

# **Minority Report and Draft Constitution for the Federal Republic of Nigeria, 1976**

By  
**Olusegun Osoba**  
and  
**Yusufu Bala Usman**

**With a New Introduction by Olusegun Osoba**

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## **Dedication**

In memory of Yusufu Bala Usman and other fallen heroes of the struggle for a better Nigeria.

## Acknowledgements

The publication of this book had its genesis in 2017, even before the creation of the Yusufu Bala Usman Institute, while some of us were associated with Cedert. The initial idea came from Attahiru Bala Usman, who mentioned that people had been asking him where they could get copies of this rare but well known manuscript which was virtually impossible to obtain. It lay on shelves of activists and scholars since its initial launching as a mimeographed document in 1976 but had never been published.

Thus we began the journey of reviving the document and getting it into print. First of all, we were not sure of the whereabouts of Dr. Segun Osoba, particularly since General Olusegun Obasanjo had pronounced him dead in his memoirs, **My Watch**, where he mentioned that both of the authors of the **Minority Report** were no longer alive. Fortunately we found that Dr. Osoba was very much alive and living in Ijebu Ode. His mind was as sharp as ever, but he was having problems with his vision that limited his ability to use a computer. We discussed the proposal to publish the *Minority Report and Draft Constitution for the Federal Republic of Nigeria, 1976*, and he agreed to write a new Introduction. Communication between Zaria and Ijebu Ode was problematic. The procedure was that Dr. Osoba drafted text in longhand, had it scanned and sent to us in Zaria. We then typed it out and sent it back to him for editing and corrections. It took us nearly a year to get the manuscript in printable form. At the same time, some of our colleagues were opposed to the idea of publishing it. They said it was an old document, and no one would read it and its relevance to today's Nigeria was questionable. It was only after quite a bit of convincing that it was agreed to publish the book, and this was only accomplished because Attahiru Bala Usman generously financed the printing.

The book was presented in Lagos in May 2019 to wide acclaim, at an event at the University of Lagos, attended by numerous activists, past and present, in the struggle to forge a more democratic Nigeria, including Comrade Hassan Sunmonu, Alhaji Balarabe Musa, the national presidents of the Nigerian Labour Congress (NLC), the Academic Staff Union of Universities (ASUU) and many others. Femi Falana was the reviewer. All agreed that the publication was long overdue, and that its contents provided essential ideas and strategies that could move Nigeria forward and help it to get out of its present dismal condition.

We would like to thank Attahiru Bala Usman, for giving both moral and financial support to this publication from inception to final printing. Of course we are all very grateful to the remaining author, Dr. Segun Osoba, who spent many hours composing the important New Introduction and meticulously editing the book. To Norma Perchonock, who did the work of typesetting, editing and proof reading the copy; to Glenda Pattenden, who designed the cover; to Abdullahi Lamido Mohammed, who produced the index and sorted out problem of scanning the original document; and to all of our colleagues who encouraged us to bring this important project to fruition.

The Yusufu Bala Usman Institute is pleased to be able to offer this free download of the eBook edition so that it can be available to everyone who cares to read it and hopefully absorb its lessons.

## Foreword

The Centre for Democratic Development Research and Training (CEDDERT) is pleased to be able to publish this Minority Report and Draft Constitution, albeit 42 years after it was first written. One of the authors, Dr. Yusufu Bala Usman, was the founder of our Centre and a path breaking scholar in the study of Nigerian and African history. Professor Segun Osoba is a historian who has made major contributions to the study of history from a radical perspective as a lecturer and researcher at the University of Ife, now Obafemi Awolowo University.

This landmark document has become a sort of “ghost” publication, never formally published but widely circulated in mimeographed form, and referred to in numerous discussions, symposia and publications whenever issues about the structure of Nigeria is being discussed. In fact, every time we go back to this document we find incisive discussions of issues affecting the Nigerian situation. We find acute analyses of conditions and clearly stated solutions which, if they had been followed since 1976, might have solved, or avoided, many of the serious problems which Nigeria is facing today.

In the 42 years since the document was written, enormous changes have occurred in Nigeria and the world, many of which have rendered some sections of the draft Constitution obsolete. This is particularly true of technological changes which pertain to some of the items in the Exclusive list in the draft. But more importantly, the trajectory of Nigerian society described in the document has moved rapidly forward, exacerbating the levels of inequality in the society, increasing transfers of wealth to the few members of the elite; increasing levels of lawlessness on the part of political office holders and government functionaries, including the judiciary, the armed forces and police; increasing the level of vacuousness of political parties’ “ideology”, and vastly increasing the amount of money required to participate in politics and run political campaigns. All of these things, accompanied by an inconceivable level of corruption, means that changing the present-day Nigerian society is a far different task than the authors originally envisaged. Dr. Osoba has said that at the time they were writing the document, the authors felt that the society could be reformed by implementing a Constitution with appropriate provisions to create a more just and equitable system. But given all that has transpired since, as he has outlined in the New Introduction, such reformism cannot be a useful strategy. Nothing less than a ‘root and branch’ approach can have any effect. He has made several important suggestions along these lines in the section on “Minimum Agenda for Change”.

The fundamental issue that faced the authors, and which is facing us in more acute form today, is how to create a Constitution, and a structure of governance, which is truly democratic in

content as well as form. As the authors point out, only in a society where all have access to the necessities of life like food, education, health, housing, security, etc. can true democracy exist. Where the necessities and the comforts of life belong only to a privileged few, and the vast majority of the population struggle to barely exist, there cannot be justice, and in the absence of justice there cannot be democracy, which assumes that all citizens have an equal voice.

The changes in Nigerian society in the past 42 years are very much in step with what has happened in most parts of the world in terms of growing economic inequality, which is perhaps the major issue facing most nations today. In its *World Inequality Report of 2018*, the World Wealth and Income Database (WID), the researchers note that inequality is largely related to ownership of capital. Capital can be public or private. The trend in the world has been the increasing transfer of capital from the public sector to the private. This has meant the ability of governments to tackle inequality has been greatly reduced. In Nigeria, this transfer has occurred in substantial ways, through the privatization of government enterprises and institutions, as well as by outright theft of public resources by those in power. In addition, the prevailing culture of greed of the ruling class means that they have no incentive to reduce inequality in the society, even if they have the means to do so.

Given the obscene levels of wealth and of poverty in Nigeria, what Constitutional measures can be instituted to ensure that the rights of the poor majority can be protected? The issue of justiciability of Constitutional provisions, especially those pertaining to fundamental rights of citizens, has been enshrined in the minority Draft Constitution. Without this right to lawfully enforce these provisions, the majority of citizens, lacking access to money and power, have no alternative to guarantee fair access to their material and other needs. However, some have argued that making such provisions justiciable leaves the way open to large numbers of court cases. But what is the alternative? Is there another way that the poor can secure justice?

One issue that is central to the discussion of the rights of the people is the question of citizenship. Of particular importance, given the heterogeneous nature of Nigerian society, is the question of ‘indigeneity’ and its relationship to citizenship. The present deliberate distortion and confusion about this issue has led to many violent conflicts and huge losses of lives and property. On this, their document states:

“The crucial importance attached by the representatives of the bourgeois elite to the state governments as exclusive spheres of influence for the various ethnic and regional elites is revealed in a kind of Freudian slip contained in Chapter X of the majority draft under ‘Definitions and Short Titles’. The majority draft defines “belong to” when used in relation to state as referring to “a person either of whose parents was a member of a community indigenous

to that state” (emphasis is ours). This definition, in spite of the rhetoric on the “federal character of Nigeria” in the same section of the majority draft, is clearly an attempt to smuggle into the draft the dangerous notion of state citizenship which is in conflict with the provision of Chapter III on “citizenship”.

... “In spite of the rhetorical and platitudinous pronouncements of the majority draft on the duty of the State to “encourage free mobility of people ...throughout the country” and to “secure full residence rights for every citizen in all parts of the country,” and even to encourage inter-marriage [Section 9(2)] a culpable implication of its definition of state citizenship is that no matter for how long a Nigerian has resided in a state of Nigeria of which none of his parents is an indigene, such a Nigerian cannot enjoy the right to participate fully in the public life of that state.”

In opposition to this concept, Osoba and Usman posit in their Draft Constitution that:

“The following persons are Nigerian citizens by birth:

- (a) every person born in Nigeria before 1 October, 1960 either of whose natural parents or grandparents belong or belonged to a community indigenous to Nigeria.
- (b) every person born in Nigeria after 1 October, 1960 either of whose natural or legal parents or any of whose grandparents is or was a Nigerian citizen.
- (c) every person born outside Nigeria either of whose natural parents is or was a Nigerian citizen.”

Had this issue of citizenship and so-called ‘indigeneity’ been resolved 42 years ago, the country could have avoided so many of the tragedies which have followed in the wake of the confusion about this Constitutional provision.

There are many other issues raised in the Minority Report and Draft Constitution that we can reflect on now and only regret that they were not considered and applied so many years ago. Among these are the issues of funding of political parties, the question of executive immunity, and the issue of public accountability.

In all of these cases, the developments in Nigerian society have exacerbated the problems that already existed 42 years ago. For instance, on the question of public accountability, Yusufu Bala Usman noted:

“... there cannot be genuine accountability in a capitalist society, more so in a dependent capitalist society like Nigeria. This is because the ownership and control of the basic means of existence – land, housing, clothing, food, transport, information – is central to accountability. It

is farcical to pretend that those who own and control these or those who serve them can be made accountable to those who have nothing but their humanity, labour and need. In order to have public accountability there has to be a just and democratic social and economic system.” (*For the Liberation of Nigeria*, 1979, p.113)

Now that Nigerian society is facing perhaps its deepest crisis, and its citizens have sunk into a previously unimagined level of desperation, we at CEDDERT feel that it is time to look afresh at the issues raised in this important document, as they seem to have new relevance in the present circumstances. Perhaps we can find goals of justice and humanity that seem to have been forgotten by an increasingly selfish and increasingly incompetent ruling class. Hopefully, the ideas in this publication will inspire a search for new solutions to our problems. That is why we are making the **Minority Report and Draft Constitution** available for all to read.

Dr. Abubakar Siddique Mohammed,  
Director, CEDDERT, Zaria, Nigeria  
December, 2018.



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**The 1979 Constitution and its Legacy of  
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The 1979 Constitution was the direct outcome of the majority draft Constitution produced in September 1976 by forty-seven of the forty-nine members of the Constitutional Drafting Committee (CDC) appointed by the new military government of Murtala Muhammed and Olusegun Obasanjo in October 1975. This majority draft was rejected by two members of the CDC, Yusufu Bala Usman and Olusegun Osoba, who decided to produce their own minority report for the records and the benefit of posterity.

Whereas the majority draft was published by the Federal Government of Nigeria and was widely debated by the public in 1976-77 before it was put before the Constituent Assembly for further consideration and subsequent enactment in 1979, the minority report was declared “non-existent” by the then military Head of State, Olusegun Obasanjo, who subsequently enacted the majority report as the 1979 Constitution after inserting into it the Land Use Decree of 1978 in spite of the Constituent Assembly’s objection to it as inappropriate in a Constitution.

Our principled and practical objections to the majority draft have been clearly stated in the first part of this report titled “A General Report on the Work of the Constitution Drafting Committee” and needs no further explanation. However, forty-two years ago, when this document was written, we warned of looming dangers of escalation in ruling class misdemeanours as intra and inter-ethnic violent conflicts, looting of state resources on a grand scale by its custodians, and brutal and authoritarian governance.

Needless to say that in the thirty-nine years since the 1979 Constitution has been the fundamental law of the land there have been four military interventions in the nation's governance (Buhari for 20 months; Babangida for 8 years; Abacha for 5 years, and Abdulsalami Abubakar for 10 months) with the ridiculous 3 month Ernest Shonekan's Interim National Government thrown in by Babangida in August 1993 as a bad joke on our collective psyche. The Babangida and Abacha dictatorships plumbed new depths in arbitrary governance and venality; and postponed any hope of societal development for decades. For instance, when Shagari's NPN government was toppled by Muhammed Buhari's regime in December 1983, Sani Abacha who acted as the public orator of the Nigerian armed forces filed a number of charges against the Shagari government, among which was "our hospitals are mere consulting clinics". Twenty months later, when Babangida toppled Buhari in August 1985, the same Abacha as public orator complained against Buhari's regime thus: "our hospitals are still mere consulting clinics".

The state of our hospitals which Abacha was railing against in 1983 and 1985 had suffered some decline since the 1950's and 1960's but, compared with the conditions that prevailed during the Babangida/Abacha era (1985-98), it could be said to belong to the golden age of public health infrastructure in Nigeria. Babangida himself made regular medical tours to Germany to look after his condition of 'radiculopathy' arising from an injury he sustained during the Nigerian civil war. Several years later, Umaru Musa Yar'adua, Obasanjo's self-appointed successor as civilian president, also spent a lot of the country's time and resources looking after his health in Germany and Saudi Arabia. Dame Patience Jonathan, Goodluck Jonathan's wife, also had several expensive sessions of state-sponsored medical tourism in Germany during her husband's presidency (2010-2016). For full measure she also managed to stack away millions of U.S. dollars in some secret bank accounts, ostensibly for taking care of her

health when she might no longer have access to state provided healthcare for the first family.

When Buhari became President in 2015, he failed to tackle the problem of a dilapidated public health system headlong. Rather he took the usual elitist, easy and self-serving option of making several long medical trips to the U.K. at great public expense to treat an undisclosed ailment. In effect, a succession of Nigerian leaders has allowed themselves, and all of us, to be disgraced by their shameful practice of seeking medical treatment abroad, when their compatriots were dying in droves at home from all kinds of preventable and curable diseases that are not attended to for lack of funds, or medical infrastructure, or political will, or all of the above.

The unanimous sponsorship of Obasanjo by a coterie of generals of the Nigerian armed forces to succeed the military in 1999 as a civilian president after 15 years of military authoritarianism was a master stroke on their part. It gave assurance to the military leaders who had committed all sorts of atrocities since 1966 that they would be safe from punishment as their former commander-in-chief, now in civilian garb, would protect them. In fact, one general is on record to the effect that he would emigrate from Nigeria if Obasanjo failed to become president in 1999. It also ensured that the stock of young to middle-age professionals and academics whom Babangida had recruited and groomed for public office in the 1980's and 1990's would be available to Obasanjo's administration. Thus it would be possible to extend the tenure of civilian-military collaboration in the governance of Nigeria into the indefinite future. It is not by accident that the myriad of extra-budgetary committees and directorates of the Babangida era like DFFRI, were transmogrified under the Obasanjo presidency into "constituency projects" of legislators at the federal and state levels. As under Babangida these "projects" were funded from the public treasury, but were not subject to strict public scrutiny in their execution, thus contributing to massive financial leakages and transfers from the

national treasury into the private coffers of the ruling elites. If you combine these with Obasanjo's monetisation of fringe benefits like housing and transportation allowances, plus selling of government assets like official quarters to those occupying them, and the dramatic inflation of the salaries and allowances of legislators and other public officers condoned under his watch, you may have a fair idea of how the state was set up to be robbed blind by its very custodians.

