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**THE ROLE OF CONSTITUTION-BUILDING PROCESSES  
IN DEMOCRATIZATION**

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**Case Study  
Nigeria**

**(External perspective)**

**John Simpkins  
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With over 130 million inhabitants, Nigeria is the giant of Africa. It boasts the oldest university on the continent. Members of the Nigerian diaspora have contributed to business, scientific, legal, medical, and artistic communities around the globe. Blessed with a wealth of natural and human resources, post-independence Nigeria seems ever poised to generate a wave of development across the continent. Prosperity always appears to be just around the corner. Unfortunately, prosperity has proven to be a condition that it always on its way yet never arrives. The same could be said of Nigerian democracy.

Just as the giant of Africa should be awakening, it has drifted into a deep slumber. Nigeria ranks 151 out of 177 countries on the UN Human Development Index. It lags behind countries such as Togo (143), Bangladesh (138), Cambodia (130) and Viet Nam (112). Current Nigerian life expectancy at birth is only 51.6 years. The smog-choked skies, over-population, and generalized urban chaos of Lagos testify to this. A more recently-instituted development indicator, The UN's Human Poverty Index, ranks Nigeria 57 out of 95 countries.<sup>1</sup> Plagued by crime, corruption, authoritarianism, and ethnic and religious violence, the sleeping giant of Africa has been described by one of its most renowned native sons as the “open sore of a continent.”<sup>2</sup>

This case study examines the impact of the ongoing constitution building process on the problems currently facing Nigeria. It will compare the 1979 constitution building process with the current process, which resulted in the 1999 Constitution. In addition, it will discuss the roles of stakeholder groups in the current constitution building process, attempts to engender the 1999 Constitution, and the potential obstacles to constitutional reform.

## **POLITICAL AND HISTORICAL CONTEXT**

Nigerian politics has been shaped by ethnic, religious, and geographical conflicts. Seven years after gaining independence, the country experienced a civil war, the Biafran War, occasioned by an unsuccessful secession attempt by the Igbo. During the mid-1990s, tensions in the oil-rich Niger Delta led to a government crackdown on the Movement for the Survival of the Ogoni People (MOSOP), who sought greater control over the natural wealth of the region. The culmination of these efforts was the execution of Ken Saro Wiwa and eight other Ogoni activists in 1995. As recently as this year, the Niger Delta has been plagued by conflict involving the Niger Delta People's Volunteer Force (“NDPVF”) and the Niger Delta Vigilante Group (“NDVG”). Central to this conflict is the continued presence of multinational operations who have been extracting oil from the Ijaw home region. At the same time, there has been a growing Muslim fundamentalist movement in the northern part of the country.

The responses to these ethnic, religious, and geographic tensions have been strong authoritarian measures featuring consolidation of power, suppression of fundamental freedoms, and military intervention. First, power has been consolidated in the Nigerian national government as a way to stifle opposition at the regional or local level. Specifically, the Nigerian government has developed a culture of secrecy and strategic authoritarianism that restricts public participation and transparency. Second, fundamental freedoms such as freedom of the press, freedom of assembly, and freedom of association have been curbed in the service of suppressing

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<sup>1</sup> *Human Development Report 2004*, United Nations Development Program, 127. The index measures the proportion of a country's population along three dimensions—living a healthy life, having access to education, and a decent standard of living.

<sup>2</sup> Wole Soyinka, *The Open Sore of a Continent: A Personal Narrative of the Nigerian Crisis* (Oxford: Oxford University Press, 1996).

voices of dissent. Third, both of the previous two initiatives have been most effectively carried out through military intervention in national government and politics.

The military long has played a prominent role in Nigerian politics. In fact, since gaining independence in 1960, Nigeria has spent a longer period under military rule than civilian rule. Those civilian governments that have managed to gain power have been ineffectual and infamous for the proclivity for graft. From the first coup d'état in 1966, the military has explained its entry into government as a corrective for the excesses or incompetencies of civilian administrations. By promoting a strong, efficient central authority, the military has sought to overcome the ethnic, religious, and geographical divisions that shape Nigerian political discourse and, thus far, have prevented the construction of a truly unified Nigerian state.

In this quest, the military has fared no better than civilian regimes. Instead, the constant upheaval coups, counter-coups, and democratization programs have been plagued by the same problems, partly because they continue to be carried out by the same cast of characters. For example, the current Head of State, Olusegun Obasanjo, serves as a civilian leader. He previously held the same position from 1976 to 1979 as an officer heading a military regime.

Another mark of military rule has been the promotion of a return to the civilian governments which they so roundly criticize. Central to these transition programs has been the development and implementation of a new constitution. The leader of the first coup, General Johnson Ironsi, indicated that his government was committed to restoring civilian rule to Nigeria. After overthrowing the Ironsi regime in a coup of his own, General Yakubu Gowon, submitted a nine-point program for returning an elected government to Nigeria. General Murtala Muhammad, who succeeded Gowon after Gowon was perceived to have reneged on his promise, also proposed a plan to return Nigeria to civilian rule.

There are at least two reactions upon being confronted with this string of coups and promises. A cynical explanation for these pronouncements is that they are meant to buy time for the new regime and discourage others seeking to continue the cycle of rule through coup d'état. While the plan is being implemented, there will be more than enough time to engage in the kleptocratic pillaging of government that has come to mark Nigerian governance. A more optimistic view of military attempts to facilitate the return of civilian rule is that the military understands that it is ill-suited to governance and simply wants to exit the scene as soon as practicably possible. A constitution building process, including a new round of elections, offers an opportunity to make a smooth transition from power to the barracks.

Whatever the reason, military regimes in Nigeria have been the primary instigators of constitution building processes in the country. The fact that the military has been driving constitutional design efforts has impacted the process in significant ways. First, the efforts tend to be largely top-down affairs, with input from civilian stakeholders carefully managed. Second, because the military is overwhelmingly dominated by men, past constitution building processes have not been gender-inclusive. Third, as military officers and political elites are often one in the same in Nigeria, the resulting so-called civilian government often has a close connection to the military. All of these phenomena come to the surface in the current constitution, written in 1999.

## **THE 1979 CONSTITUTION BUILDING PROCESS**

To better understand the 1999 Constitution, however, it is useful to look at the constitution building process that resulted in the 1979 Constitution, which gave rise to Nigeria's Second Republic. The 1979 Constitution heavily influenced the 1999 document. The

disapprobation that greeted the later constitution was a combination of criticisms of process and substance. Examining both as they relate to the 1979 Constitution provides much needed context for the current constitution building process.

In an 01 October 1975 broadcast marking the 15<sup>th</sup> anniversary of Nigerian independence, General Murtala Muhammad outlined a program to end military rule and begin the transition to a new constitutional order.<sup>3</sup> First, additional states would be created. In addition, the government would empanel a Constitution Drafting Committee to produce an initial version of a new constitution. Local government structures would be reorganized and new elections would be held at the local level. These new local governments would then act as electoral colleges in the selection of a Constitutional Assembly. As the Constitutional Assembly debated the CDC's draft, the state would lift the ban on political activity and new parties would be formed. In accordance with the provisions of the new constitution, state and federal elections would be held, including those to elect a president and vice president.

As mentioned above, Muhammad faced pressure to deliver on his promises after the failure of General Gowon to carry out a similar program. Support for a return to civilian rule was increasing in the wake of the end of the Biafran War. The surrender of Igbo forces spurred a series of changes pointing towards increased indigenization of the Nigerian state. The government scrapped the pound and pence in favor of the new naira and kobo. A wave of nationalization swept over foreign businesses. Muhammad tapped into a desire to create a constitution that spoke for Nigerians, not a document that was a vestige of colonial rule.

