploy it for private primitive accumulation.

There is no evidence of any correlation between the access that Nigerian elites have enjoyed under the guise of power sharing and an improvement in the conditions of living of the Nigerian people. It is actually possible to contend that the politics of power sharing has not in any way been of benefit to the generality of Nigerians. In fact, members of the political elite have grabbed power directly and though the working of various power sharing arrangements and have turned around to use that power to

dominate, abuse, marginalize, terrorize, exploit and intimidate non-bourgeois communities and constituencies. The criminal looting of public funds, the mismanagement of the public services, the gross inefficiency of the bureaucracy, and the absence of basic facilities needed to make life comfortable for the majority are indicators of the failure of the Nigerian elite and its use of political power. Nigerians, in spite of the production and exportation of oil and the collection of well over \$250 billion since 1958 from oil sales, have grown poorer and poorer. As a federal state, power-sharing arrangements have revolved around the following: a). Rotation of party/political positions among geo-ethnic zones; b). Federal character arrangements in political appointments guaranteed in the constitution; and c). Zoning arrangements designed by political parties to ensure the distribution of party/political positions;

However, in spite of all the arguments, quarrels, and conflicts over power sharing since 1960, the results have failed to reassure minorities and marginalized communities just as it has failed woefully in generating a sense of inclusion, patriotism, or belief in the national project. It has not bridged the distrust between Christians and Muslims; between north and south or east and west; between oil producing and non-oil producing communities; between the military and civilians; or between the state and civil society. As well, it has not resolved the perpetual distrust and conflicts between majority and minority ethnic groups in the country. With the pathological fixation of the Nigerian elite on power grabbing by any means to facilitate private accumulation, it is in no position to address these contradictions. Power sharing requires some degree of discipline and an ability to rely less on the direct deployment of state control in the interest of private accumulation. Power sharing requires that the political elite respect the rules of political competition and learn to accept defeat. Rather, the Nigerian elite does not accept defeat. The state is seen as a private domain. Those that control power make no distinction between their personal bank accounts and the public purse. As well, the power elite does not believe in the give-and-take that informs and strengthens democratic politics. Many have been known to fund military coups against legitimately elected governments. The irrationality of the Nigerian power elite, often rationalized in the name of speaking for or representing particular ethnic and regional or religious communities, has worked directly to encourage the excessive concentration of power at the center and the near total erosion of federalism. As indicated earlier, military rule, in which the elite robustly participated at all levels, did not help the situation. Now that the military has temporarily disengaged from formal politics, its proteges appear incapable of carrying out the necessary political restructuring needed to support the consolidation of democracy. Why has this been the case in Nigeria?

Among other explanations, the answer can be found in the premium placed on power in the postcolonial era. The state has become the quickest instrument of capital accumulation. The challenge is to penetrate it by any means necessary and preside over its resources. The reality is that the resources are not generated from tax collection by the so-called federal government. Rather, especially since the end of the civil war in 1970, the resources have come from the production and exportation of oil found mostly in the new ravaged Niger Delta. Since the elite is rabidly corrupt and largely unproductive, it required undemocratic mechanisms to control the communities so that it could cheat them out of its resources. This is exactly what is behind the numerous dubious and diabolical revenue sharing arrangements, the undemocratic power arrangements, and the robust

alliance between the military and the Nigerian power elite. For those that have come to locate their visibility, accumulation, opportunities, and power at the center and the ability of that center to control oil resources, the devolution of power or refederalization is hardly on the political agenda. As is the case with Olusegun Obasanjo since May 1999, it is easier to harass the governors, threaten martial law or state of emergency, issue shoot-on-sight orders to the police, set up commissions that are designed to keep the status quo, and refuse to open up the constitution review process to the people of Nigeria.

As was to be expected, the combination of the contradictions above have generated more agitations and conflicts for and over power sharing as restless minority communities, especially in the Middle Belt and Niger Delta continued to make strident demands for the right to be involved in decision making and in the governance of the country.

### **Militarization and Defederalization**

*It will not be wrong to conclude that the military has practically ruined the political future of Nigeria. Of course, it is still possible to correct the terrible legacies of military brutality, mismanagement, corruption, and negative politicking. With the first intervention in politics in 1966, the military not only set the basis for eroding all structures and features of federalism but also began to build new authoritarian structures and attitudes derived from its grossly undemocratic, intolerant, and commandist nature and structure. Though the military once again retired to the barracks in May 1999, today, Nigeria is certainly less united and peaceful. Yet, if the military created several states and local governments, introduced a new anthem and pledge, created a new capital, constructed some highways (without feeder roads), and created more multimillionaires, it failed woefully to reassure minorities and other disadvantaged communities that there was a future for them in the Federal Republic of Nigeria. More Nigerians have been killed in peacetime under the military than ever. Religious, ethnic, and class-based riots have become part of everyday life only because the military was insensitive to the demands of nationality groups. More often than not, it treated such demands as irritants and relied on repression, co-optation, violence, and temporary measures to deal with agitations for increased minority participation in power structures and the return to true federalism.*

