

# THROWING OUT THE BABY WITH THE BATH WATER

## *The third-term agenda and democratic consolidation in Nigeria's Fourth Republic*

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### ABSTRACT

*The date 29 May 1999 marked the advent of another period of democratic governance in Nigeria. Before that the country's post-independence history had been mired in instability and characterised by political violence, frequent military coups and a profound crisis of legitimacy. The military, which had given the people some hope in the face of the patron-client politics of the first and second democratic republics, dashed expectations as military rule became synonymous with corruption, economic mismanagement and gross human rights abuses such that Nigerians began to yearn for a return to democracy. This was the mood when the 'fourth wave' of democracy flowed across the political landscape in 1999. The article examines how democracy fared in Nigeria between 1999 and 2009, especially under former president Olusegun Obasanjo, who, in 1999, became Nigeria's third democratically elected president. It examines specifically Obasanjo's self-perpetuation bid and its impact on democratic consolidation in the country and concludes that Nigeria's democratisation process is still trapped in its transitional stages.*

### INTRODUCTION

On 29 May 1999 democratic governance came to Nigeria for the fourth time in its post-independence history. Before that date the country's post-independence history was mired in political instability and characterised by frequent military coups, inconclusive and contested election outcomes, frequent changes in policy, political violence, and a crisis of legitimacy (Osaghae 2002, p 14). For example,

between 1960 and 1998 there were ten officially accepted coups,<sup>1</sup> six of which (two in 1966 and one each in 1975, 1983, 1985 and 1993) led to the successful overthrow of the existing government and two of which (1976 and 1990) were bloodily aborted. According to Osaghae (2002), two (1986 and 1995) were nipped in the bud and the officers involved were either jailed or executed. In this period (1960-1998), which saw military rule accounting for 30 years of Nigeria's 48 years of post-independence history, the country had only ten years of democratic governance, including Ernest Shonekan's six months as head of an interim national government hurriedly put together by General Ibrahim Babangida, who was arguably Nigeria's most notorious military ruler.

Nigeria's first stint of self-determined democratic governance, which has been labelled the First Republic,<sup>2</sup> lasted for three years and was punctuated by the military coup led by Kaduna Nzeogwu, which resulted in the assassination in January 1966 of the prime minister, Sir Abubakar Tafawa Balewa, and a host of other important government functionaries. This coup signalled the start of the first phase (1966-79) of military incursion into and adventurism in Nigerian politics. The Second Republic (1979-1983), led by President Shehu Shagari, was cut short by the Idiagbon/Buhari coup of 1983 and Nigeria remained under the military dictatorships of Generals Muhammadu Buhari (1983-85), Ibrahim Babangida (1985-93), Sanni Abacha (1993-98) and Abdulsalam Abubakar (1998-99) until Olusegun Obasanjo was sworn in as the third democratically elected president of Nigeria, thus inaugurating the Fourth Republic.

Given these circumstances it is clear that Nigeria lacks democratic experience since democracy has never been practised for long enough to have become entrenched as a political culture, system and practice. Added to the democratic deficit and political instability which have plagued the country since independence Nigeria has also been bedevilled with economic stagnation, endemic corruption and a pervasive crisis of underdevelopment which has left the people feeling despondent and alienated from the state.

The brief experience of democracy during the first and second republics did not result in the anticipated difference between military rule and democratic governance. The Second Republic, for instance, was defined by widespread corruption, economic mismanagement and decline arising from the low price of petroleum in the global oil market, poor intergovernmental relations, a tendency

1 There is a widely held public perception that General Abacha's death and his replacement by General Abubakar was a quiet military coup in itself

2 Each of Nigeria's democratic dispensations has been labelled a 'republic'. The First Republic lasted from 1963 to 1966, the Second Republic from 1979 to 1983. The incomplete democratic transition of Babangida's regime, which saw the election to office of people at all levels of governance except the presidency between 1992 and 1993, is generally referred to as the aborted Third Republic (see Achike 1978, p 97). The current regime is known as the Fourth Republic.

towards dominant-party rule and bad political governance as well as religious extremism, nepotism and patron-client politics (Richard 1987; Abubakar 1997; Banjo 2008). These factors combined to make life difficult for the majority of Nigerians, who were groaning under the stress of a declining, if not comatose economy (Uzodike 1994). They also explain the people's desire for and embrace of the various military regimes that used the deplorable state of the nation to justify their unconstitutional incursion into politics (Agbese 1996).

Ironically, the military itself dashed the people's expectations as military rule became increasingly synonymous with corruption, nepotism, economic mismanagement, tyranny and gross human rights violations, which alienated the people even further. According to Banjo (2008, p 56) the military repressed the Nigerian people, damaged the economy through mismanagement and impoverished the country through the selfish and unrestrained pursuit of personal wealth and power, causing the masses to demand a second liberation and yearn for civil democracy. Thus, when, in 1999, the 'fourth wave' of democracy swept across the political landscape expectations were high and the people greeted the Obasanjo government with enormous goodwill and public support. Their hopes for a new beginning were raised by his declaration that his government would not pursue 'business as usual' and that there would be no sacred cows in his pursuit of an anti-corruption agenda.

So, how did democracy fare under the rule of President Olusegun Obasanjo? While it has, arguably, yielded some democratic dividends<sup>3</sup> our position is that the democratisation process is still trapped in its transitional stages, making democratic consolidation elusive. What factors militate against democratic consolidation in Nigeria, and how can they be mitigated to enable democratic consolidation and actualise the much vaunted development dividends accruable from developmental democracy?

In grappling with these questions we contend that leadership succession and, specifically, President Obasanjo's alleged bid to extend his tenure beyond the constitutionally prescribed two-term limit, popularly referred to as the 'third-term agenda (TTA)', are significant factors. This is because they dictated the political actions and development agenda of the Obasanjo administration, especially in its last four years. Accordingly, the thrust of this paper will be to

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3 Obasanjo's administration left an ambivalent record of democratic consolidation and underdevelopment of democracy, which Joseph & Kew (2008, p 167) describe as 'a paradoxical legacy of both far reaching reforms and anti-reformist actions'. His achievements include debt relief and buy-back for Nigeria, extensive banking reforms and consolidation, macroeconomic stability and an average 6% growth in the economy between 1999 and 2007; revamping of the telecommunications sector, making it the fastest growing in the world today; the institutionalisation of the anti-corruption fight, however selective, and an increase in the level of military professionalism (see Sklar, Onwudiwe & Kew 2006, p 100).

analyse the impact of the third-term agenda on the review of the 1999 Constitution and consequently on democratic consolidation in Nigeria.

The constitutional review process remains germane to our analysis because the review, which is critical to democratic consolidation, was aborted and thrown out completely by the National Assembly in the popular quest to 'kill' the TTA. Thus the National Assembly threw out 'the baby and the bath water' and the Nigerian family was left to bear the pain of the 'loss of a precious baby in a family without children'.

### CONCEPTUAL FRAMEWORK

It is pertinent to explain a number of concepts that are germane to a good grasp of our analysis. These concepts include democratic consolidation, the TTA and constitutional review.

