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Foreword

Jannie Malan and Dorcas Onigbinde

This special issue of the *African Journal of Conflict Resolution* (AJCR) focuses on Nigeria, the continent's most populous state with over 146 million inhabitants. The country is one of Africa's biggest economies, but with the vast majority of its people living in poverty. Since the end of military rule in 1999, Nigeria has undergone a dazzling period of reform and reversal in its economic, political and social democratisation processes. Communal violence along religious lines, for example, have punctuated civilian rule. Nigeria's wealth in oil – it is the sixth largest producer of crude oil – has fuelled conflict as a result of deep economic governance problems. Both presidential elections in 2003 and 2007 involved major electoral irregularities and election-related violence. Yet, although imperfectly, Nigeria continues to be ruled by civilians, and to move closer to strengthening the peaceful transition won through the adoption of its constitution in 1999. Indeed, the inauguration of President Umaru Musa Yar'Adua in May 2007 was Nigeria's first civilian-to-civilian transfer of power.

Nigeria's paradox mirrors the contradictions of Africa. Despite significant natural resources and economic and political reforms, many African countries continue to struggle with conflicts revolving around social and economic inequalities; environmental and natural resources; and access to political power. At the same time, however, the challenges and opportunities of Nigeria also reflect challenges and opportunities

elsewhere in Africa. Nigeria's diversity, clearly substantiated by the fact that it accommodates more than 250 distinguishable ethnic groups, is to a large extent a legacy of arrangements that were found 'convenient' in colonial empires. Nigeria's inter-religious tensions can be seen as an outcome of the handing down of ancient traditions on the one hand and the spreading of Islamic and Christian influence on the other. However Nigeria does not only have its stories of inter-cultural conflict; it can also share remarkable accounts of cross-cultural understanding, tolerance and reconciliation.

This special issue of AJCR, therefore, while focusing on Nigeria, adds to the scholarship on important issues affecting peace on the continent as a whole. The papers do not only deal with Nigerian conflict-causing situations and ways of dealing with them, but also provide examples, findings and recommendations which can inform and inspire proactive or reactive approaches in other settings. They are about conflicts and potential conflicts caused by environmental degradation, economic injustice and political domination, and about religious and/or traditional methods of arbitration in resolving conflict. The main thrust and far-reaching value of the material presented in this issue may be the emphasis on receiving, interpreting and responding to signs of emerging or escalating problems – whether social, economical, environmental or political.

In the first article, Ibaba Ibaba of the Niger Delta University in Bayelsa State discusses the protracted conflict in the Niger Delta, where immense profits from oil production and sale are channelled to oil companies and politicians, but away from the frustrated indigenous population as they have to battle with a degrading environment and dire underdevelopment. Militancy, violence and hostage taking are increasing as a reaction by some actors in the region (who in many cases do not represent the interest of the fragile population). The Niger Delta crisis is further exacerbated by the fact that the State remains trapped in its characteristic orientation towards the interests of politicians and their ethnic groups,

whilst neglecting the interests of the disadvantaged and estranged people of the oil-bearing states. The point is made that nothing less is needed than a transformation of the State. It has to turn from a politician-friendly to a people-friendly one where not some but all regions and populations in the country benefit from the wealth.

The second article, by Freedom Onuoha of the African Centre for Strategic Research and Studies, Abuja, is about a different kind of environmental threat. Lake Chad in the Sahara desert is shrinking at an alarming rate, and this is mainly due to the rapid growth of the human and livestock population around the lake and in the catchment areas. There are also climatic factors, such as decreased rainfall in the catchment areas, but sometimes the decreases are only part of fluctuations. It is the human factor that seems to be the most serious problem, caused by an apparently irreversible process. The growing need of the capital city and the development of more irrigation schemes along the feeding rivers cause less and less water to reach the lake. In this region, therefore, it is *water* that has become a very important natural resource, and its scarcity has become a conflict-generating factor.

In the third article, by Sulaiman Kura of Usmanu DanFodiyo University, Sokoto, the focus is on a serious political threat to peace and the social injustice it inevitably brings about. Democracy is invaded by autocracy! The leaders of a democratically (or apparently democratically) elected ruling party gradually or suddenly fall to the temptation of power. They misuse the power that was representatively entrusted to them, and they do it to benefit their own political party and their own ethnic group, and also, if not especially, to prolong their personal enjoyment of status and wealth. While they may still be paying lip service to 'democracy', they are using their authority in obviously unfair ways and glibly imposing injustice on leaders and constituencies of opposing parties. They are entrenching themselves as authoritarian leaders of dominant ruling parties and are making the political arena a private enterprise instead of

an entity propelled by the interests of the many. The author shows how this has not only happened in Nigeria, but also in other African countries, and gives recommendations for understanding and addressing the phenomenon of authoritarian one-party democracies inflicting social injustice on their countries.

After the three articles on socio-economic and political conflict situations, the last one, by Oluwafemi Ladapo of the State Ministry of Justice, Ibadan, turns our attention to one of the ways of dealing with conflict. Arbitration is a well known alternative (i.e. non-judicial) dispute resolution method, and its basic process appears to be straightforward. Parties submit themselves to umpiring by an arbitrator and agree to accept the verdict. The detailed stipulations for conducting such an arbitration process can differ, however, from one ethnic group to another, and from one religion to another. This paper explores the question of satisfactorily integrating Islamic arbitration principles into the Nigerian legal system in which customary arbitration – or at least a particular version of customary arbitration – has already been recognised. Differences are compared and difficulties discussed, taking into account the intricate diversity of the Nigerian society. The customs of various population groups, even within the same state, differ. And people of a religious conviction who are committed to adhere to a divinely ordained prescription upheld by their faith find it difficult to follow or adhere to other customs and methods. The author concludes with clear recommendations that emerge from the detailed study presented in this article.

Finally, the book review by Garth le Pere of the Institute for Global Development recommends Adekeye Adebajo and Abdul Raufu Mustafa's 2008 edited volume, *Gulliver's Troubles: Nigeria's Foreign Policy after the Cold War*, as insightful reading with regard to the domestic complexities, regional strategies and international interactions that have influenced or have been influenced by Nigeria's foreign policy. The metaphor of an

unstable giant effectively captures strengths and weaknesses, which are penetratingly and critically described and discussed in the book.

So, out of the material presented in this issue, important things can be learned about Nigeria and from Nigeria. As a very populous and diverse country, Nigeria can provide the rest of Africa and the rest of the world with learnings, warnings and suggestions that emerge from its micro-cosmic reality.

Alienation and Militancy in the Niger Delta: Hostage Taking and the Dilemma of the Nigerian State

Ibaba S. Ibaba *

Abstract

This paper examines the linkages between alienation and militancy in Nigeria's Niger Delta region, and the dilemma the Nigerian State faces in dealing with the menace of hostage taking of oil workers in the region by militant groups. To achieve this objective, the paper critically discusses the centrality of alienation in the seemingly intractable youth violence in the Niger Delta. It demonstrates that alienation, caused by ethnicity based political domination, oil based environmental degradation, corruption and parental neglect has engendered frustration and awareness that explain the conflicts and violence in the area. The paper points out that protests and agitations that were hitherto peaceful degenerated to militancy, violence and hostage taking, due to violent state repression and the militarisation of the Niger Delta. Hostage taking of oil workers, particularly expatriates, now occurs frequently in the Niger Delta, with destructive effects on the country's economy, due to disruptions in oil production. The paper blames this on the character of the State and the resultant dilemma it faces. The Nigerian State is privatised and is

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therefore used to pursue personal, sectional and ethnic interests, as against the common interests. The inability of the state to choose the pursuance of the public good has undermined its ability to deal with militancy and hostage taking. It has laid the foundations of militancy through a neglect of development, and promotion of political thuggery in the electoral process. The solution hinges on the transformation of the state; to make it address the aspirations of citizens.

Introduction

The Niger Delta is one of the world's largest wetlands, and Africa's largest delta, covering some 70 000 km² (World Bank 1995:1). It lies within the Ibo Plateau and the Cross River Valley (Willinks Commission Report 1957:9). The dominant view sees the constituent states of the region as Akwa-Ibom, Bayelsa, Cross River, Delta, Edo and Rivers (Tamuno 2000:12).

The Niger Delta is evidently blessed with numerous resources, including crude oil that accounts for about 80 percent of Nigeria's foreign exchange earnings. Despite its immense oil wealth, the region presents an example of extreme poverty, as vast oil revenues have barely touched pervasive local poverty (United Nations Development Programme 2006:9). This condition has incensed the people, leading to protests that have taken different forms. Owugah (1999:5-8) has categorised these agitations into four phases. According to him:

The first phase could be roughly put between the early and mid 1980's. The dominant strategy in this phase was that of legal action by the communities against the oil companies to pay adequate compensations for damages to their property... The second phase was characterized by peaceful demonstrations and occupation of flow stations to get the oil companies to pay 'adequate' compensations or to fulfill their promises to provide certain amenities and to employ indigenes of the community... the oil companies responded by calling in the police and military. The intervention of these state

operatives often resulted in destruction of lives and property... The resistance thus assumed a desperately militant form in the third phase...mid 1990's to 1998... characterized by the militant strategy of forceful occupation and shutting down of flow stations, kidnapping of workers, seizure of tug boats and other vessels belonging to the oil companies... The fourth phase is the demand for resource ownership and control.

Two crucial issues are discernible from the above reference. Firstly, that feelings of alienation are a fundamental cause of conflict in the Niger Delta. Secondly, the deepening of the conflicts and the resultant hostage taking are a result of government's insensitivity to these feelings, demonstrated by its violent response to community agitations or popular protests.

As stated above, the demand for resource ownership and control marks the fourth phase of the Niger Delta people's struggle for integration into the oil wealth. In this regard, the Ogoni Bill of Rights (1990), the Kaiama Declaration (1998), the Bill of Rights of the Oron People (1999), the Resolutions of the First Urhobo Economic Summit (1998), the Aklaka Declaration (1999) and the Warri Accord (1999) made resource ownership and control their cardinal objectives. For example, the 1990 Ogoni Bill of Rights stated in part that:

The Ogoni people be granted political autonomy... provided that this autonomy guarantees... the right to the control and use of a fair proportion of Ogoni economic resources for Ogoni development...

The Kaiama Declaration of 1998 was more emphatic. It declared that:

All land and natural resources (including mineral resources) within the Ijaw territory belong to Ijaw communities and are the basis of our survival. We cease to recognize all undemocratic Decrees that rob our people/communities of the right to ownership and control of our lives.

Government's response to these campaigns was repression. For example, Ogoni land was under siege for years, and Kaiama was invaded by federal troops. To resist the military might of the State; armed confrontation was adopted by the youths as a defence mechanism (Joab-Peterside 2005:48). As part of this confrontation and protest against the multinational oil companies, kidnapping of oil company personnel, particularly expatriate staff, became a useful tool, as it restrains security operatives and brings in substantial money to the captors.

Hostage taking by Niger Delta militants was a worrisome dimension in 2006 due to the frequency and intensity of such events. Between January and December 2006, a total of 24 incidents, involving 118 hostages, have been recorded (AfricaMasterWeb 2006). Despite the deployment of federal troops in the region, and the presidential shoot-at-sight order, the militants remain undaunted and continue to hold sway.

But why is it difficult for the Nigerian State to effectively tackle these militants? The objective of this paper is to answer this question. It argues that the inability of the State to deal with the issue of militancy and hostage taking is attributable to its privatisation and the resultant two-way dilemma. Firstly, the State has taken sides in the Niger Delta crisis, and therefore cannot mediate. Secondly, the nature of the State undermines the fight against corruption. Due to corruption, which in addition to stealing government monies manifests as election rigging, development has been neglected, and many citizens hold the State in contempt.

The remaining part of the paper is organised into 3 sections. The first section examines the linkages between alienation and militancy in the Niger Delta. Section two deals with the dilemma of the Nigerian State in relation to hostage taking in the Niger Delta. The third section concludes.

Alienation and Militancy in the Niger Delta

It is not in doubt that alienation is the root cause of militancy in the Niger Delta (Joab-Peterside 2005:30-51). To this end, alienation from natural resources, means of livelihood and species being endangered have been noted (Frederick 2008:5). The literature on the Niger Delta agrees that the oil industry has not promoted the development of the region; rather, it has undermined the area's development (Ikein 1991; Brown 1998; Enyia 1991; Okoko & Nna 1997; Aaron 2006a). For example, Aaron (2006a:194) has noted that:

Oil has meant for the indigenes of the Niger Delta, wrenching poverty...Peoples Rights have come under severe assault by the ecologically unfriendly practices of oil Transnational Corporations (TNC's). In addition, State laws and policies as they relate to petroleum resources, expropriate the indigenous peoples of the Niger Delta of their 'right' to their natural resources ...According to Brown [1998], the local economies of the Oil Producing Communities have collapsed. And they are not integrated into the oil economy of Nigeria...the success of the oil economy has not promoted their own capacities. It has not promoted their own self-reliance. It has not promoted the social engine of the society... the pace of development has left them.

The point is that oil based environmental degradation and ethnic based political domination have combined to alienate the people from the use of their natural resources for their own development. Oil exploration and production is associated with a number of activities that devastate the environment, and impact negatively on economy and society. Several sources (Okoko 1998; Ikporukpo 1983; Aaron 2006a; Ikein 1991; Worika 2002; Salau 1993; World Bank 1995; Ibaba 2005; United Nations Development Programme (UNDP) 2006; Adeyemo 2002; Human Rights Watch (HRW) 1999; Ibeanu 1997; Niger Delta Environmental Survey 1997; Peel 2005; Clark et al 1999; African Network for Environment and

Economic Justice (ANEEJ) 2004; Naanen 1995; Opukri & Ibaba 2007) have demonstrated the impact of the oil industry on the economy and society of the Niger Delta.

Oil spills kill fish and agricultural crops, in addition to reducing nutrient value of the soil (HRW 1999:5-12; Clark et al 1999). Studies have shown that gas flares diminish agricultural productivity. It has been noted that crops planted about 200 metres from flare sites lose 100 percent of their yield. Those planted about 600 metres from flare sites experience 45 percent loss in yield, and 10 percent loss in yield for crops planted one kilometer away from gas flares (Salau 1993:19-22; Adeyemo 2002:69).

But what are the impacts of this on the Niger Delta people? The results are productivity losses, occupation displacement/disorientation, and increased poverty (UNDP 2006:175-311; World Bank 1995:8-66). Development has stagnated, and no matter how hard peasants work, they remain at the same point, and sometimes their situation gets worse. This has caused frustration and, as psychologists have noted, conflicts are a response to the frustration which occurs as a result of obstacles against the actualisation of set goals (Anikpo 1998:7). The frustration-aggression theory of conflict also supports this perspective (Faleti nd:47). Certainly, this theory captures the Niger Delta condition where frustration has led to youth militancy and violence.

Alienation caused by the environmental consequence of the oil industry has been exacerbated by ethnic based political domination and the failures of accountability and transparency in government. Naanen (1995), Okoko and Nna (1997), Joab-Peterside (2005) and Orobator et al (2005) see the ethnicised Nigerian State and its disabled federal system as fundamental causes of the development impotence in the Niger Delta.

Because the State is ethnicised, power is used to promote sectional interests as against the common interests. The State in Nigeria is controlled by members of the dominant ethnic groups, who direct oil resources produced in the ethnic minority homelands of the Niger Delta to their

Table 1: Pattern of Project Allocation by the PTF, 1994-1998

Geo-political zones and component of states	PROJECTS					
	Road rehabilitation programme: total distance in km		Health rehabilitation programme: total number of contracts		Education rehabilitation programme: total number of contracts	
	No	%	No	%	No	%
South-West: Ekiti, Lagos, Ogun, Ondo, Osun, Oyo.	1,984.50	10.84	-	-	51	5.29
South-East: Abia, Anambra, Ebonyi, Enugu, Imo	977.9	5.34	31	6.53		
South-South (Niger Delta): Akwa-Ibom, Bayelsa, Cross River, Delta, Edo and Rivers	1,478.03	8.07	31	6.53	188	19.48
North-West: Jigawa, Kaduna, Kano, Kastina, Kebbi, Sokoto and Zamfara	5,020.00	27.42	263	55.37	336	34.82
North-East: Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe	4,299.44	23.48	2	0.42	212	21.97
Total	18310.9		475		965	
North	13,870.47	76	381	80	687	71
South	4,440.43	24	94	20	278	29

Source: Adapted from TELL Magazine 1999:24-27

benefit. This is evidenced by the manipulations of the revenue allocation mechanism to satisfy their interests.

At independence, sections 134(1) and 140(1) of the 1960 and 1963 constitutions provided for a derivation principle of 50 percent (Constitution of the Federal Republic of Nigeria 1960, 1963). Because agriculture was the mainstay of the Nigerian economy, this provision was adhered to, since it favoured the ethnic majorities whose homelands were host to the cash crops of cocoa, groundnut, and palm oil that generated the dominant share of national revenues. But as oil displaced agriculture as the productive base of the economy, the derivation principle was whittled down from 50 percent to 45 percent in 1975, and later to 1.5 percent in 1982.

The weakening of the derivation principle, and the adoption and strengthening of other criteria – such as land mass, equality of States, need and population – ensured the transfer of the oil wealth out of the Niger Delta. These principles provided more funds for the regions that were balkanised into more States and local governments, and thus became instruments of wealth distribution from the Niger Delta to other sections of the country (Mbanefoh & Egwaikhide 1998:220; Okorede 1998:28).

The politics of revenue allocation has denied the Niger Delta adequate development funds. Of significance is the fact that development agencies of the Nigerian State are guilty of alienating the Niger Delta. The Petroleum Trust Fund (PTF) is a classic example. See table 1 (on page 17).

The information in table 1 shows that out of a total of 18,310.9 kilometres of road rehabilitated by the PTF, the Northern States received 13,870.47 (76 percent) while the Southern States got 4,440.43 (24 percent). Significantly, the Niger Delta States, which bear the burden of generating the oil wealth, received 1,479.03 kilometres (8.07 percent). Similarly, out of a total contract package of 475 for the PTF National Health Rehabilitation Programme, the Northern States were allocated 381 (80 percent) as against 94 (20%) for the Southern States.

The Niger Delta got 63 (13.26 percent). For the Educational Rehabilitation Programme, the Northern States received 687 (71 percent) out of a total contract package of 965. The Southern States got 278 (29 percent) and the Niger Delta States got 188 (19.48 percent).

The eight years of democratic governance in the country has not changed this pattern of project allocation. For example, whereas the government has spent several billions of Naira to rehabilitate and construct new roads in the South-West and Northern parts of the country, the East-West road that links the Niger Delta with other parts of the country is neglected, and thus remains in a deplorable condition.

Political activism, spearheaded by groups such as the movement for the survival of Ogoni People (MOSOP) and the Ijaw Youth Council (IYC) among others, has made the Niger Delta people to be aware of the fact that the federal government has alienated them from the oil wealth.

This awareness cuts across the Niger Delta, and has resulted in the alienation of the people from the federal government, thus totally undermining their identification with each other. The implication is the loss of control over the people by the federal government. This has pitched the two parties against each other, leaving the oil companies as victims of the anger and frustration of the people.

The effect of this and of the alienation from the State is emerging social breakdown, as evidenced by generalised lawlessness in the Niger Delta. According to Anele (1999:171):

During periods of anomie or social breakdown, society loses its grip on the people who would wish to act according to their own dictates and not that of the collectivity. At a time like this, it is very easy to mobilize the people into mass movements because they readily make themselves available. However, mass movements, which emerge under such circumstances, do not primarily aim at changing society but to escape from their perceived isolation. From this theoretical prism,

people join social movements for the purpose of gaining a sense of belonging and significance, which the wider society denied them.

Youth militancy and violence, and the associated hostage taking of oil company personnel and parents of government functionaries by militia groups in the Niger Delta can be located in this context. Whereas marginalisation provided the objective condition for these groups (Adaka Marines, Movement for the Emancipation of Niger Delta, Niger Delta Peoples Volunteer Force, etc) to emerge, their pursuit of pecuniary gains explains their involvement in hostage taking for ransom – an act, which is not only out of sync with civilised practice, but also negates the Niger struggle for equity, justice and development. For many militants, the kidnapping of expatriate staff of multinational oil companies is the highest point of activism. It has become a means of livelihood and accumulation of wealth. The insecurity created by militant activities equally sustains illegal oil bunkering that costs the country four to eighteen billion US Dollars worth of oil (*Vanguard* 2008:1).

Despite the fact that hostage taking is seen as terrorist violence, pleas and threats by the federal government, which culminated in a presidential shoot-at-sight order in September 2006, militant activities and hostage taking have continued unabatedly. The crucial question is: Why has the Nigerian State failed to end this negative impact on the country's image, economy, and stability? The next section examines this issue.

The Nigerian State and Hostage Taking in the Niger Delta

The State, according to Harold Laski (1961:1), 'is the crowning point of the modern social edifice' and its character 'reveals it as a method of imposing principles of behaviour which regulates the lives of men'. The State 'stands for a number of particular institutions which together constitutes its reality... elements of the State include the bureaucracy, the coercive apparatus (police, army, prisons), the judiciary and the lower levels of governments' (Miliband 1969:49-54). As government

and regime, the State is the organisational instrument of society, which provides it with the necessary cohesive factor and maintains its unity of existence (Oyovbuairé 1980:3). Political power is exercised through the State, and it is therefore the object of political competition.

