

2014 NATIONAL CONFERENCE: MONEY DOWN THE DRAIN OR HARBINGER OF A NEW NIGERIA?

Chukwunonso Nathan Uwaezuoke
Chukwuemeka Odumewu Ojukwu University, Uli,
Igbariam Campus Anambra State
E- mail: cnuwaezuoke2003@yahoo.com

INTRODUCTION:

On 17th March 2014, the then president of the Federal Republic of Nigeria finally bowed to years of pressure from divers sources and convened a conference made up 492 members drawn from different strata of Nigerian society at the National Judicial Institute, Abuja to deliberate on the “Nigerian Agenda”¹ President Jonathan had earlier on 30th August 2013 affirmed the belief of his administration in the right of the nation’s constituent parts to come together to discuss how they will continue to live in peace and unity². However this Conference did not come cheap. About ₦ 7 billion was said to have been budgeted for the Conference³ although this sum was said to have been later reduced because there was a drop in the number of delegates from 571 delegates to 492 delegates who attended the Conference.⁴ Two issues emerge here. The first issue is whether President Jonathan had powers under the law to convene and spend such money on the Conference which has been described by the current president, Muhammadu Buhari, as a waste of public fund⁵. Indeed a prominent Nigerian lawyer had gone to court to challenge the convening of the Conference by President Jonathan⁶. The other issue is whether the contents of the resolutions of the Conference⁷ can form foundation of a “new” Nigeria. This paper intends to examine both issues in line with the existing legal framework and proffer solutions to the issues raised in the findings.

POWER TO CONVENE THE CONFERENCE

Section 5(1) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) “the Constitution” vests the executive powers of the Federation of Nigeria on the President. The president is to exercise this power:

*** Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam, Anambra State (formerly Anambra State University) Email:cnuwaezuoke2003@yahoo.com

¹ Saharareporters.com/2014/03/17. Jonathan inaugurates-national-conference-urge-delegates-focus-nigerian-agenda (accessed on 26/3/2015)

² “Jonathan may convene Sovereign National Conference” www.osundefender.org/?p=121374 (accessed on 9/7/2015)

³ www.nigerianintel.com/2013/12/30/budget.2014-govt-to-n11b-on-national-dialogue-world-economic-forum/ (accessed 26/06/2015)

⁴ www.punchng.com/news/fg-to-cut-national-conference-budget/(accessed 26/6/2015)

⁵ “Spending 7bn on Confab a waste of public funds- Buhari” www.informationng.com/2014/03/spending-n7bn-on-confab-a-waste-of-public-funds-buhari.html (accessed 26/6/2015)

⁶ Indeed, a prominent lawyer Dr. Tunji Abayomi filed a suit at Abuja Federal High Court, FHC/ABJ/CS/167/2014, to stop President Jonathan from convening the Conference unless authorized by legislation from the National Assembly. www.dailypost.ng/2014/03/05/jonathan-power-convene-national-conference-obasanjos-ex-lawyer/ (accessed 9/7/2015)

⁷ Irrespective of whether President Jonathan had powers to convene and spend money on the Conference or not.

1. Personally or
2. through the Vice- President⁸ and ministers of the government of the Federation or officers in the public service of the Federation

Commenting on the clause that the executive powers of the Federation shall “*vest in the President*” in section 5, Prof. Nwabueze opined that although section 5 seems to be a simple declaration, its apparent simplicity only serve to mask complex constitutional issues. One of these issues is whether the clause is a grant to the president of the whole of the executive power of the Federation?⁹ According to him there are two views on this. The first view is that the vesting clause in the section is not a grant of power but simply an amplification of the title “chief executive”, and that the powers of the president are limited to those specifically granted to him either in the Constitution or other laws¹⁰. The other view is that clause vesting executive powers in the president constitutes a grant of all executive powers of which the Government is capable.¹¹ Nwabueze, however, feels that the most commonsensical view of the clause is to regard it as a grant of power subject to the limitations and restrictions of other provisions of the Constitution¹².

