

# **Presentation of the Report of [NIGERIAN] CONSTITUTION DEBATE COORDINATING COMMITTEE (CDCC)**

**by  
Justice Niki Tobi**

**[Being the text of a speech delivered by the Chairman of the Constitution Debate Co-ordinating Committee (CDCC), Justice Niki Tobi, while presenting the Committee's report to the Head of State, General Abdulsalami Abubakar.]**

---

**On 11 November 1998**, the Head of State, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, General Abdulsalami Alhaji Abubakar, FSS, Dss, mni, inaugurated the Constitution Debate Co-ordinating Committee (CDCC) which was charged with the responsibility to "pilot the debate, co-ordinate and collate views and recommendations canvassed by individuals and groups and submit (the) report not later than 31 December 1998."

The Head of State, Commander-in-Chief, in his inauguration speech, called for "fresh ideas" on the following contentious issues in the 1995 Draft Constitution, and I quote from the speech:

- The Proposed Provisions on the principle of zoning and rotation. Is it durable to entrench these in the Constitution? And if so, what offices should they affect? For how long and between which identifiable geographic or geopolitical zones? What other ways and safeguards are there to allay fears of political domination and marginalisation of groups, individuals and other elements in the society?
- What is the best way of cultivating a sense of belonging in all segments of our society, in the light of our recent experience in the political arena and those of other nations the world over, through political engineering, without forsaking ideals of democracy or sowing the seeds of permanent discord that may have disastrous consequences in the future?
- What are the merits and demerits of the provisions, which call for multiple vice-presidents? How feasible or workable is the idea given our experience with the operation, during the second Republic, of a single Vice-President and the Deputy Governors under the 1979 constitution?
- As some have vigorously canvassed, what constitutional provision could serve as the most effective anti-dote to future forceful seizure of political authority other than through constitutional means? On the other hand, are there sufficient checks and balances in the survival of our impending trial with democratic governance?
- With a view to devolving more powers and responsibility to lower tiers of government, the draft has created three legislative lists thereby expanding the

competence of state and local governments in sectors such as education, agriculture, health etc. More ideas as how to make this workable will be welcomed;

- The draft has attempted to address the issues of the principle of derivation as a criterion for distributing the national wealth by increasing the current percentage to 13. We shall welcome some ideas on how to make this feasible;
- Over the years it has become fashionable to create more and more commissions at federal and state levels and entrench same in the constitution. Should all such commissions receive constitution sanctity as it presently the case, in view of the manifest and untold hardship that this has occasioned in the last two decades? How best can we retain its ideas but avoid this rigidity;
- The draft has a proposal for the establishment of a National Judicial Council, a body designed to enhance the independence of the judiciary in Nigeria. How workable or compatible is such a body within a federal system in which greater autonomy is being developed to the lower federating units? Are there other ways and means of enhancing the autonomy and independence of the judiciary without undermining a truly federal arrangement?
- The draft has introduced the novel idea of a Constitutional court charged with the responsibility of handling election petitions and hearing matters pertaining to the enforcement of fundamental rights. How justifiable is it to confer such wide jurisdiction on the court and what impact will it have on litigants? and
- How workable is the novel provision for proportional representation of political parties in the formation of the cabinet within a presidential system of government? Similarly, how workable is the provision, which permits ministers appointed to the Federal Cabinet to continue to retain their seats in the National Assembly?

The short notice notwithstanding, Nigerians graciously responded to the advertisement for the submission of memoranda. The committee received a total of 405 memoranda from Nigerians within and outside the country. I wish to say that in response to our e-mail, Nigerians abroad also sent memoranda, which the committee found most useful. And here, I should specifically mention the **Report of the Forum on the Nigerian 1995 Draft Constitution held at the Grand Hyatt Hotel, Washington D.C on December 5, 1998**, submitted by Nigerians in the United States which included submission from Nigerians worldwide via the internet. I should also mention the memorandum from the **Association of Nigerian Scholars for Dialogue** in the United States and others sent by individuals from different parts of the world.

I think I should also say that by sheer coincidence, Nigerians abroad generally shared the same views with Nigerians at home, not only on the eleven issues raised by the Head of State, but in other areas in the Draft Constitution. This shows that Nigerians wherever they are, think alike on the nature of the Constitution that should govern them. And that gladdened my colleagues in the Committee.

I personally watched the debate in five centres (including Abuja). I am happy to say that the debate was not only cordial but also most patriotic and purposeful. Reports I received from

abroad, particularly the Washington D.C debates in the United States of America, showed similar trend and response.

In the light of the memoranda and the oral presentation on the 1995 Draft Constitution, it is clear that Nigerians basically opt for the 1979 Constitution with relevant amendments. Putting it in another language, the common denominator in the mouths of Nigerians the world over is the 1979 Constitution with relevant amendments. They want it, and they have copiously given their reasons for their choice in the different memoranda and oral presentations. So we have recommended to the Provisional Ruling Council the adoption of the 1979 Constitution with relevant amendments from the 1995 Draft Constitution.

I wish to make the point loud and clear to fellow Nigerians even at the expense of prolixity that the role of the committee was to coordinate and collate views and recommendations of Nigerians on the 1995 Draft Constitution and submit a report. That is exactly what we have done. In other words, the report of the committee which I will submit to you anon is based on the views expressed by Nigerians. They are not the views of either the chairman or any of the members of the committee. For the purposes of this exercise, my colleagues and myself in the committee decided to forfeit our legitimate rights as Nigerian citizens to express our views on the Draft Constitution. Painful as it is to us, that was the only way we could perform our duties like umpires in a game to the egalitarian benefit of Nigeria and Nigerians.

Nigeria is one country known to me, and probably to world legal history, where the constitution, the highest law of the land, the *fons et origo* of any legal system, changes like the weather cock in climatology. And that is sad, very sad indeed. It is part of our colonial history that following the amalgamation of the Northern and Southern Protectorates in 1914 by Lord Lugard, we had the Clifford Constitution of 1922, the Richards Constitution of 1946, the MacPherson Constitution of 1951 and the Federal Constitution (otherwise known as the Littleton Constitution) of 1954. That was before Independence in 1960. At independence, we had the 1960 Independence Constitution. In our third independence anniversary the country became a republic and had the 1963 Republican Constitution. After some experience of military regimes, the country returned to a civilian government by the promulgation of the 1979 Constitution of the Federal Republic of Nigeria.

It is the hope of the Constitution Debate Co-ordinating Committee (CDCC) that the Provisional Ruling Council will implement the desires, wishes and the views of Nigerians in the making of the Constitution and enthrone a truly democratic polity.

Your Excellency, I wish to thank you and the Provisional Ruling Council for giving us the opportunity to serve our dear country in this very important capacity, in our own little way. Above all, we thank the Almighty God that he made it possible for us to submit our report a day before the last [due] date. It was an effort [that involved] many sleepless nights.