The chief role of the State is the maintenance of social and political order in society. This has been a subject of debate and contention between Liberalism and Marxism. The point of argument here is on how and in whose favour the State imposes order (Ekekwe 1986:10). The liberal view is that the State is neutral in the exercise of power, and therefore, it does not promote one interest against the other. It refutes the contention of the Marxist theory that there is a ruling class that benefits more from the State. The Marxist view of the State contends that the State favours the interest of those who govern.

The Nigerian State is variously characterised as a synonym of the 'power elite', 'the Nigerian National Bourgeoisie', 'Foreign Dependent Pseudo-Bourgeoisie with imperialism for the building of capitalism in Nigeria', 'the training of foreign and local businessmen and State officials', 'the Nigerian Bourgeoisie power and petty Bourgeoisie and the various sections', and the Nigerian capitalist class, which has developed from being a 'regional bourgeoisie into a federal bourgeoisie' (Oyovbuairé 1980:7).

The privatisation of the state defines the character of the Nigerian state. In Nigeria, politics is largely seen as a means of accumulating wealth; and because the state is the object of political competition and medium for the allocation of resources, it has been effectively used to achieve the goal of primitive accumulation of wealth. The result is the privatisation of the state by the custodians of power at all levels of governance (federal, state and local), and its consequent utilisation for the pursuit of individual, sectional and ethnic interests; as against the pursuit of the common interests or the public good (Ake 2001a; Ekekwe 1986; Nnoli 1980; Oyovbuairé 1980; Aaron 2006b).

The backlash is the result of the dilemma of choosing between the promotion of private or public interests. In most cases, the State promotes the private interest, and this has made it to be overtly partisan.

It is my view that hostage taking in the Niger Delta is an outcome of this crisis of identity. Hostage taking by Niger Delta militants has become a frequently occurring activity. Between January and December 2006 for instance, a total of 118 workers of different oil companies operating in the region were taken as hostages in a total of 24 attacks. Four deaths were recorded in these attacks. Similarly, a total of 129 oil workers were taken hostage in 33 attacks between January and July 2007. Again, 9 deaths were recorded. (AfricaMasterWeb 2006; *Business Day* 2007).

What is worrisome with hostage taking is not only the frequency, but also, the brigand and brazen manner in which it is carried out. The usual scenario is youths, sometimes masked and armed with sophisticated weapons, attacking oil company targets and engaging the military in combat. The familiar experience is the overpowering, and at times killing of security operatives. Thereafter, workers are taken captive, used as collaterals for negotiation and then released after ransom has been paid, either by government or the affected oil company.

Despite denials by the government and oil companies, it is widespread knowledge that militants receive millions of Naira as payoff in exchange for hostages in their custody. Related to this is the payment of militants to keep them out of action. For example, Asari Dokubo, the leader of the Niger Delta Peoples Volunteer Force (NDPVF), has revealed that the Rivers State Governor, at one time, was paying militants 100 million Naira to steer them away from disrupting oil production (*National Standard* 2007:20). This is a common practice in the Niger Delta, and partly explains the high and low tide in militancy. Militant attacks are usually low when such payments are sustained, but any breach of such compensatory payments leads to a surge in militant attacks.

It is instructive to also note that government functionaries who are charged with the responsibility of negotiating with militants see it as a medium of making money. It is common knowledge that monies paid to militants as ransom are usually inflated. Given that hostage taking benefits some government functionaries, it is proper to argue that they cannot deal with it effectively.

Also of concern is the impunity with which the militants operate. Human Rights Watch (2005:3) has noted that:

Both the leaders of armed groups and their backers have been emboldened in their acts of brutal violence by the prevailing culture of impunity. Across the Niger Delta, as throughout Nigeria, impunity from prosecution for individuals responsible for serious human rights abuses has created a devastating cycle of increasing conflict and violence.

This probably explains the long time hostages are kept. For example, militants seized 4 expatriate oil workers on 10th January 2006, and released them on 30th January of same year. Similarly, 9 oil workers kidnapped on February 18th 2006, were freed in instalments; 6 were released 1st March, and the remaining 3, 27th March, 2006 (AfricaMasterWeb 2006). It is imperative to mention that militants dialogue/negotiate with government functionaries for days before hostages are released.

Again, another issue of concern is the fact that militant attacks are no longer limited to oil company operational sites, but now take place in the streets, offices, homes and nightclubs. Perhaps of greater concern is the attack on children. Again, militants now attack the children and parents of political office holders. Equally, the attacks impact on the country's oil production output, as production is usually disrupted. Oil companies usually shut down production as a safety measure. At times, production facilities are destroyed. For example, a militant attack on Shell Petroleum Development Company's Estuary Amatu (EA)

platform led to the shutdown of the facility, which regularly produces 115,000 barrels per day (*Business Day* 2007).

Government's dilemma in ending militant attacks is attributable to a number of factors. State legislation on the oil industry is seen as the legal and fundamental basis for the disempowerment of the Niger Delta (Nna 2001:13). For this reason, the State is seen as a party to the raging conflict, and therefore cannot mediate effectively. Because the State promotes parochial interests, it is unable to address the fundamental issues of neglect and marginalisation that have thrown up the violence.

The dominant view in the Niger Delta sees the Nigerian State and the multinational oil companies as allies in the environmental devastation of the Niger Delta. Certainly, one fact is not in doubt – that the Nigerian Government has not adequately protected the Niger Delta people. This promotes objective conditions that sustain the conflict in the region. Anikpo (1998:6) makes this point when he notes that:

Wherever the State does not provide adequate protection for individuals and communities, oil production, like all vigorous capitalist enterprises tend to deepen the matrix of social inequality and to destroy, not just the local economy or material conditions of existence but also the entire cultural cosmos within which communities define themselves, perceive their collective interests and derive their social cohesion.

It is discernible here that intra- and inter-community conflicts in the Niger Delta, induced by oil companies, is the result of the Government's failure to give the Oil Producing Communities adequate protection. Given that the inter- and intra-community conflicts provide a breeding ground or nursery for the recruitment of militants, the Nigerian State appears to have shot itself in the leg by neglecting the Niger Delta.

The privatisation of the State makes it corrupt, and as noted earlier, this alienates citizens from the State. This makes the State to lose control of

citizens who do not see themselves as stakeholders in the Nigerian project. Certainly, the State's ability to resolve the conflict is severely limited. A consequence of privatisation of the State is the desperate struggle for power, and the resultant election rigging, thuggery and violence.

The desperate struggle for power by politicians has helped to lay and strengthen the foundations of militant activities in the Niger Delta. During elections, politicians engage youths as political thugs to secure victory. From all indications, this support is the basis of militant groupings. Significantly, the actions of the youth/militant groups usually spin out of control. Human Rights Watch (2005) partly blamed this for the internecine violence that engulfed Rivers State in 2004. Also writing on the Rivers State experience in 2003, Joab-Peterside (2005:46-47) noted that:

Idle youths that operate as political thugs and militia groups were recruited because of their fire-powers and paid heavily for services, thereby transforming violence into a commodity priced and purchased in the democratic process... The involvement of the armed groups in the democratic process catapulted their leaders and members to positions of political prominence.

This is a graphic illustration of what is obtainable in the other Niger Delta States, and provides an explanation for the inability of these governments to deal with the militants.

Essentially, democracy as a system of government that places ultimate authority of government in the people, so that public policy is made to conform to the will and interests of the people (Gaubu 2003:421), is predicated on elections. It is imperative to highlight that the conduct of free and fair elections is the fundamental basis of democratic governance. Through elections, citizens choose leaders to direct the affairs of government for the benefit of all.

When elections are rigged, the freedom and right to choose leaders is denied, and this has several implications. When people vote at elections to form a government, a contract is established. The government is created for a purpose (the well being of the people) and is therefore bound by the contract to fulfil its side of the bargain. Significantly, if the leadership of a government is not chosen by the people, the government is not bound by any contract, thus it tends to be unresponsive to the needs of the people. The instrument of recall and impeachment, which acts as a check on the excesses and inefficiency of elected representatives and government functionaries has become impotent. This perverts the end of government, and consequently, the aspirations of citizens are hardly met.

Also election rigging creates problems of legitimacy. When a government is seen to be illegitimate, it undermines the identification between the people and the government; the citizens tend to become disobedient and refuse to cooperate with it. This weakens the efficiency of the government as it creates a crisis of authority (Ake 2001b:34), and a tendency to become authoritarian, as shown by State response to agitations in the Niger Delta. Leaders who emerge from rigged elections lack credibility, and this is seen as a major cause of conflict in the Niger Delta (Peel 2005:3). Because such leaders lack credibility, they do not command respect, and thus find it difficult to elicit obedience.

A logical outcome of election fraud is the lack of accountability in governance, fuelled by the drive of government functionaries to recoup the monies 'invested' in the elections. Accordingly, State resources are appropriated for personal gain. The implication here is that the monies that ought to be invested in national development are diverted, through inflation of contracts, payment for 'ghost' projects, etc.

Given this, the expected development, which should accompany democracy, is not forthcoming. The inability of the government to promote development worsens poverty and hardship, which aggravates the anger

of those who feel cheated at the elections. This pent up anger creates a fertile ground for instability as little disagreements easily turn to violence.

The inability of government to promote development is one of the major causes of its inability to tackle militancy in the Niger Delta. To be sure, the low level of infrastructural development limits the effectiveness of security operatives. The absence of a network of roads and canals for easy communication enhances the activities of militants who exploit the advantages of difficult communication to carry out their activities.

Poverty and unemployment have made many youths to be vulnerable to militant mobilisation. For many of the youths, militancy and hostage taking is a means of livelihood and a demonstrative effect of corruption and conspicuous consumption among government functionaries. To end this means providing viable alternative means of livelihood for those who will come out of it. It equally requires an end to corruption in government. Threats, appeals and dialogue will not end it. What government ought to do is to invest in the people as a strategy of development. However, the culture of politics, which directs public resources to the benefit of individuals and groups, negates this.

It is useful to note that violence was used as an instrument of rigging in the 2007 general elections. Guns, dynamite and other dangerous weapons were used to scare away political opponents, and intimidate election officials. The consequence of this was the empowerment of youths who are active militants and have a tendency to legitimise violence. Again, the nature of the 2007 general elections has created and deepened apathy towards the business of government, as many Nigerians do not see themselves as stakeholders. The emerging consensus among a generality of the citizens is that democracy is meant for a powerful few, who take all they see and get all they want; in what is widely known as 'carry go'. This constrains meaningful popular participation in politics and government (Nwabueze 1993:2), a fundamental requirement for democratisation.

A major outcome of this, is the loss of faith in democratic institutions and the emergence of a parochial political attitude. It is significant to note that the executive is not trusted and thus not seen to be dependable or reliable; the legislature is seen as a stooge of the executive and therefore not useful to deal with; and the judiciary is held with contempt. This provides an explanation for the restiveness in the creeks of the Niger Delta.

A seemingly neglected factor of alienation in the Niger Delta is corruption, as transparency and accountability failures have deepened neglect and exclusion that explains militancy and violence in the region. Whereas the oil companies and the federal government are guilty of corruption, the paper highlights the corruption of States and local governments of the Niger Delta. This theme appears neglected, and robs us of a holistic view of the Niger Delta condition.

The implementation of the 13 percent derivation principle in 2000, led to a significant increase in the funds allocated to the Niger Delta States. For example, the figures for March 2005, show that Rivers State received N8.6 billion, Bayelsa State N9.3 billion, and Delta State N6.3 billion. In contrast, Lagos State, the most populous in the country received N2.5 billion (Peel 2005:4). Available data reveal the huge funds that have flowed into the region since 2000. See table 2, below.

Table 2: Allocation of 13% Derivation Fund to Niger Delta States, 2000-2003 (=N= Billion)

Serial No	State	Year 2000	Year 2001	Year 2002	Year 2003
1	Akwa Ibom	12,808.2	16,717.1	7,068.7	16,094.9
2	Bayelsa	10,571.2	13,797.4	17,485.8	22,726.4
3	Cross River	1,2	1,6	8,836.0	1,768.0
4	Delta	17,433.7	22,754.9	30,427.5	33,672.7
5	Edo	337,1	439,8	6,737	1,236.0
6	Rivers	10,571.2	13,797.6	23,106.6	25,854.7

Source: African Network for Environment and Economic Justice (ANEJ) 2004:73-76.

It is expected that these monies will be invested in the development of the region, to the extent that the fruits will not be in doubt. However, this is not the case, as poverty, unemployment and absence of basic social amenities are conspicuous. Paradoxically, political leaders of the region live in affluence, as they divert public funds to the promotion of their parochial and selfish interests. For example, revelation by the Economic and Financial Crimes Commission (EFCC) shows that governors of the Niger Delta States have stolen billions of Naira from their State treasuries. This reality has made many of the youths lose faith in the leaders who have lost credibility. The implication of corruption is the exacerbation of the material deprivations that have thrown up the conflicts and violence and the resultant militancy. Because the investment of resources in the people comes into conflict with the selfish interests of the leaders they choose to neglect the people, and thereby sustain militancy.

Conclusion

Following years of neglect and marginalisation by the federal government, corruption at all levels of the Nigerian State (federal, state and local government), and ecological devastation by oil exploration and production activities of multinational oil companies, the Niger Delta is extremely poor, despite its huge oil wealth. This grim reality has provided a fertile ground for conflicts to erupt. Protest and agitations by communities, demanding adequate share of the oil wealth and environmental protection, have led to the emergence of militant groups that have adopted hostage taking as strategy of protests.

Militants seize oil workers, keep them for extensive periods and use them as collateral for negotiation. The desperation by government and the oil companies to secure kidnapped staff, usually expatriates, has turned hostage taking to a means of livelihood and medium for the accumulation of wealth. Despite the destructive impact of this on the economy

and image of the country, threats and militarisation of the Niger Delta, the phenomenon remains unabated.

The use of the state, a public institution, for the pursuit of personal, sectional, and ethnic interests, has undermined the capacity of the state to deal with militancy and hostage taking by militants. To deal with this issue, the custodians of state power at all levels (federal, state and local government) will need to commit symbolic suicide (Wilmot 1982:148) by subordinating their personal, sectional and ethnic interests to the common interests or public good. However, they are reluctant to do this. Meanwhile, the privatisation of the state has created a situation where the institutions of oil wealth distribution (bureaucracies of the federal, state and local governments) are so corrupt that only an infinitesimal proportion of budgeted funds trickle down to the Oil Producing Communities. Thus, the development problems of the people remain unresolved, and this sustains the objective conditions that have instigated militancy.

Elections, the central element of democracy are abused through rigging. The result is transparency and accountability failures, loss of faith in democratic institutions and the exacerbation of the problems of underdevelopment – poverty, unemployment, lack of social amenities, etc. The implication of this is the alienation of citizens from the State, social breakdown, and the loss of control by the State. Here lies the dilemma of the Nigerian State in dealing with the menace of hostage taking.

Hostage taking of oil workers has become a lucrative business that appears difficult to deal with. To end it requires the provision of alternative and viable means of livelihood to the militants. Also, the objective conditions that have brought on conflicts and violence in the Niger Delta need to be liquidated, and adherence to the ideals of transparency and accountability in governance have to be established. It is clear that the present nature of the Nigerian State makes this a tall order. The solution lies with the transformation of the State, to purge it of its ethnic character and pursuit of parochial interests. This requires that those who

lead must subordinate their personal interest to the common or public good. Non-state actors can advance this goal by mobilising the citizens to demand accountability and transparency in governance.

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Environmental Degradation, Livelihood and Conflicts: A Focus on the Implications of the Diminishing Water Resources of Lake Chad for North-Eastern Nigeria

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Abstract

Lake Chad has been a source of economic livelihood for millions of people inhabiting the catchment areas in the four riparian states, namely: Cameroon, Chad, Niger and Nigeria. However, in the last four decades, the size of the lake including its resources has continued to diminish. The impact of this depletion is being felt by Lake Chad basin population who depend on the lake for their means of livelihood. This paper focuses on the diminishing natural resources of Lake Chad as an empirical referent to analyse the relationship that can develop among natural resource diminution, livelihood and conflicts. Of particular attention is the incidence of conflict between and among fishermen, pastoralists, farmers and sometimes state security agents, and the tendency of the

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conflicts to degenerate into large scale intra-ethnic, intra-state and inter-state conflicts. The paper further draws attention to the implications of the diminishing water resources of the lake for the North-East zone of Nigeria, and makes recommendations suggested by the analysis.

Introduction

The relationship between environmental (natural) resources, livelihood and conflicts has long been established in literature. Environmental resources are critical to the survival of people and nations, both for subsistence and for economic mainstay. In some circumstances, access to or control of the resources of an environment has been a contentious issue often generating tensions and violent conflicts within, between and among nations. More often, a traditional type of analysis of resource issues as they relate to conflicts focuses on 'hard' resources such as strategic minerals, to the neglect of 'soft' resources (Bissel 1996:143) such as water, food, and land. This marginal attention exists in the face of one obvious reality: people derive their living from land, water, and other livelihood-sustaining resources, and fierce competition for them underlies conflicts in some parts of the world.

Interestingly, familiarity with existing literature on conflicts, particularly in Africa, suggests that an overwhelming percentage of these conflicts are resource-based conflicts (Masari 2006:4). The unfolding scenario in the Lake Chad basin, straddling the borders of Nigeria, Chad, Niger and Cameroon, is a nodal example in this regard. The rich water resources of the lake have been a source of economic livelihood, sustaining over 20 million people inhabiting the catchment areas of the four riparian states. However, in the last few decades, the size of the lake as well as its resources has continued to diminish. The impact of this depletion is being felt by the Lake Chad basin population who depend on the lake for their livelihood. Particularly worrisome is the rising incidence of conflict between and among fishermen, pastoralists, farmers and sometimes also

state security agents, and the tendency of the conflicts to degenerate into large scale intra-ethnic, intra-state and inter-state conflicts.

Against this backdrop, the present article addresses the following questions. What factors are responsible for the diminishing resources of the lake? What is the nature of the relationship between resource degradation, livelihood and conflicts in the context of the Lake Chad? And what are the implications of the diminishing water resources of the lake for the North-Eastern region of Nigeria? Following this introduction, we clarify the key concepts used in this discourse, and then proceed to a brief treatment of the theoretical framework within which we pose these questions. The rest of the discourse is subsumed under the four remaining substantive thematic sections.

Conceptual Explications

Given the tendency, particularly in the social sciences, for concepts to elicit varying interpretations, we will clarify our usage of these concepts – environmental resource scarcity, livelihoods and conflict – as a means of understanding their linkages in social existence.

The concept of *environmental degradation* refers to a situation of declining resources of an environment. In general, the environment provides all life support systems of every human society. These life support systems are built and sustained by the natural resources found in air, land and water. These resources include fresh/safe water, fish, arable land, plants, animals, mineral resources, air, among others. These resources often come in variable quantity and quality. Humans therefore exploit these resources for survival and sustenance. The misuse or over-use of these resources affects their quality and/or quantity in comparison with their pristine availability in the environment. Therefore, the issue of environmental degradation comes into play when these resources diminish in quantity or quality, or both.

According to Miller (cited in Jimoh 2006:276), environmental degradation refers to:

The downward trend in the environmental resources such that their level of use in the human societies equally decreases at an increasing rate.

The problem of environmental degradation has generated both global and local attention. While international environmental concerns are usually couched in broad terms like climatic change and desertification, the environmental problem of concern to local settings and vulnerable groups is generally localised in nature, revolving around immediate issues that threaten their livelihood and survival. Examples include deterioration of rangeland, deforestation, degradation of topsoil, inappropriate disposal of waste, depletion of fresh water, pollution of air and water systems, and animals facing extinction. These problems directly or indirectly impact on human well-being. For example, declining soil fertility leads to poor crop yields while rangeland depletion reduces animal productivity, and any deterioration in water quality adversely affects the fish fauna.

Thus, environmental degradation refers to the process or a situation of depreciation in quantity and/or quality of the resources of the environment such as air, water resources, mineral resources, land, flora and fauna, as a result of harsh climatic factors, pollution and/or unsustainable exploitation by man. One notable implication of environmental degradation for social existence is that it usually disrupts the socio-economic life of the human population who are immediately dependent on natural resources for sustenance (Onuoha 2008a:1027). In most social contexts where there are weak regulatory mechanisms in a society, it can exacerbate the level of competition amongst the dependent population, and may engender conflicts.

The term '*livelihood*' entails an ensemble of activities, capabilities and resources needed to organise and maintain a living. A livelihood,

according to Chambers and Cornwall (cited in De Satage 2002:4), comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. Livelihood best expresses the idea that individuals and groups strive to make a living, attempt to meet their various consumption and economic necessities, cope with uncertainties, respond to new opportunities, and choose between different options (Ouden, cited in Legesse 2006:43). The term livelihood gained much analytical relevance in the late 1990s when the idea of *sustainable livelihood* was popularised as a relatively coherent and integrated conceptual approach to reflect the environmental concern of the development efforts of international organisations.

Sustainable livelihood lays emphasis on the livelihood system of marginal groups, particularly the poor, and the way in which they adapt to maintain their livelihoods under conditions of severe environmental, socio-economic and political stress. A livelihood is therefore perceived to be sustainable 'when it can cope with and recover from shocks and stresses and maintain and enhance its capabilities and assets both now and in the future, whilst not undermining the natural resource base'. In this sense, Titi and Singh (1994:31) are of the view that sustainable livelihood entails:

People's capacity to generate and maintain their means of living, enhances their well-being and that of future generations. These capacities are contingent upon the availability and accessibility of options which are ecological, economic and political and which are predicated on equity, ownership of resources and participatory decision making.

