

**H**OW long, by the way, is the American Constitution? It depends on how one configures "length". The original document produced and signed into law in 1787 was contained in only FOUR parchment pages. As a printed text, it is about 17 pages. If you add its 27 amendments, the Constitution in its current incarnation comes to about 34 printed pages. These facts are worth stating if for no other reason than the fact that starting from the 1979 Nigerian Constitution, all our Constitutions have been structurally based on the American presidential system of government. However, while the American Constitution, with all its amendments is only 34 pages long, the Nigerian Constitution of 1979 is 120 pages long, with the resounding figure of 279 Sections as its component parts. But wait a minute, wait a minute, the 1999 Nigerian Constitution, the one currently in force as the ultimate law of the land, is even longer: 169 pages, 320 Sections! But what does length have to do with modern constitutions? What does it have to do with Nigerian Constitutions in general? Above all else, what does length have to do in particular with the text under review in this piece, **Minority Report and Draft Constitution of 1976** (hereafter **MRDC '76**) of Olusegun Osoba and Yusufu Bala Usman?

In length, **MRDC '76** is like the American Constitution. At 65 pages, it seems much longer than the 34 pages of the American Constitution. But that's a little misleading because the text is in a very bold print with a font that is larger than the very fine print of all the official Nigerian Constitutions - e.g., 1979; 1985; 1989; 1999. Thus, if **MRDC '76** had actually been printed in the very fine print and small font of the typical Nigerian Constitution, it would have been less than half of its pages, probably no more than about 32 pages. Thus, **MRDC '76** has the distinction of being the shortest, the most distinct of all Constitutions ever fashioned in our country. Thus, though it is not structurally and ideologically based on the American Constitution like our 1979 Constitution, it is ironically rather like the American Constitution in its brevity.

More fundamentally, it turns out that brevity is not the only quality that **MRDC '76** shares with the American Constitution. Above brevity, above succinctness, **MRDC '76** shares with the US Constitution the great prose virtues of simplicity, clarity and gracefulness. Whether you are very learned or of very modest education, you go away from a reading of the American Constitution with the feeling that you have both understood and been moved by what you have read. This is exactly the same sentiment, the same impression with which you are left when you have read **MRDC '76**: it is simple; it is clear; it is gracefully written, almost like the best of Chinua Achebe's prose!

I am making this particular point the first issue of this review partly because since Nigerians are used to Constitutions that are long, full of jargon and written in a language style that takes ponderous *legalese* - the special brand of language used by and for lawyers - as its model, nobody can use that as an excuse for not going right away to buy and read **MRDC '76**. Indeed, the effect of reading this historic document by Osoba and Bala Usman will be salutary in proving that moderately educated people can not only enjoy reading the nation's Constitution, but they can do so without the help of a lawyer to interpret the meaning of any word, any phrase or sentence to him or her. This, indeed, was the impact of **MRDC '76** when it was