#### *Democratic consolidation*

What is democratic consolidation? Does it mean the entrenchment of the institutions of democracy as enunciated in a constitution or the inculcation of democratic values in the citizens to the point where they are willing to defend those values against those who hold state power and those who control the instruments of coercion?

Since the collapse of communism in the former Soviet Union there has been a steady rise in the number of countries embracing democracy in different forms. The many conditions for qualifying a political system as democratic notwithstanding,<sup>4</sup> a democratic state may become engulfed in a socio-political and economic crisis to the extent that it slips into autocracy, authoritarianism and, ultimately, into anarchy. Therefore, the transition to democracy alone cannot

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4 Democracy is essentially a contested concept, not only because it means different things to different people but also because it is an abstract idea, the practice of which is virtually impossible anywhere (Gitonga 1995, p 7). While it is not our task in this paper to define democracy, we state from the outset that we subscribe to the view of democracy as both an ideal and a practice, an end and the means towards achieving that end. Those who support the view of democracy as a moral ideal, a system of values and a way of life see its core values as individual liberty and rights as well as social cooperation among free individuals (Talisso 2003). As a practice, democracy is the means or machinery for realising the democratic ideal and, as such, it is a concrete reality which can be observed and measured. In this sense it is seen as a system of government and/or a set of institutions and political arrangements meant for the selection of a government (Schumpeter 1977, p 171; Appadorai 1968, p 143). By way of synthesis we attempt to conceive democracy as a system of values, a way of life and moral ideals which help to internalise and utilise individual freedom and social cooperation towards the establishment of elected government as a social institution that guarantees the development of individuals within society. This leaves room for debate about whether or not the Nigerian political system as presently constituted is a democracy. Again, that is not our concern here.

safeguard a democracy from failure. Given the multiplicity of claims of democracy<sup>5</sup> and the existential challenges which militate against democratic stability there is a need to set out minimum requirements for securing a democracy against possible overwhelming socio-economic and political challenges and collapse.

There are numerous scholarly views on the minimum conditions for safeguarding democracy and thus sustaining or consolidating it. It is widely held that unless a democracy is consolidated there is a possibility that it will slump into a system that falls short of democracy, or, at best, remain trapped in an endless transition. This position is supported by Diamond (1994, p 15), who defines democratic consolidation in the context of the politics of a state as 'the process by which democracy becomes so broadly and profoundly legitimate among its citizens that it is very unlikely to break down'.

Diamond (1994, p 15) contends that democratic consolidation depends on behavioural as well as institutional changes and increasing confidence in the survival of democracy and that this 'requires the expansion of citizen access, development of democratic citizenship and culture, broadening of leadership recruitment and training, and political institutionalization'. Democratic consolidation, therefore, is the process by which a young or new democracy matures and democratic ethos and practice deepen to such an extent that the total breakdown of democracy or reversion to authoritarianism becomes extremely unlikely. This involves deep, unquestioned, and principled 'loyalty' to the democratic ideal, framework and procedures and a shared normative and behavioural commitment by both the political elite and the masses to the specificities of democratic rule and practices of the country's constitutional system.

There is a plethora of views on the necessary and sufficient conditions for democratic consolidation and the literature is well documented, not only in the global context (Lipset 1959; Hadenius 1992; Linz & Stepan 1996) but also more specifically in the African context (Ake 1996; Nzongola-Ntalaja 1998; Diamond 1994).

For example, Linz & Stepan (1996, p 5) suggest that democratic consolidation has been attained when democratic processes and institutions have become 'the only game in town', making popular acclamation the criterion. On the other hand Ibeanu (2000) argues that what consolidates a democracy is the length of time and number of transitions within the democratic practice.

While these arguments all have their strengths and weaknesses, this paper

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5 Because democracy means different things, even dictatorships have labelled themselves democracies. For instance, President Pinochet of Chile popularly referred to his autocratic regime as an 'authoritarian democracy'. In the same vein, the 'dictatorship of the proletariat' in Marxian parlance is simply another name for 'popular democracy' (Gitonga 1995).

is in favour of the simplified and manageable concept of the minimum factors required for democratic consolidation set out by Afrifa Gitonga (1995). We shall complement Gitonga's generic analysis with that of Idowu Awopetu (2007), which is Nigeria-specific.

Gitonga identifies three features of a consolidated democracy: the *material infrastructure*, the *institutional techno-structure* and the *human superstructure*. Awopetu identifies four conditions, namely: the *material condition*, the *constitutional condition*, the *intellectual condition* and the *psychological condition*. Broadly construed, a combination of Gitonga and Awopetu gives us the material and the human indices. The material index includes Gitonga's infrastructure and techno-structure, and Awopetu's material and constitutional conditions, while the human index covers Gitonga's superstructure and Awopetu's intellectual and psychological conditions.

Using the new framework, the *material* index for democratic consolidation involves securing basic human needs (food, water, shelter) and consequently ensuring a sufficient degree of economic well-being to permit citizens to devote the time and energy necessary for participation in governance, not necessarily without any coercion, but without the fear of any form of vulnerability, which leads to intimidation. In addition, the constitution, as well as other mechanisms for governance, in terms of their objective value as instruments (means) of the democratic ideal and practice, must guarantee the people's rights and must be open and accessible to all.

Consequently, the material index extends to the institutional requirements or supervisory facilities (techno-structure), checks and balances, power-sharing, system of succession, space for opposition, duties, tasks, responsibilities, jurisdiction, and division of labour. It is only when these are well established that democracy can be consolidated. However, on its own, the material index amounts to nothing significant without the human index to complement it.

The human index is the human structure that propels the material index because, with the democratic process as with development, people are the means and end of the process. Neither the economic nor the constitutional conditions can be put in place, let alone function properly, without a developed human factor.<sup>6</sup>

The economic prosperity of a democratic community may be sufficiently

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6 The human factor has been defined as the spectrum of personality characteristics and other dimensions of human performance that enable social, economic and political institutions to function and remain functional over time. None of these institutions can function effectively without being upheld by a network of committed persons who stand firmly by them, believing strongly in and continually affirming the ideals of society (Adjibolosoo 1995, p 33). According to Owusu-Ampomah (2004, p 66) the personality characteristics that enhance human performance in all spheres and which are a sine qua non for the attainment of development goals include responsibility, integrity, loyalty, trustworthiness, commitment, tolerance, discipline, humility and love.

supportive of active and courageous participation but it takes an informed and willing citizenry actually to face up to the challenge (see Owusu-Ampomah 2004). The human index, therefore, entails a complex mix of dispositions and attitudes that must be manifested by the individual members of the democratic community for a system to be considered a consolidated democracy. Among the elements of the human index are qualitative education, national orientation, political culture and the values, beliefs and attitudes of the people.

The national culture and orientation must promote good leaders and followers who are well informed. According to Awopetu (2007, p 25) 'neither educational institutions, nor informational media, nor the act of communication is likely to be well developed or properly used if appropriate traits of character are not common place among citizens'. Crucial to democratic consolidation is the level of legitimacy the system enjoys among the people, who should believe in the system rather than in a political party, a regime or an individual. Though it is hardly possible to have everyone believe in a particular system the level of scepticism, apathy and opposition should be insignificant. It takes a politically educated and sophisticated citizenry to participate actively and constructively and thus play its role in a democracy on a continuous basis.

