

## Jonathan's Constitutional Conference in Nigeria: A reflection and a radical critique

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*The process of bringing forth a constitution is as crucial and important as the constitution itself. However, while this ideal has been institutionalized in many liberal democracies, it is yet to be fully embraced in many illiberal countries. In Nigeria, the focus of this discourse, the process of constitution-making is as old as the country itself but such processes had always followed the same pattern: elite-engineered, paternalistically-driven and above all, devoid of citizens' imprints via a referendum. It is against this backdrop that this article, in a retrospective and analytical manner, examines and offers a democratic critique of Nigeria's most recent attempt at Nigeria's constitutional engineering, the Jonathan's Constitutional Conference (JCC) of 2014. It observes that President Jonathan-initiated Constitutional Conference mimicked the paternalistic character of the previous attempts at constitution-making and as such the process is not markedly different from the old. It submits that as long as the state elites, acting on behalf of the hegemonic faction of the dominant class, continue to see constitution-making as their exclusive reserve and are always willing to defend even a bad constitution, the search for a people's constitution would continue.*

**Keywords:** constitution, Nigerian state, referendum, hegemony, paternalism, Goodluck Jonathan

### Introduction

While other forms of government can exist and even flourish without a constitution, a democracy, irrespective of its variant, has no meaning without a constitution. It is the existence of a constitution that sets a democratic model of governance from a non-democratic one. Put differently, no political system claims to possess a democratic credential in the absence of a constitution, the fundamental laws, rules and regulations according to which the state is administered and governed (Price 1970:44). However, as pivotal and central as a constitution is to a democratic order, the process of bringing it forth, into existence, is as crucial and important as the document itself. This is because the processes of its making and enactment determine how legitimate and acceptable it would be to the individuals and groups that are to be bound by its provisions. As established by constitutional historians and scholars, and proved by the experiences of advanced democracies, constitutions that are processed democratically via meticulous and painstaking efforts of the people and their duly elected representatives are more enduring, because of their wider acceptance than those imposed from above (Nwabueze 1982, 1993; Levine 1997, Jegede et al. 2000, 2001; Agbese 2000; Okon 2004; Osopitan 2004).

Reasonably and pragmatically too, democratic-driven processes, in which the citizens and their accredited representatives play active roles in constitution-making offer the best prospect not only for ensuring people's ownership of a constitution but also for establishing a legitimate and durable political order. As Ihonvhere (2001:65) lucidly, remarks, in the context of Africa, "participatory constitution-making is being used to build ownership and legitimacy around the constitution as a strategy for building democratic values and strengthening the national project".

Interestingly, while participatory constitution-making has become a *fait accompli* and institutionalized in the United States and other liberal jurisdictions (Riley and Battisomi 1987), what seems applicable in most African countries and

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some illiberal democracies of the global south is a complete opposite of this ideal. In these climes, the domains of constitution-making are fundamentally the exclusive reserve of the elites, with the attendant implications that the enacted or decreed constitutions not meeting the material and spiritual aspirations of the people, resulting in recurring demands for new constitutions. In Nigeria, the process of constitution-making is as old as the country itself, yet the country has not had a constitution, the making of which and resultant text is popularly acceptable to the various groups that are domiciled within it (Basiru 2010:105).

Although efforts have been made by successive regimes, colonial and post-colonial, to constitutionalize and reconstitutionalize the Nigerian polity, still the key national questions, as manifested today in ethnic conflicts, religious strife, indigeneship imbroglios, boundary disputes, etc. have remained unresolved. It is probably the realization of these realities and the imperatives of institutionalizing an acceptable constitutional framework for Nigeria that informed the latest attempt at constitutional engineering, by the regime of Dr. Goodluck Jonathan. On October 1, 2013, in his Independence Day broadcast to the Nigerian people, President Jonathan indicated the resolve of his regime to start a process that would lead to the convocation of a national forum that would hold dialogue on the constitutional future of the country.

As promised by the president, a Committee made up of eminent Nigerians and headed by Dr. Femi Okunronmu was set up within days. The Committee went to work and submitted its report to the president within the time frame. The report soon formed the basis for setting in motion the structures and processes that culminated in the convocation of the National Conference on March 17, 2014 by the president. The Conference headed by an eminent jurist and a former Chief Justice of Nigeria, Justice Idris Kutigi, worked for five months, at the plenary and Committee levels and produced the Report that was presented to the president on August 15, 2014.

