

## **SUSTAINABLE DEVELOPMENT AND CONSTITUTIONALISM IN NIGERIA: CONSTITUTIONAL DESIGN, IDENTITY AND LEGITIMACY IN A DEEPLY DIVIDED SOCIETY**

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### **ABSTRACT**

Post-conflict Nigerian societies are almost invariably characterized by deep religious, ethnic, national, or ideological divisions. Even after formal sustainability has been attained, these divisions are likely to remain, often pulling societies back into conflict within a few years of cessation of hostilities. For this reason, this paper examines the interplay among constitutions, identity, and governmental legitimacy in post-political conflict Nigerian societies, analyzing the role that sustainable constitutions plays in reinforcing legitimacy even where differences remain or the sources of conflict remain unresolved. To do so, it will also look back in time to Nigeria: where post-political conflict Nigerian societies evolved into stable, long-standing democracies despite severe societal schisms prevalent at the country's birth. It will analyze what role the process of constitution-making played in providing for the successful stabilization and democratization of this society in an attempt to provide useful lessons for current deeply divided Nigerian societies engaged in the process of constitution-writing to bring about sustainability in the society.

**Keywords:** Constitution, Deeply Divided Societies, Identity, Legitimacy, Sustainable Development, Post-Conflict Society.

### **INTRODUCTION**

In fact, Nigeria's constitutional design system can best be described as being in a state of flux. Even Nigeria's constitutional history is punctuated by incessant changes since independence to date. These changes, however, heralded the social, economic and political instability which grievously affects the sustainability of a steady political and economic system. The vices inherited from our colonialist which includes tribalism, nepotism, ethno linguistic differences, poverty, ideological differences and cultural discrimination still remain the bottom line that is destroying sustainability of economic and political development in Nigeria today. Since Nigerian constitution was redesigned at the end of the 1967-1970 civil war, Nigerian political institution has not functioned relatively well to dilute ethnic majority chauvinism, empower ethnic minorities, generate functional interests and political identities that cut across crude ethnicity, diffuse and defuse ethnic conflict, redistribute economic resources, promote national unity in diversity and generally prevent a recurrence of secessionist warfare. Post-political conflict Nigerian societies are almost invariably characterized by deep religious, ethnic, national, or ideological divisions. Even after formal sustainability has been attained, these divisions are likely to remain, often pulling societies back into conflict within a few years of cessation of hostilities. For sustainable peace and development to be achieved, conflicting parties in Nigeria must be persuaded that their interests will be best served by foregoing the battlefield for the halls of constitutional government.

The establishment or re-establishment, of a system of government recognized as legitimate by diverse factions of the population is crucial for post-political conflict stabilization. Once conflicting parties have accepted the government as their own and have agreed to submit societal conflicts to mutually recognize democratic mechanisms and once interacting adversaries have been reassured that their views will be heard within the decision-making and governing process and their values reflected in its outputs, an end to conflict becomes a viable possibility. This willingness to acknowledge the government as legitimate, in turn, is the first and most elemental building block upon which effective governance and sustainability paradigms must be based. Without the peoples' agreement to accept the government as their own and its laws as binding upon them, no effective governance is possible. In the quest for establishing legitimate government, constitutions and constitution-making processes often play a central role (CSIS and AUSA, 2002). In Nigeria, sustainable development and constitutional design have become an integral part of sustainability and stabilization processes in deeply divided societies. To set the stage, this paper will begin with a more detailed look at what legitimacy is, how it is derived, and what can and should be the role of sustainable constitutions in its generation.

### **THE CONCEPT OF LEGITIMACY, NATIONAL IDENTITY AND CONSTITUTIONS**

There are two basic ways to generate legitimacy (Kjaer, 2004). Output oriented legitimacy derives from the ability of governments to produce tangible results. This sort of legitimacy is a by-product of the outputs of the government in question. To the degree that governments provide needed or desired services to the people be they social, economic and health related services or security the people are likely to support the government's right to govern. Output-oriented legitimacy is inextricably linked with a second type of legitimacy which is input-oriented legitimacy, derived from the consent of those who are asked to comply with the rule of law and submit voluntarily to the government's authority. These two forms of legitimacy have a symbiotic relationship. While it is undoubtedly true that effective governmental outputs contribute to legitimacy, it is equally true that a certain degree of legitimacy is needed in order to make effective governance possible. This is a point which has been largely recognized by the international community. Quoting from USAID's Fragile States Strategy, "Where legitimacy is an issue, options generally narrow. . . Indeed, efforts to boost effectiveness are unlikely to succeed without legitimacy" (USAID, 2005). Input-oriented legitimacy lies, first and foremost, in the "hearts and minds" of the populace; that is, in their a priori consent to be governed.