By “defederalization” we refer to the process of making unitary what was once federal. In other words, defederalization is a deliberate process of eroding or dismantling a federal system and replacing it with a unitary arrangement. The military not only concentrated power in itself and the center, but also ensured that the states were reduced to mere administrative units taking orders from the center. The excessive centralization of power, resources, and opportunities also encouraged the rise of authoritarianism and other forms of despotic rule, and the negation of democratic values. As well, the personalization of power and politics under the military was made possible by the centralization of power and resources at the center. Hence, under the Generals Babangida and Abacha juntas for example, Nigeria was perceived or discussed in terms of their personal whims and caprices. Relying on violence and intimidation, the military arrangement introduced all sorts of undemocratic values, reified existing contradictions, generated new conflicts, and negated the fledgling democratic platforms that were emerging in the first republic. The reliance on decrees that oust the jurisdiction of the

law courts and by disrespecting existing social and cultural institutions, the Nigerian military destroyed possibilities for inter-ethnic harmony; nation-building opportunities, and platforms of pluralism and tolerance within and between nationality groups. It was not unusual, especially under the Abacha junta that the top ten senior positions in the country were all occupied by persons from the same ethnic and/or religious group. As Pini Jason has aptly noted, the Abacha junta

...in a space of five years removed every remaining semblance of Federalism from the governance of the nation. Being no respecter of any rules, he reduced the affairs of the state to a conspiracy, an affair between himself and few trusted locals. If you were not from Kano or of Kanuri or Lebanese extraction, you didn't qualify for any worthy post. Those who were allowed at the outer peripheries of power were either those who did him favours or those who did his dirty jobs. In such a situation, it was very easy not to see the problems of Nigeria beyond the needs of Abacha and his acolytes and courtiers.<sup>21</sup>

Furthermore, according to Jason, the military, in total disregard for the principles of federalism and as evidence of insensitivity to the need for equal representation in the country's power structures, went all out to concentrate power in the hands of a particular ethnic group. The situation under the Abacha junta serves as a typical example:

Let's take a typical situation for example. Were Abacha to desire an advice on the legal situation of Chief Abiola's pending case in the Supreme Court, he would have had in attendance, his Special Adviser on Legal matters Professor Anwalu Yadudu, Attorney-General, Alhaji Abdulahi Ibrahim, the Chief Justice, Muhammed Uwais, National Security Adviser, Alhaji Ismaila Gwarzo, his Chief Security Officer, Major Hamza el-Mustapha, the Director-General of Military Intelligence, Brigadier Sabo Mohammed and perhaps, the Secretary to the Federal Government, Alhaji Gidado Idris... But tell me, where can you locate anything "federal" in this assemblage? If you say that this group, most probably conducting their strategy meeting in vernacular, would not be tempted to see the matter as an us versus them, you are probably lying. If it concerned labour unions, you would add the Minister of Labour, Alhaji Ahmed Gasua and you would end up with the same unfederal assembly! If he summoned the Inspector-General of Police, the Deputy IG, AIGs and Commissioners of Police, you would still have the same sectional assembly and sectional solutions to a federal problem. There is nothing equally federal in a situation where people from one section of the country are solely in control of all the border posts of the immigration, and

almost all the area administrators of the customs. That simply amounts to deliberately holding the rest under siege.<sup>22</sup>

The situation described above, reflecting a situation of near absolute defederalization, is not imaginary. All protests against this “unfederal” development were met with unmediated repression. This tactic drove opposition elements abroad or forced them to generate more militant and political programs for engaging the neocolonial state. The fact that the non-hegemonic military-dominated state was incapable of instituting a truly inclusive and democratic system has become rather obvious to minorities in the country. This realization is what has increased the militant agitations for autonomy and local control over local resources. The national gyrations of state creation led to the emergence of states that were not viable and only ended up in strengthening the central government on which they were all totally dependent for revenues. In any case, each new state generated its own minority question and thus compounded the sites of contradictions and conflicts all over the country. To the extent that the control of power was still coterminous with accumulation and the definition of self-worth, those that dominated the state continued to monopolize it at the expense of power sharing options.