Obasanjo can be regarded as the most important single factor in the chaotic system of governance that has developed in Nigeria from the enactment of the 1979 Constitution and the inauguration of Shagari's government on 1<sup>st</sup> October 1979 to date. First, it is the Constitution that he fathered and manipulated even before he enacted it that has remained, with a few minor amendments, the nation's fundamental law till today. The Land Use Decree of 1978 which he included in the Constitution against the advice of the Constituent Assembly (1977-78) is the most dishonest manipulation of the Constitution and the whole governmental process committed by Obasanjo. Falsely advertised in 1978 as a legal instrument for making land easily accessible to "genuine developers", it has become the device through which lands belonging to local communities or the whole country, but held in trust by the President or state governors, have been largely shared out in vast acreages among the high and mighty in the ruling class. Obasanjo and his cronies are among the main beneficiaries of this land bonanza at the expense of the real owners of the lands. This trend has led to the emergence of latifundists and land speculators who have helped to drive land prices sky high everywhere in the country, especially in Abuja and other large urban centres.

The same man, Obasanjo, through the monetisation of allowances of public officers encouraged a culture of squandermania in government at all levels. Advertised as a way to reduce costs, it ended up increasing costs through deliberate inflation of items (e.g. legislators' allowances) and double

collection of allowances in cash and kind. For example, Dimeji Bankole, Speaker of the Federal House of Representatives during Obasanjo's second term, borrowed a total of over 24 billion naira to buy brand new Peugeot saloon cars for all members of the House and pay them enhanced allowances beyond what monetisation allowed.

Under the present Buhari administration, Bukola Saraki, as President of the Senate, and Yakubu Dogara, as Speaker of the House of Representatives, behaved exactly as Dimeji Bankole, except that this was a time of serious recession in the economy caused by sixteen years of unconscionable looting and squandermania by PDP governments which were directly run or remotely controlled by Obasanjo. Saraki and Dogara bought with billions of naira brand new cars, with impunity, for Senators and House members, all of whom had collected their transport and other allowances up front, at a time when vital social services like health and education were cash-strapped and in turmoil.

Before Obasanjo left office in 2007, he ensured that he had all the levers of control over the PDP in his own hands. Not only did he ram through a new authoritarian Constitution for the party with the Board of Trustees as the highest decision-making organ, he also made himself Chairman of the Board. Thus he was able single-handedly to decide that he would be succeeded by Umaru Musa Yar'adua, about to retire as a two-term governor of Katsina State, but known to Obasanjo to be suffering from a terminal illness. He also single-handedly selected Goodluck Jonathan, a half-term deputy governor and half-term governor of Bayelsa State as his Vice-Presidential running mate. It has been suggested, half-jokingly but justifiably, in some quarters that the choice of a man who was likely to die in office as President and as Vice-President another whose only qualification for office was "goodluck" was Obasanjo's perfect revenge against Nigerians for denying him his much-desired third term as President of Nigeria.

From 1979 to date Obasanjo has been meddling in the affairs of successive governments starting with proffering advice which he did not give himself in his two incarnations as military head of state (1976-79) and civilian president (1999-2007). Advice soon degenerated into acerbic criticism and outright denunciation. In this way he could be said to have contributed to the collapse of Shagari's government in 1983, Buhari's in 1985, Babangida's in 1993, and Goodluck Jonathan's in 2015. He tried the same recipe with Abacha but it backfired, earning his arrest and trial for coup plotting and resulting in his incarceration and almost death in Abacha's jail. Oblivious of his own historical record of disastrous interventions in Nigeria's public life, he is again working at toppling the current government of Nigeria facetiously attempting to create a "third force" between the APC government and PDP opposition, thus putting together an alliance of incompatibles and a coalition of irreconcilables made up of all sorts of mushroom organisations and dubious personalities with the PDP, which he theatrically and opportunistically left on the eve of the 2015 general elections, as the fulcrum of this inchoate alliance or coalition.

Thus Olusegun Obasanjo, the architect/builder of Nigeria's Constitutional order (1979 to date) has, by his various acts of commission and omission, in and out of office, ended up as the demolition engineer most likely to reduce the rickety edifice of the Nigerian state to dust.

### **Minimum Agenda for Change**

In view of the persistent misconduct of successive regimes in power in Nigeria, the Nigerian state is currently enmeshed in a profound crisis of governance that is not capable of being resolved or even alleviated by a resort to the normal practice of Constitutional, legal, judicial or other institutional reform. Lawlessness and corruption have become so pervasive and endemic in all sectors of state, society and economy that any strategy of change that is short of the "root and branch" overthrow of the existing order is doomed to fail. For instance,



the legal basis of governance, i.e., the legitimacy of laws passed in the National Assembly and State Houses of Assembly is often and viciously subverted by the self-centredness, careerism and corruption of the so-called law-makers, the lack of vision and coherent world view of the political parties to which they belong and the ease and arbitrariness with which they change their party affiliations.

The political parties themselves started, as we predicted in 1976, as “coalitions of ethnic notables and moneybags”, have ended up largely as custodians, managers and distributors of resources looted by their foot soldiers from the various tiers and arms of government. They have become so confident in their kleptocracy that they would not allow any of their members to vie for any high office of state or party unless he or she is capable of making a non-refundable deposit of many millions of naira, or has a godfather or godmother within the party who can make the deposit on his/her behalf. Herein lies the danger of the corruption at the centre of contemporary governmental systems in Nigeria. The winners must recover their investment plus interest and profits while in office and the losers must recover theirs from illicit handouts and favours from the winners, if the leaders in the parties are not to become paupers like their followers. Thus, the parties tend to metamorphose into a complex pattern of patron-client relationships (or cronyism) which eventually encompasses a large sector of the electorate through the system of vote buying and selling in cash or kind. Further development in this direction is bound to lead to the total collapse of the state and societal system based on the dubious and rickety Constitutional arrangements of 1979.

Obviously, for Nigeria to be rescued from the man-made disasters inflicted on it by its plundering and marauding ruling elites, there is an immediate need for an emergency plan of action, which I have called “Minimum Agenda for Change” – a set of principles and tenets distilled from our original Minority Draft Constitution of 1976, around which Nigerians of

conscience and who are believers in justice and equity can organize in a peaceful, non-violent, and collaborative manner to:

- (a) free Nigeria and its people from the death grip of the backward, obscurantist and thieving Nigerian ruling class; and
- (b) establish the core principles on which a new basis can be laid for a humane, just and equitable social, economic and political order in Nigeria.

The five proposed principles of the minimum agenda for change are:

- (1) There shall be one and only one Nigerian citizenship in operation, irrespective of whether such citizenship is earned by birth, naturalization, registration or any means whatsoever, provided that the individual on attaining the age of maturity solemnly affirms his membership of the Nigerian humanity. A citizen shall be legally entitled to live and work in any community in Nigeria without let or hindrance and shall have full rights to participate in the total life of the community in which he chooses to live and/or work. This automatically abolishes the nefarious principle of “state citizenship” which ruling class politicians exploit to divide our people and carve out fiefdoms for themselves.
- (2) The need to demystify the colonially derived legal and judicial system in Nigeria. This will involve a major effort of reviewing and reforming the language in which all legal instruments, including the Constitution, are written, so that they are accessible and understandable to the ordinary citizen. Similarly, proceedings in the courts, especially the so-called “superior courts”, must be conducted in a way that ordinary people who are litigants and witnesses therein are real participants and not mere onlookers. The dictum that “ignorance of the law is no excuse” is nonsensical unless the language of the law and of the people is one and the same.

- (3) In a new Constitutional order, the fundamental rights and duties of citizens and the directive principles of state policies imposed on governments must be fully justiciable in law, as this is the only way in which citizens can hold their governments to account when they fail in their duties, assumed under oath, to their people. This will obviate situations in which high government officials fail to provide basic health facilities for their people, ostensibly for lack of funds, but are able to find funds to treat themselves and members of their families for trivial ailments abroad; or situations in which legislators and ministers take many millions of naira home every week, but their governments are unable to pay workers' minimum wage of N18,000.00 a month.
- (4) The need to abrogate urgently the Constitutional immunity from prosecution granted to the executive arms of government (i.e., the President/Vice President of the Republic and Governor/Deputy Governor in the states). As we predicted, this misguided Constitutional provision was taken by most office holders at those levels as a license to loot with impunity the government treasuries put in their care.
- (5) For political parties to become responsible actors on the national political landscape by being able to ensure honest, lawful and disciplined conduct among their members seeking party and public offices, they can only be registered to operate on the condition that (a) they have a national, non-sectional and non-religious programme of organizational activities; (b) they are funded exclusively by the financial contributions of their individual members, none of whom may contribute in any one year more than the ***national minimum wage for one month***; (c) the financial records of each party is subject to comprehensive auditing by the regulatory body (to be determined) every year, with severe penalties up to and including disbandment imposed for soliciting and obtaining illegal contributions; (d) parties are

proscribed from charging their members any fees for seeking nomination, or making a statement of intent, to run for party or public office.

## **Conclusion**

My final submission is that a successful engagement with our people on the core principles of this minimum agenda for change will blow away all the fears and anxieties being generated among them by the fake apostles of ethnic and regional separatism, hiding behind their mendacious and tattered banners of 'restructuring'. What the masses of our people want, as most of humanity in the modern era, is NOT a coalition of mini unviable states whose human and material resources are at the arbitrary disposal of their separate ethnic and regional notables. Our people need a country, Nigeria, operating at full capacity and unshackled by the thieving activities of a good for nothing ruling class whose only operating agenda is looting the national treasury. Indeed, our people need a country in which the individual's rights of citizenship are valid in every square metre of its territorial expanse with the full right for every Nigerian to live, work and contest for political power in any part of the country without let or hindrance. This right also includes the right for any citizen to change any time and as often as they may desire, the locus of their residence or work without having to take permission from the self-appointed gate-keepers of the ethnic and regional fiefdoms.

VIVA NIGERIA! VIVA!!

Long live Nigeria!!!

Olusegun Osoba,  
Ijebu Ode, Ogun State,  
27 September, 2018

# **Section 1**

**Federal Republic of Nigeria**

## **A General Report on The Work of the Constitution Drafting Committee**

### **A Minority Submission**

**by**

**Olusegun Osoba**

**and**

**Yusufu Bala Usman**

**August 1976**

## **I. Introduction**

It is with great sense of duty and seriousness that we have decided to write this Minority Report and the accompanying Minority Draft Constitution as members of the Constitution Drafting Committee. After participating actively in the work of the C.D.C. for the past ten months, we have regrettably come to the conclusion that we must commit to writing, and communicate in a durable form, our serious and fundamental disagreements with the vast majority of our colleagues on the Committee and our own alternative proposals for a new Constitution for Nigeria.

We would like to underscore the fact that there is nothing personal about these disagreements. On the contrary, our service on the C.D.C. has given us the very special privilege of getting to know fairly intimately, and establishing cordial relations with, many other Nigerians whom we might never have met more than casually in the ordinary run of our professional and public activities.

This opportunity for forging cordial relations notwithstanding, we would like to note the basic and serious differences separating the intellectual and moral position of the Committee at large from ours. A recurrent strand in the intellectual and moral outlook of the bulk of C.D.C. members to the task of formulating the draft of a Constitution for guiding and regulating the conduct of public affairs in the post-military rule era in Nigeria is a basic commitment, sometimes thinly disguised and sometimes blatantly expressed, to the consolidation and perpetuation of the neocolonial capitalist social and economic order in Nigeria. Within the framework of this commitment, discussions of, and decisions on, Constitutional provisions for a future Nigeria were made with the clear intention and purpose of safeguarding and even enhancing the control of the various bourgeois elite interests, massively represented on the C.D.C.,

on the conduct and management of our nation's public affairs. These bourgeois interests range from those of the bureaucratic and administrative bourgeoisie to those of the professional (especially legal), and business bourgeoisie.

Given the great preponderance of these different but coordinated bourgeois interests on the CDC, it is not in the least surprising that the debates of the Committee on different issues have generally tended to be trivial and unserious in the sense of their marginality to the most serious and urgent problems facing the common people of this country. These debates have also been largely dominated by a kind of spurious intellectuality and academic objectivity in the understanding of which all opinions have equal validity. In this underworld of pseudo ideas, it is possible for people to articulate the most reactionary, even fascistic, ideas about state-craft and the ordinary people of Nigeria without feeling embarrassed or ashamed. On several occasions, some of those supposedly tough-minded self-identified spokesmen for the Nigerian people permitted themselves to assert that references to the necessity for ascertaining the needs and wishes of the masses of our compatriots were totally misguided, as the ordinary people could not be expected to understand the intricacies of Constitution-making, a uniquely legal exercise.

Sometimes those of our colleagues on the CDC merely dismissed this issue by claiming that they were so well familiar with the problems of the common people that they did not need to do any further study. Yet the conclusions and decisions emanating from the CDC debates often betray either ignorance of these very problems or some stolid unwillingness to face up to them.

We insist that there should not have been any room for this kind of play-acting or blatant insensitivity to critical issues in the discharge of the onerous responsibilities assigned to the CDC by the Supreme Military Council on behalf of the whole Nigerian

people. The CDC, judging by the content and tone of its debates and by the draft Constitution that the majority of its members have adopted, has failed to compose the draft of a Constitution (the fundamental law for the nation) that clearly maps out for our people a new political road that should take them away from the detours and blind alleys of the past towards *independent, self-reliant, just and genuinely democratic* national development.

The CDC has failed to place on the national political agenda the Constitutional blueprint for a fresh direction for Nigerian society in which optimal conditions would be built for the full development of the physical, mental and spiritual capabilities of every Nigerian citizen and in which no Nigerian human being, however great and powerful in his or her own estimation, will be able to prey on another human being.

It is against this background that we feel that the Committee has failed to:

- (i) formulate proposals that can help to create the right social and political atmosphere in which a reasonable amount of democracy can develop and flourish;
- (ii) provide against the concentration of too much power in the hands of a single person, cliques or single institution or office.
- (iii) deal with the destabilizing issue of winner-take-all style of politics and make provisions for the establishment of viable consensus politics based on a general commitment to the needs, interests and aspirations of the common people;
- (iv) formulate in clear terms, and without mystification, the fundamental principles that should guide all the principal actors in the nation's public affairs so as to promote a general commitment on the part of all our people to the creation and defence of a genuinely just and egalitarian society;
- (v) provide adequate criteria and guidelines for determining which political associations of Nigerians will be regarded and recognised as “genuinely national political parties” for the purpose of their being allowed to participate creatively in the public life of the nation;



- (vi) formulate proposals that could be realistically relied upon to help our people to overcome the elite-generated problem of ethnic, sectional and religious suspicion, rivalry and antagonism;
- (vii) deal with the critical problem of how to free our people and the resources of our nation from all forms of imperialist domination and exploitation; and
- (viii) draft in lucid language a Constitution which is capable of being rendered into any Nigerian language and, thereby, made accessible to the masses of the Nigerian people in whose name and for whose benefit the draft Constitution has allegedly been written.