In contemporary societies, such consent is expected to have formal manifestation through democratic procedures, such as participation, deliberation, and representation. However, these formal indicators of consent, to be of value, must represent a shared societal conception of what is being consented to; that is, of what the citizens wish to empower their government to do. If there is no common agreement on the fundamental principles that underlie the country, consent is likely to be short-lived. If citizens have vastly divergent views regarding what the government that they have consented to should or should not do, then that government stands on very a shaky ground. If some citizens feel that government should uphold the tenets of their religion, and others believe that it should rule according to liberal democratic norms, popular consent will be ephemeral. If some citizens believe that their government should be, first and foremost, the representative of one dominant ethnic group and others demand a more pluralist society this too can create a problem for legitimacy.

Thus, the precondition for "input-oriented" legitimacy is shared norms (Coicaud, 2002). This is a particularly salient issue in many present-day post-political conflicts and conflict societies, such as Nigeria, where disputes over normative issues are often one of the main sources of societal rifts. Constitutions, clearly, play an important role in establishing and regulating the institutional mechanisms through which input-oriented legitimacy is manifested. They establish procedural

rules for democratic elections and set the framework for governance by establishing the boundaries of governmental power and the relationship between the various branches of government and between the government and its citizens. In addition to establishing these institutional mechanisms, constitutions play an important role by elucidating the shared norms, goals, and values which are the ultimate sources of input-oriented legitimacy. Thus, constitutions play a “foundational” role of defining the commonly held core societal values, norms, and aspirations of the multiethnic and multicultural societies and of expressing a concept of unified citizens – a sense that “we the people” includes “me.” While the “basis” elements may vary from constitution to constitution, they generally include issues such as the relationship between religion and country, the fundamental rights guaranteed to all citizens, the persons defined as belonging to “the people,” and the symbols of the country. Just as input-oriented legitimacy is only possible where formal consent reflects underlying shared norms; constitutions may only reinforce legitimacy to the extent that they truly reflect public sentiment. To put it in the words of one constitutional expert, “a constitution is just a piece of paper, no better than the underlying consensus or lack thereof that it memorializes”, (Feldman, 2005)

For this reason, there is no blueprint constitution that may be used for all states, and there is no utility imposing a constitution upon a reluctant citizenry. As a result, the constitutional scholars of Nigeria have come to put enormous emphasis on the process by which constitutions are made.

#### **NIGERIA AND CONSTITUTION-MAKING**

However, the problem of societies emerging from internal post political conflict is that they are very frequently characterized by deep divisions on questions of national identity, norms, and values. In such cases, engendering a successful process may not be enough to achieve a sense of collectivity and consensus. For a constitutional process to be a source of stability and unification among multi ethnic groups in Nigeria, there must be potentialities for achieving workable compromises that can reinforce our common ground while reassuring all sides that their most vital concerns will be safeguarded. This may be extremely difficult to achieve in a deeply divided societies like Nigeria. In political conflicts involving competing normative perceptions of the public sphere, where the ultimate goals and character of the country are in dispute, forging a collective vision of the country’s future, or even achieving mutually acceptable compromise may prove an elusive goal. One of the more popular solutions to the problem of constitution-writing in ethnically, religiously or nationally heterogeneous societies like Nigeria where there is no a priori sense of citizenship is Jurgen Habermas’s concept of “constitutional patriotism.”

Habermas argues that a common commitment to the democratic institutions of the state can in itself be instrumental in forging a sense of shared citizenship. However, Habermas’ solution is only relevant for societies where there is consensus on the precepts of political liberalism. As he himself acknowledges, “democratic citizenship need not be rooted in the national identity of a people. However, regardless of the diversity of different cultural forms of life, it does require that every citizen be socialized into a common political culture” (Habermas, 1996).