Therefore, the idea of livelihood is concerned with both environmental influence on human life and human influences on the environment. It focuses on the nature and quality of the relationship between human communities and the ecosystem: how the environment provides the resource base for human existence and how the nature of exploitation

of these resources by human communities enhances or undermines the natural resilience of the environment. It captures the intricate web of interaction between human communities and their environment in which people's quest for generating and maintaining their living creates both environmental and survival problems. The environmental problems capture the various instances of environmental degradation, while the survival problems are concerned with issues of struggle and conflict over access or control of these environmental resources.

The term '*conflict*' has been variously conceptualised. However, the multiplicity of definitions has always pointed at one fact: that conflict is an enduring aspect of social existence. It is believed that wherever a community of individuals is found, conflict is basically a part of their experiences. Thus, most conflicts are social in character and usually arise as human beings pursue their different survival and security needs. In this regard, Stagner (1967:16) defines conflict as:

A situation in which two or more human beings desire goals which they perceive as being obtainable by one or the other, but not by both; each party is mobilizing energy to obtain a goal, a desired object or situation and each party perceives the other as a barrier or threat to that goal.

While Stagner conceives conflict from the point of view of incompatibility of goals, Coser (1956:3) perceives it in terms of the struggle between parties over desirable values. According to him, conflict refers to:

Struggle over values or claims to status, power, and scarce resources, in which the aims of the conflicting parties are not only to gain the desired values, but also to neutralize, injure or eliminate their rivals. Such conflicts may take place between individuals and collectivities.

Although conflict may be conceived from different perspectives, one crucial defining element of it is the presence of two or more actors struggling to secure a thing of value or adjudged to be valuable of which the gain by any of the actors amounts to a loss or deprivation to the other

actor(s). The benefit that goes with access to or control of the 'valuable' and the deprivation or insecurity that follows denial of access underlie all conflicts. In this wise, Mark and Synder (1971:8-9) contend that a key element of all conflicts is the existence of resource scarcity where the wants of all actors cannot be fully satisfied and where the quests for such resources result in conflict behaviour.

Conflict, in this context, is defined as a situation of struggle between and/or among opposing individuals, groups, communities or states over certain perceived desirable values arising from differences in the action of any of the parties in the quest to realise or secure those values. The struggle may be over tangible values such as money, property, land, water, mineral resources, or animals. It may be intangible values such as power, influence, title, respect, and position, to mention but a few. Conflict thus arises from the interaction of individuals or groups who pursue incompatible goals using incompatible means, leading to a situation of deprivation for any of the parties. It assumes a violent dimension when: (i) there is no superior force or effective regulatory mechanism to balance the struggle and thus prevent the situation from becoming more intense, and (ii) the parties involved employ physical force or lethal means to inflict injury and damage, or to eliminate the opponent in the quest to secure the value(s) at stake.

Having clarified our concepts, we may proceed to present the theoretical framework within which we posed our questions.

Theoretical Framework

The link between environmental resources and conflicts has engaged the mind of scholars as Suhrke (1996), Baechler (1998), Percival and Homer-Dixon (1998), Homer-Dixon (1999) and Gleditsch (2001). Against this background, Homer-Dixon articulated the theory of eco-violence which we may usefully adopt here. Homer-Dixon and Blitt (1998) argue that large populations in many developing countries are highly dependent

on four key environmental resources that are very fundamental to crop production: fresh water, cropland, forests and fish. Scarcity or shrinking of these resources as a result of misuse, over-use or degradation under certain circumstances will trigger off conflicts. According to Homer-Dixon (1999: 30):

Decreases in the quality and quantity of renewable resources, population growth, and unequal resource access act singly or in various combinations to increase the scarcity, for certain population groups, of cropland, water, forests, and fish. This can reduce economic productivity, both for the local groups experiencing the scarcity and for the larger regional and national economies. The affected people may migrate or be expelled to new lands. Migrating groups often trigger ethnic conflicts when they move to new areas, while decreases in wealth can cause deprivation conflicts.

The fundamental theoretical assumption of the theory is that resource scarcity is the product of an insufficient supply, too much demand or an unequal distribution of a resource that forces some sector of a society into a condition of deprivation. These three sources of scarcity are in turn caused by variables such as population growth, economic development and pollution. Thus, environmental resource scarcity will constrain agricultural and economic productivity, further inducing the disruption of economic livelihoods, poverty and migration. Migration can occur either because the environmental quality of a habitat has become unliveable or, more commonly, because the migrant's economic outcome is likely to be better in areas with greater resource availability. Both constrained productivity and migration are likely to strengthen the segmentation around already existing religious, class, ethnic or linguistic cleavages in a society (Gleditsch & Urdal 2002:286), and thus precipitate conflicts.

In this regard, Homer-Dixon (cited in Gleditsch & Urdal, 2002:285) presents his notion of environmental (or resource) scarcity with a pie

metaphor: qualitative degradation or quantitative depletion reduces the total size of the pie. A growing number of people sharing the pie imply that each share of the pie shrinks. And finally, if the pie is distributed in pieces of unequal sizes, some may be too small for people to survive on.

Within the context of Lake Chad, the eco-violence theory is analytically fecund to capture, if not explain, the intricate linkages that can develop between environmental resource scarcity, livelihood, and conflicts. In the Lake Chad area where rapid population growth and converging environmental trends contribute to the shrinking of the Lake, conflicts in the basin are likely to worsen considerably as resource scarcities interact with, or exacerbate other conflict-related social variables.

The Lake Chad Basin: Socio-Economic Importance and the Potential for Conflicts

The Lake Chad hydrological basin is located between latitudes 6° and 24° N and longitudes 7° and 24° E. The single most important geographical feature of the basin is Lake Chad itself. Lake Chad is believed to be a remnant of a former inland sea which has grown and shrunk in tandem with changes in climate over the past 13,000 years. It is an extremely shallow lake – rarely more than 7m deep – and has been susceptible to the increasing climatic variability and human impacts in the past 40 years. At its largest size, around 4000 BCE, the lake is estimated to have covered an area of 400,000 km². In the 1960s it had an area of more than 26,000 km². Between 1966 and 1997, it shrunk from 25,000 km² to less than 1,500 km² (Coe & Foley 2001). And between 1994 and 2004, it receded further dramatically, covering just an area of some 532 km². In essence, the lake has shrunk by about 90% of its size in 1960 (Masari 2006:2).

Figure 1: Map showing the Shorelines of Lake Chad and the Riparian States



Source: <http://encarta.msn.com/map_701513908/lake_chad.html>

Lake Chad is one of Africa’s largest lakes, providing fresh water and other resources to more than 20 million people living in about thirty shore-line communities of the four riparian countries – Chad, Cameroon, Nigeria and Niger – which along with the Central African Republic (CAR) make up the conventional Lake Chad Basin Commission (LCBC). This includes 11.7 million in Nigeria, 5.0 million in Chad, 2.5 million in Cameroon, 193,000 in Niger and 634,000 in Central African Republic (Science in Africa 2003). It is located in the far west of Chad, bordering on North-eastern Nigeria. In terms of the conventional basin area, the distribution of the area among the riparian countries is as follows: 42% in Chad, 28% in Niger, 21% in Nigeria and 9% in Cameroon.

The Lake Chad Basin is drained by numerous rivers – the Chari-Logone, Komadugu-Gana or Lesser Yobe Ebeji, Ebeji Mbuli, Botha El Beed, the

Yedseram, Ngadolu, Ngadda, Komadugu-Yobe, Taf-taf and Serbewel. Of the above rivers, the river Chari – along with its tributary, the Logone – provides 90 per cent of the inflow to the lake, while the remaining 10 per cent comes from the Komadugu-Yobe river system. Three-quarters of the water entering the lake north of N'Djamena originate from headwaters in the Central African Republic and, to a lesser extent, Cameroon.

The lake which is located in the semi-arid region of the Sahara Desert is a vital source of fresh water and other resources for human, livestock and wildlife communities. The main economic livelihood in the basin includes fishing, agriculture and pastoralism. Fishing is one major occupation around the lake and all four riparian countries heavily depend on supplies from the lake. It is believed that over 150,000 fishermen live on the lake shores and its islands. At the peak of its production in the 1960s, the Lake Chad fisheries are said to have included fish of close to 80 species with an estimated annual fish catch of 130,000 to 141,000 tons up to the early 1970s. Recent estimates of annual fish production are said to be close to that of 1977, hovering within the range of 60,000 to 70,000 tonnes (Living Waters 2003). However, as a result of environmental changes since the 1970s, including fluctuations in the level of the lake, there have been considerable changes in the fish fauna. These include high mortality, the disappearance of some open-water species, and the appearance of species adapted to swamp conditions in areas where they were previously unknown (<http://assets.panda.org/downloads/mrwlakechadcasestudy.pdf>).

The raising of cattle, sheep and camels by local as well as nomadic herders provides additional means of economic livelihood in the basin. The lake which provides water and grazing lands for pastoralists and herders has been the traditional convergence point for the pastoralists: Tuareg, Toubou, Feda, Kanembu, Shuwa, Fulani and Wadai from Chad, Niger, northern Cameroon and northern Nigeria (James 1989:309). Some people raise livestock, typically moving closer to the lake for grass

in the dry season, then moving away in the rainy, mosquito season when some graze their animals up to 100 km away. After the droughts of the 1970s, many herders shifted from grazing animals like cattle and camels to browsing animals such as sheep and goats (Schneider 1985:60).

In addition to direct support to livelihoods, the lake serves as a veritable source of fresh water for drinking, sanitation and irrigation. The lake provides the water and the agricultural springboard for the production of commodities such as cotton, groundnuts, sorghum, cassava, millet, rice maize and onions. Most of the farming in the basin is rain fed, harvested by hand and cultivated without the use of fertilisers or other agro-chemicals.

As the fresh water and other resources of the lake continue to diminish, economic livelihoods have been significantly disrupted such that local populations relying on the lake for their survival have followed its receding waters. The result has been the incidence of resource conflicts within the basin.

Factors Responsible for Diminishing Resources of the Lake

In terms of the drastic diminution of the lake, three factors figure prominently: climatic changes, unsustainable exploitation of its resources by riparian states, and demographic pressure.

Climate change or fluctuation is one major factor in the drying up of the lake. The impact of climate change and fluctuations on Lake Chad hacks back to many decades. Early study on the hydrological history of the lake has found that the balance between water intake and evaporation is continually fluctuating, with the result that Lake Chad, because it is so shallow, is continually changing its size and shape. These fluctuations may be seen as of three different kinds: long-term, short-term and seasonal. They reflect variations in rainfall not only in the area of the lake itself but particularly in the watershed areas of the feeder rivers.

Fluctuations in the lake are thus a fairly sensitive indicator of climatic change over a substantial area of Africa (Connah 1981:21).

The impact of climatic variability, particularly the significant decrease in rainfall in the basin since the 1960s, has adversely affected the lake. There has been a decrease in the number of large rainfall events and in river inflows into the lake. Over the last 40 years, the discharge from the Chari/Logone river system at the city of N'Djamena in Chad has decreased by almost 75 per cent, drastically reducing the inflow into the lake. Coupled with this reduced rainfall is the problem of intermittent droughts. The region has experienced a series of back-to-back droughts in the 1970s and the 1980s which left serious adverse effects on the lake such as decreased flows in the major rivers that feed into the lake; falling of groundwater tables; disappearance of specific plant species and reduction of canopy cover; loss of wildlife populations; and increased soil erosion and/or loss of fertility.

Also, unsustainable exploitation or use of water resources of the lake by both the riparian states and local inhabitants is among the factors driving the lake to extinction. Large and unsustainable irrigation projects and impoundments built by Niger, Nigeria, Cameroon and Chad which have diverted substantial water from both the lake and the Chari and Longone rivers have greatly contributed to the shrinking of the lake. Most significant was the construction of both the Yaguou-Tekele dyke (on the Chari-Logone) and the Maga dam by Cameroon in 1979, and a series of dams by Nigeria such as the Tiga Dam on River Yobe, the Alau Dam on River Ngadda, and the Yedersdam Dam on River Yedersdam. Other examples of such projects include the South Chad Irrigation Project (SCIP) in Nigeria and the MAMDI Polder Project in the republic of Chad.

Coe and Foley (2001) contend that the competing demands for fresh water by the four riparian states of Lake Chad, mostly through massive irrigation projects, account for almost 30 percent of the observed decrease in lake area since the early 1960s. Until about 1979, irrigation had a modest

impact on the hydrology of the region. But between 1983 and 1994, the amount of water diverted for irrigation quadrupled over water used for the previous 25 years, accounting for 50 percent of the additional decrease in the size of the lake. In addition to the radically reduced lake surface area, the flow of water from the primary river system that feeds it has decreased by almost 75 percent over the past 40 years.

While irrigation projects have contributed to the drying up of the lake, the decreasing water level has in turn affected irrigation projects. For instance, the SCIP was designed to irrigate 67,000 hectares, but as water levels in the lake dropped in the late 1980s, no irrigation could take place. The SCIP had an unintended spin-off. Its dried-up canals have been taken over by the *Typha australis*, a rhizomatous plant that has offered a convivial habitat for the dreaded Quelea bird. The regular loss of rice and other grain crops to large flocks of Quelea birds has added additional pressure on the already fragile livelihood system of the lake basin population.

Beyond the vagaries of climate and unsustainable exploitation of the water resources of the lake, the surge in human population in the last few decades has also conduced to increased exploitation and degradation of the water resources of the lake. Harden (1968:238) has long hypothesised that Africa's growing population is the major cause of the degradation and pollution of most of the continent's lakes. With marked population increases, human activities have begun to play a more significant role in accelerating lake-level declines. Since the 1960s, human demands for water near Lake Chad have grown rapidly. Between 1960 and 1990, the number of people living in the lake's catchment area has doubled from 13 million to 26 million (UNEP 1999:398). It is currently estimated to be slightly above 37 million (UNESCO 2007). The average population growth within the basin is quite high, being 2.4-2.6% (Odada et al 2004).

Invariably, this population surge translates into increased pressure on the water resources of the lake by local people living around the lake. Growing human population in the lake region has necessitated the raising of increased numbers of livestock to feed the teeming population. The combined effect of the surge of both human and livestock populations is the accelerated exploitation of the resources of the lake by local inhabitants to sustain their survival and that of their livestock. It has led to overgrazing, unhealthy agricultural practices and intense fishing to feed the growing population (Onuoha 2008b). One impact of this is the destruction of the carrying capacity of the lake to replenish itself. In spite of the worsening state of the lake, researchers predict some 75% population increase by 2025 (Sambo 2006:2).

The foregoing analysis shows that the downward spiral of the diminution of Lake Chad is a rather complicated and intricate process engendered by the complex interaction between human activities and global climate change. To recap, as unsustainable abstraction of the water of the lake increases, coinciding with unpredictable rainfalls in the basin, the natural resilience of the lake began undergoing much pressure. As the climate became drier, the vegetation that supported grazing livestock began to disappear. Consequently, many herders shifted from grazing animals to browsing animals, which adversely affected the area's vegetation by consuming the remaining woody plants. In addition, the local people became more and more dependent on the remnant of the lake as a source of water to replace the water they had previously obtained from the monsoons.

Thus, human activities in the basin significantly exposed the natural environment of the lake to the harsh impact of climate change. Climate change in turn has compounded the shrinkage of the lake by squeezing its natural resilience (Onuoha 2008b). Put more simply, human pressure on the lake is the result of poor rainfall, itself the consequence of climate variation triggered by human actions. The dramatic shrinking of the lake

has left adverse impacts on the environment, economic activities and livelihoods, thus creating a situation conducive to conflicts.

Environmental Resources, Livelihood and Conflicts: The Lake Chad Experience

Water in the form of rivers, lakes or streams is a source of human interdependence, supporting and binding the livelihood of people. In this regard, a transboundary watercourse poses a very different challenge: it crosses a national frontier, linking users across borders and supporting different economic livelihoods.

Lake Chad as a transboundary lake in the West Africa region has served the above purpose for many decades. The lake has been a vital source of fresh water and other resources sustaining millions of people whose livelihood is directly linked to the ebb and flow of this important water formation. In addition to direct support for livelihoods, the lake also plays an important socio-economic role in regulating annual water supply, recharging groundwater and helping to control flooding. However, over the past forty years, the water of the lake has continued to diminish. This in turn has disrupted aquatic and other terrestrial ecosystems, the quantity and quality of fresh water, and the wider environment. Problems include reduced fish fauna, siltation, loss of vegetation, and grazing land.

Given the increasing depletion of the water resources of the lake, the major livelihoods – fishing, agriculture and pastoralism – have continually evolved different strategies to cope with the harsh environmental situation. For instance, the decreasing level of surface water for fishing has prompted some fishermen to either shift from relying entirely on fishing to farming or change their fishing method. The more adaptive ones now practise a form of ‘enclosure fish culture’ in which canals leading to dry depressions in the lakebed are dug. Water flows into the depressions, and fish are allowed to move into the relatively deeper water.

The canals are then blocked off and the fish allowed to grow and are later harvested (Science in Africa 2003). This has contributed to the high rate of depletion of the fish fauna in the lake.

More so, the shrinking of the lake has made agriculture precarious. The local people now resort to an inappropriate cultivation practice known as lake-bottom cropping or receding moisture cultivation which further exposes the lake to severe climatic impacts. The marked expansion of valley-bottom cultivation in Nigeria since the 1980s has meant that pastoralists and farmers now compete very directly for access to wetland areas with a consequent increase in conflict (Blench 2004:ii).

Pastoral communities have also been affected by the recession of Lake Chad since pasture has become very scarce around it. Cattle herders have been burning the sparse coarse vegetation that is left in the hope that new plant life will sprout and prove a more palatable diet for their livestock, but there is no evidence that this works. Instead, the process seems to loosen the dry soil and make it more susceptible to erosion (Science in Africa 2003).

The disruption of economic livelihoods as a result of the shrinking of the lake generated two conflict-prone variables: firstly, increased competition among the various livelihoods over the available water resources and secondly, increased human migration within the basin. Human migrations in the basin have been a function of economic-driven movements of pastoralists, farmers and fishermen in search of areas of better opportunities. As human population increased over the years, both competition over the lake's dwindling resources and the rate of migration have equally increased. Invariably, the situation in the basin suggests intricate linkages among population increase, resource depletion and migration patterns. This has created a complex web of interaction that underpins conflicts in the basin.

For instance, prior to independence, the lake has been a source of fresh water, fishing and grazing ground for farmers, fishermen and pastoralists

of different nationalities, and there was an infrequent and minor incidence of conflicts. However, with the emergence of international boundaries following formal independence as well as the recent population surge, conflicts over the resources of the basin such as fishing and grazing lands have assumed a frequent and sometimes violent nature. Conflicts over the resources of the lake manifest in two forms: conflicts of *ownership* and conflicts of *use*.

Incidences of *conflict of ownership* occur when the struggle over the resources of the lake borders on the question of which territory of the riparian states has the right to appropriate the resources of the lake. Conflicts of ownership usually involve parties from different nationalities. At the heart of these conflicts is the issue of struggle over water and fishing rights and it usually assumes both intra-state and inter-state dimensions. The issue of increased competition between the users has led to rampant conflicts between downstream and upstream users (*The Guardian* 2000:20). Conflicts over fishing rights have been an important aspect of conflict of ownership in the Lake Chad waters in recent times.

This situation has been complicated by boundaries which have become more blurred as the diminution of the lake has intensified. Local populations relying on the lake for their survival have followed its receding waters. The result is a complex web of social, economic, cultural and political issues, threatening constantly to spill over into human rights and military tensions. For instance, in the early 1980s there were various allegations of very serious infractions and dehumanising treatments meted on Nigerian fishermen by Cameroonian and Chadian gendarmes. In one such occasion in 1983, the skirmishes resulted in the loss of 9 Nigerians and 75 Chadian troops, while 20 Nigerians and 32 Chadians were reported captured. Similarly, Nigerian fishermen and fish dealers operating from both the waters of Lake Chad and the various fishing villages on the Nigeria-Cameroon border have reported a repeated incidence of physical assaults, and often, incarceration

without the due process of law (Okon-Ekpenyong 1989:300). Conflicts over competition for the resources of the lake have continued to manifest as the lake diminishes. Recently, a Nigerian fisherman, Sanusi (cited in Murray 2007), contended that:

It is difficult to determine boundaries on water, yet the gendarme from Cameroon and Chad always come after us and seize our fishing nets and traps and we have to pay heavily to get them back.

The second form of conflict in the basin is the *conflict of use*. It is conflict of use when it basically involves struggle over how the use of the resources of the basin affects or disrupts the livelihood of other users. At the heart of these conflicts is the competition for access to water and pasture and it usually assumes inter-livelihood or inter-ethnic dimensions. Fresh water in the form of rivers and lakes binds the livelihoods of people. The unique role of water as a shared resource that provides an input into the productive systems that maintain livelihood creates the very potential for conflict when competition over it intensifies as a result of decline in supply.

Given that water is a common thread that knits together the major livelihoods system (fishing, pastoralism and farming), the dynamics of water in the lake has made these livelihoods less complementary and more competitive. For instance, the diminution of the lake has adversely affected irrigation. The extant irrigation projects in turn have contributed to the reduction in the quality and quantity of water in the lake. This has affected both the fish fauna and the vegetation in the area; thus, leading to the switching of livelihoods (particularly from fishing to farming) and intense exploitation of the lake's water. Progressive diminution of waters of the lake forces farmers to migrate closer to the lake's shorelines. By farming on the emerging areas which hitherto afforded grazing lands for pastoralists, it heightens the frequency of the struggle between two of the major livelihoods in the basin – farming and pastoralism (Onuoha 2007:72). The need to ensure the survival of their livestock makes

pastoralists and herders to move indiscriminately through the farms in search of scarce water and pasture which surround the surviving lake. Consequently, the destruction of farms by grazing animals leads to conflicts, with serious injuries and death reported at times.