The plenitude of these powers in section 5 (1) extends to execution and maintenance of:

1. the Constitution¹³
2. all laws made by the National Assembly¹⁴
3. all matters with respect to which the National Assembly has for the time being power to make laws¹⁵

⁸ Prof. B.O. Nwabueze notes that the office of the Vice- President is an office existing by the Constitution independently of the President although it has no separate and independent executive powers of its own. (Nwabueze, B.O, *The Presidential Constitution of Nigeria*, (London, C.Hurst &Co. (Publishers) Ltd. 1982) p.112)

⁹ Nwabueze, B.O, *The Presidential Constitution of Nigeria*, (Op. Cit) p. 88

¹⁰ Ibid

¹¹ Ibid, p. 89.

¹² Ibid

¹³ Prof. Nwabueze see “execution and maintenance of the Constitution” as implying a power and a duty in the president to execute the business of government in all its ramifications, to protect the instrumentalities established by the Constitution for the purpose as well as government property, and to preserve the government and the nation by ensuring their stability, security and safety. The idea of “preserving the government and the nation by ensuring their stability, security and safety” being linked with the doctrine of necessity which Nwabueze sees as qualifying inviolability of the Constitution in the sense that in certain emergency situations the Constitution can be temporarily set aside if the stability, security and safety of the State is imperiled. For the doctrine of necessity, which Nwabueze sees as being implied the written Constitution of many nations including Nigeria, four conditions must exist (i) there must exist an imperative necessity arising from an imminent and extreme danger affecting the safety of the state or society; (ii) action taken to meet the exigency must be inevitable in the sense of being the only remedy; (iii) the action taken must be proportionate to the necessity i.e. it must be reasonably warranted by the danger which intended to avert (iv) it must be of temporary character limited to the duration of the exceptional circumstances or until legislature is able to enact the necessary legislation to authorize it. See *Presidential Constitution of Nigeria*, Op. Cit. p.91- 97.

¹⁴ Nwabueze posits that “execution of laws made by the National Assembly” involves more than taking specific action required by particular statutes but rather action on the “law” viewed as a mass forming a system. See *Presidential Constitution of Nigeria*, Op. Cit. p. 90..

¹⁵ Section 5 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

This third aspect, *all matters with respect to which the National Assembly has for the time being power to make laws*, may be susceptible to several interpretations. A possible interpretation, being that the President, and others wielding executive powers¹⁶, may exercise such powers in all areas which the *National Assembly has for the time being power to make laws* irrespective of whether the National Assembly has made any legislation on the area or not. This interpretation, however, goes against the rule that the provisions of the Constitution be not interpreted to conflict with each other. A more plausible interpretation, which accord with recognized rule of interpreting the Constitution is encapsulated in following position. Section 4 of the Constitution provides that legislative powers of the Federation shall vest in a National Assembly for the Federation which shall consist of a Senate and House of Representatives¹⁷. The plenitude of this power is to make laws for the peace, order and good governance of the Federation or any part thereof with respect to:

1. Matters in the Exclusive Legislative List set out in Part 1 of the Second Schedule of the Constitution¹⁸
2. Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the extent prescribed¹⁹
3. Any other matter with which the National Assembly is empowered to make laws in accordance with the provisions of the Constitution²⁰

To Prof. Nwabueze, section 4 has two connotations which is that the National Assembly has dual power to make laws on the one hand as a branch of the Federal Government and on the other hand for the Federal Republic of Nigeria. The National Assembly is authorized to make laws for the Federal Republic of Nigeria for its peace, order and good government. In this sense, according to him, the entire legislative sovereignty of the Federal Republic of Nigeria is vested in the National Assembly. Therefore, he further argues, the legislative power of the National Assembly to make law for the Federal Republic of Nigeria is not limited to matters specified in the exclusive and concurrent list. It includes, pursuant to Section 4(4)(b) “any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.”²¹

It is pertinent to note that the Constitution does indeed vests the National Assembly powers to make laws on matters that are neither in the Exclusive legislative list nor in the Concurrent legislative list²².

The implication of discourse so far is that there must be an “existing law”²³, irrespective of the purpose made²⁴, for the President²⁵ to have a platform to exercise

¹⁶ The Vice President and ministers of the government of the Federation and officers of the public service of the Federaation.

¹⁷ Section 4 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹⁸ Section 4 (2) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹⁹ Section 4 (4) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

²⁰ Section 4 (4) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

²¹ Olisa Agbakoba “Can the National Conference provide Legal Basis for New Constitution” m.news24.com/Nigeria/MyNews24/can-the-National-Conference-provide-legal-basis-for-new-constitution-2013/008 (accessed 26/6/2015)

²² An example is section 12(1) of the Constitution.

