

# SOME ECONOMIC CONSEQUENCES OF THE 1979 NIGERIAN CONSTITUTION

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## Abstract of the paper

The provisions relating to some selected items in the 1979 Nigerian Constitution have deleterious economic consequences. The items are revenue allocation, creation of States, Land Use Decree, the Council of Chiefs and Federal/State appointments. In what follows in this paper the author delineates these economic consequences specifying necessary constitutional changes as palliatives to accommodate/solve the problems as discerned. It was shown that the constitution recognises directly only population and may be remotely school enrollment as criteria for revenue sharing between States. It was further recommended that the provisions relating to the Land Use Decree, Council of Chiefs, Federal/State appointments should be expunged from the organic law as modes of accommodation to changing circumstances of State.

## 1. INTRODUCTION

The 1979 constitution of the Federal Republic of Nigeria<sup>(1)</sup> is an organic or fundamental law which should grow with time as amendments are made to accommodate changing circumstances. The constitution derived from the activities of the Constitution Drafting Committee (CDC) of 1975/76, the National Constituent Assembly of 1978 and the Debates carried on by all Nigerians through the mass media. Thus the inputs towards the production

of this organic law are quite encompassing of the Nigerians intelligentsia and also the ruling military oligarchy who made sure that some decrees were given constitutional sanction and that the collective will of the people as represented by the output of the Constituent Assembly was vetted with minor amendments here and there by the ruling Supreme Military Council.

Some dire economic consequences resulting from the Constitution could be discerned from the provisions relating to the following items: revenue allocation, creation of States, the Land Use Decree, the Council of Chiefs, and Federal Ministerial appointments. It is pertinent to look at these provisions and analyse their economic consequences. The items are however not exhaustive, but selective.

## 2. REVENUE ALLOCATION

Section 149 subsection 1 of the Constitution states that, "The Federation shall maintain a special account to be called "The Federation Account" into which shall be paid all revenues collected by the Government of the Federation except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the Ministry or Department of Government charged with responsibility for External Affairs and the residents of the Federal Capital Territory".

Subsection 2 also states "Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and such manner as may be prescribed by the National Assembly".

The implication of this subsection is that the National Assembly could derive some criteria for revenue distribution between the Centre and the States. Whatever criteria that is accepted by the National Assembly is taken as valid and constitutional. It is assumed that no other provision in the Constitution ties down the hands of the National Assembly as to a given criterion. Several criteria thus have been evolved for the allocation of revenue between the centre and the States. Principles such as equality of states (minimum responsibility of states), derivation, primary school enrolment, reverse school enrolment, tax efforts and land mass have been brought into play. In the past as much as 50% of revenue has been distributed according to the principle of equality of States.

Nobody has looked at the Constitution, its message and implication to see how citizens of this large nation of states should be treated in the new dispensation. For instance is it constitutional to allocate revenue on any principle outside of population? Can we specify constitutionally any other principle like landmass, equality of States, tax efforts, primary school enrolment and not just population?

The contention of this paper is that the constitution recognises population as the only criterion for sharing revenue between the Centre and the States. Any other formula can be injected only by constitutional amendment. Although the Fundamental Objectives and Directive Principles of State Policy section of the constitution is not justiciable, but then as an enunciation of social ideals it commands the State agents to live up to these ideals.



Section 17 sub-section 2 (a) of the constitution on social objectives states "every citizen shall have equality of rights, obligations and opportunities before the law". This is an equality principle of the constitution. Also section 39 subsection 1 (a, b) provides for right to freedom from discrimination on basis of ethnic group, place of origin, sex, religion etc. The non-discrimination provision enunciates the equality principle of the constitution.

On the basis of this equality principle each individual casts just one vote in any election regardless of his education his resource endowment and his other capacities. The equality of each individuals rights, obligations and opportunities is sanctioned by the constitution. In a situation where Anambra State for instance with a population of about 5 million people receives say #10 million from the Federation Account through any formula in operation and Niger State with a population of about 1.5 million people receives the same #10 million under the same formula, you can not say that the equality principle has been met. Such an allocation would be in flagrant violation of the relevant sections of the constitution. Such an allocation can only be sustained by an amendment to the constitution.