Thus, constitutional patriotism is of limited utility in deeply divided societies like Nigeria which do not share a common political culture based on the liberalist separation between private identities/beliefs and the public sphere. Unfortunately, contemporary-day fragile nations tend to lack basic consensus over liberal values, suggesting that the liberal-democratic solution cannot succeed in a country like Nigeria, where divisions exist not only among various religious, ethnic, or national identity groups, but also in the role of private identities in public political life. In this society, some of the competing factions have proven less than willing to embrace liberal democratic principles. In such deeply divided

societies, those who believe that government should represent the aspirations of a dominant religious group or ethnic identity may oppose the adoption of liberal principles. This is the kind of political conflict which is termed by Albert Hirschman as “either-or” or “non-divisible,” as opposed to the “divisible” or “more-or-less” political conflicts, which usually concern allocation of resources and products among classes, sectors, or regions (Hirschman, 1994). As Hirschman notes, divisible political conflicts are easier to settle, as the conflicting parties can agree to “split the difference” or compromise, (Hirschman, 1994).

Conversely, the latter form of conflict is often described as absolute unwillingness to compromise on the issues upon which the political conflict is based. These “either-or” divisions present a considerable challenge for constitution-making. Where there is no agreement even on the basic value of political liberalism, agreement on the normative aspects of the nation may prove impossible. Moreover, dealing with these identity questions in the constitutional arena can easily exacerbate tensions rather than mitigate them. The process of constitution-making in a post-political conflict society’s imports deeply rooted identity conflicts with the high-stakes arena of entrenched law. Constitutions provide the guidelines for future Supreme Court decisions, bind the legislature, and constrain future generations.

Thus, the formalization of a written constitution in Nigeria is generally perceived as forcing unalterable choices regarding the country’s norms and identity. In such circumstances, concessions are seen as being all the more weighty, because they may have permanent implications, and mutually acceptable compromise may thus be all the more difficult to achieve. Hence, in a post political conflict society like Nigeria, we are faced with a paradox. On the one hand, we look to Nigerian constitutions in order to underpin the legitimacy of the new government by providing the popularly agreed-upon structure and values by which it governs. On the other hand, by importing identity questions into the Nigerian constitutional arena, we risk aggravating the political conflict rather than alleviating it. This paradox has troubling consequences for the chances of establishing effective governance.

As discussed above, constitutions have two primary aspects: an institutional aspect, providing the framework for the conduct of government, and a basis or identity related aspect. While the institutional aspects of a constitution are essential in order to set up a stable, legitimate system of democratic governance, the basis aspects of constitution can easily become the deal-breaker in societies where there is no unified conception of identity. In such contexts, struggles over how to define who “we the citizen”, are and what the values and ultimate goals of “our” country should be can stand in the way of more procedurally oriented dialogue on how the government should best be run. Challenges of this nature have arisen in the constitution-making process in Nigeria. In this case, the debate which preceded the enactment of the constitution revealed deep divisions among the framers with regard to basis issues. In particular, vehement debates revolved around the question of the proper relationship between Islam and Christianity and secular character of the country. This contemporary-day Nigerian constitution is not, however, the first time when constitution-making processes in states emerging out of political conflict have had to confront such challenges. Moreover, among the historical precedents of such cases are ones where post-political conflict societies did manage to successfully establish a stable and democratic system of governance.

In Nigeria, creative solutions were found to the considerable challenge of achieving the popularly accepted consent to an agreement on the powers and procedures of government that represent the contribution of the constitution to rebuilding governance. The Nigerian constitutional solutions differ in certain fundamental aspects. Most notably, Nigeria adopted a lengthy constitution in the early years of the country, whereas other African countries with multi diversity of ethnic

groups decided not to adopt a written constitution at all. Nevertheless, Nigeria adopted a similar constitutional approach to address a very similar problem of bitter internal political conflicts over the shared norms and values of the polity as a whole.

