



***THE CONSTITUTION AND SUSTAINABLE DEMOCRACY IN
NIGERIA - CHALLENGES AND PROSPECTS***

BY HIS EXCELLENCY

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Nigeria did not come into existence as a result of the voluntary union of previously existing freely contracting political units. It was essentially a creature of British imperial power. In 1900 it came into existence as three units with varied historical origins: the Colony of Lagos acquired following the Treaty of Cession of Lagos of 1861; the Protectorate of Northern Nigeria; and the Protectorate of Southern Nigeria. In 1906 the Colony of Lagos was merged with the Protectorate of Southern Nigeria under one administration and in 1914 the Protectorates of Northern and Southern Nigeria were amalgamated to form Nigeria; a heterogeneous multi-ethnic multireligious, plural amalgam of about 400 ethnic nationalities, governed by Britain as a unitary state. This unitary administration lasted for four decades, 1914 to 1954, with successive constitutional changes and arrangements preparing the country for self-government and subsequently for independence: - Clifford's Constitution of 1922, Richards Constitution of 1946; McPherson Constitution of 1951; Lyttleton Constitution of 1954; and finally the Independence Constitution of 1960.

From about 1939 the Southern Protectorate was for administrative purposes sub-divided into the Eastern Provinces and the Western Provinces and the quasi-federal McPherson Constitution of 1951 formalised this arrangement by having elected Houses of Assembly for the East, North and West, these Houses of Assembly serving as electoral colleges for selecting members of the House of Representatives. The 1954 Lyttleton Constitution introduced fullfledged federalism into the Nigerian polity.

Since federalism imports division of responsibility between a central government and the governments of the federating units - states, provinces, regions, howsoever called - a carefully written constitution is, of necessity, an essential ingredient of a federal form of government. It follows therefore that the constitution is a necessary, if not sufficient, element for sustainable democracy in any federation, of which Nigeria is one.

It is often said in Nigeria that there is nothing wrong with our several constitutions (and we have had at least three promulgated since independence - 1963 Republican Constitution, 1979 Presidential Constitution and the current 1999 Constitution, not counting the unpromulgated 1989 and 1995 constitutions) but that what is all wrong is with the operators of the constitutions who distort and abuse its provisions and do not play by the rules of the game. I do not endorse this view, for if the country is not made up of angels who will operate the constitution but is made up instead of rogues and vagabonds, then it is only proper that the constitution in place should be tailored to suit rogues and vagabonds, and not angels, as its operators. The constitution must be a dynamic instrument being amended as the situation warrants to meet changing circumstances without distracting from its primary role as the *suprema lex* or grund norm to which all other laws are subservient.

The structure of the Nigerian federation at independence was a recipe for instability and failure of sustainable democracy. Professor Wheare had postulated that there was certain danger in having one of the constituent units of a federation so large as to threaten the federation if it did not bend to its will, or having two of the constituent units so large that if they united they could dominate the others or foist their will on the federation. In the Nigerian federation of the three regions at independence, the Northern region was larger

than the Eastern Region and Western Region put together. Accordingly in the preparatory stages leading to participatory government by Nigerians, when at the Ibadan conference the North insisted on having 50 percent of the seats in the proposed federal legislature, it was allowed to have its way as the alternative which it posited was a break-up of the country. Similarly when the North and the East united, it was easy to undermine the West, declare a state of emergency therein and appoint an Administrator to run its affairs. There was also another element of inbuilt instability in the ethnic composition of regions at independence. Each region had a major ethnic group in ascendancy with minority ethnic groups suffering from real or imagined domination. In the Northern Region, the Hausa-Fulani were in leadership leaving the other minority groups on the fringes, so to speak, hence the emergence of groups such as the Borno Youth Movement, the United Middle Belt Congress and others. In the East the Igbo were in leadership leaving the other minority groups on the periphery thus leading to the emergence of the Calabar-Ogoja-Rivers (COR) State movement; in the West, the Yoruba were in leadership with the minority groups on the fringes, hence the emergence of the Midwest State movement. This majority/minority construct in each region was a veritable source of instability. Ganging up by the North and the East facilitated the creation of the Midwest region from the Western region in 1963 without a parallel creation of a COR region from the East or a Middle Belt Region from the North. The May 27 1967 creation by decree of 12 states in place of the 4 regions remedied somewhat the Majority/Minority imbalance in that in the East, two largely minority states (South-Eastern and Rivers) were created and in the North three largely minority states (Kwara, Benue-Plateau and North-Eastern) were created. At another level, the 12-state structure corrected the imbalance in the size and configuration/distribution of the former regions in that six of the twelve states were carved out of the North and six were carved out of the South, and of the six in the South, three each were carved out of the East and West, thus maintaining parity between North and South - and in the South, between the East and the West.