²³ The matter legislated on must be in the Exclusive legislative list or Concurrent legislative list or any matter which the Constituion has authorized the National Assembly to make law on.

his executive power under the Constitution²⁶. The President is left with apparently no Constitutional option in this respect. Even the powers execute and maintain the Constitution, as wide as it appears to be, does not in any way give the President powers to override the Constitution except in situation of emergency imperiling the stability, safety and security of the nation in which case the doctrine of necessity will be implied to *temporarily* set aside the Constitution in order to deal with the emergency situation effectively. The Constitution order will then be restored as soon as the situation is effectively contained.

From our examination, all purported exercise of executive power by the President must be based on the Constitution or the provisions of a law. There is no indication that any provision of the Constitution or an Act of National Assembly authorized President Jonathan to convene the 2014 National Assembly²⁷. This situation led to early legal hurdle that the Conference faced²⁸. In the absence of any authorization by the Constitution or an Act of the National Assembly, our view is that President Jonathan has no legal backing to convene 2014 National Conference²⁹. It may be argued that there is nothing stopping the President from gathering his friends to discuss on important national issues. But the issue is can he spend such a huge amount of public funds on such a venture?

We now examine whether the huge sum spent on the Conference can find any justification under the Constitution.

POWER TO SPEND MONEY ON THE CONFERENCE

The Constitution provides that all revenue or other moneys raised or received by the Federation (not being revenues or other moneys payable under the Constitution or any Act of the National Assembly into any fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation³⁰. The Constitution goes on to provide that no money shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by the Constitution or where the issue of those moneys has been authorized by the Appropriation Act, Supplementary Appropriation Act or

²⁴ When made, as Professor Nwabueze contends “for the peace, order and good governance” when they are legislating for Federal Republic of Nigeria and or matters in the Exclusive and Concurrent legislative list when they are acting as a branch of the Federal Government.

²⁵ Or any other person exercising executive powers

²⁶ Which includes convening a National Conference.

²⁷ There is neither any provision of the Constitution nor a legislation from the National Assembly convening of the Conference. The doctrine of necessity will not also avail the President to disregard the Constitution because, apart from the fact that there is no imminent and extreme danger to the stability, safety and security of the nation to warrant the convening of a National Conference, the convening of a Conference whose outcome has no clear cut way of being implemented does not solve the problem of any perceived “emergency”.

²⁸ See footnote 7. Indeed, this suit was later

²⁹ Indeed in its suit on 12 March 2014 at the Federal High Court, Anuja challenging the convening of the Conference, an NGO, Legal Defence and Assistance Project (LEDAP) had argued, amongst others, that the activities of the Conference amounted to an usurpation of the powers of the National Assembly as area which the Conference purportedly deliberated on fell into areas that only the National Assembly was competent to legislate on www.scannewsnigeria.com/breaking-news/ledap-filed-suit-to-challenge-legality-of-national-conference / (accessed 11/7/2015)

³⁰ Section 80 (1).

an Act passed to that effect³¹. In addition, no money was to be withdrawn from any public fund of the Federation other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorized by an Act of the National Assembly³². Further, even where moneys are authorized to be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, it must be in the manner prescribed by the National Assembly³³. Indeed, the President is mandated to prepare and present before each of the House of the National Assembly at any time in each financial year estimates of the revenue and expenditure of the Federation for the following financial year³⁴. The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by the Constitution) shall be included in a bill, to be known as the Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein³⁵. Further, if in any financial year it is found that either the amount appropriated by the Appropriation Act for any purpose is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act, a supplementary estimate showing the sums required be laid before each House of the National Assembly and the heads of any such expenditure shall be included in a Supplementary Appropriation Bill³⁶. Where the Appropriation Bill in respect of a financial year has not been passed into law by the beginning of the financial year, the President may authorize the withdrawal of moneys from the Consolidated Revenue Fund of the Federation for the purpose of meeting expenditure necessary to carry on the services of the Government of the Federation for a period not exceeding six months or pending the coming into operation of the Appropriation Act (whichever is earlier). However such withdrawals shall not exceed the amount authorized to be from the Consolidated Revenue Fund of the Federation under the provision of the Appropriation Act passed by the National Assembly for the corresponding period in the immediately preceding financial year, being an amount proportionate to the total amount so authorized for the immediately preceding financial year.³⁷