Under the military, Nigeria became a federal state in name only. All power came from Lagos or later, Abuja. All opportunities came from Abuja. All major contracts came from Abuja or from the offices of the representatives of the Commander-in-Chief in the various states. All Decrees came from Abuja and yet, the “lord” in Abuja was not elected by any one and was not accountable to anyone. The almighty federal government paid the salaries of primary school teachers in the states. It constructed and repaired roads in the states and supplied drugs to state owned hospitals. In the days of General Abacha, a super federal government agency, the Petroleum Trust Fund (PTF) was even established to perform the task of several federal and state ministries. Those that were shut out of power had no choice than to either toe the established line or exist on the fringes of power. Central planning became the ideological basis for growth and accumulation though it was hardly accompanied by any clear-cut ideological frameworks for combating dependence, underdevelopment, and instability. The so-called mixed economy became an excuse for using public funds to subsidize the confused accumulative strategies of an equally confused political elite. The state was turned into the accumulative machine of the bourgeois class. As they looted the state, largely aware that they could not be probed under a junta that was accountable to no one, they tightened their control over the state, its institutions and resources and did everything possible to keep others out. This generated deeper contradictions not only within and between nationality groups, but more specifically between elites that felt shut out of power and those that dominated power. This was also acted out within the military as coups and counter-coups became avenues for expressing the misguided ambitions of some military officers as well as a strategy for contesting the power space. The Majors Saliba Mukoro and Gideon Orka coup of April 1990 that was ostensibly executed on behalf of the Christians and southern states of the country was a typical example of this trend.

The advent of military rule, therefore, represented a major assault on Nigerian federalism. In fact, federalism was summarily abolished as powers hitherto guaranteed to



the regions were abolished or gradually taken over by the federal government. The very first misguided assault on Nigerian federalism by the military, in a direct sense, was when General Aguyi Ironsi promulgated Decrees No. 33 and 34 of May 24, 1966 abolishing federalism and replacing it with a unitary form of government. Thus “National Government” was to replace “Federal Government” in this new political adventure of trying to force unity on Nigerians without the adequate political arrangements even as Ironsi was seen as favoring the Ibo ethnic group in his appointments and policies. Of course, this only gave further impetus to the contradictions that eventually culminated in a civil war that led to the death of millions of Nigerians. Given that the constitution had been suspended, regional parliaments abolished as were political parties, all powers were now concentrated in the so-called “supreme headquarters” in the person of the “Commander-in-Chief “ and head of the Supreme Military Council (SMC). Regional police forces were abolished, the military commands were centralized, education became a federal affair, and all-important appointments at the state levels by state military governors reflected a set pattern of politics dictated by the military head of state.

Finally, on the military, it has completely destroyed the fabric of Nigerian federalism thus making it an almost insurmountable challenge for post-military democratic governments to reclaim lost ground. This is so because in the last three decades and more, most of the civilian elements that now occupy the seat of power in the new Obasanjo dispensation were virtually made by and under the military. The world-view and attitudes that they carry, more frequently than not, reflect the culture of military authoritarianism. To be sure, part of the explanation can be found in the historical origins of the Nigerian military: a force created by the undemocratic colonial state to visit violence on the peoples of Nigeria. On seizing power it saw the Nigerian social formation as a huge barrack under the command of the Commander-in-Chief with “obey before complain” as its philosophy of governance, and thus incapable of grappling with Nigeria’s robust and vibrant, even quarrelsome civil society. Believing in legitimation (or compliance) by repression, the commandist, repressive, insensitive, and undemocratic character of Nigeria’s military juntas have precipitated an almost firm condition where power is dominated directly by the military retired and/or active, or by surrogates of the military.

### **Constitutions without Constitutionalism: Recompacting the Political Space.**

Nigeria has never has a truly democratic constitution. To be sure, the country has had *legal* constitutions, but they have hardly been *legitimate*. The country has never adopted a participatory or process-led approach involving the various nationality groups and the various communities, constituencies and interests that make up the country in compacting its constitutions. It has consistently been elite-driven with the state playing a critical role in determining the content of the final document. It is no wonder that the constitutions have hardly served as coherent compacts for determining the relationship between the ruled and the rulers and none has been able to ensure the rule of law and popular participation much less transparency, accountability, and social justice. Nigerian constitutions have been opportunistic documents designed to perpetrate what could be regarded as a political fraud on the nationalities of Nigeria in particular minority groups

and non-bourgeois constituencies. Finally, Nigerian constitutions have never been instruments for ensuring the survival of the democratic project neither have they prevented nor discouraged the subversion of the democratic enterprise by the military. More so, the constitutions have not empowered the Nigerian people to have access to the structures of power or to the constitution so they can claim ownership of the document and deploy such ownership in the defense of their individual and collective rights.