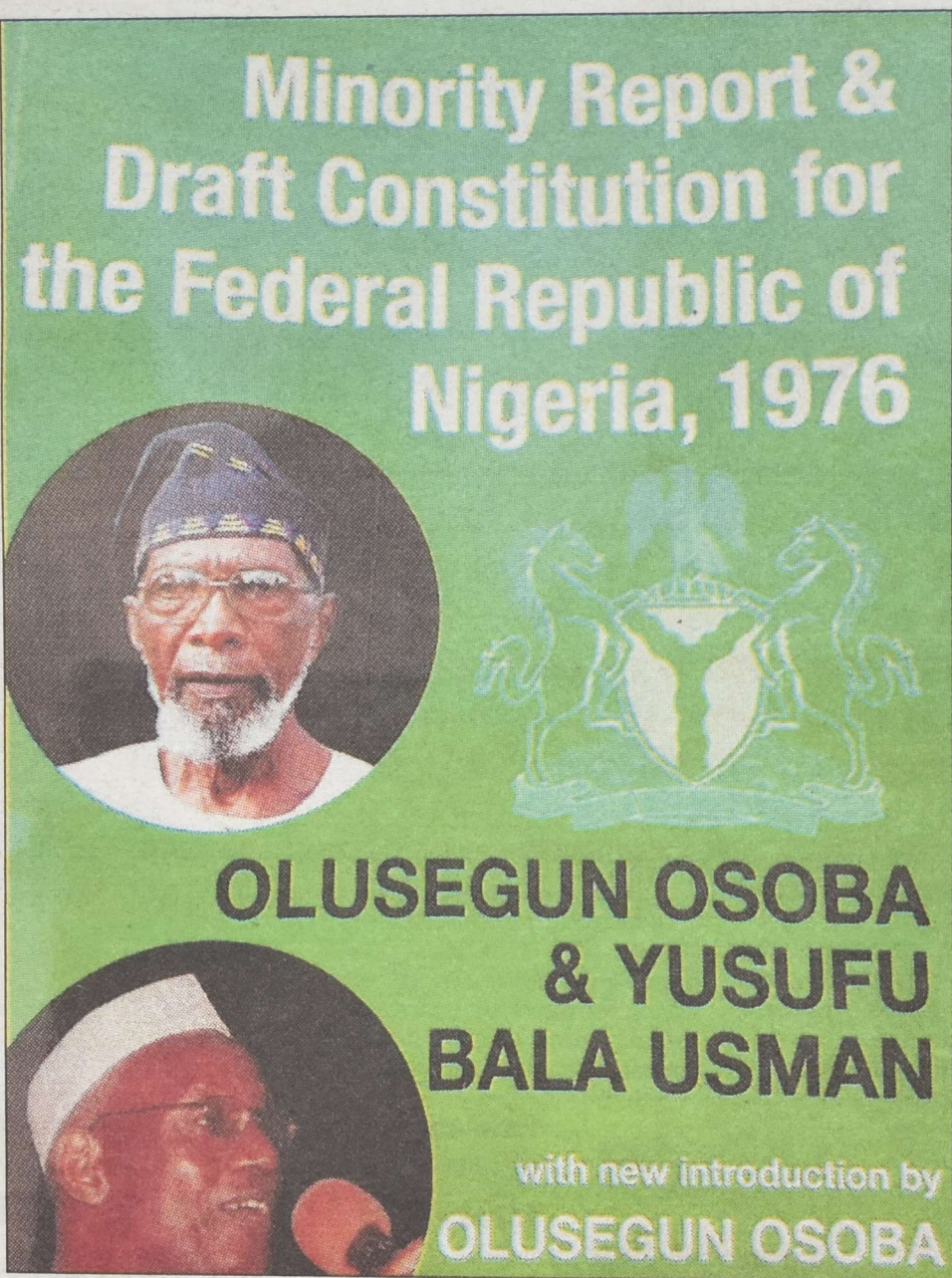
(328)

# Talakawa Liberation Herald

## BIODUN JEYIFO

### The Minority Report and Draft Constitution of 1976: in its time and in the stream of history

Review of Olusegun Osoba and Yusufu Bala Usman, *Minority Report and Draft Constitution for the Federal Republic of Nigeria, 1976*, Centre for Democratic Development Research [CEDDERT], Zaria, 2019



first released to the Nigerian reading public in 1976: everyone came away with their assumptions about Constitutions being written only for lawyers and the highly educated completely debunked and demystified. On this point, I think, again, of my opening comparison of **MRDC '76** with the American Constitution: next to the Bible, the book that Americans like to read the most is their Constitution. Since Osoba's and Bala Usman's draft Constitution never became our official Constitution, we will never know whether it would have come to be as popular and as beloved by Nigerians as the Americans love to read and be inspired by their Constitution, but I can report here that in 1976, nearly every literate Nigerian who could lay his hands on the mimeographed copy of **MRDC '76** was reading it and loving what they were reading. However, at this point, the comparison with the American Constitution ends.