### *The third-term agenda*

The concept of the third-term agenda as it relates to Nigerian politics refers to the alleged attempt of President Olusegun Obasanjo to extend his rule beyond the constitutionally prescribed limit of two four-year terms by means of an amendment to the 1999 Constitution of the Federal Republic of Nigeria. It denotes an agenda for tenure extension for President Obasanjo but it is uncertain whether such an extension would have meant three terms of four years each starting from 1999, or three terms of four years each starting from 2007, in which case it could easily have meant life presidency.

Even after the demise of the project there is still speculation about just whose idea the TTA was, but it was widely believed to have emanated from the presidency itself (Timberg 2006, p 10). President Obasanjo's ambiguous position on the issue, 'that a third term would allow him to complete initiatives he started in his previous seven years in office' (Timberg 2006), but that he had not decided whether to run, did not wash with Nigerians. He was also contradicted by some of his former close political associates such as Dubem Onyia, Minister of State for Foreign Affairs (1999-2003), who claimed that the president had sought his support for an extension of his tenure as early as 2003 (Aluko 2007).

The use of state security agencies such as the police against anti-TTA protesters also lent support to claims that the attempt to extend the presidential

term originated with President Obasanjo. Among the protests which were forcibly put down was one organised by Youth for Good Governance in Kano on 18 April 2006 in which more than 5 000 protesters participated (*Africa Research Bulletin* 2006).

Despite widespread knowledge of the role of the presidency in the prosecution of the TTA through both the National Political Reform Conference (NPRC) and the National Assembly, there were claims that the project did not exist. Could there be any truth in such claims? Was the TTA only a ploy by Obasanjo's detractors to discredit him; a fiction 'fertilized to a level of fact by the media', as alleged by Chief Onyema Ugochukwu, a senior special assistant to the president (Ogbodo 2006)? Or was it really an attempt by the core North to divert attention from the constitutional review which would have accommodated the interests of the South-South and the South-East, as claimed by Chief Mathew Mbu (Ogbodo 2006)? Did Obasanjo, in fact, attempt to extend his tenure? We ask this question to draw attention to the controversy around the third-term project.

It has been suggested that there were multiple attempts to extend tenure. The first entailed an attempt to use the government-organised NPRC. According to Ayobolu (2006), the government attempted 'to manipulate the process and outcome of the NPRC to adopt a tenure elongation agenda in a very surreptitious and clandestinely manipulative manner that will not be quickly and out rightly decipherable by the prying eyes of the public'. The second attempt was more widely known – the use of the Ibrahim Mantu committee on the review of the Constitution to recommend tenure extension. It is now history that both attempts failed, but their consequences remain.

One of the immediate results of the TTA was that constitutional amendments which would have enhanced good governance, transparency, accountability and, *ipso facto*, democracy, national integration and development, were thrown out along with the review process. In the end, the 119 amendments that were sought to deal with festering issues such as fiscal federalism, the derivation principle, the secular nature of the country, equality of states and local governments, state-federal government relations, citizenship, police, judicial independence, human rights, women's rights and land use all had to be discarded because of the tenure extension controversy (Sango 2006).

As there were antagonists of the TTA so were there protagonists.<sup>7</sup> Those who supported it did so for diverse reasons, none of them public-spirited, altruistic, or patriotic. Tunde Rahman and Oma Djebah (2005) identify 30 politicians, most of

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7 Although our focus in this paper is on protagonists among the political elites, other groups and individuals in society also supported the TTA. For example, the Manufacturers' Association of Nigeria (MAN), under the leadership of Charles Ugwu, 'publicly endorsed Obasanjo for a third term', even though he was later disowned by the association (see Duro 2007).



them state governors, who, for reasons of political advantage, to secure re-election, escape prosecution for corruption, or merely to survive politically, supported the TTA. According to them, 30 of the 36 state governors, cutting across party lines, supported the agenda. All 30 would have benefited from extended tenure; some by gaining further immunity from prosecution by the Economic and Financial Crimes Commission for corruption and related offences; some by the extension of the scope of their political power and standing in their states and zones and the corollary, containment and curtailment of the political relevance and efficacy of their opponents; yet others were looking to higher national office.

Many had mixed motives. Some had changed their political allegiance and affiliation from Obasanjo's vice-president, Alhaji Abubakar Atiku, to Obasanjo after it had become obvious that Atiku loyalists would be hunted down and forced out of office and into prison. Among the governors who jumped ship were Victor Obong Attah, James Ibori, and George Akume (Rahman & Djebah 2005; *Africa Research Bulletin* 2006). All were short on moral and political integrity in that they were willing to subvert by fraudulent and anti-democratic means the Constitution they had sworn to protect.

Some supported the TTA in expectation of its failure, in the hope that Obasanjo would back their own presidential ambitions in appreciation for their support for his tenure extension project. This explains the number of TTA governors who wanted the nomination of Obasanjo's party, the Peoples Democratic Party (PDP), in the 2007 election. With hindsight it can be argued that their support was half-hearted. According to Obi (2006) 'the flood gate of aspirations betrayed one fact – those third-term governors who declared their presidential ambition immediately Obasanjo's own ambition was aborted were pretenders'. While some state governors could be regarded as field commanders<sup>8</sup> of the third-term campaign the infantry was to be found in the two chambers of the National Assembly and in the electoral and security apparatuses of the state.

The primary protagonists of constitutional amendments were located in the National Assembly as senators and honourable members since, in terms of s 9(1), the power to amend the Constitution lay with the National Assembly. Subsections 2, 3 and 4 of the same provision set out the conditions to be fulfilled for such alterations to be effected. Thus s 9(2) requires a concurring vote of a two-thirds majority of all the members of each of the two chambers as well as the approval by a two-thirds majority of members of the houses of assembly of two-thirds of all the states. Section 9 (3) provides that

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<sup>8</sup> Adamu Muazu, chairman of the contact committee of the third-term project and Saminu Turaki, chairman of the finance committee, were such field commanders.

An Act of the National Assembly for the purpose of altering the provisions of this section, section 8 or Chapter IV of this Constitution shall not be passed by either House of the National Assembly unless the proposal is approved by the votes of not less than four-fifths majority of all the members of each House, and also approved by resolution of the Houses of Assembly of not less than two-thirds of all the States.

Section 9(4) specifies that the number of members to be used in the calculation of these majorities is the absolute membership of the respective houses as provided for in ss 48 and 49 of the Constitution, regardless of any vacancies that may exist in any house. The provisions of s 9 of the 1999 Constitution, which borders more on consensus than on majoritarian democracy, accounted, more than any other factor, for the failure of the TTA.

The members of the State Assembly were another set of people who supported the TTA. Because they were largely under the control and patronage of the governors of their respective states it was expected that had the Senate passed the resolution to alter the Constitution they would have concurred. At the public hearings held by the Constitutional Review Committee the houses of assembly of most of the states of the federation endorsed the third-term proposal. The Lagos State House of Assembly was one notable exception.

