

# Nigeria's 100 days since the end of the old constitution—a clear look forward and to the past

## 1—Nigeria's political system: the future

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### THE TRANSFER OF POWER

CIVIL GOVERNMENT SUDDENLY came to an end in Nigeria on January 16, 1966, when the Army, to the great relief of the vast majority of Nigerians, suspended the constitution and sacked the legislatures and the cabinets. Although there is an instrument transferring power from the civilian to the military authorities, couched in language of mutual understanding, the average Nigerian does not admit that there has been a voluntary transfer of power. As far as he is concerned, there has been a successful and God-sent *coup d'état* by the Nigerian Army. To the vast majority of Nigerians, the coup is the most patriotic act that any group of Nigerians had done since October 1, 1960, when Nigeria became independent.

### THE WRECK OF DEMOCRACY

NIGERIANS WITNESSED how cleverly the Nigerian politicians successfully twisted every democratic provision in the Nigerian constitution since 1952, when parliamentary democracy through popular elections was introduced in Nigeria. The names of qualified electors who were suspected to be likely to vote for the opposition parties were cleverly eliminated from the voters' list. Fictitious names were substituted so that government supporters could exercise plural voting. The one man, one vote provisions of the constitution became virtually meaningless.

The areas which voted against the parties in power were denied government amenities. Water supplies were cut; electricity equipment was removed; scholarships were withdrawn; roads were left unrepaired.

Opposition candidates were prevented from getting nominated for elections in devious ways. First, the nominators were directly and indirectly persecuted in customary courts. They were over-taxed, sacked from their jobs and became marked men. But that did not work effectively as there were people still willing to nominate their friends, their party members or their relations for elections. So, two more effective methods were devised.

Since the government conducted all elections through members of the Electoral Commissions who were appointed by the cabinet, the commission was heavily packed with fanatical members of the party in power. They in turn appointed the electoral officers and the presiding officers. The electoral officers, once appointed, went into hiding after accepting the nomination papers of candidates that stood on the ticket of the party in power. The opposition candidates were denied the opportunity to stand election. Many government members were thus "returned unopposed." Also, even when candidates stood for election, false results were announced to ensure that the political party in power was always returned to power. The ballot, which is the greatest assuring institution of parliamentary democracy, was discredited in Nigeria. In consequence, towards the end of the last Republic, the populace used the bullet freely to ensure that those whose rule they resented

were not ruling. The slogan of the opposition was "if we cannot outvote them, we must out-shoot them." Which they did!

Since political power or political favours were very remunerative, the courts, the corporations, the local authority staff, and even the chiefs were eager to maintain the status quo, so that they too could continue to retain their positions which could change hands if there was a change of political power.

Another malady was the compartmentalisation of the country into regional blocs. The country was virtually divided into the North, the East, the West and the Mid-West, each of which passed discriminatory legislation against the other. Each acted with utter disregard of the authority of the federal government. The last act was the confession of the federal government's inability to intervene in Western Nigeria, when, following the October 11, 1965 election in that region, there were riots, looting and mass killing. The inaction of the federal government in Western Nigeria was one of the causes which finally liquidated the civilian regime. Had the last regime continued for five to ten years, Nigeria might have broken up into four or more separate and warring units.

### PRINCIPLES OF A NEW CONSTITUTION

THESE EXPERIENCES ARE widely resented in Nigeria and are going to weigh very heavily in the minds of people when a new constitution is to be fashioned for Nigeria. Already, the Federal Military Government has set up a constitutional committee to recommend a new constitution. Many Nigerians do not want too quick a return to constitutional government. They suspect that some influential members of the old regime are trying to harry the Army to pack and go. If a referendum is held among the enlightened middle and lower-middle classes in Nigeria, today, there will be an overwhelming vote in favour of the continuation of the military regime for the next five years or more, to ensure enough time for the memory and influence of the politicians to die away.

In spite of the reluctance of many Nigerians to see a quick return to civilian rule, we cannot dismiss thoughts about the form of constitution that should replace the old one at the termination of the military regime.

Any constitution that will meet the aspirations of Nigerians should satisfy six main principles.