Why so? First written at the so-called Constitutional Convention of Philadelphia in 1787, the American Constitution was so faulty, so imperfect that it was to take more than two hundred years and 27 amendments for its contents to resonate with nearly all Americans. Slaves, women, workers,

immigrants, the poor and the disabled had to fight for very long periods for their rights, needs and interests to be incorporated into the Constitution. For instance, at one stage, in the American Constitution, the black person, man, woman or child, was defined as "three-fifths of a person", the "full person" being the white male person. In sharp contrast, **MRDC '76** was apparently deeply informed by the mistakes as well as the achievements of many other Constitutions in history and in the world, including both the American Constitution and many versions and incarnations of the Constitution of the defunct USSR, especially the 1936 Constitution, thought by many historians of Constitutions to be one of the best Constitutions of the defunct Union of Soviet Republics.

I confess that in 1976, I did not know this dimension of **MRDC '76**, that its drafting was inspired by the errors as well as the achievements of other Constitutions in the world. All I knew, all I was immensely inspired by was the fact that Osoba's and Bala Usman's draft document had come from the Left, our Left and that in language and style, in contents and perspectives, it was infinitely superior to any other draft Constitution ever produced in our

country. Can you even imagine it, compatriots: on university campuses, among workers and their unions, in faith community gatherings, people were talking of **MRDC '76** as Nigerians now talk about Man City versus Liverpool! And the document had not even as yet been published as a book but was being circulated in mimeographed and cyclostyled sheets of paper held insecurely together by paper clips and bounders! This was not a work of fiction, not an episode of the "Village Headmaster" and certainly not the latest of the escapades of Baba Salah; it was the minority draft Constitution of two members out of the 49 Constitution Drafting Committee (CDC) that the Murtala-Obasanjo regime had convoked to draft a new Constitution for the Nigeria that would come to be after the departure of the military from their autocratic rule. With the release of their minority draft, Osoba and Bala Usman, the two dissenting members of the CDC, became more popular, better known and more respected than the 47 members who produced the draft that would eventually become the 1979 Constitution.

At this point in this review, I must, if not exactly disagree with the Foreword written by my old comrade, Dr. Abubakar Siddique Mohammed and the "New Introduction" written by Olusegun Osoba himself in the just released, published version of **MRDC '76**, I must considerably expatiate on their insistence on the supposedly great gap between their Minority Draft and the Majority Draft that became the 1979 Constitution. This is because while it is not inaccurate to insist on the great differences between the two drafts respectively by the Minority and the Majority of the CDC, it is not helpful either to overstate the differences. Let me put the point that I am making here in a nutshell: even though Osoba's and Bala Usman's draft Constitution was rejected by the majority of the members on the CDC and the military government headed by Obasanjo, in actuality the Minority Draft and the great debate it sparked in the nation produced a decisive impact on the 1979 Constitution that was based on the Majority Draft.

In other words, in spite of the valid criticisms that the "Foreword" and the "New Introduction" make about the 1979 Constitution, that Constitution was not a document that constitutionally entrenched all the injustices, the looting, the rampant corruption, the insecurity and the divisiveness of the reign of the Babangida and Abacha dictatorships, of the Obasanjo era of the reign of PDP and the APC and of the current free-fall dystopia of the Buhari era; rather, the 1979 Constitution is in reality a document

of solid social-democratic and progressive ideological and ethical vintage. And this is due largely to the great debate sparked by the release in 1976 by Osoba and Bala Usman of their Minority Draft. This is the second major point of this review: **MRDC '76** never became the Constitution of the country, but it launched far-reaching popular and elite debates in the 1980s and 1990s that produced such landmark events and developments as the 1979 Constitution itself; the transformation of the old, conservative and timid NAUT to the radical and resurgent ASUU; the Political Bureau of 1986; the June 12, 1993 national crisis; and ultimately, the withdrawal of the military from the levers of power in 1999.