As indicated above, military rule destroyed the basis of Nigerian federalism. The concentration of power in the federal government and the commandist nature of military rule turned Nigeria into a pseudo-federal state. This has turned out to be the basis of agitations for autonomy and political restructuring demanded by the various minority groups, opposition and human rights movements, and ethno-cultural organizations.<sup>23</sup> The 1999 constitution hardly demonstrates any sensitivity to these issues. It hardly pays attention to questions of autonomy or reorganization of political power and though it pays so much attention to power and the definition of power, it is still lopsided in favor of the center. The states of the federation do not have control over their own resources. This is still the exclusive preserve of the federal government that has guaranteed only 13% of generated revenues to the states where the resources are generated (see below). This is no different from the situation under the military where the federal government illegally appropriated the resources of units of the federation and doled out meager portions to them under dubious fiscal arrangements.<sup>24</sup> The debate in the oil-bearing and producing communities of Nigeria has long gone beyond percentages to one of *control*. The 1999 constitution could not have been more unrealistic and out of touch.

Under the 1999 constitution, the states cannot set up their own police forces. The State Police Force (SPF) is only a branch of the federal police force under a federally appointed inspector general of police. Section 214 (1) is clear on the fact that “There shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.” According to Section 214 (c), it is the National Assembly that is empowered to “make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation...” And the Commissioner of police for each state “shall be appointed by the Police Service Commission.” Even more ridiculous in a federal system, is that in the event of a need to maintain or secure public safety and public order within the state, a governor may direct the commissioner of police to take necessary action. However, according to section 215 (4), “before carrying out any such directions...the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his direction.” After Nigeria’s experience in the first republic, and given the bitter partisan quarrels that accompanied the 1998-99 elections, the federal government can hardly be regarded as not being partisan much less interested in objectively responding to crises in states if such crises might weaken the opposing parties. The federal ministry of education does not just play a supervisory role; it also dictates policy to the state departments of education.<sup>25</sup> In fact, one of the first acts of General Obasanjo as the democratic president of Nigeria was to pay the salaries of striking teachers in the states. As it turned out, General Obasanjo had illegally appropriated monies belonging to the state governments to perform this magnanimous act for which he took a lot of credit!

Citizens in a state cannot form political parties that are registered in the state and interested in canvassing for support and contesting for office only in the state. In fact, all parties are to comply with federally dictated requirements and are to be registered with the federal government's Independent National Electoral Commission (INEC). This goes directly against the autonomy of the nationalities of the federating units and erodes the ability of states to organize their political interests and processes independently. In fact, the entire idea of parties being registered by the federal government means that the same federal government could deny registration on the grounds that *its* requirements have not been met. Given the experiences of the past, what the 1999 constitution has done is to restrict the formation and operation of political parties to the wealthy. It is only this wealthy class that can afford the cost of such an exercise. It also hardly recognizes the fact that not all parties in the world are necessarily set up to win national elections. This would continue to anger the minorities, the opposition groups, and locally based politicians. As Balarabe Musa has already argued, "...the idea of party registration is undemocratic. For instance, during the last election, we saw a situation whereby only people who had money and who could afford to buy votes, were able to contest and win elections."<sup>26</sup> In other words, the cumbersome, expensive, and intrusive federal government requirements for party formation and registration is a direct way of encouraging corruption, elite-dominated politics, and the continuing marginalization of persons without connections with the wealthy in the political process. The 1999 constitution negates a cardinal pillar of federalism by denying Nigerians the right to form political parties at any level they wish and by doing so, it subverts creativity at the local level by forcing it into the complex, corrupt and often compromised vortex of national politics.

Because the state wishes to continue the concentration of power at the center, it has avoided a direct engagement of the nationality issue. Thus it tries to forge a non-existent sense of nationhood by forcing political parties to adopt superficial national symbols in their logos, names, and presence in geographical spaces. The reality is that these can (and have) been done without a true commitment to unity and the integration of political interests and objectives. Most political parties that have described themselves as "national" in Nigeria's history have been dominated by power elites from the North, East or West. Denying the nationality question is tantamount to postponing the evil day for Nigeria because the degree of political alienation in the country that gave rise to ethnic and regionalist groups like *Afenifere* and Oodua Peoples Congress (OPC), Ijaw Peoples Union, *Ahaeze*, Middle Belt Forum, Midwest Initiative, Eastern Mandate Union (EMU), Northern Peoples' Forum, and so on, cannot be wished away through superficial institution building. Rather, Sections 221-229 stipulate regulations that are federally determined and controlled. In fact, according to Section 223 (b), "the members of the executive committee or other governing body of the political party must reflect the federal character." Section 222 (f) requires political parties to have their headquarters in the Federal Capital Territory, Abuja. This is a clear negation of the rights of nationalities to form their own parties, restrict their activities to their states or local governments, and dedicate themselves to the improvement of their particular communities. In fact, the federal stipulation means that only those that can afford the high cost of party formation at the national level can pursue such an agenda.