Against this background, this article looks at Nigeria's latest attempt at constitutional engineering, the 2014 National Constitutional Conference, to assess whether it was markedly different from the previous attempts. Although it cannot be affirmed that, since the agenda was made public by the president on October 1, 2013, there have not been a plethora of commentaries from various strata of the intellectual community, about the perfection or imperfection of the processes leading to the Conference and its outcome, but there seems to be a paucity of well reasoned scholarly discourse. This article's significance, thus, lies in filling this gap.

In terms of organization, the article is partitioned into a number of sections, starting with an introduction pointing to the paper's background, significance and purpose. The second section presents the theoretical framework that guides the study. Part three reviews, in a chronological order, the evolution of constitution-making in Nigeria so as to understand the nature and character of the processes. The section that follows examines the 2014 National Conference, connects and compares the process of its making to the previous conferences. The fifth section attempts to explain why the search for a popular and legitimate constitution, in Nigeria, seems elusive. Section six concludes the paper with a number of submissions.

## **Theoretical framework of analysis**

In the literature on the process of constitution-making in a liberal society, two theoretical perspectives have held sway. These are the process-led/democratic theory and the elite-imposed theory (Agbese 2000: 90). The first, drawing inspiration from Aristotle's *Politics*, posits that since ordinary people, the *demos*, are the sovereign and objects of political participation, in any polity, they must be the major actors or players in the processing of the constitution that guides their lives (Pateman 1970). The people, the theory contends further, should be allowed to participate directly or through the representatives sanctioned by them, in all political activities including setting the constitutional agenda (Osipitan 2004: 30). Thus, instead of rationalizing people's inactivity, the proponents of this theory suggest the transformation of the apathetic people into active democratic participants (Basiru 2010: 106)

Conversely, the elite imposed theory argues that the task of drawing up a constitution for the polity must not be left to the generality of the people. Armed with the Platonic conception of elite's rationality, the theory posits that the domain of constitution-making in particular and policy-making in general should be monopolized by a crop of few highly learned, detached and politically informed elites. In other words, the 'more rational' should impose a constitution on the 'lesser minds' (see Ikpe 2008). Thus implying that the people, in the process of constitution-making, are passive spectators, who are mere consumers of the constitutional outputs, given to them by the ruling elites.

The foregoing two theoretical perspectives, no doubt, provide the basis for understanding the process of making constitutions in any society and indeed mirror the realities in most societies, but the latter seems to approximate the realities of most ex-colonies in Africa where 'the people' are hardly the players in constitution-making and design. However, its major snag is that it, like the former, was developed within the framework of ahistorical modernization paradigm and as such leaves out state-class relations in the analysis of the constitution-making process in a given social

formation. Also, aside from positing that the elites monopolize the constitutional agenda, it fails to explain the class interest behind such monopolization. What is therefore suggested and deployed for the purpose of this study, given this theoretical gap, is an approach that examines the relationship between the state and social classes in a given mode of production. The conviction here is that once the nature of such relationship is established, the role of the state and its custodians in constitution-making becomes clearer.

Instructively, the theoretical debates about the relationship between the state and social classes, in a capitalist society, have largely been shaped by two contradictory perspectives: the class-mediation and the class-domination theories (Sweezy 1942:55). However, the latter fits the purpose of this paper. Styled as a neo-Marxist theory of state-class relations, the state, the theory posits, given the circumstances that led to the emergence of the state in a capitalist society, cannot be neutral in the society (Baran & Sweezy 1966:36). As Miliband (1977:67) avers, "The state is not above class struggles but right in there. Its intervention in the affairs of society is crucial, constant and pervasive; and intervention is closely conditioned by the most fundamental of the state's characteristics, namely that it is a means of class domination ultimately the most important by far of any such means." However, he contends that, in spite of the state's interventionist character, it is still not just a mere instrument but is relatively autonomous of the dominant class. Again, he submits, "The notion of the state as instrument does not fit this fact and tends to obscure what has come to be seen as a crucial property of the state, namely its relative autonomy from the ruling class and from the civil society at large" (Miliband 1977:74).