The role of the legislators at both national and state levels in propagating the TTA speaks volumes about the representative function of Nigerian lawmakers. According to Sango (2006)

many media organizations, across the country conducted several opinion polls on the issue of whether Obasanjo should be allowed to remain president beyond May 2009. Severally and collectively, these polls returned an emphatic NO! In all the geographical areas of the country, an average of 80% of all those polled opposed the idea.

Despite this, a majority of state legislators in the country, as evidenced in the number of state assemblies that endorsed tenure extension during the public hearings conducted by the Mantu review committee, supported and actively canvassed for an extension of tenure for Obasanjo and the governors (*Punch* 22 February 2006). Eventually the TTA was defeated by default – the inability of its sponsors to muster the two-thirds majority required for a constitutional amendment.

Among legislators, both national and state, monetary inducement was a primary factor in determining support for the TTA. Support for the project rose

and fell, it is alleged, on the basis of bribe money and its distribution. Amounts of money said to have been distributed to members of the National Assembly ranged from N50-million to N70-million. The support of law makers for the TTA cut across party affiliation, ethnic and geopolitical considerations, religious divides, and other social and political cleavages.

In addition to monetary inducement was the official position of the ruling party, which seemed to support tenure extension for Obasanjo (Umar, Ojo & Bamidele 2006). For example, the national executive committee of the ruling PDP, under the chairmanship of Alhaji Ahmadu Ali, 'got the PDP to adopt Obasanjo's third-term ambition as an "official project" and employed "bullying tactics", calling those opposed to Obasanjo and his plans all kinds of names' (Adebiyi, Rahman & Abonyi 2006).

The party machinery in those states whose governors had declared support for the tenure extension project was also massively behind the project. Instruments used by the party to prosecute the project included impeachment and the threat of impeachment, deregistration, expulsion, and marginalisation of members opposed to tenure extension. Among those deregistered was Atiku, while Senator Ararume was expelled from the PDP for 'anti-party activities', a euphemism for his 'anti-third-term stance' (Omotola 2007, p 147).

Although civil society and the general public also provided platforms for TTA campaigns and contests, the main battleground was the chambers of the National Assembly because that was where those with the real power to carry out the project through a review of the Constitution were to be found.

### *Constitutional review*

Constitutional review in the context of this paper refers to the attempted alteration/ amendment of the 1999 Constitution of the Federal Republic of Nigeria. Constitutional review should ordinarily seek to align constitutional provisions with the requirements and aspirations of a people for good governance and democracy and there had been calls from many sectors of the nation and from civil society organisations for the Constitution, which had been imposed by the military, to reflect the aspirations of Nigerians for political and economic development. However, the review process, when it came, was not only government driven, it was also largely undemocratic and anti-people (Sango 2006).

The focus of the review, both within the framework of the National Political Reform Conference and in the Joint Committee Constitutional Review (JCCR) of the National Assembly, was not to make the document accessible to ordinary citizens but to render it less relevant to the daily governance of the country. In the end, because the review became framed by the debate over extended tenure,

polarising the National Assembly, the Constitution Review Bill was thrown out, paving victory for democracy, as Obasanjo himself acknowledged (*Vanguard*, Lagos, 19 May 2006).

There is a nexus between the TTA, the constitutional review and democratic consolidation. As mentioned above, Nigeria is still trapped in the transition phase of its democratisation process, with the nascent democracy still very far from consolidation. Of the numerous factors which account for this, the problem of leadership succession has been an intractable challenge, as is the case not only in Nigeria, but all over Africa, where it is widely considered to be one of the main causes of armed conflict and civil war (Nzongola-Ntalaja & Lee 1998; Deng 2000).

Obasanjo's alleged 'third-term agenda' was a manifestation of the crisis of succession, which, although it did not lead to civil war,<sup>9</sup> heated the polity and tested the faith of the Nigerian people in the constitutional governance of elected representatives and the political elites in general. Beyond this, the political pathology of *leadership sit-tightism*, which pre-dates Obasanjo,<sup>10</sup> has grave consequences for politics, democracy and development in Nigeria that extend beyond Obasanjo's administration. It is to the specific impact of the TTA on constitutional development and on democratic consolidation that we turn below.

#### IMPACT OF THE THIRD-TERM AGENDA ON THE REVIEW OF THE 1999 CONSTITUTION

Nigeria has had a chequered history of constitutional development, due, among other factors, to the fact that it has never had an autochthonous constitution (one which derives its force from its own native authority and not by virtue of its having been enacted or authorised by an imperial power) (Nwabueze 1982, p 90). A society's constitution is said to be autochthonous if it is indigenous to that society and its people and if its power of enforcement is derived from that society.

Popular participation in the making of a constitution is vital as it gives it legitimacy as the ground norm of society upon which present and future

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9 It was reported that violence erupted in the northern parts of the country in connection with the third-term agenda. In the same report, militants in the Niger-Delta reportedly warned of dire consequences if the president stayed on in office (*Africa Research Bulletin* 2006).

10 Past Nigerian military leaders have been known to nurse 'sit-tight' ambitions, evidenced in their constantly postponing their own transition programmes. Gowon did not want to go, Babangida was bent on perpetuating himself in office, Abacha wanted to become a life president (then became a dead one), and now Obasanjo has placed himself squarely among this gallery of rogue leaders.

generations can depend for socio-political benefits, and thus defend. This has support in Ihonvbere's (2000) thesis that the basis of constitutional legitimacy must now be measured by the extent to which the masses have been part of the process of compacting the constitution. Similarly, the essence of a people-made constitution is well encapsulated in the words of a former Chief Justice of South Africa, the late Justice Ismail Mohammed:

The constitution of a nation is not simply a statute which mechanically defines the structures of government and the relations between the government and the governed, it is a 'mirror of the national soul', the identification of the ideals and aspirations of a nation, the articulation of the values binding its people and disciplining its government.

Hatchard 2001, p 210

In the main Hatchard (2001, pp 215-6) contends that while there is no single best model for constitution-making or review there are some basic principles of good practice which make constitutions legitimate, durable and effective tools of democracy and development. These include developing appropriate procedures and structures that will enable people to participate, putting in place mechanisms to ensure the integration of the ideas of all stakeholders, the use of a referendum to validate the proposed constitution, and the provision of a realistic timeframe within which to undertake the constitution-making exercise. He concludes that these represent the best and most realistic chance of constructing an autochthonous constitution that is both acceptable to the majority of the people and can stand the test of time. In his words, an autochthonous constitution is

a crucial step towards the establishment of an *ethos of constitutionalism* i.e. a recognition by the people that the document is 'their constitution' upon which they were consulted and which they endorse, which contains provisions that are meaningful to them and from which they can derive demonstrable benefits. The resultant document can then become 'trans-generational' in that it retains and develops public support over a period of time and thus is able to withstand attempts to undermine it either by 'unconstitutional' or 'constitutional' means.