Although conflicts of resource *use* are common in the basin, and highly under-reported, the degree of conflict between different resources users ranges from insignificant to extremely tense, but conflict between pastoralists and farmers far outweighs all other types of resource conflict in frequency and importance in the Lake Chad area.

Implications of the Diminishing Resources of the Lake for North-Eastern Nigeria

Geographically, the portion of Lake Chad that is situated in the Nigerian territory borders on the North-Eastern region which consists of the current six states of Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe. Of the estimated 20 million people that lived on the Lake Chad basin in 2003, about 11.7 million live in the North-Eastern region of Nigeria. Already, the effect of the Lake Chad shrinkage is being felt by the local population who depend on the lake for their livelihood. Hence, further shrinkage of the lake poses serious security implications for the North-Eastern region of Nigeria in particular, and the country in general.

First, the diminishing water resources of the lake will compound the problem of water security/scarcity in the region. Water scarcity occurs when the amount of water withdrawn from lakes, rivers or groundwater is so great that water supplies are no longer adequate to satisfy all human or ecosystem requirements, resulting in increased competition between users and demands (UNEP 2002). Interestingly, Nigeria has been fingered as one of the African countries likely to suffer water stress in 2025 (UNEP 2002). On the other hand, water security is about ensuring that every person has reliable access to enough safe water at an affordable price to lead a healthy, dignified and productive life, while maintaining

the ecological systems that provide water and also depend on water (UNDP 2006:12). These problems pose serious threats to human security in the North-Eastern region.

Although the lake's surface water and underground aquifers provide fresh water for wells and boreholes for the local inhabitants, people living around the lake lack access to safe drinking water and proper sanitation. This is primarily because as water quality deteriorates, saltwater intrusion degrades local wells, and water-related diseases inflict the people living in the region. The International IDEA (2000:268) has argued that access to safe drinking water, essential to human and animal survival, is very limited in the North-Eastern region. This lack of access to safe drinking water is responsible for the poor quality of life in the region because it affects people's health and productivity. The poor living condition will worsen in the event that the lake continues to shrink.

Secondly, the shrinking of the lake's water will pose the biggest single threat to food security, leading to the exacerbation of poverty in the region. Although there is pervasive poverty in Nigeria, available statistics in 2004 show that the existential condition of the vast majority of the inhabitants of the North-Eastern region is the lowest. While the prevalence of poverty (in percentages) in the South-South was 35.1; the South-East stood at 26.7; the South-West 43.0; that of North Central was 67.0; North-West was also high with 71.2; and North-East was the poorest with 72.2 (Soludo 2007:30). It has been noted that people around Lake Chad are among Africa's most chronically vulnerable to food insecurity. They deal with variability through mobility and through diversity of food sources (US Geological Survey 2007). Consequently, the poverty level in the North-Eastern region will be exacerbated in the near future as the shrinking of the lake contributes to crop failures, livestock deaths, collapse of fisheries, increased soil salinity, and significant disruption of economic livelihoods.

In addition to increased poverty, the diminution of Lake Chad will intensify the rate of migration and cross-border movement within the basin which will heighten resource and identity conflict in the North-Eastern region, and even beyond. Already, the shrinking of the lake has induced the influx of Udawa nomadic cattle herders from the Republic of Niger as well as the migration of citizens of Chad and of Nigerians further south in search of optimum opportunities. It has been noted that the long-distance migrants, usually referred to as Udawa, have been well-armed since the mid-1990s and are willing to use violence to assure their grazing (Blench 2004:iii).

Consequently, as areas dry up, farmers and cattle herders have had to move southward towards greener areas where they end up competing for the available scarce resources such as fresh water and arable/grazing lands with other economic groups or with host communities. This explains some of the conflicts between herders and farming communities reported in recent years in North-Eastern Nigeria. Some of the farmers forced to migrate from the Lake Chad area have gone to cities, as far as Lagos, where they take up menial jobs or swell the ranks of the jobless, adding to the social crises there (Science in Africa 2003). As water quantity diminishes or quality degrades over time, the net effect on the region will be unsettling: the frequency and intensity of conflicts within the region would escalate, leading to *ecomigration* and a mass of environmental refugees.

Recommendations

It is evident from the foregoing that further shrinking of the lake will create more problems for Nigeria in the near future. Therefore, there is the need for something drastic to be done to save the lake.

One way of mitigating the impact of this impending environmental disaster is for the political leadership in Nigeria to muster strong political will to jumpstart the replenishment project of the lake proposed by the

Lake Chad Basin Commission (LCBC). The Lake Chad Replenishment Project requires the damming of the Oubangui River at Palambo in the CAR and channelling some of its water through a navigable channel to Lake Chad, with the objective of rehabilitating the lake, rebuilding its ecosystem, reconstituting its biodiversity, and safeguarding it for present and future generations.

Although the political leadership in Nigeria has made commendable efforts in this regard, such as the provision of about 52% of the budget of the Regional Parliamentary Committee on Lake Chad, funding of a pre-implementation feasibility study and the organisation of international conferences and workshops aimed at finding a lasting solution to the shrinking lake, there is the need for stronger social and political networking with donor agencies, co-riparian states, community leaders and environmental NGOs to fast track the replenishment project.

More so, strengthening of an institutional framework, especially the LCBC, for regulating the exploitation of the resources of the basin is quite expedient. The signing of the LCBC convention, as far back as 1964, was a clear signal of the riparian countries' willingness to address issues relating to sustainable management of the lake and its catchment area. However, political, financial and logistical problems have significantly vitiated the effectiveness of the LCBC in regulating the use of the basin resources. It is significant to note that unilateral actions, political conflicts and micro-nationalist interests have prevented the riparian countries from cooperating as strongly as they should to strengthen the LCBC as the only viable supranational institution mandated to regulate the exploitation of the resources of the basin for their mutual benefits. The strengthening of the LCBC through greater political cooperation among riparian states, timely payment of annual subscription by member states, and vigorous implementation of capacity-building programmes for staff of the LCBC to enhance its effectiveness is another way of preventing the looming danger.

Finally, since the local communities are the primary beneficiaries and victims of the vagaries of Lake Chad, there is equally the need to integrate them in the management of the resources of the lake. This will enable them to play a strong role in articulating their needs in relation to their livelihood priorities as well as to work with local governments, environmental NGOs, the LCBC and donor agencies to achieve the overall objective of reviving and conserving the lake through sustainable exploitation. Although the priorities may vary from community to community, the bottom line should be adequate involvement or representation of the local people in the decision-making process. Such an initiative should explore means of harmonising the gap between government and local community interests. This is essential because governments' perception of the realities of the Lake Chad Basin is often times contrary to the local people's world view. Equally, attention should be focused on sensitisation, enlightenment and the training of local communities to protect both the shoreline of the lake and the adjacent areas as well as to create alternative means of generating energy to prevent wanton cutting of fire-wood by local inhabitants; an action that has greatly contributed to the desertification process. The integration of the local people and communities must go beyond the mere perception of them as stakeholders, but as key participants whose knowledge and participation are critically needed to ensure the success and sustainability of any project or policy designed to save the lake.

Conclusion

This paper traces the intricate linkages between environmental degradation, livelihoods and conflicts in the Lake Chad basin. It argues that environmental resource scarcity as a result of degradation often lead to disruption of immediate economic livelihoods, which interact with other social variables to produce conflicts in the basin. Based on the above findings, the paper concludes that if the diminution of the

Lake Chad is not halted, it poses serious security implications for Nigeria, and the North-Eastern region will be the hardest hit. To mitigate the impact, it advocates for greater political cooperation to save the drying lake, the strengthening of the supranational organisation to ensure sustainable regulation and exploitation of the resources of the lake, and the integration of the local communities in the management of the resources of the lake.

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African Ruling Political Parties and the Making of ‘Authoritarian’ Democracies: Extending the Frontiers of Social Justice in Nigeria

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Abstract

African democracies are distinguished by the character of their political parties. They are easily labelled as illiberal civilian autocracies. These features coupled with emerging so-called dominant ruling parties, demonstrate the inclination towards a new form of ‘modern’ democratic authoritarianism. In other words, the ruling dominant parties are appearing to be a ‘reincarnation’ of the one-party system and military rule that held sway for about three to four decades in Africa (from the 1960s). In the process of this transformation, African ruling parties have been grossly destabilising opposition and perceived dissenters through

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clientelism, patronage politics and extra-legal means, thereby undermining the provision of social justice in the guise of democratisation. In the light of this there seems to be a theoretical and empirical lacuna in the discourse of social justice, in explaining the contradictions inherent in safeguarding democracy through undemocratic practices, such as election misconduct, manipulation of judiciary, lack of provision of human rights, assassination and victimisation of political opponents, through which the provision of social justice is undermined. In this context and given the democratic authoritarian tendencies of African ruling political parties, this paper seeks to explore the pattern of authoritarian practice in Nigeria's ruling party – the People's Democratic Party (PDP) *vis-à-vis* the problems of social justice provision. Nigeria has returned to democracy about a decade ago, but the country is sliding towards a one-party system. The abuse of social justice, through detention, assassination and police brutality, defies any logic of democratisation. The paper therefore seeks to introduce a working framework for extending the frontiers of social justice for an integrative analysis and understanding of social justice in developing African democracies.

Introduction and Conceptual Issues

The collapse of authoritarian and totalitarian political and economic regimes of east and southern Europe in the last decades of the twentieth century and the subsequent spread of neo-liberal democracy provided great political momentum in the world of democracy. This political and economic breakthrough was tantamount to a paradigm shift. Thus this international political development coupled with domestic forces led to the collapse or liquidation of military and one-party authoritarian regimes across Africa. The spread of (re)democratisation in the third and fourth democratic waves led to more than two-thirds of African countries becoming democratic, through organisation and conduct of multiparty elections – although most, if not all, of the elections have

not satisfied even the minimum international standards. However, the important element in the African (re)democratisation was the opening of the political space for the participation of everyone in the political process. Citizens were relatively 'free' to exercise their political and civic rights. This has led to the provision of a certain degree of social and political justice to citizens, from which they were barred during the heydays of one-party and military systems.

African citizens now seem to be more 'politically free' to participate in the democratisation process than during the decades of one-party and military autocracies. During that period, not only opposition groups and dissenters, but even ordinary citizens were incarcerated, maimed, jailed, assassinated and eventually their social and political freedoms (social and political justice) were grotesquely curtailed. The re-democratisation of African countries rekindles the hope of the international community that freedoms have been restored to Africans, and that democracy would come to stay on the continent.

However, as re-democratisation means radical political and socio-economic transformations, it is often clouded with uncertainties. In other words, not all countries in the process of democratisation or transition (as often called) do reach the desired destination.¹ A democratisation process could lead to success stories as in the cases of Botswana, Mauritius, South Africa or even recently Ghana; but it can also lead to breakdowns or reversals, as in the cases of Nigeria (1960-66; 1979-83), Togo, Burkina Faso; or even to the transformation of ruling parties into dominant parties,²

1 The ultimate wish-destination of any democratisation process is democratic consolidation. However, democratic consolidation is not an end in itself, but a means of understanding the degree and scope of democratic deepening.

2 The ruling parties could transform into dominant parties without actual breakdown of the democratic order. This is a situation where, though all structures of democracy are in place, the behaviour of the regime or at least the behaviour of the actors in the regime cannot easily be distinguished from autocracy. In other words, despite the existence of democratic structures, the regime exhibits some main characteristics of one-party authoritarianism.

which could depict no less than a *reincarnation* of the one-party system, as in the cases of Mugabe's Zimbabwe and Museveni's Uganda.

In this context, as the transformation of African ruling parties into dominant ruling parties is a complex process, and is being achieved through various political strategies, this paper seeks to examine these political strategies and the question why this reincarnation process undermines the provisions of socio-political justice. However, due to theoretical and empirical ambiguity and cloudy boundaries between social and political justice, the paper not only argues that these theoretical dilemmas limit our understanding of justice itself; it also emphasises that their widespread application seriously constrains developing African democracies. Hence the paper argues for the extension of the frontiers of social justice to include political justice and be the defining element of democratisation where political parties occupy a central position. In this regard, it explores what authoritarian democracy and social justice really are, and in what ways the former undermines the provision of the latter.

Conceptually 'authoritarian' democracy requires an understanding of the concept of democracy itself. This is because 'authoritarianism' is an anti-thesis of democracy. Based on its minimal definition, democracy is a polity that has at least the following features: universal suffrage, recurring free, fair and competitive periodic elections, with more than one political party and sources of information (Morlino 2004:10). Morlino further argues that in any country that satisfies these minimum-cum-procedural criteria more 'analysis is still necessary to detect the degree to which [...] the two main objectives of an ideal democracy: freedom and political equality' are indeed present (Morlino 2004:10). In this context, 'any model of democracy that does not satisfy these two main substantive criteria is simply a hybrid regime whose failure to ensure a minimum level of civil rights [and political equality] keeps them below the minimum threshold requirements for classification as strictly democratic' (Morlino 2004:10). However, central to the argument of

a democratic regime are the issues of *freedom* and *political equality*. These are the defining and distinguishing elements between substantive democracies and their aberrations. *Freedom and political equality* are the foundation and *raison d'être* of social justice, the provisions of which rest with a democratic state. The aberrations of democracy are interchangeably called: defective democracies (Diamond 1999), illiberal democracies (Zakaria 2003), dominant and exclusive democracies (Morlino 2004), authoritarian democracies (Bangura 1991; Brown 2001), autocratic democracies and so on. The list is endless! Any democratic polity that is not a good democracy, is therefore not only a *negation* but a 'defective democracy' (Merkel & Croissant 2004).

However, using democratic governance as yard stick, the worst of the defective democracies is authoritarian democracy. This is a regime in which the procedural elements of democracy have not been implemented to the least minimum international standard, let alone provisions of freedom and political equality, which in this paper are equated with socio-political justice. By this token, conceptually, authoritarian democracies are those political regimes where leaders are not chosen in free and fair elections and in which people's rights to participate or engage in political, social and even economic activities, either individually or through any form of association, are severely curtailed. In these regimes, citizens are voiceless and cannot hold leaders accountable. Opposition and dissenters, either individually or in associations, are repressed severely through all forms of brutality, including assassination, kidnapping and incarceration. Authoritarian democracies could be harshly termed as irresponsible democracies (Morlino 2004). Post-independence African one-party democracies, such as in Kenya, Cameroon, Togo, Mobutu's Zaire, Kamuzu's Malawi, provide examples of authoritarian democracies. However, though levels could be established of different degrees of authoritarianism, this is not the main focus of the paper.

With the above simple conceptualisation of genuine (good) democracy and authoritarian democracies, it could be argued that irrespective of whatever the nature and quality of democracy, political parties are *conditio sine qua non* to its formation and existence. Put differently, political parties are central to whatever type of modern representative democracy (Kura 2007). In fact, no democracy in the world could be inaugurated without political parties. In this context therefore, as argued above, the provision of freedom and political equality (as foundation of social justice) is the preserve of a state (herein the party government), and ruling parties in both genuine and authoritarian states are the catalysts through which such provisions could be provided or denied. Unfortunately, theorists of social justice seem not to acknowledge the role of the ruling parties in the provision of social justice. Where they do acknowledge this role, they do it in an implicitly theoretical way. This is a serious theoretical lacuna that this paper intends to help fill. What is social justice? How does it relate with freedom and political equality? Why and how do authoritarian (ruling parties) democracies undermine the provision of social justice? Can the frontiers of social justice be extended? These and other questions form the theoretical and empirical concerns of this paper.

The concept of social justice is not new in human social relations. Craig (2007) notes that the concept has recently re-surfaced in social and political discourse, especially among democratic governments that claimed to be social democratic. Given this theoretical re-awakening, it is obvious that the concept would have different or even conflicting interpretations. According to the modern architect of social justice, John Rawls, drawing from classical writers – Aristotle, Kant, Hume and others – social justice is described as ‘fairness [... and] the principle subject of justice is the basic structure of society ... the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation’ (Rawls 1971:6). Although Rawls’ description of (social) justice

is rooted in social philosophy, nevertheless, his conceptualisation of social justice is very important in understanding not only how social justice can be achieved but that the structure of society and social institutions is the essential mechanism of distributing freedom, ensuring political equality and bringing about 'the division of advantages'.

This means there is a clear theoretical connection between social justice and political justice. Not only are the two interwoven, but undermining of one leads to total negation of the other. Political justice refers to freedom and political equality. With regard to social justice, Rawls (1971:53) argues that the principles are: (i) 'each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme for others [... and] (ii) social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be everyone's advantage, and (b) attached to positions and offices open to all.' Craig (2007) however contends that based on these principles, social justice has a clear contra-relationship with the issue of inequality. In this context, state becomes the central actor in the provision of equality *vis-à-vis* social and political justice.

Further to the above, Miller (2001:1) conceptualising social justice as distributive justice, argues that it is about 'how the good and bad things should be distributed among the members of a human society'. The good things are income, wealth, education, housing, health care, etc, which are means of 'good life'. Miller (2001) also identifies three inter-connected principles to social justice: desert, need and equality. For desert, a just society is one whose social and especially political institutions are organised in such a way that citizens get the benefits they duly deserve. However, this approach should be dynamic in order to allow the approach of need to adequately operate. Thus according to him, the approach of need is 'not merely idiosyncratic or confined to those who hold a particular view of the good life [...] it must be capable of being validated on terms that all relevant parties can agree to' (Miller 2001:205). Thus the equality

approach to social justice, according to Miller (2001:232) is distributive in nature as it emphasises certain types of rights, which could be distributed 'equally'.

From the foregoing theoretical conceptualisation, it is apparent that social and political justice as the defining essentialities of democracy are multi-dimensional. They are directly linked to citizenship and rights. Marshall (1950) classifies rights according to the characteristics of citizenship, to include: (i) civil rights: property rights, legal guarantees, freedoms (ii) political rights: right to vote and be voted for, rights to associate, constitutional participation, and (iii) social rights, which Miller (2001) refers to deserts: the entitlements of basic education, health, social care, income, housing, etc. These are the means of good life. Despite the acceptance of the multi-dimensionality of social justice, some scholars argue for difference of importance between these classifications (Lister 2003; Dean & Melrose 1999). Of paramount importance, however, is the inter-connectivity of the multi-dimensionality of the social and political rights. In addition to this, one can maintain that in as much as the provision of the multi-dimensional social justice is a function of stable political community and effective political institutions, political rights appear to be the foundation of other categories of social justice.

Achieving social justice (particularly in its philosophical sense) has been a challenge to even 'genuine' democracies. This is not to say that it cannot be achieved. It is equal to arguing that achieving social and political justice critically requires:

A political community in which citizens are treated in an equal across-the-board way, in which public policy is geared toward meeting the intrinsic needs of every member and in which the economy is framed and constrained in such a way that the income and other work-related benefits received correspond to their respective deserts (Miller 2001:250).

This raises the all-important question of the role of the state in the provision of social justice. Plant (2000) for example argues that social justice requires government to work with a market system. This is because the idea of social justice seems to contradict the normative exigencies of a neo-liberal agenda, in which market forces are allowed to play a major role in the political and economic affairs of the people. Doyal and Gough (1991:230) stress that social justice 'stands against fanatics of the free market economy [...] but also demands and promotes economic success'. If the state (government) is a central force in the provision of comprehensive social justice, *this paper contends that ruling political parties are the super-force in the process of the provision of social justice*. This is against the indispensable role of ruling parties in the formation of government, social mobilisation, political education and leadership recruitment, and importantly also in public and social policy making and implementation (Strøm & Müller 1999; Tordoff 1988; Salih 2003; Kura 2007). In this context, the character of democracy and/or ruling parties is a yardstick with which to measure the commitment and the extent to which a given political community and its institutions uphold and provide social justice. But studies in social justice seem to have neglected or to undermine the linkage between the provision of social justice and the nature and character of a party government. The common perception that authoritarianism undermines social justice is not theoretically enough to suggest an overarching generalisation about authoritarian democracies. The next section explores the character of African democracies and their process of authoritarian reincarnations *vis-à-vis* strangling of social justice.

African Ruling Parties: *Reincarnation of Authoritarian Democracy*

Authoritarianism is not new in political governance in Africa. Post-colonial political regimes metamorphosed into one-party authoritarianism, experienced series of military coups or were dominated by

political civil wars and armed conflicts. These were the main kinds of situation in political regimes in post-colonial Africa, until in the late 1980s and early 1990s, when the third democratisation waves spread through the region. In 1990 only four African countries were practising multi-party democracies, notably Senegal, The Gambia, Botswana and Mauritius. The end of the cold war, combined with domestic pressure from opposition groups and civil society, forced African leaders to open up the political space and allow multiparty elections to take place. This pressure was even intensified by Western donor countries and international organisations, which not only financed re-democratisation projects, but attached strict conditions of aid to democratic reforms (Shiner 2004). With these, Van de Walle (2002:66) stresses that the

[...] unexpected [democratic] changes raised hopes that a region long known for political and economic failure was about to turn a corner. [...] All through the region, single-party [and military] regimes found themselves pressed by domestic critics and global trends into allowing legal opposition parties, press freedom, and competitive elections. Multiparty races, which had been rare since the immediate post independence era three decades earlier became routine.