In addition, in this case, constitutional deliberations followed a violent political conflict through a sect called Boko Haram. In this case one of the most bitterly divisive issues during the Nigerian constitutional discussions concerned the religious and national identity of the polity as a whole: Should the *Sharia* states be understood in religious or secular national terms? How do we accommodate the need for Nigeria unity with its enormous religious, linguistic, and cultural diversity? In this case, the military framers of the constitution ultimately acknowledged their inability to achieve consensus regarding the basis issues which divided these societies. Rather than forcing choices between the competing visions of the country, they transferred these controversial decisions from the constitutional sphere to future democratic institutions which could continue the debate over time. By employing strategies of ambiguity and avoidance, they embraced constitutional arrangements formal and informal which circumvented potentially explosive political conflicts and facilitated the establishment of stable governments. In this case, these solutions have impressively stood the test of time, engendering vibrant democratic dispensations despite decades of political strife and ethnic or religious tensions which have continued till date.

#### **INFORMAL CONSOCIATIONALISM IN NIGERIA**

When the country of Nigeria was founded in 1914, Islamic societies in the Northern region were divided between rival religious and secular conceptions of the desired nature of the Northern region. What was at stake was a struggle over the ultimate values rather than distributive justice, over the whole rather than the parts. This struggle was most poignantly evident in the discussions over the constitution. The constitutional controversies generated by the religious–secular cleavage stem from the comprehensive nature of the Islam religious code of law: the *Sharia*. As an autonomous system of law and procedures, the *Sharia* could feasibly comprise an alternative to the federal legal system of the country.

From the perspective of many ultra-Orthodox Nigerians, the *Sharia* takes precedence over the law of the state whenever there is a contradiction between the two systems, and especially when civil law demands behavior that is contrary to Islamic law. Thus, much like in the case of Islamic states, the nature of the *Sharia* as a comprehensive federal legal system meant that the problem of defining the relationship between religion and state was not merely a problem of deciding whether or not a certain religion should have official status, as a state religion. Rather, it was a problem of defining the relationship between the state and the Islamic law. This problem, and the question of which law was supreme, became one of intense dispute from the early constitutional debates in the 1960s.

In October 1960, when the first parliament, which was initially elected as a national assembly, began formally discussing the issue of the constitution, the ardor and intractability of the religious–secular schism was immediately apparent. Consequentially, the debate did not center around the content of the constitution, but on whether or not a written constitution should be drafted at all. The nature of the constitutional debate in Nigeria reflected a deeply held fear that the drafting of a constitution could prove to be a destabilizing and incendiary exercise at a time when maximum solidarity was needed to confront the sustainability. This fear was poignantly expressed by Anthony Enahoro:

I would like to warn: the experience of drafting a constitution would necessarily entail a severe, vigorous uncompromising conflict of opinions. A war of spirit, which is defined by the gruesome of

political and constitutional reforms.....Is this a convenient time for a thorough and penetrating examination of our essence and purpose?

It is clear that there is no room for any compromises, any concessions or mutual agreements, since no man can compromise and concede on issues upon which his belief and soul depend. It is important to note that such warnings of the potential destabilization of the political order were not perceived as unrealistic, since they were grounded in the very delicate and fragile political order of the newly founded state. One of the most serious problems which the Nigerian government faced after independence was the challenge of transforming the political culture of a voluntaristic community in the pre-sovereignty era into a society with the institutional structure of a sovereign state.

Indeed, Nigeria's first Prime Minister, Tafawa Balewa, himself many times expressed the view that "Citizenship requires a deep mental character . . . our people do not have a character yet", (Whitaker, 1965). During its first years, the government faced grave challenges to the state's authority. This dissent originated in the pre-state social and ideological fragmentation within the Zionist movement and outside of it. Both before and after the establishment of the country, there were isolated instances of violence, or potential violence, of extreme national or religious groups that acted against the western secular leadership in an attempt to undermine its authority.