## 2. Democracy and Popular Participation

The failure of the CDC to formulate Constitutional provisions likely to contribute to the promotion of a democratic socio-political order seems to be rooted in the bourgeois elite commitment of the majority of its members. It would seem to us that the Committee at large is mortally afraid of including such provisions in its draft Constitution as would ensure that the masses of the people enjoy, vis-a-vis members of the elite, equality of stature, privileges and responsibilities. Evidence of this fear of the ordinary people on the part of the representatives of the bourgeoisie abounds in various sections of the draft Constitution composed by the majority on the CDC.

The *non-justiciable* character of the provisions under “Fundamental Objectives and Directive Principles of State Policy” makes nonsense of the requirement in Section 7 (1) for “all persons or authorities exercising executive, legislative or judicial functions to conform to, observe and apply the provisions in question”. Having defanged the provisions by their non-justiciability, the CDC draft has correspondingly robbed the masses of Nigerians of one major instrument for monitoring and controlling the conduct of those making public decisions on their behalf. We cannot grasp the value of a set of “fundamental objectives and directive principles of State policy” which cannot be enforced in law, even when it is clear to all and sundry that State policy decision-makers are constantly and consistently violating these objectives and principles.

It would seem to us that the provisions of the majority draft Constitution on “Prohibition of Legal Proceedings Against Certain Functionaries” (i.e. Federal President and Vice-President and the State Governors and Vice-Governors) during their terms of office, contradict very violently the fundamental principle of the equality of all citizens before the law and is an unwarranted attempt to shield these high officials of State from the full rigours of the law as would apply to other citizens of Nigeria in similar situations of misconduct or improper conduct.

Our position on the issue of the need to create and promote a democratic socio-political order in Nigeria is embodied in the three chapters of our draft dealing with: “The Fundamental Principles of the Constitution;” “The Fundamental Rights Freedoms and Duties of Citizens;” and “The Fundamental Economic and Social Objectives”. Our point of departure is that democracy to be genuine and effective must apply to and be upheld uniformly by all our people.

This cannot be the case unless the generality of the people are persuaded that the goals and concerns of their public leaders are geared primarily to the advancement of the welfare and vital interests of the majority of the people. It is only on the basis of such common commitment on the part of the masses and their leaders to the good of all, that the mobilization of the Nigerian people and their participation in all sectors of the nation's public life can be achieved. Democracy as a social, political or economic concept would be totally meaningless unless it is underpinned by the mobilization of the common people, their full and direct participation in all areas of the nation's public life and by the antecedent conditions referred to earlier on.

Consequently, it is on the basis of our commitment to the idea and practice of democracy as essentially a procedure for conducting public affairs through popular participation that we have formulated six clear “Fundamental Principles of the Constitution” which would be equally enforceable in law against those among the rulers and the ruled who dare to violate any of them.

### 3. Fundamental Rights and Duties of Citizens

We also attach great importance to the fundamental rights of citizens; we notice the majority on the CDC does not, because they constitute a significant guarantee of the ability of Nigerian citizens to participate fully and actively in their nation's public affairs without undue fear of molestation and danger to their rights and liberties by other citizens. However, we differ fundamentally from most of our colleagues on the CDC on this issue on two main grounds. First, we believe that fundamental rights of citizens would be better safeguarded and more effective in operation if they are clearly defined and not qualified out of existence by too many provisos which a reactionary government can exploit to abolish the substantive rights of the people in all practical senses. Second, we believe that the **Fundamental Rights and Freedoms of Citizens** lose some of their significance and force if they are not linked with the **Fundamental Duties of Citizens**. This is because rights are not conferred on a people simply because a few egg-heads have committed such rights into writing in a Constitution. On the contrary, a people as a whole has to fight and work very hard to create rights for itself and be able to defend such rights against all the forces that may threaten their effective operation.

It is indicative of the feeble commitment of the majority on the CDC to even the liberal democratic ideals they espouse that, while asserting the right of every person to life in the chapter of their draft on “Fundamental Rights”, they do not immediately note its corollary, the **right to the means of sustaining life**. If they missed out this vital corollary altogether, one might be tempted to excuse the omission on the ground of failure of memory. But this omission retains a sinister significance in that it is tucked away in Section 11(2)(a) among the *non-enforceable* provisions on the “fundamental objectives and directive principles of state policy”. In clear distinction to the cavalier treatment of the issue of right to the means of sustaining life, which is of paramount importance to the overwhelming majority

of Nigerians, is the excessively detailed and precise treatment which they give to the issue of “Right to Property” in the chapter dealing with *justiciable* “fundamental rights”.

The very elaborate provisions to protect the “Right to Property” contained in Sections 36 and 37 clearly betray the obsession of the majority on the CDC with the defence of private property as a product and a means of exploitation and private accumulation. One wished in vain that the majority on the CDC could use just a fraction of the vigour and precision with which they defined bourgeois rights of property ownership in defending and elaborating the rights of the ordinary Nigeria people, who have no private property to speak of, to the means for the sustenance of their lives and to the products of their labour!

#### **4. The Judiciary**

It is also clear that the majority on the CDC place a special emphasis on the role of the judiciary as an independent and impartial arbiter between different competing interests in the state (e.g. between the Federal and State governments, the Executive and the Legislature, the citizens and their governments). This special emphasis is revealed in the lengthy and detailed provisions made in the majority draft on “Judicial appointments” (Chap. VI, Part V) and “The Judicature” (Chap. VII). While formal recognition is accorded in these sections of the majority draft to two parallel systems of “superior courts” in Nigeria (i.e. the British-type courts and the Sharia courts), the provisions still entrench the dominance and supremacy of the British-type courts over the Sharia and other forms of customary courts in operation in Nigeria. This prejudice in favour of the British legal and judicial system pervades the whole of the majority draft Constitution, in spite of the unintelligibility and palpable irrelevance of the values, norms, principles and procedures of this system to the vast majority of our people. In effect, this attitude on the part of most of our colleagues on the CDC simply reflects the exaggerated sense of self-importance

among the Nigerian bourgeois elite and the corresponding contempt and disregard with which they treat the common people.

Whereas it may be realistic for a draft Constitution in our present plight to recognise the existence, albeit in a limited form, of this neo-colonial dependence on a strange and largely incomprehensible legal and judicial system, yet it would amount almost to criminal folly for the drafters of such a Constitution to treat this anomalous situation as if it were given for all time. The least that the majority on the CDC could have done is to articulate clearly the right and duty of the Nigerian people to evolve over time a genuinely Nigerian legal and judicial system, which is not an elaborate system of mystification to most Nigerians, but rather one that is firmly rooted in the living culture of our society, in the values, norms and beliefs appertaining to the mode in which our people create the material and spiritual conditions for their existence and reproduce themselves.

We recognise the great contributions to the development of a genuinely democratic tradition in Nigeria which can be made by a judicial system that is independent, impartial and thoroughly purged of its colonial orientation and style of operation. For instance, we expect the very crucial and clear-cut provisions formulated in our minority draft under “Fundamental Principles of the Constitution”, “Fundamental Rights Freedoms and Duties of Citizens”, and “The Fundamental Economic and Social Objectives”, to be fully enforceable in law. Nonetheless, we are not confident that infractions of these categorical principles and objectives can be handled with the perception, clarity and firmness they deserve in courts of law permeated by the mythical and illusory British notions of the impartiality and detachment of the courts. They also cannot be dealt with adequately and effectively by courts with whose principal officers’ technical arguments of a law built around the defence of private property carry far more weight than the first order substantive issues

relating to the life and death struggles of tens of millions of ill-used Nigerians.

For the democratic principles of a just, equitable and humane conduct of our public affairs to become firmly established as part and parcel of the political culture of the great Nigeria of the future that we envisage, we believe that the character, structure and procedures of our courts as they now operate must be completely transformed. The Nigeria we should build needs judicial and legal officers who are firmly committed to, and finely and sympathetically attuned to, the legitimate needs, hopes, and aspirations of the vast majority of Nigerian citizens. Only such courts can truly and faithfully defend the genuine interests, rights and liberties of the people against the selfish and over-ambitious men of wealth and power who live by trampling the common people under their feet.

## **5. The Division of Powers**

Linked with the issue of instituting and promoting a genuinely democratic tradition in the conduct of our public affairs is the need to avoid the concentration of too much power in the hands of a single person or a group of persons or an institution. Uneven distribution of power in the political system of any society cannot help but undermine the very foundations of democracy, weaken the capability of the political leadership in mobilising the citizens around a progressive programme, and create suspicion, cynicism and hostility in the masses of the people towards those leading them.

It seems to us unfortunate that the majority on the CDC were almost exclusively concerned with the issue of division of powers in a formal and superficial sense: i.e. division of powers between the Federal Legislature and Executive, between the

Federal and State governments and only marginally between the state governments and the local government authorities. The issue of the balance of power between the entire Nigerian people, in whom sovereignty ultimately resides, and the various levels of government -- technically agencies for the implementation of the people's power -- has not received any serious attention in the deliberations of the CDC.

We are of the opinion that, on the basis of the substantive provisions contained in the majority draft Constitution, the quantum of power residing in the various levels of government is likely to move progressively in the direction of infinity while that residing in the people will tend to zero. This is because the only symbol of power vested in the people is that exercised every four years in the act of voting in different categories of political officers at general, presidential, gubernatorial and local government elections. Our experience in the recent past would seem to us to have demonstrated beyond all reasonable doubt that this formal periodic and often ritualistic act alone is not sufficient for safeguarding genuine democracy in practice.

As long as the huge disparities in economic power existing among individual Nigerians and social groups within the dominant free enterprise capitalist system operating in our country remain, so long will there be staggering inequalities among Nigerians in social status and political power. While such inequalities persist, the democratic principles of equality before the law, equity and social justice can only operate as slogans for mystification and confusion. Consequently, to obviate such a possibility which is bound to have for our country the grim consequences of violent social conflict and political instability, we suggest that those who aspire to leadership positions in this country must at least be motivated by considerations of enlightened self-interest. These considerations should guide them, as we have done in our minority draft, to provide in our fundamental law (i.e. the Constitution of the Federal Republic of Nigeria) principles and Constitutional instruments that could

commit our political decision-makers of the future to a progressive dismantlement of the current economic system of grasping individualism.

And commit also to an effort at promoting the emergence and growth of genuine cooperatives or collectives among peasant farmers, nomads, urban workers, artisans and petty traders in their organisation of production, marketing, housing, consumption of social goods and the provision of recreational and other vital social amenities

This is the only way, it would seem to us, in which the economic balance of power, now very heavily on the side of our dependent bourgeoisie, could be redressed in favour of the masses of our people. Consequentially, it is also the only real and basic guarantee of the capability of the common people to participate actively and decisively in the public life of this country.

## **6. Executive Authority**

Even granting the narrow and limited liberal bourgeois democratic framework within which the majority of the CDC dealt with the issue of division of powers they would seem to have committed a grave error of judgment. This has to do with the provisions in their majority draft dealing with the executive authority of the President at the Federal level and that of the Governor at the State level. The most dangerous implication of the amount of authority vested in the President and the Governor at their respective levels of government is the dangerous concentration of powers in the hands of these so-called chief executives.

In such a situation of excessive concentration of powers, including the virtually unlimited initiative of the President or the Governor to appoint and fire his ministers or commissioners, the ideal conditions would have been created for the emergence of the chief executive as a monstrously powerful and authoritarian



political figure. Correspondingly, the other major political actors and aspirants among our flabby bourgeoisie who would want to share in the chief executive's powers as ministers, commissioners or members of various statutory commissions and corporations, are likely to be reduced to sycophants and lackeys vis-a-vis the chief executive at whose pleasure alone they can fulfil their personal ambitions for power. Such a situation could also result in enhanced political instability as the chief executive's power might become an object of considerable envy among his actual and potential rivals who might be tempted to resort to extra-Constitutional and violent methods disruptive of national unity to push him out of office in the bid to create room for themselves at the top.

It is for considerations like this that we have proposed in our minority draft that:

- (i) the President at the Federal level shall appoint from the House of Representatives somebody who shall be Prime Minister and will have the responsibility to appoint his ministers from among members of both Houses of the National Assembly together with whom he shall form a government and exercise executive authority in the day-to-day running of the affairs of State; and
- (ii) the Governor shall appoint from the State Assembly somebody who shall be Premier and will have the responsibility to appoint state commissioners from among the members of the State Assembly together with whom he shall form a state government and exercise executive authority in the day-to-day running of the affairs of the state.

Apart from resulting in a satisfactory measure of diffusion of executive powers, with the President and Governor still having substantial executive powers including the general direction of the conduct of their respective governments, this arrangement

will ensure that all those who participate in exercising the executive authority of the Federal or State government have at least the formal mandate of the electorate.

This is likely to reduce considerably, if not eliminate, the chances of ministers or commissioners becoming sycophants in relation to the President or Governor. It is also likely to ensure that ministers and commissioners, being themselves members of their respective legislatures, will respond more sensitively and attentively to the views of the representatives of the people in these legislative Houses. It would also raise the office of the President and Governor above the petty wrangling and rancours of day-to-day politicking and administration; give them a basis for getting general public respect and make the incumbents concentrate on fundamental and general issues of policy and its implementation.

## **7. The Basis of Consensus Politics**

We also wish to note that the approach of the majority on the CDC to the task of eliminating the winner-take-all style of politics and creating viable consensus politics is at best dubious. While conceding: to our colleagues on the CDC a genuine concern to tackle the problem, we are of the opinion that their efforts in this regard were substantially undermined by their extremely narrow and limited perception of the kind of consensus politics that can confer stability, peace and orderly development on the Nigerian political system. The dominant orientation on the Committee was towards making provisions for a power-sharing arrangement between the Federal and State governments in the hope that the various ethnic and local elites would have ample scope for fulfilling their political ambitions, if not at the federal level, then at the level of state governments. It is our view that this kind of shabby consensus among the representatives of different factions of the Nigerian bourgeois elite, far from being able to produce the much-desired conditions of unity, stability and progress in our political life, can only exacerbate the on-going problem of ethnic and regional distrust, rivalry and antagonism.

The palpable reality of this danger was already forcefully demonstrated in the deliberations of the CDC. Whereas it was relatively easy for the majority of members to agree on the allocation of powers between Federal and State governments and, within the Federal structure, to the President, yet there was so much tense and indecisive argumentation as to the requirements a person must fulfill to be deemed elected to the extremely powerful position of the President of the Republic. And on several occasions during these debates the old and mystifying issue of the North-South contradiction and other fears of domination by some geographical area or ethnic group came to the surface.

The crucial importance attached by the representatives of the bourgeois elite to the state governments as exclusive spheres of influence for the various ethnic and regional elites is revealed in a kind of Freudian slip contained in Chapter X of the majority draft under “Definitions and Short Titles”. The majority draft defines “belong to” when used in relation to a state as referring to “a person either of whose parents was a member of a community *indigenous* to that state”. [emphasis is ours] This definition, in spite of the rhetoric on the “federal character of Nigeria” in the same section of the majority draft, is clearly an attempt to smuggle into the draft the dangerous notion of *state citizenship* which is in conflict with the provisions of Chapter III on “Citizenship”.