In a country with well over 250 distinct ethnic groups with a plethora of distinct languages, the 1999 constitution declares in Section 55 that the language of the national assembly shall be English, Igbo, Hausa, and Yoruba. This ridiculous and provocative prescription is evidence of the arrogance of power that informs the politics of the custodians of state power in Nigeria: the majority ethnic groups and retired/active military interests. In their arrogance, they completely ignored the growing militancy, awareness, organization, and demands of the other nationality groups in the country. Thus, rather than accord all languages equality before isolating those to be used in the National Assembly, the constitution and its civilian and military framers simply ignored non-majority spoken languages in Nigeria. This attitude reflects the power configuration of the country and exhibits the direct implication for resource control and redistributive politics.

The 1999 constitution retained the vexing issue of the Land Use Act in Section 315 (d). This Act, passed in 1978 as the Land Use Decree under the previous General Obasanjo regime, has angered minority communities, those that feel marginalized from the center of power, and the entire groups and communities in the Niger Delta. It was the greed to control the oil wealth of the Niger Delta by an unsteady state and an unproductive elite that led to the promulgation of the Land Use Decree. The decree allowed top military officers, transnational corporations and members of the ruling class to grab large parcels of land at minimal cost in the name of farming. In fact, following the election of General Obasanjo in 1999, the leading groups in the Niger Delta, including the Ijaw Youth Council, The Chicoco Movement, and the Movement for the Survival of Ogoni People (MOSOP) met and announced their rejection of his election as president because he was singularly responsible for promulgating the decree that took away their land and vested all oil wealth in the federal government from which they are marginalized. When President Obasanjo visited the Niger Delta in June 1999 to meet the warring factions, Ijaw activists told him to his face that they still rejected the Land Use Act and the constitution into which it has now been incorporated as it represented a grave injustice and a negation of true federalism.

The various Niger Delta communities and groups have clearly articulated their position, demands, and perspectives on the national question in various documents including the *Ogoni Bill of Rights*, the *Kaiama Declaration*, the *Ogbia Declaration*, and the *Ikwerre Rescue Charter*. The positions in these declarations have been endorsed by other democratic groups such as Solidarity Movement of the Southern Minorities of Nigeria, National Conscience Party, Oodua Peoples Congress, Movement for the Survival of Easterners and Niger Deltans, Eastern Nigeria/Delta Unity Association, Women of Nigeria International, and Igbo National Movement to mention a few. The 1999 constitution not only ignores these documents and demands but actually goes as far as declaring that the provision on the land use act (and those on the National Youth Service Corps (NYSC), the public complaints commission, and the national securities agencies) “shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this Constitution.” The Land Use Act has been included in the Exclusive Legislative List and would continue to “have effect as Federal Enactment (...)...” This is not only insensitive to the demands of the various groups that have demanded increased control over their

lands and other resources, but a clear demonstration of continuing federal domination of the states as had been the case under military regimes. Without doubt, this would continue to generate pressures, contradictions, and conflicts as alienated groups have made it clear that the repeal of the land use act remains one of their primary objectives.

The 1999 constitution of the Federal Republic of Nigeria is anything but federal.<sup>27</sup> One could make the argument that in spite of existing political structures at local, state, and federal levels, the constitution assumes that the military was still in power! It simply consolidates existing relations of power in favor of the central government. Section 4, Second Schedule outlines a very long list of Legislative powers. The “Exclusive Legislative List” is a long shopping list that includes everything with no attempt to bring in the states, much less the local governments. Part II of the Schedule contains the “Concurrent Legislative List” where both the Federal and the State governments have powers to make laws. Even here, the central government has the final say on all issues as the National Assembly is declared as the superior power whose laws shall prevail in the case of conflicts. The Third Schedule lists “Federal Executive Bodies” such as the Code of Conduct Bureau, Council of State, Federal Character Commission, Federal Civil Service Commission, Federal Judicial Service Commission, Independent National Electoral Commission, National Defence Council, National Economic Council, National Judicial Council, National Population Commission, National Security Council, Nigeria Police Council, Police Service Commission, Revenue Mobilisation Allocation and Fiscal Commission. These are simply national or federal commissions designed to facilitate federal regulation and control of the states up to the minutest details. In this context, it has hardly altered existing relations that had reduced the states to mere appendages of the federal government under the various military juntas. Interestingly, Part II of the Third Schedule lists only four “States’ Executive Bodies”- the State Civil Service Commission, State Independent Electoral Commission, and the State Judicial Service Commission. The national equivalents, save for the civil service commission, continue to have significant influence in the performance of duties within the states. Thus, in terms of addressing the demands of prodemocracy groups, human rights organizations, minority communities, the various ethnic associations, women’s movements, the Niger Delta communities, and the widespread calls for political restructuring to return the country to true federalism with regional control over local resources, politics, and economic activities, the 1999 constitution has completely failed to address these issues. It is strong and long on power, but very weak and short on strengthening civil society, and serving as the basis for mobilizing Nigerians for the construction of a tolerant, inclusive, and democratic project in the next millennium. The constitution does not pretend to be the basis for operating a federal system of government.