Hatchard 2001, p 216

Unfortunately the Nigerian people have never been given the opportunity to exercise their sovereign power to make their constitution, as past constitutions have either been foreign-driven or elite-driven and imposed on the people.

According to Nwabueze (1982, p 90) the 1963 constitution, which was the

closest to an autochthonous constitution in Nigeria's constitution-making history (1922 to 1999), was still not autochthonous because 'it was enacted by parliament in virtue of power derived from the pre-existing imperial constitution; it was therefore authorized (though not directly enacted) by the British government'. It thus failed to delink Nigeria's legal order from the British government and launch the country on a new legal order with new constitutional roots springing directly from its own soil.

In addition to the plethora of defects in the constitutions put in place between 1922 and 1963, some of which are very well documented in Coleman (1958), the fact that none of them was indigenous, wholly made and owned by Nigerians, greatly compromised their integrity and effectiveness in dealing with the many problems of an emerging independent and plural Nigeria.

While the 1979 and 1999 constitutions could be said to be indigenous and thus autochthonous in that they were enacted by and derived their force from a Nigerian authority – the military – they were compromised by the fact that the Nigerian people did not participate in the constitution-making process. It is thus hypocritical to claim 'we the people of the Federal Republic of Nigeria ... do hereby make, enact and give to ourselves the following constitution' (Constitution of the Federal Republic of Nigeria 1999, p 1).<sup>11</sup>

Indeed, it is fair to conclude that the 1979 and 1999 constitutions are the constitutions of the Nigerian military rather than the Nigerian people, resulting in a lack of legitimacy, with implications for their effectiveness in dealing with the myriad problems bedeviling the country, combinations of which serve to impede democratic consolidation. According to Ihonvbere (2000) elite-driven constitutions in post-colonial Africa have never enjoyed widespread acceptability, and this lack of acceptability makes them less effective as a means of entrenching democracy on the continent.

Against this background, as early as 1999 a broad section of civil society started calling for a review of the 1999 Constitution which, like that of 1979, was handed down to the new democratic government and was therefore imposed on the Nigerian people by the outgoing military regime of General Abdulsalam Abubakar on 29 May. Apart from the question of autochthony real flaws were widely recognised,<sup>12</sup> which led to calls in some quarters for an entirely new constitution that would be based on the recommendations of a sovereign national conference (SNC).

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11 The preamble of both the 1979 and 1999 constitutions of the Federal Republic of Nigeria begins and ends this way.

12 This is hardly surprising since the 1999 Constitution was put together hurriedly by the military elites in an atmosphere of extreme social and political restiveness following calls for the breakup of the country after the death of General Abacha.

According to Aguda (2009) the SNC was a conference in which all the ethnic nationalities in the country would participate as autonomous entities, free to re-negotiate their membership of the Nigerian nation.<sup>13</sup> This idea, which was vigorously canvassed, still underlies the thinking of many Nigerians on the Constitution (Aguda 2009). Among the defective provisions of the 1999 Constitution are the directive principles of state policy, fundamental human rights, and organs of government as well as revenue mobilisation and devolution of power. There were also a number of calls by civil society to remake the Constitution to remedy contentious issues such as the electoral system, the practice of true federalism, the revenue sharing formula and state creation<sup>14</sup> as well as other issues germane to nationhood. Accordingly, there was consensus across the country and between civil society and government that there should be a wholesale review of the Constitution.

Evidence of government's early recognition of the many defects in the Constitution is apparent in the fact that in October 1999 it set up a Presidential Technical Committee on the Review of the 1999 Constitution. There was also the Presidential Committee on the Provisions for and Practice of Citizenship and Rights in Nigeria as well as the Presidential Committee on National Security in Nigeria, the terms of reference of all of which involved a review / amendment of some sections of the Constitution. However, it would seem that the government simply hijacked the people's call for a constitutional review, thus perpetuating a history of an elitist and statist top-down approach to constitution-making in the country. A pointer to this was its apparent rejection of calls for a SNC from which a new constitution might flow.<sup>15</sup> In response, the government inaugurated

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13 The SNC is a contentious issue in Nigerian politics as it means different things to different people and groups. For example, as defined by Aguda, the SNC evoked fears among the political elite that it could lead to the breakup of Nigeria. The debate around the different meanings and positions of different interest groups on the SNC is well captured in Okpeh 2003.

14 It has been argued that Nigeria does not practice true federalism – that there is too much power in the centre, which negates the federal principle of sharing power between the centre and the federating units (Osaghae 2002). This is, for instance, reflected in a lopsided revenue allocation formula decided by a strong central government which supports its units rather than the units supporting the centre. Another important issue relating to revenue-sharing is the formula of derivation. Minority ethnic groups, such as those in the Niger-Delta region, support a sharing formula heavily weighted in favour of derivation (how much a unit derives for the federation) rather than one related to need or population, as provided for in the Constitution. There is also the thorny issue of creating states to satisfy the demands of minorities who feel marginalised by majority ethnics who dominate the political economies of such states (federating units), where they co-exist.

15 According to Aguda, a judge, although the National Assembly is, with the concurrence of two-thirds of the houses of assembly of the states of the federation, vested with the power to 'alter' any part of the Constitution (s 9(1) & (2) of the Constitution) that power does not encompass carrying out a wholesale review of the Constitution, which would amount to the making of a new constitution. The prescription of the content of the constitution is the prerogative of the People (with a capital 'P'), which they may exercise through their representatives sitting in a constituent assembly or at a general constitutional conference.

instead the National Political Reform Conference, headed by Justice Niki Tobi, which handed its report to the executive in July 2005.

An earlier example of state leadership in the constitutional review process without recourse to the people was the National Assembly's Joint Committee on Constitution Review, which was set up in May 2000 but had failed to reach a conclusion by the time that National Assembly was dissolved. A new JCCR, headed by the deputy senate president, Senator Ibrahim Mantu, was constituted and inaugurated on 30 October 2003, but the process was aborted because of the third-term agenda.

How did the TTA affect the attempt at constitutional review? Was the process flawed in any way? Using Hatchard's (2001) principles of good practice for constitution-making as a measure, the review process failed the autochthony test. Firstly, on technical grounds the intended large-scale review of the Constitution by the National Assembly together with the Executive was fundamentally flawed *ab initio* as it was unconstitutional. The Constitution itself prescribes that any large-scale review is the prerogative of the people, which they may exercise through their representatives sitting in a constituent assembly or at a general constitutional conference (Aguda 2009).

Secondly, any legitimacy the people might have accorded to such an illegal exercise was further undermined by undue government interference in the process. The people's perception that the whole purpose of the review was to extend the president's tenure by means of constitutional approval of a third term in office would have had a negative impact on their response to the process and, worse still, its final product, if it had been passed by the National Assembly.

Thirdly, although the government developed procedures to enable people to participate in the process through public hearings there was widespread criticism of the way in which the JCCR carried out the public hearings in the different geopolitical zones. For example, it is questionable whether public hearings organised on the basis of geopolitical zones were representative enough of the country and its population of more than 130-million people. The popular sentiment was that public hearings in the states would have been more representative, affording more people the opportunity to attend the hearings and make representations.