The gravity of the situation was recognized by the secular leadership of the state, and reflected in their speeches during the House debate over the adoption of a written constitution. Consequently, a year and a half after the first representatives were elected; it passed a resolution postponing the immediate enactment of a written constitution, deciding to construct it step by step, over the course of many years, by means of enacting individual Basic Laws which were accorded the status of higher law. To be sure, there were many reasons for the decision to refrain from drafting a formal constitution at a time of independence involving political, social, and pragmatic factors. Nevertheless, clearly the inability to reach a consensus regarding the most fundamental normative principles of the country was the underlying condition which led the House to avoid unequivocal majority decisions, and to transfer the choices over the ultimate values of the polity to future political institutions. In lieu of a formal constitution, the establishment of the institutions of government was achieved through conventions and the legal structure inherited from the British rule. These institutional arrangements were retroactively entrenched in a series of Basic Laws which were adopted over the years. Meanwhile, Nigeria's Declaration of Independence partially fulfilled the "foundational" aspect of the constitution, defining Nigeria by the arguably contradictory scholars of a "free and constitutional democratic state."

Since the Nigerian society was incapable of reaching a consensus regarding the balance between its Nigerian and democratic national identities, the political leaders of the young country circumvented the potentially explosive conflict over religious issues through a set of informal consociational arrangements where representatives of the secular majority agreed not to threaten the core values of religious factions through majority decisions on controversial issues. The Nigerian consociational arrangements mandated the inclusion of religious parties in coalition partnerships, proportionality in resource allocation and the establishment of a state-funded but autonomous religious education system. The vague, unwritten quality of the consociational arrangements enabled Nigerian democracy to develop despite strong social divisions. But circumventing explicit decisions on fundamental issues did not solve them. Rather, they were postponed, to be dealt with later. Even the term "status quo" itself has remained an issue of contention. Nearly all government coalition agreements have committed to upholding the status quo. And yet, as the term has never been

clearly defined, its scope has remained an issue of acrimonious debate in the *Sharia* and the courts and among the public at large (Lijphart, 1968, 1969, 1977)

To this day, the issue of the proper relationship between religion and state has remained one of the principal fault lines along which Nigerian society is divided. While the debate over religion and state continues to polarize the Nigerian society, any attempt to resolve it has proven to be even more destabilizing. In the passing of the Basic Law, the Basic Laws were the first to deal with “foundational” issues relating to the identity of the Nigerian nation rather than just procedural issues regarding the functioning of governmental institutions. Both of these laws entrenched basic constitutional democratic rights that religious factions believed threatened the status quo. The opposition of the religious bloc to these laws was exacerbated by activists’ constitutional lawyers who lauded them as a “constitutional revolution,” implying that they were an important step on the way to the framing of a formal constitution (Suberu, 2004). The suggestion that the primacy of constitutional democratic norms was being formalized in entrenched law and could be enforced in Supreme Court rulings met with severe opposition on the part of the religious camp. The intensification of the religious secular conflict in the public and the political arenas resulted in increasing institutional tensions between the judiciary and the legislature (which was, at the time, led by a coalition that included several religious parties). This escalation was reflected in several attempts by the religious parties to use the political arena to promote their struggle with the Supreme Court and to weaken its judicial authority in constitutional-foundational issues. The severe reaction to the attempt to take a step toward formalization of a constitutional constitution in Nigeria makes it doubtful that Nigeria will be able to draft a formal constitution in the near future. It seems that the Nigerian constitution will only be completed once fundamental questions over the identity of society and country are resolved. Until such time, there remains a trade-off between the degree of formalization of the basic norms of the country and the stability of the social and political system.

### **CONSTITUTIONAL AMBIGUITY IN NIGERIA**

Nigeria did adopt a formal constitution. Nevertheless, the case of Nigeria involves similar strategies of ambiguity and avoidance to deal with deep divisions. Religiously, culturally, and linguistically, the Nigerian society was – and still is – one of the most diverse in the world. After the partition that created West African Countries, Nigeria was left with a Muslim majority and a Christian majority of almost 50/50 percent of its population alongside other minor religious minorities such as traditional indigenous religions. Over two hundred and fifty languages were spoken in Nigeria at the time of independence by more than one million people, and the number of dialects reached four hundred. Socially and economically, the polarization among Nigerians was tremendous due to its rigid traditional caste system especially in the northern Muslim states.