Muhammad almost immediately followed his pronouncement with concrete action. In early October 1975, the government appointed a Constitution Drafting Committee, headed by respected scholar Chief Rotimi Williams. The CDC was composed of 50 members, two representatives from each of the 12 states, and "learned men" in areas deemed relevant to the drafting enterprise, such as law, history, economics, political science, and other social sciences.<sup>4</sup>

On 18 October 1975, Muhammad addressed the inaugural meeting of the CDC and outlined eight issues of importance to the ruling Supreme Military Council:

1. the creation of viable institutions which ensures maximum participation and consensus and orderly succession to political power;
2. the elimination of cut-throat political competition based on a system or rule of winner-takes-all;
3. the discouragement of institutionalized opposition to the government in power;
4. the development of consensus politics and government based on a community of all interests rather than the interests of sections of the country;
5. the establishment of the principle of public accountability for all holders of public office;
6. the elimination of over-centralization of power in a few hands and the decentralization of power as a means of diffusing tension;
7. a careful definition of the powers and duties of the leading functionaries of government;

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<sup>3</sup> Oyediran, Oyele, ed. *The Nigerian 1979 Elections*. (Lagos: MacMillan Nigeria, 1981), 8-9. Murtala's comments reflected what Samuel Ikoku described as the three elements necessary for a return to democratic rule in Nigeria: (1) constitution-making, (2) erection of political parties, and (3) disengagement of the military.

<sup>4</sup> Oyediran, 10.

8. the evolution of a free and fair electoral system which ensures adequate representation of the cross-section of the nation at the Center.<sup>5</sup>

The desired structure of government was a presidential system, buttressed by an independent judiciary as well as independent ombudsman-like institutions like the Public Complaints Bureau. Further, in response to the concomitant concerns about abuse of the proposed devolution, the number of states to be created was circumscribed.

The government took an active role in the 1979 Constitution building process from the very start. This was the case for two reasons. First, the process was, after all, a government initiative and therefore subjected to close scrutiny from the military regime in order to secure its success. Second, and on a related note, past military coups and governmental intervention had been justified by a belief that civilian regimes had failed to carry out their mandates or were not up to the task of governance. To demonstrate that it was a more competent architect and manager of a new dispensation, the military regime headed by Gen. Murtala Muhammad maintained a close watch over the events that were expected to culminate in the delivery of a constitution for the people of Nigeria.

After an unsuccessful coup attempt resulted in the assassination of Muhammad on 13 February 1976, his second in command, Lieutenant-Colonel Olusegun Obasanjo took control of the government and the constitution building process. The work of the CDC continued, as the members solicited input from throughout the country, surveying Nigerians throughout the country. The CDC delivered its report, the first volume of which contained the draft constitution, to the new Head of State, Lt General Olusegun Obasanjo, on 14 September 1976. The result of this consultation period was a September 1976 two-volume report that delineated the major issues in the proposed constitution. "The Great Debate," a period of intense public dialogue on constitutional issues, was framed by the issues presented in the September report.<sup>6</sup> For the next twelve months, "various groups in different areas all over the country" discussed the draft document.<sup>7</sup> Substantive input, however, came almost exclusively from the CDC and the Supreme Military Council.

As public debate continued on the draft, the first nationwide local government elections were conducted, in December 1976. Following the plan General Muhammad had outlined in his 1975 address, the new local governments participated in the selection of the Constitutional Assembly in August 1977. Local government councils, serving as electoral colleges, selected 203 of the 230 members of the CA.<sup>8</sup> An additional 20 members were appointed by the federal government, through the Supreme Military Command, which also appointed the CA chairman and six subcommittee chairmen. There were five women in the 230-member body. Of the five, only one woman was elected by the local government process.<sup>9</sup>

The CA met from October 1977 through June of the following year. The meetings were highly charged, as evidenced by the walkout of 93 members supporting broader application of Shari'a law in the northern part of the country.<sup>10</sup> The disgruntled delegates sought the creation

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<sup>5</sup> Oyediran, 22.

<sup>6</sup> International IDEA, 23.

<sup>7</sup> Oyediran, 10.

<sup>8</sup> Nwabueze, B.O. *The Presidential Constitution of Nigeria* (New York: St. Martin's Press, 1982), 2.

<sup>9</sup> Oyediran, 10.

<sup>10</sup> Henry Bienen, *Political Conflict and Economic Change in Nigeria* (London: Frank Cass, 1985), 142.

of a Shari'a court of appeal in addition to existing lower courts. Their protest ultimately failed and the CA delivered a completed document.

The 1979 Constitution represented a break from the British governmental systems previously adopted in post-colonial Nigeria. It established a bicameral, presidential system modeled on the constitution of the United States. By involving local governmental officials, the 1979 Constitution also provided an opportunity to establish indigenous governance traditions. Nevertheless, the document was primarily the result of a constitution building process dominated by the government and engineered to deliver a result that the outgoing regime would find acceptable. While some have lauded the 1979 document as an "act of the people," there is little evidence to support this beyond a series of consultations after the CDC presented the first draft. At each substantive phase of the constitution building process, the government carried the day. The process itself was initiated by the government. The organs created to draft and debate the document were the product of a structure developed by the government. When government found certain provisions to be unacceptable, it quickly acted to correct the work of the CA.

Nevertheless, the document was viewed as the product of a deliberative process; it was considered Nigeria's first autochthonous constitution. This was so because the 1979 Constitution gained legitimacy through a number of measures that were more inclusive than past democratization efforts. Public participation, in the form of the Great Debate, was certainly a factor in the positive reception accorded the 1979 Constitution. So, too, was the government's ability to stage successful local government elections, the beginning of the constitution building process outlined by Muhammad. This achievement stands in contrast to the inability of the previous military regime to conduct the census that was meant to be the jumping-off point of its democratization campaign. Further success in the creation of the CDC and the CA built public trust, as did the series of smooth elections to populate state governmental structures leading up to the presidential vote. Within that vote, there were incentives built into the electoral process and the formation of parties themselves that would encourage interethnic bargaining and, perhaps, the development of a national identity over the long term.<sup>11</sup> For the first time, Nigerians saw in the Muhammad regime a government that delivered on its promises and, at least to some degree, consulted groups outside of the ruling clique. Even the attempted coup that resulted in Muhammad's death would not derail the constitution building process. For all of these reasons, Nigerians could rightfully point to the 1979 constitution building process as a product of their own labors and desires.

A great deal of this progress, however, was undone by the controversy that arose out of the presidential election of 1979. To facilitate interethnic bargaining, the new constitution required a presidential candidate to win one-fourth of the vote in at least two-thirds of the then-19 states in the country in order to be elected. Additionally, the successful candidate had to win the most votes overall in the national tally. Alhaji Shagari was declared the winner of the presidential election on 16 August 1979. The Federal Election Commission ("FEDECO") determined that Shagari was the victor based on a last-minute clarification of the fractional support required to win. According to FEDECO, two-thirds of the nineteen states was twelve and two-thirds, not thirteen. This meant that a successful candidate needed one fourth of the vote in 12 states and an additional one-fourth of the vote in only two-thirds of the vote in another state. By this reasoning, Shagari had met the threshold level of support. Had FEDECO required the candidate to win one-fourth of the vote in thirteen states (rather than 12 and two-thirds),

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<sup>11</sup> See Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley, CA: University of California Press, 1985), 635-638.

Shagari would not have met the constitutional requirement and the contest would have been thrown to an electoral college in the National Assembly.