Nwabueze notes that the Appropriation or Supplementary Appropriation Act does two things: it both grants supply and appropriates it to specific services. However an Appropriation Bill does not provide the legislature with an insight into the services for which supply is sought to be appropriated because the Bill merely indicates the heads of expenditure without describing or explaining them in details. However this will not be taken to mean that legislature just approves expenditure without knowledge of the services for which it is expended because, according to him, details of these expenditure are supplied by the estimates of revenue and expenditures which the President is required to have prepared and laid before the National Assembly separately from the Appropriation Bill.³⁸

In addition, the National Assembly may by law make provisions for the establishment of Contingencies Fund for the Federation and for authorizing the President, if satisfied

³¹ Section 80 (2)

³² Section 80 (3)

³³ Section 80 (4)

³⁴ Section 81 (1)

³⁵ Section 81 (2)

³⁶ Section 81 (4)

³⁷ Section 82.

³⁸ Nwabueze, B.O., *The Presidential Constitution of Nigeria*, Op. Cit, pp. 240-241.

that there is an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from the Fund to meet the need³⁹. However, where such advance is made, a Supplementary Appropriation Estimate shall be presented and a Supplementary Appropriation Bill shall be introduced as soon as possible for the purposes of replacing the amount so advanced.⁴⁰

It is clear from these provisions that it will be very difficult, if not impossible, for the executive arm of the Federation⁴¹ to legally spend money on any major project without legal authorization as envisaged by the Constitution.

₦ 7 billion was initially budgeted for the Conference⁴². As we saw earlier in this paper, that sum could not have been spent without clear legal backing of law⁴³. As required by the Constitution⁴⁴ this sum was sent, as part of the Appropriation Bill for 2014, to the National Assembly. It scaled the hurdle and became part of the 2014 Appropriation Act that was passed by the Senate on 10 April 2014 despite opposition from members of the opposing All Progressives Congress (APC) party⁴⁵. This implies that the appropriation of ₦ 7 billion by President Jonathan in the organization of the Conference was backed by law and therefore proper.

HIGHLIGHTS OF SOME DECISIONS OF 2014 NATIONAL CONFERENCE

The 2014 National Conference discussed several issues touching almost all area of the lives of Nigerians. The decisions reached on the areas discussed bothered on proposed constitutional amendment, amendments of existing status and policy directions. For instance, on Agriculture the Conference recommended a strengthening of the provisions of the Water Decree 101 of 1993 through a review of the 1999 Constitution (as amended) to include the definition of access to water resources, the establishment of water protection zones, regulation on raw water abstraction and sanctions for water misuse, pollution, and punishment for those who sabotage assets and frustrate efforts to provide water for all. The amendments should include: Access to safe and adequate water as a Fundamental Human Right, Trans-boundary waters should be placed on the Exclusive Legislative List (Interstate waters are already on the Exclusive Legislative List), Water for domestic, commercial, industrial, irrigation, power and other uses should be placed on the concurrent list, Set specific standards and limits for the various uses of water—domestic, commercial, industrial, fisheries and other agricultural uses to prevent water pollution and also fix penalties for non-compliance⁴⁶. On Citizen, Migration and Related matters, the Conference recommended amendment of Section 153 (1) of the 1999 of the Federal Republic of Nigeria to make the National Identity Management Commission a Federal Executive Body and also an amendment of Part 1 of the 1999 Constitution, item 8 to read: “*census enumeration of Nigerians*”. It also recommended that maintenance of machinery for data should be in the Concurrent List and that the National enumeration exercise should remain the responsibility of the Federal Government. It further recommended in this respect that the Integrated National Database should be included in the Concurrent Legislative List⁴⁷. The Conference, in addition, recommended an

³⁹ Section 83 (1)

⁴⁰ Section 83 (2)

⁴¹ Including the President

⁴² See footnote 4

⁴³ Whether it is in the provisions of the Constitution or any other law made by the legislature.

⁴⁴ Section 81

⁴⁵ www.vanguardngr.com/2014/04/-senate-passes-n4-7trn-appropriation-bill/ (accessed 10/7/2015)

⁴⁶ The National Conference 2014: Final Draft of Conference Report (August 2014), p. 529.