*First*, the Constitution should be written in simple layman's language, devoid of the legal technicalities and the provisos which made the suspended constitution the football of the Bench and the Bar. The language of the constitutions of the U.S.A., Switzerland, Australia and Canada readily come to mind. Also, the constitution should not be unduly wordy to the extent that it will appeal only to lawyers and to scholars and students. It should be capable of easy interpretation into the main local Nigerian languages, so that more and more Nigerians will know the fundamental Law of their land.

*Secondly*, the provisions for Fundamental Human Rights which were entrenched in the constitution should cease to be hedged with qualifications that have the effect of negating the rights that they seek to protect. For instance, the "right to freedom of expression,

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including freedom to hold opinions and to receive and impart ideas and information without interference" was useless when read alongside the law of sedition which provides that anything which brings the government into contempt or ridicule was seditious. This law was frequently interpreted as overriding the right to free speech, guaranteed in the constitution. In that respect, even party political broadcasts, or election cartoons, by the opposition parties could, and were occasionally taken to be seditious, when they tended to sway popular votes against the party in power. The right was further limited by three provisions immediately following it, one of which is that "nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society . . . in the interest of defence, public safety, public order, public morality or public health."

Another provision that a citizen of Nigeria of a particular community, tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person, be subject . . . to disabilities or restrictions to which citizens of Nigeria of other tribes . . . are not made subject" was immediately followed by the provision that "nothing in this section shall invalidate any law by reason only that the law prescribes qualifications for service in an office . . . imposes restrictions with respect to the appointment of any person to an office . . . imposes restriction with respect to the acquisition or use by any person of land or other property . . . or imposes any disability, restriction or accords any privilege . . ."

The proviso enabled regional governments to prevent their public services from employing citizens of other regions: enabled the local authorities to seize the properties of non-citizens of the locality and made the persecution of fellow Nigerians easy in a region other than his own!

*Thirdly*, the constitution should ensure not only that no one unit, or a combination of two or three units of government is so powerful as to threaten the authority of the federal government, but also that the main leaders of the country and the major political parties do not find it more encouraging and profitable to operate in the regional or state, rather than at the national level.

In this regard, the existing regional boundaries should be dismantled and in their places, provincial administrations should be set up (twenty-two or twenty-five of them) such that the national government will have power to intervene in provincial administration. That is, the national government should have power to appoint and dismiss a provincial commissioner or governor, sack the government and ensure that provincial activities are carried on in the best interest of the country.

If this happens, the leading politicians and the major political parties will strive to nationalise their activities rather than confine them to regional or tribal level. The bane of the former federal civilian regime was that it was delegated by powerful leaders and parties who did their own planning in the regions but dictated policies in the national headquarters. It was the second-rate leaders that ran national politics and killed it.

*Fourthly*, the judiciary should be unified whether or not there is a federal form of government. The system of creating regional courts and local customary courts gave rise to the attempt, which occasionally succeeded, to make the courts the instrument of coercion of the opposition by the regionally based governing political parties. The members of the judiciary are even now happy to be relieved of their experiences in the First Republic and are calling for a unified judicial system in Nigeria.

*Fifthly*, and consequently, the system of revenue allocation between the national and the provincial governments should change. Hitherto, revenue has been mainly allocated on the basis of derivation. That is, customs and excise duties collected on goods imported into or produced in a subsequent movements of the commodities from the importer to the ultimate consumer. Royalties paid on mined natural resources were largely paid to the government in the area of mining. The federal government was merely an accounting agent, paying quarterly to each government the estimated share out of such revenues. The federal government paid through this means about 65-75 per cent of regional government revenues

but had no control over the expenditure pattern of the regional governments. The principle of derivation had the effect of making the rich region richer and the poor poorer.

Under the proposed constitution, the national government should have the power to allocate funds on the basis of need and national interest. It should also be competent to make special and conditional grants through which it can compel a provincial government to perform, or desist from performing, special functions.

The tax laws should be uniform throughout the country to ensure a freer mobility of the factors of production. The national government should have income tax powers over every citizen eligible to pay tax. The influence of the national government should be made to reach the most remote village rather than be confined to the capital territory of Lagos.