There were also complaints about the sizes of the venues used for the hearings in some zones, while in others, such as Maiduguri (North-East) and Lafia (North-Central), last minute changes of venue served to alienate further those who wished to attend. In Osogbo (South-West), a rumoured change of venue also caused problems (*Punch*, 22 February 2006). This issue is not unconnected to Hatchard's fourth principle of good practice in constitution-making, which entails providing a realistic timeframe within which to undertake the constitutional review exercise.



The 1999 constitutional review process, which kicked off for the second time with the inauguration of the Mantu-led JCCR in 2003 and ended in 2006, set aside three days (22-25 February 2006) for public hearings in the six geopolitical zones. Thereafter, the JCCR and the National Assembly used the three months between the end of the so-called public hearings in February 2006 and the presentation of the Bill to the National Assembly for consideration in May to process the 'inputs' of over 130-million Nigerians. This, by any standards, would have been an almost impossible feat for the National Assembly to achieve even if it worked non-stop.

Since there had been three years in which adequate structures could have been put in place to facilitate consultation with the people, ensure the integration of all shades of opinion and tie up technical loose ends<sup>16</sup> it would seem that the constitutional review process was rushed in the year preceding the 2007 elections in order to create a constitutional basis for the TTA rather than to canvass the views of the Nigerian people through a referendum.<sup>17</sup>

In the end, the constitutional review failed. On 16 May 2006 the Senate voted to throw out the entire Constitutional Amendment Bill containing the tenure extension clause that would have paved the way for President Obasanjo to contest the 2007 elections.

Supporters of the Bill could not muster the two-thirds majority required for a constitutional amendment to bring it into effect, which is unfortunate because the Bill contained 119 other amendments that would have effectively addressed festering issues in the country. Had it not been for the TTA, the constitutional review process would not have been government-led and so rushed and would have been the first real effort at autochthonous constitution-making in the history of Nigeria.

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16 According to Dr Ahmed Hamawa, a university of Maiduguri don:

The entire exercise is not being done in good faith. This [Ibrahim] Mantu [Constitution Review] Committee has been dormant for the past five years and suddenly it seems to have regained its strength because the next elections are around the corner. They want to amend the constitution so that some people can perpetuate themselves in power. If they are sincere, let them wait until after the 2007 elections. Then, we will trust them and go there and present position papers.

*Punch*, 22 February 2006

A street survey conducted by *Punch* in Maiduguri city on 21 February 2006 confirms the people's views in this regard, with almost all commentators claiming the entire review process was a charade intended to legitimise the third-term agenda (*Punch*, 22 February 2006.)

17 A referendum would have helped to validate the process to make up for the technical flaw of not organising a sovereign national conference and or constituent assembly, as is constitutionally required.

As some have argued, the crises in the polity could be resolved through genuine commitment and adherence to the tenets of constitutionalism. In other words, a Nigerian state built on the principles of participatory democracy and social justice could be re-invented through constitutionalism. If this is to happen an autochthonous constitution, with its potential for acceptability and legitimacy, will be the starting point for reinventing Nigeria (Ihonvbere 2000; Aguda 2009). The Obasanjo administration missed this opportunity between 1999 and 2006 because of the bid to secure a third term in office using a non-transparent, non-inclusive and non-participatory constitution review process.

### IMPLICATIONS OF THE THIRD-TERM AGENDA FOR DEMOCRATIC CONSOLIDATION

The TTA has both positive and negative consequences for democratic consolidation in Nigeria. On the positive side, if, by democratic consolidation, we mean the entrenchment of democratic values and ideals in the psyche and consciousness of citizens and their subsequent ability to register their views by organised or spontaneous action such as demonstrations and submission of petitions to those in authority, then one way to measure the impact of the TTA campaign of Obasanjo and his supporters is to evaluate the number of actors who entered the civil society space and the positions they adopted.

An increase in the number of individuals and groups participating in the debate is an indication of the emergence of a participatory citizenry, irrespective of the quality and basis of the debate. For example, according to Ibrahim (2007), many Nigerians opposed the TTA. Among them were religious leaders who openly condemned it, bankers who informed journalists about the amounts and the recipients (legislators) of bribes passing through their banks, musicians who performed songs condemning the TTA advocates, street children and youths who assaulted pro-TTA legislators in their constituencies and some communities even threatening to recall such legislators (Ibrahim 2007, pp 9-10).

Another indicator would be the coordination of civil society organisations (CSOs) and other opposition groups and activities for maximum effect. Prominent anti-TTA CSOs included the National Civil Society Coalition Against Third Term, the Transition Monitoring Group and the United Action for Democracy. According to Ibrahim (2007, p 9) 'the mass media, especially private television stations and newspapers, became the vanguard of the struggle, running a very effective "name and shame" campaign against legislators supporting TTA'. In a sense, the organisation of opposition activities by CSOs, who collaborated to establish the Pro-National Conference Organizations (PRONACO) that organised a National Conference parallel to government's National Political Reform Conference, could

be regarded as a reflection of the entrenchment of democratic values in the psyche and consciousness of Nigerians. Indeed, Nigerians, in their political conduct with regard to the TTA, displayed behavioural changes reflective of a developed democratic citizenship and a move towards the normalisation of democratic politics and increasing confidence in its survival.<sup>18</sup>

However, in the same breath, and this is perhaps indicative of the ambivalent nature of Obasanjo's legacy,<sup>19</sup> the TTA dictated the administration's political actions and inactions in ways that detracted from democratic consolidation as they tended to compromise the quality of governance between 2003 and 2007. Firstly, as stated above, the constitutional review process and its potential for reinventing Nigeria was compromised and scuttled by the scourge of the TTA. Secondly, the TTA, which is characteristic of the political pathology of 'leadership sit-tightism' that bedevils African politics (Nnoli 2000), compromised the moral integrity of the Obasanjo administration and thus the legitimacy of the political system, as the president selectively tolerated corruption because of re-election considerations.

It will be recalled that when Obasanjo was sworn on 29 May 1999 the people's expectations of a new dawn were very high, after the dismal performance of the military in terms of good governance and development. He further raised the people's expectations when he pledged in his inauguration speech, aptly titled 'The New Dawn', that it would not be 'business as usual' and that in his fight against endemic corruption 'there will be no sacred cows'; that 'nobody, no matter where, will be allowed to get away with the breach of the law or the perpetration of corruption and evil'.

By the end of his first term it was back to business as usual. Among the many allegations of corruption in the presidency<sup>20</sup> the most instructive is that relating to

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18 Diamond (1994, p 15) contends that normalisation requires 'the expansion of citizen access, development of democratic citizenship and culture, broadening of leadership recruitment and training, and political institutionalization' if democracy is to be consolidated.

19 Alongside the achievements recorded by his administration, some of which were enumerated above, Obasanjo's legacy included increasing levels of poverty; deficient health, transportation and education systems; pervasive insecurity arising from crime; and comatose refineries. His many failures included an inability to fix the electricity problem despite billions of dollars poured into it, autocratic rule characterised by disregard of the rule of law; insurgency in the Niger-Delta; gross human rights abuses and tolerance of political godfatherism and state gangsterism in states like Anambra (See Joseph & Kew 2008).