Central to his thesis here is the concept of relative autonomy which is vital to explaining the state-society relations in the Third World. For example, Ake (1985a:105-14) refrains from referring to social formations in Africa as independent states. According to him, "in Africa, there are few social formations that are capitalist enough or socialist enough to be identifiable as clearly boasting the state form of domination" (Ake 1985<sup>b</sup>:108). Implying that the state, in Africa, unlike its counterpart in the core capitalist countries, is not autonomous of the contending social forces and always vulnerable, to be captured by the hegemonic faction of the dominant class. In the context of this article, it would soon be demonstrated how such feature has played out in constitution-making arena, but before this it is imperative to put Nigeria's experience in constitution-making in historical perspectives.

### **Nigeria's constitutional engineering, 1914-2005: A conspectus**

The history of constitution-making in Nigeria can be best comprehended in the context of the evolution of the Nigerian nation-state. Nigeria, a land of 374 ethnic groups (Nnoli 1995:27) inhabiting an area of 913,027.64 square kilometers (Oshuntokun 1979:92) like any other Anglophone African State was the creation of British imperialism. In fact, British penetration of Nigeria began with the annexation of Lagos in 1860, on the grounds of stopping the slave trade. It ended with the seizure of what is today known as Nigeria (Azikwe 1978:41). Like other entities the British territorialized in Africa, the penetration started from the coastland and later extended into the hinterland. To the West of the River Niger, there was the penetration through Lagos. This later extended into the Yoruba hinterland. In order to safeguard the British palm oil trade, the Foreign Office penetrated the south eastern part of Nigeria.

During this process, Sir George Goldie of the Royal Niger Company (RNC) was laying the foundation for the eventual take-over of Northern Nigeria. By 1900, the territories of the North, West and East had come under colonial administration. In 1906, they had been reduced to two: the Northern Group of Provinces and Southern Group of Provinces (Ballard 1971:334). The two separate administrations were placed under one man, Sir Frederick Lugard, in 1912, with the instruction to unite the two entities into one single entity. By 1 January 1914, the two entities became one country through three legal instruments (See Lugard 1926; Oluyede 1992). In earnest, the process of constitution-making began. Thus, from 1914 to 1960, a number of constitutions, with each phase accommodating a number of constitutional developments, came into operation. Starting with Lugard's constitutional arrangement of 1914, about six constitutional frameworks were introduced by the various colonial regimes before 1959 (Coleman 1958).

However, it is instructive to note that each had its features and modalities depending on the politico-economic realities of the epoch. For instance, while Lugard's arrangements institutionalized the appointive principle, the Clifford Constitution of 1922 made provisions for elective frameworks. On another score, the Richards Constitution of 1946 was markedly distinct from its predecessor. While the former reinforced disunity by administering the north and the south separately, the latter attempted to unify the politico-administrative units of the country (Ezera 1960). Also, it is worthy of note that the pre-1950s constitutions were made and imposed by the colonial regimes without consultation with the natives, but this attitude changed in the 1950s following the Macpherson Constitution which involved many Nigerians at the village, divisional, provincial and regional levels. As Lawal (2000:37) lucidly avers, "in Nigeria as elsewhere, the process of colonial reforms and eventually decolonization included constitution making." In subsequent constitutions, the 1954 and 1960, the emerging nationalists were involved in the processes leading to their births.

What is clear from the foregoing is that colonial initiated constitutions from 1914 to 1960 had two phases. During the first phase, 1914-46, the constitutions in place were not only non-autochthonous, because of their imperial authorization; they were devoid of popular participation. As Ojo remarks:

All that happened particularly with the 1946 Constitution was that the Governor merely drafted the constitutional proposals for the review of the 1922 constitution. These proposals embodied in the white paper published in the UK and in Nigeria were submitted to the Legislative Council for approval. They finally received British parliamentary approval (Ojo 1987: 62).

During the second phase (1946-1960), due to internal and external pressure, the colonial authorities, as part of the decolonization strategy, began to involve more Nigerians in constitution-making processes. However, the fact remains that the final authorization still lay with the political elites of the Church House.

On 1 October 1960, Nigeria attained independence with a constitution which was a product of the various conferences held in Lagos and London between 1958 and 1959. The independence Constitution, it must be emphasized, though it received inputs from 'selected' representatives of the dominant political parties, was also non-autochthonous, like the 1954 Constitution, because it derived its authority from the British Parliament. It was the 1963 Republican Constitution that signaled the departure from the non-autochthonous path. The Constitution removed the last vestige of British Monarchism as the Queen of England ceased to be the Head of State of Nigeria. Though autochthonous, being wholly processed by Nigerians, the process of its making was not democratic.

