To produce a constitution

By Edwin Madunagu

SOMETIME in the late 1980s, the political group to which I belonged met to consider the drafts of a new constitution and a new programme. The two assignments had been given to the same committee – for we knew or rather, thought that we knew, the intimate connection between what a group says it wants to do, and how it organises itself to do it. This assumption was to be seriously questioned at the meeting. The drafts were duly presented. Of the critical points raised against the documents, the one that attracted the most intense debate – from which we all learnt – was the "abstract nature" of the drafts.

The comrade who opened the debate on "abstractness" simply asked the presenters to delete the word "Nigeria" from the two drafts, and in its place substitute "Kenya" or any other African country. The silence that greeted his proposition was a clear suggestion that he should continue and perform the deletion and substitution. And he did exactly that. The comrade's submission was that if the substitutions were made the draft would fit any radical group like ours in any African country. In other words, the drafts presented were for Africa, not for Nigeria. There was nothing bad in this, only that we should know what question we were addressing. Then, the hard punch: the presenters had not been asked to make a draft for an African group, but for a Nigerian group.

The debate that followed would not be of interest to the general reader. But at the end of it all, we agreed that the first task in designing a constitution – any constitution at all – is to settle the question of fundamental principles and the concrete programme to realise principles. Then comes the articulation of the human community to be mobilised to realise the programme. Then follows self-examination that is, the examination of the political agency to undertake the mass mobilisation. If there are problems here, you go back to the programme – for to prescribe a programme entailing mass mobilisation without ensuring the actual or potential existence of a capable political agency is, to say the least, irresponsible or escapist or both.

Then follows the listing and working-out of the structures and organs of the political agency and the relationships between them. What remains after the preceding steps can be carried out in a relaxed manner: fleshing out the drafts, ensuring its coherence, eliminating contradictions and/or indicating contradictions that can only be eliminated either through the working of the emergent basic document, or through the economic and socio-political development of the entity or both. Then of course, follows the supply of explanatory notes, addendums and appendixes. But efforts should be made to prevent the main document becoming too verbose or bulky, like the Nigerian Constitution.

I have since learnt that some of the principles and procedures listed above can be applied to the review of a country's Constitution or the drafting of an entirely new one. And I believe that the ruling blocs in Nigeria have now realised that their 1999 Constitution for the Federal Republic of Nigeria has broken down, and that a thoroughly revised Constitution is now an immediate imperative. The suggestions offered below are, however, for a minimal revision to prevent this country from being plunged into generalised anarchy, fascism or civil war. Popular democracy would demand more radical and fundamental revisions – amounting to an entirely new constitution.

Chapters one to four of this Constitution are of critical importance. They can be regarded as self-definition and fundamental principles. For this reason, they call for a thorough re-examination to eliminate ambiguities and make some key provisions more explicit in their implications. Chapter 1, titled "General Provisions" and covering 12 sections, first says that the Constitution is supreme. This is clear enough. The question then is who or what state agency pronounces on violation and who has the *locus standi* to apprehend an instance of violation. If there is a hierarchy of agencies, which of them is the highest agency and what happens between when a lower agency makes a pronouncement and when a higher agency makes a review – in case of appeals and, indeed, what happens immediately after a pronouncement.

Section 2 says that Nigeria "shall be a Federation consisting of States and a Federal Capital Territory". The implication here – whatever other sections of the Constitution may say or imply – is that there are only two tiers of government in Nigeria: the Federation and the States. In other words, the federating units are the states; the local governments are not. To put it crudely, in the 1999 Constitution of Nigeria, the local governments are simply administrative departments of state governments. And state governments have been treating them as such. If that is not the intention of the Constitution, then it should be stated explicitly that "Nigeria shall be a federation consisting of States, a Federal Capital Territory, and Local Government Areas". Even if this amendment is effected, many would still insist that there should be a tier of government between the Federal and the State – with appropriate powers and functions.

Section 3 says that there "shall be 36 states in Nigeria", and goes on to name not only the states but also their capitals. Similarly, the section says that there "shall be 768 local government areas (LGAs) in Nigeria" and also proceeds to name them and their headquarters. It is therefore clear that the creation of any more State or Local Government Area – or even a boundary adjustment – entails a review of the Constitution. But we know that this same Constitution prescribes a very tedious and complex method of amendment – more tedious than the method for amending any other section of the Constitution. If the drafters of the Constitution were not cynical, what they were saying, at best, was that the creation of new States and Local Government Areas is a very serious affair, and at worst, that Nigerians should simply forget about this aspect of socio-political development.

Yet, Nigerian politicians go about this matter as if they expect state creation by fiat; and that Presidency and leaders of the power-bloc parties to whom delegations are sent, and representations are made, behave as if the matter is a question that can be settled by a stroke of the pen. So, it is either the Constitution says no additional State or Local Government Area would be created for a certain period, or it makes the exercise less tedious. In the alternative, instead of deceiving the people, the ruling blocs and their parties should simply delete from their platforms the creation of new States and Local Government Areas, and publicise this deletion.

Chapter 2 of the Constitution is on "Fundamental Objectives and Directive Principles of State Policy". The chapter reminds me of a question a Hungarian Professor of Mathematics at the University of Lagos once asked me long ago, in the little English he knew. "Why is it that there are many departments and offices in the University, but all of them equal to the nothing?" I can't remember giving him a satisfactory answer because I myself did not know. Chapter 2 of the Constitution is annoyingly too verbose. The whole exercise is rendered "to the nothing" by the simple fact that none of the economic, political, social, educational, and environment objectives listed is justiciable: They cannot be enforced in a court of law.

My simple suggestion here is that the provisions in Chapter 2 – and also in Chapter 3 (Citizenship) and Chapter 4 (Fundamental Human Rights) – should be made justiciable. I was recently reading an exchange between Joseph Stalin of the Soviet Union and Mao Zedung of China on economic restructuring of socialist societies after the devastation of World War II. Stalin had written a small book on the subject and had, perhaps, sent Mao a copy. After reading it, Mao made a one-sentence comment: "Comrade Stalin is writing about the development of things, not the development of people" – concrete and historically determined living people. I was tempted to make a similar comment after re-reading Chapter 2-4 of the 1999 Constitution.

Let me conclude by summarising some other areas of the Constitution that require critical re-examination, the first is the impeachment of public officers. My simple suggestion here is that reference should be to the total number of seats prescribed by law for the particular legislative body undertaking the impeachment. Another area is the positive of Vice-President and Deputy Governor. My suggestion here is that the position of president should be replaced with Presidential Council whose members represent definite entities and whose chairpersonship is rotational. The same goes for the position of State Governor. In the alternative – and I know many power bloc politicians would love this – the President and Governors, once elected, should be empowered to appoint their deputies, the same way ministers and commissioners are appointed. They should also be removable in the same way. Simple, isn't it? In case of impeachment, the Chief Justice or Chief Judge takes over as Interim President or Interim Governor pending elections within 90 days.

Finally, on the deployment of coercive agencies of the state it is sufficient to note that without the concentration of powers or armed coercion in one person, the constitutional and political travesties that Nigeria witness in Anambra, Oyo, Bayelsa and Plateau states would not have taken place.