To protect the rights of the individual within the context of fiscal federalism, the principles of equality of individuals is the only criterion sanctioned by the constitution and this should be applied to revenue distribution. The States are not equal except in terms of protocol for state officers and Chief executives, there is no functional equality. Land mass

cannot be injected as a criterion since revenue is for man and his welfare ultimately and not for an inanimate physical quantity. School enrolment comes closer to the equality principle since school children could serve as a proxy for population, and actual quantity, especially when population figures are often unreliable. Thus assuming a given equal proportion in primary schools between states, a state with 5 million people actual population data and with 1 million in primary schools, compared to another state with 2.5 million people would be expected to have half a million primary school children. Consequently the actual figures of primary school enrolment generated within states should be taken as actual proxies of true population figures. It was on this account that the author recommended primary school enrolment as a criterion function for revenue distribution between the centre and the states to the Okigbo Revenue allocation Commission.<sup>(2)</sup>

The idea was novel and it was the authors original contribution accepted with minor modifications, that is with reverse enrolment criterion, by the Okigbo Panel.

As the author further argued in his submission to Okigbo, education has been accepted to have great interregional externalities. A State investing highly in education would benefit the nation with an enlightened and educated work force available to the larger economy. Since the state cannot internalize all externalities or benefits accruable from investing in education incentives should be given to states to bring out 100% of the age cohorts in primary schools into actual schooling. As Anderson et. al. (1963)<sup>(3)</sup> found out 40% of primary school enrolment is a

threshold for economic development. Thus an inducement to States to emphasise school enrolment would help achieve a larger national objective.

Additionally primary School enrolment could be used as an index of absorptive capacity, with states having high school enrolment being able to absorb further investment in other sectors of her economy in response to the economic forces of factor complementarity.

Thus the economic consequence of the 1979 constitution with respect to a proper revenue allocation formula is that population and primary school enrolment are the only reliable criteria for revenue distribution in Nigeria. The frenetic and sometimes frivolous demands for states creation would attenuate since there is no extra fiscal benefit to restructure or divide a given state. All revenue allocation formulae in use in the past in Nigeria give the impression that it is better for a state to be small rather than large. Large states are necessary because scale economies would be generated in the provision of services, in the administration of the states location of industries, and provision of collective goods. The principle of individual equality would protect subh large states.

Further in the U.S.A. in response to the principle of individual equality as enshrined in their constitution revenue allocation is distributed 100% according to population. In that country there has been no demands for creation of states, very large states co-exist with very small ones. Revenue and other perquisites from the centre are distributed according to population.



Thus California with a population of 30 million people and Nevada with a population of 6 million people would have a ratio of 5:1 in any revenue allocation from the centre to the states. Does it then pay California to split into 5 states? The answer is no. Their extra largeness is protected and nebulous, inexact, imprecise, unfair and inequitable formulae are not brought into play to emasculate the equality of individuals as enshrined in the relevant constitution. The author hereby admonishes that Nigeria desists forthwith from protecting small states, and thus encouraging further redistribution of the country into smaller unviable entities. As long as Nigeria continues to protect small states and encourage smallness in size of states she would remain a weak, undeveloped Nation and the fissiparous and centrifugal propensities inherent in the agitation for states would forever divide the Nigerian people.

### (3) CREATION OF STATES

Section. 8 (1) of the 1979 Constitution stipulates the procedure for the creation of more states in Nigeria. The section requires the following processes:

- (a) two thirds majority of members representing the area in the Senate and House of Representatives, State Houses of Assembly and Local Government Councils would make a request for such a State,

- (b) This would have to be approved by 2/3 majority of eligible voters or actual votes cast in a referendum administered to the people of the area,
- (c) The result of the above referendum is approved by a simple majority of all the States of the Federation may be also voting in another referendum and a simple majority of members of the Houses of Assembly and,
- (d) This would also receive the final approval of 2/3 majority of members of each Houses of the National Assembly.