We may, however, deign to ask what was responsible for the failure of democracy in the First Republic with the intrusion of the military into governance after a bloody coup d'etat on January 15 1966; and whether it was possible for the Constitution to have been employed to sustain democratic governance at that stage. Although I had earlier on emphasised the importance of having the Nation's constitution tailored to the suit stage of development and the proclivities of its potential operators instead of assuming that an unsuitable constitution would be successfully operated by "*angels*", I must concede that there is wisdom in the words of Professor Ignatius Ayua:

" Nigeria is in dire need of good governance and responsible leadership ... especially concerning poverty eradication and improvement in the standard of living of the people. The major goal of government should be the evolution of policies and strategies towards reversing this worrisome trend otherwise constitutional governance on any model of federalism, and no matter how ingeniously devised, will be jeopardised. "

There have been as many views as there have been commentators as to the concatenation of forces that led to the collapse of the democratic experiment in Nigeria's First Republic, principally because there has been more subjectivity than objectivity in the analyses proffered on the subject matter. But a few sign posts on the way to the failure of democracy in 1966 seem to evoke consensus, namely: the 1962 crisis in the Western Region arising

from schism within the Action Group ruling party of that region; the declaration of a state of emergency in that region with the sacking of the elected government and appointment of an Administrator for that region; the treasonable felony trials leading to the conviction, sentence and imprisonment of Chief Awolowo, the leader of the Action Group, and some other leaders of that party including Chief Enahoro and Chief S.G. Ikoku, the party secretary; the 1962/63 national census controversy; the flawed December 1964 federal elections and the stalemate and attendant vacuum created by the lack of an appointed Prime Minister or Government for several days until the imbroglio between the President and the erstwhile Prime Minister was resolved; the farcical Western Nigeria parliamentary elections of October 1965 and the near-total breakdown of law and order and manifest anarchy in that region about which the Federal government was unable or unwilling to take action. This was apparently the last straw that broke the camel's back as the Western Region remained chaotic and ungovernable until the military take-over of the government in January. The question then is: which of these events could have been prevented or checkmated by appropriate constitutional provisions irrespective of the personal idiosyncrasies of the operators of the constitution. It is considered that although a lot could have been done by way of constitutional and/or legal provisions to provide for a hitch-free and reliable headcount, and to provide by way of a well-constructed Electoral Act for free and fair elections, nevertheless where the operators are determined to abuse or subvert the carefully laid down processes, there does not appear to be too much that can be done to stop them.

On the whole, Nigeria's political history since independence in 1960 has been marked by two long periods of military rule: first, for about fourteen years from January 1966 to September 1979, and again for about fifteen years from January 1984 to May 1999. This is evidence enough of failure or unsustainability of democracy. Military intervention has occurred notwithstanding the provision in our constitutions that:

"The Constitution is supreme and its provisions shall have binding effect on all authorities and persons throughout the Federal Republic of Nigeria

"The Federal Republic of Nigeria shall not be governed nor shall any person or group of persons take control of the Government of Nigeria or any part thereof except in accordance with the provisions of the Constitution.

"If any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void."

or words to that effect.

Military interventions have always succeeded primarily because military interventionists elicit the cooperation if not outright support of the civilian populace. In order to paralyse the government of military interventionists, a constitutional proposal was made in 1995,

borrowing in part from the provisions of the German Basic Law of 1949, by expanding and strengthening the above provision in the following terms:

"The Constitution is supreme and its provisions shall have binding effect on all authorities and persons throughout the Federal Republic of Nigeria.

"The Federal Republic of Nigeria shall not be governed nor shall any person or group of persons take control of the Government of Nigeria or any part thereof except in accordance with the provisions of the Constitution.

"Accordingly, it shall be the duty of all citizens to resist any person or group of persons who attempt to take control of the Government of Nigeria or any part thereof. Any person who conspires or attempts to take over control of the government of Nigeria or any part thereof is ipsofacto guilty of treason and any person who cooperates or collaborates with him is equally guilty of treason.

"Accordingly, and further, no decree, edict, dictat, proclamation, order, directive, regulation or other action by whatever name called, by a person or group or persons who have taken control of the Government of Nigeria or any part thereof shall have the force of law; And any person who cooperates or collaborates in the enforcement or administration of such decree, edict, dictat, proclamation, or other order is deemed to be an accessory to the fact of treason."

At the 1994/1995 National Constitutional Conference, in order to try to use the constitution as a vehicle for achieving sustainable democracy in Nigeria, the delegates dug deep into the history of post-independence Nigeria to identify the problematic areas that conducted to the failure of democracy in Nigeria and then made appropriate recommendations for provisions to cure them. These provisions were embodied in the unpromulgated *"Constitution of the Federal Republic of Nigeria 1995 (with Amendments)"*. It will now be in order to touch on a few of these provisions and indicate the mischiefs which they were intended to cure.