Shortly after Shagari was declared the victor, runner-up Chief Obafemi Awolowo brought an action before a Special Elections Tribunal challenging FEDECO's determination that Shagari had won.<sup>12</sup> The Tribunal found in favor of Shagari, supporting FEDECO's means of calculating the threshold fraction of support necessary to win. Awolowo appealed the Presidential Election Tribunal to the Supreme Court, which upheld the earlier ruling. Shagari was sworn in on 01 October 1979 as the first president under Nigeria's new constitution.

The 1979 elections fueled Nigerian suspicions that power remained with the government and not the people. The FEDECO interpretation occurred as the voting was taking place, leaving no opportunity to debate the meaning of the passage or to seek further clarification before commencing the election. Furthermore, when Awolowo requested FEDECO documents that allegedly would prove that FEDECO had interpreted the passage to purposely manipulate the outcome of the election, the government refused to turn over the material. C.S. Whitaker describes the resulting administration thusly:

“President Shehu Shagari's administration was composed from the very start by a clever and expedient—but self-serving and dubious—interpretation of a crucial provision of the new constitution governing presidential elections. Thus the moral tone of the Second Nigerian Republic was established.”<sup>13</sup>

## **THE 1999 CONSTITUTION BUILDING PROCESS**

Like the 1979 Constitution, the 1999 Constitution began as an effort by a military regime to relinquish power to a civilian government. The events giving rise to the implementation of the 1999 Constitution also are marked by continued ethnic, religious, and geographical divisions within Nigerian society. This is largely the product of a lingering inability to articulate a cohesive Nigerian national identity.

Presidential elections were held on 12 June 1993 as part of what was supposed to be a transition from military rule under Major General Ibrahim Babangida to a civilian government. The elections occurred without incident, despite an attempt by the Abuja High Court two days earlier to prevent them from taking place. The High Court continued its opposition to the process and, on 15 June, ordered the Electoral Commission not to release the election results. On 23 June, the government annulled the elections and Babangida remained in power until he appointed an Interim National Government on 26 August 1993. The Lagos High Court subsequently ruled that the interim government was illegal and Minister of Defense Gen. Sani Abacha seized power on 17 November, reinstating military rule. Upon becoming Head of State, Abacha promised to return to the effort to make the transition to civilian government, though little of substance occurred to indicate that he was serious about giving up power. In fact, Abacha set about detaining all who would offer political opposition to him. The undeclared winner of the 12 June 1993 vote, Chief Moshood Abiola, was arrested and detained by the Abacha government in July 1994.

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<sup>12</sup> Bienen, 178.

<sup>13</sup> C.S. Whitaker, “The Unfinished State of Nigeria,” in eds. Richard L. Sklar and C.S. Whitaker, *African Politics & Problems in Development* (Boulder, CO: Lynne Rienner Publishers, 1991), 265.

Though Abacha announced in 1995 a plan for a three-year transition to civilian rule, the period from 1995-1998 was marked by increasingly brutal government efforts to suppress dissent. In March 1995, former Head of State Obasanjo and an aide were arrested and charged with plotting a coup against the government. They would both be convicted and sentenced to prison. In the same year, an additional 40 people were convicted of conspiring to overthrow the Abacha government. Despite overwhelming international protests, Ogoni activist Ken Saro-Wiwa was executed along with eight fellow activists in November 1995 for protesting the activities of multinational oil companies in the Niger Delta. As a result, the Commonwealth suspended Nigeria. The following year, the wife of M.K.O. Abiola was murdered in Lagos. In 1997, more opponents of the government, including Nobel laureate Wole Soyinka, were charged with treason. Elections for local government and state houses of assembly were held despite little hope among the electorate that the polling would be free and fair.

As a result of his efforts to eliminate all opposition, it was no surprise that Abacha succeeded in gaining the nomination of all recognized political parties for the presidential elections to be held the following year. However, he was not able to reap the benefits of his maneuvering, as he died in June 1998, before the elections were held. He was replaced by General Abdulsalem Abubakar, who freed the detainees jailed during Abacha's reign and got the constitution building process back on track. The presidential election was held on 27 February 1999. Olusegun Obasanjo was declared the winner on 01 March. During the transition phase, Abubakar signed the new constitution into law on 05 May 1999.

The new civilian Obasanjo government had the task of implementing and enforcing the constitution that had been promulgated by the outgoing military regime.<sup>14</sup> With the responsibility for implementation also came the responsibility for responding to the new document's critics. Though modeled on the 1979 Constitution, the reception accorded the 1999 Constitution was markedly different from twenty years earlier. Drafted by a committee of 25 men appointed by the government, the 1999 Constitution met with immediate criticism. Detractors pointed to deficiencies of both process and substance. Procedurally, the document was described as the product of a process that was driven by the military government, not the people. Substantively, its provisions failed to address calls from women, Muslims, and ethnic groups for greater inclusion in the country's governing framework. Moreover, the document lacked justiciable social, economic, and cultural rights. In addition, the new constitution further consolidated central authority by granting the federal government control over the judiciary and state police units.<sup>15</sup> These shortcomings led Chief Rotimi Williams, chairman of the CDC for the 1979 Constitution, to describe the 1999 model as a "fraudulent document."<sup>16</sup>

Unlike the 1979 Constitution, there was little genuine public dialogue and consultation in the drafting of the 1999 Constitution. Two drafts of the document were in circulation before the Constitution Debate Collating Committee ("CDCC") sought any public comment. Even when it did canvass citizens, the government largely ignored the public's recommendations. Instead, the government's Provisional Ruling Council inserted in the draft its own amendments, which had not been subjected to public discussion or scrutiny. The Council defended its actions by claiming that the additions were in the "public interest...of the people of Nigeria."<sup>17</sup> Ordinary

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<sup>14</sup> The Judiciary possesses authority to interpret the Constitution, but the Executive has asserted the authority to appoint judges.

<sup>15</sup> "Nigeria: Constitutions and Institutions," Economist Intelligence Unit, 15 June 2004.

<sup>16</sup> "Towards an Autochtonous Constitution for Nigeria," *Vanguard* (Lagos, Nigeria) 03 September 2004.

<sup>17</sup> International IDEA, 26-7.

Nigerians as well as elites grew pessimistic that the current round of democratization would result in any substantive change. They needed look no further than the failed elections of 1993 and 1979 and the flawed constitution building processes that preceded them to find reasons to doubt. Moreover, this approach to the constitution building process was reminiscent of past instances of transition-by-decree under military regimes in Nigeria. Indeed, the era in which the 1999 Constitution was drafted was a time during which the 1979 Constitution had been suspended by a military oligarchy.

Chief Williams declared the new constitution to be “telling a lie about itself,” claiming that although the preamble began with the phrase, “We the people,” there was no genuine public input in the drafting of the document.<sup>18</sup> Furthermore, when promulgated, the document had not been translated into the three primary indigenous languages in the country: Hausa, Yoruba, and Igbo.<sup>19</sup> Although the 1979 document, too, lacked translation, there was no perceptible outcry regarding this shortcoming at the time. Twenty years later, however, expectations had been raised for greater inclusiveness, partly due to more vocal interest groups and partly due to a well-nurtured skepticism that the constitutional processes of the past did not take the interests of the people into account. Ultimately, the civil society sector took the lead in translating the document into indigenous languages.