To drive home its insensitivity to nationality agitations in the country, the constitution has provided very stringent and clearly unattainable conditions for amendments, state and local government creation, and boundary adjustments. What it wants to do is preserve the current structures that favor the majority nationality groups and silence the yearnings of the minorities. This also translates directly to majority control over national resources within the excessively centralized power structures. For instance, to create a new state, Section 8(1) of Chapter 1 provides that an Act of the National Assembly shall be passed only if a request is supported by at least two-thirds majority of members representing the area demanding the new state in the Senate and House of

Representatives, the house of assembly in the state concerned, local government councils in the area concerned, a referendum approved by at least two-thirds majority of the people in the area where the demand originated, the result of the referendum is approved by simple majority of all states of the federation through a simply majority of members of the houses of assembly, and finally the referendum result is approved by a resolution passed by two-thirds majority of members of each house of the national assembly. Aside from the scary financial implications involved in this circuitous process, the framers of the 1999 constitution knew very well that intra-party conflicts and competition, personality clashes, ethnic and religious as well as regional suspicions would make this process useless to the task of state creation. Clearly, the requirements already work in favor of the majority groups that already dominate or control power and resources in the current structures that the framers of the constitution appear determined to preserve.

### **Engaging the Ethnic Challenge: The Example of Ethiopia**

Many have criticized the Ethiopian constitution of 1994 for reifying ethnicity and for setting out provisions that would encourage secession and political breakdown. Others see the bold and unprecedented provisions as a surrender to ethnic entrepreneurs and warlords. I differ from this line of thinking. While ethnic federalism might not be the best option for Nigeria, we must not shy away from ethnic politics. There is absolutely nothing wrong with it. The contemporary return to ethnicity is a measure of the extent to which the state has failed and become irrelevant to the survival of the people. Unlike the state, the ethnic group provides more security and social services to the ordinary person. Consequently, it is steadily replacing the state as a source of hope, protection, basic needs, and personal security. This is why organizations like the Odua Peoples Congress (OPC) have great relevance. Of course, it could be abused. But there are ways of building ethnic identity and commitments into a national agenda. It would be foolhardy to ignore or fight it especially where the alternative provided by the state is suspect.

The Ethiopian constitution of 1994 directly addresses issues of language, nationality, sovereignty of the people, supremacy of the constitution, human and democratic rights up front. A country like Nigeria might actually draw some lessons from Ethiopia. It is clearly a constitution that has drawn very painful lessons from the past. Rather than pretend that ethnic consciousness and identity are superficial and try to homogenize the diverse peoples of Ethiopia, the constitution declares that "All Ethiopian languages shall enjoy equal state recognition," though "Amharic shall be the working language of the Federal Government." It however allows "Members of the Federation" to "by law determine their respective working languages." In Article 8, the constitution vests "All sovereign power" in "the Nations, Nationalities and Peoples of Ethiopia;" declares the constitution as "an expression of their sovereignty" and that "Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation." In some way, this means that a military government is clearly illegal even if this was not expressly stated as in the cases of Ghana and Uganda. The Constitution declares in Article 9 that it is the "supreme law of the land" and any other law shall be of no effect and that "It is prohibited to assume state powers in any manner other than provided under the constitution." This is obviously directed at those military interests that might have ideas about overthrowing the

government. The constitution makes provisions for no state religion and there is an elaborate coverage of fundamental rights and freedoms. In Article 28 it gives voice to international treaties on crimes against humanity ratified by Ethiopia and declares that such crimes "shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ." Article 33c guarantees Ethiopian nationality to those who already have them as "No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will." The rights of women are directly addressed in Article 35 including "equal rights with men," and declares that "The dominant legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions."

Finally, the 1994 Ethiopian constitution, unlike most constitutions in Africa directly engages the nationality question in Article 39. It declares that "Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession;" "Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to preserve its history;" "Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and federal governments." Specifically on the right to secession, according to the constitution, this comes into effect "when a demand for secession has been approved by two-thirds majority of the members of the legislative council of the Nation, Nationality or people concerned;" "When the Federal Government has organized a referendum which "must take place within three years from the time it received the concerned council's decision for secession;" "When the demand for secession is supported by a majority vote in the referendum;" "When the Federal Government will have transferred its powers to the Council of the Nation, Nationality and People who has voted to secede;" and "When the division of assets is effected in a manner prescribed by law."