In short, the problem of forging political unity amid extensive diversity remained the main challenge of the National Assembly even after partition. The Nigeria military framers led by General Aguiyi Ironsi overcame this extraordinary internal diversity by adopting a long and extremely detailed constitution from the decree 34 of 1966 (Unification decree) during and after a long military rule and civil war, which was considered by its critics as lacking theoretical consistency and a coherent system of values and beliefs, (Isiaq, 2007). The constitution includes provisions with potentially competing principles and perspectives, such as modernity vs. traditionalism, state intervention in religious affairs vs. separation of church and state, constitutionalism and individual rights vs. communitarism and special group rights, and

social reform vs. social conservatism. While some have seen this as a shortcoming of the constitution, others see its vagueness as its strength.

The renowned scholar and politician of Nigerian constitutionalism, Anthony Enahoro, identify the National Assembly's ability to encompass conflicting principles as one of its most original contributions to the practice of constitution-making. Two revealing examples of the inconsistency and lack of clear decisions in the Constitution are the provisions concerning the Uniform Civil Code (namely uniformity of secular personal law) and the official language of the state. These two issues represent a fundamental controversy involving two opposing views on the identity of Nigeria, one of which aspired to unify through uniformity, while the other chose to maintain the religious and cultural pluralism which had characterized the Nigerian society for generations.

### **NIGERIAN CONSTITUTION AND UNIFORMITY**

The argument over the Uniformity lasted throughout almost the entire democratic years of constitutional drafting. The question was whether to entrench civic secular principles of personal law or to preserve the particular traditions of the various religions. By making all Nigerians answerable to the same civil law, some of the military framers of the constitution under General Yakubu Gowon wished to advance a homogeneous sense of Nigerian nationhood. Yakubu Gowon, the leader of the military government, argued during the civil war and after:

Our first problem and most important problem is how to produce national unity in this country. There is no use clinging always to the past. We are departing from the past . . . we want the whole Nigeria to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities?"  
(Elaiwu, 1985)

However, other Nigerian leaders particularly Muslims argued against country interference in religious matters and demanded that the primacy of traditional *Sharia* laws of the religious majority in the Northern region should be upheld. Uniformity, as claimed by Muslim political leaders, during the House debates, was merely a thinly disguised tyranny of the majority: The argument on the uniformity reflected fundamental disagreement on the desired role of the constitution itself. The supporters of the uniformity wished to use the writing of the constitution to forge a source of common identity which could unify members of diverse religious and cultural groups. They wished to use the legal power and status of the constitution to modify religious customs and advance legal uniformity among all religious and ethnic groups.

On the other side was the conviction that constitutions should reflect current realities and should not impose deep social and cultural changes. Islamic Organization of Nigeria warned against overly radical constitutional provisions, arguing that it would be too difficult, "at this stage of our society," to expect people to surrender to the state areas of their lives such as marriage, that were previously governed only by their traditional-religious practices and institutions. I have no doubt that a stage will come when the civil law will be uniform. But then that time has not yet come. The uniformity was adopted as Article 44 of the constitution, which reads: "The country shall endeavor to secure for the citizens a uniform civil code throughout the territory of Nigeria."

Thus, the question of whether a constitutional democratic or a religious conception of personal law was to be applied in Nigeria or not remained an open one after the constitution had been enacted. By employing an ambiguous language, the Nigerian constitution effectively removed the decision on this important issue from the constitutional arena, transferring

it back to the political sphere. As a result, in the 1960s, the Nigerian Parliament passed bills which created a differentiation in the application of the uniformity to different religious communities. Consequently, the applicability of secular personal law to individuals in Nigeria is dependent on their religion. Even today, the ambiguous intent of the constitution still leads to heated political and legal debates in Parliament and the Supreme Court.

### **NIGERIA AND ETHNO LINGUISTIC DIFFERENCES**

Nigeria is a country with an immense population of over 140 million, the largest in Africa, and several hundred languages and ethnic groups (over 400 in some estimates, 510 according to *Ethnologue*, 2005), though with no single group being a majority, and the three largest ethnic groups together constituting only approximately half of the country's total population. Having been formed as a united territory by British colonial forces in 1914, with artificially created borders arbitrarily including certain ethnic groups while dividing others with neighboring states, Nigeria and its complex ethnolinguistic situation in many ways is a prime representation of the classic set of problems faced by many newly developing states in Africa when decisions of national language policy and planning have to be made, and the potential role of language in nation building has to be determined.