Inspite of the imprecise and rigorous nature of these provisions which were made to frustrate any further demands for states in Nigeria more than 52 such demands have been made in the first two and half years of the 2nd Republic the exact period of experimentation with the Republican Constitution. More of these demands are frivolous, but responsible politicians and redoubtable leaders in the grassroots level have led such demands for such states. If left untrammelled more than 100 demands would be made before the expiration of the first term of office of the 2nd Republic. What this tantamounts to is that each Senatorial District would request for statal recognition so that perhaps each senator of the second Republic would translate to the position of executive Governor of a state.

It is argued by the protagonists for states creation that more states would lead to even development of the national economy. India with a population of over 500 million people has only 22 states and the largest state Uttar Pradesh has 90 million people.



Nobody has asked for this large state which has an equivalent population of Nigeria to be split into 50 other states for the purpose of development.

U.S.A. with a population of 250 million people has 50 states, the largest states California and New York have about 30 million people each. Further in the U.S. Constitution there is no provision for the creation of states although in 200 years of their history they grew from 13 states to 50 by acquisition and cession of new territories, not by devolution of powers within existing boundaries.

It is also very doubtful that creation of states would lead to even development. Growth and development is a function of capital and investment. Capital and investment are functions of savings and income. Income and savings are functions of productivity. Productivity is a function of capital. Thus we can be enmeshed in a vicious circle that could lead us propulsively to heaven or send us down below to the depths of poverty in perpetuity depending on our initial capital endowment. As we create more states we reduce the capacity for the states to save and invest. The states capital proceeds are constantly viired to meet the needs of spiralling recurrent charges. How then can we develop without capital? Or is development merely the building of new houses, States Headquarters and so on? How do these new houses affect directly the productivity of the average Nigerian?

Are we not likely to be creating excess capacity with high costs of provision of government services through duplication and waste? Is this not a case of monopolistic competition in Government services with high cost of production, duplication and waste? There are many indivisibilities in Government services requiring large scale production so that one benefits from economies of scale of provision of these services. These indivisibilities do exist in the provision of services especially in administration, in location of industries and in the provision of collective goods. Thus as a result of the above it is fitting to state that the greater the number of states after a given maximum, the lower the capacity for economic growth and development since scale economies are vitiated and capital is depleted.

Have we then reached the optimum number of states in Nigeria? The answer is yes in terms of known economic criteria. It is possible that we have exceeded the optimum in terms of the economic factors since the present 19 states all depend on Lagos to balance their respective budgets. Is there then still any need to create more states? The answer could be positive only for sociological and political accommodation between the various groups in Nigeria. The number of additional states should thus be kept as low as possible say between 5 and 10 as maximum.

Thus the economic consequence of this provision in the Nigerian constitution is a feverish and unquestioning demand for more states which if created as demanded would whittle down development instead of enhancing it. This provision is recommended for deletion after new states must have been created to eliminate further demands after the current exercise. A lot of resources and energies which have alternative positive uses in the economy are wasted in demands for state, a situation which cannot be said to be in the direction of pareto optimality since the costs outweigh potential benefits however calculated.<sup>(4)</sup>

#### (4) LAND USE DECREE

The relevant provision in the constitution on land use is section 274 subsection 5 (d) "Nothing in the constitution shall invalidate the Land Use Decree of 1978 and the provisions of this enactment shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of this constitution" The Supreme Military Council with the above provision gave constitutional sanction to the Land Use Decree of 1978.

The Land Use Decree transferred all land rights to the States, so that transactions on land would be by state and the local governments allocation for approved uses rather than by sale in land markets.<sup>(5)</sup> The allocative effect of the price mechanism was superseded by state in favour of rationing of available spaces outside of the market mechanism.