20 In 2001 the permanent secretary of the Ministry of Defence, Julius Makanjuola, was indicted for stealing N42-million of the ministry's money but was never prosecuted because of his alleged close relationship with the president (see 'Top ten corruption cases?' available at: [www.nigeriavillagesquare.com/articles/mobolaji-aluko/10-top-corruption-cases-and-a-cutlass-to-cut-the-snake-s-head-pl-2.html](http://www.nigeriavillagesquare.com/articles/mobolaji-aluko/10-top-corruption-cases-and-a-cutlass-to-cut-the-snake-s-head-pl-2.html)). In addition, Kayode Naiyeju, was indicted, reportedly for the abuse of proceeds of the Education Trust Fund, but was promoted by Obasanjo to the post of accountant-general of the federation. This was cited in the 'resign or face impeachment' motion passed by the House of Representatives against the president in 2002.

Works and Housing Minister, Chief Tony Anenih, who allegedly misappropriated N300-billion allocated to his ministry for the rehabilitation of the Lagos/Benin/Port Harcourt roads in 2001. It was reported that the reason the president took no action against Anenih was not only his position as chairman of the Board of Trustees of the ruling People's Democratic Party but also his reputation as a 'political fixer' who could be trusted to deliver the South-South vote in the 2003 elections. In other words, Anenih, in spite of the accusations of embezzlement against him and his apparent technocratic deficiency, was tolerated by the president because of his strategic role in the president's bid for re-election.

This is one way in which the politics of re-election, either for a second or a third term, subtracts from good governance and development in Nigeria. All around the country politicians come into office with the attitude that once elected they are entitled to a second term in office. Therefore, almost immediately after been elected for the first time, politicians tend to set their sights on re-election and go as far as to start planning for it in the very first year of being elected. Characteristically, they retain or recruit and maintain a 'private army' of cultists and political thugs, hob nob with Motor Park touts,<sup>21</sup> popularly known as 'Agberos', and common criminals known as 'Area Boys'. A patron-client system is established to line the pockets of so-called political godfathers who are instrumental to re-election. In a sense then, re-election politics has done more harm than good to Nigerian politics.

Thirdly, the TTA polarised the ruling party, which had negative implications for the good governance and development of the country. The latter part of Obasanjo's administration was tainted by a bitter feud between the president and his vice-president, Atiku Abubakar, which was rooted in the politics of re-election in 2003 and exacerbated by the TTA. According to Odimegwu Onwumere the tension between them started when a PDP re-election committee launched Obasanjo's second-term election campaign without the vice-president, who was away from the country at the time, completely excluding him from the ticket. According to Odimegwu this action was based on speculation that the vice-president intended to stand against the president in the PDP primaries in 2003 (see Odimegwu 2007).

Throughout the period between 2003 and 2007 the two worked at cross purposes, compromising and sacrificing the people to their personal political battles for re-election in 2003 and the TTA in 2007 and therefore validating the saying that 'when two elephants fight, the grass suffers'. Thus, at a time when the full weight of government machinery as an instrument of development should have been deployed to confront the challenges of a people living in increasing poverty<sup>22</sup> it

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21 Bus stations or taxi ranks, as they are called in Southern Africa, are known as motor parks in Nigeria and touting by jobless people is a common characteristic of these parks. This is a Nigeria-specific phenomenon given the unregulated/informal nature of the Nigerian transport system.

22 Though these figures can be questioned, the World Bank, according to Joseph & Kew (2008, p 168), estimates that 92% of Nigerians live on less than \$2 a day, while 52% live on less than \$1 a day.

was circumvented and used to prosecute personal battles between those elected to lead by example.

According to Nnana (2007) the dispute between the incumbent and his vice-president compromised the elections in Africa's most populous country as the president openly declared in 2007 that 'over his dead body would Atiku succeed him'. '[T]aking serious interest in who succeeds you as a leader is ordinarily not wrong except that the manner Obasanjo is going about it suggests an exercise that will end up in a "selection" rather than an election. That, of course, portends danger for this diverse country of 140 million people,' wrote Nnana (2007).

Fourthly, the TTA had a negative impact on Nigeria's electoral system because the president sacrificed to his campaign for a third term the opportunity to reform the flawed system. Emerging from extensive reviews of the 2003 elections and stakeholder meetings organised by Nigeria's electoral body, the Independent Electoral Commission (INEC), in December 2003 and February 2004, all parties, including government agencies, political parties and civil society organisations, agreed with INEC that four critical obstacles to free and fair elections in 2007 had to be removed by 2005 (Ibrahim 2007, p 3). These included a constitutional amendment to give INEC administrative and financial autonomy, passing the revised Electoral Act of 2002 into law, imposing limits on campaign expenditure by political parties, early commencement, continuation and updating of voter registration and the distribution of new voter identity cards with embossed photographs and biometric features.

Apart from the revised Electoral Act of 2002, which was only passed in June 2006, INEC was very slow in prosecuting this road map to free and fair elections in 2007, leading Ibrahim (2007) to conclude that its apparent reluctance was symptomatic of programmed failure, which was not unconnected to the TTA. Apparently the president would, as he had in the 1999 and 2003 elections, have benefited from a flawed electoral system in 2007 had the TTA bid succeeded. Indeed, by failing to call INEC to order or to act in the spirit of the electoral road map the president failed to place the nation on a sustainable path of democratic consolidation. Another important indicator in this regard is the report of the NPRC, which contained very significant recommendations that would have addressed the scourge of electoral malpractice in Nigeria (interview 6 January 2007). However, thanks to the TTA, the Federal Executive Council did not consider the NPRC's report, nor has the report yet been made public.

Finally, beyond the Obasanjo era, the TTA served to compromise the quality of governance and the legitimacy of the new leadership in terms of leadership succession planning and its effect on the legitimacy of the new government. Apparently because of the TTA the president did not plan adequately for his successor. Instead of helping his party to enable an internal democratic process

that produced a credible presidential aspirant or, at the very least, head-hunting and mentoring a possible successor as well as ensuring a credible general election process to legitimise such a successor, the president planned for self-succession.

By the time his bid for a third term in office failed, in May 2006, Obasanjo and his party had less than eight months (May to December)<sup>23</sup> to 'shop' for a new presidential aspirant.<sup>24</sup> In the end, Nigeria was hurriedly given a leader who was mentally and physically ill-prepared, not only for the demanding task of running a complex country like Nigeria but also for bringing it out of the woods of underdevelopment.<sup>25</sup>

To compound the situation, the general election which ushered in the new president was marred by widespread irregularities, violence and alleged vote-rigging, which cast serious doubts on its credibility (see Omotola 2007b; Joseph & Kew 2008). In addition to the unanimous verdict of local and international observers to the effect that the election was highly flawed, President Yar'Adua, on ascending to office, admitted that the exercise was devoid of credibility. This no doubt informed his decision to do what the TTA had prevented Obasanjo from doing: reform the electoral process.