It came into existence following the amendments effected to the 1960 Constitution from the decisions and recommendations by an all-Party Constitutional Review Committee. As Osipitan (2004: 15-16) remarks, 'the 1963 Constitution was not processed by the elected representatives of the people. There was neither a Constitution Drafting Committee nor a Constituent Assembly which drafted and examined the Constitution respectively'. Unfortunately, the republic, due to a combination of forces, some of which have been well documented in literature, collapsed on January 15, 1966 (see Dudley 1973; Mackintosh 1966, Post and Vickers 1973). By virtue of section 3(1) of the Constitution (Suspension and Modification) Decree 1966 and Section (1) of the Constitution (Basic Provision) Decree 1975, the military assumed overwhelming power in all spheres of the country's body politic (Ijalaye 1977).

The first military regime of Major General Aguiyi Ironsi, on assuming power, set up three study groups to examine the constitutional, administrative and institutional problems of the federation. However, before the Committee could complete its assignment, it was stopped by the promulgation of the Constitution Suspension and Modification Decree No. 34 of 1966. The regime not only re-christened the Federal Military Government but also re-designated each Region as Group of Provinces under Military Governors appointed by the Military Head of State. Specifically, Section 3 of the same Decree unified the Federal and Regional civil services as one single Public Service known as the 'National Public Service' (Dickson 1993:4)

Following the death of Ironsi, the new regime of General Gowon initiated a new process. Like his predecessors, he set up an *ad hoc* Constitutional Conference to make recommendations for the political future of the country. However, the regime could not make any headway as the nation was engulfed in a civil war. After the war, General Gowon launched a nine-point programme for the return to civil rule, which included a new constitution. He was, however, overthrown on July 29, 1975. It was his successor General Murtala Muhammed who now set the stage for the writing of a new constitution. Upon consolidating power, he announced a five-point programme of political transition which included the setting up of the constitutional Drafting Committee (CDC) in September 1977. However, he could not see the transition to an end as he was assassinated on February 13, 1976. His successor and erstwhile deputy, General Olusegun Obasanjo, continued with the agenda.

Specifically, the process that led to the making of the 1979 Constitution commenced with the inauguration of the fifty-man Constitutional Drafting Committee under the leadership of Chief Rotimi Williams in October 1975. The Committee produced the draft which was debated before being forwarded to the Constituent Assembly. The Assembly deliberated on the draft Constitution and made their amendments before forwarding it to the Supreme Military Council. The Council accepted most of the recommendations of the Assembly but the Council tampered with the draft by inserting some decrees in the final constitution.

On October 1, 1979, the country returned to civil rule once again, with a brand new constitution; the expectations were high that the new order would stand the test of time, but the expectations were dashed four years later when the military, again, struck on December 31, 1983. The nation thus reverted to military autocracy. Indeed, the nation, as it has been argued elsewhere, became a laboratory for conducting constitutional experiments (Basiru 2010: 111). In fact, except for the short-lived Shonekan regime, the others were military Generals. While General Muhammadu Buhari did not have any agenda for constitutionalizing Nigeria; others (Generals Babaginda, Abacha and Abubakar) had. However, it was only the Abubakar regime that succeeded in transiting Nigeria into a constitutional democracy. It must be

emphasized, however, that the 1999 constitution closed the second phase of the military-imposed constitutions in the country. The 1979, 1989, 1995 and 1999 constitutions were all supervised by the military; none was popularly adopted by the people. Though the processes leading to their emergence were comprehensive, involving many actors and players, the juntas had the final say.

On May 29, 1999, after fifteen years of military autocracy, the country returned to democracy, under the 1999 Constitution. However, it was not long before its legitimacy began to be called into question by different segments of the Nigerian society. Indeed, there was a general consensus among the majority of knowledgeable Nigerians that the Abubakar's Constitution, as it is popularly called, like the past military-brokered constitutions, cannot meet the expectations of different sections of the country. In fact, some groups like the Patriots, led by Chief Rotimi Williams, called for the convocation of a Sovereign National Conference (SNC) where every nationality would be represented for dialogue on the contentious issues of the country's national existence and decisions taken at such a forum would not be subject to review. The group even went to the extent of preparing a bill for the National Assembly on how this could be achieved (Nigerian Guardian 11 October 2000:8-9).