When this Constitution was adopted it was anticipated that Ethiopia would fall to pieces in months. Yet, what this provision has done is to take the rights or struggle for self-determination out of the battlefields, the jungles and terrorist enclaves into the political process through a collective determination of the steps and processes needed for self-determination. In a country where states are "delineated on the basis of the settlement patterns, language, identity and consent of the people concerned" as in Article 46 and where Article 47 further states clearly that "Nations, Nationalities and Peoples within the states enumerated in sub-article 1 (of Article 47) have the right to establish, at any time, their own states" it would seem that by making the process open, democratic, possible, and within reach, it has to a very large extent contained the cries and calls for self-determination.

Ethiopia has had a history of coups and counter coups in the past. The new constitution in several articles attempts to address this issue. In Article 87, it states clearly that the "composition of the national armed forces shall reflect the equitable representation of the Nations, Nationalities and Peoples of Ethiopia:" that the "minister of Defense shall be a civilian," and that the armed forces shall defend the sovereignty of the country and carry out assignments in accordance with the constitution. In fact, the constitution states categorically in Article 87 (4) that "The armed forces shall at all times obey and respect the constitution." While these might not stop coups, they initiate a steady process of subjugating the military to civil order. Democratic governments in Africa tend to concede the democratic platform to the military by appointing active or retired military officers to head the defense ministry. Of course, it is clear that Ethiopia has used its constitution making experience to respond to the perpetual crisis of ethnicity and has drawn lessons from the costly war that culminated in Eritrea's independence. I cannot think of a better and more effective way to openly acknowledge and protect the rights of minorities and nationalities in the contemporary world. Making a constitution is only the beginning of the struggle. Using it as the basis of governance and justice is the real measure of progress.

## **Conclusion**



<sup>1</sup> For a discussion of illiberal democracy see Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* Vol. 76, (6) (November-December 1997), pp. 22-43 and Hussin Mutalib, "Illiberal Democracy and the future of Opposition in Singapore," *Third World Quarterly* Vol. 21, (2) (2000), pp. 313-342.

<sup>2</sup> Claude Ake, *The Feasibility of Democracy in Africa* (Dakar: CODESRIA, 2000), p.28.

<sup>3</sup> See the essays in Daniel Bach (ed.), *Reginalisation, Integration and Disintegration in Africa* (Oxford: James Currey, 1999) and Julius O. Ihonvbere, "Africa in the Twenty-First Century: The Challenges and Opportunities," in John Mbaku (ed.), *Preparing Africa for the Twenty-First Century: Strategies for Peaceful Coexistence and Sustainable Development* (Aldershot: Ashgate, 1999).

<sup>4</sup> See Julius O. Ihonvbere, "Political Conditionality and Prospects for Recovery in Sub-Saharan Africa," *International Third World Studies Journal and Review* Vol. 3 (1-2), (1991), pp. 17-26.

<sup>5</sup> For a detailed discussion see Julius O. Ihonvbere, "Where is the Third Wave? A Critical Evaluation of Africa's Non-Transition to Democracy," *Africa Today* Vol. 43, (4) (October-December 1996); John M. Mbaku and Julius O. Ihonvbere (eds.), *Multiparty Democracy and Political Change: Constraints to Democratization in Africa* (Aldershot, UK: Ashgate, 1998); and Jean-Germain Gros (ed.), *Democratization in Late Twentieth-Century Africa: Coping with Uncertainty* (Westport, CT: Greenwood Press, 1998).

<sup>6</sup> See Marina Ottaway, *Africa's New Leaders: Democracy or State Reconstruction?* (Washington, DC: Carnegie Endowment for International Peace, 1999) and Michael Bratton and Nicholas van de Walle, *Democratic Experiments in Africa* (Cambridge: Cambridge University Press, 1997).

<sup>7</sup> See Julius O. Ihonvbere, *The Military, Civil Society and Democratization in Nigeria* (Forthcoming Aldershot: Ashgate Publishing, 2000).

<sup>8</sup> See "A Wind of Change," *West Africa* (27<sup>th</sup> March-2<sup>nd</sup> April 2000) and "Triumph for Democracy," *ibid*.

<sup>9</sup> See Adebayo Olukoshi (ed.), *The Politics of Opposition in Contemporary Africa* (Uppsala: Nordiska Afrikainstitutet, 1998).