## REFORM EFFORTS

Translating the constitution is but one way in which civil society organizations have contributed to the public discourse regarding the new constitution. Criticism of the 1999 Constitution has produced a new phase in the constitution building process, one in which the government and civil society organizations are promoting competing visions for addressing the constitution’s shortcomings. Civil society organizations favor convening a “Sovereign National Conference,” a people-centered process meant to address the lack of substantive public participation in the constitution building process. On the other hand, the government proposes using the procedures already contained in the 1999 Constitution to make any changes to it.<sup>20</sup>

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<sup>18</sup> “Towards an Autochthonous Constitution for Nigeria,” *Vanguard* (Lagos, Nigeria) 03 September 2004.

<sup>19</sup> “Translating the 1999 Constitution,” *Daily Champion* (Lagos, Nigeria) 05 May 2004.

<sup>20</sup> Section 9 allows for amendment of the Constitution by the National Assembly. It provides that:

(1) The National Assembly may, subject to the provision of this section, alter any of the provisions of this Constitution.

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

(3) An Act of the National Assembly for the purpose of altering the provisions of this section, section 8 or Chapter IV of this Constitution shall not be passed by either House of the National Assembly unless the proposal is approved by the votes of not less than four-fifths majority of all the members of each House, and also approved by resolution of the House of Assembly of not less than two-third of all States.

(4) For the purposes of section 8 of this Constitution and of subsections (2) and (3) of this section, the number of members of each House of the National Assembly shall, notwithstanding any

Civil society organizations argue that the 1999 Constitution does not reflect the popular will because the procedures contained within it are the work of the previous outgoing military regime. Members of civil society organizations argue that any effort to reform the current constitution must start with public participation. President Obasanjo acquiesced to demands for greater inclusion by selecting a Presidential Constitutional Review Committee (PCRC) on 19 October 1999. The committee, which was chosen by the President and all of whose members belonged to one of the three major political parties—the People’s Democratic Party, the All Nigeria People’s Party, and the Alliance for Democracy—consisted of:

Chief Clement Ebri	Chairman
Dr. Shettima Mustafa	Deputy Chairman
Air Cmdr. Bernard Banfa (Ret.)	Member
Chief Edwin Ump Ezeoke	Member
Alhaji Abdulhamid Hassan	Member
Hon. Barrister Sunday Kuku Iyawko	Member
Alhaji Iro Dan Musa	Member
Barrister (Mrs.) Iyabode Pam	Member
Alhaji Gambo Mohammed Saleh	Member
Alhaji Isiaku Mohammed	Member
Hajiya Basirat A. Nahibi	Member
Dr. J.C. Odunna	Member
Prince Valentine Ahams	Member
Chief Alani Bankole	Member
Alhaji Umaru Ahmed	Member
Dr. Amos Adepoju	Member
Barrister Mohammed Babangida Umar	Member
Col. Yohanna A. Madaki	Member
Dr. Stella Dorgu	Member
Dr. Silva Opusinju	Member
Barrister Edward Ashiekaa	Member
Barrister Mika Anache	Member
Dr. Olu Agunloye	Member
Dr. Maxwell Gidado	Member

According to the PCRC’s February 2001 report, it collected over two million written memoranda and one and a half million oral presentations, primarily from individuals.<sup>21</sup> Critics accused the PCRC of narrowly limiting the period during which submissions would be accepted and making itself physically inaccessible to the poorest of Nigerians by locating its office in an area that was difficult to reach.<sup>22</sup> Citizens had less than one month to make submissions to the

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vacancy, be deemed to be the number of members specified in sections 48 and 49 of this Constitution.

<sup>21</sup> “Translating the 1999 Constitution,” *Daily Champion* (Lagos, Nigeria) 05 May 2004.

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

PCRC's secretariat in Abuja.<sup>23</sup> The committee organized public hearings in selected state capitals during the submissions period. Although the government's efforts had the veneer of a broad consultative process, no public recommendations, or recommendations of any other kind, for that matter, have been translated into legislation upon which the National Assembly can act. Additionally, the National Assembly has taken up the reform issue itself by creating six subcommittees, with representation from both houses, to develop additional proposals for changing the 1999 Constitution. Despite government promises of a fully amended constitution by August 2004, no amended draft document has been delivered. The government has blamed the delay on lack of resources to convene the necessary subcommittee meetings.

While the government struggles to address deficiencies in the constitution, the civil society sector has taken the lead in the current phase of the constitution building process. Indigenous nongovernmental organizations have promoted continued scrutiny of the 1999 Constitution. A notable example has been the Citizens Forum for Constitutional Reform ("CFCR"), a coalition composed of over 100 civil society organizations, including the Center for Democracy and Development ("CDD"), Global Rights: Partners for Justice, and the Center for Advanced Social Sciences ("CASS"). This broad-based coalition has some notable achievements. The CFRC has translated the 1999 Constitution into several languages. It has guided the dialogue and public participation process regarding amendments to the current constitution, which efforts have resulted in the drafting of a "model constitution" in 2002. The model constitution is the result of efforts by CFRC members to achieve consensus along all the fault lines of Nigerian political discourse: ethnicity, religion, region, and gender. The group achieved this through a series of consultations between 1999 and 2002. A broad and deep network of affiliates has facilitated these efforts; the CFRC has coordinators operating at the state, zonal, and national level.

Nigerian civil society organizations like CFRC have been successful in part due to the support of the international donor community. International donors have not always played such a significant role in Nigerian politics and policy debate. In fact, Richard Joseph lists Nigeria among the African states who "managed to parry external intervention" at the end of the 20<sup>th</sup> century.<sup>24</sup> This is due in large part to Nigeria's ample oil reserves, which have played a central role in shaping its relationship with the international donor community. In response to the oil shocks of the 1970s, developed countries such as West Germany poured foreign aid into the coffers of Nigeria, countries in the Middle East, and other oil producers as a way of guaranteeing access to the markets and natural resources of major global oil producers. Few, if any, of the recipient countries had strong democratic traditions.

Donor countries did little to alter this landscape. Developed countries, instead, supported highly centralized governments in developing nations as a strategy for maintaining control, albeit indirectly, over the valuable resources which were so critical to the nations of the industrialized.<sup>25</sup> Although the international community did at times speak out against anti-democratic activities in Nigeria, such as the execution of Ken Saro Wiwa, there were few demands for intensive structural reform in the country.

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<sup>23</sup> Ibid.

<sup>24</sup> Richard Joseph, "Democratization in Africa after 1989: Comparative and Theoretical Perspectives," in *Transitions to Democracy*, ed. Lisa Anderson (New York: Columbia University Press, 1999), 246, 254.

<sup>25</sup> See Jürgen Rüländ and Nikolaus Werz, "Germany's Hesitant Role in Promoting Democracy," in *Exporting Democracy: Rhetoric v. Reality*, ed. Peter J. Schrader (Boulder, CO: Lynn Reinner Publishers, 2002), 76.

General Abacha's 1998 death and the resulting fallout within the government, however, provided the international community with an opportunity to take a more direct approach in promoting democratic reform in Nigeria. General Abdulsalam Abubakar proved a willing partner in this enterprise, exchanging promises of reform for increased aid. Shortly after General Abubakar came to power, Canada, the European Union, and the United States lifted economic and cultural sanctions against Nigeria, increased diplomatic contact, and pledged to aid the country's rehabilitation into a full member of the community of nations.