However, such a demand was not acceptable to the presidency and members of the National Assembly, who contended that there cannot be two sovereign authorities in the country, but nevertheless agreed that the country needed national dialogue, which recommendations could be used by the National Assembly. President Obasanjo, probably sensing that should the request of the Patriots and other groups come to fruition, the 1999 Constitution, from which his presidency derived its existence, might be set aside. He chose the option of initiating the amendments to the existing constitution by setting up a presidential committee to carry out an assessment of all possible areas of defects in the 1999 constitution. The committee, in the course of its assignment, solicited and received about two million memoranda and took one and half million oral presentations (Nigeria 2002:35), but despite the efforts of the presidency, through the committee, the modalities were not acceptable to the pro-SNC groups.

Soonest, the regime danced to the tune of these groups, but substituted SNC for National Political Reform Conference (NPRC). At the convocation of the conference, on February 21, 2005, the President charged the 400 nominated delegates as follow:

After almost six years of operating our constitution (1999 constitution) and working with existing constitutional arrangements, we can identify some areas of weakness. We considerate it opportune and timely to think and talk together to strengthen our structure, system and arrangement. It is time to confront these challenges with honesty, courage, commitment, realism, understanding and patriotic disposition for the good of the nation (emphasis added, quoted in Anifowose & Babawale 2006: 27-28).

It must be emphasized that aside the fact that the presidency handpicked the 400 delegates; it also crafted the agenda for the conference (Obiagwu 2005). Having set out the agenda, the president tactically limited the scope of the agenda by setting a no-go area for the conference (Onuorah 2005). For months, the delegates met and deliberated amidst controversies and acrimony over contentious issues such as rotational presidency and resource control. Eventually, the conference ended with myriads of controversies. These coupled with the illegality that attended summoning by the president as well as the undemocratic manner in which it was constituted, made the agenda another wasteful exercise (Ajayi 2006). Thus, like other autocratically-imposed constitutional agendas, it failed to meet the aspirations of many Nigerians (Oladesu 2005).

## **Jonathan National Conference (2014)**

To begin with, Jonathan's constitutional agenda must be situated against the background of events that heralded his regime on the May 3, 2010. Obasanjo, the second executive president of Nigeria, had left office on May 29, 2007. He was succeeded by Umaru Yar' Adua, who also inherited the 1999 Constitution. As in the preceding regime, the agitations for a better constitutional order continued, but the regime rather concentrated its efforts on electoral and economic reforms. Although the regime also recognized the imperatives for a national dialogue, it never set in motion machinery to actualize it. On May 3, 2010, following months of needless crisis over the president's ill-health, the regime of Umaru Yar'Adua came to an end as the president passed on. He was immediately succeeded by his vice, Dr. Goodluck Jonathan.

Unrelentingly, the proponents of genuine national dialogue continued with their agitations, insisting the Obasanjo's agenda was not what the country needed. Consequently, the presidency and the National Assembly came under intense pressure from various groups. In 2012, the National Assembly, in response to the calls by civil society for a national dialogue, initiated efforts towards a review of the 1999 Constitution. However, the National Assembly reiterated the position of the previous Assemblies, insisting that the Sovereign National Conference is untenable as there can only be one sovereign. As the Deputy Leader of the House of Representatives, Hon. Leo Ogor, puts it, 'we are the true

representatives of the people and any constitutional matter must be left to the National Assembly to handle' (Ogor 2013).

President Jonathan, on his part after an initial *volte face*, responded to the continued agitation for a National Dialogue by constituting a high-powered Committee on the Review of Outstanding Issues from Recent Constitutional Conference under Justice S.M. Belgore (Nigeria 2014). The Committee was mandated to examine the relevance and currency of the recommendations of the previous Conferences which were not implemented, draft bills for consideration (where necessary) and propose policy guidelines for the implementation of those recommendations. Specifically, on October 1, 2013, the President eventually succumbed to the agitators for national dialogue. In his Independence Day broadcast to the nation, he declared the intention of his Government to organize a National Dialogue as a way of resolving the intractable security and political crises in the country. He remarked:

our administration has taken cognizance of suggestions over the years by well-meaning Nigerians on the need for a National Dialogue on the future of our beloved country ... In demonstration of my avowed belief in the positive power of dialogue in charting the way forward, I have decided to set up an Advisory Committee whose mandate is to establish the modalities for a National Dialogue or Conference (Jonathan 2013).