This dubious notion of *state citizenship* as defined in Chapter X is even more stringent and biologically determined than *national citizenship*, in the sense that it does not make on state citizenship comparable provisions to those on national citizenship by registration or naturalisation. In spite of the rhetorical and platitudinous pronouncements of the majority draft on the duty of the State to “encourage free mobility of people ...throughout the country” and to “secure full residence rights for every citizen in all parts of the country,” and even to encourage inter-marriage [Section 9(2)] a culpable implication of its definition of state

citizenship is that no matter for how long a Nigerian has resided in a state of Nigeria of which none of his parents is an indigene, such a Nigerian cannot enjoy the right to participate fully in the public life of that state.

In effect, the dominant elite notion of “national unity” or consensus politics in the CDC is that of a unity or a consensus based on the principle of the sharing out of state power and the wealth of the states exclusively among the members of these biologically defined ethnic and state elites. This is not a unity or a consensus based on a minimum agreement by all concerning the need to protect and promote the real interests and well-being of the masses of Nigerian people of whatever origin. It is our view that no genuine political unity or consensus is possible in the Nigerian context without such an honest and firm commitment among the various sections of the national leadership to the genuine interests of all our people. It is only within the frame work of such a commitment enshrined as fundamental principles and fundamental objectives on the basis of which all parties operate and all political activity flows that we can have genuine consensus politics. Otherwise there will only be bargaining among the various ethnic elites to maximise their own share of the loot of public funds; a bargaining process which would periodically degenerate into violent squabbling.

## **8. Public Accountability**

There is also no serious attempt to make, in the majority draft, concrete and clear provisions for the direct and substantive accountability of the political and public officers of the state to the generality of the Nigerian people from whom they derive their power and authority, on whose behalf they act, and on whom will fall the full burden of the cost and consequences of their actions. On the contrary, there are provisions for the formal and dubious accountability of one set of members of the bourgeois political class to another; with the Nigerian people at large reduced more or less to marginal observers of these actions.

No attempt is made to provide in the majority draft for the active participation and involvement of the broad masses in the political process and in the effective monitoring and control of the actions of the political and public officers. This we have attempted to do in our draft by making the fundamental principles, fundamental rights and duties and fundamental objectives, justiciable; by having a serious code of conduct; by insisting on genuinely national political parties and making the executive more closely tied with the elected representatives of the people in the legislatures.

## **9. National Political Parties**

One of the major examples of this critical omission on the part of the majority on the CDC is in relation to their attempt to deal with the issue of national political parties. They have failed in their draft to make provisions for the emergence of genuinely national, political parties that will consistently seek, through the programmes they uphold and their conduct in public affairs, the maximum well-being of all Nigerians and which will see themselves as crucial national institutions united with the Nigerian people and directly accountable to it. The extremely narrow elitist view held by the authors of the majority draft Constitution in relation to national political parties is revealed in the fact that the national parties envisaged in the majority draft could be totally ignored, at least in principle, by individual candidates seeking to be elected into even the highest national offices. Under the majority draft these individual candidates for election are not obliged to belong to, or be sponsored by, any of the national political parties recognised and registered by the Federal Electoral Commission, since any person could put himself up for election as an independent candidate.

This kind of arrangement is likely to produce at best so-called national political parties that would be no more than ad hoc coalitions of ethnic notables for elections and office sharing,

comprising especially the most financially wealthy and powerful among them. Such “national political parties” are likely to become valuable shock troops in the hands of the various factions of the Nigerian bourgeois elite in waging their disreputable and sordid political and economic battles. The majority draft Constitution would also seem, by its act of omission, to have given full protection to ethnic notables who often, being supplied with an overdeveloped sense of self-importance, will not work within a political party unless they can manipulate and control such a party for their own selfish ends.

Given the traditionally strong links between the politically and financially ambitious elements of the Nigerian bourgeois elite, it seems to us to be more than an accident that the majority on the CDC rejected out of hand our proposal that a firm limit be set on the amount of financial contributions that can be made to the funds of political parties in any one calendar year. This negative reaction on the part of the majority on the CDC also betrays their lack of concern for the emergence of truly great national political parties whose leaders will attach far less importance to the role that money, as an instrument of political manipulation, can play in the fortunes of the parties, and far more importance to the serious work of political education and mobilization that they must do among their party of members and the electorate. It also betrays a lack of concern of the need to shield Nigerian political contests from manipulation by powerful foreign business interests operating in this country and the agencies of foreign governments. For unless there is a strict limitation, as we are proposing in our draft, on who can contribute to the funds of parties and exactly how much can be contributed, these business interests and agencies will find it very easy to fund parties and individuals even for the highest office.

In effect, therefore, the provisions of the majority draft Constitution on political parties is a veritable blueprint for a political arrangement whereby the parties and their stalwarts will operate, as of old, with absolute independence of, and total

disregard for, the wishes of the common people. Except that at election times when, with their ‘naira power’ rhetoric, ethnic, religious or even physical coercion they would try to get the powerless voters to do their bidding.

It is for the purpose of remedying these staggering defects in the majority draft Constitutional provisions on political parties that we have made very detailed provisions in our own minority draft geared to conferring on the national political parties the status and responsibilities of very important national political institutions that will define their goals and policies in close relationship with the people’s most vital interests and concerns. They will also operate strictly within the framework of the principle of direct accountability to the broad masses of our people.

## **10. Independence and Self Reliance**

The majority of CDC members demonstrated their general outlook first by their unwillingness even to discuss the critical issue of safeguarding our people and the resources of our nation against all forms of foreign neocolonial domination and exploitation and, then, by the vacuous decisions they arrived at after they had reluctantly agreed to debate the issue. The majority on the CDC were not prepared to accept the exclusion of all private firms, foreign and indigenous, from all the major and strategic sectors of our national economy (e.g. mineral prospecting, extracting, processing and marketing), on the spurious ground articulated by some that the exclusion of foreign technical and technological expertise from our economy at this juncture would be inconsistent with the goals of national development. The majority of our colleagues on the CDC failed to grasp the simple fact that there is no other society in the world that has attained a considerable standard of national social and economic development on the basis of the arrangement of neocolonial economic dependence that they want to perpetuate in Nigeria.

The only concession that the majority on the CDC were prepared to make is contained in the *non-justiciable* provisions of their draft on the “Directive Principles and Objectives of Economic Policy” [Section 10(4)]. This particular Provision, empowering the National Assembly to set up by law a body to review and regulate from time to time the ownership and control of

enterprises operating in Nigeria, is very vague, and non-committal.

It will, at best, produce a rehash of the existing Nigerian Enterprises Promotion Board which is little more than a futile attempt to replace foreign capitalist exploiters with indigenous ones. It strikes us as strange that in proposing this measure, the majority on the CDC refused to be guided by our recent experience over the last two years in relation to the operation of the Nigerian Enterprises Promotion Decree which has demonstrated beyond all reasonable doubt that most indigenous Nigerian entrepreneurs are too lazy, or too dishonest, or too lacking in political will and guts to fight even for the very limited measure of national economic independence envisaged in that decree.

Consequently, we are firmly convinced about the great danger posed to our national economic interest by the domination and exploitation of our people and our national resources by foreign monopoly capital and its agents among our citizens. On the basis of the historical experience accumulated all over the world, we are convinced that not even an indigenized Nigerian capitalism or its wishy-washy derivative, 'welfare capitalism', can effectively combat this danger. It is our considered opinion that one of the most effective ways of successfully dealing with this danger in the present stage of our nation's history is by making Constitutional provisions, backed up by concrete policy measures, for the establishment of state ownership and control of the key sectors of the economy within a genuinely democratic Constitutional framework derived from a firm commitment to the progressive and speedy transformation of the social and economic order along genuinely egalitarian lines.

## **11. Understanding the Constitution**

The ultimate proof, in our view, of the political outlook of the dominant elements on the CDC is the turgid language and the ponderous style in which the majority draft Constitution is written. The pompous verbosity, the



obscurity of the technical legal terms and the innumerable cross references characterising the draft seem to have been deliberately engineered to make it impossible for anybody with a moderate general education to read and understand it. We suspect that these features of the majority draft might create, even for members of the legal confraternity, almost insurmountable difficulties of comprehension and interpretation. We are convinced that the majority draft, if adopted, will contribute nothing to the emergence and consolidation, among the masses of our people, of a popular Nigerian Constitutional and legal consciousness and of a popular commitment to the same corpus of norms and values relating to the “rule of law”.

We have always believed and we have always insisted that any serious attempt at drafting a Constitution for Nigeria must take into account the need to make the contents of such a document accessible to our people and must, in its lucidity and simplicity of expression, reflect the phenomenon of mass illiteracy and the linguistic heterogeneity of our society. One obvious implication of such awareness on the part of the CDC should have been to compose a draft Constitution in such lucid and simple English prose that it could be rendered into any Nigerian language and, thereby, made accessible to the common people of Nigerians in whose name and for whose benefit the draft Constitution has allegedly been written.

Since it is so clear to us that, in terms of the moral and philosophical principles underpinning most of its provisions and its style of presentation, it is impossible to improve the majority draft Constitution by attempting to revise or modify it in parts, it then becomes obligatory for us to produce an alternative draft which is also a practical demonstration of the fact that there is more than one way of writing a draft Constitution and that not all ways are equally valid.

We do not pretend that our minority draft Constitution is a perfect document- On the contrary, it has many faults and inadequacies. However, unlike the majority draft, it does not attempt to confuse or obscure critical issues. We have also attempted to demonstrate by it that it is possible to write a draft Constitution without mystifying our readers and without

avoiding the sort of issues that we believe are in the fore-front of the attention of the common people of this country.

## **12. Conclusion**

The current exercise of attempting to formulate a Constitution that would be the fundamental law for the guidance and regulation of the conduct of public affairs in our country has great historical significance. We could come out with a Constitution that would rekindle the faith of our people in the greatness of our dear country and could be a viable basis for mobilising our entire population in the task of translating this faith into tangible reality. It is also possible to put forward to the people an uninspired and uninspiring document that could intensify the doubts, cynicism and frustrations of the past among the generality of our people. We believe that Nigeria needs the first alternative and cannot afford the second. The way to achieve the first alternative and banish the second from our public life is for all the progressive and patriotic forces in Nigeria to recognize that we have reached such a juncture in the history of our society when we can no longer postpone our historic duty of bringing forth a genuinely just, democratic and egalitarian society.

It is precisely such a society that our people have been demanding from us since independence, and, if we fail to give them such a society, it will not be because they are not ready for it, but rather because we the members of the Western-educated bourgeoisie have decided, for one selfish reason or the other, that our own interests and concerns are irreconcilable with those of our people. It is not accidental that officialdom in Nigeria since independence, and even before, has always declared in its rhetorical and platitudinous policy statements that its primary objective is the establishment of a just and egalitarian society, and the welfare of the common man.

The repeated failure of officialdom, through several regimes, to match its words with appropriate action, has been the main cause

of the ever-widening gap between successive Nigerian rulers and the generality of the Nigerian people. Now that we are having yet another chance to retrieve our society from the jaws of disaster, our honest and sincere wish for the nation is that those who are going to take the ultimate decisions on a new Constitutional order for Nigeria should have the requisite greatness of spirit and moral caliber to take such decisions as would answer the fervent prayers of most Nigerians for a new direction towards justice, happiness and prosperity for all the people.

## **PART 2**

# **THE DRAFT CONSTITUTION**

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## **Minority Submission**

## **PREAMBLE**

We the people of Nigeria have decided to have a Constitution for the purposes of building a just society, forging our unity and consolidating our independence, on the principles of Democracy, Social Justice and Self-reliance. We therefore, in our Constituent Assembly, this ..... day of .....197..... enact this Constitution as the Supreme Law of this country binding on all persons and authorities throughout this country which shall be known as the Federal Republic of Nigeria consisting of nineteen states and a Federal Capital Territory whose areas are defined in the first appendix to this Constitution.

## **CHAPTER I**

### **The Fundamental Principles of the Constitution**

#### **1. The First Principle**

The first principle of this Constitution is that sovereignty belongs solely to the people from whom alone all organs of state, through this Constitution, derive their existence, power and authority.

#### **2. The Second Principle**

The second principle of this Constitution is that the government and all persons in authority throughout the country are solely responsible and accountable to the people, directly and through their democratically elected representatives; and the basis for ensuring this responsibility and public accountability is the active, conscious and open participation by the people in all activities and institutions.

#### **3. The Third Principle**

The third principle of this Constitution is the fundamental equality of all citizens under the law to which all citizens are subject without any exception whatsoever.

#### **4. The Fourth Principle**

The fourth principle of this Constitution is that the promotion of the welfare of all the people of this country and the enhancement and defence of their individual and collective human dignity are the primary purposes of government.

#### **5. The Fifth Principle**

The fifth Principle of this Constitution is that all the resources of this country belong to the people of this country and shall under the direction of the state be entirely utilized for even, balanced and self-reliant national development in order to promote the welfare of all the people and build a just and egalitarian society free from the exploitation of man by man.

**6. The Sixth Principle**

The sixth principle of this Constitution is that the sovereignty, unity and independence of this country are sacred and inviolable and it is the fundamental duty of the state to consolidate and defend these within the framework of promoting the self-reliance and unity of Africa, the dignity of the blackman everywhere and the freedom and equality of all peoples and all nations.

## **CHAPTER II**

### **Citizenship**

#### **8. Citizenship by birth**

The following persons are Nigerian citizens by birth:

- (a) every person born in Nigeria before 1 October, 1960 either of whose natural parents or grandparents belong or belonged to a community indigenous to Nigeria.
- (b) Every person born in Nigeria after 1 October, 1960 either of whose natural or legal parents or any of whose grandparents is or was a Nigerian citizen.
- (c) every person born outside Nigeria either of whose natural parents is or was a Nigerian citizen.

#### **9. Citizenship by registration**

The following persons are entitled to be registered as Nigerian citizens by registration:

- (a) every person of full age and capacity born outside Nigeria, any of whose grandparents is or was a Nigerian citizen.
- (b) any woman who is or has been married to a Nigerian citizen or to a person who would but for his death would have become a Nigerian citizen provided the President is satisfied that he is
  - i. a person of good character.
  - ii. has shown clear intention of a desire to be domiciled in Nigeria.
  - iii. has taken the Oath of Allegiance.



## **10. Citizenship by naturalisation**

- (a) Any persons who has resided in Nigeria for a continuous period of ten years shall be qualified to apply for a certificate of naturalisation if he has satisfied the President that he
- i. is a person of good character.
  - ii. is a person of full age and capacity.
  - iii. has shown clear intention of his desire to be domiciled in Nigeria.
  - iv. is in the opinion of the Governor of the State where he is or intends to reside when naturalized acceptable to the local community.
  - v. is a person who has made or is capable of making useful contribution to the well-being and progress of Nigeria.
  - vi. has taken the Oath of Allegiance.
- (b) Any persons who has resided in Nigeria for one month and has satisfied the President that he has made or is making outstanding contribution towards the liberation and unity of Africa may apply for a certificate of naturalisation.

