

# Towards a People's Constitution

The LAWYER had deliberated in a previous edition on the prospects and modalities of the forthcoming National Conference. Early last week we received a letter from Professor Ben Nwabueze, distinguished constitutional lawyer, Senior Advocate of Nigeria and chairman of the Patriots, inviting the LAWYER to an interview in his home on the ongoing National Conference.

Since its inauguration there has been so much debate surrounding it that it seems appropriate to revisit the ongoing National Conference.

Professor Nwabueze's letter by sheer coincidence came at a time when the entire country looked on bemused as the delegates right from the onset got themselves tangled in a heated debate on the adoption of the conference's procedure rules. The delegates just could not agree on what should constitute the majority vote in the absence of a consensus, in what was essentially a preliminary issue that ought not to have caused an immediate adjournment so soon after the plenary session started. This inauspicious beginning placed a question on the entire idea of a conference where issues of national importance were to be thrashed out and resolved. What we Nigerians are now seeing and reading in various media about the conference could have been avoided simply by the taking of pre-emptive steps in the preparation and organisation of the conference.

It certainly makes sense for delegates to resolve issues that may cause a stumbling block or otherwise prevent any form of progress from being achieved during the course of the conference and this issue of what should be done if there is no consensus has practically brought the conference to a standstill, with vociferous debate as to whether agreement should be by 75% or 2/3rd's majority vote. The possibility of a 75% majority vote makes one wonder whether the proponents of this provision want any consensus to be reached at this conference knowing the diversity of the delegates. It is not surprising that the proposal is already causing much friction among delegates as it seems to defeat the whole essence of consensus. Why a 75% majority vote for decisions to be reached when a simple majority is the norm, especially in a conference of this magnitude? The

delegates have a lot of areas to cover in so short a time, so no time should be wasted frivolously.

The Chairman, Justice Idris Kutigi (rtd) had no choice but to adjourn to confer with leaders of delegates across the geo-political zones to explore the possibility of the adoption of an agreed position on the matter. Whether there will though be a consensus only time will tell.

After a week we still have delegates confused and wondering who they are at the conference to represent, whether their various institutions, or their regions, or Nigeria. From the President's inaugural speech though, he has said what he expects: 'I know the task before you is onerous; but there must be only one winner, if we do everything right, and that winner must be Nigeria. I urge you therefore to focus strictly on the Nigeria Agenda.' I need say no more. I must also assume that a copy of the President's speech is in every delegate's folder as they will need to re-read it time and again to be reminded of what is expected of them from this conference.

Watching the rowdy sessions on the television and images of a delegate jumping off his seat in an attempt to snatch the microphone from an official to gain attention, does make one wonder whether delegates who are not known by the powers that be have a chance of making any meaningful contribution.

The cost of the confab has also generated its own debate both from within and outside the conference. Quoting former Lagos State Attorney-General and Commissioner for Justice, Mr. Supo Shasore SAN, who is one of the delegates representing Lagos State, 'given the duration of three months that the conference has to run and the sheer number of delegates, I think it imprudent to allocate such payments to delegates to attend a national conference. We should also have the liberty to air our views without being obliged in anyway. It is ordinarily a privilege to represent one's people and serve in such a capacity. Perhaps if there was no money involved we would have a much more robust dialogue and sincere attendance. My colleagues and I of the Lagos State delegation have agreed not to accept the payment. I have also written to the secretariat to ensure any money allocated to me as a delegate representing Lagos State should be returned to the Treasury and not claimed by anyone



MAY AGBAMUCHE-MBU

LEGAL  
EAGLE

may.mbu@thisdaylive.com

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The constitutionality of the conference was an issue long before its inauguration and an action has since been instituted in the Federal High Court against the Federal Government on the grounds that the Government does not have the constitutional power to convoke or convene a national conference without the consent of the National Assembly. This conference however is a national discourse without law making powers and cannot therefore be unconstitutional. To quote from the President's speech, 'the conference is open for us to table our thoughts and positions on issues and make recommendations that will advance our togetherness. The issues range from form of government, structures of government, devolution of powers, revenue sharing, resource control, state and local government creation, boundary adjustment, state police and fiscal federalism, to local government elections, indigeneship, gender equality and children's rights, among others' Professor Nwabueze did further say in his interview that the President has inherent powers to convene the type of conference he has convened, but lacks the power to set up a conference that will be competent to adopt a constitution that will be legally binding.

Amidst these weighty matters of constitution and constitutionality, what is really needed in Nigeria above all else, is an all new, genuine people's constitution.