Statistically, between 1989 and 2000 alone, about seventy presidential elections were held in about forty-eight African countries. Similarly, during this period, legislative elections were conducted in at least 48 countries. Also by the end of 1990s, 39 of the 48 African countries' legislative houses had representatives from more than one political party. In other words, all these elections were conducted with more than one political party participating. Obviously, during this period, only Congo-Kinshasa, Eritrea, Rwanda, Somalia, Swaziland and Uganda did not hold any multi-party elections (Van de Walle 2002) due to various kinds of armed conflicts, with varying intensities. This development rekindles the hope of Africans and the international community that with democratisation in Africa, other socio-political and economic problems would

give way to economic prosperity and political stability, consequently influencing the provision of social justice both as deserts and needs.

Indeed, what was even dramatic and glaring about African democratisation is that by 2003, about 44 of the 48 Sub-Saharan African states have already held what Lindberg (2006:140) refers to as ‘founding’ elections, which marked a radical shift from a ‘long period of authoritarian rule to fledgling democratic government’. Moreover, 33 of the 44 countries have already conducted second elections, 20 have completed three consecutive elections, and seven have had four or more consecutive elections (Lindberg 2006). This is a good democratic omen for a region where for more than three decades one-party and military authoritarianism held countries hostage. See Table 1 for African countries that conducted various numbers of democratic elections.

Table 1: Successive Elections, Freedom House Political & Civil Rights Ratings & Democratic Status of Sub-Saharan African Countries

Country	No. of Elections	Political Rights	Civil Liberties	Democratic Status
Angola	BD	6	5	Not Free
Benin	4+	2	2	Free
Botswana	4+	2	2	Free
Burkina Faso	4+	5	3	Partly Free
Burundi	BD	4	5	Partly Free
Cameroon	3	6	6	Not Free
Cape Verde	3	1	1	Free
C.A. Republic	BD	5	4	Partly Free
Chad	2	6	6	Not Free
Comoros	1	3	4	Partly Free
C-Brazzaville	BD	6	5	Not Free
C-Kinshasa	2	5	6	Not Free
Cote d’Ivoire	BD	7	6	Not Free
Djibouti	3	5	5	Partly Free
E. Guinea	2	7	6	Not Free
Eritrea	BD	7	6	Not Free

Ethiopia	2	5	5	Partly Free
Gabon	4+	6	4	Partly Free
The Gambia	3	5	4	Partly Free
Ghana	3	1	2	Free
Guinea	2	6	5	Not Free
Guinea-Bissau	1	4	4	Partly Free
Kenya	4	3	3	Partly Free
Lesotho	2	2	3	Free
Liberia	1	3	4	Partly Free
Madagascar	4+	4	3	Partly Free
Malawi	2	4	3	Partly Free
Mali	4+	2	2	Free
Mauritania	4+	5	4	Partly Free
Mauritius	4+	1	2	Free
Mozambique	2	3	4	Partly Free
Namibia	3	2	2	Free
Niger	1	3	3	Partly Free
Nigeria	3	4	4	Partly Free
Rwanda	1	6	5	Not Free
São Tomé & Príncipe	4+	2	2	Free
Senegal	4+	2	3	Free
Seychelles	4+	3	3	Partly Free
Sierra Leone	2	4	3	Partly Free
Somalia	BD	7	7	Not Free
South Africa	2	2	2	Free
Sudan	2	7	7	Not Free
Swaziland	2	7	5	Not Free
Tanzania	3	4	3	Partly Free
Togo	3	6	5	Not Free
Uganda	2	5	4	Partly Free
Zambia	4+	3	4	Partly Free
Zimbabwe	4+	7	6	Not Free

Sources: compiled from Freedom House 2007 and for number of successive elections from Lindberg (2006:141). The data were updated to include countries that conducted multi-party elections recently.

Note: A rating of 1 represents the most free and 7 the least free. BD: Breakdown of democratic regime due to civil war or other armed conflict.

Table 1 above shows that of the 48 Sub-Saharan African countries, six had conducted only one multi-party election. Countries in this category were affected by conflict and political instability. They include Congo (Kinshasa), Guinea-Bissau, Liberia, Niger and Sierra Leone.³ In fact, the cases of Liberia, Rwanda and Sierra Leone stand out. Other countries, due to the intensity and protracted nature of their conflict could not even conduct any multi-party election since the breakdown of their immediate post-colonial regimes. Examples of these countries are Angola, Burundi, Congo-Brazzaville, Eritrea and of course Somalia. In these two sets of countries, it is not only that they are not free, but political rights and civil liberties are grotesquely strangled and social justice provision completely thrown to the bush. Also, due to socio-economic and political breakdown, these countries simply turned into a 'Darwinian environment of survival of the fittest'. These political regimes are grossly incapable of satisfying the *needs* of the people, let alone providing the *deserts*. Only the military, the warlords and their sycophants, by virtue of their services enjoy the deserts aspect of the social justice.

About thirteen of the 48 countries in Table 1 had conducted only two successive elections, while nine countries conducted three elections. Importantly, thirteen countries have conducted four or more consecutive elections. These are the exemplary African democracies, whose political rights and civil liberty ratings vary between 1 and 2. However, some countries, such as South Africa, Ghana, Cape Verde, and Namibia, which conducted only two or three elections, also have ratings of 1 or 2.

What can generally be said about Africa, however, is that, while elections are an important component of democratisation, free and fairly

3 During the writing of this paper Sierra Leone has just conducted a national election, in which through a run-off opposition party candidate Ernest Bai Koroma of All People Congress defeated the ruling party's candidate, Solomon Barewa of Sierra Leone People's Party. The success of this election, where an opposition party defeated the ruling party, shows that with support of domestic and international democracy stakeholders democracy can be institutionalised in Africa for development and the provision of social justice.

conducted and acceptable elections have continually eluded the region. This has continued to affect the quality of democracy. As the above Table 1 indicates, democracy has spread to Africa, but offers little progress in engendering and deepening democratic values of liberties. Of all the countries that held 'founding' elections and two, three or more consecutive elections, only Benin, Botswana, Mauritius, Cape Verde, São Tomé and South Africa have a civil liberty score of two points. Mali, Senegal, Seychelles, Ghana, Tanzania, and Lesotho achieved a three point score. In fact, according to the Freedom House report (2007), of the 48 sub-Saharan African states, only 11 are 'Free', 22 are 'Partly Free' and 15 are 'Not Free', representing 23, 46, and 31 per cent, respectively.

Though the quality of democracy as measurement of freedom, equality and social justice provision is in question, in almost three-fourths of African countries, the table indicates that the political rights and civil liberty ratings of a country and its quality of democracy improve in proportion with its number of successive elections.

The paradoxes exhibited by Africa's democratic 'breakthrough' simply unravelled the 'truth' of the difficulty in establishing a stable democratic government in countries ravaged by chronic 'poverty, authoritarianism, low administrative capacity, and ethnolinguistic divisions' (Van de Walle 2001:66). The paradox also shows how lack of political will and poor leadership can entrench patriotically and selflessly established democratic institutions. Democracy was expected to reduce the hardship that African citizens had been experiencing during one-party and military dictatorship. Ironically, however, the coming of democracy in Africa has only contributed to corruption, violent conflict, poverty, human rights abuses and the throttling of social justice.

The contradiction in Africa's democratisation is further shown by the increasing metamorphoses of many African ruling political parties into what can be called 'democratic authoritarianism'. The process of this metamorphosis has taken several dimensions, through which social justice is

being squelched. Even the so-called African exemplary democracies are caught in this democratisation dilemma. Many African ruling parties are transforming into what is commonly known in comparative studies as the dominant party system. However, the dominant party system, and the process in which such transformation and metamorphosis is taking place is typical of the situation of the three decades of post-independence Africa, during which one-party and military authoritarianism held sway. In other words, African ruling parties replicate all the tendencies of one-party authoritarianism, but with a difference. The modern form of the changing nature of African democracy is being defined by the nature of the global community. The international community has virtually commonly accepted democratic norms and values as the defining conditions for aid, debt relief and even bilateral and multilateral economic, political and social interactions. Thus, while appearing to appease the international community, the African ruling parties are changing into authoritarian dominant party democracies under the guise of democratising and ensuring 'unity and stability' (McMahon 2001:5). Through this process of domination, the ruling parties undermine social justice, political equality and jeopardize democratisation in various countries.

Dominant Parties and Authoritarianism: The Dilemma of African Ruling Parties

The dominant party syndrome is not new in the process of political party development. For example, Almond and Duverger have identified scenarios of the development of dominant parties in several countries. Duverger mentioned the French Radicals, Scandinavian Social Democratic Parties, and the Indian Congress Party. While Banksten argued for the term 'dominant non-dictatorial party' and identified examples of Solid South in the United States, Mexico, Uruguay and Paraguay (cited in Sartori 2005). Blondel adds to the list of dominant non-dictatorial parties the ruling parties in Chile, Sweden, Norway,

Italy, Iceland, Israel, India, Venezuela, Colombia, etc (cited in Sartori 2005). Operationally, a dominant party is a party that 'outdistances all the others' and is 'significantly stronger than others' (Sartori 2005:171). In fact, based on this definition and electoral data from 21 countries,⁴ Sartori has identified these countries to have had dominant parties at various periods in the course of their democratic development.

With regard to the development of dominant parties, the difference between Africa and other established democracies is both technical and methodological. Technically, in western democracies, the dominant party came last in the chronological development of democracy and it 'presupposes an advanced stage of organisational differentiation and specialisation' (Sartori 2005:220). But in Africa, the emergence of the dominant one party was abrupt and sudden. This was because of the socio-cultural and economic contextual realities of the different countries, which enabled the ruling dominant parties to easily become authoritarian in character and substance.

In many African countries, post-independence ruling parties changed to dominant and authoritarian parties, which remained in power until military coups destroyed their structures. Examples abound: Benin, Burundi, Central African Republic, Burkina Faso, Ghana, Uganda, Mali, Lesotho, Rwanda, Niger, etc. After the re-introduction of democracy during the third and fourth waves of independence, most ruling parties in Africa are currently 'reincarnating' as dominant authoritarian parties. With this transformational 'reincarnation' of ruling parties, social justice and equality are in serious jeopardy.

What is new therefore about contemporary African dominant parties is that unlike their predecessor one-parties, which absolutely outlawed the

4 Iran (1971), Mexico (1970), Philippines (1969), Bolivia (1966), Paraguay (1968), El Salvador (1970), India (1967), Chile (1965), Japan (1969), Norway (1969), France (1968), Sweden (1970), Israel (1970), South Africa (1966), Denmark (1971), Turkey (1969), South Korea (1967), Ireland (1965), Italy (1972), Iceland (1971) and Uruguay (1966).

opposition parties and dissenters, the modern dominant parties, perhaps in view of the changing global political economy, allowed the existence and participation of opposition parties in the democratisation process, and introduced populist policies intended to provide social justice and political equality. Despite these changes, the dominant parties employ extra-legal and authoritarian instruments to strangle opposition, undermine citizen participation and exacerbate the crisis of social justice. The next section examines various strategies employed by Nigeria’s ruling party, the People’s Democratic Party (PDP), in maintaining its dominance in a way which affects all dimensions of social justice in the democratisation process.

Nigeria’s PDP and the Development of Authoritarian Democracy: Implications for Social Justice

Ironically, in any list of either global or African one and/or dominant parties, Nigeria is conspicuously missing. Nigeria has had no history of a one party or dominant party syndrome. But the country is famous for ethnic, political and military rule. These factors have contributed to the democratisation crisis that besieged the country since the demise of the First Republic in 1966. They have also largely contributed to intermittent violence, conflict, and political instability, the peak of which was the civil war (1967-70). The crisis of democratisation is best explained by the long period of military authoritarianism. Of the forty-seven years of Nigeria’s political existence as independent state, the military ruled the country for nearly thirty years. The political development of Nigeria could be chronologically outlined as follows:

Table 2: Chronological Political Development in Nigeria

Date	Nature of Regime	Leader(s)	Duration
1960-1966	Parliamentary Democracy	Abubakar Tafawa Balewa/Azikwe	5 Years
1966-1967	Military	Aguiyi Ironsi	6 Months
1967-1975	Military	Yakubu Gowon	8 Years

1975-1979	Military	Murtala/Obasanjo	5 Years
1979-1983	Presidential Democracy	Shehu Shagari	4 Years
1984-1985	Military	Buhari/Idiabon	1 1/2 Years
1985-1993	Military	Ibrahim Babangida	8 Years
1993-1998	Military	Sani Abacha	5 Years
1999-2007	Presidential Democracy	Olusegun Obasanjo	8 Years

The return of democracy in May 1999 represents a turning point in Nigeria’s political history. The sudden death of General Sani Abacha in June 1998, coupled with internal and external political pressure, forced his successor, General Abdulsalami Abubakar, to hand over power in what was the shortest transition to a civil rule programme in Nigeria. Thus within ten months, all relevant democratic structures, especially an electoral commission and political parties, were established and elections were conducted between December 1998 and February 1999. Only three political parties participated in the 1999 federal elections, namely: People’s Democratic Party (PDP), All (Nigeria) People’s Party (APP) and Alliance for Democracy (AD). Other political parties only participated in the December 1998 local government election, which was the defining criterion for the registrations of parties. All together, nine political parties were provisionally registered in 1998 but only three scaled the hurdles of registration.⁵

The presidential and national assembly election results indicated an overwhelming success for PDP over the remaining two political parties. Due to differing results, particularly in the Senate and House of Representatives, the party did not have an absolute majority, but this outcome has provided significant insight into what might be expected in the next coming national elections. The following tables present the cumulative results of 1999, 2003 and 2007 presidential and governorship elections.

5 The other six parties were: Democratic Advance Movement (DAM), Movement for Democracy and Justice (MDJ), National Solidarity Movement (NSM), People’s Redemption Party (PRP), United Democratic Party (UDP) and United People’s Party (UPP).

Table 3: Summary of Presidential Election Results: 1999, 2003 & 2007

Parties - Candidates	Percentage of Votes won		
	1999	2003	2007
PDP Candidates	62.8	61.9	70
ANPP Candidates	37.2	32.2	18
AC Candidates	-	-	7
Other Candidates	-	5.9	5
Total (all parties and candidates)	100	100	100

Table 4: Summary of Governorship Election Results: 1999, 2003 & 2007

Political parties	No of Governors won by party		
	1999	2003	2007
PDP	21	27	28
ANPP	9	7	5
AD	6	1	-
APGA	-	1	-
PPA	-	-	2
AC	-	-	1
Other parties	-	-	-
Total (all states)	36	36	36

Source: *International Crisis Group 2007:20*

With the above election results, the PDP presidential candidate, Olusegun Obasanjo, won the presidential election in 1999 and 2003 and the party's candidate, Umaru Musa Yar'Adua, also won the 2007 election. In addition to winning the presidential election, PDP also won more than $\frac{2}{3}$ of the state governorship elections and has $\frac{2}{3}$ of the members of the National Assembly (Senate and House of Representatives). For example, in 1999 PDP won 21 governorship elections out of 36 states, in 2003 it won 27 and in 2007 28. Moreover, in states where the party won governorship elections, it has absolute majority in the State House of Assembly.

This imperatively shows that Nigeria is on the verge of becoming a one-party democracy. Given the pattern of the elections, Osuntokun and Aworawo (2003) contends that Nigerian politics in the fourth republic was not different from the previous democratic experiments. According to Epelle (2005:141) this was because, like the previous democratic regimes, fourth republic politics was patterned by:

...attempts at converting the democratic rule to monocratic contraption, subversion of popular will, and subtle and subterranean decimation of the opposition with all its concomitant consequences.

These indeed were among the common features of democratic rule in Nigeria. But one must argue that in the first and second republics, there was no attempt especially by the ruling party to institutionalise one-party rule. The fourth republic exhibited tendencies that were characteristic of some African democracies in the 1960s and 1970s, but absolutely alien to the political process in Nigeria. This is perhaps why any analysis of the metamorphosical process of the emergence of authoritarian party in Nigeria cannot be complete without understanding the questionable democratic credentials of President Obasanjo.

The (re)emergence of Obasanjo in the political scene of Nigeria redefined the nature of politics, and marked the beginning of a political crisis in the ruling party and the Nigerian political system at large. Obasanjo was a believer in the one-party system. This was the idea he had advocated after handing over power to civilian administration in 1979. His idea of an African one-party system was premised on the political and economic nature of Africa. He argued:

In essence my present suggestion is that we adopt a one-party system... This appears to be the only procedural mechanism through which we can transcend the divisive and centrifugal forces tearing us apart and diverting our attention from the monumental task of integration and nation building. For it is within such purview that ultimate unity is always to be hoped for, the subordination of sectional opinions to

the criteria of rationality.... The one-party system like a knife is a technique. I am sure we will all agree that a knife is a knife, whether in the hand of a butcher, carver or farmer. It is technique for achieving a set goal. It is the use to which we put it that matters. Too much opposition, that is opposition pushed to the extreme, will tear the political system apart.... My insistence is that one-party system as our national rallying point would give us continuity and structural change, continuity and stability as regards fundamental policies and objectives and dramatic (but peaceful) change of our dramatis personae (cited in Mohammed 2006:12-3).

With this political belief in the mind of a leader who was elected through a political party and who by virtue of such a position became the leader of the party, the stage was set for radical political transformation to actualise such an archaic philosophy. With enormous oil monies and presidential power at his disposal, it was quite possible to actualise such an agenda.

Just barely two years after the 2003 election, the People's Democratic Party (PDP) was engulfed in an internal political crisis. According to Kura (2008), the party became crisis-ridden and identified the main problem that besieged it: the attempt to include and the actual imposition of the national chairman and other principal officers of the party by President Obasanjo. Other problems included the messy manipulation of the machinery of the party so that Obasanjo could emerge as the presidential candidate in 2003; the failed attempt at barring other parties from participation in the elections through 'day-light smuggling' of a new clause into the Electoral Act of 2001, and the destabilisation of the opposition parties. These acts in themselves are the main feature of party politics in Africa. In Nigeria, however, even students in their elementary study of social justice can discern how these strategies directly led to a tragic alienation of the masses and the 'recalcitrance of those outside the power game' (Amadasu & Amadasu 2003:121).

Another strategy that promoted the formation of an authoritarian one-party state was the edging out of all *real* and *perceived enemies* of (opposition to) this agenda, both within and outside the PDP. In this case, state resources were used to co-opt some individuals and even groups. Suberu (2006) observes that a lot of oil 'resources are controlled by the state...the party that is in control of the state, especially the central state, has a disproportionate leverage over the state. That is why PDP for example ...was growing from strength to strength through the power of patronage. I think the way the economy has affected the political party development is that it has made it possible for the party that is in control of government and so in control of economic resources [to] overwhelm the opposition and made it impossible for the opposition to think of taking over power in Nigeria.' This system of distributive patronage and largesse has further entrenched injustice and enfeebles the concept of distributive justice in Nigeria. For instance, this strategy has contributed to widening the gap between the rich and poor. It led to the consolidation *per se* of clientelism and prebendalisation of socio-economic activities, which are characteristically inimical to social justice. To this end, Epelle (2005:142) stresses that it was the conflation coupled with subversion of the people's will and desires that has thrown Nigeria into 'an orgy of violence by those whose demands on the system have not been met, and surprisingly by the state [PDP] itself'.

Against this background, there are two dimensions to violence in Nigeria since 1999: (i) violence orchestrated by poverty and (ii) violence officially caused by the PDP state to achieve its objectives. In the case of the latter, aside the use of resources, over which the party has absolute control, the state also employed security agencies to deal with dissenters. Suberu (2006) argues that the state or better still the PDP constitutionally has 'the capacity to also use the police and even INEC⁶ to remove or uproot forces that are in opposition' to it and its one-party agenda. In uprooting the

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opposition through violence the tactics of intimidation, arbitrary arrest, arson, politically engineered unrest, threat, kidnappings and outright assassinations were tactically employed. Specifically, the police have been notorious in disallowing opposition groups to hold demonstrations or meetings. This violates international codes of freedom for assembly and freedom of opinion. It also violates the Nigerian Constitution itself. These strategies incontrovertibly undermine the respect for freedom and equality, which are the basic rudiments of democracy. The magnitude of this PDP-induced violence, instability and general uncertainties clouded the eight years of the Obasanjo regime.

In relation to the magnitude of the political violence orchestrated in building a one-party democracy by the PDP and its agents, the Committee for the Defence of Human Rights (2003:31) observes that 'the spectre of political violence and assassinations in the country had become so intense that...one can still not really see the *remarkable difference* between it [civilian regime] and the days of the military' (emphasis added). The violent nature of turning Nigerian democracy into one-party authoritarianism is underscored by the number of politically motivated assassinations just in the course of the last eight years. Igbafe and Offiong (2007) provides a list, but there are many more people whose mysterious death could to date not be accounted for.

The most serious of these killings include the assassination in cold blood of the Attorney General and Minister of Justice, Chief Bola Ige, Harry Marshal and other prominent stalwarts of opposition parties. Most of the people assassinated were from opposition parties, and most of the victims either occupied strategic positions in their parties or were important political figures whose presence could thwart the PDP one-party strategy. Unfortunately, all these political murders have not been duly investigated let alone culprits prosecuted.

The second perspective of violence orchestrated by the PDP toward turning Nigeria into authoritarian one-party democracy is failure to

introduce policies of resource redistribution in the country. The policies of poverty reduction, privatisation and other economic restructuring have only aggravated the economic situation of the poor. In fact, since 1999 when democracy returned to the country, poverty has continued to grow without serious intervention to promote development. Where such interventions were introduced, the benefits were siphoned to the PDP stalwarts. It is not overstatement to state that the economic policies only widen the gap between the rich and the poor. This is perhaps why the United Nations Development Programme (2005) observed that in Nigeria 'poverty has become a way of life'. This makes people to become disenchanted with democracy. A typical example of this is the situation in the Niger Delta region, which has even gone beyond the control of the PDP government. The government consistently employs instruments of coercion, as the police and the army, to stop violence in the region, but to no avail. The unsuccessful government policies are a direct violation of the principles of social justice. There was no adequate plan to at least ensure the provision of a *needs* approach to social justice in Nigeria. In sum, these two dimensions of PDP politically-engendered violence have continued to assist the party in dominating the political system without serious challenge.