## **11. Prohibition of Dual Citizenship**

- (i) A person shall automatically forfeit his Nigerian Citizenship if he acquires or retains the citizenship or nationality of any other country.
- (ii) A person who acquires Nigerian citizenship by registration or by certificate of naturalisation has to

renounce his other citizenship or nationality within twelve months from the date of registration or naturalisation as a Nigerian citizen or he automatically forfeits his Nigerian citizenship.

- (iii) A Nigerian citizen by birth has to renounce any other citizenship or nationality he holds within twelve months of the enactment of this Constitution or of his attaining full age (whichever is later) or he forfeits his Nigerian citizenship.

## **12. Deprivation of Citizenship**

The President may deprive a Nigerian citizen by registration or naturalisation of his citizenship if he is satisfied that the person has shown himself disloyal towards the Federal Republic of Nigeria.

## **13. Special Immigrant Status**

The President may grant special immigrant status to non-Nigerian spouses of Nigerian citizens who do not wish to acquire Nigerian citizenship provided he is satisfied that they are:

- (a) of good character.
- (b) will contribute to the well-being and progress of Nigeria.

## **CHAPTER III**

### **The Fundamental Rights, Freedoms and Duties of the Citizen**

#### **The Eight Fundamental Rights**

1. The right to life
2. The right to the means for sustaining life
3. The right to respect of the human dignity of the individual
4. The right to enlightenment
5. The right to personal liberty
6. The right to the products of one's labour
7. The right to productive employment
8. The right to a fair trial

#### **The Four Fundamental Freedoms**

9. The freedom of thought and belief
10. The freedom of expression
11. The freedom of association and peaceful assembly
12. The freedom of movement

#### **The Four Fundamental Duties**

13. The duty to defend the nation
14. The duty to defend the Constitution
15. The duty to engage in productive labour
16. The duty to oppose crime, support the law and assist all persons in distress and need

#### **14. The right to life**

Every citizen has a fundamental right to life and no one shall be intentionally deprived of his life except in the execution of a sentence of court.

**15. The right to the means for sustaining life**

Every citizen is entitled as a fundamental right to the essentials of food, water and shelter necessary for the sustenance of life.

**16. The right to respect of the human dignity of the individual**

Every citizen is entitled as a fundamental right to respect for the dignity of his persons and all forms of torture, inhuman and degrading treatment on the human person are absolutely forbidden.

**17. The right to enlightenment**

Every citizen has the fundamental right to be fully informed and enlightened about the activity of government and all public institutions.

**18. The right to personal liberty**

- (1) Every citizen is entitled as a fundamental right to personal liberty and no one shall be deprived of such liberty except:
- (a) For the purpose of bringing him to a court upon reasonable suspicion that he has committed a criminal offence or in order to prevent him from committing another offence.
  - (b) For the purpose of executing a sentence or an order of a court for a criminal offence for which he has been found guilty.
  - (c) For the purpose of making him comply with an order of a court in order to secure the fulfillment of an obligation imposed upon him by law.
  - (d) For the purpose of according care or treatment in the case of persons suffering from infectious or

contagious diseases, persons of unsound mind, persons addicted to drugs, alcohol or for the protection of the community from such diseases and derangements.

- (e) For the purpose of providing for the welfare or education of a person under the age of eighteen by the person legally responsible for his welfare.
- (f) For the purpose of preventing the unlawful entry of any person into Nigeria or for the purpose of effecting the expulsion, extradition or other lawful removal of any person from Nigeria.

**18. (2)**

(a) Any person who is arrested or detained shall be informed within twenty-four hours in a language he understands of the facts and grounds of his detention or arrest and shall be brought to a court of law within a period of twenty-four hours of the arrest or detention.

(b) Any person who is kept in lawful custody for a period of six months and is not tried shall be released unconditionally.

**18.(3)** Nothing in this section invalidates any law which authorizes officers of the armed forces and police to detain a member of the armed forces or the police force for a period not exceeding three months.

**19.The right to the products of one's labour**

Every citizen is entitled as a fundamental right to own and use the products of his physical and mental labour except the portion which is utilised by public institutions for the general welfare of the community and the nation.

## **20. The right to productive employment**

Every citizen is entitled as a fundamental right to productive employment within his capacity and skill and as a part of overall national development effort.

## **21. The right to a fair trial**

Every citizen is entitled as fundamental right to fair trial and hearing and shall be assumed innocent until he is proved guilty except in the case of charges or abuse of office and corruption under the Code of Conduct when the burden of proof of innocence lies on the accused citizen.

## **22. The freedom of thought and belief**

Every citizen is entitled as a fundamental right to freedom of thought, belief, faith and religion.

## **23. The freedom of expression**

Every citizen is entitled as a fundamental right to freedom of expression, to hold, receive and impart opinions, ideas, thought and belief without any interference.

## **24. The freedom of association and assembly**

Every citizen is entitled as a fundamental right to associate with other persons in any form of open association, society, union or club for the pursuit of his legitimate rights and interest and is also entitled as a fundamental right to peaceful assembly for the pursuit of these legitimate rights and interests. This does not invalidate section 47 of this Constitution where restrictions are placed on the association or assembly of persons in political parties.

**25. The freedom of movement**

Every citizen is entitled as a fundamental right to move freely throughout the country, to enter and leave the country and reside in any part of the country without hindrance or interference.

**26. The duty to defend the nation**

Every citizen has the fundamental duty to defend the sovereignty, independence, territorial integrity and unity of the nation from external aggression and internal subversion through permanent vigilance, military and civil defense training and duties.

**27. The duty to defend the Constitution**

Every citizen has the fundamental duty to defend the Constitution and see that its provisions are established and it is fully adhered to in the spirit of its six fundamental principles.

**28. The duty to engage in productive labour**

Every citizen has the fundamental duty to engage in productive labour, physical and mental, up to the limit of his capacity and skill and as part of the overall national development effort.

**29. The duty to oppose crime, support the law and assist all persons in distress and need**

Every citizen has the fundamental duty to oppose and expose crime, support the lawful agencies combating crime and assist all persons in distress and need.

**30. Restriction on fundamental rights and freedoms**

Nothing in sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, of this Constitution shall invalidate any law that is reasonably justifiable by the principle of Democracy and Social Justice, and passed in the interest of national defense, public safety, public order, public morality, public health or for the purpose of protecting the Constitutional rights and freedoms of others.

**31. Enforcement of fundamental rights, freedoms and duties**

Any citizen who feels that any of his fundamental rights and freedom has been infringed is entitled to seek redress in a court of law and shall be entitled to free legal aid from the state to do so.

**32.** The National Assembly shall from time to time make laws on how the fundamental duties shall be enforced.



## **CHAPTER IV**

### **The Fundamental Economic and Social Objectives**

- 33.**The Federal Republic of Nigeria, is committed to fostering the establishment of just social relations in all sectors of production and in all spheres of society and therefore shall especially support and protect the interests of the peasant farmers, nomads, artisans, petty traders, and wage earners and shall also develop genuine producer and consumer cooperatives and collectives.
- 34.**The Federal Republic of Nigeria shall within the framework of this Constitution treat with special urgency and determination the question of land ownership and control and resolve it in the interests of the peasant farmers and tenants on the principle that land shall be owned and controlled by those who work and live on it.
- 35.**The Federal Republic of Nigeria is committed to full national control of the key resources of the country and the key sectors of the economy in order to consolidate independence, ensure social justice and rapid and even development. The federal government shall therefore wholly own and control all sectors of the minerals extraction and processing industries including petroleum; and all commercial banking shall be under state ownership and control.
- 36.**The Federal Republic of Nigeria is committed to rapid, even, balanced and self-reliant economic development and the state shall direct and plan the national economy. Appropriate planning authorities shall be created at village, district, area, state and national levels to ensure closely integrated planning based on the genuine needs and interests of the people and their full and active participation.

- 37.** The Federal Republic of Nigeria shall encourage private economic activity and guarantee and protect legitimately acquired private property, including those of foreigners, so long as these are beneficial to the country's economy and to the interest of the Nigerian people.
- 38.** The Federal Republic of Nigeria shall foster consciousness and commitment to national unity, democracy, social justice and self-reliance, through the political education of all the people. It shall also foster the growth and wide dissemination of living culture, science and technology; therefore, all schools and institutions of education and all radio and television broadcasting shall be under public ownership and control and shall be directed at fostering these objectives.
- 39.** The Federal Republic of Nigeria is a secular republic and the state shall not be associated with any religion but shall actively protect the fundamental right of all citizens to hold and practice the religious beliefs of their choice.

## CHAPTER V

### Political Parties

- 40.** There shall be political parties and as these are major political institutions essential for systematic, organised popular participation in democratic government, they shall have their organisation and activity regulated by this Constitution.
- 41.** A political party shall only operate under this Constitution when it is recognised by the National Electoral and Parties Commission after satisfying the Commission that it has:
- (a) Registered with the Commission its correct and accurate:
    - (i) Constitution.
    - (ii) Political Programme.
    - (iii) Names, Addresses, Occupations, Assets and Liabilities of the members of its National Executive; its principal state and national officers.
    - (iv) Full and detailed account of its financial transactions including all its sources of income and the nature of its expenditure;
  - (b) a constitution and political programme which are compatible with the six fundamental principles of this Constitution and the seven fundamental economic and social objectives of the Federal Republic of Nigeria enshrined in this Constitution;
  - (c) a constitution and democratic procedures which allow any citizen eligible to vote who accepts its programme and is prepared to work for it to join and fully participate without any discrimination whatsoever;

(d) regular and openly democratic elections at least every four years to elect members of its local, state and national organs and all its officers;

(e) among members of its national executive organ and its principal officers at least one eligible voter domiciled in each of sixteen states of the Federal Republic of Nigeria;

(f) nothing in its name, emblem, programme songs or slogans which connotes or implies association with any ethnic, linguistic or religious group; with any state, group of states or any geographical section of the country.

(g) headquarters in the federal capital.

(h) its funds derived entirely from the contributions of eligible voters which is limited for any one calendar year and for any eligible voter to the amount of a candidate's deposit for election to the Federal House of Representatives;

(i) not received any funds or any form of assistance from any foreign country directly or indirectly and has no assets, liabilities or accounts outside Nigeria;

(j) not organised any thugs, bodyguards or any form of para-military formations for the display of physical force or coercion of any person.

**42.** The National Electoral and Parties Commission has the power to conduct investigation into the organisation and activity of all political parties and associations at any time to ascertain that all the conditions in section 41 are being satisfied by all political parties at all times. The Commission has the power to prescribe to all political parties standard formats for keeping records of membership, financial transactions and for conducting elections.

- 43.** Only political parties recognized by the National Electoral and Parties Commission can put up candidates for all state and federal elections to the legislative and executive offices established by this Constitution.
- 44.** When the National Electoral and Parties Commission proscribes a party for its failure to satisfy the conditions in Section 41 of this Constitution the party's assets shall be frozen, those of its members found responsible for the violation shall be disqualified from holding any office established under this Constitution for life; and its other members are given the option within thirty days of either forming a new party or joining any of the existing parties.

## **CHAPTER VI**

### **The Legislature**

- 45.** There shall be a National Assembly of the Federal Republic of Nigeria which shall consist of the House of Representatives, the Senate and the President of the Republic.
- 46.** The powers of the National Assembly to make laws shall be exercised by bills passed by both Houses with a simple majority, (except as otherwise provided in this section), and assented to by the President.
- 47.** A bill may originate in either House but shall not become law until it has been passed by both Houses and assented to by the President of the Republic. If amendments are made in the Second House to which the bills goes, it has to be passed again with the amendments by the House in which it originates, before it goes to the President.
- 48.** Where a bill which has passed one House fails to pass the other House there shall be a joint sitting of the two Houses and the bill will be passed with a simple majority of the members present and voting.
- 49.** Where a bill is presented to the President for assent he shall within thirty days signify that he assents or that he withholds assent.
- 50.** If the President withholds his assent and the bill is again passed by each of the two Houses with a two-thirds majority of the members present and voting it shall become law and the assent of the President shall not be required.

51. If after the President has withheld his assent the bill is passed by only one House and fails to pass the other House, there shall be a joint sitting of the two Houses and if the bill is passed with a two thirds majority of the members present and voting at this joint sitting it shall become law and the assent of the President shall not be required.

## **The House of Representatives and Senate**

### *Composition*

52. The House of Representatives shall consist of three hundred and fifty members each elected from one of the three hundred and fifty constituencies into which the country shall be divided on the basis that each constituency shall be made up of contiguous settlements of approximately the same population size, provided that no constituency shall cover settlements in more than one state.
53. The Senate shall consist of five members from each state, elected from the ninety-five senate constituencies into which the country shall be divided on the basis that each constituency shall be made up of contiguous settlements of approximately the same population size.

### *Tenure*

54. The House of Representatives and Senate shall be dissolved four years from the date at which general elections into each House took place.
55. A member of the House of Representatives or Senate shall be disqualified from holding a seat:

- (a) If he is convicted by any court of law or the Code of Conduct Tribunal of corruption and/or abuse of office;
- (b) If he is fined or imprisoned for any offence involving dishonesty;
- (c) If he is fined or imprisoned or sentenced to death for murder or conspiracy to commit murder or abetment of murder;
- (d) If he is lawfully declared an undischarged bankrupt;
- (e) If he is lawfully certified a lunatic or declared a person of unsound mind;
- (f) If he becomes President, Vice-President, Governor or Deputy Governor of a State or member of any other legislative house in the federation;
- (g) If he becomes a member of a commission established by this Constitution;
- (h) If he ceases to be a member of the political party on whose nomination he was elected, provided that if the party is proscribed and he is not found responsible for the violation of the conditions for recognition of parties in Section 41 he may join with others in a new party or join any of the existing parties;
- (i) If without just cause to the satisfaction of the House he is absent from meetings for a period amounting to more than one hundred days in any one calendar year.



### *Meetings*

56. The House of Representatives and Senate shall meet in session within one month of the general elections to them and shall by resolution establish a time table of sessions so long as they meet for at least one hundred and eighty-two days in every calendar year.
57. An emergency session of either House may at any time be summoned by the Speaker or the President of the Senate on the written request of one-third of the members of either House or on the request of the President provided that no business shall be conducted at such a session unless more than one half of the members are present.

### *Committees*

58. The House of Representatives and Senate may establish committees for any special or general purposes and some of these may be joint committees of both Houses.
59. The House of Representative and Senate shall each have a permanent committee which shall include members from all parties represented in the House to be known as the Private and Public Enterprises Investigation Committee with the powers to conduct public investigations and hearings into the activity of all private and public enterprises in the country at any time the need arises. The committee's task is to ascertain generally the extent to which any enterprise is serving the interests of the Nigerian people and in particular may investigate allegations of corruption, abuse of office, profiteering and exploitation. The committee shall publish the results of its investigation and may recommend administrative action or legislation. The Committee has the same powers to summon as a High Court and may use any of the agencies of the government or its own investigators.

### *Officers*

**60.**The members of the House of Representatives and Senate shall at their first meeting elect from among themselves a Speaker and Deputy Speaker, a President of the Senate and Deputy President of the Senate respectively. The Speaker of the House of Representatives shall nominate a person for approval by the House as Clerk of the House; and the President of the Senate shall nominate a person for approval by Senate as Clerk of the Senate.