On the strength of these measures to open Nigeria to the rest of the world, General Abubakar reaped praise from donor nations. The Foreign Minister of Canada commended Abubakar's initial steps toward democracy in 1998, saying, "The statements and initial measures undertaken by General Abubakar over the past two months have given hope to friends of Nigeria that the country is setting a course for meaningful democratic reform."<sup>26</sup> The Japanese government pledged electoral assistance for the upcoming national vote.<sup>27</sup> The International Monetary Fund further encouraged reform by promising more aid should Abubakar's programs continue. In addition, the National Democratic Institute of the United States (NDI) and the Japanese government provided technical assistance in electoral procedures ahead of the imminent elections. Then-Secretary of State Madeleine Albright commented on the increased US commitment to a democratic Nigeria in January 2000:

Over the past two years, Nigerians have made an inspiring journey from dictatorship to democracy. But years of military misrule have imposed enormous costs ... In response, President Clinton and Congress have nearly quadrupled our assistance to Nigeria. Our purpose is to help Nigerians address urgent threats to stability and democracy, to invigorate key institutions such as the legislature and courts, and encourage needed economic reforms.<sup>28</sup>

While donor countries did not insist upon constitutional reform as a condition for assistance, as they have in other countries recently (witness the current reform efforts in Uganda prompted by US and UK concerns over the no-party "Movement System" currently in power there), the promise of increased aid in exchange for democratization certainly had an impact on Nigeria's constitutional reform efforts in the late 1990s. These efforts were supported, and at times led, by nongovernmental organizations, as well. Organizations such as the Ford Foundation and the Friedrich Ebert Foundation did not issue "demands" for a constitution building process as such, however, they did facilitate the process by building capacity among indigenous knowledge workers to contribute to policy discussion. A significant donor during the 30 years in which Nigeria has participated in international aid programs, the Ford Foundation in particular has fostered constitutional reform throughout West Africa. In Nigeria, it has pursued a program of promoting governance issues through the incubation of policy organizations such as the Nigerian Institute for Advanced Legal Studies, the Development Policy Center, and the Center for Advanced Social Studies.<sup>29</sup> Indigenous policy groups such as these have shaped the

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<sup>26</sup> International IDEA, 311-313.

<sup>27</sup> Tsuneo Akaha, "Japan: A Passive Partner in the Promotion of Democracy," in *Exporting Democracy: Rhetoric v. Reality*, ed. Peter J. Schrader (Boulder, CO: Lynn Reinner Publishers, 2002), 99.

<sup>28</sup> International IDEA, 311-313.

<sup>29</sup> International IDEA, 317.

approach of the CFR and provided the most coherent critique of the 1999 Constitution and constitution-building process.

In the aftermath of the promulgation of the 1999 Constitution, the efforts of international donors have taken on increased importance. Indigenous civil society groups have welcomed assistance from these organizations and see them as a useful ally in correcting the deficiencies in the creation of the 1999 Constitution as well as its substantive provisions. The World Bank, the United Nations, Canada, the European Union and the United States have maintained or increased their level of involvement in Nigeria since the end of the Abacha regime.<sup>30</sup> NGO participation in capacity-building and constitutional reform has been informed by the work of the National Democratic Institute, the International Republican Institute, and the International Human Rights Law Group. The Ford Foundation has played a leading role through its sponsorship of the work of CFR. Increasingly, these foreign organizations are working in concert with local civil society organizations to address specific issues such as regionalism, poverty reduction, and the role of women in civil society.<sup>31</sup> In addition to assisting in economic development and capacity building, Western states and international organizations can use their influence to promote democratization efforts, including a reinvigorated constitution building process. This is not to imply that conditionalities from donor countries and organizations are appropriate at this point, however, for the structures being created by indigenous civil society organizations show promise.

## **STAKEHOLDERS**

The drafting and consultation process that resulted in the 1999 Constitution is noteworthy for the lack of involvement of non-governmental stakeholders. As it has been in previous constitution building processes, the military was at the center of the action surrounding the framing of the new constitution. Perhaps the most remarkable achievement of the current Obasanjo regime is that it has succeeded in diminishing the role of the military in governance. This may be due to the general perception that the military manipulated the process leading up to the promulgation of the 1999 Constitution to serve its own purposes. Another possible explanation is that the entry of retired military officers into the political arena as civilian candidates has simply changed the character of military political participation from a contest of active officers to a contest of retired ones.

The three major political parties, who sport a large retired military presence, have contributed little of substance to the debate concerning the need to change the constitution. Their

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<sup>30</sup> Several independent foundations and government assistance programs have concentrated on democracy work in institution-building, civil society development, the promotion of human rights, the judiciary and the rule of law, building political parties, constitutional development, and women's empowerment, to name a few. The mainstreaming of democracy promotion in the agenda and funding priorities of bilateral donors has also become a prominent feature of the times. Among these donors are:

- the UK Department for International Development (DFID);
- the US Agency for International Development (USAID);
- the Swedish International Development Cooperation Agency (Sida);
- the Canadian International Development Agency (CIDA);
- multilateral agencies (especially the World Bank, IMF);
- the EU.

International IDEA, 311-313.

<sup>31</sup> The World Bank, UN, UK, US, Japan, and Germany have been the largest donors to Nigeria over the past 30 years. International IDEA, 311-313.

primary focus has been on positioning themselves for the presidential election in 2007. The People's Democratic Party, which currently controls the presidency and both houses of the National Assembly, is likely to promote current Vice President Atiku Abubakar as its presidential candidate in 2007. Having lost the last election, the All Nigeria People's Party is in the midst of a contest for control of the party between Maj. Gen. Muhammadu Buhari, the party's most recent presidential candidate, and former Head of State Gen. Ibrahim Babangida. Another significant player on the political scene, the Alliance for Democracy, is headed by Chief Mojisulowa Akinfewa and Chief Bisi Akande, who also have clashed over control of their party.

Similarly, multinational corporations have not directly participated in the constitution building process, yet they lurk in the background as significant stakeholders. Nigeria's oil wealth is a critical building block to its future economic and political success. It is necessary, therefore, for multinational corporations like ExxonMobil and Shell to be allowed to continue their operations in the oil-rich regions of the country. As mentioned above, oil exploration and extraction continue to be a source of conflict in the Niger Delta. Indigenous groups continue to push for greater control over the natural resources within their homelands.

For this reason, and others to be explained later, ethnic associations are pivotal stakeholders in Nigeria's constitution building process. In the Niger Delta, the Movement for the Survival of the Ogoni People ("MOSOP") and the National Youth Council of the Ogoni People have served as voices of the Ogoni during the constitutional debate. In addition to the political groupings listed above, the three largest ethnic groups in the country, the Yoruba, Hausa/Fulani, and the Igbo have used ethnic associations to connect their fellow group members to the constitution building process. The Yoruba have used Afenifere and the Oduduwa People's Congress ("OPC") to advance their concerns. For the Hausa/Fulani, Arewa and Turaki have served as advocacy organizations in addition to ethnic associations. Similarly, the Pan Igbo Cultural Association and the Movement for the Actualization of the Sovereign State of Biafra ("MASSOB") have promoted Igbo concerns.

The overseas Nigerian community has been a target audience for many of these ethnic associations. Nigerians in Europe and North America have actively participated in on-line forums discussing the future of Nigeria, and indirectly contributing to the ongoing constitution building process. Naijanet<sup>32</sup> and the Canadian Organization for Human Rights and Democracy in Nigeria ("COHDN") News listserv<sup>33</sup> are two of the most popular Internet presences for political debate. More traditional social organizations such as the Joint Action Committee for Nigeria offer an opportunity for face-to-face dialogue among members of the Nigerian diaspora as well as provide a link to entrenched ethnic associations back at home.<sup>34</sup>

Within the CFCR coalition, groups such as Women Advocates Research and Documentation Centre ("WARDC"), Women in Nigeria ("WIN"), and Gender and Development Action ("GADA") have fought to ensure that the current process is engendered. Women have been active participants in Nigerian politics for over 75 years. Nevertheless, women played no significant part in the drafting or promulgation of the current 1999 Constitution. According to Amina Salihu, the entire document was written by a select group of "wise men," with no female involvement at all. The absence of civil society organizations from the constitution-building

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<sup>32</sup> <http://naijanet.com/> (accessed 08 September 2004).