Other strategies used without restraint by the PDP in establishing authoritarian one-party democracy are: (i) controlling and undermining other institutions of democracy as INEC and the judiciary, (ii) creating factions within opposition parties, (iii) attempting constitutional reform for a third term, (iv) employing electoral malpractices, (v) using EFCC to harass, intimidate and exclude other party candidates in the democratic process, and (vi) making use of ethno-religious manipulations.

As part of the strategy to strengthen its grip on power and dominance, the PDP has undermined the electoral commission (INEC) and the judiciary. Constitutionally and by virtue of other statutory laws, such as Electoral Acts, INEC is supposed to be genuinely independent of

political manipulation by the ruling party or its agents. In controlling and manipulating INEC in a willy-nilly way, the PDP government consistently starve the Commission of funds and appoint PDP members as principal officers of the Commission. In the case of the latter, Mada (2006) argues that it is no longer an allegation or insinuation that 'many staff of the Commission are card carrying members of the ruling party'. These problems have contributed to a situation where INEC is grossly incapable of performing its duties impartially. According to Ogunsanyo (2003), INEC has never been in absolute control of its activities before, during or even after election. This means that INEC 'is a partial arbiter that exists at the mercy of [PDP] government and which can be directly or indirectly susceptible to manipulations with the consequent subversion of wishes of the people' (Akinboye 2005:307). Subversion of the people's wishes, which in itself represents a disgusting violation of their freedom to contest and elect candidates of their choice, takes place when by:

...mere subterfuge of manipulating the party lists submitted to INEC in Abuja and replacing the names on the original list, victory was declared for some individuals. This was well after the deadline has passed for submitting new names to replace disqualified ones (Ogunsanyo, 2003:16).

Apparently, in order to satisfy the interest of the ruling party, INEC was involved in both the 2003 and especially the 2007 general elections in changing names of candidates already submitted by political parties and even outrightly delisting and reregistering opposition parties' candidates and parties themselves. In similar fashion, the registration of new parties, which is a simple exercise anywhere in the world, became 'highly contentious as the ruling party (PDP) became averse to it in a desperate attempt to muzzle the political space' (Akinboye 2005:309) and denied people expressing their political rights and freedom.

Evidently, the muscling of INEC not only incapacitated it, but also prevented the Commission from conducting an acceptable election in Nigeria. INEC, in collaboration with the ruling PDP, has conducted and supervised the worst elections in the history of democracy in the world (up to that time). The extent of electoral malpractice has defied the imagination of domestic and international monitors and observers (Stakeholder Democracy Network 2007; European Union Election Observation Mission 2007; Human Rights Watch 2007b). To start with, it was apparent before the conduct of the 2007 general elections that INEC was not only ill-prepared but that it was acting on certain prescriptions of the PDP. The Commission has failed to provide an authentic voters' register, which is the first step towards conducting elections. For instance, ICG (2007:2) contends that in 'apparent support for the strategy by which Obasanjo and the PDP had sought to eliminate certain candidates, INEC disqualified a number, including the vice president, on the grounds that they had been "indicted" by a federal government administrative panel'. When this decision was overturned by several court injunctions and the Supreme Court, INEC was thrown into uncertainties and many opposition parties found themselves in internal crisis, struggling to replace their candidates. These happenings made it easier for the PDP to rig the elections. In several places, elections were not even conducted but results announced. If elections represent a mechanism through which people elect their government, provide its legitimacy and hold it to account, electoral malpractice is a total violation of the political freedom and equality. This has been the hallmark of the PDP government.

Coupled with the above is the deliberate orchestration of election-related violence as a strategy of rigging and electoral malpractice. For instance, prior to any general elections in Nigeria, leaders and members of opposition political parties are officially harassed by security agencies. ICG (2007) observes that in the week before the 2007 elections, opposition figures were harassed and arrested with a view to scuttle their campaigns, and even frighten their supporters. Police arrested

and detained the Action Congress (AC) governorship candidate in Osun State, Rauf Aregbesola, AC's leader in Oyo state, Michael Keleso, two members of House of Representatives, five members of Ekiti state House of Assembly, and many other senior supporters of the party in Gombe. Others include the Katsina All Nigeria People's Party (ANPP) chairman, Yusha'u Armiya'u, and several others. These arrests and many others were strategies of conscripting the political space for opposition parties, as no PDP leader or supporter was involved. In fact, prior to the 2007 elections, the Federal Government announced that the Inspector General of Police, Sunday Ihindero, bought 40,000 AK-47 rifles, to be used for security provision during the elections (Peter-Omale 2006). The objective was to coerce and threaten people against demanding for justice after election rigging.

The violence and intimidation induced by the security agencies led to clamping down on any individual or organisation opposed to the PDP government. For several times, the Mobile Police (anti-riot police) made raids on Africa Independent Television (AIT) during which tapes were seized and staff molested. This is in addition to a series of cases of intimidation and threat of censorship against newspapers and magazines. In developed democracies, election days are normal days, when after voting citizens would go about their normal daily lives. In Nigeria, election days are special days. They are days of violence. They are days of anguish and mourning. They are days when security agencies – police and soldiers are massively deployed to curtail outbreaks of violence. Although to a certain level the security agencies had contained the escalation of violence in several states after the rigging of the 2007 elections, security personnel were used simultaneously to intimidate and coerce opposition parties. Agande et al (2007) noted that in the 2007 elections, the police in particular were used to ruin the electoral process. INEC officials connived with them to allow underage voting, stuffing of ballot boxes and even hijacking of ballot boxes from electoral officials in favour of the ruling party. In Ondo State, for example, Chigbo (2007)

reports that soldiers and police were seen carrying ballot boxes from one polling station to another through which massive rigging was facilitated in favour of the ruling PDP. In fact, in various homes of PDP candidates, security personnel were seen providing assistance for stuffing of ballot boxes. Policemen and PDP thugs moved from one polling unit to another arresting over 300 members of Labour Party, which were mostly party agents observing the elections. Consequently, PDP agents simply stuffed ballot boxes and declared results (Chigbo 2007). Ajaero (2007) also stresses that in situations where electoral officials were bribed or 'settled' to change or falsify election results, police provided adequate shield and disallowed agents of other political parties to observe the election as provided by the Electoral Act 2006.

The involvement of security agencies, according to International Crisis Group (2007), is 'more fundamentally a symptom ... of professionalism.' However, it can be argued that the use of police and soldiers in electoral malpractice is beyond a question of professionalism. It is an issue of how they are constitutionally under the direct command of the ruling party and are manipulated to serve selfish interests. More so, when the ruling party has an agenda of institutionalising one-party regime, the security agencies become political tools of achieving such objectives. Thus professionalism or lack of it can be exploited. In an interview with Crisis Group, a retired police commissioner argued that Nigerian police has already been submissive and openly showed allegiance to the ruling party. This is largely because according to him, it is difficult to differentiate between a 'ruling party' and 'government'. For neopatrimonial and clientelistic reasons, since the President or better still the ruling party has political control over the police and the army, every officer would tend to show allegiance to him/it in order to benefit from patronage and largesse and/or to save their jobs. In sum, Human Rights Watch (2007:136-138) observed that:

Since the end of military rule in 1999 Nigeria has enjoyed the longest stretch of uninterrupted civilian government in its history

as a nation. While this period has seen some improvement in respect for civil and political rights, government actors including the police, military, and elected officials continued to commit serious and persistent abuses against Nigerian citizens.... Nigeria's police and other security forces continued to be implicated in wide spread acts of torture, ill-treatment, extrajudicial killing, arbitrary arrest, and property destruction.

These problems have affected the security agencies in discharging their professional duties. Instead of securing lives and properties and protecting freedom and social justice, security agencies are partners in undermining the provisions of social justice and human rights. This has serious implications for stable democracy in a pluralistic country like Nigeria.

Ethno-religious exploitation and manipulation is another strategy employed by the PDP to strengthen one-party authoritarianism in Nigeria. Democracy is the best system of government that could douse violent ethno-religious and regional tensions. Perhaps, as a grand strategy, Obasanjo's PDP directly attempted to set the major ethnic groups against each other in the struggle to institutionalise one-party rule in Nigeria. There was an informal pact between the so-called 'Northern oligarchy' and Obasanjo in 1998 for power sharing between the North and the South. The pact itself was undemocratic and never in the interest of the people, though it minimised the Southern people's cry against marginalisation. The pact was later denied by Obasanjo, perhaps because of his and the PDP's interest in a one-party system. Against this background and to truncate the self-perpetuation ambition of Obasanjo-PDP *vis-à-vis* institutionalising one-party democracy, the Northern oligarchy made a spirited attempt to block tenure elongation and the return of power to the region. Several individuals from the North declared their interests to contest the presidential election under all the major political parties. Counteracting this development, Obasanjo mobilised powerful

southern politicians, especially the governors through the Southern Governors' Forum (SGF) to vehemently oppose any power shift. Thus several former (then serving) governors declared their candidature for the presidential office. This marks the return of tense ethnic politics in Nigeria. Though there was no direct violation of social justice, the fact that the exploitation and manipulation of ethno-religious pluralism were intended to perpetuate one-party rule left much to be desired about the question of social justice in Nigeria. At the least, this has destabilised the PDP and ANPP, and has further thrown the Nigerian democratic process into serious complications and uncertainties.

It is discernible from the foregoing analysis that human rights and social justice have been compromised through the tactics employed by the dominant ruling party in Nigeria. This is evident in the poor human rights record and the serious social problems that continued to besiege the country since the return of democracy in 1999. It is vital to stress that the relative 'success' of cultivating a dominant one-party democracy and its attendant consequences in Nigeria is premised on institutional problems. In other words, the explanation for decadence of social justice and the making of authoritarian one-party regime lies with the character of social and political institutions in Nigeria. In this context, the next section introduces an institutional framework for extending the frontiers of social justice through party government (ruling party and opposition parties).

Extending the Frontiers of Social Justice: Towards an Integrative Institutional Framework

The provision of social justice is an institutional issue. It is determined by the nature of the political system and the capability of its socio-political and economic institutions. Where the institutions are developed and the political system is democratic, there is a possibility for the citizens of such a state to enjoy a relatively higher degree of social justice and

human rights. Thus in any analysis of social justice and in constructing a social justice framework *vis-à-vis* its provisions through the policy-agenda of a (ruling) party government, the nature of the political system and the presence of political parties are fundamental. The context of the socio-political and economic system is important in that all institutions relevant to the provision of social justice must be put in place and made capable to discharge such functions. For example, in understanding the link between political institutions and social justice provision, the national constitution, as the embodiment of the fundamental laws and principles of governance, should be the first point of focus. The nature of the constitution and how it was formulated are very important in ensuring social justice and preventing the emergence of an authoritarian ruling party. The national constitution stipulates the design and operations of party government, and the functions of and relationship between and among all institutions of governance. The constitution also catalogues the fundamental human rights and duties, the responsibility of the state in safeguarding such rights, and of course defines the political and economic contextualities of the state itself. It also made the protection and provision of those rights justifiable in that individuals whose rights are infringed upon could seek legal redress (Ojo 2006).

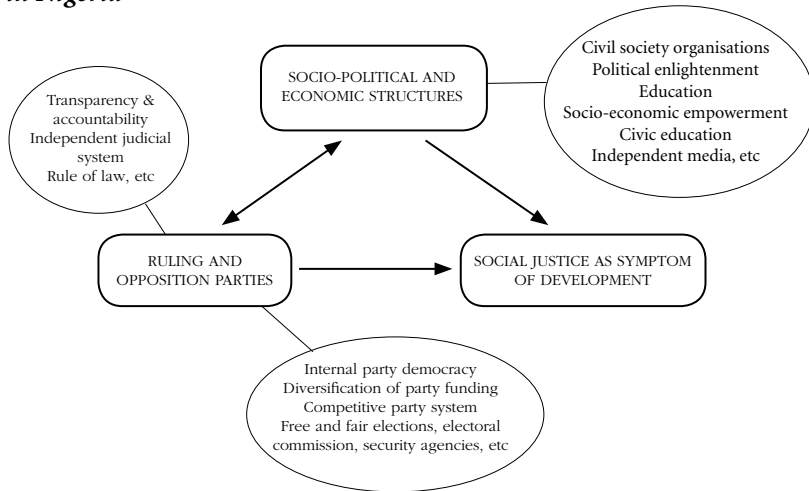
Where a constitution is designed undemocratically or enforced autocratically, as in the case of many post-military constitutions in Nigeria and other developing countries, such a constitution is likely to make the emergence of authoritarian ruling parties relatively less complex and the provision of social justice more cumbersome. For example, the 1999 Nigerian Constitution, under which the current democratic dispensation was constructed, is defective in many respects. One of these was that by commission and omission it influenced the development of an authoritarian ruling party, which is metamorphosing the democratisation process into a one-party system, and undermining the development of strong opposition parties. The constitution was so defective that it lacks legitimacy, because as International IDEA (2003:26-27) observes,

‘...the process of making the constitution allowed only a very limited consultation with the populace.... The conditions for a full, open and informed debate did not exist.’ This means that the development of a competitive party system and the responsiveness of a party government to the provision of social justice are premised on a legitimate and acceptable constitution, which designs and ensures the ‘obvious involvement of all stakeholders in fashioning its contents...’ (IDEA 2003:26-27). Irrespective of the ways a constitution is designed, it should ensure that all democratic processes are followed, so that its contents are acceptable by the people. The idea is that only a ‘people-based’ constitution, together with political will, can help in guaranteeing social justice, and making the development of authoritarian ruling parties difficult. Such a constitution would aid the development of a competitive party system, and strengthen the rule of law and electoral politics. A people-based constitution also has the merit of resolving some peculiar problems associated with federalism, especially the contentious and delicate Nigerian federalism.

Another area of consideration in the analysis of political parties cum provision of social justice is to understand what can be called ‘internal policy dynamics’ of the ruling party and other parties. Understanding the policy orientation of ruling parties and non-ruling parties is tantamount to understanding their ideology, their constitution, organisation and their key actors and activities. This would help in understanding the commitment of a particular political party to entrenching democracy and addressing the issues of social justice. It would also help to inform the commitment of parties towards introducing and implementing all relevant social and economic reforms necessary for the provision of social justice. For example, no regime would be able to ensure social justice without sound economic programmes to address poverty and social inequalities. From the foregoing discussion, a triangular integrative framework could now be envisaged in understanding the relationship between the nature of political parties, social justice and

the structure of the socio-political and economic system of a country. This could be symbolically presented as follows:

Figure 1: An integrative Framework of analysing social justice in Nigeria



The above triad shows an integrative institutional relationship between socio-political and economic institutions and political parties, as well as their responsibility to provide social justice in a particular ‘democratic’ regime. Provision of social justice in any democratic country must not be seen as mere philosophical jingling, but as a necessary prerequisite for social harmony, unity and development. As pointed out earlier, understanding the process of the making of authoritarian parties is tantamount to construing the contextual realities of social justice in a given society. Thus to institutionally analyse social justice *vis-à-vis* political parties, it is paramount to examine the environmental context.

Socio-political and economic structures are important variables, and analysts should determine the level of education, the nature of media activities, judicial system and independence, social coexistence, culture, political arrangement, political history, level of economic development,

percentage of people below international poverty line, employment ratio, and so on. While these issues are important in the making or unmaking of an authoritarian party regime, they are also vital in the wider spectrum of providing social justice.

Thus while the state has responsibility in the provision of social justice, citizens also have responsibility in this process. The state therefore has the further responsibility of creating an enabling environment for the citizens to realise their potentials as well as benefit from the social justice system in the country. This is perhaps why national constitution making is significant as it sets the institutional boundaries for the activities of both the state and its citizens, and establishes the mechanisms for government activities and the protection of all elements of social justice.

Moreover, as indicated in the above figure, there is an interwoven relationship between the nature of political parties and the socio-political and economic environment. In this relationship, there is an overlapping effect. As the environment influences the making and unmaking of authoritarian or democratic parties, the policies and activities of political parties in turn influence the socio-economic and political structures of the society. However, both the environment and the political parties logically have a serious impact on social justice, especially since it is defined as a symptom of development or underdevelopment.

When, in light of the above framework, the objective is to achieve social justice through developing a competitive party system in the general socio-political and economic environment under which political parties and other policy stakeholders operate, there is need to strengthen the activities of civil society organisations. The activities of civil society should complement the functions of government and other stakeholders towards proving and developing social justice. Similarly, the education sector must be strengthened to provide quality education. The state must also implement civic education and political enlightenment programmes, to complement the work of media and civil society

organisations in educating and enlightening citizens about social justices, rights and duties, and about workings and functions of agencies of government, such as the police, judiciary, and bureaucracy. Relevant anti-poverty policies must be introduced and implemented to address the issues of growing poverty and to economically empower the people. To achieve these objectives, ideologically differentiated political parties are indispensable.

Nevertheless, in view of the overlapping relationship between the environment and the nature of political parties, in the world of political parties there is the need for internal party democracy, diversification of party funding and finance, free and fair elections, and a competitive party system, as ways of strengthening party organisation and undermining the development of an authoritarian ruling party and repressive democracy. For these programmes and policies to succeed, both at the level of political parties and the larger socio-political and economic environment, the governmental system and administration must be characterised by transparency, accountability, an independent judiciary, the rule of law, independent media activities and other governance issues. In sum, good democratic governance with its attendant attributes is the determining linkage between the success of the social and economic reform policies and programmes (at the level of parties and in the larger environment) and the delivery of social justice as outcome of development.

Concluding Remarks

This paper examines the relationship between the process of the development of authoritarian one-party democracy and the negation of social justice. Although there is a theoretical definitional tension in the conceptualisation of social justice, there seems to be a relative agreement that provision of social justice is the distinguishing attribute of good democracy. Importantly, however, the strategies that the so-called African dominant ruling parties employ in winning elections with landslide

victories and in further strengthening their grip on power defy all logics of democracy. Through these strategies, especially as shown in the case of Nigeria, social justice is grossly undermined. This has continued to affect the quality of the democratisation process, and has created serious dilemmas and uncertainties within countries.

To address the problems of African ruling parties metamorphosing into one-party authoritarianism, the paper proposes a triangular institutional integrative framework, linking the socio-economic and political institutions of the state (defined as general environment), political parties and social justice (defined and understood as an outcome of development). The framework envisages an interwoven relationship between socio-political and economic structures and the nature of political parties, which can greatly influence the metamorphosis of ruling parties into one-party authoritarianism. In the context of the framework, both the general environment and the specific environment of political parties affect the provision of social justice. In view of the triad institutional linkages, the framework suggests reforms at both general and specific environment, which could have the capacity of changing the trends of development *vis-à-vis* social justice. Reforms at political party level could help in institutionalising a competitive party system and the development of ideologically differentiated political parties as essential safeguards against the development of authoritarian dominant (one-party) ruling parties.

However, it is important to note that the framework is not without some limitations. For example, it would be too ambitious to suggest simultaneous reforms in both the general environment and the environment of political parties. The boundary between the two environments is difficult to define. Reforms at the level of one environment could easily affect another. The same political elites are major players in the two environments. Reforms could also have unintended consequences. Despite these shortcomings, the framework has provided insight in approaching the

issues of development that could change the provision of social justice through political parties in Africa. The success of the implementation of the framework therefore squarely lies with all relevant stakeholders operating in the two environments either directly or indirectly. In other words, the success of reforms that would change the pattern of political party development *vis-à-vis* the provision of social justice as outcome of development depends on the political will of the relevant stakeholders.


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Where does Islamic Arbitration fit into the Judicially Recognised Ingredients of Customary Arbitration in the Nigerian Jurisprudence ?

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Abstract

In recent times, there has been a renaissance of the Islamic heritage in the consciousness of adherents of the Islamic faith and this has sought expression in their quests to conduct their affairs in accordance with Islamic injunctions.

This has become noticeable in areas where Islam is the predominant religion. In northern Nigeria, in the past decade, there has been a renewed focus on the Islam Shariah Law system, with six of the nation's thirty-six states symbolically adopting it in public proclamation.

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There is, however, a dearth of scholarly research on the operation of Islamic conflict resolution mechanisms in Nigeria. This situation has led to arbitrariness and uncertainty in the use of these mechanisms.

This article analyses the nature and principles of Islamic arbitration, and its applicability within the wider Nigerian legal framework *vis-à-vis* judicially recognised alternative dispute resolution mechanisms, particularly the principles and practice of customary arbitration.

Introduction

This article examines the tortuous journey of customary arbitration as a valid mechanism for dispute resolution in the Nigerian courts – from its initial acceptance, to the denial of its existence, and to the reconfirmation of its subsistence in the Nigerian jurisprudence. Particular emphasis is placed on the critical juxtaposition of the unsettled nature of the list of ingredients required for a valid customary arbitration as expounded by the Nigerian judiciary *vis-à-vis* the principles of the Islamic customary arbitration – the ‘Tahkim’. The ‘Tahkim’ is a component of the Islamic Shariah law, which system of law has been part of the Nigerian jurisprudence before the introduction of the English common law and statutes. The Shariah has been declared by the Nigerian courts as one of the sources of Nigeria’s customary law.