When independence came to Nigeria in 1960, it was agreed that English would be the country's single official language, and there was little serious support for the possible attempted promotion of any of Nigeria's indigenous languages into the role of national official language. The issue of whether Nigeria should have a national language provided a similar example of how the Nigerian National Assembly had to address fundamental issues of identity in its efforts to write a constitution. Many scholars emphasized the importance to national unity of a national language, as a "cement" to hold the various parts of Nigeria together. Other members of the National Assembly objected strongly to the subordination of their languages to that of the Hausa, Yoruba and Igbo majority. After an intense and a heated debate, the National Assembly could not agree upon a national language. In the compromise formula that was eventually agreed upon, while English was labeled the official language, English would be used for all official purposes, (Igboanusi and Ohia, 2001).

In addition, the constitution recognized all other languages for official use. Thus, the National Assembly found a way to strike a balance between nationalist aspirations and pragmatic exigencies. "Instead of ceding to the linguistic nationalism of a substantial segment of the population, a pluralist compromise was engineered, which recognized the use of different languages at different levels for different purposes" (Igboanusi and Ohia, 2001).

As in the case of the uniformity, the constitutional formula regarding official language transferred the final decision to the political arena. Again, the members of the National Assembly recognized the limitations of the constitutional arena to make such fundamental choices regarding the identity of the country. They preferred adopting ambivalent formulations which did not attempt to crystallize a coherent identity but accommodated the conflicting positions. By adopting a strategy of deliberate ambiguity, the National Assembly achieved two things: first, it drafted a constitution which successfully represented the actual identity of "the people": a divided identity. Second, it left the door open to the slow and gradual emergence of a united national identity, which would be crafted incrementally by the political institutions of the country.

### **CONCLUSION**

It is to this end that constitutional design should be used as an instrument per-excellence for changing the Nigerian political institution and structure that can easily bring sustainable development to the social, economic and political

development of Nigeria. This paper however does not view constitutional design in Nigeria as a panacea for resolving the entire problem relating to sustainable development, identity, legitimacy in a deeply divided society but sees it, instead as dynamic force in breaking the barriers that have long kept the people from the mainstream and thereby denying them of their economic, social and political development.

Sustainable development is a potent and indispensable weapon for political and structural stability. Any design in the present political dispensation in Nigeria must as a matter of fact take into consideration the plight of millions of people with different identities living in a deeply divided society in Nigeria. There must be efforts to bring this divided population together into the mainstream of national and sustainable development. This means changing the present political structure which has not fully either mobilized or utilized the human resources of its minority population.

Moreover, well-programmed constitutional design is necessary for the sensitization of the population of the deeply divided societies for both sustainable polity and sustainable development in Nigeria. Constitutional design instills a creative awareness and identity in a deeply divided population both at the majority or minority level helping them to discuss and foster self-confidence. Its purpose in the sustenance of national polity is to inform, reform and transform the deeply divided society from the position of apathy to involvement. The most important role of constitutional design is to ensure sustainable development of the deeply divided society; for it is the societies that collectively make up a nation.

Efforts at accomplishing the great task of revitalizing the deeply divided society like Nigeria for sustainable political system devoid of inequality, divided identity, different religious groups, different languages, oppression and injustice should be geared towards the sustainable development of the people in Nigeria. In failing, failed or post-political conflict Nigerian state, the court system and the parliament may be ill equipped to deal with these issues. Where political structures are highly unsustainable, and where there is little popular trust in or support for constitutional democratic institutions, there is a significant danger of opposing factions abandoning the political arena in order to try to achieve victory through violent means. In this way, unresolved disputes can constitute a live grenade, quickly tossed from the constitutional arena, to the political or judicial and from there to the explosion of renewed hostilities. A paradox linked to this problem is that where constitutions are not “sustained” where they do not rest on shared norms and goals, they do not provide strong input-oriented legitimacy through expression of those norms. Where there is less input-oriented legitimacy, there is more need for output-oriented legitimacy, and governmental effectiveness becomes all the more important. If governments are not capable of providing the expected outputs, they may quickly lose any semblance of legitimacy and may well collapse.

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