This review is in two parts. Logically, having stated the impact of **MRDC '76** over the course of the of the four decades since it was released in 1976, I should now go ahead and deal with that issue. But this is not how I wish to proceed. Rather than take that path of first tracking the path of the effect and impact over the years and decades of this historic document by Osoba and Bala Usman, I believe that it is necessary to first deal with the impact of the document in its own day, in its own moment in the sun, so to speak. The best way to do this, in my opinion, is to give a sense, an indication of what people encountered then in the document and might again encounter today if they go out and buy the published version of the document. Permit me to explain what I mean by this observation in the rest of this first part of my review this week.

There are four parts to this newly republished **MRDC '76** in book form: the Foreword; the New Introduction; the Minority Report; and the Draft Constitution. Logically, the first two were not in the original document; they are additions or supplements to the two other parts, the Minority Report and the Draft Constitution. I suggest, compatriots, that when you buy and begin to read the document as a whole, go first to the last of the four parts, this being the Draft Constitution itself. I assure you that you will be amazed not only by how easy and reader-friendly it is, but also how deeply moving it is, especially in its most basic, most fundamental sections, these being the first three chapters: Chapter One, The Fundamental Principles of the Constitution; Chapter Two, Citizenship; and Chapter Three, Fundamental Rights, Freedoms and Duties of the Citizen. Altogether, these three chapters take up about only 11 of the 65 pages of the Draft Constitution and yet they make anyone reading them extraordinarily hopeful that our country can be a land of justice, peace, equal opportunity, fairness and unity, a land where the best and the most generous and benevolent instincts and dispositions of human beings are given the possibility to operate without let or hindrance.

Altogether, there are 12 chapters in the Draft Constitution. Although, all are equally important, I wish to highlight Chapter Four, The Fundamental Economic and Social Objectives. This is because it ought to be the chapter that is the most different segment from everything and anything in the Majority Draft that became the 1979 Constitution. But this is not the case at all because between this chapter and Chapter Two of the 1979 Constitution, the difference is nearly like the difference between 6 and half a dozen. This will be our starting point in next week's continuing, final installment in the series that makes up this review.