As Omotunde Evan George Johnson has shown, a land tenure system facilitates increases in wealth when (a) property rights are properly defined with legal and tenure certainty and (b) there is "freedom and legal enforcement of contracts" when these do not have physically harmful effects on outsiders for which the contracting parties are not made to compensate. (6)

Further Johnson has shown that the legal and tenure uncertainties in African land tenure systems militate against optimal land use. In his analysis, the uncertainties derive from the tendency for law enforcement agents to uphold customary law against individual ownership of land, the non-specificity of property rights with legal and tenure certainty, the unwritten nature of laws and contracts and the inconsistencies in administrative and judicial decisions.

How has the Nigeria Land Use Decree taken care of these problems and adhered to the two fold criteria for wealth maximization in the agricultural sector 'ala Johnson? Government by taking over rights to land has reduced legal and tenure certainties from the hands of individuals who could hold such rights in perpetuity. State allocation cannot be a certainty since Governments can change and rights can thus be revoked and transferred. With such uncertainties about rights on land, investments in and attached to land are likely to attenuate and the value of land further reduced below the zero price consequent on state allocation.

Further the freedom and legal enforcement criterion cannot hold with state allocation. The individual can no longer transfer land rights to others with resources to develop such land. The state would have to come in at all stages of such transfers with necessary approvals and authorisations. Such state intervention would reduce the volume of transactions on land and in consequence lower the value of land.

The Nigerian land use decree has not taken care of the problems analysed by Johnson. Individual ownership is not protected in a system where land rights can be revoked at will as this is within the competence of changing governmental authorities. Property rights cannot be made specific, permanent and perpetual. Land values are not taken into consideration in any exchange authorized by government since the land decree only recognises value of investments in and attached to land and not land itself.

Land is an economic resource and as such must have value. Any supercession of the price mechanism in the allocation of land would lead to distortions in the economy. Land would not be allocated to its highest valued uses in a system that does not recognise land values. The situation is thus non-pareto optimal. The uncertainties increase transactions cost and in consequence should lower the value of land. Further if the cost of establishing certainty is prohibitive some lands would be unallocated to any use giving rise to the phenomenon of "land surplus" and "labour surplus" that is often used to describe the Nigerian situation. (7)

Further, the author has shown in his papers "Optimal Farm Sizes Under Different Tenure arrangements"<sup>(8)</sup> and "A comparison of Communal, Freehold and Leasehold Land Tenure: A Preliminary Study in Ibadan and Ife, Western Nigeria"<sup>(9)</sup> the inferiority of state allocations vis-a-vis individual rights on land in the agricultural sector of the Nigerian economy. Land tenure problems are institutional and state ownership compounds rather than alleviates them. State intervention should be in the direction of moderating or eliminating the institutional practice that tend to supercede the market mechanism, not to compound the practices by a blanket total supercession of land markets. In this vain, the Land Use Decree is a good candidate for deletion from the constitution to reduce or eliminate the dire economic consequences as shown above.

##### 5. CHIEFTAINCY AND MINISTERIAL APPOINTMENTS

The constitution in section 178 (1) makes provision for a Council of Chiefs in each state. Further section 140(1) (a) provides for a National Council of State which as explained in the third schedule part 1 section 1 (i) shall comprise "one person from each state who shall as respects that state be appointed by the Council of Chiefs of the State from among themselves".

With the rationalization of political authority in a republican constitution one would expect that chieftaincy and other paraphernellia of traditional authority would receive no constitutional sanction. Chieftaincy was indeed a moribund institution before the last military regime marked it out for recognition as a way of legitimizing their authority. Thus under



the watchful eyes of the last military regime, traditional authority was given recognition in a rational constitutional document. Republicanism recognises authority deriving from the people through the processes of rational selection and not traditional legitimation, thus the provisions for chieftaincy in the Nigerian constitution are inconsistent with the said republican orientation of the constitution. (10)

In Anambra State alone more than 500 chiefs have been given State recognition as a result of the provision. In Imo State, the same number have reared up their heads and attained State recognition. There is a plan to pay salaries to these chiefs in the Igbo States. In the ten Northern States and five Western States, such payments are fait accompli. Further these chiefs with very large households and retinues are wasteful in expenditure. Extensive tributes are often collected from their subjects for chieftaincy titles and annual chieftaincy festivities which in each instance consumes many thousands of naira.