*Sixthly*, all these have implications on the other aspects of public life in Nigeria. The civil service, for instance, would have to be more centralised than at present. Education at all levels will have to become more and more the responsibility of the national government, which had hitherto spent little or nothing on education in the regions, except on universities and on a few inter-regional secondary schools. Electoral Duties will have to be removed from the purview of the outgoing government and put exclusively under the Public Service Commission or the President. Constitutional provisions will have to be made to regulate the nomination of candidates, the system of voting, the behaviour and even the number of ministers that can be appointed and the remuneration that they should be entitled to. In the last regime, there were regions where almost every government party member in the legislature was a minister of state and every elected member had his eyes on a ministerial appointment. The usual experience was that elected members "crossed the floor" from one party to the other in search of ministerial appointments, thus making nonsense of the party system.

This last point has led a large number of Nigerians to demand that there should be a separation between the legislative and the executive functions. That is, an elected member of parliament should not be eligible for a ministerial position, unless he resigns his seat, and that the President should select his team in the same manner as the President of the United States of America.

#### RETHINKING AND DEBATE

THE DANGER AHEAD is that the bitter political experiences since 1952 may lead to the demand of an extreme type of constitution that will give little or no room for the exercise of discretion by rulers. As it is not possible to provide, in a constitutional document, for all possible future contingencies, it is desirable that a good measure of flexibility be provided. It is not wise to tie the future, irrevocably.

At present, a large number of committees have been set up to recommend common measures for the future. In the months ahead, a great debate will occur on the structure of the Nigerian constitution. At present, such a debate is warming up. A competent constitutional panel, dominated by lawyers, has been set up to submit constitutional proposals to the Federal Military Government. A deadline has not been fixed when the panel is to finish its task. There is the talk of a constituent assembly or of a referendum. But if the past is to be a lesson for the future, in a country in which less than a tenth of the electorate can read and understand a constitutional document, the choice of the majority may amount to no more than the wish of the political parties against which so much aspersion has been cast since January 15, 1966.

It is the recognition of this that has led a few Nigerians to advocate a re-examination of the franchise with a view to our taking a few steps backwards. That is, instead of giving every adult the vote, there should be a minimum educational qualification for the elector as well as for the legislator. It has been suggested that the elector should have passed primary six and that the legislator should possess a minimum of West African School Certificate or the General Certificate of Education, Ordinary Level or their equivalents. Such educational qualifications will make possible the adoption of the European or the American system of voting. The elector can mark his ballot paper in secret, and drop it in the ballot box in the open. This is to avoid the existing

system of dumping multiple ballot papers.

Again, there is the fear that education, *per se*, is not an insurance against fraud. In fact, it was obvious that many of the most corrupt politicians of the last regime were university trained lawyers, doctors, teachers and university lecturers, while most of those who stood against corruption and resisted the regime until the Army intervened, were stark illiterates!

#### THE PATH TO NATIONAL UNITY

The conclusion that one can reach is that in Nigeria, today, thoughts on the constitution have not crystallised. Most people are still pouring invective on the former politicians, although if they return tomorrow they will receive wide ovations from many quarters. One thing is clear. That is, that Nigeria will never

be the same as it was before January 15. We are set along the path of national unity. It is sure that the influence of the Army has come to stay and check political excesses. The extent to which the new urge to oneness has really permeated the society cannot be assessed. The fear of the army does not permit centrifugal tendencies and separatist actions to rear their heads yet. What is evident is that a lot of water has passed under the bridge and divisionists are not likely to find equally fertile ground for their doctrines as they did before the January revolution.

The outside world has been expecting a volcanic eruption, a North-South polarised conflict. It may never happen. It will be an ill-wind that will not benefit anybody. It is unlikely. The new regime has mass support. It is, so far, doing fine. ●

## After Nigeria's 100 days

# 2—The failure of liberal democracy through federalism

A Review by  
SUZANNE CRONJE

*Nigeria: The Tribes, The Nation, or The Race*  
by F. A. O. Schwarz, Jr. (M.I.T. Press,  
75s.)