<sup>33</sup> <http://www.cohdn.ca/> (accessed 08 September 2004).

<sup>34</sup> The Joint Action Committee is the combination of the Nigerian Democratic Coalition Abroad ("NADECO"), a group supported by Afenifere, and the United Democratic Front for Nigeria, an umbrella group founded by Wole Soyinka and modeled on the United Democratic Front of apartheid-era South Africa.

process resulted in a constitution that reflected the all-male militaristic environment from which it emanated.

To remedy the exclusion of women in the development of the 1999 Constitution, the CFCR has advocated “engendering the language and content” of the document.<sup>35</sup> The group has proposed revisions of the language of the 1999 Constitution to make it gender neutral.<sup>36</sup> It also has proposed 10 substantive amendments to recognize issues such as the right of women to pre- and post-natal care, and the clear prohibition of discrimination on the basis of sex.<sup>37</sup> CFCR amendments also contemplate the establishment of an independent “Gender and Social Justice Commission.”<sup>38</sup>

In concert with the work of the CFCR, Salihu has identified gender issues be addressed in reform dialogue. She calls for an affirmation of women’s personhood. This would be accomplished by constitutional guarantees of gender equality and respect for diversity as well as affirmative action measures providing equal access to educational opportunity and “opportunities for self-actualization.”<sup>39</sup> Salihu argues that socializing young girls to have the same professional and personal expectations as young boys will reap economic as well as societal benefits.<sup>40</sup> On a related point, Salihu proposes amending the 1999 Constitution to raise the minimum age at which a girl may marry to 18 and to eliminate language that states “any woman who is married shall be deemed to be of full age.”<sup>41</sup>

Salihu also identifies citizenship rights as critical to full participation of women in Nigerian civil society.<sup>42</sup> This was made manifest in the activities giving rise to the 1999 Constitution. Without the full benefits of citizenship, she contends, women will be unable to safeguard important rights such as reproductive freedoms.<sup>43</sup>

Finally, Salihu echoes the CFCR emphasis on the language of the document, specifically calling for revising the 1999 Constitution to reflect greater gender sensitivity. In addition, she points out the need for plain language in the constitution, so that it may be “readable and understood by everyone.”<sup>44</sup>

The most effective way to achieve the aims articulated by the CFCR and Salihu would be to increase citizen participation in the constitution-building process. The recommended amendments that resulted from CFCR consultations indicate that a truly participatory review process would result in an engendered constitution.

## **SECURING RIGHTS UNDER THE 1999 CONSTITUTION**

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<sup>35</sup> Otiye Igbuzor and Ololade Bamidele, eds. Report of the National Conference on the Constitution Reform Process in Nigeria (Lagos: Citizen’s Forum for Constitutional Reform, 2002), 4.

<sup>36</sup> Citizen’s Forum for Constitutional Reform, *The Position of the Citizen’s Forum for Constitutional Reform (CFCR) on the Review of the 1999 Constitution of the Federal Republic of Nigeria* (Lagos: Citizen’s Forum for Constitutional Reform, 2001), 6-12.

<sup>37</sup> *Ibid.*, 12-14.

<sup>38</sup> *Ibid.*, 12.

<sup>39</sup> “Gender Justice in Nigeria’s Constitution,” *This Day* (Lagos, Nigeria) 20 August 2003.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

As a general matter, the protection of rights and liberties has improved in Nigeria since the promulgation of the 1999 Constitution.<sup>45</sup> Little, if any, of these advances are the result of the constitution-building process. They primarily are the product of the transition from military to civilian rule. The current 1999 Constitution and the process through which it was developed have had virtually no impact on the plight of marginalized groups in Nigeria. As a result, much work remains to secure the rights and liberties of Nigeria's marginalized citizens. The constitution and the constitution-building process have a vital role to play in this endeavor, as evidenced by the constitutional reform discourse among civil society organizations. In its model constitution, the CFR includes justiciable social, economic, and cultural rights such as rights to health, education, housing, work, and human dignity.<sup>46</sup>

An elemental issue in debates over the inclusion of marginalized groups is precisely who enjoys the protection of the Nigerian constitution. Member organizations of the CFR support conferring rights to individuals on the basis of their residency in the country, as opposed to indigeneity.<sup>47</sup> Under the CFR approach, individuals who migrate to Nigeria would enjoy the protections of its charter. In a country that has been splintered by ethnic conflict and regionalism, however, the prospect of delegitimizing indigeneity as the basic criterion for constitutional protection remains controversial.

The entrenchment of justiciable social, economic, and cultural rights, measures which could have a positive impact on the plight of marginalized groups, is noticeably lacking from the 1999 Constitution. This is in stark contrast to the contemporaneous constitution building process in South Africa, the product of which explicitly provides justiciable social, economic, and cultural guarantees. Basic provisions designed to promote the cause of human dignity (a measure contained in the 1999 document) by advancing the rights of the poor, women, ethnic minorities would constitute significant progress in the Nigerian constitutional regime.

As of 2004, only 5.8% of seats in the National Assembly were held by women.<sup>48</sup> In the 2004 UN Human Development Report's Gender-related Development Index, Nigeria ranked 122<sup>nd</sup> out of 144 countries surveyed.<sup>49</sup> Women have found little relief in the language of the constitution with regard to full inclusion in Nigerian society. Though written during a period in which other countries—other African countries—were devoting a great deal of attention and ink to matters of gender participation, the 1999 Constitution devotes far too little attention to the topic. Indeed, some gender activists contend that the document systematically excludes women from Nigerian civil society, specifically by erecting a state apparatus that ignores gender concerns and excludes those who may raise such concerns from participation in even the limited government efforts to foster reform dialogue.<sup>50</sup>

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<sup>45</sup> Ibid.

<sup>46</sup> Otiye Igbuzor and Ololade Bamidele, eds. *National Conference on the Constitution Reform Process in Nigeria* (Lagos: Citizens' Forum for Constitutional Reform, 2002), 38.

<sup>47</sup> Kayode Fayeme, ed. *Deepening the Culture of Constitutionalism: Regional Institutions and Constitutional Development in Africa* (Lagos: Centre for Democracy and Development, 2003) 38.

<sup>48</sup> *Human Development Report 2004*, United Nations Development Program, 236.

<sup>49</sup> *Human Development Report 2004*, 219.

<sup>50</sup> "[I]n November 1999, the Government set up an Inter-party Technical Committee to review the Constitution. This has direct consequences for the development of democracy, as the executive has once again moved into constitution-making, ignoring the need for a popular segment to evolve. This action can be interpreted as an attempt to stifle constitutionality and popular democracy, since the pattern for 'power creation' remains very much the same as under the previous military style of leadership, where voices of those outside the locus of power were excluded. As a result, class and gender interests have been constrained, as constitution making becomes the preserve of a powerful few. In the process so far, many read a convergence of interests between the politicians and the ruling elite."