Chieftaincy is indeed a duplication of rational political authority and the costs of maintaining a parallel authority is a duplication and waste of resources. Chieftaincy is most likely to lead to conspicuous consumption and the depletion of capital in a capital scarce economy and in consequence lowering the Nations capacity for realising higher rates of economic growth and development. The chieftaincy provisions in our constitution are fit and proper candidates for deletion so that the institution could be aided to a natural death .

The President is empowered under section 135(3) of the constitution to appoint a Minister from each State of the Federation. Sections 14(3) & (4) of the constitution also provided for the reflection of the Federal character and State diversity in all Federal, State appointments.

For instance in the centre there are 45 ministerial appointments and in some states ministerial (Commissioner) posts of as high as 20 in number have been created. Posts are created not to satisfy the needs of the State but to satisfy varying geographical areas. And given the Parkinsonian/Wagnerian law of ever increasing state activity there is no limit to the creation of these posts.

Government as we know comprises the executive the legislative and the judiciary arms. Only the legislature is a representative branch of Government which should reflect the various shades and diversities of people within a given state or Nation. The executive and Judiciary need not reflect diversity since it is very costly to so orientate the people. It is very costly because in trying to make every sector of the Government representative, you are bound to **elevate** more and more people to positions where they cannot perform optimally in a given assignment and where their rewards are far greater than their contribution leading to depletion of state funds in maintaining very high recurrent charges.

The consequences of these provisions is that Nigeria is the only country in the world where the executive, the legislative and judiciary arms of government are all representative bodies and as such are extra large leading to unduly high costs of administration. For example Nigeria a country of 90 million people and 19 states has a Federal Government of 45 ministers, the U.S. a country of 250 million people and 50 states has a Federal Government of 13 ministers.

6. CONCLUSIONS: Revenue should be distributed according to population and primary school enrolment. The equality of states principle is the primary cause of the demand for states. As high as 50% of the Federation Account has been split in this way giving undue advantages to small states and thus fueling the demands for more states.

The provisions for the creation of states though rigorous and imprecise did not as was thought frustrate the demand for states. The agitation is frenetic, frantic and feverish and if left untrammelled could escalate into violence and pitched battles. Yet creation of more states can only reduce our capacity for attaining desirable levels of economic growth and development since our capital resources attenuate as we maintain very high recurrent charges in these states. Even development can be attained by a more judicious location of industries and collective goods which can be more economically and efficiently provided for in larger than smaller states.



The land Use Decree transfers land rights to the states and Local Governments who then by means of rationing of available spaces supersede the market mechanism for sale of land. It has been shown that State allocation is an inferior solution to the problems of land usage in both the agricultural and urban sectors of the Nigerian Economy.

The provisions for chieftaincy institutions by giving constitutional sanction to a moribund institution creates a parallel traditional authority to the rational republican authority. This is seen as economic waste and duplication. Chieftaincy practices additionally lead to conspicuous consumption and the depletion of capital.

The provisions for the reflection of the Federal character in all Federal appointments and State character or diversities in all state appointments have led to the creation of a cornucopia of executive positions in order to satisfy all geographical units. Merit is superseded for geography in all appointments and as shown this is inefficient and very costly. The legislature which is a valid arm of Government has taken care of social diversities and Federal character. The executive and judiciary arms of Government are not representative bodies anywhere in the world except Nigeria. It is hoped that with time and soonest if possible these provisions would give way for more rational provisions through the instrumentality of constitutional amendments since the fundamental and organic law is subject to such changes as modes of accommodation to changing circumstances of states.

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