• Biodun Jeyifo  
bjeyifo@fas.harvard.edu

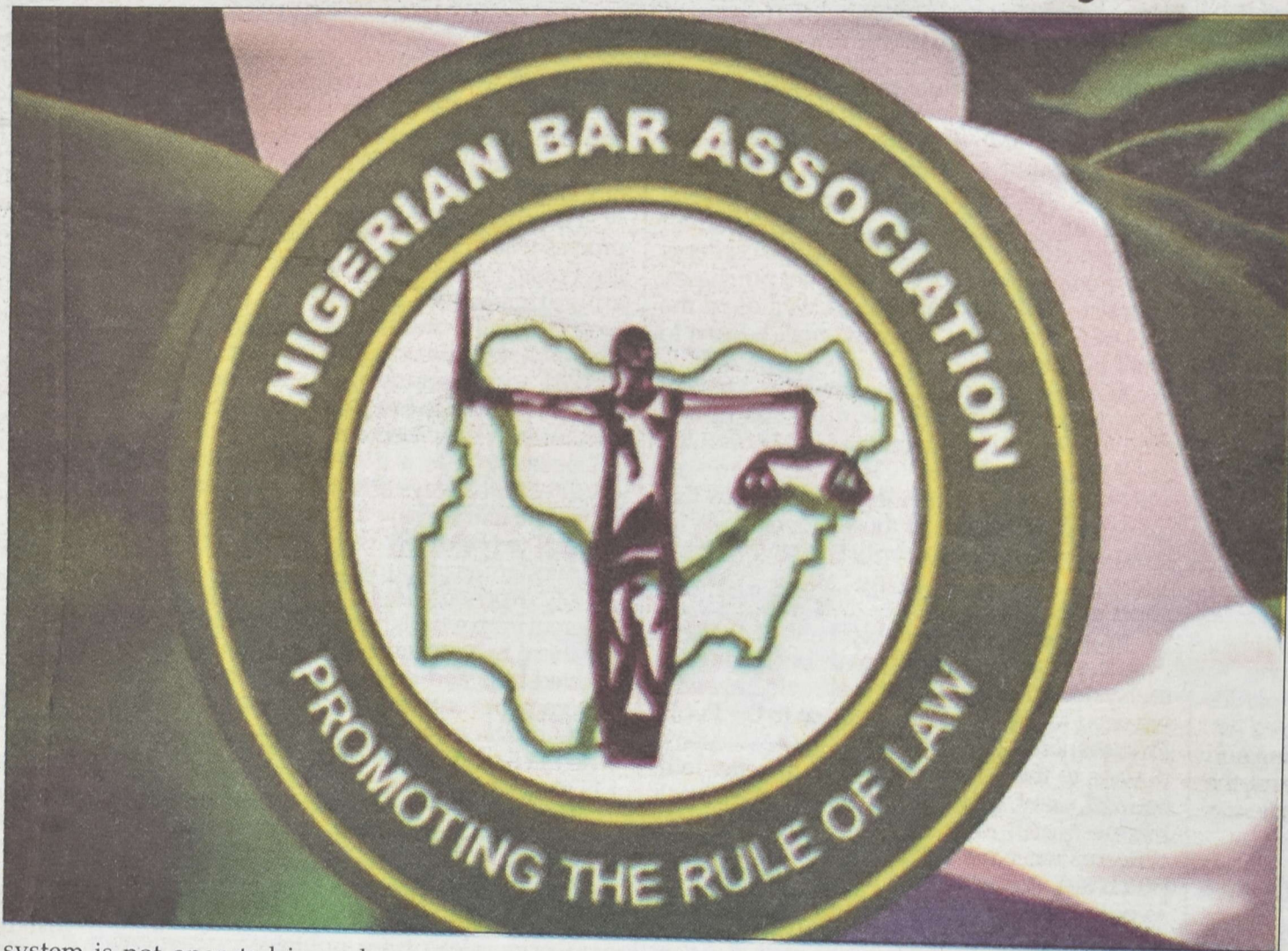




(329)

## Talakawa Liberation Herald BIODUN JEYIFO

# The Minority Report and Draft Constitution of 1976: in its time and in the stream of history (2)



**I** CONCLUDED last week's beginning installment in this review by comparing the difference between Chapter 4 of MDRC '76 and Chapter 2 of the 1979 Constitution to the difference between 6 and half a dozen. Since this was deliberately provocative, did I thereby diminish the considerable differences between the two documents in their respective other chapters and sections? I don't think so. To prove this point, permit me to provide a temporal or historical context for this assertion of similarity, if not of identity, between Chapter 4 of MDRC '76 and Chapter 2 of the 1979 Constitution.

When I first read the 1979 Constitution in the year in which it was formally instituted, I did not download a copy from the Internet as I have had to do in writing this review. This is because the Internet was not then as widely available as it is today. In other words, I had to get a printed copy of the Constitution and to do this, I had to drive to Lagos to obtain a copy at the Government Printer's Office as there was no copy available in any of the bookshops in Ibe or Ibadan. In that first print-run of the 1979 Constitution, the single most intellectually and ideologically interesting item was a so-called "Preamble" to Chapter 2 of the Constitution. Today, that "Preamble" is gone from all or any versions of the 1979 Constitution that you can download or buy in print form. To get it, you have to lay your hands on that original first print-run of the document. This is a pity because that "Preamble" is, in my opinion, the finest document of progressive social democracy in our political and constitutional history. Here, I can only summarize what it says.