In pursuance of his resolve, he set up a 13-member Presidential Advisory Committee on National Dialogue with Senator Femi Okurounmu as Chairman and Dr. Akilu Indabawa as Secretary. On October 7, 2013, the Committee was formally inaugurated and was charged with designing the framework for the National Dialogue including suggesting the appropriate name and nomenclature of the Dialogue, its legal framework, time frame, mode of representation, and modalities of implementing the decisions of the Dialogue. Their assignment was initially billed to last four weeks, but the Committee's Chairman pleaded for two weeks' extension. The request was graciously granted by the president (Punch 8 October 2013). In earnest, the Committee started work. It toured 13 cities, two in each geo-political zone and the FCT Abuja and interacted with more than 7,000 Nigerians. It also received thousands of memoranda from individuals, groups, and professional associations (Nigeria 2014:23).

Following weeks of intense work, the Committee submitted its report to the President in December 2013. The President accepted the Committee's recommendation for the convening of a National Conference. On March 17, President Jonathan inaugurated the Justice Kutigi-led National Conference of 492 Delegates with a mandate to deliberate on all matters that militate against Nigerian's national unity and progress (Vanguard 18 March 2014:1). He enjoined the Conference to complete its assignment and to submit its report to Government. After adjourning for a few days, the Conference commenced with the consideration and adoption, with amendments, of the Draft Rules of Procedure presented to them by the Secretariat. However, one issue in the Rules of Procedure that almost derailed the Conference was the decision-making procedures. While the controversy lasted, delegates were polarized into two camps.

In the first camp were those who rejected the proposal to take decisions if consensus fails by a 75% majority. They opined that, arithmetically, the 75% majority proposed as the benchmark for arriving at decisions when consensus is not possible, is much higher than the normal two-thirds. So they suggested that to avoid complications and confusion, decisions should be reached where consensus is not possible by a simple majority. They suggested that this would be consistent with the best democratic practice. In the other camp were those that supported the retention of the decision-making benchmark as proposed in the inaugural speech by the President (Nigeria 2014:74). The whole issue, after days of bickering, was eventually resolved through the intervention of the '50 Wise men/women' who recommended a compromise of a 70% majority (Nigeria 2014: 74).

Having settled the issue of Rules of Procedure, the Conference commenced plenary work with the debate of the President's Inaugural Address. After two weeks of robust debates and exchanges of views by the delegates, the Conference went into the Committee stage where the bulk of the Conference work was done. The leadership of the Conference distributed delegates into 20 Committees. The Committees worked for a period of six (6) weeks, produced Reports which were presented and discussed in the Plenary on the basis of which the Conference took decisions. The plenary's decisions and resolutions on the Committees' Reports formed the document that was presented to the president on August 18, 2014. The president, while receiving the Conference Report, thanked the Conference Management Team and the entire body of Conferees for serving the nation for almost 5 months. He reiterated his commitment to work with recommendations of the Conference. The Conference wound up with the remarks by the Chairman.

President Jonathan, like many of the regimes before him, saw the inherent weaknesses and contradictions in the governing constitution, upon which his government had based its power, and saw the imperatives of addressing those contradictions, in line with contemporary realities and challenges. By his admission, 'we cannot continue to fold our arms and assume that things will straighten themselves out in due course, instead of taking practical steps to overcome impediments on our path to true nationhood, rapid development and national prosperity' (Vanguard March 18 2014:1).

However, like his predecessors, who had also charted a similar course, the process was far from being democratic. Indeed, right from the time that his agenda of restituting Nigeria was made known to the nation, in his Independence Day broadcast, through the setting up of the Okunronmu-led Technical Committee, the collection of memoranda by the same Committee to the nomination of delegates for the conference, the process was technocratic rather than democratic.