⁴⁷ Ibid, 547

amendment of section 26 (2) (a) to read *“any person who is or has been married to a citizen of Nigeria”*. Section 29 (4) (b) should be repealed in view of the provision of Section 29 (4)(a). Section 29 (4) (b) to ensure that the definition of full age is anyone that is 18years and above. There was also a recommendation for a Constitutional amendment to make the provisions on socio-economic rights in Chapter II of the Constitution justiciable. Section 45(1) should be amended to include Section 42 and read as follows: *“Nothing in section 37, 38, 39, 40, 41, and 42 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society ...”* Section 45 to ensure that derogatory clauses pertaining to the exercise of fundamental human rights are contained in the same section of the Constitution. Section 147 (3) should be amended to read as follows: *“Any appointment under subsection (2) of this section by the President shall be in conformity with the provisions of section 14 (3) of this Constitution. Provided that in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each State⁴⁸.”* Section 42 (2) to be amended to read thus: *“A person shall not be discriminated against on grounds of ethnic group, place of origin, sex, religion political opinion, social or economic status, disabilities or circumstances of birth”*. Amendment of section 25 to entrench gender equality. Section 25 to allow a Nigerian woman to enjoy the rights vested on all Nigerians either at her place of origin or that of her husband. Delete Section 6 (6) (c) of the Constitution⁴⁹. To grant access to court with respect to Chapter II as a necessary step towards the actualisation of the fundamental objectives and directive principles of State policy. Adopt and amend Item No. 26, Page 28 of the *Report of the Presidential Committee on Review of Outstanding Issues from Recent Constitutional Conferences (The Justice Alfa Belgore Report)*, with a caveat to read *“On the matter of Indigeneship, the Committee recommends that the current Constitutional position should be maintained but that a new provision should be inserted into the Constitution to read: “The right of any Nigerian citizen to be resident or domiciled in any part of Nigeria shall not be abridged. Such a resident shall enjoy all rights, privileges and facilities in the place of his/her choice, provided that such a person meets his/her basic civic obligations which persons in that area are subject to. A person born in a State or who marries an indigene of a State acquires automatic residence status in the State.”⁵⁰* The Conference also provided for the merge of Chapter II and IV of the Constitution of the Federal Republic of Nigeria 1999, (as amended) thus making Chapter Two justiciable under our law. The African Charter on Human and People Rights domesticated as part of Nigerian law be incorporated into the Constitution⁵¹. Participatory Budgeting should be entrenched in our Constitution, to cause the citizens to participate in deciding how they are governed, including choosing projects they want in the Appropriation Laws and the contractors who will execute these projects. The Conference also recommended the retention of the National Minimum Wage on the Exclusive Legislative List⁵² and significantly the removal of the provision on restriction of legal proceedings (immunity clause)⁵³. Separate the offices of the Attorney General of the Federation/ State from that of Minister and Commissioner of Justice⁵⁴. 70 years to be the uniform retirement age of

⁴⁸ Ibid, 548

⁴⁹ Ibid, 549

⁵⁰ Ibid, 550

⁵¹ Ibid, 564

⁵² Ibid, 565

⁵³ Ibid, 597

⁵⁴ Ibid, p. 652

all judges of superior courts of record⁵⁵. Include the phrase “*not less than 35% affirmative action*” in the 1999 Constitution (as amended); and in the Constitution of political parties; as it relates to appointive positions to be held by women⁵⁶. The Conference also made several other ground –breaking suggestion like the establishment of An Anti-Corruption Court⁵⁷. The Conference also made recommendation on the status of the Land Use Act. It recommended the retention of the Land Use Act in the Constitution but on also suggested that it be amended to take care of those concerns, particularly on compensation in Section 29(4) of the Act to read; land owners should determine the price and value of their land based on open market value. In addition it recommended the amendment of the Customary Right of Occupancy in Section 21 of the Act in these terms, “*Customary right of occupancy should have the same status as Statutory right of occupancy. It should also be extended to urban land.*” The Conference further recommended the amendment of Section 7 of the Act; restriction on the right of persons under age of 21 to be granted statutory right of occupancy to read: “*restriction of persons under the age of 18, because an adult according to the Child’s Rights Act is a person who has attained the age of 18*”⁵⁸. It also recommended the creation of a State police at the State level, for any state that requires it, to be established funded and controlled by the State⁵⁹. The Conference in addition decided that Nigeria shall retain a Federal system of Government⁶⁰ and to create additional States in each of the six (6) geo-political zones to bring the number of States in each zone to nine (9). The Committee further recommended creation of eighteen more States as follows: Apa State from the present Benue State; Edu State from Niger State, Kainji State from the present Niger and Kebbi States, Katagun State from the present Bauchi State, Savannah State from the present Borno State, Amana State from the present Adamawa State, Gurara State from the present Kaduna State, Ghari State from the present Kano State, Etiti State from the present South East Zone Aba State from the present Abia State, Adada State from the present Enugu State ,Njaba-Anim State from the present Anambra and Imo State, Anioma State from the present Delta, Ogoja State from the present CrossRiver State, Ijebu State from the present Ogun State, New Oyo State from the present Oyo State, Oil Rivers (from Rivers and Akwalbom states) and Ose State (from Ondo State)⁶¹. There is also a provision of merger for States that wish to do so following the procedure spelt out by the Conference⁶². The Conference also resolved that the position of the Office of President to rotate between the North and the South and amongst the six (6) geo-political zones⁶³. Also the Conference recommended that the minimum qualification for elective offices in Nigeria be a University first degree⁶⁴. Similar matters like cross-carpeting, public funding of political parties and holding of position in the public service and a political party are all prohibited⁶⁵. The