Can any country in the developing world simultaneously pursue economic development and social justice or the production of wealth side by side with its egalitarian redistribution? That was the question that the "Preamble" posed and answered. After extensively reviewing policies and actions regarding this issue around the world, the Preamble concluded that although it was always a great challenge everywhere in the developing world to pursue wealth creation and social justice simultaneously, that is the path that the Federal Republic of Nigeria would henceforth take. The "Preamble" even went as far as to state that it was unfair and unacceptable to persuade the masses of Nigerians to wait first for wealth to be generated in an adequate quantum for redistribution to take place. In other words, to conservative and liberal politicians who have always cynically argued that since you cannot redistribute poverty, you have to create wealth first before you can distribute it, to such politicians and their ideological and intellectual supporters the "Preamble" stated unequivocally that in Nigeria wealth generation and redistribution would henceforth go together.

Although I do not have any direct evidence to prove this, I strongly believe that it was the fierce and widespread debate provoked by Osoba's and Bala Usman's Minority Draft Constitution that led to the intellectual and ideological progressivism of that "Preamble" to Chapter 2 of the 1979 Constitution. However, in place of such direct evidence, what we have is the textual and circumstantial evidence that we see in that Chapter 2 itself, most especially in Section 16 which deals specifically with the economic system for Nigeria. Perhaps it is best to quote directly from that Section itself:

"The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution

(a) control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity

(c) ensure....that the economic

system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of a few individuals or of a group

These are pretty much the same things or principles that Chapter 4 of MDRC '76 states: an economic system in which the control of the economy, together with the means of production and exchange, is controlled by the State. The difference lies in the more unambiguous and precise language. For instance, where the '79 Constitution talks of "every citizen", Chapter 4 of MDRC '76 always specifies concrete classes and groups as in the following quotes:

33. The Federal Republic of Nigeria is committed to fostering the establishment of just social relations in all sectors of production and in all spheres of society and therefore shall especially support and protect the interests of the peasant farmers, nomads, artisans, petty traders, and wage earners and shall also develop genuine producer and consumer cooperatives and collectives.

34. The Federal Republic of Nigeria shall within the framework of this Constitution treat with special urgency and determination the question of land ownership and control and resolve it in the interests of the peasant farmers and tenants on the principle that land shall be owned and controlled by those that work it and live on it.

I do admit it: to say 6 is the same thing as half a dozen is an equivalence, a generalization that obscures many specific things in each of the numbers between one and six. In this particular case, between the generalization in the '79 Constitution's principle of state

ownership and control of the economy and the means of production and MDRC '76's addition of *socialization* of the means of production in favour of oppressed or disadvantaged classes and groups, there is a lot at stake. In other words, while you can hide and obscure many crucial things behind generalizations like "every citizen" and "means of production", there is little that you can hide behind specifications like "peasant farmers", "wage earners" and "land".

All the same, it is important to remind the reader that my point in applying the trope of 6 and half of a dozen was to argue that contrary to the imputation of Segun Osoba in his "New Introduction" that there is a gulf, a chasm between the 1979 Constitution and MDRC '76, I am arguing in this review that the difference, the distance between them is not that great. Also, I am arguing that it was in fact the debate that MDRC '76 generated that led to the closing of the gap between the two documents. To this contention I now turn in the remaining part of this review.

It is perfectly understandable that both Dr. Abubakar Siddique Mohammed in his "Foreword" and Olusegun Obasanjo in his "New Introduction" jump from the institution of the 1979 Constitution to all the terrible and dispiriting things that have happened politically, economically and morally in Nigeria since then. Comrade Siddique is particularly trenchant in his account of how the gap has widened immeasurably between the few wealthy men and women and the majority of Nigerians in the intervening years and decades. He is

equally persuasive in his account of the political opportunism that has led to ethnic, regional and religious divisiveness, especially with regard to the violence and the insecurity it has caused and continues to cause.