<sup>10</sup> See Human Rights Watch, *Hostile to Democracy: The Movement System and Political Repression in Uganda* (New York: Human Rights Watch, 1999) for a very critical review of Yoweri Museveni's government. Uganda's 1995 Constitution has a provision for a referendum scheduled for mid-2000 on the continuation of the no-party or so-called "movement system" or to resort to a multiparty system. In the meantime, the National Resistance Movement continues to operate like a political party. This gives it a clear advantage over other parties that though not banned are not allowed to operate openly.

<sup>11</sup> See Owen Sichone (ed.), *The State and Constitutionalism in Southern Africa* (Harare: SAPS Books, 1998).

<sup>12</sup> The New Delhi-based Commonwealth Human Rights Initiative (CHRI) has been in the forefront of efforts to articulate such principles. See CHRI, "Consultation on Participatory Constitution Making- Recommendations to CHOGM" Holiday Inn Burgerspark, Pretoria, 16-17 August 1999; and Promoting a Culture of Constitutionalism and Democracy in Commonwealth Africa- Recommendations to Commonwealth Heads of Government (New Delhi: CHRI, 1999).

<sup>13</sup> This approach is variously referred to as "bottom-up", "people-driven", "process-led", or "participatory"

<sup>14</sup> See H. W. O. Okoth-Ogendo, "Constitutions without Constitutionalism: Reflections on an African Political Paradox," in Douglas Greenberg, Stanley N. Katz, Melanie Beth Oliviero, and Steven C. Wheatley (eds.), *Constitutionalism and Democracy-Transitions in the Contemporary World* (New York: Oxford University Press, 1993).

<sup>15</sup> Issa Shivji, "Problems of Constitution-Making as Consensus-Building: The Tanzanian Experience," in Owen Sichone (ed.), *The State and Constitutionalism in Southern Africa*, op. cit., p. 24.

<sup>16</sup> CHRI, *Promoting a Culture of Constitutionalism in Commonwealth Africa: Recommendations to Commonwealth Heads of Government*, (Delhi: CHRI, 1999), p. 7.

<sup>17</sup> *Ibid*.

<sup>18</sup> Claude Ake, "The Present Crisis in Africa: Economic Crisis or a Crisis of the State?" in Julius O. Ihonvbere (ed.), *The Political Economy of Crisis and Underdevelopment in Africa: Selected Works of Claude Ake* (Lagos: JAD Publishers, 1989), p. 46.

<sup>19</sup> See the works of Claude Ake, Walter Rodney, Dan Nabudere, Aguibou Yansane, Frantz Fanon, Aime Cesaire, Albert Memi, and Mahmood Mamdani.

<sup>20</sup> See Julius O. Ihonvbere, "Pan-Africanism: Agenda for African Unity in the 1990s?" in George Agbango (ed.), *Issues and Trends in Contemporary African Politics: Stability, Development, and Democratization* (New York: Peter Lang, 1997), pp. 337-359.

<sup>21</sup> Pini Jason, "Federalising Nigerian Government," *Vanguard* (Lagos) (31 July, 1998).

<sup>22</sup> *Ibid*.

<sup>23</sup> For a representative discussion see Femi Fani-Kayode, "Towards True Federalism," *The Guardian on Sunday* (Lagos) (July 26, 1998); Victor Oshisada, "Imperative of Unity and Reconciliation," *Ibid*; and Wake Okediran, "Putting Nigeria Together Again," *ibid*.

<sup>24</sup> For an insight into how vexing this fiscal arrangement is, see the papers presented at the "Conference of Nationalities" organized by the Campaign for Democracy (CD), Century Hotel, Okota, Isolo, Lagos, Nigeria, December 17-19, 1999.

<sup>25</sup> There are already some indications of this strategy is the way the Obasanjo government has used ministerial appointments to generate very bitter debates and divisions within the Alliance for Democracy (AD) and the human rights community among others. See Akpo Esajere, "AD Disowns Bola Ige," *Vanguard* (Lagos) (June 13, 1999).

<sup>26</sup> Saxone Akhaine, "Musa Urges Legislators to Reject Constitution." Distributed by [NOWA@PRODIGY.COM](mailto:NOWA@PRODIGY.COM), (May 10, 1999). Redistributed by the Association of Nigerian Scholars for Dialogue, USA, (May 11, 1999).

<sup>27</sup> See Chris Ebhote, "The New Constitution," *The Guardian* (April 19, 1999); Kofu Awosika, "The Fiction of Democracy in Nigeria," *The Guardian* (Lagos) (April 17, 1999); and Laide Shokunbi and Moses Ebosele, "Thick Fog Over Nigeria's Constitution," *The Guardian* (Lagos) (April 17, 1999).