55 Ibid, P. 657.

56 Ibid

57 Conference Report p. 669

58 Ibid, P. 675.

59 Ibid, p. 683

60 Ibid, p. 707

61 Ibid, p. 708

62 Ibid

63 The National Conference 2014 Final Draft of Conference Report (August 2014) p. 711-712

64 Ibid, p. 723

65 Ibid, p. 722. Indeed the Conference recommended that any person, being an elected official, who cross-carpet will lose his seat.

Conference further recommended the establishment of a Constitutional Court vested with the jurisdiction to hear and determine all pre- and post-election matters at all levels for all elections provided for in the 1999 Constitution (as amended), all issues relating to the Enforcement of Fundamental Rights as provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as amended)⁶⁶. In addition, there is a recommendation for a Constitutional amendment to reflect that no elected official is sworn in until all litigations on the elections are concluded⁶⁷. The Conference also resolved that the Constitution be amended to allow independent candidates to contest election⁶⁸. States of the Federation are also empowered by the Conference Report to have their own Constitution. The Conference also recommended free medical services for retired public officers⁶⁹. Apart from these, there are many other recommendations by the Conference⁷⁰.

WAY FORWARD FOR 2014 NATIONAL CONFERENCE RESOLUTIONS

So far the present Federal government in Nigeria has not shown any enthusiasm towards implementing the decisions of the Conference despite the huge sum spent in organizing it. The Conference, and even former President Jonathan, may have foreseen this development⁷¹. The Conference thus recommended⁷²:

- (1) Amendments to the Constitution which are proposed by the Conference should be embedded into the 1999 Constitution and the resultant document should be regarded as the 1999 Constitution (as amended);
- (2) If the volume of amendments embedded in the 1999 Constitution would make it a new document which should be regarded as making it a new constitution then a referendum will be needed to bring the new Constitution into existence⁷³.

As a panacea to the possibility of leaving the decisions and recommendation of the Conference to remain in the doldrums, it is suggested that some laudable decisions and recommendations of the Conference in various area of national affairs discussed be incorporated into private member bills in these areas for possible passage into law by the National Assembly.

It is also recommended that any future organisation of a National Conference, in other to be effective, should be done in conjunction with the National Assembly. This is because there are ample provisions in the Constitution affording the National Assembly an opportunity of acting as a catalyst in the molding of opinion bothering

⁶⁶ Ibid, p. 724.

⁶⁷ Ibid, p. 725

⁶⁸ Ibid, p. 740

⁶⁹ Ibid, p. 792

⁷⁰ Some of the resolutions were quite innovative while the others are capable of causing controversy either because of conflict with human rights norms and some other essential part of Nigerian Constitution.

⁷¹ As we pointed out in this paper, President Jonathan clearly lacked the power, under the Constitution or any other enabling statute, to convene such a conference to discuss issues touching every aspect of Nigerian life as there was an existing National Assembly and a Constitution to handle such issues.