### *Quorum*

**61.**The quorum for an ordinary session of the House of Representative and Senate shall be one-third of the total membership as established by this Constitution.

### *Language*

**62.**The business of the House of Representatives and Senate shall be conducted in English and/or any other language the members may by resolution decide.

### *Voting*

**63.**Any question proposed for decision in the House of Representatives and Senate shall be decided by a simple majority of the members present and voting unless otherwise provided in this Constitution. The Speaker of the House of Representatives and the President of the Senate respectively may cast a vote to avoid an impasse because of equality of votes.

### ***Oath***

- 64.** Each member of the House of Representatives or Senate shall before assuming his seat take in the presence of each respective House an Oath as prescribed in the Second Appendix to this Constitution.

### ***State Assembly***

- 65.** There shall be a State Assembly for each of the States of the Federation which shall consist of the Governor of that State and a House of Assembly.
- 66.** The powers of the State Assembly to make laws shall be exercised by bills passed by the House of Assembly with a simple majority and (except as otherwise provided in this Constitution) assented to by the Governor.
- 67.** When a bill is presented to the Governor for assent he shall within thirty days signify that he assents or that he withholds assent.
- 68.** If the Governor withholds his assent and the bill is again passed by two thirds majority of the members present and voting the bill shall become law and the assent of the Governor shall not be required.

### ***Composition of House of Assembly***

- 69.** A State House of Assembly shall consist of members who shall number three times the total number of House of Representative constituencies in that State.

### ***Tenure***

**70.** A State House of Assembly shall stand dissolved four years from the date at which general elections into the House took place.

**71.** A member of a State House of Assembly shall be disqualified from holding a seat:

- (a) If he is convicted by a court of law or the Code of Conduct Tribunal of corruption and/or abuse of office.
- (b) If he is fined or imprisoned for any offence involving dishonesty.
- (c) If he is fined or imprisoned or sentenced to death for murder, conspiracy to commit murder or abetment of murder.
- (d) If he is lawfully declared an undischarged bankrupt.
- (e) If he is lawfully certified a lunatic or declared a person of unsound mind.
- (f) If he becomes President, Vice-President, Governor or Deputy Governor of a State, or member of any other Legislative House in the Federation.
- (g) If he becomes a member of a commission established by this Constitution.
- (h) If he ceases to be a member of the political party on whose nomination he was elected, provided that if the party is proscribed and he is not found

responsible for the violation of the conditions for recognition of parties in Section 41 he may join with others in a new party or join any of the existing parties.

- (i) If without just cause to the satisfaction of the House he is absent from meetings for a period amounting to more than one hundred days in any one calendar year.

### ***Meetings***

**72.** A State House of Assembly shall meet in session within one month of the general elections to it and shall by resolution establish a time table of sessions, as long as it meets for at least one hundred and eighty-two days in every calendar year.

**73.** An emergency session of the State House of Assembly may at any time be summoned at the written request of one-third of the members or on the request of the Governor, provided that no business shall be conducted at such a session unless more than one-half of the total membership established by this Constitution are present.

### ***Committees***

**74.** A State House of Assembly may establish committees for any special or general purpose.

**75.** A State House of Assembly shall have a permanent Committee which shall include members from all parties represented in the House to be known as the Private and Public Enterprises Investigations Committee. This Committee shall have the same powers and functions as a similar committee of each of the two Houses of the National

Assembly established by section 59 of this Constitution, provided that its area of jurisdiction is limited to a state.

### *Officers*

**76.** The members of a State House of Assembly shall at their first meeting elect from among themselves a Speaker and Deputy Speaker. The Speaker shall nominate a person for approval by the House as Clerk of the House.

### *Quorum*

**77.** The quorum for an ordinary session of a State House of Assembly shall be one-third of its total membership as established by this Constitution.

### *Language*

**78.** The business of a State House of Assembly shall be conducted in English and/or any other language as the members may by resolution decide.

### *Voting*

**79.** Any question proposed for decision on a State House of Assembly shall be decided by a simple majority of the members present and voting unless otherwise provided in this Constitution. The Speaker may cast a vote to avoid an impasse because of equality of votes.

### *Oath*

**80.** Each member of a State House of Assembly shall before assuming his seat in the House take in the presence of the House an oath as prescribed in the second appendix to this Constitution.

## **Legislative Powers of the National Assembly and State Houses of Assembly**

- 81.** The National Assembly may make laws for Nigeria or any part of it for the purposes of public safety, public order, national defence, the maintenance of essential supplies and services and for protecting and enforcing the Constitutional rights, freedoms and duties of the citizen.
- 82.** A State House of Assembly may make laws for a state for the purposes of public safety, public order, national defence, the maintenance and security of essential supplies and services and for protecting and enforcing the civil rights, freedoms and duties of the citizen provided that these do not conflict with laws made by the National Assembly under Section 81 and 83 and 85 of this Constitution.
- 83.** The National Assembly has the exclusive powers to make laws for Nigeria on any of the matters in the Exclusive Legislative List set out in the third appendix of this Constitution.
- 84.** A State House of Assembly has the exclusive power to make laws for a state on any of the matters not on the Exclusive Legislative List set out in the third appendix of this Constitution.
- 85.** Nothing in sections 81, 82, 83 and 84 prevents either the National Assembly or the State House of Assembly from making laws on any other matter as specifically provided for in this Constitution.

## **CHAPTER VII**

### **The Executive**

#### **The Office of the President of the Republic**

- 86.** There shall be a President of the Federal Republic of Nigeria who shall be the Head of State and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria; and a Vice-President who shall act as his deputy.

#### **Election of the President**

- 87.** The President shall be elected from among candidates nominated by recognized political parties in a direct election in which the whole country shall be one constituency as established by the Electoral Law.
- 88.** Each Presidential candidate shall have a Vice-Presidential candidate nominated by the same political party who shall be deemed elected if the Presidential candidate he is nominated with is elected.
- 89.** The nomination of the Presidential and the Vice-Presidential candidates and the declaration of their programme and election manifesto shall be done by resolution or resolutions of a general congress or convention of the political party nominating them in which all branches are represented by elected delegates.
- 90.** A candidate for the office of the President shall be deemed elected if he wins more than fifty per cent of the total number of votes cast in that election.



91. If on the first ballot no candidate is elected then the two candidates with the two highest number of votes cast shall stand again within fourteen days of the first ballot and the one who wins more than fifty per cent of the votes cast shall be deemed elected.

### *Oaths*

92. Any person elected to the office of President and Vice-President shall hold these offices for a period of four years from the date they took their oaths of office, unless impeached, provided that if the nation is in a state of war or emergency and the President considers that it is not in the national interest to hold elections the National Assembly may extend the period for three months at any one time.
93. On the death, incapacitation, resignation or impeachment of the President the Vice-President shall discharge the functions of the office of the President and the President of the Senate shall discharge the functions of the office of the Vice-President and a new President of the Senate shall be elected until the four-year term for which that President and Vice-President were elected expires.
94. If both the President and Vice-President elected die, are incapacitated, resign or are impeached before their four-year term expires there shall be fresh elections to these offices.

### *Powers of the President*

95. The executive authority of the Federal Government shall be vested on the President and subject to the provisions of this Constitution and of any laws made by the National Assembly may be exercised by him either directly or through the Vice-President, Prime Minister, Ministers or officers of the Federal Public Services.

96. The executive authority of the Federal Government shall extend to the execution and maintenance of this Constitution, all laws enacted by the National Assembly, and to all matters on which the national assembly has powers to make law.
97. (i) The President shall have the power to issue a Proclamation of a State of Emergency but only when -
- (a) the nation is at war.
  - (b) the nation is in imminent danger of getting involved in a war.
  - (c) the nation is in imminent danger of invasion.
  - (d) there is actual breakdown of public order and public safety in the whole country or in any part to such an extent that extra-ordinary measures to restore security are required.
  - (e) there is a clear and imminent danger of an actual breakdown of public order and public safety in the whole country or in any part to such an extent that extra-ordinary measures to restore security are required.
  - (f) there is imminent danger of the occurrence of some disaster or natural calamity in the country or any part of it.
  - (g) there is the occurrence of some disaster or natural calamity in the country or any part of it.
  - (h) there is some other public danger which constitutes a serious and actual threat to the existence of the state and the unity of the nation.

***Duration and Legislative Approval of State of Emergency***

98. The proclamation of a state of emergency shall have effect for not more than three months at a time and shall be subject to the approval of a two-thirds majority in both Houses of the National Assembly and if confined to a part of the country also of a two-thirds majority in the relevant State House of Assembly or Houses of Assembly.

### ***Impeachment***

**99.** The President or Vice-President may be impeached and removed from office if a motion of impeachment is passed by a two-thirds majority by a joint meeting of the two Houses of the National Assembly.

**100.** The motion of impeachment may be tabled only after a joint committee of twelve members from each of the two Houses set up by a resolution passed by a two-thirds majority of the members of each of the two Houses to investigate the conduct of the President or Vice-President, has come up with a verdict of guilty.

### ***The Council of State***

**101.** There shall be a Council of State consisting of the President as chairman, the Vice-President, the Prime Minister and such other ministers and citizens appointed by the President to advise him on the formulation of general policies.

### ***The Council of Ministers***

**102.** There shall be a Council of Ministers of the Federal Republic of Nigeria consisting of the Prime Minister as chairman and Ministers as members to run the affairs of the Federal Government under the general direction of the President.

### ***The Prime Minister***

**103.** The Prime Minister shall be appointed by the President from among the elected members of the House of Representatives.

***The Ministers***

**104.** The Ministers shall be appointed by the President from among the elected members of the National Assembly on the recommendation of the Prime Minister.

***National Councils***

**105.** There shall be a National Security Council consisting of the President as Chairman, the Vice-President as deputy chairman, the Prime Minister, the Ministers responsible for Defence, Internal Affairs and External Affairs, the Inspector General of Police and the Chief of Staff Supreme Headquarters to advise the President on matters relating to the security of the state and the nation.

**106.** There shall be a National Defence Council consisting of the President as Chairman, the Vice-President as deputy chairman, the Prime Minister, the Ministers responsible for Defence, Internal Affairs and External Affairs, the Chief of Staff Supreme Headquarters, the Chief of Army Staff, the Chief of Air Staff, the Chief of Naval Staff and the Inspector General of Police to advise the President on matters relating to the defence of the sovereignty and territorial integrity of the nation.

**107.** There shall be a National Planning Council consisting of the President as Chairman, the Vice President as deputy chairman, the Prime Minister, the Minister responsible for Economic Planning, the Governors of all the States, and such other citizens appointed by the President to advise the President on the formulation and implementation of national development plans.

**108.**The President may with the approval of the National Assembly establish other national councils.

***National Commissions***

**109.**There shall be national Commissions with powers to exercise authority in the spirit of the six fundamental principles and independent of any other authorities in the exercise of their functions except as provided for in section 111 of this Constitution. Each National Commission shall have a Chairman and members nominated by the President and appointed by a resolution passed by a two thirds majority in the House of Representatives and in the Senate. The Chairman and members shall be honest citizens of proven integrity and patriotism. They shall not be members of or be associated in any way with a political party, ethnic, religious or sectional organisation. They shall not be in the employment of any of the public services of the federal or state governments nor hold directorships in any business enterprise.

**110.** A Chairman or member of a National Commission shall serve for a period of five years from the day to took his oath of office. He shall not be removed except by a resolution passed by a two thirds majority in each of the two Houses of the National Assembly because of misconduct, misbehaviour or incapacity.

**111.** There shall be a National Electoral and Parties Commission consisting of a full-time chairman and twenty-four full-time members one of whom must be domiciled in each of the states. In addition to the qualification in Section 110, the chairman and members shall be citizens who have not belonged to a political party since 1st October 1960. The National Parties and Electoral Commission shall be responsible for:

- (a) ascertaining and establishing that political parties fulfill the conditions for recognition set out in Section 41 of this Constitution.
- (b) granting recognition to political parties which fulfill these conditions.
- (c) withdrawing recognition from political parties which cease to fulfill these conditions and proscribing them.
- (d) organising and supervising the registration of qualified voters for any elections for which it is responsible.
- (e) organising and supervising all elections to the office of President, Vice-President, Governor, Deputy-Governor, membership of the House of Representative, Senate, and state Houses of Assembly according to the Electoral Law.
- (f) assisting State Electoral Commissions with the organisation and supervision of local government elections.

**112.** There shall be a National Population Commission consisting of a full-time chairman and six other members, three of whom shall be full-time. The National Population Commission shall be responsible for:

- (a) organising and supervising periodic enumeration of population, through sample surveys, censuses and otherwise.
- (b) supervising the universal registration of births and deaths throughout the country.

- (c) publishing information and data on population for national planning purposes.
- (d) advising the President on population issues and problems.

**113.** There shall be a National Fiscal Review Commission consisting of a part-time chairman and six part-time members. The National Fiscal Review Commission shall be responsible for:

- (a) proposing from time to time a formula for the making regular reviews of the federal fiscal system and the financial relationship between the federal and state governments.
- (b) allocation of revenue between the federal government and the states government and among the state governments having regard to population, the principle of even and balanced development, derivation of the revenue and the overall national interest.

**114.** There shall be a National Universities Commission consisting of a part-time chairman and six part-time members. The National Universities Commission shall be responsible for:

- (a) national coordination of university development.
- (b) the allocation of funds to the universities.
- (c) making recommendations to the President regarding the appointment of Chancellors, Chairmen of University Councils, and other members of University Councils apart from those representing interests internal to the universities.

**115.** There shall be a Nigerian Armed Forces Commission which shall consist of a full-time chairman, the Chief of Staff Supreme Headquarters, the Chief of Army Staff, the Chief of Air Staff, the Chief of Naval Staff and five other part-time members. The Commission may set up separate units for each of the three services which shall however coordinate their standards. The National Armed Forces Commission shall be responsible for:

- (a) recruitment into the Armed Forces.
- (b) commissioning of officers into the Armed Forces.
- (c) making recommendations to the President regarding the appointment of the Chief of Staff Supreme Headquarter, Chief of Army Staff, the Chief of Air Staff and the Chief of Naval Staff.

**116.** There shall be a Nigerian Police Service Commission consisting of a full-time Chairman, the Inspector General of Police, three police officers of the rank of Commissioner and above and five other part-time members. The National Police Service Commission shall be responsible for:

- (a) the recruitment of persons into the Nigerian Police Force.
- (b) the appointment of persons to officer ranks in the Nigerian Police Force.
- (c) the dismissal of persons from the Nigerian Police Force,
- (d) the exercise of general disciplinary control over the person holding offices in the Nigeria Police Force.



- (e) making recommendations to the President regarding the appointment of the Inspector-General of Police.

**117.** There shall be a Nigerian Prison Services Commission consisting of a full-time chairman, the Director-General of the Prison Services, three other prison officers of the rank of Assistant Director of Prisons and above and five other part-time members. The National Prison Services Commission shall be responsible for:

- (a) the recruitment of persons into the Nigerian Prison Services.
- (b) the appointment of persons to officer ranks in the Nigerian Prison Services.
- (c) the dismissal of persons holding offices in the Nigerian Prisons Services.
- (d) the exercise of general disciplinary control over persons holding offices in the Nigerian Prisons Services.
- (e) making recommendations to the President regarding the appointment of the Director-General of Prison Services.