NORTH-SOUTH PARITY AND MAJORITY-MINORITY PARITY

In the First Republic, the North was one region and the South was at first made up of two regions East and West with a third region Midwest emerging in 1963. We have also observed the problem with minorities in the North and the East. The structure recommended for power-sharing under the said 1995 Constitution involved division of the country into six geopolitical zones, three in the North (North Central, North Eastern and North Western) and three in the South (South Eastern, South-South and South Western). Of these six geopolitical zones, three are inhabited predominantly by majority ethnic groups - the Hausa-Fulani in the North West, the Igbo in the South East and the Yoruba in the South West; the North East and North Central being composed largely of minority ethnic groups with some Hausa-Fulani in both and Yoruba in the North Central, and the South-South being composed largely of minority ethnic groups with a sprinkling of Yoruba in Edo and

Igbo in Rivers and Delta states. Thus the proposed six geopolitical zones configuration maintains parity between North and South (three zones each) and between majority and minority ethnic zones (three zones each). The specific provisions are embodied in Part III of the First Schedule to that Constitution as follows:

PART III GEOPOLITICAL ZONES

<i>ZONE</i>	<i>STATES</i>
1. North-Central	Benue, Kogi, Kwara, Nasarawa, Niger, Plateau, and Federal Capital Territory, Abuja.
2. North-Eastern	Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe.
3. North-Western	Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto and Zamfara.
4. South-Eastern	Abia, Anambra, Ebonyi, Enugu, and Imo.
5. South-South	Akwa Ibom, Bayelsa, Cross River, Delta, Edo and Rivers.
6. South-Western	Ekiti, Lagos, Ogun, Ondo, Osun and Oyo.

INCUMBENCY AND ABUSE OF THE ELECTORAL PROCESS

It was accepted that the failure of democracy in the First Republic was in part due to the flawed federal parliamentary elections of December 1964 and the farcical Western Region parliamentary elections of October 1965. One of the reasons proffered by the military for take-over of government on December 31 1983 was the much criticised (by "*opposition*" parties) elections of August 1983. In all these cases it was suggested that the incumbency element was a contributory factor to the flaw in the electoral process. The same criticism has visited the April 19 (4.19) elections of 2003. Accordingly, in order to cure the mischief of possible abuse of the electoral process taking advantage of the incumbency factor, it was provided that the President and Governors should have a 5 year term ***without self succession***. Specifically SS 138(2); 140(1), 149(4) and 184(1) of the 1995 Constitution aforesaid provide as follows:

S. 138(2): "Subject to the provisions of subsection (1) of this section, the President shall vacate his office at the expiration of a period of 5 years

commencing from the date when (a) He took the Oath of Allegiance and Oath of Office... "

S.140(1): A person shall not be qualified for election to the Office of President if ... (b) He has been elected to such office at an immediately preceding election ..."

S. 149(4): "Subject to the provisions of subsection (1) of this section a Governor shall vacate his office at the expiration of a period of 5 years commencing from the date when (a) He took the Oath of Allegiance and Oath of Office ..."

S.184(1): "A person shall not be qualified for election to the Office of Governor if ... (b) He has been elected to such office at an immediately preceding election ..."

THE "OPPOSITION" FACTOR AND "WINNER TAKES ALL" SYNDROME

At independence, when Nigeria operated the parliamentary system of government, she inherited the norms of British parliamentary democracy with provision for Her Majesty's Government and Her Majesty's Loyal Opposition. In a Third World Country like Nigeria where Government controlled the commanding heights of the economy, the concept of politicians being abandoned on the fringes or in the wilderness of power was hardly a comforting prospect. So it turned out that Her Majesty's Loyal Opposition was anything but "loyal", certainly not going by the courts in their findings on the treasonable felony trial of Her Majesty's Leader of the Opposition and his lieutenants. Even in the Second Republic when Nigeria changed over to the Presidential system that did not provide officially for "Opposition", the anti-NPN posture of the UPN (Unity Party of Nigeria) was virulent and anything but constructive and certainly did provide encouragement and prospects of support to the ambitious soldiers who perpetrated the treasonable act of toppling the elected civilian government on December 31 1983. Acting on the belief that the third world may not be ripe for "*Opposition*" as practised in countries like Britain where opposition was mostly constructive and the Opposition saw itself as an alternative (and better) government and was prepared to exercise patience until the next elections to sell its programme to the electorate, and, if successful, unseat the incumbent government in place, the 1995 Constitution (with Amendments) provided for bidding farewell to the "*Winner Takes All*" syndrome, as per SS 148(7) and 148 (8) thereof

S.148(7): "The majority of the number of ministers appointed pursuant to subsection (3) of this section shall come from the political party or parties on whose platform the President is elected"

S.148(8): "Any political party which wins not less than 10 percent of the total number of seats in the National Assembly or of the total number of votes cast at the election, shall, subject to the provisions of subsection (7) of this section be entitled to representation in the Federal Executive

Council in proportion to the number of seats won by the party in the National Assembly."