For his part, Osoba is devastating in his graphic account of the *serial* nature of the corrupt and dysfunctional misuse of the concentration of wealth and power in political elites, first in the time of military autocracy and later in the era of the civilian succession, showing graphically how closely entwined military and civilian elites have been from 1976 to the present. Especially, Osoba provides a focus on Olusegun Obasanjo as both exemplar and *eminence grise* of the military-cum-civilian despoliation of the nation, its resources and, possibly, its posterity. Much has been written about Obasanjo; very few can match the power and the insight of Osoba's portrait of this man. Finally, and to his great credit, having provided such a valuable profile of Nigeria in ruins from 1976 to date, Osoba ends with what he calls a Five-Point Minimum Agenda which, in my opinion, demands serious consideration by all thinking and patriotic Nigerians, incidentally of all ideological persuasions.

But, did it all originate with the 1979 Constitution? Neither Mohammed nor Osoba explicitly make this argument. But that is what they are saying, implicitly! Implicitly, because they do not give any attention whatsoever to the struggles that have taken place in Nigeria since 1976. It is as if, once Osoba's and Bala Usman's Minority Report was not accepted and their Minority Draft Constitution seemed to have gone into historical

oblivion, no more significant political, economic, social, intellectual and constitutional struggles took place. But this is simply not the case at all. Indeed, rather paradoxically, as I have sought to show in this review, the first major struggle that took place between 1976 and 1979, these being the dates, respectively, of the release by Osoba and Bala Usman of their historic Draft Constitution and the institution of the 1979 Constitution was in the realm of constitutional reform itself by way of that very 1979 Constitution which, in my reading, was a bye-product of Osoba's and Bala Usman's Draft Constitution and the debate that it generated.

Perhaps Segun Osoba, from his membership of the Constitution Drafting Committee (CDC) from which he and Bala Usman resigned, knows some things about the other 47 members of that CDC that serve to prevent him from admitting that his and Bala Usman's Draft Constitution may have influenced the 1979 Constitution? I do not know. What I know is this: Segun Osoba has to be one the last men in Nigeria to be reminded that from 1976 to date, and especially throughout the late 70's to the 80's and 90's, there were struggles in virtually all spheres of the public, national life of this country precisely because he was himself in the forefront of many of the struggles. As was also Abubakar Siddique Mohammed. Why then do both men almost completely leave out a consideration, a reexamination, no matter how briefly, of those struggles in which they themselves took part? Again, I do not know. I definitely can say that whatever is the answer to this poser, it is not defeatism. Why so? Because the segments written by both men in MDRC '76 do not in any way read like words or testimonies from defeatist compatriots. Indeed, if anything, Osoba's Five-Point Minimum Agenda is a "fighting" manifesto!

In a long sentence in which he introduces this Five-Point Minimum Agenda, Osoba says the following somewhat revealing things concerning preconditions for any reform that might have a chance at success at the present moment in our country's affairs:

In view of the persistent misconduct of successive regimes in power in Nigeria, the Nigerian state is currently enmeshed in a profound crisis of governance that is not capable of being resolved or alleviated by a resort to the normal practice of constitutional, legal, judicial or other institutional reform. Lawlessness and corruption have become so endemic in all sectors of state, society and economy that any strategy of change that is short of the "root and branch" overthrow of the existing order is doomed to fail. For instance, the legal basis of governance, i.e. the legitimacy of laws passed in the National Assembly and State Houses of Assembly is often and viciously subverted by the self-centeredness, careerism and corruption of the so-called "lawmakers"...[pp 6-7]

Osoba's argument here is unassailable. This is its most forceful proof: they passed the Administration of Criminal Justice Act (ACJA) in 2015. It was intended to make the administration of criminal justice in Nigeria fairer, faster and more efficient. To date, it has been observed or effected far more in neglect than in enforcement. But there is an unperceived irony in Osoba's argument here and it is this: at the very moment that he is supremely suspicious that any constitutional or legal instruments can work for meaningful reform, he and CEDDERT bring out this historic *constitutional* document written in 1976. Irony? Yes. But also, unquenchable revolutionary hope!