**118.** There shall be a Federal Civil Service Commission which shall consist of a full-time chairman and six full time members. The Federal Civil Service Commission shall be responsible for:

- (a) the recruitment of persons into the Federal Civil Service.

- (b) the appointment of persons to offices in the Federal Civil Service.
- (c) the dismissal of persons holding offices in the Federal Civil Service.
- (d) the exercise of general disciplinary control over persons holding offices in the Federal Civil Service.

**119.** There shall be a Federal Judicial Services Commission which shall consist of a full-time Chairman, the Chief Justice of the Federation, the President of the Federal Courts of Appeal, the Grand Mufti of the Federal Sharia Court of Appeal and five other part-time members. The Federal Judicial Services Commission shall be responsible for:

- (a) the recruitment of persons into the Federal Judicial Service.
- (b) the appointment of persons into offices in the Federal Judicial Service.
- (c) the dismissal of persons holding offices in the Federal Judicial Service.
- (d) the exercise of general disciplinary control over persons holding offices in the Federal Judicial Service.
- (e) making recommendations to the President regarding the appointment of the Chief Justice of the Federation, the President of the Federal Court Appeal and the Grand Mufti of the Federal Sharia Court of Appeal.

**120.** There shall be a National Public Complaints Commission consisting of a full-time chairman and six other full-time members. The National Public Complaints Commission shall be responsible for:

- (a) investigating any complaint by any person against any other person public or private institution and ascertaining whether the person has been wronged according to any provisions of this Constitution or any law of the country.
- (b) making a report of this to the National Assembly periodically with recommendation for action by the National Assembly.

#### **The Office of the Governor of a State**

**121.** There shall be a Governor of each state who shall be the Head of the government of that state and a Deputy Governor who shall act as his deputy.

#### ***Elections***

**122.** The provisions for the election of the President and Vice-President in sections 87, 88, 89, 90, 91, shall apply to the election of the Governor and Deputy Governor provided it is understood that in this case a state is the constituency.

#### ***Tenure***

**123.** The persons elected to the offices of Governor and Deputy-Governor shall hold these offices for a period of four years from the date they took the oaths of office, unless impeached, provided that if a State of Emergency has been declared in the whole country or in that state the State House of Assembly may extend the period for three months at any one time.

**124.** On the death, incapacitation, resignation or impeachment of the Governor or Deputy Governor the Deputy Governor shall discharge the functions of the Governor and the Speaker of the House of Assembly shall discharge the function of the Deputy Governor.

**125.** If both the Governor or Deputy-Governor die, are incapacitated, resign or are impeached before their four-year term expires there shall be fresh elections to both offices.

### ***Powers of the Governor***

**126.** The executive authority of the State Government shall be vested on the Governor and subject to the provisions of this Constitution and of any laws made by the National Assembly and the State House of Assembly may be exercised by him either directly or through the Deputy Governor, Premier, Commissioners, or officers of the State Public Service.

**127.** The executive authority of a State Government shall extend to the execution, maintenance of this Constitution, and to all matters on which the House of Assembly has powers to make law.

### ***Impeachment***

**128.** The Governor or Deputy-Governor may be impeached and removed from office if a motion of impeachment is passed by a two-thirds majority of the State House of Assembly.

**129.** The motion of impeachment may be tabled only after a committee of twelve members of the House of Assembly set up by a resolution passed by a two thirds majority to investigate the conduct of the Governor or Deputy Governor has come up with a verdict of guilty.

### *Oaths*

**130.**Any person elected to the office of Governor or Deputy Governor shall not begin to perform the functions of his office until he has taken the Oaths prescribed in the second appendix to this Constitution.

### *State Executive Council*

**131.**There shall be in each state an executive council consisting of the Premier as Chairman and the state Commissioners as members to run the affairs of the government of the state under the general direction of the Governor.

### *Premier*

**132.**The Premier shall be appointed by the Governor from among the elected members of the State House of Assembly.

### *State Commissioners*

**133.**The State Commissioners shall be appointed by the Governor from among the members of the State House of Assembly on the recommendations of the Premier.

### *State Councils*

**134.**A Governor may with the approval of a State House of Assembly establish State Councils under his Chairmanship and the Vice-Chairmanship of the Deputy-Governor to

advise the Governor on the formulation and implementation of policy.

### ***State Commissions***

**135.** There shall be State Commissions with powers to exercise authority in the spirit of the six fundamental principles and independent of any other authorities in the exercise of their function except as provided for in section 135 of this Constitution. Each State Commission shall have a chairman and members nominated by the Governor and appointed by a resolution passed by a two-thirds majority of the State House of Assembly. The chairman and members shall be honest citizens of proven integrity and patriotism. They shall not be members of or be associated in any way with a political party, ethnic, religious or sectional organisation. They shall not be employed by any of the public of the federal or state governments nor hold directorships in any business enterprise.

**136.** A Chairman or member of a State Commission shall serve for a period of five years from the day he took his oath. He shall not be removed before the expiration of his term except by a resolution passed by a two-thirds majority in the State House of Assembly because of misconduct, misbehaviour or incapacity.

**137.** There shall be a State Electoral Commission consisting of a chairman and four members who shall be responsible for the organisation and supervision of all local government elections in a state.

**138.** There shall be a State Civil Service Commission consisting of a chairman and four members who shall be responsible for the recruitment, appointment, promotion and dismissal of persons in the civil service of a state and for general

disciplinary control over all persons employed in this service.

**139.** There shall be a State Judicial Service Commission consisting of a chairman and the Chief Justice of the state, the Grand Qadi of the state, where applicable, and four other members who shall be responsible for the recruitment, appointment, promotion and dismissal of persons in the judicial service of a state and for general disciplinary control over all persons employed in this service.

***The Public Services of the Federation and States***

**140.** There shall be a civil service of the Federation and a civil service for each state the recruitment, appointment, promotion, dismissal and general disciplinary control of whose members are the responsibility of the Federal Civil Service Commission and a State Civil Service Commission respectively, as provided for in sections 118 and 138 of this Constitution. This responsibility may be delegated by the Federal or State Civil Service Commission to any of its member or any officers of the service provided that:

- (a) The President shall on the recommendation of the Council of Ministers appoint:
  - (i) the Secretary to the Council of State;
  - (ii) the Secretary to the Council of Ministers;
  - (iii) the principal representatives of the Federal Government in other countries and organisations;
  - (iv) the chief executive of a ministry;
  - (v) the director of a department or unit;
  - (vi) any other office on the staff of the President, Vice-President and on the staff of the

Council of State, Council of Ministers and all National Councils.

- (b) The Governor shall on the recommendation of the Executive Council appoint:
  - (i) the Secretary to the State Government and Head of the State Civil Service.
  - (ii) the Secretary to the State Executive Council.
  - (iii) The Chief Executive of a Ministry
  - (iv) director of a department or unit
  - (v) any other office on the personal staff of the Governor, Deputy Governor or on the staff of the Executive Council and any State Council.

**141.** There shall be a Judicial Service for the Federation and for each State, the recruitment, appointment, promotion, dismissal and general disciplinary control of whose members shall be the responsibility of the Federal Judicial Service Commission and a state Judicial Service Commission respectively. There shall be at the Federal level a Supreme Court, a Federal Court of Appeal and a Federal Sharia Court of Appeal, The appointment of the Chief Justice of the Federation, the President of the Federal Court of Appeal and the Grand Mufti of the Federal Sharia Court of Appeal shall be made by the President on the recommendation of the lay members of the Judicial Service Commission, There shall be in each state a state Sharia Court of Appeal. The appointment of the Chief Justice of a state, the judges of the High Court and the Grand Qadi of the State's Sharia Court of Appeal shall be made by the Governor on the recommendations of the lay members of the state's Judicial Service Commission.



**142.** There shall be a Nigerian Police Force the recruitment, appointment, promotion, dismissal and general disciplinary control of whose members shall be the responsibility of the Nigerian Police Service Commission. The Nigerian Police Force shall be under the command of the Inspector-General of Police who shall receive directives from the President for the purpose of maintaining public safety and public order. The Governor of a state may also give directions to the commissioner of police of that state for the purpose of maintaining public safety and public order provided that these do not conflict with any directives the commissioner of police has received from the Inspector-General of Police.

There shall be the Nigerian Prison Service, the recruitment, appointment, promotion, dismissal and general disciplinary control of whose members shall be the responsibility of the Nigerian Prison Service Commission. The Nigerian Prison Service shall be under the command of the Director-General of Prisons who shall receive directives from the President for the purpose of securing, training and rehabilitating convicts.

There shall be the Nigerian Armed Forces for the purpose of defending the sovereignty, independence and territorial integrity of the nation; assisting and supporting other armed forces in the promotion and defence of the independence and freedom of the peoples of Africa; supporting civil authorities to prevent and suppress internal insurrection; and performing any other functions the National Assembly may by law prescribe. The President of the Republic is the Commander-in-Chief of the Armed Forces. The structure of the Armed Forces and the recruitment, promotion, appointment and disciplinary control of their members shall be established by a law or laws of the National Assembly

## **CHAPTER VIII**

### **Elections**

#### **Qualifications of Candidates**

A candidate for the office of the President, Vice President, Governor, Deputy Governor and membership of the Senate must have the following qualifications:

- a) is a Nigerian citizen and has reached the age of thirty years or over on the day of nomination;
- b) has not been declared or found guilty of corruption and/or abuse of office by any of the Governments or courts of Nigeria since 1st October, 1960;
- c) has not since the enactment of this Constitution been convicted by Nigerian court of law, lawful tribunal or the Code of Conduct Tribunal, of corruption and/or abuse of office;
- d) has never been fined or imprisoned for any offence involving dishonesty;
- e) is not lawfully certified a lunatic or a person of unsound mind;
- f) not a declared undischarged bankrupt;
- g) is a member of and been nominated by a recognized political party;
- h) does not and has not held any full-time appointment in any of the public services of the Federation or state, including statutory corporations, local Government authorities, universities and other state owned educational institutions, within a period of six months before the date of the election to any of these offices.

A candidate for the membership of the House of Representatives and a State House of Assembly must have the following qualifications:

- (a) is a Nigerian citizen and has reached the age of eighteen years on the day of nomination;
- (b) has all the qualifications under clauses b, c, d, e, f, g, h, of section 145 of this Constitution.

**147.** The Electoral Law to be enacted by the National Assembly shall prescribe that after nominations to the offices and legislatures mentioned in sections 145 and 146 any eligible voter has the right to bring to the notice of the National Electoral and Parties Commission any evidence challenging the validity of the qualifications of a candidate and the Commission shall investigate and act accordingly.

#### **The Right to Vote**

**148.** Any Nigerian citizen over the age of eighteen is entitled to vote in the elections to all the offices and legislatures mentioned in sections 145 and 146 of this Constitution.

### **Voting Procedure**

- 149.** The Electoral Law to be enacted by the National Assembly shall prescribe that all voting in all elections shall be conducted in such a way that the exercise of choice of candidates by the voter shall be done in complete secrecy, and the act of placing the ballot paper in the ballot box shall be done in clear public view with the accredited representatives of all candidates enabled to watch.
- 150.** The Electoral Law to be enacted by the National Assembly shall prescribe that the ballot paper shall be in full, clear, public view from the time voting begins up to the time the ballot papers are counted and the final results of the election announced.

### **Election Campaign**

- 151.** The Electoral Law shall prescribe that no political party or candidate is allowed to buy television or radio time for their campaign. The National Electoral and Parties Commission shall be solely responsible for the allocation of television and radio time for campaigning to political parties and this shall be done in proportion to the number of candidates they each have nominated for that particular campaign or campaigns. The cost of this shall be paid for by the National Electoral and Parties Commission;
- 152.** The Electoral Law shall prescribe that all political parties and candidates shall mail their programmes and manifestoes at the expense of the Commission.

## CHAPTER IX

### The Code of Conduct

**153.** There shall be a Code of Conduct for all persons holding the following offices and positions; President, Vice-President, Governor, Deputy-Governor, membership of all legislatures, membership of all National and State Councils, membership of all National and State Commissions, all offices of the public services of the Federation, States and Local Government Authorities including universities, state companies and corporations, all staff of the Code of Conduct Tribunal.

**154.** Every person to whom the Code of Conduct applies shall:

- (a) conduct himself with simplicity and modesty at all times; respecting and protecting the human dignity of all persons and all their rights and freedoms; upholding social justice and fairness in the spirit of the six fundamental principles of this Constitution;
- (b) declare all his assets and liabilities and those of his wife, wives, dependent children and relatives fully, correctly and accurately on a form prescribed by a law of the National Assembly, when assuming office and when leaving office;
- (c) not engage in and shall oppose and expose anywhere all attempts or commission of abuse of office which includes the use of one's office or official position to enrich oneself, relations, friends, patrons or clients legitimately or illegitimately, and the acquiring of any privileges or services one is not officially entitled to;

- (d) not engage in and shall oppose and expose all attempts or commission of corruption and bribery which includes the use of money, goods or services to induce, influence or attempt to influence the conduct of an official or a person in an official position;
- (e) not hold directorships in any private enterprise within or outside Nigeria or engage in the running of any private business, trade or profession;
- (f) not receive or be paid any remuneration for any public office at the same time as he is being paid for another.
- (g) conduct himself inside or outside Nigeria in such a way as to enhance the dignity of the nation and shall avoid any action that might bring dishonour or discredit to the nation.

**155.** There shall be a Code of Conduct Tribunal with the same position under this Constitution as a National Commission, with a chairman and nine members which shall be responsible directly and through its agencies for:

- (a) ascertaining that all persons to whom this Code of Conduct applies abide by it at all times;
- (b) prescribing punishment for breach of the Code of Conduct according to the various provisions of this Constitution and a law to be made by the National Assembly;
- (c) receiving and preserving the declaration of assets and liabilities and seeing to their regular publications in the official gazettes.

**156.**The Code of Conduct Tribunal shall investigate any allegation of breach of this Code of Conduct brought to its notice in writing by any citizen and shall reply in writing stating the outcome of its investigations and action. It shall report the matter in its Quarterly and Annual Reports which shall be published and submitted to the Legislatures. No legal action may be taken against a person for anything contained in a report to the Tribunal or in the reports of the Tribunal.

**157.**The National Assembly may from time to time pass laws to enable the Code of Conduct Tribunal to perform its function more effectively

## CHAPTER X

### Local Government

**158.** There shall in each state be Local Government Authorities, the approximate size of whose area and population shall be defined by a law of the National Assembly.