This is a prescription for an all-party government with ministers drawn from all serious political parties (with 10 percent of the votes cast at the National Assembly election). This is to promote consensus building rather than antagonism or opposition for opposition sake among the political parties. Accordingly holders of ministerial positions from parties other than the President's party will appreciate that they hold such positions as of right by virtue of the constitution and not as a gift by the President or his party and certainly not an invitation to "*come and chop*".

EVOLUTION OF A NIGERIAN NATION WITHIN A 30-YEAR TRANSITION PERIOD

Nigeria is a country with a defined area. She is a member of the Economic Community of West African States (ECOWAS), the African Union (AU), the Commonwealth and the United Nations (UN) but she can hardly be described as a nation in the true sense of the word. She is a collection of disparate ethnic nationalities and was described by one of the country's founding fathers (Chief Obafemi Awolowo) as "a mere geographical expression". Most true and loyal Nigerians look forward to the day when Nigeria can become a nation in the true sense of the word. Remarkably, Ghana, our neighbour and erstwhile colleague in the former British West Africa is much more of a nation than Nigeria in spite of the many ethnic groups of which it is composed - Ashanti, Fanti, Ga, Ewe etc. It is unthinkable that there would be wanton massacre of the Ga or Fanti or Ewe in Kumasi in Ashanti land or in Tamale in the North. There is much more national integration in Ghana than there is in Nigeria. National integration will not drop like manna from heaven; it has to be worked at and worked for and a sine qua non to its attainment is the entrenchment of a feeling of belonging and faith among all Nigerians in the Nigerian project. The 1995 Constitution provides for a 30-year period of transition for the attainment of this objective by providing at the national level for the rotation of the offices of President, Vice President, Prime Minister, Deputy Prime Minister, President of the Senate and Speaker of the House of Representatives among the six geopolitical zones over six 5-year terms totalling 30 years. Accordingly S.229(1) provides that

"The principle of rotation enshrined in this section shall be strictly adhered to by the political parties during the transition period of 30 years commencing from the date this constitution comes into force."

During this "*transition*" period of 30 years, at the state level each senatorial district would have filled the office of Governor two times, the office of Deputy Governor two times, and the office of the Speaker of the House of Assembly two times, each term of office being of 5 years duration. At the national level each of the six geopolitical zones would have filled the offices of President, Vice President, Prime Minister, Deputy Prime Minister, President of the Senate and Speaker of the House of Representatives for a term of 5 years each. Thereafter the cry of "*marginalisation*" would have been a thing of the past. The 30-year period would have been used to positively and constructively promote state integration at the state level and national integration at all levels, following which all positions could then be filled on the basis of merit and competence in the true democratic spirit.

Ladies and Gentlemen, thank you for listening.

ABOUT CHIEF (DR) ALEX EKWUEME



Chief (Dr) Alex Ekwueme is considered one of Nigeria's leading statesmen. In high school he won a Fulbright scholarship a month before his 20th birthday and enrolled at the University of Wisconsin (UW) to study Architecture and Urban Planning.

Ekwueme earned three UW degrees – a Bachelor's degree in Sociology and Bachelor's and Master's degrees in Urban Planning. These are in addition to a degree in History, Philosophy and Constitutional law from the University of London.

After graduating from the UW in 1957, he built an impressive career in architecture and urban planning, ultimately opening and running the first locally owned architecture firm in Nigeria, where his company designed airports, schools and other buildings.

After a break in the mid-1970s to earn additional degrees in architecture and law in Great Britain, Ekwueme returned to Nigeria in 1979, and was nominated as the vice presidential candidate of the National Party of Nigeria (NPN) on a ticket with presidential candidate Alhaji Shehu Shagari.

Since his release in 1989, he has worked tirelessly on behalf of peace and democracy in his native land, where he has a reputation as a civilian with an impeccable record. Even the judicial tribunal that probed him after the coup publicly declared, "Dr. Ekwueme left office poorer than he was when he entered it, and to ask more from him was to set a standard which even saints could not meet." In one act of particular courage in 1998, Ekwueme led a group of 34 eminent Nigerians to forward a petition to Gen. Sani Abacha, the late Nigerian dictator, advising him not to succeed himself. It was without precedent, and at a time Nigeria had been terrorized into silence, and many of its eminent citizens were either jailed, in exile or killed.

Dr Ekwueme is a Philanthropist as well as a Public Servant and an accomplished Architect, who established the first Architecture Firm in Nigeria. He established an Educational Trust Fund that sponsors the education of several hundred Nigerian youths in Universities at home and abroad.