The Islamic Shariah – although its primary source is the Koran¹ – can be termed a jurist made law because of its development by scholars of various schools of thought.² The most influential of these schools

1 Wali v. Ibrahim (1997) 9 Nigerian Weekly Law Report (hereafter referred to as NWLR) [Part 519] p. 160 at 167 para F.

2 Other sources being the Sunna (the acts and practices of prophet Mohamed and his contemporaries), the Idjma (consensus of the opinions of Islamic scholars on issues not covered by the Koran and Sunna), the Qiyas (analogical deductions based on the afore-mentioned sources) and the Itijad (reasoning by jurists on issues not covered by the major sources).

of thought in the development of the Shariah in Nigeria is the Maliki School.³

Definition of Custom and Customary Law

It is important at this preliminary stage to consider the definitions of the terms ‘custom’ and ‘customary law’; and their nature, an exercise without which the proper scope of Islamic customary arbitration cannot be well appreciated.

There is no single definition of customary law agreed to by lawyers, jurists, social anthropologists and others who are concerned with it. This in itself is not surprising for both the term ‘custom’ and ‘law’ may be used in a number of differing senses depending upon the requirements of a writer’s approach (White 1956:86).

Black’s Law Dictionary describes *custom* as ‘habitual practice or course of action that characteristically is repeated in like circumstances’. It is –

a usage or practice of the people which by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of a law with respect to the place or subject matter to which it relates. It results from a long series of customs, constantly repeated, which have, by such repetition and by uninterrupted acquiescence acquired the force of a tacit and common consent. [It is a] habitual or customary practice, more or less wide spread, which prevails within a geographical or sociological area; usage is a course of conduct based on a series of actual occurrences (Black 1999:385).

3 Alkamawa v. Bello (1998) 8 NWLR [Part 561] p. 173 at 182 para G; Obilade 1979 at 83 Section 14 Sharia Court of Appeal Law Cap.122 Northern Nigeria. Laws 1963. Other prominent schools being the Hanbali, Hanafi and the Shafi schools.

The term customary law has also been judicially defined in *Zaidan vs. Mohassen* as:

Any system of law not being the common law and not being a law enacted by any competent legislature in Nigeria but which is enforceable and binding within Nigeria as between the parties subject to its sway.⁴

However, as Austin (1954:162-163) has stated, it must be noted that in practice customary laws are positive laws fashioned by judicial legislation based upon pre-existing custom. Now, till they become the grounds of judicial decisions upon cases, and are clothed with legal sanctions by those in sovereign positions, the customs are merely rules set by options of the governed and sanctioned or enforced morally.

Elegido (2000:57) has pointed out, however, that –

A custom does not acquire legal force because a judge applies it: it already has legal force, and he will come to this conclusion by applying the tests prescribed by the law.

It is only in the light of the above definitions of the terms ‘custom’ and ‘customary law’ that one can conceptualise custom as cutting across geographical groupings, sociological groups and sub-groupings. These include: tribal groupings out of which native customs develop, socio-economic groupings, out of which trade and business customs emanate and socio-religious groupings, out of which faith-based customs evolve. To this end, the Supreme Court of Nigeria has classified the Islamic Shariah as part of the Nigerian customary law, on account of it not being a statutory body of law, but nonetheless enforceable and binding within Nigeria as between the parties subject to its sway.⁵

4 *Zaidan vs Mohassen* (1973) 11 S.C. p. 1 at 21, also reported in the *Journal of African Law* 2 (1) 1976.

5 *Zaidan v. Mohassen supra*, *Adesubukan v. Yinusa* (1971) NNLR p. 77 and *Ahmadu Usman v. Sidi Umaru* (1992) 7 NWLR [Part 254] p. 377. See also *Adesubokan v. Yinusa*

Development of Islamic Law in Nigeria

The earliest adjudged date of arrival of Islam and the Shariah into the geographical region comprising today's Nigeria is between 1085 and 1097 CE. During the centuries that followed, Islam spread both through conquest by *jihad* and proselytising by itinerant preachers (Adetokunbo 2001:197). During the colonial era, Islamic law was regarded by the courts as forming part of customary law (Yakubu 2002), and this remained so until the enactment by the Northern Nigerian government of the Native Courts Law and Moslem Court of Appeal Law, both of 1956, which introduced for the first time an explicit distinction between the Islamic law and the customary law (Anderson 1962:617-631). Subsequently however, the enactments of the states which were carved out of the northern region of Nigeria have regarded Islamic law as part of customary law. For example, section 2 of the Katsina State High Court Law of 1991 provides that 'customary law' included Islamic Law. The fact that Shariah Penal Code Laws have recently been enacted in some states of the northern part of Nigeria has retracted from the position held hitherto, and now suggests that Shariah or Islamic Law is not part of customary law. For example, section 29(3) of the Kano State Shariah Penal Code Law 2000 provides thus:

Islamic and Muslim laws shall be deemed to be statutory laws in all existing laws in the state.

Section 29(4) of the Kano State Shariah Penal Code Law 2000 further provides thus:

The provisions of existing laws in the state which define customary law to include Islamic or Muslim law are hereby accordingly amended and such provisions shall be deemed statutory laws wherever they occur.

(1971) Northern Nigeria Law Reports 77 and *Mariyama v. Sadiku Ejo* (1961) Northern Region of Nigeria Law Reports p. 81.

Despite these recent provisions, it must be noted that these changes in legislation relate only to Shariah penal law and as such their deeming of Islamic law as written law should only be limited to the criminal aspect of the law. And this is logical, when viewed in the light of section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999 which forbids the conviction of any person under unwritten laws.⁶ Written laws are defined in the same section of the Constitution as laws enacted either by the National or a State House of Assembly. By this definition, all Shariah penal provisions not enshrined in the Penal Code Law of Northern Nigeria were deemed unconstitutional and unenforceable prior to the enactment of the Shariah Penal Codes referred to above.

Also to be noted is the fact that not all the recent Shariah Penal Codes either expressly or by implication amend or abrogate the previous provisions regarding Islamic law as customary law, except the Shariah Penal Code of Kano State referred to above. It is submitted that, by virtue of the above reasoning, all non-penal Islamic laws except in Kano State are still to be regarded as forming part of Nigerian customary law.

The foregoing notwithstanding, some jurists and scholars (Oba 2002; Aboki 2006) have queried the classification of Islamic law as part of customary law, and the only ground for their query has been that the Shariah, being a divine law, ought not to be classified with other customary laws which are man made. With utmost respect to these jurists and scholars, reference must be made to the pre-Seventh Century Arabian customs which were some of the sources of what have become the Shariah (Coulson 1959:13ff) and the sunna.⁷ Also to be considered, are the elements used in the continuing dynamism of the Shariah's development.

6 *Aoko v. Fagbemi* (1961) 1 All N.L.R. p. 48

7 Practices of Prophet Mohammed and his contemporaries.

These include the *istihsan*,⁸ *urf*⁹ and *hiyals*,¹⁰ which though they are of customary nature are nonetheless regarded as legitimate sources of Islamic law.¹¹

In the last thirty-five years, there has been a burgeoning interest by Nigerian Muslims, particularly the young and educated, of the northern and south-western parts of Nigeria, in their Islamic heritage (Ballantyne 1988:317ff; Ambali 2001:83ff.).¹² This interest is evident in the clamour for the wider use of the Shariah in more and more spheres of life, beyond its traditional expression in worship, family relations and limited application of Shariah criminal law.¹³ This drive has led to the flourishing of Shariah compliant commercial transactions, financial products and *Halal*¹⁴ investment options which are civil and commercial expressions of their Islamic heritage. It is worthy of note that Nigeria is the only country outside the Arab peninsula and Afghanistan where Islamic law is extensively applied (Anderson 1962:626). However, like all human endeavours, these Islamic civil and commercial expressions, as they become more widely utilised, will naturally lead to conflicts which will require management and resolution. The natural trajectory for the *Halal* savvy Islamic young and upwardly mobile will be to seek Islamic avenues of dispute resolution, which will include not only the traditional option

8 Judicial precedent.

9 Non-Islamic customs which are not incompatible with the Shariah

10 Legal fictions.

11 For more in-depth analysis see, Libson 1997:131-155. See also Meek 1925:269.

12 See also Muhammed 2001. Nigeria has a population of about 140 million people, 50% of which are Muslims and over 65% of which are under the age of 40 years. Source <<http://www.nigerianstat.gov.ng>> and <<http://www.cia.gov/library/publications/the-world-fact-book>>

13 The Shariah is an all encompassing way of life which governs among others, *ibadah* – worship, *Al-Ahwal al Shakhisiyyah* – personal law, *Mu'amalat* – law of commercial transactions, *Ahkam Sultaniyyah* – sovereignty and governance, *Akhlaq* – morals, *Al-Adab* – ethics, *al-Qada* – judicial administration, *Uqubat* – religious offences and *Hudud* – offences committed against fellow human beings.

14 Conduct or practice carried out strictly in accordance with Islamic injunctions.

of litigation, but also Islamic alternative dispute resolution mechanisms as *sulhu* (mediation) and *tahkim* (arbitration). Therefore, there is a need to research these areas of dispute resolution, and propel the building of dispute resolution structures and the training of personnel to provide these services. This paper is a contribution towards meeting the first of the three above identified needs.

On the Existence of Customary Arbitration in Nigeria

The jurisprudential history of customary arbitration in Nigeria as a mechanism for conflict management and dispute resolution extends far back into the pre-colonial era. And this was recognised by the Western styled judicial institutions of the colonial government.

Among the earliest examples of judicial recognition accorded the concept of customary arbitration were the decisions in the Gold Coast (now Ghana) by the West African Court of Appeal (WACA), which became binding on Nigerian courts and still form part of Nigerian case law. The West African Court of Appeal, in *Assampong v. Amuaku & Ors*¹⁵ held that:

... [W]here matters in dispute between parties are, by mutual consent, investigated by arbitrators at a meeting held in accordance with native law and custom and a decision given, it is binding on the parties and the Supreme Court will enforce such decision.¹⁶

The same was held in a long string of authorities including *Foli v. Akese*,¹⁷ *Kwasi v. Larbe*,¹⁸ and *Stool of Abinabina v. Enyimadu*.¹⁹ This line of authorities was followed by the Nigerian courts in a long string of

15 (1932) 1 WACA p. 192.

16 (1932) 1 WACA p. 201.

17 (1930) 1 WACA p. 1.

18 (1952) 13 WACA p. 76.

19 12 WACA p. 171.

decisions including *Inyang v. Essien*,²⁰ *Njoku v. Felix Ekeocha*,²¹ *Mbagbu v. Agochukwu*,²² and *Idika v. Erisi*²³

However, this tide changed in the late 1980s when the Court of Appeal denied the existence of customary law in Nigeria. In *Okpuruwa v. Ekpokam*,²⁴ particularly in the lead judgement of Uwaifo JCA²⁵ (as he then was), it was pronounced that:

I do not know of any community in Nigeria which regards the settlement by arbitration between disputing parties as part of its native law and custom.²⁶

The above holding of Uwaifo JCA found an ally in the earlier published opinion of A.N. Allott (1960:126), a scholar of traditional African law, who opined that:

The term 'arbitration'...in the mouth of the African, refers to all customary settlements of disputes other than by the regular courts. The aim of such a transaction is not the rigid decision of the dispute and the imposition of penalties, so much as reconciliation of the two parties and removal of the disturbance of the public peace.

It is respectfully submitted that the pronouncement of Uwaifo JCA, was without due regard to the existing arbitration customs in Nigeria, one of which is the Islamic customary arbitration. Arbitration, known in Arabic as 'Tahkim',²⁷ is recognised by Islamic law and provided for by all its sources including the writings of all the major Islamic schools of thought, albeit with slight variations as to practice and procedures.

20 (1957) 2 Federal Supreme Court (hereafter referred to as FSC) p. 39.

21 (1972) 2 East Central State Law Report (hereafter referred to as ECSLR) p. 90.

22 (1973) 3 ECSLR p. 90.

23 (1988) 2 NWLR [Part 78] p. 563.

24 (1988) 4 NWLR [Part 90] p. 554.

25 Justice of the Court of Appeal

26 (1988) 4 NWLR [Part 90] p. 572.

27 An arbitrator is referred to as 'Hakam'.

It is pertinent to note that arbitration as a concept of conflict resolution was assimilated by Islamic law from the practices of the communities of the pre-seventh century Arabia²⁸ which had a virile mercantile culture and had developed arbitral mechanisms to facilitate trade in a community where there was no organised system of governance and judicial structure (Fathy 2000:31).

Islamic law scholars point to a couple of passages in the Koran as the basis for the recognition of arbitration by Islamic law.²⁹ Some of these passages are:

If you fear a breach between them twain (the man and his wife), appoint (two) arbitrators one from his family and the other from hers; if they both wish for peace, Allah will cause them reconciliation.³⁰

...[B]y Allah, they will not believe until they make thee an arbitrator of what is in dispute between them and find within themselves no dislike of that which thou decide and submit with submission.³¹

Happily, the Supreme Court has subsequently in a string of decisions,³² confirmed the existence of customary arbitration in Nigeria. In *Odonigi v. Oyeleke*,³³ the Supreme Court has held that:

[T]he decision of the Court of Appeal in *Okpuruwa v. Ekpokam* (1988) 4NWLR pt 90 p 554 that our legal system does not recognise the practice of elders or natives constituting themselves as customary

28 Islam came into being after the revelation of the Koran to prophet Mohammed in the 7th Century A.D.

29 See generally, Rahman 1982:50-59.

30 Koran 4:35.

31 Koran 4:65.

32 *Agu v. Ikewibe* (1991) 3 NWLR [Part 180] p. 385, *Ojibah v. Ojibah* (1991) 5 NWLR [Part 191] p. 296, *Okere v. Nwoke* (1991) 8 NWLR [Part 209] p. 317, *Ohiaeri v. Akabeze* (1992) 2 NWLR [Part 221] p. 1, *Awosile v. Sotumbo* (1992) 5 NWLR [Part 243] p. 514, *Igwego v. Ezeugo* (1992) 6 NWLR [Part 249] p. 561 and *Osuigwe v. Nwihim* (1995) 3 NWLR [Part 386] p. 752.

33 (2001) 6 NWLR [Part 708] p. 12.

arbitration to make binding decisions between parties in respect of land or other disputes cannot in all cases be correct.³⁴

The Judicially Recognised Ingredients of Customary Arbitration

Though the issue of the existence of customary arbitration has been settled, there is still uncertainty as to what exactly constitute the ingredients of a valid customary arbitration (Igbokwe 1997:201, Nwauche 1999, Elombi 1999:803, Ndukwe 1999:191).

The courts have to-date offered disparate combinations of ingredients of customary arbitration. This uncertainty is epitomised by the Supreme Court decision in *Egbesimba v. Onuzuike*³⁵ where the lead judgment per Ayoola JSC,³⁶ the seemingly concurring opinion of Ogundare JSC and the dissenting opinion³⁷ of Niki Tobi JSC, all set out three different admixtures of ingredients, from the three equally diverse lists of ingredients expounded in *Agu v. Ikewibe*.³⁸

The leading judgment of Ayoola JSC declared that:

The four ingredients usually accepted as constituting the essential characteristics of a binding arbitration are:

- i. Voluntary submission of the dispute to the arbitration of the individual or body.
- ii. Agreement by the parties either expressly or by implication that the decision of the arbitrators will be accepted and binding.

34 (2001) 6 NWLR [Part 708] p. 27-28 para G-A.

35 (2002) 15 NWLR [Part 791] p. 466.

36 Justice of the Supreme Court

37 Though this dissenting opinion, according to Tobi JSC, was not on the ingredients of a valid customary arbitration, but on whether sufficient evidence had been led to prove those ingredients of the report ((2002) 15 NWLR [Part 791] pp. 529-530).

38 (2002) 15 NWLR [Part 791] p. 466.

- iii. That the arbitration was in accordance with the custom of the parties
- iv. That the arbitrators reached a decision and published their award.³⁹

The concurring judgment of Ogundare JSC sets out a different combination of ingredients, to wit:

For a customary arbitration to be valid, it must be shown:

- a. That parties voluntarily submit their disputes to their elders or chiefs as the case may be for determination; and
- b. That there is an indication of the willingness of the parties to be bound by the decision of non-judicial body or freedom to reject the decision where not satisfied;
- c. That neither of the parties has resiled from the decision so pronounced.⁴⁰

While in his opinion, Tobi JSC set out the following ingredients:

- a. That there has been a voluntary submission of the matter in dispute to an arbitration of one or more persons;
- b. That it was agreed by the parties, either expressly or by implication, that the decision of the arbitrators will be accepted as final and binding;
- c. That the said arbitration was in accordance with the action of the parties or their trade or business;
- d. That the arbitrators reached a decision and published their reward;
- e. That the decision or award was accepted at the time it was made.⁴¹

39 (2002) 15 NWLR [Part 791] p. 505 para D-E.

40 (2002) 15 NWLR [Part 791] p. 507 para. F-H.

41 (2002) 15 NWLR [Part 791] p. 530 para A-C.

From all the judicial decisions reviewed spanning from those of the West African Court of Appeal in the pre-independence era to the latest decision of the Supreme Court at the beginning of this 21st Century, the following seven ingredients of customary arbitration have emerged:

- i. The voluntary submission by parties to arbitration.
- ii. Submission to bodies or persons recognised as having judicial authority under the custom of the parties.
- ii. Agreement by parties beforehand to be bound by the decision of the arbitral tribunal.
- iv. Conduct of the arbitral proceedings in accordance with the custom of the parties.
- vi. Non-withdrawal of any party before publication of the award by the arbitral tribunal.
- vii. Publication of the award.
- viii. Acceptance of the arbitral award by the parties.

A Critical Juxtaposition of the Judicially Recognised Ingredients of Customary Arbitration *vis-à-vis* the Practices of the Tahkim

Voluntary Submission

Voluntary submission is the basis of arbitration and it is universal to the concept of arbitration under all legal systems.⁴² The pivotal concept herein is the volition, and the word 'voluntary' is defined as that which is, 'Done by design or intention, intentional, proposed, intended or not accidental, intentionally and without coercion' (Black 1999).

Nnaemeka-Agu JSC (as he then was) harped on the voluntary nature of submission, for arbitration in accordance with custom to be valid.

⁴² With the exceptions being court-ordered arbitration and arbitrations pursuant to statute.

In his dissenting opinion in *Agu v. Ikewibe*,⁴³ his Lordship picked on the portion of the plaintiff's pleadings where it was averred that the plaintiff 'summoned' the defendant before the chiefs and elders of the parties' community and he reasoned that the word 'summoned' employed in the pleadings, drafted by a lawyer, must have been deliberate, and should be interpreted technically because it originated from the old common law writ of *summoneas*.⁴⁴ His lordship went further to opine that since the word summons connotes a command to appear, a subsequent submission to such summons could not be voluntary. He however concluded that the arbitral panel in question, even if it had purported to summon the defendant, had no power to do so.

It should be noted that it is usually difficult for parties to an already festering dispute to agree to submit to an arbitration. This was well enunciated in the Ghanaian decision of *Yaw v. Amobie*,⁴⁵ where it was pronounced that:

It is very rare for two people who are quarrelling to meet and agree together that they would submit their dispute to arbitration. The usual thing is that one party makes a complaint to somebody, the other party is sent for, and if he agrees, the party to whom the complaint is made arbitrates upon the dispute.⁴⁶

Furthermore, the fact that a party was 'summoned' or 'invited' by a prospective arbitral tribunal based on a complaint made by an aggrieved party and he responds, does not translate into a submission. In a chronological sequence, there must be a complaint lodged with a potential arbitrator by an aggrieved party, then the invitation of the other party, and subsequently, a meeting of all stakeholders (here the aggrieved party,

43 (1991) 3 NWLR [Part 180] 385 pp. 420 – 425 para F-B.

44 This writ was of judicial authority, and when issued was a command to appear before a judge or court.

45 (1958) 3 West African Law Reports p. 406.

46 (1958) 3 West African Law Reports p. 408.

the invited party and the potential arbitrator). The early stages of these meetings are akin to the pre-arbitration meetings practised in common law arbitrations. It is at these early stages that preliminary issues are sorted and procedures mapped out. These will include whether or not the ‘invited’ or ‘summoned’ party will submit to arbitration before the proposed arbitrator.

In *Asare v. Donkor & Serwah II*⁴⁷ the Ghanaian Supreme Court found objectively from the evidence adduced that the party summoned responded to a chief’s call out of respect, but that he never agreed to submit the dispute to arbitration by that chief.

It follows here et seq that a party could be forced to a meeting by a traditional summons to which a threat of sanction for failure to show up is attached, but beyond that the voluntary submission of such a party must be sought and obtained before any subsequent arbitration proceedings can be validly commenced.

Establishing the voluntary nature of a submission after an ‘invitation’ or ‘summons’ is a matter of evidence, and the Ghanaian Court of Appeal in *Nyaasmhwe & Anor v. Afibiyesan*⁴⁸ has suggested three ways in which evidence of this may be led, viz:

1. The payment by both parties of an arbitration fee to the arbitrator, prior to the alleged arbitration;
2. Expressly written⁴⁹ or oral agreement to submit to arbitration and

47 (1962) 2 Ghana Law Reports (hereafter referred to as GLR) p. 176 at 179-180.

48 (1977) 1 GLR p. 27.