However, this action did not make the resulting legitimacy question, which hung around President Yar'Adua's head like the Sword of Damocles, go away. Analysts have pointed to the fact that the legitimacy question significantly affected the president's actions and inactions both in the domestic and international arenas in the early days of his presidency. And in spite of the temporary reprieve granted by a 2008 election tribunal ruling, which upheld the election, President Yar'Adua and the entire nation were still embattled during the wait for the final ruling by the Supreme Court. Although it swung in the president's favour, it resulted in a certain political instability which does not bode well for democracy and development.

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23 December 2006 was the deadline set by INEC for presidential nominations.

24 The race for the presidency only came alive after the defeat of the TTA in May 2006. Apparently the leading contenders were all waiting for the president to declare his intentions before going ahead with their bids.

25 Alhaji Umar Yar'Adua, Obasanjo's chosen successor, was an obscure governor of Katsina state who, six months earlier, had had no ambition to become president and thus had no well articulated vision, mission or manifesto for developing Nigeria. In addition, he was known to be terminally ill with a kidney disease. Yar'Adua died one year after this article was written. Thus the article does not cover the crisis of leadership and political instability into which his illness plunged Nigeria from November 2009, when he became too ill to carry out his role, until May 2010 when he eventually died.

## CONCLUSIONS AND RECOMMENDATIONS

We have argued that democracy in Nigeria is still trapped in the early stages of transition and is thus far from being consolidated. Basically we contend that among the numerous factors militating against democratic consolidation in Nigeria the question of re-election politics and, specifically, President Obasanjo's alleged bid to extend his tenure beyond the constitutionally prescribed two-term limit, popularly referred to as the 'third-term agenda', are particularly significant. This is because the TTA became the ideological compass that was used to navigate the ship of state as democratic principles of good governance, rule of law, and popular participation, including the goal of development, became subordinated to the TTA.

Specifically, the TTA robbed Nigeria of the opportunity to reinvent the country through constitutionalism when it resulted in the Senate aborting the top-down process of reviewing the 1999 Constitution. Consequently, the entire Constitutional Amendment Bill was thrown out, along with 119 potential amendments which might have helped resolve some of the thorny issues relating to the country's federalism and place it on a sustainable path to democratic consolidation.

Indeed, the TTA was a threat to democratic consolidation as, in the main, it compromised the quality of governance under Obasanjo, polarised the ruling party and ensured the retention of a flawed electoral system. In addition, it extended beyond President Obasanjo's administration to compromise the quality of governance and the legitimacy of President Yar'Adua's administration, casting doubts on the political stability of Nigeria.

However, in some ways, the TTA was a positive test of democratic consolidation because the people's opposition to it was a measure of how well Nigerians have entrenched the democratic value of political inquiry, which augurs well for the development of democratic citizenship.

The number of individuals and civil society organisations that participated in the debate is an indication of the emergence of a participatory citizenry, irrespective of the quality and basis of their contribution. The fact remains that if strong opposition to the TTA had not been palpable among the citizenry and civil society organisations<sup>26</sup> the anti-TTA members of the National Assembly might have lost steam in forging ahead with the struggle, especially given the anti-democratic

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26 Apart from the aforementioned roles of Nigerians and CSOs in opposing the TTA, in the thick of the TTA controversy all the national dailies in Nigeria conducted daily opinion polls on the subject. The question was basically 'Do you support President Obasanjo's third-term bid?' and each time a majority (80% average) of the people who participated answered 'No'. One of the authors conducted a personal survey and analysis of these poll results to determine the level of popular opposition to the TTA. These opinion surveys are separate from those randomly conducted on the streets of various Nigerian cities by some of the dailies, and the results, like those of the survey conducted by *Punch* in Maiduguri on 21 May 2006, reflected a similar response pattern.

antecedents of Nigeria's political elites (see Banjo 2008). This is a positive move towards normalising democratic politics and increasing confidence in its survival, which Diamond (1994) contends are essential constituents of democratic consolidation. However, as he further argues (1994, p 15), democratic consolidation requires the expansion of citizen access, development of democratic citizenship and culture, broadening of leadership recruitment and training, and political institutionalisation. Therefore we cannot reasonably conclude that the emergence of the participatory citizen during the TTA debate meets all the requirements for democratic consolidation highlighted above. For example, the same citizens could not sustain the tempo of political activism used against the TTA to ensure and protect their vote, as the 2007 elections were massively rigged. In most cases the citizens who fought against the TTA were the instruments of widespread vote-rigging, ballot-box stealing and general violence that characterised the 2007 election, thus leaving us to wonder whether the people's activism against the TTA was merely a flash in the pan.

What, then, is the way forward in respect of entrenching democratic values and practices in Nigerians to the point where their total breakdown or a reversion to authoritarianism becomes extremely unlikely and so that everyone can reap the material benefits of democracy? Having located the TTA problem in the politics of re-election it is our recommendation that Nigerians consider seriously the possibility of a single fixed term of more than four years but fewer than eight years for executive positions.

While the nexus between the quest for re-election and electoral malpractice in Nigeria may still be the subject of further research we do not need a soothsayer to tell us that a single fixed term of office will augur well for democratic consolidation. For example, from our analysis of the TTA we know that the vested interests of an incumbent regime with re-election ambitions could dissuade it from pursuing extensive electoral reforms. Implicitly, therefore, only a reformist regime with no re-election prospect whatsoever will be able to reform Nigeria's electoral system to enable it to produce credible and legitimate leaders.

Obasanjo's third-term bid showed that even the Constitution is not necessarily a barrier to personal ambition. However, we contend that the attempt by Obasanjo and his cronies to change the Constitution to facilitate the TTA was possible because, in the first place, the 1999 Constitution was an illegal document in that it was not created by the people. Therefore, since illegality begets illegality, an autochthonous constitution will be much more difficult to undermine if it provides for a single fixed term in office. A reminder of Hatchard's concept of an autochthonous constitution is perhaps instructive here:

a crucial step towards the establishment of an *ethos of constitutionalism*,



i.e. a recognition by the people that the document is 'their constitution' upon which they were consulted and which they endorse, which contains provisions that are meaningful to them and from which they can derive demonstrable benefits. The resultant document can then become 'trans-generational' in that it retains and develops public support over a period of time and thus is able to withstand attempts to undermine it either by 'unconstitutional' or 'constitutional' means.

Hatchard 2001, p 216

Clearly then, Nigeria cannot run away from the thorny issue of creating its first autochthonous constitution no matter how much the political elites postpone 'the evil day'. And if this is so, nor can government continue to run from the question of a sovereign national conference, which is the most credible way to guarantee maximum participation of and support by Nigerians in the constitution-making process.

As things are, and with Nigerians becoming increasingly politically conscious, if government does not take the initiative in planning for and convening such a conference of accredited representatives of all interest groups including the National Assembly, civil society organisations will do it some day in what might yet turn out to be political revolution. If the authors were in a position to attend a national conference of Nigerians and or a Constituent Assembly to change the 1999 Constitution our one recommendation would be a single fixed term of office for executive positions.

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