**159.** The Local Government Authority shall be run by a council democratically elected by the eligible voters of the area as prescribed by the Electoral law,

**160.** Each Local Government Authority shall have the following functions:

(i)

- a) to consider and make recommendations to the state economic planning authority on the economic development of the area and the whole state;
- b) collection of rates, radio and television licence fees;
- c) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
- d) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;
- e) establishment, maintenance and regulation of motor parks and public conveniences;
- f) construction and maintenance of roads, streets, drains and other public highways, parks, or public



facilities as may be prescribed from time to time by the Government of a State;

- g) naming of roads and streets and numbering of houses;
  - h) provision and maintenance of public conveniences and refuse disposal;
  - i) registration of births, deaths and customary marriages;
  - j) assessment of privately owned houses or tenements for the purpose of levying rates as may be prescribed by the Government of State; and
- (ii) any other functions as may be prescribed by a State House of Assembly.

## **CHAPTER XI**

### **Federal Capital Territory**

- 161.** There shall be a Federal Capital Territory covering the area defined in the first appendix of this Constitution. All rights to land within this territory are wholly vested in the Federal Government.
- 162.** The National Assembly shall from time to time make law or laws regarding the administration of the Federal Capital Territory.

## **CHAPTER XII**

### **Amendments to the Constitution**

**163.** Any section of this Constitution can only be amended in the following manner:

- (i) A resolution containing the details of the proposed amendment is presented to each House of the National Assembly and passed by at least a two-thirds majority of the members of each House as laid down in this Constitution.
- (ii) The text of such a resolution passed is presented to the people of Nigeria in a national referendum not earlier than three months and not later than six months after its passage in each House of the National Assembly and the voters are asked to affirm or reject the amendment by voting “YES” or “NO”.
- (iii) If the numbers of “YES” votes amount to at least two-thirds of the total votes cast in the referendum, then the Constitution will become amended accordingly from the date on which the final result of the referendum is officially declared.

## **APPENDICES**

## **THE FIRST APPENDIX**

This shall be a list of the existing nineteen states with the precise scientific definition of the areas covered by each state making no mention of state capitals,

## **THE SECOND APPENDIX**

### **OATH OF ALLEGIANCE**

I,.....do solemnly swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria and that I will preserve, protect and defend the Constitution in the spirit of the six fundamental principles. So help me God.

### **OATH OF OFFICE OF PRESIDENT**

I, .....do solemnly swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as President of the Federal Republic of Nigeria, I will discharge my duties to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria; that I will do this in the spirit of the six fundamental principles and work towards the seven fundamental economic and social objectives of the Constitution;

that I will not allow my personal interest to influence my official conduct or my official decisions; that I will to the best of my ability preserve, protect and defend the Constitution of the Federal Republic of Nigeria; that in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will; that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as President of the Federal Republic of Nigeria, except as may be required for the due discharge of my duties as President; and that I will devote myself to the service and well-being of the people of Nigeria. So help me God.

#### **OATH OF OFFICE OF GOVERNOR OF A STATE**

I, ..... do solemnly swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as the Governor of ..... State, I will discharge my duties to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria; that I will do this in the spirit of the six fundamental principles and work towards the seven fundamental economic and social objectives of this Constitution; that I will not allow my personal interest to influence my official conductor my official decisions; that I will to the best of my ability preserve, protect and defend the Constitution of the Federal Republic of Nigeria; that in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will; that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Governor of ..... State, except as may be required

for the due discharge of my duties as Governor; and that I will devote myself to the service and well-being of the people of Nigeria. So help me God.

**OATH OF OFFICE OF VICE PRESIDENT,  
DEPUTY GOVERNOR.  
MINISTER OR COMMISSIONER**

I, .....do solemnly swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as Vice President of the Federal Republic of Nigeria/ Deputy Governor of ..... State/Minister of the Government of the Federation/Commissioner of the Government of ..... State I will discharge my duties to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria; that I will do this in the spirit of the six fundamental principles and work towards the seven fundamental economic and social objectives of the Constitution; that I will not allow my personal interest to influence my official conduct or my official decisions; that I will to the best of my ability preserve, protect and defend the Constitution of the Federal Republic of Nigeria; that in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will; that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Vice President/Deputy Governor/Minister/Commissioner, except as may be required for the due discharge of my duties as Vice President/Deputy Governor/Minister/Commissioner. So help me God.

**OATH OF OFFICE OF MEMBER OF COUNCIL OF  
MINISTERS/ STATE EXECUTIVE COUNCIL**

I.....do solemnly swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as a Member of the Council of Ministers/ Member of the State Executive Council of..... State, I will discharge my duties to the best of my ability, faithfully and in accordance with the Constitution of the Federal Republic of Nigeria and the law and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria; that I will do this in the spirit of the six fundamental principles and work towards the seven fundamental economic and social objectives of the Constitution; that I will not allow my personal interest to influence my official conduct or my official decisions; that I will to the best of my ability preserve, protect and defend the Constitution of the Federal Republic of Nigeria; that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as a Member of the Council of Ministers/a Member of the State Executive Council of ..... State, except as may be required for the due discharge of my duties as a member of the Council. So help me God.

**JUDICIAL OATH**

I, ..... do solemnly swear that I will well and truly exercise the judicial functions entrusted to me and will do right to all manner of people in accordance with the Constitution of the Federal Republic of Nigeria as by law established and in accordance with the laws and usage of the Federal Republic of Nigeria without fear or favour, affection or ill-will. So help me God.

**OATH OF A MEMBER OF THE NATIONAL  
ASSEMBLY OR A STATE ASSEMBLY**

I, .....do solemnly swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as a Member of the National Assembly/.....State Assembly, I will perform my functions honestly to the best of my ability, faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the law and the rules of the National Assembly and always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of the Federal Republic of Nigeria; that I will do this in the spirit of the six fundamental principles and work towards the seven fundamental economic and social objectives of Nigeria and that I will preserve, protect and defend the Constitution of the Federal Republic of Nigeria.

**OATH OF OFFICE OF CHIEF JUSTICE OF  
NIGERIA/PRESIDENT OF THE FEDERAL  
COURT OF APPEAL/GRAND MUFTI OF THE  
FEDERAL SHARIA COURT OF APPEAL/CHIEF  
JUSTICE OF A STATE/GRAND QADI OF A  
STATE**

I.....do solemnly swear that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as Chief Justice of Nigeria/President of the Federal Court of Appeal/Grand Mufti of the Sharia Court of Appeal/Chief Justice of .....State/Grand Qadi of ..... State, I will discharge my duties, and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the law; that



I will abide by the Code of Conduct established by this Constitution; that I will not allow my personal interest to influence my official conduct or my official decision; that I will preserve, protect and defend the Constitution of the Federal Republic of Nigeria; and that in all circumstances, I will do right to all manner of people according to law, without fear or favour, affection or ill will. So help me God.

## **THE THIRD APPENDIX**

### **The Exclusive Legislative List**

#### **ITEM**

1. Accounts of the Government of the Federation and officers, courts, and authorities of this government, including the audit of those accounts.
2. Antiquities and monuments as may be designated by the national assembly as national antiquities or national monuments.
3. Archives, other than public records of the Governments of a State prior to January 1952.
4. Aviation, including airports, safety of aircraft and carriage of passengers and goods by air.
5. Arms, ammunition and explosives.
6. Bankruptcy and insolvency.
7. Banks, Banking, Bills of Exchange and Promissory Notes.
8. Borrowing of moneys within or outside Nigeria for the purposes of the Federation or of any State.

9. Census, including the establishment and maintenance of machinery for continuous and universal registration of births and deaths throughout Nigeria.
10. Construction, alteration' and maintenance of such roads as may be declared by the National Assembly to be Federal Trunk Roads.
11. Citizenship, naturalisation and aliens.
12. Commercial and industrial monopolies, combines and trusts.
13. Control of Capital Issues.
14. Copyright.
15. Currency, coinage and legal tender.
16. Customs and excise duties.
17. Defence.
18. Deportation of persons who are not Nigerian citizens.
19. Diplomatic, consular and trade representation.
20. Drugs and Poisons.
21. Designation of securities in which trust funds may be invested.
22. Election to the offices of President, Vice-President, and Governor of a State and any other elective office whatsoever in Nigeria or any part thereof including election to a legislative house but excluding election to a local government council or any office in such council.
23. Electricity, water power and other sources of power for industrial and commercial purposes or for public utilities and undertakings.
24. Export duties.
25. Evidence.

26. Exchange Control.
27. External Affairs.
28. Extradition.
29. Fingerprints, identification and criminal records.
30. Fishing and fisheries other than fishing and fisheries in rivers, lakes, waterways, ponds and other inland waters within Nigeria.
31. Immigration into and emigration from Nigeria.
32. Implementation of treaties.
33. Incorporation, regulation and winding up of bodies corporate, other than co-operative societies, local government authorities and bodies corporate established directly by any law enacted by the legislature of a State.
34. Insurance.
35. (a) The regulation of industrial commercial or agricultural development  
(b) Industrial, commercial or agricultural development without prejudice to the rights of the Government of the State or its agency to initiate or participate in such development.
36. Labour, including trade unions, industrial relations, conditions, safety and welfare of labour, industrial disputes, prescribing a national minimum wage for Nigeria or any part thereof and industrial arbitrations.
37. Legal proceedings between State Governments or between the Federal Government and any State or any other person or authority.
38. Maritime shipping and navigation including:
  - (a) shipping and navigation on tidal waters;

(b) shipping and navigation on the River Niger and its affluents and on any such other inland waterway as may be designated by the National Assembly to be an international waterway, or to be an inter-State waterway;

(c) lighthouses, lightships, beacons and other provisions for the safety of shipping and navigation;

(d) such ports as may be declared by the National Assembly to be Federal ports (including the Constitution and powers of port authorities for Federal ports.)

39. Mines and minerals, including oilfields, oil mining, and natural gas.

40. National parks being such areas in a State as may with the consent of the Government of that State be designated by the National Assembly as national parks.

41. Naval, Military and Air Forces including any other armed forces of the Federation.

42. Nuclear Energy.

43. Passports and visas.

44. Patents, trademarks, trade or business names, industrial designs and merchandise marks.

45. Pensions, gratuities and other like benefits payable out of the Consolidated Revenue Fund or any other public funds of the Federation.

46. Police.

47. Posts, telegraphs and telephones.

48. Powers, privileges and immunities of the Federal Legislative House(s) and its (their) members.
49. Prisons.
50. Professional Occupations as may be designated by the National Assembly.
51. Public debt of the Federation.
52. Public relations of the Federation.
53. Public Service of the Federation including the settlement of disputes between the Federation and officers of such service.
54. Quarantine.
55. Railways.
56. Regulation of political parties.
  
57. Service and execution in a State of the civil and criminal processes, judgements, decrees, orders and other decisions of any court of law outside Nigeria or any court of law in Nigeria other than a court of law established by the legislature of that State.
58. Stamp Duties.
59. Taxation of incomes, profits and capital gains.
60. Statistics other than Statistics for the purposes of a State Government.
61. The establishment and regulation of:
  - (a) the framework and authorities for national economic planning.

- (b) the allocation of public revenue between the Federal, State and local governments and the general rules regarding its collection and disbursement.
- (c) the laws governing the conduct of elections including local government elections.
- (d) minimum standards of education at all levels.
- (e) the authorities for the preservation and exhibition of historical monuments, records, sites and artefacts of national importance.
- (f) the authorities for the establishment and maintenance of libraries other than those established by other public bodies.

62. The formation, annulment and dissolution of marriages other than marriages under Moslem and customary law including matrimonial causes related thereto.

63. (1) Trade and commerce between Nigeria and other countries and commerce among the States;
- (2) (a) The establishment of a purchasing authority with power to acquire for export or sale in world markets such agricultural produce as may be designated by the National Assembly;
  - (b) The grant to any such purchasing authority or to any other authority the exclusive power to export and sell any such produce outside Nigeria or for industrial processing within Nigeria.
  - (3) Inspection of produce to be exported from Nigeria and the enforcement of grades and standards of quality in respect of produce so inspected;
  - (4) The establishment of a body to prescribe and enforce standards of goods and commodities offered for sale;

(5) The control of the prices of goods and commodities designated by the National Assembly as essential goods or commodities; and

(6) The registration of business names.

**64.** Traffic on Federal Trunk Roads.

**65.** Trigonometrical, cadastral and topographical surveys.

**66.** University education and such aspect of general professional technological, technical or vocational education as may be designated by the National Assembly.

**67.** Water from such sources as may be declared by the National Assembly to be sources affecting more than one territory.

**68.** Weights and measures.

**69.** Wireless, broadcasting and television other than broadcasting and television provided by the Government of a State; allocation of wavelength for wireless, broadcasting and television transmission.

**70.** Any other matter with respect to which the National Assembly is empowered to make laws in accordance with the provisions of this Constitution.

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## About the Authors

**SAMUEL OLUSEGUN OSOBA** was born in Ijebu-Ode, South-West Nigeria, on the 9th January 1935. He attended Ijebu-Ode Grammar School (1947-53); Nigerian College of Arts, Science and Technology, Ibadan (1954-56), University College Ibadan, (1956-1959), and Moscow State University (1963-67). He taught at Ijebu-Ode Grammar School (1959-63). He taught and conducted research in the Department of History, O.A.U., Ile-Ife (1967-91). His special area of research interest is the social and intellectual history of modern Nigeria.

In his many years of teaching at Ife, Dr. Osoba established a tradition of historical research grounded in sound and original Marxist methodology. Not in the school of mechanical Marxism, with mindless repetition of trite terminology and mechanistic phrases, but scholarship in the genuine tradition of empirical research and deeply thought out consideration of Nigerian and African reality. The aim was to challenge students to reconceptualise their knowledge such that it became a way of not only understanding society, but also of using it to find ways of changing society in order to better the lives of ordinary people. His deep knowledge of, and total contempt for, the Nigerian ruling class was at the heart of his scholarly work and continues to be a central intellectual concern. Dr. Osoba's work at Ife inspired generations of students, who look to him for intellectual challenges and scholarly inspiration. Above all, his profound knowledge, his integrity and his humility make him a model for others to emulate.

**YUSUFU BALA USMAN** was born in Musawa, Katsina in the northern part of Nigeria in April 1945. He died in September, 2005. He spent most of his working life teaching in the Department of History, Ahmadu Bello University, Zaria. In his numerous historical writings, Bala completely changed the paradigm of the study of African history, from one based on "tribal" studies, to a dynamic perspective which shows how present identities and structures are a product of historical processes, and are not fixed, permanent categories.

Bala was a political activist who played an important role in sensitizing the Nigerian people to the liberation struggles going on in Africa and elsewhere, and was a major influence in forging a progressive foreign policy stance for the Nigerian government in the late 1970s and 1980s. He was an active participant in Nigerian politics, playing major roles in founding and supporting political movements with a radical agenda aimed at liberating the peoples of Nigeria and all of Africa from the bonds of colonial and imperialist oppression. He was a public intellectual, whose writings and lectures were designed to expose to the Nigerian public the ways the existing political and economic system operates to exploit and oppress the vast majority of the people of the country.

Dr. Yusufu Bala Usman was undoubtedly one of the most brilliant minds that Nigeria has produced. Aside from his impressive intellectual achievements, he stands as an individual whose courage, honesty and integrity served as a shining example for his colleagues, students and in fact all those who came in contact with him. Years after his death in 2005, he remains an inspiration to all Nigerian patriots and Africans everywhere.