49 It should be noted that the view expressed in a large number of Nigerian judicial authorities is that writing is unknown to customary law. See *Niger Const. Ltd. v. Ogbim* (2001) 18 NWLR [Part 744] p. 83 at 93 para F-H and *Egwu v. Egwu* (1995) 5 NWLR [Part 396] p. 493. However, customs have also been held by the courts to be dynamic, and are what the present generation understands and practises, as opposed to ancient traditions: see *Owonyin v. Omotosho* (1961) 1 All NLR p. 304. Hence if evidence is led to the effect that the particular customs of parties to an arbitration now recognise transactions in writing, it is submitted that the courts will be obliged to enforce such

3. Other conducts which in the opinion of the court unequivocally and irresistibly point to such a submission.

In *Maidara v. Halilu* it was held that Islamic personal law applies to all Muslims, but for Islamic law of contract to apply, parties though Muslims, all have to consent to its application.⁵⁰ Submission is the basis of arbitration under the Shariah and thus must be mutual and emanate from the volition of all the parties. The Shariah prescribes that disputing parties are free to appoint any arbitrator of their choice and in fact parties may agree that a party to the dispute arbitrates, here relying on that party's conscience to do justice (Zeyad 2003:2).

Submissions can be in writing. The dispute between Ali Bin Abi Talib (the fourth Caliph) and Muawiya Bin Abi Sofian, over who was entitled to the seat of the Caliph, resulted in the war of Siffrin, which was referred to arbitration via a written submission by both parties on the 13th of Safar, 37 Anno Hegira,⁵¹ at the instance of Muawiya (Houtsma 1987:407).⁵²

customs by virtue of section 14 of the Evidence Act. Particularly interesting is the fact that courts have been admitting in evidence, written awards of customary arbitrations without challenge: see *Aniekan v. Aniekan* (1999) 12 NWLR [Part 631] p. 491. The above notwithstanding, the fact that writing is known to Islamic Law, which is a variety of customary law, cannot be discounted, more so as it is a fact that the Shariah itself is a codified law.

50 (2000) 13 NWLR [Part 684] p. 257.

51 Corresponding to 13 July 657 A.D. in the Gregorian calendar.

52 Cf the Nigerian Supreme Court decision in *Opebiyi Ors v. Noibi & Ors* (1977) NSCC p. 464, where it was pronounced that a dispute over leadership succession cannot be submitted to arbitration. It is to be noted that though the community seeking to arbitrate its dispute in this case was wholly a Muslim community, no evidence of the existence of Islamic customary arbitration (Tahkim) was led in evidence before the court, as required by law when seeking to prove the existence of any custom: section 14 Evidence Act Cap 112 LFN 1990. This decision was with prejudice to the fact that Mohammed Bello JSC (later Chief Justice of Nigeria) who delivered the lead judgement of the Court was a renowned Islamic law jurist. It is submitted that the Tahkim is applicable to all types of disputes except those that are expressly forbidden by Islamic law, Nigerian statutes or on account of public policy.

Submission to Bodies or Persons Recognised as Having Judicial Authority Under the Customary Law of the Parties

This ingredient first came into reckoning in the decision in *Inyang v. Essien*,⁵³ but it has since been distinguished by Karibi-Whyte JSC in *Agu v. Ikewibe*,⁵⁴ when he held that the Federal Supreme Court (in *Inyang's* case) misconceived the facts in *Assampong v. Amaku* which it sought to rely on,⁵⁵ because in that case (*Assampong's* case), the arbitral tribunal was not a judicial body.

Sadly, however, the courts have continued to pronounce that submission to elders or chiefs is an ingredient for a valid customary arbitration. With respect, it is posited that this position is a generalisation which is incongruous with the facts and realities of some arbitral customs. This is particularly the case in arbitrations based on oath-taking before priests, arbitrations before age groups, women's groups, trade and business groups. The tribunals in the foregoing arbitral customs are obviously not constituted of elders and chiefs.

Under Islamic Shariah arbitration, the qualifications for arbitrators are similar to those for holding the position of a judge (Saleh 1984:22, Zeyad 2003:2), and in principle, a woman can be appointed a judge (Sahcht 1996:188), and therefore by implication an arbitrator. It is worthy of note, that the Islamic Shariah excludes the following classes of persons from assuming judicial office (Sahcht 1996:125):

- i. Persons who have in the past been punished for a grave offence;
- ii. Minors and
- iii. Slaves.

As stated above, parties may even agree that a party to the dispute arbitrates, here relying on that party's conscience to do justice (Zeyad 2003).

53 (1977) NSCC p. 464

54 (1977) NSCC p. 408 para B-D.

55 (1932) 1 WACA p. 192.

Furthermore, there is no restriction on the number of arbitrators that may be appointed. In the matter between Ali and Muawiya, parties appointed one arbitrator each, a total of two arbitrators (Houtsma 1987:407).

From the above, it is unjustifiable for this ingredient of submissions only to elders and chiefs to remain as a pre-requisite for a valid customary arbitration. The proper course to take is to allow each custom to determine the qualifications for its own arbitrators. Parties to court actions relying on customary arbitration would also be advised to plead and lead evidence to prove such qualifications.

Finally, it is submitted that the imposition of this ingredient by the courts amounts to judicial legislation over customary law matters. This with respect is beyond the jurisdiction of the courts, whose jurisdiction is to interpret the *lex lata* (law as it is) and no more.

Prior Agreement of Parties to be Bound by the Arbitrator's Award

This ingredient is fundamental to any proceedings which is tagged arbitration. The whole essence of arbitration – as distinguished from settlement, mediation and conciliation – is that the decisions reached at the end of arbitral proceedings are binding. Therefore, any proceedings involving the resolution of a dispute between or among parties by a third party who acts in a non-judicial capacity and whose decisions are not binding, cannot properly be called an arbitration.

It is submitted that this ingredient of prior agreement to be bound by the award of an arbitrator is inextricably connected with the ingredient of voluntary submission. This is because the word 'submission' itself is a technical term, which means:

A contract between two or more parties whereby they agree to refer the subject in dispute to others *and to be bound by their award* (Black 1999:1426. Emphasis supplied.)

The concept of ‘Tahkim’ is so clear under the Islamic Shariah tradition of the Maliki School and its connotation that once parties submit their dispute to an arbitrator, his award binds them. Hence there is a presumption that any party to a Tahkim submission intends to be bound by its proceedings and award.

Conduct of Arbitration in Accordance With the Custom of the Parties

This is arguably the most fundamental of all the ingredients of customary arbitration, because the pivot of customary arbitrations is that such arbitrations are conducted in a distinct way and in accordance with the peculiar procedures set out by the customs of the parties or the customs to which they submit their dispute.

Two questions arise with regard to this ingredient and they are here-under set out and discussed:

Can a non-Muslim subject himself to Islamic arbitration?

Where a dispute is referred to Islamic arbitration, can another system of laws such as the common law be employed as the substantive law, while Islamic arbitration guides the procedural aspect thereof?

On the first question raised above, it appears that a non-Muslim is allowed to subject his dispute with a Muslim or with a fellow non-Muslim to Islamic law and the jurisdiction of a Shariah court. The Shariah Court of Appeal Law⁵⁶ provides that that court shall have jurisdiction and apply Islamic law:

...[W]here all the parties to the proceedings (whether or not they are Muslims) have by writing under their hand requested the court that

56 Cap.122 Northern Nigeria Laws 1963, which was applicable to the entire Northern Region and has now been adopted and re-enacted by the several states carved out of that Region.

hears the case in the first instance to determine the case in accordance with Muslim law.⁵⁷

And this provision has been adopted and incorporated almost verbatim in the Constitution of the Federal Republic of Nigeria, 1999.⁵⁸ From the foregoing, it can be inferred that non-Muslims may submit their disputes to Islamic customary arbitration.

With respect to the second question raised above, under Islamic Shariah law, where one of the parties to an arbitration in accordance with the Shariah is a non-Muslim, the parties may decide to apply another law for the substantive determination of the dispute, while the Shariah guides the procedural aspects thereof. However, such a law employed for the substantive aspect, must not be contrary to the principles enshrined in the Koran and the Hadith. For example, interests on loans are forbidden by the Shariah. This accommodation of non-Islamic custom by the Shariah is referred to as the doctrine of '*Urf*'.

Non-Withdrawal of any Party Before the Publication of the Award

This ingredient seems to suggest that parties are entitled to withdraw from arbitral proceedings any time before the award is published. However, it varies from custom to custom as to whether it is possible to withdraw after a submission to arbitration, and, if permitted, within which time frame it should happen and which procedures should be followed. Under the Islamic Shariah, particularly of the Maliki School of thought persuasion, once parties voluntarily submit to an arbitration, they cannot withdraw at any stage thereafter.⁵⁹

57 Cap.122 Northern Nigeria Laws 1963, Section 11(e); cf. *Agbebu v. Bawa* (1992) 6 NWLR [Part 245] p. 80 at 90.

58 Constitution of the Federal Republic of Nigeria, 1999, Section 277(d).

59 Zeyad 2003, endnote 26; *Jika v. Jika* (1991) 3 NWLR [Part182] 708 at 714 A-B.

Publication of the Award

Publication here refers to the conveying of an arbitral award to all parties to an arbitration, as opposed to the use of the word in common parlance, which connotes the making available of an information to the general public. This limited use of the term underscores one of the cornerstones of arbitration, which is the privacy ensured in proceedings, except of course where the parties to the arbitration are whole communities as has been observed in some communal disputes.⁶⁰

The Supreme Court in *Odonigi v. Oyeleke* held that the failure to convey an arbitral award to all the parties vitiates the whole process.⁶¹

It is submitted that the answer to the question whether or not the award of a customary arbitration can or ought to be reduced into writing is a matter to be gleaned from individual customs.

It appears that publication of awards is universal to arbitration irrespective of legal tradition, as it is the logical end point to any arbitration. To this extent, publication of arbitral awards is also integral to Islamic customary arbitration proceedings.

Post-Award Acceptance of Award by the Parties

This ingredient developed out of the denial of the existence of binding customary arbitration in Africa and the attempt to dress such proceedings in the toga of negotiations for compromised settlements by scholars like Allott (1960). Elias (1956:212) also followed in the same path, when he opined that:

It is well accepted that one of the many African customary modes of settling disputes is to refer the dispute to the family head or an

60 See *Opebiyi Ors v. Noibi & Ors* in footnote 53 above, where a community of Muslims sought to arbitrate the leadership succession dispute amongst themselves.

61 (2001) 6 NWLR [Part 708] p. 29 para A-B.

elder or elders of the community for a compromise solution based on the subsequent acceptance by both parties of the suggested award which becomes binding only after such signification of its acceptance. (Emphasis supplied)

It ought also to be noted that the cardinal distinguishing factor of arbitration from other Alternative Dispute Resolution mechanisms, is the binding effect of the decision of a private adjudicator voluntarily consented to by parties to a dispute. Anything short of this falls within the realm of the other third party facilitated settlements like conciliation and mediation.

It should be noted further, that an agreement between parties to submit their dispute voluntarily to private adjudication is a contract and as such they should be entitled to all the privileges and duties of same.

Additionally, this ingredient of the post-award opportunity afforded a party to resile, flies in the face of the doctrine, that it is in the interest of the society that there be an end to adjudicatory proceedings.

The greatest danger this ingredient poses if it remains is that customary arbitral processes will be sentenced to a purgatory of some sort where their decisions are in an uncertain state or at worst in an unending flux. This is because every party who loses in a customary arbitration will opt to resile from the award and this is aptly captured in the words of Bailay CJ in *Ekua Ayafie v. Kwamina Banea*, cited with approval by the West Africa Court of Appeal in *Larbi v. Kwasi* that:

... after the arbitration was concluded, the Defendant objected to the award because it was against him. The Plaintiff, no doubt, would have objected had the award being [sic] but his way.⁶²

In Islamic arbitration, where an award is delivered, parties are bound by it⁶³ and such an award is enforceable as a judgment of a court, by a *kadi*

62 Elias 1956:80.

63 Cf Sahcht 1996:10.

(judge). This is because an arbitrator has no such powers of enforcement (Zeyad 2003:19). The Koran (4:64) declares that:

... [B]y Allah, they will not believe until they make thee an arbitrator of what is in dispute between them and find within themselves no dislike of that which thou *decides* (*kadayta*) and submit with submission. (Emphasis and translation supplied.)

The word *kadayta* used in this passage refers to an authoritative and binding decision in the manner of a court's judgment. This interpretation is held by the Maliki,⁶⁴ Hanbali and Hanafi schools of thought with only the Shafi's holding otherwise (Zeyad 2003). However, where an award is contrary to tenets of Islam or the doctrines of the Maliki school, then a *kadi* before whom the award is brought for enforcement may set it aside (Sahcht 1984:189).

Conclusion

It is clear from the foregoing analysis that only three out of the seven identified judicially recognised ingredients of customary arbitration are in tandem with the practices and procedures of Tahkim – Islamic customary arbitration of the Maliki School's interpretation – which holds sway in the Nigerian territories. These ingredients are namely: voluntary submission, pre-submission agreement to be bound by arbitral awards, and the publication of awards.

It appears that the preponderance of customary arbitration disputes which have come before the Nigerian appellate courts for adjudication have originated from the Ibo customs of south-eastern Nigeria, which though they bear keen similarities to one another, are not absolutely homogenous, nor are they wholly representative of the

64 *Jika v. Jika* (1991) 3 NWLR [Part182].

customs of other communities in Nigeria, the Muslim *umma*⁶⁵ inclusive (Potiskum 1990:111).

Now, it is from these Ibo customs that the Nigerian courts have sought to deduce universal 'ingredients' of customary arbitration. With the utmost respect to their lordships, the trend of crystallising a set of universal ingredients for 'arbitration' customs practised in more than one community is antithetical to the very nature of customs, which is their variety and peculiarity in relation to the communities from which they have evolved.

The use of the term 'ingredients' as universally applicable to the subject matter of customary arbitration is a misnomer with respect to the individuality and distinctiveness of the several customary law traditions under which arbitration is conducted.

It is here submitted as an alternative, that what the courts ought to do is to formulate a set of universal validity tests, which though not exclusive in themselves, will be aimed at securing equitable administration of justice through the mechanism of customary arbitration, the results of which the courts will hold as final, binding and in respect of which no litigation may be commenced, as the doctrine of *estoppel* will be applicable to their decisions. To this end, the following validity tests are suggested by the author:

1. Voluntary submission by all parties to an arbitral tribunal of their choice.
2. Conduct of the arbitration in accordance with a custom mutually agreed to by the parties (both for substantive and/or procedural aspects):⁶⁶

65 A term used to describe the Muslim community as a socio-religious and cultural grouping, transcending racial and territorial classifications.

66 See analysis above under the sub-heading 'Conduct of Arbitration In Accordance With the Custom of The Parties'.

Which custom(s) must not be repugnant to natural justice, equity and good conscience nor contrary to public policy⁶⁷ and neither incompatible with the provisions of the Constitution of the Federal Republic of Nigeria, 1999⁶⁸ nor any other enactment.

3. That proceedings be held in a judicial manner based on adduced evidence and that the subsequent award be based on the merits; and
4. The publication of the award by the arbitrator(s) to all the parties.

Any other customary dispute resolution mechanism not in consonance with these tests should not be properly termed customary arbitration, though its practice may be valid among those subject to its sway.

Finally, it is submitted that when next the Nigerian appellate courts have an opportunity to adjudicate over the existence and ingredients of a valid Islamic law arbitration, emphasis should be placed on facts adduced in proof of such custom⁶⁹ and where such is lacking, the court may order *suo motu* for additional evidence to be adduced of such custom, or send such matter back to the trial court for retrial on such grounds. This suggested line of reasoning finds support in the appellate court dictum in *Ogun v. Asemah* where it was held that ‘... customs are peculiar to the localities where they operate and they need facts to establish them in any litigation.’⁷⁰

67 Section 14 Evidence Act, Cap 112 Laws of the Federation of Nigeria, 1990.

68 Section 1(3).

69 There is also a need for legal and legal-anthropological scholars to carry out field surveys on the prevalence and actual practices of Islamic arbitration in Nigeria to serve as checks on judicial decisions in the same sphere. See Holleman 1973:599ff.

70 (2002) 4 NWLR Part 756 p. 208 @ 241-2 para G-E.

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Book Review

Gulliver's Troubles: Nigeria's Foreign Policy after the Cold War

Adebajo, Adekeye & Mustapha, Abdul Raufu (eds) 2008

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Reviewed by Garth le Pere *

This elegant book covers an expansive thematic mosaic. Its sixteen chapters provide incisive analytical coverage, conceptual insights and empirical richness, pointing to the factors and imperatives which have shaped Nigeria's foreign policy since the end of the Cold War. That it succeeds so admirably is a tribute to the editors and well-chosen authors. Each chapter helps to impose order on this complex mosaic.

Nigeria is no ordinary country: it is Africa's most populous and its third largest economy. Its polity experiences ongoing fragility and its democratic base is rather tenuous, yet it exercises tremendous power and influence in its sub-region, in Africa and on the global stage. It is the sixth largest oil exporter in the world, yet the scourge of poverty

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and underdevelopment afflicts the majority of its 130 million people and this has been exacerbated by perennial bad governance and debilitating corruption. In its 48 years of independence, the country has had a chequered political history, punctuated by seven military regimes and failed attempts at forging a calculus of democracy. The country's citizens have acquired a dubious reputation for ingenuity in creating niches in the global criminal underworld. Thus it is hardly surprising if, in the words of its former foreign minister Ibrahim Gambari, the country '...has teetered between confidence and conflict, and between exuberance and exhaustion'.

This backdrop frames the historical and contemporary issues that have informed and animated Nigeria's conduct in African and global affairs. There is an excellent introduction by Adekeye Adebajo. His teasing polemic sets the normative mood for the book: 'Over its nearly 50 years of independence, Nigeria has been reduced to a giant with clay feet'. How the giant has performed is defined by three concentric circles which also provide the book's explanatory and organisational framework: the domestic, regional, and external. In the domestic context, five chapters present different dimensions of Nigerian politics that have been consequential for its foreign policy conduct. Abdul Raufu Mustapha's chapter examines how the country's 'fractured' nationhood, its social cleavages and troubled identity have negatively shaped and influenced its foreign relations. This is nicely complemented by Ibrahim Gambari's reflective chapter on major historical turning points in Nigeria's domestic politics and the evolution of theory and practice in its foreign policy. The other chapters are equally instructive in chronicling the politics of the foreign service and the making of the Nigerian diplomat in a country with over 250 ethnic groups; the interface between security prerogatives and foreign policy, especially the prominent role of the military and the emergence of ethnic militias; and the way in which oil wealth has created pathologies of inequality, exploitation and repression that bring Shell

and political elites into direct confrontation with restive minorities of the Niger Delta.

The regional narrative is captured by four finely nuanced chapters that locate Nigeria's foreign relations in its African neighbourhood. In this regard, Akinjide Osuntokun's chapter is especially relevant in its treatment of how the differing colonial progenies – British, French, Spanish and Portuguese – have influenced Nigeria's regional outlook. Regionalism comes under the spotlight in Kate Meagher's perceptive chapter on informal economic networks, with Nigeria providing much of the gravitational pull for informal trade. This, however, has its own foreign policy challenges as far as formal trade and monetary integration regimes are concerned. An equally absorbing chapter is Adebajo's careful deconstruction of Nigeria's attempt to bring and maintain peace in Liberia and Sierra Leone, highlighting what he calls 'the myths and realities of Pax Nigeriana'. The strategic-political interface between Nigeria and South Africa is brought to life by Chris Landsberg through the prism of the countries' collaboration in putting together the new architectures of the African Union (AU) and the New Partnership for Africa's Development (NEPAD).

Nigeria's independence in 1960 was the pivotal moment which defined its international role. As the 99th member of the United Nations (UN), Nigeria has been steadfast in upholding principles of multilateralism and it was especially its bold anti-colonial and anti-apartheid stances that earned it great respect and admiration. Its international profile was profoundly influenced by interactions with the UN, the Commonwealth and the European Union (EU), or what Martin Uhomoibhi, in his chapter, calls 'a triple web of interdependence'. Nigeria's aspirations to a permanent seat on the UN Security Council will always be coloured by its fragile ethnic and social fabric and unstable domestic environment. But crucially, Nigeria has also championed the cause of developing countries through the Non-Aligned Movement and the Group of 77 (G-77) where

their marginalisation on world affairs has been an ongoing concern. The remaining chapters are critical and refreshing appraisals of important bilateral relations. Kaye Whiteman looks at relations with Britain which he describes as ‘...a complex mixture of the circumstantial and the continuous...moving from reasonably cordial to differing levels of animosity and tension’. The boundaries of relations with the United States (US), according to Gwendolyn Mikell, are circumscribed by the ‘sphere of influence’ of Britain. Yet through policy players on both sides, important links have been forged in support of economic diplomacy, security cooperation and democratisation but also with Nigeria as a strategic supplier of oil. Relations between Nigeria and France are rooted in the tense and acrimonious politics of *Françafrique*. Thus, as Jean-François Médard reports, relations ‘...have been characterised since the outset by distrust, hostility and conflict’. With great foresight, the editors have included a chapter on China. Sharath Srinivasan skilfully synthesises the logic of China’s strategic engagement in Africa but unfortunately, does not provide enough of an empirical account of how this has played out in Nigeria.

There are challenges aplenty for Nigeria’s foreign policy, especially with a change of guard since the significant but deeply flawed elections of April 2007. Critically, how it meets these challenges will depend on how it balances the demands and dynamics of the three concentric circles that underpin its foreign policy. It is almost axiomatic that as Nigeria goes, so goes Africa. This book is path-breaking in helping us to understand why this ‘giant with clay feet’ will continue to shape the fortunes of our continent and indeed, the world. As such, it will be a standard reference on the subject for many years to come.