Others see structural impediments to gender inclusion in the conflicting aims of the Constitution itself. Although Section 42 of the Constitution provides for the protection of gender concerns, the notion of federal character subordinates gender inclusion to the promotion of state autonomy.<sup>51</sup> Further, a lack of constitutional clarity on the status of women under Shari'a has left open the possibility of exploitation of discrimination against women through the abuse of a constitutionally-permissible alternative system of justice. Continued unwillingness on the part of the government to take up this issue has prompted submissions to the PTCRC by women's groups seeking broader participation in, and democratization of, governmental structures and implementation of international gender treaties and conventions.<sup>52</sup>

## **REDUCED MILITARY ROLE**

Given that it is the product of a military regime, perhaps the greatest achievement of the constitution building process is that it has diminished the role of the military in the political sphere. Upon taking office, President Obasanjo articulated a comprehensive plan for bringing the military under the control of a civilian government.<sup>53</sup> Central to this project was the

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International IDEA, 117.

<sup>51</sup> Section 42 reads as follows:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

<sup>52</sup> International IDEA, 117-8.

<sup>53</sup> The essence of the doctrine of military subordination to civil authority was summarized by President Olusegun Obasanjo, after barely two months in power, in an address he delivered at the Graduation of Course Seven, National War College, Abuja, on 24 July 1999. In that address, President Obasanjo portrayed the doctrine of subordination of the military to civil authority as involving acceptance of the following principles:

- The elected civilian President as Commander-in-Chief of the Armed Forces, and the supremacy of elected officials of state over appointed officers at all levels;
- Civilian headship of the Ministry of Defense (MOD) and other strategic establishments;
- That decisions regarding the goals and conduct of military operations must serve the political and strategic goals established by the civil authority;
- The application of civilized principles to all military investigations and trials;

command of the military by a cadre of civilian, elected officials. Additionally, the military would exist only to serve purposes defined by civilian, elected officials. These aims were to be accomplished through constitutional and legislative means.

Constitutionally, the role of the military is stated in Section 217, which reads:

(1) There shall be an armed forces for the Federation which shall consist of an army, a navy, an Air Force and such other branches of the armed forces of the Federation as may be established by an Act of the National Assembly.

(2) The Federation shall, subject to an Act of the National Assembly made in that behalf, equip and maintain the armed forces as may be considered adequate and effective for the purpose of -

(a) defending Nigeria from external aggression;

(b) maintaining its territorial integrity and securing its borders from violation on land, sea, or air;

(c) suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, but subject to such conditions as may be prescribed by an Act of the National Assembly; and

(d) performance of such other functions as may be prescribed by an Act of the National Assembly.

(3) The composition of the officer corps and other ranks of the armed forces of the Federation shall reflect the federal character of Nigeria.

Section 218 vests ultimate control of the military in a civilian leader:

(1) The powers of the President as the Commissioner-in-Chief of the Armed Forces of the Federation shall include power to determine the operational use of the armed forces of the Federation.

(2) The powers conferred on the President by subsection (1) of this section shall include power to appoint the Chief of Defence staff, the Chief of Army Staff, the Chief of Naval Staff, the Chief of Air Staff and heads of any other branches of the armed forces of the Federation as may be established by an Act of the National Assembly.

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• The right of civil (Supreme Court) authority to review any actions or decisions taken by military judicial officers.

(3) The President may, by directions in writing and subject to such conditions as he think fit, delegate to any member of the armed forces of the Federation his powers relating to the operational use of the Armed Forces of the Federation.

(4) The National Assembly shall have power to make laws for the regulation of -

(a) the powers exercisable by the President as Commander-in-Chief of the Armed Forces of the Federation; and

(b) the appointment, promotion and disciplinary control of members of the armed forces of the Federation.

Together, these constitutional provisions unequivocally articulate the principle of military subordination to civilian governmental authority, no small feat given Nigeria's post-independence experience with authoritarian military rule.<sup>54</sup>

Legislative oversight of the military is accomplished primarily through constitutional measures relating to the National Assembly's authority to raise and appropriate funds for the military.<sup>55</sup> Additionally, committees within the National Assembly have been set up to operationalize constitutional oversight authority.

To complement constitutionally-mandated civilian control of the military, it is necessary to "re-professionalize" the military by focusing on the so-called "Five Ds":

- *d*emocratization,
- *d*emilitarization,
- *d*emobilization, and
- balancing the requirements of national *d*efence with
- the *d*esideratum of economic recovery and social development.<sup>56</sup>

Work remains to be done on demobilization<sup>57</sup> and balancing defense requirements with other budgetary priorities. It is not small matter that many of the most prominent Nigerian politicians are retired members of the military. Nonetheless, the 1999 Constitution has reduced direct military involvement in civic life and, as a consequence, fostered a nascent culture of civilian governance.

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<sup>54</sup> Beyond those specifically military clauses, other provisions of the Constitution meant to guarantee civilian supremacy over the military include those entrenching fundamental human rights and freedoms for individuals, (Chapter IV) free and fair elections, (Chapter IV) and the separation of the three functions of government; the executive, legislative and judicial. (Chapters V-VII) International IDEA, 176-7.

<sup>55</sup> See Chapter V, Sections 81, 85 and 88.

<sup>56</sup> International IDEA, 176-80.

<sup>57</sup> This includes policy decisions on force levels and structure; the number of soldiers to be demobilized based on realistic threat perceptions, the timetable of demobilization, what programs to adopt for ensuring socio-economic reinsertion of ex-combatants, dangers of mal-reintegration of ex-combatants and what countermeasures to prescribe for policy. International IDEA, 176-80.

## **PARTY PROLIFERATION**

While this is a significant accomplishment, the constitution has failed to provide for the further development of political parties and fair contestation of elections. Tensions among states and between states and the central government remain. Ethnic and religious violence continues virtually unabated. The current constitutional arrangements marginalize, if not completely ignore Nigerian women.

The most recent national elections in Nigeria, held in April 2003, ended in an unsuccessful court challenge of the results by the runner-up, Major General Muhammadu Buhari.<sup>58</sup> There also was concern regarding the fairness of the local elections.<sup>59</sup> The target of complaints in each instance was the Independent National Electoral Commission (“INEC”), which was granted broader authority by the Electoral Act 2002. Under the new legislation, the INEC instituted limits on individual and corporate campaign donations, which were almost universally disregarded.<sup>60</sup> The INEC also became embroiled in a controversy over its requirement that political parties inform it of any changes in their mailing addresses. Those parties who were threatened with deregistration in the run-up to the April national elections accused the INEC of manipulating the political process.<sup>61</sup>

The most recent elections demonstrate that electoral reform remains a pressing issue in Nigeria. Continued problems in national balloting further erode public confidence in the civilian government’s ability to stage free and fair elections. Indeed, such problems weaken public confidence in the government, generally.

## **SPOILING FACTORS**

Because the 1999 Constitution was practically “received” by the people of Nigeria from an outgoing authoritarian, military regime, there were no real spoiling factors present. Should attempts at constitutional reform move forward, there are several issues that could work to undermine further democratization. Some in the civil society sector would allege that the current government already is playing such a role in its slowness to embrace a reopening of the dialogue process to address deficiencies in the 1999 Constitution. No new efforts to reinvigorate the constitution-building process have emanated from the government. The National Assembly has been accused of seeking to maintain the status quo by promoting a strong central government at the expense of greater state autonomy. This approach only exacerbates the issues of state autonomy that express themselves in Nigerian politics along the fault lines of religion, ethnicity, and region. While both chambers of the National Assembly have committees to examine potential changes to the constitution, their work has been confined essentially to following the lead of the CFRC.