TWO WEEKS AFTER this book was published at the end of December, the situation which it set out to describe had ceased to exist. At first glance this fact may seem a pity for Mr. Schwarz, whose painstaking account of the political developments in Nigeria can now no longer serve as a guide to what many people consider the most confusing political scene in the world. The January military coup put an end to all the parties, alliances, regional and federal balances and alignments, and to some of the politicians as well. However, Mr. Schwarz's work is far from lost. Nigeria is about to reconstitute herself. General Aguiyi-Ironsi has recently instructed the Constitutional Review Study Group — on whose recommendations the future shape of Nigeria will largely depend — to "identify constitutional problems in the context of One Nigeria." In particular, the group is to discover those faults in the former Nigerian constitution which militated against national unity, and to ascertain how far the powers of the former regional governments "fostered regionalism and weakened the central government."

This is the very subject with which Mr. Schwarz occupies himself in his book, which is therefore of greater topical interest even than its author could have intended. Nigeria's political history has as its dominant theme the identification of region, tribe and political party: before January this year, each of the major parties was solidly supported by one of the regional ethnic majorities: the Action Group (AG) by the Yoruba of the Western Region, the National Congress of Nigerian Citizens (NCNC) by the Ibo of the Eastern Region and the Northern Peoples Congress (NPC) by the Hausa of the Northern Region. The federation started independence in 1960 as an entity composed of these three groupings (the Mid-Western Region was carved out of the Western Region at the end of 1963 to give the largely Edo-speaking peoples of this part of the country more autonomy; it supported the NCNC, and its creation was a political move against the AG in the Western Region).

The political balance of Nigeria was determined by tribal sentiments rather than ideological considerations. Of course, each of the regions contained a number of ethnic minorities whose rights were to be safeguarded against the concentration of political power in the hands of the predominant tribe. Linked to this was the imbalance in the size of the regions, with the North greater in area and population than all the other regions combined. This added to the fears of the minorities the fear in the South of

political domination by the North — a fear which later proved to be only too well justified. It was this built-in Northern predominance which finally led to the break-down of Nigeria's political system, and Mr. Schwarz's book contains a very illuminating chapter on the pre-independence Minorities Commission which failed to find in favour of the creation of more regions or states which might have cut the size and thus the political power of the North to more reasonable proportions. The Commission under the chairmanship of Sir Henry Willink feared that the creation of new regions would perpetuate tribal differences and set back efforts to build a nation. It put its faith in liberal democracy and parliamentary government: "votes will count and in the last resort it is the votes that will win fair treatment for the minorities".

At the same time, as Mr. Schwarz points out, the Commission appeared to fear too much democracy too fast. It argued against the transfer of the Yoruba-speaking areas of the Northern Middle Belt to the Western Region on the grounds that many people would suffer by the "revolutionary speeding up" of the area's democratisation that would follow such a step: "There had, to be sure, been votes by a number of local government bodies in favour of joining the West, but the Commission said it was not sure the people had understood the issue when they chose their representatives." There are many Nigerians who are convinced that the predominance of the pro-British North in Nigeria's political set-up was nothing but a neo-colonialist device to perpetuate British influence after independence, and Mr. Schwarz supports this view by saying, "It may also be that it (the British government) believed that the existing system with three large regions dominated by the North helped the conservative forces which it probably hoped would rule Nigeria".

IT WAS BRITISH POLICY which insisted on the regions and thus prejudiced Nigeria's chances of success; and Mr. Schwarz, whilst being critical of the composition of the federation and some of its institutions, tends to the view that a federal system was the necessary framework to accommodate the country's diverse entities: ". . . the system should probably be credited with enabling Nigeria's 50 million people to form a nation. The significant question to ask is not whether Nigeria is better off with or without a federal system. The significant questions are two. First, does Nigeria's federal system tend to accentuate or to mute the jealousies between the country's groups, large and small? Second, is its federal constitution capable of growing with the nation?"

To the second of these questions, Mr. Schwarz's answer is an unequivocal yes. "The powers of the national government are flexible