⁷² The National Conference 2014 Final Draft of Conference Report (August 2014) p. 898

⁷³ The Conference did not outline under which existing legal frame work it intended to achieve this issue of referendum. This is because under the 1999 Constitution referendum is used mainly on the issue of creation new states and boundary adjustments in section 8.

on what the National Conference set out to achieve. Along this line Prof Nwabueze suggests that pursuant to Section 4(4)(b) “any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.” the National Assembly can exercise the powers in section 4(1) to repeal Decree 24 of 1999 which is the legal basis of the 1999 Constitution and replace it with a brand new Constitution. According to him, the legal position will be different if the National Assembly is merely altering the Constitution which is covered by Sections 8 and 9. In support of this position, Prof. Nwabueze cites the example of what Parliament did in 1963 when it replaced the whole of 1960 Independence Constitution with the Republican Constitution of 1963. All Parliament did in 1963 was to repeal the Order-in-council, made by the Queen of England providing for the Independence Constitution and replaced it with a brand new Republican Constitution. Further that since Decree 24 is an existing law under Section 315(4) of the 1999 Constitution and thereby being a law with respect to which the National Assembly has power under Section 4(1) to make law, it is deemed to be an Act of the National Assembly and can therefore be repealed⁷⁴.

Prof. Nwabueze concludes by noting that it would be inconceivable and manifestly absurd that there should be an existing law as defined in Section 315(4) which is beyond the power of the legislative authority of the sovereign state of Nigeria to repeal⁷⁵. Olisa Agbakoka, agreeing with Prof. Nwabueze, opined⁷⁶,

So the way I see it is that, assuming we can agree on the content of the Constitution that can work for us, it should be very easy to constitutionalise the agreements reached at the National Conference by invoking the special legislative powers of the National Assembly and enacting those agreements reached into a supreme Constitutional document. If this process is followed, the Constitution as an outcome of the Sovereign will of the People will have the stamp and authority of Nigerians, validated by a referendum before enactment by the National Assembly...

This position may be faulted on the ground that if the National Assembly repeals Decree 24 of 1999 then it will have no other power remaining since the basis of the existence of the National Assembly is based on the provisions of the 1999 Constitution which was legally birthed by the Decree 24 of 1999. A possible response to this position is that the National Assembly can do so and if it does so, it would not have done so under the existing legal order rather it would have brought about a revolution that will sweep away the existing legal order and introduced a new legal order⁷⁷.

Further, it had been suggested⁷⁸ that the outcome of such a National Conference should be subjected to a referendum in other to make it legitimate and people

⁷⁴ Footnote 17

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ This is idea was espoused by Kelsen, H., “The Pure Theory of Law” (1934-1935) cited in Freeman M.D.A, *Lloyd’s Introduction to Jurisprudence*, 8th Edition (London, Sweet & Maxwell and Thomson Reuters, 2008)p. 337

⁷⁸ By the Nigerian Bar Association some month before President Jonathan convened the National Conference

driven⁷⁹. Senator Ndom Egba⁸⁰, while dismissing as unconstitutional, this call to subject to outcome of the National Conference to referendum insisted that the only provision for referendum in the Constitution was in the case of State creation and that the drafters of the Constitution deliberately excluded referendum from the Constitution amendment process⁸¹. Ezegwu Anene agreeing with Ndoma Egba, suggests that the only way the outcome of the National Conference can be subjected to referendum is to include it in any amendment of the Constitution⁸².

CONCLUSION

In this paper we examined the Constitution to determine whether the convening of a National Conference in March 2014 by President Jonathan and which a whopping sum of ₦ 7 billion was spent to organize was proper in law. Our examination threw up some interesting conclusions. Whereas, there is no clear provision of the Constitution empowering President Jonathan to convene the Conference, the money appropriated to organize the Conference surprisingly got the approval of the National Assembly as required by law thereby presenting a strange scenario where money lawful approved by the National Assembly was used for a venture that has doubtful legal validity. The Conference nonetheless concluded its deliberations and submitted its Report. The question remains what to do with the Report: do we allow it to rot despite the huge sum spent in organizing it? Or do we harness the myriad of remarkable innovations crafted by the Conference in ushering a new and enduring Federation built on peace, unity and progress. There are overwhelming reasons to choose the latter. It is hoped the present Federal government will choose this route.

⁷⁹ www.dailyindependent.com/2014/01/footnote-to-president-jonathan-on-the-national-conference/ (accessed 10/7/2015)

⁸⁰ A Senior Advocate of Nigeria and former Senate Majority leader

⁸¹ Footnote 44

⁸² Ibid