In addition to the government, or perhaps if the government is unable to stem the tide of reform, another potential obstacle to a renewed constitution-building process exists in the form of the military. While the military has not forcefully interjected itself into national politics lately, it lurks on the edges of public discourse as a continued threat to the expansion of constitutional freedoms. It stands at some remove perhaps because many who become civilian

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<sup>58</sup> Charlie Cobb, Reed Kramer, & Nneoma Ukeje-Eloagu “Buhari-Freely Elected Government Can Transform Nigeria,” AllAfrica Global Media 22 April 2004.

<sup>59</sup> See p. 29, *supra*.

<sup>60</sup> *Global Corruption Report 2004*, Transparency International, 224.

<sup>61</sup> “We Can’t Trace the Address of 23 Parties—INEC,” *This Day* (Lagos, Nigeria) 25 March 2004.

leaders were once officers in the military. “Civilian” officials like retired General Obasanjo still command the respect of the military. Nevertheless, the military could pose a threat to stability if it becomes involved in suppressing dissent or squelching ethnic tensions as an arm of the state. From here it would be a short distance to the resumption of its historical role as an intervenor to correct the inadequacies of civilian government.

Widespread ethnic or religious violence in response to slights real or perceived threatens the constitution building process. Of the three largest ethnic groups, the Igbo are primarily Christian, the Hausa-Fulani are primarily Muslim, and the Yoruba are split between the two faiths.<sup>62</sup> As of June 2001, eleven of the nineteen states in the northern part of the country had adopted Shari’a law to settle both civil and criminal disputes.<sup>63</sup> The increased prominence of Islamic law has been viewed as part of an effort by Hausa-Fulani leaders to weaken the Obasanjo government, which came to power on the strength of solid support in the North.<sup>64</sup> Given the recent violent incidents between Muslims and Christians in the North, it is not difficult to conceive of a situation in which one group embarks on a campaign of violence against another in response to what the aggrieved group views as preferential treatment in the current constitution building process. Such a conflict would certainly derail efforts to reestablish national dialogue around issues such as the place of Shari’a law and the treatment of women in states that have adopted Shari’a law.

Despite efforts to address corruption, Nigeria remains a poster-child for kleptocracy in the developing world.<sup>65</sup> As if by force of habit, workers at Murtala Muhammad Airport in Lagos still ask, “What do you have for me?” of new arrivals. The primary difference between the current situation and the Nigeria of old is that the airport employees are content to abandon their request after the new arrival’s refusal. Nevertheless, a culture of corruption continues to

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<sup>62</sup> Phillip C. Aka, “The ‘Divided Democracy’: Analyzing U.S. Support for Nigerian Democratization,” 22 B.C. Third World L.J. 225, 233 (2002).

<sup>63</sup> 22 B.C. Third World L.J. 233.

<sup>64</sup> 22 B.C. Third World L.J. 235.

<sup>65</sup> • In December 2002 the National Assembly passed the Economic and Financial Crimes Act 2002, which established the Economic and Financial Crimes Commission (“EFCC”), mandated to investigate all financial crimes, including money laundering, advanced fee fraud, counterfeiting, illegal charges transfers and futures market fraud. It is also responsible for enforcing the money laundering legislation of 1995, as amended in 2002. The president signed the new law on 14 December, one day ahead of the deadline set by the Financial Action Task Force (“FATF”), the intergovernmental body concerned with money laundering. FATF had threatened to recommend sanctions if Nigeria failed to strengthen financial crimes legislation by that date. FATF acknowledged that the new law marked significant progress, but at its February 2003 review it did not remove Nigeria from the list of Non-Cooperative Countries and Territories.

• In February 2003 the Senate passed the Corrupt Practices and Other Related Offences Commission Act 2003, to replace and purportedly ‘strengthen’ the similarly named act from 2000. However, the act was widely perceived to be a deliberate weakening of existing legislation. The law was eventually blocked by the federal high court (see below).

• In April 2002 the assembly passed the Electoral Act 2002, which replaced the Electoral Act 2001. The law, which governed the conduct of the April 2003 general elections, faced several constitutional challenges during 2002–03. Among other provisions, the law empowered the Independent National Electoral Commission (INEC) to place a limit on donations to political parties by individuals or corporate bodies. The apparent scale of expenditure and donations during the election period suggests, however, that limits were not followed, although the INEC issued no complaints against any party or candidate.

permeate the country as a whole. In the 2003 Corruption Perceptions Index of Transparency International, Nigeria ranks 132 out of 133 countries surveyed. The 419 schemes of the Internet and through the post have become synonymous with endemic Nigerian corruption.

Unfortunately, the culture of corruption extends to the political sphere. The perception of public office as an avenue for personal enrichment undermines the democratic project.<sup>66</sup> With riches to be gained through public service, there is little incentive for the contestation of free and fair elections. Remarking on the March 2004 local government elections, the outgoing Canadian High Commissioner stated, “There was a general consensus that the local March 2004 local government elections were not good elections. The lesson must be learnt from that experience toward a better election in 2007.”<sup>67</sup> Should donor communities scale back their efforts in the face of continued rampant corruption, the follow-on effect of limiting avenues for civic dialogue and public participation could imperil democratization efforts. The struggle of the CFR is a prime example of the danger of reduced resources in the civil society sector. Currently, the group is unable to disseminate its model constitution because it lacks the necessary funds to cover printing and distribution costs. Without foreign assistance, millions of Nigerians will lack access to the one document that, at this point, represents genuine public participation and dialogue.

## **PRESS FREEDOM**

As the media continue to criticize the government, they have been subjected to increased pressure from the government. Two recent incidents bear out this point. On 04 September 2004, armed members of the Nigerian State Security Services (SSS) raided the office of *Insider Weekly* magazine in Lagos, arrested the magazine’s production manager, and returned a day later to arrest another member of the staff. In addition the SSS officers confiscated documents, money, and computers from *Insider Weekly’s* offices. On 06 September 2004, the SSS arrested and held for ransom the wife and children of the publisher of *The Weekly Global Star*, a Lagos community publication. When the publisher surrendered himself, his family was released, but he was taken into detention. In each case, the detainees have been charged with treason for publishing material critical of the government. Responding to the actions of the SSS, Freedom House Executive Director Jennifer Windsor stated, “The Nigerian government must take a clear stance to prevent the SSS from taking the law into its own hands and to uphold the values of freedom of the press. This type of intimidation must not deter investigative reporting on the government.”<sup>68</sup>

## **SUSTAINABILITY**

Nigeria continues to struggle to achieve constitutional legitimacy. The barriers to fully-fledged democracy are apparent in the constitution building process presently underway. The current process fails to fully integrate women into the constitutional project, offers an inadequate remedy to ethnic conflict, and fosters little confidence in a government that has been rife with corruption and cronyism. Prospects for sustaining the 1999 Constitution in its present form are bleak. The efforts of the civil society sector have fallen flat due to the reluctance of the government to promote meaningful constitutional reform, reform that is based on public consultation and responds to the issues outlined above.

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<sup>66</sup> “As Nigerians say: ‘Ali Baba may be dead, but the 40 thieves are still around.’” International IDEA, 316.

<sup>67</sup> “Nigeria’s Democracy Needs Reforms – Strauss,” *Daily Champion* (Lagos, Nigeria) 14 June 2004.

<sup>68</sup> Freedom House currently rates Nigeria’s media as “partly free” in its worldwide survey of press freedom. <http://www.freedomhouse.org/research/freeworld/2003/countryratings/nigeria.htm> (accessed 03 October 2004).

After numerous attempts by military governments to initiate constitutional reform throughout Nigeria's history, it is now left to civilian authorities to lead a national discussion on the values and governing principles of the country. Should the current regime prove not to be up to the task, the repercussions could cripple not only a country but a continent. Soyinka's open sore is still in need of attention.