The process seems to have followed the country's established patterns of constitution-making: the setting up of Review Committees to prepare a draft, the 'nomination' of delegates for a Conference, the inauguration of an Assembly by the Convener, the submission of the Assembly's draft reports to the government, the release of white papers following minor tinkering and decreeing the report into laws in the absence of a national parliament or sending such to the parliament if it is in existence. It then appears that the Conference Report, like others that were products of similar projects, may remain unimplemented. Should the report have even been implemented by the presidency or incorporated into the 1999 Constitution as amendments, it is still not a legitimate, people-oriented document, because the process did not pass through democratic rigour.

The key ingredients of a democratic constitution-making process were obviously lacking: direct elections of delegates and most importantly, the ratification of the constitutional document in a national referendum by 'we the people'. The position of Ige, is instructive,

no amounts of consultations with Obas, Emirs, Obis, Obongs and Chiefs, no amount of seminars and workshops with professionals and other groups, no amount of public discussions on radio, televisions, newspapers and other forms can be a substitute for popular election or referendum. That is the only way the people's democratic will and power can be demonstrated and gauged. All other methods are mere bamboozlement (quoted in Osipitan 2004: 30).

It is thus obviously clear from the foregoing that President Jonathan's 2014 reconstitutionalization agenda is in terms of character and procedures not markedly different from the previous agendas. This raise one fundamental question: why has the reconstitutionalization agenda in Nigeria followed the same pattern? This leads us to the next section.

### **State, class and constitution-making in Nigeria**

The reason why constitution-making processes in Nigeria have always followed the same pattern cannot be treated in isolation. It needs to be situated in the character of the post-colonial Nigerian state and its relations with the social classes (see Ekekwe 1986). As Ake (1996: 7) puts it: 'much of what is uniquely negative about politics in Africa arise from the character of the state, particularly its lack of autonomy, immensity of its power, its proneness to abuse, and lack of autonomy and lack of immunity against it'. Put differently, the post-colonial Nigerian state, though immense in terms of power, is not autonomous from the social forces and thus not a neutral entity in the dialectical struggles for power. However, as fascinating as the above contention is, it cannot be divorced from the country's political history.

Foundationally, its precursor emerged in a manner that was nothing but undemocratic. Unlike the American federal state that emerged organically through the franchise of the peoples, the Nigerian colonial state was forcefully cobbled together by the forces external to it (Nwabueze 2003:62). So *ab initio*, the state that emerged in Nigeria was an imperial *force majeur* that saw laws as instruments of domination and oppression. The colonial state in Nigeria did not see constitution-making as the business of the oppressed natives. Even by the time the colonial state saw the expediency of Nigerianizing the process of constitution-making, responsibilities were entrusted and appointed to the emerging petty bourgeoisie. At independence in 1960, the colonial state apparatus remained intact. The post-colonial state was not structurally different from its precursor, as there were changes without change (Odukoya 2006: 247). It continues to serve the interests of the class that has hijacked it, either through elections or by *coup d'état*. This class like its precursor continues to see the arena of constitution-making as its exclusive right, with occasionally a token gesture in the form of pseudo-national conferences. The issue here is that the post-colonial Nigerian state has not shed its colonial garb. Irrespective of the regime in power, it still retains its awesome power, always ready to be deployed to protect the legal order that serves the interest of the dominant class in Nigerian society.

### **Conclusion**

This paper, in a historical and analytical manner, has examined the latest attempt at constitutional engineering in Nigeria, the Jonathan National Conference (JNC), to determine whether it was markedly different from the previous attempts. It was noted that, unlike the practice in liberal democracies and some Francophone African countries, where people directly, or through their representatives process, approve constitutions and key policies of the state, through referenda, the opposite has always been the case in Nigeria.

However, in a radical departure from the conventional legalistic appraisal of constitution-making processes in Nigeria, often favored by legalists and jurists, the paper adopts a radical approach which views the undemocratic nature of constitution-making in Nigeria through the lens of bourgeois domination supervised by a non-autonomous state. In this context, it contends that in Nigeria, the state, acting on behalf of the hegemonic faction of the dominant class, has always seen constitution-making as its exclusive reserve and is always willing to defend even a bad constitution. It is argued that since the latest constitutional agenda was conceived and instrumentalized in the context of the old procedural paradigm and mindsets, it could be regarded as the same as the old; a clear replica of the old order. Emanating from this thesis, it is submitted that as long as such structure continues, the quest for a people's constitution in Nigeria would remain elusive. Putting things back requires the restructuring of the over-centralized Nigerian state via an autochthonous constitution-making process.

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